

**MINUTES OF MEETING
INDIAN HILL VILLAGE COUNCIL
APRIL 20, 2009**

A meeting of the Indian Hill Village Council was held on April 20, 2009 at 7:30 p.m. The meeting was held in the Village Fire Department Training Room.

Officials present:

Mr.	Eppa Rixey IV, Mayor
Mr.	David T. Ottenjohn, Vice Mayor
Mrs.	Susan K. Holzapfel, Council member
Mrs.	Lindsay B. McLean, Council member
Mr.	Keith M. Rabenold, Council member
Mr.	Mark E. Tullis, Council member
Mr.	Michael W. Burns, City Manager
Mr.	Paul C. Riordan, Clerk/Comptroller
Mr.	Don Crain, Solicitor

Officials absent:

Mr.	Joseph Beech, III, Council member
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Visitors present:

Sourushe Zandvakili	7950 Indian Hill Road
Shirin Zandvakili	7950 Indian Hill Road
Scott Phillips	Frost Brown Todd
Brian R. Redden	300 Pike St., Suite 400 Cincinnati 45202
Jonathan Rosenthal	7956 Indian Hill Road
Sheila Rosenthal	7956 Indian Hill Road
Stuart Tobin	10810 Indeco Drive 45241
Rob Dowdy,	Community Press, 394 Wards Corner
David M. Couch	Assistant City Manager
Paul F. Madden	Planning Commission Chairman
Kari Zenni	
John & Jolly Campbell	7850 Indian Hill Road

PLEDGE OF ALLEGIANCE: Council opened the meeting with the Pledge of Allegiance to the Flag

MINUTES: The Minutes of the regular meeting of March 30, 2009, had previously been distributed to each Council member. Mayor Rixey declared the minutes accepted as corrected.

PUBLIC HEARING: Mayor Rixey opened the meeting for a Public Hearing to consider an appeal of a January 20, 2009 Planning Commission decision to affirm an October 15, 2008 Administrative decision of the home occupation at 7956 Indian Hill Road.

Mayor Rixey explained the hearing would take into consideration the testimony and information that was presented to the Planning Commission leading up to their January 20 decision. The issue at hand is whether the existing dance studio operation that is currently being

operated at 7956 Indian Hill Road meets the home occupation standard contained in Section 38.4 of the Zoning Ordinance.”

He said “we are not here to debate the merit or qualifications of the dance studio.” He then reviewed Section 38.4 of the Zoning Ordinance.

City Manager Burns explained that he had distributed to each Council member at the February Council meeting, a packet containing a record of the information related to the appeal of the January 20, 2009 Planning Commission decision affirming the October 15, 2008 Administrative decision which determined that a dance studio operating as a house occupation at 7956 Indian Hill Road was in conformance with the home occupation standards contained in Section 38.4 of the Zoning Ordinance.

City Manager Burns also explained certain information included in this packet. He highlighted a June 5, 2008 letter from Dr. and Mrs. Zandvakili who officially objected to the property at 7956 Indian Hill Road being used as a dance studio. He said that after investigation he concluded that the property was being used in accordance with home occupancy use. The property is limited to 8 to 10 students and if it got beyond that the matter would have to be opened again.

City Manager Burns explained that the Planning Commission affirmed his October 15, 2008 administrative decision regarding the home occupation use at 7956 Indian Hill Road for the operation of the “Keep on Dancing Modern Ballet and Jazz” studio by Mrs. Jonathan Rosenthal. The Commission also confirmed City Manager Burns’ October 15, 2008 finding that this determination is based upon the current 8 to 10 student capacity of the studio. He also reported that on February 17, 2009 a letter from Dr. & Mrs. Zandvakili to Mayor Rixey was received indicating their appeal of the Planning Commission decision.

Mayor Rixey stated that due to the long history of the dance studio in the community, he assumes that some of the members of Council have had some dealings with one or both of the parties. It has been discussed and it is not felt that any of these dealings are such that it would make it necessary for any of the Council members to recuse themselves from this hearing.

Dr. Zandvakili was then invited to address Council.

Dr. Zandvakili said that he is concerned about the safety of his small children because they return home from school at approximately 4:00 P. M. which is the time that the dance studio starts. He also explained that his family and the Rosenthal’s have a shared driveway. Dr. Zandvakili reviewed a letter dated August 1, 2007 addressed to Dr. & Mrs. Rosenthal which proposed the following:

1. The dance studio class be limited from 5 to 7:00 PM Monday to Thursday
2. The problems associated with the dance studio traffic, headlights can be corrected by planting some year around greens on the property. A written agreement for the maintenance of the shared driveway should be prepared.

