



Meeting Minutes

Monday, February 6, 2017 ~ 7:30 P.M.

Louis J. R. Goorey Worthington Municipal Building
John P. Coleman Council Chamber
6550 North High Street
Worthington, Ohio 43085

City Council

Bonnie D. Michael, President
Scott Myers, President Pro-Tempore
Rachael Dorothy
Douglas C. Foust
David M. Norstrom
Douglas Smith
Michael C. Troper

D. Kay Thress, Clerk of Council

CALL TO ORDER – Roll Call, Pledge of Allegiance

Worthington City Council met in Regular Session on Monday, February 6, 2017, in the John P. Coleman Council Chambers of the Louis J. R. Goorey Worthington Municipal Building, 6550 North High Street, Worthington, Ohio. President Michael called the meeting to order at or about 7:30 p.m.

Members Present: Rachael R. Dorothy, Douglas Foust, Scott Myers, David Norstrom, Douglas K. Smith, Michael C. Troper and Bonnie D. Michael

Member(s) Absent:

Also present: City Manager Matthew Greeson, Director of Law Pamela Fox, Assistant City Manager Robyn Stewart, Director of Finance Molly Roberts, Director of Planning and Building Lee Brown, Director of Parks and Recreation Darren Hurley, Chief of Fire Scott Highley and Chief of Police Jerry Strait.

There were approximately 60 visitors present.

President Michael invited all those in attendance to stand and join in the recitation of the Pledge of Allegiance. After the Pledge, she welcomed the Boy Scout troop in attendance.

SPECIAL PRESENTATION

Small Cell Wireless Facilities in the Right of Way

Greg Dunn of Ice Miller LLP presented a summary of Senate Bill 331's Micro Wireless Facility Provisions. He began with a history of the situation. About 15 years ago, in almost exactly the same manner, the legislature changed the rules on right of way management and gave utilities full rights to utilize the right of way. Upper Arlington and Dublin sued over the legislation and won on the basis of home rule and two subjects in one bill. The state legislature then passed a new bill that became law that was much less onerous. Dublin, Worthington & Columbus were the only three cities in the state at that time that had right of way ordinances on the books that were grandfathered under the state law.

The legislature acted this time on Senate Bill 331 without committee hearings and acted in lame duck session, thus there was little time or public input. Mr. Dunn proceeded to highlight the current legislation that has been passed and the problems with it. The legislation addresses small cell or micro wireless facilities. These facilities are under 50 feet and support a facility about the size of a small refrigerator. Under the new state legislation, utilities can place these in the right of way of cities.

Mr. Dunn stated that small cell facilities are coming; citizens want them. The idea is a good one and we need it, especially for 5G. However, the way they've done it is terrible.

They have taken away all city control. They can operate in right of way. Cities have 90 days to act on an application and they are prohibited from having a zoning review.

Ms. Dorothy asked if the Architectural Review District regulations apply to these facilities. Mr. Dunn replied they probably do not.

Mr. Dunn further overview the state legislation references cities' authority for health, safety and welfare but then takes that away too. Cities can't charge more than \$250 for fees. They can't ask for information about the request or even whether it is needed. They can't ask applicant to use facilities that are already in existence close by. They can't ask them to co-locate with other utilities.

Mr. Myers asked if these facilities are towers. Mr. Dunn responded they are towers under 50 feet in height. Under this legislation, utilities can put up a 50' tower with refrigerator-size box on it.

Ms. Michael asked Mr. Dunn to define right of way for the boy scouts in the audience. Mr. Dunn explained it is the land where road is located and the land adjacent to the road.

Mr. Dunn continued his overview by explaining cities can't ask for screening or landscaping that is unreasonable. Usually cities can ask for a bond if an entity is in your right of way and/or using your facilities. However, the legislation does not have a bonding requirement. The definition of public utility is so vague under Ohio law that virtually anyone can get a public utility certificate and thus have these rights. Cities can't push them onto the city's own property such as poles that are already in the right of way. There is no limit on the duration of the permit. Cities can require setbacks different from that for other facilities in the right of way. They can't impose regulations for radio frequencies and they can't dictate separation distance from other facilities or keep them out of residential areas. Cities also can't have moratorium related to this issue.

Mr. Dunn commented he thought the reason this was done was because they could do it in Ohio. There hasn't been a problem with placing facilities here in this state. He expects the utilities will take the Ohio legislation to California where they are having problems getting approval to install.

When asked by Mr. Troper if other states have similar legislation, Mr. Dunn replied no. he believes Ohio has been reasonable about this issue.

Mr. Dunn further explained utilities can attach to a wireless support structure owned by a municipal corporation for no more than \$250 per year. This includes mast arms, stop signs, and any other facility in the right of way that you own. Ms. Dorothy stated this would apply to the city's special order, decorative mast arms.

