

**NORTH RIDGEVILLE MUNICIPAL COUNCIL  
MINUTES OF  
REGULAR MEETING      NOVEMBER 6, 2000**

President of Council Jean Brown called the meeting to order at 7:30 P.M. with the Invocation and the Pledge to the Flag.

President Brown: Thank you. Roll call, please, Mr. White.

**ROLL CALL**

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

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

**MINUTES**

President Brown: Thank you. Please note:

Public Hearing Minutes of October 16, 2000 regarding T 123-2000

Do I have a motion to accept?

motion by Swindig to accept, 2<sup>nd</sup> by Borocz.

Council Member Butkowski: Madam President?

President Brown: Is there any discussion?

Council Member Butkowski: Yes Madam President, can we group all four of these and just approve them all at one time?

President Brown: Can we do that, Mr. Zagrans?

Law Director Zagrans: Yes, absolutely.

President Brown: Well, then let's do that.

Public Hearing Minutes of October 16, 2000 regarding T 124-2000

Public Hearing Minutes of October 16, 2000 regarding T 125-2000

Public Hearing Minutes of October 16, 2000 regarding T 109-2000

President Brown: Can we also put in the regular?

Law Director Zagrans: Probably better to keep the regular separate.

Council Member Swindig: Madam Chairman, I'd like to withdraw my motion for October 16, 2000, T 123-2000 Public Hearing and to include T 123, 124, 125, and T 109.

President Brown: All into your motion?

Council Member Swindig: All into my motion.

President Brown: Okay. Mrs. Borocz, you second that?

Council Member Borocz: Yes, I do.

motion by Swindig to accept the Public Hearing Minutes of October 16, 2000 regarding T 123-2000,

Public Hearing Minutes of October 16, 2000 regarding T 124-2000,

Public Hearing Minutes of October 16, 2000 regarding T 125-2000 and

Public Hearing Minutes of October 16, 2000 regarding T 109-2000,

2<sup>nd</sup> by Borocz

President Brown: Any discussion on all four of them? Seeing none, please take a vote.

Yes, 7              No, 0

Council Clerk White: Motion carries seven, zero.

Regular Council Minutes of October 16, 2000

President Brown: Do I have a motion to accept?

motion by Butkowski to accept, 2<sup>nd</sup> by Swindig

President Brown: Any discussion? Any changes that have to be made? None? Please take roll please.

Yes, 7              No, 0

Council Clerk White: Motion carries seven, zero.

President Brown: Please note in your packet:

Parks & Recreation Commission Minutes of September 27, 2000,

Civil Service Commission Minutes of October 17, 2000,

Board of Drainage and Flood Control Minutes of October 25, 2000 and

Board of Zoning & Building Appeals Minutes of October 26, 2000

President Brown: Continuing on to Committee Reports. We have Utilities Committee Report. Mr. White, would you please read it.

### **COMMITTEE REPORTS**

UTILITIES COMMITTEE REPORT NO. 7045 Members of Council, we have considered the matter of an ordinance and resolution of necessity to authorize the construction of the Westerly Sanitary Truck Sewer improvement Project and to authorize the issuance of notes and bonds pertaining thereto and recommend that this request be approved and proper legislation be drawn authorizing the above with the contingency that the ordinance becomes moot and void if the landowners financing 84% of the project do not fulfill their obligation.

Signed: Dave Gillock, Karen Borocz and Larry Overby.

motion by Gillock to accept, 2<sup>nd</sup> by Borocz

President Brown: Discussion?

Council Member Butkowski: Madam President, I called the Secretary's office today and she

said there is no contract available or any more information than just what we've gotten here. This is a major project for the City. I would think we'd get a little more information than this before we approve this.

President Brown: This is just on a Committee Report.

Council Member Butkowski: I realize that.

President Brown: Pardon?

Council Member Butkowski: I realize that but there's not a lot of information here.

Council Member Gillock: Madam President?

President Brown: Yes Mr. Gillock?

Council Member Gillock: We will still have to approve the financing and the plans. This is just to get the process started. All of that will have to be done.

President Brown: Thank you Mr. Gillock. Any other discussion? Please take roll.

Yes, 5                      No, 2 (Minnick, Butkowski)

Council Clerk White: Motion carries five, two. That's all the Committee Reports that I have.

President Brown: Yes, that's all I have, too. Mayor's report.

### **MAYORS REPORT**

Mayor Hill: Yes Madam President. I don't have a full report but I would request that for T 137, authorizing the Mayor to enter into an agreement with the unions to make benefits and wages retroactive to the date of the initiation of the collective bargaining agreement, I would ask Council to suspend By-Laws and pass this by emergency so we can conclude negotiations as quickly as possible. That concludes my report.

President Brown: Any questions of the Mayor's Report? Seeing none, moving on to Safety-Service Director's report. Mr. Johnson.

### **SAFETY SERVICE DIRECTOR'S REPORT**

Safety-Service Director Johnson: Yes Madam President.

The Service Department has paved Davis Drive and today completed the base coat on Wallace Boulevard.

Street pads, sidewalk and drive apron work has been performed on Denise, Leafy Mill, Fox Hollow and Grant Street.

Crack sealing was performed on Shady Moss, Gate Moss, Davis, Clark, Patton, West Point, Wainwright and Stoney Ridge.

There were several water problems since the last report on Rosebelle, Jefferson, Olive, Wallace and one hydrant replaced at 9207 Root Road.

Ditch cleaning and piping took place on Cornell, north Lear Nagle and Wallace.  
Sewer cleaning took place in the Mitchell farm areas.

Tree trimming was done on Meadow Moss and Otten Road. Tree removal took place on Chestnut Ridge, Avon Belden and Luanne.

Spot berming on Lorain, Relocated 83, Chestnut Ridge and the new paved streets of Noll and Washington.

The following streets have been stoned: Birch, McKinley, Adele and Barres Road.

Large ditches that were cleaned: the ditch behind Vinnie's Donuts that runs parallel with Chestnut Ridge and the French Creek from Lorain Road to Route 10.

The cave-in along Lear Nagle, due to a faulty drainage pipe, has been corrected.

A swale was installed on the south end of Denise Drive. This should divert some of the water from the backyard of the homes on the west side of Denise. That concludes my report.

