

November 20

2008

Ontario City Council met in regular session on November 20, 2008 in the City Offices, with Council President Dave Metzger presiding. The meeting opened at 7:21 p.m. with the Pledge of Allegiance.

The following persons were in attendance when roll was called: Council members Dan Zeiter, Mark Weidemyre, Leon Blackwell, Barry Lewis, Paul Williams, Charlotte Hellinger and Joseph W. Cinadr; Mr. Metzger; Mayor Kenneth Bender; Law Director Rebecca Thomas; Service/Safety Director Charles Au; and Clerk of Council Cathy VanAuker. A number of interested citizens were present in the audience.

The minutes of the regular Council meeting of November 6, 2008 were presented for approval. Mr. Williams made a motion to approve the minutes and Mr. Blackwell seconded the motion. At roll call, five members voted Aye, zero Nay, two Abstain by Mrs. Hellinger and Mr. Cinadr and the motion to approve the minutes passed.

PUBLIC COMMENTARY

Sue Martin, 3616 N. Mary Lou Lane, stood before Council to say: I didn't intend to talk tonight but something was said during Caucus, so I have to address that. Rebecca Thomas, I want to know what procedure was not followed by the Charter Commission the last time.

Mrs. Thomas replied: There were a lot of things that could have been handled differently with the legal counsel that was there at that time. There are a lot of other ways to have gotten to a charter than what was handled the last time. I think it was rushed a little bit, that's my opinion, it may not have been. There's a procedure the consulting firm is going to be going through with the Charter Commission.

Mrs. Martin continued: When you addressed Dan, you specifically said there was a procedure that wasn't followed and that's why we need money. The Charter Commission is volunteer, we didn't get paid one cent, we had legal counsel and now you are going to say it failed because we didn't follow procedure. One thing that helped make it fail was our Mayor who is sitting here because he put a daisy sign in his yard that said don't vote for it. Mrs. Thomas made a statement that procedure wasn't followed and that's why it failed. I take offense to that and I don't think that's a good reason why you should tell him there needs to be a budget. I think it's wrong when you make statements like that, that can't be followed with fact. Never once did you come into that meeting and tell us we aren't following procedure. We were never told that.

Mrs. Thomas commented that had to do with the legal counsel they had the last time. She dealt with him.

Larry Collins, 130 Hazel Drive, was next to come before Council to say: I was at the last Council meeting on November 6th and I noted at the end of the regular Council meeting that you ended the regular meeting and went into another meeting. I was told by a member of the news media that they thought you were going into a mediation meeting and not executive session. In light of the agenda item for tonight's Council meeting I would like to ask some questions.

1. Was the mediation meeting about Chief Tim McClaran?
2. Did you vote in that meeting? My understanding was that you could meet in private about personnel issues, but you must vote in public.
3. Did you have a quorum to vote? When Council was over, there were only five members of Council present, plus the President, and it is my understanding that you need six members present to make a quorum.
4. How did you get the sixth member to make a quorum?
5. Is tonight's vote the result of that mediation meeting on November 6th.

It is further my understanding that the mediation was initially brought into being for the sole purpose of attempting to resolve the \$75,000 law suit brought by Chief Tim McClaran against the City for age discrimination and breach of contract.

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According to the Council minutes of October 2, 2008, Councilman Barry Lewis asked several questions about the situation with two police chiefs and about the current litigation and the Law Director responded, and I quote, "The pending federal case is going to be a global resolution of this situation." My question is: How can a mediation over \$75,000 be turned into a global resolution when it was not brought into being for that purpose?

The News Journal reported front page news on Friday, August 8, "Ontario must reinstate police chief". This followed a ruling by the Ohio Supreme Court on August 7, 2008 ordering the reinstatement of Chief McClaran. The News Journal reported front page on Friday, August 15, 2008, "Ontario won't fight police chief's return". It appears to me that Chief McClaran's return has been fought on every battlefield to keep him from returning.

It is my understanding that it has been told by a member of the Administration as early as September 4, 2008, that Chief McClaran would not be returning as Chief, they said, "I guarantee it".

