

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
MINUTES OF
REGULAR MEETING JULY 6, 2010**

CALL TO ORDER: 7:30 P.M.

President Corcoran: I call to order tonight's meeting of the North Ridgeville City Council, July 6, 2010. Please stand for the invocation and pledge of allegiance.

INVOCATION: lead by President Corcoran.

PLEDGE OF ALLEGIANCE: by all.

ROLL CALL:

Present were Council Members Nancy Buescher, Dennis Boose, Richard Jaenke, Bob Olesen and President Kevin Corcoran.

Absent were Council Members Bernadine Butkowski and Roseanne Johnson.

Also, present were Mayor David Gillock, Safety-Service Director Jeffry Armbruster, Assistant Law Director Toni Morgan, Engineer Larry Griffith, Auditor Chris Costin and Clerk of Council George Smith.

MINUTES - Corrections (if any) and Approval:

Council Minutes of regular meeting held June 21, 2010

President Corcoran: Are there any comments or corrections? Seeing none, those minutes are approved.

President Corcoran: Please note:

Civil Service Commission Minutes of regular meeting June 15, 2010.

LOBBY:

President Corcoran: We are now at the lobby session of the meeting. That is your opportunity to talk to us. The floor is open. You have to state your name and address upon stepping up to the podium. Please provide the lobby sheet to Mrs. Buescher and you will have three minutes to speak.

1) Ken George, owner of the Brew Keeper located at 34445 Center Ridge Road spoke regarding his struggle to stay in business. He explained what his business is and that his business is failing due to all the complaints being made to the Police Department and Fire Department. He is in front of Council to ask for direction as he would like to resolve these complaints, but

can't, because he doesn't know where the complaint is coming from. The Police have been to his establishment 11 times. The Fire Department has been there once and the Building Inspector has been there once; all the while, not knowing why they were called in the first place. He stated that all these complaints are killing his business. He stated that as a good neighbor he is willing to do what it takes to solve these issues.

President Corcoran: Sir, your three minutes are up.

moved by Boose, seconded by Buescher to allow this gentleman up to three more minutes to speak

President Corcoran: Any objections? All those in favor say yes. Those opposed say no.

Yes, 5 No, 0

2) Ken George continued by asking Council for suggestions or at least some direction as to what to do to solve this problem. He explained that his business is in a B-3 commercial district that butts up to a residential neighborhood with an apartment complex along the side of their parking lot. He stated that there is a residential house directly to the south corner of their building and a church to the right. The complaints aren't coming from the church because there is never anybody there at night. He asked for some direction on whom he could talk to; to mediate this in order that this problem get solved because otherwise, this will put him out of business.

Mayor Gillock: Mr. President, this is the first that Jeff and I have heard about this particular issue. We will take a look at this and talk to the Police Department to see what we can find out. Obviously, anyone can issue a complaint and if they do, we have to respond. Maybe, we can get some idea of what is going on. I did want to say that I have been in this establishment. It is not your typical bar. If you remember, this was once a bowling alley and then it was either an Elk or Moose Club that didn't go to well. Mr. George had put substantial investment into this building to turn it into a brew pub. I've been in there with civic groups and noticed where he has spent a lot of money putting in copper kettles so that customers can make their own beer. You can go in with civic groups and with their guidance, you can use the facilities to make your own beer. It is clean. It is a good time. They moved from the east side where it was very successful. It is a good business. I want to put that plug in for him and we will certainly take a look into seeing what we can do to find out what the issues might be, because, I am not aware of complaints such as this.

President Corcoran: Is there anyone else?

Council Member Boose: Mr. President, I have been there at times too, with some friends of mine and others that have brewed their own beer. I have been there for meetings where they also have a restaurant and again, I can attest, as the Mayor said, Mr. George has put thousands of dollars into this establishment and again, as he has said, he has tried to be a good neighbor. Whatever the Administration can do to find out what specific complaints these are, so that Mr. George

might be able to work on, would be greatly appreciated. Again, I think he is coming here today asking what he can do and whatever we can do to help him in that cause would be a positive for our City. Thanks.

President Corcoran: Mr. George, I did receive one of the calls where someone complained to me. One of the issues was the lights and the way they shine. I was told that the Building Department went to your place and you were very accommodating and even talked about putting some kind of shielding up.

Ken George stated that they couldn't tell him where the complaint was coming from and he didn't know what to shield it from. That is all he was looking for, that if he erects a barrier, he has 750 feet of fence. He stated that he is going to need a variance so that he can put a fence or some kind of barrier up 20 feet so that he can block the light. He stated that he can't do that all over 750 feet of fence. So, he would need to know where he should put that barrier to satisfy whoever is complaining. He explained that there was a complaint of the smoke. He stated that people can still smoke outside. It is still legal and his exhaust fan, which is in his attic, makes too much noise according to a complaint and that noise level is probably about three decibels. He stated that there just seems like there is another agenda here. He stated it is sad, but someone just doesn't want them to be there. He explained that they finally have found an audience on Wednesday, Thursday and Friday, where they may have 150 to 250 people there and they are making noise just from talking. He asked for Council's help.

President Corcoran: Is there anyone else that would like to speak? Seeing none, we'll move on to the Administrator's Reports.

ADMINISTRATORS REPORTS:

A. Mayor:

Mayor Gillock: Thank you, Mr. President. I have several things to address this evening. First, to get the budget out of the way, I would ask the Clerk to assign a temporary number to the budget ordinance that was left at your desk and was reviewed at the hearing.

Clerk of Council Smith: T 83-2010.

moved by Mayor Gillock, seconded by Olesen to suspend By-Laws to add T 83 to the agenda under first readings

President Corcoran: Are there any comments? All those in favor say yes. Those opposed say no.

Yes, 5 No, 0

President Corcoran: T 83 is added to first readings.

