

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING
Monday, December 14, 2009
6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, December 14, 2009 at 6:00 p.m., in the Council Chambers of the Municipal Building.

Acting President, David Malone 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:

Mike Mearan	1 st Ward
David Malone	2 nd Ward
Bob Mollette	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.

Council dispensed with the reading of the Journal for the regular session of November 23, 2009, on a motion by Councilman Albrecht.

Councilman Albrecht, acknowledging receipt of a memo from Councilman Mearan, made a motion to add to the agenda a resolution in memory of Phillip D. White, Sr.

The motion carried viva voce. The resolution was added to the agenda as Item “7i”.

STATEMENTS FROM CITIZENS ON ITEMS ON THE AGENDA

Teresa Mollette – 1705 Franklin Blvd. objected to the legislation that would extend a contract to Caudill and Associates CPAs to perform the City’s financial and compliance audit. Mrs. Mollette reiterated remarks made by Councilman Mollette at the November 9th conference session. She felt Caudill and Associates did not maintain a “non-biased” opinion and felt they have not responded to questions that have been directed to them. She felt the extension of the contract was inappropriate and that Caudill & Associates could not provide the City with a fair audit.

With regard to the legislation relating to a contract with South Webster for sludge removal, Mrs. Mollette approved of this measure, saying the needs the income.

Noting New Boston to not yet be ready to commit to an engineering study for their portion of the levee, Mrs. Mollette felt the ordinance should receive three readings. She also felt, in spite of the ORC Design Professional Selection Law, that the engineering study should be bid. She suggested “working as a community” with the incoming new Mayor and new members of Council.

Jane Murray – 1920 Dorman Drive announced that she and Mr. Duncan attended “some really good meetings” last week with the State Department of Natural Resources and stated that she wanted to briefly tell Council about it. She noted that the City has to maintain the floodwall and stated that the Corps of Engineers work with the City in terms of inspections and compliance. She further stated the FEMA and the Corps is working on new mapping of the flood zones across the country, which, she said “This is going to impact the federal insurance for flood insurance (sic)”. She continued saying, “And with the combination the Corps of Engineers in bringing in a major international company, they are national but also international company, out of Canada in February that will meet with us”. She said “we” spoke to the issue of cost and of working together. She felt that from that meeting there is a clear sense that the City of Portsmouth has “plenty of time” to look at how this is approached, saying we will know better after the meeting in February. Ms. Murray claimed the April 2010 deadline, spoken of previously by Mr. Duncan, “is something that’s more of a progress report and so to say that we are working, we will hear the sessions in February we will start working on our planning, we will do it with the City of New Boston because I have spoken with the Mayor of New Boston and the City Administrator and they very much welcome the opportunity to work with Portsmouth”. Ms. Murray felt grant applications need to be made to pay for the cost of this. As previously pointed out by the Auditor, Mr. Williams; Ms. Murray concurred that the City cannot deplete its flood defense fund for one contract, saying “we will be going forward as a consolidated grant proposal effort on both engineering cost and any other maintenance costs that are required”. She acknowledged that Council is probably already aware of the fact that cities are awarded extra points when applying for a grant, if there has been cooperation with “other governments”. Ms. Murray stating that she has spoken with the two Councilmember elect who will be taking office in January, said “they and I would appreciate your just deferring this until after the first of the year”. She felt that after the February meeting more will be known and a better plan can be offered. She also advised that a local engineering firm as requested that they be given the opportunity to present a proposal and she responded “of course”. She said she is also in favor of accepting proposals.

Ms. Murray announced that she will be having her “swearing in” at 11:30 a.m. on Thursday, December 17, 2009 at the rotunda in the County Courthouse. Along with the public, she invited members of Council, the Solicitor and the Auditor to the event.

LEGISLATION

The Clerk gave a **third reading** to an ordinance amending Chapter 169 of the Codified Ordinances of the city of Portsmouth, Ohio – Employees Generally by repealing Section 169.01 (a) and (b) - Residency Requirements, to conform to the Supreme court of Ohio decision in Lima v. State, 122 Ohio St.3D 155,2009-Ohio-2597 which was decided June 10, 2009.

