

ASHTABULA CITY COUNCIL
CITY OF ASHTABULA – COUNCIL CHAMBERS
4717 Main Avenue, Ashtabula, OH 44004

EMERGENCY MEETING MINUTES
Saturday, February 9, 2019

Council met in an **EMERGENCY MEETING**. The President of Council called the meeting to order at 7:30 a.m. and offered the opening prayer, and the Pledge of Allegiance was recited.

Member(s) Present:	Mr. Michael D. Speelman	(Ward 4 Councilor)
	Mr. Richard A Quaranta	(Ward 3 Councilor)
	Ms. Jane E. Haines	(Ward 5 Councilor)
	Mrs. Kym A Foglio	(Ward 1 Councilor)
	Mr. August A. Pugliese	(Ward 2 Councilor)
	Mr. Christopher J. McClure	(Vice President)
	Mr. John S. Roskovics	(President)
Member(s) Absent:	None	
Officer(s) Present:	Mr. James M. Timonere	(City Manager)
	Mrs. LaVette E. Hennigan, MMC	(Clerk of Council)
Officer(s) Absent:	Michael Franklin	(City Solicitor)
	Ms. Traci R. Welch	(Director of Finance)

SUNSHINE LAW CERTIFICATION

The Clerk of Council certified conformity to the Sunshine Law.

PURPOSE

The President announced THE PURPOSE OF THIS EMERGENCY MEETING IS TO PERMIT CITY COUNCIL TO VOTE ON LEGISLATION PERTAINING TO THE REQUEST OF OUR LADY OF PEACE PARISH (OLOP) TO REZONE A PORTION OF THE FORMER MOUNT CARMEL SCHOOL PROPERTY LOCATED AT 1200 E. 21ST STREET, ASHTABULA, OHIO, FROM R-2/SINGLE FAMILY RESIDENCE DISTRICT TO R-4/MULTI DWELLING DISTRICT. (Yesterday, it was brought to the City's attention that the Ward 1 Councilor is a paid staff member of OLOP. City Solicitor Michael Franklin advised Council to retake the Thursday, February 7, Special Meeting vote, as soon as possible, from which the Ward 1 Councilor must request to abstain, to comply with applicable laws.)

WELCOME

The President welcomed visitors.

STATEMENT

The Ward 1 Councilor read the following statement into the record:

"First and foremost there has been no secret that I am the organist at OLOP Parish for the past 48 years. Augie, John, Rich, Jim...you all know this, I talk about my experiences before Pre-

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Council all of the time. Mr. Franklin is also aware of my position as his wife Betsy gives my communion at Mother of Sorrows, and we talk about the church also.

We had a meeting Tuesday, at no time during that meeting did anyone, especially our solicitor mention that there was a problem with me voting...the vote took place on Thursday, two days later and at that time, with Mr. Quaranta missing, at no time did anyone mention that there was a problem with me voting...only after the vote tied and failed, and then one whole day later, was I notified that I MIGHT have violated ethics by voting because I am an employee of the Parish.

I was advised that I could be reported for an ethics violation, be removed from office, and be charged with a misdemeanor of the first degree, up to six months of jail and fined \$1000, if I don't abstain from my vote, I consider this to be very threatening.

Being appraised of this at 4:30 p.m. yesterday, by the Solicitor, that I MIGHT be in violation of the Ethics law, you gave me no time to contact the Ohio Ethics Commission to, indeed, get an opinion if I am in violation since I am a contracted employee of the Parish. I do not have a contract, or an office. The reason I am on the payroll is that the diocese changed their policy so that the organists now have to pay taxes. I am not only contracted to play at Mt. Carmel (MTC), but at Mother of Sorrows (MOS) and St. John (STJ). I am not currently playing at MTC. If I would have voted yes and the ordinance to rezone passed, would we be sitting here today? Would my vote have been questioned?

If this was any other ordinance, we would table it until I could get a ruling because I do want to cast my vote, but not at the expense of being removed from office. However, I feel this ordinance is being ramrodded through. I want the rest of you to think about this long and hard before you vote today."

DISCUSSION

Vice-President: Asked the Ward 1 Councilor if anyone asked her to recuse herself for the Thursday, February 7, Executive Session; the discussion of which might have a "direct influence on the Councilor's ethics". He asked the Councilor if anyone asked her to recuse herself from those proceedings.

