

MINUTES – SPECIAL SESSION

PORTSMOUTH CITY COUNCIL MEETING
 Tuesday January 30, 2018
 6:30 P.M.

The City Council of the City of Portsmouth, Ohio met in special session on Tuesday January 30, 2018 at 6:30 p.m., in the Portsmouth Municipal Council Chambers.

Mayor James D. Kalb called the meeting to order. A moment of silent prayer was observed followed by The Pledge of Allegiance to the Flag.

Roll Call showed the following members to be present:

Sean Dunne	1 st Ward
Jo Ann Aeh	2 nd Ward
Kevin E. Johnson	3 rd Ward
Jim Kalb	4 th Ward
Gene Meadows	5 th Ward
Thomas K. Lowe	6 th Ward

Also present was City Solicitor John Haas and City Clerk Diana Ratliff.

City Clerk's Report – City Clerk Ratliff reported the following:

1. In accordance with Section 4 of the City's Charter, City Council requested a special meeting of Council to entertain legislation to hire an Attorney to represent City Council in upcoming pending litigation.
2. Notices were sent to each Council Member, Mayor, Solicitor and Auditor
3. Acknowledgements were received from all of the above.

The City Clerk's report was received, filed and made part of the record, on a motion by Councilman Kevin E. Johnson. The motion carried viva voce: **VOTE: 6 ayes – 0 nays.**

Mayor Kalb stated that at the advice of Solicitor Haas, Council was present to retain Special Counsel to represent them in the upcoming pending litigation.

STATEMENTS OR REMARKS FROM CITIZENS ON ITEMS ON THE AGENDA

Reece Brown – 2198 Sedan-Crabtree Road Lucasville, Ohio – Good luck

Sharon Bender – 1666 Highland Avenue, Portsmouth, Ohio – She said that she was sickened at the fact that our city had to have something like this go this far and spending the citizens money. She didn't believe that Council had polled their constituents in their Wards to find out whether they agree with what they had done. She felt that it was a total waste of money and it was the citizen's money that Council was wasting.

Matthew Seifert -613 3rd Street Portsmouth, Ohio – He echoed what Ms. Bender had said in that it was a waste of money for Council to retain Counsel because this was an action that shouldn't have been taken in the first place. He said that putting down a retainer of \$5,000 of the people's money and up to \$50,000 of the people's money to defend Council's individual actions was incredible, that was in addition to the extra money spent to pay Sam Sutherland as Acting City Manager for the past month and also paying Mr. Allen's salary while he was unable to do anything for this city that he cares so much about. He said that this was in addition to the untold possible thousands, tens of thousands or millions of potential liability with the city up against going forward with an action that many find unfortunate but potentially wrong and illegal as far as a wrongful termination action. He said he paid taxes in the City and he felt they deserved better for their money.

Renee Storey – 2108 Grandview Avenue Portsmouth, Ohio – She reiterated what the others had said and advised that she was a Realtor in the City and had a hard time selling houses inside the city limits because many people don't want to pay the city tax as they felt it was too much. There was a lot of service because of the city tax, things that the people in the County don't have but that money should be going to pay toward things that the city needed such as infrastructure, renewal of our city and not for Special Counsel because of the actions of Council that were not considered before they were taken. She doesn't appreciate her tax money going to waste.

Gina Chabot – 3rd Ward – She reiterated the issues with the money and not all of Council necessarily voted toward the action and it was appreciated. She felt that it needed to be reconsidered because again not only the money issue but the publicity issue. She said that as a citizen along with many other people have worked long and hard to help turn around the image of the city and Council's action was negating the positivity's. She said that she also had the new Portsmouth, Ohio discover map which was developed by Connex through Cultural Affairs money to promote our city and Derek Allen was a part of the Community Development.

Joni Fearing – P.O. Box 1917 Portsmouth, Ohio – She said that she felt that she and everyone else had been confused by what had been posted and said. She stated that one of her big concerns was the email messages and text that had only included four Councilmembers and felt there were issues with the Sunshine Law and transparency. Something that she read was that there were no documentation of any of the allegations against Mr. Allen and she didn't know how that worked and how anyone could have that kind of allegation against them with no documentation. She said that it was hard to piece the puzzle pieces together. She added that the mediation was supposed to have been successful but that they were going to take time to write up documents and then he came inand again I'm not going to pretend to know everything which had been one of her biggest frustrations, but she wished someone could tell the public everything. Things have been heard and it's hard to know what the truth was and this city was struggling, but before Council spent \$50,000 there were major issues that needed to be addressed that that money could serve. There needed to be more evidence and more certainty. She said she had heard that the mediation was \$3,500 which seemed more reasonable but \$50,000 she had trouble agreeing with that amount.

