

**MINUTES OF THE REGULAR MEETING
MASSILLON CITY COUNCIL
HELD, TUESDAY, SEPTEMBER 8, 2009**

COUNCIL PRESIDENT GAMBER I d like to welcome all of you to Massillon City Council for Tuesday, September 8, 2009. We have in attendance with us this evening: Mayor Francis Cicchinelli, Auditor Jayne Ferrero, Law Director Perry Stergios, Engineer Keith Dylewski, Community Development Director Aane Aaby and the Wastewater Treatment Plant Superintendent Keith Bledsoe. On the wall to your left are agendas for anyone who wishes to follow the meeting. Also under item #5 on the agenda is where the public can speak on any item that appears on the agenda and then under item #17 is where the public can speak on any item that does not appear on the agenda. I d also like to remind anyone with a cell phone please turn it off or turn it very far down.

1. ROLL CALL

Roll call for the evening found the following Council Members present: Gary Anderson, Kathy Catazaro-Perry, Dave Hersher, Ron Mang, Paul Manson, Dave McCune, Donnie Peters, Larry Slagle and Tony Townsend.

Thus giving a roll call vote of 9 present.

2. INVOCATION

COUNCIL PRESIDENT GAMBER Councilman Dave McCune has a guest this evening who will provide the invocation. Mr. McCune?

COUNCILMAN DAVE MCCUNE – Yes, I’m honored tonight to have Pastor Mark Jacobs from the Anchor Baptist Church here to lead us in prayer tonight.

3. PLEDGE OF ALLEGIANCE

COUNCILMAN DAVE MCCUNE – Chairman of the Police and Fire Committee led those in attendance in the Pledge of Allegiance.

4. READING OF THE JOURNAL

COUNCIL PRESIDENT GAMBER Madame Clerk are the minutes of the previous meeting transcribed and open for public viewing (Yes, they are) Are there any additions or corrections to the minutes? If not the minutes stand approved as written.

5. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS ON THE AGENDA

LAWRENCE LEWERS – I’m a resident of Wright State Drive condo group. There is an issue I think its Resolution No. 16 that we’re involved with I just have some brief statements to make here. Thank you very much for the opportunity to address council. I would one last time like to offer for consideration a few brief comments these from the unique perspective of the folks directly next door. We live across the yard from the structure in question from the unit where this structure and this violation of setback and so forth and that whole issue that you may be familiar with to some degree. Much information has been shared with you on paper and verbally and there’s not much new here. Let me interject I’m considering sharing a short letter with our neighbors when this is all resolved because I want to make sure we’re all strung out along the

street. I want to make sure that they understand kind of every story has two sides. I think that's not necessarily the case at this time and just a matter of good neighborly communication I'm considering heavily doing that at some point. While this series of errors has been very disappointing and troubling the errors that led to this situation occurring. While the ideal solution to this matter would undoubtedly be to right size the structure in question. This is a sunroom that is 2' too big going over the setback line. I think really indeed that's the best solution for everybody including the owner. Because if the structure remains there it's always going to be wrong it's always going to be I think a burden to her. Just my opinion well we firmly believe that all the owners were cheated out the proper and responsible procedures and safe guards but known to the degree that we were. While we are quite certain the value of our unit will be forever somewhat diminished. We know that to be very, very difficult to prove or to put a number on it. We issue this statement: we chose not to personally push for any structural changes or for any particular solution to this matter. My wife, I represent my wife and I and this task of coming up with a solution we respectively and confidently leave to you who have been appointed these tasks through the positions that you have sought and want. Those are my comments thank you very much once again.

KEVIN MCDONALD – I live at 2460 Wright State Drive. This is about I'd like to bring up the point of the condominium act and buying into a condominium. Being a condominium owner I am a percentage owner of all the common land. This addition was built into the common land to which I am an owner. According to the state law I should it requires the consent of all owners to do this so we're in violation of the state law. I was never asked for my consent I never gave my consent and that's really about all I have to say on it. I think I presented enough information if people would take the time to read it I think the board of appeals made the right decision. I think their decision should be upheld. So I oppose this resolution. Thank you.

