

MINUTES OF A SPECIAL COUNCIL MEETING
August 9, 2021 – 7:30p.m.

Council of the City of Berea, Ohio, met in special session in the Council Chamber on August 9, 2021 and the meeting was called to order by President of Council Jeff Dettmer at 7:30p.m. Present: Bill DeVito, Leon Dozier, Jim Maxwell, Chris McManis, Rick Skoczen, Kim Smith and Gene Zacharyasz. Absent: None. Also present via Zoom: Director of Law and Public Safety Barb Jones.

The Pledge of Allegiance followed.

This meeting was held in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code and Chapter 109 of the Codified Ordinances of the City of Berea. The certificate of compliance is on file in the Clerk's office.

LEGISLATION – FIRST READING:

ORDINANCE NO. 8-1: AN ORDINANCE AUTHORIZING THE DIRECTOR OF LAW TO ACCEPT THE MATERIAL TERMS OF THE ONE OHIO SUBDIVISION SETTLEMENT PURSUANT TO THE ONE OHIO MEMORANDUM OF UNDERSTANDING AND CONSISTENT WITH THE TERMS OF THE JULY 21, 2021 NATIONAL OPIOID SETTLEMENT AGREEMENT, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Mrs. Jones explained that many large drug manufacturers have been sued over the opioid epidemic, and the State of Ohio is seeking to settle all claims from municipalities with regard to this particular lawsuit that is being heard in the northern district Ohio District Court. Attorney General Yost has entered in to a settlement for all of Ohio with three primary defendants, and this legislation, if adopted, will allow the City to participate in this settlement and receive funds. Mrs. Jones noted that the City could choose not to adopt this Ordinance and sue the pharmaceutical companies ourselves, but it would likely not be cost effective to do so.

Mrs. Jones continued by explaining that adoption of this Ordinance does not guarantee that a settlement will be made, or what the City's share would be, but part of Ohio's share is determined by how many Cities, Villages and Townships agree to participate in this settlement. The more that participate, the higher the settlement will likely be, and adoption of this Ordinance will allow the Attorney General's Office to negotiate on the City's behalf.

Mrs. Jones stated that Cities all over Ohio are holding Special Meetings this week because the Court provided less than a week for the State to return a response with regard to how many Cities will participate in the settlement.

Mr. Maxwell stated that, given the negligence of these pharmaceutical companies, he is supportive of acting on this legislation tonight. He asked if the City's portion of the settlement will trickle in over 18 years. Mrs. Jones responded that the companies have up to 18 years to comply, but the City will likely receive half its portion in the first 3 years, and then the rest will come over time.

Mr. Maxwell asked if the companies pushed to pay out sums over such a long period of time, and Mrs. Jones responded that, because the settlement is with nearly all the State, the companies said that they need a long period of time to be able to pay sums out across the board. Mr. Maxwell stated that the negligence of these companies has caused devastation in every community, and while the Council and Administration can not dictate the terms of the settlement, he feels that this lengthy pay period shows a weakness in our State government.

Mrs. Jones concluded by stating that any money the City receives has to be spent for particular purposes relative to treatment, education, and other things associated with opioid addiction.

Moved by Mr. Dozier, seconded by Mr. Maxwell, that the three-reading rule be suspended for Ordinance No. 8-1. Vote on the motion was ayes: DeVito, Dozier, Maxwell, McManis, Skoczen, Smith and Zacharyasz. Nays: None. The motion carried.

Moved by Mr. Maxwell, seconded by Mr. Zacharyasz, that Ordinance No. 8-1 be adopted. Vote on the motion was ayes: DeVito, Dozier, Maxwell, McManis, Skoczen, Smith and Zacharyasz. Nays: None. The motion carried.

OTHER BUSINESS:

Mr. Dettmer explained that, within the past couple weeks, he has become aware of significant issue in Ward 1 involving flooding on private property. Residents from Ward 1 are in attendance this evening, and he would like to provide them with an opportunity to speak to this topic.

Gale Grizzell, a resident on The Mall, stated that her basement flooded in the middle of July for the eighth time. The water in her basement has ranged from a couple inches to 2 feet high, and while she has made Mayor Kleem aware of the situation and been in communication with the City Engineer, she does not understand why residents on Fair Street who were experiencing similar flooding issues received enlarged infrastructure while the North End, a designation she takes exception to, only received rehabilitation. She finds this unacceptable.