Mark Hunter – 1551 Beechwood Heights Portsmouth, Ohio – He asked for common sense. He asked them to return to the mediation table and if mediation had ended in a way other than had been publicized because Council was accountable. Since the process had started people had come forward probably 3-1, and Council needed to stop serving their own needs and be transparent and involve the citizens because Council represents the citizens. Council had individual wards and were accountable and the citizens were not getting heard and he didn't understand what was going on and he does not like it. He would like to see a forum where Council could answer public questions and tell them what Council knew and tell them their motivations. He asked if it was personal and if there were things that had been said that had offended Council, the citizens needed to know it because there had been nothing put forward to substantiate the allegations that had been made and it was very concerning. He appealed to Council to have a cooler head, common sense and return to mediation and open the channel up again and don't hire an attorney to go down a path that would set the city back for decades because he didn't believe our town could survive.

Kevin W. Johnson – 307 Chillicothe Street Portsmouth, Ohio – He said he was deeply disturbed that half of Council hadn't bothered to even look up and listen to the people who had come before them to speak. He stated that he was disappointed that Council had gotten to this point, because there was a process but unfortunately from December 18th onward the process had not been followed.

Barb Burke – 2729 Shawnee Road Portsmouth, Ohio – She said that she was confused by City Council's actions and she would appreciate it if she had all eyes on her and that she was in Mr. Meadows Ward. She stated that she did not understand and unfortunately the media seemed to be short on words to explain the whole situation. She believed that what Mark Hunter said were wonderful words for thought. She also had a card for each Councilmember "Be the reason someone smiles today"

LEGISLATION

The Clerk gave a **first reading** to an Ordinance authorizing the employment of Attorney Mark McCown, 311 Park Avenue, Ironton, Ohio as special counsel to represent the City Council of the City of Portsmouth, Ohio regarding matters including, but not limited to, employment, discipline and termination of Derek K. Allen as City Manager and to allocate funds to pay for said services at the rate of \$250.00 per hour, with a retainer fee of \$5,000.00 and an amount in total not to exceed \$50,000.00; and further, authorizing the transfer of \$50,000.00 from unappropriated monies in the General Fund No. 101 to Legal Fees Fund No. 101.105.5232. Pursuant to Council Rule 5, this legislation is requested to be passed as an emergency in accordance with Section 10 of the Charter for the City of Portsmouth in order to facilitate administration, daily operation and avoid practical and legal entanglements.

Councilwoman Aeh motioned to suspend the three reading rule.

The role was called. VOTE: 5 ayes – 1 nays (K. E. Johnson), the rule was suspended.

Councilwoman Aeh motioned that the Ordinance be passed.

Councilman Johnson stated that during the meeting at P.H.S. gymnasium he brought up that the Solicitor was our legal representation and fast forward our Solicitor relays that he cannot go forward with being our legal representation. Now the City was looking at \$5,000 to retain a lawyer and at least \$50,000 at \$250.00 per hour. He remembered when he didn't even make \$50,000 a year and believed that it was an unnecessary burden and advised that it was the taxpayers paying the \$50,000 and he does not support the action. He would like Council to sit down with the Solicitor and put their heads together and somehow work this out.

Solicitor Haas stated back several meetings ago that as Solicitor for the City of Portsmouth he represented the City, Council, and the City Manager and at the time he didn't believe there was a conflict of interest with the firing of the City Manager. He had hoped that the parties would have gotten this resolved in Mediation and if they didn't he would be in a situation where at that point and time he would have a conflict. He does have a conflict of interest now because earlier today he filed suit on behalf of he and Mr. Allen against City Council claiming violations of the City Charter and asked Judge Harcha for a temporary restraining order and