REX MILLER – I'm representing the two folks who just already spoke to you. I submitted a letter to Mr. Stergios at the end of last week concerning the same matter Resolution No. 16 on the agenda tonight. This item 16 relates to a sunroom added onto one half of a duplex condominium unit which is considerably larger than is consistent with the plan for the condominium. The condominium statute clearly provides that in order for such an addition to be made consent of all the unit owners is required. That consent was not obtained it was not constructed properly. I saw in the newspaper a reference to potential lost of some \$30,000. I noted that the building permit application indicated that the total cost to construct this sunroom was about \$17,000. In order to bring the sunroom into compliance 2' needs to be taken off the outer portion of that sunroom. Certainly it's not reasonable to believe that it's going to cost more to take 2' off the sunroom than what it would have cost to build the entire sunroom itself. The board of zoning appeals denied the request for a variance in this matter and that's what brings the matter to this council this evening. Massillon has ordinance section 1129.05 which sets forth the standards for consideration by the board of zoning appeals and by this council in determining whether or not to grant a variance. Those standards are very specific that is where by reason of exceptional narrowness of the lot, the shallowness of lot shape or area specific piece of property at the time of enactment of the zoning ordinance or by reason of exceptional topographic that's the lay of the land. Conditions of whether extraordinary or exceptional conditions of the property strict application would create an undue hardship to the owner. None of those standards apply to this request for a variance. This lot is 88' wide it's the same width of the other lots along that street. It's a rectangular lot in shape the other homes built on that street are all built in compliance with the zoning requirements. It just so happens that through an error of the homeowner, an error of the builder and an error of whoever approved the plans that she ended up building beyond the limits that are permitted. Those folks need to bear the expense to bring that building back into compliance. If we grant variances on the basis that somebody made a mistake and therefore we will ignore the standards of the law to make their mistake right. Then we're not operating by law we're operating by who we happen to prefer, who we would like to make happy. This council has history of I believe 3 or 4 years ago another property owner received a building permit began construction it was later determined that the building permit had been issued in error. That matter again went to the board of zoning appeals which denied the request for a variance. It came to this council and this council denied the request for the variance at that time. I believe that the council should honor the precedence that's already set and deny the variance in this case. Thank you.

6. INTRODUCTION OF ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 111 – 2009 BY COMMUNITY DEVELOPMENT COMMITTEE

Authorizing and directing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into a contract agreement with various programs, through the Community Development Block Grant Programs for the fiscal year 2009 which the City has provided through the CDBG Program funding, and declaring an emergency.

COUNCILMAN MANG – If you remember the first part of the year when we went through and approved the CDBG budget the same people that are on here tonight were on that list then. We had to wait until the program was given the right to go ahead meaning the money is now available before us to enter into a contract with these various organizations. I do believe that or I would imagine these organizations are probably ready to go with the plans and things that they had submitted. For those reasons it's an emergency only in the stand point that we maybe delaying some projects that would be quite beneficial to this community. I would hate to see that happen because the going for a second reading isn't really going to change anything because we've already committed ourselves to do already doing this. It's just the fact now that we have the money at hand. If we have questions I have Mr. Aane Aaby here will be glad to work on them.

COUNCILMAN MANG moved for suspension of the rules and passage, seconded by Councilman McCune.

The rules were suspended by a roll call vote of 9 yes.

ORDINANCE NO. 111 – 2009 WAS PASSED BY A ROLL CALL VOTE OF 9 YES.

ORDINANCE NO. 112 – 2009 BY: FINANCE COMMITTEE

Making certain appropriations from the unappropriated balance of the Community Development Block Program Fund, Fire Damage Structure Fund, Neighborhood Stabilization Program Fund, Capital Improvement Fund, 1201 Street Construction Fund, Home Health Fund, Muni Motor Vehicle License Plate Fund, Waste Grant Fund, State Highway Fund, WIC Fund, Law Enforcement Trust Fund and Parking Enforcement Fund, for the year ending December 31, 2009, and declaring an emergency.

