

**MINUTES OF THE REGULAR MEETING
OF THE AVON LAKE MUNICIPAL COUNCIL
HELD JANUARY 28, 2013**

The regular meeting of the Avon Lake Municipal Council was called to order on January 28, 2013 at 7:30 P.M. in the Council Chamber with Council President O'Donnell presiding.

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

Present: Council Members Dan Bucci, Jennifer Fenderbosch, Rob James, David Kos, Larry Meiners, Martin O'Donnell, John Shondel, Mayor Zilka, Law Director Abe Lieberman, Finance Director Nancy Bryan, Engineering Department Manager Joseph Reitz, and Assistant Clerk of Council Valerie Rosmarin.

APPROVAL OF MINUTES

The minutes of the January 14, 2013 Council Meeting were approved as amended.

CORRESPONDENCE

MAYOR'S REPORT

The Mayor and Council President O'Donnell met with 12 members of the Cleveland Clinic staff on January 8, 2013 to discuss the helicopter service operating out of the Avon Cleveland Clinic facility. The representatives said the Clinic follows the protocol approved last year by the Avon Planning Commission, which prescribes a flight pattern along Interstate 90 as the aircraft transports patients to the main campus. Pilots are to stay between the freeway and well to the south of the railroad tracks. The issue of a regular 4:30 flight coming into the Avon Clinic facility over Avon Lake neighborhoods was discussed. Records do not show a regular or intermittent helicopter landing at that time. The helicopter often departs for the main campus in Cleveland at midmorning. On its return trip it stops at Burke Lakefront Airport for refueling. This routine might have the aircraft returning to the Avon facility at midafternoon, but not at a fixed time. The Clinic officials stressed that they are sensitive to residents and make every effort to comply with the flight path in the protocol. On occasion the helicopter might stray north of the railroad tracks due to weather conditions, but this would be rare.

The following ward meetings are scheduled: Ward I February 20th; Ward II February 27th; Ward III March 6th; Ward IV March 13th. Locations and times are to be confirmed.

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A budget meeting is scheduled for January 26, 2013 at 8:00 A.M. in the Engineering Conference Room.

The Walker Road railroad crossing between Moore Road and Miller Road will open early on January 15th.

COUNCIL PRESIDENT'S REPORT

In honor of Martin Luther King Day, no Collective Committee meeting will be held on January 21st. A rescheduled Collective Committee meeting will be held on Tuesday, January 22nd at 7:30 P.M. The next regular Council meeting is scheduled for January 28th.

A vacancy exists on the Environmental Affairs Advisory Board. Any resident interested in the position should send a letter of interest and resume to the Clerk of Council at bdopp@avonlake.org or by regular mail to 150 Avon Belden Road, Avon Lake.

The scavenger legislation is not on the agenda in order to give it further study and development. The third reading is scheduled for January 28th.

ENGINEERING DEPARTMENT REPORT

The Engineering Department weekly update was distributed.

Beginning January 15th, the Service Department will be trimming tree lawn trees west of Lear Road and north of Walker Road as part of the annual tree maintenance program. The tree trimming program follows the procedures and recommendations of the Urban Forestry Department.

LAW DIRECTOR'S REPORT

The Law Director's litigation update was distributed.

The Charter Review Commission will hold an organizational meeting on January 15, 2013 at 6:30 P.M. in the Engineering Conference Room. This is an open meeting.

HUMAN RESOURCES COMMITTEE REPORT

Mr. Bucci reported that salary increases for municipal court personnel were discussed at the January 7, 2013 Human Resources Committee meeting.

PUBLIC UTILITIES COMMITTEE REPORT

Mr. Shondel announced that WOW reported on Saturday that anyone with a WOW e-mail address could receive e-mail, but could not respond to several accounts. The entire Cleveland market had a temporary problem.

