

Regular Council

February 28, 2008

Presiding Officer, Mayor Donald Kuchta called the February 28 regular meeting of Macedonia City Council to order at 7:33m.

Present: Council members' Shane Barker, David Engle, Kenneth Martin, Nicholas Molnar, Peggy Spraggins and Janet Tulley; Assistant Law Director Thomas Hanculak, and Council Clerk Josephine Arceci
Absent: None

PLEDGE OF ALLEGIANCE led by Council President David Engle was followed by an invocation by Councilor Tulley.

MINUTES None.

FINANCIAL REPORT Mrs. Tulley moved, Mr. Engle seconded, acknowledging receipt of the Financial Report dated January 31, 2008.

Roll call: Ayes: Barker, Engle, Martin, Molnar, Spraggins, Tulley
Nays: None
The motion carried

INTRODUCTION, READINGS & ADOPTION OF LEGISLATION

ORD. NO. 2-2008

Mrs. Tulley moved, Mr. Barker seconded for **ORD. NO. 2-2008: AN ORDINANCE PROVIDING FOR THE 2008 ANNUAL APPROPRIATIONS, AND DECLARING AN EMERGENCY to remain at its second reading.** (First reading, January 10, 2008)

Roll call: Ayes: Barker, Engle, Martin, Molnar, Spraggins, Tulley
Nays: None
The motion carried

ORD. NO. 12-2008

AN EMERGENCY ORDINANCE AMENDING CHAPTER 721 OF THE CODIFIED ORDINANCES OF THE CITY OF MACEDONIA REGARDING EXCESSIVE FALSE ALARMS was **offered** by Mr. Barker for its **second reading by title only.** Second not required.

ORD. NO. 13 -2008

AN ORDINANCE DETERMINING MEMBERS OF CITY COUNCIL ELIGIBLE TO PARTICIPATE IN THE CITY'S EMPLOYEE HEALTH CARE PLAN was **offered** by Mr. Martin for its **second reading by title only.** Second not required.

ORD. NO. 17 -2008

AN EMERGENCY ORDINANCE AMENDING CHAPTER 1129 OF THE CODIFIED ORDINANCES OF THE CITY OF MACEDONIA REGARDING SUBDIVISION REGULATIONS MANDATING PRELIMINARY APPROVAL OF BUILDING PLANS FOR HOMES OF THE DEVELOPER OR THE HOMEOWNERS ASSOCIATION ASSURING CONFORMANCE TO THAT SUBDIVISIONS' COVENANT AND DEED RESTRICTIONS was **offered** by Mr. Martin for its **first reading by title only.** Second not required.

RES. NO. 18-2008

A RESOLUTION DECLARING IT NECESSARY TO IMPROVE SOUTH FREEWAY DRIVE BETWEEN CERTAIN TERMINI BY GRADING, PAVING, CONSTRUCTING DRIVEWAY APRONS, REPLACING GUARDRAILS WHERE NECESSARY, REHABILITATING THE RELATED STORM SEWER SYSTEM BETWEEN CERTAIN TERMINI BY CONSTRUCTING STORM SEWERS, CATCH BASINS, MANHOLES, JUNCTION CHAMBERS AND A CONCRETE HEADWALL, AND ACQUIRING ANY NECESSARY REAL ESTATE AND INTERESTS THEREIN, ALL TOGETHER WITH TE NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY was **offered** by Mrs. Spraggins for its **first reading by title only.** Second not required.

Regarding RES. NO. 18-2008, Hanne Muri, representing the South Freeway Drive Property Owners Coalition expressed on behalf of the majority of owners of SFD property their willingness to be assessed for the improvement of S. Freeway Drive. It is in the property owners best interest Ms. Muri explained that the road be improved in financial cooperation with the City to keep existing businesses viable and as a way to encourage new business into long standing vacant buildings. Ms. Muri added that it has been increasingly more difficult to lease building space because of the deplorable road conditions. Ms. Muri, for the numerous property owners in attendance encouraged Council to acknowledge the necessity of improving S. Freeway and to pass appropriate legislation to that end.

Regular Council

February 28, 2008

Mayor Kuchta apologized for the condition of S. Freeway Drive and for the project having taken so long to get started. Progress has been made over the last five years the mayor said with regards to taking care of Macedonia's many road problems while at the same time paying down debt. Many roads have been neglected for far too long, S. Freeway Drive being one of the worst he added. The patience of the property owners has to be commended. The road is finally going to be improved with the cooperation of property owners who are willing to share the financial burden. The City's share of the approximately \$1.4M project is \$800,000 the mayor added.

