

**MINUTES – REGULAR SESSION**

**PORTSMOUTH CITY COUNCIL MEETING**

Monday, February 8, 2010

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, February 8, 2010 at 6:00 p.m., at the Welcome Center, 342 Second Street, Portsmouth, Ohio.

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:

Kevin Johnson	1 <sup>st</sup> Ward
David Malone	2 <sup>nd</sup> Ward
Nicholas Basham	3 <sup>rd</sup> Ward
Jerrold Albrecht	4 <sup>th</sup> Ward
John Haas	5 <sup>th</sup> Ward
Richard Noel	6 <sup>th</sup> Ward

Also present was the City Auditor, M. Trent Williams. The Solicitor, Michael L. Jones, joined the meeting at approximately 6:30 p.m.

Council dispensed with the reading of the Journal for the regular session of January 11, 2010, on a motion by Councilman Albrecht.

There was no public hearing; however, the President reminded everyone that a public hearing will be held at the next meeting on February 22<sup>nd</sup> regarding the request to rezone the former McKinley School property.

Councilman Haas made a motion to add to the agenda a resolution with the authority of Chapter 305 of the Codified Ordinances - Traffic Control Section 305.07 – Reservation of Power of Council overriding the decision of the Mayor to reactivate certain traffic signal devices within the City of Portsmouth and referring the study by HMTV Inc. in June of 2007 to the Traffic Committee for review and recommendation.

The motion carried viva voce. **VOTE: ayes 5 (Johnson; Malone; Basham; Albrecht; Haas - nays 1 (Noel) The resolution was added to the agenda as Item “7f”.**

**STATEMENTS FROM CITIZENS ON ITEMS LISTED ON THE AGENDA**

Bill Handley – 2650 Grandview Avenue, a retired Portsmouth Police Officer, said he served as chairman of the Traffic Committee from 1982 – 1995 and he was glad when the lights were removed. Mr. Handley said he was glad when the traffic lights were removed and when he heard, prior to the election, a rumor that the traffic lights might possibly be reactivated, he was disappointed. He said he spoke to her about this, giving her his opinion. He noted that as a member of the Traffic Committee for thirteen years and having attended traffic school at Northwestern University, he felt he had some standing on this subject. He said at the time the lights were removed he was not aware that ODOT had conducted a study and only became aware of that fact about a week ago when he read it in the newspaper. Mr. Handley said he is aware traffic signals have to meet certain criteria to be legal and to minimize liability for the City. He noted that if the Mayor has had a traffic study done that warrants the reinstallation of the lights, that would be another story. He said he did not know if this has been done but as of right now, he is opposed to the reactivation of those lights unless there has been a traffic study to warrant it. Mr. Handley said he has advised his councilperson of his concerns and has also contacted the Mayor’s office and voiced his opposition to her decision.

Bill Shaw – 2113 Timlin spoke against the rezoning of the former McKinley School property, noting this neighborhood has been “Residence A” for decades. He acknowledged that a school can exist in any designated zone in the City but felt a doctor’s office is not be an appropriate use of property in a Residential A district. Mr. Shaw, referring to the Codified Ordinances, Section 1131.07 (d) “Action by Council” and read from subsection 3 “General Consideration Regarding Amendments”, said he felt this aptly suits this request and should determine it for all of Council. Mr. Shaw felt the language in the ordinance to be mandatory and claimed this request to be “spot zoning”. He claimed this would take 3.1 acres out of approximately 150 acres of residential “A” districting and making it residential “B”. He said, “The ordinance doesn’t say , if four doctors we like want to build a building and we think it might be a good idea for the City that we can spot zone”. Mr. Shaw felt it to be mandatory upon Council to follow the language of the ordinance and to not adopt the zoning change. He noted there to be a lot of people offering various reasons as to why it should not be adopted but basically Portsmouth has a zoning plan that has been in effect for decades and established residential “A” districts. Mr. Shaw stated that when the zoning plan was established in the 1920s this particular area was zoned residential “A”. He claimed the City to have never enforced its zoning ordinances, which he said “in evident by some of the properties in that area but that doesn’t mean because one person got away with it that everyone should get away with it”. He further

stated, "It is time for the City to start enforcing its zoning ordinances and this is the place to start". In describing the boundaries of residential "A" zoning, he noted Wayne Hills to be an exception to the zoning code because of federal law". He requested Council to take into consideration the mandatory language of this section and deny the zoning change request.

