

A regular meeting of the Council of the City of Blue Ash, Ohio, was held on January 25, 2007. Mayor Robert J. Buckman, Jr. called the meeting to order in Council Chambers at 6:30PM.

**OPENING CEREMONIES**

Mayor Buckman led those assembled in the Pledge of Allegiance.

**ROLL CALL**

MEMBERS PRESENT: Councilman Rick Bryan, Mayor Robert Buckman, Councilman Lee Czerwonka, Councilman Henry Stacey, Councilwoman Stephanie Stoller, Councilman James Sumner, and Vice Mayor Mark Weber

ALSO PRESENT: City Manager David Waltz, Deputy Solicitor Bryan Pacheco, Clerk of Council Jamie Eifert, Deputy Clerk of Council Sue Bennett, Treasurer/Administrative Services Director James Pfeffer, Parks & Recreation Director Chuck Funk, Service Director Dennis Albrinck, Assistant Community Development Director Dan Johnson, Economic Development Director Judy Clark, members of the press, and interested citizens

**HEARING – 6:30PM – regarding a Board of Zoning Appeals decision related to a potential Budget Rent-A-Car location in Blue Ash on Kenwood Road**

Mayor Buckman called the hearing to order at 6:30PM. He asked that those persons expecting to testify stand. Assistant Community Development Director Dan Johnson, Attorney Stephen Griffith, John Rickert of Ricore Investment Management, Inc., and William Madden of Budget Rent-A-Car stood, raised their right hands, and swore “to tell the whole truth and nothing but the truth, so help you God.”

Mr. Johnson provided background as to why this hearing is being held this evening. The written information provided to Council regarding this matter includes his Memo to Council dated January 25th explaining the Appeals process; the appeal letter from Mr. Johnson dated December 28<sup>th</sup> to the Clerk of Council; the letter dated January 12<sup>th</sup> from Mr. Griffith to the Clerk of Council; the staff report prepared for the Board of Zoning Appeals’ (BZA) December 11<sup>th</sup> meeting; the Application Notice letter dated November 17<sup>th</sup> from Mr. Johnson to Mr. Ford regarding the denial of the application; the letter dated November 30<sup>th</sup> from Mr. Griffith to the Board of Zoning Appeals; the area map from the County Auditor’s property website; approved minutes of the December 11, 2006 BZA meeting; a transcript of the meeting of December 11<sup>th</sup>; and Chapter 1133 of the Code of Ordinances regarding the BZA. (A copy of these items may be found within the Community Development Office.)

Mr. Johnson explained that the reason we are here this evening is because on November 17<sup>th</sup>, he denied a permit for a building renovation at 11109 Kenwood Road. The applicant had applied to make renovations to house a Budget Rent-A-Car (RAC) office and, in his opinion, a rental facility at that location. A letter of denial was sent because this location is in the M-1 District. The Blue Ash Code allows such a use in the M-4 District. The way in which the Blue Ash Code is constructed, if a use is not specifically permitted in a district, then the use is prohibited. The M-1 District does not permit “sales, leasing, and storage of automotive vehicles, recreation vehicles, boats, and machinery,” which is what is specifically allowed in M-4. Because it was listed as specifically included in M-4, he believes it was the intent to specifically describe where such activity would be allowed in Blue Ash -- in the M-4 District, and not in any other district.

Mr. Johnson further explained that the applicant appealed, through his attorney, to the BZA, and on December 11<sup>th</sup>, the BZA held a public hearing and decided in favor of the appellant. The BZA agreed that Mr. Johnson’s interpretation of the Code is correct; however, they proceeded to grant a variance to allow this use as proposed in this district. Mr. Johnson does not believe they made a reasonable decision since Blue Ash has over one square mile of land in Blue Ash zoned M-4. If Council specifically intended to have M-4 house automotive related uses, then there is sufficient land in Blue Ash to house a rental car use. A rental car use is the same as leasing in his opinion, and is supported by the common dictionary

definition. The term “lease” does not specify anything other than it is a rental. You pay someone to give them something in return for a period of time. That is his interpretation of the purpose of a rental car agency.

Mr. Johnson explained that it appears one of the arguments being made was that this was not a rental use so much as it was an office use because this would be the Northern Cincinnati headquarters for Budget RAC, and that the rental was an ancillary use to the primary use of office. He explained that when interpreting the zoning code, it is appropriate to consider all the uses independently, and if there’s a use that is not permitted in the district, then it is not permitted regardless of what the primary use is. Therefore, the fact that it is primarily an office use does not mean that the ancillary use of rental would be acceptable in that district.

Mr. Johnson commented that the BZA granted a variance for this use. The Blue Ash Code clearly describes the rights and responsibilities of the BZA; however, it does not specify the right to grant a variance for a use that is not otherwise allowable in the district.

Mr. Steve Griffith, attorney representing the applicant for the Budget RAC space, introduced himself. He asked Mr. Johnson questions regarding the BZA transcript to confirm whether portions of the transcript were correct. Mr. Griffith read from those transcripts (this quote of Mr. Johnson’s appears on Page 23 of the transcript):

“Just for clarification of the Board, if they told me that this was going to be an office, exactly as proposed on this, wash bay and all, if they told me we’re not going to lease cars out of here, I would sign off on the permit. It’s the leasing that’s the problem. You know, the configuration of the internal space, the fact that they have a wash bay, the fact that they might designate some spots for their use. If those were employee spots rather than car spots for the leases, I would still be able to sign off on this permit given what’s in the Code. It’s the fact that somebody’s handing them money for a set of keys.”

