

Regular/Public

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President Baker called the regular meeting to order. Pastor Ray Pfahler offered the prayer. The Pledge was recited by all.

Roll call: Shupp, Miller, Vance, Hamsher, Aspiras, Corfman, and Leathers were present.

Corfman moved and Aspiras seconded that the minutes of the September 7, 2010 regular meeting be approved. Roll call vote. Ayes all. Motion carried.

Public Comment: None.

Standing Committee Reports:

A. Finance – Mr. Miller had no report.

B. Utilities – Mr. Vance reported he was not able to be at the last Public Utilities Board meeting, but I understand there were a number of water projects that were reviewed and received favorably. We do have an ordinance tonight that we need to pass that we will talk about later in the agenda.

C. Health & Safety – Mr. Corfman had no committee report, but stated we are staying on top of and keeping track of any dog issue with the investigation.

D. Parks and Recreation – Mr. Aspiras had no report.

E. Transportation – Mr. Shupp had no report, but mentioned he got a call from Bill Stocker and he had a suggestion for the name changing on Mineral Springs Street. He thought Education Drive might be something we might consider on that name change if we go ahead with it. I thought it had a nice ring to it myself.

F. Planning – Mr. Hamsher had no report.

G. Ordinance & Personnel – Ms. Leathers had no report.

Special Committee Reports: None.

Administrative Reports:

A. Mayor - Mayor Handwerk reported the September Employee of the Month is Chris Bishop from the Fire Department. Chris started as a probationary firefighter on March 12, 1980 and he was appointed as a firefighter on September 12, 1980. In April 1986 he was appointed to Lieutenant and on May 9, 1990, he was promoted to Captain. He was a captain for six years at which time he became Assistant Chief July 1, 1996 and remains an Assistant Chief today. Chris is in charge of the training bureau. I would also like to note that Chris is pretty much in charge of the softball tournament that the firefighters have for the 4th of July festival which has certainly become a very big tournament and a very big part of that festival. Not only is Chris a dedicated firefighter, but he is also one of our five firefighters that works for the City of Orrville. In November 1980 Chris also began working for the City of Orrville Utilities as a Meter Reader. In 1995 he transferred to the Distribution Department at the Power Plant as a Line Worker. Then in 2008 he began working in the Utilities Technical Services Department as an Electronic Technician 3 and that is what he remain today. Congratulations to Chris and he and I will be eating lunch at Jerry's on Wednesday this week.

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B. Safety Service Director- Director Wheeler reported resurfacing projects have been full blast over the last few weeks. Briarwood, Mill, Elm, Lynn, Sunrise Circle, and as of today Apple Blossom resurfacings have all been completed. Willard, Linden, Harding, and Washington should be completed by the end of this week. We appreciate everyone's patience during these projects. Medway and the City of Orrville Police Department will be involved in Operation Medicine Cabinet this Saturday. This is an opportunity for citizens to disburse of prescription drugs, liquid or solid, with no questions asked by the officers. The operation will be from 10am to 2pm this Saturday at City Hall. That is September 25th. Also, a reminder that October 2nd is the citywide yard sales from 9am to 4pm and please be careful driving that day. You might also be careful not to double park or block driveways.

C. Utilities Director – Director Brediger stated he would have a few comments concerning the resolution this evening. A couple other items; we do have some updated pricing for the AMP natural gas aggregation program. That pricing this year will be \$5.88. That is lower than anything that is currently being offered right now. The next cheapest price is \$5.99. Just a few comments concerning people that are currently enrolled in the program or not currently enrolled, if you are currently enrolled in the program you don't have to do anything. If you are enrolled in the program and want to disenroll you contact our aggregation program provider, IGS, at 1-800-280-4470. If you are currently not part of the program, if you have your natural gas supplied by another gas supplier, and you would like to get enrolled in the program you can call the same number. That is IGS at 1-800-280-4470. This will be the fifth year the City has been participating in this program. Most of the years it is cheaper, this year being one of them. There have been some years where there have been better offerings. You can get a full list of all those natural gas providers by visiting the Public Utilities Commission of Ohio's website. All this information, with several more details, will be running over the next couple of issues of OrrViews. Certainly, if you have any other questions, you can contact our office on that. Last Monday at the Public Utility Board the board approved a power cost adjustment factor adjustment. That power cost adjustment factor did decrease roughly making a difference of a little bit over 2% decrease on our residential rates which amounts to about \$1.40 decrease for a residential customer using around 750 kilowatts a month. We also updated the Board on where we stood on our various participation on several hydro projects that are currently underway. At our next Utility Board meeting on September 27th we will be giving a similar slide show on our involvement in the coal-fired Prairie State project that our Association has partial ownership in. I will just mention this to Council, if there is any interest in seeing those programs as part of a City Council meeting I would be more than happy to present those so they can get aired on the TV. The last thing is a follow up to some questions or comments that were raised during the public comment period at the last City Council meeting about some residents having some sewer issues up in the area of the vicinity that was part of that rezoning discussions. Talking with our Wastewater Superintendent those residents live in area where that sewer is privately owned. We have a history of having calls from customers up in that area with problems on their sewer and those problems are on private lines. These residents that spoke to that may have forgot that or may not have been aware that there is that section up there around that pond area – roughly about a dozen homes that are privately sewered. There are some issues in there that have existed for a number of years. I just wanted to follow up. They are connected to our sewer system at some point in time, but they are private until they connect to us and the problems that the two residents mentioned were on their private septic systems.

