

City of Gahanna

*200 South Hamilton Road
Gahanna, Ohio 43230*



Meeting Minutes

Monday, July 25, 2011

7:00 PM

Council Committee Rooms

Finance Committee

Beryl D. Anderson, Chair

Shane Ewald

Brian D. Larick

John R. McAlister

Nancy McGregor

Timothy W. Pack

David L. Samuel

Isobel L. Sherwood, MMC, Clerk of Council

Members Absent: Brian Larick

Members Present: Beryl D. Anderson, Shane W. Ewald, John McAlister, David L. Samuel, Nancy R. McGregor and Timothy W. Pack

Additional Attendees:

Troy Euton, Karl Wetherholt, Mike Andrako, Angel Mumma, Jennifer Teal, Brandi Braun, Anthony Jones, Leah Evans, Brian Hoyt, Donna Jernigan, Tom Weber, Deputy Chief Bell, General Williams, Kristen Treadway, Dwight McCabe from VRG, Sadicka White and Joel Teaford from COCIC, Ed Leonard Franklin County Treasurer; Residents Keith Webster, George Mrus, Sherry Passmore, and Louis Houser; Press.

ISSUES - From Committee of the Whole:

Junkermann Property Agreement Modification

Anderson called the meeting for Monday, July 25, 2011, to order. Jones said thank you to all who came to opening of the Golf Academy; we have had a significant turnout there so far; as previously discussed, we are requesting that Council authorize the Mayor to sign a Modified Developers Agreement which will extend the terms of our 2005 Development Agreement and provide some additional financial security for the City with a promissory note and a mortgage agreement that has a description of the property; some highlights of the agreement are: in Section 9 Contingencies, after the term, the parcels would be sold and the \$1.2 million would be paid back; with the extended term over 5 years we have the option for the generation of taxes from development of the site over 5 years; the third point is an Acceptable Development Plan Agreement on what can be built that includes some unique building requirements like the bike tournament site; the Developer or the City can come up with the agreement; the last item is VRG transfers ownership back free and clear after the agreement expires 5 years from January 1, 2011, if any of the contingencies are not met; this gives us more flexibility; Section 10 was added titled Security; provides the City with a mortgage position and requires a promissory note; the mortgage and note are signed with the extension agreement and, if approved by Council, provide the City extra security on our position; those are the changes; there has been a lot of discussion from all parties; some of the individuals are here and the COCIC (Central Ohio Community Improvement Corp.) as well; would like to comment on why the department feels this is a good position; number one is the Junkermann Tract is critical to the success of the whole Central Park Project; without this we would not have received the reclamation grants we got for the landfill's future development; this allowed development of the site and allows property tax benefits to come back to the City; we have received funding for the roadway for the undeveloped property to proceed with development plans; the City now has a one-of-a-kind asset in the OCT district and there is no other course like ours on top of a landfill; VRG has been our partner and played a critical role in this detailed project; they identified funding sources and have invested heavily themselves as well as securing \$5.5 million in grant funds; additionally the Developers Agreement is more secure with the promissory note; in 2005 the note was not executed; now we are in a position to secure our future; Central Park is at a critical place with the start of the development here and with the first development which is the golf course having just opened last week; we need to keep our eyes on the future; we are asking Council to assess the current situation and allow us to go forward and achieve our return. Anderson said there has been a lot of conversation on this agreement both positive and

negative so we appreciate the added detail.

Samuel said I want to see this move forward and make sure there are no snags; with the original agreement that has expired, was VRG formally advised of their responsibilities. Jones said all parties knew the details. Samuel said is there a possible legal issue; I had a copy of the ORC (Ohio Revised Code) sent to me; information on page 2 of the Development Report to Council sounds like this is subject only to real estate taxes and that replaces the promissory note.

Weber said let me pipe in; as a contingency for the extension, we want the mortgage and note executed; there is already a first mortgage so ours is a second mortgage which is far better than no mortgage; this would all be done at the same time at sort of a mini closing; we would record the mortgage then; this is more than we had before; obviously we should have had a note for the past agreement; there was no loan with the COCIC; now we will have a note and a second mortgage of record; now, if we need to, we could foreclose as it does have the proper language. Anderson said so currently there is no loan. Weber said having the note will be far better; there was an omission on that previously; we can't have a first mortgage as that was taken out to help finance the project; now we have second mortgage which puts us in a much better position.

