

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
MINUTES OF
REGULAR MEETING NOVEMBER 19, 2001**

CALL TO ORDER 7:30 P.M.

President of Council Jean Brown: I would like to call the regular meeting of the North Ridgeville Municipal Council for November 19, 2001 to order Please stand for the Invocation and the Pledge of Allegiance.

INVOCATION by President Brown.

PLEDGE OF ALLEGIANCE by all.

ROLL CALL

Present were Council Members Larry Overby, Allen Swindig, Gail Minnick, Bernadine Butkowski and David Gillock and President of Council Jean Brown.

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

motion by Swindig to suspend By-Laws to name Mrs. Pagel as the third ward Councilman, 2nd by Gillock

President Brown: Any discussion from Council? Please take roll.

Yes, 6 No, 0

Clerk of Council White: Motion carries six, zero. Welcome Mrs. Pagel.

Law Director Zagrans: Not yet. Point of order.

Council Member Gillock: Madame President, do you want to make the motion now?

motion by Swindig to name Mrs. Pagel as third ward Councilman, 2nd by Gillock

President Brown: Does she have to be sworn in now?

Law Director Zagrans: There has to be another vote.

President Brown: Take roll.

Yes, 6 No, 0

Clerk of Council White: Motion carries six, zero. Now, we can welcome Mrs. Pagel, officially.

President Brown: She needs to be sworn in. Mr. Manning.

Mrs. Josanne Pagel was sworn-in by State Representative Jeffrey Manning.

President Brown: Welcome aboard, Mrs. Pagel.

MINUTES

Regular Council Minutes of November 5, 2001

motion by Swindig to accept, 2nd by Butkowski

President Brown: Any discussion? Any corrections? I have one on page 14 under the Senior Citizens Advisory Board Report where the Christian Community School, for offering to help, not

held, seniors with the raking of leaves this year.

Clerk of Council White: So noted.

President Brown: Any other corrections, seeing none, vote please, roll call.

Yes, 7 No, 0

Council Clerk White: Motion carries seven, zero.

President Brown: Please note Planning Commission Minutes of November 13, 2001.

COMMITTEE REPORTS

1) FINANCE COMMITTEE REPORT #7099 Members of Council: We have considered the matter of the Lorain County Correction Facility Contract for housing inmates per attached ordinance and contract and recommend that this request be approved and proper legislation be drawn authorizing the above. Legislation must be adopted December 3, 2001 so that it can be returned to the County Prosecutor no later than December 15, 2001.

Signed: Allen Swindig, Bernadine Butkowski and Larry Overby

motion by Swindig to accept, 2nd by Butkowski

President Brown: Any discussion? Please take roll.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero.

2) FINANCE COMMITTEE REPORT #7100 Members of Council: We have considered the matter of the Community Newsletter for the first quarter of 2002 and recommend that this request be approved and be included in the temporary appropriations for 2002.

Signed: Allen Swindig, Bernadine Butkowski and Larry Overby

motion by Swindig to accept, 2nd by Overby

President Brown: Any discussion? Please take roll.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero

3) FINANCE COMMITTEE REPORT #7101 Members of Council: We have considered the matter of temporary appropriations for the year 2002 and recommend that this request be approved and proper legislation be drawn authorizing the above.

Signed: Allen Swindig, Bernadine Butkowski and Larry Overby

motion by Swindig to accept, 2nd by Butkowski

President Brown: Any discussion? Take roll please.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero.

4) FINANCE COMMITTEE REPORT #7102 Members of Council: We have considered the matter of amended appropriations for the year 2001 and recommend that this request be approved and proper legislation be drawn authorizing same.

Signed: Allen Swindig, Bernadine Butkowski and Larry Overby

motion by Swindig to accept, 2nd by Overby
President Brown: Any discussion? Please take roll.
Yes, 7 No, 0
Clerk of Council White: Motion carries seven, zero.

5) FINANCE COMMITTEE REPORT #7103 Members of Council: We have considered the matter of the effectuation of the annual conversion and preparation of the City's annual financial statements and for providing for the compensation for the Auditor in the amount of \$15,000 and recommend that this request be approved and proper legislation be drawn authorizing the above. Signed: Allen Swindig, Bernadine Butkowski and Larry Overby
motion by Swindig to accept, 2nd by Overby
President Brown: Discussion? Seeing none, take roll please.
Yes, 7 No, 0
Clerk of Council White: Motion carries seven, zero.

6) FINANCE COMMITTEE REPORT #7104 Members of Council: We have considered the matter of amending Ordinances 3489, 3483 and 2725 by replacing the existing Exhibit A attached thereto with the accompanying revised Exhibit A, effective retroactive to January 1, 2001 and recommend that this request be approved and proper legislation be drawn authorizing the above.
Signed: Allen Swindig, Bernadine Butkowski and Larry Overby
motion by Swindig to accept, 2nd by Overby
President Brown: Discussion? Please take roll.
Yes, 7 No, 0
Clerk of Council White: Motion carries seven, zero.

7) FINANCE COMMITTEE REPORT #7105 Members of Council: We have considered the matter of funding of approximately \$125,000 for a concession stand at the Shady Drive Complex and authorize the issuance of debt as recommended by the Auditor and recommend that this request be approved and proper legislation be drawn authorizing the issuance of the appropriate debt obligation.
Signed: Allen Swindig, Bernadine Butkowski and Larry Overby
motion by Swindig to accept, 2nd by Overby
President Brown: Discussion? Take roll please.
Yes, 7 No, 0
Clerk of Council White: Motion carries seven, zero. That's all the committee reports that I have.

