

City of Bay Village

Council Minutes, Committee Session
Conference Room
Paul Koomar, President of Council, Presiding

June 20, 2016
7:30 p.m.

Present: Henderson, Koomar, Mace, Tadych, Vincent, Mayor Sutherland

Excused: Mr. Clark, Mrs. Lieske

Also Present: Law Director, Ebert, Finance Director Mahoney, Director of Community Services Selig, Director of Public Safety/Service Thomas, Police Chief Spaetzel, Fire Chief Lyons, Director of Operations Landers.

AUDIENCE

The following audience members signed in this evening: Lydia DeGeorge, Dick Majewski, Suzanne Graham, Tara Wendell, Emily Taylor, Claire Banasiak.

ENVIRONMENT, SAFETY AND COMMUNITY SERVICES COMMITTEE

Deer Resolution

Mr. Vincent advised that Mr. Henderson contacted him regarding the work he had done on behalf of the residents relative to the deer culling that took place by the City of Avon Lake at the Walker Road Park. Mr. Vincent and Mr. Henderson prepared a draft resolution, entitled, A Resolution of Support for Development of a Deer Population Management Plan for the City of Bay Village. Mr. Vincent distributed statistics received from the Police Department concerning the number of deer related motor vehicle accidents and the deer carcasses picked up by the Bay Village Police and Service Departments. For 2013, there were no Service Department records, but Mr. Vincent calculated the number as eleven based on what the Police Department had in their files. The Service Department now has an updated record keeping system and has the statistics for the years 2014 and 2015.

Mr. Henderson stated that after Mr. Vincent brought up the information they had conversations and wanted to make sure the City has the opportunity to consider a resolution that documents key points. The draft prepared by Mr. Vincent and Mr. Henderson documents that City Council is concerned that the deer population is negatively affecting public health and safety, primarily through deer related motor vehicle accidents. It is clear from the numbers shared by the Police Department that the number of accidents is on the rise and is also similar, in terms of the number, to the number of accidents that are occurring in Westlake and Avon Lake; it is in the thirties. Avon Lake determined that it is negatively affecting public safety and that opinion is shared as regard to Bay Village. It is also potentially causing economic harm and duress to residents, primarily through damage to property, something that Law Director Ebert has expressed some views on, and there is a possibility, although we do not have documents to accept or reject the

hypothesis, that it may be negatively affecting biodiversity and natural habitats or other ecology in the City, because that was the case in Avon Lake. As Mr. Vincent mentioned, information has been received from the Police Department regarding the number of deer-vehicle accidents that have occurred in the City for the past three years, as well as the number of deer carcass pick-ups, however, a protocol is not maintained to record the number, nature and details of complaints issued by residents regarding deer related damage to private property. Mr. Henderson noted that he keeps track of them on a spreadsheet, but there is no centralized way for those to come to the City and be tracked in a formal way the way that Solon, for example, maintains a data base and has a form available on their website for capturing information for that database. There also has not been a survey conducted as to the size of the deer population for a document that trends the size of the deer population as Avon Lake and other cities have chosen to do. Westlake and North Olmsted are currently working with the Ohio Department of Natural Resources to develop deer population management plans. The City of Avon Lake has successfully collaborated with the Ohio Department of Natural Resources (ODNR) to put together a deer population management plan for 2015, an edition of which was approved by the Avon Lake City Council on April 25, 2016. Those are the background recitals that Mr. Henderson considered along with Mr. Vincent, and it is recommended that the resolution state that we ask for and encourage the Mayor and Director of Public Safety to communicate the effects of the deer population in the City of Bay Village on drivers by reporting deer-related vehicular accidents and deer carcass pickup statistics to City Council in a summarized, written format on a monthly basis; and document the effects of the deer population in the City of Bay Village on private property by implementing a protocol to track the number, nature and details of complaints issued by residents regarding deer related damage to private property, and to communicate this information to City Council in a summarized written format on a monthly basis, and; collaborate with the ODNR (i) to estimate the number of deer in the City of Bay Village (ii) to assess the effect of the deer population in the City of Bay Village on the City's ecology and (iii) to develop a safe and effective deer population management plan for the City of Bay Village which addresses the public health and safety, economic and, if appropriate, ecological concerns; and, (iv) propose a deer population management plan and budget to City Council by December 31, 2016.

Mr. Vincent agreed, and displaying the statistical information he presented this evening, clarified with the Police Chief that A through D on the report represent the four zones in the City of Bay Village, with the closest to Avon Lake being Zone D.

Mr. Vincent stated that this is a good way to start thinking about this topic, and it is hoped to meet with the Mayor and Police Chief as their schedules allow this week or next week.

Mr. Ebert stated that he filed a Wildlife Damage Complaint with the Ohio Department of Natural Resources for his private property.

Mayor Sutherland stated that the City can't go out on private property and document. Mr. Henderson stated that what he is proposing, similar to the City of Solon, is that a form be developed and a data base be created to track complaints regarding damage on or near private property.

Mr. Ebert stated that until the City actually takes resolution, not only for a deer management plan but for the actual culling on one acre or more, the private property owners who are losing substantial assets can't be helped. The ODNR won't approve it until the City takes the first step of a resolution, and then an actual plan. Mr. Ebert noted that it will require culling on one acre or more and the residents of the surrounding houses have to be in agreement.