Baker: I had a gentleman ask me last week, how do residents know – if they don't know – if they are part of the aggregation program? How can they find out?

Brediger: They can call our office. Contact Mike Hedberg and he will let them know whether or not they are on that program. When we first enrolled in this program five years or so ago, every resident in Orrville was enrolled in the program unless they chose to opt out at that time. If they have not changed natural gas providers, most likely they are currently in the program. The safest way is to

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contact Mike Hedberg or the Utilities office and we will let them know whether or not they are currently enrolled in the program or not.

D. Finance Director – Director Strimlan had no report.

E. Law Director - Director Lutz had no report, but asked to go into executive session to talk about pending litigation after Good of the Order.

F. President of Council – President Baker had no report.

Peppard: We have received an alley vacation petition that we need to refer to the Planning Commission from Gary Stalnaker so we will do that.

Old Business:

ORDINANCE L-10

Leathers moved and Aspiras seconded that Ordinance L-10, an ordinance amending the zoning map created by Chapter 1120 of the Codified Ordinances of the City of Orrville, Ohio, to reclassify a parcel of land known as Lot Number 3425 in the City of Orrville from I-2 (Industrial) to R-4 (Residential), be placed on third reading. Roll call vote. Ayes all. Motion carried.

Baker: This was the ordinance that we had a lot of discussion on at our last meeting with some residents and also amongst council. Is there any further discussion on that ordinance?

Leathers moved and Corfman seconded that Ordinance L-10 be adopted as read. Roll call vote. No all. Motion denied.

Baker: That ordinance did not pass. Mr. Wheeler, do we need to have that presented back to the Zoning Board?

Wheeler: We will notify the property owner and let them decide whether or not they want to resubmit the application with a request for a different zoning from the R-4 which has obviously been turned down.

ORDINANCE M-10

Leathers moved and Corfman seconded that Ordinance M-10, an ordinance amending the zoning map created by Chapter 1120 of the Codified Ordinances of the City of Orrville, Ohio, to reclassify a parcel of land known as Lot Number 3426 in the City of Orrville from I-2 (Industrial) to R-4 (Residential), be placed on third reading. Roll call vote. Ayes all. Motion carried.

Lutz: I was just going to speak on behalf of the administration. The Administration doesn't object to this one being passed. There were no objections obviously at the hearing last time we were here and the purposes for the application, if that matters to you, are different. Obviously Martha Baer who on the first ordinance for the larger parcel wants to make it more marketable. So the concerns of the people that showed up were valid. If they didn't want an apartment complex there, for example, one could be put there. However, on this thin strip that Jim Bowers has applied for that is not really a concern. The reason that is being applied for is to facilitate the marketability to one buyer only and that would be Mr. Nussbaum who operates his auto repair business there. For him to be able to purchase the property he only will do so if he can live at the residence there. So designating the R-4 allows him to do that. If it is not residential designation then he has to apply for a variance through the Planning Commission which we are not sure if they would allow him to do that. If this one is not passed, he too would or Jim Bower- the property owner – would have to reapply to the Planning Commission and ask for either an R—2 or R-3, but the Administration doesn't have an objection with this being R-4 even if in the future Martha Baer's parcel would be an R-2 or R-3. I will ask the Safety-Service Director or the Mayor if I have misstated anything the Administration felt.

Handwerk: I have no problem with it either way. I think, as Mr. Wheeler said, he felt fairly confident that if Mr. Bowers had to come back it probably would be okay, but I agree with what you are saying that in his situation it really shouldn't be an issue either way.

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Wheeler: I do want to point out one thing. Obviously there is no intention at this point of there being future multi-family housing on that. But I do want to be very clear that doesn't mean that some day that wouldn't be permitted if they were to demolish the existing building or what have you. I don't think the likelihood of that is much, but I also wanted to make it clear that it did still allow for that opportunity in the future.