MAYORS REPORT

Mayor Hill: First to appointments. Ron Schwachenwald's term on the Planning Commission expires on December 31st.

motion by Mayor Hill to reappoint Ron Schwachenwald for a three-year term beginning January 1st, 2nd by Swindig

President Brown: Any discussion?

Council Member Minnick: It's my opinion that Mr. Schwachenwald, working for the BIA, has a conflict of interest and I don't believe should be appointed to this commission.

President Brown: Any other discussion? Please take roll.

Yes, 4 No, 2 (Minnick, Butkowski) Abstain, 1 (Pagel)

Clerk of Council White: Motion carries four, two, one.

Mayor Hill: Bob Olesen's election to City Council means that there is a vacancy on Planning Commission. I am nominating Dick Jaenke. Mr. Jaenke is here with us tonight, if you could just stand so they can see who you are. Thank you. Mr. Jaenke was on Strongsville City Council for ten years, served as Council President for three and was Council liaison to Planning Commission.

motion by Mayor Hill to appoint Mr. Jaenke to Planning Commission to fill the unexpired term that extends to December 31, 2004, 2nd by Swindig

President Brown: Any discussion? Please take roll.

Yes, 6 No, 0 Abstain, 1 (Pagel)

Clerk of Council White: Motion carries six, zero, one.

Mayor Hill: John Gasior has served honorably on the Board of Zoning and Building Appeals.

motion by Mayor Hill to reappoint John Gasior for the term that begins January 1, 2002 to December 31, 2005, 2nd by Swindig

President Brown: Any discussion? Please take roll.

Yes, 6 No, 0 Abstain, 1 (Pagel)

Clerk of Council White: Motion carries six, zero, one.

Mayor Hill: Mr. Lou Vasi has served on the Parks and Recreation Board for nearly six years. I might say that he has done a wonderful job and has a deep interest in the Parks and Recreation programs and facilities. But, the Parks and Rec Board is the only Board that has term limits of six years. Therefore, a replacement must be named. I recommend the appointment of Mr. Larry Overby, who has been Council liaison to the Board. His term would begin January 1, 2002 and conclude on December 31, 2005. The dates on the memo I sent to Council, by the way, were incorrect.

motion by Mayor Hill to appoint Mr. Overby to the Parks and Rec Board, 2nd by Swindig

President Brown: Any discussion? Please take roll.

Yes, 6 No, 0 Abstain, 1 (Overby)

Clerk of Council White: Motion carries six, zero, one.

Mayor Hill: Unfortunately, Mr. Bobniz who served on the Income Tax Board of Review has passed away. I recommend the appointment of a man who has an extensive background in the field of Income Tax and, in fact, through AARP, helps our Seniors fill out their Income Tax forms as a volunteer. Kenneth Grosser would you please stand? Thank you.

motion by Mayor Hill to appoint Kenneth Grosser to the Income Tax Board of Review,

2nd by Overby

President Brown: Discussion? Please take roll.

Yes, 6 No, 0 Abstain, 1 (Pagel)

Clerk of Council White: Motion carries six, zero, one.

Mayor Hill: Congratulations to our new board members who are here tonight, thank you. It's not a terribly rewarding position that you fill, each of you, except that you are part of our future and we appreciate the work that you do. Thank you.

Council will note T 138-2001 under new business. This is merely a clarification as to placement of subdivision signs to ensure the signs are not placed in an area that would impede a driver's view. This legislation was recommended by the Assistant Law Director as a result of her work with Planning Commission.

Council will note T 140-2001 and T 141-2001 under New Business. These measures rescind developers' credits for the construction of water lines and water detention or retention. If you will recall, just last year, I introduced legislation and Council passed the deletion of developers credits for sewers. Typically, a municipality will approve developers' credits in an effort to get sewers or waterlines extended or, in this case, retention basins built when it would not be affordable by the City, IE. the taxpayers. We are now at the point with credits that have been given and the sewer agreement that was recently passed, that developers' credits are not beneficial, long-term, to the City. Therefore, I recommend passage of T 140 and T 141 to delete the remaining developers' credits.

Couple of reminders. A reminder that we will have our fifth annual Christmas Tree Lighting ceremony on Saturday, December 1st at the gazebo in South Central Park starting at approximately 4:00 P.M. Girl Scout and Boy Scout troops will be decorating, The High School and Middle School Choirs will be singing and Santa and Mrs. Claus will be on hand. After the actual lighting at approximately 5:30, there will be entertainment at the Senior Center.

Another reminder, a meeting will be held on Wednesday, December 5th in the Middle School or Junior High basement from 5:00 P.M. to 7:00 P.M. regarding the railroad overpass. The meeting will be held by the Engineering firm hired by ODOT to design the overpass. My understanding is that they will have tables set up, as they have in other communities, and informational materials for distribution. Representatives will be present to discuss the project in a one-on-one format. More information should be available shortly so please watch the papers and the government access channel on cable television. I did submit a list of present and soon to be Council members so they will receive invitations. In addition, the representatives have asked that these same Council members come early on Dec. 5th to the Middle School. That would be from 4:00 to 5:00 so Council members can have their particular questions addressed. Council, please mark that on your calendars, December 5th, Middle School, 4:00 P.M. to 5:00 P.M..

motion by Mayor Hill to adjourn into Executive Session to discuss litigation immediately following the Auditor's Report, 2nd by Swindig

President Brown: Any discussion? Take roll please.