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. #70-09**

The Clerk gave a **second reading** to an ordinance authorizing the Auditor of the City of Portsmouth, Ohio to enter into a three (3) year contract with Schonhardt & Associates for technical accounting and management oversight assistance in preparation of the 2009, 2010 and 2011 Comprehensive and Summary Annual Finance Reports

Councilman Albrecht moved this constitute a second reading.

Councilman Mollette inquired of the Auditor whether or not this contract was bid. The Auditor again advised that the three-year contract was not bid and was not required to be bid because it is for professional services and is not over \$25,000.00. Mr. Mollette inquired as to why it would not be an advantage to invite others, perhaps local individuals, to submit a proposal. The Auditor advised that if he felt that was necessary or an advantage he would do so, however, at this point the City has had a relationship with Schonhardt for longer than he has been the Auditor. He explained the exceptions to Mr. Mollette, saying that law makers provide these exceptions because they understand that things of this nature along with firms such as engineering, architectural and law that entail a certain level of comfort are things that you certainly do not want to farm out the service they provide to just anybody who might be the low bidder. He noted that once you have established a relationship with someone who does a good job, unless there is a reason, noting that the savings of hundreds of thousands of dollars would be one reason, there is no reason to switch firms when there is a small difference in cost and when your comfort level with that firm is good. Councilman Mollette said his concern is always looking ahead and making sure that we are going to continue to ask questions because you can sometimes get caught in a rut. Mr. Williams advised that he is the Auditor and if he felt the City was in a rut with this firm he would certainly kick them out of the door. He said he has built a great level of confidence with this company and it is his decision. However, Mr. Mollette noted that the Auditor was asking Council to agree with his decision, whereupon the Auditor advised Mr. Mollette that he was not asking Council to agree with him but was asking Council, in compliance with the charter, to approve the contract. To Mr. Mollette, he said, "I do not see you asking the Judge who he wants to be the substitute Judge". Mr. Williams said he felt he had hit a brick wall since Mr. Mollette does not understand the comfort level about which he is talking, which he stated was different than one that is not necessary when the contract is with someone with whom it is not necessary to share information and work with year after year after year. Councilman Mollette stated, "from my position, it's one where it would be helpful when contracts do come up that you have reasons why, there's good reasons to stay with them and I think, as we have talked before that if we had a finance committee that would be able to interface more from Council's position would be able to interface more with individuals like this then we would have a better feeling but they're just another contract is what I'm looking at, it's just another contract that we are awarding that is \$25,000 a year". The Auditor advised the amount to actually be less than that but the maximum amount would be \$25,000.00. The Solicitor confirmed with the Auditor the cost of the contract per year and inquired as to how long the City had been contracting with this particular firm. Mr. Williams advised the Auditor that the City as used this firm since about the early 90's. He acknowledged that the City did use another firm at one time but it resulted in problems and so the City returned to using Schonhardt. The Solicitor confirmed with the Auditor that he is comfortable with this particular firm. Councilman Mollette, saying this was one final comment, asked that if this is a contract which is under the specified requirement for bidding of \$25,000.00, should it not be for a year as opposed to three years, noting this to basically be a \$75,000.00 contract. He asked the Solicitor to clarify that matter. The Auditor said he does not know why this contract has always been awarded on a three-year basis and he did not know why the collective bargaining unit contracts are done on a three year basis. He said he is never in favor of doing something just because that is the way it has always been done but in this case a three-year term has worked well but he would not have a problem with going to a one-year agreement. However, he noted the request is for three years and he is comfortable with that. He further noted that the only one who has to work with this firm is his office and acknowledged that occasionally this company does have to gather information from other departments, which he noted has always worked well. Mr. Williams said he is not suggesting that \$25,000.00 is not a lot of money but if you save a few thousand and are not comfortable with another firm, he saw no reason, in his opinion, to switch. Councilman Noel agreed with Mr. Mollette and asked the Auditor if he could change the contract to a one-year agreement. Mr. Williams said he would absolutely prefer not to but guessed he would, if he had a really good reason to do so. He reiterated his feelings about not changing something that works well. Councilman Mollette requested the Solicitor to, at the next meeting, look at the issue and advise with regard to the three-year contract exceeding the \$25,000.00 limit without a bid. The Auditor noted it to be a \$25,000.00 appropriation request for one year. The Auditor asked Council if they would entertain a motion to pass the ordinance this evening. Councilman Noel said he would be opposed to suspending the rule. In response to Councilman Haas inquiring if the \$25,000.00 contract limit applied to professional services, Mr. Williams again stated that this contract does not have to be bid. Councilman Haas inquired as to whether or not Schonhardt has done anything to call into question their abilities to perform these services. Mr. Williams said he would obviously say "no" but suggested that perhaps Mr. Mollette needs to be asked that question or perhaps this is just a political type question that he has asked before. Councilman Mollette said he takes

