

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING

Monday, April 11, 2011

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, April 11, 2011 at 6:00 p.m., in the Council Chambers of the Municipal Building.

Acting President of Council, John Haas called the meeting to order. The Pledge of Allegiance to the Flag followed a moment of silent prayer.

Roll Call showed the following members to be present:

Kevin Johnson	1 st Ward
Rich Saddler	2 nd Ward
Nicholas Basham	3 rd Ward
Jerrold Albrecht	4 th Ward
John Haas	5 th Ward
Richard Noel	6 th Ward

Also present were Mayor David A. Malone, Solicitor, Mike L. Jones and City Auditor, M. Trent Williams.

Council dispensed with the reading of the Journal for the regular session of March 28, 2011, on a motion by Councilman Albrecht.

STATEMENTS FROM CITIZENS ON ITEMS ON THE AGENDA

Austin Leedom – 1521-5th Street asked if the ordinance authorizing the Mayor to advertise for sale property located in Sciotoville also authorizes the Mayor to sell that property. Mr. Leedom asked if this is the beginning of a program to “sell off” real estate due to the City’s “money problems”.

Thomas Lowe – 5257 Wilson Avenue reiterated statements he made at the 3/28/11 meeting regarding his concern for safety issues with the possible development of the property being considered for sale. He said he felt his plea at the last meeting was ignored by Council and that by them not addressing safety issues they were violating the citizen’s civil rights by proposing to sell this property. Mr. Lowe provided Council with a copy of Section I (Enumerated Corporate Powers) with a portion highlighted regarding defining, supervising, regulating, prohibiting, abating, suppressing and preventing all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof. Mr. Lowe also referred to Section 1319.02 of the Codified Ordinances regarding maintenance of vacant structures and land and claimed the selling of the proposed property would be in violation of Ordinance #12, which was passed in 1981. Mr. Lowe claimed the property to be unstable and reiterated remarks from the previous meeting with regard to the City needing to call in the state to make sure the property is safe as well as repeated remarks about making the new owner of the property responsible by requiring that person have an insurance policy to cover any damages or injury from the new owners use of the property. Mr. Lowe claimed there to be unanswered questions with regard to liability. He further state that he would like to bid on the property but wants to know “the good and bad” about it before making an offer.

William Thacker, Planning Director for Community Action Organization of Scioto County, urged Council to support their agency by adoption of the resolution on this evening’s agenda. Mr. Thacker advised Council that CAO is currently at risk for some severe budget cuts, ranging anywhere from 35% – 40%, which means the absolute elimination of many of CAO’s programs. Acknowledging CAO to be a “very important institution” in our community, Mr. Thacker reported that last year their agency provided services in excess of 14,000 people. He described the various programs and level of services provided by CAO. Mr. Thacker reported the Scioto County CAO employs over 200 local people with an annual payroll of \$6,000,000.00. He also noted that during the years 2009 and 2010, CAO paid out \$20,858,165.00 in purchases to local merchants. Mr. Thacker acknowledged understanding of the need to make budget cuts and requested Council urge those in authority to let those cuts be wide-spread so the vital services and employment offered by CAO will remain in Scioto County.

Van McGinnis – (no address given) expressed his concern for a “large rock” on the property being considered for sale by the City. Mr. McGinnis described the rock as being “dangerous to stand on”, saying he had planned on reporting it a long time ago but just now got around to doing so.

LEGISLATION

The Clerk gave a **second reading** to an ordinance authorizing the Mayor to enter into an agreement to compensate the Village of New Boston an amount equal to ½ of all revenues received by Portsmouth for the treatment of sewage originating in Eden Park, not to exceed \$20,900, and a separate agreement to receive sewage from Scioto County at Eden Park for an initial rate of \$3.74 per thousand gallons.

Councilman Albrecht moved to suspend the rule requiring an ordinance be read on three separate dates.

The roll was called. **VOTE: ayes 6 – nays 0 The rule was suspended.**

Councilman Albrecht made a motion to pass the ordinance.

Councilman Johnson, noting the contract to provide a place indicating it had been reviewed as to form, inquired as to whether or not that has been done. The Solicitor assured Mr. Johnson that he has done so and has signed to that effect on the original copy of the contract. He said he could not speak from personal knowledge with regard to the County Prosecutor or the Solicitor for the Village of New Boston but it is his understanding that they two have reviewed and signed the contracts as to form. Mr. Duncan, Director of Waste Water responded from the back of the room but his response was not audible from his position and could not be transcribed.