Mr. Henderson stated that this is all similar to the conversations he remembers hearing when he went to the City of Avon Lake's Council meetings and listened to them talk about their plan. Mr. Henderson noted that his intent in introducing the resolution is to clarify that City Council does acknowledge all of the recitals and recommends the three actions which he would envision this administration act upon and develop a deer management plan, in conjunction with the ODNR, like the other cities have done to present to Council along with the budget, hopefully by the end of this year, so that during the following year we can evaluate that plan and over time put together an ordinance authorizing the implementation of the plan, most likely to begin the following winter because that is typically when these plans are implemented.

Mayor Sutherland stated that the City of Bay Village would have to pay for the United States Department of Agriculture (USDA) would have to do a flyover for a population study and they don't do that until the winter. Mr. Vincent stated that there has been something in the newspapers recently about using drones for this purpose.

Mr. Henderson stated that he is trying to nail down that City Council supports the development of a plan. He expressed hope that all these kinds of details are something the administration can work through with various experts if there is a need to, the ODNR, or the USDA to put together a plan similar to the one that the City of Avon Lake, the City of Westlake, and the City of North Olmsted have presented for adoption.

Mr. Koomar asked if this is something that Mr. Vincent and Mr. Henderson want the Council to look at on June 27, 2016. Mr. Henderson stated that he would like the resolution to reflect the data that was given by the Police Chief in the fourth and fifth articles of the resolution. Mr. Henderson stated that he would like to see this move forward for adoption by Council. It is a non-binding resolution, in his opinion. It clarifies for the administration that City Council does support the development of a plan that can then be presented back to Council in the form of an ordinance and an associated appropriations ordinance for consideration.

Mr. Tadych stated that he has no problem with it; the deer are all over the City. He stated that there is a problem, and something should be done about it.

Mr. Mace stated that he agrees that it is a concern for most residents in the City that there are a lot of deer in the City. Most of us hear about the economic damage. It has gotten to the point that we need to say that we are aware of it and we have to do something.

Mayor Sutherland stated that they may not be able to make that December 31, 2016 deadline because they won't be able to do a population study until the winter of 2017. Mr. Koomar asked if there are other options to do it, or is that the only option. The Mayor stated that is the only time the leaves are off the trees.

Mr. Vincent stated that he thought Metroparks did a ground study last year, and asked if anyone knew about that. The Mayor stated that might be a possibility, but what they do with the helicopter flyovers is they actually have people who are certified as spotters. Still, the count would have to be done in the winter when they can actually see them. Then, looking at a certain area they can extrapolate what it looks like across the City. There is really no other way to estimate the population, unless you are seeing the kind of understory damage that Avon Lake had, which we are not seeing.

Mr. Henderson stated that one of the things he recalls Geoff Westerfield (ODNR) explaining to the City Council of Avon Lake was that the number of deer is not necessarily one of the factors that has to be considered in a deer population management plan. Other factors like accidents, carcass pick-ups and ecological damage can serve as the basis for the implementation of a deer population management plan. Headcount and estimates of total size are also useful and informative for that, but most of the deer population management plans in our area, for example Broadview Heights and Solon, don't actually focus on a reduction in the number of deer, they focus on reduction in the impact of the deer in terms of public health and safety, economics and ecologic concerns of the City. Mr. Henderson stated those are the factors, in his understanding from Geoff Westerfield that could be focused upon. He asked the Mayor, if the December 31, 2016 deadline is not favorable, to let the Council know what sort of general steps and timeline the Mayor would think makes sense, as far as when to work with the ODNR, when to do the aerial surveys, how to implement the data base as they have in Solon. But, he would like to move forward with a resolution by next week so we can get some clarity around a reasonable timeline.

The Mayor stated that she would think that March 30, 2017 or April 30, 2017 would be reasonable. When they did the flyover in Avon Lake it was in the beginning of March. But, if we don't have the results from them we can still put those other pieces in place.

Mr. Tadych stated that a reporting system would be at least something to put in front of them as we go forward. Mr. Henderson noted that there certainly wouldn't be any trend data for initiating the process, but often what people do when they have that number is divide it by the number of square miles of land we have, but we also know from Geoff Westerfield that there is not one single metric as a guideline for the suburbs regarding the appropriate number of deer per square mile. It is really the effect of the deer on the population. That is what the first recitals in the proposed deer management plan resolution are meant to capture.

Mr. Koomar asked if there is a possibility that we don't need a flyover. From a budget standpoint, Mr. Koomar would like to have December 31, 2016 in the resolution for appropriating money as a body for a project. At least we say the plan is done by then; it might not be the whole thing is done, but it is where you would be going active.

Mayor Sutherland stated that she can obtain an estimate of how much a flyover would be and that would be the outside cost. If they have a drone program available that we could use instead that might be less expensive. An estimate received a couple of years ago was about \$3,000. The

Mayor stated that she would prefer to have a March or April deadline and work it into the budget.

Mr. Henderson asked the Mayor to check with Geoff Westerfield about all of the other work that has to be done. That would be the first element of third party cost that would be incurred and if the plan was put together and it was adopted by Council the appropriations would be included in the plan. Mayor Sutherland stated that some of that will be driven by the exact population and where it is located. We took seven or eight deer in Walker Road Park, but thirty were taken in the Metroparks. The budget will be a function of the population.

Mr. Henderson stated that fundamentally we have good examples from the City of Avon Lake, Westlake and Solon.

Director Mahoney suggested that of putting a deer recoding system on the website would require a whole software piece. Mr. Vincent suggested just uploading a pdf, and the Mayor agreed, noting that we would post something similar to our neighbors.

Ohio House Bill 523, Sec. 3796.29- Medical Marijuana for Medicinal Use – Discussion regarding authority of municipal corporations to prohibit, or limit the number of, cultivators, processors, or retail dispensaries within the municipal corporation.

Mayor Sutherland stated that she sent the actual legislation from Ohio House Bill 523, to Council and recommended reading the Legislative Services Commission analysis. The rules for this are not going to be done until October or November of 2016.

Mr. Henderson stated that he did have a chance to read both the legislation and the Legislative Services Commission analysis. This law was put in place by Governor Kasick and will be effective September 8, 2016. It legalizes the use of Medical Marijuana across the State of Ohio. Around the same time, the interest in a state wide ballot measure to legalize Marijuana campaign has been suspended. By way of background, federal law still classifies Marijuana as a Schedule One Control Substance. These are substances like Heroin, LSD and Marijuana. These are drugs with no accepted medical use and high potential for abuse with potentially severe dependence. The Department of Justice is encouraging federal prosecutors not to prosecute those who distribute Marijuana for medical purposes in accordance with the state law. This law, among other things, permits a patient, on the recommendation of a physician to use Medical Marijuana to treat certain qualifying medical conditions, it requires the Marijuana to be in the form of oils, edibles, patches, and a few other qualifying forms such as vaporization, but not smoking. It prohibits cultivation of Marijuana for personal, family, or household use, and it creates three types of entities: cultivators for Medical Marijuana, processors that will process that into qualifying forms and retail dispensaries that will sell it to the public. In Mr. Henderson's opinion there are two sections of this law that require attention by the City of Bay Village. First, Section 3796.29 authorizes the legislative authority of a municipal corporation, such as this City Council, to adopt an ordinance to prohibit or limit the number of cultivators, processors, or retail dispensaries within a municipal corporation. Also, Section 3796.28 clarifies that the law does not require an employer to permit or accommodate employees' use, possession or distribution of Medical Marijuana. It also does not prohibit an employer from refusing to hire, discharging,

disciplining, or otherwise taking adverse discipline action against a person because of that person's use, possession or distribution of Medical Marijuana. It does not prohibit an employer from establishing and enforcing a drug testing policy, a drug free workplace policy, or a zero tolerance drug policy. It does not permit a person to sue an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking adverse discipline action against said person because of their use of Medical Marijuana, even if the Marijuana was recommended by a doctor and was used during off work time. Section 3796.28 also clarifies that a person who is discharged from employment due to the use of Medical Marijuana shall be considered to be discharged for just cause for purposes of unemployment compensation law, if the person's use of Medical Marijuana was in violation of the employer's policy, and therefore said persons would not qualify for unemployment benefits.

Mr. Henderson continued, stating that based on conversations he had with Law Director Ebert and HR Specialist Demaline last week, it is his understanding that the City of Bay Village has a drug free workplace program which is referenced in Section 151.18(a) of Chapter 151 of the Codified Ordinances as amended by Ordinance 16-44 which is up for third reading and adoption this evening and it does not prevent employees from using Medical Marijuana. As a result of the adoption of House Bill 523, Mr. Henderson recommends two actions: 1) the City Council adopt an ordinance prohibiting cultivators, processors and retail dispensaries within the City of Bay Village prior to September 8, 2016 with an emergency clause, and 2) either that the Mayor update the City's Drug Free Workplace Program or other formal workplace program or policy to not permit the use, possession, or distribution of Medical Marijuana by a City of Bay Village employee, and to allow the City of Bay Village to refuse to hire, to discharge, to discipline, or to otherwise take adverse employment action against a person because of that person's use, possession, or distribution of Medical Marijuana, or that City Council amend Chapter 151 to require such policies.

Mr. Koomar commented that a few years ago the City Council took action regarding internet gambling facilities. The thought on the Medical Marijuana issue is we don't know what rules are going to be written or how it is going to be implemented, which is in the future, but we do have the power as we sit here today to limit that and allow the rules to play out, and, if so desired, adjust the ordinance versus waiting for it to be implemented and reacting to it.

Mr. Vincent asked Law Director Ebert his thoughts. Mr. Ebert stated that the use of Medical Marijuana would be prescribed by a doctor. Mr. Vincent stated that the issue is that this is state law and they can put whatever they want but the union doesn't care about state law. There is an understanding that Medical Marijuana is useful in the treatment of Epilepsy, and if someone on staff uses it for that purpose and gets fired, that is Mr. Vincent's concern. Unfortunately, we won't know that how that will play out. Mr. Vincent asked the Mayor if there is knowledge as to how other local municipalities are looking at this. If we say no retail sales here in Bay Village, but our neighbors are allowing it, how effective is it going to be? Mayor Sutherland stated that she is sure all the cities are looking at it right now, but she does not know where they are in the process. There is a Council of Governments meeting coming up and the Mayor will see what everybody is doing.

Mr. Koomar asked if there is a downside to prohibiting the first part of the law, the growing and distribution.

Mr. Henderson stated that an ordinance prohibiting cultivators, processors and retail dispensaries within the City of Bay Village, is what he personally would like to see enacted before September 8, 2016. The Department of Commerce and State Board of Pharmacy will be responsible for issuing licenses to these types of activities pursuant to the rules eventually promulgated, which will take some time. However, the law still goes into effect September 8, and Mr. Henderson is still of the opinion that we should be in front of that.

Mayor Sutherland stated that we should just prohibit it and be done with it. Mr. Henderson agreed. Mr. Vincent stated that he would like to look at the employment issues. Mayor Sutherland stated that she would have to talk to HR Administrator Jen Demaline because Ms. Demaline has already said that if they have a prescription there may be issues. Mr. Henderson stated that he is aware that many employers, including very large employers in the Greater Cleveland Area are currently working with their law teams to make sure that their Drug Free Workplace Programs are not jeopardized by this, and to clarify that employees subject to those programs cannot use Medical Marijuana. That is underway, employers are working on that and that is something that the City of Bay Village administration should work through. Mayor Sutherland expressed agreement.

Mr. Mace stated that if they are working on that Drug Free Program and putting it in the ordinance, we already got our unions to agree to a policy that all employees are subject to. Mayor Sutherland stated that there may be some tweaking required, but Jennifer Demaline is working on it.

Mr. Henderson stated that as long as the administration takes action to cause that to occur, he is happy. He does not think it is necessary for Council to take action relevant to Chapter 151 at this point because 151 already requires this program, the details of which are not enumerated in Chapter 151. Mr. Henderson stated that he is glad to hear that the administration is on board with the idea. A second action is not necessary from Council, just one action to prohibit cultivators, processors, and retail dispensaries in the City of Bay Village. Mr. Koomar asked Mr. Ebert to prepare a document for review by Council.

Mr. Tadych asked what the retail reference includes. Is it setting up a business, retail wise, or can they get it at any of the drugstores. Mr. Henderson stated that he would strongly recommend the exact language from the House Bill be used because the House Bill defines these terms within it.

Mr. Ebert stated that it is premature as far as the rules and regulations and until such time as the Federal government gets involved there may be a different situation requiring a change in the ordinance.

FINANCE AND CLAIMS COMMITTEE

Mr. Tadych reviewed the legislation he will present at the Regular Meeting of Council this evening including Resolution No. 16-39, the Tax Budget for Fiscal Year 2017, and resolutions

certifying unpaid tree removal, sidewalk removal, sewer rental and refuse collection charges, grass cutting and cleaning charges, and Ordinance 16-44 regarding Employment Provisions, all of which are up for adoption this evening. The Administrative Compensation Ordinance for officers and employees of the General Administration Department will be placed on second reading this evening.

PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE

Mr. Vincent will present Ordinance 16-49 amending Chapter 1351 “Determination of Grade Lines” to second reading this evening. The proposed amendments to Codified Ordinance 1373.01 regarding Storage in Front of Building Line; Exceptions will also be moved to second reading.

Mr. Henderson stated that when he reads Ordinance No. 16-49 in simple language, using the red lining indicating the changes, he sees that the existing rule says that “No person shall store, keep or maintain in any residential district in the City any of the following objects:” Following that statement, the objects are enumerated. The change removes the word “residential” and also adds the phrase “more than one of.” Mr. Henderson would like to offer the idea that perhaps the residential district ought to remain the way it is, and that there be a second paragraph added that looks exactly like the first but pertains to business districts. Changing that paragraph be changed to “more than one of” would be appropriate. Mr. Vincent stated that Mr. Henderson’s concern is that now we are letting residential neighbors have more than one boat. Mr. Ebert stated that if it is behind the front line, in the back yard. Mr. Cheatham noted that storage in front of the building line is allowed if the building is 100 feet back from the right-of-way. Mr. Ebert noted that boats are in driveways of homes that are set back 100 feet back.

Mr. Henderson asked if the goal of this ordinance is to only change the non-residential districts.

Mr. Ebert stated that there have been complaints about businesses adjacent to residential properties storing more than one boat. The issue of the residential then came in for those dwellings who are 100 feet back from the right-of-way

Mr. Tadych stated that we didn’t want to store any boats in the business district. He noted that this would allow storing a boat even in the parking lot of the shopping center, which is ridiculous.

Mr. Ebert stated that they will review the ordinance further. Mr. Cheatham noted that a complaint was received regarding property on Edenborough, which was passed on to the Property Maintenance Inspector. The property was 100 feet back, but they had four to six boats and campers in their front yard. There was nothing legally the City could do. The same situation occurred on property on Wolf Road, but there was nothing that could be done because the home was 100 feet back from the right-of-way.

Mr. Ebert stated that Chapter 1373.01 is the code that gives the authority to store boats in front of building lines 100 feet back from the right-of-way.

Mr. Vincent asked about the possibility of prohibiting commercial entities from storing anything on their property. Mr. Tadych expressed agreement, noting that the businesses on Clague Road in the past have had numerous boats and vehicles stored outside in the parking areas.

Mr. Ebert stated that temporary storage is allowed for the purpose of loading or unloading purposes for periods not to exceed 72 hours within a 21-day period. The Mayor commented that this was changed because people would bring their boat in, drive it around the block and bring it back in.

Mr. Henderson asked if the intent of the phrase “more than one of” in the proposed revision of the code is to limit the number allowed to be stored. Mr. Ebert stated that it is because businesses are in the back of residential in Bay Village, that’s why there are complaints.

Mayor Sutherland asked how the proposed revision of the code would affect business related trailers. Mr. Henderson stated that this is a good point and the type of thing that would be resolved by having two paragraphs, rather than blending them in one.

Mr. Tadych suggested that if it is a commercial building they should have a garage to store their boats or trailers in a garage. Mr. Vincent noted that he would assume businesses have a trailer behind their buildings as necessary. The Mayor noted that there is a cabinet maker in the City who has to have a trailer to haul materials. Mr. Ebert stated that trailers related to businesses is an exception. The Mayor commented that many of the commercial buildings do not have garages for vehicles.

Mr. Koomar summarized that in preparing the legislation there will be a breakdown of residential versus commercial and in the case of commercial up to two business related trailers to allow the commercial owners some cushion, and a limit of one on residential. If the trailer, vehicle or boat has to be currently registered, that prohibits those that are just being stored versus those that are currently being used. Mr. Tadych noted a stored vehicle at a vacant home on Kenilworth as an example.

PUBLIC IMPROVEMENTS, STREETS, SEWERS AND DRAINAGE COMMITTEE

Cleveland Water – Westlake Meeting

Mr. Henderson reported that on June 14, 2016, he attended a City of Westlake City Council meeting in which there was a study called A Wholesale Water Option Study for the City of Westlake. Mr. Henderson stated that it was presented by the Westlake City Engineer and Dan Schaefer, the consulting engineer from Brandstetter Engineering Company. Mr. Henderson noted that the meeting reviewed the fact that in 2012 the City of Westlake completed a study with another engineering firm and they put together a plan which involved primarily the installation of a 30-inch water transmission line from the City of Avon Lake to buy water from Avon Lake Regional Water. That project was projected to cost about \$19 million in capital expenditures, but, according to the City of Westlake, was expected to reduce operating expenses and create savings that would be passed along to residents. That plan was challenged by the Cleveland Water Department on a legal standpoint, and earlier this year the City of Westlake won that case. The case is currently under appeal, but the City of Westlake has decided to move

forward. A new engineering firm has developed a new plan designed to help them achieve their goals and in this plan it eliminates the single, 30-inch plan. It now recommends six or seven local water line connections into the City of Westlake from Avon Lake and North Ridgeville, and the capital cost of that project is estimated at \$14 million, \$5 million less than the prior plan. The operating savings are expected to be realized through purchases of water from three sources now, not one as previously planned. This would be purchased from Avon Lake Regional Water, Elyria Water, and also Cleveland Water. The new plan is intended also to address concerns about Avon Lake Regional Water's ability to operate during periods of ice when they have problems pumping water. This would address that through having redundancy through the City of Elyria's water system and also the City of Cleveland's water system. One of the two engineer's mentioned in the meeting that the project from an engineering standpoint involves Avon, Avon Lake, Elyria, and North Ridgeville, and does not involve Bay Village. He commented that from an engineering standpoint, a technical standpoint that is, that Bay Village could be included in their plan and doing so would likely improve their water system from a technical standpoint in his opinion.

On Thursday, June 16, 2016, the Westlake City Council passed an authorization for the City of Westlake to move forward with a new contract to vet out this plan in detail. It is expected to last from July to mid-2018 to develop a plan, work with the Ohio Environmental Protection Agency to get everything in place to implement a billing system and other details that the City of Westlake is going to have to work through.

Mr. Henderson offered two ideas as a result of the information he learned at the meeting. First, it might be interesting to invite Dan Schaefer to the Bay Village City Council Chambers and have him provide City Council with an update on what City Council of Westlake just authorized, and depending on the outcome of that discussion, it might be advisable for the Public Improvements Committee to do what the Mayor actually suggested to evaluate the options regarding water. We have the option to do nothing, or maintain the status quo. We have the option to accept Cleveland Water Department's proposal. And, now, we may have an option to participate in the Regional Water System that Westlake is developing. All three of those are options require due diligence and that is something the Public Improvements Committee could undertake, but it might require a third party consultant to assist because it is technical in nature.

The Mayor asked the cost of the contract of the City of Westlake approved on June 16, 2016 as referred to by Mr. Henderson. Mr. Henderson stated that the cost of the contract is \$437,520, and their intent is that they are going to be doing the heavy lifting on the engineering and the cities that are interested in participating would be asked to participate in the costs of implementing the program, and those costs would be shared through rate-sharing with Westlake undertaking the debt and passing along the costs over time through a capital fee in their water system. Fundamentally, they have gone away from the 30- inch pipe that caused a lot of concerns to be brought up. Some residents expressed concern that if water came in from the west rather than the east that this might dislodge particulates that are attached to the pipes. Mr. Schaefer indicated that is something they can work through as a non-problem. Mr. Henderson asked if this will expose anybody to the risks associated with what happened in Michigan. He said it would not.

Mr. Koomar stated that Council could definitely consider having Mr. Schaefer address the Bay Village City Council. He is a relatively recently hire with Brandstetter, but spent twenty-five years in the Cincinnati area and actually retired as the Superintendent of the Greater Cincinnati system, and that system had been changed over the years. His knowledge and handle on details of the technical system of building or adding on is clearly something he has done in his career and years of experience. The meeting was very informative.

Mr. Henderson stated that it would be a good opening discussion for the evaluation of the three major options to 1) do nothing; 2) consider the Cleveland Water proposal, or 3) consider something with Westlake.

Mr. Tadych stated that some years ago there was discussion about this and a motion in Council that we look at feeder lines coming in to Bay Village from Westlake from the City of Cleveland's lines. There was an actual discussion about spending some money to look into this. This has grown now, as Tom described, into a different scenario. Mr. Tadych stated that although he is not against someone coming in and talking about something, he is against spending any money until we see what plan Westlake is finally going to settle with. Mr. Tadych stated that he personally feels that in the next twelve years we will see a blended water situation, which is what he is talking about now, being offered to any community through blending with Cleveland and other communities' water. That is the thing to come, but it isn't coming yet.

Mr. Koomar said that in terms of what the Environmental Protection Agency requires, for emergency hook-ups and things like that with Cleveland Water, if they chose not to participate, there are certain requirements from a public safety standpoint which Mr. Schaefer is well-versed in those topics.

Mr. Henderson stated that he shares Mr. Tadych's position about spending money for evaluating this, but he does think that Westlake is now authorizing \$437,000 worth of engineering that is going to take place between in the middle of 2018. That is two years of work, and many details will be ironed out and changes will be considered, but the general thought is that it would be very wise for Bay Village to stay tightly informed of what their plans are because there is a possibility that we might want to participate in it.

Mr. Tadych stated that there was some evaluation done many years ago and Mayor Sutherland and most of Council agreed that the evaluation of staying with Cleveland seemed to be to the advantage and safety of our residents. That may change over what we hear from the others, but at that point we decided that was the firm way to be.

Mayor Sutherland stated that she has been very clear that she thinks that Westlake is being very unrealistic and there are pressures coming down on some of these smaller systems by the USEPA as well as the Ohio EPA. The Mayor said she was in a meeting about a month ago and the Mayor of Lorain talked about the fact that they are now requiring licensing of their employees. That is not something we have to worry about with the City of Cleveland. Some of these small operators are definitely sub-standard to the big systems and eventually they will just get absorbed because they won't be able to maintain the high standards that are required.

Mr. Tadych stated that he thinks a cautious watch of what Westlake does is to be commended, but he does not think we should go overboard in doing too much yet.

Mayor Sutherland cautioned that the City of Bay Village is in a system now, with the City of Cleveland where we don't necessarily have a say, other than the Council of Governments Regional Water System, but we will have no influence with Westlake. Our friends from Westlake have be watched, more so than our other partners, to make sure things are equitable.

Mr. Tadych stated that he was going to the water meetings in Westlake when this first came up and it is something we've done, kept an eye on things, and we should continue to do that. Mr. Henderson stated that he thinks he would like to continue to do that by inviting this gentleman to come and explain to the Bay Village City Council what Westlake is doing. If that calls for additional conversations, great. If that's the end of it, we can accept that. But, the Mayor asked Mr. Henderson to take a look at the Cleveland Water Contract about a month or so ago, and that is a valid thing for us to do because water is the only utility that we actually put in all of our bodies. Mr. Henderson stated that he wants to make sure it is safe, it is affordable, and it is maintainable. It is important that we look at all of the options that are around us at this time. Mr. Henderson expressed that he would like to learn more about this.

2016 Sidewalk Replacement Program

Finance Director Mahoney will review the fee to be charged to residents for placing any unpaid repair or replacement of sidewalks involved in the 2016 Sidewalk Replacement Program on the taxpayer's tax duplicate. Mr. Henderson asked if there is compounding interest on the amount to be charged. Mrs. Mahoney stated that there is no compounding, it is just a one-time charge, but the County adds one percent. Mr. Henderson stated that it is not really interest expense, it is a fee, and he would be opposed to the former ten percent quoted. Mr. Ebert noted that the amount is not in the resolution, it is in the letter that is circulated after passage of the resolution, and it will be reviewed further.

Mr. Mace's suggestion of including notification to the Service Department of electric fences on property on which there will be installation of sidewalks will be included in the letter to residents.

Mr. Henderson will move forward with adoption of the resolution this evening at the Regular Meeting of Council, with confidence that Mr. Ebert and Mrs. Mahoney will provide the correct wording in regard to the fee.

RECREATION AND PARKS IMPROVEMENT COMMITTEE

Mr. Mace had no report this evening.

SERVICES, UTILITIES AND EQUIPMENT COMMITTEE

Mr. Tadych stated that there will be a joint meeting of the Finance Committee-Services, Utilities and Equipment Committee on Thursday, June 30, 2016 at 6:30 p.m. The meeting was previously

been cancelled, but the meeting is now re-scheduled for Thursday, June 30, 2016. In regard to the agenda for that meeting, Mr. Tadych stated that the items to be discussed are the City telephone system, the consultant costs, upfront and on-going, the system cost upfront and on-going, system capabilities and estimated useful life, potential savings over existing costs, providers and systems, consideration of a lease or purchase, network update for the telephone system, and a new Finance Department computer system. Mr. Tadych stated that Mrs. Mahoney would furnish all of the RFP's and related information prior to the meeting. Mr. Vincent asked about the range of bids received. Mrs. Mahoney stated that they range anywhere from the five year cost of just under \$60,000 to over \$300,000. There were ten or eleven proposals. Sixty days are needed from May 24, 2016 to award the contract.

MISCELLANEOUS

Mr. Koomar noted that he received emails regarding the process to appeal to a Notice of Intent for Building when it is posted on property. If a resident has a concern of a posting they can speak to the Building Official. If agreement is not reached, the next course of action is for an appeal to the Board of Zoning Appeals. Mayor Sutherland stated that if the neighborhood does decide that they want to file a formal objection that goes to the Board of Zoning Appeals, all of the neighbors should sign it and they would get charged once, rather than individually.

Mr. Koomar stated that there was an issue of the posting of ten days. Mr. Tadych stated that the posting was dated prior to June 17, 2016, and did not go up in front of the building until June 17, 2016. Mr. Cheatham stated that he gave the time for objection until Monday, June 27, 2016 so it is still ten days. Before he got the first objection, he had already contacted Melissa Wank and was planning to tell her the date was wrong and there was a misunderstanding at the desk and they gave her the wrong date, and new cards with a new date would be issued.

Mr. Greg Goray, 566 Humiston Road, who live directly north of the construction project, addressed the Council. Sue Goray stated that building permits went up, but there was no Intent to Build posted. It wasn't until they called and asked where the Intent to Build posting was that the building permits came down. Mr. Goray stated that the building permits were dated June 14, 2016, they went up on June 15, 2016. Mr. Goray called Mr. Ebert at 7:08 p.m. with several issues, one of them was the lack of the posting of the Intent to Build. Two days later, the Intent to Build went up dated June 13, 2016, the date prior to June 14, 2016, the date that the permits were issued. It was concurrent days that all of a sudden these things were issued. Comments were made by the Building Director saying "Everyone knew." Apparently everyone did not know. I did not know. Who constitutes everyone? The people most affected do not know what is going on, and we are the ones most affected, given that we are right next door. We were not involved with the issue of the grading, again being the party most affected, with how that decision came to be. What happened to the system of including the people that are most affected? Can anyone answer why we weren't included on the decision with the issue of the elevation being raised sixteen or seventeen inches? A previous comment was, by the Building Department, the decision was made because they didn't want to put in a lift station for their sanitary sewer. That's legitimate, however, the sheet flow diagram also includes within that document, invert depths of the sanitary location. Invert depth is the depth to the bottom of the sanitary pipe. It was already known what the invert depths were, but no one looked at it. Why weren't we included with this decision?

Mr. Cheatham stated that he explained at the public meetings over and over that the builder asked for forgiveness, not permission. The top that was approved was not what he went by and we found it after the fact. At that point, he involved Safety/Service Director Thomas, the city engineer, and stop works were placed on the other two lots so that nothing could go forward until it was all accepted. There were numerous meetings with residents from Humiston in the room. It was all discussed and the city engineer along with the builder's engineer came to an agreement on what would work for the three lots for drainage, and the stop works were lifted. What happened on the ten day Intent to Build is that the builder came in to protect his rights as an owner and dropped off a set of plans, about six weeks ago. The Law Director agreed that they had to be accepted but at that time not issue the ten-day Intent to Build. The ten-day intent is typically issued when they drop off the plans, but because of the stop work order on the project, they did not issue the ten day Intent to Build. The plans sat for five to six weeks and when the stop over was lifted, and the Law Director and engineers agreed, Mr. Cheatham was authorized to do the plan review. At that point it had been so long, he assumed that the ten day sign had been issued. He honestly just forgot that it was a different case and it had not been issued. Mr. Cheatham stated that he would take the blame that they had not been issued, and he did the plan review and authorized the issuance of the permits. As soon as he got an email asking about the ten day posting he immediately called Mr. Ebert who notified the builder's secretary who came in on Thursday to pick up the ten day Intent to Build Notice and posted it on Friday, June 17, 2016. Mr. Cheatham stated he asked his permit technician why the permits are dated June 13, 2016 and she had a misunderstanding that the date should be the 13th. They were reissued and were dated June 17, 2016 and will be posted. That still leaves the termination date for the appeal at Noon on Monday, June 27, 2016.

Mr. Goray read the mission statement of the Bay Village Building Department as it is posted on the Bay Village website:

“We are dedicated to protecting the quality of life, health, safety and welfare of the residents of Bay Village through the enforcement of codes and regulations.”

Mr. Goray said that he met with Mr. Cheatham two weeks prior to the demolition of the house asking him how the neighbors would be protected from the spreading of toxic poisons of asbestos and lead. He said nothing. He said they would not do anything. Mr. Goray later sent out an email asking why water wasn't sprayed on the project. He said, “Oops, sorry.”

Mr. Cheatham stated that none of that is true. Mr. Cheatham stated that he said that was under the purview of the Ohio Environmental Protection Agency and that every time he called the Ohio EPA about any demolition on residential they always tell him they are not really interested. We have no legal authority as a City or Building Department to enforce any kind of asbestos or any kind of lead-type stuff in residential. We have zero authority. You can call Columbus, the Board of Building Standards, the Department of Commerce, and the Department of Industrial Compliance, that is accurate 100%. Mr. Cheatham stated that he told the gentleman we had no authority, there was nothing we could do, but he could call the Ohio EPA as a neighbor and ask them. It is not the Building Department's work to know if there is asbestos, it is the Ohio EPA. As far as the water spraying, Mr. Cheatham stated that he informed Mr. Goray that all demolition contractors know that they are supposed to spray down the property and they leave a hydrant for that purpose. The

Building Department is not out on site while they demolish a house. This is the first time ever he received a complaint that someone didn't do it.

Mrs. Goray asked the minimum lot size for residential new housing construction. Mr. Cheatham stated it does not apply to these lots. These lots are grandfathered. Mrs. Goray stated that they called another municipality and according to their Building Director...Mr. Ebert stated that these particular lots are exceptions because they were recorded pre 1954. There is a specific ordinance that, because of the Humiston situation, is in review by Council's committee. They are trying to come up with a different formula for those undersized lots that are specifically grandfathered in pursuant to the code. They are buildable lots based on the law. Mr. Goray stated that Donald Graham, the Building Director at Westlake stated that any grandfathering is null and void upon the sale. The Nyerges' were the original owner of those three lots. Dr. Nyerges bought them in the late 1930's or early 1940's from the Humistons. It was Dr. Nyerges intent to maintain those three lots as one parcel. That was conveyed by their son, Ted, who is also now deceased, and their daughter Holly who is not deceased. That was always conveyed to us going back to the 15 years that we've lived there. It has been a wonderful property adjoining our lot which is 85 feet and Dr. Nyerges' old lot being 135 feet wide. It has been part of the integrity of our neighborhood. Mr. Graham heard of this scenario on Humiston two months ago and looked at the site. He was awestruck that this was even going on. He said that the Building Department has so much power here. Mr. Goray noted that they have been on vacation and for various reasons have not been able to attend, and sometimes not even being told these meetings are going on. Mr. Ebert gave examples of building of grandfathered-in lots in the Sunset neighborhood, and permitted use on Bassett Road pertaining to the Martin's Deli construction.

Mr. Goray read the small print on the Intent to Build sign that is posted. It says "Unless complaint is in writing and is filled within ten days with Building Director alleging that the work proposed in this application is so located or of such character that it will substantially injure the existing use or value of the neighboring property, if not therefore a permit will be issued." That statement tells that the neighbors are allowed to submit that they are being directly adversely affected either by the location or the character or use.

Mr. Cheatham stated that Monday, June 27, at 12 Noon is the deadline for filing the appeal. Mr. Cheatham stated that the houses that the builder is building are legal with all zoning codes, have been approved by the City engineer and Service Director and he cannot say under any circumstances he can say that he agrees it is injuring the neighbor or altering the character of the neighborhood. He said he is being equitable across the board that since it meets the codes it is legal. As a Building Official he can do nothing about it. He stated that if Mr. Goray goes to the Board of Zoning Appeals they are going to basically look at the language and they are very much of the same opinion that if it is totally legal it is not about whether you like it or not.

Mr. Henderson asked what the word "character" means on that Intent to Build sign. Mr. Cheatham stated it is subjective, that is the whole point. Mr. Ebert read from the code as follows: "A single family dwelling may be constructed on lots separately owned on September 5, 1922, or numbered lots in a subdivision recorded in the Office of the Recorder of Cuyahoga County prior to April 29, 1954." The permanent parcel number for this lot was dated in 1940. You can build on these lots even though the code of Bay Village shows the minimum square footage of property in order to

build in the First Residence District and Third Residence District is 7500 square feet. These lots are specifically grandfathered in under the provisions of Chapter 1155.04, passed in 1954 when the Building Code went into effect in Bay Village. When you say stop all these, you are taking property rights away. You have to come up with a rational, logical compromise with what we have currently and also address those concerns. Perhaps we talk about the square footage of a lot and a percentage of the square footage of the house being built.

Mr. Tadych stated that he drove by the house today and was surprised to see the dirt spread on either side of the house slanted down towards the lower properties. He was assuming that before the houses on either side of the house that exists today were started, the walled area would be in place before they begin construction. Certainly that is not the case. The dirt is sloped down; it looks dreadful, and the retaining walls need to be there before they can build on either side.

Mr. Cheatham stated that the builder can work on all three properties at once but he cannot get a final inspection and a final occupancy permit on the house until Director Thomas and Bramhall Engineer approve that the engineering is to what was approved and that includes a retaining wall.

Mr. Tadych stated that his fear is similar to what happened to the first house. Once it is in place it can't be torn down; it can't be altered, it is just an impossibility. Mr. Tadych would like to see the retaining walls there to define the property on either side, north and south of the existing house and then say whether or not he is allowed to build the house. That is the way it would be fair to the residents – to complete the walls to the existing house.

Mr. Koomar questioned that if the grade is set and the builder moves the dirt, does that upset the grade.

Mr. Cheatham stated that they have changed the processes and what happened before cannot happen again. The engineer goes out before there is a footing inspection to make sure the basement is deep enough. Then they shoot the top of the wall to make sure the height of the wall follows the plans. It goes to all the officials before it goes forward. We have created processes that are checks and balances.

Mr. Cheatham stated that if the walls go in before the other houses are built the lots are so narrow the builder might be afraid of damaging them as he digs the other basements.

Mr. Ebert read from the code: "Whenever a non-conforming use has been discontinued for a period of six consecutive months, subsequent use reverts back to the zoning code of the district in which it was established."

Mr. Goray stated that what he thinks what would have been fair is having the retaining wall in between the other two properties that he is building on. Mr. Goray was informed that this is where he is building it. Mr. Goray stated that is not the case according to the plans. According to the plans it is one foot from the Goray property line. Mrs. Goray noted that the builder threatened to take their fence down.

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Mr. Vincent suggested that the letter sent to the Gorays by the builder be sent to the Law Director for review. Mr. Vincent asked if anything can be done in the City to have someone on site when a home is being demolished. Mr. Ebert agreed.

Mr. Koomar addressed the Gorays to be sure they are aware of the process of going through the Board of Zoning Appeals, an independent group of residents, and the Mayor stated that all the complaints can be in one application with one \$50.00 fee. Mr. Cheatham provided a copy of the ordinance applicable to the appeal process. Mr. Cheatham informed Mr. Goray of the Monday, June 27 deadline to file a complaint with him.

Mr. Tadych stated that there is another house coming down in his ward on Wolf Road. He would hope that if it has to be sprinkled it is. Mr. Ebert stated that it is required under the state code.

There being no further comments, the Committee meeting adjourned at 9:05 p.m.

Paul Koomar, President of Council

Joan Kemper, Clerk of Council