As we all know the issue surrounding Chief McClaran began with the Safety Service Director asking Chief McClaran to retire soon after the Administration took office. In response to the issue of the Chief, former Mayor Tom Durbin wrote an article in the Tribune Courier that appeared June 22, 2006. His article highly praised the Chief for an excellent job.

In closing I would simply say, and ask, after almost three years, I have heard no charges against Chief Tim McClaran. I would urge you as you consider the possible final disposition of this matter tonight, that you search your hearts and ask yourself the question: Are we doing what the City wants or are we doing what some people want? And, secondly, are we concerned about Chief McClaran, his family and his career of thirty-one faithful years of serving and protecting this community. I urge you, members of Council, to weigh the matter, do what is right and vote your conscience. Thank you.

In response to Mr. Collins' questions, Mrs. Thomas instructed Council not to make any comments. They can not discuss anything that happened in mediation, ever. By law, mediation is always closed. Mrs. Thomas clarified that a quorum is four members.

Next to come forward was Attorney Jeffrey Heck, 1 Marion Avenue, Suite 104, representing the Scott Family Trust. The Trust owns approximately a 20 acre parcel of property, lying between Ferguson Road on the south and U.S. Rt. 30 on the north. It is bounded on the east side by vacant property currently but also includes the old park land with the swimming pool and ball fields, and to the west primarily by some apartment complexes and a new apartment complex that's already been approved by this spot.

I'm here this evening to address a matter that may well be before you this evening by virtue of a motion by one of you to amend the zoning of this particular piece of property owned by the Scott Family Trust. It is currently zoned R-3. Perhaps stated differently, the motion may come as a request to send this particular zoning matter back to the Planning Commission for consideration of a zoning change. On behalf of the Scott Family Trust, the owners of the property involved, I am urging you tonight to not pursue this matter further and not pursue this course. My client does not wish to and does not seek a rezone of its own property. This request instead seems to be, as the result of the activity of some individuals who reside in the general area, but not immediately contiguous to this parcel. In fact, for many of those residents, those individuals live already where an apartment complex, an R-3 development, already lies between my client's property which is presently zoned R-3 and their residences. My client's property has been zoned R-3 for many, many years, in fact, decades, and previously we believe, was actually zoned multi-family which is no longer a designation under the code, your code, but is very similar to the current R-3. The point is, the zoning for this property is as it has been for many, many years, as has the surrounding area. It is surrounded, in fact, on all sides presently by R-3 property, except for one undeveloped lot at the small corner of it which is R-2. Ladies and gentlemen, there is no legal basis, there is no legitimate reason, and there is no factual basis to change the zoning of that property at this time. In fact, any such zoning change would be, because of the facts and the circumstances would be arbitrary or be capricious and, in

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fact, would be unconstitutional. It would essentially constitute spot zoning and indeed it would do nothing but injure the party, the Scott Family Trust, that owns that property when others have already been in that exact region and immediately contiguous to that property had an opportunity to take advantage of R-3 zoning already and are using much of this contiguous property on at least two sides in that fashion, with again, as I say, another development already approved by this body to go into immediately contiguous to that property, again R-3. To alter it now without a lawful basis in law and in fact would violate my client's clear property right. I do not mean any disrespect tonight as I stand here before you to any individual on Council or Council as a whole. But, if this matter is pursued, and ultimately if it is passed, I will be in no position other than to protect my client's legal rights to the fullest extent that I must. My hope is that that's not necessary. It's not what my clients are looking for and it's not what my clients want. I recognize tonight that if Council considered that motion, such a motion tonight, the effect would in fact be simply to send to Planning Commission for consideration and a recommendation to you at another time. However, because there are no lawful basis for such a change, I'm urging you to not let the train go down the track, don't let it leave the station, when it's not going to get to a lawful, legal appropriate destination anyway. Stop that process now, and I urge you to use your discretion and your wisdom this evening in considering such a motion if one is made to eliminate a potential problem before it gets started.

COMMITTEE REPORTS

Mr. Blackwell reported on the Personnel Committee meeting held at 5:30 p.m. One item discussed during the meeting, the designation of a Deputy Auditor, is on this evening's agenda. Additional discussion surrounded the bonding amounts for City employees and health insurance for Council members. Legislation will be prepared and then presented to Council at an upcoming meeting. A Personnel meeting is scheduled for December 12, 2008, at 4:15 p.m.