Mr. Johnson confirmed that the above was an accurate transcript. In answering additional questions from Mr. Griffith, Mr. Johnson commented that:

- He believes that he did speak with representatives from Budget about the appeal from him. He was uncertain as to whether that discussion was before or after the formal appeal was submitted.
- He advised the applicant, as he would any other person approaching the office, as to where a proper location for such a use in Blue Ash would be.
- He did not recall commenting to Budget representatives on whether he thought they would be successful on the appeal to City Council.

Mr. John Rickert approached the podium and made the following comments in addressing questions from Mr. Griffith:

- He resides at 9073 East Kemper Road in Montgomery, Ohio.
- He is the Principal with Ricore Investment Management – the property manager who owns the building at 11111 – 11135 Kenwood Road, which is known as the Corporate Center of Blue Ash. Ricore has owned it since January 2003.
- They have 94% occupancy. The only vacancy is 3,336 square feet -- the space they had hoped to lease to Budget RAC.
- The general use in the building is office or office/warehouse.
- Existing tenants in the building include PSS Medical, which sends medical supplies to county and small regional hospitals. They do employ service vehicles in their business which they park on site. Drivers come on site, park their personal vehicles, get into their trucks, load up, and go out to the county hospitals. American Cold Storage is a sales and service company for industrial refrigeration units. They also employ service vehicles in their business. Parallel Technologies sells and services commercial or business telephone systems, and their employees also use service vehicles in their business. Bethesda Hospitals, a division of Tri-Health, has their orthopedic medicine and their corporate health billing function in the building. Adept

Technology is an engineering firm, and they conduct engineering training and sales of industrial robots in that location. A second engineering firm is a tenant and also sells industrial robots. The Southwest Regional Office of the State of Ohio Auditor is a tenant, and they also utilize State-owned vehicles for their Auditors to go out on location. Staff Mark is a relatively recent tenant, and they are a temporary employment agency. Minuteman Press, located out front facing Kenwood Road, is a commercial printer and copier. Mr. Rickert's office, and sister company, Comprehensive Facilities Management, is located in the rear of the property, and they are a property management and maintenance business. Their maintenance people also utilize service vehicles in their duties.

- A plan was unfolded and Mr. Rickert identified it as the site plan for Corporate Center of Blue Ash. He pointed out the building structure, Kenwood Road, the adjacent property uses, including a hotel, a U.S. Postal service facility, parking areas, and other nearby uses.
- The lease proposals and negotiations with Budget RAC began approximately in mid August.
- To obtain a Certificate of Occupancy, he would expect, like any other tenant, the need to retain a General Contractor, submit tenant finish improvement plans to Blue Ash to receive a construction permit. Normally, Blue Ash would issue a Building Permit, the General Contractor would build, the Building Inspectors would come out and view the project at various stages of progress. There would then be a final inspection in life safety which would have to be signed off, and then an Occupancy Permit would be granted.
- He was surprised that the Budget RAC use was not permitted. His company is neither small nor inexperienced. Zoning codes are typically a part of the decision making process. They felt the existing code accommodated Budget's proposed use. Budget's use is not automobile sales nor storage or leasing of automobiles. They considered that the use of the property is indistinguishable from the other office uses in that they are similar to other tenants. He was willing to accept Mr. Johnson's opinion, as he believed he was doing his job. Therefore, an appeal was filed to the BZA to get a variance or permission to proceed with the deal. He is even more surprised to be standing in front of City Council this evening than he was to be in front of BZA.
- Regarding planned signage, they have a standard sign scheme that they employ with each tenant. The prior owner had what Ricore believed to be inadequate black signs. Ricore decided upon an internally illuminated box type sign, which every tenant has. The proposed sign for Budget would be no different.

(A question was not able to be heard at this point in the meeting; however, the answer was "none.")

- Photographs of Budget properties at other locations were shown to Council. One of the photos shows the Hosbrook Road location. He believes they are an office use, not a dealership. Photographs of a dealership were also shown. He believes they are being treated unfairly. Budget has required, as a part of the lease, the provision of 20 parking opportunities on the premises. Sixteen of those spaces are in the back of the property, near the retention pond not visible from Kenwood Road. Four of the spaces would be in the front parking area along Kenwood Road. His perception is that Blue Ash is objecting to the rental nature of the business and is contemplating that these vehicles are being stored.
- The showing of these photographs is attempting to illustrate that, in their opinion, his neighbors do the same thing, and they do it permissibly. Time Warner vehicles are just south of his property. Wornick's trucks and debris are often on their lot. Page 3 of the photographs, picturing adjacent property to the south, shows what would be looking onto their rear lot, which is predominantly the US Postal Service and their large trucks, including semi-trailers. To the north is a hotel. Page 4 of the photographs shows vehicles parked on their property, including the PSS Medical vans. Drivers of those vans come to work, park their cars, load their vans, and run their routes. They believe that Budget's desire to allow people to pick up or drop off

rental vehicles in Blue Ash, as opposed to the Cincinnati airport, is indistinguishable from the office uses already in place. Their cars would look no different than other vehicles already parked in the parking lot, and he believes their use is less obtrusive than delivery or service vehicles already employed by PSS, Wornick, and the US Postal Service.

- Mr. Rickert reiterated that he is more surprised to be at Council this evening than he was at the BZA hearing. Mr. Rickert read an excerpt from the transcript from the BZA hearing (this excerpt begins on Page 20 of the transcript):

“D. Johnson: I think you’re right. I think from the perspective that it’s not necessarily I was right or wrong so much as was I right in denying the permit or if not, you have the capacity to say either I’m interpreting the Code wrong or I’m interpreting the Code right, but yes, you have the latitude to permit this either way.

