

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

The Regular Meeting of the Avon Lake Municipal Council was called to order on September 13, 2010 at 9:35 P.M. following the Collective Committee Meeting 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, Clerk of Council Barbara Dopp.

There being no objection, Mr. Eckert, Acting Finance Director, was excused from attendance at the meeting.

APPROVAL OF MINUTES

The minutes of the August 16, 2010 Special Council Meeting and the August 23, 2010 Regular Council Meeting were approved as prepared and published.

CORRESPONDENCE

The Lorain County Sheriff's Office announced a prescription turn in program will be held on September 25, 2010 from 9 A.M. – 3:00 P.M. at the Avon Lake Police Department.

MAYOR'S REPORT

Mayor Zuber made the following announcements.

The Mayor and Ray Frank from Columbia Gas appeared on *City Happening 101* to discuss the energy efficiency audit available to Avon Lake residents. The Mayor also appeared on the show with Dr. Church from Lorain County Community College.

The Avon Lake Police Academy began on September 9th. The academy is an opportunity for residents to become informed about the operations of the Police Department.

The Mayor attended a SERB conference in Columbus on September 10th. Information is available in the Mayor's office.

The pool officially closed on September 11th after the Love- A-Stray fundraiser.

September 13, 2010 Council Meeting Minutes

The Mayor, Mr. Zilka, and the Human Resources Director met with two candidates for the position of Finance Director.

The Mayor and the Chair of the Economic Development Advisory Board will attend the International Economic Development Conference in Columbus from September 26th to September 29th.

COUNCIL PRESIDENT'S REPORT

Mr. Zilka made the following announcements. The next Collective Committee meeting is scheduled for September 20th. The proposed Clear Wire telecommunications tower will be on the Collective Committee agenda to give those who were unable to speak at tonight's meeting an opportunity to speak. The next Regular Council Meeting is scheduled for September 27th.

ENGINEERING DEPARTMENT REPORT

The Engineering Department Update was distributed. The sewer main on Harvey Parkway was completed. Contractors will be working on house connections. The contractor is working on the sidewalk restoration on Jaycox and Electric Boulevard. Tree lawns and driveway aprons should be completed in the near future.

The City is not working on Jaycox and Walker Road. Any work in that area is most likely being performed by WOW Cable which will be using that intersection as a hub.

Regarding concrete repairs, Mr. Reitz gave the following update. Carriage Lane work is continuing and moving forward; work should be completed by the end of the week. The contractors will then move to Woodstock, Herrmann, Surrey, and Redwood.

LAW DIRECTOR'S REPORT

The Law Department Update was distributed.

ENVIRONMENTAL COMMITTEE REPORT

Mrs. Fenderbosch reported on the energy efficiency audit program which was discussed at the Avon Lake Public Library as part of the Environmental Series.

FINANCE COMMITTEE REPORT

Mr. Zilka reported on the memo from Anna Musson regarding the Finance Department which was discussed at the August 23rd Finance Committee Meeting. Most of the issues were dealt with except the issue of investments. It was agreed that it is necessary to review the City's investment policy to make sure the investments are receiving maximum return in the safest manner. There was general support for an independent audit of the Finance Department.

The next Finance Committee meeting is scheduled for September 20, 2010 at 6:00 P.M.

HUMAN RESOURCES COMMITTEE REPORT

Mr. Bucci reported on the Human Resources Committee meeting held September 7, 2010. At that meeting the Human Resources Director presented the final version of the Employee Manual. The Committee also reviewed the recommendation by the Municipal Board of Utilities for the hiring of a Chief Utilities Executive.

PUBLIC SERVICE COMMITTEE REPORT

Mr. O'Donnell encouraged residents to contact their insurance companies regarding possible damage from the hail storm which occurred last spring.

SAFETY COMMITTEE REPORT

Mr. Rush reported on the following items discussed at the August 26th Safety Committee Meeting: application for a SAFER grant; repair of engine #4; disposition of a fire engine at govdeals.com; and the signal warrant study.