SEWER COMMITTEE REPORT

Mrs. Fenderbosch reported on the EPA mandated sanitary sewer separation and lateral installation project discussed at the January 10, 2013 joint meeting between the Sewer Committee and Public Service Committee. A meeting for residents affected by the project has been scheduled for 7:00 P.M. at Troy School either on January 29, 2013 or February 7, 2013. Mrs. Fenderbosch referred to a chart illustrating the timeline for the project.

PLANNING COMMISSION REPORT

Mrs. Fenderbosch reported on the results of the January 8, 2013 Planning Commission meeting.

AUDIENCE PARTICIPATION

Cheryl Slater, 162 Jamestown Parkway, stated that all studies she cited regarding bow hunting referenced the use of compound bows. She expressed her opposition to bow hunting and reported on the dangers of deer hunting. She inquired about a possible conflict of interest since Mrs. Fenderbosch's husband and son are bow hunters.

Mrs. Fenderbosch stated that her son does not reside in Ohio, but is a resident of Louisiana, and that her husband refuses to hunt in Avon Lake because of her political position.

Mrs. Slater inquired about the 250 foot setback requirement for deer hunting. Mayor Zilka stated that he will work with the Police Chief and Lt. Bulger on implementing a program that is safe and practical. Any area for culling will be clearly marked and individuals will be warned to stay out of the area.

Nancy Jazwa, 298 Bayview Drive, expressed her support for non-lethal methods of deer management. She asked if the deer vehicle accidents have decreased in the last three years.

Mayor Zilka stated there were 33 deer vehicle collisions in 2011; there were 21 in 2012.

Mike Sweeney, 572 Bridgeside Drive, stated that although the number of deer vehicle accidents has decreased, the number of dead deer picked up by the Service Department has greatly increased and pointed out that not all deer accidents are reported. Mr. Sweeney stated that the letter from the Humane Society letter was light on credible and factual information. The letter states that, "how many deer

there are is not as important as what conflicts they are causing and what the actual relationship is between population densities and problems on the ground.” He stated that the more deer you have, the more problems exist. The Humane Society urges a full and open dialogue. There have been about two dozen various public forums in Avon Lake regarding deer management. The Humane Society questioned whether there is an adequate scientific basis to justify control of deer populations to conserve biological diversity. Mr. Sweeney pointed out the destruction of property in the parks and on private property.

Sandra Barnes, 33687 Lake Road, asked how the deer were transported to Avon Lake. Mrs. Fenderbosch stated that the Ohio Department of Natural Resources informed her that they brought deer to Ohio in the 1930's; she did not know how they were transported.

Ms. Barnes asked if the deer could be transported to an animal preserve.

Mr. O'Donnell stated that he and the Mayor conferred with representatives of Lorain County Metro Parks, but they were not receptive to the idea. Deer do not survive very well when being transplanted. Injury is a problem and an unstable environment is created when relocated deer are confronted with deer already in the area. Most communities throughout the country are experiencing deer overpopulation and do not want additional deer brought into their communities.

Mr. James explained that the deer are held in trust by the Ohio Department of Natural Resources (ODNR) for all citizens of the State of Ohio. They prohibit the relocation of deer mainly because there is fear that the deer would spread disease if relocated to other areas. The EAAB investigated the option of relocation and found that it is not legal.

Leo Kaliszewski, 129 Duff Drive, expressed his opposition to deer culling and asked Council to consider the letter sent by the United States Humane Society. He asked about the cost of the program and the involvement of the Mayor, Police Department, and Police Chief.

Mayor Zilka stated that a culling program will take the time of a number of City employees and will involve overtime for not only for those performing the culling, but also for those responsible for securing the areas. Mayor Zilka stated that he is not in favor of bow hunting and training police officers to master bow hunting. He further stated that police officers are skilled with guns and it appears that sharpshooting might be a format easier for the police officers to adjust to and master. Mayor Zilka stated that it will take time and effort to secure an area if the culling program moves forward.

Mrs. Fenderbosch stated that she will make a motion to amend the deer management legislation to address the harvesting of deer.