3. The Zandvakili's would like to be protected from any potential liability in the event of an accident given its non residential use by the dance studio.

Dr. Zandvakili said that they have never asked that the business operation be ceased. He said that there are commodities sold by the Rosenthal's because they sell costumes to the students. He also said that the home occupancy rule states that traffic should not be generated by a home occupation that is greater in volume than would be expected in a residential neighborhood. He also said that there needs to be a parameter set around the hours that the home occupation can be conducted so that he can protect his children.

Dr. Rosenthal addressed Council and explained that the students now number 8 to 10 and the starting time of the classes is 4:15 p.m. He also explained that once a year there is a dance recital and costumes are delivered to his home for the students.

Council member Tullis asked Dr. and Mrs. Rosenthal to explain the number of students in the classes.

Mrs. Rosenthal explained that there are a total of 10 students. She explained that three (3) attend on Monday, three (3) attend on Tuesday, eight (8) on Wednesday, and four (4) on Thursday. Mrs. Rosenthal said that she could work with the requirement of limiting the students to 8 – 10.

Mr. Scott Phillips, representing the Village of Indian Hill, explained that this was not a request for a special exception. He said that this is an administrative appeal of the City Manager's decision who was asked whether this met the requirement for a home occupation. The City Manager conducted an investigation and concluded that it did. Mr. Phillips said that there is no mechanism available to place restrictions on the use of the property such as hours of operation with this type of appeal.

City Manager Burns said that it was taken into consideration that the dance studio had a 28 year history in the Village, however, the eight to ten student standard took into account the fact that the neighborhood has changed and there are now two younger children that share the driveway.

Mr. Phillips explained that Council could affirm the decision, reverse the decision, remand the decision to the Planning Commission, and it is also possible that the decision could be modified, although he could not envision what that would look like because this is not a request for a special exception. He said that the only issue to be considered is did the City Manager make a mistake when he ruled that this was a home occupation business.

Mr. Scott Phillips swore in all those giving testimony to Council.

Mr. Brian Redden, Counsel for Dr. & Mrs. Rosenthal addressed Council. He said that the way that they understood it, the underlying issue before the Planning Commission was not whether there should be time or student number restrictions, but whether this could be conducted as a home occupation at all. He said that the Zandvakili's requested in January that this business

not be allowed to be conducted whatsoever. He said that the Planning Commission decided that within certain parameters' this business could be conducted under Section 38.4. It was acceptable so long as certain conditions were satisfied. He also said that the safety issues are being addressed in that the classes are being conducted from 4:15 to approximately 6:30 p.m. Monday thru Thursday. He said that they submit that an approval of the Planning Commission's decision is appropriate because there is no issue pertaining to how the dance studio is being operated at present. He said that Mrs. Rosenthal is aware that if the number of students were to increase then her ability to conduct the business would be subject to potential inquiry, and at that point ruled to be altered further.

Mr. Stuart Tobin, 10810 Indeco Drive 45241, addressed Council. He said that when Council makes its decision they have to look at the expertise of the people hired to make the decision. There has been no expert testimony from anyone else. He said it is clear that Sheila Rosenthal has been doing this for over 28 years and it is grandfathered. She went through the same process in 2003. He said that one thing that's different is there is now two children living next door, but he didn't believe this changed the law. He said it was probably safe before and it is safe now. He said they cannot point to one child being endangered or injured. All they can give is some subjective testimony. He said he thinks they have to weigh on the side of the professionals who made the investigation.

Mrs. Sharon Zandvakili addressed Council. She said that parents come in early to drop off their children in the driveway. The only thing she is worried about is her kids. She said the law says there is to be no excess traffic.

City Manager Burns said that this issue was studied for several months, the Rangers sat at the end of the driveway and observed the traffic. They found that the conditions of the traffic coming into the driveway were no different than many other driveways in the Village of Indian Hill.

Mayor Rixey said that it is important that they look at the specifics in the rules as they are written. They have to take into consideration, not just this situation but also residential situations throughout the Village. He said if necessary Council would digest the information reviewed and the testimony presented and come to a conclusion within 30 days.

There being no further testimony or questions, Mayor Rixey declared the Public Hearing closed.

Mr. Phillips cautioned Council not to discuss this matter amongst themselves or to enter into any additional fact finding before their deliberations, because, they are acting in a quasi judicial role.