Lutz: It is just that the geography kind of works against it. It is probably not very likely at all.

Shupp: I just want to make sure that if we go ahead and pass this zoning on this lot that we won't run into trouble down the road on the one we just turned down requesting an R-4 there because we had given an R-4 rating to the Bowers' property on this ordinance. You are telling me we can control the 47 acres that we just denied the R-4 request on without having any specific reasons to deny it in the future as an R-4 request again if we give an R-4 to the Bowers' property?

Wheeler: I would say the concerns of the public comments, in my mind, did give valid reasons regarding why it should be denied regarding infrastructure, density concerns, traffic concerns, just a variety of reason that I think validate Council's decision to turn it down. Those concerns, I don't believe, exist for this particular property. Just the sheer number of apartment complexes that could be built on the 27 acres, it really sort of emphasis what the public's concern were. I don't think those concerns exist at this property.

Shupp: My point is not the acreage the Bowers' property is on being an R-4 and being torn down. My point is, if we grant it to that property adjoining the other 47 acres that we just turned down the R-4 request for, are we going to have some kind of litigation down the road from Mrs. Baer or another owner at some time requesting R-4 there again?

Lutz: Who knows if there is going to be litigation, but I doubt it. There is not a good cause of action. I can tell you that. The appropriate designation... I mean the reason the Planning Commission recommended R-4 was because of the recommendation at that time because R-4 is right across the street. It fit in with the area there for both parcels, but that was prior to hearing from the objections of the property owners around it. That gives you valid reason to not approve R-4 if you agree with their objections. So that is not the case with Mr. Bowers' property. There was no one even speaking to Mr. Bowers' property at that hearing.

Hamsher: So what I am hearing you say Mr. Lutz is should that 27 acres ever come back we can control that still. We can still vote it down from now until eternity from the R-4 designation.

Lutz: That is correct.

Hamsher: Regardless of what is around it. Regardless of the Planning Commission recommendation.

Lutz: That is correct.

Hamsher: The people sitting in these seats can say no, never R-4.

Lutz: Anybody can bring what they call an Administrative Appeal based on your decision or on the Planning Commissions' decision. If the Planning Commission said no to R-2 or R-3, they can administratively appeal that to the Common Pleas Court here in Wayne County. They have that right. It is not that big of deal because usually the hearing is based just on briefs alone. You don't have like a new trial so to speak on the issue as long as all witnesses were put under oath and everybody got to present the evidence they wanted to present; which they are very careful to do at the Planning Commission meetings and of course we did that here at this hearing last time too. They were put under oath. So the case would just go to the judge based on briefs written by the parties. So one party would be the City and the other party would be the people appealing; if it was Martha Baer or Jim Bowers or whoever it might be. There is that risk and they would have to show that your decision was arbitrary, that you didn't have a valid basis for making it. There is that possibility, but it is not that huge of deal if that should happen.

Hamsher: I guess I am going pie in the sky, but let's pretend that Mr. Bowers sells to Mrs. Baer and at that point it is an R-3 for Mr. Bowers and I-2 for Mrs. Baer and those two properties are melted into one, how does that work? Do they have to apply for a whole new because it is basically a whole new piece of property?

Lutz: They don't have to apply for a new zoning designation unless they want to for some reason.

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Hamsher: I guess what I am saying is does the 27 acres have a back way in if they purchase the Bowers' property?

Lutz: No. Not if I am understanding your question.

Aspiras: I know you guys (Mr. Wheeler and Mr. Lutz) have had conversations with both property owners on this legislation. If we were to vote this down and they were to come back and apply for an R-1, R-2, or R-3 based on what you know about what they are trying to accomplish, can they still accomplish that?

Handwerk: Not in R-1.

Wheeler: Mr. Bowers I would say yes he could still accomplish that with any of the zoning. His situation is fairly unique in regards to he wants to live where he has a place of business. So the grandfathering and the nonconforming use issues won't go away, but the zoning would still allow for him to do what he wants to do. The 27 acres obviously could...with it being vacant property I am not sure what they wanted to do to begin with other than make it more marketable which based on that I think R-2 and R-3 probably make it more marketable than R-1 just because there is more opportunities for that property.

Shupp: I don't think Council's intent is to put a stumbling block in front of Mr. Bowers and what he has plans there and obviously Danny Nussbaum is looking to purchase the building in the future. I just thought it might be more prudent for us to be consistent on this whole section – both lots – the 47 acres and whatever Mr. Bowers has. That was kind of my point.

