

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
MINUTES OF
SPECIAL MEETING JULY 31, 2002**

CALL TO ORDER 10:37 A.M.

President of Council David Gillock: I'd like to call to order the second Special Meeting of the North Ridgeville City Council scheduled to immediately follow the 10:30 meeting. Would the Clerk please read the notice for T 95-2002.

READING OF NOTICE

Council Clerk Norris: Letter dated July 24, 2002 to Council President G. David Gillock and Members of Council, City of North Ridgeville, Ohio, regarding Special Council meeting, Dear Members of Council and Mayor: Notice is hereby given, in accordance with Section 3.9(c) of the Charter of the City of North Ridgeville, that a Special Council meeting will be held Wednesday, July 31, 2002 immediately following the Special Meeting scheduled for 10:30 A.M. This meeting will be held in City Council Chambers, North Ridgeville City Hall, 7307 Avon Belden Road, North Ridgeville, Ohio. The purpose of this meeting is to consider T 95-2002, an Ordinance providing for the re-division of Wards within the City of North Ridgeville, Ohio in accordance with Section 3.1 of the Charter. It's signed, Sincerely, Nancy J. Buescher, Ward I Council Member; Dennis Johnson, Council At-Large; G. David Gillock, President of Council; carbon copies to Clerk of Council, Safety-Service Director, Engineer, Law Director, Auditor, Treasurer and News Media.

President Gillock: Would the Clerk please take the roll.

ROLL CALL

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

Also, present were Mayor Deanna Hill, Safety-Service Director Johnson, Law Director Eric Zagrans and Clerk of Council Charles Norris.

Absent were Engineer Tom Beutler and Auditor Chris Costin.

SPECIAL MEETING

President Gillock: We are now open for a discussion on T 95-2002. Mr. Swindig?

Council Member Swindig: Mr. Chairman, on the discussion, I would like the legal opinion of the Law Director read into the Minutes.

President Gillock: The legal opinion of the Law Director read.

Clerk of Council Norris:

LEGAL OPINION DECLARING T 95-2002 IS NOT IN ACCORDANCE
WITH CITY CHARTER AND IS ILLEGAL UNDER RELEVANT
PROVISIONS OF THE OHIO REVISED CODE.

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
SPECIAL MEETING**

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Three members of City Council, namely Nancy Buescher, Dennis Johnson and yourself, have issued a Notice of a Special Council meeting scheduled for Wednesday, July 31, 2002, to consider and take action regarding T 95-2002, which was introduced by Council Member Buescher on July 22, 2002, and entitled, AN ORDINANCE PROVIDING FOR THE RE-DIVISION OF WARDS WITHIN THE CITY OF NORTH RIDGEVILLE, OHIO IN ACCORDANCE WITH SECTION 3.1 OF THE CITY CHARTER.

I hereby issue a Legal Opinion, consistent with my previous Report of the Law Department to City Council dated April 30, 2002, delivered for the May 6, 2002 City Council meeting, that T 95-2002 is not in accordance with Section 3.1 of the City Charter. Furthermore, T 95-2002, if enacted by Council, would violate the relevant provisions of the Ohio Revised Code and would constitute an illegal usurpation of powers reserved by the General Assembly under the circumstances to the City's Director of Public Service. Therefore, Council may not lawfully enact T 95-2002; if it were to do so, the ordinance would be illegal, unenforceable, null and void.

It is significant to note that the effort to introduce T 95-2002 completely ignores my previous Legal Opinion on this subject set forth in the April 30, 2002 Report to Council. In addition, T 95-2002 was drafted and introduced without any prior notice to or consultation with the Department of Law, which is charged by Section 5.2 of the Charter to serve as legal counsel to the City Council. If anyone had bothered to consult with the Law Director or Assistant Law Director on this matter, who are required by Charter to be your legal counsel and advisors on legal issues, we would have reminded Council members of the previous April 30 legal opinion, quickly and easily explained the fundamental legal flaws with the proposed T 95-2002, and saved everybody the substantial waste of time and trouble this misguided effort has entailed. I had suggested to you a meeting at the end of May 2002 among interested persons from the Administration, City Council and both political parties to discuss these matters thoroughly. I continue to feel it was both unfortunate and shortsighted that the meeting was never held because a representative of one of the political parties indicated that she was not willing to meet.

