

UTILITIES COMMITTEE MINUTES JANUARY 3, 2017

The Utilities Committee meeting was held on January 3, 2017 at North Royalton City Hall, 14600 State Road. The meeting was called to order at 6:07 p.m.

PRESENT: Committee Members: Chair Paul Marnecheck, Vice Chair John Nickell, Dan Kasaris; Council: Larry Antoskiewicz, Gary Petrusky, Dan Langshaw; Administration: Mayor Robert Stefanik, Law Director Thomas Kelly, Asst. Wastewater Supt. Scott Shantery, City Engineer Mark Schmitzer, Service Director Nick Cinquepalmi, Assistant Law Director Donna Vozar; Other: Lou Krzepia, Jessica Fenos.

APPROVAL OF MINUTES

Moved by Mr. Kasaris, seconded by Mr. Nickell to **approve the November 1, 2016 Utilities Committee minutes.**
Yeas: 3. Nays: 0. **Motion carried.**

UNFINISHED BUSINESS

1. **Inflow/Infiltration of storm water**

Mr. Shantery said that they are done with testing for the season. Letters were sent out at the end of September and again in November for residents on Albion and Sprague Roads. He said that they will start up again in April weather permitting. He said that they are finished in B District with dye testing. All that is left is the enforcement of the violations. Mr. Marnecheck asked how many violations there are. Mr. Shantery said that he does not have this information this evening but will have it emailed to the committee. Mr. Kasaris asked if they intend to dye test in Hunters Creek and Pine Stream in 2017. Mr. Shantery said yes. The Hunters Creek testing will also include parts of Wallings Road, the "planets" area, and Royalwood so it is a pretty big area being tested. He said that this entire area goes to the Hunters Creek lift station. Mr. Marnecheck asked if this included Eagles Chase. Mr. Shantery said yes, everything that goes to the Hunters Creek lift station will be tested. Mr. Marnecheck asked how they decide on which house to start at. Mr. Shantery said that the plan is to start within the Hunters Creek development because we feel that this is where most of the I&I is located. Mr. Petrusky said that some of the houses, such as those on Angeline, are only a few years old and should not have any I&I. Mr. Shantery said this is correct, that is why they want to start in the oldest part of the area, which is the Hunters Creek development. Mr. Marnecheck asked if the houses on Rt. 82 at the entrance to Hunters Creek would be tested as well. Mr. Shantery said no, those homes go to A Plant via gravity sewer and do not go into the Hunters Creek lift station.

2. **Telecommunication code amendments**

Mr. Kelly said that just prior to Christmas Governor Kasich signed SB 331 which covered a multitude of topics, one of which was the small cell communication legislation. He said that thanks to the Ohio Municipal League as well as other representatives on behalf of the municipalities in Ohio, a good number of changes were made to the legislation that AT&T had promoted which restored to municipal governments some minor control over the placement of small cell towers and limited the utility companies in terms of the size, height, etc. He said that we now have 90 days from the date that the Governor delivered the legislation to the Secretary of State within which to make some modifications to our own Codified Ordinances to reflect not only the restrictions that are placed on us but also to give us such freedom and leeway as we might be able to develop, which is not going to be very much. To the extent that we do have some say in where these things will be placed and how many of them are to be located in a given area, then we will provide as robust and as rich a level of oversight as we are going to be permitted. Mr. Kelly said that Ordinance 17-01 is on the agenda this evening which is the reissuance of the moratorium previously issued in this matter. Mr. Kelly asked that the legislation be amended from a period of 6 months to 90 days due to the fact that SB 331 limits the ability of municipal corporations to issue any moratoriums in these matters. We cannot approve a 6 month moratorium in the face of the state's determination. Within this 90 days, which will overlap the state's 90 days by about 15 days, we hope to have something for Council by the second meeting in February as to what the changes to our code will be. We have already made some efforts at drafting some changes to our telecommunications right of way ordinances, but these are not going to work now in the face of what AT&T and the legislature has wrought. So we are going to go back to the drawing board and take another look at it to see if we can find