COUNCILMAN MANSON We went through all these at last week's committee session. Some of these are a little confusing I'll be jumping around so I would appreciate if I miss speak somebody stop me. The auditor I think she's real familiar with this we were through it. We have 12 sections so section 1 is we have \$195,000 request from the CDBG this appropriation represents the amount CDBG recovery act stimulus funding that the city has been award for the target area streets program. City council previously passed Ordinance No. 85 – 2009 authorizing the city to advertise and receive bids for the project. The appropriations for the funds is being requested at this time to enable the city to award the contract to the lowest and best bidders so the project can get started. Any questions? Then the second part of that is a total of \$73,000 these appropriations are for various CDBG funded contracts with area public service agencies and organizations and the request to release the funds. Any questions on that we've got Mr. Aaby here he can answer all those questions. Section 2, appropriate from the unappropriated balance of the fire damage structure fund \$131,000 this appropriation is needed for the release of fire damage funds. These are the funds that the insurance companies had to pay to the city to be held for the fire that was downtown that took in Engravers Gallery and Duncan's Jewelers and Dutton's whoever else that involved down there. Now we will be releasing those funds. Section 3, now this may get a little bit no this one's still pretty clear here. Section 3, they're requesting the appropriation of funds from the neighborhood stabilization program and that's what we monies we received earlier in the year. We received \$1,578,000 from HUD for neighborhood stabilization. This \$1,000,000 would be used to provide assistance to eligible households to acquire vacant foreclosed homes as their principle residents. Also to assist in down payments, closing costs and to rehabilitate the properties up to housing standards. Mr. Aaby is here he can answer any questions you may have on that. Section 4, is \$38,000 to be transferred from the capital improvement fund to an account 1401.435 street resurfacing that's for section 4. Section 5, is please appropriate \$20,000 from 1201 street construction fund to

1201.435 street repairs. Then section 6, is \$20,000 from the street reconstruction I'm sorry what a minute I'm not okay wrong part there hang on this is where I said it gets a little confusing. Alright, section 6, the health department needs to appropriate from the home health fund account 1235.705 the amount of \$20,000 to home health salary. These funds are needed to help pay departmental employees through the end of the year. Any questions on that? Alright, section 7, the first part is \$27,000 from the 1206 municipal motor vehicle license plate fund to be transferred to 1206.435 street repair \$27,000. The next one is \$16,064 please prepare an ordinance to appropriate from the unappropriated balance of the muni motor vehicle 1206 fund to an account services and contracts 1206.435 \$16,064. This is needed for the Wales Road project. Any questions on that? Section 8, is \$11,000 please appropriate from the unappropriate of the waste grant fund \$11,000 to recycling services and contracts. The funds are needed to cover costs for the disposal of recyclables and leaves. Section 9, back to the sheet that has the this \$10,000 from the 1202 street highway fund to 1202.435 streets, highways repairs. Okay, next one is section 10, health department needs to appropriate from the unappropriated balance of the WIC account 1219.705 \$5,212 to be used for utilities, travel and supplies. There's \$200 going into utilities, \$200 going into travel and \$4,8012 going into supplies. Section 11, please appropriate from \$3,500 from the unappropriated account 1215 law enforcement trust fund to an account 1215.305 supplies and materials this money is needed to pay for needed expenses for the police department including \$2,609 for the K-9 its necessary for doctor and dental expenses for our drug dog. Section 12, we have \$1,000 please appropriate \$1,000 from the unappropriated balance of the parking enforcement fund to an account 1208.435 supplies and materials. These funds are needed for purchasing ticket books and other supplies necessary for the parking enforcement officer. Any questions?

COUNCIL PRESIDENT GAMBER Mrs. CatazaropPerry?

COUNCILWOMAN CATAZARO-PERRY – In section 4, Mr. Manson and section 9, the streets resurfacing which streets is this \$38,000 going to and then the streets repairs the \$10,000. Could you just clarify where that money is going?

COUNCILMAN MANSON 4 and 9?

COUNCILWOMAN CATAZARO-PERRY – Section 4 and section 9, please?

COUNCILMAN MANSON Section 4, is \$38,000, section 9 is \$10,000 I'm going to ask the engineer to come up and answer that for us.

COUNCIL PRESIDENT GAMBER Mr. Manson, that's fine we'll call on him do you have a list of those streets as part of your request?

COUNCILMAN MANSON No I haven't. Could you explain section 4 and 9.

ENGINEER DYLEWSKI Those are for the street resurfacing project.

COUNCILMAN MANSON Okay, can you tell us what streets they are.

