

MINUTES – SPECIAL SESSION

PORTSMOUTH CITY COUNCIL MEETING
Monday, November 15, 2010
6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in special session on, Monday, November 15, 2010 at 6:00 p.m., in the Council Chambers of the Municipal Building.

President, David Malone called the meeting to order. A moment of silent prayer, in memory of Corp. Shawn Fannin, a local resident who was killed in the line of duty in Afghanistan, was followed by the Pledge of Allegiance to the Flag.

Roll Call showed the following members to be present:

Kevin Johnson	1 st Ward
David Malone	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 City Solicitor, Michael L. Jones and City Auditor, M. Trent Williams.

City Clerk's Report

1. The Clerk received a request from Council President, David Malone to call a special meeting for Monday, November 15, 2010 for the purpose of considering legislation authorizing the Mayor to enter into a contract for any necessary testing, cleanup and abatement of mold in the City Building.
2. Notices of the special meeting were provided to the Police Department for delivery to all members of Council. Notices to the Mayor, Solicitor and Auditor were placed in their respective mailboxes.
3. An acknowledgement of being served was returned from all members of Council with the exception of Councilman Noel and the President of Council. The President advised that he did not receive a notice.

The Clerk's report was accepted on a motion by Councilman Albrecht.

STATEMENTS FROM CITIZENS ON SUBJECT OF THE SPECIAL MEETING

Jack Lovins, co-owner of Servpro in Ironton, Ohio, at the request of Councilman Basham, provided Council with an overview with regard to the process of testing, clean-up and abatement of mold. He also provided Council with an estimate of the cost of providing this service for the area of the municipal building that is occupied by the Police Department. He reported the main source of the mold in the City Building to be from the HVAC units in the Police Department. Mr. Lovins also advised that the areas that need to be remediated can be blocked off – one section at a time - and it would not be necessary to vacate. He also explained that his estimate for the Police Department was only for the structure - not the contents, however he stated that the contents would have to be cleaned prior to being returned to the cleaned sections of the building. Mr. Lovins advised that his company can also clean the contents but that would increase the cost and he estimated that cost to be ½ of the cost of doing the structure. When asked about the time frame, Mr. Lovins advised it would take about one month for Servpro to clean every room in the entire basement. Also in response to being asked, Mr. Lovins said he submitted his estimate for services on November 7, 2010, however he acknowledged he had done a “walk through” of the area sometime in August 2010. He noted there had been previous water damage that had not been properly cleaned and further noted this to always be a cause for mold to develop. When asked, Mr. Lovins acknowledged having sent his November 7th proposal for cleanup to Bill Beaumont, which he said included the entire lower floor of the building.

Peggy Burton, City Health Commissioner noted that usually the first thing to be considered in remediation is how to stop the water and she did not hear any mention of addressing this issue, which she claimed to be where the problem originated. She continued noting some structural issues that may have allowed water to enter the Police Department area. Acknowledging that she did not know how much this issue as been researched, Mrs. Burton said she wanted to offer some good information for Council to consider and expressed her hope that they would not make a rushed decision. She made reference to OSHA's “Guide to Mold in the Workplace” and an article on “The Growing Problem of Mold”. Mrs. Burton provided Council with a handout of both of these articles. She suggested that anyone who is considered for this testing and remediation be someone with experience in this field, noting there is a standard that needs to be followed. She advised that using an accredited laboratory to be key to this process and further advised there to be only twelve such laboratories in the United States. Acknowledging Servpro to use an industrial hygienist, Mrs. Burton

noted that or other qualified indoor air professionals to certainly be what Council would want. She further acknowledged this to be “an in depth issue” and that research is ongoing. Mrs. Burton questioned whether or not \$25,000 would be a sufficient amount of money to do the job that is required. She felt the cost could depend on whether or not the City wants to use the latest scientific knowledge to accomplish this task. With regard to remarks she recently made publically with regard to the uncertainty of whether or not mold actually caused health problems, Mrs. Burton said she wanted to clarify her remarks saying they were in no way intended to minimize the severity or the significance of issues with any people in the Police Department or any other department who are believed to be suffering ill effects from mold issues. She said her comments were “mainly to clarify all the comments I’ve been hearing as to why if the Health Department no doing something about this”. She said she just wanted to explain the Health Department’s position, noting again that “there are not regulations or things like that”.

LEGISLATION

The Clerk gave a **first reading** to an ordinance authorizing the appropriation of up to \$25,000 from the unencumbered balance of CIP Fund No. 301 for any necessary testing, cleanup and abatement of mold in the City building; and, if necessary, authorizing the Mayor to advertise for bids and thereafter enter into contracts with the lowest and/or best bidder for various purchases/projects for aforesaid testing, cleanup and abatement of mold in the City Building and declaring the same to be an emergency.

