

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
MINUTES OF
REGULAR MEETING APRIL 1, 2002**

CALL TO ORDER: 8:00 P.M.

President of Council David Gillock: I would like to call this Regular meeting of the North Ridgeville Municipal Council to order. Please stand for the Invocation and the Pledge of Allegiance.

INVOCATION: lead by Council President David Gillock.

PLEDGE OF ALLEGIANCE: by all.

CALLING OF THE ROLL - ROLL CALL:

Present were Council Members Nancy Buescher, Josanne Pagel, Bob Olesen, Bernadine Butkowski, Denny Johnson and David Gillock. Also, present were Mayor Deanna Hill, Safety-Service Director Jim Johnson, Law Director Eric Zagrans, Engineer Tom Beutler, Auditor Chris Costin was represented by Deputy Auditor Donna Kiraly and Clerk of Council Chuck Norris was represented by Clerical Aide Sandy Hall. Absent was Council Member Allen Swindig. Also, absent were Auditor Chris Costin and Clerk of Council Chuck Norris.

motion by President Gillock that Sandy Hall be appointed the Acting Clerk of Council for this evening so she may be able to sign and attest the signatures. 2nd by Johnson.
President Gillock: Is there any discussion? If not, please call the roll.
Yes, 6 No, 0

MINUTES - Corrections and Approval:

President Gillock: You have before you the Public Hearing Minutes of March 18, 2002. Is there a motion to approve?

motion by Butkowski to approve, 2nd by Olesen
President Gillock: Is there any discussion? This is on the Solomon Agricultural District application. If not, please call the roll.
Yes, 6 No, 0

President Gillock: You have before you the Regular Council Minutes of March 18, 2002. Is there a motion to approve?

motion by Butkowski to approve, 2nd by Buescher
President Gillock: Are there any additions or corrections? I have a couple. On page two, right in the middle of the page, it's signed by Josanne Pagel, Bob, it should be "Olesen". It's just a misspelling. On page nine, the next to the last paragraph, 13 lines up from the bottom, it says

“interrupted” our charter, it should be “interpreted”. And on page ten, in the fifth line down, that should be, so “except” rather than “accept”. Are there any others? If not, please call the roll.

Yes, 6

No, 0

President Gillock: Please note:

Planning Commission and Board of Zoning and Building appeals Work Session Minutes of February 28, 2002;

Planning Commission Minutes of March 12, 2002;

Parks & Recreation Minutes of February 27, 2002.

At this time I would like to bring up for Agenda purposes, a memo we received from Mr. Johnson and he might explain a little more. Mr. Johnson, the Safety-Service Director, has asked that we suspend By-Laws, for closure, for several ordinances which missed cloture for a matter of a few minutes, for I think a valid excuse and I would like to ask Council to accommodate. Mr. Johnson, is there anything else you would like to add?

Safety-Service Director Johnson: Yes, during the course of the day I involved the Secretary in the Law Office in a lot of looking up ordinances for the satellite discharge system and at the end of the day she gave me those and it happened to be about five minutes past cloture so we missed it and it was due to the extra work that I had given her.

motion by President Gillock to suspend By-Laws to allow the ordinances attached to Mr. Johnson's memo to be added under New Business this evening. 2nd by Olesen

Yes, 6

No, 0

President Gillock: Would the Clerk please assign T numbers to these please.

Acting Clerk Hall: The street sweeper would be T 31-2002, for crack sealing would be T 32-2002, for a static roller would be T 33-2002, for rummage sales would be T 34-2002, for ADS contract would be T 35-2002 and for senior rental agreement would be T 36-2002. Those are all that I have.

President Gillock: These will be brought up under New Business.

COMMITTEE REPORTS:

Acting Clerk Hall:

BUILDINGS & LANDS COMMITTEE REPORT #7149. We have considered the matter of the application for placement of farm land in an agricultural district by Joseph and Joyce Solomon on Avon Belden Road in an Agricultural District and recommend that this request be approved and proper legislation be drawn authorizing the approval with modification as the same in their previous application.

Signed: Chairperson Robert W. Olesen, Members Josanne K. Pagel, Nancy J. Buescher.

motion by Olesen to accept, 2nd by Butkowski

President Gillock: Any further discussion? If not, please call the roll.

Yes, 6

No, 0

QUESTIONS FOR THE FOLLOWING WRITTEN REPORTS:

President Gillock: We have no written reports this evening.

Mayor: None

Safety-Service Director: None

Engineer: None

Law Director: None

AUDITOR'S REPORT:

Deputy Auditor Kiraly: I have no report.

OTHER REPORTS:

President Gillock: Please note:

Police Department Support Car Report for February 2002;

Mayor's Court Case Report for February 2002;

Service Department Report for two weeks ending March 23, 2002

Senior Citizens Advisory Board Liaison Report:

Council Member Butkowski: I would like to announce, once again, the Singing Angels will be at Lake Ridge Academy on April 7th at 2:00 p.m. All the proceeds for the five dollar admission will go to the Senior Center. Seniors are also having a spaghetti dinner on April 26th from 5:00 to 7:00 P.M. All your help would be appreciated.