ENGINEER DYLEWSKI I don't have them in front of me I think Medill is one of them its over in that general area right up on Wales there. We had three streets in the regular paving program this year.

COUNCILMAN MANSON Okay, I'm satisfied with the answer if there's a problem there.

COUNCILWOMAN CATAZARO-PERRY – Could you just clarify the \$10,000 for the repairs is that also part of that?

ENGINEER DYLEWSKI I think that's the fund they took them from several funds to go towards the project. That's why it was different accounts.

COUNCILWOMAN CATAZARO-PERRY – I'm not sure if that was discussed when I was at my town hall meeting or not. I just wanted clarification on it. Thank you.

COUNCIL PRESIDENT GAMBER Mr. Manson?.

COUNCILMAN MANSON moved for suspension of the rules and passage, seconded by Councilwoman Catazaro-Perry.

The rules were suspended by a roll call vote of 9 yes.

ORDINANCE NO. 112 – 2009 WAS PASSED BY A ROLL CALL VOTE OF 9 YES.

ORDINANCE NO. 113 – 2009 BY: FINANCE COMMITTEE

Reducing the appropriation in the 1409 Muni Road Fund, for the year ending December 31, 2009, and declaring an emergency.

COUNCILMAN MANSON Yes, give me one minute here. Okay, Ordinance No. 113 please prepare an ordinance to reduce the appropriations and funds 1409 municipal road fund in the following account it was for the Wales Rd resurfacing. We had an error on Ordinance No. 110 and we are correcting this error and I think we will be having the next ordinance will be clearing that up. That was part 7 of Ordinance No. 112.

COUNCILMAN MANSON moved for suspension of the rules and passage, seconded by Councilman Hersher.

The rules were suspended by a roll call vote of 9 yes.

ORDINANCE NO. 113 – 2009 WAS PASSED BY A ROLL CALL VOTE OF 9 YES.

COUNCILMAN MANSON Point of information here the streets that we're talking about to be resurfaced were Medill, Parkview and Rotch.

ORDINANCE NO. 114 – 2009 BY: FINANCE COMMITTEE

Making certain transfers in the 2009 appropriations from within the General Fund, for the year ending December 31, 2009, and declaring an emergency.

COUNCILMAN MANSON Yes, these are funds that were given back by the various departments and individuals and they will be going to police salaries and fire salaries. Originally we thought this number when we talked about it at the committee meeting last Monday was \$167,000.00 there were errors in a couple like I believe three different numbers that we had in there. So it only amounts to \$117,000.00 any questions?

COUNCILMAN MANSON moved for suspension of the rules and passage, seconded by Councilwoman Catazaro-Perry.

The rules were suspended by a roll call vote of 9 yes.

ORDINANCE NO. 114 – 2009 WAS PASSED BY A ROLL CALL VOTE OF 9 YES.

RESOLUTION NO. 13 – 2009 BY: COMMUNITY DEVELOPMENT COMMITTEE

Adopting the decision of the Tax Incentive Review Committee made on August 11, 2009 wherein they recommended that those certain Enterprise Zone Agreements listed on the attached exhibit "A" be continued, and declaring an emergency.

COUNCILMAN MANG The title pretty much tells the story what we're asking for tonight. The enterprise zone agreements are tax abatements that have been issued by this council all have terms as to what they need to do to maintain that tax abatement. What the tax incentive board does is go through each one of these to make certain that they are still doing what they proposed to do at the time we issued the tax abatement. Anybody have any questions on that?

COUNCILMAN MANG moved for suspension of the rules and passage, seconded by Councilman McCune.

The rules were suspended by a roll call vote of 9 yes.

RESOLUTION NO. 13 – 2009 WAS PASSED BY A ROLL CALL VOTE OF 9 YES.

RESOLUTION NO. 14 – 2009 BY: COMMITTEE OF THE WHOLE

A resolution declaring Friday, October 23, 2009 to be Coach Nick Vrotsos Day.

COUNCILMAN MANG I will recognize Dave McCune at this point.

