

**MINUTES OF THE REGULAR MEETING
OF THE AVON LAKE MUNICIPAL COUNCIL
HELD AUGUST 23, 2010**

The Regular Meeting of the Avon Lake Municipal Council was called to order on August 23, 2010 at 7:30 P.M. in the Council Chamber with Council President Zilka presiding.

Mr. Kos 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, Acting Finance Director Dan Eckert, Engineering Department Manager Joseph Reitz, Clerk of Council Barbara Dopp.

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

APPROVAL OF MINUTES

The minutes of the July 12, 2010 Regular Council Meeting and the July 29, 2010 Special Council Meeting were approved as amended; the minutes of the July 19, 2010 Special Council Meeting were approved as prepared and published.

MAYOR'S REPORT

Mayor Zuber made the following announcements.

The Landmark Preservation Society held a successful summer market at Veterans Memorial Park.

Mayor Zuber judged the dessert bake off at the Calvary Baptist Church cook-off on August 1st.

Mayor Zuber attended the Camp Imagine awards ceremony.

The Mayor will meet with Gateway Recycling regarding the City's recycling program.

COUNCIL PRESIDENT'S REPORT

Mr. Zilka made the following announcements.

August 30th is the fifth Monday of the month and no Council meeting is scheduled. Due to the Labor Day holiday, Council will not meet on September 6th. The next Regular Council meeting is scheduled for September 13th. If needed, a Collective Committee meeting will be held prior to the September 13th Council meeting.

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The Law Director requested that Temporary Legislation #9731 be removed from the agenda.

ENGINEERING DEPARTMENT REPORT

The Engineering Department Update was distributed.

The asphalt paving portion of the Jaycox Road Sewer Project began. When the sewer was installed on Cherry Lane, the entire south bound lane was removed. The road did not have a stone base beneath it. Mr. Reitz asked the contractor for a quote for a stone base and under drain. The Public Service Committee will consider the possible change order to bring that portion of Cherry Lane up to current standards.

Mr. Reitz met with Homeowners Associations from nine subdivisions and two management companies regarding the maintenance of retention basins. An educational DVD is available in the Engineering Department.

The concrete street repair project has been delayed by the contractor.

The AT&T telecommunications tower behind City Hall became operational on August 19th. Building permits are being resolved with the Building Department.

LAW DIRECTOR'S REPORT

The Law Department Update was distributed.

ENVIRONMENTAL COMMITTEE REPORT

Mrs. Fenderbosch made the following comments. The Environmental Series will resume at the Avon Lake Public Library on September 8th; the topic is "Home Energy Audit and Home Performance Solutions".

Avon Lake does not have plans for a "no idling" ordinance.

A Community Shred Day will be held at the Avon Lake Public Library on September 18, 2010 from 9:00 A.M. until noon.

FINANCE COMMITTEE REPORT

Mr. Zilka reported on the following topics discussed at the August 16, 2010 Finance Committee meeting: the bonding of public officials; an error in the firefighter contract; and monthly financial statements.

Mr. Zilka reported on the following topic discussed at the August 23, 2010 Finance Committee meeting: a memo from Anna Musson regarding issues needing attention in the Finance Department.

HUMAN RESOURCES COMMITTEE REPORT

The Human Resources Committee is scheduled to meet on September 7, 2010 at 6:00 P.M.; the Committee will discuss the appointment of the new Chief Utilities Executive.

PUBLIC SERVICE COMMITTEE REPORT

Mr. O'Donnell reported on the following topics discussed at the August 23, 2010 Public Service Committee Meeting: pool operations, a change order with Vasu Communications; and proposed renovations to the Folger Home.

PUBLIC UTILITIES COMMITTEE REPORT

Mr. Kos reported on the proposed construction of a telecommunications tower at Learwood Square Shopping Center discussed at the August 18, 2010 Public Utilities Committee Meeting.

SAFETY COMMITTEE REPORT

Mr. Rush reported that the City of Avon Lake was denied a SAFER grant which would have funded the hiring of three additional firefighters. There will be a second round of applications for a SAFER grant. The Safety Committee will meet to discuss this option. The application deadline is September 17th.

ECONOMIC DEVELOPMENT COMMITTEE

The Economic Development Committee is scheduled to meet on September 2, 2010.