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John Uptmor, 32623 Admirals Way, expressed his support for the culling program. ODNR studies show the severe damage deer have caused to the ecosystem.

MOTIONS

Mr. Bucci moved to approve the following revised Council committee rosters: Public Service Committee – Rob James, Chair, Jennifer Fenderbosch, David Kos, Larry Meiners; Environmental Committee – John Shondel, Chair, Jennifer Fenderbosch, Marty O'Donnell.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

Mr. Meiners moved to authorize the Mayor to sign an agreement with James C. Zupka, C.P.A., Inc. for the 2012 GAAP conversion for an amount of \$10,625.00.

Three quotes were received to prepare the financial statements in accordance with Generally Accepted Accounting Principles.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

Mr. O'Donnell moved to accept the resignation of Elana West from the Parks & Recreation Commission. Ms. West accepted a position with the Municipal Utilities and will not be able to serve on the Commission.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

Mr. James moved to authorize the advertisement of bids for the 2013 Miller Road Park boat launch sand dredging. Sand dredging is done annually to maintain the boat launch.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

Mr. James moved to authorize the advertisement of bids for tree service for City property. Mr. Reitz recommended having a tree service company on retainer to be available when needed.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

Mr. James moved to authorize the advertisement of bids for generator upgrades. The current generators are outdated and it is important to have up-to-date generators in place in order for the City to function in the event of a major power outage.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

LEGISLATION

Third Readings:

Temporary Legislation #10081, AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 668.06 ENTITLED NONCOMPLIANCE WITH NOTICE; REMOVAL BY CITY, AND SECTION 668.07 ENTITLED ASSESSMENT OF COST BY MUNICIPALITY, AND DECLARING AN EMERGENCY, was read by title only.

Mr. O'Donnell moved for passage of Temporary Legislation #10081. The Zoning Administrator recommended an amendment to Codified Ordinance Section 668.06 which deals with nuisance properties, particularly yard mowing. After proper notification, the City can go onto properties and mow when high grass is present. The City recoups the funds by filing a lien with the Auditor's office which is then placed on the tax duplicate. Due to foreclosures and other factors, the City often does not recoup the funds for some time. The proposed amendments would provide for a more timely repayment and will provide the opportunity to bill the owner for the cost of the mowing. If there is no response from the property owner, the City can still go ahead and file the lien. The amendment also provides a surcharge of 15% to cover the administrative costs.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

Ordinance No. 1-2013 adopted.

Temporary Legislation #10087R, AN ORDINANCE ESTABLISHING TOOLS TO MANAGE THE WHITE TAIL DEER POPULATION WITHIN THE CITY OF AVON LAKE, AND REPEALING ORDINANCE NO. 165-2004, was read by title only.

Mr. James moved for passage of Temporary Legislation #10087R.

Mr. James thanked all who were involved in the deer management legislation. Mr. James read the following statement. This is not the first time the City of Avon Lake has addressed this issue. In 2004, City Council under the leadership of former City Council President Greg Zilka, as well as former Mayor Rob Berner, passed a law

