

**MINUTES OF THE REGULAR MEETING
OF THE AVON LAKE MUNICIPAL COUNCIL
HELD NOVEMBER 22, 2010**

The regular meeting of the Avon Lake Municipal Council was called to order on November 22, 2010 at 7:30 P.M. in the Council Chamber with Council President Zilka presiding.

Mr. Meiners led the Council, staff, and public in reciting the Pledge of Allegiance.

Present: Council Members Dan Bucci, Jennifer Fenderbosch, David Kos, Larry Meiners, 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.

The minutes of the October 25, 2010 Regular Council Meeting, the November 8, 2010 Regular Meeting, and the November 1, 2010 Special Council Meeting were approved as prepared and published.

RESOLUTION OF GRATITUDE AND APPRECIATION

Temporary Legislation #9761, A RESOLUTION OF GRATITUDE AND APPRECIATION FOR DAWN MEYER, was read in its entirety.

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

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

No: None

Motion carried.

Mr. Bucci moved for passage of Temporary Legislation #9761. Mr. Bucci, Mayor Zuber, and Mr. Zilka commended Ms. Meyer for her service at Community Resource Services.

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

No: None

Motion carried.

Ordinance No. 115-2010 adopted.

Ms. Meyer thanked Council for the Resolution.

MAYOR'S REPORT

Mayor Zuber made the following announcements.

Learwood School conducted a Veterans Day breakfast and celebration.

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Service Director Tom Lescher graduated from the Tree Commission Academy on November 12, 2010.

The Avon Lake Landmark Preservation Society held a Chili Cook Off on November 13, 2010.

Peter & Company Jewelers held a grand opening of their new store at Learwood Square Shopping Center.

St. Raphael's School received a National Blue Ribbon Service Award.

Todd Danielson began his position as Chief Utilities Executive on November 15th.

COUNCIL PRESIDENT'S REPORT

November 29th is the fifth Monday of the month and no meeting is scheduled. The next Collective Committee meeting is scheduled for December 6th. The next Regular meeting of Council is scheduled for December 13th. The final meeting of Council for the year 2010 will be a combined Collective Committee Meeting and Council Meeting on December 20th.

A motion will be added to the agenda permitting Mr. Meiners to abstain from voting on the statement of reasons for rejection of the Clear Wire tower.

There will be a vacancy on the Zoning Board of Appeals beginning January 1, 2011. Anyone interested in serving on the Board should submit a letter of interest and resume to the Clerk of Council at 150 Avon Belden Road or e-mail to bdopp@avonlake.org. All members of the Board, at the date of their appointments, shall have been qualified electors of the City for the past two years.

ENGINEERING DEPARTMENT REPORT

The Engineering Department Update was distributed. The Jaycox Road Sewer Project has been completed.

LAW DIRECTOR'S REPORT

The Law Department Update was distributed. Clear Wire LLC filed a complaint against the Avon Lake City Council and the Zoning Administrator in Federal Court. Clear Wire is seeking injunctive relief and damages. The City will have 21 days to answer the complaint. Clear Wire alleges the following: failure to furnish a written decision on the denial supported by substantial evidence in a written record; unreasonable discrimination; unlawful prohibition of Clear Wire's provision of service in the area where the tower was to be located; violation of Clear Wire's civil rights by imposing burdens and standards on Clear Wire that were not imposed on previous providers. Clear Wire is seeking an injunction requiring the City to grant all zoning approvals needed in order

to move forward with construction of the tower, and damages for their costs and expenses to date.

Law Director Kerner advised Council members to note the date they receive the summons, initial it, and send it to the Law Department.

Even though Mr. Kos voted in favor of the tower, and Mr. Meiners abstained from voting, they are still named in the complaint because they are part of the body of Council. Their positions will be explained on the record as the case moves forward.

ENVIRONMENTAL COMMITTEE REPORT

The Environmental Committee will not meet in December. The Environmental Issues Series will continue at the Avon Lake Public Library on December 8th; the topic is "Safe Water on Tap."