COUNCILMAN MCCUNE Yes, Councilman Anderson had brought up at our work session last Monday that he would like a resolution passed recognizing Coach Nick Vrotsos for his many contributions to the city and the youth through his involvement with the tiger football team and his daily life. Along with that resolution we also have a proclamation from the mayor's office recognizing Coach Nick for all those contributions as well. So tonight when we pass this resolution we also be accompanying that resolution with a proclamation from the mayor's office declaring October 23, 2009 as Coach Nick Vrotsos Day. We will order our citizens to stand up and cheer appreciation for Coach Nick and his achievements and successes as a valuable teacher and a well respected coach.

COUNCIL PRESIDENT GAMBER Mr. Anderson, you brought that forward do you have anything to say or add? (No, sir, I don't) Alright, Mr. McCune, your motion please?

COUNCILMAN MCCUNE moved for suspension of the rules and passage, seconded by Councilman Anderson.

The rules were suspended by a roll call vote of 9 yes.

RESOLUTION NO. 14 – 2009 WAS PASSED BY A ROLL CALL VOTE OF 9 YES.

RESOLUTION NO. 15 – 2009 BY: COMMITTEE OF THE WHOLE

A resolution Chuck Maier as a Member of City Council for the City of Massillon, Ohio.

COUNCILMAN MANG I guess I first should apologize to Mr. Maier that we did not take this up immediately. The fact is that Chuck sat along side of me for a number of years he was my right hand person I also know that Chuck did a very good job to the people in his ward. I think Chuck was well respected by his ward people I know that here on council he was well respected I think he acted in a very high professional manner. The fact that he moved out of the area is something that was of his choice but I do commend him for the years that he was a member of this body. Kathy?

COUNCILWOMAN CATAZARO-PERRY – I too think Chuck did an excellent job and would like to thank him for his service to the City of Massillon. I just want to say that I think we'll all miss him.

COUNCILMAN MANG moved for suspension of the rules and passage, seconded by Councilman Slagle.

The rules were suspended by a roll call vote of 9 yes.

RESOLUTION NO. 15 – 2009 WAS PASSED BY A ROLL CALL VOTE OF 9 YES.

RESOLUTION NO. 16 – 2009 BY: COMMUNITY DEVELOPMENT COMMITTEE

A resolution reversing the decision of the Massillon Zoning Board of Appeals made on August 13, 2009 wherein the Zoning Board of Appeals denied a request for a variance from the

Massillon Zoning Code side yard setback variance at 2340 Wright State Drive SE to construct a 10' x 16' sunroom addition, on Lot No. 15933 in the City of Massillon, Ohio, and declaring an emergency.

COUNCILMAN MANG We know the appeal for this has been issued by Mr. Bill Kraft who came before this body and explained to us that he had made an error. The part that Mr. Kraft was a little bit concerned about was the fact that before anyone appealed his building permit that this building had already gone through several inspections. Meaning that the building was already in progress and nothing happened. As soon as there was an appeal brought forward Mr. Kraft recognized the fact that he had overlooked the setback requirements and came forward and said "I made an error". At the same time the condominium association recognized the same thing due to the fact that they are to approve under the condo agreement which has nothing to do with the city that they too had missed the fact of the setback. We were presented a list of 31 or 36 people from the condo association. But the point here is that the regulations of the condo association applies to them. What we're talking about here is zoning regulations that apply to the city. We always like to work with them and in this case we would have been working with them other than they made the same error that we made. We had a gentleman come before us and explain that he really didn't want to see the structure torn down but what he really wanted to make sure of is that the rights of everybody in the condo association was respected. He felt that some of these things had not been completed and for those reason was the reason why he appealed it. Now I don't want to speak for that gentleman but at that point he was not interested in tearing down the facility. Mr. Kraft did not issue a stop order on this building because he thought it should progress due to the fact that there was time elements that could have stopped this project and things like footers and siding would not have been brought forward. So based on those facts and the fact that I don't see any real reason not to bring this thing up for a question a vote because delaying it is not going to change all the information that has been given to us. I will be glad to delay it if you think you need more information but we've had a considerable amount but I am open to questions. Mr. Manson?

COUNCILMAN MANSON Yeah, there's something I'd like to clear up I'm not saying I'm for or against you know allowing the project to go ahead but something that I would like to clear up. At first we heard that it was a \$30,000 addition and then tonight we were told it was \$17,000. That's quite a difference and I'd just like to know I would prefer to know before I vote one way or the other what we are talking about cost wise.