To reiterate what was spelled out in the Law Department Report to Council dated April 30, 2002, Section 3.1 of the City Charter provides, in pertinent part, that City Council is supposed to enact legislation to re-divide the four wards of the City every 10 years, quote, to meet the United States Government census within 90 days after the issuance of the proclamation of the population of the City by the Secretary of State, unquote.

Thus, since the City received the Secretary of State's proclamation based on the 2000 census in early April 2001, City Council should have re-divided the four wards of the City pursuant to Section 3.1 of the Charter not later than July 15, 2001. Obviously, Council did not do so, and therefore failed to exercise its authority to re-divide the wards of the City granted and authorized by the City Charter.

Since the Charter is silent regarding the procedure to follow in the event Council fails to re-divide the City's wards within the prescribed time period, we must look to the Ohio Revised Code for legal guidance. Section 731.06(B) of the Ohio Revised Code states: If the legislative authority, i.e., City Council, fails to make such subdivision, i.e., the re-division of the City's wards in light of the decennial census, within the time required by the City Charter, it shall be made by the Director of Public Service.

The foregoing language is mandatory rather than permissive. It plainly authorizes the Director of Public Service to draw up a redistricting plan and to effectuate the re-division of wards without the further involvement or action by City Council. There is no ordinance needed or required to re-divide the City's wards when the Director is authorized to perform that task under Section 731.06(B).

The Ohio Supreme Court has recently reaffirmed its holding that municipal charters are to be construed to harmonize them with statutory provisions. State ex rel. North Olmsted versus Cuyahoga County Board of Elections, 2001, 93 Ohio St.3d 529. Accordingly, since the provisions of the Ohio Revised Code apply to a charter municipality such as North Ridgeville unless there is a specific Charter provision to the contrary, and in order to harmonize our Charter and O.R.C. Section 731.06(B), I informed the City's Director of Public Service, Jim Johnson, of his duty under the Ohio Revised Code to make such re-division of the City's wards in accordance with the 2000 census information forthwith. I further indicated that he bore the responsibility to use the detailed census tract information properly to ensure equality and proportionality within each of the four wards drawn with boundaries that conform to the requirements of Section 3.1 of the Charter.

On May 17, 2002, the Director of Public Service filed with the Lorain County Board of Elections his redistricting plan for the City of North Ridgeville to conform to the 2000 census information.

Since he acted only because Council failed to act within the time required, and

because no subsequent action by Council or legislation is authorized or necessary, he correctly forwarded and filed his plan containing redrawn ward boundary lines directly with the Board of Elections. Upon its filing on May 17, 2002, the Director's plan and description of the boundary lines for the four wards have become the lawful ward boundaries of the City, and the Board of Elections became legally obligated to consider and treat them as such.

Therefore, the City's four wards have already been lawfully re-divided to meet the 2000 United States Government census, as the Charter requires.

The Director's obligation under Ohio law is to re-divide the wards so that they are, quote, substantially equal in population, unquote. O.R.C. Section 731.06(D). Given the City's population of 22,338 according to the 2000 census, absolute equality among the City's four wards would have 5,584 people living in each of Wards I and II and 5,585 living in each of Wards III and IV. The Director's May 17, 2002 plan deviates from these norms as follows:

Ward	Population	Deviation	Percentage Deviation
I	5,656	+72	1.3 percent
II	5,607	+23	0.4 percent
III	5,485	-100	1.8 percent
IV	5,590	+ 5	0.1 percent

The largest deviation in any ward is only 100 people which is under two percent. The population variance or spread between the largest and smallest wards is only 171 people. I find that the wards are, quote, substantially equal in population, unquote, within the meaning of O.R.C. Section 731.06(D). Thus, the Director has appropriately discharged his obligation by filing a valid and effective redistricting plan that provides for substantially equal population in each of the wards.

Notwithstanding the foregoing, T 95-2002 has been introduced for the July 31 Special Meeting seeking to redistrict the City's four wards again. There are two reasons why enacting T 95-2002 would be an improper and inappropriate exercise of Council's legislative powers.

First, as addressed above, Council had the authority to re-divide the City's wards under Section 3.1 of the City Charter following the 2000 census, but failed to exercise such authority within the required time. In that event, Ohio law specifies that the City's Director of Public Service assumes the authority to re-divide the City's wards. On May 17, the City's Director exercised such authority and carried out his legal responsibilities to redistrict the City in accordance with the 2000

census. It would make a mockery out of the Charter's 90 day time requirement to hold that Council can miss the deadline and still subsequently enact a redistricting plan. Every provision in the Charter is to be given its full and plain meaning so that no provision is rendered meaningless or a nullity. Therefore, Council has no authority under the Charter to enact legislation to re-divide the City's wards once the 90 day time period elapses.