Mayor Gillock: Thank you and while we are speaking about the budget, I wanted to give you a very brief update on our income tax revenues at mid year. As you all know, this is a significant portion of our General Fund budgeting. I checked with our Income Tax Department and as of

June 29, almost mid year, our actual receipts for the year were 3,844,530.29. That is 227 dollars and 52 cents above last year. So, our revenues, while they are holding their own, are certainly flat. We are not gaining anything, as we usually do; as we have historically done, we are very flat. That could change by the end of the year. I watch other cities and I see them report. You will see a small increase and then it levels out. We hope that will grow, but right now, we are the same as last year.

In regards to the fireworks on July 3, I want to pay particular thanks to Debbie Toth and Sonja Walden, who are filling in for the job they did over there. We had a huge crowd. We had people up on the railroad overpass parked and sitting in chairs that far away. They were parked over on Sugar Ridge Road and they were over at the schools. The Fire Department does an excellent job. The fireworks were really good. The Parks and Rec Department, this year, expanded the offerings with a bounce house and more concessions. I took my two-year-old granddaughter fishing at 6:00 P.M. with the Fishing Club guys doing a one on one. It was really good. It was great weather. So, I really want to thank Debbie and Sonja for their help on July 3.

Some good news; on June 23, I traveled to the John S. Knight Center in Akron, Ohio for the fourth annual Team NEO Economic Development Awards Dinner. Team NEO is the Economic Development Committee that serves the Northeast Ohio 16 County area. First, Dr. Church from the Lorain County Community College was recognized for his economic development efforts by receiving the H. Peter Burg Regional Vision Award. H. Peter Burg was the Chairman of Ohio Edison and was instrumental in starting Team NEO. That is a great honor for Dr. Church. In addition, North Ridgeville, in partnership with Team Lorain County, the city of Oberlin, and Lorain County Growth Partnership, won the business attraction award. This is the award we all received and it is evident of the Cleveland Plus Campaign. Team NEO represents 16 Northeast Ohio Counties and there were over 70 nominations for the awards given that evening. The other two finalists in the business attraction award, which we received, were the Youngstown Warren Regional Chamber and the city of Youngstown for their work in attracting the regional call center that generated 500 new jobs and the city of Cleveland for bringing Heidtman Steel to Cleveland with 30 new jobs. We received the award for collaborative efforts to bring Greenfield Solar Corporation, who were also there as part of the 650 people in attendance, bringing them to Lorain County. They will bring 200 new jobs to the area by 2012 with 120 of those manufacturing jobs being located in North Ridgeville and the other 80 in Oberlin. Greenfield was also considering Arizona, New Mexico, Oregon and Texas and our resources along with our proximity to NASA were instrumental in that decision. So, we are real proud in receiving that award.

I would like to ask for an Executive Session briefly to discuss property acquisition whenever you feel is appropriate on the agenda.

President Corcoran: How about in the place of recess?

Mayor Gillock: In the place of recess. Thank you and that concludes my report.

President Corcoran: Thank you, Mayor. Mr. Safety-Service Director.

B. Safety-Service Director:

Safety-Service Director Armbruster: Late last week we were informed that garbage pickup would be as normal this week; meaning Monday would be Monday and Tuesday would be Tuesday. Tuesday was the pick up in North Ridgeville; unfortunately, in the process; if you were to look at our web page and we tried to distribute this across the whole City as quickly as possible, but as today began and ended, we're ending up with BFI making a second trip through North Ridgeville tomorrow to pick up the garbage, as most people thought it was not going to happen this way. Tomorrow, the garbage will be picked up as usual and those of us that gave the garbage to the garbage men today, can actually put it out again tomorrow, if they want to at what they have saved up for today. So, I am happy to report that BFI responded to our request to actually have the trash pick up as it is and if they are going to do a change like this in the future, we certainly need to be made aware of it in the process, so that we can get the message out to all of the people in Ridgeville and not necessarily have it one way on our web page and another way when they actually pick up the garbage, so I am to report that it will be picked up tomorrow.

President Corcoran: Thank you. Mr. Engineer.

C. Engineer:

Engineer Griffith: Thank you, Mr. President. By their very nature, lawns require lots of maintenance. Lawns are usually composed of one or two grass species that are cut very low and are prevented from going to seed and thus, they provide little value to wild life. The soil beneath lawns is often heavily compacted, so rain has trouble getting into the ground. Instead, it runs off contributing to flooding of our ditches and streams. Lawns have only about one tenth of the absorption capacity of a mature forest. By cutting grass at a three to three and a half inch height, during hot summer months, the taller grass will help to shade the grass roots, which will in turn reduce weed growth, browning of the grass and the need for extensive watering. If you do water the lawn on a hot day, water the lawn in the early morning or evening. This will reduce water evaporation. Last, but not least, use a mulching mower, so that clippings can remain on the lawn and provide nutrients as they decompose. That concludes my report this evening. Thank you.

President Corcoran: Thank you. Mr. Auditor.

D. Auditor:

Auditor Costin: Yes, thank you. I have no report scheduled for tonight, but I do have a couple of items I wanted to point out to Council. The first of which is the 2011 budget that the Mayor has introduced. I would request that be passed with the emergency, so we can have it to the County by the due date of July 20.

When we get around to T 80, there was handed out a revised T 80 ordinance that I would be more than happy to explain revisions when we get to have its first reading.

Also, finally, for the last meeting in July, the next meeting, we will be presenting an amended appropriation ordinance that is going to reflect the items that we are going to talk about in today's meeting and any of the other items that have been considered in the past by Council, since our last appropriation ordinance. That concludes my comments.

President Corcoran: Mr. Mayor?