Mr. Zeiter, Mr. Weidemyre, Mr. Lewis, Mr. Williams, Mrs. Hellinger and Mr. Cinadr had no report this evening.

MAYOR'S REPORT

Mayor Bender had no report.

SERVICE/SAFETY DIRECTOR'S REPORT

Mr. Au had no report.

LAW DIRECTOR'S REPORT

Mrs. Thomas announced the Charter Commission will be sworn in on December 18, 2008 during the Council meeting. She will send a letter to all members with this information as well as the date and time of the first meeting.

MISCELLANEOUS MATTERS

Mr. Metzger reminded everyone of the time change for the next Council meeting. The Ontario Show Choir will sing prior to the annual Christmas Tree lighting at 6:15 p.m. and pictures with Santa at 6:30 p.m. Caucus will begin at 7:15 p.m. with Council at 8:00 p.m.

Joseph Paonessa, President of the Ohio Vietnam Veterans' Memorial Park, provided a video presentation showing the progress of the only state memorial park for fallen soldiers from Vietnam, which is currently being constructed in Clinton, Ohio

Mr. Metzger read three Notices of Public Hearings scheduled for January 8, 2009 for the following:

1. Request by Heidi Thew to rezone the following property located on the south side of Lexington Springmill from R-1 Low Density Residential district to OS Office Service District.
Permanent Parcel 038-60-257-04-000 and 038-60-257-05-000.
2. Request by Steve Sheldon to rezone the following property located on the south side of Lexington Springmill from R-1 Low Density Residential District to OS Office Service District.
Permanent Parcel 038-60-222-04-000, 038-60-191-08-000, 038-60-191-09-000 and 038-60-191-10-000.
3. Request by Larry Merwine and Ontario Planning Commission to rezone the following property located on the south side of Lexington Springmill from R-1 Low Density Residential District to OS Office Service District
Permanent Parcel 038-60-187-12-000 & 038-60-187-13-000 owned by Larry Merwine.
Permanent Parcel 038-60-187-160-000 owned by Darryl McGinty.
Permanent Parcel 038-60-187-17-000 owned by Carolyn Caudill.
Permanent Parcel 038-60-199-08-000 owned by William and Candy Hamilton.
Permanent Parcel 038-60-279-11-000 owned by Arvin and Mary Stewart.
Permanent Parcel 038-60-286-01-000 owned by Joyce Steiner.

Mr. Weidemyre said he is representing the people of the 3rd Ward and has been asked to make a motion. Mr. Weidemyre made a motion for the Planning Commission to make recommendation to Council concerning the rezoning of 20.15 acres at 2248 Ferguson Road, Parcel 038-60-170-05-000. In addition, he would like Planning Commission to consider rezoning 2200 Ferguson Road, Kent Sayers' property, as well as 2246 and 2246 ½ Ferguson Road, which is Stowell Park. This tract is currently zoned R-3 and the request is for R-2. Mr. Lewis seconded the motion. Seven members voted Aye, zero Nay, and the motion passed.

Mr. Weidemyre made a motion to consider a rezone on Parcel 038-60-169-12-000, 20.67 acres and Parcel 038-60-169-13-000, 63.709 acres, known as Eva Jean Schluter property, from R-2 to R-1. Mr. Lewis seconded the motion. This property is the fields located on the north and south side of Ferguson Road. Six members voted Aye, zero Nay, one Abstain by Mrs. Hellinger, and the motion passed.

CONSIDERATION OF ORDINANCES AND RESOLUTIONS

RESOLUTION NO. 08-20

(SECOND READING) A RESOLUTION AUTHORIZING THE SERVICE/SAFETY DIRECTOR TO ENTER INTO CONTRACT WITH FRIENDS BUSINESS SOURCE FOR THE PURCHASE OF OFFICE SUPPLIES.

