

Regular

November 5,

2015

Ontario City Council met in regular session on November 5, 2015, in the City Offices, with Council President Larry Collins presiding. The meeting opened at 7:00 p.m. with the Pledge of Allegiance.

The following persons were in attendance when roll was called: Council members Ken Earhart, Larry Arnold, Eddie Gallo, Jim Hairston, Mark Weidemyre, Pamela Dykes, Mayor Randy Hutchinson, Law Director Andrew Medwid, Service-Safety Director Jeff Wilson, Chief Rodney Smith, Auditor Mary Ann Hellinger, and Clerk of Council Cathy VanAuker.

Mrs. Dykes moved to excuse Mrs. Webb from this evening's meeting. Mr. Arnold seconded the motion. Six members cast their votes Aye, zero Nay, and the motion passed.

The minutes of the regular Council meeting of October 15, 2015 were presented for approval. Mr. Weidemyre moved to approve the minutes with a second by Mrs. Dykes. Six members cast their votes Aye, zero Nay, and the motion passed.

Dan DeVille, Area Manager for First Energy Corporation assigned to the Ohio Edison Operating Company, came forward to provide awareness to the many scam activities occurring to their utility customers. Several modules were built on their website to educate consumers so they won't become a victim.

- Elderly customers are a highly targeted group.
- Scams can occur after storms when imposters make homeowners think they can prevent their power from going out. Another scenario is contacting customers at home and implying they haven't paid their bills.
- The scam modules can be seen on the First Energy website at www.firstenergycorp.com then search under scam or fraud.

The next item on the agenda was a panel discussion pertaining to the former GM property. Mr. Collins introduced the following guests from Revitalizing Auto Communities Environmental Response (RACER) Trust, the Environmental Protection Agency (EPA), and the Adler Group, developer:

Carl Rhodes, Tetra Tech Certified Professional
 Patricia Spitzley, RACER Trust Deputy Redevelopment Manager
 Pamela Barnett, RACER Trust Cleanup Manager for Ohio
 Bruce Rasher, RACER Trust Redevelopment Manager
 Archie Lunsey, EPA Ohio Area Manager
 Dina Pierce EPA Media Relations
 Jose Martinez, Adler Group Head Project Manager

The purpose of the panel discussion was to achieve clarity not only in the timeline but also with the issues surrounding the redevelopment of the GM property.

Mr. Rasher opened the discussion.

- Mr. Rasher said the mission of RACER Trust was to help communities that were hurt by the GM bankruptcy. They require buyers to make certain promises and representations in the contract as to the redevelopment plan, how much they plan to invest in building renovation or construction of new buildings, and the timetable for the jobs that will be created. Buyers are required to engage directly with the community and negotiate separately with the community on the development agreement stipulating those same promises to the community and that agreement is a condition of closing.
- RACER was approached by Brownfield Community Development Company with a proposal to acquire the plant, demolish no more than 40% of the plant and to create 1,100 jobs with two tenants. The tenants were identified in the offer. Letters of intent accompanied the offer between the tenants and Brownfield.
- The buyer never represented to RACER that a No Further Action Letter or any particular environmental status for the property was necessary as a condition for them to purchase the property or necessary as a condition to undertake development.

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- RACER was surprised to learn a few years later that a No Further Action letter was an impediment to the buyer carrying out their promises. The property was ready for redevelopment, they sold it and is ready for redevelopment today. The outstanding environmental issues represent a very small percentage of the property.

Mr. Lunsey commented:

- The Voluntary Action Program is the State of Ohio's Brownfield Program. RACER Trust is the volunteer and is allowed to move through the investigation/remediation without communication with Ohio EPA. RACER did establish a technical assistance mechanism where they communicated while going through certain aspects of the investigation.
- RACER went further and entered a particular track of the Voluntary Action Program referred to as the Memorandum Agreement Track, allowing the community to have the opportunity to comment on the mediation prior to implementation. Several weeks ago the city was notified through public notice RACER intended to do a soil excavation. There was a thirty day public notice comment period but during that comment period Ohio EPA received no comments from the community. At that point, the EPA approved RACER's request to implement that work. The work began and they are starting to close out that work which is almost completed.
- RACER will take all the data they have gathered and put it into a No Further Action (NFA) letter and submit it to the Director of Ohio EPA. With that request RACER could ask for a Covenant Not to Sue which is a release of liability for any environmental conditions so the lease can be transferred to subsequent property owners.
- The EPA is waiting for a No Further Action letter from RACER Trust. The Director will review the information and make a decision on accuracy. Once that is done a Covenant Not to Sue could be issued.