ZONING BOARD OF APPEALS REPORT

Mayor Zuber reported on the following results of the August meeting of the Zoning Board of Appeals: an area variance for property at 31645 Winners Circle was denied; an area variance for property located at 32588 Belle Road was granted; an area variance for property located at 33119 Electric Boulevard was granted; and an area variance for property located at 507 Capri Court was granted. Mayor Zuber stated there has been discussion by Planning Commission regarding project boundary setbacks. Several residents have contacted the City about this restriction, especially properties abutting R-1 zoning districts.

AVON LAKE HISTORIC PRESERVATION COMMISSION

The Commission is scheduled to meet on September 14th at 7:00 P.M.

CABLE TELEVISION ADVISORY COMMISSION

The Commission is scheduled to meet on September 16th at 7:15 P.M.

ENVIRONMENTAL AFFAIRS ADVISORY BOARD REPORT

The name of the firm for the off shore wind farm on Lake Erie will be announced on September 14th at 10:30 A.M. at the Great Lakes Science Center.

Mrs. Fenderbosch spoke at a symposium at the Natural History Museum on deer population control.

AUDIENCE PARTICIPATION

Benjamin Ockner, Berns, Ockner, and Greenberger, 3733 Park East Drive, Beachwood, Ohio, Counsel for Clear Wire, showed photo simulations of the appearance of the proposed Clear Wire tower; one shows the proposed monopole and one shows a flag-pole construction. The flagpole is a stealth type construction which would have no outside mounted antenna and would still allow for co-location for three carriers. It is capable of having an American flag on it. The flag would either have to be lighted at night or lowered during night time hours.

Michael Summerfield, 404 Harbor Court, Avon Lake, referred to maps depicting wavelengths and frequencies from telecommunication towers. He stated that ELF has been related to childhood leukemia. He referred to studies regarding the harmful effects of cell towers.

Chris Keim, 400 Harbor Court, Avon Lake, asked for information regarding the minimum height required by Clear Wire.

Weldon Rice, 406 Harbor Court, Avon Lake, referred to the photo simulations provided by Clear Wire. He inquired about the necessary height and the design requirements. He asked for a dead set diagram and explanations without any questions before Council takes any vote. He expressed his opposition to the tower.

Don Goedde, 396 Harbor Court, Avon Lake, expressed his opposition to the proposed Clear Wire tower and stated it will decrease the value of the homes in the area. He referred to Code Section 1256.01 (b) (1). He questioned the public's demand for this proposed internet service. He referred to Code Section 1256.03 (a), which states that generally wireless telecommunications towers are objectionable in residential areas.

Joe Mudry, 6215 Sylvia Drive, Brookpark, Network Deployment Manager with Clear Wire, referred to the photo simulations of the proposed tower with a flag and with the antennas located within the canister, as the City can mandate for all co-locators. He stated that he is not sure what more he can do to improve the site. It is their best aesthetic option. As mentioned, the flag would have to be lighted at night, but there are options to lower the flag at night. Clear Wire can work with that option. There should be no antenna arrays ever exposed on that site by Clear Wire or anyone else. Someone would have to change the tower in the future which probably would not be possible due to the design, and any change would have to be approved by Council.

Neil Weinberger, JND Properties, 3333 Richmond Road, Beachwood, made the following comments. There are no other locations for the proposed tower on the Learwood Square property. The other locations proposed by Clear Wire were not viable due to underground utility easements, the main entrance and walkways of the Maximum Independent Living (MIL) housing, and delivery truck traffic. When the MIL housing was approved, it was decided that a clear path for trucks was required behind the shopping

center. The area being designated for the proposed tower is an asphalt area and was suggested by JND to be the best location on the site. All the JND undeveloped property between Learwood Square and Maximum Independence Living is contiguous to Harbor Court. The proposed tower is in the Giant Eagle service area, as are the refrigerant towers, generators, and trash containers. MIL chose to be located in a service area of a shopping center to provide their residents with accessibility to the shops. Before Harbor Court was developed, the MIL housing abutted green space.

