

Minutes of the Ordinance Committee Meeting
Sheffield Lake, Ohio
November 5, 2009

The regular meeting of the Ordinance Committee was held Thursday, November 5, 2009. Chairman Eric S Elliott called the meeting to order at 7:33 PM.

ROLL CALL OF MEMBERS:

Present: Elliott, Bring, Huska

Attending: Law Director Graves, Councilmen Kovach and Rosso

READING OF THE MINUTES: *Motion by Bring/Second by Huska to approve the minutes of the September 10, 2008 meeting with any corrections. Yeas All.

PRESENTATIONS: None.

CORRESPONDENCE: None.

OLD BUSINESS:

Ordinance Review –

169.01 full-time bargaining bond dollar amount; revision – Law Director Graves advised Tammy actually looked into it and I have to tell you that the bond amounts are right where they need to be. You know they seem rather low and I know Bill and Tammy had said they thought they were low but as far as our insurance company and what they have reported from other communities that they are right where they need to be. So I would recommend leaving it alone, I just had a discussion with Tammy about it. **REMOVE.**

Recommendations from Planning Commission – Law Director Graves advised I got to write that up. There is 4 of them that need to be moved on and the next step is going to be to set those for public hearing and I will discuss those a little bit more at Worksession. The next move will be to have those set for public hearing and then adopt those zoning changes.

Update refuse code – **REMOVE.**

NEW BUSINESS:

Water base rate increase – Chairman Elliott stated I had mentioned under Worksession that I was going to move to repeal that ordinance and at this time I would like to open it up for any discussion. Councilman Rosso advised it is not repealing but amending it to set it back to what it was prior to that. Law Director Graves advised I would just like to point something out because I know that Rick was saying that after a conversation with Mr. Gardner that this wasn't the original intent of the ordinance. If you think about it logically I don't think that follows

because Bill has said that what the argument was is that this extra \$2.00 was intended as some kind of an alternative minimum charge for someone who would go to Florida for the winter and perhaps not use any water at all. If you recall the base water rate was \$3.00 so that you would add \$2.00 on and if went to Florida and use 0 units of water you would have a \$5.00 alternative minimum water charge. However with your initial \$3.00 you get 0 to .99 units of water, at 1 unit to 1.99 you went to the unit charge of \$1.29 per unit. What that would mean is someone that was here and just using 1 unit of water would pay the \$3.00 plus the \$1.29 fee of a total charge of \$4.29 – they could use up to 1.99 units of water and have a \$4.29 charge and the person that went to Florida and used 0 would have a \$5.00 charge. So mathematically the person using no water would be paying more under that theory than someone that was here using up to almost 2 units of water. Councilman Rosso stated explain that again because that base charge of \$5.00 is that you can't be less than \$5.00. Law Director Graves stated that is what I thought because see when he proposed it it was just \$2.00 onto to the base charge of \$3.00 making the base charge \$5.00. The counter argument was that wasn't the original intent, the original intent was not to bump everybody's minimum charge up to \$5.00. It was to have a minimum charge on someone who didn't use any water so they would pay at least \$5.00 but someone that did use water I assume you would keep their base rate at \$3.00 and then just charge them for the per unit use/consumption beyond the 0 to .99 that is included in the original \$3.00 base rate. Councilman Rosso stated under today's ordinance the guy uses 0 and the guy uses 1 both pay \$5.00. Law Director Graves answered that is right, it is a base charge – from 0 to .99, by the way you can't just say 1 if it is .99 when you are arguing with Bill. You got to say .99. Councilman Rosso stated I am not quite sure why we are arguing with our Grant Administrator. Law Director Graves answered because he is the guy that came up with this and I guess now we are going back to what the original intent of it was. Council is going to make up their mind whether they want to keep the \$2.00 and whether they think that it is something that is needed in the department today. I just want to be clear that I don't think that the original intent was to create an alternative minimum charge and if it was it doesn't add up in my opinion. I think that it was just to increase the minimum charge to \$5.00 across the board because revenues were going down and for one reason or another it never got implemented. Like all other departments their revenues are down, everybody's revenues are down. Councilman Rosso advised that is not the way it was presented to us. Law Director Graves stated I disagree. Councilman Rosso debated that is exactly what Bill told me. Law Director Graves stated it doesn't add up, Bill is the one that presented it to me to write up and Bill doesn't always explain things very clear which you well know. In fact I think this might be the only time when you are relying on Bill said. Councilman Rosso stated whether it was right or wrong I am just saying what his argument was, it was a \$2.00 minimum charge for people that didn't use water and the example was the people

