

MINUTES OF A SPECIAL COUNCIL MEETING
January 12, 2015 – 7:00p.m.

Council of the City of Berea, Ohio, met in the Council Chamber on January 12, 2015 and was called to order by President of Council Mary K. Brown at 7:00p.m. Present: Cheryl A. Banaszak, Nick Haschka, Margarette S. Key, Dale A. Lange, Jim Maxwell and Gene Zacharyasz. Absent: None. Also present: Mayor Cyril M. Kleem, Director of Law James N. Walters III and City Engineer Tony Armagno.

The Pledge of Allegiance followed.

This meeting was held in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code and Chapter 109 of the Codified Ordinances of the City of Berea. The certificate of compliance is on file in the Clerk's office.

LEGISLATION – SECOND READING:

ORDINANCE NO. 1-2: AN ORDINANCE FINDING AND DECLARING THE EXISTENCE OF A NUISANCE CONDITION AT THE SANDSTONE RIDGE SUBDIVISION, BEREA, OHIO, AUTHORIZING AND DIRECTING THE ABATEMENT OF THE SAME, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Mr. Haschka stated that Council has extensively discussed this Ordinance, and heard from residents as well. He inquired as to whether any response has been received from the Trustees of the Home Owner's Association.

Mr. Walters responded that letters were sent to each trustee of the HOA, the statutory agent and the owner of Barnett Management, the management company hired to handle management of the HOA. A reply was received from Dan Neff of Neff & Associates, who informed Mr. Armagno that the spillway construction project is commencing next week. The City has, however, received no indication that the work on the retention basin is slated to be done.

Mr. Walters noted that the City has also been in communication with Mr. Barnett who echoed Mr. Neff's comments, and said the HOA has sufficient funds to pay for the spillway's construction. Mr. Walters recommended that Council pursue the Ordinance in order to keep pressure on the HOA to immediately correct the violations. He cautioned that the City may still have to remedy the situation if it is not properly and promptly handled by the HOA.

Mr. Haschka asked for clarification on the timeframe that would be established, should the Ordinance be adopted. Mr. Walters explained that the legislation does include a completion schedule, and if the Ordinance is adopted tonight, the City will introduce a design and build piece of legislation at the next regular Council meeting. This legislation would ensure that, should the City need to step in and complete the work, violations are remedied as quickly as possible.

Mr. Maxwell asked if the HOA's construction of the spillway will impede the City's work, should the City need to increase the volume of the retention basin. Mr. Armagno responded that the work is contiguous, but the spillway should be completed first. In response to a question

from Mr. Maxwell, Mr. Armagno said that the HOA is committing to the spillway, but not the retention basin, because of financial restraints.

Mr. Maxwell next inquired as to why the previously approved retention basin design drawings would not suffice, if the City has to correct this part of the violation. Mr. Walters explained that the original design expanded the retention basin in to properties that are, at present, not owned by the HOA. The corrective option that Mr. Armagno approved in August authorized the HOA to deepen the retention basin, thus attaining proper volume, but the drawings were far from construction quality.

General discussion commenced concerning why the spillway and retention basin were not constructed properly in the first place. Mr. Walters stated that the issue was brought to the City's attention by homeowners in Sandstone Ridge. The City spoke with their insurer who found that the City had no fault in the oversight. Mayor Kleem continued that members of the current administration were not involved in the inspection or approval process, so it can not be definitively determined why this oversight occurred. The fact of the matter is that once the City realized that 8 homes in a row had flooded, they determined that a problem was evident.

Mrs. Brown wondered how long flooding in this area has been occurring. Mr. Armagno stated that homeowners have experience varied amounts of flooding over the years, however, another property next to the retention basin has never flooded, and the City does not know why. What the City does know is that the retention basin was not built as shown on the approved plans.

Mr. Maxwell asked for the cost estimate to repair the violations, and Mr. Armagno answered that the cost will be approximately \$170,000.00, plus any additionally incurred costs. The City must also secure access to the retention basin. Mr. Maxwell asked if this access will be a problem, and Mr. Armagno confessed that it may be an obstacle, adding that a temporary road might need to be established.

Mr. Maxwell wondered, if the HOA performed the necessary work, how the City would know for sure that the volume of the retention basin is correct. Mr. Armagno answered that a certified copy of the "As Built" survey will be required to be completed and submitted to the City. This survey was never received when the original construction was inspected.

Mr. Zacharyasz questioned whether the spillway will alleviate immediate flooding concerns, and Mr. Armagno stated that it very well could. Mr. Zacharyasz next asked if a deeper basin will create any safety concerns. Mr. Armagno assured Council that the Zoning Code establishes minimum requirements for side slopes and pooling depths, so as to ensure proper safety.

General discussion commenced concerning how the City will attain access to the basin. Mr. Walters said that the necessary property in question resides in Olmsted Township, and is a single family residence. When the property was transferred to the homeowners, the drawings do show the existence of an easement, but nothing dictates access to the site in question. Should the

City be forced to abate the nuisance, the City will have to maneuver heavy vehicles on private property. In response to a question from Mr. Armagno, Mr. Walters confirmed that no contact has been made with the homeowners in question, and Mayor Kleem added that the process will begin once the legislation is adopted. The City did not want to approach these homeowners without first receiving the authority to do so.

Mr. Maxwell asked if the property in question would be seriously upset due to heavy construction vehicles. Mr. Armagno stated that a gravel driveway currently exists, and any disturbance would be minimal, as the property is expansive. Mr. Walters continued by explaining that he is unsure whether or not the homeowners would ask to be compensated for access through their property. Mr. Armagno noted that when compared to the total cost of the project, any reimbursement fee would be minimal.

Andy Fay, a member of the audience, inquired as to who owned the property back when Planning Commission approved the subdivision. Mr. Armagno said that Lopat, Ltd. owned the land. Mr. Fay asked why the City does not pursue Lopat, rather than the current owners. Mr. Walters noted that the City Ordinance states that action be brought against the current property owner, and Mayor Kleem clarified that both the developer and the current land owner basically entail the same group of individuals. He acknowledged the possibility that members of the HOA may foot the bills associated with correction of the violations.

A woman in the audience asked for clarification as to why the members of the HOA would have to pay for a mistake made by the developer. Mayor Kleem said that he did not know who would pay for the repair, but acknowledged that it very well may be the Sandstone Ridge homeowners. He encouraged residents in that subdivision to speak to an attorney about their lack of representation on the HOA Board.

Mr. Maxwell was curious as to what next steps would follow the adoption of this Ordinance. Mr. Walters reminded him that a design/build Ordinance is in the works, and Mr. Armagno added that, should the City need to commence abatement, work would begin soon after the HOA's 30 day timeframe has expired. Mayor Kleem acknowledged that access to the site is the biggest obstacle with regard to the City's abatement of the nuisance. Mr. Armagno agreed.

Moved by Mr. Haschka, seconded by Mr. Lange, that the three reading rule be suspended for proposed Ordinance No. 1-2. Vote on the motion was ayes: Banaszak, Haschka, Key, Lange, Malott, Maxwell and Zacharyasz. Nays: None. The motion carried and the three reading rule was thus suspended.

Moved by Mr. Haschka, seconded by Mrs. Key, that Ordinance No. 1-2 be adopted. Vote on the motion was ayes: Banaszak, Haschka, Key, Lange Malott, Maxwell and Zacharyasz. Nays: None. The motion carried and the Ordinance was thus adopted.

OTHER BUSINESS:

Mrs. Brown reminded everyone that the next Regular Council Meeting will be held on Monday, January 26, 2015.

Mr. Lange added a boisterous “Go Bucks!”

There being no further business before Council, moved by Mr. Haschka, seconded by Mrs. Key, that the Special Council Meeting be adjourned. Vote on the motion was all ayes and no nays. The motion passed and President Brown declared the meeting adjourned at 7:35p.m.

Mary K. Brown
President of Council

Alycia Esson
Clerk of Council

CERTIFICATE OF COMPLIANCE

The special meeting of Council of the City of Berea, Ohio, held on the 12th day of January, 2015, was conducted in compliance with Codified Ordinances Section 109 and Ohio Revised Code Section 121.22.

Alycia Esson
Clerk of Council