Yes, 7 No, 0

Clerk of Council White: Motion carries.

Mayor Hill: I am moving to adjourn into Executive Session to discuss personnel after we reconvene following any action on the Executive Session pertaining to litigation. In other words, it would be Executive Session after the Auditor's report, reconvene in Council Chambers to take any action that might be necessary and then go into Executive Session to discuss personnel.

Could I have a second, please?

motion by Mayor Hill to adjourn into Executive Session to discuss personnel after the Executive Session pertaining to litigation, 2nd by Overby

President Brown: Any discussion? Yes, Mr. Zagrans?

Law Director Zagrans: I just want to remind the Members of Council, the reason for that cumbersome procedure is that one subject matter for each Executive Session.

President Brown: Understood. Take roll please.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero.

Mayor Hill: Thank you and lastly, it is important to remember this year, more than in any other year of our recent past, Americans have felt the loss, the pain and the grief of what occurred on September 11th. As we gather together as families to give thanks for our blessings, we need to also focus on how it is a truly special time to come together in the name of peace. May each of you have a wonderful Thanksgiving 2001. Thank you. That concludes my report.

President Brown: Thank you, Mayor. Does anyone have any questions regarding the Mayor's oral report? None? Moving on to the Safety-Service Director's report.

SAFETY SERVICE DIRECTOR'S REPORT

Safety-Service Director Johnson: Thank you, Madame President. Ditch cleaning and/or piping was performed on Alden, Watson, Olive and the no name street off of Root Road and the creek running into Highland.

There was one water valve box and one hydrant that were replaced in the last two weeks.

Concrete pads were poured on Rhonda, Joanne, Tree Moss and Hollow Tree Oval.

Partial depth repairs were performed on Pearl and Hollow Tree Oval.

The sewer vac was used in several areas. They were Rosebelle, Lincoln, Jefferson, Cornell, Olive and Shawn.

The three catch basins were rebuilt on Joanne, Tree Moss and Dorchester.

The Service Department has started to crack sealing with Hickory Trail, north Mills Creek Lane, Gate Moss Oval, Shady Moss, Leafy Mill, and Fern Tree, part of Chestnut Ridge and Mills Road between Jaycox and 83.

Spot berming, street patching, roadside mowing, landscaping, weed whipping and brush chipping took place as manpower and time allowed. That concludes my report.

President Brown: Thank you, Mr. Johnson. Does anyone have any questions of his oral report? None, moving on. Mr. Beutler, Engineer's report.

ENGINEER'S REPORT

Engineer Beutler: Thank you, Madame President. On the public projects we got going, the westerly sanitary sewers, I have no change from my report of last month.

The Water Tower is on schedule for completion. The actual filling of the new water tower may be initiated within the next two weeks.

Sugar Ridge Road reconstruction phase two is approximately 75 percent complete.

In regards to Stewart Lovece's letter dated November 7, 2001. I cosponsored, in conjunction with the Law Department, a letter to Mr. Lovece requesting specific information referenced in his letter. This letter was done in order to protect the general safety and welfare of the Citizens of North Ridgeville. Despite the public safety issue, I have not received a response from Mr. Lovece at this time and that concludes my report.

President Brown: Thank you. Does anyone have any questions of his oral report?

Council Member Gillock: Mr. Beutler, on Sugar Ridge where the new construction meets the older pavement, right by Race, there's still a tremendous bump there. There use to be a sign up that said bump and that's been taken down. Can we get that put back up until they do that because I've had some complaints? After dark you can't see it and it's still pretty rough there.

Mayor Hill: I went down Sugar Ridge both ways today and there was a sign that said bump. I don't know if it was removed later today, but it was there.

Council Member Gillock: Well, just check to make sure it is because somebody who lives down there said it was gone.

President Brown: Any other questions of the oral report for Engineer? Moving on to the Auditor, Mr. Costin.

AUDITOR'S REPORT

Auditor Costin: Thank you, Madame Chairman, Council should of received their October written financial report.

Auditor's Written Financial Report for October 2001

motion by Swindig to accept, 2nd by Overby

President Brown: Any discussion? Seeing none, please take roll.

Yes, 6 No, 0 Abstain, 1 (Pagel)

Clerk of Council White: Motion carries six, zero, one.

Auditor Costin: The only comment I would have would be to remind you that in accordance with your finance committee reports from Finance, 7101 and 7102, you can expect amended appropriation ordinance in December as well as the temporary appropriations ordinance for 2002. It's easier to prepare then it is to explain. Thank you. No further comments.

President Brown: Thank you. Does anyone have any questions of his oral report? None, moving on to the Law Director, Mr. Zagrans.

Law Director Zagrans: I believe we're going to go into Executive Session now, pursuant to the vote.

Council adjourned into Executive Session at 7:52 P.M. to discuss litigation.

Council reconvened from Executive Session at 8:01 P.M.

motion by Swindig to return to Council business, 2nd by Overby

President Brown: Any discussion? Take roll please.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero. Please continue.

motion by Gillock to suspend the By-Laws so that we may discuss revisions of the Council rules of conduct, 2nd by Swindig

President Brown: Discussion? Take roll please.