seriously spending taxpayer dollars and it has nothing to do with politics, saying it is a part of his job. Noting the Auditor is asking Council to spend money and it is his position has always been is whether or not it is being done wisely and he always asked enough questions that he can ascertain whether or not the expenditure is appropriate. The Auditor noted that he has answered that question and his answer is that we are.

There being no further questions or comments, the roll was called. **VOTE: ayes 4 (Malone; Albrecht; Haas; Mearan) – nays 2 (Mollette; Noel) A second reading was declared.**

The Clerk gave a **second reading** to an ordinance authorizing the Auditor of the City of Portsmouth, Ohio to extend the contract with Caudill & Associates, CPAs to perform the financial and compliance audit of the city of Portsmouth for one-year period of January 1, 2009 through December 31, 2009, in an amount not to exceed \$40,000 annually, to be paid from Audits and Examinations accounts appropriated each year within General and Enterprise Funds as outlined in the annual Operating Budgets.

Councilman Albrecht moved this constitute a second reading.

Councilman Mollette reiterated previous remarks he has made expressing his opposition to Caudill and Associates and describing his “on going struggle” in trying to get information from them. He also claimed the contract to have been signed by Caudill & Associates, the State and the City’s Auditor prior to it being presented to Council. Mr. Mollette said his concern, from the position of Councilman, is that prior to a contract being signed, it should come to Council for approval. The Auditor acknowledged Mr. Mollette to be “partially” right. He said he did receive notice from the State Auditor’s regional office in Athens that the State was not going to do the City’s audit this year and they would like the City to extend its contract with Caudill & Associates for one more year. He noted it was at this point that the paperwork was started by the State Auditor’s Office, Caudill’s Office and his office. He said at some point, after he had already signed the contract, on behalf of the City, he realized this is something that, although not required by the State, to have contract approval by City Council. Mr. Williams said he made a phone call to the regional office and advised them of the circumstances. He said when he asked the State if they required the contract to be approved by Council, they advised him that it did not. However, Mr. Williams noted it to be necessary based on the City’s charter and advised the State of that fact. Mr. Williams acknowledged that the contract has not been approved at this point and the City is not obligated to fulfill that contract should Council not approve it. Mr. Williams said, knowing Mr. Mollette and some other people involved with him had some issue with Caudill, he wanted to find out if there have been any other problems with this company, so while on the telephone with the Athens Office he asked that question and inquired as to Caudill & Associates reputation with the Auditor of State. Mr. Williams reported that he was told that Caudill & Associates have done numerous audits for numerous cities and are a growing company. Mr. Williams said he was glad to have them in our City and that the State informed him that they have had absolutely no issues of independence or objectivity and they have no reason to believe the Caudill & Associates could not provide a professional, independent and complete audit report. The Auditor said, “I guess it’s just some things don’t go your way. Sometimes you disagree with things but most people don’t have a problem with this company and they’ve done a fine job and I’ll say they’ve done an excellent job – always been responsive to me and I don’t know of anyone else outside of Mr. Mollette that they have not been responsive to”. The Auditor reiterated his remarks regarding a meeting in Caudill’s office with the Athens Regional Office to “hash” out this problem. Mr. Williams said he did not think they could have been more accommodating either at the Athens level or at the local level. The Auditor urged Council to keep in mind the comments made by Athens and the majority of the cities that have not had any problem, noting that in his opinion, neither has this city. Councilman Mollette said he could only speak from his personal level and that when he made an inquiry directly to Caudill & Associates he was advised that the problem had been resolved. However, he said he learned later from the State Auditor’s Office, that it had not been resolved but it would be checked in the next year’s audit. Mr. Mollette, acknowledging that it obviously was resolved, said, “What you have to realize is when you are talking with the State Auditors they don’t have time to follow up on individual auditors to find out – are they doing their job, they assume that if an issue wasn’t raised then it was taken care of and if there wasn’t any findings then the issue was resolved and there was no finding”. (sic) Mr. Mollette reiterated his problem, saying they have not answered his question even though he followed up on it twice. He claimed the State Auditor has stated that they may have to come back to the City Solicitor for an “official legal advice” because there is no record the expenditure was never approved by Council, which, Mr. Mollette stated was against the City’s charter. The Auditor advised Mr. Mollette’s statement to be incorrect, noting the expenditure had been approved, however the contract may not have been. Mr. Mollette expressed his feeling that in a two year period a “simple question” should have been answered and the issue resolved. Councilman Noel said, “That has been a part of the agenda, his memos has been in the agenda because I’ve seen it two or three times where he’s asked his question and its never been answered”.