that allows bow hunting of deer under certain circumstances. This law remains effective and no matter what City Council does tonight, this law will continue to exist and the bow hunting of deer will not go away in Avon Lake. Several years ago the EAAB took up consideration and study of deer in Avon Lake. It reviewed and rejected a number of options. Some of the options it rejected were the sharpshooting of deer, sterilization, relocation, and contraception. It rejected sharpshooting because it was determined to be too expensive; upwards of \$500 per head by private contractors. It rejected contraception because contraception is generally illegal in the State of Ohio. It also rejected relocation and sterilization because those options are also illegal under Ohio Department of Natural Resources regulations. Left with few other options, it recommended to the Environmental Committee of City Council enactment of a larger bow hunting program in Avon Lake. It did this after taking hours of comments from the public at meetings that held dozens, if not hundreds, of individuals. That recommendation was forwarded to the joint Environmental Safety Committee for consideration. During EAAB's consideration, as well as the joint committee's consideration of an ordinance prohibiting the nuisance feeding of deer, members of the joint committee heard numerous comments in support of and against deer hunting. City Council has further received dozens, if not hundreds, of telephone calls, letters, e-mails, and personal conversations regarding deer hunting. Many of those comments supported deer hunting in order to reduce the population of deer. Other comments strongly opposed any kind of hunting in Avon Lake, especially with bows and arrows. Taking these comments into consideration, the joint committee drafted legislation that provides the Mayor with as many tools as possible to safely, effectively, and humanely address the deer issue. The primary tools provided to the Mayor involve the Mayor developing a culling program on certain parcels of land owned by the City conducted only by members of the Avon Lake Police Department, City employees, or contractual agents of the City. Closely related to that culling program is the requirement that the Mayor attempt to obtain permission from the State of Ohio to use contraceptives on deer within the City. This permission is far from guaranteed, but at least the City can try. I may also comment that, while I recognize the Humane Society's letter and they do provide some very thoughtful comments, the Ohio Department of Natural Resources is on the record with some issues relating to contraception. In January 19, 2012 an article published in the Plain Dealer begins by stating that an Ohio Division of Wildlife official said contraception is not a viable option when it comes to deer management in Parma. Scott Peters, Wildlife Management Supervisor with the Wildlife Division, said Ohio law prohibits use of contraceptives on deer except for research. Further, Peters said contraceptives are not economical nor can they alone reduce the deer population. He is quoted as saying even the manufactures of contraception drugs say that you have to reduce deer population before you can introduce the drugs to maintain the population. It doesn't matter whether this is true or not. What matters is that ODNR is the ultimate regulator and they ultimately provide the permission to use contraception. If the City ever has a chance to use contraception within City limits, and that is something I seriously hope we do because I hope it is the ultimate remedy, the regulators are saying we have to reduce the population first. It is a chicken or egg problem. If we

don't get their permission, we don't get contraception, and according to them, if we don't reduce the population, I don't think we will get permission. Other aspects of the legislation include bow hunting on private property that meets specific requirements. But again, only by Avon Lake Police Department members, City employees, or contractual agents of the City. Finally, it codified the existing 2004 bow hunting ordinance as that ordinance was never put into the books. As I have mentioned before, I am not a hunter, I do not have a hunting license, I do not have a gun or a bow and arrow, and I don't want any of those sorts of things in my house. I have no agenda except for the safety of the residents of Avon Lake, as well as its visitors. I take that concern very, very seriously. The greatest concern to me is the number of deer vehicle related accidents in the City. Though we have not had any fatalities that I am aware of to the present day, it is something that I am often worried about. I am also worried about the destruction of natural habitats and parks by the deer, the destruction of public and private property by deer, and the potential for the transmission of disease and parasites by deer. Not everyone is going to agree that this legislation is the best solution, but this legislation represents a compromise. It addresses the deer situation with a number of tools and the City will continue to use other tools, such as more enhanced signage as well as educational efforts aimed at reducing deer vehicle accidents and planting deer resistant landscaping. As with all compromises, no one will see everything they want on this legislation. However, I believe everyone gets a little bit of what they want and I believe it balances all the concerns that have been raised on this issue to date. I look forward to the passage of this legislation.

Mrs. Fenderbosch referred to an article in the Plain Dealer regarding the nutritious value of deer meat. She stated that no one on Council wants to waste the meat if a deer is culled. Mrs. Fenderbosch stated that the Mayor is the one who will implement the legislation and that he agrees that the meat could help the food banks.

Mrs. Fenderbosch moved to amend Temporary Legislation #10087R Section 1. (a) (1) as follows: ii. Undertake such measures as may be necessary or appropriate to secure appropriate authorization from the State for the City's deer management plan; and

iii. Develop a procedure for processing of carcasses of deer harvested pursuant to the City's deer management plan, with preference to making the carcasses available for human consumption if feasible under the circumstances.

