

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING

Monday July 10, 2017

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on Monday July 10, 2017 at 6:00 p.m., in the Council Chambers of the Municipal Building.

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

Roll Call showed the following members to be present:

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

Also present was Solicitor John Haas, Auditor M. Trent Williams and City Clerk Diana Ratliff.

Council dispensed with the reading of the Journal for the regular session of June 26, 2017, on a motion by Councilman Kevin E. Johnson. The motion carried viva voce: **VOTE: ayes 6 – nays 0.**

STATEMENTS OR REMARKS FROM CITIZENS ON ITEMS ON THE AGENDA

There was no one present that wished to address Council on items on the agenda.

LEGISLATION

The clerk gave a **second reading**, to an ordinance authorizing the vacation of an alley between the southernmost parcel of four (4) parcels on Kendall Avenue for the expansion of Speedway located at 2401 Gallia Street more fully described in the attached legal description Exhibit A, with the City of Portsmouth reserving all easements to this property; the vacation being effective once all properties are acquired by Speedway and a Certificate or Affidavit from the title company, Esquire Interstate title, LLC.

Kevin E. Johnson motioned that this constitute a second reading.

Councilman Kevin W. Johnson requested that the “t” in Title be capitalized. Solicitor Haas stated that he had some other amendments and would make the changes.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, a second reading was declared.**

The clerk gave a **second reading**, to an ordinance to amend the Zoning Map of the City of Portsmouth, Ohio, by rezoning parcels 33-0809.000, 33-2204.00, 33-1912.000 and 33-1208.000 from its current zoning of Residence “C” District to Business “B” District.

Kevin E. Johnson motioned that this constitute a second reading.

There were no further questions or comments. The role was called. **VOTE: 6 ayes – 0 nays, a second reading was declared.**

Councilwoman Aeh motioned to recess into Executive Session to discuss Personnel issues and requested Solicitor Haas be included.

The roll was called and the motion carried. **VOTE: ayes 6 – nays 0, they recessed into Executive Session at 6:08 p.m.**

Councilman Kevin E. Johnson moved that Council reconvene from Executive Session.

The roll was called and the motion carried. **VOTE: ayes 6 – nays 0, Council reconvened with all still in attendance at 6:27 p.m.**

Councilwoman Aeh motioned that Manager Allen’s letter of reprimand be accepted as discussed in Executive Session.

**Executive
Session**

Councilman Kevin E. Johnson ask who drafted the letter, Mayor Kalb replied that Councilman Meadows drafted the letter and that he (Mayor Kalb) had reviewed it and offered some input. Mr. Johnson asked if Mr. Meadows had done this on his own or was there other input from members of Council. Mr. Meadows stated that he drafted the letter and then sent it to Mayor Kalb and Mayor Kalb had suggested a couple of minor changes. Mr. Johnson asked if it was sent via email and Mr. Meadows replied “yes” and that he had attempted to send it via City Council e-mail because he does not like using his personal e-mail for business and the City Council e-mail will not allow attachments; he had to use his business e-mail to send a copy to the City Clerk to make certain that it was on the city server. Mr. Johnson asked Mr. Meadows if he sent it to anyone else on Council and Mr. Meadows stated that he had already answered that and that he had sent it to Mayor Kalb. He asked Solicitor Haas if that was proper protocol and shouldn’t other Council members have had input. Mr. Meadows said that he had done this to assist Mayor Kalb whose signature would be on the letter and if Mayor Kalb wanted to disseminate it to the other Councilmembers prior to the meeting, that was his prevue to do and he had not checked his email to see if he had sent it to everyone. Mayor Kalb said that he took it upon himself and called the Clerk today to have her print it out for all of Council’s review tonight. He said it was the same thing that had been discussed in Executive Session at the last meeting and that he had not received the letter until late Saturday. He said he does not look at his e-mails before the meeting and he could’ve sent it by e-mail but would not have been until the middle of the day today before he could’ve gotten it out to everyone. Mr. Meadows said that it was sent Sunday because he had been on vacation in a remote area where there was no cell service, no e-mail, and no internet. Mayor Kalb said that was why he considered the Executive Session in case there were questions or concerns for someone that hadn’t had the opportunity to look it over and see if it’s not what we had discussed previously. He apologized if Council felt it needed to be done differently. Mr. Johnson explained for transparency purposes, that Mr. Meadows communicated a written reprimand to Mayor Kalb, Mayor Kalb went forward from there and this was the first he had heard about the letter unless some other Councilmembers had heard about it. Mr. Meadows stated at the last meeting that he had requested a written reprimand. Mr. Johnson ask Mr. Meadows what kind of precedence does that set; what if he had wanted to communicate something to the Mayor and not to the rest of the body of Council, Councilwoman Aeh replied that he would be within the rights of the Sunshine Law but if he had tried to converse that to the rest of Council through e-mail that he could probably have gotten in trouble with the Sunshine Law. Mr. Johnson questioned Mrs. Aeh by saying “just by communicating it?” and she replied “yes”. Mayor Kalb explained further by saying if there was back and forth communication with some of Council not being happy with the letter and they began making changes between e-mails it could be a violation of Sunshine Laws. Mr. Meadows said that had it been brought up in Executive Session and could have been discussed section by section. Mr. Johnson said he understood the Executive Session but wasn’t clear on communicating it from one to another. Mr. Meadows said that once it was discussed on the floor, it had to be discussed on the floor, but until it was brought on the floor they could talk about anything they wanted. Solicitor Haas said that he wrote in his e-mail earlier that Council could send out proposed legislation or draft a letter of reprimand citing the proposal and those could be sent to everyone on Council to request that they look at it, think about it and that it would be discussed at the next meeting. Council cannot go back and forth making changes, insinuating or basically indicating how you’re going to vote, but there was nothing wrong with sending out a draft of any proposed legislation, you just can’t vote outside of the meeting. Mr. Meadows asked if there was any problem with just sending it to only Mayor Kalb and Solicitor Haas said “no”, nothing legally wrong.

