

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING
Monday, April 25, 2011
6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, April 25, 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, City Solicitor, Mike L. Jones and City Auditor, M. Trent Williams.

Council dispensed with the reading of the Journal for the regular session of April 11, 2011, on a motion by Councilman Albrecht.

On a motion by Councilman Albrecht, a resolution ratifying a Memorandum of Understanding and an agreement with the Amateur Radio Emergency Service was added to the agenda. **VOTE: ayes 6 – nays 0**
The resolution was added to the agenda as Item “7e”.

STATEMENTS FROM CITIZENS ON ITEMS ON THE AGENDA

Thomas Lowe – 5257 Wilson Avenue advised Council that this was his third time appearing before them with regard to the City’s intentions to sell property in Sciotoville. Mr. Lowe, saying he felt like he was being ignored, reiterated remarks he made during his last two visits at these meetings. He suggested this legislation be tabled until geological studies can be made on the property to ascertain if development of the property would create an unsafe situation for citizens. Mr. Lowe also expressed his opinion that because Councilman Saddler worked for ODOT that his voting on this issue would be a conflict of interest.

Austin Leedom – 1521-5th Street agreed with Mr. Lowe with regard to Councilman Saddler, saying he also felt there to be a conflict of interest and that the legislation should be tabled. He also claimed there to be no appraisal of the property and therefore the City did not know its “true value”.

LEGISLATION

The Clerk gave a **second 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 second reading,

There were no questions or comments. The roll was called. **VOTE: AYES 6 – NAYS 0** **A second reading was declared.**

The Clerk gave a **second 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 second reading.

The Solicitor advised that the City followed proper protocol procedure with regard to Mr. Saddler and based on information and content of the ordinance; there is no conflict of interest.

Councilman Saddler, in response to remarks from citizens, reminded everyone that at the very beginning he had advised everyone that he had no conflict as a member of this Council. He noted that he has paperwork from ODOT’s chief legal adviser and he will make that available to anyone who would like to review it. With regard to the property in question, Mr. Saddler stated that there is no conflict with that issue,

