

*City of Olmsted Falls*  
**Minutes of a Special Council Meeting**  
**Tuesday, July 25, 2017, at Olmsted Falls City Hall**  
**26100 Bagley Road – Council Chambers, 7:45 p.m.**

The Pledge of Allegiance was recited. Mayor Ann Marie Donegan called the Special Meeting to order at 7:45 p.m. Roll call was conducted. Present: Councilmen Linda Garrity, Jim Haviland, Bob Sculac, Ed Gorski, Paul Stibich, Terry Duncan, and Kyle Miller.

Also in attendance: Gregory M. Sponseller, Law Director; Mr. Bruce Rinker, Special Counsel for City of Olmsted Falls; Mike DeSan, Asst. Finance Director; and William Traine, Asst. Safety Director Audience: 17.

**MAYOR'S REPORT AND APPOINTMENTS**

Mayor Donegan indicated that Service Director Borczuch has distributed to Council a memo and requisition to Council regarding concrete work needed at the fire station. The quote received from Fabrizi Trucking & Paving does not include a price for the removal and replacement of sidewalks with curbs and installation of an ADA ramp which will increase their quote. Due to that fact, the recommendation is to accept the quote from Martin Concrete in the amount of \$42,250.00.

Mr. Sculac moved to **approve** a requisition to Martin Concrete in an amount not to exceed \$42,250.00 for concrete work in front of the fire station; Mr. Gorski **seconded**. Poll: 7 ayes; 0 nays.  
**Motion carried.**

Mayor Donegan indicated that the Board of Equalization met for their final time last evening in which they considered reduction of assessments for residents on Main Street. They will be preparing their report, which is required by law, and submitting to Council. She believes Council may have to come in for a special meeting in order to review and approve the report in order to continue moving this project forward. She stated that the project needs to be completed by December of 2018.

She wanted to inform Council that she signed an agreement with ConstituentOn which is a software package that tracks complaints. This is cutting edge technology so when the city receives complaints of any sort the software will generate letters to the resident in order to make sure no complaints fall through the cracks. Currently, all complaints are dealt with manually and the cost is \$800 per year. This will help us continue to make good on our customer service and follow up on complaints. This will also help eliminate some of the secretarial work that is required when doing everything manually.

Mayor Donegan indicated that the city is the recipient of the Cleveland Stonewall for the Stephanie Tubbs-Jones Freedom Award for improving the lives of the LGBTQ community in enacting our human rights ordinance. The City will receive this award on September 10<sup>th</sup>. This is a prestigious award and it took a lot of guts for a community of our size to act as models in making life equal for people.

She is happy to report that the administration building is now wireless. We were able to complete that work in conjunction with the Community Paramedicine grant. We are performing some trial areas and we should be wireless before Fall. This is another step in the right direction in terms of technology. We are excited particularly because we did not have to incur the cost out of the general fund.

Additionally, she would like Council to know that she has asked the Shade Tree Commission to discuss with ODNR the new policy of trying to dissuade cities from planting trees in tree lawns and those protocols. We currently follow some of those policies, for example, we do not plant trees under electric lines but she did ask them to engage in reviewing these in terms of best practices.

As you know the German Club had a historical house torn down and installed a nice garden at the entrance of their building. They also hold a couple of very large events and although the German Club is not housed in Olmsted Falls part of their parking area is so every year over the past decade they come to the city and ask for permission to park there. We met with them as the city does receive complaints from resident on Cook Road regarding lights shining into their homes and alcohol bottles left in their yards. We had a nice conversation with Margot and have a plan that we think will work that is proactive. We are also in the process of informing the residents that the parking will no longer be head in so lights will not shine into their homes but rather towards the German Club parking lot and this area will only be just used for workers parking. There will also be police presence. She has encouraged Margot and the German Club is apply for a use variance from the Planning & Zoning Commission specifically for these special events so they do not have to approach the city for permission each and every year.