Planning Commission Liaison Report:

President Gillock: Would the Clerk please read the applications.

Planning Commission meeting of March 12, 2002

Applicant: Wooster Buildings LLC, P. O. Box 154, Wooster 44691;
 Robert C. Kapper

Owner: North Ridgeville Church of God, 6000 Lear Nagle

Request: Build proposed 24 foot by 48 foot storage building

Location: 6000 Lear Nagle Road, in R-1;
 Permanent Parcel No. 07-00-008-117-046

PC Action: Approved unanimously.

 motion by Olesen to approve, 2nd by Johnson

President Gillock: Is there any discussion?

Council Member Olesen: This is for the church to build a 24 by 48 foot storage building and the

PAGE 4

Acting Clerk Hall: Motion is approved six, zero.

Applicant: Voicestream Corporation, 4834 Wood Street, Willoughby, 44094
Owner: Gary & Belinda Pierce, 8067 Maddock Road
Request: Build a 149 foot 6 inch cellular tower in I-2 zoning district and erect fencing around the lease site with electronic cabinets within the fenced lease area, tower designed for two co-locations
Location: 8067 Maddock Rd., Permanent Parcel No. 07-00-00027-109-021
PC Action: Approved three to two.

President Gillock: Is there a motion to approve?

motion by Olesen to approve

President Gillock: We have a motion by Olesen to approve. Is there a second?

2nd by Gillock for purposes of discussion

President Gillock: Is there any discussion?

Council Member Olesen Mr. President, this was scheduled to be heard at the Board of Zoning Appeals with a variance of 690 feet on this application. Although they are an industrial area it abuts a long residential lot. The case was not heard because the residents signed a petition asking for a witness to come in on their behalf to testify, who could not be available on such short notice. Consequently, this case is not going to be heard by the Board of Zoning Appeals until April 25. I would recommend that perhaps we will want to postpone this until May 6.

motion by Olesen to postpone approval until May 6

President Gillock: Is there a second?

Council Member Pagel: Mr. President, you have a motion on the floor. Is this a subsidiary motion?

President Gillock: Yes, this is a subsidiary motion to postpone. Is there a second? Motion fails for lack of a second. Further discussion?

Council Member Butkowski: Mr. President, I think they're asking for 690 square feet of variance. That's extremely excessive. There's other locations that are already in existence. I know they said they had some problems with those but, they were not specific on what the problems were. I think we have to take into consideration that this does not have to go to the Board of Zoning Appeals if we don't approve it here tonight. There's a lot of people in the neighborhood that are against it. If this thing goes in we could be looking at this at other locations. The I-2 runs a very narrow strip along there and they could be coming in with other companies asking for the same thing and affecting them. The City has a very tall water tower. Maybe they can start putting them all up on there. It's not as close to residential.

Council Member Buescher: Mr. President, I just wanted to say that this tower will be located only 75 feet away from one of the residents. That's my understanding and that's way too close.

Council Member Johnson: Mr. President, Voice Stream Corporation expressed a desire to move very quickly on this. They were pretty adamant about that. I think they deserve our up or down vote as soon as we know what it is. Rather than delaying it any further, I'd like them to know how we feel.

Council Member Olesen: Mr. President, I just want to clarify one thing. The tower is not 75 foot from any residence. It's actually 750 feet away, but it is within that amount of space to the

residential lot line. In other words, it's a long lot line.

Council Member Buescher: Thank you.

Council Member Pagel: Mr. President, according to the ordinance that deals with variances in the zoning, this does not meet with the criteria to grant a variance for this accordingly, too, it could cause possible damage to the property value of the residents that are in that area and there are six families that do make this a neighborhood. I believe that we need to be prudent about this.

President Gillock: Any other comments? If not, please call the roll.

Yes, 0

No, 6 (Buescher, Pagel, Olesen, Butkowski, Johnson, Gillock)

Acting Clerk Hall: Motion is denied zero to six.

Request: In accordance with Codified Ordinance 1279.26 CLUSTER AREA SITE DESIGN AND APPROVAL, these line items have been submitted for Planning Commission review:
C.O. 1279.26, Paragraph 3, lines 1 and 2, City Engineer and the City Planner review;
C.O. 1279.26, Paragraph 4, lines 1 through 3, Law Director approval;
C.O. 1279.26, Paragraph 5, lines 1 through 3, Planning Commission evaluation of the reports of the Engineer, City Planner and Law Director regarding cluster area site plan; for Andover Place at Waterbury PCD.

Disposition: The Planning Commission has carefully reviewed the City Planner, Law Director and City Engineer Reports as well as correspondence from the Fire Chief and administrative officers comments regarding the revised plan. We confirm our position of site plan approval.

