



**NORTON CITY COUNCIL
REGULAR COUNCIL MEETING
TUESDAY, FEBRUARY 19, 2013**

Roll Call: Dennis McGlone
Charlotte Whipkey
Scott Pelot
Bill Mowery
John Conklin
Todd Bergstrom
Don Nicolard

Also Present:
Mayor Mike Zita
Rick Ryland
Laura Starosta
Pete Kostoff
Karla Richards
Ann Campbell

The Regular Council Meeting convened on Tuesday, February 19, 2013 at 9:01 PM, in the Council Chambers of the Safety Administration Building. The meeting was called to order by Don Nicolard, President of Council, followed by the Pledge of Allegiance and a moment of silent reflection.

COMMITTEE OF THE WHOLE:

Nothing to report.

COMMUNICATIONS FROM THE PUBLIC:

Mr. Danny Grether, 2831 Brookfield Drive, Norton, Ohio, commented on the tax residents pay for sewers. Mr. Grether discussed the differences on sewer fees from Summit County rates and Barberton rates from the different homes he has lived in. Mr. Grether stated he liked to hear the rate reduction in Mr. Demboski's presentation. Mr. Grether stated he wants to be able to be charged for usage only. Mr. Grether discussed a no steal agreement where you don't take customers from us and we won't take them from you. Mr. Grether encouraged everyone to look into being in such an agreement. If Norton can control these costs and keep the dollars in his community he might be interested. Mr. Ryland addressed the comments about buying old lines, and explained that because Summit County owns most of the lines that transfer the effluent to Barberton's plant when we put in a new sewer line, you pay for that line to be put in the ground and then the ownership transfers to Summit County. We collect none of that revenue involved and the purchase of the system from Summit County puts all of those fees back in our control. We have been fighting with Summit County over the lines we just put into Oak Street and Greenwich Road, because we want ownership of these new lines. Mr. Grether stated he has done some research and if we repair and replace these existing lines owned by Summit County, there is grant money available for this. Mr. Ryland stated the purpose is to not have to give away the new lines in addition to owning the current lines. Mr. Bergstrom stated that the money currently going into Summit County DOES will then come directly to the City.

Mr. Kostoff stated the City of Fairlawn has received better maintenance since they own their own lines, and now Summit County comes back chopping at the bit to do the maintenance, and Summit County is now providing a better level of service. Mr. Pelot also noted that if

one of these Summit County lines goes bad and they have to replace it's at their full costs. Mr. Pelot stated that if we own these lines, there would not be three tap in fees as we then have the ability to control our own destiny and set the rate on fees.

Mr. Andrew Lehner, 3857 Easton Road, Norton, Ohio, stated he is not pleased with how the things are going with the sewers. Mr. Lehner stated his Dad just paid \$900.00 for property taxes again and he is on a fixed income and cannot afford more. Mr. Lehner stated we should research the sewer issues about our standpoint.

CONSIDERATION OF THE MINUTES:

Minutes of the Regular Council meeting of January 28, 2013 were approved as submitted. Minutes of the Committee Work Session of February 4, 2013 were approved as submitted.

REPORTS FROM OFFICERS, BOARDS AND COMMISSIONS:

Mayor Zita had no report. Mr. Ryland noted that in earlier communications to Council they had received a settlement on pending litigation, and asked if Council they would be addressing this tonight? Mr. Nicolard stated he thought this would be addressed next Monday under Executive Session if necessary. Mr. Kostoff stated he would need a voice vote tonight to authorize the Administration to settle this matter, and he did not feel that Executive Session was necessary unless Council had further questions. Mr. Nicolard suggested we address this under unfinished business and Mr. Pelot moved to add it to the agenda for tonight, seconded by Mr. Bergstrom.

Roll Call: Yeas: Pelot, Bergstrom, McGlone, Whipkey, Mowery, Conklin, Nicolard
Nays: None

Motion passed 7-0.

Mr. Mowery turned the discussion of the settlement to Mr. Kostoff stated the case of Matheny v. City of Norton, et al., United States District Court Case # 5:12-CV-01697-CAB has now been proposed to be settled with a payment of \$9,422.13 to the Plaintiff-Nicholas Matheny, and \$5,372.87 to Matheny's Counsel and a payment of \$205.00 to CAIR Ohio representing expenses. While all of our investigation to date indicated that there was no merit to any of Plaintiff Matheny's allegations, the insurance carrier involved in this situation strongly recommended settlement for this relatively small amount because of the fact that the City of Norton would have likely expended significantly more financial resources in proving Plaintiff Matheny's allegations had no merit then had to be expended relative to the settlement. One must also consider that there would have been a significant utilization of time by the Police Chief, by the officers involved and by the Safety Director in addition to those financial expenditures. We believe that this resolution benefits the City by refocusing the expenditure of both financial and other resources that can be used for other, more productive purposes.