Diane Hamilton, 376 Harbor Court, Avon Lake, expressed her opposition to the proposed tower and asked Council to consider the impact on the entire City.

Elizabeth Smith, 31850 Walker Road, Avon Lake, referred to an article regarding the health benefits of smoking which appeared in the 1920's and related it to the possible future health hazards associated with telecommunication technology.

MOTIONS

Mrs. Fenderbosch moved to add a motion to the agenda to permit Mr. Meiners to abstain from voting on matters related to the proposed Clear Wire tower at 407 Lear Road. Mr. Meiners is associated with the American Legion which was considered as a possible site for the proposed tower. A conflict of interest may exist.

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

No: None

Motion carried.

Mr. Rush moved to authorize Avon Lake Fire Chief William Morris to file an application for a SAFER grant to fund the hiring of up to three additional Firefighters in accordance with the SAFER grant conditions and in furtherance of the additional Firefighter manning of the Preuer Report.

The City will have the option to decline the grant if it is awarded.

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 issues relating to the cell tower being proposed at 407 Lear Road, Avon Lake, OH.

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

No: None

Motion carried.

Mrs. Fenderbosch moved to authorize the Mayor to enter into a contract with McKenna\CMS to assist in evaluating and determining the need in accordance with

September 13, 2010 Council Meeting Minutes

Avon Lake Codified Ordinance 1256.011(b) for the proposed Clear Wireless monopole tower, antenna, and related wireless telecommunications facilities to be located at 407 Lear Road, and authorizing the deposit of \$8000 into escrow by the telecommunications applicant.

McKenna\CMS is a qualified firm having been involved in 30 other states and 600 municipalities. Quotations were solicited from two other firms, which declined the project.

Mr. Kos stated that he is not against hiring the consultant, but hopes that McKenna focuses on 407 Lear Road, which is the location that was before Planning Commission and is presently before Council. It would not be fair to Clear Wire to take an agreement that is in place and shift it to another location.

Mrs. Fenderbosch stated that, in order to evaluate the 407 Lear Road location, they will have to do a complete study.

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

No: None

Abstention: Meiners

Motion carried.

Mr. Rush moved to instruct the Clerk of Council to return the form to the Division of Liquor Control stating that the City requests a hearing in the matter of a request for a new liquor license for Ed & R Dining Services LLC, dba Casita del Lago, at 33491-93 Lake Road, and that the hearing be held in the County seat.

They currently hold a D1, D2, and D3 license and are requesting a D5 license which allows them spirituous liquor for on premises consumption only, beer and wine for on premises, and off premises in original sealed containers until 2:30 A.M. Their current license allows the same until 1:30 A.M. The Police Chief recommended that Council request a hearing with the Division of Liquor Control based on saturation of D5 licenses in the area.

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

No: None

Motion carried.

LEGISLATION

Second Readings:

Temporary Legislation #9729, AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PERSONAL SERVICE AGREEMENT WITH BRAMHALL ENGINEERING, AND DECLARING AN EMERGENCY, was read by title only.

September 13, 2010 Council Meeting Minutes

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 #9729. The agreement is for design services for the Walker Road/Lear Road Intersection Project. The project includes right turn lanes at all four corners of the intersection, mast arm signals, and emergency preemption. The contract amount shall not exceed \$35,500. The estimated cost of the project is \$262,000.

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

No: None

Motion carried.

Ordinance No. 93-2010 adopted.

Temporary Legislation #9730, AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT AND SITE PLAN TO CONSTRUCT A 150 FOOT TALL MONOPOLE WIRELESS TELECOMMUNICATION TOWER AT THE LEARWOOD SQUARE SHOPPING CENTER, was read by title only.