PLANNING COMMISSION REPORT

Mrs. Fenderbosch reported on the following results of the August 3, 2010 Planning Commission meeting: a conditional use permit and site plan for construction of a monopole telecommunications tower at Learwood Square Shopping Square was approved for Clear Wireless. A fence variance and a landscaping variance were granted for the site.

ZONING BOARD OF APPEALS REPORT

An area variance for minimum setback for property located at 233 South Point Drive was approved.

PARKS & RECREATION COMMISSION REPORT

Mr. O'Donnell reported on Recreation Department programs. The pool will be open during limited hours when school is in session.

RENEWABLE ENERGY TASK FORCE REPORT

Mrs. Fenderbosch reported on the solar array installed at Watteredge on Miller Road.

ENVIRONMENTAL AFFAIRS ADVISORY BOARD REPORT

The Environmental Affairs Advisory Board is scheduled to meet on September 1, 2010.

Mrs. Fenderbosch is organizing a meeting for residents interested in exploring deer management.

AUDIENCE PARTICIPATION

John Sindyla, 7425 Royalton Road, North Royalton, Ohio, represents Clear Wireless. He referred to a map and made the following comments. Clear Wireless is proposing a telecommunications tower at Learwood Square Shopping Center behind CVS. The proposed site is asphalt and currently is not being used for parking or travelling. The closest residence to the proposed tower is 431 feet to the northeast. Planning Commission approved the proposal. All zoning requirements were met according to Engineering Manager Joe Reitz and Zoning Administrator Ruth Booher. Clear Wireless has co-located on all existing surrounding towers. The proposed tower can accommodate three co-locators to provide coverage to the area.

David Konecny, 2904 Benjamin Drive, Brunswick, Ohio, the RF/Electrical Engineer for Clear Wireless, referred to the map and pointed out the proposed location for the tower and proposed coverage area.

Benjamin Ockner, Berns, Ockner, and Greenberger, 3733 Park East Drive, Beachwood, Ohio, is the outside Counsel for Clear Wireless. Mr. Ockner made the following comments. In the event that the request of Clear Wireless is not approved by the City, Clear Wireless will reserve its right to file an appeal in State court and other proceedings in Federal Court under the Federal Telecommunications Act. Avon Lake's wireless ordinance determines that wireless towers are acceptable under specific circumstances and conditions in all non-residential areas of Avon Lake. Planning Commission members are experts in interpreting and applying the Planning & Zoning Code in the context of the wireless code. They have made the determination that Clear Wireless meets all Avon Lake's requirements. Clear Wireless will do its best to address the concerns of residents in the area of the proposed tower. The Planning & Zoning Code provisions on wireless facilities went into effect in 1998; the adjacent subdivision was not approved until 2004.

Chris Keim, 400 Harbor Court, Avon Lake, made the following comments. It is not illegal to mention the health risks associated with wireless towers since they impact property values. According to the Avon Lake Code, negative impacts on property values can be considered. Regardless of study results regarding health risks, stigma damage exists. It is up to Council to determine whether Clear Wireless has met all

Code requirements. The coverage map provided by Clear Wireless illustrates Wi-Fi coverage. There are no commitments for co-location from cell phone providers.

Weldon Rice, 406 Harbor Court, Avon Lake, stated that he has problems with the representations on the maps provided by Clear Wireless. He made the following comments. Council has the ability to interpret the application request from Clear Wireless. In his opinion, there is a lack of technically feasible co-location opportunities; the standard has not been met. By review of the maps, at least two-thirds of the area is already covered; the only part that isn't covered is the bottom half. They are only talking about wireless service, not cell phone service. Those contracts are not in place. People live 80 feet away from the proposed tower.

Rob Hayden, 407 Harbor Court, Avon Lake, expressed his opposition to the proposed tower and stated that he has not had cell phone problems. He stated that property values will decrease and the City will receive less property tax revenue.

MOTIONS

Mr. Bucci moved that the Memorandum of Understanding, dated July 17, 2010, between representatives of the City and the Firefighters Union be ratified and affirmed to correct the printing error recently discovered in Section 16.06 of the Firefighter Collective Bargaining Agreement, so that the number to be used for computing compensation for unused holiday or personal leave hours payable to a firefighter upon termination of his employment shall be the number 100 as agreed to by the negotiators rather than the number 104 that was erroneously entered into the printed agreement.