Mr. Kostoff noted that at no time did we receive any credible evidence that would substantiate any of the allegations made by the Plaintiff, towards the Chief of Police, any of its officers, the Safety Director or the City in regards to the operation of the Police Department or in its dealings with subordinate officers. However, based on the strong recommendations of the insurance carrier, he recommends the City be authorized to settle

this matter and that the Administration be authorized to execute this settlement and release of certain funds. Mr. Kostoff stated he described this as a nuisance settlement. Mr. Kostoff added that we believe if this had gone to trial there would have been a complete repudiation of the charges, and again stated this is nothing more than a nuisance complaint, and judgement would have cleared the City and all of the officers involved. Ms. Whipkey asked if the City's insurance carrier pays this settlement amount? Mr. Ryland stated the City pays \$10,000.00 deductible and insurance pays \$5,000.00. Ms. Whipkey asked if this is the end of it and Mr. Kostoff stated there is still the State that is pending. Ms. Whipkey asked if that would be the City's money for the State case and Mr. Kostoff replied yes. These are different allegations, and in the Federal case it was for discrimination and in the State case that is about general employment issues. Mr. Ryland stated the State case is in the Court of Appeals. Mr. Mowery moved to settle this agreement, seconded by Mr. Pelot. Ms. Whipkey stated that in the long run this would be cheaper to settle this now than to keep fighting this and paying more in legal fees. Mr. Kostoff stated that when we met with the insurance carrier, we had done our own interviews and to satisfy all of us that there were not allegations that would deny the coverage of the insurance company. Although there were no depositions, we had several status meetings in the Court and at no time when requested did we receive any evidence that would point to any wrongdoing by the Chief or any of his officers. Mr. Kostoff stated that for the record, there should be no inference drawn from this settlement of any culpability in part by the Chief, Mr. Ryland, Sgt. Dalessandro as a result of our recommendation. Again, this is purely a nuisance lawsuit. Mr. Kostoff stated that we strongly feel we would prevail, but having to expend hundreds of thousands of dollars in going to trial. Ms. Whipkey stated we are making it clear for the public that there is no admission of guilt here, we are simply making this issue go away, and Mr. Kostoff concurred.

Roll Call: Yeas: Mowery, Pelot, McGlone, Whipkey, Conklin, Bergstrom, Nicolard
Nays: None

Motion passed 7-0.

PUBLIC HEARINGS:

None

INTRODUCTION OF NEW LEGISLATION:

ORD #5-2013

Mr. McGlone offered Ord. #5-2013 for its first reading and asked the Clerk to read it:

AN ORDINANCE REZONING PROPERTY LOCATED AT 4331 CLEVELAND-
MASSILLON ROAD, FROM AN R-1 DISTRICT TO A B-2 DISTRICT, AND
DECLARING AN EMERGENCY. (MCGLONE-PLANNING)

First reading only, a Public Hearing will be held on February 25, 2013. Ms. Whipkey asked if the legislation wasn't to allow the business to go into the building? The Council Clerk and Mr. Nicolard confirmed it was and that was why there is a public hearing scheduled. Ms. Whipkey asked of the business was currently in the building? The Council Clerk answered it has and had been operating for a month or so already. Ms. Whipkey questioned the legality