Mayor Gillock: Mr. President, I left something out of my report if I could please go back to this for this one item. You all received a letter from the Lorain County Board of Elections stating that due to a change in State law the filing deadline for the local questions and issues has changed from August 19 to August 4. The State has changed their deadline, their timing for all elections in the future, to 90 days, instead of 75 days. Our Charter in many places, section 12.1, 13.1, 14.3, 14.5 and 16.1 have references to 75 days lead time. The Board of Elections is asking us to change that to 90 days. So at the next meeting, I am not quite sure yet, as I know we will need at least two ordinances, if we don't need five. I will get that worked out with the Law Director; that will be coming for your review to hopefully, put it on the ballot. That is the only way we can change the Charter. So, that will be coming. I just wanted to advise you that the Board of Elections is asking us to change those 75 day notifications to 90 days. We are basically the only City in Lorain County that goes to the 75. Several other cities have Charters and they either say 90 or they say refer to the State general laws. Lorain and several others are statutory cities so they automatically follow the State law. So, we are kind of like the black sheep here when it comes to the Board of Elections regarding this timing. I will give you more information on it, but I just wanted to make you aware that, that was coming to the next meeting for your discussion. Thank you.

President Corcoran: Thank you. Anybody else have anything?

E. Other Reports:

President Corcoran: Please note:

Mayor's Court Report for May 2010 and
Law Director's Annual Litigation Summary.

COUNCIL COMMITTEE REPORTS:

President Corcoran: There are no Council committee reports. Moving on to correspondence.

CORRESPONDENCE:

Clerk of Council Smith:

1) Received a letter from Betty Sutton, Member of Congress, inviting Council Members to attend a roundtable discussion at the Lorain County Community College Spitzer Conference Center on Friday, July 9, 2010 from 9:00 A.M. to 11:00 A.M. regarding the topic: Faith-based Organizations and the Federal Government Working Together Toward Common Good.

OLD BUSINESS:

President Corcoran: There is no old business. Now we are at new business.

NEW BUSINESS:

Request from the Parks & Recreation Commission for Council approval to expend, not to exceed \$2,600.00, from the Parks & Recreation Improvement Fund for two South Central Park restroom doors with lock timers.

moved by Mayor Gillock, seconded by Boose to approve

President Corcoran: Any comments?

Council Member Boose: Yes, Mr. President. As Liaison to the Park and Rec Commission, we've had issues with those restroom doors for many, many years and this is one additional attempt to try to solve that issue with vandalism and such and so, these doors will have automatic locks on them so that they can be more easily turned on and turned off, locked and unlocked. They also have some safety issues. I believe that you could be locked out, but you can't be locked in, which is a good safety issue. Also, it will alleviate the necessity for someone from the City to have to go there late at night and make sure they are all locked up. Hopefully, it will again solve one of the issues that we have over there.

Mayor Gillock: We have similar locks at the Root Road Soccer Complex and at Shady Drive and they work very well. We are hoping that they will do the same here.

President Corcoran: Anybody else? All those in favor say yes. Those opposed say no.

Yes, 5 No, 0

President Corcoran: Request is approved. T 79.

Ordinance and Resolution Submittals:

Clerk of Council Smith:

T 79-2010 A RESOLUTION ESTIMATING AGGREGATE MAXIMUM AMOUNT OF PUBLIC FUNDS TO BE AWARDED AS ACTIVE DEPOSITS AND INTERIM DEPOSITS.

Mayor Gillock: Mr. President, Tony Hatmaker, our Treasurer, has asked us to adopt this, this evening if we could. This is the first step in renewing our depository contracts which expire this year. These are the contracts we have with our banks. They run for five years. Mr. Costin could expand on this, but there are a couple of ways that they come into play. One, is that we determine a maximum amount. It was one million dollars and I think we are increasing that to three million and that is for active or operating deposits. Then, for our investment type deposits which are our CDARs right now, it is at 10 million and we are looking to raise that to 20 million dollars. We set those limits. Then each financial institution that wants to do business with the City will then enter into a contract and they will tell us what the maximum amounts that they are willing to accept through their responses to our advertisements for depositories are later in the year. This is all technical requirements set up for us to do business with the banks and to establish maximums that we can put in a bank and how much they are willing to accept. Obviously, we have rolling funds, operating funds, that we use all the time. You are aware that our CDARs program is the money that we don't use as quick and is all FDIC guaranteed, but through the CDARs programs, we can go to one bank with a million dollars and they will reinvest that with many other banks so that it is all insured. We have a rolling program where we invest one million dollars each month. We have an excess of 12 million. We have that so we can stay current with interest rates and as they change, we can react. The banks will, each month, give us their interest rates so we can get the best interest rate. This will allow us to enter into those agreements with those banks.

Council Member Olesen: Mr. President, did the Mayor indicate that he would like this passed tonight?

President Corcoran: Yes.

moved by Olesen, seconded by Jaenke to suspend the By-Laws to give T 79 its first reading this evening

President Corcoran: Does anyone have any comments or questions? All those in favor say yes. All those opposed say no.

Yes, 5 No, 0

President Corcoran: Okay, T 79 is added to first readings. T 80.

Clerk of Council Smith:

T 80-2010 AN ORDINANCE AUTHORIZING THE MAYOR TO ADVERTISE FOR BIDS AND ENTER INTO A CONTRACT ACCORDING TO LAW AND IN A MANNER PRESCRIBED BY LAW FOR THE INSTALLATION OF A TRAFFIC SIGNAL AT THE LORAIN ROAD AND FIRE STATION NO. 2 DRIVEWAY, NOT TO EXCEED \$115,000.00.

moved by Mayor Gillock, seconded by Buescher to amend T 80 by substitution with the new T 80-2010 substitution that was left at your desk

Mayor Gillock: Actually, what this is and Mr. Costin can explain, is a grant from Homeland Security which pays 90 percent; we have to put in ten percent. In the original ordinance we

didn't gross it up. In this one, we have to pass the ordinance for the entire amount and not just 90 percent and that is the reason for this substitution.

President Corcoran: Are there any other comments or questions? All those in favor say yes. Those opposed say no.

Yes, 5 No, 0

President Corcoran: T 80 is substituted. Is there any time frame in which to pass this by?

Auditor Costin: We intend to pass this at the next meeting so that the Chief can get moving on the applications. We actually can't pass it tonight, technically, because we don't have it appropriated yet. This is one of the items that will be reflected in the amended appropriation ordinance.

President Corcoran: Thank you. Next up, T 81.