Dr. Zandvakili requested copies of the investigations performed by the Indian Hill Rangers. City Manager Burns said that this information was not available. Dr. Zandvakili then requested that the Rangers notes be removed. City Manager Burns said the Indian Hill Rangers' verbal report is in the packet.

Council's decided to review the testimony and documentation and to make a decision on the appeal at the May 18, 2009 Council meeting.

FINANCE COMMITTEE REPORT: Council member Tullis directed Council's attention to a memo entitled "Finance Committee Meeting Report" dated April 16, 2009.

Council member Tullis reported that the Finance Committee met on April 16 to review and discuss several topics in advance of the Council meeting. He also directed Council's attention to the Statement of Receipts and Disbursements, March 31, 2009. He also reported the income tax collections through April 20, 2009, totaled \$5,700,000. Staff calculated that income tax received for the period of May through November, 2008 totaled approximately \$1,000,000. Assuming that collections this year for the same time period are approximately 60% or \$600,000 the total income tax receipts are estimated to be \$6,300,000 for the year 2009. The shortfall for the year would be approximately \$1,000,000 which would be a reduction of approximately 15% below budget for 2009.

Council member Tullis reported that City Manager Burns will be looking at Capital expenditure delays to offset some of the shortfall. On the positive side, known inheritance tax receipts equal \$2,200,000 which is \$200,000 over the 2009 budget.

Council member Tullis also pointed out that the income tax receipts for 2009 would be the third highest in the Village history.

Council member Ottenjohn pointed out that the total reduction in income tax receipts from 2008 is approximately 25%.

Council member Tullis also reviewed the Statement of Receipts and Disbursements, March 31, 2009 along with the notes which explained variances from budget.

Council member Tullis reviewed the rest of the financial statements and highlighted that the statement of cash and investments and fund balances totaled \$16,924,000 which was slightly up from the previous month. This month's balance also included receipts from FEMA in the amount of \$283,000 which is shown as a separate fund in the statement. He also highlighted that the Rowe Arboretum investments and the Green Areas and Recreational Fund investments have increased slightly since the previous month, which is positive movement in this economy.

Council member Tullis also reported that the dividend income of the Rowe Arboretum Fund appears to be on track with budget.

The Financial Statement for March had previously been distributed to each Council member. There being no exceptions noted the Financial Statement was accepted as issued.

Council member Tullis also reported that Mrs. Mary Ida Compton was in attendance at the Finance Committee to discuss Bahl & Gaynor investment performance for the Rowe Arboretum Fund. She advised that the 2008 performance was a negative 23.84%, but this beat the benchmark by nearly 14%. She expressed the opinion that Bahl & Gaynor has performed

very well compared to the rest of the benchmarks. It was also noted that the dividend income has been maintained very close to the budget. Copies of the performance reviews are available for all Council members if they would like a copy.

Council member Tullis also reported that the Finance committee reviewed draft copies of the official statement for the bond issuance. He explained that the underwriters are working on setting up the rating review with Standard & Poors, and he is hopeful that they will visit the Village for the review. The issuance is expected to take place sometime between May 15 and June 12.

Council member Tullis also reported that Mrs. Weber advised the Finance committee that it will be necessary to do an additional appropriation ordinance in May or June in order to properly account for several financial adjustments. These include the allocation of \$283,000 in FEMA reimbursements; \$100,000 in Water Works engineering costs related to the implementation of Phase 1 of the Master Plan; an additional \$75,000 in legal fees related to the Martin Marietta mining case and ongoing litigation; and, the establishment of the bond fund for the upcoming issuance of bonds.

Council member Ottenjohn requested City Manager Burns to prepare an analysis for the next Finance committee meeting for a worst case scenario with the income the Village is projected to receive to make sure that the Village is all set for the financing.

LAW COMMITTEE REPORT: Council member Rabenold directed Council's attention to a memo entitled "Law Committee Meeting Report" dated April 14, 2009. He reported that the Law committee met on April 10 to review and discuss several topics in advance of the Council meeting.

Council member Rabenold reported that Messrs. Burns and Phillips provided an update on the Martin Marietta hearing process in Anderson Township. Opponent testimony continues to be considered by the ATBZA. Expert testimony will probably continue until early May. It is anticipated that public comment sessions will begin in mid May. Martin Marietta will then present rebuttal testimony, and the overall hearing process will continue until early summer.