The last time the Firefighters collective bargaining contract was negotiated, the work week hours were reduced from 52 to 50 hours per week. The change was made in one section of the collective bargaining agreement, but was not made in another section. A firefighter who recently retired did not receive approximately \$200 due to the error in the agreement. This change will correct the typographical error in the collective bargaining agreement.

Mayor Zuber stated that any future typographical errors in collective bargaining agreements will be brought to the attention of Council for review. The retiring firefighter has been paid the correct amount based on opinions from the Law Director and Human Resources Director.

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

No: None

Absent: Meiners

Motion carried.

Mrs. Fenderbosch moved to refer a conditional use permit request for the Folger Home to Planning Commission.

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Law Director Kerner stated that the Landmark Preservation Society has been leasing the Folger Home and has been making uses of the facility in accordance with public uses. The Landmark Preservation Society has requested permission for additional uses. It has been determined that the facility is no longer a public entity, but a private entity because it is supported by a private foundation. Although the facility has public uses, the Law Director issued an opinion that, under Avon Lake Code, a permitted conditional use is required on all proposed uses under the similar use section of the Code rather than the public use section. The Landmark Preservation Society decided that the previous uses should be authorized under the similar use section of the Code as well as the proposed new uses.

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

No: None

Absent: Meiners

Motion carried.

Mrs. Fenderbosch moved to refer plans to Planning Commission for construction of a stairwell, porch, and ADA approved restroom at the Folger Home.

The requested renovations have been reviewed by the Historic Preservation Commission and the Public Service Committee. The goal is to take the spirit of restoration to move forward.

Mr. Rush pointed out there is inconsistency in references to the facility; sometimes it is referred to as Assembly Hall, the Folger Home, or the Folger House. Law Director Kerner stated that the official name of the facility is Assembly Hall, but other nomenclatures are used as well. Mr. Rush stated that he feels the legal name should be used. Law Director Kerner stated that in such situations, the legal name is often used and followed by the phrase "otherwise known as" so that it is clear that reference is being made to the same facility.

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

No: None

Absent: Meiners

Motion carried.

Mr. Zilka moved to confirm the appointment of Martin O'Donnell, Timothy Rush, and Larry Meiners to the Walker Road Park Joint Committee for terms expiring December 31, 2011.

The Walker Road Park Joint Committee is between the City of Avon Lake and the City of Bay Village. The Committee will begin meeting again since Bay Village and Avon Lake are considering park improvements.

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

No: None

Absent: Meiners
Motion carried.

LEGISLATION

Mr. Zilka moved to delete Temporary Legislation #9731.

Law Director Kerner made the following comments. The legislation would authorize the Law Director to continue defending the City of Avon Lake in an action filed by Robert Young appealing a denial by the Zoning Board of Appeals for a fence variance. Information was received that Mr. Young intended to file an appeal with the Ohio Supreme Court, but the appeal was not filed before the deadline, and therefore, further representation is no longer needed.

Yes: Kos, O'Donnell, Rush, Zilka, Bucci, Fenderbosch
No: None
Absent: Meiners
Motion carried.

First 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.

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 City applied for an Issue 2 Grant.

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

This item was approved by Planning Commission. Mrs. Fenderbosch made the following comments. Section 1217.05 (f) states, "Following a recommendation for approval by the Planning Commission, the application shall be submitted to Council for confirmation: (1) Council, by a majority vote, may confirm the recommendation of the Planning Commission; or (2) Council may reject the recommendation of the Planning Commission. Failure of Council to act within 90 days from the date Council receives the recommendation from the Planning Commission, shall be deemed a confirmation of the Planning Commission recommendation." The proposed tower has met the location requirements in a B-1 district; there is no available City owned land in that location; and there is no quasi-public property that has been agreed upon. Learwood School and Holy Spirit Church rejected the proposal for a tower on their property and possible

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wetlands exist at the assisted living facility. The next location would be within a business district. The fall zones and setbacks are appropriate and meet all Avon Lake zoning requirements. A fence variance was approved to be congruent with an existing wooden fence. A landscaping variance was approved since the tower will be located on asphalt. Clear Wireless is an internet provider. They have presented co-location opportunities to cellular providers.