There being no further questions or comments the roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed Ord. #21**

The Clerk gave a **first** reading to an ordinance designating the target area of the Main Street Portsmouth district, which includes Madison Street east to Gay Street and Front Street north to Eight Street as an area of slum and blight.

Councilman Albrecht moved this constitute a first reading.

There were no questions or comments. The roll was called. **VOTE: ayes 6 – nays 0 A first reading was declared.**

The Clerk gave a **first reading** to an ordinance authorizing the Mayor to advertise for sale certain real estate owned by the City of Portsmouth located in the Sixth Ward commonly referred to as Parcel ID 34-2898, which contains approximately 50 acres as per surveyed located near U.S. 52, as further described in the attached legal description, and further, authorizing the Mayor to establish guidelines and restrictions as to the use and/or development of this property.

Councilman Albrecht moved this constitute a first reading.

Councilman Johnson stated that he had visited this property with Councilman Noel a couple of weeks ago and described it as “a beautiful property” noting the entire view of the entire valley to be “incredible”. Mr. Johnson said he noticed, with regard to any future use of this property, that it is “dotted with pits” as a result of clay mining. He claimed a lot of clay came out of this property for “early clay factories”. He continued to advise Council of the area’s history with regard to brick making and claimed that hill to be the source of the clay that provided the bricks for our downtown and Scioto County. Mr. Johnson further advised that since this is a “clay area” there is a “very thin” amount of top soil that could easily erode should it not have the trees and he feared that by selling it the area could be stripped of wood as is the property behind where Mr. Noel lives, which would not leave anything and felt that would cause “extreme problems” for, not only the surrounding property but more so for U.S. 52. Mr. Johnson felt the City could, at some time, consider non-mechanical selective harvesting of the trees on this property, noting there to be a lot of hard woods in that area. With regard to the rock that was mentioned earlier, Mr. Johnson said he did not know if that were a danger or not, noting that from where he viewed it he could not see any danger but that did not mean that a danger does not exist. However, he felt that to be an issue for ODOT, not an issue for the City and acknowledged that the City does not own the side of the hill, noting it to have been cut back by ODOT years ago when US 52 was widened. He advised that since ODOT left that large rock it meant there was something behind it. Mr. Johnson suggested that if there is a concern, the Mayor should contact ODOT and request they “take a look at it”. Mr. Johnson, stated, that given his tour of the property and what he considers as being the delicate nature of the property he “will not vote for the motion”.

The Solicitor advised the reason this issue is before Council is because a local legal counsel had inquired as to whether or not the City would be interested in selling this property. Mr. Jones stated that to his knowledge, this was not a sale the City was making an effort to promote on this particular 50 acres. He noted this had become an issue in 2008 when there was a question about how much of this area was actually owned by the City, which prompted having the land surveyed. The Solicitor advised that recently, through an attorney, the homeowner notified the Planning Commission that they were still interested in purchasing the property since there is now a survey. Mr. Jones acknowledged that as a matter of procedure the request went to the Planning Commission who determined there to be no current use or potential use of this property by the City and therefore sent it to Council with their recommendation that the City consider selling this particular piece of property. He further acknowledged that the way the ordinance is written the Mayor does have the authority to advertise and obviously has the authority to sell the property. He further acknowledged that the Mayor would also, obviously, have the authority to place certain restrictions on any potential development of the property. Mr. Jones also advised that the adjoining homeowners of this property as well as any other person would have the opportunity to bid on the property, if Council decides to put it up for sale. He noted the sale is not limited to any one individual but it was just one individual who inquired about the property being offered for sale. Councilman Noel objected to giving the Mayor the authority to sell without first bringing the matter back to Council. Mr. Noel reiterated his previous concerns about falling rocks, claiming that if that