President Gillock: Do we have a motion to approve?

motion by Olesen to approve, 2nd by Gillock

President Gillock: This is the application that was returned to Planning because it was lacking a City Planner's Report for their review. They've now received that, reviewed that and as you see confirmed their position of approval of the site plan. Is there any other discussion? If not, please call the roll.

Yes, 3

No, 3 (Buescher, Butkowski, Johnson)

President Gillock: Motion fails three to three.

Request: Information briefing by Whitlatch & Co., P. O. Box 363, Twinsburg, regarding Forest City in the development of Waterbury PCD for a proposed detached cluster development and a proposed attached single family condominium development.

Disposition: See Planning Commission minutes of March 12, 2002 for further details.

President Gillock: No action is needed on this one as that was an informational briefing only and there is nothing to approve. If anyone wants to comment on it you are free to do so.

Council Member Olesen: The only comment that I would have is that this looks like a very nice proposal. The buildings looked very attractive but we don't have enough details at this point to really do anything else with it.

Council Member Butkowski: Mr. Chairman, I was going over the original map for this area and it said in that area they were going to be building collector's single family homes. Then, I looked at this new map and these are five and six thousand square feet homes and it didn't say anything in the original plans about detached clusters or condominiums. It seems like they're deviating from their original plan.

President Gillock: If they do deviate from the original plan, they have to go through Planning but they'll have to go through Planning for this anyway. This was a cluster so, they do have to make that step and they still have a hearing on it also.

Council Member Butkowski: I was wondering how that was going to change the density over all?

President Gillock: As long as they are under 3.24 on the total project, it's up to Planning whether they want to approve that site plan or not. They can't exceed the 3.24 for the total project.

OLD BUSINESS: None

NEW BUSINESS:

Acting Clerk Hall:

T 30-2002 An ordinance providing for the issuance and sale of notes in the maximum aggregate principal amount of \$6,790,000, in anticipation of the issuance of bonds, to pay the property owners' portion, in anticipation of the levy and collection of special assessments, and the City's portion of the cost of constructing a sanitary trunk sewer, together with the necessary appurtenances and work incidental thereto from an existing manhole in Case Road at the northern corporate boundary of the City south in Case Road a distance of approximately 300 feet and then easterly and southerly in City easements, properties and rights-of-way to a point approximately 2,400 feet east of and 2,600 feet south of the intersection of Race Road and Sugar Ridge Road.

President Gillock: Other new business. Let's do the ones that were submitted earlier that we suspended closure for.

T 31-2002 An ordinance authorizing the Mayor of the City of North Ridgeville, Ohio, to purchase a street sweeper from the State Co-Op, or to advertise for bids and enter into a contract with an outside vendor according to law and in a manner prescribed by law, not to exceed \$110,000.00.

motion by Mayor Hill to suspend By-Laws for first reading, 2nd by Olesen

President Gillock: Any discussion? Mayor Hill?

Mayor Hill: This along with some of the others, funds have already been appropriated by Council. We'd like to move these along because these are things that our Service Garage is able to do in the summer time so we want to be able to complete the process and to do the purchase and to get the equipment in place prior to the beginning of the season. This couldn't have been done before because of the appropriations procedure. It's kind of like it takes another step.

President Gillock: Any other discussion? Please take roll.

Yes, 6 No, 0

T 32-2002 An ordinance authorizing the Mayor of the City of North Ridgeville, Ohio, to purchase a crack sealing distributor from the State Co-Op or to advertise for bids and enter into a contract with an outside vendor according to law and in a manner prescribed by law, not to exceed \$33,500.00.

motion by Mayor Hill to suspend By-Laws for first reading for the same reasons, 2nd by Butkowski

President Gillock: Any other discussion? If not, please call the roll.

Yes, 6 No, 0

Acting Clerk Hall: Motion is approved six, zero.

T 33-2002 An ordinance authorizing the Mayor of the City of North Ridgeville, Ohio, to purchase a six ton static roller from the State Co-op or to advertise for bids and enter into a contract with an outside vendor according to law and in a manner prescribed by law, not to exceed \$41,500.00.

motion by Mayor Hill to suspend By-Laws so that we can get started on the work for first reading for the same reasons, 2nd by Butkowski

Council Member Butkowski: I also want to make a correction on there.

President Gillock: Just a second. Okay, discussion?

Council Member Butkowski: That \$41,500.00 should be reduced to \$39,000.00. That was the approval on the appropriation that it was sufficient to purchase that.

motion by Butkowski to reduce the amount of \$41,500.00 to \$39,000.00, 2nd by Johnson

President Gillock: Is there any other discussion on the amendment? Please call the roll on the amendment.

Yes, 6 No, 0

Acting Clerk Hall: Motion to amend is approved six, zero.

President Gillock: Any other discussion on suspending By-Laws to give the first reading? If not, please call the roll.

Yes, 6 No, 0

Acting Clerk Hall: Motion to suspend By-Laws for first reading is approved six, zero.

