

CITY OF CANAL FULTON COUNCIL

July 11

06

Mayor Grogan called the July 11, 2006 City Council meeting to order at 7:00 in Council Chambers at City Hall.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Mayor Grogan, Diane Downing, Jim Deans, Victor Colaianni, Linda Zahirsky, and Tony Crookston. Motion to Excuse: Mr. Colaianni made a motion to excuse Mrs. Cihon, as she is on a trip with the Sr. Citizen Center, seconded by Mr. Deans. ROLL: Yes, ALL.

Others Present: Tom Reynolds, Intern, Robert Gessner, Massillon Cable, Paul Bogocius, Resident, Rochelle Rossi, Resident, and Joan Porter, Repository.

CORRECTION/ADOPTING THE RECORD OF PROCEEDINGS

Mrs. Zahirsky made a motion that Council accepts the June 20, 2006 City Council meeting minutes, seconded by Mr. Crookston. ROLL CALL: Yes, ALL.

Mrs. Zahirsky made a motion that Council accepts the June 26, 2006 Special City Council meeting minutes, seconded by Mr. Colaianni. ROLL: Yes, ALL.

REPORTS OF STANDING COMMITTEES - None

CITIZENS' COMMENTS – AGENDA MATTERS

Robert Gessner, President, Massillon Cable TV: Mr. Gessner offered his apologies for a 28 year old error. He stated since 1978, they have been computing the City's franchise fee at 1% of basic cable revenue. The franchise says 1% of monthly transmission charges. In 1978 it didn't make a difference because there was only basic cable service, but over the years with new services being added, basic cable and monthly transmission revenue "kind of went like this". Mr. Gessner stated there are several communities where they pay a franchise fee of 1% of basic cable revenue and they were calculated on that basis. Massillon Cable mistakenly continued to pay Canal Fulton 1% of basic revenue. Mr. Gessner and Mr. Svab were reviewing the franchise contract renewal which will take place in a couple years. Mr. Svab called this matter to Mr. Gessner's attention. They worked together on a resolution. Mr. Gessner stated he went back and estimated revenues back to 1978 and calculated the difference. He said he then wrote a check for \$31,500 for the estimated difference and then worked on a settlement where they refunded some fees the City has paid and gave some money to the Senior Citizen Center to come up with a good settlement through 2005.

Mr. Gessner stated he came to the meeting tonight to give everyone an understanding to what was done and for any questions. He offered his apologies. Federal Law permits cable operators to put on a franchise fee as a separate line item on their invoices. They have always listed the franchise fee, but only in communities where they pay more than 1% of basic cable revenue. There has never been a franchise fee listed on Canal Fulton resident's bill and now Massillon Cable is going to pay 1% on more than basic cable. The franchise fee will now appear. Massillon Cable will take care of notifying the subscribers of this fee. He said an estimated guess in added cost will be fifty cents a month.

Mr. Svab stated he would like to collect the franchise fees semi-annually instead of annually.

Mayor Grogan asked what an area like Canal Fulton needs to do to get the local sport teams on a local access channel. Mr. Gessner stated he recently met with the local schools about increasing their presence. Hopefully they will have all their school announcements and school information, along with all the school districts in western Stark County located on cable channel 10 all the time. If the schools develop a student or school based video program, they will make accommodations for that. He stated there are so many school activities and so few advertisers willing to support it.

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Mr. Svab thanks Mr. Gesser for his generous contributions, not only this year, but in the past for supporting Olde Canal Days Festival and other athletic events. They have always been a good neighbor.

PUBLIC HEARING – Stark County Budget

Mayor Grogan asked for discussion from the public. There was no discussion. Mayor Grogan then asked for any discussion from the Council. There was no discussion.

Mrs. Zahirsky made a motion to accept the County Budget and submit to the County as prepared by the Finance Director, seconded by Mr. Deans. ROLL: Yes, ALL.