were to happen, there are sections where the rocks would go all the way across the highway. He felt whoever would own the property should be responsible. He again expressed his concern with regard to possible clear cutting. Mr. Noel felt this ordinance should be “held up” until Council gets some answers. Councilman Albrecht noted it to have been stated at the last meeting that it would be the buyer’s responsibility if anything happens. With regard to the shale, Mr. Albrecht said Scioto County is probably 60% shale with top soil no matter where you build. Councilman Saddler advised that the area being referred to is the face of a cliff, which is not a part of this property. He further advised this section belongs to the State of Ohio and is the responsibility of ODOT. He said the cliff face is not an issue with regard to the purchase of this property. He further noted that whoever purchases property, would be responsible for any problems that might occur as a result of work being done on that property whether it be a flat piece of land or a hillside. Councilman Saddler supported the sale of the property. Councilman Basham noted that the property, while sitting there all this time, was obviously safe enough since there have been no complaints about it. Noting other concerns that have been uttered, Mr. Basham said. “if the top soil was strong enough to support trees worthy of logging than obviously there is some decent top soil up there”, saying “without decent top soil you are not going to have trees worth logging”. Mr. Basham felt there to be some “real flim flam” concerns and if ODOT owns the rock face, even if the property is sold, ODOT would still be responsible for the rock face, not the City and not the new owners of the property, should it be sold. Mr. Basham saw this as a win win situation, saying he has sit here and listened to constituents and residents talk about how the City should sell property it owns but is not using, for more than \$1.00. He said he saw this as being a real win for the City because we will get something out of property that we are not using or planning on using. Mr. Saddler noted this would be property, if sold, that will return to the tax base and generate revenue for the City. Councilman Noel said he was not talking about the cliff face, stating that 40 acres of that property is hilly and when he talked with Mr. Justice, in the Engineering Department, he said that there was only one place on that property on which it would be okay to build. Mr. Noel claimed that when it rains water comes out of that ravine and if the trees are removed there will be nothing to hold the water back, saying the trees allows the water to flow gradually. He again expressed his concern with the possibility of clear cutting. Councilman Johnson, with regard to what he preserved and saw when he visited the property and noted the thinness of the soil, said the Amazon has extremely thin soil and the density of the soil has nothing to do with the size of a forest. He acknowledged the county to be shale based except this particular hill is clay on top of shale, claiming that to be presenting certain other problems. With regard to people being legally responsible for their development and whatever happens on their property, Mr. Johnson felt that to not necessarily to be true. He noted Mr. Noel’s home to have been flooded before because of stripping the forest behind his property but the owners were not held accountable nor were the people doing the stripping. He claimed that none of the other properties received any relief from the “supposed owner” or the people who were doing that type of stripping of the property. With regard to US 52, Mr. Johnson referred to the trees along the bluff and claimed those trees are what is holding back the earth and if there is a heavy rain all of that will be coming down on US 52. Mr. Johnson felt the bottom line to be, “to get any money out of 50 acres there has got to be some return for it”. He noted the property to be pitted with holes and “only two flat areas that could possible hold a small cabin”. He claimed these to be the only two areas to be “flat enough for any construction”. Mr. Johnson felt that in order for the City to make any money from this property the City would have the guarantee that the potential buyer could develop and build there. He also felt the potential buyer could take out the trees without any restriction, saying this was the only worth the property has.

There being no further questions or comments the roll was called. **VOTE: ayes 4 (Albrecht; Haas; Saddler; Basham) – nays 2 (Noel; Johnson) The motion carried. A first reading was declared.**

The Clerk gave a **first reading** to a resolution in support of Community Action Organization of Scioto County, Inc.

Councilman Albrecht made a motion to adopt the resolution.

The Acting President thanked Mr. Thacker for being here this evening. Mr. Haas stated that he supports this resolution and hoped the majority of Council will do so as well.

Councilman Johnson, saying he had a grammatical issue with the resolution, made a motion to amend the second “whereas” of the resolution by inserting “well” between the words “have” and “served” and removing the word “well”, following the words “Scioto County residents”.

There were no comments. The roll was called. **VOTE: ayes 6 – nays 0 The ordinance was amended accordingly.**

There being no further questions or comments regarding the motion to adopt, the roll was called. **VOTE: ayes 6 – nays -0 The amended resolution was adopted. RES. #07-11**

STATEMENTS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Ray Mitchell – 2416 Micklethwaite Road advised everyone that he is a member of the Traffic Committee and reported a request from a resident who wants a handicap parking place erected in front of their home. He noted there to be several other such parking places throughout the City. Mr. Mitchell said he has been checking on other cities in Ohio and have found that some have applications for handicap parking and wanted this Council to adopt handicap street parking in residential areas of the City.

Wayne Nichols – 2014-8th Street, recognizing the reactivation of the traffic signal on 11th and 12th Street at Findlay Street, expressed his hope to see the notification sign moved to Clay Street.