T 34-2002 An ordinance amending North Ridgeville Codified Ordinance Section 858.04 to allow for City-wide garage or rummage sales.

President Gillock: Comments? T 35.

T 35-2002 An ordinance amending Ordinance 3752-2001 extending the monthly contract with ADS Environmental from January 31, 2002 through April 30, 2002 at the rate previously approved of \$1920.00 per month and approving payment thereof.
 motion to suspend By-Laws for the first reading, 2nd by Olesen

President Gillock: Any discussion?

Mayor Hill: Yes, Mr. President, just to further explain, the contract expires April 30 so we need to have a contract in place and if we can at least give it a first reading tonight and then perhaps consideration at the next meeting for a vote, that would be appropriate.

President Gillock: And this is for maintenance of flow meters at the French Creek plant. This comes up every year. Right?

Mayor Hill: That's correct.

President Gillock: Any other discussion? If not, please call the roll.

Yes, 6 No, 0

Acting Clerk Hall: Motion to suspend for first reading is approved six to zero.

T 36-2002 An ordinance modifying the terms of the Senior Center Rental Agreement and reflecting increased fees and amending NRCO Section 1064.02.

President Gillock: Any discussion? I have one other piece of new business. I have a request from Jim Spaulding the Parks and Rec Director. I am the Liaison to Parks and Rec also. Parks and Rec approved an expenditure of \$6,000.00 from their Improvement Fund for the purchase of gravel for expanding the parking areas at Shady Drive Complex and the Soccer Complex. Soccer games start this Saturday, practice at Shady Drive will start May 1. The money has been appropriated. They've approved it but they need our approval since it is over \$5,000.00.

 motion by Gillock to approve Parks and Rec expending \$6,000.00 from the Parks and Recreation Improvement Fund, 2nd by Butkowski.

President Gillock: Any other discussion? If not, please call the roll.

Yes, 6 No, 0

Acting Clerk Hall: Motion is approved six to zero

CORRESPONDENCE:

Acting Clerk Hall:

1) Received a letter from Thomas O'Leary, District Deputy Director for the Ohio Department of Transportation inviting Council Members to attend the Lorain County Government Day scheduled for Friday, April 5, 2002 at the Lorain County Community College, Spitzer Conference Center from 9:00 A.M. to 11:00 A.M.

2) Received a News Release from the Government Finance Officers Association,

Washington Office, announcing that the award of the Certificate of Achievement for Excellence in Financial Reporting has been presented to Chris S. Costin, CPA, CFGM, City Auditor as the individual designated by the government as primarily responsible for preparing the award winning CAFR. This is the highest form of recognition in the area of governmental accounting and financial reporting and its attainment represents a significant accomplishment.

President Gillock: Just a comment. The CFAR report is the comprehensive annual financial report that you've all received.

3) Received a copy of a letter from Larry Kane, John Stanfield and Joseph Zuberny to the Board of Zoning and Building Appeals in regard to an application to build a cellular phone tower on Maddock Road.

4) Received a letter from Kathleen Crowther, Executive Director of the Cleveland Restoration Society announcing the Northeastern Ohio Emerging Preservation Leaders Scholarship Program enabling local individuals from diverse professional and cultural backgrounds to participate in the 2002 National Preservation Conference.

5) Received a letter from Auditor Chris S. Costin stating that he has reviewed the Engineer's correspondence with regard to water rates, reviewed his calculations, reviewed applicable water bills from the City's water supplies and concur's with the Engineer's findings that a water rate increase 2.34 percent is applicable for the year 2002.

President Gillock: According to our Auditor, the average cost of the increase to the average homeowner would be fifty cents per month or less. It would be a total of less than \$50,000.00 to the City. We don't need the money currently in the Water Fund now. According to the Auditor, give the residents a little relief for a year. So I will refer that to Utilities, Mr. Johnson.

Council Member Johnson: That's the kind of rules I like to hear.

REFERRED TO UTILITIES COMMITTEE TO CONSIDER AN ORDINANCE TO SUSPEND THE WATER RATE INCREASE FOR THIS YEAR.

LOBBY:

President Gillock: We now move into our lobby portion of our meeting. Anyone wishing to address Council may do so. Approach the podium and there are sign up sheets in the back. You will have three minutes. We request your name and address so we have them for our records. Miss Glenn, you had made a request and would you like to go first?

1) Kellie Glenn, Assistant Director for the Lorain County Community Development, introduced herself stating that the Director is Ron Twining and she is here because they have started Staff Liaison in communities and she has been assigned to North Ridgeville. If you have any problems, concerns or you need help with the County, I can try to help you. Right now I working with Jim McVeigh to help North Ridgeville update their Housing Impediment Study.

- 2) John Prajzner of 35140 Mildred Street, urged Council to oversee the financial well being of the City by overriding the Mayor's veto of 3780-2002.
- 3) Tom Lavelle of 5875 Lear Nagle, stated that we wouldn't have any need for this ordinance if it wasn't for Stamp suing. I don't think he has a lot to say about the way the money is spent in this City when in my opinion he wasted it.

