

CITY OF CANAL FULTON

May 20, 2003

REGULAR COUNCIL MEETING:

Mayor Shawn Kenney called the May 20, 2003 Council Meeting to order at 7:30 p.m. in City Hall Council Chambers.

PLEDGE OF ALLEGIANCE:

CALLING OF THE ROLL: Present: Nellie Cihon, Bill Dane, Linda Zahirsky, Robert Szanto, Mike Mouse, Mayor Shawn Kenney. Mrs. Downing was absent.

Mr. Szanto made a motion to excuse Mrs. Downing. Mrs. Zahirsky seconded the motion. Roll: Yes – ALL.

OTHERS PRESENT: Marge Loretto, City Manager; Debbie Kerr, Finance Director; Dale Kincaid, Law Director; Joan Porter, The Repository; Bob Hill, Fire Chief; Fred Fleming, Park Board; NOPEC Representatives, First Energy Representative, Donna Lemmon, Chamber of Commerce; John Hatfield, Dennis Downing, Victor Colaianni, Rochelle Rossi, all residents.

ADOPTING/CORRECTING OF MINUTES:

The Mayor asked for approval of the minutes May 5, 2003 regular Council meeting. Mrs. Cihon made a motion to approve the minutes of May 5, 2003. Mr. Dane seconded the motion. Roll: Yes – ALL.

Mrs. Zahirsky made a motion to approve the minutes of the Special Council meeting of May 8, 2003. Mrs. Cihon seconded the motion. Mr. Dane pointed out that he was listed as present at the meeting, but he was absent. The minutes will be amended to reflect that. Roll: Yes – 4. Mr. Dane abstained.

SPECIAL RECOGNITIONS:

CITIZENS COMMENTS ON AGENDA MATTERS:

REPORTS OF ADMINISTRATIVE OFFICERS:

Senior Citizens. No Report.

Community Service Coordinator. No Report.

Fire Chief.

Chief Hill said he applied for a Stark County grant and was successful. He said they will be getting eight chemical suits. He stated he had another meeting with the Clinton Fire Chief last week. He said they discussed a coverage plan for weekends.

Mr. Mouse asked Chief Hill if he had in writing how the program would work. Chief Hill said he will have three people in the station, if that's what Mr. Mouse wants to know. They will be there 8:00 a.m. to 4:00 p.m.

Mr. Dane suggested that after the details are worked out, the Chief has a meeting with the Safety Committee.

The Chief also mentioned that there is a 9-1-1 call box on the corner of Cherry and High and that they now have another 9-1-1 call box in front of the west side fire station.

Police Chief. No Report.

Engineer/Streets/Public Utilities. No Report.

Director of Finance.

Mrs. Kerr passed out the April bank reconciliation. Mr. Dane made a motion to acknowledged receipt of the April 2003 bank reconciliation. Mrs. Cihon seconded the motion. Roll: Yes – ALL.

Report of Mayor

The Mayor stated he has received a complaint from a gentleman who provides income tax software to accountants throughout the state. The Mayor said the man is claiming that he received misinformation from our tax department regarding the new filing deadline, which was April 15 as opposed to April 30 in the past. The man had prepared his forms based on this misinformation and his clients are now being charged a penalty fee. The Mayor said the man is asking that the penalty be abated because of the misinformation he received. The Mayor said the Income Tax Administrator refuses to do so. He said the City has an Income Tax Board of Review, consisting of the Finance Director, Law Director, President of Council,

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and the Finance Committee Chairman. The Mayor said he is requesting that the Board meets to discuss this issue. He said it is his recommendation that the people who received returns that had April 30 printed on them have their penalties be abated if they filed before April 30.

Mrs. Loretto said 31 filed on generic forms and 191 filed between April 15 and April 30. She said 160 were on the City's form, which clearly states April 15th.

Mr. Mouse said he received a phone call from a resident who is retired and was under the impression that it was still April 30th. He said they owed no obligation, but was charged the \$25 penalty. He said he would like that to be considered also.