in Florida. It did not affect anybody whose water bill was more than \$5.00. Mr. Bring advised that is exactly what Mr. Elliott's argument is why we should go back and start this over, find out exactly they need, how much they should charge and not use that money for buying trucks and everything else. Mr. Elliott stated if for nothing else to clarify what they are actually spending money on. Councilman Rosso advised I still have questions on the argument that we need it for fire hydrants and then we take \$16,000.00. But we borrowed \$360,000.00 for water meters which we were told we never the water meter bill and have the money and now we need to add that \$2.00 to buy more water meters because that was another mess. Mr. Bring stated but we did spend the money. Law Director Graves stated we did spend it on the water meters and I think that was another situation where I think they were trying to save the city money and ended by buying cheapies that are now not functional. Mr. Bring stated \$240,000.00. Chairman Elliott stated and you can't fix. Law Director Graves stated and then the company went bankrupt. Councilman Rosso stated Bill sat here and said I have never paid them, we haven't spent that money yet at every meeting. Mr. Bring stated until I went over to the Water Department and asked Tom we still didn't get a straight answer until Tom told me. That is why we are back to this that is why Mr. Elliott is proposing that we go back. Chairman Elliott stated everybody that mentions this has a different reason and why it was imposed. Councilman Rosso stated it is about \$7000.00 per month on that \$2.00? Law Director Graves answered yes if you figure about 3000 water bills. Chairman Elliott stated that is higher than what we originally estimated, I thought it was like \$5,600.00 or something. Councilman Rosso stated we will have 4 to 5 months of that money so they will have a minimum of \$25,000 to \$30,000 that was raised on that. There was a brief discussion on building up a cushion to allow for going back and reviewing it. Chairman Elliott stated I think we need to clarify where this money is going and why it is needed and then go from there. I am not saying that we don't need a water increase over there, what I am saying is that it needs to be clarified on where the money is going and how much is actually needed and just not throw a ball park figure out. Councilman Rosso stated I want to be clear too this is not because of anything that Joe did. This is another one of the dirty sticks he picked up on in the middle of it. It just seems like anymore what we thought was being done in the past has turned out not to be right. *Motion by Elliott/Second by Bring to draw up legislation to amend the water base rate ordinance from \$5.00 back to \$3.00 for a first reading from to include the emergency clause. Yeas All. Law Director Graves stated keep in mind too that a large part of the water bill are constant expenses, you know the maintenance, the labor – it is not just paying for the water and so as it is ironic, it is almost counter intuitive but as there are more vacancies as we lose water accounts we don't save money. We actually lose money. Our base costs stay here and revenues go down, it is not like as people move our water bill goes down because that is a small piece of what we have to pay for – it is kind of upside down

in that regard. Chairman Elliott asked would this also do away with the \$2.00 increase they did for the vac truck? Mr. Bring answered no. Councilman Rosso answered no, that expires next year I think. Law Director Graves asked do you want to put an effective date on this? Councilman Rosso advised it passes the first Council meeting in December, so make it effective January 1st. That gives them 5 months - \$35,000.00.