Yes, 6 No, 0 Abstain, 1 (Minnick)

Clerk of Council White: Motion carries six, zero, one.

motion by Gillock to amend and revise rule three, section five of the rules of Council adopted on December 16, 2000 to read as follows, paragraph three, section five:

All persons recognized by the President to speak during lobby session shall address the President or Council as a whole. In addressing Council during lobby session, no one shall be permitted to use or engage in any profane or vulgar language, act or display at any time in any manner whatever. The President of Council shall interrupt any person violating this rule and demand that they immediately cease and desist their offensive language or conduct. Anyone failing immediately to comply with the President's order shall forfeit his or her right to speak further at that Council meeting, and shall immediately yield the floor and the speaker's podium and resume his or her seat. Failure to comply with this rule shall subject the violator to temporary removal or permanent expulsion from the meeting at the President's discretion.

2nd by Swindig

President Brown: Discussion? Take roll please, Mr. White.

Yes, 6 No, 1 Abstain, 1 (Minnick)

Clerk of Council White: Motion carries six, zero, one.

motion by Gillock to amend and revise rule four, section three of the rules of Council adopted on December 16, 2000 to read as follows, paragraph four, section three:

During any Council meeting, no member of Council shall use or engage in any profane or vulgar language, conduct or display in any manner whatever. The President of Council shall interrupt any Council member violating this rule and demand that he or she immediately cease and desist the particular offensive language or conduct. Failure to comply with this rule shall subject the offending Council member to the sanctions, reprimands and punishments authorized by the City Charter and the Council's By-Laws in effect from time to time.

2nd by Swindig

President Brown: Any discussion? Please take roll, Mr. White.

Yes, 6 No, 0 Abstain, 1 (Minnick)

Clerk of Council White: Motion carries six, zero, one.

motion by Gillock to accept the terms for the dismissal of the ACLU suit discussed in the Executive Session, 2nd by Swindig

President Brown: Any discussion? Take roll please.

Yes, 6 No, 0 Abstain, 1 (Minnick)

Clerk of Council White: Motion carries six, zero, one.

Law Director Zagrans: Madame President, if I may give the Law Director's report at this time?

President Brown: Yes you may.

LAW DIRECTOR'S REPORT

Law Director Zagrans: Thank you. Members of Council, I wish to report on the termination of the last two major pieces of civil litigation in which the City of North Ridgeville had been involved. The first one is the case of Miles versus City of North Ridgeville pending in Federal Court, that is the case that we all refer to as the ACLU case. With the vote that you have just taken pursuant to an agreement that I reached with the attorneys for the ACLU, you have fulfilled the condition under which that lawsuit will be tomorrow, dismissed with prejudice, which means it cannot be re-filed. The terms of that dismissal include the fact that the City will bare no financial cost for that litigation. That is to say, it will not cost the City of North Ridgeville anything to have been involved in that lawsuit.

The second major piece of litigation that has been concluded, involving the City, is the lawsuit that has become known through references over the last year as the declaratory judgement action in Lorain County. On November 8, 2001, that case was dismissed and so now, that case is over as well. (Tape one, side one ends) As two major pieces of civil litigation in which the City was

engaged and therefore, we hope that the future will proceed with a clean slate involving the City in litigation and hopefully we have seen the last of those major court battles. Thank you, Madame President. That completes the Law Department report.

President Brown: Any questions of Mr. Zagrans oral report?

Council Member Minnick: Madame President, I would like to know whether the litigation in Lorain County was dismissed or withdrawn.

Law Director Zagrans: Well, it was plaintiff voluntary dismissal of the case.

Council Member Minnick: So, plaintiffs would be the City.

Law Director Zagrans: That's correct, the City and others.

President Brown: Please note other reports.

Council Member Gillock: Point of order. We're suppose to be in Executive Session again.

Law Director Zagrans: That's right. Pursuant to the vote that Council previously took.

Council adjourned into Executive Session at 8:15 P.M.

Council reconvened from Executive Session at 8:32 P.M.

motion by Swindig to return to Council business, 2nd by Overby

President Brown: Any discussion? Take roll please.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero for us to continue.

OTHER REPORTS

President Brown: Please note:

Mayor's Court Operating Trust Fund/Court Bail Trust Fund Report for October 2001;

Water Operation Report for October 2001;

Police Department Activity Report for October 2001;

Police Department Support Car Report for October 2001; and

Fire Department Report for October 2001.

Parks & Recreation Commission Liaison Report:

Council Member Overby: Our next meeting is December 5th.

Senior Citizens Advisory Board Liaison Report:

President Brown: I have no report for the Senior Citizens Advisory.

Planning Commission Liaison Report:

Council Member Gillock: Planning Commission met on November 13th with four applications.

First applicant:

APPLICANT:	Oster Construction, Inc., P. O. Box 438, Vermilion, 44089
OWNER:	Case Road LLC, 1050 Terminal Tower, Cleveland 44113

REQUEST: Final plan for cluster development which is part of Avalon Estates
LOCATION: 4901 Case Road, in R-1
Permanent Parcel No. 07-00-043-000-012
PC ACTION: Oster Construction requested they be postponed to the meeting of
December 11, 2001 in order to obtain the final signatures needed to
comply with requirements.

motion by Gillock to approve, 2nd by Overby

President Brown: Discussion? Take roll please.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero.