There being no further questions or comments the roll was called. **VOTE: ayes 4 (Albrecht; Haas; Mearan; Malone) – nays 2 (Mollette; Noel) A second reading was declared.**

Councilman Mearan, noticing there to be a number of people present who were here with regard to Item “7i”, made a motion that this item be moved up on the agenda and be read next. He noted that since it appears there is going to be a lot of discussion on agenda items this evening and due to the fact that some of the people present for this particular item have to leave, he would like for it to be presented next.

Upon agreement of Council Item “7i” was moved forward on the agenda. At the request of Councilman Mearan a resolution in loving memory of Philip D. White Sr. for outstanding service to the McKinley Memorial Swim Pool was given a **first reading** in its entirety.

Councilman Albrecht made a motion to adopt the resolution.

Councilman Mearan explained the origin of the plaque and his promise to make it happen prior to the end of his term. He recognized all those who have had their name inscribed on the plaque. Councilman Mollette thanked everyone for their attendance this evening and Councilman Mearan for his involvement. Acting President Malone noted it to have been a long time coming.

There being no further comments the roll was called. **VOTE: ayes 6 – nays 0 The resolution was adopted.**

The family of Philip D. White, Sr. presented Councilman Mearan with a plaque expressing their deep appreciation for his efforts in securing the plaque in honor of their relative. .

The Clerk gave a **second reading** to an ordinance establishing a maximum amount of \$100,000.00 on each Blanket Purchase Order issued by the City Auditor.

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 acceptance of the Ohio Office of Criminal Justice Services, Bureau of Justice Assistance funding, under the FY09 American Recovery and Reinvestment Act (ARRA); in the amount of \$217,908.00 matching grant for Court Security; establishment of new Fund 208 for this grant and the appropriation of such funding as received.

Councilman Albrecht moved this constitute a second reading.

In response to Councilman Mearan, Mark Malone, from the City's Probation Department, explained the grant to members of Council. Mr. Malone acknowledged having written a letter to Council on November 5th requesting a waiver of the three readings so the Court can take advantage of these funds. He said this program was supposed to have started on September 15th but the approval was not received until November and would have taken effect in December. Mr. Malone advised Council that the money that would have been received in the first quarter has already been lost to the City and we are in jeopardy of losing the second quarter of the grant funds if this is not approved as soon as possible. Mr. Malone advised Council that he is not trying to force Council into any decision but he wanted them to know that the second quarter ends on September 15th. He explained that the grant would allow the Court to eliminate two part-time Sheriff Deputies who have been working on security for the Courts. He advised Council that the Ohio Supreme Court mandated that security not only be provided for the Court but also for the entire building in which the Court is located. Mr. Malone said that is not happening all across Ohio due to the lack of funds, however, Mr. Malone said he was able to apply for and receive some grant funds in the amount of \$217,908.00 over a seventeen-month period. He reported this grant to end on December 31, 2020. He said he did not know, at this point, what future funding might be available to continue the program. Mr. Malone said the Court is trying to save the City money and projected the savings to the City in 2010 should be over \$45,000.00. He noted that currently the City is paying \$92,000.00 a year for Court security. He said the security will now consist of two full time employees with benefits and two part time without benefits. He said these employees will provide security to the entire building. He said this will not cost the City any money and expressed his hope that in 2011 he will appear before Council to request approval for keeping these people as employees of the City. He cited the worst case scenario is that the City would revert back to two full time people at a cost of \$92,000.00 per year. Mr. Malone noted that if this is not passed this evening then it will be necessary to send in another quarter report filled with zeros. Mr. Malone asked Council to suspend the rule and pass the ordinance.

