



CLEVELAND HEIGHTS

MINUTES OF THE CITY COUNCIL MEETING OF MONDAY, SEPTEMBER 20, 2004

Council Committee of the Whole of the City of Cleveland Heights, Ohio, met on the above date at 6:27 p.m.

Edward Kelley, presiding

Council Members present: Caplan, Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox

Council Members absent: None

Staff present: Carter, Czaga, Downey, Gibbon, Hull, Malone, Niermann O'Neil,
Wagner, Wong

Topic of discussion included general information pertaining to the City Manager's weekly memo.

Committee of the Whole adjourned at 7:33 p.m.

The Council of the City of Cleveland Heights, Ohio, met on the above date at 7:41 p.m.

Edward Kelley, presiding

Council Members present: Caplan, Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox

Council Members absent: None

Staff present: Carter, Czaga, Downey, Gibbon, Malone, Niermann O'Neil, Wagner,
Wong

The minutes of the Regular Council Meeting held Tuesday, September 7, 2004 were signed by Mayor Kelley, noting one correction to be made. The resolutions passed at that meeting were also signed.

Marianna Stein, 2727 Lancashire Road, stated, "Yesterday, we had a picnic at the zoo with the Democrats and there was a fantastic turnout. I think we're going to have a new president. I hope so. A lot of us are working at it. Dennis Kucinich was there, so we were talking about the presidential thing and I blurted out the fact that in my precinct he won and it took me about three times for me to say that and then he started laughing and jumping up and down. I'm glad to be here."

REPORT OF THE CITY MANAGER

Mr. Downey stated, "Thank you very much, your Honor. I have several items this evening. The

first of which would be to request authority to advertise for bids to hold a public auction for used vehicles in the Police Department.”

Mayor Kelley made it a matter of record and referred it to the Public Safety and Health Committee of Council.

Council Member Evans moved that the City Manager be given authority as requested.

Second by Council Member Dietrich.

Roll Call: Ayes: Caplan, Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox

Nays: None

Motion passed

Mr. Downey continued, “Thank you very much, your Honor. With regard to Bid Document 2004-10, that is the processing and marketing of commingled recyclable materials. Staff would request, your Honor, that Council reject the bid of Recycle America and accept the bid of World Resource Recovery Systems.”

Mayor Kelley made it a matter of record and referred it to the Municipal Services Committee of Council.

Council Member Hicks moved that the City Manager be given authority as requested.

Second by Council Member Caplan.

Roll Call: Ayes: Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox, Caplan

Nays: None

Motion passed

Mr. Downey continued, “Lastly, your Honor, Bid Document 2004-22, the rental of work clothing for municipal employees, the lowest and best bidder is Coyne Textile Services. Your Honor, I would request that the bid tabulation and the award of contract be made a matter of record.”

Mayor Kelley made it a matter of record.

REPORT OF THE DIRECTOR OF FINANCE/CLERK OF COUNCIL

Mr. Malone stated, “Thank you, your Honor. I need to notify Council that three (3) resolutions of the Board of Zoning Appeals have been received pertaining to variances in the Zoning Code and are requested by the following: BZA Calendar No. 3054 James Carson, 1290 Forest Hills Boulevard, accessory-use regulations; BZA Calendar No. 3055 Martha Stitt and Mary McGraw, 3436 Ormond Road, minimum yard requirements for principal uses; and BZA Calendar No. 3056 Susan Holt, 2830 Coleridge Road, accessory use regulations. I request these be made a matter of record.”

Mayor Kelley made them a matter of record and referred them to the Planning and Development Committee of Council.

REPORT OF THE PUBLIC SAFETY AND HEALTH COMMITTEE

Council Member Evans stated, “Thank you, your Honor. I’d like to present Resolution No. 139-

2004(PSH), authorizing the City Manager to accept a grant from the Ohio Department of Public Safety, Division of Emergency Medical Services on behalf of the City of Cleveland Heights; and declaring an emergency.

This is one of those resolutions that brings about great satisfaction in that it's always nice to accept a grant, especially when they can really benefit our fire department.

