

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
MINUTES OF
REGULAR MEETING FEBRUARY 19, 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 Member Allen Swindig.

PLEDGE OF ALLEGIANCE: by all.

CALLING OF THE ROLL - ROLL CALL:

Present were Council Members Nancy Buescher, Allen Swindig, Josanne Pagel, Bob Olesen, Bernadine Butkowski, Denny Johnson and David Gillock.

Also, present were Mayor Deanna Hill, Safety-Service Director Jim Johnson, Auditor Chris Costin, Law Director Eric Zagrans and Clerk of Council Chuck Norris.

Absent was Engineer Thomas Beutler.

MINUTES - Corrections and Approval:

Regular Council Minutes of February 4, 2002

motion by Butkowski, 2nd by Buescher to approve

President Gillock: Are there any corrections or additions?

Yes, 7 No, 0

Clerk of Council Norris: Passes seven, zero.

COMMITTEE REPORTS:

1) BUILDINGS & LANDS COMMITTEE REPORT #7140. We have considered the matter of T 138-2001, recommending an ordinance to address the issue of entrance ways in terms of signage, fencing, plantings, electrical and sprinkler systems and other components and establishing a fee. This ordinance will amend NRCO 1286.03(f). Attached amendment be added to NRCO 1286.03(f) (Section 2): Such sign and the immediate and adjacent green space or area related to the sign, which may include fencing, plantings and other landscaping components, shall be maintained by the Homeowners Association. And recommend that this request be approved and proper legislation be drawn authorizing should be filed under subdivision ordinance and referenced accordingly in table of contents.

Signed: Robert Olesen, Josanne Pagel and Nancy J. Buescher.

motion by Buescher to accept, 2nd by Butkowski

President Gillock: Discussion? If not, please call the roll.

Yes, 7 No, 0

Clerk of Council Norris: Motion carries seven, zero.

2) SAFETY COMMITTEE REPORT #7131. We have considered the matter of Codified Ordinance Sections 854.01, 854.02, 854.03 and 432.02 and recommend that no action is needed. The ordinances remain the same.

motion by Pagel to accept, 2nd by Olesen

President Gillock: Is there any discussion?

Council Member Pagel: Mr. President, I think it's appropriate to allow the residents to understand how we met to this decision and we received a number of phone calls from the residents and their number one concern was safety of the issue and we believe that Two Mom's Ice Cream was actually safe, their truck, they were trying to take every precaution they could, but they could not take care of the unknown. We also looked at the traffic flow. We identified areas that we thought would be fine in 25 mile per hour streets only, unbeknownst to us, that according to the Police records, that they had a lot of tickets written in those areas because there were bypasses that people were going through and going at 35 miles per hour and 45 miles per hour. We also looked at, that if we did specifically rescind the ordinance dealing with vending from a truck, it would allow anyone to come in and vend from a truck, not just Two Mom's Ice Cream. We took a lot of time with this and I feel that this was the most appropriate response for us and we were unanimous in our decision.

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

Yes, 7 No, 0

Clerk of Council Norris: Motion carries seven, zero.

motion by Swindig to suspend By-Laws to allow the reading of the Ziegan agricultural application, 2nd by Pagel

President Gillock: President Gillock: Is there any discussion?

Council Member Olesen: The only discussion, as we already said Mr. President, that this application for an agricultural district is one of many we're going to get and they're rather routine. This is a renewal.

President Gillock: What is the purpose of your motion?

Council Member Swindig: The purpose of my motion is the deadline.

President Gillock: This is on the agenda under new business. We don't need to suspend By-Laws at this point then, correct.

Council Member Swindig: I would say we would have to suspend By-Laws to introduce this committee report.

President Gillock: Okay, for the committee report. Any further discussion on the committee report? If not, please call the roll on suspending By-Laws to have the committee report.

Yes, 7 No, 0

Clerk of Council Norris: Motion carries seven, zero.

