



**COMMITTEE OF THE WHOLE MEETING
MARCH 1, 2004**

Committee Members Present: Brenda Hlas (Arrived at 7:47 PM)
Dennis McGlone (Arrived at 8:02 PM)
Bill Mowery (Excused)
Scott Pelot
James Price
Mike Zita
John Conklin

Administration Members Present Mayor Joseph Kernan (Excused)
Claude Collins
Jeanne Zerga
Jeff Pritchard

The Committee of the Whole convened for a meeting on Monday, March 1, 2004 at 7:30 PM, in Council Chambers of the Safety Administration Building. The meeting was called to order by John Conklin, President of Council, followed by the pledge of allegiance and a moment of silent prayer. Mr. Conklin indicated that Mr. Mowery is excused this evening, he has the flu. Mr. McGlone & Mrs. Hlas will be joining us midway; they are both attending their children's basketball playoff game. Mr. Pelot reminded everyone to get out and vote tomorrow. Mr. Conklin reminded everyone about the Special Council meeting set for 8:30 PM tonight.

Ordinance #18 –2004 to Proceed for Tallwood Waterline Project

Mr. Collins discussed the next step for this project was to go out for bids and this ordinance was necessary in order to do so. We should have addressed this at the last Council Meeting. There was discussion as to concerns about changing where the waterline is installed to the west side of the roadway, so as to not disturb some of the residents driveways. Mr. Collins stated that the engineers advised against this, they could bore underneath the driveways as necessary, and would not cost as much to do it this way. Mr. Collins indicated this is the last piece of the puzzle for this project. Mr. Collins stated that he has been in contact with Mr. Miller of the Ohio Public Works Commission, advising him about our time line and our concerns of maintaining the funding, and Mr. Miller advised him that our new timeline would be fine, as long as the construction is underway by August 1, 2004. Mr. Collins indicated that we should be ready to enter into a contract around April 1, 2004, and construction would start soon thereafter. Mr. George Tomko questioned about this being the last piece of the puzzle. Mr. Collins indicated this last piece of the puzzle is for Phase I only, not for Phase II or III. Mr. Tomko asked Mr. Collins about Linda Lombardi not being our Engineer. Mr. Collins stated that technically Linda Lombardi still works for the City, and that we have the whole Osborn Engineering firm at our disposal. At this point and time, Linda Lombardi has moved on to other jobs, however she is still available if needed. Mr. Richard Esdinsky is our current Engineer and has over 25 years of Municipal Engineering, previously with Parma and North Royalton as a Municipal Engineer. Mrs. Elaine Tompkins inquired as to why we have an outside firm URS doing this project, and questioned why we subcontract with URS. Mr. Collins stated the Tallwood project is a huge project, and too much for a Municipal Engineer to take on and keep up with their normal duties. Mr. Zita moved to place this Ordinance on the Special Council Meeting agenda, seconded by Mr. Pelot.

Ord #18 Continued:

Roll Call: Yeas: Zita, Pelot, Price, Conklin
Nays: None

Motion passed 4-0.

Willig Tire-Sewer Bill:

Mr. Collins gave the history on this, which has been going on since September. Mr. Collins stated this is a nightmare that went bad. Willig Tire, located at 5027 Wooster Road West, hired a construction company (Swartzmiller Construction) to install a sewer line. They broke the connection line and left it open, exposing raw sewage, which was running out into the streets and into the storm sewers. Mr. Collins indicated that he contacted Willig Tire and was told the contractor had quit working on the job, and gave them some time to get someone else out there as soon as possible. This was not done and Mr. Collins stated that he made a vital decision to take over the project and contacted Lockhart Construction to come in and repair the damages as soon as possible. Lockhart came to the site within hours and pumped the area dry and made the repairs, and was informed that this would be an insurance job. Since the completion by Lockhart, Mr. Collins had been trying to reach the insurance adjuster for over two months, and finally got to the President of the company, he was told they would take care of the entire bill from Lockhart, totaling about \$35,000.00. Mr. Collins was under the impression that this was all done and processed long ago, until he received information that the insurance company is not paying this. Mr. Lyons and Mr. Collins have discussed this matter in detail and it appears that the City will have to pay the bill from Lockhart at a reduced rate of \$32,000.00 and then sue for the reimbursement. There was discussion as to where this money would come from and Mr. Collins stated that this is where the Sewer Fund could come into play. Mrs. Hlas asked about our chances for winning in a lawsuit, and Mr. Collins stated he did not know, he only asked Mr. Lyons about the process of recovering our money. Mrs. Hlas indicated that if we have to sue, then this is where Mr. Lyons would be paid an additional \$85.00/hour for fees, which is going to cost us more money, and she would like to know just what our chances are. Mrs. Hlas stated she wanted a letter from Mr. Lyons indicating the chances and why he feels we should take this route. Mrs. Hlas asked about Mr. Willig's construction company being bonded and insured, and Mr. Collins indicated that they are insured for \$1 Million in liability through the Hastings Mutual Insurance. They are fighting the bill because they did not authorized Lockhart to finish the job, they will only pay for the repairs/damages. Mrs. Zerga indicated that currently there is \$40,000.00 in this fund, or another option was to use the money in the Street Improvement Fund, which was earmarked for Clev-Mass. Road widening and that balance is \$435,000.00. There were questions and concerns if we could even use this fund for anything else other than Cleve-Mass. Road. Mr. Price stated the only other option was to not pay this and wait to get sued by Lockhart for non-payment. Mr. Pelot stated that we really don't have any other option, we called Lockhart to the job site and they performed the work, they should be paid. Mr. Price discussed paying Lockhart ½ now or \$16,000.00 and the remainder in 30 days as they have offered. Mr. Collins indicated that he has learned from this and from now on whenever anyone who wants to tap into a water or sewer line, they must file a certificate of insurance for \$100,000.00 in our name. Mr. Price moved to place this on Council's next agenda, waiving the second and third readings as an emergency, seconded by Mrs. Hlas. Mr. Conklin stated that he is definitely not happy with this and hopes that Mr. Lyons is successful with the pursuit of a lawsuit.

Willig Tire Sewer Continued

Roll Call: Yeas: Price, Hlas, McGlone, Pelot, Zita, Conklin
Nays:

Motion passed 6-0.

Agricultural District-Mr., Dale Adams parcel on Swain Drive.

Mrs. Hlas explained the need to take another look at this parcel and application. Mrs. Hlas indicated that she discussed this with Mr. Pritchard, and that Mr. Pritchard had also spoken to the County. Mr. Pritchard concurs with the Planning Commissions recommendation to turn this parcel down. Mr. Pritchard explained the reasons, and that he, Mr. Arters and Ms. Conley went out there recently to look at the property. Mr. Adams stated that he had spoken with the County and was told he could do this as one parcel. Mr. Pritchard stated that the parcel Mr. Adams owns on Johnson Road has 28 acres and is more suitable to his purposes. Mr. Adams asked Mr. Pritchard if he stopped the grazing of sheep, and planted sweet corn there and made \$2500.00 or more, would this then be considered an agricultural district. Mr. Pritchard stated that we are not saying that you cannot have animals on the property. Essentially the agricultural districts are taxed as a residential unit, so there is no real tax incentive. The only incentive is to delay infrastructure improvements, which is the real purpose. Mr. Pritchard indicated that the County automatically discounts one acre for residential purposes. So you essentially have 90-100 head of sheep on 2.23 acres. Mr. Pritchard indicated that he checked with the County and there is no minimum requirement.

Mr. Conklin called for a temporary recess at 8:29 PM in order to go into the Special Council Meeting scheduled at 8:30 PM.

At 8:34 PM, Mr. Conklin reconvened the Committee of the Whole meeting and continued the discussions with Mr. Adams. from residential as far as a tax break is concerned. Mrs. Hlas inquired about the differences between the two and Mr. Pelot read a statement from Ohio Revised Code indicating the process and that you can be in either or both. Mr. Adams inquired as to the final stage of the process and if he is required to submit the approval of council to Summit County. The Clerk indicated that she would notify the County of those who are approved by certified mail and the applicants by mail, and Mr. Conklin added it should be by certified mail to them as well.