Section 1 states that the City Manager is authorized to accept a grant award from the Ohio Department of Public Safety, Division of Emergency Medical Services in the amount of Two Thousand Dollars (\$2,000.00) on behalf of the City of Cleveland Heights, as described in the correspondence from the Ohio Department of Public Safety, Division of Emergency Medical Services. I'd like to move that Council accept Resolution No. 139-2004(PSH)."

Mayor Kelley accepted Resolution No. 139-2004(PSH).

Roll Call: Ayes: Evans, Hicks, Kelley, Montlack, Wilcox, Caplan, Dietrich

Nays: None

Resolution passed

Council Member Evans continued, "Next, is Resolution No. 140-2004(PSH), declaring the property at 3407 Hartwood Road to be a nuisance; authorizing abatement of the nuisance; and declaring an emergency. The City Manager and the Certified Building Official have reported to this Council that the property known as 3407 Hartwood Road owned by Harvey Swoope, Jr. and /or Dianne Roberts has not been maintained for a number of years and is in a state of severe disrepair. It has also been reported that they've been cited by the Housing Inspection Department for numerous housing code violations over the past two (2) years and that little progress has been made toward the corrections. This property has deteriorated over the years to the point that it is a hazard to the health, safety and welfare of potential occupants and the public and is a blighting and deteriorating factor in the neighborhood adversely affecting the value of neighboring property.

There is about \$11,000 worth of repairs for this particular property in estimated costs.

In Section 1, it is hereby found and determined by this Council, pursuant to Chapter 553 of the Codified Ordinances of the City of Cleveland Heights, that the premises at 3407 Hartwood Road is in a state of disrepair to the extent that it constitutes a health and safety hazard and a blighting influence and is hereby declared to be a public nuisance. Section 2 states that the City Manager and Certified Building Official and Director of Law are authorized and directed to cause the nuisance to be abated in accordance with Chapter 553 of the Codified Ordinances. I'd like to present Resolution No. 140-2004(PSH) for passage this evening."

Mayor Kelley accepted Resolution No. 140-2004(PSH).

Roll Call: Ayes: Hicks, Kelley, Montlack, Wilcox, Caplan, Dietrich, Evans

Nays: None

Resolution passed

REPORT OF THE ADMINISTRATIVE SERVICES COMMITTEE

Council Member Dietrich stated, "There is no legislation tonight, but as always I'll use my time for something else. By the time our next City Council meeting is televised the deadline for voter regis-

tration will have passed. I know everybody has heard this a million times and I know my colleagues will talk about it too, but I want to beg and plead with you. If you are a person who doesn't normally vote, this is the time you need to vote. Your vote will make a huge difference. The way the presidential election comes out this time will make a huge difference and your opinion should be counted. To register to vote you can come to City Hall. You can go to the community center - any public library. There are volunteers popping up all over the place with little booths to register you - like in the entrance to Zagara's grocery store. There is a voter hot-line at the Board of Elections and the number is 443-3298. You must register by 9:00 on October 4th to be eligible to vote in the presidential election. Even people with a criminal record, like you're a felony who has served your sentence, you are still eligible to vote. So don't let that stop you. It is extremely easy. In case you haven't done it before, you don't need to show anything. You don't need your driver's license or social security card or id, just your signature and they take your word for it. In this election cycle there are two groups of people that are being called deciding factors. One of them is young women, ages 18 to 35 and the other one is African-Americans. As it happens, large numbers of these groups right now tend to feel apathetic and apart from the political process as though their participation doesn't make a difference, but we know everybody's participation makes a difference. Your vote is as important - it counts as much as George Bush's vote. If African-Americans would vote in large numbers it could swing Ohio. There was an article about that in the Plain Dealer this morning. And since, in Cleveland Heights almost half of our residents are African-Americans, Cleveland Heights could be a big deciding factor in Ohio. A few of the things that hinge on this election, like some things to think about, as you choose who you would vote for, is how our country is viewed by the world? How much our policy is being influenced by a single set of religious beliefs? How free scientists are to pursue research to find cures for diseases? Even how proud you are of your country? Voting is the most important thing - one of the most important things we can do as citizens and I just beg you, please, please do not disregard it this time. That's all that I have."