Clerk of Council Smith:

T 81-2010 AN ORDINANCE REPEALING ORDINANCE NO. 4566-2008, WHICH AUTHORIZED THE MAYOR TO ENTER INTO A CONTRACT WITH THE LOWEST AND BEST BIDDER FOR THE PURCHASE OF FIBER OPTIC LINES AND ALL ASSOCIATED WORK AND APPURTENANCES FOR THE FRENCH CREEK WASTEWATER TREATMENT PLANT, AND REPLACING IT WITH THIS ORDINANCE, AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH DIGITAL MATRIX FOR THE PURCHASE OF FIBER OPTIC LINES AND ALL ASSOCIATED WORK AND APPURTENANCES, NOT TO EXCEED \$20,000.00.

T 82-2010 AN ORDINANCE COOPERATING WITH THE DIRECTOR OF THE OHIO DEPARTMENT OF TRANSPORTATION TO COMPLETE THE PRELIMINARY ENGINEERING OF THE CENTER RIDGE ROAD WIDENING IMPROVEMENT PROJECT.

Mayor Gillock: This is one that we will want to pass at the next meeting also. It has to be put into appropriations. We have the funds available in the Street Levy, but it hasn't been appropriated yet. This is the next phase in attempting to widen Center Ridge Road. If you remember, we did a study with Burgess and Niple. ODOT has a fourteen-step process that you go through to build or improve a minor road which is what this is classified as. Burgess and Niple took us through the first four steps. This is the next step which is the environmental study. We received a grant from the TRAC Commission for 710,000 dollars and the other 230 is our match. So, we will have to have that passed at the next meeting after we include it in the new appropriation ordinance.

President Corcoran: Thank you. That is the end of new business. We come to the recess portion.

RECESS:

moved by Buescher, seconded by Boose to dispense with the recess
President Corcoran: All those in favor say yes. Those opposed say no.
Yes, 5 No, 0

moved by Buescher, seconded by Jaenke to go into Executive Session for the discussion
of property purchase
President Corcoran: All those in favor say yes. Those opposed say no.
Yes, 5 No, 0

Council adjourned into Executive Session at 8:07 P.M.
Council reconvened at 8:15 P.M.

FIRST READINGS:

Clerk of Council Smith:

T 76-2010 AN ORDINANCE REPEALING ALL PROVISIONS AND SECTIONS OF ALL
ORDINANCES CONTAINING INCORRECT JOB TITLE(S) REFERRING TO
THE DEPARTMENT HEAD OF COMPUTER SERVICES AS ANYTHING
OTHER THAN "INFORMATION SERVICES DIRECTOR/NETWORK
COORDINATOR" AND REPLACING THOSE PROVISIONS/SECTIONS
WITH THE CORRECTED JOB TITLE.

First Reading

T 77-2010 AN ORDINANCE CREATING A NEW CLASSIFICATION AND
ESTABLISHING THE QUALIFICATIONS FOR THE FULL-TIME POSITION
OF ASSISTANT CHIEF BUILDING OFFICIAL.

First Reading

T 78-2010 AN ORDINANCE AMENDING THE ORIGINAL DEPARTMENT HEAD
SALARY ORDINANCE NO. 2725-93 AND SUBSEQUENT AMENDMENTS
THERETO UP TO AND INCLUDING THE MOST RECENT AMENDMENT
REFLECTED IN ORDINANCE NO. 4580-2008 BY INCLUDING THE FULL-
TIME POSITION OF ASSISTANT CHIEF BUILDING OFFICIAL, AND
ESTABLISHING THE PAY RATE SCALE FOR THIS POSITION.

First Reading

T 65-2010 AN ORDINANCE AMENDING NRCO SECTION 1030.12, DUTIES OF
PRIVATE OWNERS.

First Reading

T 66-2010 AN ORDINANCE AMENDING NRCO SECTION 1290.05, PERMIT APPROVAL; CONSTRUCTION REQUIREMENTS, SECTION 1268.04 LOT AND YARD REQUIREMENTS, SECTION 1270.04 LOT AND YARD REQUIREMENTS, AND SECTION 1274.06 YARDS TO REFLECT NEW STANDARDS FOR DRIVEWAY WIDTHS IN COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS.

First Reading

T 83-2010 AN ORDINANCE ADOPTING AND APPROVING THE BUDGET OF THE CITY OF NORTH RIDGEVILLE, OHIO FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2011 IN THE FORMAT PRESCRIBED BY LORAIN COUNTY AUDITOR AND SUBMITTING SAME TO THE LORAIN COUNTY AUDITOR.

First Reading

moved by Olesen, seconded by Jaenke to dispense with the second and third readings for T 83

President Corcoran: Are there any comments or questions?

Council Member Boose: Yes, Mr. President. My recommendation would be to postpone voting on this until the next meeting which I believe still meets the deadline for submission to the County. I may be wrong, but I have the impression that some of us may not have seen this until this evening and there are some due diligence that we all must do. I had the fortune of getting this earlier in the day and did go through it and had conversations with the Auditor and the Assistant Auditor and we have some issues coming up in 2011. I understand by the Auditor's indication that this is basically for providing estimated revenues and again, he went through the expenditures as well, so that one, it meets the Ohio Revised Code, but two, it allows the County to more adequately and accurately provide the estimated revenues for 2011 later this year so that we can begin our budget process. But, as you look at this, you can see that the estimated balance that we begin the year 2011 and what we end up with is about a five million-dollar drop. That eats up, and I don't want to say all our reserves, but it cuts that in half. What is more noticeable is that we are predicting, based upon again, two percent increase in wages, less a ten percent premium adjustment for insurances and putting the split back to an 85/15, that the General Fund is going to end up almost two million dollars in the red. That is after the income tax revenue transfers. I would have a difficult time this evening voting yes for this and it is my understanding that in order to pass this, this evening, you will need five votes. I don't know what the other four of you are inclined to do, but my recommendation would be to review this prior to the next meeting and take a vote on it then. We will still be able to meet the deadline.

