

CITY COUNCIL MEETING – MONDAY, APRIL 12, 2010

The Council of the City of Zanesville met in regular session at 7:00 p.m., Monday, April 12, 2010 in the City Council Chambers, 401 Market Street, Zanesville, Ohio.

Mr. Vincent led those present in the Lord's Prayer and the Pledge of Allegiance to the Flag.

The following members of Council answered Roll Call: Mrs. Norman, Mr. Kilpatrick, Mr. Hutcheson, Mr. Roberts, Mr. Tilton, Mr. Zakany, Mr. Baker, Mrs. Gentry, and Mr. Vincent.

Mr. Tilton moved to excuse Mr. Tarbert, seconded by Mr. Baker.

Motion carried.

APPROVAL OF MINUTES

Mr. Zakany moved to accept the minutes as printed of the Regular Meeting of March 22, 2010, seconded by Mr. Tilton.

Motion carried

COMMUNICATIONS, REPORTS, AND RESOLUTIONS

Communication from Stacy Hazen – Administrative Assistant Zanesville-Muskingum Port Authority – Subject: Tax Incentive Review Council Recommendations.

Mr. Tilton moved to receive, seconded by Mr. Hutcheson.

Mr. Raines: When the City enters an enterprise zone agreement in the Northpointe Park, and if the company has a payroll of over \$1 million, the City has to share income tax with the affected school district. We have three enterprise zone agreements with Worthington Foods (Kellogg's). Two of them are exempting taxes, only the personal property taxes. Last year the State of Ohio eliminated the personal property tax and exemption of tax no longer exists. We still have to share our income taxes with the school even though the tax has been exempted. The City is no longer taking an action that is affecting the school district, yet we are reimbursing the school district for money they would have lost. I am planning to bring an ordinance to Council to do away with one of the enterprise zone agreements. One of the two expired at the end of 2009 and the other one has four years left. There is no longer a tax exemption in place we should not have to share the income tax with the school for that four year period. Last year, the one enterprise zone agreement, the tax sharing was \$13,000. The taxes were roughly twice as much as that, but we have to share half with the schools. I also wanted it reflected in the minutes which I think that is the reason why the Port Authority sends this to you, so the minutes will reflect that Council is informed. It is possible that we may end one of the enterprise agreements.

Mr. Baker: How far is AK Steel out of compliance with the employment retention?

Mr. Raines: AK Steel pledged to retain 308 jobs of those 308 jobs they have retained 91.

Mr. Baker: What kind of incentive is there under these tax waiver agreements for them to comply?

Mr. Raines: As long as the Tax Incentive Review Council recommends continuing it there is not really any.

Mr. Baker: This is actually recommending the continuation of AK Steel's waiver, so what is the rationale?

Mr. Raines: The general feeling has been as long as there is work and they are trying.

Mr. Baker: Do everything it takes to get them to employ as many people as possible.

Mr. Vincent: They shared the difficulties they are having in bringing people back and that things are on the upswing.

Motion carried.

Communication from Howard S. Zwelling – Mayor – Subject: Board Appointment

Traffic Committee – I am hereby recommending appointment of Mr. Grant Hutcheson to the Traffic Committee to replace D. J. Dittmar.

Mr. Zakany moved to receive and concur, seconded by Mr. Kilpatrick.

Motion carried.

Communication from Michael A. Sims – Public Service Director – Subject: City Cemeteries 1st Quarter Report (2010)

Mr. Tilton moved to receive, seconded by Mr. Hutcheson.

Motion carried.

PROPOSED ORDINANCES

Mr. Tilton moved to add Ordinance No. 10-30 and Ordinance No. 10-31, seconded by Mr. Kilpatrick.

Motion carried.

Ordinance No. 10-28 – Introduced by Council – Amending Ordinance Nos. 07-114, 07-115, 09-01, 09-02, 09-11, 09-32, 09-37, and 10-12, which established pay, benefit, and employment policies for employees in the municipal service.

Mr. Tilton moved for first reading, seconded by Mr. Roberts.

Mr. Roberts: I assume this is because we took some of the cars away and they are now using their private cars for transportation on City business.

Mr. Raines: We needed to change the unaffiliated ordinance to lower the reimbursement rate from \$.55 to \$.50 which is the IRS standard.

Mr. Roberts: So these areas we are covering are going to drop \$.05 per mile for reimbursement.

Mr. Raines: The unaffiliated, A.F.S.C.M.E., police officers, police sergeants and lieutenants are at \$.55 per mile. The corrections officers are at \$.50 per mile. The police captains, police secretaries, and records clerks are at \$.40 per mile.

Petition from Randy Case – 916 Vine Street

Mr. Case: Mr. Roberts basically asked the questions I had. How many of these people use their private vehicles? Police captains drive their own vehicles and after that they have a city vehicle to use, so if they are going on city business they are driving a city vehicle. How many times is the City paying these people to use their own vehicles when they can be using a City vehicle?

Mr. Raines: I do not know how much, I think the unaffiliated use their personal vehicles more than anyone else.

Mr. Vincent: Mr. Raines is there any benefit for this being waived tonight to speed it up?

Mr. Raines: I suppose the people that are getting \$.55 per mile are not in a hurry for it to change and the people that are getting \$.40 per mile would like to see it passed tonight.

Motion carried.

Ordinance No. 10-29 – Introduced by Council – An ordinance authorizing the proper city official to enter into an agreement with Southeast Area Transit to share fuel tank facilities, and declaring an emergency.

Mr. Zakany moved to waive the three readings, seconded by Mr. Baker.

R. C. to waive

8 Ayes – 0 Nays

Motion carried.

Mr. Tilton moved for passage, seconded by Mr. Hutcheson.

Mr. Kilpatrick: Do we know if S.E.A.T. is current on their payments to the City for fuel?

Mrs. Moyer: They owed \$33,000 (not including the March billing). Their bill is usually about \$50,000. They made a large payment and caught up in January.

Mr. Raines: It is about \$10,000 per month. The fuel they use in February they would get billed for in March.

Mayor Zwelling: Also their funding is unusual, and they have a line of credit with a local bank to pay certain bills until their money comes in. We always get our money, but they are always a little behind.

Mr. Zakany: Do we have a way to know how much fuel the different departments use?

Mr. Sims: We have a Gas Boy Computer System and every vehicle has a key that is tagged to the vehicle. Every time that key is entered it registers the usage to that vehicle.

R. C. for passage
8 Ayes – 0 Nays

Motion carried.

Ordinance No. 10-30 – Introduced by Council – Authorizing the issuance of not to exceed \$1,210,000 of bonds for the purpose of repairing and improving the State Street Bridge, constructing, improving and otherwise enhancing Sixth Street; authorizing a bond purchase agreement appropriate for the sale of the bonds; authorizing an official statement in connection with the sale of the bonds; and retiring notes previously issued for such purpose; and declaring an emergency.

Mr. Tilton moved for first reading, seconded by Mr. Hutcheson.

Mr. Raines: The first ordinance is to retire the note outstanding being held by Century National Bank and roll that into a bond. The second ordinance is to add to that note and roll it into a bond, the projects that were approved last year by City Council for Secret Auditorium, which were doors between the lobby and the auditorium, and also the stage curtains. The cost of the entire bond issue is \$1.2 million, \$1,275,000. The annual debt service would be about \$94,000. The total interest for 20 years (this is preliminary because we do not have a bond rating yet) will be just over \$600,000.

Mr. Vincent: You did some shopping around locally and tried to work some things out with the local banks.

Mr. Raines: I contacted three local banks. One of them responded with a fixed rate for 20 years and the other two responded with fixed rate for a certain period and then whatever the market was at that time the rate would change. I do not feel very comfortable with not have a fixed rate and the other one was an issue over the 5% fixed rate over 20 years the interest would be over \$1 million compared to a little over \$600,000, did not seem competitive.

Mr. Vincent: You figure by the next meeting we will know what our bond rating is going to be and what rate we can expect?

Mr. Raines: We will be having a conference call with the Moody Bond Rating Service. It will not go up terribly. I do not expect it to go down, but it could go up.

Mr. Vincent: It would be good for Council to know for comparisons before the decision is made.

Mrs. Moyer: Can we issue more debt going into this bond? Like the State Street project?

Mr. Raines: There is still work to be done, but that part of it is completed.

Mr. Sims: We have a grant for underneath the bridge repair.

Mr. Baker: Mr. Raines, what was the note that was previously rolled over?

Mr. Raines: The note we have now is just for the Sixth Street and State Street Bridge Projects.

Mr. Baker: What percentage is that of the total of the bond issue going to be worth?

Mr. Raines: It is going to be about \$1.2 million versus about \$65,000. Secrest is a very small part.

Mr. Baker: What is the percentage rate difference between the original note and the bond?

Mr. Raines: The original was short termed note and is 2.5%. The shorter term bonds that mature faster have a 2% or 3%. Longer term bonds have a maximum rate of 4.65%.

Mr. Baker: Is that what we are looking at?

Mr. Raines: We are looking at a series of bonds, the way that it is structured is the shorter the term, the lower the interest rate. The longer the maturity rate, the higher the interest rates.

Mr. Roberts: Did you look into getting a shorter term for just the \$65,000 at a lower interest rate?

Mr. Raines: In essence we are because the initial term of the bonds is 2%. Every year we have bonds that come due and we have to pay the principal. If you look on the ordinance the State Street Bridge and Sixth Street have an estimated life of 20 years. The Secrest has estimated life of 13 years.

Motion carried.

Ordinance No. 10-31 – Introduced by Council – Authorizing the issuance of not to exceed \$65,000 of general obligation limited tax bonds for the purpose of acquiring, constructing, and installing improvements to Secrest Auditorium; authorizing a bond purchase agreement appropriate for the sale of the bonds; authorizing the use and delivery of an official statement relating to the bonds; and declaring an emergency.

Mr. Roberts moved for first reading, seconded by Mr. Hutcheson.

Mr. Baker: This is for curtains and doors, is that right?

Mr. Raines: Yes.

Motion carried.

ORDINANCES FOR ACTION

Ordinance No. 10-24 – Introduced by Council – Amending Ordinance No. 97-127, as amended, which authorized a maximum schedule of positions, and authorizing payment of sick leave reciprocity benefits.

Mr. Tilton moved for second reading, seconded by Mrs. Norman.

Mr. Zakany: At one time we had a full time traffic person, we had a part time, now we went from one and a half employees to one.

Mr. Tilton: You have a full time superintendent, a full time employee and a part time employee. You now have three people in the department.

Motion carried.

Ordinance No. 10-19 – Introduced by Council – An ordinance authorizing the proper City official to enter into a lease with AK Steel Company.

Mr. Tilton moved for third reading and passage, seconded by Mr. Hutcheson.

R. C. for passage
8 Ayes – 0 Nays

Motion carried.

Ordinance No. 10-20 – Introduced by Council – An ordinance amending Chapter 1347 of the Codified Ordinances of Zanesville.

Mr. Tilton moved for third reading and passage, seconded by Mrs. Norman.

R. C. for passage
8 Ayes – 0 Nays

Motion carried.

PRIVATE PETITIONS AND COMMUNICATIONS

Petition from Randy Case – 916 Vine Street

Mr. Case: Has there been a change in policy when the City does a water line repair and there is a possibility of discolored water? There was a repair on Pine Street and I ended up with brown-yellow water. Is there any way it can be put on the news and in the paper when this happens?

Mr. Sims: We do not put it in the paper unless we know that it is a major break that we know is going to cause a problem. This must have been a localized break.

Mr. Case: The other thing is helping with the parks. I have had a few calls from people. I have not talked to the interim park director to see if he had received any calls. Maybe a Council member could step up to spearhead and organize the volunteers. Would any one like to do this?

Mr. Roberts: I think, at your pleasure Mr. Vincent, it should be taken to the Public Service Committee. I think there might be some liability issues regarding volunteers on City property.

Mr. Vincent: We have had this before with Keen Street.

Mr. Sims: We have had volunteer assistance in the past. I requested some information from Mr. Hillis concerning the utilization of City equipment. I do not think there is anyway we can allow that. We had volunteer help in various parks and we will definitely appreciate any assistance we can get. One of our water maintenance employees that lives in the Cuddy Dickson Park area is willing to mow the park every 10 days with his own equipment.

Mr. Tarbert is chairman of that committee and if Council would like for me to get with him I can.

Mr. Vincent: We will send it his way.

Mr. Zakany: There was a service club that was taking care of the bike trail. Is that being done?

Mr. Sims: I have not heard from anyone this year unless they are following up with the superintendent. We are in contact with the Goodwill and they have offered to put three to five middle aged teenagers with a supervisor at no cost or liability to the City to assist with litter pickup and cleaning around the marker stones in the cemeteries.

Mr. Baker: Mike, how close is the project on Wayne Avenue to being finished?

Mr. Sims: Actual they should finish around mid May. It was scheduled to run through June or July, but they are a couple of months ahead. They are sending water tests in Wednesday and they should receive the results back by Thursday or Friday to see if the line has passed. They cannot hook the services up until they get the water test results back.

Mr. Baker: So something like six weeks. Do you actually go out and inspect the project to make sure everything is being done?

Mr. Sims: The engineer and his technician do the inspections as well as water division employees. Mr. Saunders is aware that we will not do any final payment or release of retainage until everything is done to our satisfaction.

Mr. Baker: I have several residents on Wayne Avenue that still have problems with their yards and I want to make sure everything is taken care of.

Mr. Sims: You will always have some dispute. We try to reclaim to previous condition. Some people want it better than it was. No free landscaping.

Mr. Baker: I know we have discussed furloughs as a way of solving some of the City's problems. I know that a legal opinion was given that indicated that might not be legal? It would be a good thing for the administration to make sure that it is a plausible scenario if needed later.

Mayor Zwelling: It would be legal if contracted for. If the unions and the City had an agreement then it could be done. It is not legal for me to impose that.

Mr. Baker: And we know that for certain now? With under the agreements the City has now with the various unions, unless there is a separate agreement there is no way for the City to impose that.

Mayor Zwelling: We would have to meet with each union and they would have to vote to accept it.

Mrs. Moyer: What about civil service? They cannot be furloughed.

Mr. Sims: Only unclassified. Classified cannot. They would have to agree to it as well.

Mr. Vincent: Mayor, do you have any communications?

Mayor Zwelling: The ICARE Association is doing clean up on Saturday. And Mr. Hutcheson's association is cleaning Putnam. Matt Phillips who is furnishing the litter bags and gloves. We appreciate this very much. Any groups in the City want to do something similar contact me and I will hook you up with Matt Phillips.

Mr. Vincent: That information is also on Channel 6.

Mayor Zwelling: This past week I attended a session at 5B's to view a demonstration of the paddle fan adapter. This device is going to be manufactured by BILCO for Mr. Biles. This will mean jobs for the area and looks like a good product.

MISCELLANEOUS AND UNFINISHED BUSINESS

Mr. Hillis: This year we have drastic increase in the City for pothole claims. If someone suffers damage as a result of what they think is the City's responsibility legally, they go to Vicki and obtain a claim form. The claim is then sent to the various departments, investigated, and then it is sent to me. I issue an opinion that I present it to the Board of Control and they vote on whether or not to pay the claim. If a legal claim has been denied, those individuals will contact members of City Council and ask City Council to present a moral claim. I am requesting some input and direction from City Council because this year we have had 56 claims forms obtained in the last month and all but five of those have been for potholes. In the past years we have had an estimated five claims per year for damage caused by potholes.

I have met with Mark Nauer, the Mayor, and Mr. Sims about this issue and the vast majority of these claims I do not believe the City is legally responsible to pay.

I have some suggestions as to how to handle these claims. One manner is to set up a committee on City Council to deal with moral claims and they can review the moral claims and make a recommendation to City Council to proceed with the claim or not. Another recommendation maybe for City Council to decide on a flat amount or a flat percentage that they feel is fair in pothole claims and pass an ordinance or resolution directing me to pay no more than that amount to settle these type of claims. The other solution is to do nothing and if that happens I will send letters to 50 some people and I can assure you that each one of you will be compelled to do 50 some ordinances to deal with this. I would ask that you give me some direction so I know what to do with these claims.

One day on Maple Avenue in front of Baldersons there were seventeen cars that had flat tires from a pothole. I do not know how fast you have to be going to hit a pothole to blow out a tire, but I can tell you that some of these claims are for a blown out tires and some of the claims are for several thousand dollars dealing with bent rims, bent axels, alignments, all kinds of damages. It does not change for me whether it is a \$50 claim or whether is it a \$2,000 claim. The question is: Are we liable for it? The answer certainly may impact on your decision as to how you want to deal with them. Do you want to set a \$50 or \$100 limit or are you going to pay 50% of what the bill is or 40% or look at them individually or appoint a committee to do it.

Mrs. Norman: When are we legally responsible for a pothole?

Mr. Hillis: We are legally responsible if we knew or should have known that the pothole existed and we did not do anything to repair it. Talking with Mr. Nauer, most of the pothole claims will happen in February and March, that time frame the City does not have access to any asphalt. The plants are shut down until April so we cannot purchase hot mix to fill these potholes so we fill them with cold mix. Mr. Nauer stated he has a crew that spends time everyday traveling through the wards patching potholes. He also has a separate crew that covers Maple Avenue on a daily basis. The problem is that they may have patched it and four hours later the traffic washes it out.

The City is not an insurance company we are not required to do anything other than to do reasonable repairs to keep our roads safe. With the harsh winter we get water and it get in the cracks and freezes you get potholes. We cannot patch them correctly with the equipment we have, Columbus has a \$500,000 machine that will mill and heat the asphalt.

The unpaid claims total for this year is probably in the neighborhood of \$15,000 right now. The way it works with claims in the past if the Board of Control decides to pay a claim the money to pay the claim will come out of that department. Mr. Nauer's department is extremely low on funds due to the overtime and severe snow we had and he does not have the funds available to pay the \$17,000 for pothole claims.

Mr. Tilton: You said we had five per year and this year we have 56 claims. Has it gone up in one certain area or throughout the City?

Mr. Hillis: Maple Avenue is extremely bad and Wayne Avenue is also. I would say that 80% of the claims have been from those two areas. Most of them on Maple Avenue.

Mr. Sims: The first occurrence on Maple Avenue there were 14 hits before the Police Department was able to dispatch the street crews out. And we fixed it that night and it blew out by the next morning. Same thing with Wayne Avenue.

Mr. Tilton: With Wayne Avenue it is due to the construction more than of the potholes.

Mr. Sims: Some of it. There is also some going southbound as well, but there have been several related to the construction.

Mr. Hillis: At least two or three that are related to the construction on Wayne Avenue, but there have been at least that many on the other side of Wayne Avenue going the other direction that has nothing to do with the construction. Accordingly to Mr. Nauer there are two specific areas – one on Wayne and one on Maple that are prone to potholes because of the drainage system.

Mayor Zwelling: We have Wayne Avenue scheduled for paving in 2011 and Maple Avenue 2012.

Mr. Vincent: Even though they are state routes it is still the City's responsibility?

Mr. Sims: As far as anything inside the City limits for general repair yes. The overlays are funded 80% -20% by O.D.O.T. That is what we are anticipating for 2011 and 2012.

Mr. Vincent: Typically when a pothole is reported like the one in front of Baldersons you talked about the police being dispatched to go out there, what do they do? Do they drop a cone in front of it?

Mr. Hillis: They usually contact the Street Department and Mr. Nauer gets a crew out there as soon as possible. Sometimes you are talking about things that happen on a Sunday and we do not have anyone working in the Street Department at that time.

Mr. Vincent: Dropping a cone would create some liability issues?