REPORT OF THE COMMUNITY RELATIONS AND RECREATION COMMITTEE

Council Member Caplan stated, "Thank you. I have no legislation but I'm going to continue that theme about voting. Besides registering to vote, you can get an application for an absentee ballot. This is really easy. You can get it from City Hall, from the community center, from the libraries, you can write to the Board of Elections at 2925 Euclid Avenue, Cleveland, 44115 and they will mail you an application. It is real easy. Put in your name, you check that you are voting in a general election. You check why you want to vote absentee. You think you need a little bit more time because it's confusing. There are a lot of things on this ballot. You sign where the x is and you mail it and they mail you back an absentee ballot. It doesn't cost you anything except for your stamps. So consider doing that. I have a little visual aid to help you remember to vote [display's a poster stating], "You think your vote doesn't count. Register to vote." Your one vote really does make a difference, so I encourage you to vote. I'm going to encourage you to do a couple of other things. One of the things to vote for is the City of Cleveland Heights has an issue on the ballot, actually we have two and I'll talk about one and we don't have a number for it yet and as the time gets closer we will and we will be able to tell you which issue it is, but it is an issue that will maintain our recreation, community and cultural facilities. We had, in 1987, we passed a levy that for someone who has a 100,000 dollar home it cost about forty-one dollars and change every year to take care of our parks and we put a cover on Cain Park and we did playgrounds and we did a variety of things. At the end of this year that levy is over. So, we have put on a .07 mill levy on the ballot and that is about twenty-three dollars a year, so it's about half more or less of what you were paying on a 100,000 dollar home and that will allow us to continue to maintain all the facilities that are recreational and for community service. So, you're going to hear about this every time we have a public meeting. Oh, I said .07, I really meant 0.7, excuse me. It's about half of what's on it already. So, think about how you have to maintain your own home, maintaining your car. We need to continue to maintain our recreation and community facilities.

Two more things that I wanted to tell you. One was (it's another theme I'm on) and that is about - remember to recycle. As you put out your garbage - you know that mail that comes in your house - half of it you don't even need to open, put it in a paper bag. Put all your mail that you don't want in a paper bag. Put your magazines in a paper bag and on garbage day, with your magazines, your newspapers, your junk mail, you put it out and the recycle trucks come and take it and the paper goes away. You recycle your plastic bottles and your bottles and your cans in another bag altogether and in the end if you're real good about recycling you'll end up having a very small amount of garbage. We pay for the garbage to go to the landfill. We don't pay for the recycling of those other products, so it's a way for us to save some money in the city and it is environmentally friendly.

The last thing - we're right in the middle of - there was Rosh Hashana for our Jewish residents last week and this coming week starting Friday night is Yom Kippur. It is the days of awe which are the days of thoughtfulness about thinking about how we've been in the past and how we want to be in the future and my best wishes for all of us Jewish and non-Jewish alike, is that it is a healthy, sweet year that's filled with peace for all of us. Thank you."

REPORT OF THE FINANCE COMMITTEE

Council Member Wilcox stated, "Thank you, your Honor. There is one piece of legislation tonight from the Finance Committee and that arises out of our negotiations for renewal of our cable television franchise agreement. That process has just begun even though it will be a number of years before the franchise is up and this is Resolution No. 141-2004(F), authorizing the City Manager to enter into an agreement with Lewis and Associates to conduct an audit of Adelpia's cable television franchise fee payments to the City; providing compensation therefor; and declaring an emergency. As I mentioned, the City's cable franchise agreement with Adelpia expires in June of 2007. Adelpia has previously sent a letter to the City asking that the City commence negotiations for renewal of the franchise pursuant to federal law.

The City has actually responded to that letter and the process has begun.

In anticipation of the franchise renewal negotiations and in light of the bankruptcy proceedings regarding Adelpia, it would be in the City's best interests to perform an audit of franchise fee payments which Adelpia has made to the City during the two most recent calendar years. Lewis and Associates of Hollywood, Florida has submitted a proposal to provide the necessary accounting services for this project, the terms of which are reasonable and competitive.