Mr. Martinez stated.

- A clean environmental is needed to market the property.
- A master plan has been created for the site that indicates the location of the roads and buildings. They know how they are going to use the pits and how they are going to fill the pits. Money was spent testing the slab area because they cannot reuse the slab.

The panel responded to questions from Council.

- Mr. Lunsey said nothing precluded any entity or individual from redeveloping the site which was under the Voluntary Option Program.
- Mr. Rasher said the demolition of a site creates challenges for a developer that are unrelated to environmental remediation, No Further Action letters or Covenants Not to Sue. The buyer may have some issues in connection with demolition but it doesn't have anything to do with the environmental status being an impediment to getting loans or securing tenants. The buyer will never be held responsible for what RACER is responsible for, which provides significant protection to the buyers, lenders and tenants.
- Mr. Lunsey said a purchaser of the property could be held responsible for any required environmental clean-up.
 - After RACER sold the property the buyer did some underground construction activity which required the process to be restarted.
 - A No Further Action letter or a Covenant Not to Sue is not necessary for an investment to be made, jobs created or lending to occur. It is not an impediment to the redevelopment of the site.

Richland Bank President Jeff Partin came forward to respond to the question if commercial loans would be availability on this property. Mr. Partin said they would not pursue a commercial loan opportunity without a clean bill of health on the real estate. There are other ways to finance property by holding other security. If there are remediation or contamination issues to correct, that are real estate secure, they like to see the No Further Action letter.

- Mr. Rasher said not every financial institution will lend against collateral when there is environmental contamination. He encouraged not relying on just one institution.
- Mr. Martinez said Adler is not finding the jobs, they are finding companies to bring in to develop on the property. The tenants are going to the bank for loans and Adler would not give indemnities on loans.

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Discussion continued.

- RACER adopted a redevelopment approach for the community to control their own destiny which is why they insist the buyer engages with the community and execute a development agreement. Contractually, RACER's obligations are completed at closing but they have worked with many buyers after closing on areas such as infrastructure.
- Ms. Barnett said the active field remaining issue that was required has just been completed. They worked very closely with the EPA. The No Further Action package should be completed by the end of this year.
- Mr. Lunsey said if they received the No Further Action letter by the end of this year the objective of the EPA would be to expedite the review. If discrepancies are found during the review the review time stops. The discrepancies would be noted in a letter to RACER and the Certified Professional, then upon correction, the EPA would have another opportunity for review. If satisfied, the review process would continue. Pending no discrepancies the Covenant Not to Sue should be issued to the Volunteer in 15 business days.
- In the Settlement Agreement RACER is required to consider six criteria when selecting a buyer. One item is the ability of the buyer to perform. The buyer is to make numerous representations to RACER as to their ability to finance a project and have access to capital.
- Mr. Martinez said the tenants they are talking to can't take the site as is. Most warehousing and distribution tenants can't use the slab. The slab and parking areas need reworked and the utilities relocated. There were tenants who were taking the buildings but now they are working with tenants who need new facilities.
- Mr. Martinez stated Adler did testing under the slab, at their expense, and sent the information to RACER. The berm along the eastern boundary of the property is the most commercial and nicest area as well as the northern boundary along W. 4th Street. Adler would like to crush the slab and put it in the pit to become a truck port and staging area. The boundary L-shape property would become the commercial/retail/office/professional buildings. A 15' buffer behind this area would hide the industrial park that would use the pits to create the truck yard for distribution centers. The balance of the site to the west would become a road for industrial access. Mr. Martinez offered to share the plans with anyone who was interested. This site must look developer ready. The berm blocks the visibility of the site so this would be the side to start the improvements.
 - Adler did not want to begin demolishing the slabs because they would have to assume all liability and they did not want to take that risk so they are waiting on the No Further Action letter which gives them permission to move forward.
- Mr. Rasher said RACER is not a liable party but a responsible party required to carry out what the court ordered them to do. They have certain obligations and was given funding which was administered under the oversight of the agency regardless of what the buyers do. The agreement with any of their buyers stipulates if the buyer undertakes activity which may affect RACER's mission the buyer is required to contact them.
- When Mr. Gallo asked how much of the \$2,299,952 funding was spent on this property, Ms. Spitzley responded approximately a third but no less than a quarter of the funding was spent. The remaining funding for the environmental actions at this site would go into a general cushion account fund to use first at other Ohio sites then any other sites. Environmental funds are very specific as to how funds can be spent and it must be on environmental actions.
- Mayor Hutchinson said there is a potential buyer for seven acres at this site. Would they have to have it environmentally cleared? Mr. Rasher responded they would be required to environmentally investigate or remediate the facility as necessary to at least an industrial standard but commercial has also been included. If a portion is sold the obligation would still be covered under the NFA letter and would need to meet those standards.
 - Ms. Spitzley said their agreements with purchasers states the activities they undertake cannot cause RACER to spend more money than what normally would be spent. Since they are so close to having a Covenant Not to Sue issued that it would not be a problem if it occurred after the CNS, parceling is allowed. If it happens before that and they want to have their own Covenant Not to Sue the buyer would have to go through the process again.