Mr. Dunn said the version of the legislation that was passed was slightly better than what was originally introduced. Originally, the utilities could put the equipment on any municipal facility, now just in right of way.

Mr. Dunn went on to report the legislation does not apply to townships or counties. This appears to have been for political reasons given the large number of legislators from townships and counties. It creates a legal problem with the bill. The general rule is cities have home rule authority unless it is a matter of general statewide concern. An example of this is concealed carry in which people will travel across jurisdictional boundaries. It is difficult to understand how small cell wireless facilities can be a statewide concern when it does not affect townships.

Mr. Dunn commented on the potential of lawsuit by cities. It would have the two main components as the previous lawsuit, home rule and two subjects in one bill. This legislation was included in the Petland bill and most of the subjects in that bill had to do with animals.

Ms. Dorothy asked when the legislation will go into effect. Mr. Dunn responded that it will be effective in the middle of March, which is 90 days from passage. Ms. Michael confirmed that the legislation will be effective on March 19th.

Ms. Fox shared that we think of these tall facilities as being mostly along High St. and SR-161. She asked if it is likely that these facilities also would be placed within our residential neighborhoods. Mr. Dunn replied that they will start on the high density areas like High St. and SR-161. As demand increases for the services then yes they will migrate to the neighborhoods. It may not happen for three to five years but everybody has been wrong all along on how fast this stuff rolls out.

Ms. Michael asked about the lawsuit. Mr. Dunn responded that cities won the last one. He thinks this case is stronger than the previous one so he thinks they have a pretty good chance of success. Last time, the cities weren't prepared for success and the utilities went right back to legislature to have new legislation passed and cities still got things that weren't great. This time he would suggest that be considered a lobbying function. He would like to have basic rules and include reasonable fees.

When asked by Mr. Norstrom if they can build the new tower in the same location as existing ones, Mr. Dunn explained that they leave the towers or macros in place and connect the micros by fiber optics down the right of way and back to the macros.

Ms. Michael asked about the underground facilities associated with this equipment. Mr. Dunn responded that cities can regulate them based on existing ordinances.

Ms. Dorothy commented that one of the first locations of interest will probably be at SR-161 & High Street which is right in middle of Worthington's historic district.

Mr. Norstrom asked about other cities that are pursuing this issue and about lobbying efforts. Mr. Dunn commented that he is talking to Cleveland and Toledo. Cities are still discussing the strategy of multiple lawsuits filed in multiple locations or everyone joining together on one lawsuit. Central Ohio cities will file in Franklin County. Cities may want to enhance lobbying efforts beyond the Ohio Municipal League efforts.

Ms. Michael commented that this issue was discussed at the last Central Ohio Mayors and Managers group (COMMA). At that meeting, the cities of Bexley, Whitehall, Gahanna, Grove City, Dublin, Upper Arlington, Delaware, and Westerville indicated they are committed to moving forward with a lawsuit. There were a few others in attendance that hadn't fully discussed the issue to decide whether to join a lawsuit or not. The cities are asking for consistency across the various suits filed.

Mr. Myers asked if the intent is to file prior to effective date and ask for a stay. Mr. Dunn responded yes, but he is not sure they will get the stay.

Mr. Smith asked if there are any municipalities in favor of the law. Mr. Dunn commented the utilities originally came in with an even worse piece of legislation that allowed for placement on any municipal facility, with larger sized equipment, and the only appeal was to Public Utilities Commission of Ohio which has a very long decision timeframe. The bill was changed to allow for appeals to Common Pleas Court, reduced the size of the equipment and could only place them in right of way. The threat of the original legislation caused the Ohio Municipal League to agree to a compromise and go neutral on the issue. Mr. Greeson stated the City of Worthington did not go neutral on the issue and asked Representative Duffey to vote against it, which he did.

Ms. Michael commented on the quickness of the legislation. It was only out there for a few days and then it was passed.

Mr. Norstrom asked if staff has prepared a resolution on the subject. Mr. Greeson responded staff has not done so at this point.

Mr. Myers stated he is opposed to this action beyond just the small cell issue. Home rule has been beaten up. He would like to have estimate on the cost of a lawsuit and a rundown on who else is involved. He'd like to hear about the ultimate strategy and understand who will be the lead plaintiff. Mr. Dunn responded that last time the lawsuit cost about \$125,000 total. The cost would be split across everyone who participates. He expects Cleveland to file in Cuyahoga County. He is not sure what Toledo plans to do. The Ohio Mayors Alliance, which includes the 30 largest cities, has organized a strategy.

Mr. Norstrom and Mr. Myers asked for a resolution on joining the lawsuit and any additional background on the issue.