Law Director Graves advised just giving you a heads up Rite Aid has been month to month for quite some time and they got word last week that their Board did vote, my last offer was to just renew the lease for another 3 years at current rent to lock them in. Their annual rent is \$56,000.00, even though compared to other shopping centers it is not that much per square foot. They are the third highest rent behind Apples and the Bowling Alley for the shopping center. We really don't want to entertain the possibility of Rite Aid leaving. So my inclination to draft some legislation that would lock them in for 3 years. Now North Coast Capital Partners, they have said that Rite Aid's stock and their company is just really low right now and they would much rather see a Walgreen's or CVS something like that but I don't know that they have made any real progress in that regard. They are saying let's not lock them in month to month. Well my position on it is we can't take that chance if Rite Aid pulls out and we don't have adequate rental income. Mrs. Huska stated they have been there for years. Mr. Bring stated well it is not that, that might not even get their quota and might move out of the area and then we will be stuck. Law Director Graves stated it is a big piece of rental income and my inclination is to lock them in for another 3 years through 2012. All the plans call for a drug store at that location, they would just like to see a different company. Mr. Bring stated it might take you 3 years to get to that point. Law Director Graves stated just giving you heads up, you will probably see legislation to approve this lease by emergency. Originally I had a proposal which actually was a 5 year extension with rent staying the same for 3 years and then increase in years 4 and 5. They had agreed to that, their lease representative had agreed to that over the phone but when it went back to their approval Board they rejected it and the lease expired and they basically said can we just keep current rent and I said yes and they said well we are just going to go month to month? So they went into month to month, they have been month to month now for I don't know – 5 months. I would like to lock them in. So I will have legislation, I think we all kind of agree with that.

Law Director Graves advise I received something from the Mayor asking me to look into this. Just so you know I pulled the Allied Waste contract and it does expire – the 3 years have gone so fast and it feels like we just did this but in May of 2010 is the 3 years for the last fifth amendment contract. It does automatically roll over into annual renewals unless either party notifies the other one within 60 days of the expiration that they don't want to renew. So I did get a call from Dave Kidder today, I don't know if he wants to start talking about that or if he wants to

talk about this recycling program. The Solid Waste money is very tenuous right now in terms of the incentive that is out there. Bill swears up and down that the \$30,000.00 incentive for the recycle program is totally separate and we would definitely get that. We will have to see but apparently there is also a plan where you would get credit for your recycling to use at various retail establishments of which Apples is a participating store. So we will be looking into that as well. Mr. Kovach stated well the Mayor talked about that the other night. Law Director Graves advised I got some information emailed to me today. There was a brief discussion on recycling.

Law Director Graves advised I got a recommendation today from the Community Center review board to increase the rental fees for the Community Center. There will be legislation coming to Council to consider increasing those rates which you are already aware of it.

Law Director Graves advised I wanted to talk about a couple of issues that the city could start discussing in terms of our legislation. Clarifying our current section 1151.01 regarding home occupations as accessory uses in residential districts. Right now our code is real vague on this and you know there have been some residents that have been raising this issue as to what extent you can have a home based business or other income out of your home in a residential area. Certainly no matter what you are doing you need to make sure you are paying the local taxes, so that is kind of a side note to this whole discussion. Yes they have to make sure they are paying their taxes on any businesses. But to what extent as far as the zoning would a home based business be permitted and most communities allow professional type home based businesses in a home office as an accessory use in a residential area. Now you cross a line when you start having frequent traffic coming in and out, maybe if you are doing landscaping then you would have large trucks coming in and out and things like that. Things that would generally disturb the piece and enjoyment of nature of a residential area and now you are treating it as a business area. I have some sample legislation from other communities; Amherst, North Olmsted – I pulled a lot of this which their code does a lot better job describing the type of home based businesses that would be considered accessory uses in a residential area. I mean like a realtor, an attorney, an author or like John Edwards he is a reporter and maybe he writes out of his home. I mean he is earning income out of his home but it is not really. Mr. Bring added music lessons. Committee had no problem with it, Law Director Graves advised maybe we will come up with something for Worksession.