Mayor Donegan stated that she would like to bring up some points regarding Baker's Creek that she would like everyone to consider. She requested that the Clerk pull minutes from March 28<sup>th</sup> in which Mr. Haun indicated that he received a price of \$15,000 to fix the stone road again. So, when she was stating numbers she did not pull them out of thin air but rather remembered him making this statement. There were specifications for a bridge replacement that are dated 2009, 2010 and 2011 and the cost of the project at that time through the city's old engineer, Benza & Associates, was \$230,000 so for those who said this had not been done before is not a factual statement and this price is very different than the \$107,500 currently proposed so she wanted to make that clear for the record. Additionally, there were some Council members that are present on this Council that were present in 2010 and at that point Mr. Thompson discussed the city, in good faith, being one of the partners within this project. So, again that was not something she came up with on her own or dreamed up. This was the city acting in good faith and if she did not hear anything from Council we would continue with this commitment. She would also like to discuss during her term in which Baker's Creek or some resolution of Baker's Creek was discussed. She spoke about this issue on July 28, 2014; June 10, 2014; January 13, 2015; March 24, 2015; March 22, 2016; April 26, 2016; June 14, 2016; August 3, 2016; December 13, 2016; December 27, 2016; and this year May 8, 2017; June 5, 2017. Her point in getting those dates on the record is that this wasn't just something we pulled up and decided that we were going to do something about it, this is something that again Mr. Scheutzow contacted her in her first couple weeks as Mayor and is something we have wrestled with since.

## **COMMUNICATION FROM RESIDENTS**

**Stephen Hoca, 26493 Cranage Road**, stated that he will make this very simple. He went over to Gus Kuntz residents and looked at the bridge. One of the ideas he had looked into is a possibility of maybe one of those Army surplus bridges as he has seen them online and knows it seems like a cheaper solution but they are very durable. Also, they were concerned about the fact that they said that no one actually tested the strength of the bridge to determine whether or not it was salvageable or not; whether it needs to be torn down or just added on to. It definitely needs to be widened out because they also cannot get an emergency vehicle on there so that is an emergency problem. He believes Mrs. Kuntz said that her husband was in the hospital and they were very concerned because it took them a long time to get an ambulance. He thinks this was discussed before about the safety problem and they think an inexpensive solution might be to get one of those surplus bridges. Mayor Donegan indicated that was something Mrs. School has brought up on a number of occasions.

**Mary School**, stated that she has two quick points this evening. At the last meeting Mrs. Nyland had indicated that there was a hole in the bridge and correctly so. She made the comment that it did not happen from natural causes and just two days after our meeting the hole became twice the size that it was and you can see that it was not erosion it was actually large cracks of cement so someone is working overtime. Second point, in addition to the guidance of our attorney of record, Mark Porter, it has been suggested to her that it is illegal for anyone to be assessed for property that they do not own she would like to suggest to Council that they table this issue until they have all of the facts and legalities clearly and accurately laid out for them that are presently being compiled.

**Ruth Koehl**, stated that part of this is personal but she needs to tell Council. She has come to every meeting and sat here and listened to all that is being said. The reason she does not speak out is because she is having a lot of difficulty finding her words, she is 80 years old, and has been diagnosed with the start of dementia and on account of that she sometimes struggles to express her thoughts because can't find the words. After what happened at the last meeting she needs to say this, when all of this trouble with the bridge started a long time ago she went back and re-read her deed very carefully, her deed does not say anywhere that we have responsibilities to maintain the bridge nor does it say that in any of her six neighbor's deeds but all the deeds do say that all of us have permission to cross the bridge, something is wrong here. She wants all of Council to know that she is in complete support of Ruby and Ted Haun, our neighbor's, and Mary.

