

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
MINUTES OF
REGULAR MEETING NOVEMBER 5, 2001**

CALL TO ORDER 7:30 P.M.

President of Council Jean Brown: I would like to call the regular meeting, November 5, 2001 of the North Ridgeville Municipal Council 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.

Absent was Council Member Karen Borocz.

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

Clerk of Council White: In relationship to Mrs. Borocz not being here, I have a letter from her which says:

The Honorable Mayor Deanna Hill and Clerk of Council James White.

Dear Mayor Hill and Mr. White:

Effective immediately, I hereby resign my position on City Council as the Ward Representative for Ward 3. The reasons for my resignation are personal and very private and I would like not to divulge them at this time. It has been a pleasure to serve my City and the residents, and it is with a very heavy heart that I tender this resignation.

Very truly yours, Karen Borocz.

Law Director Zagrans: Madame President, may I have the floor to remind the Members of Council what their obligations are under our Charter. Given Mrs. Borocz resignation, Council has thirty days within which to appoint a replacement to fill out Mrs. Borocz unexpired term.

That is pursuant to the provisions of our Charter. Thank you.

President Brown: Thank you, Mr. Zagrans.

MINUTES

Public Hearing of October 15, 2001 in regard to T 122-2001

motion by Butkowski to accept, 2nd by Overby

President Brown: Any discussion? Take roll please.

Yes, 6 No, 0

Clerk of Council White: Motion carries six, zero.

Public Hearing of October 15, 2001 in regard to T 123-2001
motion by Butkowski, 2nd by Overby

President Brown: Discussion? Please take roll

Yes, 6 No, 0

Clerk of Council White: Motion carries six, zero.

Regular Council Minutes of October 15, 2001
motion by Butkowski to accept, 2nd by Overby

President Brown: Any discussion? Any corrections? Please take roll.

Yes, 6 No, 0

Council Clerk White: Motion carries six, zero.

President Brown: Please note:

Civil Service Commission Minutes of October 16, 2001;

Parks & Recreation Minutes of September 26, 2001; and

Board of Zoning & Building Appeals Minutes of October 25, 1001.

COMMITTEE REPORTS

Council Member Swindig: Madame Chairman, due to the busy schedule of the Members of Finance and this time of the year and being that this was an important issue that we had, I talked to them on the phone and the time restraints of this contract being that it must be passed by December 3rd with the emergency. I talked to them on the phone too, on the Lorain County Correctional Facility Contract and they agreed with me that we should go ahead and have the Law Director go ahead and do the contract. I make that in the name of a motion.

Council Member Overby: I'll second it.

President Brown: Any discussion? Mrs. Minnick.

Council Member Minnick: Is that proper to have a committee report from over the phone?

Council Member Swindig: Mrs. Minnick, being that, the way the Members of this Finance Committee was working and the time restraints that we have to have this back to the Lorain County Prosecutor by the time and day, I took it on myself to ask them if they would like a meeting and try to arrange a meeting and I couldn't get anybody prior to this Council meeting to do it. So, I took it on myself to do an oral committee report.

Law Director Zagrans: Madame President, may I ask Mr. Swindig a couple of questions to determine whether or not this was appropriate. Mr. Swindig, were all of the members of your committee involved in the telephone conversation?

Council Member Swindig: Not at the same time, sir. Can I expand on that? I called the members in trying to set up a meeting and being that I could not set up a meeting time before this Council meeting, I called them back and asked if they would go along with an oral committee report.

Law Director Zagrans: Did each of them indicate to you that they approved and consented to the

report that you are about to give?

Council Member Swindig: Yes.

Law Director Zagrans: Did each of them know that you were going to be talking to the others and to each of them to consent to that procedure?

Council Member Swindig: They knew I was talking to the other committee members.

Council Member Minnick: Madame President, I still have a concern that meetings are suppose to be open to the public and the press wasn't allowed. That's my problem.

Council Member Swindig: Madame Chairman, this is a boiler plate contract and being that it was misplaced and I received a note from Paula saying we have to have it out so we can go and get it on and voted on by Council. We had to do something before this meeting.

Law Director Zagrans: Madame President, I am sure that Mr. Swindig's intentions were absolutely of the best, I don't think anybody questions that, he was just trying to do what needed to be done to get it on for the reasons that he's already articulated. But, I have a concern, not only for the open meetings requirement, but also just the regular procedures. It would have been, perhaps, a little different if it had been a conference call with all members participating telephonically, I don't know. But, I just don't think that this is an appropriate meeting, Al, and if things have to be done on shorten order or if a special meeting or meetings has to be called in order to get it accomplish within the time frame that Paula has told you about, then I'm afraid that's what's going to have to be done. So, I appreciate what you try to do, but I just don't think it works under our laws.

President Brown: You want to withdraw your motion.

Council Member Swindig: I'll withdraw my motion.

President Brown: Larry, your second.

Council Member Overby: Yes.

President Brown: Then there will be a Finance Committee meeting.

Council Member Swindig: Madame Chairman, can I ask the members of Finance Committee to suspend the rule of notification and we will have a short Finance meeting following this Council meeting?