The current section iii. will become section iv.

Yes: Shondel, Bucci, Fenderbosch, Kos, Meiners, O'Donnell

No: James

Motion carried.

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Mr. Kos moved to amend Temporary Legislation #10087R by adding the word “undeveloped” to page 3 of the legislation, section i. to read as follows: The owner or owners of undeveloped private property consisting of parcels of five acres or greater, or a combination of no more than three continuous properties...

Mr. Kos referred to the blue map that was previously reviewed at a Council meeting. He said this map was the most conceivable and sensible map. Looking at the blue properties on the map, each blue property is undeveloped. At first the Mayor requested that the phrase “wooded and undeveloped” be returned to the legislation. Mr. Kos stated that he has no issue with dropping the term “wooded” because “wooded” could really shrink the number of areas provided on this map. However, the term “undeveloped” makes their interpretation of the map the actual type of legislation before Council.

Mr. Bucci stated that he will oppose Mr. Kos’s amendment because the map is sort of a snapshot in time that fits the current situation. In time the map may not be accurate. If the term undeveloped is inserted, it would drastically change the legislation.

Yes: Kos, Meiners

No: Shondel, Bucci, Fenderbosch, James, O’Donnell

Motion failed.

Mr. Meiners stated that there is no way to appease everyone. He commended Mr. James on his hard work on the legislation, but stated that he will vote against passage since he is opposed to bow hunting, even though he supports sharpshooting.

In answer to Mr. Meiners, Mayor Zilka stated that he will never put a police officer in the difficult position of performing a task for which he does not feel qualified. He may hire contractual agents.

Mr. Meiners asked about the City’s liability coverage regarding accidents or injuries relative to deer culling. The Mayor and Finance Director did not have that information.

Mr. Kos pointed out that, if contractual agents are used, they would be required to have the same type of insurance as all contractors hired by the City.

Mr. James emphasized that the bow hunting program is absolutely discretionary. It will be up to the Mayor to decide whether he will even utilize the bow hunting option. The ordinance simply provides him with options and tools.

Mr. Kos read the following statement. This issue has not been an easy one for anyone in the community. I believe that our City is split between those wanting lethal and those wanting non-lethal methods for controlling deer. However, the first

proposal that was brought forth focused mainly on lethal methods. I thought this was shortsighted and unfair. I took my position initially based on the fact that about half of the City's population either opposed or had some concerns about hunting and did not have anyone speaking for them. Those folks needed that initial voice on Council and I have been proud to be that voice. A funny thing happened though as I got to know them and their concerns. I discovered that a lot of what they were saying was correct. Avon Lake is not like many of the other townships or rural communities that have successfully implemented similar programs. We are developed and similar to Bay Village, Westlake, and Rocky River. All of these communities have deer issues, but none of them have implemented such a program. I have said from the beginning that I do not oppose hunting, but I oppose hunting in Avon Lake. The ratio of people per mile is higher here than in any of these other communities. I want to acknowledge the exhaustive efforts of Tim and Cheryl Slater, Dan and Kristy Haude, the Kaliszewski's, Michelle Murphy, and the hundreds of volunteers, supporters, and petition signers. I commend what you have done by presenting facts and perspectives that otherwise may not have been considered. I wish I could provide all of you with a completely non-lethal program. However, we must be realistic. I am just one person with one vote and the numbers were not on my side. This is where I would like to thank my colleague Rob James. Because of his willingness to work with me, these three major additions to the legislation have been included partially at my request: the addition of significant training and certification requirements; schools, day care centers, and churches have been protected from being near any lethal activity; a 250 foot setback has been provided that limits the locations for hunting. Because of Mr. James' willingness to compromise with the minority, I had a decision to make. Objecting to every point would have resulted in a much different piece of legislation than is before Council. Passing of a culling program was inevitable. That is why I chose to work with Mr. James to install as many safety features as possible since my no vote would not matter in the future. However, the amendments will endure. At the end of the day, it is my duty to represent and provide for the safety and wellbeing of my constituents. These amendments and safety enhancements do that better than obstruction and a no vote. The issue is now in the hands of Mayor Zilka, which I know he will manage. I encourage the Mayor to share his plan with the public once it is drafted and request that he move full speed ahead on the NOACA sign program and the Tufts University program. It has always been my desire to see all non-lethal strategies exhausted prior to any lethal activity.