Ms. Grizzell continued by adding that a growing concern for her is the new construction planned for, or in progress in, the North End, including the Senior Living complex and the proposed townhouses. A brand new house is under construction now, and the basement of that house already flooded. She noted that while Mayor Kleem thinks that this construction will increase the tax base, it will likely also increase neighborhood flooding, and thus she finds herself here this evening to introduce the situation to members of Council who may be unaware, and to ask that the North End sewer rehabilitation be put on hold until residents have the opportunity to meet with the City Engineer and understand why the mitigation of flooding on Fair Street was so vastly different than the mitigation efforts on the North End.

Dennis Knowles, a resident on The Mall, stated that the flooding problem is real. On a rainy evening, all he is thinking about is whether or not his basement is flooding. Thoughts about how to prepare and mitigate the flooding are all that stream through his mind during storms, and it is terribly unsettling.

Mr. Knowles stated that in 2011 the City engaged URS to do studies of the sewer system on Fair Street and in the North End. The findings of both studies were identical. There were issues involving sanitary and sewer lines, as well as private property deficiencies, and this contributed to an excess flow, overwhelming the system and causing water to back up in to basements. The City website still has both studies that show the exact same problems identified.

Mr. Knowles continued by stating that Ordinance No. 2016-42 was with regard to the Fair Street reconstruction project. This \$6 million project involved infrastructure improvements and replacements on Fair Street, and included the replacing of pipes to make them larger. Ordinance No. 2017-27 involved the replacement of the existing sanitary sewer system on Fair Street.

Ordinance No. 2017-25 was with regard to the North End's sewer rehabilitation project. The \$1 million effort pales in comparison to the Fair Street replacement, and while North End rehab is ongoing, he noted that all that is happening is good money is being throw away because the problem is not stopping, the flooding continues, and the City needs to seriously look at what the right answer may be before expending any more funds.

Gay Grizzell, a resident on The Mall, stated that she has had continual flooding issues and both the Service and Engineering Departments have been out to her property. They told her to take down trees and add PVC, and this would stop the flooding. She, subsequently, spent \$5,700 to take down trees, \$5,400 on PVC, and conducted various other repair spending nearly \$15,000 under the assumption that the flooding would cease. It, however, has not. No one is happy except the restoration company and the issue is not shedding a positive light on the City of Berea. She is requesting Council's assistance to resolve the matter.

Martin Lott, a resident in the North End, stated that the group of people gathered here today is a small representation of the large number of homeowners who have a flooding problem. Initially, back in 2011, he felt the North End would be taken care of and left the neighborhood meeting with good faith that things would be handled. During the construction of his house, he filmed the process including the tar, block, drain tiles, and footer. He sat down with the City Engineer and watched this tape and the City Engineer stated that there is no way his house should be flooding. He and his wife have tried everything possible to mitigate the issue, and have just recently put in a sump pump. He has taken the downspouts offline and his lines have been filmed with a camera. All of these things were at the recommendation of the City, and the City paper stated that Phase 1 and Phase 2 of the Shelley Parkway rehabilitation project is complete. And so he has to ask, why is he still flooding?

Mr. Lott informed Council that 2 compromised areas have never been studied. One is on a line from Emerson to Riveredge. The streets flood and it has something to do with manhole covers. The other location is on North Rocky River Drive at the end of Shakespeare. These neighborhoods have dealt with flooding for years.

Mr. Lott stated that his property has flooded 6 times, and once the water was above his knees within 20 minutes. This last time, he was able to get to the pump and stop major flooding. He questioned that if Shelley Parkway's rehabilitation is done, what phase will his repair occur within? His sewer is tied in to the sewer system that will cater to the new Senior Living complex that is under construction. He does not know what will happen when that building becomes operational.

Mr. Lott reiterated that the group here today is but a small representation of the number of people who deal with this issue on the North End, and noted that there are 5 or 6 pumps from Prospect through Fair Street, but none that he knows of in his neighborhood. The City has, obviously, not gotten to the bottom of the flooding issue, at least not on the North End. He simply wants both ends of the City treated equally and is asking Council for help. The residents in his neighborhood do not want a band-aid, they want a solution. He and his family can not even plan a vacation or conduct home improvements because of the constant flooding. He, again, requested assistance.