**Ord. #04-2018
 Hiring of
 Attorney
 Mark
 McCown to
 represent City
 Council**

preliminary injunction and it was granted. At this point and time Mr. Allen would be back in his job and will remain that way until the hearing on February 14, 2018 at 1:00 p.m. in Judge Harcha's courtroom on the existence of this ex parte preliminary injunction. He said they were in a conflict situation now and because he knew that Council had mentioned that they wanted and tried to hire Attorney McCown previously and he doesn't have a problem with that because he's known Mr. McCown for a long time and had a great deal of respect for him, he's a very good lawyer. He spoke with Mr. McCown and sent him a copy of the draft of what was filed so that he could start getting prepared and be up to speed fairly quick. He said from now until the time of the hearing they would be involved in depositions and he had indicated to Mr. McCown that he wanted to depose all of the members of Council and that will be done before the 14th. He also indicated to Mr. McCown when his hourly figure and retainer was discussed that when a very similar action happened back in 1980 the lawyer fee for the outside Counsel ended up in litigation for a total of \$49,000 and that's how the \$50,000 figure was decided upon and that 1980's case ended up in the Ohio Supreme Court. He said that's where the City stands, there was an order enjoining Council from taking any further action against Mr. Allen until the case was resolved.

Mayor Kalb asked Solicitor Haas about the court hearing on February 14th and if there would still be a Public Hearing on February 12th. Solicitor Haas replied "no" that all that was set aside. Mayor Kalb stated that the people would not get to hear both sides of the whole issue as they've been waiting for and Solicitor Haas stated that it would not be on the 12th. Solicitor Haas stated that Council could speak with their Attorney and take his advice on the issue of writing a report but it would be up to their Attorney, but the issue that he filed on had nothing to do with whether the allegations were true or false, the items that were before the court which granted the injunction, looked at what he presented, motion with an affidavit, emails, charter sections, minutes and agendas and other exhibits and the issue of the case was "did Council violate the charter or their own rules when they fired Mr. Allen and the way they attempted to fire him" He said that in order to get an injunction the court had to determine that the Plaintiff was likely to succeed on merits of the case and an injunction was granted. He said there were 5-6 reasons or instances that he believed that City Council violated the City Charter, their rules and the Ohio Revised Code. He would also like it noted that prior to December 18th City Council did not seek any legal advice from him before they did what they did and that was why he felt that he had a conflict at this point and as City Solicitor it was his choice as to whom he wanted to represent, he could represent City Council or he could represent Mr. Allen and he chose to represent Mr. Allen's side of this case.

Councilman Johnson asked Solicitor Haas what it would take for City Council, Mr. Allen and the City Solicitor to go into Executive Session and work this out, could that be done in his legal opinion. Solicitor Haas stated that it could happen at any time, but he would prefer that City Council had legal representation present and it would also take a vote of 4 Councilmembers to proceed into Executive Session. Mr. Johnson said that as a Councilman he would prefer to do it tonight and put all of this madness behind us.

Councilwoman Aeh disagreed with proceeding into Executive Session because Mr. Allen would have his attorney present and City Council would not and she would rather their attorney be present.

Mayor Kalb asked if they were allowed by law to discuss the mediation because he had many questions asked of him as to why they couldn't come to a resolution and were they allowed to disclose the happenings in the mediation. Solicitor Haas said generally "no" because mediation was set up so that the parties could be open and honest with each other and the mediator, things would get said that may be admissions that someone may not be willing to make and in order to try to get the thing settled they may not make later down the road and you can't discuss it. He said the other issue that he had with the parties reporting on what happened in mediation was that the Mediator in doing his job will maybe come to one party as Council and asked "what if we did this" and Council may take that as an offer from the other side and it possibly didn't even come from the other side, he's come up with an idea that if he could get Council to agree, he may go back to the other side. He said it was impossible for Council to know what went on in the other room and likewise vice versa, everything went through the mediator and he may report things a little different and may try to manipulate things to get a resolution. He added that he thought there was no way the parties could go out and get into the details; what happens in mediation stays there.

Councilwoman Aeh stated that in a video Mr. Allen publically stated that he thought he was going to sign papers and she said never was there an offer. Solicitor Haas stated that it may have been what he was told and it would be improper for either party to go out and say anything about what happened because it's hard to know what exactly went on and the only person that really knew was the Mediator. Mrs. Aeh said that Mr. Allen improperly stated that and should not have according to the rules of not being able to talk about it because she could tell you in response to what he said that was "absolutely not true". Solicitor Haas stated that "now both sides were even because he said something and now you've said something".

Councilman Meadows called for the question.

There were no further questions or comments. **The role was called. VOTE: 5 ayes – 1 nays (K. E. Johnson), the Ordinance was passed.**

The meeting adjourned at approximately 7:00 p.m. on a motion by Councilwoman Aeh.

City Clerk

Mayor