

**MINUTES OF THE REGULAR MEETING
OF THE AVON LAKE MUNICIPAL COUNCIL
HELD DECEMBER 13, 2010**

The regular meeting of the Avon Lake Municipal Council was called to order on December 13, 2010 at 7:30 P.M. in the Council Chamber with Council President Zilka presiding.

Mr. O'Donnell led the Council, staff, and public in reciting the Pledge of Allegiance.

Present: Council Members Dan Bucci, Jennifer Fenderbosch, David Kos, Martin O'Donnell, Timothy Rush, Gregory Zilka, Mayor Zuber, Law Director William Kerner, Engineering Department Manager Joseph Reitz, Finance Director Nancy Bryan, Clerk of Council Barbara Dopp.

Absent: Mr. Meiners

There being no objections, Mr. Meiners was excused from attendance at the meeting.

The minutes of the November 22, 2010 Council Meeting were approved as prepared and published.

CORRESPONDENCE

Edward McNamara submitted his letter of resignation from Planning Commission.

Scott Gedeon forwarded his resume and letter of interest for appointment to the Zoning Board of Appeals.

A thank you note was received from Marion Conn thanking Council for approving the refund of Planning Commission fees for renovations to the Folger Home.

Gerry Paine submitted a letter of resignation from the Historic Preservation Commission.

WOW will be providing service to their first customers in Avon Lake on or after December 6, 2010.

Several e-mails were received from residents objecting to the proposed restroom at Belle Road Park.

A letter was received from James Moyse expressing his support for the proposed restroom at Belle Road Park.

MAYOR'S REPORT

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Mayor Zuber made the following announcements.

On November 23rd, the Mayor attended the small business seminar sponsored by the Economic Development Advisory Board; the topic was "Accounting and Banking for Small Businesses." The next seminar is scheduled for January 14, 2011 with a presentation by COSE on Workers' Compensation.

The Mayor attended a meeting of the Team Lorain Board on December 1, 2010.

Light up the Park was held on December 5, 2010.

Along with Mr. Zilka, the Mayor attended the luncheon for volunteers held by "Meals on Wheels".

Residents who have questions regarding snow plowing should contact the Mayor's office or the Service Department.

COUNCIL PRESIDENT'S REPORT

The next Collective Committee Meeting is scheduled for December 20, 2010. A rescheduled Council Meeting will be held after the Collective Committee Meeting on December 20th. This will be the final meeting of the year.

A vacancy exists on Planning Commission due to the resignation of Mr. McNamara. Council President Zilka contacted Jason Hamman, who previously interviewed for a position on Planning Commission, but was not appointed. Mr. Hamman agreed to accept appointment to Planning Commission.

Varney Fink & Associates forwarded their final report of the audit of the Finance Department. There were no discrepancies in the cash accounts.

ENGINEERING DEPARTMENT REPORT

The Engineering Department Update was distributed.

The Avon Lake Municipal Utilities Department was working in Ward II to repair two water main breaks on Walker Road. This water line is scheduled for replacement in 2011. There was also a water main break on Harvey Parkway.

LAW DIRECTOR'S REPORT

The Law Department Update was distributed.

ENVIRONMENTAL COMMITTEE REPORT

The Environmental Committee is scheduled to meet on December 14, 2011 to discuss the EAAB budget and expenditures regarding cable service.

FINANCE COMMITTEE REPORT

Mr. Zilka reported that the Finance Committee met on December 13, 2010 and discussed the Audit Committee composition and duties, and bidding procedures.

The Finance Committee is scheduled to meet on December 20th at 6:00 P.M.

HUMAN RESOURCES COMMITTEE REPORT

Mr. Bucci reported that the Human Resources Committee met on December 6, 2011 and discussed the Employee Assistance Program and the Mayor's salary.

PUBLIC SERVICE COMMITTEE REPORT

Mr. O'Donnell reported on the following topics discussed at the December 9, 2010 Public Service Committee meeting: the operations and budget of the Recreation Department; increased fees for trash pick-up; renewable energy; and the possibility of regional trash collection.

PUBLIC UTILITIES COMMITTEE REPORT

A representative from Time Warner will be invited to a future Work Session to answer questions and address concerns.

SAFETY COMMITTEE REPORT

A Safety Committee meeting is scheduled for December 16, 2010 at 6:00 P.M. at the Safety Center; the canine unit and the HazMat contract will be discussed.

ECONOMIC DEVELOPMENT COMMITTEE REPORT

Mr. Bucci is planning a meeting with all the commercial property owners in Avon Lake.

PLANNING COMMISSION REPORT

Mrs. Fenderbosch reported on the following items discussed at the December 7, 2010 Planning Commission meeting: revisions to Planning & Zoning Code Section 1252.04(f) regarding fences within project boundary setbacks; the Verizon cell tower site plan re-approval; and revision to the site plan for the T.I.D. Co. cell tower.