Council member Rabenold also reported that City Manager Burns provided a confidential brief update on two other litigation/mediation/arbitration matters involving the water tower and Public Works building. He said that City Manager Burns would provide an update in executive session. He reported that they also discussed the appeal hearing of the January 20, 2009 Planning Commission decision which was previously discussed in the Public Hearing.

Council member Rabenold reported that the Law Committee reviewed a draft lease renewal with the Historical Society related to the Bonnell House and the Red Schoolhouse. It was suggested that some additional insurance language be added in related sections. It was suggested to increase the building replacement values for both buildings under the Village's policy; increasing liability limits, and adding host liquor and hired and non owned auto liability coverage under the Historical Society's coverage. He said that City Manager Burns indicated to the committee that the Village could include the building and fire coverage under the pool

coverage for an annual cost of \$350 to \$400, which is significantly less than separate insurance for the Historical Society. City Manager Burns suggested to the committee that the Village assume this cost, but then take the amount into consideration when reviewing any Historical Society annual funding requests. The committee was acceptable to this suggestion. Copies of the revised lease agreement with changes in bold were included in the Council packets.

Council member Rabenold requested that a sentence be added to the lease requesting that the Historical Society provide the Village with a certificate of insurance on an annual basis.

Since the lease has expired Council decided to pass this ordinance on an emergency basis.

“AN ORDINANCE AUTHORIZING THE MANAGER TO ENTER INTO LEASES LEASING THE LITTLE RED SCHOOLHOUSE AND BUCKINGHAM LODGE TO THE INDIAN HILL HISTORICAL MUSEUM ASSOCIATION AND DECLARING AN EMERGENCY”
was presented and read.

Upon motion by Council member Rabenold, seconded by Council member Ottenjohn, the rules were suspended by unanimous roll call vote.

Council member Rabenold moved that the ordinance, with additions made as discussed relative to the insurance certificate and emergency passage, be enacted. The motion was seconded by Council member Ottenjohn and was carried by unanimous roll call vote. Mayor Rixey declared Ordinance No. 10-09 enacted.

City Manager Burns reported to Council that the abandoned building project at 7360 Indian Hill Road will be going to foreclosure.

GROUNDS COMMITTEE REPORT: Council member McLean directed Council’s attention to a memo entitled “Grounds Committee Meeting Report”, dated April 15 2009. She reported that the Grounds committee met on April 14, to review and discuss several topics in advance of the Council meeting.

Council member McLean reported that Mr. McQueen provided a report on Grand Valley activities, a copy of which was attached to the Grounds Committee meeting minutes. She highlighted that the Grand Valley committee met on April 16 to discuss present and future projects for the Grand Valley.

Council member McLean also reported that Mr. Kipp provided a progress report on several projects, a copy of which was included with the Grounds Committee meeting minutes. She highlighted that the basement concrete foundation and floor for the Indian Hill Rangers/Administration building improvements has been completed but due to additional wet weather conditions during March and the first part of April the work is approximately two and a half weeks behind schedule. The brick veneer masonry work on the exterior walls for the north

section of the building is moving along rapidly. The roof trusses for the north end of the building have been erected.

Council member McLean also reported that Dugan & Meyers Construction Co. still feels the schedule for the (basement area/police offices) will be made up for the most part. Phase 1 is currently scheduled to be completed by August 1. Both Phase 1 and Phase 2 are scheduled to be completed by December 15, 2009.

Council member McLean also reported that the concrete footers, foundation, containment pits and injection chamber for the Water Works Chemical Feed building have been completed and the project is on schedule to be completed by July 2009.

Council member McLean reported that Mr. Davis provided a departmental activity report, a copy of which was attached to the Grounds committee minutes. The report reflects regular seasonal activities.

Council member McLean also reported that the Grounds committee considered the revised draft leases for the Bonnell House and the Red Schoolhouse which had been considered previously in the Council meeting.

Council member Mclean reported that City Manager Burns provided an update on the Beech Street property encroachments on an adjacent Green Area. The property owner met with the Green Areas Advisory Committee on April 1st. The owner has indicated her acceptance of the Village's requirements for resolving the encroachments, and final documents will be signed sometime in May.

WATER WORKS REPORT: Council member Holzapfel directed Council's attention to a memo entitled "Water Works Committee Meeting Report" dated April 15, 2009. She reported that the Water Works committee met on April 14, 2009 to review and discuss several topics in advance of the Council meeting.

Council member Holzapfel reported that Mr. Kipp provided a project report on the chemical feed building as part of his Grounds committee report.