Temporary Legislation #9732, AN ORDINANCE PROVIDING FOR CONTINUED LEGAL SERVICES FOR ENSURING PROPER LOCAL GOVERNMENT AND REVENUE ASSISTANCE FUNDS DISTRIBUTION TO AVON LAKE, AND DECLARING AN EMERGENCY, was read by title only.

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

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

No: None

Absent: Meiners

Motion carried.

Mr. Zilka moved for passage of Temporary Legislation #9732. A decision was made regarding the allocation of the Local Government Funds and Avon Lake was not a party of the proceeding. The case has been to the Supreme Court on the basis of four cities not receiving the right allocation of funds. The case is moving forward and the City must file a brief by September 15th. The Law Director is requesting an additional \$3000 to continue to represent the City of Avon Lake.

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

No: None

Absent: Meiners

Motion carried.

Ordinance No. 91-2010 adopted.

Temporary Legislation #9733, AN ORDINANCE AWARDED A CONTRACT FOR ASH TREE REMOVAL, AND DECLARING AN EMERGENCY, was read by title only.

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

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

No: None

Absent: Meiners

Motion carried.

Mr. O'Donnell moved for passage of Temporary Legislation #9733. The Service Director recommended the removal of approximately 128 ash trees at Inwood Park due to emerald ash borer infestation. The Service Director recommended Eco Tree

Services based on its method of tree removal. The contract amount is \$11,750.00. New trees will be planted by Service Department employees.

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

No: None

Absent: Meiners

Motion carried.

Ordinance No. 92-2010 adopted.

Temporary Legislation #9734, AN ORDINANCE APPROVING A MODIFICATION TO THE CONTRACT WITH ASTRO POOL COMPANY, AND DECLARING AN EMERGENCY, was read by title only.

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.

Mayor Zuber requested suspension of the rule requiring three readings at the second reading of the legislation.

MISCELLANEOUS BUSINESS AND ANNOUNCEMENTS

Community Resource Services will hold its "Souper Bowl" food drive on August 27th at the Avon/Avon Lake football game at the Avon Lake Stadium.

The Big Trucks/Safety Center Open House will take place on September 25th from 10:00 A.M. until 2:00 P.M. at the Safety Center.

Mayor Zuber asked Council Members to contact him regarding any questions, concerns, or issues. Mr. O'Donnell asked the Mayor to contact Council Members as well with any concerns or issues and to keep Council informed.

Mr. Kos announced that he and Tyler Jeske will raise money for the Wounded Warrior Project. Mr. Kos will run the Marine Corps Marathon in Washington D.C. and Mr. Jeske will run the Air Force Marathon in Dayton.

PUBLIC INPUT

John Sindyla, 7425 Royalton Road, North Royalton, Ohio, representing Clear Wireless, responded to earlier comments by Mr. Rice. He made the following comments. A tower at the proposed business property would be within the distance of 431 feet, which is the current location to Mr. Rice's residence. The location at the American Legion property would more than likely be approximately 200 feet from the rear of Mr. Rice's property. The proposed location behind the shopping center is unused property and is zoned for towers.

David Konecny, 2904 Benjamin Drive, Brunswick, Ohio, the RF/Electrical Engineer for Clear Wireless, made the following comments. Clear Wireless went through an exhaustive search in its network design process to identify every option that would not require construction of a new tower. It is very resource intensive for Clear Wireless to construct new towers. They explore and identify every opportunity available. Clear Wireless is currently located on all existing structures in the area surrounding the proposed location. The proposed location meets Avon Lake Code. Regarding co-locator ability, Clear Wireless operates at a frequency different from other cellular carriers, and cannot speak to other carriers' needs. When Clear Wireless becomes aware of another tower being constructed, they immediately investigate whether the location would work for them. Clear Wireless is not merely a Wi-Fi provider, but is also an internet service provider offering high speed data. They hope to offer other services in the future.