President Brown: Does anyone have any questions of the Safety-Service Director's oral report?  
Mrs. Minnick?

Council Member Minnick: Mr. Johnson, has Gloria been repaired yet?

Safety-Service Director Johnson: Gloria is due to be stoned this year. I don't know if it has been. I haven't been down there in the last couple of days because of the paving of Wallace. We've been on that project for several days.

Council Member Minnick: Have the holes at least been filled for the residents?

Safety-Service Director Johnson: I will check it out.

Council Member Minnick: Thank you.

President Brown: Anyone else? Moving on to Mr. Lovece, our Engineer.

### **ENGINEER'S REPORT**

Engineer Lovece: Thank you, Madam President. Bainbridge Road reconstruction starting today. I'm sure a lot of you are probably aware. The bridge is out over French Creek. That bridge is located immediately west of Kensington and there's two way traffic maintained from Wil-Lou to the bridge from the east and from 83 to the bridge from the west. So that bridge will be out for at least two months. At the same time they are working on the eastern end of the pavement and they are looking to get it complete. They're looking at getting all the asphalt complete in two weeks. That's the goal right now and things are moving.

Wallace Boulevard water main project is complete and with that project we've made several improvements to the water distribution system, actually in that neighborhood, and there's more

hydrants now than there was before for better fire protection, a larger diameter pipe, 8 inch. Part of the old main was only six inch.

Case Road reconstruction, weather permitting, paving will begin tomorrow. That's from Center Ridge Road all the way to Burns. Right now the grinding up of the old pavement, that's complete. We're just waiting for the contractor to come in and pave the road.

Mills Creek at Lear Nagle, this is Mills Creek opposite the Pine Ridge Trailer Park. We hired Don Mould Company to do some ditch cleaning. We actually broke through some rock. We busted about a foot and a half of rock for about 100 feet and removed an old bridge that was blocking the flow. This will provide relief for the homes along Lear Nagle Road, to minimize it, and during a given storm it should minimize the probability of flooding along portions of south Lear Nagle Road and into the Hershey, Steinbeck, Dickens and Gail are where that water used to back up. That should help quite a bit. There's still a few more bottlenecks that have been there for many years but, namely two bridges that homeowners own, but I think for the most part it will improve the flow.

Last, but not least, something I'm concerned about. Normally I don't get involved in political issues. If someone asks me my opinion about something, it's true. If someone asks me my opinion, I'll give him my opinion. But then I'll leave it that they can vote on it however they want. What concerns me, there was an ad in the Press and Light November 1 quoting some things and the way it looks I support what's in this ad and actually I do not support what's in this ad. In fact, I'm rather concerned about this Issue 57 because I think if this Issue 57 passes I'm afraid it's going to be detrimental to the economy of the community. The fact that my name is in there and people are quoting me in a previous meeting, I think I should bring this up. I'm totally against Issue 57 and totally for Issue 58. You know, I think there are some things that the voters best not vote on. It's up to us to make the decisions. That would be like voting for everything that the engineer does. It would make it so cumbersome. I mean, I just wanted to point that out because, frankly, my intention with these quotes was to let the developers know, hey, you and I know we can't catch everything, but we're going to watch. I don't want to see inferior drawings, that's true. I want to see it done right. And that's it. So, it's my way of letting the developers know we're watching. Thank you.

President Brown: Thank you Mr. Lovece. Any questions of the Engineer's Oral Report? Yes, Mr. Swindig?

Council Member Swindig: Mr. Lovece, I talked to the Service Department today on the water lying in the ditch along Mills Road by Garrett, and they said it was something from Red Tail. Did they remove the blockage in Red Tail?

Engineer Lovece: I know I had a similar complaint today. I sent one of the inspectors out and I haven't heard since, but we're aware of it.

Council Member Swindig: Thank you.

President Brown: Anything else? Mr. Gillock?

Council Member Gillock: Stewart, can I ask you a question about the water tower which wasn't a part of your report?

Engineer Lovece: Okay. Go ahead.

Council Member Gillock: The main thing I was curious about is with this new water line coming through and I know there will be some taps off of that. Part of the reason for our water tower was for safety. Will the new water line have any impact on the need for the new tower?

Engineer Lovece: We factored that into the design and the new water tower. The new water main, those big 42 inch concrete pipes that you see, that will help mainly the western part of the City. It will also help for the need of a second water tower many years from now. The City is growing and it's a good thing we have this new transmission main and we are aware, I was aware about a year ago about this and we factored that into the design for the new tower. I'm glad you brought that up because there was another misconception that we may not be building the water tower this fall, something about soil conditions I heard. But the new water tower is under construction, they're doing some of the demolition right now, and the soil conditions couldn't be better to build a high rise tower. Thank you.

President Brown: Anyone else want to speak? Okay. Auditor's report. Mr. Costin.

#### **AUDITOR'S REPORT**

Auditor Costin: Madam Chairman, there is no formal report due for tonight's meeting. I do have two items of business, the first of which has to do with our current rating. The Mayor did announce at our last Council Meeting that Moody's Investor Services rated our short term notes a MIG 1 and up graded our bond rating from a BAA1 to an A2. At that last meeting we did not have a copy of the formal rating from Moody's and have received it since and that was passed to all the Council persons before the meeting for your general interest.

Item number two is, under New Business, T 135-2000, a resolution accepting certain rates. It's under New Business. I do request that be passed tonight with the emergency. It is a formality that's required by the Ohio Revised Code and the rates are going to remain the same regardless of whether we pass it or not pass it, so I would request respectfully that we do pass that T 135-2000 tonight with emergency. No further comments. Thank you.

President Brown: Thank you Mr. Costin. Any questions of Mr. Costin's report? Seeing none, moving on to Mr. Zagrans, Law Director's report.