McGregor said this seems to me to be very confusing; there are a lot of issues here; I would like for Council to hire an attorney to help us understand the ORC and to help us understand what happened; VRG is a private company in business to make money; I don't think we can take advice from them; we have a different perspective and we need a different look; we can't assume what they say is the right thing to do.

McAlister said I disagree; we have all had attorneys who have plowed through the issues; we have the parties to the table in good faith and VRG played an important part to clean up the landfill; the only way to clean that up was to cooperate in a public/private partnership; there is no one more opposed to that than I am but that was the only way to clean it up; I oppose giving this more time.

McGregor said with all those attorneys things still didn't get done.

McAlister said that was explained pretty well by Weber; I am ready to move forward on this and I am for it.

Pack said it is no secret how I feel; the COCIC and VRG did help to clean it up; but we spent 4.5 million dollars of taxpayer money; I have heard very little advocacy for taxpayers on what was promised to them in 2008 when VRG assumed the responsibility, and heard very little about the requirement for them to pay back the \$1.2 million in that development plan; note the expiration date has come and gone and we have not complied with the ORC about the expiration of the agreement; nothing has changed in what was promised to the taxpayers if we don't develop it, and we have a negative situation here; we need to get tax money back; that has not occurred; I only work for the taxpayers and the City; they want the money back that was promised to them; nothing says we can provide collateral free loans; we had to have private business sponsors to have the July 4 Freedom Festival this year; our police cruisers are as old as they have ever been in Gahanna; our current staff of employees are on the bottom tier of pay and have not received raises for 3 years; this is money owed to taxpayers as promised to Council in the agreement and based on guarantees; then the promissory note is not executed; the County has loaned \$2.6 million but they have much deeper pockets than us; they have money for economic development and ours is a fraction of what they have; we are working on behalf of taxpayers; what better incentive at holding the line on income tax rates than recovering monies owed; we have more than held up our end of the bargain; it was a wonderful thing to get rid of the landfill; but to just ignore the covenant is not right; as a partner they need to live up to their commitment; outside counsel may be what we should look at; we should ask Mr. Leonard the County's position; he understands our positions and constraints; what is the County assessing to give this loan; are there funds between the County and Gahanna; when we are paid back do we pay back to the County.

Leonard said as expressed at your last meeting, we support the Development Agreement; it has given a financial launch to this area; it is not at the pace we liked, but the Commission has agreed to the terms; there is a bond for the final refinancing of the construction costs; those funds were OAQDA (Ohio Air Quality Development Authority) funds necessary to provide funds for the closure of the landfill and we extended those terms.

Pack said don't we have some latitude; my view is still I am not in favor of extending the partnership; there is 1.3 million owed us that is equal to a lot of jobs that would be paying taxes to Gahanna.

White said I think you have to know what was entailed; I am here as a COCIC member and the former Development Director of Gahanna; the Junkermann Tract was damaged property; it was the subject of a lawsuit that was taking taxpayer dollars; through my foresight, I asked for us to put up 1.2 million dollars to get a grant; so now we have paid \$1.2 million for damaged property; it had no mortgage, no notes; we used that as collateral and to Eaton Bank and the City owned it free and clear; they said they would give you cash value around the park; you see the Junkermann Agreement as the insert to every single document; there was a promissory note; it was not executed; I didn't do it; we had a part time City Attorney and the Engineering Department was busy working on this and circumstances just did not allow me to see that I did not get the note signed; I am so sorry; we got \$3 million from the State and then got money for the conservation easement; then \$4 million and Tech Center Drive; I was on the COCIC Board and the agreement was not to pay the City back any of this; Jones has told you this is the best we could do at the time; hindsight is always clearer; we thought it could be developed; it does not have the appropriate zoning for today's use but they will try to develop this; if you hire an outside attorney it will be money down the drain; every one is amicable and they are agreeing to 5 more years; they are not going to leave Gahanna; my point is you are trying to deal with last year's issue today; nothing inappropriate was done; we were trying to close the landfill and reduce that liability the taxpayers faced; the City of Gahanna did not have clean hands; we caused that dump and we were liable; and it was not for just the \$2 or \$3 million to close it; it was for air, water, and soil contamination that was estimated to be a \$25 million liability; that is the liability the taxpayers were facing; now you are fighting for a million to come back to the City to use to fill one pot hole; it has never been about one pothole; I don't know anything else to say; we did nothing underhanded or inappropriate; for the mistake I made, I am sorry; please forgive me and go on with what is right for the community; I would like Gahanna to make this deal and get a good development agreement; if VRG has to pay the money and give the land back, so be it, but I am fighting to keep Gahanna viable.