Mr. Kos referred to the Verizon site plan re-approval and pointed out that the application did not include a report from a structural engineer regarding failure of the tower and what would happen should the tower fall. Regarding any proposed changes to the cell

tower ordinance, Mr. Kos asked that City employees who work near cell towers on City property are given the same consideration for safety as residents are given.

ENVIRONMENTAL AFFAIRS ADVISORY BOARD (EAAB) REPORT

Mrs. Fenderbosch reported that the EAAB will purchase three recycling units for the municipal pool.

RENEWABLE ENERGY TASK FORCE REPORT

Mrs. Fenderbosch reported that she has been invited to participate in an advisory capacity in Lorain Community College's solar and wind academic programs.

AUDIENCE PARTICIPATION

Craig Holbert, 366 Armour Road, Avon Lake, commented on the purchase of a new phone system for Avon Lake city buildings. Mr. Holbert is employed by Cisco Systems. Century Link revised their evaluation showing that in a five year time span, their proposal will save Avon Lake over \$60,000.

MOTIONS

Mr. Rush moved to instruct the Clerk of Council to return the form to the Division of Liquor Control indicating that the City does not request a hearing in the matter of a liquor license transfer. The liquor license transfer request is from Revco Discount Drug Centers, dba CVS Pharmacy, at 375 Lear Road to Ohio CVS Stores LLC, dba CVS, at the same location. The Police Chief has no objections to the transfer request and there is no cause for a hearing.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Mr. O'Donnell moved to reappoint Mr. Rush and Mr. Kos to the Volunteer Firefighters Dependents Fund Board effective January 1, 2011 for terms expiring December 31, 2011.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Mrs. Fenderbosch moved to accept the resignation of Edward McNamara from Planning Commission.

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Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Mrs. Fenderbosch moved to reappoint Richard Knilans to Planning Commission effective January 1, 2011 for a term expiring December 31, 2015.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Mr. Zilka moved to accept the resignation of Chad Chillemi from the Zoning Board of Appeals.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Mr. Zilka moved to approve the 2011 Council Meeting schedule.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Mr. Bucci moved to permit Mr. Rush to abstain from voting on Temporary Legislation #9757 due to a potential conflict of interest.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

LEGISLATION

Third Reading:

Temporary Legislation #9756, A RESOLUTION RENEWING RESOLUTION NO. 272-2003 ESTABLISHING AND DESCRIBING THE BOUNDARIES OF A COMMUNITY REINVESTMENT AREA, AND DESIGNATING A HOUSING COUNCIL OFFICER TO ADMINISTER THE PROGRAM, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #9756. The Community Reinvestment Area (CRA) program is governed by Ohio Revised Code Section 3735 and allows for tax abatement for certain businesses which comply with the requirements. The City is required to evaluate and renew the CRA agreements every two years. The Community Reinvestment Area encompasses the entire City.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Ordinance No. 120-2010 adopted.

Temporary Legislation #9757, AN ORDINANCE REVOKING THE COMMUNITY REINVESTMENT AREA AGREEMENT BETWEEN THE CITY OF AVON LAKE AND THOMASINA PATTON AND TBP AVON LAKE, LLC AND DIRECTING THE LORAIN COUNTY AUDITOR TO TAKE ALL NECESSARY ACTIONS TO RECOVER ANY REAL PROPERTY TAXES EXEMPTED UNDER THE TERMS OF THE AGREEMENT FROM THE TIME PERIOD MAY 19, 2009 TO THE PRESENT, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Bucci moved for passage of Temporary Legislation #9757. TBP wishes to opt out of the CRA agreement. The program has not been financially beneficial to the business owner. Mr. Rush asked for permission to abstain from voting due to a potential conflict of interest.

Yes: O'Donnell, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Abstention: Rush

Motion carried.

Ordinance No. 121-2010 adopted.

First Readings:

Temporary Legislation #9762, AN ORDINANCE AUTHORIZING THE PURCHASE OF A FIBER OPTIC BASED TELEPHONE SYSTEM FOR AVON LAKE CITY BUILDINGS, AND DECLARING AN EMERGENCY, was read by title only.

A fiber optic based telephone system will be purchased from ClarkTel/Tele-Communications which submitted a joint bid with WOW! Business Solutions. The purchase includes the furnishing and installation of a complete fiber optic based system consisting of an NEC digital phone system and IP terminals to include hardware, training, and warranties. The total amount shall not exceed \$85,464.50.

Temporary Legislation #9763, AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A FIVE YEAR AGREEMENT WITH WOW! BUSINESS SOLUTIONS TO

PROVIDE DIAL TONE, INTERNET, AND METRO ETHERNET SERVICES TO ACCOMPANY A FIBER OPTIC BASED TELEPHONE SYSTEM, AND DECLARING AN EMERGENCY, was read by title only.