#### **LAW DIRECTOR'S REPORT**

Law Director Zagrans: Thank you. I have four legal matters including litigation on which to report tonight. Since the last Council meeting the City won its lawsuit against the Lorain County Board of Elections to place a more accurate and complete summary of the proposed amendment to the City Charter as the ballot language of Issue 57. Although the proponents of the proposed

Charter amendment, including its attorney who wrote it, tried to get the Board of Elections to put a very brief and incomplete statement on the ballot, on October 20, Judge Betleski of the Court of Common Pleas ruled that the summary ballot language was, quote, "insufficient and misleading," end quote, in two respects. In order to make the ballot language legally adequate and more accurate he ordered the Board of Elections to add language to the ballot specifying first, that when the amendment, if adopted tomorrow, would require that a proposed zoning change to allow a Planned Community Development or PCD must first be approved by a majority of the voters in the entire City and each Ward where the affected property is located, the definition of PCD includes any, quote, "development which is planned and designed to integrate a mixture of land uses within a geographically defined area," end quote, and that the mixture of land uses referred to specifically includes, quote, "residential, business, commercial, industrial, institutional, governmental, collateral non-residential, or any other uses," end quote. And second, Judge Betleski ordered that when the amendment, if adopted tomorrow, would require that a proposed zoning change to allow a commercial retail development of ten acres or more must first be approved by a majority of the voters in the entire City and in each Ward where the affected property is located, the computation of ten acres or more shall include, "contiguous land which is already zoned to allow or permit commercial retail development," end quote. The Court ruled that the City had brought a good and meritorious lawsuit and entered final judgement in favor of the City on October 20. However, the Court declined to include a third provision in the ballot language that the City believed is necessary to make the ballot complete, sufficient and clear to the voters. The City wanted the Court to order the Board to include Section 3 of the proposed Charter amendment which reads, quote, "all ordinances, resolutions, proclamations, motions and Charter provisions inconsistent with the proposed amendment are hereby repealed and declared null and void," end quote. The City filed an appeal of the judges refusal to order this provision of the proposed Charter amendment included on the ballot so that the voters could know about it and decide for themselves if they approve. As I've said, all the court did in granting judgement to the City was to include more of the terms of the proposed Charter amendment on the ballot so that the voters can know about them, read them, and decide for themselves if they approve or not. The Board of Elections did not appeal the judges decision. They immediately changed the ballots in the way that Judge Betleski ordered. But amazingly, the proponents of this proposed Charter amendment and its attorney filed an appeal of the decision on October 30. In other words, the proponents of the proposed Charter amendment have appealed a ruling letting the voters see on the ballot more of the specifics of what they are asking the voters to approve. Obviously these appeals are not going to be considered or decided before tomorrow's election. The City's appeal is therefore probably moot and we're likely to dismiss it voluntarily since the Court could not consider it before the election. However, the appeal by Mr. Phillips and his clients of the Judge's decision to put more of the specifics of what they wrote on the ballot may place a cloud over the issue to be considered in tomorrow's election. I hope that will not be the case.

Second. There is on tonight's agenda, T 131-2000, the final plan and plat approval of Phase 1 of

the Kingston Place PCD. There is an amended version of T 131-2000 that I understand has been distributed to all the Members of Council and that I further understand Mr. Swindig is going to introduce to substitute, in its entirety, for the original form of T 131-2000. The reason for the amendment is so that the language of the ordinance can conform to the language of Section A.09 of Ordinance No. 3491-99 regarding approval of a final plan of development area for Phase I of the Kingston Place project. That is the language that was added, final plan of development area, to track Section A.09. Please note the change at your convenience.

Third. On November 1, 2000, Council Clerk Jim White received from Mr. Phillips a referendum petition directed against Ordinance No. 3621-2000 which Council adopted on October 2, 2000. That's the preliminary plan approval for the Waterbury PCD and another referendum petition against Ordinance No. 3628-2000 adopted on October 16, 2000. That's the preliminary plan approval for the Meadow Lakes PCD. The referendum petitions ask City Council to reconsider both of those ordinances and either to repeal them or place them on the ballot at the November 6, 2001 general election. As Ronald Reagan might say, here we go again. It seems that even without the proposed Charter amendment, Mr. Phillips and fewer than sixteen percent of the people who voted last November, who by the way comprise only about five percent of the total number of registered voters in North Ridgeville, are going to insist on a vote on every PCD that comes before Planning Commission and City Council. You will recall, Members of Council, the process from the Kingston Place referendum last March. Mr. White has until Wednesday, November 15 to determine the legal sufficiency of the two petitions for referendum and the signatures on them. Then Council must, by December 15, 2000, if the petitions are legally sufficient, reconsider and repeal the ordinances or submit them to a vote of the electors next November, a year from now. But this one comes with a twist that the Kingston Place one did not have. Last Thursday, November 2, Mr. Phillips sent me a letter demanding that I file a law suit against the City and against City Council on behalf of his clients to force Council to remove the emergency clauses under which both ordinances were adopted and threatening to sue the City himself if I do not. Here's the twist. Mr. Phillips and his clients don't believe or accept the fact that under Sections 8A.06 and 8A.08 of the PCD enabling legislation that Council adopted last September 20, 1999, that when Council approves and adopts a preliminary PCD plan, it is authorizing a change in the zoning of the affected property of 200 acres or more from R-1 zoning to PCD zoning. They say my legal interpretation of Ordinance No. 3491-99 is wrong and that approving a preliminary PCD plan does not rezone the property. However, Mr. Phillips and his clients contradict themselves by simultaneously arguing that Council's approvals last month of the Waterbury and Meadow Lakes preliminary PCD plans did rezone those properties to PCD rezoning and that in their view the City Charter does not allow rezoning to be done on an emergency basis. This is because, as Mr. Phillips admits, you cannot bring a referendum petition against emergency legislation under Ohio law. So his referendum petitions would be invalid unless he can knock out the emergency provision in each ordinance. Now, contrary to Mr. Phillips limited and erroneous expectations, I do intend to inspect very carefully the legal question he has presented and to issue a legal ruling on the matter prior to the mid-December