### **LEGISLATION**

The Clerk gave a **third reading** to an ordinance authorizing a requirement that all contractors working within the City register with the Engineering Department and that during times of a natural disaster the City will request the assistance of the Attorney General's Office, Contractor Registration Program.

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. #07-10**

The Clerk gave a **third reading** to an ordinance amending chapter 1131 of the Codified Ordinances of the City of Portsmouth, Ohio – Administration, Enforcement and Penalty by repealing Section 1131.07 (d) (1) and (2) – Amendments – Action by Council.

Councilman Haas moved to table the ordinance.

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

The Clerk gave a **second reading** to an ordinance to amend the Zoning Map of the City of Portsmouth, Ohio, by rezoning all of Parcel Numbers 33-2640.000 and 33-2921.000 generally known as the former McKinley School, Ohio from its current zoning of Residence "A" District to Residence "B" District. This property is more particularly described in the attached Exhibit A.

Councilman Albrecht moved this constitute a second reading.

Councilman Johnson restated the fact that he has major problems with this ordinance and noted Mr. Shaw's reference to "spot zoning". He also took issue with Council being asked to vote simply on changing the zoning from a residential "A" to a residential "B" district. Acknowledging Council to have received a report at their last meeting from the Planning commission, Mr. Johnson said the report did not even refer to the consequences that should be considered in making this change. He felt the pictures included in the report were just samples and not the plan. He voiced major concerns not just with regard to the zoning codes but for the neighborhood, noting we do not know what we are getting into to or the ramifications and how that community will be impacted. He also expressed concern with regard to the traffic flow and certain one-way streets, which he said would make it almost impossible for emergency services to respond. Mr. Johnson also noted a "blind corner" that, he said, impedes traffic and further claimed there to be numerous issues. Acknowledging the fact that there was formerly a school on that location and anyone who thought there were not any problems was comparing apples to oranges, saying "there were problems but the school was there for a long time" and noted it served its purpose. He said he wished to see the zoning code followed as well as the process so that the neighborhood and the City is comfortable with a major project. Mr. Johnson, noting himself to be a business person, said he would bend over backward to support business in Portsmouth but his back only goes so far.

Councilman Noel agreed with Mr. Johnson and said he could not add anything to what has already been said. He felt the ordinance should be tabled saying he was not against the doctors but was against them wanting to put an office in that particular place, saying he would not want that around him. He said most of the people he knows in that area are retired and they do not deserve this kind of (*not discernible*)

Councilman Albrecht said he would like for everyone to keep in mind that this is the second reading and would like for it to go for a third reading to see what happens, saying it can always be defeated.

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

The Clerk gave a **first reading** to an ordinance to enter into a reciprocity agreement with the Ohio Department of Transportation to allow ODOT to perform snow removal from structures that are in the jurisdiction of both the City and State.

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 inquired as to whether or not this action would have any financial impact on the City. (due to the inadequacy of the sound system, the Auditor's response could not be heard). Mr. Johnson said he could understand the logic behind this and would defer to his colleagues as to why this has to be passed right away. Councilman Albrecht said he spoke to the Solicitor earlier today about this ordinance and was advised that since we have had so much snow and are expecting more he suggested the ordinance be passed tonight. Councilman Haas, in response to Mr. Johnson concern about any financial impact, noted that the ordinance states that no compensation shall be made to either the City or ODOT. Mr. Johnson understood that but noted the bottom line to be that the City is taking on a section that is outside of the City's limits that has not been the City's responsibility before. He further noted the State to be taking over a bridge that the City has previously done and stated that the size of the bridges are very different and by looking at just the size he is seeing an increase in cost. He felt the City to be taking on a larger section and giving the State a smaller section and he did not know what the financial impact would be. Councilman Haas acknowledged that he may be reading the ordinance wrong but it appeared to him that the State is taking over responsibility for the overpass in Sciotoville and the City is taking responsibility for the bridge at the end of Second Street. The Auditor said he was not sure that was correct, saying he thought the reference was to the twin bridges on Route 52 near OSCO. The Auditor noted there to not be a Service Department employee present who might be able to answer that question. Councilman Johnson said he would be much more comfortable with tabling the ordinance because, noting the City would be responsible to the 18.81 mile marker, we would be responsible for going 18 miles outside of the City's limits. Upon second look he realized it was the 18.81 mile marker and inquired as to how far out that would be. The Auditor stated it to be his understanding that this is the bridge across the Scioto River at Rt. 52, which means the truck would go across the bridge at OSCO, turn around and come back.