M. Sirkin: You interpreted it correctly in my opinion. That being said, is it a goofy little niche in the Code that nobody came up with and worked until this particular day right here?

S. Griffith: It’s almost when you’re trying to write these, I’ve had to try to write these. It’s really, really difficult to write something that people are going to use in the future ... really that’s one reason why you have variance procedures because it is so difficult.

S. Collett: Under that scenario then, if we were to make the judgment that you interpreted right but that we may need to grant a variance, would they then have to submit for a variance?

D. Johnson: No.

J. Rickert: What does that mean, Dan?

D. Johnson: That means the Board has the latitude to tell me to issue the permit.

J. Rickert: Are you good with that if they do?

J. Berry: To be quite frank, he has no choice. If we were to decide, I think the right terminology would be vacate your order, then he would have to allow this to proceed.”

- Mr. Rickert commented that the Board voted unanimously, after that interaction, to allow Budget to proceed. He left the Chambers that evening with the understanding that they would be allowed to proceed.

In addressing questions from Deputy Solicitor Bryan Pacheco, Mr. Rickert answered the following:

- None of the other tenants in the building lease cars from those premises.
- None of the other tenants store those cars for leasing purposes. However, they do allow their cars to remain on their property overnight or during the day when not in use. Those cars are not leased by anybody.
- Mr. Rickert was a former Deerfield Township zoning commissioner who does understand the importance of understanding what codes are before invoking a business venture.
- Mr. Rickert was aware, by reading this code, that in the M-1 District, leasing, sales and storage of vehicles is not a permitted use.
- Mr. Rickert understands that the BZA did not say that the use is correct. They actually gave a variance.

- Mr. Rickert confirmed that Mr. Pacheco quoted an excerpt correctly from the transcript from Mr. Rickert's testimony: "... but I don't know that I would necessarily frame it that Dan's incorrect because I don't know that I think he is." (This quote appears on Page 20 of the transcript.)
- Mr. Rickert, with respect to the Budget use, does not dispute that the cars will be rented from the property.
- Mr. Rickert commented upon the issue of "leasing" vs. "renting." In his opinion, in the context of automobiles, he believes that leasing is when you have cars available on lot in which consumers may come and choose whether to lease (vs. buy) the vehicle from the dealer for specified terms – more than a day and more than a couple of days. There's a formal lease agreement. It is his opinion that "renting" is different and would occur, for example, when you drop off a personal car, rent another car for a couple of days, and then return the rental car.

In addressing questions from Mr. Griffith, Mr. Rickert commented that:

- Office use is permitted in the M-1 zone.
- Budget's use of the property is, in effect, office.

In addressing questions from Mr. Pacheco, Mr. Rickert commented that:

- As a part of the office use, people may come to Budget, drop off their cars, leave them parked, pick up the rental car, and then drive it to the airport.

In addressing a question from Councilman Mark Weber as to his opinion as to whether or not the BZA had the authority to grant the variance under Chapter 1133, Mr. Johnson read directly from the Code (Section 1133.04 – Powers):

"The powers of the Board of Zoning Appeals are to interpret the Zoning Code as follows:

- (1) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an inspector in the enforcement of the Zoning Code.
- (2) To interpret the provisions of the Zoning Code in such a way as to carry out the intent and purpose of the Master Plan including, but not limited to, determining zoning lines where the street layout on the ground varies from the street layout as shown on the Zoning District Map.

(b) To consider the following four exceptions:

- (1) Use of premises for public utility and railroad purposes.
- (2) Reconstruction of a nonconforming building that would otherwise be prohibited by the Zoning Code.
- (3) Parking of vehicles or recreational vehicles in the R-1, R-2, and R-3 Districts not in conformity with the Zoning Code when it appears that a substantial hardship or injustice will prevail because of unusual or exceptional conditions.
- (4) Installation of microwave antennas (satellite dishes) not in conformity with the Zoning Code when it appears that a substantial hardship or injustice will prevail because of unusual conditions.

(c) To consider the following four variations:

- (1) Vary the yard and/or area regulations where there is an exceptional or unusual condition, which condition when related to the yard and/or area regulations of the Zoning Code would prevent a reasonable or sensible use or arrangement of buildings or other features on the lot."

Councilman Weber stopped Mr. Johnson at that point, and in answer to Councilman Weber's question, Mr. Johnson commented that the BZA did not cite a specific authorizing section of the Code when granting their variance.

In addressing Councilman Weber's question as to how the BZA arrived at their decision, Mr. Griffith commented that the owner's interpretation is different from Mr. Johnson's interpretation, and, in his opinion, the BZA resolved that. The Board made a decision to permit the use, and the use is permitted because it's an office use. The Board interpreted the zoning code. If the Board happened to advance the wrong reason as the basis for its decision, there is case authority in Ohio that the right decision was made, then it doesn't make any difference. The applicant does not believe a variance is needed, and he remarked that the BZA does not have the right to grant a variance under the code. The use is office, and simply because a use is permitted in M-4, it does not mean that another use is prohibited in M-1.

Mr. Rickert commented that it has never been their practice or intent to operate in violation of any municipality or to "pull the wool over anybody's eyes." They will follow the process. When he learned that the application for the Building Permit had been denied, he was told by Blue Ash that he needed to apply for a BZA variance to go to speak in front of the BZA. He did that in order to follow the process. When Counsel asked the question of his testimony in the transcript regarding his thoughts as to whether Mr. Johnson was correct or incorrect, he was trying to allow Mr. Johnson an opportunity to "save face." His intent was to get it done, and rather than say that he thought Mr. Johnson was wrong, he decided to follow the process as best understood with the intent to be good corporate citizens. They simply ask to be treated fairly and that Council understands that it is very difficult to lease space. There are economics involved and risk taken as building owners in terms of their properties. They are trying to work with the system, rather than buck it.