Ward 1 Councilor: Responded, no.

Vice-President: We are not permitted to vote in Executive Session, but there was information exchanged that the Ward 1 Councilor should not be involved in because it was with her husband employer. He said one situation could definitely be a conflict. The other situation "probably is a conflict because of who the employer is of the Ward 1 Councilor's spouse".

City Manager: When I was the President of Sts. John and Paul School and Ashtabula City Manager, I was never asked or encouraged to or given legal opinions on what to do. It was

because of his ethics training that he knew when to recuse himself. He reiterated what he told the Ward 1 Councilor yesterday, that he honestly did not know she received a check from the church and is considered to be on the payroll. He said had he known he probably would have spoken with her. He said he “deals with Mr. Foglio all the time at the water company, but it never dawned on him to think that the Ward 1 Councilor, who is married to Mr. Foglio, should not have been involved in the February 7, conversation. He said he believes if the legislation to rezone was prepared and voted on at the February 4, Regular Council Meeting, none of this would be taking place “because we were all at the Council meeting”.

Vice-President: The request to abstain is voluntary. He said he mentioned the February 7, Executive Session because when determining whether or not to abstain, there are grey areas. “I think [whether to abstain or not] comes down to economics and our oath – and how can I benefit economically by voting on this or that.” He said because the Ward 1 Councilor is a musician at the church he struggles with how the Councilor would financially benefit by voting yes or no. On the other hand, the Councilor taking part in discussions with the employer of the Councilor’s spouse is altogether different. He said if the Ward 1 Councilor requests to abstain from voting on the rezone request he is not going to accept it because he does not see how her position as the church musician has anything to do with rezoning. And, to do so starts “a very weird slippery slope for abstention”

President: I think Mr. Franklin alluded to this in his email to us... She voted against the request to rezone (at February 7, Special Meeting), even so, she still needs to abstain because she is receiving a paycheck from the church. Could she benefit from the sale of the church property is not the point. The point is she is an employee of the church so should not vote on any legislation involving the church. He likened it to a member of Council who has to abstain from voting on payroll ordinances because their spouse was employed by the City of Ashtabula. “I’m going by what the legal department of this City is telling us. If Mrs. Foglio doesn’t want to abstain, that is her prerogative. Just be advised of what Mr. Franklin told us. The vote on the request to abstain has to be unanimous. Mrs. Hennigan, what would happen if less than the required votes on the request to abstain are received?”

Clerk: The Councilor would have to vote.

Ward 4: The Councilor questioned the timing of this redo request, even given the legal aspect of it. He said, “If the common person were to look at what has and is taking place, it appears the vote did not go the way it was suppose to. Somehow we have managed to find a loophole in the rules [Council Rule 8(c) requires unanimous consent of the remaining Council members in order for a request to abstain to pass], return for an Emergency Meeting today at 7:30 a.m., when it is wildly inconvenient for everyone, to get a vote that’s going to go the way [they] want it to go. That’s the way it looks and that’s the way it feels to me.”

REQUEST TO ABSTAIN

The Ward 1 Councilor, on the advice of the City Solicitor, requested to abstain from voting on Our Lady of Peace Parish's request to rezone former school property, as a paid staff member of the Parish. Mr. Roskovics moved, Mr. Quaranta seconded the request to abstain.

Discussion

The Ward 4 Councilor expressed his frustration with this process and the legalese. He said he did not want to force the Ward 1 Councilor's hand to vote if it will put her in legal trouble.

On the roll call to approve the Ward 1 Councilor's request to abstain: Mr. Speelman...

The Ward 4 Councilor sought clarification on what his vote would mean for his Ward 1 colleague. The Clerk reported Rule 8(c) of the City Council Rules of Order, states: Every member of City Council present shall vote on any question by voice vote or on the roll call of the ayes and nays, unless excused by the unanimous consent of the remaining members of Council in the form of a request to abstain.

Clerk: Roberts Rules of Order Newly Revised *In Brief* – page 115, says: The phrase “abstention votes” is an oxymoron, an abstention being a refusal to vote. To abstain means to refrain from voting... The Clerk, therefore, noted that the Ward 1 Councilor could simply refuse to vote.