Mrs. Fenderbosch referred to a map showing the 407 Lear Road parcel for the proposed tower. The location of the tower on this site was pointed out. This is a Business B-1 zoned parcel. The third reading will take place on October 25th.

Temporary Legislation #9734, AN ORDINANCE APPROVING A MODIFICATION TO THE CONTRACT WITH ASTRO POOL COMPANY, 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 #9734. Astro Pool Company offered a one year extension to the two year warranty in exchange for the release of retainage funds. This was recommended by the Public Service Committee and the Engineering Department Manager. Astro Pools can help with the opening and closing of the pool and with maintenance of safety standards. Currently the City is holding \$71,917 in retainage. Astro requested the release of all the retainage, except for \$5000 which will be held by the City to cover any punch list items that need to be addressed.

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

No: None

September 13, 2010 Council Meeting Minutes

Motion carried.

Ordinance No. 94-2010 adopted.

First Readings:

Temporary Legislation #9735, AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT AND SITE PLAN TO CONSTRUCT A WELCOME/VISITORS CENTER, MUSEUM, AND ADMINISTRATIVE OFFICES AT ASSEMBLY HALL, ALSO REFERRED TO AS THE FOLGER HOME.

This item will be discussed at the September 20, 2010 Collective Committee Meeting. Mayor Zuber requested that this item be passed as an emergency at the second reading on September 27th.

Temporary Legislation #9736, AN ORDINANCE APPROVING THE PLAT FOR THE RESUBDIVISION OF A PORTION OF COVE AVENUE AS PART OF THE LAKE BREEZE SUBDIVISION ALLOTMENT.

This dedication plat will combine original sublots from the Lake Breeze subdivision.

Temporary Legislation #9737*, AN ORDINANCE APPROVING A SITE PLAN TO INSTALL A NEW SCOREBOARD AND ATHLETIC FIELD SIGNAGE AT THE AVON LAKE HIGH SCHOOL STADIUM, AND DECLARING AN EMERGENCY, was read by title only.

Mrs. Fenderbosch moved for suspension of the rule requiring three readings.

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

No: None

Motion carried.

Mrs. Fenderbosch moved for passage of Temporary Legislation #9737*. The applicant requested waivers for the various components of the new scoreboard. The field signage will accommodate advertising.

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

No: None

Motion carried.

Ordinance No. 95-2010 adopted.

Temporary Legislation #9738, A RESOLUTION AUTHORIZING AN APPEAL, BY THE AVON LAKE ACTING FINANCE DIRECTOR, TO THE STATE OF OHIO BOARD OF TAX APPEALS OF THE LORAIN COUNTY BUDGET COMMISSION'S APPORTIONMENT OF THE UNDIVIDED LOCAL GOVERNMENT FUND TO LORAIN COUNTY SUB-DIVISIONS FOR THE 2011 YEAR IN ACCORDANCE WITH THE

ALTERNATIVE FORMULA AGREEMENT THAT WAS APPROVED IN 2003, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Zilka moved to suspend 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 #9738. Law Director Kerner stated that this is the eighth annual Notice of Appeal the City is filing to contest the allocation of funds granted to Avon Lake by the County Budget Commission.

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

No: None

Motion carried.

Ordinance No. 96-2010 adopted.

Temporary Legislation #9739, AN ORDINANCE PROVIDING FOR CONTINUED LEGAL SERVICES FOR INSURING PROPER LOCAL GOVERNMENT AND REVENUE ASSISTANCE FUNDS DISTRIBUTION TO AVON LAKE, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Zilka moved to suspend 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 #9739. The Law Director requested \$1000 to continue to represent the City before the Board of Tax Appeals.

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

No: None

Motion carried.

Ordinance No. 97-2010 adopted.

Temporary Legislation #9740, AN ORDINANCE CONFIRMING THE APPOINTMENT OF TODD DANIELSON TO THE POSITION OF CHIEF UTILITIES EXECUTIVE, ESTABLISHING WAGES AND COMPENSATION FOR SAID POSITION, AND DECLARING AN EMERGENCY, was read by title only.