Mr. William Madden introduced himself. In answer to questions posed by Mr. Griffith, Mr. Madden commented that:

- He resides at 1004 Redrain Circle, Lexington, Kentucky, and that he works for the Avis Budget group.
- Budget entered into a lease of space at Blue Ash Corporate property in Blue Ash and that Budget intends to use it principally to set up a northern office apart from the offices staged at the Cincinnati CVG airport. There will be about six or seven people who will work in this office, including a northern city manager, a group of people attending to the operations of the individual stores across the northern tier of the city, and there will be movement of vehicles from one location to another. The second use was to operate a rental facility.
- There would be provisions for 20 vehicles on site, four in front and 16 parked to the rear, or western edge of the property near the holding pond. On site at any one time, he estimates an average of ten vehicles.
- There are typically three modes of operation for the rental business. One is call-in type business, where someone would set reservations, order a particular style of vehicle, and determine dates and other terms of the agreement. They don't generally leave vehicles, but they pickup a vehicle with the intent to return it either there or at some other location – however the agreement calls for. The second mode is for delivery of vehicles, where they provide cars and take them to the individuals who are leasing or renting. The third mode is walk-in traffic, and is by far the smallest portion of their business.
- No heavy maintenance at any of the off-airport facilities is performed. There are no oil changes, tire changes, light bulb changes, windshield washer or wiper repair, or anything of that nature. Cars are rinsed off, vacuumed, the windows are cleaned, and they are prepped for delivery for new rental.
- All vehicles would be fueled off site. There is no storage of fuel on site other than what is in the vehicles themselves. No gas, oil, kerosene, diesel or anything of that nature is stored on-site.
- The average length of time a vehicle is rented for an off-airport location is about three days.
- The tenant finish improvements were designed for this space by Steven Ford, LLC, a design builder. He has a plan for construction of the offices as well as remodeling of

the facility and redecoration. That plan was given to the BZA for review. (Mr. Johnson indicated that plan was not included in the materials provided to Council.)

- In addressing the plans for the space, those plans include three offices up front and three offices along the southern wall, a break room, and two restroom facilities. Employees would be working from desks and counters at that location.
- If not able to use this particular building, they will continue their search elsewhere in attempt to find an alternative location.

In addressing questions from Mr. Pacheco, Mr. Madden commented that:

- In terms of the renting of cars, a rental agreement is signed and money would be paid in order for the customer to rent the car.
- In respect to vehicles on the property, those vehicles on the property that are not being rented will be stored to be later used to rent.

In addressing a question from Councilman Czerwonka, Mr. Madden commented that he had been all over Blue Ash and he chose this location because of its central nature to the business market in Blue Ash, especially in terms of Reed Hartman Parkway (Highway). Their desire is for these facilities to be highly visible. The M-4 or more industrial type zoning is typically not as visible, easily accessible, and generally is not as conducive to doing this type of business.

In addressing a question from Councilwoman Stoller, Mr. Madden clarified that he did not specifically look in Blue Ash's M-4 District – he looked all over Blue Ash. Particularly, the area that was central and more associated to the business community that exists here. There is no service of Budget's nature for the large business community. It is also a convenient point for them to distribute personnel and to manage personnel. Today, he did drive the M-4 area, and it is away from the business community, industrial in nature, less office oriented, and not as conducive to traffic or the ability of traffic to get to those areas generally speaking.

Councilman Stacey asked both attorneys, Mr. Pacheco and Mr. Griffith, to give their legal opinions as to the difference between "renting" and "leasing." Mr. Griffith commented that words are used in their ordinary and customary way that people intend for them to mean. In this particular case, the permitted use in M-4 is the sales, leasing, and storage of automobiles, boats, etc. Mr. Griffith believes that to rent something is to basically rent something for a short period of time, and to lease something is to lease it for a longer-term period.

Mr. Pacheco agreed that one should consider the common sense, everyday language. The definition of "lease," per dictionary.com, is a contract renting land, buildings, etc. to another. Under the synonyms, the first listed for "lease" is "rent." He does not see a difference. Regardless, Mr. Madden testified that the vehicles that are going to be leased or rented are stored while they are not being leased or rented. Even if there are issues with the "lease" word, the storage becomes a problem as well. In terms of lease, Mr. Griffith's interpretation is correct – you look at the everyday language. Mr. Pacheco concluded that when considering the everyday language, there is no difference between leasing and renting.

Mr. Griffith commented that he believes the Blue Ash Assistant Community Development Director does not have the standing to bring this appeal. Consequently, the Council does not have jurisdiction. He commented that Mr. Pacheco has cited authority of the Court of Appeals of Fulton County to the contrary. The Supreme Court of Ohio in the case of *City of Willoughby Hills vs. CC Bar's Sahara Inc.* ruled that where a municipality's charter or its ordinances expressly allow the municipality to seek appellate review of determinations made by its Board of Zoning Appeals, the municipality has the standing to attack or avoid such decisions. In that case, the municipality had expressly delegated to itself the right to appeal decisions of its BZA. Blue Ash, however, has not. Its charter does not specify the City as an aggrieved party. Accordingly, the decision of the Supreme Court of Ohio in *Kasper vs. Coury* applies to this case. In that case, the Supreme Court ruled that a township zoning inspector has no standing to appeal the decision of a township board of zoning appeals because no statute authorizes such an appeal. The reason for those decisions is that the City has an established appellate body, in this case the BZA, to determine issues such as the one raised in this case. It has committed to that body the right to make those decisions. The Supreme

Court of Ohio doesn't think that the City should create a Board to make such decisions, and then have the ability to nullify those decisions. Mr. Griffith commented further that if you follow Mr. Pacheco's logic in this case, the City/Assistant Community Development Director has standing to appeal a decision of the Board of Zoning Appeals. If the Assistant Community Development Director is aggrieved by the decision of the Council this evening, he could appeal that decision to the Court of Common Pleas.