Council Member Gillock: Second application:

APPLICANT: R. W. Beckett Corporation, P. O. Box 1289, Elyria, Ohio 44036
OWNER: R. W. Beckett Corporation, P. O. Box 1289, Elyria, Ohio 44036
REQUEST: Sanitary Sewer extension along Race Road then west through this
parcel to pick up existing manufacturing facilities in I-2 and I-3.
LOCATION: Taylor Parkway, Permanent Parcel No. 07-00-038-000-126
PC ACTION: R. W. Beckett Corporation requested they be postponed.

motion to Gillock to approve, 2nd by Swindig

President Brown: Discussion? Please take roll.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero.

Council Member Gillock: Third applicant:

APPLICANT: Wooster Building LLC, P O. Box 154, Wooster, Ohio, 44691
OWNER: North Ridgeville Church of God, 6000 Lear Nagle Road
REQUEST: Propose 24 foot by 48 foot storage building in R-1
LOCATION: 6000 Lear Nagle Road, Permanent Parcel No. 07-00-08-117-046
PC ACTION: Application was approved contingent upon meeting all the City
requirements with the primary emphasis being on the installation
of a fire hydrant within 300 feet of the building.

motion by Gillock to approve, 2nd by Swindig

President Brown: Discussion? Please take roll, Mr. White.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero.

Council Member Gillock: And the fourth applicant was:

APPLICANT: Van Dyke Architects, 812 Huron Road #413, Cleveland, 44115-
1126
OWNER: Lorain Public Library System, 351 Sixth Street, Lorain, 44052
REQUEST: Approval of preliminary plans for a new library
LOCATION: 35700 Bainbridge Road, east of City Hall, in R-1

Permanent Parcel No. 07-00-021-117-016, -049, -053, -059

PC ACTION: Application was unanimously accepted as presented.

motion by Gillock to approve, 2nd by Swindig

President Brown: Discussion? Please take roll.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero.

Council Member Gillock: That concludes my report.

OLD BUSINESS None

NEW BUSINESS

Clerk of Council White:

T 138-2001 An ordinance amending NRCO § 1286.03(F).

Council Member Gillock: Madame President, I request that this be referred to Planning as it's required to be.

President Brown: Referred to Planning.

REFERRED TO PLANNING COMMISSION.

Clerk of Council White:

T 139-2001 An ordinance vacating a storm water easement on Xavier Court.

Council Member Butkowski: Madame President, I would like that referred to Utilities please.

President Brown: Okay.

REFERRED TO UTILITIES COMMITTEE.

Clerk of Council White:

T 140-2001 An ordinance repealing NRCO § 1046.23 and amending § 1046.04(D) to eliminate developer's credits.

Council Member Minnick: Madame President, I would like to have that referred to Buildings and Lands and Finance.

President Brown: Buildings and Lands and Finance?

Council Member Minnick: Yes.

President Brown: Okay.

REFERRED TO BUILDINGS AND LANDS COMMITTEE AND FINANCE COMMITTEE.

Clerk of Council White:

T 141-2001 An ordinance repealing NRCO § 1474.12.

Council Member Minnick: Madame President, I would like to have that referred to Buildings and Lands.

President Brown: okay.

REFERRED TO BUILDINGS AND LANDS COMMITTEE.

Clerk of Council White:

T 142-2001 An ordinance amending NRCO § 234.03.

Council Member Butkowski: Madame President, I would like to have that referred to Finance please.

President Brown: To what?

Council Member Butkowski: To Finance.

REFERRED TO FINANCE COMMITTEE.

Clerk of Council White:

T 143-2001 An ordinance reducing the salary of Council Member Allen C. Swindig for the 2002 and 2003 term to \$4,200.00 per year.

Council Member Minnick: Madame President, I would like to refer that to Administrative Committee.

 motion by Overby to suspend the By-Laws so this can have first reading tonight, 2nd by Gillock

President Brown: Discussion?

Council Member Swindig: Madame Chairman, I have been doing this for the past four years. I don't see why it has to be referred. All it is, I am on a disability pension and I am only allowed to make so much money and that's all. I am well below what I am allowed to make by having my salary reduction. But I've been doing it for the past four years.

Council Member Minnick: Madame President, I understand that, but it has come to my attention that reducing Mr. Swindig's salary is in violation of Ohio Revised Code 731.07. It's also questionable whether asking for salary decreases is fraudulent and I believe we should contact the Railroad Pension Board to determine if reducing Mr. Swindig's salary to accommodate the disability requirement could be considered fraud.

Law Director Zagrans: Madame President, if Mrs. Minnick wants to raise the question of fraud, then she will be raising the question of whether she and others voted fraudulently to reduce it in years passed. But, the real reason I wanted to comment is, that it is not against Ohio law to reduce Mr. Swindig's salary if Mr. Swindig is in favor of the reduction as he appears to be.

Council Member Swindig: Yes I am.

Council Member Minnick: Madame President, I can't recall, I don't believe I did vote for that salary increase, or decrease, but, Ohio Revised Code 731.07 contains and express prohibition against in term increases or decreases of salary, in pertinent part, Ohio Revised Code 731.07 provides as follows: The salary of any officer, clerk or employee of the City shall not be increased or diminished during the term for which he was elected or approved. This section has been interrupted and applied to protect the decrease in one's salary after one has been approved or elected and before the beginning of the new term. It goes on, but I really believe that this needs to go to the Administrative Committee for further review.

Council Member Gillock: Madame President, as the ordinance points out, the salary for Council Member Swindig was reduced in 1997 and 1999 to the same level of forty-two hundred which is what he is requesting next year. So, I don't see this as an increase or a diminishing or what he's getting. He's being paid at the same level he's being paid now.