REPORTS OF ADMINISTRATIVE OFFICERS

SENIOR CITIZENS (Nellie Cihon) – Not Present

COMMUNITY SERVICE (Phil Kaster) – None Submitted

FIRE CHIEF (Chief Ray Green)

Chief Green stated last week, Mr. Colaianni, Mr. Cozy and he met with Mike Stevens, Lawrence Township Trustee, to discuss some issues with the Day Program. They had not had a meeting since last year. He stated they discussed the need next year to increase the manning of the crew. He stated there have been some changes last year in the Ohio Administrative Code. This has been an issue that has been discussed at all of the Chief Conferences. Ohio has a law that is called the two in, two out rule. This means when they respond to a structure fire and a hose line needs to go into a working fire, it is required to have four personnel on the scene before they can make entry into an unoccupied structure. The only exception to this law is if they arrive and they are told someone is in the building. He said these are codes through OSHA, The Bureau of Workers Compensation and the Industrial Commission.

Chief Green stated if they showed up with less than four people and it is an active fire, it will be fought from the outside until it is knocked down or when someone else gets there, then they can safely make entry.

Mayor Grogan asked if there was any liability to the City if less than four personnel show up to a scene and the damage to the structure increases because they don't have a fourth person to go inside. The Law Director indicated no. There was concerns expressed about responding to a rural area and the neighbors do not know if anyone is home. Chief Green stated if there was any doubt, entry would be made if there is a chance that there is a viable victim in a structure.

There was discussion on the annual fit tests. Mrs. Zahirsky suggested they go to Harmony Healthworks in Barberton instead of buying equipment to perform these tests. Mayor Grogan asked Chief Green to investigate several alternative options.

They also discussed pay increases with Trustee Stevens. Chief Green made a recommendation of 3%. Chief Green stated they have not used non-EMT certified personnel to fill shift vacancies in the past. There has been an occasion that they could have used them, but it was questionable to how they would be paid. A pay rate needs to be established for non-EMT certified personnel.

Also discussed were the mutual aid hours between the hours of 6:00 p.m. and midnight. They would like to have Lawrence Township increase their hours of staffing to cover up to midnight on the alternating weeks.

There was discussion on responding to a Lawrence Township call and not being able to charge. The justification with Lawrence Township is that their citizens already pay for it through a levy. Canal Fulton does not have a substantial levy and therefore charge City resident. Mr. Cozy suggested charging the township for the transport. The Township could bill when they transport someone from the City. The reciprocity was if they came into the City, they would not charge our residents. But the problem is, if we are going to them twice as often as they are coming to us,

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there is no reciprocity, we are subsidizing. Chief Green stated he has a copy of the agreement that was established in 1997. Chief Green would like to have the above wording included in a new agreement.

Soil testing was done at the site of the construction of the fire station. All indications were that the soil was good.

Chief Green stated Michelle Stewart submitted a letter of resignation effective June 1, 2006. She felt she no longer has time to commit to the fire department because of her family obligations.

POLICE CHIEF (Chief David Frisone)

Chief Frisone stated he distributed the statistics for June. There were a total of 407 calls for service.

The department has completed the planning for Olde Canal Days. An operational plan was submitted to the Mayor and City Manager. They will be well staffed. Officer Montean and Officer Swartz attended a DUI law update. There is an impending change that takes effect to one of Ohio's DUI laws. It deals with levels of drugs other than alcohol, basically narcotics or prescription medication. It puts limits on how much you can have in your system if you are tested following an accident or traffic stop. Chief Frisone attended a seminar on Investigating and Prosecuting Crimes Against the Elderly sponsored by the Summit County Prosecutors and also a Suicide Among Law Enforcement Course sponsored by Stark County Crisis Intervention team.