Law Director Graves advised this is an issue and it comes up almost daily and it is something that the city doesn't do a very good job addressing and that is to the extent that we allow residents to have impediments within the road right of ways. Even taking that a step further to the extent that residents are allowed to utilize paper streets that aren't developed. There are a lot of people in the city that just use paper streets as if it is just part of their yard and then their neighbors realize it

and start complaining and then it is like alright do we need to make them move everything off of that even though it is woods anyway. As far as even finished dedicated streets the road right of way is 40 to 50 feet wide and throughout the city the actual paved road can be as narrow as 14 feet up to maybe 20 feet but people throughout the city – you name it. Some places have decorative fences that come pretty much right down to the road, they have railroad ties that they have made flower box type things in, they have big decorative boulder type things I mean right there. There is some places in the community where the neighbors constantly complain, they are blocking this, they are blocking the sidewalk. I don't know how would want to do this? Mr. Bring answered to me as long as they are not building a structure on it and they are keeping it up I don't have a problem with it. Law Director Graves advised you are talking about finished roads? Mr. Bring stated right. Law Director Graves advised the way we enforce it now obviously there can't any visual impediments that could become a traffic hazard but as far as just stuff. Mr. Bring stated a lot of people when they usually do take over something like that, they clean and take care of it. I mean if it is an eyesore then you got to go down and tell them they got to tell them that they got to clean it. I think we did that over here where the guy was stacking his wood on there and he had garbage there but he cleaned it right up. Chairman Elliott stated especially somebody that is actually keeping it up because if you go in there and aggravate them then they are stop keeping it up and then we are going to have to mow it. Mr. Bring added to me if they are not building sheds on it and stuff like that and we are not using it, to me I don't have a problem with it. Law Director Graves stated there is one situation in town where it is a paper street and one neighbor loves to take his riding mower, I think it is like a dispute so he does this to kind of annoy but he lives like 3 houses down and he needs to mow his back yard and he has got property behind his house. So instead of just going around his house, he takes his riding mower down where he knows the paper street goes through and he takes it and drives back through the woods and around behind these other homes to get his yard. Well the neighbor that lives right there has taken probably $\frac{3}{4}$ of the road right of way for gardens and I mean it looks really nice but he is so adamant that that be kept open but it is not a public road, it is but it is not finished road and obviously we are not going to allow traffic you know cars and so forth be driving back there. Councilman Rosso stated it is the argument about the guys at the end of Grantwood that put the mound in. Then let that grow and become a mess on Lake Road, they got 2 - \$500,000 or \$600,000 homes there, let them take care of it. Law Director Graves stated there is situation over across from Tennyson School on the corner Richelieu and Kenilworth I believe it is. You know that big white house across from Tennyson School on the other side of Richelieu, they have rose bushes that grow right on the corner there right across the sidewalk and it forms a rose bush barrier on the sidewalk. So technically if a kid is walking down the sidewalk they can't get through there but they have also like 4 feet over made a

little like bridge path over the ditch so the kids can just walk around. There are people in this community that wake every morning and go to bed every night livid about those rose bushes. You know they are like this is just corruption, people aren't being protected – I mean they are rose bushes. But the real issue is it is part of the road right of way, they have planted these things there. Councilman Rosso stated did you ever see the front of Belaska's house, those railroad ties – they are all in the road right of way. Law Director Graves advised absolutely, if Lake Road ever got widened we could make her move all that stuff back. Councilman Rosso recalled originally they talked about may having to move it when we paved it. Mr. Bring agreed right, Bill was going to make her move all that. But to me if they are taking care of it and they are not building structures on it who cares. Chairman Elliott stated it could be an eyesore if we aggravate those people and then the next thing you know we are going to have to maintain it. Law Director Graves advised like tree lawns, it is a private residents obligation to trim those trees, cut that grass. There is a difference between the city having the right to go on there and a duty to maintain and we say we have the right to go on there because it is part of the road right of way but the duty to maintain it lies with the private property owner. We can't mow every tree lawn in the city but people try to say that. Like if there is a tree that needs trimmed in their tree lawn, well that is part of the city or the city planted that 60 years ago and you guys have to trim it – no, we will if it is a danger. Councilman Kovach stated on an issue like that I mean if it is really impeding the roadway like the rose bushes but if those are in the way the city can go and cut it right off at the sidewalk if they so desire. Law Director Graves advised that is the big thing if it ever becomes a visual impediment and it is going to cause a car accident because you can't see around the corner or something, absolutely that is it. Mr. Bring stated we go over there and do it and there is nothing they can do about it, I mean that is part of the city's rights but to me like I said if it is not bothering anybody. Obviously the kids don't seem to mind it they are using the bridge. They are probably enjoying that better then going on the sidewalk, who knows. Mrs. Huska stated you think that people don't have enough to do with their lives.