Mayor Hill: Excuse me, Mr. President, I think the Law Director wishes to respond. He had his hand up.

President Gillock: Okay, go ahead.

Law Director Zagrans: I just wanted to make sure everyone was clear that Mr. Prajzner once again misquoted me rather badly. I didn't say that the framers of Section 11.6 of the Charter intentionally did what they did. What I said was, I couldn't assume that they didn't intent to do and mean what they say. That's very different. Not putting myself in, the being able to read the minds of people that I don't even know, I'm saying rather, that as a matter of legal interpretation, it would be wrong to conclude that they didn't mean what they said. Thank you.

President Gillock: Anyone else? We will adjourn until five minutes until nine.

RECESS: from 8:47 P.M. until 8:55 P.M.

FIRST READINGS:

T 31-2002 AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF NORTH
3781-2002 RIDGEVILLE, OHIO, TO PURCHASE A STREET SWEEPER FROM THE
STATE CO-OP, OR TO ADVERTISE FOR BIDS AND ENTER INTO A
CONTRACT WITH AN OUTSIDE VENDOR ACCORDING TO LAW AND IN
A MANNER PRESCRIBED BY LAW, NOT TO EXCEED \$110,000.00.

First Reading

motion by Mayor Hill to dispense with second the third reading, 2nd by Butkowski

President Gillock: Is there any discussion? If not, please call the roll.

Yes, 5 No, 1 (Johnson)

Acting Clerk Hall: Motion is approved five to one.

motion by Mayor Hill to adopt, 2nd by Butkowski

President Gillock: Any discussion? Please call the roll.

Yes, 6 No, 0

Acting Clerk Hall: Motion approved six to zero and becomes ordinance number 3781-2002.

Permanent Ordinance No. 3781-2002

T 32-2002 AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF NORTH
3782-2002 RIDGEVILLE, OHIO, TO PURCHASE A CRACK SEALING DISTRIBUTOR

FROM THE STATE CO-OP OR TO ADVERTISE FOR BIDS AND ENTER INTO A CONTRACT WITH AN OUTSIDE VENDOR ACCORDING TO LAW AND IN A MANNER PRESCRIBED BY LAW, NOT TO EXCEED \$33,500.00.

First Reading

motion by Mayor Hill to dispense with second and third readings, 2nd by Butkowski

President Gillock: Any discussion? If not, please call the roll.
Yes, 5 No, 1 (Johnson)

Acting Clerk Hall: Motion is approved five to one.
motion by Mayor Hill to adopt, 2nd by Butkowski

President Gillock: Any discussion? If not, please call the roll.
Yes, 6 No, 0

Acting Clerk Hall: Motion is approved six to zero, becomes ordinance number 3782-2002.
Permanent Ordinance No. 3782-2002

T 33-2002 AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF NORTH
3783-2002 RIDGEVILLE, OHIO, TO PURCHASE A SIX TON STATIC ROLLER FROM
THE STATE CO-OP OR TO ADVERTISE FOR BIDS AND ENTER INTO A
CONTRACT WITH AN OUTSIDE VENDOR ACCORDING TO LAW AND IN
A MANNER PRESCRIBED BY LAW, NOT TO EXCEED \$39,000.00.

First Reading

motion by Mayor Hill to dispense with second and third readings, 2nd by Butkowski

President Gillock: Any discussion? If not, please call the roll.
Yes, 5 No, 1 (Johnson)

Acting Clerk Hall: Motion is approved five to one.
motion by Mayor Hill to adopt, 2nd by Butkowski

President Gillock: Any discussion? If not, please call the roll.
Yes, 6 No, 0

Acting Clerk Hall: Motion is approved six to zero and becomes ordinance number 3783-2002.
Permanent Ordinance No. 3783-2002

T 35-2002 AN ORDINANCE AMENDING ORDINANCE 3752-2001 EXTENDING THE
MONTHLY CONTRACT WITH ADS ENVIRONMENTAL FROM JANUARY
31, 2002 THROUGH APRIL 30, 2002 AT THE RATE PREVIOUSLY
APPROVED OF \$1920.00 PER MONTH AND APPROVING PAYMENT
THEREOF.

First Reading

President Gillock: That's all the first readings. Second readings.

SECOND READINGS:

T 24-2002 AN ORDINANCE AMENDING CERTAIN SECTIONS OF NORTH RIDGEVILLE CODIFIED ORDINANCE CHAPTER 452 REGARDING PARKING TO INCREASE AND TO STANDARDIZE THE WAIVERABLE FINES AS FAR AS PRACTICABLE.

Second Reading

T 26-2002 AN ORDINANCE ADDING LANGUAGE TO NORTH RIDGEVILLE CODIFIED ORDINANCE SECTION 1044.02(C), (D), (E), AND (F) ESTABLISHING THE CHARGE FOR A CHANGE OF USE OR FOR INCREASED USE IN THE USE BENEFIT CALCULATION.