COUNCILMAN MANG I don't know if I can answer that question other than the building permit would have I think when you get a building permit you have to put down the estimated cost. Is that correct or am I wrong?

COUNCIL PRESIDENT GAMBER That's correct. We had the gentleman before in the public speak section that said the application had an amount of \$17,000, yes. We have since been told that the replacement cost is \$30,000.

COUNCILMAN MANSON It says \$17,500 on this copy. I just like to talk about it for another week, personally or you can move it ahead its up to you. I know we heard \$30,000 last Monday or whatever day it was and now we're being told that its \$17,500 that just kind of bothers me that there's such a discrepancy in that number.

COUNCILMAN MANG I'm guessing that the individual just made an estimate. The point is that \$17,500 or \$14,500 or \$10.00 what do you wish to do with the structure?

COUNCILMAN MANSON First of all I'd like to know exactly what it cost. Like I said I heard \$30,000 last week.

COUNCILMAN MANG When what I think the thing we had before us is what we have to go by and that's \$17,500. I will ask the law director if there's something else we have to go by, but that information they put on there is as accurate as accurate it's going to be.

COUNCIL PRESIDENT GAMBER I would concur Mr. Manson. Are there other questions? Mrs. Catazaro-Perry?

COUNCILWOMAN CATAZARO-PERRY – I'm not privy to all the information because of my town hall meeting. But could you help clarify was the owner supposed to present it to the condo association and they did not present it. I mean was the homeowner supposed to is it any part of the homeowner's fault or was it strictly our error.

COUNCILMAN MANG The part of the condo association is not part of what's happening here. The owner or the contractor applied for a building permit and the chief building inspector issued a building permit based on everything he had before him. A building permit was issued Mr. Kraft stated there was several things that happened at the construction site that had to be inspected. He inspected those and it was after that point when an appeal was made. Mr. Kraft at that point did not stop construction and he then appealed it to Zoning Board of Appeals. Stating to them that he made an honest mistake instead of 10' it was 8' and it differs by 2'. Now that's just about as simple as I know it to be and you know I understand the condo thing but that we're talking about zoning here in the city and the zoning ordinance and how it applies.

COUNCILWOMAN CATAZARO-PERRY – I'm just asking if the owner was compliant with all that we requested.

COUNCILMAN MANG What the owner did with that part as far as the city's concerned, yes.

COUNCILWOMAN CATAZARO-PERRY – Okay, is the structure complete now?

COUNCILMAN MANG You know I heard someone say at the last meeting that it was complete. Matter-of-fact we had a picture I believe.

COUNCILWOMAN CATAZARO-PERRY – So the condo association wants the homeowner to take responsibility to correct the error. Am I understanding that?

COUNCILMAN MANG The condo association has you know they have their own and we recognize what they have the problem is when it comes to zoning and that that's a city situation. Whatever they go through is one thing but when you come to the city to apply for a permit and we give you the permit or don't give you the permit. Dave?

COUNCILMAN MCCUNE The president of the condo association was here before us Kathy and stated that one of the 31 of the 36 members of the association I believe it was didn't want to see this structure torn down. In fact the gentleman that made the appeal himself stated that he didn't want to see it torn down. Just to let you know what all the conversation was.

COUNCILWOMAN CATAZARO-PERRY – Thank you, I appreciate that.

COUNCILMAN TOWNSEND I believe it was someone on council that brought up the dollar amount of \$30,000. I can't remember who said it but they had made the statement that I believe it would cost to tear it down would cost about \$30,000. I believe Mr. Wasnak at that point said yes so he was just assuming but that amount came from someone on council.

COUNCILMAN MANG Well, Tony, it's in your ward what are your thoughts on this?

COUNCILMAN TOWNSEND Well, my thoughts is this I can respect Mr. McDonald for wanting to abide by the condo agreement and the bylaws but the fact is the people were allowed to build the sunroom complete it, it was mistake that was made by Mr. Kraft. Also the president of the condo association said that they even went through and measured the sunroom and they had admitted that they overlooked the 2' addition as well. I think you know these people built this sunroom it was \$17,000 that was the information that I had and for them to adjust it I'm pretty sure it's going to cost a good piece of money. Even for them to tear it down is going to cost a pretty piece of money. It was an error I just really can't see having those people to spend more money to adjust the sunroom or even tearing it down.