President Brown: Yes, I agree. Mr. Swindig, did you say you made a motion that you want this.

Clerk of Council White: We have a motion before us, right now.

Council Member Swindig: No, in the comments I did request for the salary reduction.

President Brown: Who made the motion?

Clerk of Council White: Mr. Overby and Mr. Gillock seconded.

President Brown: We had discussion. Take vote please.

Yes, 5 No, 1 (Minnick) Abstain, 1 (Swindig)

Clerk of Council White: Motion carries five, one, one for first reading tonight for T 143-2001.

T 144-2001 An ordinance amending Ordinance No. 3479-99 providing for wages and fringe benefits for the Chief and Assistant Chief of the North Ridgeville Fire Department.

motion by Swindig to suspend By-Laws to give that a first reading tonight, 2nd by Overby

President Brown: Discussion? Take roll please.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero for T 144-2001 to have first reading tonight.

I do need, on T 143-2001, it was brought up whether you were going to send this to

Administrative Committee.

President Brown: No, I'm not.

CORRESPONDENCE

President Brown: Correspondence please.

Clerk of Council White:

1) Received a letter from Coalition of Homlessness and Housing in Ohio Executive Director Bill Faith in regard to the passage of House Bill 386 that threatens to protect citizens from predatory lending and requesting consideration of passing a resolution in opposition to House Bill 386.

2) Received a letter from Stewart Lovece bringing attention to issues in the interest of public safety and welfare in regard to two bridges on Lear Nagle, the flood control structure north of the Ohio Turnpike along French Creek and roof trusses in newer homes may not be installed in accordance with manufacturer drawings.

3) Received a letter from Walter & Haverfield in regard to the recent FCC decision that allows cable operators to pass through additional franchise fees to consumers that may result in higher cable rates.

4) Received a memo from Mayor in regard to her nominations to fill vacancies on Planning Commission, Board of Zoning and Building Appeals, Parks and Recreation Commission and the Income Tax Board of Review.

5) Received a memo from Mayor Hill submitting responses from department heads and staff who have responsibility for the areas of concern expressed by former City Engineer Lovece. That's all of the correspondence that I have.

Council Member Minnick: Madame President, may I request that Mr. Lovece's letter be referred to Buildings and Lands to consider putting notification in utility bills.

President Brown: For what?

Council Member Minnick: Because of the roof trusses, the possible roof truss problem. Put a note in the utility bills so that all the residents are informed.

President Brown: Is that allowed?

Law Director Zagrans: It's allowed if you choose to do so, yes.

President Brown: And you want that to go in with the water bill?

Council Member Minnick: I would like the letter referred to Buildings and Lands so that they could consider putting a notification in the water bill.

President Brown: Mr. Lovece's letter?

Clerk of Council White: She's requesting that you send the letter to the Buildings and Lands. That's your decision of what you want to do.

Law Director Zagrans: I would support the request, but only as long as Buildings and Lands will conduct a full, thorough inquiry because a notice should not be sent to residents in a water bill or otherwise if the suspensions in Mr. Lovece's letter prove not to be the case. So, I would support Mrs. Minnick's request for the referral, but only if Buildings and Lands is prepared to give the matter a very thorough effort.

President Brown: I will refer it to Buildings and Lands.

REFERRED TO BUILDINGS & LANDS COMMITTEE.

LOBBY

President Brown: Moving on to lobby, I will allow you two minutes to speak after you give your name and your address. Anyone wishing to speak?

No one spoke.

President Brown: Does Council have anything they want to say?

Council Member Minnick: Yes, I do. Back to the dismissal of the lawsuit in Lorain County. I'd like to know where that leaves the emergency clause that we were suppose to get a ruling on. It was sent to the Supreme Court because there was a question whether the emergency clause was illegally applied and the Supreme Court dismissed it because it was in Lorain County Common Pleas Court and now the City has withdrawn the lawsuit so, we are left in limbo and the voters had signed petitions to vote on that.

Law Director Zagrans: Actually, Mrs. Minnick has incorrectly stated the Supreme Court's dismissal. The dismissal was pursuant to Supreme Court practice rule ten five, not because there was a case pending in Lorain County. That dismissal can be interrupted in many ways. I

interrupt it as a dismissal on the merits. Mr. Phillips asked the Supreme Court to clarify it because he disagreed it was a dismissal on the merits. Supreme Court declined to clarify. The referendum petitions that were submitted to Council on November 1, 2000 sought a vote at the general election to be held on November the 6, 2001. That general election has come and gone. The matter is moot.

President Brown: Thank you. I will call for a ten minute recess. We will reconvene five minutes to nine.

RECESS from 8:46 P.M. to 8:54 P.M.

FIRST READINGS

Clerk of Council White:

T 136-2001 AN ORDINANCE ACCEPTING THE PLAT OF WATERBURY PCD PHASE
II FOR FINAL APPROVAL FOR RECORDING PURPOSES
First Reading

T 143-2001 AN ORDINANCE REDUCING THE SALARY OF COUNCIL MEMBER
3737-2001 SWINDIG FOR THE 2002 AND 2003 TERM TO \$4,200.00 PER YEAR.
First Reading
motion by Overby to suspend the second and third reading, 2nd by Gillock

President Brown: Discussion? Please take roll.

Yes, 5 No, 1 (Minnick) Abstain, 1 (Swindig)

Clerk of Council White: Motion carries five, one, one to suspend second and third readings.
motion by Overby to adopt, 2nd by Gillock

President Brown: Discussion?