Mr. Greeson commented that COMMA has designated a committee to work through the details and recommend how costs will be divided.

Ms. Michael stated she has heard a consensus from City Council to bring back a resolution next week which provides support for the concept and the lawsuit pending the City's cost.

Ms. Dorothy commented that she is in support of the effort to file something on the issue.

Mr. Dunn explained home rule to the boy scouts in the audience. In Ohio, municipalities have certain inherent powers of self-government, which is called home rule. Ms. Michael added that the state legislature continues to tear away at the ability of cities to rule themselves.

A woman in the audience stated that the crux of the objection appears to be the impact on home rule. However, isn't there an economic benefit to the community if it facilitates 5G extra high speed. Mr. Dunn responded that the utilities will argue that it is so important that it is necessary to have statewide approval. However, he is not sure how you do that by excluding townships and counties.

Mr. Greeson stated the City of Worthington is highly interest in facilitating technology. Historically, the City has worked with companies to roll it out. We're open to working with providers, we just don't think this legislation is the methodology to achieve it. Mr. Dunn added that the roll out needs to be good for both the community and the company. Mr. Norstrom stated that utility companies want to be here.

Mr. David Robinson asked from the audience about any precedence where private enterprise has such unconstrained access to public facilities. Mr. Donn replied that cable television has access but in that case they have the requirement of five percent (5%) revenue sharing in recognition of the value of the right of way usage. Industries have over time received freer and freer use of the facilities municipalities have paid to obtain.

Ms. Michael thanked Mr. Dunn for the presentation.

Ms. Michael asked for a motion to appoint Robyn Stewart as Temporary Clerk of Council for this evening's meeting.

MOTION Mr. Foust made a motion to appoint Robyn Stewart as Temporary Clerk of Council for this evening's meeting. The motion was seconded by Mr. Norstrom.

There being no additional comments, the motion to appoint Robyn Stewart as Temporary Clerk of Council carried unanimously by a voice vote.

Mr. Foust offered comments to the boy scouts in the audience. He completed his Eagle Scout in 1972. There has not been a day where he hasn't done something in his life using what he learned. They are on a good path and he encouraged them to stay with it.

VISITOR COMMENTS

There were no visitor comments.

APPROVAL OF MINUTES

- December 5, 2016 – Regular Meeting
- December 12, 2016 – Committee of the Whole Meeting
- December 19, 2016 – Regular Meeting
- January 3, 2017 – Regular Meeting
- January 9, 2017 – Special Meeting
- January 9, 2017 – Committee of the Whole Meeting
- January 17, 2017 – Special Meeting

Ms. Dorothy noted two corrections: in the December 19th minutes the word “interim” should be “in term” and December 3rd the word “charter” should be “character”. Mr. Smith noted the January 9th minutes stated he voted against the motion on golf carts and he actually voted in favor of it. Mr. Foust noted a typo in the January 9th meeting which he already shared with the City Clerk, “antidote” should be “anecdote”.

MOTION Mr. Troper made a motion to approve the aforementioned minutes as corrected. The motion was seconded by Ms. Dorothy.

The motion to approve the minutes as corrected carried unanimously.

PUBLIC HEARINGS ON LEGISLATION

Ordinance No. 03-2017 Enacting a Moratorium on the Consideration of Certificates of Appropriateness for the Installation of Solar Panels on Structures in the Architectural Review District.

The foregoing Ordinance Title was read.

Mr. Myers encouraged a yes vote on the moratorium, but not because we don't all support alternative energy. Following the last Architectural Review Board (ARB) and City Council action, there was a great deal of discussion, some confusion, and many questions about where panels should be located. We need to take a pause, enact the moratorium for only 90 days, and go through a deliberative process to discuss whether we have right ordinances and guidelines in place. He suggested the following schedule. On February 13th, staff present the research it has conducted about how other municipalities approach this issue. He thinks this night is not discussion but more for information. Then, they should take time to digest the research that is shared. During that time, they should hold interested party meetings. He volunteered to be part of the interested party meetings since he is the Council liaison on Architectural Review Board

and was involved with the development of the solar panel guidelines in 2010. He would anticipate a City Council Committee of the Whole meeting on March 13th for the public at large to give views. All the interested parties can give prepared testimony too. Then toward end of March, City Council can have its debate in public. At the first meeting of City Council in April, legislation can be presented as necessary. City Council can vote on any legislation by the end of April and dissolve moratorium. He stated he is going into this discussion with a very open mind and wants to hear everyone's point of view. He doesn't know whether design guidelines should change, stay the same, or have additions/subtractions. The ARB's decisions have been four to three and they need guidance. He stated he wants to deliberatively and cautiously come up with what will work for Worthington.