Second Reading

T 29-2002 AN ORDINANCE AMENDING SECTIONS 246.01, COMPOSITION OF THE POLICE DEPARTMENT.

Second Reading

THIRD READINGS:

None

UNFINISHED BUSINESS:

President Gillock: We have Ordinance 3780-2002 which was an ordinance establishing a procedure in the matter of hiring and contracting for outside legal and professional services. The motion was vetoed by the Mayor. We received her letter on March 26, 2002. The Charter requires that upon receiving her veto that we reconsider the matter at our next regular scheduled meeting.

motion by Gillock to override the Mayor's veto, 2nd by Johnson

President Gillock: Open for discussion.

Council Member Olesen: Mr. President, for the last two weeks some Council Members, myself included, have done some serious soul searching on this matter. On one hand we looked at the new legislation to show those we serve that we want to take even better care of the monies that they have entrusted to us. On the other, some doubts have been cast on the legality of our doing so with respect to our City's Charter and the interpretation of the authority that is actually vested in Council. Whatever the outcome of this vote tonight, I urge and I implore Council and the Administrative Committee, to take prompt action in drafting an amendment to Charter 11.6 that will allow the voters to officially decide this issue once and for all. Only then, will we be assured that no future Administration and Council will again be at odds in dealing with this issue.

Mayor Hill: Mr. President, my veto of Ordinance No. 3780-2002 has nothing to do whatever with the judgement by the Administration of the merits of such an ordinance, fiscal responsibility, nor who controls the City funds. In fact, and I want to be very clear about this, I actually support requiring specific Council approval for expenditures exceeding \$15,000.00 for professional and legal services. However, my first veto since taking office over six years ago was issued after

much deliberation, consideration and the conclusion that the ordinance violates the City Charter. Power and control over the appropriation of public funds is the right and responsibility, which I also support, of City Council. As made clear by past practice and procedures followed by multiple Administrations, including this present Administration, and as outlined by City Charter, Ordinance Number 3780-2002 does not limit spending. The annual budget as approved by City Council establishes ultimate control over public funds. Nothing about those issues or the required relationship between Council and the Administration on fiscal matters is altered by this veto. Instead, this veto is all about upholding the City Charter as I am sworn by my oath of office to do and as I am required to do by the City Charter. Section 11.6 of the Charter deviates from the provisions of Ohio law for public contracts greater than \$15,000.00. Section 735.05 of the Ohio Revised Code provides that any City expenditure or contract in excess of \$15,000.00, whether to buy goods, supplies and materials or to hire professional services, must first be authorized by ordinance. However, Section 11.6 of the Charter provides that City Council must first authorize by Ordinance those contracts or expenditures in excess of \$15,000.00, "for purchase of supplies or material", only. In other words, by limiting the requirement of prior Council authorization to large purchases of supplies and material, the Charter carved out an exception for purchases of professional services that is different from the requirements of Ohio law. I cannot assume that the specific departure from existing Ohio law was inadvertent or not intended or a typo by the framers of 11.6 and the people of North Ridgeville who ratified it. To assume that the language of Section 11.6 was the product of mistake or ignorance would violate the basic tenants of our City government and undermine the public's faith and trust in the rule of law and in the sworn commitment of City officials to uphold the law. I cannot and will not do so. Council cannot change the Charter simply by adopting an ordinance. If Council wishes to change the past and current requirements for contracts and expenditures for professional services in order to conform to Section 735.05 of the Ohio Revised Code, it can do so only by placing the issue amending 11.6 of the Charter on the ballot and subsequent voter approval. Accordingly, I issued my veto of Ordinance No. 3780-2002. Thank you

President Gillock: Anyone else? Mrs. Butkowski.

Council Member Butkowski: Mr. President, Section 11.6 of our Charter says each net expenditure for any contract for purchase of supplies or materials other than the compensation of persons employed by the City that exceeds the financial limitations imposed by the statutes of the State of Ohio including lease or lease purchases of facilities or equipment exceeding the same statutory limits shall first be authorized and directed by the ordinance of City Council. At the March 18 Council meeting, the Law Director stated Section 11.6 of the Charter omits professional services and outside legal counsel. They are included in the Ohio Revised Code. Mr. Zagrans has stated here on Council floor that the Charter does not address a particular issue then the Ohio Revised Code takes over. Then you would have to conclude the Ohio Revised Code would take over and the ordinance that we have in front of us here again tonight would be lawful.

President Gillock: Anyone else?

Law Director Zagrans: Yes, Mr. President.

President Gillock: Is this a legal opinion?

Law Director Zagrans: I was just going to respond to what Mrs. Butkowski said.

President Gillock: Okay, go ahead.