The Massillon Prosecutor's Office has declined prosecution of the theft of tree case. A lengthy discussion was held with our prosecutor. He looked over the case again and he also took it to another prosecutor within the office. He said today that they have problems with us seeking criminal prosecution in this case. Chief Frisone will give an update. Chief Frisone stated there is no doubt when you stand on the property line which trees are on the borderline and which trees belong in the park. Chief Frisone stated he invited the prosecutor to come look at it, and he chose not to. Mayor Grogan said "He chose not to take a look at a potential crime scene, when the Police of Chief requested or offered to him, that is a bit disconcerting". There is damage created because of a person's action and the prosecutor's office is opting not to do anything. Law Director Kincaid stated they may be saying it is negligence rather than criminal intent.

Mayor Grogan asked if we could add this to Resolution 24-06 and have our own in-house prosecution team. Mr. Cozy stated they have extensive experience on the plaintiff's side defending lawyers.

Mayor Grogan asked if we initiate a house check for elderly. Chief Frisone stated upon request they do but they do not have a program.

ENGINEER (Bill Dorman) – Not Present

FINANCE DIRECTOR (Scott Svab)

Mr. Svab stated there are attachments to the purchase orders and the bills. These are the payments that are due for the OPWC. These are zero interest loan payments that the state offers and we take advantage of them for our water and sewer infrastructure improvements. There is also another invoice for Klingsmith, fire station architect. The third invoice was for the Milan Street water line. This is the last project that was completed which was completed in last December.

Chief Green notified Mr. Svab that we have been paying for an AT&T line for Beach City, Wilmot, Bethlehem and Navarre. Mr. Svab contacted Beach City and they were aware that they were getting free service. In September 2003, AT&T became SBC and at that time it was being billed to the R.E.D. Center. Somehow there was a glitch and AT&T was sending Canal Fulton the bill along with other bills that the City received. The City has been paying this bill since 2003. Mr. Svab has requested copies from AT&T. It is almost \$5,000. This has been forwarded to

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Beach City. They are presenting to their Council. They are going to try to determine what percentage of share that the other communities may have to pay. It is a digital line that they use for their repeaters.

Mr. Svab stated when they closed June income tax collections, they are up 8%.

Mrs. Zahirsky made a motion that Council received the new financials from the finance director, seconded by Mr. Crookston. Roll: Yes, ALL.

CITY MANAGER (Mark Cozy)

Olde Canal Days: Mr. Cozy stated there is concern with the concessionaires down in the park with the flood stage being near the flood plain area. They have set an emergency overflow area for the concessionaires. They have designated the rail trail as the emergency area. The rain is supposed to come before the festival. Mr. Cozy stated we are getting a lot of last minute entries. They have extending their staging area to include Bob Avenue.

T.A.P. Committee: Mr. Cozy stated T.A.P. Committee is having a survey presentation at the Senior Center August 9 at 7:00 p.m. Members of T.A.P. have been calling area hospitals and they are interested in participating with a health and wellness center. They will probably have representation from all area hospitals. The committee is trying to ascertain what authority they have at this point, once this gets going, which hospital will be involved. Congressman Hagen recommended they do not start talking about what property the wellness center would be on. The market would dictate where it would go. They should focus on who they would be working with and the facility design. They are aware of the comprehensive plan. They are taking requests for qualifications, with the deadline being at the end of the month.

Law Director Kincaid asked if they are only doing this jointly with Lawrence Township. Mr. Cozy stated they are talking about a joint recreation board or district to oversee this. Law Director Kincaid stated it takes a resolution by each entity.

Discovery Park Project: Bids were recently opened. The low bidder was Hysong Paving, North Canton, \$93,716.00. The engineering estimate was \$99,180. The project includes a playground, parking lot, walking track and numerous trees and fencing. There weren't any objections of acceptance of the contract from Council. Mrs. Zahirsky stated Dover Lake Park had closed and to check with them to see if they have any playground equipment they could donate. Mr. Cozy will call them.