Our Law Department has actually reviewed a number of proposals and this one appears to be the best and most responsive for our needs and this is an experienced company that will be able to provide these audit services.

This Resolution, in Section 1 authorized the City Manager to enter into an agreement with Lewis and Associates of Hollywood, Florida to conduct an audit of Adelpia franchise fee payments over the last two calendar years. Compensation for such services shall be in a sum not to exceed Ten Thousand Dollars (\$10,000.00), plus actual out of pocket expenses, in accordance with the proposal submitted by Lewis and Associates dated September 7, 2004, a copy of which is on file with the Clerk of Council. The agreement and all related documents shall be approved as to form by the Director of Law.

I should point out this company, although out of state, will be shipped all the materials they need. There won't be a lot of travel involved in this. This is primarily an accounting function and they will be looking at our franchise agreements which provides that Adelpia pay three percent (3%) of

their gross revenues to the City and they will be looking over the last two years and their audit will be complete by the end of this year and then we will review that and determine whether we need further audit services at that time. I offer Resolution No. 141-2004(F) for passage tonight.”

Mayor Kelley accepted Resolution No. 141-2004(F).

Roll Call: Ayes: Kelley, Montlack, Wilcox, Caplan, Dietrich, Evans, Hicks

Nays: None

Resolution passed

Council Member Wilcox continued, “Next, I wanted to report on our bond sale for 2004 special assessment bonds which were sold - the date was September 1st and these are 25-year maturities and the average coupon was 4.57% and we obviously are very pleased with the result of that sale, very competitive price. I should remind everyone that out of 3.2 million of bonds sold the city’s portion of that is just a shade over a million dollars - a million thirty-five and the property owner of Severance Town Center will be paying the bulk of those payments on the debt service through the special assessment that we previously issued.

I also wanted to remind folks the importance of voting. Again, we’ve stated that there is a voter hotline - 443-3298 at the election board. You can determine whether you’re registered, where you need to vote if you haven’t gotten that information and as we get closer to the election I’m sure you’re going to hear more of the same - more about this. But I think it’s very important when you go into the voting place, if there is any question whether you are at the right precinct, don’t take that lightly - ask for a provisional ballot if you think you’re entitled to one and make sure that your vote will count.

I did want to remind everyone that there are two city issues - besides the recreation levy which Councilwoman Caplan talked about, there is an issue to continue to allow the city to tax S Corporations, as we’ve previously done. There will be a number of communities in Cuyahoga County and the State of Ohio that will have this issue on the ballot. This is a requirement of the legislature of the State of Ohio [that] has required cities to put this on the ballot if they continue to tax these corporations and I’ve said this a number of times, this is not a new tax, this is just a matter of equity and fairness. With that, that concludes my report.”

REPORT OF THE MUNICIPAL SERVICES COMMITTEE

Council Member Hicks stated, “Thank you, your Honor. I have one piece of legislation this evening. I have Resolution No. 142-2004(MS), approving a Change Order with Northeast Ohio Trenching Service, Inc. for a contract for the Cumberland Pool Floor Replacement Project; providing compensation therefor; and declaring an emergency.

After much debate, we have agreed to adjust the original contract amount by a net increase of \$50.00 due to additional materials as set forth in the request for Change Order submitted by Northeast Ohio Trenching Service, Inc. The original contract sum was \$212,788.00, with this increase the new contract sum will be \$212,838.00. Your Honor, I offer Resolution No. 142- 2004(MS) for passage this evening.”

Mayor Kelley accepted Resolution No. 142-2004(MS).

Roll Call: Ayes: Montlack, Wilcox, Caplan, Dietrich, Evans, Hicks, Kelley

Nays: None

Resolution passed

Council Member Hicks continued, "Thank you, your Honor. I, too, would like to ask everyone to register to vote and hoping that once you do you look at all the issues and don't just vote in an historic fashion, vote the way you have researched.

Also, with the two issues that both Councilwoman Caplan and Councilman Wilcox have both mentioned, I'd ask that hopefully our school board would come out and join us and support our issues. It's not often that we get an opportunity to ask them to support our issues and so we hope that they will come aboard and join us as public elected officials and back the issues that the city is going to have on the ballot this November. That's all that I have."