Mr. Szanto said they would look at a date and time and meet to come up with a ruling.

City Manager's Report.

Mrs. Loretto stated that the City Engineer has recommended changing the maintenance ordinance, which Mr. Kincaid has prepared.

She said they also got a second grant for park equipment.

She said there is also a liquor transfer to be addressed. She said it is just a change of name.

Mr. Szanto made a motion that Council approves the change of name in the liquor license for DPKK, Inc. dba Mini Mart Foods. Mrs. Cihon seconded the motion. Roll: Yes – ALL.

Mrs. Loretto also said they have received a notice from the EPA for approval to drill for a new well.

Mrs. Loretto also reminded Council that they would look at the exempt personnel salaries after the election. Mrs. Zahirsky said there was a resolution that will be given to the Law Director. She said it is moving forward.

Parks.

Mr. Fleming stated that one of the Park Board members met with Mrs. Loretto concerning the criteria for hiring a coordinator for the Summer Recreation Program.

Mr. Kincaid stated that, regarding the user fees ordinance that is before Council, there is an O.R.C. Recreational User Statute, which protects the City if we have a recreation facility that is generally open to everyone without charge. He said he wanted to make sure that if the City starts charging for facilities, that it is run by the City's insurance carrier.

Mr. Fleming said he called the insurance company. He was directed to a risk manager. They discussed the issue and the risk manager didn't think there was a problem. Mr. Fleming said the risk manager was supposed to get back to him with a definite answer before this evening's meeting, but has not done so.

Mr. Fleming stated the City has always charged for things like the pavilion, gazebo, etc. He said with that history behind the City, it helps.

Mr. Dane asked what the reasoning was for raising the rates. Mr. Fleming said the main reason was that the current fees are old and the Board wanted them more in line with today. He said the Park Board would just like to generate enough money to maintain the facilities.

Mr. Mouse said he has no problem with user fees, but his concern would be that if they would begin having people rent and reserve, we'll have citizens being bumped out. He asked if there is a stipulation that limits the amount of reservations that would be taken in a month. He said he would strongly urge this.

Mr. Mouse said he has looked at the minutes of the May 4th Park Board minutes. He said the Board proposed a \$200 flat fee for open space fees.

A discussion followed regarding asking for land or charging an open space fee.

The Mayor interrupted the discussion by stating that the Park Board has done their job and a member of the Park Board should not be cross examined by Mr. Mouse at a Council meeting. He said if Mr. Mouse is so intent on getting his way, why doesn't he do one. He said he would urge Mr. Mouse, especially with his new found education by attending the seminars for elected officials, that he initiates some legislation.

The Mayor stated that Mr. Mouse was wonderful at criticizing the efforts of everyone else, but he has yet to see him in two and a half years initiate any legislation. The Mayor said he is suggesting that one time – one time – that Mr. Mouse do something.

Law Director. No Report.

READING OF ORDINANCES:

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THIRD READINGS: No Third Readings.

Public Hearing

Ordinance 19-03: An Ordinance Amending the Codified Ordinances of the Zoning Code of the City of Canal Fulton to add Chapter 1150, Regarding Certificate of Occupancy, Declaring that a Certificate of Occupancy shall be Required to be Obtained from the Office of the Zoning Inspector of the City of Canal Fulton before Occupancy of any Permitted or Conditionally Permitted Use in All Business and Industrial Districts within the City.

Mr. Dane made a motion to pass Ordinance 19-03. Mrs. Cihon seconded the motion.

Mrs. Zahirsky stated that in Section 5 in the fee section, she could not understand why there was a difference in fees between B-1, B-2, L-1, and I-1. She question how much longer it would take to inspect to justify the fees. She said Mr. Belford told her it would not take much more time for the different buildings. She said she is not going to vote for this.

The Mayor said Industrial would be someone like Hydrodine and a B-1 would be like a mini mart. He said there is a vast difference. He said when you are talking about 22,000 sq. ft for a factory and 1,000 sq. ft. for a storefront, there is a big difference.