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 #9740. The Board of Municipal Utilities selected Todd Danielson for the position of Chief Utilities Executive to fill a vacancy that will be created by the retirement of John Kniepper. The Board offered Mr. Danielson conditional employment pending Council confirmation. Mr. Danielson's salary is paid through the revenue generated from fees charged to municipal utilities customers both within and outside Avon Lake. Approximately 80% of rate payers live outside Avon Lake.

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

No: None

Motion carried.

Ordinance No. 98-2010 adopted.

MISCELLANEOUS BUSINESS AND ANNOUNCEMENTS

The Economic Development Advisory Board will hold a small business session on September 21st from 7:00 P.M. – 9:00 P.M. at the Avon Lake Public Library. The topic is "Social Media and Marketing".

The City will hold Staff Appreciation Day on September 24th. City Hall will close at 12:30 P.M. on that day.

On September 25th, the "Big Trucks" event will take place at the Safety Center from 10:00 A.M. – 2:00 P.M.

Tonight's meeting will be available on the Avon Lake website beginning Tuesday afternoon.

Mrs. Sarady, representative for Clear Wireless, received a copy of the McKenna proposal at the Public Utilities Committee Meeting.

PUBLIC INPUT

Michael Summerfield, 404 Harbor Court, Avon Lake, referred to the coverage maps presented by Clear Wire. Five providers are showing good coverage for voice and data. He stated that the proposed tower is wrong on many issues including location, necessity, and health concerns. He further expressed his opposition to the proposal.

Elizabeth Smith, 31850 Walker Road, Avon Lake, expressed her opposition to the proposed Clear Wire tower and asked Council to consider the impact on the entire community.

Weldon Rice, 406 Harbor Court, Avon Lake, expressed his opposition to the proposed Clear Wire tower.

September 13, 2010 Council Meeting Minutes

Robert Young, 395 Harbor Court, Avon Lake, expressed his opposition to the proposed Clear Wire tower based on the question of necessity, health risks, and the effect on property values. He referred to the Zoning Board's denial of a fence variance for his property.

Pete Hamilton, 376 Harbor Court, Avon Lake, expressed his support for the hiring of a consultant to evaluate the proposed Clear Wire tower and all towers within the City and expressed his opposition to the location of the proposed tower.

Benjamin Ockner, Berns, Ockner, and Greenberger, 3733 Park East Drive, Beachwood, Ohio, the outside Counsel for Clear Wireless, stated that the McKenna proposal was received by Clear Wire. He made the following comments. Verizon may have coverage in Avon Lake, but Clear Wire does not. The issue is about Clear Wire and they have the right under Federal law and the Avon Lake Codified Ordinances to try to complete its coverage. Clear Wire has agreed to co-locate on the structures available in the City. This is the first tower for which they have sought approval. Clear Wire and Council must abide by Federal law. The Avon Lake Code is specific regarding telecommunications towers.

Chris Keim, 400 Harbor Court, Avon Lake, referred to studies stating that telecommunications towers impact property values negatively. He asked Clear Wire to provide the minimum height required for their coverage. He stated that Clear Wire is requesting approval for a higher pole for co-location purposes.

Joe Mudry, 6215 Sylvia Drive, Brookpark, Network Deployment Manager with Clear Wire, stated that Clear Wire will not own the tower. It will be owned by a tower company who will lease and market the tower. The minimum height required is 150 feet. The Avon Lake Code allows towers up to 190 feet, which Clear Wire did not explore.

Don Goedde, 396 Harbor Court, Avon Lake, expressed his opposition to the proposed Clear Wire tower. He stated that there is no need for co-locators. The City is covered by other providers.

Mr. O'Donnell moved to adjourn.

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

No: None

Motion carried.

Adjournment: 11:30 P.M.

Approved: _____
Council President

Attest: _____
Clerk of Council