Law Director Zagrans: Thank you. Mrs. Butkowski would be entirely correct in the absence of any provision in the Charter you look to the Ohio Revised Code. But the Charter does legislate. The Charter is not silent on this topic. It adopted 90 percent of the language of the Ohio Revised Code verbatim on this very point of spending of Section 735.05 of the Ohio Revised Code. It did not adopt the other 10 percent. It specifically omitted professional services from the language that it incorporated from the Ohio Revised Code. That's not the absence, that's not the silence of the Charter speaking to the point. That is the Charter speaking volumes on the point. Thank you.

President Gillock: Anyone else? Mr. Johnson?

Council Member Johnson: Mr. President, this is not a complicated issue. The Ohio Revised Code, past City practice, past Law Departments, numerous people outside this administration have unequivocally supported Council's oversight responsibility over expenditures on legal and professional services. Voting to override is the right thing to do. Allowing the veto to stand risks our good fiscal standing and neglects Council's oversight duty. Thank you.

President Gillock: Anyone else? Mrs. Pagel?

Council Member Pagel: Mr. President, in the past two weeks my skin has grown probably two inches in thickness due to being slandered, being accused of not doing my homework, and also just recently being threatened. I raised the question two weeks ago because there were two distinct opinions and there was a question and I asked that we take some time and find the facts. So, for the last two weeks I did go find the facts and I answered questions in my mind that were raised and my facts came from the Ohio Supreme Court, Director of Law Library and also from the State Auditor's Department Legal Counsel and I believe this ordinance should stand.

President Gillock: Anyone else?

Law Director Zagrans: Mr. President, I have a different point, if I may.

President Gillock: You're not a Member of Council, with all due respect, and I don't really want you arguing unless it's a legal point.

Law Director Zagrans: It is a legal point. But it's different. I wanted to let everyone speak to the last point on the merits of this before I raised this one, which is entirely procedural.

President Gillock: Okay, go ahead.

Law Director Zagrans: Thank you. It's my personal belief that under the veto provision in the Charter, the way that you have proposed to do this, is correct. However, I thought this same procedure was right for overriding the Kingston PCD ordinance, too, and the Stamp Committee took it to the Ohio Supreme Court saying that it was wrong to do it merely by a motion to override or in that case nullify the ordinance rather than by another ordinance to do it. I'm merely raising the point for you because I didn't realize that this was going to come up by a motion vote tonight rather than by an ordinance. As I say, I interpret the Charter myself as being this is the right procedure by which you should approach the question of overriding the Mayor's veto. But, the Supreme Court, the last time that I thought this was the right procedure said you have to have legislation to do something akin to this and I simply raise it for your consideration.

President Gillock: Mrs. Pagel?

Council Member Pagel: Mr. President, I believe this is a motion to override a veto not to rescind an ordinance and I think that's what was in the past and I believe our motion to override is correct.

Council Member Johnson: Mr. President, I don't see the merit in coming up with a new ordinance that could be vetoed again by the Mayor. I think we're on the correct path here myself.

Mayor Hill: Yes, I have a question of Councilwoman Pagel. You said that you did research with the State Auditor's office and with the Supreme Court. Could you share that information with us.

Council Member Pagel: I did not seek a written opinion. I sought advice. The advice came from the Legal Library of the Ohio Supreme Court where I asked them to interpret the Ohio Revised Code. They were informed of our Charter, they were informed of our ordinance, and their advice was that this ordinance does stand and Council does have the power to create an ordinance at this time to approve appropriation of funds. And the Legal Counsel for the Auditor's Department said the exactly the same thing. I went to them after the Ohio Supreme Court. I have no document as far as a written opinion.

President Gillock: Anyone else? Mrs. Butkowski.

Council Member Butkowski: I have a Charter in front of me and according to a portion of Section 2.6 of veto it says that Council shall reconsider such ordinance or resolution. It doesn't say that it has to be rewritten or anything. It's just to reconsider of what was voted on previously.

Council Member Johnson: Mr. President, I would recommend backing off on what we have and going with a motion to reconsider. Would that satisfy the Charter?

President Gillock: We've already reconsidered.

Council Member Johnson: This is a motion to reconsider?

President Gillock: We have reconsidered. It's a motion to override. I don't believe we need a motion to reconsider. The Charter requires us to do that. I mean, you could argue a procedural point. Whether we need a motion to do what the Charter tells us to do, which we would all have to vote for or we would be violating the Charter so, I think it's moot on that point. Anyone else? Last chance. I have a statement I would like to make and I'm going to exercise my prerogative as the President. After I make mine, I'm not going to recognize anyone else. I'm going to call for the vote. So, if anyone else wants to speak, now's your chance.

Mayor Hill: Yes, Mr. President, I just want to reiterate that it is not a question with this office as to the correctness or appropriateness or the control of City funds. It is a question of the City Charter and abiding by the City Charter and making sure of it. Because the part that I am confused at least, alarmed at most, is why, if this is something that Council chooses to enact into law, there can be no wait for a Charter amendment and why pass an ordinance and have an ordinance that legal questions still remain and it's been sent to Committee for consideration for putting it on the ballot for the people to decide, the people of this community. And then, we all have a clear understanding of what the people of this community want done even though it is what we have in fact been doing, although, not always, because sometimes engineer services are rolled into the project as a total. So, there have been exceptions. But, my question remains of,

what's the hurry. Why not put it before the voters. Why not have it very, very clear to all of us as to the reasons for the need and what the people believe should be done and put in writing, even though it is what we do and I take no issue with the procedure that is followed with City Council making that final decision on expenditures over \$15,000,00.