Law Director Graves stated the last thing I wanted to talk about is wind turbines, I have kind of become the obstacle here to getting these things. Maybe not the obstacle but at least the voice of caution and restraint and let's think closely about what we are doing up there rather than just throw things up. I have looked into these wind turbines a great deal, I actually spoke at the county presentation on the wind turbines. I think the ones that we have up at the boat launch are good, we are not getting the kind of benefit out of them that maybe we originally thought but we are getting some benefit for the costs they were positive for the city. The big problem with the wind turbines right now is the costs to build these things and right now they are just so expensive that the savings from the electricity that they generate, it just takes so long to recoup that that it is usually way beyond the

usable life expectancy of the machine. That is what you are up against, you know in these other states where I think they are much more prevalent than Ohio I think the states might be in a little bit better fiscal shape than Ohio and maybe there is a lot more subsidy and alternative energy standards and things like that when they are getting these things built. NexGen is a company out of Boulder Colorado and they have proposed to come in and build a 100KW wind turbine, it is a big one about 160-foot tower and they will build it for free. We have to buy the power but we put it at the shopping center and I am not 100% sure why the city has to kind of be the middle man in this but apparently we do and then sell that power to Apple's at a reduced cost; a couple cents less per kilowatt hour. Apple's likes the idea, North Coast Capital Partners they like the idea but NexGen wants to move right away. Bill and Joe and everybody thinks that we should just let them move right away. Now in terms of the zoning for this, the wind turbines up at the boat launch are a little different – they are smaller they are only 40-feet tall and they are in a city park area. Historically parks in the city have things like that, they have water towers, they have cell towers – things like that. Now when you go to start talking about putting wind turbines in the middle of a business district, we really need to have some kind of legislation regulating the wind turbines and addressing issues like fall radius and how far you want them from occupied structures, how far you want them from the roads. He explained concerns. The proposal is put these right dead center in the shopping center. The proposal for the legislation is to allow the Zoning Board of Appeals to grant conditional use permits for wind turbines and I have looked at what other cities have done and it is a pretty comprehensive set of regulations as far as like the fall radius and so forth. If we move quicker they could go to the Zoning Board and try to plead an undo hardship and need a variance to build this right now. I guess my question is NexGen wants to get going right now while it is in preliminary testing, studying, they want the city to enter into a non-binding letter of intent to move forward with the project with all the relevant terms to be worked out later but they are going to start doing their testing and evaluation. They have been hounding me with phone calls and emails and I have been really holding this up. What I told Joe and Bill is this even though it is a non-binding letter of intent there is still an element of good faith that comes into play when we sign this with them and unless we have discussed the project with City Council, the Planning Commission and the Zoning Board – these bodies that are ultimately going to have some say in this, I don't know how we could argue that we are going into this in good faith. I think that if they spend \$50,000.00 in testing and then it is time to build the turbine and then Council takes a look at the plan and they say no we don't think this is a good idea. They could say well wait a minute if we would have known that going in we never would have spent all this money doing the preliminary testing. I think there is a possibility that there might be a lawsuit based on bad faith. There was a brief discussion. Law Director Graves stated I wanted to bring this up tonight to Ordinance Committee because