There being no further questions or comments the roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #08-10**

The Clerk gave a **first reading** to an ordinance authorizing the Mayor of the City of Portsmouth, Ohio to enter into an agreement with Strategic Funding Group, Inc. of Lexington, KY for the purposes of providing strategic grants counsel services, funding research services and grant proposed development and writing services. Aid contract shall not exceed the sum of \$25,000.

Councilman Albrecht moved this constitute a first reading.

Councilman Johnson noted this group would be working very closely with Main Streets Portsmouth their grants writers are very excited to see this occur. He felt the City is going to see a very large return on their investment.

The Auditor said he does not know the ins and outs entirely of this contract but he would have the same question Mr. Johnson had on the previous legislation as to what kind of financial impact this would have on the City. He said he was not aware and was wondering who the local administrator of the grant will be. He noted that in the past, when sometimes working with consulting firms, the City still had a Community Development Director or a grants person who has worked with that consulting firm. Mr. Williams wondered if the City was going to have that person and it seemed to him there to be more of a financial impact in this case that needs to be spelled out (*Mr. William's remaining statement could not be heard due to someone coughing*). Mr. Johnson, noting it to be unfortunate that the Mayor is not present, said in his discussion with her, until such time in the future when (*not discernible*) she's taking over the management of that aspect of "Community Services". He said he knows she has met with "Main Street Mandy Harts, with her funding group" and between them, as he understood, are going to be managing this process. He stated that Main Street through their own resources has started a lot of this and this will greatly increase their capabilities. He further stated that having Main Street also increases our ability to leverage these grants, especially the (*not discernible*) simply because we're (*could not be heard above someone coughing*). The Auditor expressed his understanding that Mr. Johnson cannot speak for the Mayor but there is a lot of local leg work involved with grants and (*not discernible*). Councilman Johnson said all he can tell him is that the Mayor has met at least three times this month with Main Streets working on this and he thought a lot of coordination will be seen among those involved. (*A response by the President was not audible and could not be transcribed*)

There being no further questions or comments the roll was called. **VOTE: ayes 5 (Noel; Johnson; Malone; Basham; Albrecht) – nays 1 (Haas) A first reading was declared.**

The clerk gave a **first reading** to a resolution with the authority of Chapter 305 of the Codified ordinances of the City of Portsmouth, Ohio – Traffic Control – Section 305.07 – Reservation of Power to Council, overriding the decision of the Mayor to put back certain traffic control devices within the City of Portsmouth and referring a study done by HNTB Inc. in June 2007 to the Traffic committee for review and recommendation to City Council.

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

The roll was called. **VOTE: ayes 4 (Malone; Basham; Albrecht; Haas) – nays 2 (Johnson; Noel) The rule was suspended.**

Councilman Albrecht made a motion to adopt the resolution.