Council Member Buescher: Mr. President, this is a gray area and this is for the benefit of our Auditing Department. They should know exactly what is black and white in these situations. Most of the opinions that have been given on this subject by legal authorities seem to think that this ordinance is all that's necessary and that it does not have to be put to a vote of the people. That would be an option. But this ordinance takes care of the questions at hand. Thank you.

Council Member Johnson: I would support both the ordinance and a Charter amendment but I would submit that both of them do make sense. The ordinance states how this Council interprets the Charter. The Charter amendment would guide all future Councils.

President Gillock: Anyone else?

Council Member Olesen: Yes, Mr. President, I too would support our Charter amendment so the people can speak on this.

President Gillock: Anyone? This may well be the most important vote that we take on this term of Council. I suspect more research and discussion has gone into this ordinance than any since the PCD ordinance was passed before any of us, but Mr. Swindig, was on Council. I cannot dispute what the Charter says and it clearly states that each net expenditure for any contract for purchase of supplies and materials shall first be authorized and directed by ordinance of Council. We cannot change that even if we were inclined to do so and this ordinance does not change the Charter. When the ordinance is upheld those expenditures will still need to be authorized and directed by ordinance. But, Mr. Zagrans has stated that our Charter omits to provide what the State Law provides which is also for professional services coming to Council and I don't dispute that either. However, the original Charter stated that each net expenditure or any contract for purchase of supplies and materials had to go to Council. Mr. Zagrans has given the opinion that the change was deliberate and intentional and works a change in the State Law. With all due respect, I disagree. It does not seem logical to me that anyone would make the determination that they desire to exempt professional services from legislative oversight and would accomplish that by adding one letter to our Charter, adding the letter f to the word or. I do not agree that there was any deliberate or intentional action to change the working of the Ohio Revised Code. Lastly, I'd like to add one more opinion that appears to support my position. In 1999, when I was first elected to Council, I was serving on the Lorain Public Library Board. I asked our Law Department if I would have to resign as a result of being elected to Council. Our Assistant Law Director issued a written opinion that I would not have to resign and I believe her legal opinion, as written, was well reasoned and thorough in its analysis. She stated, "The Charter will prevail when there is an express conflict with a parallel State Law", and I think we all agree with that. She said, "However, Charter provisions only supersede State Law where the municipality clearly and expressly states the areas where it intends to supersede and override general State statutes." She goes on to say, "Absence such language, the Charter must be harmonized with the State statute. As a consequence, Mr. Gillock need not resign because general state law, Ohio Revised

Code 102.03, does not require and the City Charter does not indicate the express intent to override Ohio Revised Code Section 102.3." Her written opinion in that issue certainly seems to support our contention that our Charter does not change the ORC in any way and an ordinance is required. Councils' actions do not change the way the City has historically conducted its business. This ordinance is an attempt to maintain the status quo and give the auditor some guidance towards an effort to change the way that we do business. I've already referred this to the Administrative Committee to review for possibly putting on a Charter Amendment to clarify it, once and for all, to see what the citizenry desires, and I support that. There's no doubt in my mind our residents prefer our system of checks and balances. In fact, both the Law Director and the Mayor have stated there's nothing wrong with the good intentions of the ordinance. They only seem to disagree with the procedure. Therefore, I think it behooves us to protect City assets, preserve our method of Council approving all expenditures in excess of the State statutory limit and override the veto of the ordinance. Thank you. Would the Clerk please call the roll. This is, a yes vote overrides the veto.

Yes, 6 No, 0

Acting Clerk Hall: Motion is approved six to zero.

COMMITTEE MEETING ANNOUNCEMENTS:

Council Member Olesen: Buildings and Lands will meet Wednesday at 9:30 A.M.

Acting Clerk Hall:

Next Council Work Session Monday, April 15, 2002 at 7:30 P.M.

Next Regular Council Meeting Monday, April 15, 2002 at 8:00 P.M.

ADJOURNMENT:

motion to adjourn by Butkowski

President Gillock: Meeting adjourned.

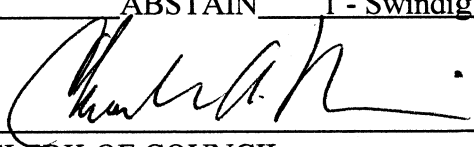
Meeting adjourned at 9:40 P.M.

MOTION Butkowski 2ND Buescher DATE April 15, 2002

YES 6 NO 0 ABSTAIN 1 - Swindig



PRESIDENT OF COUNCIL



CLERK OF COUNCIL