Miller: I believe I understand Mr. Shupp's point being that if we vote one of them R-4 and the one next to it comes back and says well you gave him R-4 why can't you give us R-4, then there is a whole other set of possible litigation or whatever comes from that. What I am hearing you say is that yes that is possible but highly unlikely. Is that where we are at?

Lutz: That is correct and even if it happens it is not that big of deal in my mind. Looking at it from a lawyer's perspective, but it would be consistent with the property across the street and I think that is why, and I wasn't at the Planning Commission meeting, but that is why the Planning Commission decided the way it did and recommended R-4 was one of the reasons was because it was consistent with what's across the street at Crown Hill at those condominiums. So it would, even if you pass this one and it is R-4, that is consistent with the one across the street, and then you decide later to make it R-2 or R-3 for the parcel next to it you have valid reasons for doing so I would say. It wouldn't be an arbitrary decision on your part because you had a hearing that heard the objections of the property owners around those properties. They had no objection to the property owned by Mr. Bowers.

Vance: I think this property almost got bundled with the other one.

Wheeler: That is probably a safe assumption. Obviously, I can't speak for Mr. Bowers, but I think they came to the Planning Commission with the desire to change it so that he could live there. I don't think they necessarily had any preference what it was zoned as long as he could live where his business is, but Mr. Lutz is correct it was done so to remain consistent with the surrounding properties.

Vance: In my view the property doesn't need to be zoned R-4 for Mr. Nussbaum to do what he wants to do. The R-4 designation, it will never be built. A building will probably never be built that would need the R-4 designation; just because the property is too small. I think really what we do by passing the R-4 designation is we just help facilitate the process; it doesn't have to go back to Planning Commission and get another designation. From what I am hearing you say, we don't have a lot to fear by doing an R-4 because the high density isn't going to be built on that property and the chance of it not meeting any kind of legal muster is pretty small. Really, we are just helping facilitate this transaction to take place. For that, even though I wouldn't have just from a clean sheet of paper wouldn't have zoned it R-4, I don't have an objection to doing it just because we know the plan here and I don't think our concern is some kind of high density housing being built on that plot can be done. I would have rather it been an R-3, but I understand it was bundled with the other property and that is why it got the R-4 designation.

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Lutz: When you say bundled, they were applied within the same time frame, but they are two separate property owners and I would image that if Mr. Bowers applied first and there was no one in here objecting at the hearing, you guys would pass as an R-4 and then if Martha Baer came forward and wanted R-4 and you had the objections you wouldn't. It is just a coincidence that they are together so to speak. I think there were discussions between the property owners regarding doing it at the same time since they were adjacent. I am not saying it was total coincidence that it happened like that, but under that scenario I think you would be in the same situation you are now if you do pass this as an R-4 and later on, like I said, if Martha Baer had applied later you probably would have turned it down if you believe the concerns that were expressed were valid – which you obviously do.

Vance: My point is that it doesn't need to be zoned as an R-4 in order to accomplish the purpose they want. It actually allows a lot more options then I think what we would want, but I don't think we have much to fear as far as those possibilities coming to fruition in this particular parcel.

Lutz: That is correct.

Baker: Would there be any additional cost to Mr. Bowers if this was turned down and he would have to go back and ask for it to be R-3?

Wheeler: The application fee would be applicable again. \$100.

Leathers moved and Corfman seconded that Ordinance M-10 be adopted as read. Roll call vote.

Ayes all. Motion carried.

RESOLUTION 21-10

Leathers moved and Miller seconded that Resolution 21-10, a resolution authorizing the Director of Utilities of the City of Orrville to approve the execution of an Efficiency Smart Power Plant Schedule Agreement between the City of Orrville and American Municipal Power, Inc., be placed on second reading. Roll call vote. Ayes all. Motion carried.

Vance: I was just going to reiterate that it is in our interest to pass this resolution. The residents that are served by our municipal power plant will benefit from this program to the tune of about every dollar that we spent we are being guaranteed at least 70% of \$1.94 in savings. It has a number of positive considerations for us to enter into this agreement.

Leathers moved and Vance seconded that the rules, regulations, and statutes requiring a reading of a resolution on three separate days be suspended. Roll call vote. Ayes all. Motion carried.

Leathers moved and Hamsher seconded that Resolution 21-10 be adopted as read. Roll call vote. Ayes all. Motion carried.

New Business:

RESOLUTION 23-10

Leathers moved and Aspiras seconded that Resolution 23-10, a resolution authorizing the Safety-Service Director to prepare and submit an application or applications and to sign an agreement and/or agreements, as may be necessary to participate in the Ohio Public Works Commission State Capital Improvement Program for Grant Funds, and declaring an emergency, be placed on first reading. Roll call vote. Ayes all. Motion carried.

Wheeler: This resolution allows us to apply for an OPWC grant. At this point we would apply for \$200,000 of which we would have to match \$200,000. That would allow us to do resurfacing projects in 2011. At this time those projects would be McGill; North Walnut; asphalt area of Church Street, Westwood and Mohican. Those may be tweaked a little bit in order to maximize our dollars as one or two of those we may be potentially be able to get some dollars from other areas - other grant opportunities. That is the plan for 2011 under the OPWC grant, assuming we get the grant.

Vance: That would be an upgrade from chip and seal to...

Wheeler: Correct. North Walnut is obviously already resurfaced and would be a resurfacing project.

Leathers moved and Shupp seconded that the rules, regulations, and statutes requiring a reading of a resolution on three separate days be suspended. Roll call vote. Ayes all. Motion carried.

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Leathers moved and Corfman seconded that Resolution 23-10 be adopted as read. Roll call vote. Ayes all. Motion carried.

RESOLUTION 24-10

Leathers moved and Corfman seconded that Resolution 24-10, a resolution authorizing the Safety-Service Director to enter into a purchase contract and/or contracts for the purchase of the following materials and services to meet the requirements of the City of Orrville, Ohio, for calendar year 2011: gasoline and diesel fuel; medium curing asphalt, asphaltic concrete and asphalt emulsions; concrete; general miscellaneous engineering and architectural services; police professional liability insurance; and public officials liability insurance (with riders for employment practices liability, extended employment practices liability), be placed on first reading. Roll call vote. Ayes all. Motion carried.

Wheeler: This is an annual housekeeping resolution. These are items that historically we have purchased without bidding. I will say many of the times it is purchased on a need basis or project-by-project basis so it is not necessarily that we are buying gasoline the first of the year that we need for the whole year obviously. That allows for us to maximize our dollars; get the best price; and also when it comes to some of these things like insurance, to get an apples-to-apples price comparison when we are trying to get estimates.

Leathers moved and Shupp seconded that the rules, regulations, and statutes requiring a reading of a resolution on three separate days be suspended. Roll call vote. Ayes all. Motion carried.
Leathers moved and Aspiras seconded that Resolution 24-10 be adopted as read. Roll call vote. Ayes all. Motion carried.

RESOLUTION 25-10

Leathers moved and Miller seconded that Resolution 25-10, a resolution authorizing the Board of Control to advertise for bids and enter into a purchase contract and/or contracts to meet the requirements of the City of Orrville, Ohio, for calendar year 2011, for the following materials and services: liquid insecticide for mosquito control; services, supplies and machinery needed to chip and seal roadways and/or alleys; traffic paint services; and crack sealing services, be placed on first reading. Roll call vote. Ayes all. Motion carried

Wheeler: Again another housekeeping resolution. These are items that we annually go out to bid for and this resolution would allow us to go out for bids on these particular items as well for 2011.

Corfman: This resolution does contain that famous mosquito control which brings up another question on abandoned swimming pools, little pop up pools. I think at some point we need to address it. I know this resolution doesn't.

Wheeler: Normally we do handle that under property maintenance. If you have particular addresses that there is issues, we do move forward with sending them the notification and we have had more of those this year then I think we have had historically and unfortunately it is probably a result of some of the economy and some of the abandoned houses or foreclosed houses.

Corfman: I am aware of that, but by the time our process goes through we spent \$15,000 on mosquito spray and those things are producing more mosquitoes then we can possibly kill by spraying. Maybe we need to, I am not sure where, but is there some way we can start looking into better control of abandoned swimming pools?

Wheeler: From a mosquito control standpoint, that would be helpful.

Corfman: Certainly those that live in the neighborhoods. They will let you know or I can always forward other councilmen's phone numbers.

Leathers moved and Corfman seconded that the rules, regulations, and statutes requiring a reading of a resolution on three separate days be suspended. Roll call vote. Ayes all. Motion carried.

Leathers moved and Corfman seconded that Resolution 25-10 be adopted as read. Roll call vote. Ayes all. Motion carried.

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Good of the Order: None.

Leathers moved and Hamsher seconded that Council go into Executive Session as requested by Mr. Lutz to discuss pending litigation. Roll call vote. Ayes all. Motion carried.

Into Executive Session at 8:11 p.m.

Hamsher moved and Aspiras seconded to return to regular session. Roll call vote. Ayes all. Motion carried.

Corfman moved and Miller seconded that the council meeting be adjourned. Ayes all. Motion carried. Council was adjourned at 8:32 p.m.

Tamra Peppard, Clerk of Council

Date

Lyle Baker, President of Council