of allowing it. Mr. Ryland confirmed the business was moved in and operating as the owner had allowed it and Ms. Whipkey was correct as the business should not be there. Ms. Whipkey discussed the fact that the business is already operating at this location, before the residents are allowed to come to the public hearing. Mayor Zita stated that this past location had a B3 request that was denied. The property owner has since rented the building to the current business owner temporarily. Mr. Bergstrom stated he does not agree with this use prior to coming to Council for approval. Ms. Whipkey stated that legally this should not have happened this way. Mr. Nicolard stated we have the opportunity to correct that one way or another. Mr. Nicolard stated that the owner took the option to collect some rent from this business while he is paying taxes. Mr. Nicolard stated we need to protect the rights of all residents and that includes landlords too. Mr. Nicolard stated that closing the business down would send their tax dollars down the road somewhere else. Mr. Bergstrom stated that this owner knew we had an issue with the previous request. Mr. Ryland stated that Ms. Whipkey is absolutely correct and he could shut that business down tomorrow. Ms. Whipkey stated she didn't think it was a prudent idea, but there should be some kind of repercussion as the owner took advantage and broke the law, isn't there some kind of fine? Mr. Conklin stated that when he was at the podium the last time we did not tell him he could not use it this way. Mr. Ryland noted that on two other businesses, the owner had been informed he could not do it. Mr. Kostoff also agreed this was not done correctly and it does not follow procedures, and not sure how the Zoning Inspector allowed this to occur. Mr. Pelot stated that if they don't have an occupancy permit you need to shut him down. Mr. Pelot stated this does not matter where this issue came up, we are still a City and we need to follow the laws. Mr. Ryland thought the business was just parking their equipment there until the sign went up a week or so. Mr. Bergstrom stated that we need to follow protocol and go to him and tell him to leave. Mr. Robert Copen, 2518 Sue Lane, Norton, Ohio, does not know the man that owns the building, but he recalled that at the last time the owner was here before Council, he came away with the impression that Council would only approve a B-2 use. It's hard enough to get businesses here now, and he has a tenant at a vacant building that you agreed you could support. Mr. Kostoff stated this owner also knows the process for approval since he has been here several times. Mr. Mark Spisak, Chairman of the Planning Commission, appeared and Mr. Nicolard asked where the zoning for this area going, and Mr. Spisak stated that entire area is slated to go to B-2. Mr. Spisak noted that Planning Commission held a public hearing on this B-2 request and not one resident came to complain. Mr. Conklin and Mr. Pelot did not feel the need to throw them out at this point. Mr. Nicolard stated fine, throw them out and tell them nothing else is allowed there. Mr. Pelot stated that we are not throwing a business out of town just because the property owner made a bad judgement call here. Mr. Arters needs to go talk to both of them and take the sign down, that they can park their vehicles inside and use if for storage only at this point. Mr. Mowery stated that it was supposed to just be dry storage and now we may have office activity and sales taking place.

Mr. Conklin stated that he does not support throwing the business out. Mr. Larry Perkins, 3844 South Knights Drive, Norton, Ohio, stated that your lack of action in removing the business as soon as you noticed the trucks would result in harm to this business.

ORD #6-2013

Mr. Pelot offered Ord. #6-2013 for its first reading and asked the Clerk to read it:

THE ORDINANCE TO AMEND THE APPROPRIATIONS FOR THE CURRENT EXPENSES OF THE CITY OF NORTON FOR THE FISCAL YEAR ENDING DECEMBER 31, 2013 AND DECLARING AN EMERGENCY.

First reading only.

ORD #7-2013

Mr. Bergstrom offered Ord. #7-2013 for its first reading and asked the Clerk to read it:

AN ORDINANCE AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION AND DECLARING AN EMERGENCY.

First reading only.

INTRODUCTION OF PRIOR LEGISLATION:

ORD #1-2013

Mr. Bergstrom offered Ord. #1-2013 for its third reading and asked the Clerk to read it:

AN ORDINANCE AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION AND DECLARING AN EMERGENCY.

Mr. Bergstrom moved to adopt Ord. #1-2013, seconded by Mr. Conklin. Mr. Bergstrom noted that this relates to the resurfacing of I-76.

Roll Call: Yeas: Bergstrom, Conklin, McGlone, Whipkey, Pelot, Mowery, Nicolard
Nays: None

Motion passed 7-0.

ORD #4-2013

Mr. Bergstrom offered ORD #4-2013 for its third reading and asked the Clerk to read it:

AN ORDINANCE TO AUTHORIZE THE MAYOR AND/OR ADMINISTRATIVE OFFICER TO ENTER A COST SHARING AGREEMENT WITH THE CITY OF NEW FRANKLIN FOR THE RESURFACING OF PORTION OF CLEVELAND-MASSILLON ROAD AND RELATED COSTS; AND DECLARING AN EMERGENCY.

Mr. Bergstrom moved to adopt Ord. #4-2013, seconded by Mr. Conklin.

Roll Call: Yeas: Bergstrom, Conklin, McGlone, Whipkey, Pelot, Mowery, Nicolard
Nays: None

Motion passed 7-0.

UNFINISHED BUSINESS:

Mr. Pelot raised this issue again about the B-2 rezoning on Cleveland-Massillon Road, and asked Mr. Ryland to discuss this matter with the business owner and the landlord to ensure that the building is used only for storage until the rezoning is voted on by Council. Mr. Ryland stated his main concern is to know why or how that sign got there.

NEW BUSINESS:

None

PUBLIC SERVICE ANNOUNCEMENTS:

Mayor Zita read several announcements (see attached).

ADJOURN:

There being no other business to come before the Regular Council Meeting, the meeting was adjourned at 9:58 PM.

Don Nicolard, President of Council

I, Karla Richards, CMC-Clerk of Council for the City of Norton, do hereby certify that the foregoing minutes were approved at a Regular Council Meeting held on February 25, 2013.

Karla Richards, CMC-Clerk of Council

****NOTE: THESE MINUTES ARE NOT VERBATIM****

All Council & Committee Meetings will be held at the Norton Safety Administration Building, unless otherwise noted.