He reminded everyone of the show on A&E tonight that will be featuring Scioto County in an article about drug addiction.

Austin Leedom – 1521-5th Street referring to a special election in February 2009 limiting taxing authority, advised a hearing on the last appeal is scheduled for May 13, 2011, at 3:00 p.m., in the Court of Common Pleas. He further advised the presiding Judge will be from Ross County. He claimed every signer of the petition that put this issue on the ballot to be a defendant in this matter.

Miscellaneous business and reports:

City Clerk's Report

1. Received, from the Auditor, on March 30th the following reports for the period ending 2/28/11:
 - Combined mtd/ytd expense report
 - Mtd/ytd revenue report
 - Combined mtd/ytd fund report
 - Mtd bank report

2. Received a notice from the Ohio Division of Liquor Control of a request to transfer a D5 license:
 - From: Looney Inc.
936-9th Street 1st Fl. & basement

 - To: Sunshine Superman Project LLC
936-9th Street 1st Fl. & basement

3. Oath of Office

Alisha M. Bradford for position of Special Deputy Clerk of the Portsmouth Municipal Court.

The Clerk's report was received, filed and made part of the record, on a motion by Councilman Albrecht.

Mayor's Report

1. In response to Mr. Nichols' remarks, advised him that the City only has one of the signs and therefore can only address one traffic signal at a time.

2. The Mayor shared a response he received from a citizen who was praising City employees for the work they did on a couple of neighbor's driveways. The citizen reported the City employees to have repaired the driveways to better than it had been and found the employees to work in a courteous and friendly manner. The Mayor acknowledged this to always be the way the employees perform, however they rarely receive any praise.

The Mayor's report was received, filed and made part of the record, on a motion by Councilman Albrecht.

The Acting President had nothing to report.

Miscellaneous business from City Council:

6th Ward Councilman Noel reported the logging in his neighborhood has been discontinued per conservation group, however it will resume when the weather improves. He said this same thing will happen in the Spring and that is why he would like to see "an overlay in the building permits where they do come in and destroy the 69 acres of property like that 69 acres of land and destroy all the property that timber, that's my concern". Mr. Noel reiterated his remarks concerning property being proposed for sale by the City, saying the property is "all hilly" and if an out-of-town contractor comes in to use the trees to make chips there will no longer be anyplace for wildlife. He claimed the property to be beautiful the way it is "without developing it out".

5th Ward The Acting President had nothing to report from his ward.

4th Ward Councilman Albrecht had nothing to report from his ward.

3rd Ward

Councilman Basham, noting two water breaks, on the same line, this past winter on Sunrise, reported the pavement in the area of the 2nd break to have been repaired, however the pavement in the area of the 1st break has not been patched.

Mr. Basham reported having spoken with a police officer on Friday who was asking questions regarding budgeting and SB5. He said the officer acknowledged that SB5 would help out City Council and the budget process and while he, as a member of Council, agreed it would be easier, he advised the officer that a lot of people would regard this as stealing and he did not feel that would be the right way to go about things. He noted the officer was not in favor of SB5. Mr. Basham reported that he attended the SB5 Referendum rally in Columbus this past Saturday. He advised there would be petition training in the next few weeks and the fact that petitions would soon be available for signing. He said there were also discussions about making sure everything is being done right, which he felt put Portsmouth ahead of the curve considering our history with petitions and issues. Mr. Basham said it was very exciting and he heard a lot of council members from other cities across Ohio who are also against SB5 and are excited about the referendum movement.

2nd Ward

Councilman Saddler stated that he had no report with regard to his constituents but would like to mention the TV show that will air tonight on A&E. He said he understands their point is to expose a problem in this area, however, he does not appreciate the title of the show – “Hillbilly Heron”. Mr. Saddler said it makes it sound as if we are all a bunch of hillbillies. He acknowledged that while we live in the hills but we are not all hillbillies. He said he felt this to be bad publicity for our count and our city and felt Portsmouth would be mentioned in this show this evening. Mr. Saddler encouraged every citizen to contact A&E and request they do a follow-up show on the positive things Portsmouth and Scioto County have to offer.

1st Ward

Councilman Johnson had nothing to report.

Neither the Solicitor nor the Auditor had anything to report.

The meeting adjourned at 6:52 p.m., on a motion by Councilman Johnson.

City Clerk

Acting President