Income Tax Issue-Ordinance #20-2004

Mr. Price asked if this had its first reading, and the Clerk indicated that it did have a first reading, and may have been tabled for further discussions. After checking her notes, the Clerk indicated this was not tabled, it was just a first reading only. Mr. Price indicated that he wanted to have more discussions on this so that Mr. Tomko could have his issues and concerns addressed. Mr. Tomko asked if this had been discussed at committee meetings, especially the rental section. Mrs. Zerga indicated that the amendment in this ordinance that discusses the rentals is only for compliance of the owners to submit a list of tenants to the Finance Dept. for income tax purposes. The actual net profit of rental income falls under page #3, section #19 under Taxable Income.

Income Tax Issue-Ordinance #20-2004 continued:

Mr. Tomko asked why this change was not in bold print, and Mrs. Zerga indicated that it is in bold print. Mr. Tomko asked about the new legislation prepared for the codified updates and wished to see the language therein to see exactly how some of the charitable agencies are defined, etc. These so called charitable organizations are not going to pay income taxes, the people who work for them are “volunteers” and are usually paid cash, under the table, while a small amount goes to charity, and the rest goes into their pocket. If you had any idea of the amount of money that goes through those places, like the Arcade, etc. you would be amazed. Mr. Tomko stated he just heard today about one person here in town who has over 50 machines, and they are being modified to make these a game of skill. Mr. Tomko stated that in the past the FBI had busted into his place on Barber Road, and took out 65 machines. Mrs. Hlas asked how are we supposed to know if someone is getting paid under the table, unless we stand there and see money exchanged, we wouldn’t know about it. There was more discussion on the rental aspects of this legislation, and Mr. Tomko wondered how other communities handle this. Mrs. Hlas stated that she has rental property in Barberton, and has always paid taxes on the profits from the rentals. This year she received notice from the City to submit a list of renters, including name, address and SS#. Mr. Price asked about no dollar amount being mentioned, and Mrs. Zerga indicated that Mr. Lyons stated that it should be left out. Mr. Tomko stated he wanted Council to look into doing away with the income tax credits, and get some money coming into this city. Mrs. Hlas stated that this is on our Matters Referred list to discuss, and Mr. Pelot stated this was discussed at length during our Workshop session held back in January. Mrs. Zerga discussed two other changes, one was in the extensions, which only extends the filing of documents, not an extension to pay. Mrs. Zerga also discussed another change where if \$1.00 was to be refunded, no transaction takes place, and she is changing this to \$5.00. It was discussed that this ordinance would receive its second reading on Monday, March 8, 2004.

Agricultural District-New Application for Ed Soltis:

Mr. Conklin stated there are possibly two more new applications, pending. The Clerk stated that she just received a new application from Sue Dayton, of Dayton Nursery, and that Mr. Cook was given an application, however he has not filed it as of today. Mr. Pritchard stated that he questioned the County on filing deadline for new applications, and they were not aware of a deadline. Mr. Pelot indicated that for a renewal it is March 1. Mr. Collins indicated that the Clerk had approached him about charging filing fees for these applications, and he has asked Mr. Lyons to look into this. He believes that Council should set their own fee for this. The Clerk stated that so far she has spent over \$600.00 out of Councils budget for the seven applications in process. The average costs for the certified mail is \$4.42, and \$72.00 for a legal notice published in the Barberton Herald, per application. The Clerk stated that this was a lot of money out of Council’s budget that she did not anticipate. Mr. Pelot stated that the Planning Commission has recommended approval of this application in their Resolution #11-2004, and based on that he agreed. Mr. Pelot moved to place this on Council’s next agenda, seconded by Mr. Price. The Clerk indicated that she has made arrangements for a Public Hearing also for March 8, 2004.

Roll Call: Yeas: Pelot, Price, McGlone, Zita, Hlas, Conklin
Nays: None

Motion passed 6-0.

Police and Fire Fighters Pensions, Resolutions #28 and #29

Mr. Zita turned the discussions over to Mrs. Zerga for details. Mrs. Zerga indicated that we received notice from the Ohio Police & Fire Pension Fund that it is mandatory these resolutions are passed. It recognizes the pickup contribution or pre-tax contribution, which is the plan that the City is currently doing. There is no change, it only a requirement to have these resolutions on the books. Mr. Zita moved to add these two resolutions to Councils next agenda, seconded by Mrs. Hlas.

Roll Call: Yeas: Zita, Hlas, McGlone, Price, Pelot, Conklin
Nays: None

Motion passed 6-0.