FINANCE COMMITTEE REPORT

Mr. Zilka reported on the following topics discussed at the November 15, 2010 Finance Committee Meeting: the preliminary audit report of the Finance Department; bidding procedures and contract administrator; T-Mobile cell tower lease at the Safety Center; sexual harassment law suit against the Office on Ageing; the September financial report; the preliminary October financial report; and financial overview.

Finance Committee meetings are scheduled for December 13th and December 20th.

Mr. Kos referred to the T-Mobile cell tower lease agreement considered by the Finance Committee and asked that the same level of discussion be applied to T-Mobile as was applied to the Clear Wire tower regarding safety issues.

HUMAN RESOURCES COMMITTEE REPORT

A Human Resources Committee meeting is scheduled for December 6, 2010. The following items are on the agenda: the Employee Assistance agreement; and the Mayor's salary for the next mayoral term.

PUBLIC SERVICE COMMITTEE REPORT

Mr. O'Donnell reported on the following topics discussed at the November 17, 2010 Public Service Committee meeting: a new telephone system at City buildings; Zoning Department, Service Department, and Engineering Department operations and budgets.

PUBLIC UTILITIES COMMITTEE REPORT

Mr. Kos reported on the public hearing held by the PUCO in North Ridgeville on November 22, 2010 regarding the electric rates for all-electric homes.

Mr. O'Donnell requested meetings with WOW and Time Warner representatives to address cable installation and service issues.

SEWER COMMITTEE REPORT

Mr. Meiners reviewed five sewer projects planned for Wards III and IV. These projects will cost approximately \$19 million. A sewer project is also planned for the "Stop 45" area which will cost approximately \$5 million.

PLANNING COMMISSION REPORT

Mrs. Fenderbosch reported that a Work Session was held between Planning Commission and the Zoning Board of Appeals on November 9th. The topics included the following: setbacks in Planned Unit Developments; front yard fencing restrictions; and revised language to the telecommunications tower ordinance.

CABLE TELEVISION ADVISORY COMMISSION REPORT

Mr. Kos reported on the following topics discussed at the November 18th meeting of the Cable Television Advisory Commission: new equipment for the cable studio; progress of cable installation by WOW; and development of an ALCTV face book page.

HISTORIC PRESERVATION COMMISSION

The Historic Preservation Commission met on November 16, 2010 and discussed the following items: certification of the Commission; draft of the certificate of appropriateness form; Commission terms of appointment; and request for budgeted funds. The next meeting of the Commission is scheduled for December 13th.

ENVIRONMENTAL AFFAIRS ADVISORY BOARD (EAAB)

Mrs. Fenderbosch reported on the following topics discussed at the November 3rd meeting of the EAAB: "Where Does it Drain" sign at Walker Road Park; County recycling programs; recycling at City parks; distribution of sunscreen at the City pool; and the EAAB logo contest.

MOTIONS

Mrs. Fenderbosch moved to add a motion to the agenda to permit Mr. Meiners to abstain from voting on the approval of the statement of reasons for the rejection of construction of a telecommunications tower at 407 Lear Road. Mr. Meiners has a potential conflict of interest.

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

No: None

Motion carried.

Mrs. Fenderbosch moved to permit Mr. Meiners to abstain from voting on the approval of the statement of reasons for the rejection of the construction of a telecommunications tower at 407 Lear Road.

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

No: None

Motion carried.

Mr. Bucci moved to approve the statement of the reasons for rejection of the construction of a telecommunications tower at 407 Lear Road. This statement is required under the Telecommunications Act of 1996. The reasons for rejection in the statement include the following: violation of the sole use on a zoning lot; violation of other uses on a zoning lot; a number of violations of setback requirements; failure to demonstrate necessity; failure to adhere to the spirit and intent of the Code to protect the character and value of the residential, business, industrial, and recreation areas; and failure to provide the documents required for the approval process. The statement does not include health concerns as a reason for denial of the application.

