

MINUTES OF A REGULAR COUNCIL MEETING
January 5, 2015 – 7:30p.m.

Council of the City of Berea, Ohio, met in the Council Chamber on January 5, 2015 and was called to order by President of Council Mary K. Brown at 7:30p.m. Present: Cheryl A. Banaszak, Nick Haschka, Dale A. Lange, Jim Maxwell and Gene Zacharyasz. Absent: Margarette S. Key and Richard T. Malott. Also present: Mayor Cyril M. Kleem, Director of Public Safety and Service Barb Jones, 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.

Moved by Mr. Haschka, seconded by Mr. Maxwell, that the minutes from the December 15, 2014 Regular Council Meeting be approved. Vote on the motion was all ayes and no nays. The motion carried and the minutes were approved.

MAYOR'S ADMINISTRATIVE REPORT AND COMMENTS

Mayor Kleem thanked Council for a good and productive 2014, adding that while both healthcare costs and the Wyleswood project came in significantly over budget, the City retained a healthy budget reserve of 2.6 million dollars. He stated that the administration looks forward to working with Council in the new year.

Mr. Lange inquired as to the final total of the Wyleswood project. Mr. Armagno responded that \$650,000.00 was budgeted for the project, but due to high bids and unforeseen soil conditions, the project ended up costing approximately \$850,000.00.

REPORT AND COMMENTS BY THE OFFICERS OF THE ADMINISTRATION:

Dana Kavander – Director of Finance:

Mrs. Kavander was not present.

James N. Walters III – Director of Law:

Mr. Walters had no report.

Barb Jones – Director of Public Safety and Service:

Mrs. Jones reminded all residents to place their Christmas trees out for rubbish collection on Friday, January 9, 2015 or Friday, January 16, 2015.

In response to a question from Mrs. Brown, Mrs. Jones stated that the Dispatcher transition will hopefully occur on February 2, 2015.

COMMENDATIONS: **None**

PETITIONS: **None**

AUDIENCE PARTICIPATION: **None**

COUNCIL COMMITTEE REPORTS AND COMMITTEE ANNOUNCEMENTS:

Facilities and Court Committee – Jim Maxwell

Mr. Maxwell informed Council that both he and President Brown met with the Court on December 31, 2014 and discussed ways to improve communications in the new year. It was determined that representatives from Council, the Court, and the Administration will meet quarterly so as to discuss any pending issues or concerns, keep lines of communication open, track the renovation progress and alleviate the possibility for unwelcomed, end of the year budget surprises.

Mr. Maxwell explained that the Court will continue their bi-annual presentations before Council, adding that these presentations will occur during Council Work Sessions. Both the quarterly meetings and bi-annual presentations will be coordinated by the Clerk of Council.

Mrs. Brown declared that she made Mr. Maxwell the chair of the new Court Committee because he knows the history with the Court, and has already been an asset. She thanked Mr. Maxwell for his hard work, and encouraged Council members to relay any questions for the Court to herself or Mr. Maxwell, so any potential issues can be handled immediately.

Mr. Lange inquired as to whether the Court has agreed to repay the \$45,000.00 advance that they received from the City. Mr. Maxwell said that while this was discussed at the aforementioned meeting, the Court has not yet committed to repayment.

Mr. Fay asked if the quarterly Court meetings would be open to the public, to which Mrs. Brown responded in the negative. Mrs. Brown noted that the bi-annual Court presentations before Council will be open to the public, but the quarterly meetings will not be posted, as there will simply be a representative from Council present to relay any pertinent information.

LEGISLATION – THIRD READING:

ORDINANCE NO. 11-12: AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACTS FOR THE IMPROVEMENT OF THE MUNICIPAL COURT AND BEREA CITY HALL BUILDING AND OTHER IMPROVEMENTS, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Moved by Mr. Maxwell, seconded by Mr. Haschka, that proposed Ordinance No. 11-12 be placed in the Facilities and Court Committee. Vote on the motion was ayes: Banaszak, Haschka, Lange, Maxwell and Zacharyasz. Nays: None. The motion carried and the Ordinance was placed in the Facilities and Court Committee.

LEGISLATION – SECOND READING

ORDINANCE NO. 12-1: AN ORDINANCE RATIFYING AND AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH THE BEREA BOARD OF EDUCATION FOR THE USE OF THE FORMER SITE OF THE PARKNOLL SCHOOL FOR MULTIPLE PURPOSES, INCLUDING RECREATION, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 12-1 stands on second reading.

ORDINANCE NO. 12-4: AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH THE CUYAHOGA COUNTY LAND REUTILIZATION CORPORATION (CCLRC) FOR PARTICIPATION IN THE CUYAHOGA COUNTY PROPERTY DEMOLITION PROGRAM, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Mr. Maxwell wondered if the Administration had any specific demolitions in mind. Mayor Kleem stated that this program has saved the City a lot of money in the past, and hopes to utilize the program to assist in the demolition of properties on Front Street.

Mrs. Brown inquired as to what happened to the profits from the sale of the house on Longfellow, and Mayor Kleem explained that the money was placed in a special fund that must be used in that specific census tract. He stated that he has been in discussions with Mrs. Key so as to determine the next project, but nothing is ready to come before Council. Mayor Kleem reminded Council that the money in this fund will carry over until such time as it is used to rehab a property, or raze and rebuild a house.

LEGISLATION – FIRST READING:

RESOLUTION NO. 1-1: A RESOLUTION SUPPORTING THE 2015 CELEBRATION OF THE ANNIVERSARY OF THE BIRTH OF MARTIN LUTHER KING, JR.

The Clerk read the Resolution in full.

Moved by Mr. Maxwell, seconded by Mr. Zacharyasz, that proposed Resolution No. 1-1 be approved. Vote on the motion was ayes: Banaszak, Haschka, Lange, Maxwell and Zacharyasz. Nays: None. The motion carried and the Resolution was thus approved.

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. Armagno walked Council through a timeline of events that led to the introduction of this Ordinance. He began by reminding Council of the significant rainfall that plagued the City on May 12, 2014. 1.5 inches of rain fell in just 15 minutes, and hit northern Berea hard. Following this storm, the City received a lot of calls about basement flooding in the northern phase of Sandstone Ridge, specifically Cobblestone Court and surrounding streets. In response to these calls, the City began investigating the cause of the flooding and met with affected homeowners. During this investigation, City inspectors witnessed a full and overflowing retention basin, and proceeded to review the sewer system and basin. Two problems were uncovered during this investigation.

First, a spillway designed to allow stormwater to flow out of the basin during major rains, was never constructed.

Second, the retention basin was not built to the size approved on the construction plans, but was actually built smaller.

Mr. Armagno continued by explaining that these two issues are causing stormwater to fill and overflow the basin, back up the storm sewers, and, inevitably, flood nearby basements.

Mr. Armagno stated that the City has since reviewed the ownership of the property on which the basin sits, realizing that it is owned by the Homeowner's Association. The City met with Neff & Associates on June 3, 2014, and it was acknowledged that the spillway was not built, as planned. Neff & Associates said that they were not aware of the size discrepancy with the retention basin. The meeting concluded with Neff & Associates making several commitments. They agreed to perform a survey to verify the size of the retention basin, verify the property owner, begin the process of installing the spillway and provide the City with a plan of action.

On June 23, 2014, a notice of violation was sent to the property owner, explaining the two violations and presenting timeframes for correction. Mr. Armagno said that on July 22, 2014, a follow-up meeting was held and it was determined, per the aforementioned survey, that the basin was built too small. Neff & Associates provided the City with three design alternatives that would meet code and resolve the issues. They also agreed to discuss the corrections with both the HOA and the developers.

Mr. Armagno said that on August 5, 2014, the City approved one of the corrective options provided by Neff & Associates, and directed them to move forward with construction. Since that time, emails have been exchanged, but no progress has been made. The City has spoken with homeowners who have received a quote from a local contractor. The Administration agreed that, in order to get these issues resolved before more flooding occurs, it is in the best interest of the community to declare the situation a nuisance and get the violations corrected as soon as possible.

Mr. Maxwell inquired as to the total cost of the repairs, and Mr. Armagno said that, according to the provided quote, the repairs may total around \$165,000.00.

Mr. Maxwell wondered why the completed project was not properly inspected, and the approved designs not consulted. Mr. Armagno answered that the retention basin was to be built in two phases. A temporary structure was established during construction, and when the subdivision was finalized, it should have been converted to its required size, and a spillway installed. It took a detailed investigation to determine that the retention basin was not built to the approved size.

Mr. Maxwell questioned whether this Ordinance is meant to kick start the repair. Mr. Armagno said that the developer was given 90 days from the time the City approved the repair plan to complete the project. To date, no work has begun.

Mayor Kleem informed Council that the project was to be substantially completed by the end of 2014, and Mr. Armagno added that this was the information that Mr. Neff had provided some homeowners.

Mayor Kleem continued by explaining that the Homeowner's Association Board includes Ferris Kleem, John Kleem, John Mayer and Dan Neff. These are the same individuals who improperly constructed the retention basin and neglected to build the spillway over 10 years ago. These individuals have made no movement to correct the violations and, in addition to this Ordinance, the City is considering pursuing criminal charges against the parties involved. The intent of these acts is to motivate the individuals to take care of the problem before more homeowners are adversely affected. Should the violations be declared a nuisance, and remain unresolved, the City will have the ability to abate the nuisance and find a way to bill the property owner the estimated \$170,000.00-\$200,000.00 it would cost to correct the violations. Mayor Kleem noted that if the City progresses with criminal charges, a Judge could fine the responsible parties up to \$1,000.00 each day that no action is taken.

Mr. Maxwell questioned who the term "responsible parties" refers to exactly. Mayor Kleem stated that the property is owned by the HOA, and the City is still deciphering who exactly would be held liable. Mr. Maxwell wondered if the City has considered not issuing building permits in this development until the situation is resolved. Mr. Walters cautioned that this would further delay house construction, and the HOA is not turned over to the homeowners until 90% of the subdivision is occupied. Mr. Maxwell countered that it would also delay an income stream, but Mayor Kleem noted that permit fees contribute to the City's income, as well.

Mr. Haschka was curious as to whether or not the process could be expedited, so as to avoid further flooding concerns in the neighborhood. Mr. Walters suggested that the City give notice to the HOA Board regarding the second reading of this Ordinance, and invite them to attend the Council Meeting. The issue can be addressed that very night, and suspension of the three reading rule is always a legal option.

Mrs. Brown wondered if this type of work could be done over the winter months, and Mr. Armagno responded in the affirmative. Mayor Kleem noted that if a nuisance is declared, the City will immediately begin preparing to take action, in case the HOA Board does not comply.

Mr. Zacharyasz questioned why this Ordinance must be adopted if the HOA is already in violation of the Codified Ordinances of the City. Mr. Walters responded that criminal charges could be filed without Council action, but in order for the City to abate the nuisance, this legislative process must be followed, and authorization granted by City Council.

Dave Yakinow, a member of the audience and resident of Sandstone Ridge, alerted Council that the money to correct these issues will, in fact, come out of the pockets of Sandstone Ridge residents unless the City petitions FEMA or other organizations for grant funding. He expressed his concern that a legal battle could drag on indefinitely, and this situation needs to be fixed immediately so as to protect the homes in Sandstone Ridge. Mayor Kleem informed Mr. Yakinow that grant funding would take years to secure, if any was even possible, and added that he understands that the question of who pays for the repair is a complicated one indeed. Mayor Kleem reminded Mr. Yakinow that the City's money is also his money, and while alternate funding sources can be investigated, he suggested that the homeowners look in to possibly pursuing some civil action against the HOA Board, as homeowners have been unfairly left out of every discussion and decision.

Mrs. Brown wondered how long the construction could take, and Mayor Kleem answered that the situation could be substantially reconciled within 2 months.

Kevin Pack, a member of the audience and resident of Sandstone Ridge, expressed his frustration with the HOA Board, stating that they are rude and evasive to any resident who asks a question or expresses an opinion. The residents feel helpless and want representation on the Board. Mr. Pack continued by explaining that his paperwork states that the HOA will be turned over to the residents once 75% of the subdivision is occupied. It changed to 90% without his knowledge, which does not seem right. He added that the builder takes no responsibility for anything, and acts as if they are not liable.

Mayor Kleem informed Mr. Pack, and the listening audience, that declaring a nuisance and possibly filing criminal charges is all the City can do, legally. He stated his understanding that the homeowners are in a tough spot, as their HOA doesn't provide residents with much of anything, and encouraged them to discuss taking civil action.

Ryan Devins, a member of the audience and resident of Cobblestone Court, thanked Mr. Armagno for his hard work on this issue. He informed Council that he has spoken with Mr. Neff, who guaranteed him that the flooding issues would be resolved by December 9, 2014. Mr. Devins noted that he has plans for a basement project underway, but does not want to proceed until he is certain the flooding matter is resolved. He encouraged the City to take whatever action they can as quickly as possible.

Mayor Kleem cautioned Council that while expediency is necessary in this situation, the City must also make sure that we are properly notifying the HOA Board so that they can not come back and claim their due process rights were violated.

General discussion commenced concerning a possible timeline for correction of the violations, and Mr. Armagno explained that if the City has to do the work, it may take a little longer than if the developer undertakes construction. He felt that construction would take between 60 and 90 days, but the spillway could be installed in a month, and this should resolve the flooding concern.

Fernandez “Chico” Baldwin, a member of the audience and resident on Cobblestone Court, informed Council that his basement has flooded, and he has put off repairs until the flooding concern is remedied. He stated that he has recent photos of water progressing above the pipes, and fears that a heavy snowfall could bring more immediate flooding to Sandstone. The matter must be resolved as soon as possible.

General discussion commenced concerning what notice the HOA Board must receive with regard to this legislation. Mr. Walters clarified that no notification is legally required, but, as a courtesy, members of the Board should be invited to come and speak when this proposed Ordinance comes up for second reading before Council. Everything has been publically and properly posted, so the HOA Board should already know about this piece of legislation.

Both Mayor Kleem and Council agreed that a Special Meeting was the best way in which to proceed with this matter.

REPORT AND COMMENTS BY THE PRESIDENT OF COUNCIL

President Brown thanked Council for a great 2014, adding that she looks forward to the work that will be accomplished in the new year.

President Brown announced the Peace with Police worship service and fellowship on January 11, 2015 at Mt. Zion Baptist Church in Berea. The event will commence at 11:00a.m. Mayor Kleem explained that Mt. Zion is an entirely - or almost entirely - African American Church, and they are inviting the City’s entirely white police force to participate in this event. He encouraged all who are able to attend this community event.

REPORTS AND COMMENTS BY THE MEMBERS OF COUNCIL

Mrs. Banaszak had no report.

Mr. Haschka had no report.

Mr. Lange had no report.

Mr. Maxwell had no report.

Mr. Zacharyasz wished his daughter a very happy birthday.

CORRESPONDENCE

The December 6, 2014 – December 31, 2014 Correspondence is available in the Clerk’s office.

OTHER BUSINESS:

Mrs. Esson had no report.

Moved by Mr. Maxwell, seconded by Mr. Haschka, that the January 12, 2015 Council Work Session be cancelled, and that Council holds a Special Meeting on January 12, 2015 at 7:00p.m. for the purpose of discussing proposed Ordinance No. 1-2. Vote on the motion was ayes: Banaszak, Haschka, Lange, Maxwell and Zacharyasz. Nays: None. The motion carried.

Moved by Mr. Maxwell, seconded by Mr. Zacharyasz, that the January 20, 2015 Regular Council Meeting be moved to Monday, January 26, 2015 due to the Volunteer Banquet and the events celebrating the Martin Luther King Jr. holiday. Vote on the motion was ayes: Banaszak, Haschka, Lange, Maxwell and Zacharyasz. Nays: None. The motion carried and the date of the meeting was thus changed.

There being no further business before Council, moved by Mr. Haschka, seconded by Mrs. Banaszak, that the Regular 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 8:53p.m.

Mary K. Brown
President of Council

Alycia Esson
Clerk of Council

CERTIFICATE OF COMPLIANCE

The regular meeting of Council of the City of Berea, Ohio, held on the 5th 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