3) BUILDINGS & LANDS COMMITTEE REPORT #7142. We have considered the

matter of the application for placement of farmland in an agricultural district by Richard L. & Ruth M. Ziegan for 106.63 acres of property located at 6195 Stoney Ridge Road and recommend that this request be approved and proper legislation be drawn authorizing the approval with modification as the same in their previous application approved through Resolution No. 836-97. And further recommend that a Public Hearing be scheduled for March 4, 2002 in order to comply with the procedures set by Ohio Revised Code.

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

motion to accept by Butkowski, 2nd by Olesen

President Gillock: Is there any discussion? I just might, briefly point out, for the lobby, these applications, you will see several more of these in the coming weeks. They are routine and come up every year. They're applications from land owners who have larger parcels of land that they want to class as agricultural rather than regular city lots which help them avoid assessments such as sewers and other items because it's really agricultural property. They have to come and get Council approval and have a hearing to do this. You will see several of these but, they're fairly routine. No other discussion, please call the roll.

Yes, 7 No, 0

Clerk of Council Norris: Motion to accept passes seven, zero.

President Gillock: The hearing will be set for 7:20 P.M. on March 4 prior to the Work Session for the next Council meeting.

QUESTIONS FOR THE FOLLOWING WRITTEN REPORTS:

President Gillock: We now come to questions for the Mayor, Safety-Service Director, Engineer, which we do not have any this evening. For the Law Director, by Ohio Revised Code, and I asked Mr. Zagrans to give us a report of the activities for his department for the year 2001, which he has submitted. I'd like to ask him to read that now. There's a lot of good information in there for the Citizens who might want to hear and then we could go to questions.

Mayor: None

Safety-Service Director: None

Engineer: None

Law Director:

Law Director Zagrans: In accordance with your request and the provisions of the Ohio Revised Code, I am pleased to submit to you my annual report of the activities of the Department of Law of the City of North Ridgeville, Ohio, for the year 2001.

The Law Department had an extremely busy and productive year in 2001. It represented the City in some major and controversial civil litigation, all of which was resolved favorably to the City's interests by year end or shortly thereafter.

First and most importantly, all legal challenges to the preliminary plan approvals and zoning changes relative to the Meadow Lakes and Waterbury planned community development projects, which were vital prerequisites to the financing agreement for the Westerly Sewer Interceptor Project, were successfully defeated.

In three separate challenges mounted in the Ohio Supreme Court, Case Numbers. 01-071, 01-1149 and 01-2054, opponents of the Meadow Lakes and Waterbury PCDs filed so-called taxpayer actions in mandamus contesting both the zoning changes and the passage of the preliminary approval legislation as emergency measures, which had thereby precluded a referendum vote on either development. The opponents sought the issuance of writs of mandamus from the Supreme Court requiring that the issues be placed on the ballot for the November 2001 general election.

Although expensive for the City's taxpayers by having the Department of Law defend against repetitive (and ultimately frivolous) litigation, the City prevailed in all three cases. The Ohio Supreme Court has issued three judgments dismissing the legal challenges to the PCDs as insubstantial and lacking merit under the law.

In turn, the City dismissed its declaratory judgment lawsuit – which had asked the Lorain County Court of Common Pleas to declare whether City Council had correctly followed the City Charter in approving the two PCDs and whether the issue should be placed on the November 2001 ballot, because after the November election was held, the issue was moot. It had been the City's hope and expectation when it filed the declaratory judgment litigation in December 2000 that the Lorain County Common Pleas Court would have resolved the controversy in a relatively expeditious and inexpensive fashion. However, a succession of delays caused by the PCD opponents in that litigation, coupled with the serial Ohio Supreme Court mandamus suits, meant that this dispute dragged on for the entirety of 2001. Instead of one lawsuit to resolve the controversy, we wound up through no action by the City with four lawsuits, and four times the difficulty and expense.

All that remains of this controversy are two administrative appeals now pending in the Lorain County Court of Common Pleas Court taken by the PCD opponents from the City Council's administrative approval of the final PCD plans for Meadow Lakes and Waterbury. The PCD opponents have yet to file their briefs on the matter.