Councilman Haas, noting some of the grants that have previously come before Council had strings attached, asked Mr. Malone if there are any strings tied to this grant. Mr. Malone's response was "there are no strings attached, no sir". Mr. Malone explained that this grant is part of the stimulus program with the purpose of creating jobs., noting that the Courts will be creating three jobs and further noted that the two deputies who were serving as Court security, went back to work at the Sheriff's office.

Councilman Mollette expressed appreciation for the effort that went into getting the grant and said he had no problems with suspending the rule to put this ordinance through. Councilman Noel agreed with Mr. Mollette.

Upon Councilman Albrecht withdrawing his motion for a second reading, Councilman Noel 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.**

Prior to another motion being made, Mr. Malone thanked Council and advised that the Court has already applied for another grant and will know in the next week or two whether the 25% requirement has been waived for Court security equipment for the building.

Councilman Noel 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. #71-09**

The Clerk gave a **first reading** to an ordinance authorizing the Mayor of the City of Portsmouth to enter into a new three-year contract for the disposal of 60,000 gallons of liquid sludge biannually for the Village of South Webster at a rate of \$.08 per gallon, excess liquid sludge over the 60,000 gallon biannual limit will be billed at \$.10 gallon, for the period beginning January 1, 2010 through December 31, 2012.

Councilman Albrecht moved this constitute a first reading.

In response to Councilman Mearan asking if this needed to be passed before January 1, 2010, Richard, Director of Waste Water, advised Council that the present contract will expire on December 31st and they may be delivering more sludge before the end of this month or possibly next month. However, he said he did not see any reason to not have three readings, if that is what Council wants to do but noted it might be convenient to pass it this evening. Councilman expressed the fact that he would not have problem with suspending the rule either at this meeting or the next one. In response to Councilman Noel asking if this contract was tied to an employee, the Acting President advise that to be a different issue.

There being no further 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 enter into a contract with Environmental Engineering Service, inc. to assist the City with certification of its flood protection system in accordance with FEMA criteria.

Councilman Albrecht moved this constitute a first reading.

Councilman Mollette expressed concern about language in the ordinance, saying that he has noticed that other municipalities have received some stimulus money to actually do the evaluation and the certification. He acknowledged that FEMA will not accept a “partial submission” and continued by reiterating information that was previously provided to Council with regard to the levee to be a continuous system that includes that portion that runs along the river’s edge in New Boston. Mr. Mollette reading from the ordinance said he would like to see the City work with New Boston instead of placing obstacles in the way. Mr. Mollette favored “placing a hold” on the ordinance unless Mr. Duncan can provide a good reason why the City could not work with New Boston after their February status meeting. He said he would rather not “establish a path” but rather keep open communication. Mr. Mollette said he would like to see further discussion on the issue before an ordinance is passed. He said he would hold off on making a motion to table in case there is any more discussion.

Councilman Noel suggested tabling the ordinance until more information is available.