Council Member Olesen: Mr. President, I would like to ask the Auditor if this is going to interfere with us getting this in on time.

Mayor Gillock: Mr. President.

President Corcoran: Do you want the Auditor to answer Mr. Olesen's question first?

Mayor Gillock: Well, what I was going to say is, if you look at the top of the form, it states that you have to have this to the Lorain County Auditor's office by July 20. That is the next Council meeting, which is in the evening. If you don't pass it tonight, then we will have to have a Special Council meeting to pass this.

Auditor Costin: Can I respond?

President Corcoran: We don't have a meeting on the 19th?

Mayor Gillock: Yes, I was looking at two weeks from the 6th.

President Corcoran: The holiday throws' things off. Mr. Auditor.

Auditor Costin: Two things. It is indeed the 19th. We would still have a difficult fire drill to do all the signatures and get everything over to the Lorain County Auditor the next day. The second thing I would add to Mr. Boose's comments, though, is that there really isn't anything, I believe, that we could do to change our best estimate at this time because, it is based on facts and circumstances in effect today. Now, in reality, we can change those facts and circumstances as he indicated. When we get to appropriations, we can change the split. We may be able to look at other sources of revenue. We may be able to look at other sources of cutting expenses. I think that it is absolutely necessary for the City to do and for Council to do, but I don't think that it is going to have any impact or implications on what we are going to send to the County Auditor because that is based on circumstances that are in effect as we sit here today. It is not up to the Administration to second guess what Council is going to do, but only to submit a budget as a starting point; as I indicated, which is the source of the revenues for the certificate of estimated resources and then we can, as a City, deal with those issues between now and the end of year and certainly in appropriations. So, the question is really, studying this budget, we may simply decide that perhaps we can change our estimated guesses, but it really has no consequence until we pass legislation or take the necessary action to do so. It is premature to do that at this time of the year when all we are doing is estimating our revenue based on facts and circumstances in existence. Those appropriations that were estimated under estimated expenditures really are meaningless because they haven't been appropriated by Council. So again, all we are doing is taking our best guess based on the wishes of the Administration of what we would like to do, but it is Council that decides what we are going to do. Again, this is the starting point for the whole process of planning and budgeting our appropriations for the year 2011. I think all we are doing in postponing passing this tonight, is simply putting pressure on the Auditor's office to be able to finalize all the documentation and get it to the County Auditor on a timely basis the very next day, which means we have to process the paper and Kevin will have to come in and sign it, you will have to sign because it all has to be properly signed before they will accept it. I understand your concerns and I think definitely, your attitude is exactly correct, but I think that what we would be doing isn't going to affect what we are passing tonight. Do you understand what I am saying?

Council Member Boose: Right, my only comment is that you need five votes and that is my comment.

Auditor Costin: If you choose not to vote, then it will not only pass, it will not pass with the emergency, which means, we will be in default over the Ohio Revised Code. That is your prerogative.

Council Member Boose: Well, the prerogative would be to wait for the other two members of Council to come and perhaps they would look at it differently. I just have a hard time sitting here putting my name to the estimates showing a two million-dollar negative balance in the General Fund. Some funds I can see where that may not be as imperative of an issue, but that is the General Fund. I understand that we are only going by what we have already put in place. I understand that, but I don't want it to come back, because I have seen it happen in other instances where, well, you voted for this knowing that this was the way it is. How can you change your mind now? I can't do that.

Mayor Gillock: Mr. President, the assumptions we made that lead to showing a deficit in the General Fund were a couple of things that Mr. Boose mentioned, the salary increases or insurance issues. Those are subject to the union negotiations. Those have to come back to Council. We had to plug in some numbers to have something to give the Auditor. I could have said just as easily, don't do anything. I could have said, make this come out with a three million-dollar positive. It doesn't mean anything. What he needs to do is get the revenue numbers in. But, if we don't pass it tonight, then we will have a special meeting because I am not going to wait until the 19th and try to do it in a fire drill in trying to get everybody here on the 20th to get everything signed and get it over there. It is just not fair to his office. That is my comment.

President Corcoran: We seem to have a little bit of a dilemma. We have people who would like to see this happen today and some people who don't.

Auditor Costin: I would like to make one more comment. Based on the facts and circumstances in existence, Mr. Boose is exactly right. We are looking at a 1.9 million-dollar deficit and I think we have to address it. I think we do have to, in fact, consider what we are going to do prior to going into next year. I am glad that you pointed that out because it is important to notice all of those fund balances. There is another deficit that we have to be concerned about on the next page. I think it is necessary we take action. Again, I would reiterate that the action we take, isn't going to change this budget unless we have some formal action that changes our facts and circumstances. The passage of this budget is just actually complying with State laws to take our best guestimate based on facts and circumstances in effect where we would be next year if we took no further action. This, I believe to the best of our ability, is exactly what this documentation does. That is what this document does and it is not going to change at the next meeting either.

Council Member Olesen: Mr. President, I can look at this over the next two weeks or until the cows come home and it is not going to change. I am not going to change anything on there because it is what it is. I guess my next question is, what happens if we default and we don't get this information in on time? What is the penalty?

Auditor Costin: The penalty is they can withhold our taxes to us. They can really withhold any City money that they collect on our behalf. We have never done that. I believe that is the

penalty. Hopefully, we wouldn't do that. One way or another, we certainly want to pass this on a timely basis and comply with the Ohio Revised Code. We have never done otherwise since I have been here.

President Corcoran: It doesn't seem like we are getting anywhere.

Council Member Boose: Mr. President, again, the reason I bring this up and discuss it prior to the vote was so that, again, I understand that there is a motion and a second on the floor to dispense the second and third readings, but I wanted to give the rest of Council the opportunity to understand where I was coming from so that you can avoid a negative vote or a vote that wouldn't do what you are trying to do today, so that you can make some other sort of arrangements, that's all.

President Corcoran: It was moved by Olesen and seconded by Jaenke to dispense with the second and third readings for T 83. Clerk, please call the roll.