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- Mayor Hutchinson said the interested buyer of seven acres, which would bring in forty jobs, would have to hire their own Certified Professional and go through a costly process which really means they can't sell.
- Mr. Lunsey agreed the buyer would be responsible but the complicating factor is RACER Trust's obligations as the result of the bankruptcy. The more the parcel is subdivided the more parties that need to enter into the agreements.
- In response to Mr. Arnold's question when RACER Trust would complete their obligations, Ms. Spitzley specified their timeline. The field activities have been completed, now they take those field activities with all the data and package them into the No Further Action letter which will be submitted to the Ohio EPA by the end of this year, if not sooner.
 - Mr. Lunsey said the statute allows 90 days to evaluate and respond but in this instance because the EPA has been actively working through each issue they are familiar with the site which should result in an expeditious review.
 - Mr. Martinez said once the No Further Action letter is provided then money will need to start flowing. If they don't have any tenants then they are just making an investment.
 - Adler would like to procure local contractors to do the grading work which will be a substantial amount of work.
 - Mr. Martinez said he has not seen as much marketing activity as he would like from the Jones Lang LaSalle Marketing firm in Cleveland so they are going to try to do a better marketing effort.
- Mrs. Dykes thanked Mr. Lunsey for answering all of their questions and to the panel for clarifying the city's questions pertaining to the slab and the on-going process. She stated Ontario is a small community and relies on the professionals they deal with and didn't expect to have to meet over performance based activities. She asked that when the city makes a phone call to them they don't go three months without responding, that is not acceptable. This county has lost ten major manufacturers and General Motors was the last major one. This county has suffered tremendously, it needs to grow and we've lost several potential tenants while trying to grow the community. Hopefully someone will step up. Mrs. Dykes thanked Mr. Lunsey for being the catalyst requiring the others to provide answers. As professionals we deserve that. Thank you for being here.

COMMITTEE REPORTS

Mr. Hairston reported the Finance Committee met prior to Caucus to discuss the 2016 temporary appropriations. Although there are a few issues to resolve in the Enterprise Funds the ordinance will be added to this evening's agenda for the first reading.

Mr. Weidemyre reported on the recent Streets Committee meeting.

