

## Special Council

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The special meeting of the Waterville Council was called to order by Mayor Timothy Pedro at 6:00 p.m. at the Waterville Primary School.

The prayer was offered by Mayor Pedro. The Pledge of Allegiance was then recited and led by Councilwoman Barb Bruno.

Present at roll call were Todd Borowski, John Rozic, Anthony Bruno, Mayor Tim Pedro, Mary Duncan, Barb Bruno and Rod Frey.

Also present this evening was Jon Gochenour, Municipal Administrator; Phil Dombey, Law Director; Steve Schult, Treasurer and Melissa Cook, Recording Secretary.

### Staff Present:

Joe Valvano – Police Chief

Doug Meyer – Fire Chief

### Citizens Present:

Due to the large number of residents in attendance at this evening's meeting, a sign in sheet was not provided.

### Approval of Minutes

Mrs. Duncan moved to approve the minutes of the October 10, 2022 Special Council Meeting. Mr. Borowski seconded the motion, which passed by unanimous voice vote.

### Staff Reports

Due to the limited amount of time available for the use of the Waterville Primary School for this meeting and the expected amount of time needed for the scheduled public hearing, no staff reports are planned for this meeting.

### Communications from Council Members/Committees

Due to the limited amount of time available this evening, Council Members did not provide any comments, reports or committee updates.

### NEW BUSINESS:

None

### OLD BUSINESS:

- A. ORDINANCE 07-22 AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF WATERVILLE TO CHANGE THE ZONING CLASSIFICATION OF A 12.527 ACRE PORTION OF PARCEL 96-5653 LOCATED IN THE 1400 BLOCK OF PRAY BOULEVARD FROM (C-3)

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### HIGHWAY COMMERCIAL TO (R-4) MULTI-FAMILY, HIGH DENSITY RESIDENCE DISTRICT

*Tabled 6/27/2022; First Reading Scheduled for July 25, 2022; Second Reading Scheduled for August 22, 2022; Third Reading, Public Hearing and Legislative Action Scheduled for September 12, 2022; Tabled until November 28, 2022*

Nathan Waggner of Cash Waggner and Associates, agent, is seeking to rezone a 12.527-acre portion of a vacant 36.972-acre parcel located in the 1400 Block of Pray Boulevard from Highway Commercial District (C-3) to (R-4) Multi-Family, High Density Residence District in order to construct Phase 3 of the Waterville Place Apartments. If the zoning change request is successful, the applicant would split off the planned 12-acre portion from parcel 96-56053 and submit a site plan to construct a four building, 144-unit apartment complex. This development would be adjacent to Phases 1 and 2 of the existing Waterville Place Apartments to the east which will consist of seven buildings and 252 units once it is completed.

Although located next to the existing Waterville Place Apartment Development, a review of the proposed zoning change from commercial to multi-family, high density residential would appear to be contrary to the intent of the City of Waterville's 2012 Comprehensive Plan. Unlike the existing Waterville Place Apartments, which are located on parcels that were zoned multi-family residential prior to their construction in accordance with the goals of the Comprehensive Plan, the current 36-acre site is located within the U.S. 24 Concept Area. In the Comprehensive Plan, the U.S. 24 Concept Area is intended for nonresidential uses due to its close proximity to the U.S. 24 Interchange and nearby commercial and office developments. Rezoning this parcel would not only add 144 additional units within approximately 500 feet of 528 existing multi-family units, it would remove 12.527 acres of potential commercial development from the U.S. 24 Concept Area which is key to the City maintaining a strong, diversified tax base into the future. Moreover, the requested zoning change would seem premature considering that a significant portion of Phase 2 of the adjacent Waterville Place Apartments still remains unfinished, including three apartment buildings, landscaping and other required infrastructure.

