

Mrs. Norman moved for passage, seconded by Mrs. Gentry.

Petition from: Randy Case, 916 Vine Street

Mr. Case – I am curious as to how from a year ago at a meeting about the water plant this was a \$9,000,000 plant but the minute we find out we have stimulus money it turns into a \$17,000,000 plant.

Mr. Sims – When we looked at this a little over a year ago, we were looking at very preliminary engineering; we were looking at best guess cost estimates from previous projects that the engineering consultant worked on. We thought that we were pretty close but there were some things that have happened in the last year. After we started looking at the design, as everyone knows that attended the meeting, the original thought was to add existing filters outside the plant; utilize the old plant but when we had the meeting with the electrical engineers, we decided we were just going to walk away from the old plant because of the need to completely gut the building. Take all the electrical components out and retro fit everything into an over hundred year old building. We were still thinking that we were around the 79,000,000 figure. There was never any official cost estimate put together until we found out that we were eligible for stimulus funding in late February, we had till March 15 or 21, whatever that cutoff date was to get the application in. We submitted the application based on the best information that we had at the time. The consultant submitted the PTI in a bare bones form to get that through, to make sure that we didn't lose the opportunity and then they put all their numbers together based on the latest design which included some things that we weren't familiar with in the early stages. We had to relocate a portion of Buckeye Drive to accommodate the eight filters, as well as the metering division head quarters and the operators and the lab head quarters.

There will be a DVD requirement in all this Federal Stimulus Funding which will add cost to the project. We will have to pay either State or Federal prevailing wage, which ever is highest and we don't know until we go to bid what's going to be the highest. Everything is going to be buy American clause which is causing some problems because a lot of the strictly American manufactured fitting are either (1) more expensive or (2) not available due to slow down in production and we are going to have to look for some waivers on some of this. When the consultant finally put his estimate together for us, it was about three weeks ago and it ended up being close to \$17,000,000 and he was as shocked as we were.

Mayor Zwelling – Is it not true, Mr. Sims, that 4.5 million is the maximum, we could get no matter what the price is?

Mr. Sims – No matter what the total price of the plant would be; five million is the maximum you can get, we got that and we got half a million on the Wayne Avenue water line. We are allowed up to \$14,000,000 per water project, so we can also borrow \$9,000,000 at zero interest loan for twenty years. I don't think we are ever going to see that opportunity again. No, I wasn't happy with the cost that was put in front of us and that is why I had the Public Service Committee meeting. What we are hearing now, all the contractors are gearing up for this and the prices are going to be higher and there is going to be a price gouge. The consultant is looking at this in a conservative manner to make sure no matter what happens, we are not going to bust this bid. If the bid comes in more than 10% over engineers estimate, we cannot award it and we would have to go back to Council, work through it again, come up with a revised plan and try to eliminate things. We really can't eliminate, we have already looked at that. We are not building a high end plant, it is one of the simplest treatment processes that you can build. There is no surface water included in it which makes the treatment process more difficult and more expensive. We looked at eliminating a filter but here we are sitting right at the brink of maximum capacity now with the system we have. The filters are about \$100,000 a piece; looking at quotes anywhere from \$25 to \$100,000 a piece. We are where we are, it is a great opportunity for us to finally have a new facility. The one we are working off of was last retro fitted in 1984; we still have electrical components that date to the 50's.

Petition from: Michael Wyatt, 1158 Selsam Street

Mr. Wyatt – Since the old City dump was surrounding the present water plant, I suggest that we either select a different location or do something that it will make it a lot better to get a good product. We have had a lot of problems with our water. Look at our field, our field has been contaminated so many times by BFI, the old city dump. I suggest that you do not vote on this today.

Mr. Vincent – We did share that concern as far as what the land is like. We have had problems before with sewage plant construction. They drilled holes and tested the soil, everything has been checked out so far and is fine.

Mr. Sims – As far as the plant site, absolutely. Mr. Wyatt is a little off base with the BFI contaminates, there are no reported contaminates from the landfill at all; the only contamination was generated by dumping of PCV solvents from United Technology back in the 40's. Our water quality has not been impacted by that dump, it has been impacted by the other side of the river.

Mr. Vincent – I think many people can share your concerns with the cost of this project. It will get us a new plant; it's more viable, long term. The tanks will be on one level versus stacked as they are now which does not work very well at all. Without this stimulus money and the loans, the engineering firm did all the figures. Do you have those?