International City/County/Management Conference, San Antonia, Texas, September 9-13, 2006: Mr. Cozy would like to attend the conference with an estimated cost of \$2,000. Mr. Cozy stated this would benefit by building networking for him. It attracts the latest in technology and management. Mrs. Zahirsky made a motion for Mark Cozy, City Manager, to attend the International City/County/Management Conference in San Antonia, Texas in September, seconded by Mrs. Downing. Roll: Yes, ALL.

Right-of-Way Trees: Mr. Cozy stated the current ordinance is clear regarding the right-of-way trees. There are some issues that some of the right-of-ways that we deal with are owned by the City. We have had some recent concerns regarding a tree which recently came down and had fallen in the road. The street department was out there promptly and cut up the tree. The resident was upset because the crew did not haul away the wood. The resident felt his tax dollars should pay for the City to haul away the wood. Mr. Cozy told him that we could take the wood away at some point, but we have other priorities with other emergencies and issues happening and with only having three people in the department. Our ordinance is clear that we would charge them for our cost to haul away the wood.

Updated Map: Mr. Cozy asked Council to review the map and let him know their input.

Direct Energy: A new rate was locked in for natural gas for next season. The rate is \$11.18 per mcf. This is significantly lower than the past year. This will be in effect November 2006 to October 2007. Mr. Colaianni was instrumental in watching the market.

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Stark County 911 Planning Committee: They are working on installing new equipment. There is a vacant seat. There is an at-large mayor position seat which needs filled. It has been recommended that Tony Middleton, Alliance, fill that position. Linda Zahirsky made a recommendation approving Tony Middleton, Alliance Mayor, as the at-large Mayor position, seconded by Mr. Colaianni. Roll: Yes, ALL.

MAYOR (John Grogan)

Mayor Grogan commended Mr. Colaianni for his efforts in watching the natural gas prices.

PARKS & RECREATION BOARD (Fred Fleming) Not Present

LAW DIRECTOR (Attorney Dale Kincaid) – No Report

THIRD READINGS

Resolution 24-06: A Resolution Entering into a Contract with Eric J. Williams, and Pelini & Associates, LLC for Legal Services.

Mrs. Zahirsky made a motion to accept Resolution 24-06, seconded by Mr. Crookston. Roll: Yes, ALL.

SECOND READINGS

Ordinance 16-06: An Ordinance Amending Section 1133.06 of the Supplemental Requirements of the Planning and Zoning Code Relating to the Payment by a Developer of Engineering Expenses.

Ordinance 17-06: An Ordinance Enacting Section 1113.02(f) Setting Forth the Review of Each Preliminary Plat Plan by Various Department Heads.

Ordinance 18-06: An Ordinance Adding a Paragraph to Paragraph 5 on Page 60 of Section 1145.04 Pertaining to General Provisions for Conditional Zoning Certificate.

Ordinance 19-06: An Ordinance Adding Planned Unit Residential Developments as Conditionally Permitted uses in Zone R-2 Chapter 1161 of the Zoning Code.

Ordinance 20-06: An Ordinance Adding Planned Unit Residential Developments as a Conditional Use in R-3 Zones.

Ordinance 21-06: An Ordinance Amending Section 1165.01 to Provide that Density in R-4 Zones Shall be Limited to Eight Units per Acre.

Ordinance 22-06: An Ordinance Amending Section 1163.01 to Provide that Density in R-3 Zones Shall be Limited to 6 Units per Acre.

Ordinance 23-06: An Ordinance Deleting From the Planning and Zoning Code Section 1145.04, Paragraph 115, Subparagraph 6, on page 60.

Ordinance 24-06: An Ordinance Deleting Section 1185.02(c) Relating to the Restoration of Non-confirming Uses Destroyed by Calamity.

Ordinance 25-06: An Ordinance Amending the Ordinance Providing for Private Streets in Planned Unit Residential Developments.

Ordinance 26-06: An Ordinance Changing the Zone of an 18.126 Acre Parcel now Zoned B-1 to R-1.