deadline for Council acting on the referendum petitions. Parenthetically I note it's a curious thing when Mr. Phillips requests my assistance on behalf of his clients to bring a lawsuit on their behalf, he spends virtually the entire letter he wrote me, belittling and berating me. Contrary to what Mr. Phillips writes, his demand is not futile ~~not~~ nor does it necessarily compel me to reverse any legal opinion I have previously given. This is a new question that has not been before presented during my tenure as Law Director. This is why Mr. Phillips is just plain blowing smoke, as they say, when he states that, quote, "my sole goal and objective is to prevent North Ridgeville residents from voting on the Waterbury and Meadow Lakes PCDs." Nothing could be farther from the truth. My legal opinion will be based on what the City Charter and Ohio law allow. Those things, the City Charter and Ohio law alone, will determine who gets to vote or not and on what. I also intend to obtain a legal opinion from an outside law firm in order to eliminate any false implication that my opinion might be politically rather than legally motivated. Mr. Phillips and his clients may want to try to have their cake and eat it, too, but they can't have it both ways. Mr. Phillips' apparent admission that approval of a preliminary PCD plan constitutes the rezoning of the property itself seems to be the basis of his demand that I bring a lawsuit against the City. But I'm not going to allow myself to be tricked into taking legal action at Mr. Phillips request only later to have him try to knock the legal legs out from under that preceding. So in order to proceed by the mid-December deadline, I will need Mr. Phillips to give me a written explanation of whether or not he concedes that the challenged ordinances constituted the rezoning of Waterbury and Meadow Lakes. Once I have that determination from him as to what his position is, I will then be able to rule on whether or not his demand is legally sound and sufficient.

Finally, some Members of Council have expressed concern and confusion about some of the things they have recently read in the newspapers. Two of them have submitted a couple of questions to me about the meaning and affect of the various legal matters that have been swirling around the City for the last several weeks. First, two Members of Council asked me whether we are somehow violating the recent Ohio Supreme Court decision on Kingston Place by approving the preliminary PCD plans for Waterbury and Meadow Lakes last month and by voting on the approval of the final plan of development area for Kingston Place tonight. And they have asked me a second related question about insinuations in a recent letter to the editor that I had deliberately made an improper legal ruling for me own financial benefit. As to the first question, no we have not violated, in any way, shape or form, the Supreme Court Decision. We immediately and fully complied with the Court's ruling by placing Ordinance No. 3543-99 on the ballot where it will appear at tomorrow's election. The issue in that Supreme Court case was a very narrow and limited one. Council did what the referendum petition wanted, you repealed the ordinance on April 17 of this year. At that time, when you repealed the ordinance in response to the referendum petition against it, no one questioned the procedure of voting to repeal the ordinance by motion. No one said it was an illegal or improper process to follow, not even Mrs. Minnick and Mrs. Butkowski, who have criticized the process subsequently but who voted along with the majority on April 17 to repeal the ordinance by motion. Because the ordinance was

repealed, I said there was no need to have the voters vote on the question, it was repealed, and that is exactly what Section 13.2 of our City Charter says. When it is repealed there is no vote. As I say, no one raised a concern about the procedure I allowed in repealing the ordinance for over two and a half months. Then, in July, Mr. Phillips figured out that if he could say I had Council follow an improper procedure to repeal the ordinance, then he and his clients could get the question on the ballot and try to get the voters of North Ridgeville to reject the ordinance, which would be by the way, the exact same result they had already obtained from this Council when this Council rescinded the ordinance. No one else besides the people who were opposed to this ordinance objected to the procedure that you followed to repeal the ordinance. It was only the people who were against it in the first place who objected. The Supreme Court case that subsequently followed held one thing and one thing only. It said we were wrong to repeal the challenged ordinance by a motion to rescind it. The Court said that, quote, "the same procedural requirements that must be followed to enact an ordinance must be followed to repeal an ordinance", end quote. I didn't try and don't try today to keep voters from voting on ordinances. For goodness sakes, I approved in April, the quick immediate procedure to repeal the ordinance that the referendum petitioners were against and didn't like. Under our Charter, as I've said, there is no vote on a referendum petition if Council repeals the challenged ordinance. There were no, in fact, rights denied. All the Supreme Court said was, you needed to follow the legislative procedure. And that's the only reason that the Kingston Place issue is on the ballot tomorrow, because the Supreme Court threw out Council's repeal of Ordinance No. 3543-99 for following the wrong procedure. Now, what is entirely different from that case and what that case ruled are the preliminary plan approvals for Waterbury and Meadow Lakes PCDs that this Council adopted last month. Those approvals do not thumb our noses at the Supreme Court decision or what some Members of Council were quoted in the paper as saying. The one has nothing whatsoever to do with the other. Waterbury and Meadow Lake PCDs involved entirely different legal issues. And, by the way, I dare say that the issue addressed by the Supreme Court in the Kingston Place case will never again come up in North Ridgeville. We're not going to follow the wrong procedure in response to a referendum petition in that way again. So, the answer is no, we are completely in accordance with the Ohio Supreme Court decision and always have been since it was announced. Second, as to the slur that I would deliberately rip off the taxpayers of North Ridgeville making a knowingly wrong decision so that someone would have to file a legal challenge to my ruling and I would make money defending the City in Court. I have just two things to say. If my decision regarding the procedure for repealing Ordinance No. 3543-99 was a wrong one, so be it, but it was not deliberately wrong. If I was wrong on the law, so were three justices of the Ohio Supreme Court, including the Chief, who said that the City used the correct procedure under our Charter to repeal the ordinance not the wrong procedure. And so are the Ohio Municipal League which is the organization of all Chartered municipalities in the State of Ohio and the Ohio Municipal Attorneys Association, the organization of all city and village Law Directors.

(Tape End) (Tape Begin)

... the ordinance last April. Its hard to see how I could be deliberately and schemingly wrong if

so many jurists and legal scholars thought that I was right. And finally, by the time that someone reaches my seniority in the practice of law, he or she invariably takes a cut in compensation to take any public office or position of employment. I charge the City only a fraction of the hourly rate I charge my private clients and I certainly charge the City less than Mr. Phillips' requested hourly rate for his time. So if it were financial benefit from causing and then defending litigation that I was interested in, I'd be much better off spending the same amount of time ripping off my private clients than ripping off the City of North Ridgeville. This just demonstrates the absurdity of this outrageous lie. Of course, the truth is, I do neither. So, in the words of the lawyer on the Ali McBeal T.V. show, please. That concludes my report.

President Brown: Thank you Mr. Zagrans. Any questions of the report? Mrs. Minnick.

Council Member Minnick: Well, it was quite a lengthy report. It was quite a misleading report.

Law Director Zagrans: Do you have a question, ma'am?