Mr. Mouse asked Mrs. Zahirsky if she is suggesting that the ordinance be amended to take into account size and complexity. She said no, that's the way it is already.

Mrs. Zahirsky said she questioned why we need this to begin with. Mr. Szanto said it was to prevent a landlord from renting a B-1 or a B-2 building to someone who, let's say, actually does manufacturing. And it has happened here before.

Roll: 3, Yes. Mrs. Zahirsky and Mr. Mouse voted No. Ordinance FAILS.

End of Public Hearing

Ordinance 21-03: An Ordinance to Change Accounting Procedures Due to Code Changes, and Declaring an Emergency.

Mr. Dane made a motion to pass Ordinance 21-03. Mr. Szanto seconded the motion.

Roll: Yes – ALL.

Ordinance 22-03: An Ordinance to Make Appropriations and a Transfer from the Unappropriated Balances in Various Funds for the Purchase of a Dump Truck, and Declaring an Emergency.

Mr. Szanto made a motion to pass Ordinance 22-03. Mrs. Cihon seconded the motion.

Roll: Yes – ALL.

Resolution 7-03: A Resolution Authorizing the City Manager to enter into an Agreement with First Energy Solutions Corp. to Provide Aggregated Electrical Service.

Mr. Mouse said he spoke to Terry O'Connor of Avalon Foods. Mr. Mouse said Avalon is reviewing the two proposals. He said he wants to ask Council to postpone for one week before voting.

NOPEC representatives spoke briefly on their behalf.

First Energy's representative spoke briefly on behalf of First Energy.

Mr. Mouse made a motion to table Resolution 7-03 until the next Council meeting. There was no second.

Mr. Szanto made a motion to pass Resolution 7-03. Mrs. Zahirsky seconded the motion.

Roll: Yes – 4. Mr. Mouse voted No.

Resolution 8-03: A Resolution Authorizing the City Manager to Enter into an Agreement with the Northeast Ohio Public Energy Council (NOPEC) to Provide Aggregated Electrical Service.

Mr. Mouse made a motion to pass Resolution 8-03. There was no second.

Motion is DEFEATED.

The Mayor thanked both First Energy and the NOPEC representatives. He stated this was a difficult decision for Council.

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Resolution 9-03: A Resolution entering into a Contract with CTI Environmental, Inc. for Engineering Services for the Design of the Milan Street Sanitary Sewer and Waterline Improvements, and Declaring an Emergency.

Mr. Dane made a motion to pass Resolution 9-03. Mrs. Cihon seconded the motion.

Mr. Mouse stated he is reluctant to support any money issue and he will vote no.

Roll: Yes – 4. Mr. Mouse voted No.

SECOND READINGS:

Ordinance 20-03: An Ordinance Amending Chapter 143 (c) of the Codified Ordinances, Chapter Entitled: Fees.

FIRST READINGS:

Resolution 10-03: A Resolution Authorizing the City Manager to Enter into a Contract with Sluggers & Putters and with the Northwest Local School District for Recreation Services and the Use of School Buses for the 2003 Summer Recreation Program, and Declaring an Emergency.

Mrs. Cihon made a motion to suspend the rules on Resolution 10-03. Mrs. Zahirsky seconded the motion. Roll: Yes – ALL.

Mr. Szanto made a motion to pass Resolution 10-03 under suspension. Mrs. Cihon seconded the motion. Roll: Yes – ALL.

Resolution 23-03: An Ordinance Accepting Public Utilities in the Villas at Autumn Meadow, Phase 2.

PURCHASE ORDERS AND BILLS:

P.O. #3352 in the amount of \$5,235.75 to Plastic Lumber Co. for recycled park equipment.

Mr. Dane made a motion to accept P.O. #3352 in the amount of \$5,235.75 to Plastic Lumber Co. Mrs. Cihon seconded the motion. Roll: Yes – ALL.