Ewald said there were questions on the status of the property in January; given the facts, I support going forward with the extension; we will be in a better legal position when we get the Security Section of the agreement put in concrete terms; the agreement with VRG is appropriate given the fact they are coming back and would like to continue to partner with us via the new agreement; need to remember the economy is not what we thought it would be; a lot of commercial property is not being developed; this is an isolated area and we are putting the infrastructure in place to give it the opportunity to be developed; the cost to city is minimal; the city is not paying any more for this agreement so I see it as a win/win.

Samuel said I support this; VRG is a dedicated partner with the City; if we fail to do this, other folks coming in would see this as not business friendly; I will vote yes.

Braun said I would like to make a few points and correct some facts; to say our Police cruisers are the oldest they have ever been is incorrect; the situation is not ideal but workable; Gahanna employees have been 3 years with no raises and that is not good; we are right sizing and we are not done with that process; we continue to make progress in a difficult economic time; many projects such as this require us to use our best judgment; this was done not only to clean up the landfill but also to clean up the area for

development using grants along with a valuable partnership; we do this all the time; we leverage resources for progress.

Pack said I don't want White to think my position has to do with her action at the time of the agreement; VRG assumed the agreement, they knew the terms; VRG assumed the agreement from COCIC and they all knew what was expected; they could have refinanced and come to the City; my opinion has to do with the extension of the agreement; not prior to that.

Anderson said I am in support of this effort to leverage creatively and capitalize on all that has gone on; taxpayers are key, but this project is getting us added value; it was cleaned up and ready to develop; where we are is at the agreement; VRG is not reneging on the agreement just asking for an extension; I am not opposed to outside counsel; I do wonder about the cost but since this issue is so contentious, it would bring fresh eyes to it; prudent we remember how much we have envisioned here and how much return we see since this was started; there is such an improvement to where it is now; discussion now is the agreement is due so let's pay the taxpayers back; let's look at the whole picture; since this was for 5 years that may be their problem and we are really looking at an extension of time as what is needed; I say give it more time; I am in support of it; I am also ok with outside counsel.

Weber said it is unusual for Council to engage special counsel; that is done by the City usually to file a lawsuit; I could see us doing that if we want to sue VRG; but we don't; we are trying to extend an agreement; all hiring outside counsel will do is delay the process by several months with no gain to the City; throwing a bunch of attorneys at this will not clarify the issue; usually the more attorneys you have the muddier the mess becomes; yes you have a reason to sue VRG; they did not comply; we already know that; we know what happened; we know that under terms of the document the contract expired; so to spend money for no good reason is up to you; you have the right to throw money away if you want to.

Anderson said the caveat is perception; it might be obvious; but let's make sure we have our "i's" dotted and "t's" crossed.

Weber said so are we asking for an indefinite hold while it is reviewed; this is time sensitive; I understand that mistakes were made; but is the proper course of action having someone else say mistakes were made; it is very expensive to hire outside counsel just to clarify perceptions; if the extension is given and they have another 5 years and then there are problems, we have options; we can move forward with filing foreclosure.

Anderson said I realize it would be expensive; but I also heard that it is needed for clarity; there is a lot of confusion here.

McAlister said I agree with Weber; we do not need a \$300 a day attorney for clarity; if anything it would become more obscure.