Councilor Spraggins asked Mr. Tufts the time line with regards to the onset of construction to which Mr. Tufts answered that construction could begin the later part of 2008, depending if an Equalization Board has to be appointed or there are other statutory requirements that have to be met.

Councilor Tulley reminded Mrs. Spraggins that at the finance meeting of February 19 Mr. Tufts advised Council the procedural requirements relative to assessments and correlating time frame relative to those requirements. Mr. Tufts had mentioned at that time Mrs. Tulley stated, all things being equal and if there were no hurdles with regards to any of the formal requirements, bids could be let by late summer early fall with construction beginning shortly thereafter.

RES. NO. 19-2008

A RESOLUTION AUTHORIZING THE MAYOR TO FILE, ON BEHALF OF THE CITY OF MACEDONIA, AN APPLICATION TO THE SUMMIT/AKRON SOLID WASTE MANAGEMENT AUTHORITY ("THE AUTHORITY") FOR COMMUNITY RECYCLING GRANT was **offered** by Mr. Molnar and moved Council to waive the requirement that it be read by title on three different days, instructing the Clerk to read it by **title only for all three readings**. Second by Mr. Engle.

Roll call: Ayes: Barker, Engle, Martin, Molnar, Spraggins, Tulley
Nays: None
The motion carried

Mr. Molnar moved, Mr. Engle seconded, to **adopt RES. NO. 19-2008, as amended** and post same according to law.

Roll call: Ayes: Barker, Engle, Martin, Molnar, Spraggins, Tulley
Nays: None
The motion carried. **RES. NO. 19-2008, adopted.**

MOTIONS OR OTHER LEGISLATIVE ACTIONS: Regarding the following motion Mrs. Spraggins asked that the record show that she was the sole initiator and that Mr. Molnar's involvement was limited to Mrs. Spraggins seeking from Mr. Molnar the amount of his legal expenses relative to the 2007 November election.

Mrs. Spraggins moved, Mr. Engle seconded to reimburse Councilor Nick Molnar for legal expenses incurred to defend his candidacy during the November 7, 2007 election in the amount of Two Thousand Two Hundred Fifty Seven Dollars and Fifty Cents (\$2,257.50)

Roll call: Ayes: Engle, Spraggins
Nays: Barker, Martin, Tulley
Abstention: Molnar
The motion failed
(Abstentions count with majority side of issue pursuant to C.O. 121.02(r))

Relative to Mrs. Spraggins motion, Mr. Barker had stated that reimbursing campaign expenses was not a proper use of tax dollars.

Mrs. Spraggins had stated that the Mayor, without Council approval allowed tax dollars to be spent in the amount of almost \$5,000 to support former Council member Miller candidacy by trying to keep Mr. Molnar's name off the November ballot. Mr. Miller's issue Mrs. Spraggins stated was not the City's and had the administration not set this precedent by paying Mr. Miller's expenses she would not have requested that Mr. Molnar be reimbursed as well. However, since it happened it is now only fair she added that Mr. Molnar's expenses be covered.

Mr. Barker accused Mrs. Spraggins of mudding the waters as she always does with her inaccurate statements he said. Defending the Charter was the real and only issue. The residency requirement is in black and white, it's that simple. If laws are written down they need to be enforced, if not, why have them he stated.

Councilor Martin interjected that the Board of Election interpreted the Charter contrary to Mr. Barker's opinion. In this case Mr. Martin stated he concurred with the BOE.

Regular Council

February 28, 2008

Councilor Tulley reminded Mr. Martin that in actuality the BOE chose not to take any action. Macedonia became involved when the BOE requested Mr. Diemert's legal opinion relative to the residency requirement. As the city law director, Mr. Diemert's is obligated to interpret the Charter and defend it if necessary. Mrs. Tulley felt the City couldn't legally pay Mr. Molnar's personal expenses based on previous Council advice that public funds could not be used to pay for private matters. Mr. Molnar Mrs. Tulley added was as a private citizen at the time he chose to seek legal counsel and therefore was not entitled to reimbursement.

Mayor Kuchta questioned why Mrs. Spraggins continues to blame him for initiating the issue.