Councilman Kevin W. Johnson said that in the initial Executive Session only the facebook posts and the poor communication skills were discussed which was reflected in the letter as “questionable and inappropriate comments”; not once did he recall “insubordination” being mentioned. The very last paragraph was based upon insubordination which was not discussed. Mayor Kalb said that it was discussed in which Councilman Kevin W. Johnson countered that the word “insubordination” had not been discussed. Mayor Kalb said that they had discussed writing a reprimand and the reason for the reprimand would be? Mr. Johnson replied “questionable and inappropriate facebook posts”. Mayor Kalb said that it was insubordination and Mr. Johnson asked how it was insubordinate, Mr. Meadows replied that it was derogatory facebook posts towards Council and the citizens of Portsmouth. Mr. Johnson said that was not insubordination and that it may have been in poor judgement but not insubordination, that word was never discussed and what you’re concluding with in the letter was not discussed. Mr. Johnson said the term insubordination was a very specific word, Mayor Kalb said this would’ve been good to discuss back in Executive Session and Mr. Johnson said that he chose to discuss it on the floor and Mayor Kalb said that was his prerogative as it was his prerogative to give the letter to Council at the meeting instead of e-mailing it. Mr. Johnson said that yes that was his prerogative which only gave the rest of Council about 5 minutes to look it over.

Councilman Kevin E. Johnson asked Solicitor Haas if our city could face legal repercussions down the road over the letter. Solicitor Haas replied “no” not with respect to a cause of action, it would be more of a defense to a firing. Mr. Johnson ask about the contents of the letter and it being subject to one person’s opinion, because at the last meeting there were some people that spoke which were offended by the posts and some that had agreed with the posts. Mayor Kalb said that he believed that was why it had come to that point, after discussing it in Executive Session, we were ready to vote on the floor to move forward with the letter or not, depending on the vote. Councilman Kevin W. Johnson said that Council was following procedure that any Employer should follow to do a reprimand with the advice of the Solicitor and was not uncommon. Mr. Meadows said that at the last meeting in Executive Session, the pattern of conduct was discussed, with multiple instances over the past months and he believed that was what got them to where they were at as far as “subject to opinion” and the opinion would be expressed in the vote as the Employer. Councilman Kevin E. Johnson said that we answer to the citizens, Mr. Meadows said that come November that would be reflected on the ballot, Councilman Kevin W. Johnson said “well, at least two of us”. Mr. Meadows said that when the issue came up earlier in the year about the Manager being removed, he had received a couple of e-mails in support of him, but when this issue came up all he had was negative e-mails and comments and none of those people e-mailed him to say that they still support him. Solicitor Haas said that he thought this step was important since Council was operating under

a progressive type of discipline procedure and this was one of the steps. He believed part of that was to be instructive to the Employee on what Council expected of him as far as conduct; was it facebook altogether, was it comments about the suit and tie requirement or a polo shirt with the city emblem on it? Solicitor Haas requested to hear from the City Council members that were in support of the letter, what their hopes and desires were instructing on this as it would be important for the City Manager to know.