noting the sale of this property has nothing to do with ODOT and reiterated his statement that there is no conflict at this point. Councilman Noel said he has a “conflict of interest problem” in response to Mr. Saddler’s statement. Mr. Noel said he has a copy of a determination from ODOT’s Chief Legal Counsel. Reading from that opinion, which was the same opinion of ODOT’s legal counsel offered by Mr. Saddler, Mr. Noel stated there was no problem with Mr. Saddler serving on Council, however he is not to participate in any negotiations regarding “maintenance or improvements in that area”. Mr. Noel claimed the City to have responsibility for the right-of-way. He felt Mr. Saddler should abstain from voting or any discussions concerning any conversations on the sale of this property. Mr. Noel said he has spoken with two engineers in Chillicothe and they (*not discernible*). He continued by reading a response that stated it was in reference to a question asked by Mr. Noel and further stated that Mr. Saddler “may serve simultaneous as a member of Portsmouth City Council as a non-partisan and as Transportation Tech Specialist at ODOT’s District 9 provided that, as a Council Member, he does not participate in any deliberations, discussions, negotiations or vote concerning the City’s construction, improvement, maintenance” and interjecting “which, this does concern maintenance”, Mr. Noel continued reading “or repair of a State Road”. Mr. Noel said he did not think there to be any question and saying, “They have no doubt that the City is responsible for the right-of-way”. He said he has not seen anything that shows the exact area the City controls or that the State controls in that area. Mr. Noel acknowledged this parcel to be in his ward saying, “I have a strong feeling that this is a dangerous place”. Noting Mr. McGinnis to not be present this evening, Mr. Noel said the rock that Mr. McGinnis was referring to is a “huge bunch of large rocks” and claimed, “It is hidden now by the undergrowth”. He said he checked this out, saying “it is washing around it” claiming, “it’s a hazard waiting to fall”. He further claimed there to have been “two big rocks” that have fallen in that area. Noting there to be places that looks like a wall, Mr. Noel said, “It is all cracked, it is coming down” and further claimed more came down during this last rainfall. Mr. Noel said he was not saying trees could not be cut on that property but “to go in like they are doing now and clear cut that whole hill will come down”. He expressed his feeling that this ordinance should be tabled until the safety issues are checked. Councilman Albrecht said he has heard nothing about anyone wanting to clear cut on this property and noted it to be the Mayor’s responsibility to learn what is going to be done and to place restrictions on the sale. He also acknowledged that he has heard nothing from any engineers or anyone with any qualifications on these issued. Mr. Albrecht noted this to be a second reading and felt the Solicitor should look at the correspondence Mr. Noel received and determine whether or not Mr. Saddler can or cannot vote on this issue. Councilman Basham, noting the correspondence refers to maintenance or improving a State road, acknowledged that the City is not doing either things and felt this to not be an issue since the only thing that is being considered is the possible sale of City-owned property. He also felt that if there were safety problems involving SR52 that the State would be concerned and felt this to be a “pretty simple” issue about whether or not the City wants to sell this property. Councilman Saddler advised that he has the same correspondence as Mr. Noel and read it in its entirety, noting that Mr. Noel only read parts of the letter. The letter was in response to a question as to whether or not he (Rich Saddler) could be employed by ODOT District 9, in his classified position while simultaneously holding a position as a member of Portsmouth City Council, a non partisan elected body. It was also questioned as to whether or not the position Mr. Saddler held with ODOT was compatible with that of a City Council member. Mr. Saddler noted this to be the question that was asked of ODOT when they did the compatibility review. Mr. Saddler read the answer from ODOT’s chief legal advisor, which stated, in part “A person may serve these two positions simultaneously provided that, as a member of Council, he does not participate in any deliberations, discussion, negotiations or votes concerning “the City’s construction, improvement, maintenance or repair of a state road or a federal, state or county road, on agreement between the City and a board of County Commissioners that have the department road construction improvement”. Mr. Saddler thanked Mr. Basham for what he said about there being no incompatibility with regard to consideration being given to the sale of this property. Mr. Saddler reiterated the fact that he does have a copy of the correspondence Mr. Noel was referring to, should anyone like to see it. He pointed out that the matter being considered by Council does not pertain to ODOT and is just a piece of property that the City is trying to sell. He reiterated the fact that there is no conflict of interest. Councilman Noel acknowledged having the entire correspondence but stated that he had not wanted to “read the entire thing”. Mr. Noel claimed that on the second page of the correspondence there are listed seven reasons on why Mr. Saddler can or cannot serve, saying as a Transportation Tech Specialist, Mr. Saddler has a “number of responsibilities on here as to why he cannot serve”. He quoted from the 2nd page, “as a Transportation Tech Specialist acts as a staff stationing production, he inspects simple projects to insure contract compliance to plans, (*not discernible*) and guidelines and approve the use of contingencies as required at the plan site”. Mr. Noel continued providing Council with a further description of Mr. Saddler’s duties as a Tech Specialist. He also noted the correspondence stated, “It is possible Portsmouth City Council may have issues before it that concerns construction, and maintenance”. Mr. Noel stated his main concern to be with the maintenance and noted that the correspondence stated that if there was a conflict the member, as an employee of ODOT, would have to refrain from participating.

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

The Clerk gave a **first reading** to an ordinance to appropriate \$12,000 from 2011 Capital Improvement Fund No. 301 to replace the telephone system at the Central Fire Station and declaring the same to be an emergency.

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 asked if these funds were coming from the 2010 carry-over unencumbered balance. The Auditor advised that it was.

There being no further questions or comments the roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #22-11**

The Clerk gave a **first reading** to an ordinance authorizing the distribution of \$10,560.17, which is the 33 1/3% of the Hotel/Motel Tax assigned to Cultural Affairs, to various organizations as recommended by the Cultural Affairs Panel.

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.