Mr. Kos stated that he will vote no on this motion since he supported the approval of the tower when it was before Council. He stated that he wished the statement reflected that the denial of the cell tower proposal was not unanimous and that he voted to approve the tower.

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

Kos: No

Abstention: Meiners

Motion carried.

LEGISLATION

Third Reading:

Temporary Legislation #9753R, AN ORDINANCE AUTHORIZING THE FUNDING OF THE COST OF THE PURCHASE OF TRANSDERMAL ALCOHOL MONITORING DEVICES, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Rush moved for passage of Temporary Legislation #9753R. The Judge of the Municipal Court recommended the purchase of 12 transdermal alcohol monitoring devices which will be paid for from the Court's Indigent Drivers Alcohol Fund; fees from OVI offenses are deposited into this fund. The total amount is \$33,600.00.

Mr. Rush moved to amend Section No. 2 of Temporary Legislation #9753R by adding the following language in bold face type: Section No. 1: That the funding of the expenditure from Fund Account Number 214 for the purchase of 12 transdermal alcohol

monitoring devices from the sole source vendor, **approved by the Lorain County Probation Department**, Behavioral Interventions of Boulder Colorado in the total amount of \$33,600.00 is hereby approved.

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

No: None

Motion carried.

The roll call was taken on passage of Temporary Legislation #9753R.

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

No: None

Motion carried.

Ordinance No. 116-2010 adopted.

Second 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.

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.

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.

TBP wishes to opt out of the CRA agreement. The program has not been financially beneficial to the business owner.

First Readings:

Temporary Legislation #9758, AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF AVON LAKE TO SUBMIT THE APPLICATION AND ENTER INTO AN AGREEMENT WITH THE OHIO DEPARTMENT OF NATURAL RESOURCES, OFFICE OF COASTAL MANAGEMENT, AND TO EXECUTE THE NECESSARY CONTRACTS

FOR THE PURPOSE OF ACQUIRING FUNDS, AND DECLARING AN EMERGENCY, was read by title only.

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

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

No: None

Motion carried.

Mr. O'Donnell moved for passage of Temporary Legislation #9758. The Engineering Department will use the funds to continue with the storm water management program.

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

No: None

Motion carried.

Ordinance No. 117-2010 adopted.

Temporary Legislation #9759, AN ORDINANCE AUTHORIZING THE DIRECTOR OF FINANCE TO DISPOSE OF CERTAIN SURPLUS CITY PROPERTY NO LONGER NEEDED FOR PUBLIC USE BY INTERNET AUCTION, AND DECLARING AN EMERGENCY, was read by title only.

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

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

No: None

Motion carried.

Mr. Rush moved for passage of Temporary Legislation #9759. Surplus Fire Department items will be auctioned on govdeals.com with minimum prices.

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

No: None

Motion carried.

Ordinance No. 118-2010 adopted.

Temporary Legislation #9760, AN ORDINANCE PROVIDING FOR ADDITIONAL APPROPRIATIONS AND ADJUSTMENTS TO ESTIMATED RESOURCES, AND DECLARING AN EMERGENCY, was read by title only.

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

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

No: None

Motion carried.

Mr. Zilka moved for passage of Temporary Legislation #9760. Adjustments are needed to pay a \$25,000 insurance deductible for a sexual harassment case against the Lorain County Office on Ageing; the City of Avon Lake was named in the complaint.

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

No: None

Motion carried.

Ordinance No. 119-2010 adopted.

MISCELLANEOUS BUSINESS AND ANNOUNCEMENTS

The small business seminar sponsored by the Economic Development Advisory Board will be held on November 23rd at the Lake House. The topic is "Accounting and Banking."

"Light up the Park" will take place December 5, 2010 at 6:00 P.M.

ADJOURNMENT

Mr. O'Donnell moved for adjournment.

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

No: None

Motion carried.

Adjournment: 8:50 P.M.

Approved: _____
Council President

Attest: _____
Clerk of Council