- The city has an ordinance requiring sidewalks in front of residences and businesses to be cleared of snow. Reminder notices will be posted on Facebook and on the city website.
- The Westmoreland Company, which built the FedEx property, requested the city pay their expenses incurred while waiting on electric services and to replat to their specifications. The city determined these issues had nothing to do with the city. The property was ready for electric service as promised so they would need to contact Ohio Edison.
- Council members were asked to submit streets in their Wards that are in need of paving so a list can be prepared for the 2016 paving program. \$460,000 was budgeted for next year's paving projects.

Mr. Earhart, Mr. Arnold, Mr. Gallo, and Mrs. Dykes had no report.

MAYOR'S REPORT

Mayor Hutchinson had no report.

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SERVICE-SAFETY DIRECTOR'S REPORT

Mr. Wilson provided the following report.

- All paving was completed on Ferguson Road and the new traffic signals were installed and activated.
- PED (pedestrian) buttons were added at Ferguson Road to trigger the light change for pedestrians to cross the street. The programming has not been done so they are not functioning yet. Painting should be completed next week.
- The extended stay hotel is on schedule for a March 1, 2016 opening.
- Four rounds of leaf pick-up have been done on every street in the city and the fifth round began today. Weather permitting, this service will continue through November 20th.
- The Dog Park fence installation is underway. Due to the timing the city will not install the water line until spring. The Dog Park Committee has not mentioned a timeline for completion.
- The two new dump truck are in and at Henderson Equipment having the hydraulics, controls and plows installed. They should be ready next week.

Mr. Gallo and Mrs. Dykes expressed their concern regarding the recent street repair on Walker Lake Road. Mr. Wilson said they would continue to monitor the repair.

Mr. Earhart mentioned there were street light outages along the new sidewalks on Lex-Springmill Road. Mayor Hutchinson said the outages were reported and this time of year, because it gets dark earlier, Ohio Edison has crews checking the lights.

LAW DIRECTOR'S REPORT

Mr. Medwid had no report.

PUBLIC COMMENTARY

Calling twice and hearing no one who wished to speak, the Public Commentary portion of the meeting was closed.

CONSIDERATION OF ORDINANCES AND RESOLUTIONS**ORDINANCE NO. 15-45**

AN ORDINANCE TO AMEND CHAPTER 191 OF THE CODIFIED ORDINANCES OF THE CITY OF ONTARIO REGARDING MUNICIPAL INCOME TAX.

Hearing no motion to suspend the rules requiring three separate readings, Mr. Hairston read Ordinance No. 15-45 for the second time, by title only.

ORDINANCE NO. 15-47

AN ORDINANCE AMENDING ORDINANCE 15-09 KNOWN AS THE PERMANENT APPROPRIATIONS ORDINANCE FOR 2015 BY MAKING ADDITIONAL APPROPRIATIONS IN THE GENERAL FUND AND THE SPECIAL REVENUE FUND.

Mrs. Dykes moved to suspend the rules requiring the reading of Ordinance No. 15-47 on three separate days. Mr. Gallo seconded the motion. Six members cast their votes Aye, zero Nay, and the motion to suspend the rules passed. Mr. Arnold read Ordinance No. 15-47 for the first time, by title only.

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Mr. Arnold moved to adopt Ordinance No. 15-47. Mrs. Dykes seconded the motion. Hearing no discussion, six members cast their votes Aye, zero Nay, and Ordinance No. 15-47 was adopted.

ORDINANCE NO. 15-48

AN ORDINANCE ESTABLISHING TEMPORARY APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF ONTARIO, OHIO FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2016 AND EXPIRING DECEMBER 31, 2016.

Mr. Hairston moved to waive the 24-hour rule for Ordinance No. 15-48. Mr. Weidemyre seconded the motion. Six members cast their votes Aye, zero Nay, and the motion passed

Hearing no motion to suspend the rules requiring the reading of Ordinance No. 15-48 on three separate days Mr. Hairston read Ordinance No. 15-48 for the first time, by title only.

At 8:45 p.m., there being no further business to come before the meeting, the same was adjourned upon a motion by Mrs. Dykes with a second by Mr. Earhart and the motion passed unanimously.

Larry C. Collins, President of Council

Cathy VanAuker, Clerk of Council