It may be pointed out that O.R.C. Section 731.06(C) states: In order to provide substantially equal population in each of the wards, the legislative authority, i.e., City Council, may re-divide the city into wards at any time. This provision means that the Council does not have to wait for 10 years until the next U.S. Government census in order to re-divide the City's wards. Council may re-divide the City's wards at any time in order to fulfill the statute's objectives. But it does not also mean that Council can re-divide the City's wards whenever it chooses without regard to the statute's stated objectives. The predicate language contains the intent and objective of the statute: quote, in order to provide substantially equal population in each of the wards, unquote. Thus, if the Council has facts or information that the wards are not substantially equal in population, it may act whenever such a situation occurs in order to substantially equalize the wards. However, if Council does not have evidence that the populations of the wards are not substantially equal, it does not have authority under Section 731.06(C) to re-divide the wards at any time.

The General Assembly has given the power of re-dividing municipal wards to the Director of Public Service whenever the legislative authority fails to re-divide within the required time following a decennial census. It would illegally usurp the powers conferred by the General Assembly for City Council to be able to undo whatever the Director does at any time. Such an absurd and illogical result cannot be upheld under the law. Instead, the only authority City Council possesses to re-divide the City's wards under Section 731.06(C) after the Director has done so pursuant to Section 731.06(B) is in order to substantially equalize the wards.

In this matter, Council has evidence that Wards I, II, III and IV as redrawn by the Director are now substantially equal in population based on the 2000 census. Therefore, Council has no authority under Section 731.06(C) to re-divide the City's wards because they are already substantially equal in population.

Second, Council's proposed redistricting plan would purport to change the current status quo and actually make the wards less substantially equal than they are now under the Director's plan. According to the figures introduced and filed with the ordinance, under the proposed T 95-2002:

Ward	Population	Deviation	Percentage Deviation
I	5,451	-133	2.4 percent
II	5,854	+270	4.8 percent
III	5,368	-217	3.9 percent
IV	5,665	+ 80	1.4 percent

In every instance, the deviation from strict equality is significantly greater under the T 95-2002 proposal than the current ward populations under the Director's May 17 boundaries. In Ward 1, the deviation under T 95-2002 is almost double, 89 percent, greater than the current plan. In Ward II, T 95-2002 would provide for deviating from equality about 12 times, 1200 percent, greater than under the Director's plan. In Ward III the deviation is more than double the Director's plan. In Ward IV, T 95-2002 would deviate from strict equality 16 times, 1600 percent, greater than the deviation under the current plan. The largest deviation in any ward is 270 people which is almost five percent, compared with the largest deviation under the Director's plan of only 1.8 percent. The population variance or spread between the largest and smallest wards is 486 people, almost three times what it is under the Director's plan.

Thus, the proposed T 95-2002 would be less equal than the current ward boundaries if the population figures attached to the proposed legislation were accurate. However, to compound matters, the figures for two of the four wards, Ward II and Ward IV, are wildly inaccurate. In checking the U.S. Government census tracts for the areas within the proposed boundaries for each ward under T 95-2002, the actual results are:

Ward	Population	Deviation	Percentage Deviation
I	5,451	- 133	2.4 percent
II	5,487	- 97	1.7 percent
III	5,366	- 219	3.9 percent
IV	6,034	+ 449	8.0 percent

Thus, the stated Ward II population figures are off by 367 persons, and the stated Ward IV population is off by 369 people, not from the median for equality which is specified in the Deviation column above, but from the numbers claimed by the sponsors of T 95-2002 to be the correct population count under their redistricting plan.

Considering the actual and correct numbers under T 95-2002, the population variance or spread between the smallest and largest wards is 668 people, almost four times the variance under the Director's plan. In Ward I the deviation under

actual T 95-2002 remains almost double, 89 percent, greater than the current plan. In Ward II, T 95-2002 would provide for deviating from equality about four times, 400 percent, greater than under the Director's plan. This is the only ward in which the actual deviation from equality is less severe than in the stated numbers introduced with T 95-2002. In Ward III the deviation stays more than double the Director's plan. However, in Ward IV, T 95-2002 would deviate from strict equality 90 times, 9,000 percent, greater than the deviation under the current plan. The largest deviation in any ward is eight percent, compared with the largest deviation under the Director's plan of only 1.8.