ultimately this would all involve legislation, I think maybe at Worksession start thinking about it. There was a brief discussion on the large wind turbines. Law Director Graves advised the plan would be to put this in the middle of the shopping center and there would be some parameters around it to ensure safety but ultimately there is going to be some public thru-ways in the redevelopment of the center. The theme of the center; it is water theme and also the alternative energy – the green thing. Try to get a geo-thermo heat element up in some of those buildings, get solar panels on top of Apples and get wind power going. Sheffield Lake is right now the envy of the rest of the county because we actually put 2 up and that was one of the main reasons I got invited to speak at this thing and while there were people that spoke that know a heck of a lot more about wind turbines than I do I was the one to get up and say hey we actually already did it and here is what they are doing. Also Sheffield Lake is coming at it from a different perspective than most other communities, a lot of other communities you have private residents or companies coming forward to the city wanting to build them and the city is trying to pass very restrictive legislation and trying to limit it, from our perspective it is the city that wants to build them and so we want very flexible. There was a brief discussion on building them on the lake and other requirements. Law Director Graves explained urgency on this as they only have 1 or 2 of these left, they are building them in other places in the country and they are very interested in putting one near the water and they came to the county and no one else in the county is really ready to go. Some of these communities for example Avon Lake they have been seriously considering this for a couple of years and they say they are still about 18 months away from any meaningful legislation. Their reasoning is it is going to be another 18 months before. So they want to build one in Lorain County and Lorain County sent them to Sheffield Lake, they said there is only one place that is ready – Sheffield Lake has already put a couple up and if you are going to get one done here you want to go there. Now there is almost a feeling of we don't want to lose out and have someone else be the first to put a big one in the county. Mr. Bring stated I have been laying papers on John's desk for 3-1/2 years about wind turbines, that is how he got interested in it. Law Director Graves advised these guys are ready to come in and build this thing for free. There was a brief discussion on benefits, attraction, restrictions and safety. It is roughly the same height as the water tower that just dropped. By the way, the water tower they just dropped up at Gary Green was about 140 feet so these would be like another 20 feet beyond that water tower. Chairman Elliott asked what other committees are going to be involved, did you say Planning and that kind of stuff. Law Director Graves answered in terms of letter of intent I would just want to approve it. They would do it 2 ways, they would either right to Zoning Board of Appeals and say I need a variance to get a conditional use to build this and I am going to show undo hardship because if the city doesn't do this now we are going to lose this opportunity. They are going to build this thing somewhere else and

they only have so many to build. The legislation that I want to present will be a total zoning change that I think would need to go through the full approval process of a rezoning which would be the referral to Planning Commission for 60 days for their review; the Building Inspector, the Fire and everybody gets to way in and then it comes back to Council for public hearing. You have the public hearing and then I think you go 3 readings, that legislation even if I brought it to the next Council meeting probably isn't get enacted until like March and then after that it would still require going to the Zoning Board for the approval of the conditional use, it just wouldn't be a variance it would just be issuing of the conditional use permit. There was a brief discussion on process. Councilman Kovach asked I need to know one thing, can I put an amusement park under that thing? Law Director Graves answered the parameters of this are going to have to be able to include vehicular and pedestrian traffic in the redeveloped shopping center. People are going to have to be able to walk around and drive their cars in the vicinity of this thing safely and that would include the operation of the Community Days if that is there. It would be no different then people just walking to the stores or driving on the roads in the parking lot. There was a brief discussion on concern.

CITIZEN'S COMMENTARY: None.

MEETING ADJOURNED: With no further business before this committee,

*Motion by Bring/Second by Huska to adjourn at 8:32 pm. Yeas all.

CLERK OF COMMITTEE AFFIRMATION: This Meeting Of The City Committee Of The City Of Sheffield Lake, Ohio Was Held And Conducted Under All Rules And Regulations Governing The Sunshine Laws Of The State Of Ohio As They May Apply. All meetings are recorded and available in council's office.

CLERK OF COUNCIL

Kay Fantauzzi

I, Kay Fantauzzi, duly appointed Clerk of Committees of Sheffield Lake DO HEREBY CERTIFY that this is a true and exact copy of the Minutes of Committee of November 5, 2009.

CHAIRMAN OF COMMITTEE

Eric S Elliott

COUNCIL PRESIDENT

Edward R Podmanik

and/or

COUNCIL PRO TEM

Richard Rosso