The City and various City officials were sued in federal district court in Cleveland by Ron and Sara Siemientkowski, who had also sued various other federal, state and local governments and agencies, and the private developers who built their home. The City and its officials were victorious and the suit was dismissed with prejudice as against them. The Siemientkowskis filed an appeal with the United States Court of Appeals for the Sixth Circuit in Cincinnati, which affirmed the judgment entered by the District Court in the City's favor without even the need for oral argument.

The City successfully appealed the initial decision by the Lorain County Board of Elections not to allow six Charter Amendments to appear on the ballot for the November 2001 general election. Although the decision of the Lorain County Board of Elections ended in a 2-2 tie vote along party lines, the Secretary of State correctly ruled in favor of the City that City Council had

validly approved legislation authorizing the proposed amendments to be placed on the ballot, and that the Board of Elections did not have the discretion to fail to do so.

A civil rights lawsuit filed in federal district court against the City by the ACLU on behalf of a former Council member and six other residents challenging the constitutionality of two sentences out of a comprehensive set of rules of conduct adopted by City Council in December 2000 received much attention and comment. Although the City continued to maintain that the two challenged sentences were appropriate and constitutional, the City decided to resolve the matter without continuing the litigation. The case was settled by simple amendment of the wording in the two sentences in question, and the case was dismissed without any cost whatsoever to the City or its taxpayers.

Notwithstanding all of the major civil litigation in which the City was involved during 2001, the Law Department still expended only 53 percent of its budgeted amount for legal services and litigation expenses. In other words, departmental expenses on civil litigation for the year 2001 came in at 47 percent under budget.

In addition, the Department of Law handled approximately 1,444 new criminal cases during the past year. Our two prosecutors handled an average of 37 hearings per week, not including arraignments or Mayor's Court. Until now, Mayor's Court has heard only uncontested cases or those in which a plea of guilty is entered; the remainder are transferred to Elyria Municipal Court for adjudication. However, henceforth the Mayor's Court magistrate will also hear contested minor misdemeanor cases instead of sending such cases to Elyria Municipal Court. The advantages to the City include: first, all of the fines and a small portion of the Court costs will remain in the City's treasury; second, citizens who wish to contest their cases do not have to travel to Elyria to do so; third, the contested hearings will probably be held in the evening right after the remainder of the Mayor's Court docket so that citizens will not have to miss work to attend Court, as is the case when such hearings are scheduled in Elyria; and fourth, access and travel time to and from Court is substantially reduced for our police officers who are subpoenaed to testify. We therefore anticipate that the volume of the criminal case load being handled by the two prosecuting attorneys employed by the City will continue to increase in the coming year as will the complexity of the criminal matters being handled.

Even with all of this activity during 2001, and including in addition drafting and reviewing the major contracts and development agreements regarding the Westerly Sewer Project and the Waterbury and Meadow Lakes planned community developments, among others, into which the City entered, the Department of Law still ended the year with its workload on time and substantially under budget.

Thank you very much for the privilege of submitting this annual report for your consideration.

President Gillock: I will now open it up for questions. In regards to the magistrate of Mayor's Court now, during contested cases, do both these, Mr. Strait is our magistrate?

Law Director Zagrans: Yes.

President Gillock: He receives certain training to be able to do this?

Law Director Zagrans: Correct.

President Gillock: Anything you want to expand on that? Because, I know that was an issue in the beginning as to whether we could even do that or not.

Law Director Zagrans: Yes, he has received the training that you suggest and this has been approved throughout the State of Ohio for magistrates who now serve instead of Mayor's in Mayor's Court and for minor misdemeanor cases. That's not a big step up from the kinds of cases that Mayor's Court has been taking on up till now. The only difference being, as I said, that he will now consider and hear contested minor misdemeanor cases rather than taking those and sending them over to the Elyria Municipal Court. Anything above a minor misdemeanor in terms of seriousness or penalty will continue to go to Elyria Municipal Court.

President Gillock: Thank you. Any other questions? Mr. Johnson?

Council Member Johnson: The cases that are heard by the magistrate, if he fines, however he fines, what would be the appeal from that point on? Would they appeal to the municipal court?

Law Director Zagrans: I don't believe so. I believe the appeal would be if one were taken, would be straight to the Court of Appeals for the ninth district which is the court of appeals for Lorain County.