Mr. Williams made a motion to suspend the rules requiring the reading of Resolution No. 08-20 on three separate days. Mr. Cinadr seconded the motion. Seven members cast their votes Aye, zero Nay, and the motion to suspend the rules passed. Mr. Zeiter read Resolution No. 08-20 for the second time, by title only.

Mr. Williams made a motion to adopt Resolution No. 08-20. Mrs. Hellinger seconded the motion. Seven members cast their votes Aye, zero Nay, and Resolution No. 08-20 was adopted.

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ORDINANCE NO. 08-44

(SECOND READING) AN ORDINANCE ESTABLISHING TEMPORARY APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF ONTARIO, OHIO FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2009 AND EXPIRING DECEMBER 31, 2009.

Mr. Blackwell made a motion to suspend the rules requiring the reading of Ordinance No. 08-44 on three separate days. Mr. Williams seconded the motion. Six members cast their votes Aye, one Nay by Mr. Zeiter, and the motion to suspend the rules passed. Mr. Weidemyre read Ordinance No. 08-44 for the second time, by title only.

Mr. Williams made a motion to adopt Ordinance No. 08-44. Mr. Cinadr seconded the motion. Six members cast their votes Aye, one Nay by Mr. Zeiter, and Ordinance No. 08-44 was adopted.

ORDINANCE NO. 08-45

(SECOND READING) AN ORDINANCE AMENDING ORDINANCE 08-11 KNOWN AS THE PERMANENT APPROPRIATION ORDINANCE, FOR 2008 BY MAKING ADDITIONAL APPROPRIATIONS TO THE GENERAL FUND.

Mr. Williams made a motion to suspend the rules requiring the reading of Ordinance No. 08-45 on three separate days. Mr. Blackwell seconded the motion. Five members cast their votes Aye, two Nay votes by Mr. Zeiter and Mr. Weidemyre, and the motion to suspend the rules failed. Mr. Blackwell read Ordinance No. 08-45 for the second time, by title only.

ORDINANCE NO. 08-46

(SECOND READING) AN ORDINANCE AMENDING SECTION 12.1(2) OF ORDINANCE 97-60, AND 04-38, 04-55, 05-08 AND 08-20 TO ALLOCATE THE BALANCE OF INCOME TAX FUNDS AVAILABLE TO BE DISBURSED.

Mr. Williams made a motion to suspend the rules requiring the reading of Ordinance No. 08-46 on three separate days. Mrs. Hellinger seconded the motion. Six members cast their votes Aye, one Nay by Mr. Zeiter and the motion to suspend the rules passed.

Mr. Blackwell made a motion to amend Ordinance No. 08-46, Section 1, to disburse 100% to the General Fund. Mr. Cinadr seconded the motion. Six members cast their votes Aye, one Nay by Mr. Zeiter. Mr. Lewis read Ordinance No. 08-46, by title only.

Mr. Williams made a motion to adopt Ordinance No. 08-46. Mr. Cinadr seconded the motion. Six members cast their votes Aye, one Nay by Mr. Zeiter, and Ordinance No. 08-46 was adopted.

ORDINANCE NO. 08-47

(SECOND READING) AN ORDINANCE AMENDING ORDINANCE 08-11 KNOWN AS THE PERMANENT APPROPRIATION ORDINANCE, FOR 2008 BY MAKING ADDITIONAL APPROPRIATIONS TO THE GENERAL FUND.

Mr. Williams made a motion to suspend the rules requiring the reading of Ordinance No. 08-47 on three separate days. Mr. Blackwell seconded the motion. Seven members cast their votes Aye, zero Nay, and the motion to suspend the rules passed. Mr. Williams read Ordinance No. 08-47 for the second time, by title only.

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Mr. Williams made a motion to adopt Ordinance No. 08-47. Mr. Cinadr seconded the motion. Seven members cast their votes Aye, zero Nay, and Ordinance No. 08-47 was adopted.

RESOLUTION NO. 08-21

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT OF SETTLEMENT AND RELEASE WITH TIMOTHY MCCLARAN AS AMENDED.

Mr. Williams made a motion to suspend the rules requiring the reading of Resolution No. 08-21 on three separate days. Mr. Blackwell seconded the motion. Six members cast their votes Aye, one Nay by Mr. Zeiter, and the motion to suspend the rules passed.