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FIRST READINGS

Resolution 25-06: A Resolution Ratifying the Settlement with the former Clerk of Council and Declaring an Emergency. Mrs. Zahirsky made a motion to suspend the rules on Resolution 25-06, seconded by Mr. Deans. Roll: Yes, ALL. Mr. Crookston made a motion to pass Resolution 25-06, seconded by Mr. Colaianni. Roll: Yes, ALL.

Resolution 26-06: A Resolution Entering into a Contract with Clemens, Nelson Associates, Inc. for Management Consultants Services.

PURCHASE ORDERS & BILLS

P.O. 4692: Mr. Colaianni made a motion to pass P.O. 4692 made out to Ohio Public Works Commission in the amount of \$91,975.08, seconded by Mr. Deans. Roll: Yes, ALL.

P.O. 4693: Mr. Crookston made a motion to pass P.O. 4693 made out to Thomas Klingsmith for the fire station architecture in the amount \$6,500.00, seconded by Mr. Colaianni. Roll: Yes, ALL.

P.O. 4694: Mr. Colaianni made a motion to pass P.O. 4694 made out to Ohio Public Works Commission for the Milan Street Water Line 2006 Principle Payment in the amount \$8,291.22, seconded by Mrs. Zahirsky. Roll: Yes, ALL.

BILLS: **\$39,562.59** Mr. Crookston made a motion that Council has received the bills in the amount of \$39,562.59, seconded by Mrs. Zahirsky. Roll: Yes, ALL.

OLD/NEW/OTHER BUSINESS - None

REPORT OF PRESIDENT PRO TEMPORE (Linda Zahirsky) - None

REPORT OF SPECIAL COMMITTEES - None

CITIZENS COMMENTS Open Discussion (Five-Minute Rule) - None

EXECUTIVE SESSION

Mrs. Zahirsky made a motion to go into Executive Session to consider compensation of a public employee and requested the Mayor, Council, City Manager and Finance Director be present and anticipate legislative action, seconded by Mr. Deans. Roll: Yes, ALL.

REGULAR SESSION RECONVENED

At 9:50 PM, Mrs. Zahirsky made a motion to reconvene the regular session; seconded by Mr. Colaianni. There was no legislative action taken. Roll: Yes, ALL.

Mrs. Zahirsky made a motion to go back into Executive Session for the employment of a public employee or official, the promotion or demotion of a public employee or official, compensation of a public employee or official, investigation of charges or complaints against a public official and the purchase of personal, tangible or intangible property and requested the Mayor, Council, Mr. Mayberry, Chief Green, Chief Frisone, City Manager and the Finance Director, seconded by Mr. Colaianni. Roll: Yes, ALL.

At 9:55 PM, Mr. Deans made a motion to reconvene the regular session; seconded by Mr. Colaianni. Roll: Yes, ALL.

Ordinance 27-06: An Ordinance Amending Ordinance 10-06 by Establishing the Position of Mechanic. Mr. Colaianni made a motion to amend Ordinance 27-06, under the blank paid per hour section to amend it to read "paid \$13.50 per hour", seconded by Mr. Crookston. Roll: Yes, ALL. Mr. Colaianni made a motion to pass Ordinance 27-06, as amended, seconded by Mr. Deans. Roll: Yes, ALL.

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Mrs. Zahirsky stated she is going to vote no on this because she feels this position is not necessary at the City and believes this is not a good way to spend money. Roll: Mrs. Downing, Mr. Deans, Mr. Colaianni, Mrs. Crookston, Yes. Mrs. Zahirsky, No.

Mrs. Zahirsky stated she would like to make a recommendation to have Dale do an Ordinance for part-time personnel to include fire fighter position at \$9.00 if they work the Day Program.

ADJOURNMENT- Mayor Grogan adjourned the July 11, 2006 City Council meeting.

Mayor John Grogan