Edith Lott stated that their house was built in 1994 and has flooded ever since. The flooding started small, with one basement drain overflowing, but in 2011 things got worse. Her and her husband have made all the repairs that the City suggested, checking off the entire list that the Assistant Engineer sent them. Mayor Kleem had stated that problems may still persist until every homeowner corrects the issues on their private properties. 100% compliance is, therefore, necessary in the neighborhood. Mrs. Lott, therefore, inquired as to whether or not Fair Street had achieved 100% private property compliance, because they have received a total replacement. If so, the City did the right thing by rewarding those residents with a full replacement. She, however, finds 100% compliance highly unlikely and thus does not understand why the same replacements were not done on the North End.

Mrs. Lott stated that Mayor Kleem mentioned he could force litigation on private property owners, but this could be costly for residents. She further noted that no one has looked to see if the portion of her property that has the problem is between the sidewalk and the street, and thus on public property, but it is certainly not occurring on her private property.

Ho Davidson, a resident on Shakespeare, stated that his house never flooded while he was growing up. Things have changed, however, because yesterday, at 1pm, it began to rain and, like a fire drill, he and his wife took precautions. The City continues to blame the residents, stating that they must fix private property issues, but last year he spent \$6,000 on mitigation efforts and he is still flooding. His property has flooded 11 times in 10 years, sometimes up to his knee. Mr. Davidson stated that he is here tonight to let Council know that it is time things change and the residents in his neighborhood are unwilling to wait any longer. The residents request an end to the dissemination of misinformation and a reconstruction similar to that on Fair Street.

Marsha Davidson informed Council that her family is in danger of being dropped from their insurance and was thus not able to report their most recent flood. The financial burden of the flooding issue is overwhelming, and the precautions they must take to prevent significant damage to the personal items in their basement are an enormous inconvenience. In 2011, they were told that they experienced a 100-year flood, but the property has flooded many times since, sometimes 3 to 4 feet high, to the point that the washer and dryer are floating. A host of misinformation has been distributed regarding this issue, as the City has stated it has done everything it can to correct the problem. This is, obviously, not the case as her property continues to flood, as do many in her neighborhood. The problem has to do with the size of the system and infrastructure.

Mrs. Davidson mentioned the two areas that have yet to be investigated, on Emerson and Shakespeare, adding that the Police are typically out there after heavy rains because of the street flooding.

Daune Jaynes stated that while she does not live on the North End, she works down there and has met a lot of people while canvassing. She understands their issue and their fight. The North End is the only area in the City left to be developed and the sewer issue can not simply be given a band-aid. The problem must be studied, as residents have done the things necessary to assure the flooding stops and it, quite simply, has not. This is unacceptable. She stated that she hears their plight and is with them.

Mr. Dettmer stated that this issue was first brought forward by Councilman Dozier. Mr. Dozier stated that he did talk to the Mayor and received the information that was included in the City newsletter. Mayor Kleem stated that the City has done its part and now residents must do their parts. He added that he invited North End residents to the September 20th Council meeting because both Mayor Kleem and Mr. Armagno will be present to address concerns.

Mrs. Jones announced that Mayor Kleem and Mr. Armagno are putting together a package of information to address some of the issues relative to the comparisons made between Fair Street and Emerson. Following the release of this information, a public meeting will be held, and while a date has not yet been set, it will be soon.

Mr. Maxwell thanked the residents for being here this evening. He stated that, like one resident mentioned, he too was under the assumption that the North End sewer issues were going to be taken care of, and that the rehabilitation project would resolve them. He voted to support legislation with this assumption, and the Ordinances passed under the advisement of the Engineer's Office.

Mr. Maxwell continued that, while he is not an engineer, the Engineering Department has assured him that the new construction on the North End will not cause additional problems for residents because of the sewer project. With regard to the Senior Living complex, it is his understanding that a retention pond will be built and water will remain on site. He, therefore, voted in favor of the project. Council does, therefore, own some responsibility, but having said that, Council Members are not all engineers in their day jobs. Council Members act on information given by those who are engineers.