COUNCILMAN MANG Mr. Anderson?

COUNCILMAN ANDERSON I just have a question of the legality of what the end result is

going to be. No matter what we do whether we vote yes, no whatever is this going to end up as a civil situation. If it is what are we even doing with it.

COUNCIL PRESIDENT GAMBER May I respond, Mr. Mang?

COUNCILMAN MANG Well, you know what happens beyond this, this is council's job, okay? It's a city ordinance that's in violation okay? What happens beyond that is not anything this body will be dealing with. I guess they could sue the city, they could do whatever but we have to go ahead and deal with what we have because an appeal was made. Now that's you know we have so many days to react to that appeal. I'm not sure where we're at we're probably very early. But there's x amount of days that we have to act.

COUNCIL PRESIDENT GAMBER May I make comment?

COUNCILMAN MANG You sure can sir.

COUNCIL PRESIDENT GAMBER Alright, everyone else has a chance to ask a question. To help tell Mrs. Catazaro-Perry what happened the condo association basically has two sizes of these sunrooms. One size is larger and its good on certain lots and one size is smaller. When the builder requested the standard sunroom he was inadvertently given the larger room. That's the first error was the builder's mistake after that there were a variety of errors that went with it. Secondly, the gentleman is correct we had exactly the same situation a very short time ago where Mr. Kraft made an error in providing a building permit. When the error was discovered a variance was requested the request was not approved and council upheld that refusal. My final comment is that because this ordinance does request reversing the Zoning Board of Appeals seven votes are required to do that. Mr. Mang?

COUNCILMAN MANG Yes, to clarify I'm going to ask for suspension of the rules; but to clarify the voting Mr. President, would you do that? A yes vote means...

COUNCIL PRESIDENT GAMBER This is another of those situations where we are being asked to overturn a decision, a decision is to deny the variance. If you vote yes you are voting to overturn the decision of the board and the room will go forward. If you vote no you're maintaining the decision of the Zoning Board of Appeals.

COUNCILMAN MANSON Any questions?

COUNCIL PRESIDENT GAMBER We'll start at the left, Mr. Slagle?

COUNCILMAN SLAGLE The previous time that we had the issue before this was there an economic consequence that would have arisen in that case do you remember?

COUNCIL PRESIDENT GAMBER Yes, they're very similar footers were poured and construction had been started.

COUNCILMAN SLAGLE Well I think this case the whole room had already been completed. But you're saying last time the footers had been poured. I mean the economic consequence of redoing footers without putting up the walls and the stud work and the roof is significantly different from. I mean you can't remove 2' of the sunroom...

COUNCIL PRESIDENT GAMBER I'm not arguing one against the other. I'm just saying that we had exactly the same situation in terms of the request.

COUNCILMAN SLAGLE But the economic consequences were somewhat different.

COUNCIL PRESIDENT GAMBER Perhaps. Mr. Manson, did you have a hand up? (No) Mr. Peters? (No)

COUNCILMAN MANG moved for suspension of the rules and passage, seconded by Councilman McCune.

The rules were suspended by a roll call vote of 9 yes.

RESOLUTION 16 – 2009 WAS PASSED BY A ROLL CALL VOTE OF 9 YES.

7. UNFINISHED BUSINESS

8. PETITIONS AND GENERAL COMMUNICATIONS

9. BILLS, ACCOUNTS AND CLAIMS

A. REPOSITORY - \$1,335.40

B. ENGRAVERS GALLERY - \$27.75

COUNCILMAN MANSON I move that we pay the bills, seconded by Councilman Hersher.

Roll call vote of 9 yes to pay the bill.

10. REPORTS FROM CITY OFFICIALS

A). MAYOR SUBMITS MONTHLY PERMIT REPORT FOR AUGUST 2009 COPY FILE

B). AUDITOR SUBMITS MONTHLY REPORT FOR AUGUST 2009 COPY FILE

C). MAYOR SUBMITS MONTHLY REPORT FOR JULY 2009 – COPY FILE

D). LIST OF COUNCIL COMMITTEES FOR APPROVAL

COUNCIL PRESIDENT GAMBER Okay, we do need a motion, Mr. Manson?