P.O.# 3367 in the amount of \$7,875.00 to Canal Fulton Electrical Supply for lightning protection and phase monitoring for H.S. Pumps and Wells.

Mr. Dane made a motion to approve P.O. #3367 in the amount of \$7,875.00 to Canal Fulton Electrical Supply. Mrs. Cihon seconded the motion. Roll: Yes – ALL.

P.O.# 3368 in the amount of \$11,300.00 to Ronald Hinton Surveying Co. for survey of a portion of Milan St. and B&O Railroad with easement description for proposed Milan St. waterline and sanitary sewer line.

Mrs. Cihon made a motion to accept P.O. #3368 in the amount of \$11,300.00 to Ronald Hinton Surveying Co. Mr. Dane seconded the motion. Roll: Yes – 4. Mr. Mouse abstained.

Mrs. Kerr stated she had just received the group rating plan for worker's compensation with an enrollment fee, through the Ohio Municipal League Group Rating, which saves on premiums in the amount of \$27,692.00. She said the Purchase Order is for \$3,339.00 to Gates McDonald.

Mr. Szanto made a motion to approve P.O. #3383 in the amount of \$3,339.00 to Gates McDonald. Mrs. Cihon seconded the motion. Roll: Yes – ALL.

Bills: \$145,422.60

Mr. Dane made a motion to acknowledge receipt of the list of bills totaling \$145,422.60. Mrs. Cihon seconded the motion. Roll: Yes – 4. Mr. Mouse abstained.

NEW BUSINESS:

The Mayor stated he received a letter from a teacher for Sts. Philip and James with thank you letters enclosed from her 5th grade History class. She said Mrs. Cihon took them to City Hall for a tour of the building and a mini Council session. She said they had a wonderful time.

OLD BUSINESS:

The Mayor said there was a meeting with the Lawrence Township Trustees regarding water to the schools. He stated he consulted with the City's attorney the day after the meeting. The Mayor stated since December of 2001, they have been after the Trustees to approve some kind of agreement, some kind of economic development package or a JEDD agreement whereby two public entities would benefit – the schools and also the City of Canal Fulton. He said the JEDD district would be the Northwest School District campus.

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He said they have \$54,000,000.00 worth of improvements going out there. They have had problems with their wells and do not want to be in the business of providing water. They want safe reliable water that meets EPA standards and the City has that. The Township does not. The Mayor stated that our people have invested millions and millions of dollars in the City's water system.

He said they asked Lawrence Township for their help in this. He said the tax monies that the City would receive from what would then become the largest employer in Canal Fulton, would certainly assist the City. The water would assist the Northwest School Board. He said all the City was asking of the Township was approval. He said they have rebuffed us over the last year-and-a-half. The Mayor said finally Senator Kirk Schuring became involved and tried to broker an agreement. He said the City's legal council drew up a JEDD agreement where there would be no annexation whatsoever. He said all the City needed was cooperation from Lawrence Township.

He said they offered an agreement where 80% of the money would initially be from income taxes derived from people who are not already paying City income tax from the Northwest School District. That money would be used to pay off the cost of the pipeline. He said 20% would be split for administrative costs – 10% to Lawrence Township and 10% to the City. He said after the pipeline was paid for, the proposal from the City was that the City would give the Township 18% and the City would retain 72%. He said the 18% was based on the fact that 18% of the employees in the Northwest School District live in the Township.

He said the Township Trustees countered. He said they wanted 50% of all tax revenues after the pipeline was constructed. The City felt that was pricey for just signing your name to a piece of paper. The Mayor felt this would be a disservice to the City's residents. The Trustees also wanted a provision in the contract that the City would not annex anything in the Township for a period of ten years. He said he felt that is a deal killer that we cannot live with.

The Mayor said the City's attorney suggested that they counter-offer back to the Trustees with a split of 20% to the Township and 80% to the City, and the City would agree for a period of ten years that, in the event there was a proposed annexation, the City would negotiate with the Trustees for the property to be considered. He said the attorney also recommended that the City receives an answer to the counter-proposal by May 28, 2003. The Mayor said he is asking Council's approval to proceed with this. He said this would be a final proposal.