## **OLD BUSINESS**

### ***Resolution 36-2017***

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLMSTED FALLS MAKING FINDINGS AND CONCLUSIONS FROM THE PUBLIC HEARING AUTHORIZED BY RESOLUTION 16-2017 AND RELATED TO THE PRIVATE BRIDGE OVER BAKER'S CREEK ON THE PRIVATE DRIVE OF EAST RIVER ROAD, ORDERING THE ABATEMENT OF NUISANCE CONDITIONS RELATED THERETO BY AUTHORIZING AND DIRECTING THE CITY ENGINEER TO PROCEED WITH PLANS AND SPECIFICATIONS FOR THE REPLACEMENT OF THE BRIDGE, AUTHORIZING AND DIRECTING THE MAYOR TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACTS FOR THE SAME, AUTHORIZING AND DIRECTING THE COLLECTION OF THE COSTS OF THE SAME FROM AFFECTED PROPERTY OWNERS, AND DECLARING AN EMERGENCY **Third Reading**

Mr. Sponseller stated that he has been a municipal lawyer for more than a quarter of a century and this is as a difficult situation as he has encountered. Understanding the respect that each person has for their own property, the rights that each person has for their own property, understanding the obligations that a City Council has, and understanding the legal obligations that a city has. He would like to reiterate for the record and does not want to be too redundant as we have spent many meetings on this issue. He heard the comments expressed by the three speakers this evening, he understands the expression of opinion from legal counsel representing some of these property owners, we have Mr. Rinker as co-counsel with Mansour Gavin who has seen as a Mayor of a city for more than two decades a number of issues. Mr. Sponseller pointed out that it is his legal opinion, in consult with Mr. Rinker, and as reflected in the findings, that the city does in fact have this legal authority and even the obligation to address this matter because it is a life safety issue. The question becomes how is it addressed and is recited in the conclusions, which specifically makes reference to applicable provisions in the Ohio Revised Code as well as the various provisions in the city ordinances. Furthermore, he wants to bring to Council's attention that the draft Exhibit "1" has been modified to reflect that one of the parcels has in fact sold. The Abramovich parcel sold to the McGreevey's who are now the owners of record. This transaction just occurred on July 3<sup>rd</sup> and we had some informal discussions with them to try and bring them up to speed with this legislation and the proposed findings. Additionally a requested was made for some information with respect to the cost in the event Council adopts this ordinance. These are rough estimates from the engineer depending on the length of the assessment and a total assessment of \$10,000. These are also based on tentative interest rates currently in effect if the city were to borrow to cover the project. If it was a 20 year assessment the cost would be \$331.20 a half for a total payment \$13,248; if it were a 15 year assessment the cost would be \$401.50 a half for a total payment of \$12,045.00; if it was a 10 year assessment the cost would be \$549.40 a half for a total of \$10,988; and if it were for five years it would be \$1,035 a half for a total of \$10,350. Again these figures are based on \$10,000 and are being used to give you a sense of the dollars. These dollars are not etched in stone unless until the final bids are received and the project is completed. He wants to be clear this presumes that there are no changes in interest rates and depends on the duration. He also wants to be clear that this does not mean this is the amount that would be assessed it is just an example of based on a \$10,000 figure. He specifically wanted to bring to Council's attention the changes of the property sale and the engineer's estimate of \$107,500 that will be inserted into the document. Furthermore, he knows that Council has been wrestling with a factual way to proceed and as we've said from the beginning this is a combination of the law, legal issues, and equity, what is fair, appropriate and reasonable under the circumstances. Reasonable people can disagree on what is reasonable at times which he understands but nonetheless the overarching issue is the life and safety issue that Council will need to make a decision on. The first and foremost is that Council will need to make a finding as to whether or not a nuisance condition exists, based upon the evidence that has been presented, and then the appropriate remedy, which may or may not ultimately consist of what has been submitted in terms of Exhibit "1."

Mayor Donegan stated this is obviously a topic that has not gone on for 30 – 40 years and has certainly been dealt with as effectively and efficiently attempting to bring this to a conclusion. She thinks that Council has been wrestling with this issue. However, she would ask that you deliberate with your colleagues and not with people in the audience because other people have overheard some conversations that she thinks looks like a way to taint the process and it has been brought to her attention over the last couple weeks. She would ask that you have respect for one another as we may disagree on going about things, we may disagree on certain things, but it is unfortunate when

colleagues don't deliberate amongst themselves. At least agree to disagree because that is what this is all about.