COUNCILMAN MANSON I move that we accept the auditor's report, seconded by Councilwoman Catazaro-Perry.

Roll call vote of 9 yes to accept the auditor's report.

COUNCIL PRESIDENT GAMBER The next item is the committee reassignments you should all have a sheet revised as of August 19th. Does everyone have that sheet? When Mr. Anderson came on board we replaced Mr. Maier as chairman of the public utilities committee. At that same meeting Mr. Townsend requested a change from parks and recreation committee and the best solution seemed to be to put Mr. Slagle in chairmanship of that committee then Mr. Townsend became chairman of the health, welfare and building regulations. So we would like a motion and a voice vote on approving these changes. Mr. Mang?

COUNCILMAN MANG I so move, seconded by Councilman Manson.

Roll call vote of 9 yes to accept the list of council committees.

11. REPORTS OF COMMITTEES

COUNCIL PRESIDENT GAMBER We will have committee sessions next Monday the 14th starting at 5:30pm. If anyone has any special presentation or request please check with either Mr. Mang or the Clerk.

12. RESOLUTIONS AND REQUESTS OF COUNCIL MEMBERS

13. CALL OF THE CALENDAR

14. THIRD READING ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 101 – 2009 BY FINANCE COMMITTEE

Amending CHAPTER 133 “AUDITOR” of the Codified Ordinances of the City of Massillon, by enacting new Subsection 133.05 “PAYMENT OF DIRECT DEPOSIT”, and declaring an

emergency.

COUNCILMAN MANSON – Ordinance No. 101 we've been discussing this for over six weeks now. Its payment direct deposit the only comment I want to make on this is I can assure you nobody's going to lose a dime if we pass this ordinance. It will help the city be more efficient.

COUNCILMAN MANSON moved for passage, seconded by Councilman Hersher.

COUNCIL PRESIDENT GAMBER Any comments or questions? Mr. Peters?

COUNCILMAN PETERS – I have a question for the law director if you would bring him up.

COUNCIL PRESIDENT GAMBER Mr. Stergios?

COUNCILMAN PETERS – Mr. Stergios, in the labor contract I know you're familiar with because you've been asked about it. It specifically says that employees will be paid with a paper paycheck. It doesn't say pay stub it says paycheck.

LAW DIRECTOR STERIOS – It says they'll receive their check in a sealed envelope.

COUNCILMAN PETERS – Yeah, that's what it says something like that. Same difference it says they'll receive it doesn't say they'll receive their stub in a sealed envelope. Okay, I mean I know you're an attorney and I respect that but that's plain black and white. It states it you know plainly I mean I know that you like to change things around a little bit do you really feel that comfortable changing that around with no ramifications from the unions or the bargaining?

LAW DIRECTOR STERIOS – I think that the only contract it says that it in is the AFSCME contract. I didn't check police and fire to be honest. But I guess I've got bigger things to worry about than rather if they want to file a grievance over it let them file one. I don't think an arbitrator will say that means that they get a physical, depositable paycheck. That comes from ages ago they didn't want people looking at their paychecks so they came in a sealed I guess technically they don't even come in an envelope now. They come in the perforated thing that we all get so I'm not worried about it. I would not let that stand in the way or make my decision based upon that provision. So...

COUNCILMAN PETERS – It's not it was just a you know...I'm through with you. I just want to say that I mean it has nothing to do with the money it has nothing to do with getting the paycheck in the envelope. I'm just one of guys that think that you know that it is a right and it is something that you know everybody that started to work they knew ahead of time that they were going to get a paycheck. You've got guys that's been there 30 years that's before direct deposit was ever created. I'm saying I don't want to take that away that's my main reason for voting no against it and because the union contracts says that too.

ORDINANCE NO. 101 – 2009 WAS PASSED BY A ROLL CALL VOTE OF 8 YES, 1 NO.
PETERS VOTED NO.

.SECOND READING ORDINANCES AND RESOLUTIONS

16. NEW AND MISCELLANEOUS BUSINESS

.REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS NOT ON THE AGENDA

18. ADJOURNMENT

COUNCILMAN MCCUNE – I move that we adjourn, seconded by all.

MARY BETH BAILEY, CLERK,

GLENN E. GAMBER, PRESIDENT



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