



NORTON CITY COUNCIL
REGULAR COUNCIL MEETING
MONDAY, FEBRUARY 12, 2007

Roll Call:	Ken Braman	Also Present:	Mayor Joseph Kernan-Excused
	Tom Jones		Claude Collins
	Dennis McGlone-Excused		John Moss
	Bill Mowery		Jeff Pritchard
	Scott Pelot		Mike Lyons
	James Price		Karla Richards
	Mike Zita		

The Regular Council Meeting convened on Monday, February 12, 2007 at 7:01 PM in the Council Chambers of the Safety Administration Building. The meeting was called to order by James Price, President of Council. Following a salute to the flag and the Pledge of Allegiance, there was a moment of silent prayer.

COMMITTEE OF THE WHOLE:

Mr. Mowery indicated that he had spoke to the Millers regarding their project for the service garage last week, and he was informed that this project has been put on hold. Mr. Mowery stated that Council and the city would be notified of any future activity.

Mr. Price announced to the public that Ord #93-2006 which is under Unfinished Business, would not be discussed tonight and Council would not be taking any action on this matter. Mr. Price stated that Mr. McGlone is excused this evening, and we need his presence in order to participate in this discussion.

CONSIDERATION OF MINUTES:

Minutes of the Regular Council Meeting of January 22, 2007. Mr. Jones noted the following corrections; page #3, eight lines down, it should be Ord. #82-2006 not Ord #83-2006, page #4 on Res. #3-2007, the rest of the vote information is missing, there were no nays and the motion passed by a vote was 7-0, page #6 last sentence, remove the words Master Plan. The minutes were approved as corrected.

Minutes of the Committee Work Session of February 5, 2007. Mr. Jones noted the following corrections: Page #4 under the Charter Review discussions, six lines down, add the word not, to clarify that Mr. Jones stated he could not support having executive sessions, page #8 under New Business, Mr. Jones read the clarified information as follows: *The Clerk of Council corrected her previous statement that Ord. #93-2006 was tabled indefinitely and killed, it was not, it was Ord. #82-2006 that was tabled indefinitely and killed. Ord. #93-2006 was sent back to the Committee to be reworked. It will come back to Council as amended Ord #93-2006.* The minutes were approved as corrected.

Minutes of the February 3, 2007 Saturday Workshop, were accepted as written.

COMMUNICATIONS FROM THE PUBLIC:

Ms. Jackie Harmon-Abney, a Norton resident, spoke regarding Ord #93-2006. Ms. Abney discussed a recent email to Mr. Collins and his response back to her on January 23, 2007. Mr. Collins had stated that the residents would not be forced to connect to new sewer lines. Ms. Abney stated that now the residents are hearing that we will be forced to connect to sewer lines. Ms. Abney stated that she understood that the former Council President was at a Health Board meeting on December 5, 2006 where this was discussed and it was stated then that residents would be forced to connect, and asked if we do or do not have to connect? Ms. Abney inquired about the financial assistance grants that Mr. Collins referred to. Ms. Abney discussed that the newspaper stated that the Ohio EPA states the new mandates would require residents to connect. Ms. Abney asked is there a lack of communication here or if she misunderstood what Mr. Collins had stated?

Mr. Price called for a two (2) minute recess in order to begin the Public hearing at 7:15 PM.

PUBLIC HEARING:

Application for placement of farmland in Agricultural District, pursuant to ORC Sections 929.01 through 929.05, for the following property: 4.577 acres described as Parcel #4608192 and Parcel #4608694 located on 3734 Clark Mill Road, within the City of Norton. Owner: Norman R. and Jocelyn C. Kendall.

Mr. Price convened the Public Hearing for the above application and asked anyone in favor of the application to come forward, adding that the applicant has the right to speak first. Mr. Kendall, the applicant, came forward and asked Council to switch the order to allow anyone opposed to speak first. Mr. Lyons indicated that if Council had no objections this could be done, there were no objections. Mr. Price called for anyone opposed to come forward. Mr. Lemmon of Lemmon and Lemmon Developers spoke against the application. Mr. Lemmon stated that he was against this because the R3 zoning is not reasonable in this area. Mr. Lemmon stated that there are piles of manure right on the property lines with signs pointing to them. There is barbed wire fencing along the property line, which he believed is a safety issue. Mr. Lemmon stated that the families that have purchased their property within this development did not expect this, adding that this is a health issue. Mr. Lemmon cited Section 660.04 of the Ohio Revised Code-noxious odors, and discussed the potential of this in the warm weather. Mr. Lemmon asked Council to deny this application on the basis of the health, safety and welfare of the residents in that area.