Mr. Hillis: Dropping a cone is going to cause a problem. Are you going to shut down a lane on Maple Avenue for a day?

Mr. Roberts: I assume these claims are made out by an individual and I got a flat tire out on Maple Avenue. I am not going to tell you that I was going 75 mph. I have an issue with \$2,300 for a claim.

Mr. Hillis: I have two claims here for over \$2,300.

Mr. Roberts: That is just for rims and tires?

Mr. Hillis: I would have to look at it. One of them is a Ford and the other is a Mercedes, so I understand why the parts are expensive, a lot of the claims are under \$100 and the bills are attached and they have gone any replaced the tire, but some of them were for a bent rim.

Mr. Roberts: Wayne Avenue is a work in progress, there is not really anything we can do about it.

Mr. Hillis: There are only a couple of claims from Wayne Avenue and I am not concerned with them. The potholes in most of the claims are not in construction zones.

Mr. Vincent: An underinflated tire might add to the problem. We have a Public Service Committee meeting, my thoughts are to send it that way and I am not too keen on the moral claims committee at this point. My thoughts are a flat amount, that might cover the insurance deductible, would be a way to go. I guess my thoughts are to send it to Public Service Committee with the other item.

Mrs. Moyer: Before we gave this to the Law Director we used to say "Tough Luck".

Mr. Hillis: Legal claims always went to the Law Director before I was the Law Director and you gave me the authority to settle claims.

Petition from Kimberly Pepper – 339 Van Horn Avenue

Ms. Pepper: I live just off of Maple Avenue, it is more than just potholes on Maple. There are more and more problems on the sides.

Mr. Baker: You mentioned favoring either the deductible or a percentage of the deductible and that is probably the most elegant solution to the problem. Would that really solve the stack of moral claims coming to the City when you have a \$2,000 repair bill on a Mercedes and the City pays \$200 or a percentage of the deductible, is that going to stop somebody from filing a moral claim with the City and us having to deal with it anyway?

Mr. Vincent: If you have insurance, it is going to cover it. It is going to be no fault and not increase your rates and the City would pay your deductible, you would have nothing out of pocket.

Mr. Baker: Would insurance cover that sort of damage?

Mr. Vincent: I think we need some more information and I would like to see what other cities are doing to help give Council some guidance.

Mr. Hillis: I have one more thing, last Council meeting Dan Quinn addressed City Council about a traffic light issue and asked an opinion as to why it didn't come to City Council or does it have to come to City Council. Hutcheson has sent me email requesting the same information.

My research has indicated that under the Ohio Revised Code the Public Safety Directors are given vast authority to make laws and rules that deal with parking, traffic control devices, and similar things. I will provide a copy of my legal opinion essentially that is if City Council has given that authority to Safety Director. Our Codified Ordinances did give that authority to the Public Safety Director. No, he is not legally required to bring any of his actions to City Council or for City Council's approval if a traffic light, or no parking on the street, or for any of that is done. City Council does not have the authority at the time to vote down his traffic actions. However, under our Codified Ordinances, City Council does have the authority if they do not agree with the traffic order he has passed, City Council can put on an ordinance revoking that and then it would go before all of City Council. Technically, no it is not a legal requirement in the state that if we remove a traffic control device, he comes to City Council and notifies the citizens of it.

Mr. Tilton: Have we not voted down traffic orders before?

Mr. Hillis: Yes you have.

Mr. Tilton: And we are not legally allowed to do that.

Mr. Hillis: Right, it is a technically when you look at it. You have voted down things he has done and you have done it by majority vote. So I assume you have a majority to vote down no parking in a specific location that the same majority would have supported an ordinance revoking what he did. In talking with Mr. Brandford about this his approach has been to ask City Council's guidance and he continues to bring the traffic orders he does not want to simply pass them without your input and he has taken the recommendations in the past and when you said no he has followed that. We had a citizen asking a legal opinion as to why it did not come to City Council and why wasn't he advised, it is not required that he be advised.

Mr. Tilton moved to adjourn, seconded by Mr. Roberts.

Motion carried.

Meeting adjourned at 8:08 p.m.