Council Member Minnick: Yes Madame President, I have an information sheet advisory opinion about increases in compensation. However this is a decrease, but it's about the same anyway. What is the question address in the opinion? This is from the Ethics Commission of Ohio. Can an elected City or Village Official accept or take an official action to obtain an increase in compensation for a position that he is entitled to hold in the next term when the increase was enacted after he has been reelected to that position and prior to the beginning of his new term and without a meaningful opportunity for public input. What is the Ethics Commission answer? No, the Ethics law prohibits an elected City or Village Official from accepting or taking any official action to increase the compensation for a position which he is entitled to hold in the next term after his reelection to the position and prior to the beginning of his new term. The Ethics law prohibits these actions because the increase in compensation to which the public Official is entitled solely by his own action without the meaningful opportunity for public input may manifest an improper influence upon the official and impair his independence of judgement. On behalf of the public interest, what is the practical effect on the opinion and to whom does it apply? The opinion of the Commission ensures the public that increases in compensation for its elected City and Village office holders will be presented and considered prior to an election for new terms of these office holders and is not solely dependent upon the potential improper

influence of the compensation increase on an office holder who would otherwise be legally entitled to an increase as a result of his action. How and when does this opinion become effective? The opinion becomes effective with any changes requested by the Ethics Commission upon acceptance by the Commission. And then we have Ohio Revised Code 731.07 that contains and express prohibition against in term increases or decreases of salary. In pertinent part, Ohio Revised Code 731.07 provides as follows, the salary of any officer, clerk or employee of a City shall not be increased or diminished during the term for which he was elected or appointed. This section has been interrupted and implied to protect, to prohibit the decrease in ones salary after one has been approved or elected and before the beginning of the new term. Village of Newcomers Town versus the State ex rel Blat, 1930360, holding that an ordinance reducing the salary of village Marshall below the standard salary in effect at the time of election or appointment is invalid. The City cannot legally decrease the salary of a Council person below the uniform salary schedule for all Council persons after an election and before the beginning of the new term of office. The Councilman who request the decrease in his Council salary, so as not to incur a decrease in his retirement disability pension, cannot vote on such matter because a public official cannot use his authority or influence to secure something of substantial value. Ohio Revised Code 102.03(d), the savings from avoiding reduction of one's retirement disability pension is something of substantial value. Those are my reasons for not allowing the decrease and if Mr. Zagrans has something other then that, I would like to have a written legal opinion from him.

Law Director Zagrans: Madame President, there's only one thing that I heard Mrs. Minnick say that was correct and that is that Mr. Swindig can't vote on this motion as I do not believe he intended to vote on this motion because the similar motions that have been made during the years that I have been around, he hasn't voted on. However, the Ethics opinion that Mrs. Minnick sites simply is not applicable to this situation. It was an Ethics opinion involving increases in a Council Members salary after becoming elected to the position and one can readily understand why an increase in salary or an action taken by a public official to increase their salary after they were elected would be considered unethical. I am astonished that anyone could, with a straight face, argue that it is unethical or some how wrong to the taxpayers of the City of North Ridgeville for a public official voluntarily to lower the amount of money that the taxpayers of this community are going to have to spend for his salary serving as an elected official. That is an astonishing and wrongheaded argument to make. So, if the Members of Council want my opinion on the subject, the legal citations that Mrs. Minnick has used to argue against this, do not apply to this situation and I see nothing wrong with the motion that has been made.

Council Member Minnick: Madame President, the Ethics Commission addressed the increase, however, Ohio Revised Code 731.07 expressly addresses the increase or decrease and in that I would like a written legal opinion from our Law Director that allows Mr. Swindig to take the salary decrease.

Council Member Gillock: Madame President, 731.07 does say that you cannot increase or decrease a salary during the term. But, there are exceptions to the rule and I'm not going to try and practice law, but I know in North Ridgeville we have an ordinance that allows the Mayor's salary to be adjusted during the year based on the salary of the highest paid individual of the

City, the Police Chief, I believe. The City of Cleveland has an ordinance that their Council Members receive and automatic pay increase every year. I believe it's six percent, based on cost of living and there's other exceptions to the rule. That is not a cut and dry rule that says you just cannot do this. The purpose of the law, in the first place is, number one, you don't want elected officials giving their selves a raise after they're elected. Secondly, you do not want those elected officials punishing someone who may have just been elected by taking his salary away. In this case, Mr. Swindig has been receiving this same salary for four years, has requested this, saving the City twenty-eight hundred dollars a year and based on the fact he's been receiving this salary for four years, I don't see this as an increase or decrease.

Council Member Minnick: Madame President, I would like to know if Mr. Swindig's disability board knows that this is occurring and if he does, if they do and we know that for a fact, then that would make this a little easier to handle. But, right now I'm going by Ohio Revised Code.

Law Director Zagrans: Madame President, may I remind the Members of Council that the laws of defamation apply to statements that are made during public meetings about public officials just as much as they apply to any other form of communication.

Council Member Swindig: Madame Chairman, yes, the railroad retirement does get a copy of this ordinance and they get it every year that I have applied for it. I've applied for the year 2002 and 2003, they will get a copy of this ordinance when it's signed and in effect both in the year 2002 and 2003 and I have the opinion of the railroad retirement attorneys stating that I cannot make more than four hundred dollars a month.

Council Member Minnick: Madame President, in regard. . . .

Council Member Swindig: And that is by the railroad retirement board's attorney.