Codified Update-Ordinance #30-2004.

Mr. Zita turned this discussion over to the Clerk for details. Mrs. Richards indicated that this update was the first of two sets we will be receiving, and each set will have its own piece of legislation. Mr. Collins indicated that the Board of Control has already authorized the payment, this legislation is for accepting the updates. The Clerk indicated that she questioned Mr. Lyons if we should do these as one piece of legislation or two. Mr. Lyons indicated they should be separated since we are receiving two batches of updates, the legislation is for each set of updates. The Clerk stated that the updates have not been done since 2000. Mrs. Hlas asked where the legislation came from, and The Clerk indicated that American Legal Publishing prepared this along with the updates. Mr. Zita moved to place this on Council's next agenda, waiving second & third readings as an emergency, seconded by Mr. McGlone. Mr. Tomko asked if the updates have been received, and the Clerk stated that the first set has been received which is complete up to December 2002. Mr. Tomko indicated that he would like to take a look at what has been received so far.

Roll Call: Yeas: Zita, McGlone, Pelot, Price, Hlas, Conklin
Nays: None

Motion passed 6-0.

New Business

Mr. Conklin indicated that he would like to see Gardner Blvd. Phase II and III on the next Matters Referred list, to get the ball rolling again on these phases. Mr. Conklin stated that he would also like see Council address guns in Council Chambers. Mrs. Hlas indicated that she called to either Rep. Williams or Sen. Coughlin and inquired if we need to pass a law. She was told that that the way the legislation was written at the State level, there is no need to adopt legislation, and that we could post a sign outside the doors. Mrs. Hlas felt that if we passed a law, then we would have to address fines and penalties, etc. Mr. Collins stated that he is currently working on addressing firearms and fireworks prohibited in the City parks, with the exception of the Cider Festival, and will be bringing this to Council shortly. Mr. Conklin felt we should address the guns in Council chambers at that time and no action was required. Mr. Ralph Dowling of the Parks Board asked that when addressing firearms in the future we should also include all City owned property, such as the Service Dept. Facility, etc.

New Business Continued:

Mr. Collins indicated that the AP gas station formerly the Clark Station has applied for a permit, and Chief Carris indicated that a formal hearing was not required. It was decided to approve the permit and the Clerk would notify the Ohio Liquor Control Division, no formal action of Council is necessary. Mr. Collins indicated that Mr. Kernan was unable to be present tonight. However he wished that Council would address his recommendations for appointments to Boards and Commissions and for three resolutions of appreciation for Dennis Stouffer- BZA, James Snyder-Cemetery Board, and Lynn Smart-Cemetery Board; all of which have served at least two terms. The re-appointments are for the following: Dr. Littlejohn to Health Advisory Board for a second term, Ms. Linda Weigand on Civil Service with no term limits, Terence Judge on BZA, Mickey Young, and Darlena Wise to the Cemetery for their first terms. Mr. Collins stated that Mayor Kernan is working on getting one more name for the Health Advisory Board. Mrs. Hlas inquired about the term lengths on the various Boards, and it was discussed that they are three-year terms, and can be served consecutively. Mr. Price moved to place these on Councils next agenda, seconded by Mr. Zita.

Roll Call: Yeas: Price, Zita, McGlone, Pelot, Hlas, Conklin
Nays: None

Motion passed: 6-0.

Mrs. Hlas asked if we would be addressing CCA and RITA issues anytime soon? Mr. Conklin stated that these two items along with the income tax/credit issues would be the only three items discussed at the next Committee of the Whole meeting on March 15, 2004. Mr. Conklin discussed holding a Committee of the Whole meeting again next Monday, March 8, 2004 at 6:00 PM, prior to the Regular Council Meeting. All present were in agreement and it was discussed that the first item on the agenda would be the Brentwood Water Ordinance fees, and whatever else we could accomplish on the Matters Referred list.

Old Business:

None

Adjourn:

There being no other business to come before the Committee of the Whole, the meeting was adjourned at 9:40PM.

John Conklin, President of Council

Date approved: March 8, 2004

*****THESE MINUTES ARE NOT VERBATIM. THE AUDIOTAPE WILL BE
ARCHIVED IN THE CLERK OF COUNCIL'S OFFICE*****