Council Member Minnick: Yes, Mr. Zagrans, I have to rebut what you said. I am not an attorney and I did agree to verbally rescind the ordinance. I kept thinking of that and kept thinking of that and it bothered me and I did call the Ohio Municipal League and I got advice from them. They did tell me that I couldn't use it as a legal opinion, but I did get their advice. I asked ~~is~~ this Council and you to get another legal opinion. I was denied that. So I searched out another legal opinion, searched the Charter and searched just everywhere til I found that we did illegally rescind that ordinance. And I tried to make it right and this Council did not follow me, they followed your opinion, which like I said the Ohio Municipal League told me I was right, my hunch was right. You aren't considering ...

Law Director Zagrans: If that was a question I'll respond to it.

Council Member Minnick: It was not a question. I'm making a statement. If you can make a long, long report like that with misleading statements, I believe I have a right to rebut that under your report.

Law Director Zagrans: Well I just want to point out that the Ohio Municipal League ...

Council Member Minnick: Yes I know.

Law Director Zagrans: ... apparently on considered reflection of the question, came to the opposite conclusion from whatever you were told off the cuff by someone down there.

Council Member Minnick: It was not off the cuff. I did talk to an attorney and it makes me wonder what pull you have down in the Ohio Municipal League that they changed their mind. Anyway, you are considering now the preliminary plan automatically rezoning the issues so it's not that the Committee agrees with your legal opinion that the preliminary plan automatically rezones because the PCD ordinance does not use automatically in it. They had to referendum the petition or had to referendum the ordinance that was considered rezoning the issue. So, and the Supreme Court filed claimed latches. Latches meaning that it was not filed in time. Anyway, your report was wrong, it was erroneous, it was misleading and I just had to make some of those comments.

President Brown: Anyone else have anything to say regarding the report from Mr. Zagrans? Okay, moving on to other reports.

**OTHER REPORTS**

President Brown: Please note:

Mayor's Court Operating Trust Fund/Bail Trust Fund Report for October 2000.

The Park & Recreation Commission Liaison, Mr. Overby, do you have anything?

Parks & Recreation Commission Liaison Report:

Council Member Overby: Yes, at our last meeting I passed out the request information from the Racquet Ball Club to the Members and we will be discussing that at our next meeting. Also, we voted to purchase and install drainpipe around the perimeter of the concession stand in Frontier Park for \$2,500.00. I'd like to make a motion to approve that.

motion by Overby to approve \$2,500.00 to purchase and install drainpipe around the perimeter of the concession stand in Frontier Park, 2<sup>nd</sup> by Gillock

President Brown: Is there discussion? Mr. Costin.

Auditor Costin: Madam Chairman, for the record, is the motion to expend the monies from the Park & Rec Improvement Fund?

Council Member Overby: Yes it is.

President Brown: Anyone else? Roll please Mr. White.

Council Clerk White: One moment. I'm adding to your motion, from the Park Improvement Fund.

Council Member Overby: Thank you.

Yes, 7                      No, 0

Council Clerk White: Motion carries seven, zero.

Council Member Overby: We also voted to approve the purchase of \$1,600.00 worth of diamond dirt for the baseball diamonds and \$1,000.00 for the purchase of a laser level which will allow one individual to get a better grade out there and I'd like to make that into a motion also from the Park & Rec Improvement Fund.

motion by Overby to approve the purchase of \$1,600.00 worth of diamond dirt and \$1,000.00 for the purchase of a laser level, from the Park & Recreation Improvement Fund, 2<sup>nd</sup> by Gillock

President Brown: Is there discussion? Mr. Gillock.

Council Member Gillock: That diamond dirt, is that for three and four?

Council Member Overby: No, it's for all the other diamonds, not for three and four. We may be doing something different with three and four.

President Brown: Any other discussion? Roll please Mr. White.

Yes, 7                      No, 0

Council Clerk White: Motion carries seven, zero.

Council Member Overby: We also voted to approve spending \$9,400.00 for the purchase and installation of grass seed, fertilizer and straw at the soccer complex. This is something that's in a rotation that they are redoing the fields and I'd like to make that into a motion also and those

funds are to come from the Park & Recreation Improvement Fund.

motion by Overby to approved \$9,400.00 for the purchase and installation of grass seed, fertilizer and straw at the soccer complex, from the Park & Recreation Improvement Fund, 2<sup>nd</sup> by Gillock

President Brown: Any discussion? I think we talked about that once before regarding the soccer field.

Council Member Overby: They've been doing it and it's looking real good. It's an ongoing thing.

president Brown: Okay, please take roll.

Yes, 7                  No, 0

Council Clerk White: Motion carries seven, zero.

Council Member Overby: That's all I have this evening. Thank you.

President Brown: Thank you Mr. Overby. Any questions of Mr. Overby's report? None. Going on to the Planning Commission Liaison Report. Mr. Gillock.

Planning Commission Liaison Report:

Council Member Gillock: No report.

President Brown: No report.

Council Member Minnick: Madam President, I have a question of Mr. Gillock.

President Brown: Pardon?

Council Member Minnick: I have a question of Mr. Gillock.

President Brown: Oh, for Mr. Gillock?

Council Member Minnick: Yes. Mr. Gillock, since you introduced the Kingston ordinance as our Planning Commission Liaison, can you tell me if Planning Commission addressed the thirteen outstanding issues that I brought up at the September 18 Council meeting?

Council Member Gillock: I don't have the thirteen issues before me but the issues were, for the most part what I can remember that you did mention, they were addressed at Planning.

Council Member Minnick: Why didn't we get a written report?

Council Member Gillock: As far as I know I thought there was a written report.

Council Member Minnick: No, there hasn't been.

Council Member Gillock: I'm not Chairman of the Planning Commission.

Council Member Minnick: Okay, I just thought you might know. Okay.

### **OLD BUSINESS**

President Brown: Okay. There's no old business. Going on to new business. Mr. White.

### **NEW BUSINESS**

T 135-2000      Resolution accepting the amounts and rates as determined by the Budget Commission and authorizing the necessary tax levies and approving the alternative method, formula and allocation of ULGF and ULGRAF and certifying them to the County Auditor.

Council Member Swindig: Madam Chairman.

President Brown: Yes.

motion by Swindig to suspend By-Laws to give T 135-2000 a First Reading, 2<sup>nd</sup> by Overby

President Brown: Discussion? None. Roll please.

Yes, 7                  No, 0

Council Clerk White: Motion carries seven, zero for T 135-2000 to have First Reading.

T 136-2000    A resolution to approve the expenditure of funds.

Council Member Swindig: Madam Chairman

President Brown: Yes Mr. Swindig

motion by Swindig to suspend By-Laws to give T 136-2000 a First Reading tonight, 2<sup>nd</sup> by Borocz

President Brown: Discussion? None. Roll please.

Yes, 7                  No, 0

Council Clerk White: Motion carries seven, zero. T 136-2000 will have First Reading tonight.

T 137-2000    An ordinance authorizing the Mayor to enter into an agreement with Unions representing City employees to make benefits and wages retroactive to the initial date of the collective bargaining agreements.

Council Member Swindig: Madam Chairman

President Brown: Yes.

motion by Swindig to give T 137-2000 a First Reading tonight, 2<sup>nd</sup> by Overby

President Brown: Discussion? None. Roll please.

Yes, 7                  No, 0

Council Clerk White: Motion carries seven, zero. T 137-2000 will have its First Reading tonight. That's all the New Business that I have.

### **CORRESPONDENCE**

Council Clerk White: Correspondence:

1)      Received a memo from the Board of Zoning & Building Appeals requesting consideration of legislation, similar to Planning Commission, establishing a fee for Special meetings upon request by an applicant.

REFER TO FINANCE COMMITTEE

2)      Received a memo from Council Member Gail Minnick submitting additional comments regarding Meadow Lakes PCD.

3)      Received a letter from Gerald Phillips certifying a copy of Ordinance No. 3621-2000 which is being filed prior to the circulation of a referendum petition on said ordinance.

- 4) Received a letter from Gerald Phillips certifying a copy of Ordinance No. 3621-2000 which is being filed prior to the circulation of a referendum petition on said ordinance.
- 5) Received a letter from Parks Director Jim Spaulding announcing Parks & Recreation Commission approval of expenditures for drain pipe at Frontier Parks; purchase of diamond dirt and a laser level for the Shady Drive Baseball Complex; purchase and install grass seed, fertilizer and straw at the Soccer Complex.  
Council Clerk White: Council just acted on those three things.  
President Brown: That's right. We don't have to vote on it.
- 6) Received a letter from Gerald Phillips submitting Petitions for the Referendum of Ordinance No. 3621-2000, Waterbury PCD.
- 7) Received a letter from Gerald Phillips submitting Petitions for the Referendum of Ordinance No. 3628-2000, Meadow Lakes PCD.
- 8) Received a memo from North Ridgeville Board of Zoning and Building Appeals announcing that their regular meeting for November will be held Thursday, November 30, 2000 due to the Thanksgiving holiday
- 9) Received a Proclamation from Mayor Hill proclaiming November 4, 2000 as a day of celebration for Fields United Methodist Church's 175<sup>th</sup> Anniversary and ask that all citizens recognize the good they do for our citizens and community.

Council Clerk White: That ends the correspondence that I have.

President Brown: Okay. Thank you.

Council Member Butkowski: Madam Chairman.

president Brown: Yes Mrs. Butkowski.

Council Member Butkowski: That number four, that should say Ordinance No. 3628-2000.

Council Clerk White: Okay. I'm sure that's correct. Thank you.

### **LOBBY**

President Brown: Okay. Now we go into Lobby. Please state your name and your address and I will give you two minutes to speak.

- 1) Gerald W. Phillips, 35955 Detroit Road, Avon, Ohio stated the ballot language was originally approved by the Lorain County Board of Elections and the Secretary of State, which they were willing to live with, and they had to file a cross appeal in order to reserve their rights because the City appealed it and will consider whether or not to pursue it after the election if the City dismisses their appeal.

- 2) Joseph Antush, 38500 Otten Road, stated his six year old grandson got him involved in this fight against PCDs in order to preserve his neighborhood and City and asked everyone to vote yes on Issue 57 and no on Issue 58.
- 3) Bob Miles, 34582 Lorain Road, asked whatever happened to our City's commercial areas, pointing out all the empty spaces, and reminded everyone to vote yes on Issue 57.
- 4) Chris Crobaugh, 38460 Otten Road, quoted from the Supreme Court decision regarding the law suit and standing Section 13.2 of the City Charter on its head, and stated this election isn't about good government, it's about somebody making a ton of money.
- 5) Dennis Boose, Denise Drive, thanked Council for approving the expenditure for the Shady Drive Complex and the Soccer Complex and apologized for not mentioning at the last Council meeting Mr. Gillock responding to his letter as well as Mrs. Minnick and Mrs. Butkowski while still waiting for replies from the others.
- 6) Mary Ann Miles, 34582 Lorain Road, stated Community Care can build on land already zoned for commercial, Issue 57 doesn't affect it, and reminded people to vote yet on Issue 57.
- 7) Gerald Phillips responded to Law Director Zagrans comments on the referendum stating it has always been their position that you need two separate ordinances and a preliminary plan does not automatically rezone it so in order to preserve their rights they had no choice but to referendum.
- 8) Bob Olesen, 6053 Fieldstone Circle, stated documents he had received from the STAMP people could be awarded a prize for fiction. This amendment would create a nightmare for our City and pointed to numerous gifts of park land from local developers who also add dollars to our tax base.
- 9) John Prajzner, 35140 Mildred Street, stated if the preliminary PCD plan automatically rezones it, then this is a rezoning issue and you can't pass it as an emergency measure. If it's not a rezoning issue, where is the ordinance rezoning both the properties.
- 10) Nancy Buescher, 36669 Center Ridge Road, stated the problem is not development, it's massive development and the flawed process used to pass these PCDs, asking everyone to please vote no on Issue 58.
- 11) Linda Dunham, Bagley Road, asked Gail Minnick to tell people who paid for the attorney when she fought for our telephones and stated the Ohio Supreme Court has officially

sanctioned Mr. Phillips twice and this charter amendment is very poorly written and does rescind prior ordinances.

President Brown: Times up. Thank you.

Council Member Minnick: Mrs. Brown. I understand sometimes people do respond to lobbyists and I was wondering if you would like me to respond to Mrs. Dunham now or if you would prefer I wait for Unfinished Business.

President Brown: I don't think you should have to respond until after we get done with this Lobby session.

Council Member Minnick: Okay. Thank you.

- 12) Chris Crobaugh, 38460 Otten Road, quoted from the Supreme Court decision and invited anyone to read it to understand where STAMP is coming from.

President Brown: You can't speak on the same thing twice.

Bob Olesen: It's a little different.

President Brown: You can't speak on the same thing twice. Sorry Mr. Olesen.

- 13) Dick Brent, 8659 Harris Drive, stated it seems if we wanted to get even with the developers, why not let them do this sewer line for us costing them eight or nine million dollars and the City only about a million dollars, urging everyone to vote no on Issue 57 and yes on Issue 58.
- 14) Gail Minnick, 6193 Mills Creek Lane, wanted to address Mrs. Dunham, stating Mr. Schmitt offered to pay for the phone system attorney because it was crucial to his development, she owes him nothing and they both obtained their goals.

President Brown: Anyone else wishing to speak?

- 15) Gerald W. Phillips, 35955 Detroit Road,

President Brown: Are you speaking on the same subject again?

I'm talking about public records request which the residents of North Ridgeville have asked upon the Law Director for the legal opinion of the attorneys for Kingston Place after the referendum petition was found valid and which is crucial to understanding Mr. Zagrans' legal opinion that the referendum was for the wrong ordinance.

- 16) Linda Dunham, Bagley Road, wanted to address Mrs. Minnick again.

President Brown: Are you going to talk on the same subject?

Linda Dunham: Oh, I can't talk about it again? Darn.

President Brown: Sorry. You'll have to talk about it next time. That will do it for the Lobby.  
We'll have a recess until five minutes to nine.

**RECESS**      from 8:45 P.M. to 8:55 P.M.

President Brown: Could we have the first readings, please, Mr. White.

**FIRST READINGS**

T 135-2000      RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS  
905-2000      DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE  
NECESSARY TAX LEVIES AND APPROVING THE ALTERNATIVE  
METHOD, FORMULA AND ALLOCATION OF ULGF AND ULGRAF AND  
CERTIFYING THEM TO THE COUNTY AUDITOR

First Reading

motion by Swindig to suspend 2<sup>nd</sup> and 3<sup>rd</sup> readings, 2<sup>nd</sup> by Overby

President Brown: Discussion?

Council Member Swindig: Yes Madame Chairman. Mr. Costin passed this out, a new Schedule A and B that I would like to put in and replace the present one in the ordinance.

President Brown: Mr. Costin?

Auditor Costin: Madame Chairman, for the record, the original rate ordinance that came from the County that was in your packet contains some erroneous information, specifically the public library issue that the voters passed last year was co-mingled with out health fund. On the new Schedule A it's been appropriately listed separately and the request would be to insert the new Schedule A and pass the resolution superceding the old Schedule A that was originally presented.

President Brown: Any other discussion? Seeing none, roll please Mr. White.

Council Clerk White: We are voting on the second and third readings, right?

President Brown: Yes.

Yes, 7      No, 0

Council Clerk White: Motion carries seven, zero.

motion to adopt by Swindig, 2<sup>nd</sup> by Butkowski

motion by Swindig to add the emergency due to getting it into the County...

Auditor Costin: Excuse me, do we not have to amend first?

Council Member Swindig: We made the amendment. I'm sorry, I make a motion to...

motion by Swindig to

President Brown: For the amendment.

Council Member Swindig: ...as amended.

President Brown: As amended.

amend 2<sup>nd</sup> by Overby

President Brown: In your motion. Get that?

Council Clerk White: Okay.

President Brown: Okay, roll.

Council Clerk White: On the emergency.

President Brown: On the emergency.

Council Clerk White: Correct.

Yes, 7                      No, 0

Council Clerk White: Motion carries seven, zero on the emergency.

Council Member Overby: I'll vote yes on that.

Council Clerk White: Yes, I thought you would. I didn't want you to get mad at me. On the adoption.

Yes, 7                      No, 0

Council Clerk White: Motion carries seven, zero, becomes Resolution No. 905-2000 with emergency.

Permanent Resolution No. 905-2000

T 136-2000    A RESOLUTION TO APPROVE THE EXPENDITURE OF FUNDS.

906-2000      First Reading

Law Director Zagrans: Madame President?

President Brown: Yes?

Law Director Zagrans: I would like to ask someone on Council to please move to amend T 136-2000 to delete the Whereas clause that refers to the Black River water study. The reason being that the \$100,000 that was appropriated by Council for that study, at the insistence of the E.P.A., did not include this engineering bills that Council is being asked to approved in T 136-2000. The Whereas clause doesn't pertain to these particular bills that are the subject of the ordinance.

President Brown: So we take it out?

Law Director Zagrans: Right, but you have to amend it...

President Brown: You have to amend it.

Law Director Zagrans: ...to delete that Whereas clause.

President Brown: Need a motion.

motion by Borocz, 2<sup>nd</sup> by Swindig

President Brown: Any discussion?

Council Member Butkowski: Yes Madame President?

President Brown: Yes?

Council Member Butkowski: Am I to understand that these engineering fees are for that Black River quality thing...

Law Director Zagrans: Yes they are

Council Member Butkowski: ...but was not included in the \$100,000.

Law Director Zagrans: That's right. The \$100,000 is merely what we have to pay along with the other affected users of the treatment plant towards the study that the E.P.A. and the Army Corps of Engineers has planned.

Council Member Butkowski: What are they going to use the \$100,000 for? Can't that include

the engineering fee too?

Law Director Zagrans: You would think, but it doesn't.

President Brown: Any other discussion? Vote please.

Yes, 7              No, 0

Council Clerk White: Motion carries seven, zero on the amendment.

motion to suspend second and third readings by Swindig, 2<sup>nd</sup> by Gillock

President Brown: Any discussion? Vote please.

Yes, 7              No, 0

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

motion to adopt by Gillock, 2<sup>nd</sup> by Swindig

President Brown: Discussion?

motion to add the emergency by Gillock, 2<sup>nd</sup> by Borocz

Council Clerk White: Any discussion?

President Brown: Discussion?

Council Clerk White: On the emergency.

Yes, 7              No, 0

Council Clerk White: Motion carries seven, zero. On the adoption.

Yes, 7              No, 0

Council Clerk White: Motion carries seven, zero. T 136-2000 becomes Resolution Number 906-2000 with the emergency.

Permanent Resolution No. 906-2000

T 137-2000    AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN  
3629-2000    AGREEMENT WITH UNIONS REPRESENTING CITY EMPLOYEES TO  
MAKE BENEFITS AND WAGES RETROACTIVE TO THE INITIAL DATE  
OF THE COLLECTIVE BARGAINING AGREEMENTS.

First Reading

motion to suspend second and third by Gillock, 2<sup>nd</sup> by Borocz

President Brown: Any discussion? Seeing none, on the suspension.

Yes, 7              No, 0

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

motion to adopt by Swindig, 2<sup>nd</sup> by Borocz

motion to add the emergency by Swindig, 2<sup>nd</sup> by Gillock

Council Member Swindig: So that we can move along with negotiation of contracts.

President Brown: Discussion anybody? Roll please.

Council Clerk White: On the emergency.

President Brown: On the emergency.

Yes, 7              No, 0

Council Clerk White: Motion carries seven, zero. On the adoption.

Yes, 7              No, 0

Council Clerk White: Motion carries seven zero. T 137-2000 becomes Ordinance Number

3629-2000 with the emergency.

Permanent Ordinance No. 3629-2000

Council Clerk White: That's all the first readings that I have.

**SECOND READINGS**

T 134-2000    AN ORDINANCE ACCEPTING FOR RECORDING PURPOSES ONLY THE  
                  PLAT OF RIDGEFIELD SUBDIVISION VI.  
                  Second Reading

**THIRD READINGS**

T 131-2000    AN ORDINANCE ACCEPTING THE PLAT OF KINGSTON PLACE PCD  
                  PHASE I FOR FINAL APPROVAL AND FOR RECORDING PURPOSES.  
                  Third Reading

                  motion to adopt by Swindig, 2<sup>nd</sup> by Overby

Council Member Swindig: Madame Chairman?

President Brown: Yes?

Council Member Swindig: I passed out earlier amending ordinance where after the word an ordinance in the title and approving final plan of development area including to be inserted wherever it is referred to in the ordinance.

Council Clerk White: Are you making that motion.

Council Member Overby: I will make that motion.

                  motion to amend where after the word an ordinance in the title and approving  
                  final plan of development area including to be inserted wherever it is referred to in  
                  the ordinance, 2<sup>nd</sup> by Overby

Council Clerk White: Could I ask a quick question?

Council Member Swindig: Yes.

Council Clerk White: Who second your adoption?

Council Member Overby: I did.

President Brown: Discussion.

Council Member Minnick: On the amendment?

Council Member Swindig: On the amendment.

President Brown: On the amendment.

Council Clerk White: No discussion, on the amendment.

President Brown: On the amendment.

                  Yes, 5                    No, 2 (Minnick, Butkowski)

Council Clerk White: Motion carries five, two on the amendment.

President Brown: On the amendment.

Council Member Swindig: Madame Chairman?

President Brown: Yes?

                  motion to add the emergency for the health, safety of our residences and necessary

step to getting the sewer project completed by Swindig

President Brown: Second?

2<sup>nd</sup> by Overby

President Brown: Discussion?

Council Member Minnick: This is on the emergency or is this on the...

Council Member Swindig: This is the reason for the emergency.

Council Member Minnick: Well, it doesn't matter where I address this. I brought up thirteen issues at the September 18th Council meeting. I could read them all now or someone can tell me whether they've been answered or addressed but I have not received a Planning Commission report. I have not heard anything from the Engineer. I have not heard anything that these thirteen issues have been addressed.

President Brown: I just got a paper from you that's a second page.

Council Member Minnick: That was Meadow Lakes. That was different.

President Brown: That was a different one. Thank you. Okay.

Council Member Minnick: We have thirteen issues that remain unaddressed and should be addressed before the final approval. If you want I'll read them...

President Brown: That's not necessary.

Council Member Minnick: ...and someone can tell me whether they have been addressed.

President Brown: I don't think it's necessary for you to read them. We all got a copy of it.

Council Member Minnick: That would have been in the minutes if nobody has addressed the. Isn't anybody else concerned on this Council whether these are being addressed or not? This is the final plan approval for Phase I.

Council Member Swindig: Madame Chairman, I think the Engineer has addressed those issues along with the Building Department. I call for the question.

Council Member Minnick: Madame President if it has...

Law Director Zagrans: Excuse me, parliamentary point of order, call for the question, there is no further debate, you called the question.

President Brown: Yes, thank you. Call for the question Mr. White. Please take roll.

Council Clerk White: On the emergency.

Yes, 5                      No, 2 (Minnick, Butkowski)

Council Clerk White: Motion carries five, two on the emergency. On the adoption.

President Brown: On the adoption please.

Yes, 5                      No, 2 (Minnick, Butkowski)

Council Clerk White: Motion carries five, two. T 131-2000 becomes Ordinance Number 3630-2000 with the emergency.

Permanent Ordinance No. 3630-2000

That's all of the third readings that I have.

### **UNFINISHED BUSINESS**

President Brown: I don't think that there's any unfinished business. I have none in front of me.

**COMMITTEE MEETING ANNOUNCEMENTS**

Council Clerk White:

Next Regular Council Meeting Monday, November 20, 2000 at 7:30 P.M.

That's all that I have.

President Brown: I have a Public Hearing. Oh, that was already held. Thank you. Motion for adjournment, please.

Council Clerk White: He did. She did.

**ADJOURNMENT**

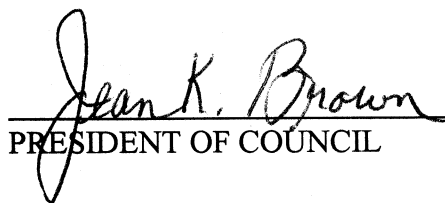
motion to adjourn by Swindig, 2<sup>nd</sup> by Borocz

President Brown: Adjourned.

Meeting adjourned at 9:10 P.M.

MOTION Borocz 2ND Overby DATE November 20, 2000  
( As Corrected)

YES 7 NO 0 ABSTAIN 0

  
\_\_\_\_\_  
PRESIDENT OF COUNCIL

  
\_\_\_\_\_  
CLERK OF COUNCIL