Council Member Johnson: Would the defendant always have the right to go to municipal court in front of a regular judge or is that being taken away?

Law Director Zagrans: I believe that is being taken away. I believe, for minor misdemeanor cases, those cases are going to be adjudicated here.

Council Member Johnson: So, if you plead not guilty to a minor misdemeanor in front of the magistrate, you have no choice but to adjudicate here?

Law Director Zagrans: That's my understanding, Mr. Johnson.

President Gillock: Anyone else? Thank you for that report. Auditor's report.

AUDITOR'S REPORT:

Auditor Costin: Mr. Chairman, Council should have received their January 2002 written report.

Auditor's Written Finance Report for January 2002

motion to approve by Swindig, 2nd by Butkowski

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

Yes, 7 No, 0

Clerk of Council Norris: Passes seven, zero.

Auditor Costin: No further comments.

President Gillock: Thank you, Mr. Costin.

OTHER REPORTS:

President Gillock: Please note:

Mayor's Court Operating Trust Fund/Court Bail Trust Fund Report for January 2002;

Water System Monthly Operating Report for January 2002;

Visitor's Bureau 2001 Annual Report;

Police Department Support Car Report for January 2002; and
Fire Department Report for January 2002.

OLD BUSINESS:

President Gillock: Is there any old business?

Council Member Pagel: Mr. President, just as information for the Council from the Safety Committee meeting, when there were questions from other Council Members who attended about certain vending and that Mr. Zagrans and I had been in communication, he will have a report for us next Council meeting regarding types of vending and the differences between ice cream trucks and corporate.

NEW BUSINESS:

Clerk of Council Norris:

Received a renewal application for placement of farmland in an agricultural district from Richard L. and Ruth M. Ziegan for approximately 106.63 acres located at 6195 Stoney Ridge Road.

President Gillock: The hearing is set for 7:20 P.M. on March 4, 2002. Other new business?

Mayor Hill: Yes, Mr. President, Mr. Terry Murray has served on our Parks and Recreation Commission for a while. He's had to resign due to scheduling difficulties. His term expires on 12-14-2003. I am nominating Mr. Michael Francu, who is here with us this evening. If you could stand for a moment and let them see who you are. He's employed as a guidance counselor at Lakewood High School. He earned his bachelor's degree from Youngstown State University and his master's degree from Westminster College. Mr. Francu has been involved in school levy campaigns over the last ten years. He's a member of the Library Committee and worked on the successful levy campaign to build the new library. I am very pleased to nominate and make the motion now for Mr. Michael Francu to serve on the Parks and Recreation Commission until the term expires on 12-14-2003.

motion by Mayor Hill, 2nd by Swindig to appoint Mr. Francu to the Parks and Recreation Commission

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

Yes, 7 No, 0

Clerk of Council Norris: Motion carries seven, zero.

Mayor Hill: I want to thank him once again. It's not always easy to be a volunteer but, we appreciate the efforts.

President Gillock: Yes, I would like to add my thanks for volunteering to serve on the board.
Any other new business?

President Gillock: I would just like to point out, I noticed in the newspaper that Mayor Hill was again appointed as the County's representative to NOACA, the Northeast Ohio Areawide Coordinating Agency and we appreciate that, keep the funds coming in for us.

CORRESPONDENCE:

Clerk of Council Norris: We have five items of correspondence before us.

- 1) Received a letter from Ronald F. Twining, Director of Lorain County Community Development Department announcing a public presentation of the draft report concerning multi-modal transportation needs in Lorain County. This presentation is scheduled for Thursday, February 28, 2002 at 7:00 P.M. at the New Russia Township Hall, 46268 Butternut Ridge Road.
- 2) Received a letter from the Ohio Department of Commerce, Division of Liquor asking the City to disregard the notice to Legislative Authority in regard to the liquor permit transfer request for Robert V. Harvey.
- 3) Received a memo from Council Member Olesen submitting information in regard to proposed procedures for special development districts and a summation of a document prepared by the Buckeye Institute.
- 4) Received a memo from Safety-Service Director Jim Johnson in regard to statement of events relating to a water shut-off.
- 5) Received a memo from Safety-Service Director Jim Johnson in regard to the distribution of public notices.