Councilman Albrecht said he would like to see it have a first reading, noting it can be tabled at any time before the final reading. He said if it becomes necessary to pass the ordinance they would be further along if it had already had a couple of readings. Councilman Haas asked Mr. Duncan to tell Council what he took away from the meeting with FEMA. Mr. Duncan said as he understands it the State law requires the City to work with qualified consultants and noted there to be a process for determining qualifications and there are different ways to determine if you are working with a qualified firm. Mr. Duncan acknowledged one of the ways is to request submittals from various firms and have a process where their proposals are evaluated, then after one is selected by a committee then a price is negotiated with that particular firm. He noted that if the price is not acceptable then you would move on to the next firm. Mr. Duncan said when the City first met with the Corps of Engineers and FEMA, they provided the City with a list of firms who have experience working with flood wall and with whom they have worked. Mr. Duncan said he reviewed the list of firms and found that a lot of them were not, because of the liability and because of the issues related to Katrina, willing to take on the liability of certify the levee. Mr. Duncan noted that a lot of large firms won’t do certifications because of the liability connected with it. He said that after contacting several of these firms it became clear that a lot of the firms were not very interested in doing the work, thus the time limits were a concern. He said he did get a proposal from Environmental Engineering Services and when asked to show on what they based their cost, they presented a lot of studies that have been done in a lot of different areas and the price they were quoting was very comparable based on levee miles and the complexity of the City’s levee system. Mr. Duncan stated the cost was about half of what other contractors were able to show him. He also reported that some of the Corps of Engineer’s information had a certain dollar figure per mile that was very favorable and that is why he took the information to the Mayor and the Auditor to be presented to City Council. Mr. Duncan restated the act that Engineering services are not usually bid. With regard to the meeting in New Boston, Mr. Duncan said it was not with the Corps of Engineers but was with the State of Ohio and they were pretty clear about the deadlines. He again noted that the deadlines will not be extended and identified them as being April 15, 2010, which is a preliminary or interim report, and April 15, 2011 for a final report. Mr. Duncan noted there to be different options available to the City should those deadlines not be met. With regard to the meeting this February with Black & Veach, Mr. Duncan stated it to be his understanding that they have a contract with the Corps of Engineers to study all the levees systems and flood walls under the Corps of Engineers in certain areas. He believed they are based in St Louis or Kansas, City. Mr. Duncan said he worked with Black & Veach before in Toledo and said they are a very qualified firm but will not be working for New Boston or Portsmouth but will be working for the Corps of Engineers. Mr. Duncan pointed out the fact that “they” have nothing to do with FEMA, noting that FEMA requirements are totally different. With regard to the readings of this ordinance, Mr. Duncan stated that according with his discussions with Ms. Murray, the City may still want to talk with an environmental service about a possible modified contract or something other than what was proposed in the Council letter. He suggested there might be some sort of interim report that the City (*not discernible due to someone coughing*) and that perhaps a different contract can be found who will do that. He advised Council that the reason this matter was presented to Council in the manner that is was is to allow time for three readings which would take it past the first of the year and, if the Mayor agrees, the City would be able to meet the April 15th deadline. Nr,

Duncan noted that he was not saying that was the only way this could be done but it was the idea at the time. He said he could not really speak for the Mayor or Mayor-elect, but this is Council's decision. Councilman Mollette reading, from a document that he identified as "certification requirements" asked if this is something the City would have to pay for or if it would be paid through the Corps of Engineers or if it were something the Corps of Engineers would certify through the Engineering Firm mentioned by Mr. Duncan. In response, Mr. Duncan stated that unless there is some kind of change of which he is not aware, it's the City's responsibility and also the villages to certify that the levee has not deteriorated, that there are no encroachments on the levee; that all the operating systems are working properly and that there needs to be soil borings done on both sides of the flood wall to determine if the soil is still what was required in the original plans. He continued by describing some of the many other aspects to the certification. He said the team that was put together by the Environmental Engineering Service put together included a surveyor; a constructional engineer; a civil engineer and electrical engineers who check all aspects of the floodwall system. He further stated that the sense he got from the Corps of Engineers is that they are not going to pay for all that. Mr. Duncan noted the situation that is developing is that there are a lot of small communities who don't have the funding and therefore there may be some funds made available, however, the competition would be fierce since there are so many communities that would be applying for that funding. Councilman Haas, referring to previous conversation regarding New Boston's ability to pay for anything that needs to be done, asked Mr. Duncan if he had a counterpart in the New Boston system with whom he is dealing and has New Boston indicated how they expect to pay for their portion of the flood system. Mr. Duncan said he has talked with New Boston's Mayor and Service Director. He said they have requested funding and have indicated that they have had a good response from different agencies; therefore they may have some assistance. Mr. Duncan did not feel like New Boston is as far along in the process as Portsmouth but felt there to be no reason that the two entities could not work together. It was Mr. Duncan's opinion that New Boston may wait until they have the funds and he again stressed the fact that the deadlines are very strict and wanted the City to make sure they keep those deadlines in mind.

