

Minutes of a Meeting of
PUBLIC IMPROVEMENTS, STREETS, SEWERS AND DRAINAGE COMMITTEE

held February 25, 2015
6:30 p.m.

Members Present: Councilman David L. Tadych, Chairman
 Councilman Tom Henderson
 Councilman Steve Lee

Also Present: President of Council Paul Koomar, Law Director Ebert, Bob
 Greytak, CT Consultants; Director of Public Service/Safety
 Director Scott Thomas

Audience: Richard Fink

Chairman Tadych called the meeting to order at 6:30 p.m. The agenda item for this meeting is reviewing new Codified Ordinance Chapter 916, Foundation Drain Disconnection.

Safety/Service Director Scott Thomas explained that in response to flooding complaints, and as a result of the compliance program with the United States Environmental Protection Agency (USEPA), the City begin searching for sources of clear water inflow and infiltration to the City's sanitary sewer collection system. In the 1990's, the City contracted with an outside contractor to reline the existing sanitary lines, repair the sealed sanitary manholes, and ground lateral connections that showed signs of infiltration. The reason for this was to do as much as possible to stop some of the clear water going into the system and causing flooding.

In 2012, the City started testing downspouts in the Bruce/Russell/Douglas Drive area. They tested 120 homes. Of those 120 homes, 39 failed due to downspouts connected directly into the sanitary line. The residents were informed and of the 39 retested after remedial action 21 failed again later that year. Residents did take steps to disconnect and have the clear water run directly into their yards, or took steps with plumbers to have the clear water put directly into the storm system. The question remained that if we are only talking about 39 homes, why we were still getting flooding and sanitary overflows. We had taken steps to correct the problem on the public side. Where was all this clear water coming from? This last year, 2014, the City crews went back into the area and tested foundation drains in conjunction with CT Consultants. It was felt that homes prior to 1970 were most likely connected with their foundation drains into the sanitary line system. After testing the 120 homes that had been tested in 2012, it was found that 95 of the 120 homes had foundation drains directly connected into the sanitary system. Roughly, just under 80% of the homes were contributing a great deal of clear water into the sanitary lines which caused an overflow, which may cause possible back-ups into the system. Additionally, this clear water goes to the Rocky River Wastewater Treatment Plant, increasing the amount of water being treated from the City of Bay Village, which is one of the reasons why we are paying more for sanitary sewer rates.

Of the 24 homes on Lake Road tested, 18 failed. On Douglas Drive, 5 homes were tested, 4 failed. On Dover Center Road, 9 homes were tested, 6 failed. Bruce Road had 32 homes tested, 32 failed. On Russell Road, 44 homes were tested, 35 failed.

New Chapter 916, Foundation Drain Disconnection was written to alleviate the problems caused by these issues. Mr. Bob Greytak, CT Consultants presented an explanation of the way Chapter 916 will assist in these efforts.

Mr. Tadych asked Mr. Greytak how many gallons of water is anticipated those failed homes will cause to be brought into the system in a year's time. Mr. Greytak stated that there is empirical evidence from numerous studies, primarily in the Michigan area, that illustrate that a foundation drain during a rain weather event can contribute anywhere from 5 to 10 gallons-per-minute (gpm), or an average of 8 gpm, into the sanitary sewer. For 100 homes, this would be 800 gallons of water per minute. This is enough water to fill up an 8-inch sanitary sewer by itself without adding any other contributions. Adding connected downspouts and the normal sewage that is discharged, it far exceeds the capacity of the sanitary sewer. While the foundation drains themselves may not be causing overflows, they take up the capacity that is needed in the sanitary sewer to allow the sewage to be transported to the treatment plant.