Council Member Minnick: Thank you. Madame President, in regard to Mr. Zagrans statement, I had requested this to be going into committee so that this could be discussed and when it can't be discussed in committee, then I have no other choice but to discuss this on Council floor.

President Brown: Please take the roll, Mr. White.

Yes, 45 No, 1 (Minnick) Abstain, 1 (Swindig)

Clerk of Council White: Motion carries five, one, one. T 143-2001 becomes Ordinance Number 3737-2001.

Permanent Ordinance No. 3737-2001

T 144-2001 AN ORDINANCE AMENDING ORDINANCE NO. 3479-99 PROVIDING FOR
3738-2001 WAGES AND FRINGE BENEFITS FOR THE CHIEF AND ASSISTANT
CHIEF OF THE NORTH RIDGEVILLE FIRE DEPARTMENT.

First Reading

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

President Brown: Discussion? Take roll please on the suspension.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero to suspend second and third readings.

motion by Overby to adopt, 2nd by Swindig

President Brown: Discussion? Please take roll, Mr. White.

Yes, 7 No, 0

Clerk of Council White: Motion carries seven, zero. T 144-2001 becomes Ordinance Number 3738-2001.

Permanent Ordinance No. 3738-2001

T 145-2001 AN ORDINANCE DIRECTING THE CITY ENGINEER TO CAUSE TO HAVE PLANS, SPECIFICATIONS, PROFILES AND A COST ESTIMATE PREPARED TO BE ON FILE IN THE OFFICE OF THE CLERK OF COUNCIL AS REQUIRED BY LAW PURSUANT TO OHIO REVISED CODE § 727.12 AND § 729-02 FOR THE CONSTRUCTION OF SIDEWALKS, DRAINAGE FACILITIES, SEEDING, MULCHING, AND NECESSARY APPURTENANCES THERETO ON A PORTION OF CENTER RIDGE AND IN CERTAIN OTHER DESIGNATED LOCATIONS DESCRIBED HEREIN AND THAT APPROPRIATE FUNDING BE AUTHORIZED FOR PROFESSIONAL ENGINEERING SERVICES TO PREPARE SUCH PLANS NOT TO EXCEED \$130,000.00

First Reading

Council Member Gillock: Madame President, I just have one question, right now, on this. This one hundred thirty thousand is not for the sidewalks, it's for the studies and engineering services, is that correct? I have two questions, that's number one. Number two, if I could ask the Auditor, do we have this money? Or, where we going to get it?

Auditor Costin: At this time, this money has not been appropriated. What I mentioned during the recess, I was discussing this very ordinance with one of the committee members and suggested that this might be a topic of discussion during the appropriations for 2002 unless there is some urgency and we need to prioritize spending the money in our amended appropriations that will follow this year. I would recommend that it be part of the overall discussion in appropriations process that we embark on in the month of February 2002.

Council Member Gillock: So, can we postpone it until then?

Auditor Costin: Well, it hasn't passed yet, it's going to receive its first reading tonight.

Council Member Gillock: The second and third will be in December.

Auditor Costin: Then we'll postpone it until appropriations, would be my recommendations.

But, truthfully, I don't know anything about the ordinance and its urgencies and so forth. That would have to be explained by the committee.

SECOND READINGS None

THIRD READINGS

T 103-2001 AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 1294.03 -
3739-2001 DETACHED PRIVATE GARAGES AND ADDING OUTBUILDINGS.

Third Reading

motion by Overby to adopt, 2nd by Butkowski

President Brown: Discussion? Take roll please, on the adoption.

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
REGULAR MEETING NOVEMBER 19, 2001**

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Yes, 5 No, 1 (Swindig) Abstain, 1 (Pagel)

Clerk of Council White: Motion carries five, one, one. T 103-2001 Revised becomes Ordinance Number 3739-2001.

Permanent Ordinance No. 3739-2001

T 117-2001 AN ORDINANCE AMENDING SECTION 660.15 OF THE CODIFIED
3740-2201 ORDINANCES ENTITLED "NOTICE TO REMOVE LITTER AND DEBRIS,
CUT WEEDS AND PROVIDE PROPER DRAINAGE; ABATEMENT;
ACTION BY CITY; RECOVERY OF COSTS".

Third Reading

motion by Gillock to adopt, 2nd by Butkowski

President Brown: Any discussion? Please take roll.

Yes, 6 No, 0 Abstain, 1 (Pagel)

Clerk of Council White: Motion carries six, zero, one. T 117-2001 becomes Ordinance Number 3740-2001. That's all of the third readings that I have.

UNFINISHED BUSINESS None

COMMITTEE MEETING ANNOUNCEMENTS

Council Clerk White:

The next Regular Council meeting will be Monday, December 3, 2001 at 7:30 P.M.

There will be a Public Hearing Monday, December 17, 2001 at 7:15 P.M. on Waterbury PCD Phase II final approval.

ADJOURNMENT

motion to adjourn by Swindig

President Brown: Meeting adjourned.

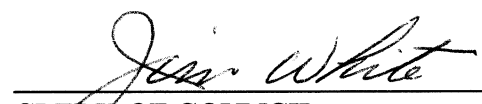
Meeting adjourned at 9:10 P.M.

MOTION Overby 2ND Swindig VOTE December 3, 2001
(As corrected on Page 18)

YES 7 NO 0 ABSTAIN 0



PRESIDENT OF COUNCIL



CLERK OF COUNCIL