There were no questions or comments. The roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #23-11**

The Clerk gave a **first reading** to a resolution to ratify a Memorandum of Understanding and Lease Agreement to be entered into in April 2011, by the City of Portsmouth, and the Amateur Radio Emergency Service for provisions of back up communications to the County Emergency Operations Center.

Councilman Albrecht made a motion to adopt the resolution.

In response to Councilman Johnson noting that he did not have a copy of the Memorandum of Understanding or the lease agreement, the Solicitor advised that Council should have received both. Mr. Jones explained that the Amateur Radio Emergency organization has agreed to pay \$1.00 per year for the use of some space on our tower. He further advised that there is no cost or liability to the City, referencing letters received from Kim Carver, Scioto County Emergency Management Director.

There being no further questions or comments the roll was called. **VOTE: ayes 6 – nays 0 The resolution was adopted. RES. #08-11**

STATEMENTS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Thomas Lowe – 5257 Wilson Avenue felt citizens need more time to speak and suggest increasing the time limit to ten minutes with an eight minute warning.

Mr. Lowe also felt the residency requirement for City-elected officials should be changed, to less than five years. He felt the five-year requirement did not “allow for equal opportunity” as he would like to have the opportunity to run for a City position, saying he would do the job for free by returning his salary back to the City.

Miscellaneous business and reports:

City Clerk’s Report

1. On April 20, received from the Auditor the following reports for the period ending 3/31/11:
 - Combined mtd/ytd expense report
 - Mtd/ytd revenue report
 - Combined mtd/ytd fund report
 - Mtd bank report
 - Appropriation transfer from transaction listing

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

Mayor’s Report

1. The Mayor stated that he had no report but would like to take this opportunity to personally and publicly recognize Lisa Roberts, of the City’s Health Department and Police Chief Horner. The Mayor acknowledged U.S Attorney Carter M. Stewart’s recent recognition of these two City employees along with Scioto County Sheriff’s Captain David Hall for all their efforts in fighting illegal trafficking of prescription drugs.

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

President's Report

1. Acting President, Haas announced the reappointment of Kirk Donges to the Board of Design and Review.

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

Miscellaneous business from City Council:

1st Ward Councilman Johnson reminded everyone of the upcoming election, noting the two issues on the ballot for the City.

2nd Ward Councilman Saddler reported having not received any concerns from citizens.

3rd Ward Councilman Basham officially reappointed Ron McCain to the Cultural Affairs Panel.

Mr. Basham reported on complaints about the inadequate repairs to Sunrise Avenue following a water main break. He also conveyed the "thanks" of Mike Dickerson to everyone who assisted him with his sewer issues.

4th Ward Councilman Albrecht thanked Pastor Rawlins for the work he has done in the East End with regard to the drug and prostitution problems.

He also reported having received complaints from the Grant Street area about motorist driving by in the early morning hours playing their music so loud it rattles the windows.

5th Ward Acting President Haas advised that he has been asked about who owns the road leading to the movie theater. He said it was reported that the road is full of large potholes and it was his understanding that perhaps it is Mr. Mullen's responsibility. In response to being asked if someone in his office could make a call about this, the the Solicitor stated a request was presented to the Planning Commission that the City take over this road. He further advised that the Planning Commission determined it is not the City's responsibility to maintain this roadway.

6th Ward Councilman Noel receiving calls due to flooding and noted having seen City crews working at the end of Sycamore Street. He said since the EPA stopped the clear cutting in his area he now has "clear water" instead of "chocolate water". He reiterated remarks he had previous made about the resumption of the clear cutting when the weather improves.

The Solicitor announced that everyone is welcome to attend a hearing set for April 27th at the Courthouse. He advised a visiting Judge will hear arguments regarding the recently passed ordinance on pain clinics. Mr. Jones advised that someone is already challenging the ordinance and is seeking an immediate injunction and wants to have the ordinance declared as unconstitutional. He said he would like to see the Courtroom filled with people showing support of City's action.

The Auditor had nothing to report.

The meeting adjourned at 6:43 p.m., on a motion by Councilman Basham.

City Clerk

Acting President of Council