Mr. Meadows began by saying that there were parts of his facebook page that were beneficial to the public and he hoped that he continued because it was good when he put comments about fire hydrants being tested and water pressure could be down or that there was a water leak. The informational posts were helpful, not only to Council but to the citizens. As a Councilman, it was good to know if something was happening in your Ward so that if someone called regarding an issue, it would be easy to explain what was going on without having to make a call to the City Manager to find out. He thought that it was good when he posted pictures of the employees out doing their jobs because it not only let Council know but it let the public see what was going on and that they were not sitting at the Naval Reserve playing cards but they were out working. He had a problem with the City Manager holding a sign up every day showing the date and the fact that he was wearing a tie; there was no need. He said one of the biggest issues that he had with the Manager was that the whole story was never told about the polo shirt. During the Manager's evaluation, he and Councilman Kevin W. Johnson as well as the rest of Council had agreed that they thought it would be appropriate if he wanted to wear a polo shirt with the city seal on it. He would hope that he wouldn't go to the Golf Course wearing a City of Portsmouth polo shirt and play a couple of rounds of golf, but as far as working that would be very appropriate. He would also hope that common sense and judgement would be used when attending a big meeting and that he would dress the part. He gave examples of what he wore when he met with client and when he was at leisure. The Manager had posted pictures on drug raids with the Police and Health Department in a suit.

Councilwoman Aeh said that there were some good sides to the facebook page, but the purpose of how the facebook page began was an "in your face" to City Council because of his evaluation. She said that some of the stories of people working were fine but some of them were fabricated such as the picture of his Administrative Assistant hanging off the back of a garbage truck or the Community Development Director in torn jeans as if she's mowing the grass on the levy, or when you have two women employees out appearing to be boarding up vacant houses, that was flat out lying. When you show people digging a hole or looking for a broken water main that was truth. When you show them paving the streets, that's the truth. There was a lot of stuff that had been posted that took time; time to take the picture, time to write a little story about it and time to post it. That was wasted time and was misleading which was what she didn't like about his page.

Mayor Kalb addressed Councilman Kevin W. Johnson's concern about insubordination. He said we're doing a reprimand for posts that didn't put the City or City Council in a good light. He said if the Manager was doing something that didn't put us in a good light, he considered that insubordinate and felt that to be more proper terminology than saying that he was being reprimanded for bad facebook posts. He doesn't believe the type of post and the way it was posted was right and he believed it to be insubordinate. Councilman Kevin W. Johnson said that we're holding him to a standard that perhaps that not all of us meet. He used the example of what made the newspapers when Mayor Kalb used the Viagra comment in the Manager's evaluation which was not perceived well by the public. He questioned the standards in which Council is holding the City Manager because you should always strive to act in a way to reflect positively on the City of Portsmouth, it's Employees, and elected officials which included City Council and each member thereof. Mayor Kalb said he understood and he had already apologized and that he was wrong, it was an attempt at making humor or what he thought was a humorous remark. Mr. Johnson said that's exactly what the City Manager thought he was doing. Mayor Kalb said that he answered to the people that elected him and the Manager answers to City Council. Mr. Johnson said that he continued to believe that what they discussed in Executive Session was not the term insubordination, it was covered as questionable and inappropriate. Mayor Kalb ask for an example of what Mr. Johnson thought to be insubordination. Mr. Johnson replied it would be City Council telling him to do something and the Manager not doing it. Mayor Kalb said that was malfeasance and Mr. Johnson said malfeasance was not doing the job that you were contracted to do, for example if he didn't write the checks and insubordination means that you're refusing an order which wasn't what was discussed in Executive Session, but that questionable and inappropriate behavior was what was discussed. Mr. Meadows said that in the evaluation process, they spoke to the Manager about positive communication and one of the goals of that process was to instruct him to improve his communication skills. Mr. Johnson said this was the second step beyond the evaluation in which it was pointed out that he posted questionable and inappropriate comments. There was a difference of opinion and the conversation continued.

Councilman Lowe has asked that his statements be verbatim "I see it as whenever we ask him to do just like we said in that letter and he keeps uh posting detrimental comments uh that is insubordination. I've had it on numerous occasions with him of insubordination when I've ask him to do stuff, I've got the e-mails or whatever. Mayor Kalb said that wasn't part of this. (Councilman Lowe) But uh that's uh right, that is not part of this but he has a, a, shall I say a uh track record of that and that's all I've got to say on the matter. Solicitor Haas said that he believed that he knew what Mr. Lowe was referencing and the Charter was very clear on the matter and it was a real thin line between being insubordinate and Council directing the administrative activities.