Councilman Johnson expressed his concern that the motion relates only to those signal lights that the Mayor asked be reinstated indicating these are causing a liability concern. He felt the ordinance did not reflect all the other lights that were recommended by ODOT to be removed, were not and therefore still opens up the City to liability. He said he recently sent an e-mail to everyone outlining all those signal locations that were in the report and describing some of them as being a “little bit scary” to effected residents and proceeded to provide examples. He felt that if Council is going to do a resolution then it should be sent through the Traffic Committee, saying he would much prefer that all the traffic signals be reviewed. The President felt that to be a good idea and noted that the preamble to this resolution as well as Section I does refer to the “entire study”, therefore this resolution refers to all the lights. Councilman Haas explained that the purpose of this resolution is to just put a hold on reinstallation of the lights. He noted this action was done a couple of weeks ago and the Traffic Committee was bypassed. He said he did not think anyone would want the City to turn on traffic lights before the Traffic Committee studies the survey, and then, through their recommendation, possibly have the lights turned on again. Councilman Noel, acknowledging the light that he is most concerned with is actually in the 4<sup>th</sup> Ward, reiterated his desire to see the light at Norfolk and Walnut Streets be reactivated. He also reiterated his previous accusation that that particular light was deactivated for spite. He also stated that if the light is taken down “it is going to cause, possibly, another death”. Mr. Noel said that to pass this tonight without having any details on it would be wrong. Councilman Albrecht reminded Mr. Noel that, as stated by Councilman Haas, this is just to send this to the Traffic Committee. Mr. Noel stated that he understands that, however, he felt the lights should be properly timed but felt they are not. He said he was not “against the flow of traffic” but still felt the light at Walnut & Norfolk should be reactivated saying people cannot get out of their driveways. He also claimed a business had closed in that area because of difficulty getting in and out of their parking lot. He also claimed that when the lights were removed it did go before the Traffic Committee because a lot of the people in that area, as well as himself, attended the meeting. Councilman Johnson said he will vote for this resolution only because, he has stated previously and publicly, that he believed the Traffic Committee should have been involved in this decision. He expressed his hope that Mr. Haas’ comments that this is all encompassing is accurate and that all the recommendations will be reviewed. He said he felt it to be important that, whether it be the Mayor or Council, we start utilizing the committees that we have. Mr. Johnson, in an aside, expressed his opinion with regard to the inactiveness of the Shade Tree Committee and how he thinks the City should utilize the many talents of the people who serve on the various committees. Councilman Basham felt it to be important to point out that in reading the information he does not believe anything was for spite, saying that since he has been on Council he has heard from many people who have stated that the City needs to follow its procedures, rules and the avenues that are in place. Mr. Basham felt that by taking this back to the Traffic Committee is important, from his perspective, to make sure it goes through the proper chain of events so a real look can be taken at the issue, he noted that the Traffic Committee might agree that the lights need to be reactivated but in any event it is important to let the committee make their decision. Councilman Noel said he would agree to vote for a first reading. In response Mr. Haas said he just wanted Mr. Noel and Mr. Johnson to understand that the lights were scheduled to be reactivated next week. He said he talked to representatives of ODOT who indicated that as far as they were concerned they would follow their own recommendations (*not discernible*) within ODOT’s jurisdiction they would have done what they recommended a long time ago. He noted that because some of the recommendations were followed and some were not, the City lost some funding. Mr. Haas felt that if these lights go back up future proposals for grant funds would probably not be looked at favorably. He said he knows this study is a few years old now and some of the situations have changed but one of the things the study recommended, and he felt this to be important, is to go through and look at these lights and do what the study recommended in many cases. He noted that many of the lights that were referred to on Gay Street were erected for pedestrians’ sake and he felt if this were reviewed and let ODOT know that the City is seriously looking at their proposals that they may be willing to underwrite and help us with a pedestrian study to help determine is those lights need to be there or not. He said the way he interrupted the study was that we needed to look at the lights with respect to a pedestrian study, which, to his knowledge, has never been performed unless it were done by ODOT. That being said, Mr. Haas said he thinks this resolution should be adopted and the Traffic Committee should be allowed to do its job, saying he had every bit of confidence in the ability of the members of that committee and he felt they are eager to do this. Councilman Johnson stated that he does not disagree with anything Mr. Haas said but he does have one clarification. He said in speaking with ODOT the only thing the City lost with regard to any type of grant was in safety equipment, such as beepers on cross walks. He said they indicated that we could lose out but have not lost anything yet. Mr. Johnson stated that Mr. Brushart, with ODOT, was very specific with regard to the type of grants that we might lose. Mr. Johnson described these grants as being “minor”. Councilman Haas said he does not disagree with Mr. Johnson’s remarks, saying Mr. Baird was very guarded about what when he indicated what monies might or might not be applied for in the future.