In light of the considerable amount of existing multi-family housing in the City of Waterville, including the 528 units currently located within 500 feet of this proposed apartment project, it would seem that there is an adequate supply of this type of housing for a small community of 6,000 residents. Moreover, rapid and unplanned residential growth will inevitably overburden emergency services, traffic capacity and school enrollments and have a negative fiscal impact on the City budget. In an effort to ensure balanced growth and a strong diversified tax base, the 2012 Comprehensive Plan envisions development for parcels within the U.S. 24 Concept Area to be nonresidential. In addition, three of the proposed seven apartment buildings in the

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Waterville Place Apartments Complex still remain unfinished after nearly three years of development. Consequently, it was the recommendation of the Planning Commission at their June 6, 2022 public meeting to deny the proposed zoning change request for a 12.527-acre portion of a 36.972-acre parcel located in the 1400 Block of Pray Boulevard from Highway Commercial District (C-3) to (R-4) Multi-family, High Density Residence District since the request is contrary to good planning practice and the promotion of the goals contained in the 2012 Comprehensive Plan. This issue was tabled at the June 27, 2022 Council meeting at the request of the applicant and tabled again at the request of the applicant until the October 24, 2022 Council Meeting. The third reading of this ordinance was scheduled for October 24, 2022. The applicant has again requested that this issue be tabled until the November 28, 2022 Council meeting.

**B. ORDINANCE 10-22 AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO PERMIT THE OPERATION OF AN OUTDOOR ENTERTAINMENT FACILITY ON A PARCEL ZONED (C-4) MIXED USE BUSINESS DISTRICT AND (C-3) HIGHWAY COMMERCIAL DISTRICT LOCATED IN THE 600 BLOCK OF PRAY BOULEVARD**

*First Reading Scheduled for September 12, 2022; Second Reading scheduled for September 26, 2022, continued until October 10, 2022; Third Reading, Public Hearing and Administrative Action Scheduled for October 10, 2022, continued until October 24, 2022*

DFG Waterville Landing LLC, property owner, has submitted a request for a Conditional Use Permit for the construction of an outdoor amphitheater facility located off of Pray Boulevard south of St. Rt. 64/Waterville-Swanton Rd. The proposed location is south of the Meijer property on the west side of a planned 1,200-foot roadway extension of Pray Boulevard. The amphitheater would be seasonal and contain 5,199 permanent seats, a lawn area for general admission and have a maximum capacity for 9,375 attendees. According to the site plan, the 61,000 square foot facility will be set approximately 7-feet below grade and be oriented to the southwest toward U.S. 24 to mitigate the noise level away from the residential areas of the City. The amphitheater will not have a permanent stage with the stage being put up and taken down after each season. The only permanent buildings on the site will be concession stands, restrooms, ticket booths and an operations office. Renderings of these buildings were also included with the site plan. The site will provide paved parking for 2,533 vehicles with parking areas located on the east and west sides of the new Pray Boulevard roadway extension. The operator of the facility, HB Concerts, plans to hold 20 to 25 events per season with concerts being held Thursday through Sunday. According to the operator, the facility would open at 5:30 p.m. with concerts starting at 7 p.m. and ending at approximately 10:30 p.m. HB Concerts has also provided information outlining the general operation of the amphitheater, staffing, security and the potential economic impact to the City. A traffic impact study was provided with the application which analyzes current traffic conditions on U.S. 24, St. Rt. 64 and Pray

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Boulevard, potential traffic volumes during “peak hour” arrival times to the site and provides a suggested “maintenance of traffic plan” to safely manage vehicles entering and leaving the facility after the event is over. If the Conditional Use Permit was approved by City Council, the applicant would submit a “roadway dedication plat” for the proposed extension of Pray Boulevard to the Planning Commission for final approval. The City Engineer has reviewed the Pray Boulevard extension plans, the proposed storm water management and drainage report, an original traffic impact study, dated June 27, 2022 and a second, revised traffic impact study, dated September 8, 2022, his comments were provided prior to the September 12, 2022 Council meeting.