Furthermore, there is reasonable doubt that a redistricting plan that provides for a greater than two percent deviation from equality in 75 percent of the City's wards, and a maximum deviation of eight percent in one of the wards, would pass constitutional muster either under United States Supreme Court decisions holding that equal protection requires voting districts to be equal in population to prevent an impermissible dilution of voting power, see *Baker versus Carr*, 369 U.S. 186, 1962, one person, one vote; *Karcher versus Daggett*, 462 U.S. 725, 1983, percentage deviation of .07 percent between New Jersey congressional districts is unconstitutional; or under analogous principles set forth in the Ohio Constitution, Article XI, Sections 3 and 4, providing that substantial equality of representation for State House and Senate districts means no district may deviate from the average population for such districts by greater than five percent.

Therefore, a redistricting plan that provides for less equality among the ward populations than the boundaries prescribed just two months ago by the Director carries no justification under Ohio statutes for special reconsideration, at any time.

Accordingly, and for the foregoing reasons, it is the legal opinion of the Director of Law for the City of North Ridgeville, Ohio, that T 95-2002, if enacted by Council, is not authorized by either Section 3.1 of the City Charter or Section 731.06 of the Ohio Revised Code, and would be illegal and invalid.

E. H. Zagrans

President Gillock: Mr. Swindig?

Council Member Swindig: I would like to thank Council Clerk Chuck Norris for reading that legal opinion.

President Gillock: Madame Mayor.

Mayor Hill: Mr. President, I'd like to call on the Law Director for his advice or further comments, if he has any.

Law Director Zagrans: I would be happy to answer any questions that any member of Council

may have. I realize that was a rather lengthy, detailed opinion and I don't have anything to supplement it with other than the consequences of a City confronting that kind of Federal Court constitutional challenge. If we were to do something like T 95-2002, the cost would be astronomical, well into the hundreds of thousands of dollars.

President Gillock: Mrs. Buescher?

Council Member Buescher: Mr. President, since it takes an ordinance to change an ordinance, there are questions concerning whether or not the redistricting should be passed by ordinance by City Council. Mr. Jim Johnson, the Safety-Service Director, did not submit his plan to Council for approval and for this and other reasons, I recommend that Council postpone to look into receiving additional opinions in this matter.

motion by Buescher to postpone T 95-2002 until we can check our numbers, receive the correspondence from the Law Director and verify whether we need an ordinance to change or amend our current ordinance, 2nd by Johnson

President Gillock: Well, I'd like to make a statement. First item, some of the statements in the Law Director's opinion, I feel, are personal and irrelevant statements such as, quote, this is a misguided effort that he feels is unfortunate and shortsighted, unquote. The meeting wasn't held irrelevant to the legalities of the situation. Having said that, I don't really argue with most of the items in the opinion. That was never my argument. (Inaudible) After talking with two attorney's and the General Counsel for the Secretary of State by phone, I find several of your statements in your legal opinion debatable. Therefore, I am willing to postpone until such time that we can confirm or verify what the legislative authority of the City can do. In fact, in your second paragraph, you accuse Council of the, quote, illegal usurpation of powers reserved by the General Assembly under the circumstances to the City's Director of Public Service, unquote. I believe nothing could be further from the truth. I have never questioned your ruling, that since Council missed it's deadline, that the Safety/Service Director should do the redistricting. Why the Proclamation from the Secretary of State was not forwarded to the Council when the administration received it will probably never be known. If it was intentionally withheld, there may exist, in fact, elements of fraud. I don't believe this to be the case, since the administration at that time controlled the Council and could have redistricted at that time as they saw fit. They did not do anything until this Council brought the issue up by requesting a copy of the proclamation. But the fact of the matter is, Council missed the deadline, for whatever reason, and the Director of Public Safety is charged with redistricting. However, my questions are twofold. One, I believe it takes an ordinance to change an ordinance as the Ohio Supreme Court ruled in our own Kingston Place decision. The fact that the Safety-Service Director sent a letter and map to the County Election Board and did not even send a copy to the City's legislative authority, I believe changes nothing. We are still waiting for the Safety-Service Director, Law Department to forward an ordinance to Council to redistrict. Since that has not been done, I do not believe any redistricting has actually taken place. What I find a mockery, a term you use so eloquently in your ruling, is that an appointed, not elected, official can change the laws of the City of North Ridgeville without even advising the legislative authority in any way. This ruling would leave our residents caught in the middle should they come to the Council Clerk's office to inquire as to