There being no further questions or comments the roll was called. **VOTE: ayes 6 – nays 0 The resolution was adopted. RES. #03-10**

There was no one present wishing to address Council with regard to any item not on the agenda.

#### **Miscellaneous business and reports:**

##### City Clerk’s Report:

1. Receipt a notice from the Board of Elections advising the City that an estimated amount of \$30,971.36 will be withheld by the County Auditor from the monies

payable to the City of Portsmouth during the fiscal year 2009 at the time of the first tax settlement in said fiscal year. She reported this amount to represent the City's cost of \$18,242.05 for the 2/3/09 special election; \$5,422.00 for the 5/5/09 primary election and \$7,125.31 for the 11/3/09 general election.

2. Oaths of Office

Bret Ervin; Nathan Williams; Jeffery Jones; Louis Shope and Kevin Messer for positions of Police Officer.

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

In her absence, there was no Mayor's report.

President's Report:

1. The President had no report but noted several matters are being referred to the Health Department and the Water Department and, if warranted, will report on those issues at the next meeting.

Miscellaneous business from City Council:

1<sup>st</sup> Ward Councilman Johnson said he forwarded a couple of citizens inquiries to the Traffic Committee and one to Jeffery Peck regarding Capital Improvement project.

Reported the death, on Sunday, of a long time resident and friend, Nancy Palmer.

2<sup>nd</sup> Ward The President had nothing to report from his ward but thanked the Welcome Center for the use of their facility this evening.

3<sup>rd</sup> Ward Councilman Basham reported his ward to have been "pretty busy", saying he attended a meeting on Wednesday, which was a neighborhood meeting regarding the rezoning of the former McKinley School property. He said it was nice to see neighbors there but he actually received complaints that not all the neighbors in the area received information about the meeting. He noted some people to be against the proposal but others are in favor of it and a large faction of people that didn't live in the neighborhood. He said he wanted to thank Mr. Carl Hogarth who put that meeting together, saying he appreciated the fact that when there was a problem, regardless of whether he was for or against the proposal, he followed the proper channels Mr. Basham expressed his appreciation for following the proper channels for voicing concern one way or another. Mr. Basham said he has done some research on the property and has had people tell him that Council needs to stop the doctors and the City should not allow that to be built. He noted that when you look at residence "A", regardless whether your are for it or not, the doctors own the property and right now they can build a hospital or a sanitarium on that property, with its current zoning, whether or not Council votes for or against the ordinance.

4<sup>th</sup> Ward Councilman Albrecht, noting a resident to have given him a jar of yellow water this evening, advised that he was told by the Mayor's office that the line are presently being purged and he assumed that the water break has been fixed.

5<sup>th</sup> Ward Councilman Haas thanked the residents of the 5<sup>th</sup> Ward who have taken the time to write him letter and to call him on the phone regarding issues of the 5<sup>th</sup> Ward. He noted one of the concerns he reported to the Traffic Committee was a couple of complaints about "Do not enter" signs at the entrances of an alley at 27<sup>th</sup> Street and Dorman Drive between Shawnee Road and Grandview Avenue.

Mr. Haas thanked the Mayor for signing the necessary documents to that allowed the hiring of the police officers that are being funded by grant money that was approved last fall. He said he was glad to see that take place in time for the recruits to attend training classes.

6<sup>th</sup> Ward Councilman Noel expressed appreciation for the citizens who turned out for the meeting this evening, saying "we should have this kind of turn out all the time".

He expressed his sorrow at the passing of Nancy Palmer, whom he also knew.

The Auditor reported the reports for the period ending on 12/31/09 have been filed with the City Clerk.

The Solicitor thanked everyone for excusing his tardiness, saying he realized today that the job of being a Solicitor is a challenging and tough job but one of the toughest jobs is when it's your son's last basketball game, there is no time left and your son is standing at the line ready to make a free throw.

The meeting adjourned at 7:06 p.m., on a motion by Councilman Johnson.

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City Clerk

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President of Council