Mr. Griffith commented further that he had requested, in a letter to the Clerk of Council dated January 12, 2007, that the Council view the property in question. The reason for that request is because they believe viewing the property is critical to determining this appeal. In a letter to Mr. Griffith dated January 17, 2007, Mr. Pacheco informed him that there would be no view. Mr. Griffith pointed out that at least one member of the BZA, Mr. Sirkin, thought it important to go look at the property in question. There were photographs brought to the meeting this evening to attempt to show Council what the property looks like.

Mr. Griffith commented further that the substantive issue in this appeal is whether the use that Budget intends to make of the property in question is an office use. Section 1161.01 of the Blue Ash Code permits the following uses in the M-1 zoning: "offices," and goes on to permit general light industrial such as business and distribution warehouses, wholesale warehouses, express companies, etc. The M-1 zoning is a light industrial zone and expressly permits office use. In order for this Council to overturn the decision of BZA, it has to determine that the use that Budget intends to make of the property is not an office use. He further commented that the BZA showed excellent judgment in recognizing that the use Budget intends to make of this property is office use, and is indistinguishable from the office and light industrial uses that the other existing tenants of the property are making of it. Furthermore, he explained that the plans for the tenant finish improvements to the property do not call for any alterations to the exterior of the building. The only improvements will be to add offices to the interior leased space. No changes are being made to the parking lot or the way it is striped. The employees of Budget will drive their vehicles and report to work and park in the existing parking. They will enter their offices in the leased space to work at their desks and counters. While working in those areas, their vehicles will be parked in the existing parking lot. The customers of Budget will arrive at the property to drop off vehicles or to pick up vehicles. Ordinarily, Budget will not park vehicles for rent at the property; instead, it intends to shuttle vehicles between the CVG airport and the property. Budget does not intend to maintain vehicles at the property, though even if it did, such a use is consistent with the general light industrial use that is also expressly permitted in the M-1 zone. It is clear that other tenants keep service vehicles in the lot.

Mr. Griffith further commented that the Assistant Community Development Director's contention that the fact that the sales, leasing, and storage of motor vehicles is permitted in the M-4 zone means that such activity is prohibited in the M-1 zone is a fallacy. Office use is permitted in both zones. Since the word "office" is used in the M-4 zone as well as the words "sales, leasing or storage of motor vehicles," that means that the two uses are different because the use that Budget plans to make of the property is going to be office, which should be permitted in the M-1 zone. He commented further that Budget will not be storing vehicles at the property any more than other tenants of the property will be storing vehicles. Budget and its employees and customers will be *parking* vehicles at the property for temporary periods, similar to other tenants at the property. The tenants on this property now, as well as tenants of neighboring properties, park vehicles in the parking lot of the property and surrounding property when they're not using those vehicles. In his opinion, the Assistant Community Development Director's interpretation of the word "store" is incorrect, since no one could park vehicles at the property because they would be storing them there, which is not permitted.

Mr. Griffith commented that Budget will not be leasing vehicles; however, Budget will be renting vehicles. In his opinion, the term "lease" connotes a long-term arrangement; the term "rent" does not. Some testimony here tonight agrees with that distinction. When the Blue Ash Code refers to the sales, leasing and storage of automobile use in the M-4 zone as a permitted use, it is referring, in his opinion, to an automobile dealership. What Budget intends to do is not an automobile dealership, but rather, it is an office. He contends that the Assistant Community Development Director is interpreting the zoning code in a way to deny



a plainly permitted use of that property. He could just as easily have interpreted the zoning code to permit this use of the property, as the BZA had the good judgment to do. He mentioned that the only reason we are here tonight is because Budget rents vehicles. If Budget rented computers from the same space, we wouldn't be here. He quoted Dan Johnson from the December 11<sup>th</sup> meeting transcript (this quote appears on Page 23 of the transcript):

“Just for clarification of the Board, if they told me that this was going to be an office, exactly as proposed on this, wash bay and all, if they told me we're not going to lease cars out of here, I would sign off on the permit. It's the leasing that's the problem. You know, the configuration of the internal space, the fact that they have a wash bay, the fact that they might designate some spots for their use. If those were employee spots rather than car spots for the leases, I would still be able to sign off on this permit given what's in the Code. It's the fact that somebody's handing them money for a set of keys.”

Mr. Griffith continued by commenting that the point of the zoning code is not to enforce rigid rules, and that is why the Code permits a procedure for variances, as most zoning codes do. The rules in and of themselves are not important. They are a means to an end, and that end is to make sure property in Blue Ash is used in accordance with the land use plan; does not constitute a nuisance or otherwise detract from the health, safety or welfare of the citizens of Blue Ash; and preserves the health, safety and welfare of the citizens of Blue Ash. He posed the questions: “How does interpreting the zoning code to prohibit Budget's proposed use serve those objectives? How will prohibiting the renting of vehicles from an office in a light industrial zone have any different impact on Blue Ash than the renting of medical equipment that occurs there now and is plainly permitted?” In his opinion, it won't. He explained that under Ohio law, if the zoning code is susceptible to two interpretations, the interpretation that favors the free use of property is supposed to be followed. The Assistant Community Development Director is not following that interpretation. If he did, Blue Ash would have one more tenant occupying space, providing a service that will benefit Blue Ash. The ability of Budget to use the property for its office use would increase the value of the property to the ultimate benefit of Blue Ash and would provide income taxes to Blue Ash resulting from the wages paid to the employees working there and the increased net income of the property owner. If the Assistant Community Development Director's interpretation is followed, Blue Ash will have frustrated a legitimate business use, and receive no gain for it. He asked Council to consider the message that this interpretation is sending to the business community. The Blue Ash website comments that Blue Ash is trying to be welcoming to business, and he asked Council if this action was conducive to that notion. Mr. Griffith commented that his client, Mr. Rickert, was surprised by this interpretation and couldn't imagine why this Budget office would not be welcome in this light industrial district. The BZA had the good judgment to recognize that Budget's proposed office use is permitted in an M-1 zone. He concluded by urging Council to affirm the BZA's exercise of good judgment to achieve a result that makes sense and serves the purposes the zoning code is intended to serve, rather than blindly enforcing a rule that does not apply in this instance.