Law Director Hanculak interjected that contrary to Mrs. Spraggins' statement, Mr. Miller filed the objection with the BOE. To state otherwise he advised Mrs. Spraggins is false and misleading. As Mrs. Tulley had previously stated shortly after Mr. Miller's objection was filed, the BOE sought Mr. Diemert's opinion. Mr. Diemert opinion was and still is that the Charter had been violated. The law department not only researched the Charter and case law but past evidence of a similar situation that occurred within the City years ago. This was not the first residency challenge. As the City's law director Mr. Diemert did what he was entrusted to do, defend and uphold the Charter? Mr. Diemert did not represent either Mr. Miller or Mr. Molnar he represented the constitution of Macedonia Mr. Hanculak reiterated. Hypothetically Mr. Hanculak asked if Mr. Molnar had not won the election would there be a willingness to reimburse him his attorney's fees.

Councilor Martin asked Mr. Molnar if any member of the law department or anyone from the City contacted him prior to the election to which Mr. Molnar answered no. Mr. Martin also asked Mr. Molnar if any member of the law department spoke to him at anytime during hearing. Mr. Molnar answered that there was a brief conversation but it had nothing to do with any part of the hearing.

Councilor Tulley asked Mr. Martin the relevance of his questioning to which he answered he wanted to know if the law department attempted to settle the matter prior to the hearing.

Mr. Hanculak reminded Mr. Martin, who is also an attorney, of the probation of opposing counsel having contact with individuals involved in the case by stating, "Any dialogue as you know, Mr. Martin is limited to between representing counsels".

Mrs. Spraggins asked Mr. Hanculak if Mr. Miller filed his objection as a council member or as a private citizen to which Mr. Hanculak answered he does not know. Mrs. Spraggins must ask Mr. Miller that question. Mrs. Spraggins asked Mr. Hanculak why he did know since he represented him.

Mr. Hanculak, reminding Mrs. Spraggins in a firm voice, said the law department did not represent Mr. Miller. Mr. Miller did not contact the law department at any time. Mr. Hanculak questioned Mrs. Spraggins why she continues to misrepresent the facts. Mr. Diemert became involved Mr. Hanculak stated when the BOE contacted the law department after Mr. Miller filed his objection. To state otherwise he told Mrs. Spraggins is false and incorrect. Mr. Diemert did what he was paid to do as the City law director, respond and to defend Charter of the City of Macedonia.

Mrs. Spraggins asked Mr. Hanculak if the Board of Elections asked the law department to do research an appeal to which he answered he didn't know. "But", he answered, "I know you know because Mr. Diemert has talked to you until he's blue in the face.". Mr. Diemert's bill Mrs. Spraggins stated indicates research expenses relative to appealing the decision of the BOE. Who then authorized the research she asked, the BOE or the administration. Mrs. Spraggins asked Mayor Kuchta if he authorized the research to which he answered he has had nothing to do with any part of the issue.

Councilor Martin mentioned there were several aspects of issue that were very bothersome to him. The brief prepared by the law department gave very specific reasons why Mr. Molnar's name should not have been on the ballot. It was and perhaps should have been a Memorandum of Law in which both sides of the issue are given equal weight. Also many residents expressed to Mr. Martin their disappointment that the attempt was made to exclude Mr. Molnar's name from the ballot particularly since it was at taxpayer's expense. From the point of view of many residents Mr. Martin said, Mr. Miller used resources provided through his government position to challenge the issue. Mr. Martin compared Mr. Miller's challenge of Mr. Molnar residency to what occurred in Florida during the Albert Gore, George Bush campaign. Mr. Martin likened the situations in both because of what he described as having the "appearances of too much legalese and chicanery".

Mr. Hanculak responded to Mr. Martin's comments. The general public Mr. Hanculak said may not know the difference between an opinion and a Memorandum of Law, but as an attorney Mr. Martin should. An opinion Mr. Hanculak explained is a conclusion based on research of the facts and of the law, and in this case Macedonia's Charter. An opinion unlike a thesis or a Memorandum of Law does not provide both sides of an issue. Mr. Hanculak reminded Mr. Martin that the law department provided an

Regular Council

February 28, 2008

opinion at the request of the Board of Election. For the law department there was only one side, the defense of the Charter he said. Mr. Hanculak also reminded Mr. Martin that attorneys at law are held higher standards, ethical considerations and the mandates placed upon them by the Supreme Court. If Mr. Martin feels that there was "chicanery" or that Mr. Diemert lied during the November ballot issue then Mr. Martin should file his concerns with the Supreme Court. Mr. Hanculak told Mr. Martin that being the case Mr. Hanculak has no doubt that Mr. Diemert will successfully defend his reputation and his 35-year practice of private and public law.