Mr. Price called twice more for anyone against this application to come forward, no one came forward.

Mr. Price called for anyone in favor of the application to come forward, adding that the applicant has the right to speak first. Mr. Kendall, the applicant, came forward and spoke regarding the manure pile, adding that the reason this is there is because it is a natural fertilizer. Mr. Kendall stated that he is trying to grow trees planted along the boundaries to obscure the allotment. Mr. Kendall stated that this development is an eyesore and that the developer has been running rough shot over us and continues to do so. Mr. Kendall stated that he has been there for over forty (40) years, and that the cows and the manure will continue to be here. Mr. Kendall stated the he desires to protect our open space for future generations. Mr. Kendall cited comments from Mr. Fred Dailey of the Ohio EPA. Mr. Dailey the Director encourages farmers to invest in their farms future by placing their farms in an "agricultural district".

Public Hearing Continued:

Forms are available at all local county Auditors offices. Mr. Dailey stated that “the agricultural district law is one of the best farmland protection tools the state has today because it can help keep the farmer on the farm and land in protection. By having farmland designated as an agricultural district, farmers can gain protection from nuisance lawsuits, defer expensive development assessments until the land is changed to a non-agricultural use, and protect farmland from some eminent domain land acquisitions”. Mr. Kendall discussed the proposed legislation as being a resolution to reject this application, and felt that he was in full compliance with his request. Mr. Kendall stated that the burden of proof is on Council, and for the Law Director to state that he is not is compliance incorrect.

Mr. Price called again for anyone in favor to come forward. Ms. Charlotte Whipkey, a Norton resident, spoke in favor of this application. Ms. Whipkey stated that Mr. Kendall was here first and that he went to extreme measures to inform the residents know about the manure pile. Ms. Whipkey stated that as far as the smell is concerned, she could recall coming to city hall last fall and could smell the manure from the landscaping around the building. Ms. Whipkey stated that our people were here first and that should have first rights.

Mr. Price called for the last time for anyone in favor to come forward. Mr. Jim Lino, a Norton resident, spoke in favor of this application. Mr. Lino stated that he was all for anything to do with an agricultural use. Mr. Lino stated that most residents have no idea about how bad the smell can be next to a mulch yard which is right next door to his property.

Mr. Price declared the Public Hearing closed.

COMMUNICATIONS FROM THE PUBLIC CONTINUED:

Ms. Barbara Vimont, Chair of the Charter Review Commission spoke regarding three issues that came up recently. Ms. Vimont discussed the supposed violation of the Charter because a member on the Commission while serving on another committee. Ms. Vimont stated that she does not view this as a fault of the person who served on both, she faults this to the Mayor for appointing her to both, and Council for allowing that to occur because you also approved her appointment to both committees. On the other side, all of the work that Commission did should still stand. Ms. Vimont stated that although this member voted, if her vote was removed the Commission still had a quorum. Ms. Vimont stated that she does believe that a violation of the Charter did occur by that appointment. Ms. Vimont discussed the boundaries and wards resolution, and their recommendation of changing the percentage to 20% was based on State laws. Ms. Vimont stated that they intended to bring the city into line with the State laws. Ms. Vimont discussed the executive session resolution they recommended. Ms. Vimont stated that while there may be some opposition to this, there are only about four (4) reasons to go into executive session. They are for litigation, the acquisition of land, union negotiations, and hiring and firing of city employees. Ms. Vimont related this to a game of poker where we show everyone our cards, but they don't have to show us what they have. By not being able to hold executive sessions, we have no way to negotiate because they already know what we have. Ms. Vimont stated that as a taxpayer, this does not protect her money. Ms. Vimont stated that yes, the chance for abuse is there, but then anything can be abused. It's more important to protect the citizen's funds by allowing this. Ms. Vimont stated that Ohio law requires notification of an executive session having occurred at the next Council meeting and you can be assured that the citizens would be asking Council what went on during the executive session

Communications from the Public Continued:

Ms. Megan Booth, a member of the Charter Review Commission and the Citizens Advisory Committee, spoke regarding the recent Charter violation. Ms. Booth stated that yes, she did serve on both, and she was very open about serving on these. Ms. Booth stated that she was appointed to both by the Mayor. It was just brought to her attention last week that she has violated the very Charter that she is working. Ms. Booth read a portion on Charter Section 7.01 “ *the Mayor shall appoint, subject to confirmation by a majority of the members elected and appointed to Council, seven qualified electors of the Municipality holding no other office or appointment in this Municipality, as members of a Charter Review Commission to serve until their duties are completed. The members shall serve without compensation*”. Ms. Booth stated that since she was appointed to both, it would appear to be a violation of the Charter. Ms. Booth apologized adding that had she known this she would have never accepted both, nor did she feel Mayor Kernan would have appointed her do both had he known before hand. Ms. Booth suggested that perhaps the Law Director should have reviewed ahead of time since this occurs every five years. Ms. Booth stated that although she views this as a violation of the Charter; she did not want all of the work to be in vain. The work of the Commission should still be valid since all of the votes were unanimous, and wished to continue to serve until it remains in force, and they should be done in the next couple of months. Ms. Booth stated that as far as the Citizens Advisory Committee, our work was completed last fall. Ms. Booth stated that she did not believe they voted on any issues, and did not believe that any official minutes were taken, if so she has been unable to find any. Ms. Booth stated that she appreciates the opportunity to serve and would like to continue to finish the work that she has started.

Mr. Mark Spisak, Chairman of the Planning Commission, read a statement regarding Ord #11-2007 (see attached statement).

Mrs. Elaine Tompkins, a Norton resident, read a statement regarding various concerns (see attached statement).

Ms. Charlotte Whipkey, a Norton resident, spoke regarding Ord #11-2007 and asked Council to turn s down this comprehensive plan. Ms. Whipkey stated that the residents really had no public input, citizens were denied the opportunity to speak, there were no minutes taken. Ms. Whipkey stated that many of the citizens that did attend, put forth their ideas thinking something was settled only to return to the next meeting to find they are right back were they started. Ms. Whipkey stated that without any official minutes who is going to contest that and prove it? Ms. Whipkey stated that this legislation has a maintenance code could be Ord. #37 coming back to haunt us. Ms. Whipkey stated that as she questioned this before, how does our own home become a hazard? Ms. Whipkey stated that she has never received an answer. Ms. Whipkey expressed her concern with the possibility. Ms. Whipkey stated that there was lots of public input and referenced to the Planning Commission minutes of May 23, 2006 which state “The commission discussed the zoning code but went to referendum. They wondered if the Comprehensive Plan could be subject to referendum. Mrs. Abbott stated that she was informed it could only go to referendum if they attempt to do something to a property owner because it goes with the Comprehensive Plan. Mr. Conklin stated that that Planning Commission was the only body that would vote on the plan and he was not aware of any mechanism to referendum an act by the Planning Commission. Ms. Whipkey urged Council to please consider turning this down because it is not in the best interest of the residents.

Communications from the Public Continued:

Ms. Brenda Anderson, a Norton resident, spoke regarding the time line of events regarding the Weber Drive issues and provided a display chart and documents for the record (see attached). Ms. Anderson raised these issues to ensure that Council and all of the residents realize the grave errors that have occurred. These errors now effect the entire city. Ms. Anderson stated that there are at least seventeen (17) times that the city stated the residents did not have to connect to a sanitary sewer line if they have a working septic system. On November 5, 2006 the Barberton Health Dept. made a pledge to enforce the rules or mandate from the State. Our representative from Council, who was also the Council President, failed to report this new enforcement. This concealment of information will affect approximately 1500 septic systems. All septic systems will connect if a sanitation line is near. The wastewater prescription plan no longer protects the residents. This document clearly states and is peppered throughout with the phrase "*must not conflict with clean water plan, which is included in section 208 of the Federal Clean Water Act*". Our Planning Director cites the plan and stated on May 9, 2005 that it would be signed by our Governor in about six (6) months, not recognizing that the State mandate would go into effect on January 1, 2007. Am I to believe that the wastewater prescription plan did not have the words "*must not conflict with the clean water plan*"? Am I to believe that no one reviewed these two documents? Ms. Anderson discussed Ord #93-2006, which now includes a final approval by the Administrative Office, who changed these words and why? Who had the power to do this and why? I contend that it should state final approval should be by Council, they are the elected body of the people who this ordinance would directly effect. Why then should an appointed employee have final review, where is the voice of the people? Ms. Anderson urged Council to take back your power, not only for the purse strings, but also for the balancing agent for all of the residents. Ms. Anderson discussed the State mandate that has been ignored for two years. Ms. Anderson stated that she got a copy of this mandate for free, was the city not aware that you could also get a copy for free and it can be reviewed? Our entire city is affected by this mandate, not just Weber Drive. We need a legal interpretation of the mandate or a legal opinion on issues such as home rule-will it override this mandate, can this mandate be slowed down to protect our family and our homes, what is the 400 ft and 200 ft meaning, what is the domino theory and can it be stopped? We need this opinion for all operating rules for septic systems, working and non-working, for when a sanitation line is available or when it comes available. The residents have a right to know the costs and to be assured the city can help with the finances such as grants. Ms. Anderson stated that the mandate states that financial hardship is not an excuse. Will the city just merely accept this mandate and let the citizens loose their homes? Will our city challenge this mandate to protect its citizens? Our city requires a legal opinion or interpretation in writing. Council, you represent the people and you to will be effected by this opinion. Ms. Anderson stated that the citizens are waiting and are in great need of legal protection, and suggested that maybe an ordinance can be passed into law. Ms. Anderson asked if anyone has contacted the Governor or a State Representative to protest this mandate?

Ms. Violet Carr, a Norton resident, stated that she was not here to speak for herself or for the residents in the Weber Drive area. Ms. Carr stated that she was representing all of the residents that contacted her and could not be here tonight regarding the mandate. Ms. Carr discussed the Barberton Health District meeting of December 5, 2006 and it was stated at this meeting that residents would be forced to connect if a new sewer line was available. Ms. Carr stated she later found out that Mr. Zita was at this meeting and did not share this information about the new Ohio mandate. Concerns skyrocketed when the Planning Director finally admitted publicly knowing about the State mandate no matter the age or condition of your septic system if a sewer line was available. Ms. Carr stated that this would become a domino effect and would take out 1500 plus residents.

Communications from the Public Continued:

Ms. Carr stated that law was finalized in May in 2006 and was highly publicized at different levels throughout the State. By law the Health Dept. was given all information 90 days in advance of the January 1, 2007 implementation date, and it was ignored. Ms. Carr stated that back in October the city was notified that the new law would take effect on January 1, 2007. Ms. Carr stated that even as early as January of this year, city officials were still denying this fact, and questioned this “misinformation” going on for two years. How can ordinary citizens without the aid of high salaried staff with access to official public offices and State notifications are more informed than the Administration personnel for over a year? We continued to share this information with all of you and its source, but we were ignored, we were belittled. All they had to do was check out what we were telling them. Ignorance of the law is not an excuse; not knowing the gun was loaded doesn’t count. Ms. Carr suggested that a Donald Trump method of your fired should be used. Perhaps a clean up is needed, and after all they are elected officials and very well paid employees of ours. They are all accountable to us, the citizens. The citizens will take this city back and the employees and elected official’s better start helping or maybe the Trump method should excel.

INTRODUCTION OF NEW LEGISLATION:

ORD #6-2007

Mr. Zita offered Ord. #6-2007 for its first reading, and asked the Clerk to read it:

AN ORDINANCE TO AMEND THE SCHEDULE OF POSITION TITLES, STATUS, STRENGTH NUMBER, SALARY RATES AND WAGES FOR 2007.

First reading only

ORD #7-2007

Mr. Zita offered Ord. #7-2007 for its first reading, and asked the Clerk to read it:

AN ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF NORTON A PROPOSAL TO AMEND ARTICLE III OF THE CHARTER OF THE CITY OF NORTON TO AUTHORIZE COUNCIL TO HOLD EXECUTIVE SESSIONS IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO.

First reading only.

ORD #8-2007

Mr. Zita offered Ord. #8-2007 for its first reading, and asked the Clerk to read it:

AN ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF NORTON A PROPOSAL TO AMEND ARTICLES I AND III OF THE CHARTER OF THE CITY OF NORTON TO MAKE GENERAL MODIFICATIONS TO THE FORM OF GOVERNMENT IN ARTICLE I AND TO ELIMINATE THE REFERENCE TO “CONTINUOUS RESIDENCY” IN SECTION 3.03

First reading only.

Introduction of New Legislation continued:

ORD#9-2007

Mr. Zita offered Ord. #9-2007 for its first reading, and asked the Clerk of Council to read it:

AN ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF NORTON A PROPOSAL TO AMEND ARTICLES VII AND X OF THE CHARTER OF THE CITY OF NORTON TO CLARIFY THE MISSION OF THE CHARTER REVIEW COMMISSION, TO MAKE IT MANDATORY UPON COUNCIL TO SUBMIT THE CHARTER REVIEW COMMISSION'S RECOMMENDED CHARTER CHANGES TO THE VOTERS, TO COMBINE ARTICLES VII AND X, AND STREAMLINE SOME OF THE LANGUAGE OF THOSE SECTIONS.

First reading only.

RES #10-2007

Mr. Braman offered Res. #10-2007 for its first reading, and asked the Clerk to read it:

A RESOLUTION TO REJECT THE APPLICATION FOR PLACEMENT OF FARMLAND LOCATED AT 3734 CLARK MILL ROAD IN AN AGRICULTURAL DISTRICT.

First reading only.

RES #11-2007

Mr. Braman offered Res. #11-2007 for its first reading, and asked the Clerk to read it:

A RESOLUTION TO APPROVE THE CITY OF NORTON COMPREHENSIVE PLAN DATED NOVEMBER 2006 .

First reading only.

INTRODUCTION OF PRIOR LEGISLATION

None

REPORTS FROM OFFICERS, BOARDS AND COMMISSIONS

Mr. Moss indicated that he would like to add the EMS fee contract renewal to the next work session agenda. Mr. Moss stated that there has been no increase in fees. Mr. Moss reminded Council that they need to do something with the motel/hotel tax ordinance and a food ordinance to cover expenses for reimbursements.

Mr. Pritchard discussed the current wastewater 208 prescription plan. Mr. Pritchard stated that this not only affects the residents of Norton, this is statewide. Mr. Pritchard stated that the city has been in discussions with other area health departments. We are working on establishing a joint committee to provide a draft of proposed language to try to modify the language, however we are confined within the guidelines of the Ohio Department of Health and we are working toward that goal. Mr. Pritchard stated that we will try and address this not only from the City of Norton's standpoint but on a regional standpoint as well.

Reports from Officers, Boards and Commissions Continued:

Mr. Ed Binic, of the Barberton Health Dept., spoke regarding Mr. Pritchard's comments. Mr. Binic stated that we do have the ability at the local level, it's called the local authority in the law to determine things like accessibility and time lines required. We will continue discussions and will seek input from the Municipal Engineer, Council, Planning Director, Norton Health Advisory Board and Administration. This is in addition to seeing what other health departments are doing. Mr. Binic stated that it has been a pleasure working with Mr. Collins and he has been a positive influence on his life. Norton is losing a very good employee.

UNFINISHED BUSINESS

None

AMENDED ORD. #93-2006 An ordinance to amend the City of Norton Administrative Code Utilities regulations by adding Section 1042.08 to establish sewer construction requirements. (Jones-Utilities) There was no action taken as announced at the beginning of the meeting.

NEW BUSINESS:

Mr. Jones discussed Ord. #8-2007 and Ord. #9-2007 and mentioned that he felt there were some inconsistencies with the proposed resolutions received by the Charter Review Commission and the legislation. Mr. Lyons indicated that he discussed this with the Clerk of Council and these typographical errors would be corrected.

Mr. Pelot asked Mr. Lyons for his legal input on the issue of a member of the Charter Review Commission serving on two boards. Mr. Lyons stated that the members that served on the Citizens Planning Group were not created or approved by Council and are in the Charter. Mr. Lyons stated that this is really a fundamental question to begin with, and that it is premature to imply that the Charter has been violated. Mr. Lyons stated that the Citizens Planning Group has done their work and no longer exists, therefore, the member in question may still serve on the Charter Review Commission.

Mr. Lyons stated that it has been great working with Mr. Collins, he has done a great job for this city and wished in the very best.

Mr. Price asked Mr. Collins to join him on the floor to receive his official Resolution of Appreciation and presented Council's gift to him. Mr. Price thanked Mr. Collins for all that he has done for this community and wished him the very best in his future endeavors. Mr. Collins stated that he appreciated all of the kind words and applause he has received.

PUBLIC SERVICE ANNOUNCEMENTS

None

ADJOURN:

There being no further business to come before it, Council adjourned the meeting at 8:15 PM.

James Price, President of Council

I, Karla Richards, CMC-Clerk of Council of the City of Norton, do hereby certify that the foregoing minutes were approved at a Regular Meeting of Council, held on Monday, February 26, 2007.

Karla Richards, CMC-Clerk of Council

*****THESE MINUTES ARE NOT VERBATIM *****