Mr. Pacheco referred to the transcript in reference to what the BZA did and said. On Page 20 of the transcript, BZA member Mr. Sirkin stated, in talking to Mr. Johnson: “You interpreted it correctly in my opinion.” He commented further that BZA member Mr. Collett stated, in addressing a comment from Mr. Rickert or Mr. Griffith, “You know, you've come to us with a use that is pushing the envelope at the very least and our Zoning Code accommodates that use in an M-4 District.” (Page 12 of the transcript). Then the BZA eventually granted a variance, which Mr. Griffith admitted the BZA did not have the power to do. The BZA interpreted the Code incorrectly and attempted to accommodate a business which it did not have the power to do. The zoning code is clear. In this particular district, there is no leasing, no storage, and no sale of automotive vehicles. There is no dispute that Budget is going to be leasing cars from the property when you look at the dictionary definition that Mr. Griffith also agrees controls the definition legally. The very word “rent” is a synonym for “lease.” Definition 6 of “lease” under dictionary.com says “to grant a lease, to let or rent.”

Mr. Pacheco further commented that the vehicles are being stored for purposes of being leased or rented. No other tenant on that property, as Mr. Rickert also testified, has that use.

In Mr. Pacheco's opinion, it is very clear and there is no room for interpretation.

In reference to the court cases cited by Mr. Griffith, Mr. Pacheco commented that those cases are distinguishable on at least two grounds. First, the Ohio Supreme Court *City of Willoughby* case was referring to a situation where the first avenue of appeal is from the BZA to the Court of Common Pleas. That is not comparable with this case. The Blue Ash Code specifically sets a procedure. The BZA is not the final arbitrator; however, City Council is. The appellate statute under 1133.03(a) talks about any person aggrieved. In this case, Mr. Johnson is a person who is aggrieved under the case law provided to Mr. Griffith (the *Fulton County* case). The other case cited by Mr. Griffith was a township case. Townships are different forms of government subject to different regulations. Blue Ash has a specific ordinance/code for their community, and it does give standing. Not only does the *Fulton County* case talk about Mr. Johnson being a person with an adverse interest, it also talks about City Council having an interest in terms of making sure its zoning codes are enforced.

Mr. Pacheco further commented that, in respect to the interpretation of the code, Section 1123 sets up a very specific scheme: if a use is not listed as a permitted use, it is not allowed. Mr. Pacheco commented that Mr. Rickert once held a comparable position to Mr. Johnson's in Deerfield Township, and he is aware of zoning codes as it was his responsibility to interpret them in that prior job. This use has not changed and has been on the books, which all had the opportunity to look at it. Blue Ash is not imposing some retroactive condition, and it is clear that this use is not permitted in the district. If it's not permitted in the district, then there has to be a variance. And, as Mr. Griffith has admitted, the BZA did not have the power to grant a variance. Leasing and storage of vehicles is clearly established here. Mr. Griffith has admitted that the difference between leasing and renting relates to the duration – not because of a contract, not because of money exchange – it only has to do with duration. There is no such distinction under the plain, common use everyday understanding of the language as referenced in the dictionary. Furthermore, he commented that there is no doubt that the vehicles in this case are being stored, not parked, and they are being stored for leasing. Mr. Madden admitted that not only will there be other vehicles there, the intended use is for customers to drive their personal cars to the site, those cars will be left at the site, and the customers will get in their rented or leased car and leave. Those personal vehicles of customers are now being stored there because there was no other place for them. Mr. Pacheco concluded that from his perspective, there is not much of an interpretation issue in this case. There is no power on behalf of the BZA to grant a variance, which it did in this particular case. Mr. Pacheco concluded that since these are the facts as presented both at the BZA as well as this evening, it demands Council's reversal of the BZA's granting of the variance. This use as proposed cannot go forward.

In response to Mayor Buckman's request for questions from Council, Councilman Sumner remarked that he agrees that the BZA exceeded its authority in granting a variance in this case. They did have authority to interpret whether the Building Administrator made an error or not. He stressed that he was not intending to be critical of the Board as these are difficult concepts to work through. Councilman Sumner also commented that it has always been the City's intent through the past master plans and zoning codes he has been a part of to specifically list permitted uses, and those were intended to be exclusive. He reminded all of the experience with the dog kennel (i.e., Camp Bow Wow on Creek Road). In that situation, that use was not listed and Council had to pursue a change to the zoning code to permit that use. In answering the question of leasing vs. rental, Councilman Sumner commented that it has always been Blue Ash's intent to limit automotive related businesses. The fact that the word "rental" is not used is not germane. The purpose of listing those types of uses was to purposely limit those types of automotive uses to the M-4 district only. He stated that this has been a principle that has been maintained for quite some time.