Mr. Martin responded that he didn't mean to apply in anyway that Mr. Diemert had done anything wrong. In point of fact, Mr. Martin stated, the record shows that he voted not to reimburse Mr. Molnar's expenses

Mr. Hanculak asked Mr. Martin in the future would he support prosecution if the Charter were violated to which Martin answered yes. But regarding Mr. Molnar's case, Mr. Martin did not feel there was a violation.

CORRESPONDENCE: ~ Amy Johnson to Mayor Kuchta and Angela Gmerek and the staff of the Family Recreation Center commending how superbly a safety situation was held during a pool side mishap.

~Michele Grenig to Mayor Kuchta, Service Director Crevar and service department staff regarding the quality of Macedonia road conditions during the recent snow event.

PRESENTATION : A presentation by Mike McNutt, Watershed Coordinator of Tinkers Creek Watershed Partners included the explanation of watersheds, how they work and their importance in to the environment Information provided by Mr. McNutt about the Tinkers Creek Watershed Partners and the Tinkers Creek Tributary is on file in the office of the clerk of council.

PUBLIC COMMENTS:

Resident Gary Eisenbreg complained that noise continues to emanate from Conversion Resources. Mr. Eisenberg asked the status of legal action against Conversion to which Mayor Kuchta read aloud the settlement agreement.

MAYOR'S REPORT: Attached at end of this document.

COMMITTEE REPORTS :

Planning Commission Mr. Martin reported Cobra Plastics was approved. The company must resubmit redesigns for better landscaping and screening.

Finance Committee Mrs. Spraggins announced that a finance meeting will be held March 6 at 7pm.

Drainage and Sanitary Control Committee Mrs. Tulley reported that the DSCC are meeting March 7 at 7pm. This committee typically meets the first Wednesday of the month, more often if necessary. The DSCC are a hard working and dedicated group who have every intention of seeing Macedonia's worst water issues resolved. Mrs. Tulley mentioned that the Brandywine Watershed will be using Macedonia City Center as there meeting hub. Their next meeting is March 11 at 3:30pm in Council Caucus.

Northfield-Macedonia Cemetery Board Mrs. Tulley announced the Board's next meeting is Saturday, March 8 at 8:30m. Meetings are held at the cemetery in the sanctuary building turned office. Mrs. Tulley reminded her fellow council members that her appointment made in January to the Board is a 3-year term. If they are concerned that she'll be holding the position too long action should soon be taken.

Safety Committee Mr. Barker announced that a Safety meeting will be held at 6:30pm prior to the finance meeting on March 6. The purpose of the meeting is to discuss Ordinance No. 12-2008 relative to charging fees for excessive false alarms.

DEPARTMENT REPORTS

Service Department Mr. Crevar reported that during the last snow event crews worked for a period of 48-hours. Seven trucks at minimum were the roads at all times. GPS systems that monitor speed and location are now equipped on all trucks he said. Road salt during the event cost about \$31,500. Overtime costs have not be tabulated. Residents were reminded to secure their mailboxes. Information about the best way that can be done can be obtained on the City's website or by calling the service department. Mr. Crevar mentioned that 33 tons of cold patch has been used thus far this year at a cost of about \$76 per ton. The 2007 total recycling program net 144 tons, which is up by 46 tons from 2006.

Building Department Mr. Tufts was present. Mr. Tufts' report is attached at the end of this document.

Regular Council

February 28, 2008

Recreation Department Ms. Gmerek reported that the Family Recreation Center will have a booth at the Nordonia Hills Chamber of Commerce Business & Community Expo on March 15th from 9am until 5pm. The event, as in previous years, is being held at Nordonia High School. There will plenty of information on programs and memberships Ms. Gmerek said as well as plenty of staff on-hand to answers any questions. Ms. Gmerek thanked those who stopped at the Recreation Center booth at the Summer Camp Fair on February 9 that was sponsored by the Middle School PTSA. Ms. Gmerek announced that the average daily admittance for the month of February was over 600 per day. President's Day topped the month with 950 admissions. There were 2,802 daily passes sold this month. Also sold this month were 200 new memberships which bring the total active membership to 5,447.