Benjamin Ockner, Berns, Ockner, and Greenberger, 3733 Park East Drive, Beachwood, Ohio, the outside Counsel for Clear Wireless, made the following comments. Council's role in the process is understood in relation to Planning Commission's recommendation. Scare tactics regarding cancer should not carry weight with Council. The law is very clear. Council may not consider the health effects of radio frequency emissions when considering the site request of Clear Wireless. The Telecommunications Act of 1996 clearly prohibits it. You may not consider it as long as the facility complies with FCC regulations on radio frequency emissions. The evidence before Planning Commission and Council shows the site is in compliance with the Code. You cannot get around the law by claiming the health related stigma on property values, of which there is no evidence. This is not a lawsuit where damages are being sought for injury to real property which is where the stigma argument applies. The RF Engineer for Clear Wireless stated that there are not any feasible co-location alternatives or opportunities. Clear Wireless has made statements in good faith with the intention of being honest and has not been misleading. The idea of Wi-Fi versus cellular service is not a distinction that has any relevance. The Telecommunications Act of 1996 applies to all wireless telecommunications.

Weldon Rice, 406 Harbor Court, Avon Lake, made the following comments. He hasn't heard an RF Engineer voice a specific opinion about every other location in the City that was not technically feasible. He is concerned about the representations made by Clear Wireless on its proposal. In response to Section 1256.01 (b) (2), the proposed use is located on non-residential property. Technically, the proposed site is on business property, but the location of the tower is on the site of the home for the disabled. Residents on Harbor Court were not notified of the Planning Commission meeting. It is up to Council to interpret the Code and consider both sides.

Robert Young, 395 Harbor Court, Avon Lake, made the following comments. He referred to his case against the City involving the denial of a fence variance. He was handed a brief last Wednesday regarding his appeal. As far as he knows, the appeal was filed. Mr. Young asked for answers to the following questions: how much money

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has the City spent on his case against the City Avon Lake; why was the address of the proposed tower changed from 407 Lear Road to several 100 yards in the direction of the Weldon residence; why was the project turned down by Holy Spirit and Learwood School; how does this pole meets the fall zone standard when it is 80 feet away from a building occupied by residents; isn't it safe to assume that satellite technology will render all of these poles obsolete in a very short period of time; who will be responsible for taking the poles down and in what time frame.

Kim Young 395 Harbor Court, Avon Lake, expressed her opposition to the proposed tower.

Barbara Cozier, 388 Harbor Court, Avon Lake, expressed her opposition to the proposed tower and asked for alternate designs to be considered.

Mike Morton, 396 Long Pointe Drive, Avon Lake, expressed his opposition to the location of the proposed tower and his concerns with health issues.

Michael Ross, 353 Harbor Court, Avon Lake, asked Council to consider all arguments and evidence.

Chris Keim, 400 Harbor Court, Avon Lake, made the following comments. Stigma is part of real estate and property values. Public perception matters to property values. Alternatives to the design and location of the proposed tower have not been provided. Clear Wireless has not proven that they are minimizing the adverse visual impact.

Jim Spicuzza, 379 Harbor Court, Avon Lake, stated that he was not notified that a monopole was to be located behind his subdivision. He inquired about the maximum allowed height of the monopole and whether Clear Wireless can add onto the pole. He expressed his opposition to the pole.

Pete Hamilton, 376 Harbor Court, Avon Lake, expressed his opposition to the proposed tower and asked that the aesthetic quality of the subdivision be maintained.

Mrs. Fenderbosch made the following comments. The address for the property of the proposed tower did not change; it is still 407 Lear Road. The Code requires residents within 300 feet to be notified; the City went beyond the requirement and notified residents within 400 feet. If the City had followed the Code and notified residents only within 300 feet, the residents of Harbor Court would not have been notified. The distance of 431 feet is measured from the edge of the property closest to the proposed tower. The round mark with an X on the asphalt area behind the shopping center is not where the tower will be located. It will be located 30-50 feet west of that area. Cleveland Catholic Diocese typically does not approve cell towers on their property because they want the crosses on top of the churches to be the highest point on its property. Learwood School is considering a science project with a wind turbine and needs to consider setbacks, which would prevent them from having another structure on their property. Alternative designs were discussed at the Public Utilities Committee

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meeting. It was recommended that a halo design be considered. The Ohio Department of Health performed a cancer study in Avon Lake and determined that a cancer cluster does not exist in Avon Lake.

Mr. O'Donnell moved to adjourn.

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

No: None

Absent: Meiners

Motion carried.

Adjournment: 9:23 P.M.

Approved: _____
Council President

Attest: _____
Clerk of Council