LOBBY:

President Gillock: We now come to the Lobby portion of the agenda. Anyone wishing to speak, please fill out a form you'll find in the back in case we need to contact you later and have a record. Anyone wishing to speak? If not, we will recess till 25 till.

No one spoke.

RECESS: from 8:25 P.M. to 8:35 P.M.

FIRST READINGS: None

SECOND READINGS:

Clerk of Council Norris:

T 155-2001 AN ORDINANCE AMENDING SECTION 246.01, COMPOSITION OF
 [POLICE] DEPARTMENT.
 Second Reading

T 14-2002 AN ORDINANCE GIVING THE DIRECTOR OF TRANSPORTATION
 CONSENT TO DESIGN AND BUILD A GRADE SEPARATION OVER THE

**NORFOLK AND SOUTHERN RAILWAY IN THE CITY OF NORTH
RIDGEVILLE.**

Second Reading

THIRD READINGS:

T 6-2002 AN ORDINANCE AUTHORIZING THE ENGINEER TO PREPARE PLANS,
3777-2002 SPECIFICATIONS AND COST ESTIMATES FOR THE IMPROVEMENTS TO
GLORIA STREET WHICH WERE REQUESTED BY PETITION.

Third Reading

motion by Swindig, 2nd by Pagel to adopt

President Gillock: Is there any discussion?

Auditor Costin: For the record, is there any estimate of the amount of dollars we would spend for that?

President Gillock: Not at this point. It is my understanding that this ordinance authorizes the engineer to proceed with the planning to determine those costs at which point we'll then start through Squire, Sanders and Dempsey with the regular resolution of necessity.

Auditor Costin: This also gave the Mayor the authorization to go outside. If we go outside, that is what I was curious about so we can make sure the appropriation is in place.

President Gillock: For the cost of the engineering services?

Auditor Costin: Correct.

Council Member Swindig: Mr. Chairman, with this not being passed by emergency, we still have the 30 days and we still have time to look at it in our budget, would we not?

Auditor Costin: Technically we should have dollars appropriated. We do have dollars in the contingency funds that we maintain. What I don't know is how much we need to earmark for this particular ordinance. Are we talking about five thousand dollars, fifty thousand dollars? I'm comfortable that it would probably be available but, as we pass these things I'd like to pull it out of the contingency.

Council Member Butkowski: Mr. President, it's my understanding that this is a self assessment so, will all these engineering fees be a part of that assessment.

President Gillock: Yes they will be. They can be included. Even if our own engineer does the work. We can include a cost for his work.

Council Member Butkowski: We can or we will?

President Gillock: We can.

Council Member Butkowski: Are we going to?

President Gillock: We're leaving it up to him whether he's going to do the work or hire a consulting engineer to do it. Either way, we can include those costs in the self assessment. I see no reason why we wouldn't.

Council Member Butkowski: What I'm asking, is this a definite that this will all be included in their assessment? That's what I want to know. Will this engineering be included in the assessment along with the work that's done?

Safety-Service Director Johnson: The total cost of the project would be included but, we really

wouldn't know what that would be until after all the bids come back and the bids are awarded and the job is finished. Then the assessments, at that time, are on the total cost when it is completed.

Council Member Butkowski: That's what I wanted to know. Totally, this will not cost North Ridgeville any money. It will be paid for by the owners on that street.

President Gillock: Correct. I think that's the point of self assessment.

Safety-Service Director Johnson: That's what their petition says.

Auditor Costin: I was going to say, there are sometimes portions that are allocable to the City. Those are generally insignificant to the total project cost on these assessment projects. So, they don't always necessarily have to be 100 percent self-assessed property. There may be some, what's considered, common cost that the City would pick up. But again, typically those are minor amounts. Maybe I can take another second and reiterate my question. What we do in a case like this is, we would spend the monies from some appropriate fund and then, when we do the assessment, the City portion that we're allowed to recover would then be reimbursed. We still need to go through the appropriation process in terms of setting the monies aside to expend for those front end fees and again, I didn't really mean to cause a significant problem only to see if anybody had an idea of what were talking about here in terms of dollars.