what Ward they were in. We would follow the legally enacted ordinance we currently have on the books, which may in fact be different from the plan the Safety-Service Director provided to the Board of Elections. Also, when I talked to you about a week and a half ago in regards to why your office spent over \$700 to Squire Sanders and Dempsey in regards to redistricting, you told me that since questions had been raised, by myself and others, you sent them four questions which they responded to. I requested from you a copy of your correspondence to them listing the four questions and their response. You responded that you would provide that information to me. I have yet to receive it. I am not convinced in my own mind that the Safety-Service Director's efforts are procedurally correct. Two, even if we accept the Safety-Service Director's plan, according to 731.06 (C), quote, In order to provide substantially equal population in each of the wards, the legislative authority may re-divide the city into wards at any time. unquote. In a discussion with the General Counsel to the Secretary of State, it was pointed out this does not say we have to make the population more equal or anything else. It says what it says, quote, to provide substantially equal population, the legislative authority may re-divide at any time, unquote. I think a case can be made that the Safety-Service Director has redistricted the Wards per your legal opinion, even though procedurally I question the legality of his efforts, but now, we can still do our own redistricting in accordance with 731.06 (c), as long as we provide substantially equal populations. I see no language anywhere that says we have to prove that the wards are not substantially equal as you indicate. Lastly, the percentages we arrived at when we drew up a redistricting map are substantially different than the numbers you put forth. So again, I am willing to postpone until we can verify our numbers, we get the correspondence from you that I requested and we verify that we do or do not need an ordinance to change or amend the redistricting ordinance currently found in our codified ordinances. Thank you. Mr. Zagrans?

Law Director Zagrans: Mr. President, other than the legal issues, there's one thing in your statements that I wanted to make sure you did not misunderstand what I have said in my opinion. I did not accuse the Council, nor did I mean to accuse the Council, of acting illegally to usurp the legislatively conferred authority by the General Assembly on the Director of Public Service. What I said was, that if Council enacted T 95-2002, that would be such an usurpation. I certainly would not accuse Council of ever acting in that manner until now because it has not.

President Gillock: Thank you. Anyone else?

Council Member Olesen: Mr. President, just one comment. I thoroughly agree with Mrs. Buescher to postpone for further study. From a standpoint of the Fourth Ward, I saw two plans, two redistricting plans. Both, to my way of thinking, were acceptable to me. The second plan I understand was more acceptable to some of my cohorts on Council. What I am bothered by is that we pay big bucks to our legal counsel to protect us against ourselves and I don't want us to go astray. So, I think we have to look at this matter very thoroughly. I'm also really concerned by the numbers that have come out in the third analysis of the district. It puts about 250 more homes in my ward and you can imagine going to 250 more homes, paying postage to reach 250 more homes. This will put a substantial burden on whoever runs for that Fourth Ward Council seat. Thank you.

President Gillock: Mrs. Pagel?

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Council Member Pagel: Mr. President, I'd just like to follow up with what Mr. Olesen said. We do pay a great deal of money to our Director of Law and I would just like to see more consistency in the advice coming through year to year to year. This is not a waste of our time. I believe any activity in legislation is good learning, but I believe that we would not be here had, last year we could have had legal advice coming through in a manner to follow through whatever the circumstances was, to have this done according to Charter last year.

President Gillock: We have a motion to postpone until we can check our numbers, receive the correspondence from the Law Director, and verify whether we need an ordinance to change or amend our current ordinance. Is there any discussion with regards to the motion? If not, please call the roll.

Yes, 6 No, 1 (Swindig)

Clerk of Council Norris: Motion to postpone carries by a vote of six to one.

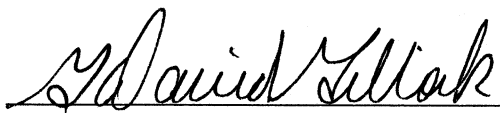
ADJOURNMENT

President Gillock: Meeting is adjourned.

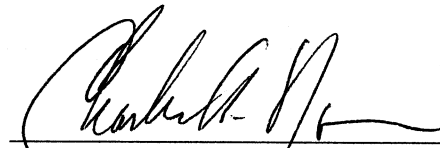
Meeting adjourned at 11:08 A.M.

MOTION Butkowski 2ND Pagel DATE September 3, 2002

YES 7 NO 0 ABSTAIN



PRESIDENT OF COUNCIL



CLERK OF COUNCIL