Councilwoman Stoller commented that she agreed with Councilman Sumner. These concepts have gone back a number of years and certain things were put on the books for reasons based upon past experience.

Councilman Bryan agreed with both Councilpersons Sumner and Stoller and commented on their many years of service and experience. He remarked that in 1133.04, it is specifically pointed out that the Board has no other powers beyond those above specified in subsections (a) through (c).

Councilman Weber commented that he also does not see where the BZA had the authority to grant the variance that it made. He questioned how Council could uphold a decision that was made through a route not provided for in the Code.

After brief discussion, Mayor Buckman moved, Councilman Bryan seconded to reverse the Board of Zoning Appeals decision and to reinstate/uphold the Assistant Community Development Director's interpretation. The Clerk was asked to call the roll. Councilpersons Bryan, Buckman, Czerwonka, Stacey, Stoller, Sumner, and Weber voted yes. Seven yeases. Motion carried unanimously.

Mr. Pacheco commented that at the next Council meeting, he will present a Findings of Fact/Conclusions of Law document regarding this issue to Council for consideration.

This portion of the meeting was declared complete at approximately 7:44PM.

**WORK SESSION – Topic 1: Blue Ash Airport**

Mr. Ed Cecil was present to represent PB Americas, along with Steve Ryan. He explained that Mr. Muench, who the City had been working most closely with, is ill and has checked himself into a hospital.

City Manager David Waltz commented that currently Blue Ash is in the process of doing their due diligence associated with the purchase of the 130 acres from Cincinnati, and he estimates that Blue Ash will close on the property in June or July. In February, the Administration anticipates the next meeting with the City of Cincinnati, along with their consultant who they are in the process of selecting, to begin work towards the airport's reconfiguration.

The plan that PB was asked to prepare by Blue Ash is simply a basic schematic rendering of a reconfigured airport on the south side of the runway, and provides a potential starting point for discussions. The City of Cincinnati will have to make their own decisions regarding final reconfiguration, and he cautioned Council not to get bogged down with any one detail or thought at this point in the process.

Mr. Cecil commented that in November, Blue Ash asked his firm to assess the feasibility of developing the south airfield (the plan uses the "south airfield" title referring to the reconfigured state of the airport on the south side of the existing runway). The specific question was "can the facility requirements developed in the 1998 Master Plan study fit on the 98 acres located south of the runway?" Their company was tasked with coming up with a plan to provide assurance to City Council that there was enough room to develop a small viable aviation facility in this fashion.

Mr. Cecil further explained that they took the facility requirements from that 1998 Master Plan and applied them to the south airfield concept. Basically, there are ten sets of facility requirements providing guidelines for taxiways, hangars, connectors, airport access, tie downs, maintenance, etc. Regarding hangars, typically hangars are 24 feet high further from the runways and no more than 16 feet high closer to the runways. Their work also involved talking with both Blue Ash and Lunken officials, as well as three existing fixed base operators at the airport.

He commented that a major design issue was drainage and mentioned that there is a 40-foot elevation difference between the east and west end of the property. The property drains to the south.

The second task asked of his firm came after talking with three of the fixed base operators and the City. One of those operators, Mr. Bob Ready, asked the City for additional consideration related to placement of the future Ultimate Sacrifice Memorial, featuring the restored B-17. It would be his preference for the Memorial to have direct access to and from the airport. Mr. Waltz added that it would be Mr. Ready's first choice to tie the Memorial in with the operations of a fixed base operator. In that regard, PB was asked to look at that possibility, and their "alternate" plan addresses this request. Mr. Cecil further explained that to accommodate Mr. Ready's request, a 500 foot extension was added to the eastern end of

the existing runway, making the total runway 4,000 feet. Mr. Cecil briefly reviewed the plan, which was also provided to Council prior to the meeting.

Mr. Waltz commented that the alternate plan, including placement of the Memorial closer to the airport, would allow adjustment of the Memorial along the runway. Therefore, if the City determined it would like to utilize that more visible area close to the Reed Hartman/Glendale-Milford intersection for another park feature, the Memorial could be moved to the west, while still accommodating Mr. Ready's goals. He mentioned that he could understand a benefit of having pilots being able to fly in to view the Memorial as perhaps they would also enjoy one or more of the future park features, such as a show at the Performing Arts Center, or another feature of the park plan. Mr. Cecil commented that the property included for the Memorial in the alternate plan would be approximately 10 acres. Moving it west down the runway could reduce it to about seven acres.

In addressing a question from Councilman Bryan, Mr. Waltz commented that there could be a possibility of shared parking with the Memorial and Performing Arts & Conference Center.

Councilman Bryan commented that the plan does confirm that it is possible to fit a fine aviation facility on 98 acres south of the runway. Mr. Cecil confirmed that this is true. He commented that the drainage concerns could be solved via use of concrete pipes. The airport today can house 130 aircraft. The plan as proposed could house 179 aircraft, and possibly more than that. Mr. Cecil commented favorably on the potential of an access road from Carver Road, especially since it would intersect the airport at approximately the mid-way point.

In addressing a question from Councilwoman Stoller, Mr. Cecil commented that typical T-hangar height is 16 feet, and hangars 400 feet from the runway can be 20 feet in height. He commented that though future land grades would have to be determined, he believes that conventional hangars could be set without much difficulty.

Mr. Waltz commented briefly on some future considerations Council may want to start pondering relating to the future Airport Park in general:

- It would be beneficial for the City to work with a master park planner.
- A name for the park will have to be determined.
- The possibility of sponsorship for portions of the park should be considered.
- There are MSD issues that will have to be considered.
- The method of resident outreach in finalizing the park's amenities should be considered.
- The greater issue of the airport operation should be considered. If the City of Cincinnati decides it cannot proceed with continued operations of the airport, Blue Ash will have to figure out where to go from there.