Councilman Kevin W. Johnson moved to question.

The role was called. VOTE: 5 ayes – 1 nays (J. Kalb), question was called.

Mayor Kalb said there was a motion to accept the written reprimand and have it included in his Personnel record in the City Clerk's office.

The role was called. VOTE: 4 ayes – 2 nays (K.E. Johnson, K.W. Johnson), the letter was accepted.

STATEMENTS OR REMARKS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Vina Colley – P.O. Box 136 Portsmouth, OH – She had previously mentioned about a pipe that was coming from the A-Plant down to the Scioto River and she found a picture of it and she was supposed to be touring with one of the upper management at the A-Plant in July. She said the pipe had been there since the plant existed and all of the drains, sewers, releases, the cleanup and things that they had cleaned the equipment with were thrown down the drain without knowing that it went down the Scioto River. She said she didn't know if City Council was interested in talking with the D.O.E. to see if there was some type of funding that they might give for what they've done to this area. She said that in 1991 they took the EPA to the river where they found the fish and water to be radioactive. She needed to speak with Manager Allen about the facility on Charles Street.

MISCELLANEOUS BUSINESS AND REPORTS:

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

1. She received via email on July 5, 2017 from the Auditor's office, the following summary statements of the Combined MTD/YTD reports for the period ending June 30, 2017: Expense, Revenue and Fund.
2. She advised that the local Salvation Army had a new Captain whose name is Captain Dan Simco. Captain Simco had come into her office and introduced himself last week and he was present for the meeting tonight and she ask that Council welcome him to the area.

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

City Manager's Report – City Manager Allen had no report due to absence.

Mayor's Report – Mayor Kalb reported the following:

1. He said there were some expiring appointments in the 1st, 3rd & 5th Wards on the Land Reutilization Committee and he would appreciate any input and requested the suggestions be sent via email.
2. He commented on the reprimand and thought that it was a good discussion and thought everyone made clear their concerns. He had a hard time voting one way or the other because of Councilman Kevin W. Johnson's concerns and his vote was just a difference of opinion between he and Mr. Johnson regarding the definition of insubordination.

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

City Solicitor – Solicitor Haas had no report.

Auditor Williams – Auditor Williams reported the following:

1. June's General Fund - \$914,881 which was \$42,145 more than last year in the same month which was \$605,437. The new tax revenue collected was \$207,438. Total collection included in both General and Capital was \$1,039,723 which was \$47,431 more than last year and the accumulated total compared to last year was \$621,430.
 Major Fund Balances – General Fund \$3,039,047, Streets \$289,395, Water \$343,432, Sewer -\$1,835,993, Sanitation \$457,569 and Insurance \$1,635,495.
2. He said that Councilman Kevin W. Johnson had put key tags to be used at Bob Evans for different fundraising events. He said that he had one for each one of the employees and their spouses.
3. He welcomed Captain Simco to the area.

Mayor Kalb ask if the State was taking more funds from us and if we were keeping even. Auditor Williams said that because of the additional tax, the city was doing much better than if we hadn't been prepared. He told Council to keep in mind that the State would probably go for the rest of the local government funding. Councilman Kevin W. Johnson said the estimated total cost to the local government fund and what they were doing in the budget was \$97,000,000 across the State, we were one of the smaller entities. Of the \$97,000,000 there may only be 25% of what they cut before or perhaps even less; it won't be a big hit this time but what we fear though would be what would come up in the various overrides in Governor Kasich's veto's. He said the big hit would come in two years. Auditor Williams said the burden will directly affect the citizens of Portsmouth and he said that at least the citizens passed the increase because other cities didn't have that good fortune.

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

MISCELLANEOUS BUSINESS FROM CITY COUNCIL

1st Ward – Councilman Kevin W. Johnson reported the following:

1. He explained about the keys tags and that it was good at Bob Evans Restaurant in Portsmouth, New Boston and Waverly it benefits The Potter House, Operation Safety Net, Steven’s Power Packs and the Outreach Council in Pike County and was good through May 31, 2018.
2. He commented about the State’s budget and one of the reasons we had ask our citizens for the income tax increase was to not only make up for but to plan for any further cuts down the line. He said last year he and Former Mayor Malone were attacked by the Republican Party for raising taxes in Portsmouth, of course it was known that Council cannot raise taxes but that was the message. He said most people understood that our recommending it was because the loss of the State funds which had been there since the 1930’s. The agreement with the State, Municipalities and the Counties was that they signed onboard for the income tax and in return the County and Cities would get local government funding. He said when you compare that with what’s going on with the County funding, the MCO is only 7 years old and was already 17% of the County budget and the County Commissioners were saying that they want the tax, but you don’t hear from the Republican Party because that was a new tax. The \$2,000,000 loss to the County that was from the County, the process was a kickback from where that tax was collected and that would be a \$2,000,000 hit to the citizens of Scioto County. Their doctor bills, hospital bills, and if they are on Medicare or Medicaid that’s what the MCO was which was a tax on the whole process, the equipment and he found it strange that the Republican County Commissioners were fighting tooth and nail for the tax, but the Republican Party doesn’t come up and say “that is a new tax”. He doesn’t mean to say that the county doesn’t need it, but you ask yourself that if the tax had only been there for 7 years and already it was 17% of the budget and they claim that they couldn’t possibly cut back, where did the money go? How did they expand the government to such an extent that if they lose that 7 year old tax, they could go back to an organization that they had 7 years ago, no they won’t, be they’ll lose their 4-H and Economic Development.

2nd Ward – Councilwoman Aeh reported the following:

1. She welcomed Captain Simco to the community.
2. She welcomed Andy Gedeon’s son back to City Council meeting.
3. She said that in some areas of the city and in the 2nd Ward, the streets have become basketball courts, they put their hoops up along the sidewalk and on 7th Street they had one underneath a street light so that they could play basketball at 10:30 p.m. in front of someone else’s home. She didn’t know of any ordinances that prohibit that but in her neighborhood they had two, but they were turned because the neighbors went out and turned them to where they play on the sidewalk but the ball still goes out into the street. She said there was one at the corner of 7th & Brown Street and there were kids everywhere and she had to stop because they were everywhere in the street. She doesn’t believe the streets were made for basketball.
4. She said that people were complaining on facebook that their dogs were going wild because of people letting off fireworks. She said one day before the 4th if it falls on a Sunday and Saturday if you’re having a family gathering, but we’re at the 10th of July and people were still setting off fireworks. In one post on facebook, the people said they called the police and the police told them they had to get a permit for the fireworks, she said that was false unless you were doing a public exhibition, “no person shall possess fireworks in this municipality or shall possess for license wholesale fireworks is authorized by Ohio Revised Code”. She said people were buying fireworks, selling fireworks and putting off fireworks but she said the codified ordinances state that you cannot do that, there was no permit for personal use of fireworks.

3rd Ward – Councilman Kevin E. Johnson reported the following:

1. He thanked the Solicitor for his work in filling in for the City Manager as he had an issue at Mound Park with some graffiti and the response was immediate.
2. He welcomed Captain Simco to the community.
3. He also welcomed Andy Gedeon’s son to the Council meeting.
4. He complimented City Council on their professionalism because they had something they didn’t agree on but it was held professionally; we set a good example for a young man that was in the building. He said he still didn’t agree and he thought a few of them got it wrong but that was okay. He was very honored to be an American where we can sit in this room and agree to disagree.

4th Ward – Councilman Kalb reported the following:

1. He welcomed Captain Simco and young Mr. Gedeon back again.
2. He said he thought there was a hearing on the CDBG fund for the improvements and upgrades at Mound Park and hopefully those would be geared towards security cameras. He wondered if there would be funds available to have the buildings and structures coated so that the graffiti would be easier to remove.

5th Ward – Councilman Meadows reported the following:

1. He said that was comforting to know that we could disagree on the floor and business goes on which spoke volumes to everyone’s professionalism and he was proud to be associated with a group such as those on City Council.
2. He called the Water Department because he had questions about his bill and he had heard complaints about how they act and treat people. He didn’t write the lady’s name down that he spoke with but she was friendly, professional, and polite and answered his questions. The conversation was about 15-20 minutes long because he was trying to understand the billing process and she was very patient and he apologized for keeping her so long and she told him that if she wasn’t speaking with him, she’d be speaking with someone else. His experience with our water department was fantastic and if you hear something bad, it may not be true.

6th Ward – *Councilman Lowe has asked that his statements be verbatim.* Councilman Lowe reported the following:

“I just have a couple of things here, uh I’d like to welcome the Captain there and little Gedeon there. Uh, I’d like to thank Chris Tomlin for boarding up a place on Wilson Avenue. Uh, I got a report of a flooding problem in the between the 6400 and 6500 block of Bahner Road and then I just have a few things for the Solicitor on a couple of delinquent properties that we might be able to get back on the tax roll and that concludes my report. Thank you”

The meeting adjourned at approximately 7:21 p.m. on a motion by Councilman Kevin W. Johnson.

City Clerk

Mayor