President Brown: Is that allowed, Mr. Zagrans? There has to be notice.

Law Director Zagrans: No, I don't think so because I think there has to be 24 hours notice to the press. So, I think you could ask for a meeting tomorrow, but I don't think there can be a meeting at the end of tonight's meeting. Sorry.

Council Member Swindig: Meeting on Wednesday at 3:30.

Clerk of Council White: You're having a Finance Committee meeting Wednesday at 3:30. We will notify the rest of the press.

MAYORS REPORT

Mayor Hill: I think most of you have heard or read that after six long years of meetings, telephone calls, letters, studies and testimony before the Federal Surface Transportation Board for Congressman Sherrod Brown and myself, and over 30 years of requests by City Officials, Route 83 has finally been identified as a project for funding a railroad grade separation.

Meaning, an overpass or an underpass. Cost is estimated to be between 2.9 and 3.3 million dollars. Local funding at five percent is required by State law and will be presented to Council for approval as soon as costs are finalized. Construction is slated for 2005, but the schedule may be moved ahead more quickly dependent upon several factors. A public involvement meeting is tentatively scheduled for Wednesday, December 5th at the North Ridgeville Middle School, actually, in the new cafeteria from 5:00 P.M. to 7:00 P.M. We'll have more information later. Waiting until completion in another four years will certainly be difficult, but after almost six years of intense work and 30 years of begging, I guess we can wait another few.

More good news. We were notified last week that we have been awarded a four hundred thousand dollar grant from the Department of Development for the reconfiguration and reconstruction of the Lear Nagle, Center Ridge intersection and infrastructure. The grant has been recognized by the department as a public, private partnership that enables our community to make some much needed improvements including extension of the sanitary sewer, a third lane on south Lear Nagle, sidewalks and a new traffic signal. The improvements are slated to begin early spring 2002. The second wonderful part of this grant, job opportunities will be provided. The eight million dollar project is expected to create at least 79 new jobs just at TOPS. There will be more as the development expands with a Danato's and some retail.

We have also just been notified that we've been approved for a seventy-eight thousand dollar recycling grant. With the funds we will continue our yard waste recycling programs, the aluminum can collection, the Police Department DARE and Safetyville Programs and we'll purchase parking stops, trash bins, benches, bleachers, picnic tables and soccer goals for our parks. We do want to thank Jim Whitlock of the Utilities Department for his work on the grant.

In a cooperative effort between Police Chief Thomas and I, we have taken the first steps to implement a Police Chaplain Program. We've spent a few months pulling this together after I heard about the program which is currently in operation in Mason, where my sister is on City Council. The same Police Chief who initiated it in Mason had done the same thing when he was Chief in Dublin, Ohio. Our Chief has sent out letters to local clergy, 18 of them, to complete a list of volunteers and if there's interest and I've already talked to a few of them one on one and I know there's a high interest, an informational meeting will be held. There will be a background check and there will be mandatory adherence to all department policy and procedures as well as to guidelines set forth by the International Conference of Police Chaplains. The Chaplains also will not be permitted to use this as an opportunity to convert to any religion. These volunteers will assist citizens and officers alike with death notifications, serious accidents, suicidal subjects and domestic situations. The program also allows officers to focus on police duties while the clergy provides comfort to affected families. This is just one more way to reach out, to extend a helping hand to our friends, our neighbors, our families and our officers.

Please remember to vote tomorrow. The polls are opened from 6:30 A.M. to 7:30 P.M. Along

with all the Council seats being on the ballot several, county issues are presented and six charter amendments will be before you. Although an explanation was given about each of the amendments by the Law Director, oh, several weeks ago, apparently misunderstandings or misconceptions remain. Issue 11, with the yes vote, will mean that rezoning from multi-family housing will follow the same process as any other rezoning. With Planning Commission and Council approval, public hearings and public notice, opportunities for referendum and voter approval. Issue 12, with the yes vote, eliminates the term limit for the Mayor and no, I did not ask that the citizen Charter Review Committee place it on the ballot. It should not be viewed in the short term as a vote for or against this sitting Mayor, but rather as a revision to our Charter recommended on the basis of research by the Charter Review Committee. Issue 13, with a yes vote, would maintain day to day supervision of the Parks and Rec Director by the Mayor. The change would be that the director would be treated as every other department head in the City, including being recommended by the Mayor and approved by Council. There would be no change in the budgetary process nor an oversight of funds. Issue 14, with a yes vote, would mean that if there is a vacancy for Council President, the replacement must be a Council at-Large Member as elected by remaining Council Members. If no Council at-Large Member agrees to take the position, a Ward Council Member will be elected by the remaining Council Members. Issue 15, with a yes vote, would put the current certification requirements in line with State law. A house keeping measure. Issue 16, with a yes vote, would also be a housekeeping measure for the allocation of interest income per State law.

Lastly, Council will find under new business, T 137-2001 for consideration. This resolution will not only terminate a tax abatement agreement granted in 1994, but will enable us to collect taxes that were abated over the years. The Company, AAR, went out of business some time ago, but we received confirmation just last week. Therefore, it would be in the best interest of the community to recover the abated dollars as soon as possible. The County Auditor is the one who will determine the final amount and moving this resolution forward, Council, is requested. That completes my report.