Mr. Weidemyre made a motion to amend Resolution No. 08-21 to read: Whereas, on the advice of legal counsel and at the request of the Administration of the City of Ontario, the Ontario City Council agrees to settle and release by agreement with Timothy McClaran. Mr. Williams seconded the motion. Seven members cast their votes Aye, zero Nay, and the motion passed.

Mr. Weidemyre explained to the public that due to time restrictions this resolution can not be read three times and must be resolved right away. Mrs. Hellinger read Resolution No. 08-21 for the first time, by title only.

Mrs. Hellinger made a motion to adopt Resolution No. 08-21. Mr. Williams seconded the motion. Six members cast their votes Aye, one Nay by Mr. Zeiter, and Resolution No. 08-21 was adopted.

ORDINANCE NO. 08-48

AN ORDINANCE AUTHORIZING THE AUDITOR TO APPOINT A DEPUTY.

Mr. Cinadr made a motion to suspend the rules requiring the reading of Ordinance No. 08-48 on three separate days. Mr. Lewis seconded the motion. Seven members cast their votes Aye, zero Nay, and the motion to suspend the rules passed. Mr. Cinadr read Ordinance No. 08-48 for the first time, by title only.

Mr. Cinadr made a motion to adopt Ordinance No. 08-48. Mr. Weidemyre seconded the motion. Seven members cast their votes Aye, zero Nay, and Ordinance No. 08-48 was adopted.

ORDINANCE NO. 08-50

AN ORDINANCE LEVYING A SPECIAL ASSESSMENT FOR THE DEMOLITION OF THE STRUCTURE UPON PROPERTY LOCATED AT 3750 WEST FOURTH STREET WITH PERMANENT PARCEL NUMBER 038-60-171-17-000.

Mr. Williams made a motion to suspend the rules requiring the reading of Ordinance No. 08-50 on three separate days. Mr. Cinadr seconded the motion. Six members cast their votes Aye, one Nay by Mr. Zeiter, and the motion to suspend the rules passed. Mr. Zeiter read Ordinance No. 08-50 for the first time, by title only.

Mr. Blackwell made a motion to adopt Ordinance No. 08-50. Mr. Williams seconded the motion. Six members cast their votes Aye, one Nay by Mr. Zeiter, and Ordinance No. 08-50 was adopted.

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ORDINANCE NO. 08-51

AN ORDINANCE AMENDING ORDINANCE 08-44 KNOWN AS THE TEMPORARY APPROPRIATION ORDINANCE FOR 2009 BY MAKING ADDITIONAL APPROPRIATIONS TO THE GENERAL FUND.

Mr. Weidemyre made a motion to return Ordinance No. 08-51 to the Finance Committee. Mr. Williams seconded the motion. Seven members cast their votes Aye, zero Nay, and the motion passed.

ORDINANCE NO. 08-52

AN ORDINANCE AMENDING ORDINANCE 08-11 KNOWN AS THE PERMANENT APPROPRIATION ORDINANCE FOR 2008 BY MAKING ADDITIONAL APPROPRIATIONS TO THE GENERAL FUND.

Mr. Williams made a motion to suspend the rules requiring the reading of Ordinance No. 08-52 on three separate days. Mr. Blackwell seconded the motion. Six members cast their votes Aye, one Nay by Mr. Zeiter, and the motion to suspend the rules passed. Mr. Blackwell read Ordinance No. 08-52 for the first time, by title only.

Mr. Blackwell made a motion to adopt Ordinance No. 08-52. Mr. Williams seconded the motion. Mr. Zeiter commented that during this process he was amazed at how easy it was for some people to give away money that wasn't theirs and questioned fellow Councilmen if this money was coming out of their own pockets would they be as willing to give it away. Six members cast their votes Aye, one Nay by Mr. Zeiter, and Ordinance No. 08-52 was adopted.

At 8:12 p.m., there being no further business to come before the meeting, the same was adjourned upon a motion by Mr. Williams and a second by Mr. Cinadr. At roll call, seven members voted Aye, zero Nay, and the motion to adjourn passed.

 President of Council

 Clerk of Council