



**COMMITTEE WORK SESSION
MAY 16, 2016**

Committee Members Present: Rick Rodgers
Dennis McGlone
Joe Kernan
Dennis Pierson
Paul Tousley
Scott Pelot
Charlotte Whipkey

Also Present: Mayor Mike Zita
Valerie Wax Carr
Ron Messner
Justin Markey
Karla Richards

The Committee Work Session convened on Monday, May 16, 2016 at 7:00 PM, in the Council Chambers of the Safety Administration Building. The meeting was called to order by Charlotte Whipkey, President of Council. Following a salute to the flag and the Pledge of Allegiance, there was a moment of silent prayer. Mayor Zita noted today is the start for the Police Officers Memorial Week and he asked everyone to please remember all of the officers that were killed in the line of duty. Ms. Whipkey asked if that's what the new black, blue and white flag at the flag pole represents and Mayor Zita indicated yes, and this new flag was purchased by the Norton FOP. Mr. Pelot asked Officer Brody Fratantonio if that is what the black band across the officer's badge represents this and Officer Fratantonio stated this represents our brothers in blue and all of the fallen officers. Mr. Tousley asked if it was possible to include the State of Ohio Flag on the flagpole as well and Mrs. Carr stated she would look into this and we may have one in inventory.

General Topics of Discussion:

Chapter 1028-Moratorium-Installation of Tile Pipe:

Mr. Kernan discussed the current moratorium which will be expiring on July 15, 2016 and was put in place to address the water run off problems we have. Mrs. Carr noted that Council did put this in place last year and thanked Council for supporting this as it gave them time to look at things to determine what might be done differently and she noted Mr. White-Municipal Engineer was present for the discussion.

Mrs. Carr stated we thought the Watershed District would be father along and at this time we recommend Council does not remove this now or possibly ever as we can observe and control it better being open. Mrs. Carr noted we had only one (1) complaint during this time frame and they were fine with it, once it was explained why the ditch could not be covered. Mr. White stated in Summit County they do not allow any open ditches on county roads, as well as Copley Twp and Springfield Twp has actually removed enclosures on vacant houses. Mr. White stated the best we can do for surface water is to allow the flow to move down stream. Mr. Kernan stated with open ditches you won't have problems with tiles collapsing, you can see blockages in addition to washouts from the street are filtered out better with the plants and the water can make it to the waterways cleaner. Mr. White concurred, adding that the EPA requires specific maintenance for water quality purposes, and ditch cleaning is not considered as municipal waste while catch basins and pipe cleaning is considered waste. Ditches will hold more storm water than concentrating in a pipe and is easier to observe and maintain with multiple environmental benefits. Mr. Pierson asked Mr. White in the past if we ever developed a standard for ditches, and Mr. White stated we have looked into this and the County simply does not allow enclosures unless they take charge and if they do they will do full designs for what would be needed to be done. Mrs. Carr stated that if we do allow enclosures, in the past they never went through engineering standards, so if we do this we need to have Mr. Reynolds and Mr. White work on the proper calculations for the pipe size. Mr. Pierson discussed an ongoing situation on Hametown where the City actually put in a sub standard ditch and this is causing some drainage problems for the residents in this area washing out driveways and culverts. Mr. White stated we can look at this but he would still recommend leaving it open and Mrs. Carr suggested we add the proper vegetation to this area to help with the water absorption water flow. Mr. Pierson stated that in the past these improvements were all made at the cost to the resident, and this needs to be addressed. Mr. Rodgers stated that this is probably a case by case basis. Ms. Whipkey stated we have many ditches that are very, very deep and questioned if this is a safety issue that we need to be looking at? Mr. White stated the County can take a look and unless it's a bonafide safety issue they may not correct them. Mr. Rodgers expressed concerns with senior citizens and he just does not want to see anyone falling down and getting hurt when keeping them trimmed. Mr. White noted the EPA does not recommend the mowing of ditches. Mr. Kernan asked for more details on the types of vegetation, and Mr. White stated that daylilies are the most recommended, which are extremely salt tolerant, rugged, have attractive flowers, and fill in very densely when planted on the ditch sides. Mr. Kernan moved to add an extension of a one year moratorium to Councils next agenda for a first reading, seconded by Mr. Pelot.

Roll Call: Yes: Kernan, Pelot McGlone
 No: None

Motion passed 3-0.

Holiday Pay Reimbursement:

Ms. Whipkey explained that this would pay out a former employee that did not receive this pay and requires two (2) pieces of legislation.

Mr. Rodgers thought this should go to the Personnel Committee for discussion first as Mr. Markey stated in an email a few weeks ago. Mr. Markey did not deny that was stated, however this is really a hybrid situation as it deals with both Personnel which deals with employees and Finance Committees which deals with appropriation amounts. Mr. Rodgers stated he is not in favor of this and he is still opposed to the current Administrator receiving this pay. Mr. McGlone asked if Mr. Ryland asked for this while in office and if so do we have a record of this? Mr. Markey stated in the email received Mr. Ryland stated he had asked for this and is not sure if we have a record on that, only that it was discussed. Mr. Pierson asked if Mr. Ryland or any other past city managers have filed suit and Mr. Markey replied no. Mr. Pierson stated that if Mr. Ryland asked for this verbally back then and he did not get this, then obviously the past Council did not think he was worthy of this. Mr. Pierson stated he didn't feel we should even be discussing this, it's like opening up a can of worms. When or if he files a suit then we could look at this. Ms. Whipkey and Mr. McGlone stated this never came to Council to receive the pay. Ms. Whipkey stated she believes Mrs. Starosta brought this up after Mr. Ryland was gone. Ms. Whipkey stated she also is not in favor of waiting until he files, if he does it could cost us more in the long run in attorney fees, when we have other issues we need to address. We would not even be looking at this if it had not been brought to the floor to begin with and that Mr. Ryland probably would not have given this another thought. Ms. Whipkey stated she would just as well bite the bullet and pay it rather than take a chance with the courts and possibly paying more. Mr. Pelot stated there is an ordinance on the books that state they are entitled to this money whether it's Mr. Ryland or Mrs. Carr, and Mr. Ryland is not ignorant and he is not going to let this go, he knows there is an ordinance and we made a ruling right here on the floor not two weeks ago that he was entitled to it. Mr. Pierson stated that's your opinion, he does not believe any of them are is entitled to the money and he is not going to vote to cut a check just because someone sends in an email. Mr. Rodgers stated the history of this began with Claude Collins and the reason was to keep the Chiefs of Police and Fire above the rank and file. There was no intent to apply this to the Administrative Officers position and what he understands from what he read and was told to him is that Mr. Moss told Mr. Ryland that he was not entitled to it. The easiest solution is to say this Administration made a mistake in paying it, return the money and call it a day; it does not have to be paid back in one lump sum. Mr. Tousley discussed Charter Section 5.01 Administrative Officer and questioned the breakdowns as indicated in the Exhibit A and the capacity. Would the holiday pay be 80% less and in Mr. Ryland's case the pay should really be \$3,200.00 rather than \$16,000.00 due to the safety department referral? Mr. Pierson stated if you want to look at it that way the Mayor should also get this as he is the Chief Executive over all the departments. It was designed for those in law enforcement and fire. Mr. Tousley stated 75% of the pay is to the Admin Office and the Charter specifically names what is under this department, which is basically police and fire, and based on that should we be legally paying 100% or the reduced amount? Mr. Markey stated he would have to review this. Mr. Rodgers stated in the real world the Safety Directors in other cities do not partake in union benefits; somehow this has now turned into something the Administrative Officer should be getting now. Mr. Rodgers stated if there was any way Mr. Ryland was entitled to this then he would have received it. We made a mistake, we have to admit that and back up.

Again, he felt the best solution is to return money and call it a day and save the \$16,000.00. This is not done; you are paying them the benefits given to unions and it is not done. There is a separation and you do not do this in business or government. Mr. Markey clarified that what you are saying is you are asking Mrs. Carr to return the holiday pay and Mr. Rodgers replied yes. Mr. Rodgers commented about one time while on the Akron Fire Department he was overpaid and he had to give it back in installments over time. Mr. Messner stated he respectfully disagrees, this has been paid out and unless Council appeals this he is required to pay this again by law in December. Mr. Messner stated that what's been done is done, and it's not right to go back and demand this to be repaid. It was not a mistake as Mr. Rodgers stated; Mr. Rodgers was President and he approved it. Mr. Messner stated that even Mr. Rodgers admitted that he made the mistake, and the law says it's to be paid. Mr. Rodgers argued that Mr. Messner was incorrect, and back when Mrs. Carr was hired this was brought to his attention and he stated as long as it was an ordinance he was fine with it. Had he read the ordinance and saw what the pay was, it would not have been. On the face of it there is no right about this whole issue. Mr. Messner stated then that's OK because Council read it and Mr. Rodgers, replied no he did not read the ordinance and Mr. Messner asked then whose fault is that? Mr. Rodgers stated he has already apologized to his Council members and the residents for not reading the legislation. Mr. Messner argued that the law is still the law and it states this is to be paid and it was. If you want to change the law, then change the law. Mr. Rodgers stated Mr. Markey provided a legal opinion and if Mr. Markey said he was wrong in that opinion, the ordinance can stand which was specifically for police and fire chiefs only. Mr. Markey stated he does not believe that his opinion he provided was wrong and that Mr. Rodgers may have a different opinion or interpretation, which everyone is allowed to have. Mr. Markey stated he was asked to give legal opinion behalf of the City which he gave. Mr. Markey repeated his opinion was if Council does not feel that should have been paid out then change the ordinance so that it only covers the fire and police employees. Mr. Rodgers stated he is not saying that opinion was wrong or right, what he is saying is that if this Council says it made a mistake and that Mr. Markey could say maybe his opinion wasn't right, that does not put Mr. Markey on the spot. Mr. Markey stated he does not believe his opinion was incorrect, you seem to believe that it was wrong and that Mrs. Carr is equally wrong for taking pay that she was legally entitled to. Mr. Markey recommended that you should change the language to state the non-bargaining employees of the police and fire departments and exclude the Safety Director. Mr. Pierson discussed the fact that none of these others took the pay and you even have an opinion from former Law Director Mr. Bob Heydorn on this. Ms. Whipkey noted this legislation did not take effect until 2005-2006 so anyone prior to that would have been excluded from it, she is not even sure Mr. Collins was entitled to much of that. Ms. Whipkey stated she did not feel it was negotiating as it specifically says "non-bargaining" and she didn't believe the unions did any negotiating on behalf of the Chiefs or Administrator. Ms. Whipkey stated she did not see it that way and added that it was Mr. Rodgers in the past that wanted to pay Mrs. Carr even more salary and we are sitting here in this boat due to the fact it was brought to the floor that he did not read or see fit to ask Council about. We already have the opinion from two (2) attorneys from Roetzel & Andress.

Ms. Whipkey stated she read the ordinance and to her it says they are paid; we don't need to drag ourselves through the mud and a mistake was made when it was made public and okayed back then Ms. Whipkey stated she was not willing to change the ordinance and if we are amending the ordinance we should also be including the Service Dept. Mr. Pierson stated it comes with the territory when you take the job and the responsibilities as part of the job. Mr. Pierson asked how can we sit here and be willing to pay when they have not filed a claim in the court? We don't have money to fix roads or anything else; we should not be just paying this out. Ms. Whipkey stated that you're the one that brought this out in the first place and that's how Mr. Ryland found out about this. Mr. Rodgers questioned that Ms. Whipkey wanted to keep it quiet from the public and Ms. Whipkey responded it should have been researched privately before bringing it to the floor. Ms. Whipkey added it was not brought out for transparency, but was brought out to make someone look bad to which Mr. Pierson denied the statement. Mr. Pierson stated he had sought opinions from two separate law directors of cities with populations of 40,000 and they laughed at it. Mr. Pelot stated that Mrs. Carr asked specifically about this when she was hired and she was told this was in the ordinance, so therefore she is entitled. If someone is required to be on call 24/7 that means you're not socializing and drinking, you're not on vacation, etc. They have to be responsible during this time and compensated one way or the other. Mr. Pelot stated he was never in the union, and has always been compensated one way or the other. Mr. Rodgers stated he was union and the extra money for holidays was negotiated as more money for the unions, and does not apply to the Administrator or anyone else sitting at home and not being able to drink. Mr. Rodgers stated that's her job to negotiate with the unions and is why Mrs. Carr could not have it. Mr. Messner noted that all Chiefs and department heads are involved in the negotiations. Mr. Rodgers responded that Mrs. Carr and Mr. Messner knew that Mr. Collins was protecting the Chiefs and it did not relate to the Administrator. Mr. Messner asked Mr. Rodgers if he was sure that Barberton and Copley and other communities were not paid this and Mr. Rodgers answered yes or was pretty sure they were not although the Chiefs were paid if they were in the union or came up through the union. Ms. Whipkey moved to place #43-2016 to Councils next agenda for a first reading, seconded by Mr. Pelot. Mr. Tousley asked the members of the Committee to please look into the \$12,000 difference issue he raised earlier first.

Roll Call: Yes: Whipkey, Pelot,
 No: Pierson

Motion passed 2-1.

Ms. Whipkey moved to add Ord. #44-2016 to the agenda, seconded by Mr. Pelot.

Roll Call: Yes: Whipkey, Pelot,
 No: Pierson

Motion passed 2-1.

Mr. Rodgers moved, as Chair of Personnel and it was pointed out he was a member, that Mrs. Carr return the money from 2015 and 2016, for Council to admit a mistake was made, and to amend the current ordinance. Mrs. Carr stated she was not paid in 2016, she was paid in 2014 and 2015 and no one had objected to this pay then. Mrs. Carr stated the reason it was talked about was before her hiring to make sure this was Ok. Everyone she spoke to said the prior Administrative Officers had received this same pay. Mrs. Carr stated that her only mistake was not to pull payroll records to verify at that time. Mrs. Carr stated that she is not the one to make the mistake and she did nothing wrong, and feels she is not entitled to pay this back. Mr. Rodgers asked Mrs. Carr as the former Safety Director in Cuyahoga Falls, did she receive the same bonus pay that the union members did and she replied no she did not but they did not have bonus pay. Mrs. Carr clarified that if a new holiday was negotiated for the unions, it had to come before Council to okay the non-bargaining people, such as herself, to receive it. Ms. Whipkey stated she was denying Mr. Rodgers' motion and if this is to be brought out she is assigning this to the Finance Committee. Mr. Rodgers argued this and referred to the original email from Mr. Markey and is opinion that this falls to the Personnel Committee. Mr. Markey stated under the Rules, Finance Committee is responsible for all pay ordinances, and the Personnel Rules is responsible for ordinances setting salaries and number of employees. Ms. Whipkey stated this stays with Finance and as the Chair of Finance she is not moving this forward. Mr. Rodgers argued that fact and asked Mr. Markey for an opinion on this. Mr. Markey stated it's not fair to ask opinions on the fly and on the floor and he was not giving one; if you have an issue, you need to ask for it earlier so an answer can be prepared. Mr. Rodgers insisted it belonged to Personnel and the President could not over rule his motion. Mr. Markey stated that the President of Council controls the meeting and the agenda items.

Unfinished Business:

Mr. Rodgers asked Ms. Whipkey about the handouts she handed out last week relating to Barberton's report on the visit to Forest, and asked how she came about this and who prepared it for her, if those people had prepared it. Ms. Whipkey stated that she had requested this, and it was emailed to her and if anyone else had received it then. Mr. Rodgers stated he would be asking for these email records. Mr. Rodgers stated a Norton resident contacted Mr. Wes Davis in Forest, Ohio with some questions and he was given a copy of that. Mr. Rodgers indicated that he also called Mr. Davis this afternoon to verify what was sent to him. We had a lengthy discussion regarding this report that came from Barberton. Mr. Rodgers noted it's funny that out of all of the cities Barberton inspected, Forest was the only one they came back with a report on. They also inspected Randolph and North Lima. Those reports were all favorable as was this one. In speaking to Mr. Davis the one glaring issue was pointed out is that the vacuum system built in 2000 they received a 30 year loan, but we can't get that, but yet they received it Barberton mentioned the \$1,000.00 yearly cost to change oil and maintaining the pumps and yes that is true, but what is not stated is the cost for maintenance on gravity system to do some of the same maintenance. Forest has half vacuum and half gravity. The Barberton report also stated that downspouts and sump pumps are connected to vacuum systems. This is not a fault of the system; it's a fault of the Administrator of the system.

Mr. Rodgers also discussed the comments about the valves and all of the working parts in the system and with new designs; much of this has been eliminated and Mr. Davis knows that. Barberton stated it was awkward getting down into the pit in cold and wet weather, well what about getting down in a manhole in cold and wet weather. Mr. Rodgers indicated that Mr. Davis state the whole reason for the exercise was to have a less expensive system. Mr. Rodgers stated he had asked Mr. Davis about maintenance and Mr. Davis agreed there is more maintenance on the vacuum system, but it would never outspend the savings on the build cost. There are 1500 residents in the Village of Forest and half of them are on the AirVac system. There are four (4) residents to one (1) pit so their maintenance would be higher. We are going to have two (2). What we have here from Ms. Whipkey is her attempt to discredit any fact finding on the work we had done on the vacuum systems. Worst of all you have denied the residents the chance to save millions of dollars on a sewer system. Again Barberton visited other systems and came back with what they felt was a problem, which really is not a problem; Mr. Davis is quite happy with the system. For those worried about Plum Island, there are two more under construction in this same area so all the hocus pocus about vacuum doesn't hold water. Ms. Whipkey asked if Mr. Rodgers had his information from conversations or emails; and Mr. Rodgers stated he has some from phone conversations and some from emails. Mr. Rodgers commented about government waste is rampant at every level and even here, but we can control it; if you look for the bad, you will find it when looking at it in a biased manner. Ms. Whipkey asked Mr. Rodgers if he was done and when he stated he was Ms. Whipkey stated she was not going to even comment on that, and Mr. Rodgers interrupted her to which she reminded him he had said he was done. Mr. Rodgers then stated that's because when you give a smart ass response and you cannot justify anything you did on this whole subject, adding, "pardon his French." Mr. Tousley asked if there is any word from the EPA since December, and Mr. Markey stated we have been told by their in house attorney to assume our time line was ok by them and we should be receiving soon the final EPA time line. Ms. Whipkey asked does this mean that the EPA is not looking to fine us? Mr. Markey stated he was not sure on that. Mr. Pierson asked if the EPA sent anything stating there would be fines and Mr. Markey replied no. Mr. Pierson stated then why are we saying there could be fines; they don't have the authority to fine us. Mr. Markey clarified that the procedure is they can recommend to the Attorney General to levy fines. Mr. Pierson stated that there is no need to speculate there would be fines and it's just a big IF. Mr. Rodgers asked again about the leash law and the six (6) hour rule like in Akron. Mrs. Richards explained that yes we do have a leash law although it's not restrictive to the six (6) hour rule. In addition to the situation Mr. Rodgers brought up recently which actually falls under our animal cruelty laws and this is what this dog owner was cited for. Mr. Pelot stated that if you call the Dog Warden they will come out for a fee. There was discussion regarding the past contract the City had with the Summit County Dog Warden, and Mrs. Richards concurred that we used to contract with them in the past, and it just became too expensive.

New Business:

None

Topics for the next Work Session:

Charter Review Amendments (Tousley-Rules)

Ms. Whipkey mentioned the RV moratorium that we put a 6 month window on in the past and with the season coming up; do we need to look at changing the ordinance now. Ms. Whipkey stated she spoke with Mr. Braman and he has already received many calls about this already. Mr. Markey noted that moratorium expired. Ms. Whipkey concurred, but we never did anything about the language in the legislation. Mr. Pelot asked if there are any plans for the road striping? Mrs. Carr stated we are getting some pricing through Summit County. All we need to do is provide them with the linear feet we need and they will provide cost estimates. Mr. Rodgers asked where we are on the Silver Springs Road issue and Mrs. Carr stated the engineer and he has six (6) proposals and we could possibly have this ready for next Committee Meeting. Mr. Pierson asked about the finalized road listing and Mrs. Carr stated the list she provided to all of you has been submitted to the County. There is one exception with Frashure Road that has an asphalt overlay on top of concrete. We want to remove this and have it re-concreted only and not be using asphalt. Mr. Rodgers stated that there are no under drains on Frashure and questioned if we should be looking at this now and doing it right because if not this roadway will be heaving and cracking.

Public Comment:

Mr. Paluch. 3740 Shellhart Road, as a Nash Heights citizen he was invited to go to Randolph to see their vacuum system. Mr. McGlone, Mr. Pelot and Mr. Kernan did not go. Mr. Rodgers corrected Mr. Paluch that Mr. McGlone did attend. Mr. Paluch stated we have been lied to; there is no grant money that comes from the government to do Nash heights. Wouldn't it be wise to put this system on hold with the court for several years until you get grant money, and until you see how much vacuum system would save the residents. A 60 yr. old lady said at the Assessment Board hearing that she cannot afford this and will have to walk away from her home. Why rush this project if you don't have the grant money? It just goes to show that we have unqualified people from the Mayor on down that don't know how to run the City.

Public Updates:

Ms. Whipkey noted that May 23, 2016 is the next Council meeting. May 31, 2016 is the 4th Monday and there will be no meeting on this day.

Adjourn

There being no other business to come before the Committee Work Session, the meeting was adjourned at 8:13 PM.

Charlotte Whipkey, President of Council

NOTE: THESE MINUTES ARE NOT VERBATIM

****ORIGINAL SIGNED AND APPROVED MINUTES ARE ON FILE WITH THE CLERK OF COUNCIL.****

All Committee Meetings will be held at the Norton Safety Administration Building, unless otherwise noted.