a way to carve out appropriate restrictions that will allow for the Planning Commission and the Building Department to identify the appropriate placement and to work with the utility companies that are coming in who are going to make use of this new authority that the legislature has given them. Mr. Kelly said that we want to keep in mind that although we feel somewhat put upon in terms of the way this was passed by the lame duck session, the fact of the matter is that all of our people are interested in having greater capacity for data transmission as the years go on and as technology forces us into this experience. He said that this benefits everyone who uses a computer, phone, iPad, etc. by being able to have more data transmission capacity and that is what the legislation at the state level was designed to do. Mr. Antoskiewicz said that he would not have been as kind to the OML as Mr. Kelly was. He said that he did not think they fought as hard as they could have. He said that they basically gave them the rights to the right of way. He said that they can go into any of our neighborhoods, any of the right of ways, stick up their poles and stick these cells on them. He understands that there is a benefit to the public with improved service, but to not allow the municipalities to have any real say is not a very good deal. Mr. Kelly said that when we were first approached by the Sprint spin off, the Mayor made a great suggestion that we try to limit the placement of these new devices on our most heavily traveled county and state roads, but under present circumstances and with the law from the state level being what it is, we may have a challenge trying to find appropriate restrictions to be able to limit their ability to place these towers in neighborhoods where we have underground utilities. Mr. Antoskiewicz said that he hopes that one or more of the larger cities take on the challenge of taking this to court over some of the home rule issues. Mr. Kelly said that there appears to be no such challenge at this point in time so we will have to wait and see what happens. He said that in the interim we don't have much choice but to try to craft our ordinances in a way that fits the state mandate. Mr. Langshaw said that this is a textbook example of what is wrong with the state legislature and the lame duck session. He said this most likely violated the Ohio Constitution because they threw a bunch of stuff into what is supposed to be a single subject bill. He asked the Law Director if some larger city wants to take this on, is this something we could do an amicus brief for. Mr. Kelly said that it is possible but we would have to wait and see exactly what form the judicial challenge might take. He said that we took on the ODNR for basically the entire state and this David and Goliath experience is not one to be repeated. Mr. Kasaris asked how we are able to use our ability to enact legislation to protect the public health, safety and welfare in this matter. Mr. Kelly said that the legislation does cede back to a municipal corporation's control over their own public right of ways. So at least initially on a broad brush approach to this, they haven't taken our right of ways away from us. In one sense the original legislation did. We still have the right to challenge the placement of a given antenna, box or support system. We have some very limited ability to guide the placement of this equipment. Mr. Kasaris asked if this would be an administrative process. Mr. Kelly said yes, through the Planning Commission and the Building Department. They will still have to go to the Planning Commission under our charter because this is a matter that effects the right of way and calls for the Planning Commission to make these determinations within 60 days, which dovetails exactly with the state legislation which gives us 60 days. The state legislation also says that we are to aid the applicant in making sure that they get every opportunity to succeed in doing what it is they want to do. Mr. Langshaw said that the original title of SB 331 was to regulate dog sales and license pet stores. He wanted to note for the record how ridiculous this is and he hopes that other cities will fight this. Mr. Marnecheck asked the committee if they were in agreement with the amendment that Mr. Kelly requested earlier in the meeting. They committee members said yes.

3. **WWTP "B" Screw Pump Replacement Project**

Mr. Shantery said that the contractor has ordered the pumps and they are currently being built. He said that everything is on schedule for installation to take place this year.

4. **WWTP “A” Influent Pump Station Project**

Mr. Shantery said that we are waiting on change orders from Montgomery Watson for changes that were given to them by the contractor. Mr. Marnecheck asked if we have the size and scope of the change orders. Mr. Shantery said that they found 3 electrical banks that were not on the original plans from Montgomery Watson, so they need to instruct the contractor on where they want those moved to so they can proceed with the 30” force main. Mr. Marnecheck asked if this is a big problem that would impact the schedule. Mr. Shantery said that he does not believe that it is a big problem; they are just waiting on the final plans from Montgomery Watson. He said that they said that this would be mid-January.

NEW BUSINESS

1. **WWTP “B” Standby Generator Replacement – Ord. 17-03**

Mr. Shantery said that this is basically the same project we just completed at “A” Plant. We are getting a new standby generator and a transfer switch at “B” Plant. Fresch Electric was the low bid and this awarding legislation is on Council’s agenda this evening. He said that this company has been in business for 40 years and they have done this type of work before. Mr. Kasaris asked why the bid is \$100,000 lower than the engineer’s estimate. Mr. Shantery said that the bid proposal meets the engineers specifications for what they wanted and came in the lowest. Mr. Kasaris asked if the materials are different, or is the labor different. Mr. Shantery said that he does not have this information. This was all reviewed by Brown and Caldwell. Mr. Kasaris said that he has seen low bids come in only to be jacked up later with change orders and asked if this could happen here. Mr. Shantery said that he does not think it is that big of a project so he does not believe that there would be a lot of change orders. They bid according to the specifications from Brown and Caldwell so they will not be able to come in and give us cheaper equipment. Mr. Langshaw asked if the company has a good reputation. Mr. Shantery said that Brown and Caldwell has stated that they are definitely qualified to perform this work and he said that he sees no issue with this. Mr. Marnecheck said that Superintendent McNeeley stated in his letter that this company has performed many generator installations similar to ours.

Moved by Mr. Kasaris, seconded by Mr. Nickell to **remove from committee and recommend to Council for approval**. Roll Call: Yeas: 3. Nays: 0. **Motion carried.**

ADJOURNMENT

Moved by Mr. Kasaris, seconded by Mr. Nickell to **adjourn the January 3, 2017 meeting**. Yeas: 3. Nays: 0. **Motion carried. Meeting adjourned at 6:33 p.m.**