The vote resumed - Mr. Speelman (nay), Mr. Quaranta (nay), Ms Haines (nay), Mr. Pugliese (aye), Mr. McClure (nay), Mr. Roskovics (aye). The motion to approve the Ward 1 Councilor's request to abstain from voting FAILED by a 2 to 4 vote.

The Ward 2 Councilor said he can feel things have changed and does not want to see the City's progress turn backwards. He suggested placing the meeting on hold until the City Solicitor is present because there are too many legal questions being asked. It was believed that the City Solicitor explained, in detail, why the Ward 1 Councilor should abstain from voting and that she should be permitted to register her request to abstain as soon as possible to avoid legal ramifications, which is the purpose for this meeting.

The Vice-President reported he said something at the February 7, Special Meeting that has bothered me him every since, and which subsequently was reported in the Star Beacon. He said they were his words, but were not in the “spirit of civility that our Council operates. And, I want to apologize; those words were insensitive. And, to you John, you said you were upset and you said “my friend, Mr. McClure. That meant a lot to me that you said my friend. And, I apologize I made you upset; and I mean that.”

President: There is nothing nefarious going on here. We took a vote, we all went home and we thought that is the way the vote went. We got an email from the Solicitor saying we need to rectify the situation, as soon as possible, regarding the Ward 1 Councilor abstaining from the vote on OLOP Parish's request to rezone property. That is why we are here at 7:30 a.m.

The Ward 1 Councilor asked “where am I at on this”. The President said Council has rejected her request to abstain from voting, which means that you have to vote. The Councilor said, “Well, then I will vote.”

READING

The Clerk presented the following legislation for City Council’s consideration:

ORDINANCE NO. 2018-13, AN ORDINANCE CHANGING THE ZONING OF A PORTION OF THE PROPERTY LOCATED AT 1200 EAST 21ST STREET FROM R-2 (SINGLE FAMILY RESIDENCE DISTRICT) TO R-4 (MULTI-FAMILY RESIDENCE DISTRICT), UPON CONDITIONS, AND AMENDING THE ZONING DISTRICT MAP ESTABLISHED BY CODIFIED ORDINANCE SECTION 1115.02. Mr. Pugliese moved, Mr. Quaranta seconded to waive the reading of the ordinance.

Rosemary Bernato asked that it be clarified that “these are just the two parcels that Our Lady of Mt Carmel – this is not all of the property; correct?” She said she did not understand the suggested correction the City Manager mentioned at the February 7, Special Meeting. The Manager explained that the ordinance title has been changed to “a portion of the property located at 1200 E. 21st Street; and again in Section 1. He said, “It lists the two PPN (Permanent Parcel Numbers) because that is what is on the property now. What will happen, if this goes through, and the sale goes through to Testa and Testa only, they will be required to have the property surveyed and a new parcel made from the portion that the school sits on now – that new parcel will be given a new PPN by the Auditor and only that property will be rezoned.” We have to include the parcel numbers that encompass the whole campus. But, that ‘s why we break this out and say “the portion of when it’s purchased by Testa”.”

The President announced a motion and second are on the floor to waive the reading of the ordinance and called for a voice vote. The motion CARRIED. Mr. Pugliese moved, Mr. Quaranta seconded to waive the Charter requirement of two readings. On the roll call to waive the Charter requirement: Mr. Speelman (nay), Mr. Quaranta, Ms. Haines, Mrs. Foglio, Mr. Pugliese, Mr. McClure, Mr. Roskovics vote aye; motion CARRIED by a 6 to 1 vote. On the roll call to adopt the legislation: Mr. Speelman (nay), Mr. Quaranta (aye), Ms. Haines (aye), Mrs. Foglio (nay), Mr. Pugliese (aye), Mr. McClure (nay), Mr. Roskovics (aye); motion CARRIED by a 4 to 3 vote, and will take effect in 30 days due to the lack of 5 or more affirmative votes for immediate enactment.

ADJOURN: The President adjourned the meeting at 7:56 a.m.

DATE APPROVED: MARCH 18, 2019

ATTESTED BY: John S. Roskovics
John S. Roskovics, President of Council

ATTESTED BY: LaVette E. Hennigan
LaVette E. Hennigan, MMC, Clerk of Council