Mr. Waltz commented that while he was at the Ohio City Management Association Conference this week in Columbus, one of the workshop leaders (from Seattle) saw his Blue Ash shirt and commented favorably on the upcoming park that he had heard of from his brother, who lives in Evendale. He also visited his brother and Blue Ash recently and was very complimentary. Mr. Waltz commented how exciting it was to be a part of a project that people from across the country were learning and talking about.

There being no further questions from Council, this portion of the meeting ended at approximately 8:12.

### **WORK SESSION – Topic 2: Downtown Streetscaping**

Dan Johnson commented that developing the downtown streetscaping theme is the next step in the downtown project. The first was Council's passage of the new concept plan last year, and next was the approval of the new downtown regulations, which will go into effect later this month. A RFP process was conducted in October, seeking proposals from consultants for development of a new streetscaping theme and plan. The decision was made to award the project to Kinzelman Kline Gossman (KKG). KKG's plan, which will eventually be presented to Council for formal adoption, will include a written summary of the planning

process, a written description of the results, diagrammatic maps and diagrams of the subject area that highlight features of the plan, and other information necessary to make implementation of the recommendations successful.

Dan explained examples of public items to be addressed in the plan, such as:

- Pavement, including sidewalks, crosswalks, handicapped ramps, drive aprons, parking lots, streets, and curb and gutter.
- Pavement markings and safety measures such as bollards.
- Utility poles, brackets and fixtures
- Street signage and other public signs.
- Street and pedestrian lighting.
- Street furniture or decoration, such as benches, trash receptacles, tables, planter boxes, stone walls, etc.
- Landscaping, including trees, bushes, and suggested species.
- Temporary public displays, such as banners and flags.
- Above-ground utilities, such as boxes, manhole covers, traffic lights, etc.
- Bus stops.
- Street configuration, on-street parking, medians.

Mr. Johnson commented that he anticipates this process will last approximately four months, and implementation time would depend upon future Council decisions and direction of various streetscape features.

Mr. Johnson introduced Clete Benken, Kevin Dizke, and Erik Brown from KKG present at the meeting. Mr. Benken commented that he is excited to be a part of this project and looks forward to helping the City make the transition from its current downtown to the new downtown which will be more pedestrian friendly, among other aspects. In making their suggestions, they will also keep in mind potential or desired tenants.

In addressing a question from Councilman Stacey regarding signage, Mr. Brown commented that their desire is to help the City establish a “sense of place.” Mr. Benken added that a goal will be to declutter and to decrease public signage overall. For example, they may end up suggesting a “way finding” system similar to a mall.

Several images were displayed by the consultants, including existing site photos, best practice examples of other retail “main streets,” and examples of successful urban mixed-use public space projects.

In addressing a question from Councilman Bryan, Mr. Benken commented that the goal will be to build from what Blue Ash currently has in downtown. Currently, Cooper/Kenwood is the core and the land use and tenants guide the identification of a place. When making their recommendations, they will keep in mind how the street relates to the highest and best design.

In addressing a question from Councilwoman Stoller, Mr. Johnson commented that although the right-of-way area varies in downtown, generally it is about 90 to 100 feet wide on Kenwood Road and not quite as wide on Cooper.

Mr. Benken explained that their project and planning will include spending a lot of time with staff as well as those who know the traffic patterns, such as staff at CDS Associates. Mr. Benken mentioned that his firm had its “grass roots” with CDS, and also that he used to work part-time for the City’s grounds maintenance division.

In addressing a question from Councilman Bryan, Mr. Benken commented that their goal is to complement the plan Menelaos helped to develop, and he commented that the people working on this project at KKG think similarly to Menelaos.

**MISCELLANEOUS BUSINESS**

Brief discussion was initiated by Councilman Sumner regarding an issue he believes is relatively urgent in relation to the potential of excess funds available from the hotel/motel tax issue in the Greater Cincinnati area (in relation to the creation of the Northern Cincinnati Convention & Visitor's Bureau, in which he participated). He suggested that decisions are currently being made as to how to disburse those excess funds, and he believes a potential future recipient could be the Performing Arts and Conference Center (PACC). Councilman Sumner commented that even though the PACC is a future concept, he believes that now is the time to approach the Hamilton County Commissioners on the concept. Even if funds wouldn't be directed in near future years, the procedure in determining who gets those funds for many years to come may be impacted, and he would not want the City to miss an opportunity. He suggested the possibility of utilizing the government relations consultant, Chris Colwell, to approach the County Commissioners on the City's behalf. Councilman Sumner believes the revenues could be in the range of \$150,000 to \$200,000 annually over the next 30 or more years.

After some discussion, it seemed the consensus of Council for the City to pursue this potential. The PACC would be a reasonable beneficiary of such funds since it will in the future help to fill up those hotels and motels, similar to the Sharonville Convention Center which has already been targeted as a recipient. It was agreed that the City Manager and Councilman Sumner would pursue this possibility.

Councilman Bryan suggested that noise be considered as the topic for the next work session (date not yet determined).

**ADJOURNMENT**

All items on the agenda having been acted upon, Councilman Bryan moved, Councilman Sumner seconded to adjourn the meeting. A voice vote was taken. All members voted yes. The Council meeting was adjourned at approximately 9:05PM.

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Robert J. Buckman, Jr., Mayor

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Jamie K. Eifert, Clerk of Council

MINUTES WRITTEN BY:

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Susan K. Bennett, Deputy Clerk of Council