Prior to a motion being made, Councilman Albrecht inquired as to whether or not the amount should be changed in light of the fact that the estimate provided by Servpro was more than the \$25,000. The President noted this to be something that can be changed, if it is something on which Council wishes to move. The President felt the emergency issue needs to be addressed. Councilman Johnson felt there to be other issues that need to be discussed. In response to Councilman Johnson asking from where the ordinance originated, the President advised it to have come from the Solicitor. The response to Mr. Johnson’s request as who prompted the ordinance was not audible. Mr. Johnson said he was just trying to determine if the request for legislation came from Council or the Mayor and his question had no other significance. Councilman Johnson suggested Council entertain changing the amount to “no more than \$50,000” and consider consulting with the Health Department during this process. Mr. Johnson stated that he and Councilman Noel toured the building on Clare Street and expressed his support for relocating the Police Department to that building. Vice President Haas began by stating that in no way is this legislation an indication that he is personally against moving the Police Department. He said he is in favor of moving everyone out of this building and further noted that earlier this year he was not in favor of putting a roof on this building. He acknowledged \$65,000.00 being spent on the roof and he was not yet aware of exactly how much has been spent on the Mayor’s office but noted it to have been newly painted and newly carpeted and assumed that the mold has been removed from that office. Mr. Haas stated that he has a real hard time beholding the City with yet another building at this time, especially after so much money has been spent on this building trying to stop the water from getting in, in the first place. He reiterated his hope of seeing all the City offices located in one building. He acknowledged cleaning this building to not be a great alternative but it is the one the City can afford to do at this time and he looks at this as a temporary solution.

Councilman Johnson made a motion to amend the ordinance by increasing the amount from \$25,000 to \$50,000.

Councilman Johnson also requested language to amend the ordinance further by including the Health Department as consultants during this process. Some discussion followed between Councilman Johnson and the Solicitor but was not audible. Mrs. Burton also interjected some conversation; however she was speaking from her seat in the audience and could not be heard well enough for transcription.

It being determined that the amendments should be considered separately, the roll was called on the motion to increase the amount from \$25,000 to \$50,000. **VOTE: ayes 6 – nays 0 The ordinance was amended.**

Councilman Johnson made a motion to amend the ordinance to include consultation with the Health Department.

In response to Vice President Haas asking if he could ask for some clarification from Servpro with regard to the standards, the President acknowledged Servpro’s presence and reminded everyone that this project would have to go out for bid and that Servpro’s presence did not mean they would necessarily mean they would be awarded the job. Mr. Haas explained that since the Health Commissioner noted certain standards had to be met he wanted Servpro to tell Council what those standards are in order to give Council some idea of what is expected. Mr. Haas said he would rather not have some open-ended number of items that would inflate the \$50,000 figure to a higher amount. Mr. Haas referred to it being mention several times about stopping the water from penetrating the building and noting that could be as simple as cleaning the drains of the HVAC system or as big as digging out all around the building’s foundation. Mr. Haas felt that language regarding this possibility needs to be included in the estimate. He said if that is the case then we would be getting into a much bigger project and that is his concern, saying he does not want this to get out of control. He stated that, in his mind, he views this as a temporary measure and not a long-term project for this building. Councilman Johnson concurred with Mr. Haas with one exception, which was with regard to the foundation. Mr. Johnson felt if that were the case, it would be something that the City would need to address. Mr. Haas said he would personally prefer, if this was going to be in the bid that Council would be made aware of any