Council Member Johnson: You're questioning the total cost of the package or just the engineering.

Auditor Costin: No, we won't have the total cost of the project itself until the engineers do their analysis.

Council Member Johnson: You just want the engineers cost?

Auditor Costin: Preliminary engineering, correct.

Council Member Johnson: Since the engineer isn't here, can the administration come up with a figure, ballpark?

Mayor Hill: No, that's why it says the engineer will do a cost estimate. It will come from the administration staff person who is the engineer.

President Gillock: I think Council Member Johnson is a step ahead of that. This ordinance originally authorized the engineer to prepare the plans. We then amended the ordinance so we can allow him, if we so desire, to go outside to hire a consulting engineer to prepare the plans, Mr. Costin is asking, do we have an idea of what that's going to cost, to hire an engineer to develop the plans to determine the cost. We don't have that and here I would think our engineer would be able to give us an estimate but, it was never included in the amendment of this. I thought we talked about, we didn't need it at this time. If we do, we really don't want to postpone a project like this they want to get started on. We could postpone and wait until the engineer gives us an estimate and include it.

Council Member Butkowski: It looks like we're going to have to postpone it since the engineer isn't here tonight to give us some kind of a ballpark fee if we have to have that, we can't go forward.

Auditor Costin: The alternate might be to amend this ordinance to authorize an expenditure, for example, to approximately ten thousand dollars so we can get moving and then if the engineer,

upon his return, determines it would be more than that, we can come back and amend that if you so chose.

President Gillock: Someone want to make that amendment.

motion by Swindig, 2nd by Johnson to amend the ordinance authorizing up to ten thousand dollars for outside consulting services

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

Yes, 7 No, 0

Clerk of Council Norris: Motion to amend carries seven, zero.

President Gillock: Is there any further discussion on the adoption?

Safety-Service Director Johnson: As I mentioned the total cost of the project would be to the assessed frontage. The City will have a share of that because it will go from the frontage of the property line where it ties to the existing street, approximately 12 to 14 feet and that is on City property and that is our frontage, that will be our cost of the project.

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

Yes, 7 No, 0

Clerk of Council Norris: Motion as amended carries seven, zero and becomes Permanent Ordinance Number 3777-2002.

Permanent Ordinance No. 3777-2002

UNFINISHED BUSINESS: None

COMMITTEE MEETING ANNOUNCEMENTS:

Clerk of Council Norris:

Finance Committee to meet Tuesday, February 26, Wednesday, February 27 and Thursday, February 28, 2002 beginning at 9:00 A.M. in the Conference Room regarding 2002 appropriations

There will be a Council Work Session on Monday, March 4, 2002 at 7:30 P.M.

The Ziegan Public Hearing will be held at 7:20 P.M. on March 4, 2002.

The next Regular Council Meeting Monday, March 4, 2002 at 8:00 P.M.

Council Member Swindig: I have a question of Mrs. Butkowski. Is that Thursday meeting for, in case we need it?

Council Member Butkowski: Yes it is. It's just a rollover in case we need it. I would like to encourage the Council people or anyone who is interested in attending all or part of the appropriation meetings. It would help everybody to understand the operations of the City a little better.

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
REGULAR MEETING FEBRUARY 19, 2002**

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Council Member Buescher: I have a committee meeting announcement. Administrative Committee will meet tomorrow morning Wednesday, February 20 at 10:00 A.M. in the conference room.

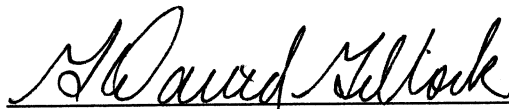
ADJOURNMENT:

motion to adjourn by Swindig, 2nd by Buescher
President Gillock: Meeting adjourned.

Meeting adjourned at 8:45 P.M.

MOTION _____ Butkowski _____ 2ND _____ Buescher _____ DATE _____ March 4, 2002 _____

YES _____ 7 _____ NO _____ 0 _____ ABSTAIN _____ 0 _____



PRESIDENT OF COUNCIL



CLERK OF COUNCIL