Mayor Kelley commented, "Great point."

REPORT OF THE PLANNING AND DEVELOPMENT COMMITTEE

Vice Mayor Montlack stated, "Thank you, your Honor. There is one piece of legislation from this committee. It is Ordinance No. 143-2004(PD), authorizing the City Manager to enter into a lease-purchase agreement for the sale of City-owned property at 3372 Kildare Road; and declaring an emergency.

This property has been owned by the city and has been used for municipal purposes and now it is available to be redeveloped. Not only available, but because of our housing department's inspection of the property, we see that it needs some upgrading and therefore, we're going to try and accomplish two objectives. One is to place it back into the housing mainstream for owner/occupancy and then at the same time improve the property so that the Kildare Road neighbors and the occupants of that property will enjoy it for more benefit.

Under this Ordinance, the City Manager would be authorized to enter into an agreement with Kenneth and Chesca Hadden for the lease and purchase of City-owned property at 3372 Kildare Road, Cleveland Heights. The agreement that we're authorizing would provide for the lease of the property to these purchasers for a period of up to six (6) months, at a cost of Three Hundred Dollars (\$300.00) per month, with an option to purchase the property for the sum of Seventy-five Thousand Dollars (\$75,000.00) plus customary closing costs. The agreement shall further provide that the buyers (who also could be referred to as contractors) prior to any resale of the property, shall correct all point of sale violations and shall renovate the property in accordance with plans approved by the City Manager.

Although, if you have the text in front of you, you will find this additional sentence not in, but consistent with our discussions all along under this authorization, "Any purchaser on the initial resale shall be an owner/occupant." The agreement and all related documents shall be approved as to form by the Director of Law. Ordinance No. 143-2004(PD) is submitted on first reading for approval."

Mayor Kelley accepted Ordinance No. 143-2004(PD).

Roll Call: Ayes: Wilcox, Caplan, Dietrich, Evans, Hicks, Kelley, Montlack

Nays: None

Ordinance passed

Vice Mayor Montlack continued, "There are three calendar items from the Board of Zoning Appeals where the vice chair of this committee, Councilwoman Phyllis Evans was in attendance at the hearing and Councilwoman Evans will handle these matters."

Council Member Evans stated, "Thank you, Vice Mayor. These three calendars were presented at the public hearing on Tuesday, September 14th at 7:30. In each of the cases in the opinion of the Board of Zoning Appeals better known as BZA, the applicants clearly demonstrated there were exceptional and unusual circumstances resulting in practical difficulty in complying with the requirements of the Zoning Code, and, further, that the variance was in harmony with the general purpose and intent of the Zoning Code, and that the public health, safety, and general welfare were safeguarded and substantial justice was done. I'll start with the first one which is BZA Calendar No. 3054, James Carson, 1290 Forest Hills Boulevard, in an 'A' single-family district, hereinafter referred to as the "applicant," has made formal application requesting a variance from the accessory-use regulations of the Zoning Code, to permit a driveway with a maximum pavement width of 18'. The applicable provision of the Zoning Code is contained in Section 1121.12. The Board of Zoning Appeals said that the applicant will suffer practical difficulty if the variance is not granted because the applicant's lot is located at an unusual intersection with heavy traffic; the additional driveway width is in keeping with the character of the neighborhood; and the driveway width was approved by the Forest Hills Home Owners association. The issuance of a special permit is hereby authorized to permit a driveway with a maximum pavement width of 18', as shown in plans submitted to the Board. I'd like to move that Council adopt BZA Calendar No. 3054."

Second by Council Member Hicks.