Mr. Mouse asked the Mayor if he was aware that after the Mayor left the meeting that the Trustees and their attorney proposed a 40%/60% split. The Mayor said he was aware of that. He said he still felt that was almost in the nature of economic blackmail because they do nothing.

Mr. Szanto said he agrees with the Mayor. Mr. Szanto made a motion to authorize the Mayor and/or Attorney Hall to act as agent(s) to make the above counter-proposal to the Township. Mrs. Cihon seconded the motion.

Mr. Mouse stated that Mr. Stevens said he was concerned that providing the water would be falling on the shoulders of the School employees. He said he feels the focus has now changed from providing water to the schools to getting income taxes. He said it is his contention that it is the School's responsibility to provide water to the Northwest School District.

The Mayor said the City taxpayers pay dearly for all school employees. He said if you look at your real estate tax bill, which is your second highest tax you pay, 70% goes to the schools, and 70% of that 70% goes to school employees, who we all know, in their next collective bargaining sessions will bargain for at least a 1% increase in their salaries.

Mr. Mouse stated that long before the levy was put up he suggested a proposal which would have cut the City's liability for the property tax. The Mayor said that that situation was explained to Mr. Mouse before by Superintendent Lambes. Mr. Mouse said Mr. Lambes told him that their bond people looked at it and they were not comfortable with it. Mr. Mouse said he asked why, and Mr. Lambes replied that he did not know.

Mrs. Zahirsky stated that this is the fifteenth time she has heard this from Mr. Mouse and asked the Mayor to please call the roll. Roll: Yes – 4. Mr. Mouse voted No.

Mr. Dane said that in the City's proposal back to the Trustees at the meeting, he noticed that there were some sideline issues, including legal representation and the Township wanting to put the entire burden regarding this on the City. He said he is not optimistic that this new one will be passed or will even get an answer back at all. He said, though, that it should be included in the City's proposal that this IS the proposal and no side issues will be addressed.

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OTHER BUSINESS:

Mrs. Loretto said she has received many complaints about the grass on Locust Street. She said the problem is that the City needs to wait until it is 12 inches high and then there is a procedure that needs to be done before the grass can be cut. She said maybe the City should consider lowering it to 8 inches.

A short discussion followed.

Mr. Mouse pointed out that there was an article in The Independent entitled "Records Battle Could Cost Canal Fulton". He said it seems that something has placed the City at liability for a possible \$800,000.00 lawsuit. He said he would like to know what steps were taken to find out who was responsible for putting the City in this situation and what is being done to correct it.

The Mayor asked why Mr. Mouse doesn't asked his friend Mr. Downing. He is the one who put the City in the situation. Mr. Mouse asked if the citizens are liable for this if Mr. Downing wins. The Mayor said it would come out of the general fund if there is a verdict.

CITIZENS COMMENTS:

Mr. Colaianni said he hopes that some decision would be made concerning water to the schools. He said the 20%/80% sounds fair to him. He said there are residents who will not let their children drink the water at the school.

Mr. Hatfield said he was glad to hear about getting water and sewer out Milan Street. He the stated regarding the open space fees ordinance, that he would like to see the ordinance. He said there is a lot to that and needs to be looked at closely. He said he is not sure the City needs new ball fields. He said there are all kinds of ball fields just outside the City limits that everyone can use. He also asked the Council please do what it can to get water to the schools.

Mr. Mouse said they keep on hearing that Discovery Park was donated to the City, but he knows that Discovery Park was not donated. He said it was created by the Planning Commission, it was not donated. Mrs. Zahirsky said it was donated. Mr. Mouse insisted it was not. The Mayor said it was donated.

REPORT OF COUNCIL PRESIDENT:

No Report.

REPORT OF STANDING COMMITTEES:

Sharon Reiter, Clerk of Council

Shawn Kenney, Mayor