external problems before \$50,000 is expended. He said he did not want to do the clean up and then have to bring someone in later correct any external problems, saying if this needs to be done he would rather not do it piecemeal. Mr. Lovins said stated that what Servpro thought when they inspected and was backed up by an Industrial hygienist, was that there had been water problems in the past that was not properly remediated, which resulted in an on-going mold problem. In response to Councilman Johnson's inquiry as to from where the water came, Mr. Lovins said he was not able to say, noting that to not be something with which they deal. He said Servpro deals with the results of the problem – not the problem itself. He also said that his proposal states that the water problem has to be dealt with first. Mr. Lovins advised that the work they do is under warranty for three years as long as there are not on-going water problems that have not been resolved. He said that determining the source of water penetration is not his expertise but there are signs of this having occurred. Mr. Lovins advised that the regulations to which Mrs. Burton was referring – Mold Remediation Regulations – and set forth by the City of New York are the highest standards in the United States and are the regulations that Servpro follows. He further advised that along with what the Industrial Hygienist protocol dictates and the commands of the regulations is how Servpro approaches the problem of mold. Mr. Lovins further advised that they do not receive their final payment for the project until a clearance test has been done and the Industrial Hygienist approves the area as being free of mold. He further stated that if they do not pass the Hygienist test, the cost of having it retested is at the expense of Servpro not the City. Councilman Johnson felt the City's Engineering Department should also work with the people doing the cleanup by going behind them and ascertaining where the penetration of water occurred and taking corrective measures. Mr. Lovins guaranteed that while his company is in the process of doing the cleaning they would be able to determine the origin of water leakage. The Chief of Police asked Council to consider the cost of remediation of the contents of his department and noted that in a conversation with the people from Servpro, they indicated the cost would be about half the cost of remediation. Chief Horner also felt consideration would need to be given to the evidence storage room, saying an officer would have to be present 24/7 with the cleaning crew to insure the integrity of that evidence. Vice President Haas felt there to be three options – 1) buy another building 2) remediation of the existing building 3) do nothing and leave the Police Department scattered all over the City. He acknowledged none of the three to be a "great option" but he was not thrilled at spending \$50,000 or more additional money on this building and already voted against putting a roof on it. Mr. Haas also felt that purchasing another building to not be an option for the City at this time. He did not believe that anyone, including the Chief of Police, is interested in the Police Department being located at different locations all over the City with no base of operation. Of the three options, Mr. Haas believed remediation to be the best option. Councilman Johnson concurred and felt Council should, during the upcoming CIP budget discussions, consider setting aside funds for another site for the Police Department and again reiterated his support for the property located on Clare Street. *(Additional remarks by Mr. Johnson were not audible and could not be transcribed).*

Councilman Johnson amended his motion to amend the ordinance to also include consultation with the Engineering Department.

The Solicitor felt there to be no question about there being an issue with the Police Department that needs to be addressed but pointed out the fact that there are two other floors in this building that are also in need of attention. He noted the Clerk's office, located just above the Police Department, has large cracks in their floors and felt if there is mold in any other office that is something that needs to be known. Mr. Jones also acknowledged the Auditor's office to also have concerns. The Auditor acknowledged sending a letter to all members of Council dated November 8th asking about the mold and, while acknowledging it must certainly be the worst floor, why is it the only floor being under consideration. He said he, at least, wanted the other floors inspected to see if there are any other contaminated areas in the building. In response to the Auditor asking if the rest of the building is included in this ordinance, the President said it was not a part of the cost and that he did not know exactly from where the estimate came. It was noted that the estimate came from Servpro based on an inspection of the Police Department. The Auditor advised Council that his employees have come to him with complaints that this issue should not be isolated to only one floor of the building. He stated their concerns to come mainly from the fact that there have been reports but they do not specifically state the extent of the problem and if other areas have not been tested why would it not be possible that the HVAC problem does not exist in other areas of the building. Mr. Williams did not think this to be a problem on other floors but did not know if there were other mold problems throughout the building. He noted that in the November 7th issue of the Portsmouth Daily Times quoted asbestos as being a part of the problem and while the reports do not state this, Mr. Williams wanted to know if this were something that is also going to be tested. He also wanted to know if the testing was going to stop here or how far is it going to go. He said he understands Mr. Haas' concerns about this issue escalating into something the City cannot afford to do. Mr. Williams noted this to have been a concern for many years for the people who work in this building. He noted that we can do whatever we want with this building, if we had lots of money to put into it. The Auditor said he understands that Chief Horner probably and most likely have the biggest problem in this building but that doesn't mean that there are not other problems with other employees that involve health issues or that there are not other issues that are just as urgent. Councilman Johnson suggested using the \$50,000 as a base line, noting this to be \$7,000 over the estimate submitted by Servpro. Councilman Basham noted that there is obviously a key player in this who is absent this evening and he feels like Council is trying to "work this one handed" getting everybody aiming for the same goal, of coming up with a solution, not the perfect solution, but one that the City can afford at this time. He expressed his hope that Council could move forward with the ordinance and if the \$50,000 does not include the other floors, then the Mayor could bring back, on a conference agenda, testing of the other areas of the building. Councilman Johnson noted that this ordinance says we are testing the entire building. The President advised that the conversation he and the Solicitor had was for the entire building to be tested. The President reminded everyone of a letter that was generated in August by Kevin Moron of Asabrook Engineering that stipulated that the mold issue had to be addressed. He noted the first letter to have

given the City thirty days to address the problem, which was not done, and now there has been circulated a second letter giving the City ten days to vacate the building. He felt this only addresses the immediate issue and he felt everyone to be on the same page in that respect. He felt this to be something that cannot be delayed and felt it to be a good start toward addressing the remainder of the building. He expressed his hope that there will be no mold problem in the rest of the building and therefore there will be no additional remediation cost. The Solicitor noted that using the estimate provided for remediation of the Police Department then adding to it the cost of remediating the contents, we are then up to \$63,000.00. Councilman Johnson suggested this be discussed at the next Council meeting and perhaps separate legislation will be needed. The Auditor questioned as to whether or not the structure can be dealt with without addressing remediation of the contents. *(Further remarks from Councilman Johnson were not discernible as were remarks from the Chief of Police who was speaking from his seat in the audience and not at the microphone).* Vice President Haas asked if we were to follow this all the way, then would any items that were removed from the Police Department to another location, such as the Fire Department, have to be decontaminated before returning them to the Police Department. He also wanted to know where we draw the line. He also questioned whether or not the contamination has been spread to the various places where the contents of the Police Department have been relocated and again asked, "where do we draw the line?". The Chief stated that when he walks across the carpet in the Police Department he is spreading the contamination to his home as well as other places he happens to go.