Yes, 4 No, 1 (Boose)

Clerk of Council Smith: Measure was defeated.

Council Member Buescher: Mr. President, if we took the vote to adopt this tonight, would it be possible to come back at another time to pass the emergency when the other two members are here?

Law Director Crites: We couldn't get there, Mrs. Buescher, because we require a super majority to suspend the readings, which are otherwise required by Charter. Charter states that all legislation must receive three readings and we can't suspend the By-Laws without five members of Council.

Council Member Buescher: So, then we'll have to have a special meeting then, when all the other Council members are here?

Law Director Crites: I presume, unless it is possible to . . .

Mayor Gillock: We may have to have two special meetings because depending upon vacation schedules and if people aren't here as we have to have five votes, then we will have to have a special meeting for each reading.

President Corcoran: That will be something that you'll have to look into. I have no knowledge of what Mrs. Butkowski's schedule is.

Council Member Buescher: I believe she'll be gone for one week.

President Corcoran: All right. T 79.

Clerk of Council Smith:

T 79-2010 A RESOLUTION ESTIMATING AGGREGATE MAXIMUM AMOUNT OF
1208-2010 PUBLIC FUNDS TO BE AWARDED AS ACTIVE DEPOSITS AND INTERIM
 DEPOSITS.

First Reading

moved by Olesen, seconded by Jaenke to dispense with the second and third readings for T 79

President Corcoran: Any comments or questions? All those in favor say yes. All those opposed say no.

Yes, 5 No, 0

 moved by Olesen, seconded by Jaenke to adopt

President Corcoran: Are there any comments or questions?

Council Member Boose: Mr. President. Although, I don't know how I would be directly or indirectly affected by this, because I do work for a financial institution that may or may not bid on this business, I will have to abstain. I wanted to let you know before you took the vote.

President Corcoran: Thank you. Anyone else? Clerk, please call the roll.

Yes, 4 No, 0 Abstain, 1 (Boose)

Clerk of Council Smith: Measure passes with a vote of four yes with one abstention.

President Corcoran: T 79 is adopted and becomes resolution number 1208-2010.

 Permanent Resolution No. 1208-2010

President Corcoran: That is the end of the first readings. Moving on to second readings, T 61.

SECOND READINGS:

Clerk of Council Smith:

T 61-2010 AN ORDINANCE AMENDING NRCO CHAPTER 1210 PLANNING
REVISED COMMISSION TO REQUIRE CITY PLANNER REVIEW AND A TRAFFIC
 IMPACT STUDY WHEN CERTAIN CRITERIA ARE MET.

 Second Reading

T 72-2010 AN ORDINANCE CREATING THE FULL-TIME POSITION OF FINANCE
 TECHNICIAN.

 Second Reading

T 73-2010 AN ORDINANCE AMENDING ORDINANCE NO. 4486-2007 BY
 INCLUDING THE FULL-TIME POSITION OF FINANCE TECHNICIAN,
 AND TO CREATE AND ESTABLISH A WAGE RATE FOR THIS POSITION.

 Second Reading

T 63-2010 AN ORDINANCE AMENDING SECTION 1240.01 OF THE CODIFIED
 ORDINANCES OF THE CITY OF NORTH RIDGEVILLE, OHIO KNOWN AS
 THE ZONING CODE ORDINANCE, TO RE-ZONE THE FOLLOWING LAND:
 PROPERTY CONSISTING OF THE NORTHWEST CORNER OF CENTER
 RIDGE ROAD AND FOWLERS RUN AND FRONTING ON SONGBIRD
 LANE; PERMANENT PARCEL NUMBERS 07-00-045-110-096 AND 07-00-
 045-110-105, 07-00-046-107-019 AND 07-00-046-107-020 (AS SHOWN BY

LEGAL DESCRIPTION BELOW); FROM R-1 RESIDENCE DISTRICT TO B-3 HIGHWAY COMMERCIAL DISTRICT AND OWNED BY LAKE RIDGE HOLDINGS LTD AND SANDY RIDGE DEVELOPMENT.

Second Reading

President Corcoran: That brings us to third readings, T 67.

THIRD READINGS:

Clerk of Council Smith:

T 67-2010 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A
4758-2010 CONTRACT FOR THE YEARLY EXPENDITURE OF FUNDS FOR THE PROFESSIONAL SERVICES OF MARSH-MCBIRNEY, INC., A HACH COMPANY, FOR METERING SERVICES FOR THE FRENCH CREEK WASTEWATER TREATMENT PLANT, NOT TO EXCEED \$80,000.00.

Third Reading

moved by Mayor Gillock, seconded by Olesen to amend T 67 by substitution with the revised ordinance that was left at your desk this evening

Safety-Service Director Armbruster: Mr. President, this is the Hach, Marsh-McBirney flow meters that we have. There are six of these flow meters that are in the interceptors' sewer coming out of North Ridgeville and placed in Avon and Sheffield and how we do our billing to the other communities. What was a concern by Denny Johnson was that Hach, Marsh-McBirney were going to be doing the actual testing of the units and in this agreement; in the data services agreement, you can see that Hach in the special terms and conditions are actually going down into the physical sewer and they are the ones that are actually going to fix, if there is an issue, the flow meters. It is not going to be a city of North Ridgeville person. It is going to be Hach, Marsch-McBirney in itself. Then, through this conversation, discovered that we have been with Hach, Marsh-McBirney since actually going back into the early 90s, that's when we leased them. Since they are actually their equipment, we could actually reduce our cost on a yearly basis. Instead of spending 71,000 on July 1 through June 30, contract with them. We can reduce that to a 46,800 cost from 900 and some dollars a meter to 390 dollars a meter. We chose to go with the 120-month contract with them, replacing the equipment to the city of North Ridgeville at the end of the fifth year, as well as, if there is any instrument that needs to be replaced due to any reason whatsoever, that it would be replaced at the cost at Hach, Marsh-McBirney at no additional cost to the city of North Ridgeville. As I look at this, we do have to make one little change. The Auditor and I spoke today with regard to the contract running from July 1 through June 30 which means that next year it would be 46,000 every year through the 390 so, it really doesn't make a difference. There isn't going to be any additional cost, so 46,800 is twelve months. So, it doesn't make any difference as to whether it is running from July 1 through June 30 or January 1 through December 31. This completely satisfies Denny's concerns as well as mine as we were