Mr. Maxwell stated that he can not speak to why Fair Street received a different repair than Emerson, and feels that a public meeting is the only way to address the concerns that have been raised. The way he sees it, there are a few issues to be addressed at a public meeting:

- 1) Why was the repair of Fair Street different than the repair of Emerson? There may be a valid reason, but he wants to hear it and needs an answer.
- 2) What needs to be done to fix the flooding problem?
- 3) Will new construction on the North End make the problem worse?

Mr. Maxwell concluded by stating that, after their comments this evening, no one disagrees that there is a problem. The City must play a part in solving this problem. He urged the Administration to hold a public meeting and invite Council, and this meeting should occur as soon as possible. Mr. Maxwell asked Mrs. Jones to convey that request to the Mayor and also

acknowledged Mr. Dozier, asking Mr. Dozier to let him know if he can be helpful in facilitating this public meeting or finding a solution. Venting is good, but it is time to move forward to a solution.

Mr. Dozier stated that he will spearhead the public meeting effort. Mr. Maxwell thanked the residents for the constructive way they introduced this issue to Council, noting that he can hear their frustration. Mr. DeVito concurred with Mr. Maxwell.

Mr. Skoczen thanked the residents for being here, acknowledging that the public meetings regarding the Fair Street and North End sewer studies was where he decided he wanted to get involved with Council. He, too, thought the repair efforts being conducted would fix the issues, but 10 years have gone by and he sees that this is not the case. The City can not over build and under infrastructure. The issue must be resolved, as he does not want to see residents suffering.

Mr. McManis stated that he grew up in Ward 1 and can relate to the issue of basement flooding and wet socks. He noted that flooding is a recurrent issue in every Ward in the City.

Mrs. Smith thanked the residents for attending and committed to helping as much as possible. She stated that, for years, her house flooded and she is very familiar with the concept of having to head home as soon as the rain begins.

Mr. Zacharyasz echoed the sentiments of Council and stated that the residents have the support of the Members of this body and hope that a public meeting will occur sooner rather than later.

Mr. Dettmer applauded the residents for the manner in which they presented their frustrations to Council, adding that they got what they came here for which is the attention of Council and a commitment to assisting the Administration in finding a solution that will prevent wet socks and no longer require them to rush home when it rains.

Mr. Zacharyasz informed Council that a long-time member of the Shade Tree Commission, Jan Harlamert, passed away, and he offered sincere condolences, prayers and love to her family. Jan put so much work in to the Commission and knew more about trees than he would ever care to, adding that her passion was wonderful. Mr. Zacharyasz concluded by noting that Jan donated so much time to the City and will be sorely missed.

Mr. Skoczen stated that the first time he walked in to a Shade Tree Commission meeting, Jan asked him what he knew about trees, and when he admittedly declared not a whole lot, Jan said, "You are going to learn about them!" He noted that he learned so much from Jan, adding that she was devoted to the City and will be missed.

Mr. Dettmer reminded Council that Ordinance No. 6-5 had been referred to the Planning Commission, but since the Commission has now reviewed the Ordinance and made a recommendation, it can be placed back on the Regular Council meeting agenda. Mr. Maxwell requested a copy of the minutes from the Planning Commission meeting at which this Ordinance was discussed.

Moved by Mr. Maxwell, seconded by Mr. Skoczen, that Ordinance No. 6-5 be placed on the September 7, 2021 Regular Council Meeting agenda for second reading. Vote on the motion was ayes: DeVito, Dozier, Maxwell, McManis, Skoczen, Smith and Zacharyasz. Nays: None. The motion carried.

There being no further business before Council, it was moved by Mrs. Smith and seconded by Mr. McManis, that the Special Council Meeting be adjourned. Vote on the motion was all ayes and no nays. The motion passed and President Dettmer declared the meeting adjourned at 8:43p.m.

Jeff Dettmer
President of Council

Alycia Esson
Clerk of Council

CERTIFICATE OF COMPLIANCE

The special meeting of Council of the City of Berea, Ohio, held on the 9th day of August, 2021, was conducted in compliance with Codified Ordinances Section 109 and Ohio Revised Code Section 121.22.

Alycia Esson, Clerk of Council