The Acting President, David Malone expressed his concern about New Boston not having the funds when the levee has been determined to be one flood system that borders two entities. He was concerned about how our city could take care of our part and also that part for which New Boston is responsible should they not find any funding. He felt we have to do something to have the system certified. In response to Mr. Malone asking if the scheduled meeting in February between the Corps of Engineers and their contractor was relevant to what our City needs to do, Mr. Duncan said the City has already met with Black & Veach in about October or November of this year. He said they came to the City and reviewed and made copies of our drawings, made inquiries about the flood wall and advised they had already visited other communities along the river. He said he was pretty certain they had not yet met with New Boston. Mr. Duncan said he may be mistaken but it is his understanding these meetings will be a part of the report they will be making to the Corps of Engineers. Councilman Haas pointed out that none of that has anything to do with what Council is considering this evening, noting it to be a separate report. Mr. Duncan acknowledged that to be true. Mr. Mollette, noting language in the ordinance referring to a letter from FEMA in January of this year, advised Mr. Duncan the sooner this type of information can be provided to Council the better. Mr. Mollette advised that in searching the Internet he came upon a city that was awarded stimulus money for this type of certification and recited for Council the information regarding this award. He also cited another such award to another city and noting there is money available. He felt that taking a path to finance something of this nature would prevent the City from receiving any type of grant funding. Mr. Duncan acknowledged the fact that Mr. Mollette might be right about that. Councilman Noel expressed his thought that two entities are involved in this certification issue that it would give us a priority status and felt we should "hold off" on any effort to fund this through bonding. He said he did not think the "federal government is going to let us down if we miss a deadline or something". Mr. Duncan noted the obvious problem for him is the transition to a new Mayor. He said he believed we might have some flexibility and that maybe the legislation should be tabled and maybe we could come up with a different plan that would satisfy all the parties.

Upon Councilman Albrecht withdrawing his motion for a first reading, Councilman Noel made a motion to table the ordinance.

The roll was called. **VOTE: ayes 6 – nays 0 The ordinance was tabled.**

The Clerk reminded Council that everything on the table following the next meeting would be dead since the Council will be reorganizing in January. She advised them that if their wish was to bring this ordinance back from the table in the future, they would have to do so at their next meeting.

The Clerk gave a **first reading** to an ordinance authorizing the City Auditor to amend appropriations to reflect actual revenue and expenditures in order to balance and close the City's books for the fiscal year 2009.

Councilman Albrecht moved this constitute a first reading.

The Auditor asked that the motion be rescinded and passed this evening, noting there is nothing that is going to change between now and the next meeting. He noted that it does have to be passed before the end of this year and further it to be the standard, end of the year ordinance. Councilman Mollette said he would be against suspending the rule because the revenues and expenditure, as previously discussed, determined the revenues are over a million dollars short of what is needed. With regard to the expenditures, he said he has not heard where they have been cut or if they have even been cut. He also said he has not been told what monies are going to be moved. He said he would expect, when an expenditure is exceeded, that the Auditor would come back to Council to get that approval prior to letting the expenditure exceed its limit. The Auditor said he would expect the person needing to exceed the designated amount to bring it back to Council for an approval. However, Mr. Mollette felt the Auditor was the one in control and it is he who should come back to Council before more is paid out than is available. Noting he has brought this up more than one time

over the past five years, Mr. Mollette said he feels this is where Council needs to assert their responsibility and prior to exceeding any established budget items it needs to come back to Council for approval. He said he hopes this practice changes with the change in administration.

There being no further questions or comments and the Auditor acknowledging there to be no real reason why this could not have a first reading the roll was called. **VOTE: ayes 5 (Albrecht; Haas; Noel; Mearan; Malone) – nays 1 (Mollette) A first reading was declared.**

STATEMENTS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Darlene Lattimore (no address given) thanked everyone for their efforts regarding the plaque for her uncle Phil White. She requested the same thing be done in honor of her Uncle Albert White who was the first black mayor. She also stated that her uncle was the “first full blooded Indian man” to serve as mayor

Karen Dunham – 315 Market Street, a resident of the first ward and strong supporter of the McKinley Pool, also expressed her appreciation to Mr. Mearan. She also thanked Mr. Horsley who also contributed to the pool through PMHA and expressed her hope that the new Mayor will continue to keep the price of admission low.