WOW! Business Solutions submitted a joint bid to provide dial tone, internet, and metro Ethernet services to accompany a fiber optic based telephone system provided by ClarkTel/Tele-Communications. The City will be billed monthly at a rate of \$0.03 per minute for long distance, \$1425.00 per month for metro Ethernet, and \$700.00 per month for high speed internet services. The new phone system will save the City \$125,000 over a five year period.

Temporary Legislation #9764, AN ORDINANCE PROVIDING FOR THE CONTINUED DEFENSE OF THE CITY OF AVON LAKE IN AN ACTION FILED BY JACK REDILLA, ET AL, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Zilka moved for suspension of the rule requiring three readings.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Mr. Zilka moved for passage of Temporary Legislation #9764. This case involves an appeal of a decision of the Zoning Board of Appeals relative to a frontage variance on a Lake Road property. The Law Director requested an additional amount not to exceed \$3000 to continue with the defense of the City.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Ordinance No. 122-2010 adopted.

Temporary Legislation #9765, AN ORDINANCE PROVIDING FOR THE DEFENSE OF THE CITY OF AVON LAKE IN AN ACTION FILED BY CLEAR WIRELESS LLC IN THE LORAIN COURT OF COMMON PLEAS CASE NO. 10CV170085, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Zilka moved for suspension of the rule requiring three readings.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch

No: Kos

Absent: Meiners

Motion carried.

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Mr. Zilka moved for passage of Temporary Legislation #9765. Clear Wireless filed a Notice of Appeal against the City for denial of Planning Commission's recommendation for approval of a conditional use permit and site plan for construction of a telecommunications tower at 407 Lear Road. The Law Director requested an amount not to exceed \$3000 to represent the City.

Mr. Kos stated that he will vote against any allocation of funds relating to the defense of the City regarding the Clear Wireless case since he supported the Clear Wireless application for a telecommunications tower.

Law Director Kerner confirmed that, if outside Counsel is hired for this case, the fees will be in addition to the money allocated for representation by the Law Director.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch

No: Kos

Absent: Meiners

Motion carried.

Ordinance No. 123-2010 adopted.

Temporary Legislation #9766, AN ORDINANCE PROVIDING FOR THE DEFENSE OF THE CITY OF AVON LAKE IN AN ACTION FILED BY CLEAR WIRELESS LLC IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF THE OHIO EASTERN DIVISION CASE NO. 110CV02647, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Zilka moved for suspension of the rule requiring three readings.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch

No: Kos

Absent: Meiners

Motion carried.

Mr. Zilka moved for passage of Temporary Legislation #9766. This case was filed by Clear Wireless in United States Federal Court on the basis of violations of the Telecommunications Act of 1996. The Law Director requested \$3000 to represent the City in this case. This is separate from the case filed in the Lorain County Court of Common Pleas. This will be in addition to any funds allocated for outside Counsel.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch

No: Kos

Absent: Meiners

Motion carried.

Ordinance No. 124-2010 adopted.

Temporary Legislation #9767, AN ORDINANCE AUTHORIZING THE CITY OF AVON LAKE TO FILE AN APPLICATION AND ENTER INTO AN AGREEMENT WITH THE

OHIO DEPARTMENT OF NATURAL RESOURCES FOR THE PURPOSE OF ACQUIRING FUNDS THROUGH THE DIVISION OF FORESTRY'S URBAN FORESTRY ASSISTANCE PROGRAM, AND DECLARING AN EMERGENCY, was read by title only.

Mr. O'Donnell moved for suspension of the rule requiring three readings.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Mr. O'Donnell moved for passage of Temporary Legislation #9767. The Service Director requested authorization to apply for a grant for removal and replanting of trees due to the emerald ash borer infestation.

Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Ordinance No. 125-2010 adopted.

Temporary Legislation #9768, A RESOLUTION ADOPTING AND DECLARING A TEMPORARY BUDGET FOR THE YEAR 2011, AND DECLARING AN EMERGENCY, was read by title only.

Adoption of a temporary budget is part of the annual budgetary process to allow for the expenditure of funds until the end of March when the permanent budget is adopted as required by State law.

MISCELLANEOUS BUSINESS AND ANNOUNCEMENTS

The City is partnering with the Marine Corps Detachment 576 in a "Toys for Tots" drive.

Columbia Gas has not authorized sales people for door to door solicitation.

The Environmental Issues Series will continue at the Avon Lake Public Library on January 12, 2011; the topic is "Aquatic Invasive Species in Avon Lake".

PUBLIC INPUT

Kevin O'Toole, 365 Armour Road, Avon Lake, expressed his opposition to the proposed restroom at Belle Road Park.

ADJOURNMENT

Mr. O'Donnell moved for adjournment.

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Yes: O'Donnell, Rush, Zilka, Bucci, Fenderbosch, Kos

No: None

Absent: Meiners

Motion carried.

Adjournment: 8:35 P.M.

Approved: _____
Council President

Attest: _____
Clerk of Council