Mr. Sims – If you were to take the stimulus money out which until a month ago we had no clue we had those stimulus funds to spend, anyway. Regardless of stimulus funds the plant cost is going to be what it is going to be \$17,000,000 and if we were to borrow that entire amount at the current D.E.F.A. loan rate at 3.7% for twenty years, it would cost each customer approximately \$7.11 a month. With the \$9,000,000, zero interest and the 4.5 forgiven, basically the grant the resulting increase would be about \$4.19 a month. We were going to build a plant, regardless. The thing that I need to impress upon Council is, the reason for these coming through and the same as I mentioned at the Public Service meeting, we have to be in bid phase by July, so we have to be under contract with the contractor and ready to proceed by the 15th of October if not they will just go to the next project on the list. The sooner we could be to bid, the first ones in line, once these contractors get several stimulus projects like this bid, then they are going to be busy enough. If we had not had the PTI – (Permit to Install) if we had not had that submitted, they would have gone to the next project. The OEPA is in control of this whole project and they review every step of what we do. They are as familiar with the site as anybody.

Mr. Dittmar – There are a lot of negatives but there are a lot of positives on adding a new plant. It is going to be a lot more efficient.

Mr. Sims – One thing we are going to be able to utilize is a back-up generator. Right now we only have one feed to the plant. The EPA requires a redundant fee; currently we are paying for the Sewer Treatment Plant - \$3,500 a month just to have that redundant service there in case the one circuit would go out. The treatment process really isn't going to change much but we will be able to buy all the chemicals in bulk and store them on site.

Mr. Tarbert – For the members of Council who were not at the Public Service Subcommittee meeting, last week, I just want to inform you that there were several members of Council there and all these details were gone over for over an hour with the engineer, the designer. All of these issues were brought up and the Committee's recommendation to Council was to pass this ordinance.

R.C. for passage
9 Ayes – 0 Nays

Motion carried

Ordinance No. 09-57 – An ordinance authorizing the proper City official to apply for an O.W.D.A./D.E.F.A. loan for installation of a backwash line at the Water Treatment Plant and if approved advertise for bids for the construction, and declaring an emergency.

Mr. Tilton moved to waive the three readings, seconded by Mr. Tarbert.

R.C. to waive
9 Ayes – 0 Nays

Motion carried

Mr. Zakany moved for passage, seconded by Mrs. Norman.

Mr. Tilton – Mr. Sims, this backwash line, is it not in the original package with the old plant?

Mr. Sims – No, when we first started looking at this, we were going to do the work ourselves to save money, so we ask the engineer to keep it separate from the plant and we hired them to do a bare bones set of drawings. This line was going to tie in with the EastPointe Industrial Park line that will be coming down Rt 666 and they were going to run their line to the plant; we were going to continue to Mill Run. The only difference now is because we have the stimulus money, we are going to go ahead and just bid that along with the EastPointe project.

R.C. for passage
9 Ayes – 0 Nays

Motion carried

Ordinance No. 09-58 – An ordinance authorizing the proper City official to apply for an O.W.D.A./D.E.F.A. loan for the R-17 and R-19 Sewer Separation Project and advertise for bids for the construction, and declaring an emergency.

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

R.C. to waive
9 Ayes – 0 Nays

Motion carried

Petition from: Michael Wyatt, 1158 Selsam Street

Mr. Wyatt – This 09-58 is a joke, right? If you use that money on the sewer system, does that mean you we will get a cut back on our sewer rates?

Mr. Sims – No, it will mean you won't have an increase in your sewer rates. What I am saying is, because of our ability to get stimulus funding for this, it's going to protect us and the citizens from having to have another sewer rate increase. This is not a large enough project to impact this; had this been a \$5,000,000 project, that will be coming next year or the year after if we don't get some funding on that, that may impact us. The only thing I can say on this one, there may even be the matching money that we have to borrow with low interest loan in the sewer budget, we may be able to waive that part of it and take the \$130,000 with loan forgiveness and pay the balance.

Mr. Wyatt – You guys take this money and spend it like it's water and that's not the way things go.

Mr. Sims – Do you not realize that we are mandated by the EPA to do these projects? You have been to several meetings, (interruption)

Mr. Wyatt – Only if you accept the grant money and then you take money out of the coffers here and you send it up to them because you have to have matching funds for this stuff when you do it.

Mr. Sims – If we didn't have this money, we would have to borrow it anyway from OWDA and pay back. We are mandated to do these project, whether we have funding or not.

Mr. Tarbert moved for passage, seconded by Mr. Dittmar.

R.C. for passage
9 Ayes – 0 Nays

Motion carried

ORDINANCES FOR ACTION

Ordinance No. 09-39 – Introduced by Council – An ordinance to amend and revise the zoning map and make permanent zoning in the City of Zanesville, Ohio as herein provided. (Mc Intire Avenue – YMCA)

Mr. Vincent moved for third reading and passage, seconded by Mr. Tarbert.

Petition from: Tom French, 1268 East Drive

Mr. French – I am here representing my sister, Mary Patricia Baker, 1004 Sunset Avenue. Zoning is based on precedence and everything you do as Council will have something to do with the future of the zoning. What you have to do is protect neighborhoods; businesses notoriously have more ability to get things done politically and economically than the residents do. Residents have to protect themselves, so they form associations. That is what they have to do because otherwise nobody will help them get things done and you are pressured and intimidated by money and politics, that's the facts of life. I served eight years on the Zoning Board of Appeals and I can tell you that almost every case was handled through attorneys and almost every case they use precedent as their argument. We asked this question six weeks ago and it has not been answered; the YMCA got this property from the City of Zanesville for \$8,000 and now they have vacated it. The Y, would they be able to sell that property? That property should go back to the City of Zanesville. This question was asked of Mr. Hillis; Mr. Hillis said that he would not ask the Attorney General because of time elements, because of lack of arguments in the case. Any sale of that property, the proceeds should be to the City of Zanesville. That's our money, that's our property, that's not the YMCA's property. They didn't do what they were suppose to do.

Mr. Vincent – We have always accepted it for fact that this purchase had to do with, if the building was not completed within three years; what everyone talks about, looking at the quitclaim deed from the City of Zanesville. Zanesville's Young Men's Christian Association convey to grant here the City of Zanesville, Ohio an option to repurchase the here and after described land at the price of \$8,600 if within three years of date of execution of said option; planning and pre-construction details have not been completed and actual construction of the YMCA building commenced under the contract for total construction specifying completion date for said construction. To me that doesn't say that it's completed, commence means started, correct Mr. Hillis? I just wanted to share that, so people understood. It did not have to be completed within three years.

Mr. Hillis – There is a number of things, Mr. French, that you stated that are incorrect. First, it was never asked why the City couldn't repurchase the property back for \$8,000, but if it had been asked, I would have said that would have been great if we put it in the deed that we would. Or if we had put it in the deed back in 1969 that we were selling this to the Y for \$8,000 and if you ever sell it to someone else, you have to pay us back or you can't sell it to someone else. Those are all things the City could have put in the deed in 1969, long before I became Law Director, long before any of these people were here. We didn't do it, should we have, we probably should have but we didn't and that has been forty years ago and you cannot now go back and say wow we should have thought of this forty years ago, why didn't we think of it, let's do it now.

Mr. French – What does the deed say?

Mr. Hillis – It says, we had a right to repurchase it, we could have at that time filed something to repurchase it if we felt that the YMCA, back in 1972 had not lived with their requirements, we certainly could have but the Law Director at that time could have filed a law suit and done something. He didn't, I don't know why he didn't.

Mr. French – Why wouldn't that still be able to be done?

Mr. Hillis – Because we can't not do something, then let them finish the project, let them build the building and then wait forty years and then say now we are going to go back and say you didn't do something forty years ago that you should have. Should we have put something in, I certainly think that we should have but we didn't. Could we have filed a law suit back in the early 70's, certainly we could have, we didn't.

Mr. French – They are not meeting their obligations, right now.

Mr. Hillis – I don't believe that there is anything in the deed, that they are not meeting, right now.

Mr. French – They are not even there.

Mr. Hillis – It doesn't say in the deed that they have to be there.

Mr. French – What does it say about resale?

Mr. Hillis – It doesn't say anything about resale. Could it have, certainly it could have. Could we have put that in there, certainly we could have. We didn't.

Mr. French – I still think there is a question there; I think in the law that they would have arguments that would be brought forth as to the time element and to the final execution. I don't think you should pass this until you have that question answered by the Attorney General.

Mr. Tarbert – Mr. Hillis, is the Attorney General even involved in rendering legal opinions to private citizens.

Mr. Hillis – No.

Mr. Tarbert – Mr. Hillis has talked about reasons why we can't bring suit which in legal terms would be a waiver, a stopple, and latches but let me get into the statutory law for a second – O.R.C. 2305.04 specifically says – on recovery of real estate; “An action to recover the title to or possession of real property shall be brought within twenty-one years after the cause of action accrued”. So, not only do we have Mr. Hillis's opinion with regard to common law definition as to why we can't go after the YMCA now; we've got statutory provisions which give a statute of limitations; even if we could we are barred by the statute of limitations within twenty-one years and for those of you who think this is a breach of contract, that's even shorter of fifteen years. That's my opinion and in coordination with Mr. Hillis's common law opinion, this smoke screen about asking the Attorney General to render an opinion for a group of private citizens, I've not seen that happen. Even if it did, I don't know how they would get around the O.R.C.

Petition from: Troy Kenily, 1016 Culbertson Avenue

Mr. Kenily – First, I would like to say to you members of Council, you have a tuff decision, tonight. Our organization is opposed to the rezoning; this is not anti-Y or anti-business issue. As an organization, we have to look long term on a property for zoning. Businesses come and go but homes in our neighborhood will be there continuously. The prime example was the hotel that was built in the 1980's which took out three homes and a Zanesville Art Institute on Adair Avenue. Our neighborhood was opposed to this rezoning, we went to court to try to stop it. Today, you can see why, the hotel sold out to the hospital, and now it is not what it is intended to be used for. We would like to see no more expansion of commercial property. Our neighborhood has been around for over 100 years. Putnam has been around for over 200 years and look what all the commercial property has done for that neighborhood. Back in 2005 was the first that I heard the Y was considering moving and the acting Mayor Zwelling had discussed the possibility of acquiring the building for a community pool. Unfortunately, this did not happen even though I can say the community would like to have a pool.

Petition from: Randy Case, 916 Vine Street

Mr. Case – At the last Council meeting, I asked Mr. Miracle if the Y had met its obligation on the deed. Mr. Miracle said that they did it within three years and it was opened in 1972. I have the paper where it was opened in 1976.

Petition from: Carl Robinson, 817 Maple Avenue

Mr. Robinson – I am totally against the rezoning. I think Mr. Baker made a very valid argument against this at the last City Council meeting. A week ago yesterday, Mr. Miracle was heard on WYBZ, a local radio station, talking to Mary Burkhart and stated the Y had done a great deal of business in 2008 due to the lack of another swimming area in the Zanesville region. I think that speaks volumes in itself. There are municipalities all over, surrounding us that have swimming pools. I recently saw where Dresden opened their pool; they have a pool of the likes of which you would see in downtown Las Vegas. There is nobody asking for anything other than what's due to the kids of this City and that is to keep that area that was designated as by Mr. Mc Intire in his will, March 18, 1815. Vote this down and leave it as is.

Mr. Vincent – I have before me, John Mc Intire's will dated March 18, 1815 and with that it says "all of my estate, whatever kind the same may be for the use and support of a poor school which they are to establish in the town of Zanesville for the use of poor children in said town". I don't see it, I don't see anything about a park. So, as not following John Mc Intire's will, I don't think that fits here.

Petition from: Deanna Martin, 735 Moorehead Avenue

Ms. Martin - What stuck out in my mind was, for the poor. That area that we are talking about, to me is a primary area for our kids. We complain about our young people on the streets but where do they have to go. When I was young, we had places to go that was supervised and that is the key, we need supervision for our young people and that area has a pool. We find things to accommodate other people but when it comes to our youth, that is my main concern. I have one question if this was my neighborhood would I want this commercial business in my neighborhood.

Mr. Mc Peek – The transfer of the property as a park; I believe was done by the executors of the Mc Intire will after the passing of John Mc Intire's wife. It was a decision made by the executors of the estate; 12.8 acres left to the City of Zanesville as Mc Intire Park.

Mr. Zakany – I listen here, tonight, all the legal documents how they were messed up, I believe they were messed up by attorney's. I know there are members of Council that have already taken sides and they are wrong. I still think it should be kept for the kids.