going down into the interceptor ourselves, at the direction of Hach, in making adjustments. Now, Hach is totally in charge of these flow meters when it comes to the actual flow meter. We are still the ones entering if there has to be any work done in the interceptor to clean it up. We are still the ones that will be entering the sewer at that point with all the protective devices to fix that area for the meter in itself. I would like to see this passed this evening as the contract was July 1 and we have worked all the agreements out as we have gone. I think it starts, as the Mayor pointed out, 120 months starts July 10, 2010 if you look at the Data Services Agreement on the second page.

Law Director Crites: Mr. President, I have a question for Mr. Armbruster. There is a motion on the floor to amend by substitution. First, you have to vote on that motion. It was not seconded. If it is seconded and if per chance that it gets passed, I believe Jeff insinuated that there is another change that you wanted to make inside the body of the ordinance?

Safety-Service Director Armbruster: It does not have to be changed because twelve months is 46,800.

President Corcoran: It was moved by the Mayor and seconded by Mr. Olesen to substitute T 67 with the ordinance that we have in front of us. Are there any comments or questions about that substitution.

Council Member Boose: Mr. President, so the only change in the document is located on the first page of the service order or where?

Safety-Service Director Armbruster: The changes, Mr. President, is that the contract goes from 120 months rather than 24 months. We went from 995 dollars a month per meter to 390 dollars per month.

Council Member Boose: Where is that at?

Safety-Service Director Armbruster: In the fees on the second page where it says data delivery services. It starts on July 10, 2010. The special terms and conditions that the latest technology is going to be delivered to us, in other words, if Hach, Marsh-McBirney has any new technology that we need to have, we will have it first. They are replacing all of the instruments in a minimum of five years. Through these negotiations, Councilman Boose, we are replacing one of the meters as we speak. Only Hach personnel representatives will be physically repairing or replacing the instruments. There was a time when we were being instructed to do so by Hach employees. That is no longer going to be done. If Hach elects to subcontract that confined space entry, we will allow them to do that but, they are Hach employees, they are not North Ridgeville employees or French Creek employees. The contract in itself, the service agreement covers boiler plate, which is basically the same thing, but I wanted to make sure that in the data services service order, that specifically, the issues that were asked for in English would be pointed out so that there would be no question in reading the legal side of the contract as to what it meant when it comes to someone going down into the sewer in the repair or maintenance of a Hach meter. In fact, what Hach told me, the meter cannot be repaired. It is certified in the lab and should not have to be fixed or anything done to it throughout its entire life.

President Corcoran: Any other questions?

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Council Member Boose: Not at this time.

President Corcoran: All those in favor of the substitution say yes. All those opposed say no.

Yes, 5 No, 0

moved by Olesen, seconded by Jaenke to adopt T 67 as substituted
moved by Mayor Gillock, seconded by Olesen to add the emergency clause in
order to meet the July 10 effective date

President Corcoran: Any questions about that emergency clause. Those in favor say yes. Those opposed say no.

Yes, 5 No, 0

President Corcoran: On the adoption of T 67 with the emergency clause, Clerk, please call the roll.

Council Member Boose: Mr. President, I have a couple of questions. Again, other than the changes on pages one and two that you noted, there are no other changes?

Mayor Gillock: I'm not aware of any other changes. The key issues were the price per month and if you remember, the old one said that they would not go into confined space, but their website says that they calibrate them and they will take care of them and that is when we said, you have to take care of them. That change is incorporated.

Council Member Boose: Item 5.1 term indicates that should Hach company contract with third parties for the provision to customer and the term shall continue for the length of any such third party contracts. It indicates in the change that they have the ability to subcontract out the in ground work. How might that affect our ten-year contract?

Safety-Service Director Armbruster: Mr. President, there was a lengthy discussion with regard to the care and custody of the equipment in itself. It has no impact based on the fact that it is not the city of North Ridgeville that it is hiring these people from the outside firm. It is Hach themselves. Hach is warranting it and Hach is in total custody and control regardless of whether they bring an outside firm in. There was a lengthy discussion with regards to how that was going to happen and where it is. That is why in the third page it states that they have the right to do so, but they do not have the right to pass that liability off to anyone else.

Council Member Boose: Thank you. I do understand that, but my question wasn't to that. My question was to the third party contract that they make. Say they make a fifteen-year contract and say in year seven of our contract, they make a five-year contract to a third party. According to 5.1, that automatically extends our ten-year contract another two years. At least, that is the way I'm reading it.

Mayor Gillock You are reading 5.1, should Hach contract with third parties for provision of services to the customer, which is if you look at the special terms and conditions under number two, it says only authorize Hach personnel representative to physically repair or replace the components throughout the terms of the contract. Hach may elect a subcontractor in a confined space entry work, but it will be supervised by Hach personnel. If under 5.1 they do that and they subcontract to a third party for those services, it is just saying the term of this contract. It still remains the same even though they are using a subcontractor. That is their issue and I think it is

just their way of saying that they can use that third party contractor. We still have our contract with Hach. Our contract does not become assignable to a third party.

Council Member Boose: I am not suggesting that it becomes assignable, but it would be extended. Mr. Law Director, do you read that differently than I read it?

Law Director Crites: I'm actually reviewing it right now and don't feel like I am in a position to make any opinion to it until I have had a chance and opportunity to review it as I haven't.

Council Member Boose: Number 7.2 talks about confidential information and it talks about the terms of the agreements, service order form including pricing. It says consists of confidential and proprietary information of them, customer agrees; that's us, to hold company confidential information in confidence and agrees not to release such information to any individual whether employee, subcontractor, or subcontractor employee. How do we do that? I'm not quite sure what they are asking there?