Roll Call: Ayes: Caplan, Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox

Nays: None

Resolution confirmed

Council Member Evans continued, "Next is BZA Calendar No. 3055, Martha Stitt and Mary McGraw, 3436 Ormond Road, in an 'A' single-family district, have made formal application requesting a variance from the accessory-use regulations of the Zoning Code, to permit an addition in the corner-side-yard with an 11'-setback. It was in the opinion of the BZA that the applicants clearly demonstrated there were exceptional and unusual circumstances resulting in practical difficulty in complying with the requirements of the Zoning Code; and, that the variance was in harmony with the general purpose and intent of the Zoning Code. It was resolved by the BZA that the applicants would suffer practical difficulty if the variance is not granted because the proposed addition results in no negative impact on the neighborhood; and the proposed addition is the best architectural solution possible for the corner lot. The issuance of a special permit is hereby authorized to permit an addition in the corner-side-yard lot that has an 11'-setback, as shown in plans submitted to the Board. The applicants are required to obtain a building permit and approval of the Architectural Board of Review prior to beginning construction. All construction which is the subject of this application shall be completed within 12 months of approval of this resolution by Council. I move that Council adopt BZA Calendar No. 3055."

Second by Council Member Caplan.

Roll Call: Ayes: Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox, Caplan

Nays: None

Resolution confirmed

Council Member Evans continued, "The third one is BZA Calendar No. 3056, Susan Holt, 2830 Coleridge Road, in an 'A' single-family district, has made formal application requesting a variance from the accessory-use regulations of the Zoning Code, to permit a 4'-tall picket fence in the corner-side-yard. The applicable provision of the Zoning Code is contained in Section 1121.12, which the maximum fence height is 3'. It was resolved by Board of Zoning Appeals that the applicant will suffer practical difficulty

if the variance is not granted because of the inherent problem of safety and security that characterizes all corner lots; because the fence is of an open or mostly transparent style; and because the proposed fence is in keeping with the character of the neighborhood which includes similar fences on properties facing the same intersection. The issuance of a special permit is hereby authorized to permit a 4'-tall picket fence in the corner-side-yard as shown in plans submitted to the Board. The applicant is required to obtain a fence permit prior to installation. All construction shall be completed within 60 days of the date of approval of this resolution by Council. I'd like to submit BZA Calendar No. 3056 for adoption this evening."

Second by Council Member Dietrich.

Roll Call: Ayes: Evans, Hicks, Kelley, Montlack, Wilcox, Caplan, Dietrich

Nays: None

Resolution confirmed

REPORT OF THE MAYOR

Mayor Kelley stated, "I just have one very small item to report. As many of you may know, the school levy repeal action was defeated at the Board of Elections' level. My hat goes off to the Board of Elections for spending the time on a hearing date from 8:30 in the morning to twelve. They recessed and came back at 4:00 in the afternoon and went to almost 11:00 and by my simple math they spent 10 1/2 hours on this issue - working to look at signatures and validate or invalidate signatures. I think they did an extraordinary job spending over ten hours, as I said, trying to get to the bottom of this and get to the right number. But, the real people that benefitted are our children of the school district that did not have to go through horrendous repeal action or a possibility of a ballot issue and a possibility of further cuts. It's unfortunate that this issue was brought by the people; Mr. Weinstock, Mr. Byrne, Mr. Friend and Mr. Wagner who thought they were doing a great thing for our community when they certainly - from my point of view were not. Comments were not asked for by the papers at the time of this repeal, but I'm very clear at this point in time that I don't think it was an appropriate action and Mr. Weinstock has gone on to say that he is using this as a spring board to run for mayor in University Heights. I wish him all the best and maybe he'll be twenty signatures short of that petition drive also next August. But, really, when you try to do something to harm the children of our community, I don't think that's a good thing for our community and again, kudos to the Board of Elections - to the four Board of Trustees who started this action at 8:30 in the morning and went almost all the way to 11:00 (p.m.) to try to work this out and come up with the right number and ended up falling twenty signatures short, which as I said was to the benefit of our children. It reaffirms what our Superintendent Deb Delisle is doing, our teachers, our administrators - first-class organization and they bend over backwards to work with our children, who are our future and our school district has done great things and will continue to do good things, but you can't do it on a shoestring or a wing or a prayer.

That concludes my report at 8:20 p.m. Our next meeting will be Monday, October 4, 2004. Thank you for coming."

Respectfully submitted,

Edward J. Kelley, Mayor
President of Council

Thomas K. Malone
Clerk of Council

/mwc