Finance Department Mr. Brunot announced that representatives from R.I.T.A will be set up in the Community Room of the City Center on March 17 and 18 between the hours of 9am and 7pm to help residents prepare their local tax returns.

Fire Department In Chief Black's absence (attending training seminar) Captain Gagliardi reported that call volume as of today is up 36 compared to this time last year.

Police Department Chief Golden reported that Summit County Prosecutor Sherri Bevan-Walsh is advising of a con artist alert relative to the Department of Energy. Emails are emanating stating entitlement to refunds from the Department of Energy once personal information is provided.

Law Department Mr. Hanculak had no report.

Unfinished business: None

New business: Mrs. Tulley reminded residents to book pavilion use at Longwood Park early. She for one finds the pavilions convenient and economical and the best way to be covered and still enjoy the sights and sounds of Longwood Park. With regards to another matter, Mrs. Tulley congratulated three groups of Nordonia students who will be competing in state championships this year-two wrestlers, a gymnast and the bowling team.

There being no further business, the meeting was adjourned at 9:05pm

Mayor's Report
February 28, 2008

I have to start by complimenting our Service Department on a job well done. I have received so many compliments on the condition of our streets compared to our neighboring communities. Great job Guy's! We need more cooperation from those residents that park on the street. There were many instances where cars were left on the street. We were warned well in advance that this storm was coming so there should have been no cars left to make the job tougher, or even to risk the possible damage to your vehicle from a plow. Macedonia will ticket you. We did not this time, but this is a law you need to follow. Also, this was a very heavy snow.

First Energy filed a proposal with the Public Utilities Commission of Ohio (PUCO) to raise customer rates for electric distribution service which applies to the wires and equipment that deliver electricity to your home. The office of the Ohio Consumers' Counsel (OCC), Ohio's residential utility consumer advocate, provided extensive testimony in the case opposing First Energy's proposal and believes that the proposed rate increase is unreasonable.

First Energy proposed a \$340 million annual revenue increase, including an increase of \$109 million for Cleveland Electric Illuminating, \$161 million for Ohio Edison and \$71 million for Toledo Edison. Based on the work of accountants, economists and other experts working for the OCC, the rate increases proposed for First Energy should be reduced by millions of dollars.

The PUCO scheduled a series of public hearing on this issue. OCC strongly encourages consumers in First Energy's Ohio service territory to attend these public hearings and voice their concerns. Public hearings provide the best forum for consumers to have their views taken into consideration both by company representatives and by decision makers at the PUCO. The testimony from the hearings will become part of the official case record. First Energy customers can attend any of the following scheduled public hearings: The hearing will be Wednesday March 5, 2008 at 1:30pm at the Oliver R. Ocasek Government Center, First Floor Auditorium, 161 South High Street, Akron, Ohio

On February 12, 2008, I was invited to take part in the "Community Connections" hosted by the Nordonia Hills School District. These types of meetings provide us with a chance to talk about many of the issues affecting the quality of education our students are receiving and the development of education policy

Regular Council

February 28, 2008

which is a concern for all of the communities. I thank Superintendent Wayne Blankenship and his administrative staff for inviting me to such a worthwhile forum. Don't forget to vote on Tuesday March 4th.

CITY OF MACEDONIA

Building/Engineering/Zoning Department

(330) 468-8360 Fax: (330) 468-8396

MEMORANDUM

TO: Josephine Arceci, Clerk of Council I ;

FROM: Fred Tufts, P. E., City Engineer

Major Infrastructure Projects:

1. **SR 82 Widening, Phase 2:** The Fiber optic relocation work within the Norfolk Southern right-of-way continues. The contract remains on schedule for letting March 5,2008. Currently 22 prime contractors and 46 sub-contractors have taken out bid packages.
2. **South Freeway Drive:** Moving forward on this important project requires a decision on the funding parameters. If the project is to be partially financed through assessments, the process requires a Council resolution of necessity, which has been prepared and distributed.
3. **North Freeway Drive:** We are working with Dominion East Ohio to set a meeting with their contractor regarding the destruction of sub base drainage for the roadway and the lack of site restoration.
4. **Shepard Road Sanitary Sewers, Phase 2:** The design documents are well along and should be complete sometime this spring. I am currently reviewing the latest submittal.

General

I am in receipt of a proposal from an architect with Building Official certification for a fee not to exceed \$30,000.00 to prepare documents to restore the Manor House; this fee would include associated cost estimates.
Cc: Mayor Don Kuchta FNT/mtm