Mr. Greytak advised that six or seven years ago, the USEPA issued findings and orders to the City of Bay Village to eliminate the remaining Sanitary Sewer Overflows (SSO's) in the City. There were four listed by the USEPA, two of them on Cahoon Road. That project has been addressed by the relief sewer on Cahoon Road. The remaining two are in the neighborhood of Lake Road and Glen Park, downstream of the Bruce/Russell/Douglas Drive area. All of this area feeds the sewers on Lake Road into that area where the overflows are. The overflows were obviously placed there for a reason, and the reason is that the sanitary sewers were being overwhelmed and there was a need for a relief point. The USEPA says those must be eliminated.

Mr. Greytak met with Mr. Noel Vargas and his staff from the USEPA in Chicago (Region 5) to explain the situation as it currently existed then. It was explained that the City had attempted to eliminate these Lake Road overflows and build a Lake Road pump station. The Lake Road pump station failed, for a number of reasons including some causes that are in litigation. The pump station was undersized for the amount of water getting to the pump. It was proposed to the USEPA that the City had two courses of action. One was to rebuild the pump station and size it for a much larger rainfall event, which would tremendously upsize the pump station to 2 ½ million gallons. The other option was that there was good data on the sewers on Lake Road collected through flow metering and it was conveyed to the USEPA that CT Consultants felt very strongly that the foundation drains and downspouts connected to the sanitary sewer were causing overflow. The area used to be a combined sewer area and when the separation was done it was the intent that the sanitary sewer would take all the plumbing from the individual homes, and the old combined sewer would be the storm sewer. The plans indicated that if one connection was coming out of a property that connection was to be to the sanitary sewer. If there is only one connection coming from the property it is taking all of the sewage as well as the downspout water and foundation drain. They separated the sewers, but put in a new sewer that was smaller than the former combined sewer and connected all the houses back up to the new,

smaller sewers. Evidence from the flow metering showed how quickly the flow would spike in the sanitary sewers during rainfall events. It was proposed to the USEPA that they allow investigation of the area to determine if the theory about foundation drains being connected, and if they were connected, the City institute a program of eliminating those sources on private property. After that was done, CT Consultants would flow meter again to collect information as to the effectiveness of that measure. That would also give data to design another pump station on Lake Road which would be appropriately sized to pump strictly sanitary sewage. The USEPA was pleased with that approach. They liked the holistic approach, and it dovetailed in with their new integrative framework which is looking at ways to accomplish the same thing without investing in a lot of gray infrastructure. A commitment was made to go ahead with the program, do the testing, and there is now sufficient evidence to show there is a serious problem. The question is how we go about disconnecting those private sources. That is the purpose of this new Chapter 916, Foundation Drain Disconnection.

Mr. Tadych explained that the flow metering was done in 2010 or 2011 and it was performed for a longer period of time than normally done, due to the insistence of Mr. Tadych, which gave additional data than usually received through these measures.

Mr. Lee asked if the new Chapter 916 was based on another city's model. Mr. Thomas stated that it was based on a number of different cities. One particular city reviewed was Waterloo, Iowa, where there was a similar program addressing similar issues and orders from USEPA. The City of Lorain, Ohio had a comprehensive program, but ran out of money. The City of Lakewood, Ohio is preparing for a similar program.

Section 912.02 in our current Codified Ordinances states that you are not permitted to have clear water sources coming into the sanitary sewer. The section is too open-ended and does not specifically address issues that need to be addressed.

Mr. Lee stated that new Chapter 916 institutes a fee of \$50.00 per month for non-compliance and sets up a financial assistance program to provide temporary financing for homeowners to complete the necessary steps to be compliant. Mr. Lee asked if this is something that is done by other cities. Mr. Thomas states that instituting the fee puts some "teeth" into the ordinance.