Due to the size and potential impact of the planned development on the City of Waterville, the approval of a Conditional Use Permit is required for this project. Under the City Zoning Ordinance, the Planning Commission may recommend to Council “conditions of approval” on the construction, location and operation of the proposed use. All approved Conditional Uses shall incorporate by reference a detailed site plan and any deviation from or modification of the site plan shall require Planning Commission review and Council approval. Any approved conditional use shall be subject to periodic review by the Planning Commission and Council to ensure that such use continues to be compatible with the permitted uses in the zoning district.

The issue was first considered by the Planning Commission at their August 15, 2022 public meeting. The requested conditional use permit was continued by the Planning Commission at their next public meeting held on September 12, 2022. At this meeting, the Planning Commission recommended approval of the proposed conditional use permit to Council, by a vote of 3 votes to 2, with the following recommended conditions needed for the potential approval by Council:

1. The maximum capacity of the amphitheater will be 9,375 or a smaller size if requested by the developer. The traffic study references a maximum capacity of 10,300 seats while media reports have also provided different information in regards to capacity size. The maximum capacity of 9,375 of the facility will be used to determine the required amount of parking which will be based on the ratio of 2.5 tickets per vehicle which is the standard used in determining the number of vehicle trips entering the site in the original traffic impact study. Since the 2,533 paved parking spaces for vehicles indicated on the current site plan will not provide enough parking spaces to accommodate the amphitheater’s maximum capacity of 9,375 ticket holders or the additional parking spaces required for employees, the capacity of the amphitheater will be limited to 5,200 ticket holders. If or when the developer obtains more land for additional parking, the capacity may be increased to a maximum capacity of 9,375 after the final review and approval of the Planning Commission and City Council;

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2. The developer/operator will establish general hours of operation for all concert events held at the amphitheater which is subject to the approval of the City of Waterville. The operator has indicated that the general hours of operation for concert events is 5:30 p.m. to 10:30 p.m. Thursday through Sunday. In order to deter performances from exceeding the agreed upon ending time, a financial penalty would be imposed for each minute a performance goes beyond its scheduled ending time as determined by City Council. The establishment of hours of operation will be necessary to ensure that adequate resources are available to manage the flow of traffic into and out of the facility and allow for the advance scheduling of law enforcement personnel to direct traffic and provide required security;
3. The developer will submit a revised and detailed site plan which addresses the requirements contained in Chapter 1146 of the City Zoning Ordinance including a landscaping plan prepared by a landscape architect registered in the State of Ohio and an exterior lighting plan prepared by a professional engineer registered in the State of Ohio for approval by the Planning Commission. The landscaping plan shall provide a landscaping buffer of approximately 1,254 feet along the eastern property line of the parcel consisting of earthen mounding at a minimum of 10 feet in height with staggered plantings of evergreen trees at a minimum of 15 inches on center to block music, parking lot lighting and vehicle noise from residential areas located to the east of the property;
4. The submittal of a final traffic access and vehicle management plan approved by the City of Waterville which incorporates the comments of the City Engineer including the construction of a second westbound lane on the north side of St. Rt. 64, between Pray Boulevard and the U.S. 24 northbound on ramp, for a distance of approximately 1,100 feet, to ensure the safe and efficient flow of traffic out of the amphitheater. Any traffic control signage, traffic cones or other equipment used to manage and direct traffic into and out of the amphitheater will be purchased and maintained by the operator and be installed and removed by the operator's employees or contractors for each concert event. All exiting traffic will be required to turn left only onto St. Rt. 64 from Pray Boulevard and enter the north or southbound on ramps of U.S. 24 after each event. The developer/operator will reimburse the City of Waterville for all expenses incurred by the City associated with law enforcement directing traffic into and out of the facility;
5. The submittal of a final public safety plan for the amphitheater approved by the City of Waterville which mandates that there will be a specific number of off duty uniformed police officers and private security personnel at each concert

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event based on a ratio of ticket holders in attendance. The outline provided by the operator indicated that the 11 uniformed, off duty officers and 23 private security personnel would be provided at the amphitheater. The safety plan will also specify that there will be one (1) private EMS ambulance, fully staffed on site for each event, which will assume the primary responsibility for BLS medical transport emergencies. The plan will also provide details on how the operator will respond to weather events, medical, police and other potential emergency situations;

6. The developer/operator will submit a noise mitigation study prepared by a professional engineer registered in the State of Ohio to determine if the depth and orientation of the amphitheater site is sufficient to prevent excessive noise from adversely affecting adjacent properties. The developer/operator will make all required improvements recommended in the study to the site, including increased landscaping, mounding or other noise mitigation methods, necessary to ensure excess noise does not adversely affect adjacent properties;
7. The developer will submit a “roadway dedication plat” to the Planning Commission and City Engineer for final approval for the extension of Pray Boulevard as a public roadway;
8. The developer/operator agrees to and will cooperate with the City of Waterville in the establishment of an “Admission Tax”, as provided under the Ohio Revised Code, to offset any indirect costs incurred by the City due to the operation of the amphitheater site. Upon request, the developer/operator agrees to provide financial information to the City to verify the accuracy of admission tax receipts submitted to the City;
9. Detailed engineering and construction drawings for all roadway, water, sanitary and storm sewer improvements to be maintained by the City of Waterville shall be submitted for the review and final approval of the City Engineer.
10. Agreement to all of the conditions of approval by the developer/operator is necessary for the issuance of a final zoning permit for this project by the City of Waterville.

Council members were provided with copies of the current site plan, renderings of facility buildings, a traffic impact study, dated September 8, 2022, as well as grading and site utility plans. On Friday, October 21, 2022, the applicant submitted an “Acoustical Study”, not prepared by a professional engineer, another revised traffic impact study and a “sample” landscaping plan which provides no landscaping details for the proposed parking area located on the east side of the new Pray Boulevard roadway extension which borders the nearby Mill Creek residential subdivision. Since

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this information was submitted only a few days prior to the October 24 public meeting, City staff and engineering consultants have not had an opportunity to review this material in any detail.

Phil Dombey, City of Waterville Law Director, spoke providing an overview of the rules of procedure that will be followed for the public hearing on this matter. He asked that this be an orderly hearing with no applause, disruptions or personal attacks which will make it much more difficult to obtain a good record. He then added that each witness or resident who gives testimony will be sworn in under oath. Only residents of the City of Waterville have standing to provide testimony in this matter. Mr. Dombey stated that the applicant will provide testimony first followed by opposition testimony. Each party has provided exhibits, will provide testimony of witnesses, direct examination and cross examination of witnesses. Individuals unrepresented by counsel will have an opportunity to testify afterward. Testimony will be substantial, reliable and probative evidence with respect to this matter. There is a court reporter present and all speakers must provide their name and address for the record.

David Arnold and Zachary Lemon, RCO Law of Toledo, attorneys representing the property owner and applicant, DFG Waterville Landings, were called upon to provide testimony. Mr. Arnold called the following individuals who provided testimony:

John Henry, Vice President of HBC Management;  
Tim Bockbrader, Landscape Architect with Edge Group;  
William Roberson, Architect with Poggemeyer Design Group and  
Laurie Adams, Director of Traffic and Safety with DGL Consulting.

After a brief opening statement by Mr. Arnold, Mr. Henry gave testimony on the site location, demographics, failed amphitheater project in Rossford, expected attendance, days and times of performances, the actual concert venue, estimated ticket tax revenue to the City and parking. Mr. Bockbrader, Mr. Roberson and Ms. Adams gave detailed testimony regarding the landscaping plan, the proposed amphitheater buildings and the traffic study. Mr. Stopar, of Semro, Henry and Barga Ltd. of Toledo, attorney for eight residents residing in the Mill Creek Subdivision opposing this proposal, did not ask any questions of the applicants' witnesses. Mr. Arnold and Mr. Lemon then read into the record a deposition from Jeff Hedbeck, of dBA Design Group, a consultant who prepared an "acoustical study" regarding the potential effect of noise generated from the proposed amphitheater on adjacent properties. Mr. Hedbeck was not present at this meeting. Attorney Stopar then stated that he objected to the totality of the testimony due the fact the Mr. Hedbeck is not a licensed engineer and that this was a requirement of the Planning Commission. He asked that it, along with other updated information, be provided to the Planning Commission for a second review.

Mr. Jeff Stopar, attorney representing the residents of Mill Creek Subdivision opposing

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the conditional use permit request, provided a statement summarizing his clients' objections to this proposal. Mr. Stopar called the following individuals who provided testimony:

Tim Plowman – 1499 Southridge Dr.;  
Matt Harrell – 1457 Southridge Dr.;  
Jacqueline Schluter, 1499 Southridge Dr. and  
Adam Freeman – 1097 Springcrest Dr.;

Mr. Arnold asked questions of Mr. Plowman, Mr. Harrell and Ms. Schluter. Mr. Arnold objected to all portions of Ms. Schluter's testimony in regard to the future value of real estate in the Mill Creek Subdivision. Mr. Arnold also objected to Mr. Freeman's testimony regarding his lay opinions of future real estate values.

### Citizen Comments/Testimony was provided by:

Don Myers – 1028 Farmview Dr.;  
Michael Laurello – 874 Wilkshire Dr.;  
Jesse Gross – 1084 Bending Brook Ln.;  
James Zielinski – 82 Karyl Ct.;  
Rachelle Belanger – 862 Cherry Ln.;  
Lisa Webber – 7522 Wellsbury Ln.;  
Kyle Jazwiecki – 132 S. Sixth St.;  
David Brenner – 133 S. Second St.;  
Isaiah Bailey – 1025 Waterville-Monclova Rd.;  
Mark Dickey – 7867 Dana Rae Dr.;  
Russell Wells – 8430 Waterville-Neapolis Rd.;  
Ruth Mary Westmeyer – 1026 Michigan Ave.;  
Greg Aubell – 1406 Mill Creek Ln. and  
Wayne Wagner – 243 Harvest Ln.

Residents of the City of Waterville came to this evening's meeting to voice their concerns about the amphitheater project citing noise, traffic, lighting, safety issues, bringing "undesirables" to Waterville, the burden on rescue services, the impact on the City's infrastructure, the environment, declining property values and drug concerns. There were also residents of the City in attendance who stated that they were in favor of the amphitheater project asking Council to do their due diligence and to not be intimidated by what's happening within a small portion of the community. They stated that they saw an opportunity to establish Waterville as an entertainment center with the addition of the proposed amphitheater.

At the conclusion of resident testimony, Council members asked numerous questions of the applicant, the opposition and the witnesses who provided testimony. Councilman Rozic asked the applicant if they were in agreement with the additional



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conditions, in addition to the conditions recommended by the Planning Commission, put forward by Council. Mr. Arnold stated that the applicant was in “general agreement” with the additional proposed conditions which he believes need to be clarified and finalized. Mr. Bockbrader and Ms. Adams answered several questions from Council members regarding the landscaping plan and traffic impact study. Mayor Pedro asked Mr. Arnold several questions regarding the deposition testimony received regarding the acoustical study. Mr. Stopar provided an objection of the questioning since Mr. Hedback, of dBA Design Group, is not present to provide answers to his testimony in his deposition.

Mr. Dombey stated that due to the enormous amount of material, exhibits and the three hours of testimony provided, City Council will need time to review all of this information prior to making any decision on this issue. Realistically, it will probably be the last meeting in November and the school will need to be available for this meeting.

The public hearing was concluded at 9:20 p.m.

### Other Business

The next regular meeting of City Council will be held on Monday, November 14, 2022 at 7:30 p.m. in the Council Chambers of the Municipal Building. Ordinance 10-22 will not be on the agenda for discussion.

### Adjournment

There being no further business to come before Council, Mrs. Duncan made a motion to close the meeting at 9:24 p.m. Mr. Rozic seconded the motion, which carried by unanimous voice vote.

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Jon D. Gochenour, Clerk of Council

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Timothy G. Pedro, Mayor