Safety-Service Director Armbruster: Mr. President, this has to do with the technicality of the actual software and how it was developed in the flow meters itself. We would have to have some scientist figure out from the standpoint of how they developed that side of it. We can't share that information. If we do have knowledge of how they did it and where it is because this equipment meets, what they call a ten-state standards of quality throughout the United States. It is the best equipment available and they don't want, if we were able to figure out, just exactly how these meters work and share that information with any of their competitors in order to get them up to speed with Hach themselves. It comes right down to the fact that if you figured it out, you can't discuss it with anyone. It is in the contract here as to how it is protected.

Council Member Boose: On page 11 under governing law, eleven C says this agreement is governed by the laws of the State of Colorado and that we agree and consent to jurisdiction in the State of Colorado. Is that something that we really want to agree to?

Mayor Gillock: That might be a mistake and maybe it should read State of Ohio. I would ask the Law Director.

Law Director Crites: Probably not. It is actually very common for a national company where they want to fight their battles at home.

Council Member Boose: And finally on the last page; under audit rights, it says Hach Company shall have the right upon reasonable notice to periodically conduct an audit of the customer's usage subject to the confidentiality provisions in this agreement. Do we have that same authority to audit them?

Safety-Service Director Armbruster: Mr. President, the Hach meters; the six that are there now, are used for billing purposes and not only for North Ridgeville's collection system but for Avon and Sheffield's collection system. We are constantly in contact with Hach on the ability so that they can confirm and that we can audit the meter readings to make sure that the meter readings are absolutely correct because, recognizing that these are Hach meters and the way we bill the other communities, the potential for litigation is always there if we are to incorrectly bill them.

Council Member Boose: And that is why I asked because I didn't see that identified in the agreement.

Safety-Service Director Armbruster: Well, within this agreement, further in here, we have the right to terminate the agreement, if in fact, the meter readings are not correct. No one wants to be in bed with, for lack of a better term, with a process where you can't legitimately and accurately rely on those numbers when you are using them for billing purposes. That is where we got back into the meters themselves to make sure that it was only Hach employees or Hach subcontractors that were actually working with the meter physically, where we would work physically with the sewer.

Council Member Boose: Is there somewhere in this document that says we have that right?

President Corcoran: I believe, that if you look at 1.2, it talks about the customer, meaning the city of North Ridgeville having the right to access the information through our own web page that Hach develops and has that data collection information on there.

Mayor Gillock: Mr. President, the data collection information is accessible through the website. The real issue is the accuracy of the flow meters, which relates to the calibration, which is the thing that we really hold their feet to the fire over. Last year, independently, we certified those flow meters. We had an engineering firm come in and independently take measures to basically prove that they were correct. We did find an issue. It wasn't with the meter. We found gravel in one of our systems which was throwing the readings off. We have audited that way and we do have access to the material.

Safety-Service Director Armbruster: To further clarify that, SV4 is one of our flow meters being replaced, as I said, within the next 30 to 60 days and based on some down time that we have had we've asked that it be replaced and they are replacing it within the existing contract.

Council Member Boose: Again, I just want to make sure that this new contract can't *pivot prevent* us from doing the same thing that we did last year.

Auditor Costin: I was just going to add that audit rights, I believe; I'm not an attorney obviously, but I am exposed to a lot of contracts and that is a typical provision. I believe it relates to 2.1 that gives us the limited license. I think all their concern is, is that they want to make sure that is all we use it for. That is typical language that you will see in most contracts where you have a licensing agreement.

Council Member Boose: My only final comment would be if the Law Director had the opportunity to review that.

Law Director Crites: If I may, the President and I were just discussing the same and having reviewed it, frankly, in my opinion it is just poor draftsmanship. In the last sentence in 5.1, I think what they are trying to do is reserve themselves the right to bring in help and then they are saying that if they bring in help, the term of the contract will remain unchanged. That is what it should say, but it is written upside down. In talking with Mr. Corcoran, if we really wanted to clarify it, and it is not proper for us here on the floor of Council to amend the provisions of a contract and then pass it as amended. I guess we kind of could, but that is rather bulky. The proper way to do it would be for us to contact the contractor correctly and say, hey we would like to change this clause to clarify and then come back.

Council Member Boose: As long as you are saying in your opinion that is what they mean, I don't have an issue with that, because now that it is on the record. If we have to go to court, it is on record that, that is how we thought and perhaps someone will look kindly on us if that is the case.

Law Director Crites: That is a good point. It seems to be clear because in the four corners of the agreement, it is clear and it is actually stated more than once with the actual term of what the contract is and it would be a very odd day that a court would over turn that term based upon this poorly written line. I would say that it probably has no operative affect of the contract and it would be my recommendation that Council went ahead and passed it with this term.

President Corcoran: We are at the point where we have a motion on the floor by Mr. Olesen and Mr. Jaenke seconded to adopt T 67 with the emergency clause. We are calling for the roll.

Yes, 5 No, 0

Clerk of Council Smith: Measure passed.

President Corcoran: It becomes ordinance number?

Clerk of Council Smith: 4758-2010.

Permanent Ordinance No. 4758-2010

COMMITTEE MEETING ANNOUNCEMENTS:

President Corcoran:

Public Hearing July 19, 2010 at 7:15 P.M. re: T 66-2010 commercial/industrial driveway widths

Public Hearing July 19, 2010 at 7:20 P.M. re: T 63-2010 rezoning the northwest corner of Center Ridge Road and Fowlers Run and fronting on Songbird Lane

Next Regular Council Meeting Monday, July 19, 2010 at 7:30 P.M. in Council Chambers

ADJOURNMENT:

President Corcoran: Is there any other business to bring before the City this evening?

Seeing none, the meeting is adjourned.

Meeting adjourned at 9:00 P.M.

Approval of Minutes:

These Minutes, as corrected, were approved at a regular meeting of the North Ridgeville Municipal Council on July 19, 2010: