

## UTILITIES COMMITTEE MINUTES MARCH 5, 2019

The Utilities Committee meeting was held on March 5, 2019 at North Royalton City Hall, 14600 State Road. The meeting was called to order at 6:33 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, Wastewater Supt. Mark Smith, City Engineer Mark Schmitzer, Service Director Nick Cinquepalmi. **Other:** Lou Krzepina, Jeremy Dietrich, Jessica Fenos, Anton Krieger.

### **APPROVAL OF MINUTES**

Moved by Mr. Kasaris, seconded by Mr. Nickell to **approve the February 5, 2019 Utilities Committee minutes.**  
Yeas: 3. Nays: 0. **Motion carried.**

### **UNFINISHED BUSINESS**

1. **Inflow/Infiltration of Storm Water**

No update.

2. **Turnpike Sludge Line**

Mr. Kelly said that the Law Department is working to secure additional documents from the Ohio Turnpike Commission as well as from the party responsible for the damage. He said that the contractor that was engaged by the turnpike has taken the position that they bear no responsibility for the actions of their subcontractor in this matter. He said that we need more information from all of the parties in order to attempt to determine whether or not this is verifiable and supported or not. Mr. Marnecheck asked if there is any cause for concern. Mr. Kelly said yes, and it has to do with the nature of the contractual agreement between Kokosing who is the contractor that did the work, and Stedco Steve Drongowski Trucking which is the subcontractor. The contract indicates that there is an independent contractor relationship between the parties as opposed to employer/employee. This means that if Kokosing took no action to direct the subcontractor in the performance of his job or duties, there is an argument to be made that the subcontractor stands alone for purposes of insurance and that we cannot reach up the ladder to Kokosing for purposes of securing additional coverage. He said we need more information to know if this is true or not. He said that the approach taken by Kokosing and their insurance carrier is that the subcontractor, as an independent contractor, was not performing work for Kokosing at the time the accident happened. The argument is that the subcontractor had deposited his materials and left the job site at the point in time at which the damage was done to the overhead sludge line. At that point, there is an argument to be made that the relationship for that moment was at an end. Mr. Marnecheck said that they are saying that the subcontractor had already completed the work for Kokosing and therefore done with their obligation to the company. Mr. Kelly said that this is the argument. He thinks it is thin, he is not happy with it, and he wants more information and research. He said that the doctrine is "respondeat superior" which is Latin for "let the superior respond". In this extent Kokosing would normally be in this position, but if it is in fact a relationship between a contractor and an independent contractor and if they can demonstrate that in fact the trucking company was not on the job at the time, there is at least an argument to be made that the limits of the policy are as much as we can expect to share in. Mr. Nickell asked where the Ohio Turnpike Commission comes in on this since they commissioned the work. Mr. Kelly said that we may end up there as well. He said that we are climbing the ladder to the degree that we can. He said that the trucking company may have left the job site, but they left it with the truck bed up in the air which is what brought down the sludge line. So is this enough of a distance legally to be able to claim that they were no longer operating in conformity with their agreement with Kokosing. Mr. Marnecheck asked how much distance is there. Mr. Kelly said that we don't know this yet. They were working on a job site on the turnpike and had delivered materials to the site and failed to lower the truck bed, which brought the sludge line down. He said that he does not know how far away from the accident the job site was and he does not know how that will ultimately play into our claim. He said that is why we are seeking more factual information. Mr. Kasaris asked when does the statute run. Mr. Kelly said two years, October of this year. Once we have all of the facts we hope to be able to come to a reasonable conclusion about what our opportunities are.

3. **B Plant Screw Pumps**

Mr. Kelly said that this is a matter of imminent litigation and would like to discuss this in Executive Session.

Moved by Mr. Marnecheck, seconded by Mr. Nickell **that the Utilities Committee recess into Executive Session to discuss matters of pending and imminent litigation.** Roll Call: Yeas: 3. Nays: 0. **Motion carried.**

Committee recessed into Executive Session at 6:41 p.m.

**EXECUTIVE SESSION**

Executive Session called to order at 6:42 p.m.

**PRESENT: Committee Members:** Chair Paul Marnecheck, Vice Chair John Nickell, Dan Kasaris; **Council:** Larry Antoskiewicz, Gary Petrusky, Dan Langshaw, Director of Legislative Services Laura Haller; **Administration:** Mayor Robert Stefanik, Law Director Thomas Kelly, Wastewater Supt. Mark Smith.

- Matters of disputes involving the public body that are the subject of pending or imminent court action were discussed. [ORC 121.22 (G)(3)]

Moved by Mr. Marnecheck, seconded by Mr. Kasaris **to adjourn the Executive Session.** Roll Call: Yeas: 3. Nays: 0. **Motion carried.**

**Executive Session adjourned at 6:55 p.m.**

Moved by Mr. Marnecheck, seconded by Mr. Kasaris **to reconvene the March 5, 2019 Utilities Committee meeting.** Roll Call: Yeas: 3. Nays: 0. **Motion carried.**

**Meeting reconvened at 6:56 p.m.**

4. **Plant A Permit**

No update.

**NEW BUSINESS**

None.

**ADJOURNMENT**

Moved by Mr. Marnecheck, seconded by Mr. Kasaris **to adjourn the March 5, 2019 meeting.** Yeas: 3. Nays: 0. **Motion carried. Meeting adjourned at 6:57 p.m.**