The roll was taken on passage of Temporary Legislation #10087R.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, O'Donnell

No: Meiners

Motion carried.

Ordinance No. 4-2013 adopted.

First Readings:

Temporary Legislation #10097, AN ORDINANCE PROVIDING FOR TRANSFERS AND ADVANCES, AND DECLARING AN EMERGENCY, was read by title only.

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

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

Mr. Meiners moved for passage of Temporary Legislation #10097. The Finance Director determined certain transfers and advances are needed for the immediate expenses of the City.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

Ordinance No. 2-2013 adopted.

Temporary Legislation #10098, A RESOLUTION AUTHORIZING THE DIRECTOR OF FINANCE TO DISPOSE OF CERTAIN SURPLUS CITY PROPERTY NO LONGER NEEDED FOR PUBLIC USE BY INTERNET AUCTION FOR THE PERIOD OF FEBRUARY 1, 2013 THROUGH DECEMBER 31, 2013, AND DECLARING AN EMERGENCY, was read by title only.

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

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

Mr. Meiners moved for passage of Temporary Legislation #10098. The City has had an internet auction program in effect and has disposed of City property. This legislation will approve the following three auction sites: www.govdeals.com; www.propertyroom.com; and www.publicsurplus.com.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell

No: None

Motion carried.

Ordinance No. 3-2013 adopted.

Temporary Legislation #10099, AN ORDINANCE AUTHORIZING WAGE INCREASES FOR COURT PERSONNEL, AND DECLARING AN EMERGENCY, was read by title only.

The Municipal Court Judge has the authority to set his wage and the wages of the Court staff. He is proposing 2.5% wage increases. When Mr. Bilancini became

Judge, he lowered the court salaries from those of the previous court personnel. The current staff did not receive any increases in 2009, 2010, and 2012.

MISCELLANEOUS BUSINESS AND ANNOUNCEMENTS

Mr. Meiners stated that he was not in attendance at the January 10, 2013 joint meeting of the Sewer Committee and Public Service Committee because he was out of town on business and had advised Mrs. Fenderbosch prior to the meeting.

PUBLIC INPUT

Mike Sweeney, 572 Bridgeside Drive, thanked Council for passing the deer management ordinance.

Chris Quinlan, 73 Community Drive, inquired about white spots in the parking lot at the Folger Home. Mr. Reitz and the Mayor stated that they were not aware of the spots.

Chris Turner, 115 Parkwood, congratulated Council for passage of the deer management ordinance and offered his services as an experienced bow hunter.

EXECUTIVE SESSION

In compliance with Ohio Revised Code Section 121.22, Mr. Meiners moved for adjournment to Executive Session to discuss imminent litigation.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell
No: None
Motion carried.

Adjournment to Executive Session: 9:18 P.M.

RECONVENING OF OPEN COUNCIL MEETING

Council reconvened in open meeting at 10:53 P.M.

Present: Mr. Bucci, Mrs. Fenderbosch, Mr. James, Mr. Kos, Mr. Meiners, Mr. O'Donnell, Mr. Shondel, Mayor Zilka, Law Director Lieberman.

Mr. Meiners moved for adjournment.

Yes: Shondel, Bucci, Fenderbosch, James, Kos, Meiners, O'Donnell
No: None
Motion carried.

Adjournment: 10:55 P.M.

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Approved: _____
Council President

Attest: _____
Clerk of Council