Teresa Mollette – 1705 Franklin Blvd. took issue with the Auditor’s statement that Councilman Mollette’s remarks were political. She said everything done by officials is political and claimed Mr. Williams’ remarks to have been an insult. She railed at the Auditor and reiterated several times that everything done by public officials is political and the public is here to judge them. She also felt the remark was a violation of the freedom of speech and showed disrespect by an elected official. She further claimed the head of the City’s income tax division prepared taxes during the hours he was suppose to be working for the City, saying people know when you do and don’t do your job.

Eileen Perry 1410-15th Street felt the “back and forth” was unnecessary and complained about lane lines not being painted on the streets.

Miscellaneous business and reports:

City Clerk’s Report

1. Received, on 12/11/09, from the Auditor the following reports for the period ending 11/30/09:
 - Combined mtd/ytd expense report
 - Mtd/ytd revenue report
 - Combined mtd/ytd fund report
 - Mtd bank report
 - Appropriation transfer from transaction listing
2. Received from the Ohio Dept. of Commerce, Division of Liquor Control a notice that all permits to sell alcoholic beverages in the City of Portsmouth will expire on 2/1/10. ORC Section 4303.271(B) provides the legislative authority with the right to object to the renewal of a permit and to request a hearing and will be the only opportunity to object to the renewal of a liquor permit premises, which might be a problem in your community.

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

Due to the Mayor’s absence, there was no report from his office.

President’s Report

1. Acting President Malone expressed his sympathy for the passing of Johnny Grooms a retired police officer and a member of the Traffic Committee.
2. Appointed Russ Sommers to fill Mr. Grooms’ unexpired term on the Traffic Committee.
3. Appointed Kerry Keating to the Planning Commission
4. Wished everyone a “Merry Christmas”.

The President’s report was received, filed and made a part of the record, on a motion by Councilman Albrecht following Councilman Mollette’s remark about letting citizens be aware of a vacancy on committees in case others might want to serve. He acknowledged Mr. Keating to have done good work but felt these are the types of things where citizens might like to serve to represent the citizens. Mr. Malone noted it would be good to have volunteers but he did not know anyone else was interested and it was his responsibility to make that appointment.

Miscellaneous business from City Council

- 6th Ward Councilman Noel had nothing to report.
- 5th Ward Councilman Haas had nothing to report.
- 4th Ward Councilman Albrecht reported all the concerns of the residents of his ward have been passed on to the appropriated department.
- He wished everyone a happy holidays.
- 3rd Ward Councilman Mollette asked citizens and the public to note in the Clerk’s report that all liquor licenses will be renewed at the beginning of the year and that if anyone finds any of these establishments to be a nuisance they should call the police department.
- Noted there to be 15 items of concern about McKinley Pool reported at the last meeting and expressed his hope that these are resolved.
- He requested Council to not forget the “911 expectations” that he has been citing with regard to emergency vehicle response time and how he feels this should be regulated by ordinance.
- He reiterated previous remarks with regard to the budget not being submitted by November 15th and no copy of the 2010 budget has yet been received by members of Council
- Thanked everyone who attended tonight’s meeting.
- 2nd Ward Councilman Malone had no report from his ward.
- 1st Ward Councilman Mollette thanked the Phil White family for the recognition they bestowed upon him this evening, describing himself as being humbled and the plaque will occupy a prominent place in his house.
- Said he was glad to see Kevin Johnson present this evening and wished him a speedy recovery.

The Solicitor had nothing to report.

The Auditor distributed copies of a financial report to members of council and advised there to not be many changes since his mid-year report. He noted that cuts in payroll narrowed the gap between revenue and expenses but felt the difference will be about \$500,000.00. He also noted other funds – water & sewer – continue to falter. He also reported month financial reports to have been filed with the City Clerk.

The meeting adjourned at 7:37 p.m., on a motion by Councilman Albrecht.

City Clerk

Acting President of Council