McGregor said to me there are issues that are not clear; my opinion was that outside counsel should have been hired when the agreement expired in December; that was not done.

Pack said I would like to point out ORC Section 701.07; it deals with a framework for cooperative development agreements; quoted from it; says City shall give notice of 90 days to cure the breach; then sue for various cause; this provides options to Council; have we completed this ORC requirement and sent the letter to them; have we notified them; if we haven't, then we need to do it. Braun said the type of agreement that is referring to is government entities who want an agreement with each other. Pack said it can be different parties in a development agreement. Weber said this section applies if the City wishes to call the agreement into breach; there is no disagreement on the facts and they are into breach; we will do this if we want to sue; if they elect to sue it would apply to our situation; we have not elected this option but wish to extend the agreement. Pack said so VRG has never been officially advised.

Jones said for our economic development agreement, this case is not pertinent to this

Code Section; at the end of the day, it is past the due date; we have always had options; we could end the agreement and let the chips fall where they may; we feel the best option is to extend the agreement for all the aforementioned benefits we are presenting now.

Ewald said how much property tax was being paid on just the Junkermann Tract. Jones said the property owner is paying for it; we are not paying for maintenance fees or taxes; that is a benefit for the City; that amount of money is not being paid out from the General Fund; we are not paying marketing fees; it is being marketed for free; we can not get a better agreement; make sure everyone understands VRG is not getting a free ride; they pay taxes and maintenance as a consequence of ownership and Gahanna benefits.

Teaford said I am the Executive Director of the COCIC; want to point out if you delay this, no one can buy or develop the Junkermann property in the meantime; no one can touch it until you make a decision; the property is off the market.

Samuel said we have heard the explanations and White has apologized; it is what it is; I am not in favor of an outside attorney.

Recommendation: 1st Reading, Consent Agenda; no need to come back, 2nd Reading, Regular Agenda.

McKenna Creek Detention Basin

Wetherholt said Franey sent a detailed report about the basin; pointed out there is a meeting with the City of Columbus August 4, 2011, at 1:00 p.m. where we hope to try to get some things discussed; there are 240 acres in the Columbus jurisdiction and we believe we will get something but it will probably take a long time; Columbus has some utility credits available and we need to know what the private businesses can do; we continue to look at that option; our proposed basin gets us forward but not all the way there; last committee we said we would contact ODNR (Ohio Department of Natural Resources) about the Market at Hamilton area of the stream; they do not hold easement; the City of Gahanna holds a conservation easement even though the property is privately owned; when that was developed, they had just finished a similar project and knew about the relocation of the stream; the conservation easement restricts alterations to the stream if it were to be used for storage so it has limited storage potential for this and various other reasons; Dan Mecklenburg at DNR was very concerned about the back up of water at the exit; tailwater estimates for this hydrologic soil group prevent operating this at full capacity so he is opposed to using the Market at Hamilton to get more than a couple of feet easement; the language is specific; we decided the various constraints are not conducive for what we are dealing with and for what we need for a basin; we talk to the EPA on Friday; we think we can get through that and bid the basin.

Anderson asked the location of the meeting with the City of Columbus. Wetherholt said he would get that information; it will be one of the City of Columbus office sites.

Andrako said the current advertisement is done and the bid opening is August 5.

Anderson said she wanted to thank the Shagbark Association and the City for their collaborative effort; we will go forward since Council is ok with what was presented.

George Mrus, 1217 Sanctuary Place, said he was quite comfortable with this solution; have written 25 or 30 letters to the County and City and want this to go forward; feel you have taken into account the remediation effort and this detention basin is in the community's best interest.

Keith Webster, 1223 Sanctuary Place, said he is in the minority; believes this is not the right thing to do as planned now; there is a misconception between Dan Mecklenburg and the City of Gahanna that made information unacceptable to ODNR. Wetherholt said Dan Mecklenburg said without a control structure it would cause the culvert to back up to the rest of the stream; this is a more environmentally responsible solution.

Anderson asked for a recommendation. Andrako said this was an update and no action is

required.

Sherry Passmore, 1239 Sanctuary Place, said I would ask Council to keep an open mind to alternatives that have been suggested; we used the services of an Environmental Engineer; he has opined about the Giant Eagle basin being expanded at about one fourth of the cost of your solution and with less environmental impact; would hope you would keep an open mind and have some dialogue with Scott Sonnenberg about his plan to modify the basin; hope this is included in talks with the City of Columbus; I think there may be more cost effective ways to do this and not have such an impact on the environment; also concerned about soil erosion; not going to relieve that situation until you reduce the volume of water; this is not going to solve the problem so please keep an open mind.

Anderson suggested residents send these suggestions to Franey; ask if anyone else had any input.

Louis Houser, 1203 Sanctuary Place, said members of the board have met with engineering in support of the detention basin over the last 5 years; looked at many issues while the water has continued to flow at greater rates; maybe this won't stop it all, but it will stop a lot and slow it down; I looked at Academy Court and at what is eroding and if this can stop the rate of flow we should do this.

Anderson said I appreciate the residents' concerns; any additional views and comments please put in writing and send them to Engineering.

PENDING LEGISLATION:

ORD-0147-2011

TO AMEND TITLE ONE, PLATTING AND SUBDIVISIONS, OF PART ELEVEN, PLANNING AND ZONING CODE, OF THE CODIFIED ORDINANCES OF THE CITY OF GAHANNA.

Jones said we had public hearings last week and have worked diligently with Planning and with the Council Clerk to complete an update to current standards and provide some items with clarification on sections of Code; 3 of these are before you; the first Code Amendment requested is to Title One; this consists of planning and subdivision language modifications; the definition in Landlocked was modified as well as in Right- of-Way; some verbiage was updated; in Chapter 1105 some modifications were made to allow us to meet with developers; these conferences allow us to exchange feedback which is a valuable tool; it was reworded to make it clearer; in the Preliminary Plat section some verbiage was changed; nothing significant; only minor changes; those are the changes to Title One.

Pack said in Chapter 1105.01 (a), I am concerned about the last sentence; says the conference between the Developer and City Officials shall be considered confidential; why is that necessary; they can schedule a meeting and it is not public; the statement sounds onerous. Jones said it is similar to what was already in the Code now; we just modified it to show a meeting and it is still confidential. Pack said it doesn't explain confidentiality. Jones said the meeting allows the developer to share ideas with us; the developers are at a disadvantage when they come to us; this is more inviting and lets them know we don't take any documents from them and nothing is public record at this point; it is only public after the application. Pack said ok.

Recommendation: 2nd Reading, Consent Agenda.

Recommended for Adoption, Consent

ORD-0150-2011

TO AMEND CHAPTER 1131, VARIANCES, OF THE CODIFIED ORDINANCES OF THE CITY OF GAHANNA.

Jones said modifications to Chapter 1131 were done for various reasons; we clarified the language for the notification of final action and that this is made part of the variance.

Pack said based on my experience, which is a number of years on BZA (Board of

Zoning Appeals), when people appeal an administrative decision and go on and file a request for the Common Pleas Court to review, at that hearing in addition to a transcript to explain the decision, it needs the conclusions of fact which would be the same as a finding of fact; are they the same thing.

Weber said they are close. Pack said I believe it puts the City at a disadvantage to allow for the removal of the finding of fact at the conclusion of the variance. Jones said I defer to City Attorney Weber. Weber said Planning Commission speaks through their minutes and they have a vote; on variances, there can be a lot of discussion on the record; sometimes there is no discussion only the vote; the finding of fact is more critical to the BZA; they have the issue of going forward to Common Pleas Court; I do understand your point and will take a look at it.

Recommendation: 2nd Reading, Regular Agenda.

Recommended for Adoption

ORD-0151-2011

TO AMEND CHAPTER 1133, AMENDMENTS, OF THE CODIFIED ORDINANCES OF THE CITY OF GAHANNA.

Jones said this section has the most substantial changes; we changed the name to Zoning or Rezoning; Planning Commission can make recommendations more cohesively and where it is appropriate consider the zoning done in other communities; came up with special elements they can consider that puts more issues on the applicant; Planning Commission has more opportunity to ask questions around the items listed in 1133.03 (B) 1-6 ; in the future they can explain the case and what grounds were used for the conclusion.

Recommendation: 2nd Reading, Consent Agenda.

Recommended for Adoption, Consent

ISSUES - From Director of Emergency Management:

Property Agreement for Emergency Exercise

Williams said on October 20, 2011, we will be conducting a full scale Emergency Exercise involving the Police and Fire Departments as well as many other elements of the City. Anderson clarified if Council was involved. Williams stated they are not; Development has secured the Amerigraph Building to be used as the site; the owners require a property agreement based on the use and a liability agreement; there is no cost; we just need the agreement signed for insurance purposes.

Recommendation: 1st Reading, no need to come back, 2nd Reading, Consent Agenda.

ISSUES - From Director of Public Service:

TIZ Fiber Extension, Phase 1

Andrako said this request is for the installation of fiber optic cable into The Industrial Zone (TIZ); the conduit installation is being done now and this will allow the fiber to be placed in the conduit as well as provide for necessary aerial cable and the splicing; there is quite a bit of splicing that will be done and it is critical to do it correctly; we use Columbus FiberNet and have been impressed with the quality of their work and splices; this request is to enter into contract with them for this work and we are requesting that we waive bidding to prevent delays or outages that could result from improper splicing; the cost was included in the 2011 appropriations so no supplemental is requested; the conduit will be completed in the next 2 weeks so this should pass and be ready for

installation when that conduit is complete.

Recommendation: 1st Reading, no need to come back, 2nd Reading, Consent Agenda.

Truck Purchase

Andrako said the 2011 appropriations approved funds for us to replace water/sewer truck 596 which is a 2001 S10; we would like authorization to purchase it from the State Term Contract for \$31,712.

McGregor said what is the reason we are going from a small S10 to a full size truck; with gas prices always increasing seems we should look at keeping it small. Andrako said we are down 4 one ton trucks; this one has the capability to be outfitted with a plow and we are losing that capacity in our fleet; it can also handle a fully loaded trailer while the S10 has limits on that use. McGregor said are there other trucks available equivalent to this. Andrako said when we were budgeting, we decided on this full size replacement; it is needed for towing and plowing.

Recommendation: 1st Reading, no need to come back, 2nd Reading, Consent Agenda.

ISSUES - From Director of Finance:

Supplemental - Early Retirement Incentive - Street Fund.

Mumma said we have received one additional request for early retirement from another employee in the Street Department; this is the 2nd request from this department; the first position was not backfilled; they operate 1 position down; this 2nd position will be backfilled but at a lower rate of pay; we are requesting a supplemental for the funds for the buyout; it appears as 2 transactions but it is only 1; \$73,000 will first be appropriated as a transfer to the Street Fund; then it will be transferred to the Street PERS Fund; a point of clarification, when I said the City had 1 additional early retirement request, I meant we have one more at this time; with the City early retirement offer, we could see additional retirements through December 31, 2011; we could still have more.

Anderson clarified the 2nd open position would be backfilled. Mumma said yes but not at the top step pay grade.

Recommendation: 1st Reading, no need to come back, 2nd Reading, Consent Agenda.

ISSUES - From Clerk of Council:

Liquor Permit Transfer - Giant Eagle

Jernigan said we have a request for a transfer of the D1 and D2 liquor permits from GJP Inc., DBA Corners Beverage Shoppe, 1383 Johnstown Road, Gahanna, OH 43230 to Tamarkin Co., DBA Giant Eagle 6501, 1250 N. Hamilton Road & Mezzanine, Gahanna, OH 43230; the police have no objections.

Recommendation: Motion Resolution, Consent Agenda.

Liquor Permit Agency - Giant Eagle

Jernigan said we have a request for a Liquor Agency license for Tamarkin Co. DBA Giant Eagle 6501, 1250 N. Hamilton Road & Mezzanine, Gahanna, OH, 43230; the police department has no objections.

Recommendation: Motion Resolution, Consent Agenda.

Meeting Adjourned.

Della Brandenberger, Reporting