President Brown: Thank you, Mayor Hill. Any questions of the Mayor's oral report? Moving on, Mr. Johnson, 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 Jaycox Road, Stoney Ridge, Cornell, Alden and the ditch that runs through the Shawn development.

There were five water breaks in the last three weeks.

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

The Service Department removed several defaulted areas on Lexington Way and replaced these areas with the proper fill and asphalt.

The sewer vac was used in several areas. They were: Case, Orchard Lane, Jefferson, Cornell, and Shawn Drive.

The Don Mould Construction Company has started the construction of the cities new salt barn with the completion expected by the end of November.

Two catch basins were rebuilt on Joanne and on White Oak Way.

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 Mr. Johnson's oral report? Seeing none, moving on to Mr. Tom Beutler.

ENGINEER'S REPORT

Engineer Beutler: Thank you, Madame President. Tonight I want to report on four projects. The first is the Westerly Sanitary Sewers. The construction from the north to Center Ridge Road is nearing completion and depending on final testing, that could be put into operation sometime during the month of December.

The Water Tower project is on schedule for completion during the later part of November or the first part of December. We've had a few minor delays and because of the weather and so forth it's extended from my last report.

The Senior Center and City Hall Parking Lot is now completed. There's just a couple of real minor items that have to be completed.

The Sugar Ridge Road reconstruction phase two is approximately 50 percent complete and that is still scheduled to be in place within the 60 days according to the contract and that concludes my report.

President Brown: Anyone have questions of the Engineer's oral report?

Council Member Butkowski: Madame President, I was wondering, have you gotten the FEMA report back yet that they've been working on over the last six or eight months?

Engineer Beutler: We had a copy of a report that basically that was sent off to FEMA and that was at the end of August and I haven't heard anything more from FEMA in regards to that.

Council Member Butkowski: Okay, because some of the people have been asking. They're anxious to get rid of that insurance. Thank you.

President Brown: Any other questions of this oral report? Moving on to Mr. Costin, the Auditor's Report.

AUDITOR'S REPORT

Auditor Costin: Madame Chairman, there is no report schedule for this evening.

President Brown: Thank you very much and there won't be any questions.

Auditor Costin: And no comments.

President Brown: Moving on to the Law Director's report. Mr. Zagrans or Toni Morgan, either one.

LAW DIRECTOR'S REPORT

Assistant Law Director Morgan: Actually, you get both this evening. I'm going to start. This deals with subdivider's agreements. On October 9th, of this year Oster Construction appeared before Planning Commission seeking final approval for Phase I of what started out as Shawville Subdivision and later became Avalon Subdivision and when that was subsequently taken over by Oster, it's now called Avalon Estates. Because a subdivider agreement had not yet been executed, I asked at Planning Commission that the matter be postponed until a subdivider agreement was executed. That request was made for Avalon Estates only. The reason the request was made was to bring our approval procedures into alignment with our ordinances. Since coming to work for the City on a full-time basis, I have had the duty and the pleasure of working with both the Planning Commission and the Board of Zoning Appeals. During that time, we have worked to standardize and clarify our procedures in many areas. As you may know, the Planning Commission and the Board of Zoning Appeals have an ongoing joint work session dedicated to clearing up any inconsistencies in our ordinances and to reviewing any problem areas, and then to make appropriate recommendations to Council for changes. Bringing standardization into the subdivider process is really a part of that total ongoing process. Once the PCD ordinance was passed, we also had to determine how that would fit into the process as well. Numerous revisions were made to the subdivider agreement along the way. For example, a relatively recently passed ordinance relating to installation of traffic signals and signs was added to the subdivider agreement as section 18. It is a fluid document which needs to be updated on a regular basis. In reviewing past subdivider agreements, and bear in mind that a complete Law Department has been located in the City Hall only since 1996 so we may not have a complete inventory of all subdivider agreements ever passed but, in reviewing some of those past agreements, while each is very similar to every other one, it was found that differences did exist. I felt that first the agreement itself needed to be standardized. It needed to reflect all the requirements the City expected from the developer. This task was finally completed, although as I have indicated, it is an ongoing process. Once the agreement was standardized, it then became apparent that requiring the same agreement for each phase of development was redundant. Any agreed to changes from phase to phase could be documented as an addendum to the original agreement. As just a brief and sketchy history on the past practices in that area, our records

show a subdivider agreement for Fields Subdivision on 4- 26-79, another later in 79, one in 1997 and again in 1999, indicating separate agreements for different phases. Homestead Vineyards apparently has separate agreements for various phases dating from 1994 to 1998 and more recently, Deerfield developers signed separate agreements for each phase. However, during the same period of time, developments having more than one phase may also have been executed with only one subdivider agreement to cover the entire development. Ridgefield Homes is an example. It has been developed in phases and the 1995 subdivider agreement indicates that only one agreement would be entered into. Now that the subdivider agreement has become a sufficiently standardized document, the better procedure seems to be that we require only one document to document the entire project. That one agreement can be revised or updated if it becomes necessary during the course of the project and there is no legal requirement as to the number of agreements. The requirement of one subdivider agreement should become the standardized procedure. Now, a second question arises as to the timing of the execution of the agreement. Just a cursory glance at some of our past ordinances shows that, as a rule, Council would accept the final plat and then authorize a subdivider agreement and here are just a few examples, Ordinance 3033-94 accepting the plat for Homestead Vineyard Phase Four, authorizing the Mayor to enter into a subdivider agreement and also authorizing the Engineer to accept and approve the plat. Ordinance 2864-94, for Lexington Farms, also contains language which first accepts the plat, then also authorized the Mayor to enter into a subdivider agreement and authorized the Engineer to accept and approve the plat. A more recent example is Ordinance 3157-96 which indicates that the Engineer has reviewed the plan and recommends its approval to Council. It further directs that a subdivider agreement be entered into before the plat is recorded. Ordinance 3369-98 directs that the Mayor enter into a subdivider agreement for Homestead Vineyards Phase Six Subdivision without accepting a plat and apparently a copy of a sample agreement was attached as an exhibit and finally, Ordinance 1436-78 accepts the plat for Canterbury Village and authorizes that the Engineer to accept and endorse the plat. These all do things a little differently from each other as you can tell. Each of these ordinances served the purpose of regulating subdivision growth in the City. Each got the plat accepted and recorded. Each resulted in an executed subdivider agreement and each was done incorrectly. Pursuant to 1224.03, the Engineer's signature is required on all subdivision plats before it can be recorded. Chapter 1228, Improvements, makes the Engineer responsible for numerous other duties related to subdivisions as well. The point being that the Engineer's responsibilities are guided by existing ordinances and it is not necessary for Council to authorize the Engineer to do what he is already authorized to do and that kind of authorizing language, as you may have noticed, gradually disappeared from most of the ordinances accepting the plat. Likewise, Charter provision Section 2.1(i) directs the Mayor to execute on behalf of the City all contracts to which the City is a party. Language authorizing the Mayor to enter into a subdivider agreement is likewise not necessary, as a subdivider agreement is a contract to which the City is a party and the Charter authorizes execution by the Mayor. Also, at 2.1(f) it also makes her responsible for enforcement of the agreement. The ordinance which you will see tonight, I believe, accepting the Waterbury plat reflects these changes. This should become more or less the standardized

language for accepting a plat, realizing of course, that everything is open to suggestion and improvement as needed. These changes are needed to bring our procedures into conformity with the actual language of our ordinances. North Ridgeville Codified Ordinance 1228.01(b) indicates that before any subdivision plat or construction plan is given final approval, the subdivider or the developer shall have executed a subdivider's agreement with the City. Clearly, a subdivider's agreement must be complete, as the word executed indicates, prior to final approval. The ordinance does not specify whether that is final approval of Planning Commission or final approval of Council, which comes shortly after Planning Commission's final approval and its report to Council. As a practical matter, it makes sense for the subdivider agreement to be complete before Planning Commission gives final approval, which is why Avalon Estates was postponed at the last Planning Commission meeting. But, a strict reading of the ordinance would allow Planning Commission to give final approval as long as a subdivider agreement were actually executed before Council accepted Planning Commission's report, thereby giving its final approval. Now, I hope these comments have served to clarify the process and not make it more confusing. I wish to apologize because stopping the Avalon Estates approval at Planning Commission in order to use that as a starting point for standardizing procedures and for bringing our procedures into conformance with the language of our ordinances was not in any way meant to stop the movement of Meadow Lakes or Waterbury through the process as it had always been done before. As I indicated in the examples I gave of past ordinances, for many, many years it had been the practice of Council to first accept the plat and to then call for a subdivider agreement, the opposite of what our ordinance actually calls for. This process naturally puts the plat before the subdivider agreement. This is a small change, but I believe it gives the City a better bargaining position to make requests of developers above and beyond what is required by our ordinances because until the Agreement is executed, they cannot receive final approval from Council and I hope that meets with your approval as well. That concludes my report.

Law Director Zagrans: Thank you. Therefore, implementing what Ms. Morgan has indicated to the Members of Council is the correct procedure under our ordinances. There will, for now on, be followed a seven step process for the approval of R-1 developments. These kinds of agreements only happen in R-1 developments. They can also, we can also require, we do require subdivider's agreements in PCD's, but of course, PCD's are governed by their own statutes. So, for R-1 developments, here is what we are talking about as the steps. Step number one, a preliminary plan is submitted to the Planning Commission for its approval. That is a preliminary plan of the entire subdivision that is being proposed under Codified Ordinance 1224.05(a). Second, after Planning Commission adopts it, if it does, it will report to Council and Council then votes on whether or not to accept and approve the Planning Commission report and recommendation on the preliminary plan. That is pursuant to Charter provision at Section 8.6. Step number three, the City enters into a subdivider's agreement with the developer for the entire subdivision. As Ms. Morgan has already stated, that is specifically provided by our Codified Ordinances as part of the Engineer's duties in overseeing the development of a subdivision at Codified Ordinance 1228.01(b). Step number four, construction, is authorized and entitled to

proceed at that point. Construction can also wait until after the final plat has been submitted, but construction can and typically does go forward at that point, at least beginning. Step five, a final plat is submitted to Planning Commission for its approval pursuant to Codified Ordinance 1224.05(b)(4). At that point, by the way, in the event there are any uncompleted improvements in the subdivision, uncompleted improvements, the developer must have a performance bond posted at that point in time for any such uncompleted improvements. Step six, assuming Planning Commission has approved the final plat, the plat is submitted to City Council, before it is recorded at the County recorder's office, that is pursuant to Codified Ordinance Section 1224.05(b)(5), the first sentence. That is what is commonly referred to as the dedication for public use and if City Council approves dedicating the subdivision for public use, there is an ordinance that would be adopted by Council accepting the plat for recording purposes. Step seven, three years later, not longer than three years later, upon accepting the requirements of maintaining the public areas of the subdivision such as streets and so on, Council would be asked to accept the public improvement under the second sentence of Codified Ordinance 1224.05(b)(5). Now, this requires separate Council action and note please that there is a distinction because I heard some people at the last Council meeting confusing the concepts. The step when the final plat is submitted for recording purposes is dedication for public use, three years later is acceptance of the public improvement. Again, that requires separate Council action. So, those are the seven steps in that sequence that our Codified Ordinances and Charter tell us should be followed. We're going to put the subdivider's agreement, as Ms. Morgan indicated, at its proper place in that sequence at step three, not at the end of the process as has been the custom through several prior administrations because while it may be technically permissible is not the way that the process is set up. There are a couple other matters that the department would like to report on.

The second matter is the question of developers credits that has come up as, perhaps, an adjunct to these issues over how developments are going to proceed and subdivider's agreements are going to proceed. Members of Council will recall that formally and this was something that was enacted in June of 1995 as Ordinance Number 3882 of 95 and signed into law by Mayor Armbruster. Formally, credits were permitted for developers who construct sanitary and storm sewers for the benefit of the City at large over and above the sewerage requirement that is needed for their particular subdivision that they are developing. And that ordinance going back to 1995 allowed a developer who did construct at, his or her, cost such a sewer providing for benefits for the City to receive credits against fees and other monies owed to the City for the cost of doing so. That allowance of credits to developers was repealed last year in Ordinance 3591 of 2000, introduced by Mayor Hill, adopted by this Council on June 19th of 2000 and signed into law by Mayor Hill. Credits are no longer given to developers for constructing sanitary or storm sewers. However, when the law was repealed allowing for credits there were existing developer agreements already in place that permitted credits. That is to say, signed contracts which are legal obligations on the part of the City under prior law that the City cannot abrogate without getting sued, and I might say sued successfully, just because the law has changed. It is the Law

Department's understanding that there are three existing developer agreements that are grandfathered into the law as it existed before the law was changed last year to abolish credits. One is the Ridgefield developers agreement that was signed in 1995. A second is the Center Ridge Heights or Liberty Woods developers agreement that was signed in 1998 and the third is the Butternut Grove Phase Two developers agreement signed sometime in 98 or 99. As to those three existing contracts, the City must continue to abide by the terms of those contracts. As to any other developer agreement executed on or after June 20, 2000, there are no credits for sanitary or storm sewer construction. There are still credits, theoretically available for water lines or water detention structures, because when we changed the law with regard to sewers, we didn't change the law with regard to water lines and water detention facilities. At the next Council meeting or the Council meeting after that, the law department is going to be drafting an ordinance to repeal credits for those structures as well.

Finally, it's come to my attention that rumors seem to be running rampant that the City of North Ridgeville is soon to be plagued by an adult entertainment establishment. I wish to report that that rumor is the most common of all rumors, the false rumor. The owner of the land where this fictitious adult entertainment establishment was suppose to be going in has given assurances and representations both to the Mayor and to the Assistant Law Director that there are no plans, designs, intentions, contracts or any other things in the works to bring an adult entertainment establishment into the City of North Ridgeville. He is not planning to do it, has no intention of doing it, etcetera. That raises however, the additional question of whether the City should be in the business of regulating such establishments whether or not there are plans to bring one into the City in the near future or not. When this matter came up over a year ago, I indicated that there was litigation then pending in a couple of different Courts, including in the Northern District of Ohio which is the Federal District embracing North Ridgeville. That left the precise nature of how a City could regulate such establishments open. We know that Brookpark has had its battles. We know that the Supreme Court of the United States, last term, came down with a decision in the so called Candy Land case. Candy Land being the name of the establishment. It is clear that a City acts with unconstitutionally infirm ground if it seeks to prohibit, all together, such establishments or tries to keep them out of a community. On the other hand, it's clear that cities may engage in, what I'm going to call erogenous zoning, so long as that is done with a clear eye to what the constitution permits and does not permit. For example, it has been established and accepted by the Courts that adult entertainment facilities and establishments have negative secondary effects or can have such effects on the areas, the geographic areas into which they are built or moved. However, secondary effects studies take time. Assistant Law Director Morgan has been in touch with her counterpart in the Brookpark Law Department and in one or two other Law Departments that have recently done battle. It is clear that if we pass an ordinance, we are setting ourselves up as a target. If we were not going to be a target before, we will become a target because the industry, if that's what it is, that engages in such business interest, is very vigorous and vigilant in terms of trying to fight regulation wherever it is encountered. So, I think that if this is something that the Members of Council are interested in

pursuing, there are zoning regulations that can be looked at and adopted that are going to put us on the best possible footing for regulating but not banning these kinds of establishments. When you get involved in the regulation on sexual speech as opposed to the regulation of zoning of such facilities, you are getting into greater constitutional danger and difficulty. Clearly, if we pass an ordinance, we're going to get sued. Whether there's an establishment here or whether there's an establishment seeking to come here. But, however, if that is something the Members of Council want us to pursue, we have the research tools available to do it. But, for right now, there is based on the representations made to the administration, no truth to the rumor that North Ridgeville is about to be visited by such an establishment. Thank you, Madame President, that completes my report.

President Brown: Thank you, Mr. Zagrans. Does anyone have any questions of Toni Morgan or Mr. Zagrans report? Mrs. Minnick?

Council Member Minnick: Madame President, I'd like to ask, according to our ordinances, is the subdivider's agreement required to be executed before buildings are constructed? Now, from what one, two, three, four, all your steps here, it sounds to me like that is a requirement.

Law Director Zagrans: A subdivider's agreement is part of the Engineer's obligations under our Codified Ordinance 1228.01(b) and must be completed prior to the final plat being accepted for recording purposes. The past practice has been that subdivider's agreements have sometimes been done as late as the platting stage and construction had been begun prior to that. However, from here on out, we are going to adhere to the steps in the sequence that I've indicated and therefore, a signed subdivider's agreement or developers agreement will be done before construction begins.

Assistant Law Director Morgan: Can I elaborate on that, just briefly? I just wanted to add that, from here forward, building permits will not be allowed to be pulled unless a subdivider's agreement is in place as well.

Council Member Minnick: So, what you're telling me is that anything went before and construction could begin before a subdivider's agreement was executed?

Law Director Zagrans: That's absolutely not what we are saying. It's not a matter that anything went before. The development of subdivisions was just as strictly regulated before as it will be hereafter. But, there has been confusion as to the steps to take and the order in which to take them. So, while the regulation will be exactly the same, our ordinances haven't changed a bit between yesterday and today. The steps are going to be taken in the order in which we have outlined so as to clear up any confusion that may have here before existed.

Council Member Minnick: Madame President, I ask the Law Directors, what are the consequences to a builder that starts building before there's a developers agreement executed?

Law Director Zagrans: Well, as Ms. Morgan just indicated, if that were to happen, that means that the developer would be building before being granted a building permit to build which would put him in violation of our ordinances and that violation carries with it penalties and sanctions which I assure you will be vigorously enforced by the Building Department and by the Law Department.

Council Member Minnick: Madame President, I have another question. I have not been down there, but I have been informed that building is going on in Meadow Lakes and I know that building construction was going on before there was an agreement in the Presidentials, so what are we going to do about that?

Assistant Law Director Morgan: Can you clarify what you're talking about the Presidentials and Meadow Lakes the same time?

Council Member Minnick: Well, there was a subdivider's agreement executed in 1998 for the Presidentials and construction began before that and now Meadow Lakes is being constructed and the developers agreement and final plan approval has not been given yet.

Law Director Zagrans: As we indicated, there is nothing illegal about that as long as the appropriate building permits were obtained. If what you're saying is true, there's nothing illegal about that. That is not the procedure that the Assistant Law Director and I prefer to see follow and therefore, we are going to, we have laid out the steps we would like Council to follow from here on out in making sure that this confusion doesn't occur in the future. But there's nothing as so long as building permits were pulled. There's nothing illegal about the scenario that you are claiming to be the case.

President Brown: Thank you, Mr. Zagrans.

Council Member Minnick: Madame President, I have another question. I thought that Mr. Zagrans said that building permits would be issued until a developers agreement was executed.

Law Director Zagrans: That's the procedure we are going to follow from here on out.

Council Member Minnick: And you said that it has been followed in the past.

Law Director Zagrans: It is a procedure that has sometimes been followed in the past and sometimes the developers agreement has not been signed and in fact, more commonly, the developers agreement has not been signed until the end of the process when the final plat has come before Council for approval. We don't favor that procedure. We think that is the less desirable of the two procedures.

Council Member Gillock: Madame President, couple questions. In planned community developments, we're now looking at doing a subdivider's agreement for the entire project, yet they still have to come back through Planning for final approval by phase. In a planned community development, we often ask for call of amenities of the special projects. For example, in Waterbury, a sewer line to the Baseball Complex, or it's been discussed, land to be donated to the school. When do we get the developer locked in on that type of item?

Assistant Law Director Morgan: Any time a phase comes through, if there's something we want to add to that, there is a special page on the subdivider's agreement, the original one, called special conditions and that can be amended and added to at any point and as I indicated, by requiring this agreement up front, I think it puts us in a better position to negotiate because they do not receive final approval until we are through with that process.

Council Member Gillock: So, can Planning, when Meadow Lakes comes to phase six, which is by the Baseball Complex as part of the final approval process require the subdivider's agreement be modified to include that requirement?

Assistant Law Director Morgan: Any kind of changes, there may be changes that the

subdivider's wants to initiate and it's a long process, so some change may have come up. Any changes they want, any changes that we want, that's the time to discuss them and get them ironed out, yes.

Council Member Gillock: Secondly, when we were discussing the steps in the R-1 and step seven, Mr. Zagrans, I believe you said they have to maintain it and the City would accept it after a period of no longer than three years, isn't it no less than three years? Don't they have to maintain it for three years?

Law Director Zagrans: If I said, no longer, I mis-spoke. You're absolutely correct, it's no less than.

President Brown: Thank you, moving on to other reports.

OTHER REPORTS

Please note:

Mayor's Court Case Report for September 2001;

Police Department Support Car Report for September 2001; and

Building Department Report for January through September 2001.

Parks & Recreation Commission Liaison Report:

Council Member Overby: Because of the holidays, the November and December meetings have been combined and will be December 5th. Parks and Rec meeting will be December 5th.

Senior Citizens Advisory Board Liaison Report:

President Brown: The Senior Citizens Center wants to thank the North Ridgeville High School Key Club, Lake Ridge Academy eighth grade class and the Christian Community School for offering to help seniors with leaf raking this year. It is just one more example of community spirit and involvement. It says, look into your local newspapers or contact the senior center for the numbers to call to arrange to have someone assist you. Any questions? Moving on, Planning Commission, Mr. Gillock.

Planning Commission Liaison Report:

Council Member Gillock: There's not been a Planning Commission meeting since our last Council meeting.

OLD BUSINESS None

President Brown: I have no old business, moving on to new business.

NEW BUSINESS

Clerk of Council White: Request for new C1 and C2 liquor permit from TOPS Markets LLC, southwest corner Center Ridge Road and south Lear Nagle Road.

T 136-2001 An ordinance accepting the plat of Waterbury PCD Phase II for final approval final for recording purposes

T 137-2001 A resolution terminating Community Reinvestment Area No. 13 as provided in Resolution No. 765-94

 motion by Swindig to suspend By-Laws to give T 137-2001 a first reading, 2nd by Gillock
President Brown: Any discussion? Take roll please, Mr. White.

 Yes, 6 No, 0

Clerk of Council White: Motion carries six, zero, T 137-2001 will have first reading tonight.
That's all of the new business that I have.

CORRESPONDENCE

President Brown: Correspondence please.

Clerk of Council White: I have no correspondence.

LOBBY

President Brown: Moving on to lobby, I will allow you two minutes to speak. I will start the timer after you give your name and address. Anyone wishing to speak? Fill out one of those forms that we have in the back, please.

1) Ron and Sara Siemientkowski of 33975 Gloria Avenue, spoke about the health issues of radon and the Mayor's radon report published on the City's web site. Stated that they are sorry Gail Minnick is not on the ballot for Council. Stated that Greenpiece Landscaping altered the grade of property at 33975 Gloria Avenue increasing resistance to any water on the property to flow to the sewer. Stated that the position of the sewer does not match the plot plan filed. Spoke about a letter written to Engineer Tom Beutler. Stated that if the City does not respond they will pursue assistance from the National Society of Professional Engineers.

2) Joe Antush of 38500 Otten Road spoke about the detailed itemized attorney bill for twenty-one thousand dollars, with a few items blocked out, that Mr. Zagrans hired without authorization.

3) Dick Brent of 8659 Harris Drive spoke about the banner week for the City with the overpass or underpass on 83 and the four hundred thousand dollars for the intersection on Lear Nagle. Commended the administration for their efforts and City Council.

Law Director Zagrans: Members of Council, Mr. Antush persists in mis-characterizing the bill that you all received and you approved. Every single expenditure is itemized on that bill. Every single hour that was spent. Every single dollar amount that is involved. Every task that was done. What I blocked out, as I was legally obligated to do, are the references to what each of those tasks pertain to if they involved attorney, client privilege information or communication.

That is the only thing that is blocked out. Everything of what they did, when they did it and how long they took is fully and explicitly set forth in the bill and that's what Council approved. Thank you.

President Brown: We will take a ten minute break. Twenty minutes to nine we will reconvene.

RECESS from 8:32 P.M. to 8:40 P.M.

FIRST READINGS

Council Clerk White:

T 137-2001 A RESOLUTION TERMINATING COMMUNITY REINVESTMENT AREA
944-2001 NO. 13 AS PROVIDED IN RESOLUTION NO. 765-94.

First Reading

motion by Swindig to suspend second and third readings, 2nd by Overby

President Brown: Discussion? This is for the company that has left North Ridgeville, Mayor?

Mayor Hill: That's correct, Madame President, and so that we can move the process along, which is a legal process, to recover funds that were abated from 1994.

President Brown: Thank you. Please take roll on the suspension.

Yes, 6 No, 0

Clerk of Council White: Motion carries six, zero to suspend second and third reading.

motion by Swindig to adopt, 2nd by Overby

President Brown: Any discussion? Please take roll.

Yes, 6 No, 0

Clerk of Council White: Motion carries six, zero. T 137-2001 becomes Resolution Number 944-2001.

Permanent Resolution No. 944-2001.

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

SECOND READINGS

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

Second Reading

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

Second Reading

THIRD READINGS None

UNFINISHED BUSINESS

T 122-2001 AN ORDINANCE APPROVING FINAL PLAN OF PHASE II OF MEADOW
3735-2001 LAKES PCD, INCLUDING ACCEPTING THE PLAT OF MEADOW LAKES
PCD PHASE II FOR FINAL APPROVAL AND FOR RECORDING
PURPOSES.

President Brown: This was postponed from 10-15-2001 to the next regular scheduled meeting, November 5th.

motion by Overby to adopt, 2nd by Swindig

President Brown: Discussion?

Council Member Butkowski: Madame President, I was going over the subdivider's agreement and I found under the special conditions that on number one there, it says, previous development improvements at developers cost for which the developer is due credit from the City are sufficient to satisfy the performance bond requirements of section five. What did they do to get that because it requires a performance bond in there and apparently they don't have to have one because of previous developments, what would those be?

Law Director Zagrans: May I respond? Madame President, thank you. Obviously, with any development there are aspects of the development and improvements that the City requires the developer to perform. If there are, as I said in the Law Department report, if there are uncompleted improvements at the time the final plat is submitted for approval, then a performance bond is required in the amount of the cost of completing those uncompleted developments. But, where as here, Mr. Dettore had a sufficient amount of credits under the prior ordinances that were repealed last year. But, going back under the regime established by those prior ordinances to more than cover the cost that would be bonded by the performance bond then, obviously, the performance bond requirement is not needed.

Council Member Butkowski: So, are you saying these are carry overs from other stuff that he's done in this City?

Law Director Zagrans: Yes, that he has done and paid for and for which he was entitled to receive credits under our old ordinances.

Council Member Butkowski: He's received a lot of credits on a lot of the different stuff and it doesn't seem like this performance bond is usually for the inspection fees and stuff.

Law Director Zagrans: No, the performance bond is used to ensure that a developers obligations to complete the improvements that have not been completed by the time the final plat is submitted for approval are concluded.

Council Member Gillock: I would just add that the performance bond is usually a guarantee that the developer is putting in the required utilities, the streets, the sewer lines, the water lines and in most of these cases when they come get the final approval, those are installed so there's no need for the performance bond and as the Law Director indicated, if they came for final approval without those utilities being there, that's when you require the bond. But, in this case, as you go phase by phase and they come to final approval, if those utilities are already completed, there is

no reason for a performance bond.

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

Yes, 4 No, 2 (Minnick, Butkowski)

Clerk of Council White: Four, two, carries. T 122-2001 becomes Ordinance Number 3735-2001.
Permanent Ordinance No. 3735-2001

T 123-2001 AN ORDINANCE APPROVING FINAL PLAN OF PHASE II OF MEADOW
3736-2001 LAKES PCD, INCLUDING ACCEPTING THE PLAT OF MEADOW LAKES
PCD PHASE II FOR FINAL APPROVAL AND FOR RECORDING
PURPOSES.

Third Reading

motion by Overby to adopt, 2nd by Swindig

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

Yes, 4 No, 2 (Minnick, Butkowski)

Clerk of Council White: Motion carries four, two. T 123-2001 becomes Ordinance Number
3736-2001.

Permanent Ordinance No. 3736-2001.

Clerk of Council White: That's all the unfinished business that I have on the agenda.

COMMITTEE MEETING ANNOUNCEMENTS

Council Clerk White:

A Public Hearing Monday, November 19, 2001 at 7:20 P.M. on T 103-2001 REVISED.

The next Regular Council meeting will be Monday, November 19, 2001 at 7:30 P.M.

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

Tomorrow is election day. Please go out and vote.

Council Member Swindig: Wednesday at 3:30 a Finance meeting.

Clerk of Council White: That's all that I have.

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
REGULAR MEETING NOVEMBER 5, 2001**

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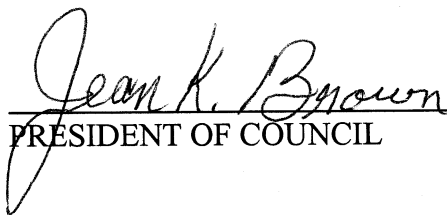
ADJOURNMENT

motion to adjourn by Swindig
President Brown: Meeting adjourned.

Meeting adjourned at 8:50 P.M.

MOTION Swindig 2ND Butkowski VOTE November 19, 2001
(As corrected)

YES 7 NO 0 ABSTAIN 0



PRESIDENT OF COUNCIL



CLERK OF COUNCIL