Mr. Tadych stated that 22 years ago the City did dye testing in a larger area of the city, mostly in Ward 1. Nothing ever came of that except to recognize that some homes were connected properly, and others were not. Mr. Tadych asked if there is documentation of that effort. Mr. Thomas stated that the sewer crew does have the documentation of what was found when that dye testing program was done. Mr. Thomas reiterated that Section 912.02 states that clear water cannot be connected to the sanitary sewer, but there are no repercussions if there is non-compliance. Many times people were informed of the code, but many times nothing happened. Some of the residents would disconnect their downspouts so the water would stop going directly into the system, but going back it was found that when a home was transferred to a new homeowner they would reconnect the downspouts. Mr. Thomas noted that this is the reason they are creating districts. If everyone in the entire City was informed of this program at the same time, it would not be fair. If we can help and work with the individual homeowner, and work out

a program that is fair, it will be much more advantageous to the City and to the residents. The crews must go back and see if the work has been done and the disconnections have been made. It will be two years before the next district is begun. The Service Director will come back to Council with the next projection district, showing the reasons why that particular district is chosen next. Once the homeowners see the commitment from the City, the results will be excellent.

The committee members began a review and commentary regarding the proposed new Chapter 916, Foundation Drain Disconnection.

Mr. Henderson stated that he understands the background and intent of the ordinance.

Mr. Henderson:

916.02 – There is a second sentence that defines the word “disconnection.” “Disconnection” is also defined again on the second page, in Section 915.05 (b) with a different definition. Mr. Henderson recommends aligning the two definitions with whichever one is more correct.

Mr. Lee:

916.01 – A. Foundation Drain Disconnection District 11 shall consist of the areas identified as the Bruce Russell, Douglas, Lake Road areas. Mr. Lee stated that it is difficult to tell if the north side of Lake Road, or the east side of Dover Road is included.

Mr. Thomas stated that District 11 stated that it is all part of District 11. District 11 is actually bigger than the 120 homes, but it is included as part of District 11.

Mr. Tadych asked if a map of the City with its districts, in a broader sense, could be attached to the ordinance. Mr. Thomas stated that they can probably come up with a way of defining the areas to make it part of the ordinance.

Mr. Lee suggested attaching an illustration of the districts for each district as they are proposed.

Mr. Henderson:

916.03 (1) Approved System. The second sentence uses the word “Storm Sewer” in capitalized text. Capitalized text words are usually defined in the definitions section. “Storm Sewer” is not defined in the definitions section. Either uncapitalize “Storm Sewer” or add a definition for the words.

916.03 – Floor drain connection prohibited.

A floor drain is normally the drain in the garage. Mr. Fink pointed out that many people have floor drains in their laundry areas. Mr. Thomas stated that if it is in the garage it goes to the storm sewer. If it is anywhere else, it should go into the sanitary sewer.

Mr. Lee:

916.03 (2) and the end of 916.02 – “the scope of authorized work as defined by current standards adopted as administrative policy under City Building codes.” We definitely have those standards in the City Building codes, and someone can find those in the City Building Code?

Mr. Thomas stated that the standards are spelled out in the City Building codes.

Mr. Tadych: *Floor drain – We are defining a definition for a foundation drain, but there is no definition for a floor drain.*

Mr. Henderson:

916.94 Non-compliance Fee is used in the title, but the first two words in the last sentence call it an “extraneous flow fee.” Mr. Tadych asked if it is a fee or a penalty.

Mr. Greytak stated that the homeowner did not really do anything but buy a home. We are asking them to comply with the program and if they don't there will be a fee; but it should not be punitive.

Mr. Henderson:

916.04 – “Any sanitary sewer customer within an established district with a direct or indirect foundation drain connection to the sanitary sewer system,” etc. Later it says “the fee will continue from month to month until such time as the City determines through inspection either that the director or indirect foundation drain connection no longer exists or that there was no direct or indirect foundation drain connection as of the date or the established district.” The phrase beginning “that there was no direct or indirect foundation drain connection” is illogical in the paragraph because the first sentence establishes that this only applies to customers that have a direct or indirect foundation drain connection.

Mr. Lee:

How does a homeowner find out that they are in non-compliance?

Mr. Thomas will send a letter to the homeowners once the district is established. Before enacting the legislation, the homeowner will be contacted again. Moving forward with any new district, a letter will be sent telling the property owners that the City crews will be there testing the foundation drains.

Mr. Lee:

The \$50.00 fee begins on the one-year anniversary of when the district is established.

Mr. Thomas stated that they will send the letter out ahead of time so the clock will start specifically at the same time.

Mr. Lee asked if it would be better to say that the 12-month clock begins to run from the time the homeowner is notified.

Mr. Thomas stated that a specific date can be set. They would be getting a letter from the City before it starts.

Mr. Lee stated that, for example, if the Bruce residents are notified immediately, and it takes 60 days to notify the residents on Russell, the way this would work the folks on Russell would only have 10 months to comply before the fee kicks in but the folks on Bruce would have a full 12 months.

Mr. Thomas stated that he would rather have one date for everyone.

Mr. Henderson:

When we go two years from now to expand to a new district, how will the timing work to change to establish a new district, the testing, and the notification.

Mr. Thomas stated that once the district is established, they will test, and change accordingly how much time it will take for testing, and they will still be given a year.

Mr. Henderson:

You would have to do the testing before the legislative change. The legislative change creates the district.

Mr. Thomas stated that is correct. We will do the testing and come back with the legislative part.

Mr. Henderson:

When the legislation passes, that causes the one year clock to begin. Notification would occur very close to the same time.

Mr. Thomas stated that is correct.

Mr. Koomar:

Fifteen years from now, none of us will probably all be in this room. If someone picks this up, there not going to know to make sure the letters are sent out on time. I can see something about passage of the ordinance and notification within two weeks. It is clear to everyone what those time frames are. That way within two weeks, the fee starts. I would like that to be crystal clear,

Council takes action, administration is required to send out notice, and it takes effect the first day of the following month. Then it is very clear to anybody 20 years from now what our intent was.

Mr. Henderson:

916.04 – The monthly fee of \$50.00 per month – In another section it refers to a maximum zero-interest plan of \$2,000. Is that the average of what you think it would cost a homeowner to correct?

Mr. Thomas stated that he has met with a couple local plumbers, American Plumbers and Killeen Plumbing. They have done a majority of the work within the City of Bay Village. They have also been doing work in Rocky River and Westlake. In looking at the cost for a sump pump system, American Plumbing gave a price of \$1500. They did 92 homes in Westlake last year at that price. We will inspect what they have done in Westlake. In addition, Mr. Greytak talked about a water pressure system but even if we don't do something like that, I would recommend a two sump pump system with a clean out, cleaning out the entire footer drains, and that would be part of that \$1500. I would also like to add a small generator in case power goes out so the homeowner can hook up the sump pump to make sure they don't flood.

Mr. Tadych noted that there is a battery system that can be applied to the pump that also has an alarm system on it. Rather than a generator type system, which would be far more expensive, something that demands that there be an alarm system and some method for the homeowner to know the power is out.

Mr. Thomas stated that most of the sump pumps are outside, not inside.

Mr. Tadych stated that in the homes an alarm system is needed.

Mr. Koomar stated that batteries may not last throughout the entire power outage.

Mr. Thomas will work with each homeowner when they make their decision as to the options that are available.

Mr. Tadych:

916.04 – The “direct or indirection foundation drain connection” takes care of the floor drain as well because they are associated?

Mr. Greytak stated that 916.04 should be changed to “Non-Compliance Fee for the Program.”

All agreed.

Mr. Henderson:

The \$600 per year, or \$50.00 per month is a reasonable fee.

Discussion followed about whether a seller of a home is in compliance with their fee payments or with the requirements of the ordinance. It was decided that this information is subject to the legal requirements of a seller to disclose full information when selling a home. The Ohio Residential Disclosure Form would apply to something of this nature. Additionally, information is public record and can be obtained through city records.

Mr. Lee:

Certified Mail notification should be considered to prove that the homeowner is on notice of the need for compliance.

Mr. Thomas stated that in addition to notification, crews visit the sites and keep contact information and dates as to when the property owner is notified.

Mr. Koomar noted that non-compliance will probably not be too much of an issue due to the many benefits for homeowners when complying with the disconnection procedure.

Mr. Henderson:

916.04 – Who is the customer when the home is rented?

Mr. Thomas stated that the customer is the homeowner.

Mr. Tadych suggested adding the words “property owner.”

Mr. Henderson:

Will customers receive bills from the City?

Mr. Thomas – They will receive bills. The department is prepared to send monthly bills.

Mr. Henderson:

Section 916.06 – Scope of Program – The title should be changed to Payment Option Program (POP).

Mr. Koomar asked why a similar payment option program would not be offered to residents to comply with housing inspection violations. Mr. Thomas noted that the difference is the requirement with EPA requirements and the commitment by the City’s part. Non-compliance affects everyone in this regard, rather than individual homes.

Mr. Koomar noted that homeowners should be notified of all financial assistance programs available.

Mr. Fink noted that with property maintenance homeowners are directly responsible and are aware of the need for maintenance. In the case of the sewers, the homeowner may not be aware of the problem, and did not cause the situation.

Mr. Henderson:

Because Section 916.14 states "Payment may be made to the eligible participant, to the contractor" etc., it is recommended that in Section 916.06 (2) that the maximum loan amount be the lesser of the actual specs to complete the project, or \$2,000. I would not like to see a situation where you could loan a participant \$2,000, they spend \$1,500 and keep \$500.

Mr. Lee:

One question for Mr. Ebert would be what document should be signed agreeing to the dollar amount and the payment plan. There should be some documentation agreeing to the terms of the program.

Mr. Tadych:

Should there be a special account for the money, and should that be defined in the ordinance?

Mr. Lee:

How much money will be appropriated to the fund for the program? If there are 80 or 90 homes will we appropriate \$160,000 or \$180,000?

Mr. Henderson expressed agreement that there be a special capital fund.

Mr. Tadych:

Section 916.06 (3) Add "one year period" to the first sentence stating that "payments can be made monthly or paid in one lump sum."

Section 916.06 (2) Do we need to put the words "with a fee" because there is a fee when the payment is referred from collection to property taxes, in addition to the amount certified for collection. Mr. Thomas will add the words "and any applicable fees."

Mr. Henderson;

Section 916.07 Eligible Participants (2) Please add "and the Finance Director" to the end of the sentence. It would be expected that the Finance Director be aware of the situation where any particular homeowner is delinquent on payment of sewer fees, or other fees of the city. I would recommend the addition of any item No. (3): "That no person who is delinquent on property tax or sewer fees will be allowed to participate in the loan program."

Mr. Lee:

Section 916.07 (1) - Who issues the “Exterior Plumbing Inspection Certificate” referred to in this paragraph. Mr. Thomas stated that the Service Department issues this certificate. It is the letter notifying the property owner that the Service Department has found that the foundation drains are directly connected to the sanitary sewer. Mr. Thomas will add the definition of “Exterior Plumbing Inspection Certificate” to the definition list.

Mr. Henderson:

Section 916.08 Designee – Please add the words “or the Finance Director” twice in this section, right after “Director of Public Service.”

Mr. Thomas:

Section 916.09 – Voluntary Participation - Mr. Thomas stated that the words “Assistance Program” are used because the Auditor’s Office does not want to indicate that the assistance is a “loan.” The words “Payment Program” are the words that the Finance Director and Service Director Thomas decided to use in reference to this program. Mr. Lee suggested just using the words “this program” instead of “Assistance Program.”

Mr. Koomar:

Section 916.06 Scope of Program (2) – Change “may be assessed” to “shall be assessed.”

Mr. Henderson:

Section 916.10 – Scope of Work – The word “Program” in the first sentence should not be capitalized. The word “reductions” at the end of the first sentence should be changed to “corrections.”

Mr. Tadych:

Section 916.11 – Approved Contractors- Should “self-permitted work” be added to this paragraph? Mr. Greytak stated that the burden would be on the property owner to show that they are going to do the work properly and complete it in a timely manner. Mr. Thomas stated that if the homeowner shows credentials he would have no problem with the homeowner doing this own work. Mr. Lee suggested that if a homeowner is performing their own work a loan or payment assistance would not be necessary.

Mr. Tadych suggested saying “private contractors or approved individuals.” Mr. Fink suggested that it may not be wise, considering the EPA involvement, to permit homeowners to perform their work individually. Mr. Thomas noted that if a contractor does not perform the

work to the satisfaction of the Director of Public Service, they would be required to redo the work at their own expense.

Mr. Henderson stated that he does not believe that Section 916.11 would prevent a person from correcting a problem at their home. It prevents them from participating in the financial assistance program because it reads “performing work under this Program” If a person is truly capable of fixing the situation themselves, that is permissible. But, in order to participate in the loan program the homeowner should hire a private contractor. The word “Program” will be changed to the “Payment Option Program.”

Mr. Lee:

Section 916.12 Contractor Selection – What is the intention of the last sentence “If the eligible participant selects a contractor not on the approved private contractor list, the same rules shall apply.” Does the participant have to select somebody on the proposed list, as well as propose additional people be added to the list, or they don’t even have to pick somebody on the list. Mr. Thomas explained that the whole idea is that if they have someone other than someone on the list and that contractor meets the requirements then that contractor would be approved and they would be eligible for the payment options.

Mr. Henderson stated that if this is the case, the second sentence of the first paragraph and the last paragraph are not needed.

Mr. Tadych stated that he would change the words “in accordance with a process established” in the first sentence to “with an available written process established by the Director of Public Service.” He noted that it has to be a written process. Mr. Thomas suggested adding “process as defined in Section 916.11.”

Mr. Henderson stated that he does not think there would ever be a situation where a private contractor who was not on this approved list would be used for fixing this problem under the loan program, because it is relatively easy to add a contractor the list. Section 916.11 states that contracts approved for work are “based on qualifications including experience, quality of work and insurance.”

Mr. Tadych suggested saying “contractor selection under Section 916.11” in the heading.

Mr. Henderson asked the overarching purpose of Section 916.12. Mr. Thomas stated that it is to make sure that the homeowner clearly knows that the City is going to oversee the work of the contractor, if participating in the financial assistance program. If they are not participating in the financial assistance program, if they are going to do upgrades to the sanitary sewer they must apply for permits to do so. People are free to choose any contractor they want if they are paying for the work themselves. But, if they want the City to front the program they must use one of the City’s approved contractors. Something like this could invite shady contractors to show up overnight.

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Mr. Tadych *suggested dropping the “I” that is hanging at the end of the second paragraph of Section 916.12.*

Mr. Greytak *noted in regard to Section 916.13, that after these improvements are done the improvements are owned by the property owner and not the City and provided the words to be used to indicate this ownership.*

Mr. Tadych – *In Section 916.14 Payment, do we want to indicate who gets the payment by the City. Mr. Lee suggested that the Director of Finance be asked if the payment should be made jointly to the homeowner and the contractor, requiring endorsement by both the homeowner and the contractor.*

Mr. Greytak – *In Section 916.15 Maintenance – Add “operating and maintaining” and change the word “improvements” to “corrections” or work. Use a small “p” for the word program.*

Section 916.16 – *Director of Public Service and Properties-* Mr. Thomas *stated that he would like to be able to change certain nuances within the program if they are not working properly. Mr. Greytak added that if the USESPA, for whatever reason, should come back and makes a further requirement on the City this section would permit changes. Mr. Lee suggested changing the cross reference to Section 916.06 instead of 916.05.*

Mr. Koomar *suggested that Section 916.16 should be removed entirely so as not to mix legislation with operational issues. Mr. Thomas agreed.*

Mr. Tadych *stated that another meeting of the Public Improvements, Streets, Sewers and Drainage Committee will be held to approve the next draft of Chapter 916, Foundation Drain Disconnections, when it is prepared. He thanked everyone for their attendance this evening.*

The meeting adjourned at 8:15 p.m.

Joan Kemper, Secretary

David L. Tadych, Chairman