Mr. Tarbert – We have talked about this issue quite a bit, I think you are right, Mr. Zakany, I think there minds are probably already made up on Council. But there was something interesting, tonight; we have touched on it before but I understand this use to be a park and it is fond in your memories but we didn't kill that park; the Interstate killed that park, not City Council, not the City of Zanesville. The Interstate going though there killed that park and by doing that by looking at a map, again you have got entrance ramp, exit ramp and Interstate on three sides of this, that is not a residential piece of property, this is not a lot on Sunset, this is not a lot on Convers, this is not going in a neighborhood, right next to a house. There is commercial across the street and there is interstate on three sides of this. If you were looking at a map of this City and we didn't have Mc Intire-Terrace here, this was just a zoning issue, which is what it should be that is a commercial piece of property, it is not residential. Nobody is going to buy that piece of property and put a house there. Nobody is going to turn that into a residents and as far as the City making that a park, we don't own it. We don't own that piece of property, we're not selling it. It's not us that's selling that piece of property. We can't make it a park because we don't own it. We are here to look at it, to look at that one piece of property and say is this residential or is this commercial and based on all the facts surrounding that property, it's a commercial piece of property.

Mike Anderson, 1017 Convers Avenue spoke

Mr. Anderson – The park should stay the way it is – I don't think you should take an area that has potential for such a park in an area where we don't have any other green space like that.

Mr. Tarbert – Another concern that I have and this not an attack on the association or an individual in that association but this issue was brought to us in 2005 and Mr. Amicone was here talking about a Boys and Girls Club*; I think there were Mc Intire Terrace people here saying we should make this a City park, we could raise the money; we've seen no action. We've seen no representatives from the Boys and Girls Club, --- all I am saying, this is not a new issue. Nothing in four years, no action brought before Council to raise the money, to bring a Boys and Girls Club here, we've seen nothing. I put a little of the burden on you folks who knew about this in 2005 and didn't approach me, I don't know if you approached the rest of Council but I've not heard anything for four years.

Harriett Amicone – spoke

Mrs. Amicone – I would not bring a Boys and Girls Club down into this mess until we have it resolved. There are people in here that support the park. They will keep it as long as you want to keep it for the kids. This belongs to the poor kids of this community, that's why I suggested a Boys and Girls Club. A Boys and Girls Club is not a field house, it is not a YMCA, it serves the poor. You have a lot of poor people in this city. You have a centrally located park that exists, that was built by the community. It deserves to stay a community park for the poor.

Mr. Tarbert – I was never opposed to a Boys and Girls Club. I was never opposed to it when your husband came here.

Mrs. Amicone – He was never here, I was here. We were going to put the Boys and Girls Club in our own business.

Mr. Robinson – I just want to ask the Mayor a couple of questions that's dated in Sunday, July 17, 2005 newspaper article – where he said he was going to check on possible funding to see if any funding was available. Did you ever do that, Mayor?

Mayor Zwelling – I did request – I said it would make a wonderful gift to the City of Zanesville if the Y property would be given to the City. I know what the financial situation is for Coshocton, Dresden, Heath and they are barely able to keep their heads above water.

Mr. Robinson - That isn't the question that I ask you, this is a quote: I want to check and see if there are any grants available before we try to sell this to Council. Did you check?

Mayor – I am not aware of any.

Mr. Robinson was removed from the Council Chambers.

Mr. Tilton moved to call the question. Two – Ayes / Two Nays – Asked for Roll Call.

Mr. Hennessey – Mr. Tilton has asked to call the question; that means it goes to vote if Council agrees with the motion.

R.C. to call the question

9 Ayes – 0 Nays

Motion carried

R.C. for third reading

4 Ayes – Mr. Vincent, Mr. Tilton, Mr. Tarbert, Mr. Dittmar

5 Nays – Mr. Kilpatrick, Mr. Mc Peek, Mr. Zakany, Mrs. Gentry,
Mrs. Norman

Motion defeated

Mr. Tilton moved to insert the new Ordinance 09-44-B in place of 09-44-A, seconded by Mr. Zakany. Motion carried.

MISCELLANEOUS AND UNFINISHED BUSINESS

Mayor Zwelling – I had a meeting, this afternoon, with the new District Executive Director of O.D.O.T. District 5 from Jacksontown and that individual is Carl Newman, a native of Zanesville and he happens to be married to Councilwoman Norman's daughter.

Mr. Brandford – The last Council meeting, we had a gentleman come and talked about the dispatcher and it is more involved but by next Council meeting I will have a report for Council.

Mr. Zakany moved to adjourn, seconded by Mr. Tilton. Motion carried.

Meeting adjourned at 8:45 p.m.