Mr. Stibich moved to **adopt**; Mr. Gorski **seconded**.

Mr. Haviland stated that we have heard hours of residents and professional testimony as the Mayor referenced 16 meetings that this has been discussed. The conclusion that was reached as previously mentioned is the safety issue. It is a key fact that we have an obligation as a body and as a city to deal with this decade old problem because on its own it is not going to get resolved by all the parties. Therefore he would recommend that we move on this tonight.

Mayor Donegan stated that she is going to ask before the vote for specific answers to the findings of a nuisance and the formula for remedy because this is a very different kind of piece of legislation.

Mr. Stibich stated that he would like to talk to the residents like a "dutch uncle" which is "I love ya but you got to do this" this needs to be done, you have been arguing amongst each other and with the city for decades pointing fingers. This needs to be done because look at the conditions you are living under, you don't have a bridge you are driving on an old dilapidated road like an old trail, you need to do something. He is not in favor of this legislation for two reasons; one he does not think the city should contribute anything towards the project as the city has already contributed a lot and invested a lot with consults, engineers, studies, experts, the city staff, over decades police, fire, service departments, the Mayor has worked tirelessly to make this work. The city has probably invested hundreds of thousands of dollars in finding a solution and it's kind of sad to say that because the bridge doesn't even cost that much. If you look at the numbers you will probably find that there has been a lot of money the city has already invested and he is not in favor of the city investing cash directly into the project. The second thing is that the Nylands get no benefit from the bridge and he does not like the idea that they have to pay about \$10,000 for something that they will only look at in their back yard. That is a lot of money for a back yard fixture and it sets a precedent as they may be responsible for maintenance of this bridge and the road in the future which will be passed on to their heirs or whoever owns the property after them. The real solution to this problem is to sub-divide the road, the bridge and the road to the other homes to separate parcels and deed those over to a homeowners association; all of you make a covenant to participate in the homeowners association and pay for the common maintenance of that bridge and the road which would attach to the land forever. That is another problem and another issue our issue is the safety and welfare of you and the city being able to provide you with police and fire services when you need them. He reiterated that needs to be done.

Mayor Donegan would ask for a poll from Council on the following:

Conclusion #1: The private bridge over Baker's Creek is so structurally compromised and unsafe as to constitute a public nuisance as that term is defined under law; **Poll:** 7 ayes; 0 nays.

Conclusion #2: The City of Olmsted Falls has the authority to and shall exercise such authority as it is necessary to abate the nuisance; **Poll:** 7 ayes; 0 nays.

Conclusion #3: The City of Olmsted Falls need not and shall not acquire or otherwise dedicate to public use the bridge and East River Road in order to abate the nuisance; **Poll:** 7 ayes; 0 nays.

Conclusion #4: Based upon its review of numerous recorded deeds of the East River Road properties Council concludes that no deed provision has been made to ascribe responsibility for maintenance of the bridge nor is the bridge nor other structure nor thoroughfare nor means of ingress and egress described in anyway in such deeds; **Poll:** 7 ayes; 0 nays.

Conclusion #5: Based upon all of the evidence, history and anecdotal accounts and documentation, and profession expertise and opinion, Council shall appropriate such funds and shall take such steps as are necessary to cause the removal and replacement of the bridge and thereby impose upon the 10 private properties identified herein their proportionate cost for such abatement, said sums to be levied as special assessment if necessary, in such sum and in such manner as are authorized by law; as set forth herein below and based upon the Engineer's estimate of \$107,500; **Poll:** 7 ayes; 0 nays.

Conclusion #6: Council determines the proportionate cost for abatement to be ascribed to the ten (10) private properties listed above in Finding No. 8 as follows which includes the City at 9.10%; **Poll:** 6 ayes; 1 nay (Stibich).

Poll on adoption: 6 ayes; 1 nay (Stibich). **Motion carried.**

Mr. Gorski moved to **adjourn**; Mr. Stibich **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.**

Meeting adjourned at 8:19 p.m.

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*Ann Marie Donegan, Mayor*

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*Angela Mancini, Clerk of Council*