Council member Holzapfel also reported that Mr. Davis provided a departmental activity report, a copy of which was attached to the Water Works committee meeting minutes. She especially noted that the engineering proposals for the 2009 main improvements involved a fairly wide spread (\$98,640 - \$170,100), and staff is very pleased with the lower cost proposal which is under the original estimate of \$180,000 for engineering services.

Council member Holzapfel also reported that the committee reviewed copies of an updated Attachment "A" for an ordinance amending the tap-in fee schedule for the north Indian Hill benefit area. The updated fees are based on 3.3% interest rate. The tap-in-fee accrues to any developing building lots in the area which was transferred to Greater Cincinnati Water Works service in 1987. This transfer involved the expenditure of \$453,990 from the Village's

CIRF to make system improvements, and the new schedule reflects the per lot pay back to the CIRF including interest costs over the preceding 22 years. The committee recommends emergency passage of this amending ordinance which needs to be passed by May, 2009.

“AN ORDINANCE AMENDING SECTION 51.26 OF THE CODE OF ORDINANCES BY DELETING ATTACHMENT “A” THERETO AND SUBSTITUTING A NEW ATTACHMENT “A” AND DECLARING AN EMERGENCY” was presented and read.

Upon motion by Mayor Rixey, seconded by Council member Holzapfel, the rules were suspended by unanimous roll call vote. Upon motion by Council member Holzapfel, seconded by Council member Ottenjohn the ordinance was passed by unanimous roll call vote. Mayor Rixey declared Ordinance No 11-09 enacted.

PUBLIC WORKS REPORT: Mayor Rixey directed Council’s attention to a memo entitled “Public Works Committee Meeting Report” dated April 14, 2009. He reported that the Public Works committee met on that date, to review and discuss several topics in advance of the Council meeting.

Mayor Rixey reported that Mr. Kipp provided a project status report, a copy of which was attached to the Public Works committee meeting minutes. He especially noted that the paving program may change a little due to the water main projects. His amended project management update reflects the adjustments and Mr. Kipp advised that all projects are still subject to a budget review in May.

Mayor Rixey explained that the Drake Road project has been deleted because of the Water Works requirements so that the total estimated project cost is now \$498,500. There will be a separate project for the Stephan Park Walking Path in the amount of \$16,000.

Mayor Rixey reported that Mr. Davis also provided the committee with a departmental activity report for the month of March, a copy of which was attached to the Public Works committee minutes. It was noted that the department is removing and replacing a 36” culvert along the Camp Jim B driveway.

SAFETY COMMITTEE REPORT: City Manager Burns directed Council’s attention to a memo entitled “Safety Committee Meeting Report” dated April 14, 2009. He reported that the Safety committee met on that date to review and discuss several topics in advance of the Council meeting.

City Manager Burns reported that Colonel Schlie provided a Police activity report for March, a copy of which was attached to the Safety Committee minutes. Colonel Schlie noted that two officers recently completed Field Training Officer (FTO) training. This type of training is important for maintaining the department’s “accreditation-like” operational standards.

City Manager Burns reported that Chief Ashbrock provided a fire & EMS activity report for the month of March. Chief Ashbrock also discussed the differences between ionization and

photoelectric sensor detectors. The latter type is being promoted by several fire safety advocates. Chief Ashbrock may prepare an informational piece for the bulletin explaining the pros and cons of each type. A copy of his report is also attached to the Safety committee minutes.

City Manager Burns provided the committee with a brief update on the administration building project. It is currently about two weeks behind schedule on the first phase, but the construction manager feels that this lost time will be made up prior to the completion of the second phase, and the project will finish on time in early December 2009. He said that it will be necessary for the Administration employees to make temporary moves beginning in June. Several employees will move into the Phinney House while the rest will occupy several offices in the police wing until the rest of the project is completed in December. The Ranger's station should be ready for occupancy by the first week in August.

PLANNING COMMISSION REPORT: Council member Ottenjohn reported that the Planning Commission meeting of April 21 was cancelled, therefore there is no Planning Commission report.

CITY MANAGER'S REPORT: City Manager Burns, in his Manager's report, reminded Council that May 7 is the date for the "National Day of Prayer" to be held at Stephan Field

Council member Rabenold made a motion that Council move to executive session to discuss a legal matter. The motion was seconded by Mayor Rixey and was carried by unanimous roll call vote. Council entered into executive session; Council returned from executive session. There being no further business to come before Council, Mayor Rixey declared the meeting adjourned.

Respectfully submitted,

Eppa Rixey IV, Mayor

ATTEST:

Paul C. Riordan, Clerk