Mr. Haas felt that the thing that is being lost sight of is that regardless of whether or not the Police Department is relocated, the mold problem still exists and the permutations that have been discussed go on and on for anybody in this building. Mr. Haas noted that no matter where the Police Department might be relocated this building will still have the same issues in the basement of this building and something has to be done about it.

There being no further discussion the roll was called on the motion to further amend the ordinance to include consultation with the Health and Engineering Departments. **VOTE: ayes 6 – nays 0 The ordinance was further amended.**

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.

The Auditor inquired as to whether or not it was Council's intent that this project be bid. In response to the President replying in the affirmative, the Auditor advised that by adding the emergency designation and giving the Mayor the authority to act, Council was eliminating the need to put the project up for bid. Mr. Williams felt the ordinance needed to be specific as to Council's intent. Following a short discussion with regard to the correct language Noting abrogating an emergency eliminates the need to go out for bid, the Auditor said he just wanted to bring this to Council's attention. Councilman Basham noted there to already be one bid on file, which is the estimate submitted by Servpro. Mr. Basham questioned whether or not any further estimates would be necessary. The Auditor reiterated his question with regard to Council's intent to bid and noted the President had stated that to be the idea when he was speaking with the Solicitor, saying they had no idea who would do this project and therefore they felt it would need to be bid. *(Comments from Councilman Johnson were not discernible)* The Solicitor noted the objective to be remediation of the mold issue. The Auditor acknowledged that can be done but it depends on what Council wants. The Solicitor said he was viewing this from the aspect that a letter has been issued that requires the issue be resolved or vacate the building and, in his opinion, constitutes an emergency. Neither the Solicitor nor the Auditor felt they had the expertise to know how much this type of service should cost and the Auditor acknowledged that it might be prudent to ask for a couple more informal quotes. He also suggested that no more time than necessary should be spent on accomplishing this. The President acknowledged that since the Police Department has already temporarily relocated it will allow the City some additional time to receive some additional quotes. In response to the Chief asking "When can we look at being a Police Department again?", Vice President Haas, speaking for himself in response to the Chief's remarks to the citizens about the health and welfare of the Police Department, said he believes the Police Department needs to be out of this building but now is not the time since there is no money to do so. Mr. Haas reiterated the fact that he was speaking only for himself, saying he understands the Chief's concerns but as a member of Council his responsibility is not only to the Police Chief and his department but is also to the citizens of this city. Mr. Haas' personal opinion was that he did not believe now to be the time to purchase another building for the city to own, maintain and renovate while still having the problem in this building, full of other employees that has to be dealt with as well. He acknowledged the million dollar question to be "how to get the police department back together again" and "quite frankly" felt this is the best the City can do under these circumstances. Mr. Haas said that is why he believed the President of Council called a special meeting so Council can get on top of this issue before it goes on any longer. The Auditor asked the Chief if he was the one who obtained the current proposal Council has seen with regard to removing the mold, however the Chief's response was not audible. Neither was his response to the Auditor inquiring as to whether or not it would be feasible to obtain a couple more quotes this week. Vice President Haas, noting that the Service Director, Bill Beaumont, secured the estimate further noted that without the Mayor being present Council has no way of knowing whether or not she asked Mr. Beaumont to call anyone else. The Health Commissioner received permission to speak, however she spoke from her seat in the audience and her remarks were not audible and could not be transcribed. Mr. Haas stated it to be his

understanding that prior to Servpro's estimate, dated November 7, 2010, Mr. Beaumont was asked to secure estimates but no one seems to know if he did, in fact, receive any others. Mr. Johnson indicated that Mr. Beaumont had a pool of three but the President inquired as to how we would know that for sure.

Mr. Johnson felt time to be of the essence and saying he was comfortable with the language in the ordinance, called for the question.

The roll was called on Mr. Johnson's motion. **VOTE: ayes 6 – nays 0 The motion carried. Discussion ceased.**

The roll was called on Councilman Albrecht's earlier motion for passage. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #70-10**

The meeting adjourned at 7:09 p.m., on a motion by Councilman Noel.

City Clerk

President of Council