Ms. Dorothy asked if there are any current applications. Mr. Brown replied there are not. Ms. Dorothy asked how many there have been in the last five years. Mr. Brown replied two.

Ms. Dorothy clarified that this ordinance proposes a 90 day moratorium. Once enacted, it would go into effect until early May.

Mr. Myers asked if it would go into effect in 30 days or immediately. Ms. Fox replied it could be passed by emergency, otherwise it would go into effect 23 days from passage.

Mr. Myers stated he thinks this issue could be done in 60 days. Ms. Fox replied the Ordinance was written to last 90 days unless City Council chooses to revoke it early.

Ms. Dorothy referenced a memorandum from Ms. Fox that suggested if the issue is resolved prior to May 31, City Council can revoke the moratorium by a separate piece of legislation. She commented that she does not think that will be necessary given there have only been two applications.

Ms. Michael asked if any of the Council Members think the Ordinance should be passed by emergency. After a pause, she indicated she is not seeing anyone.

Mr. Myers called for the question.

The clerk called the roll on Ordinance No. 03-2017. The motion carried by the following vote:

Yes 5 Foust, Norstrom, Smith, Myers, and Michael

No 2 Troper and Dorothy

Ordinance No. 03-2017 was thereupon declared duly passed and is recorded in full in the appropriate record book.

Ms. Michael asked staff to follow the process suggested by Mr. Myers for moving forward. Mr. Greeson responded that staff is prepared to present its research next week and do a question and answer session but not a full blown public hearing. The focus will be on what staff found in the research. It would be helpful to know if there are additional areas of research after that discussion. Staff will engage with the Old Worthington Association, Worthington Historical Society, Sustainable Worthington, Old Worthington Partnership and any other interested party passionate about this issue. They will try to have a manageable-sized meeting with representatives of those groups. They will come back in March for public testimony and then seek Council's direction.

Mr. Smith mentioned Mr. Norstrom sent out an email recently about live streaming council meetings. He asked if we can record our meeting next week so that stakeholders that want to hear it can do so.

Mr. Greeson responded that staff will look into it.

Mr. Norstrom added that it would not necessarily be for the whole meeting, but focused on that portion.

NEW LEGISLATION TO BE INTRODUCED

Resolution No. 04-2017 Authorizing Amendments to the Policy & Procedures of the City's Re-emergent Corridor Assistance Program.

Introduced by Mr. Myers.

MOTION Mr. Smith made a motion to adopt Resolution No. 04-2017. The motion was seconded by Mr. Norstrom.

Mr. McCorkle provided an overview of the proposed changes to the 2017 Re-emergent Corridor Assistance Program (ReCAP) and highlighted the program to date. Since the program began in 2014, there have been 12 projects; seven on Huntley Road, two on Proprietors Road, two on Worthington Galena Road and one on Schrock Road. The total amount awarded in grants and loans from the program is \$218,762.

Mr. McCorkle showed before and after photos of the completed projects and the ones which have been approved but construction is not yet complete. He made specific comments regarding a few properties. At 6955 Worthington Galena, some work has been performed by the City. We have requested the repayment of a portion of the award for failure to install the awnings. The Community Improvement Corporation (CIC) discussed this particular applicant coming back with a new owner. If a new project is a substantial improvement, the CIC did not see a problem with them re-applying. They suggested reducing the award amount by the amount already received. At 7046 Worthington Galena, the City also asked for funding to be returned because they did not perform the portion of the project related to the windows, doors, and landscaping.

Mr. McCorkle presented the proposed changes for the 2017 ReCAP program, which were reviewed and recommended by the CIC in January. The grant would become reimbursable in which the recipient would need to prove the work was performed and provide evidence of invoice amounts and payment prior to receiving the grant funds. The program will place more emphasis on non-deferred maintenance. Applicants will not be required to accept the loan portion of the award. A couple potential applicants have asked to forego the loan and simply receive the 25% grant. This will result in less money coming into the revolving loan fund but it will also allow the program to fund more projects which the CIC would like to do. Mr. Norstrom commented that this will have budgetary impacts for the City.

Mr. McCorkle continued his presentation of program changes by overviewing changes to the scoring sheet. The number of possible points for the current physical condition and exterior appearance and the scope of work have been increased to provide more emphasis on impactful, lasting benefits rather than deferred maintenance. The scoring will take into account whether the property is owner occupied, which is an emphasis the CIC would like to see. The possible points for the quality of the application have been decreased to de-emphasize it. Additionally, there is general cleanup of the application.

Ms. Dorothy asked if the staff is tracking any metrics such as rental rates and vacancy rates. Mr. McCorkle replied he has both and he does a comparison across the city's corridors. Vacancy rates in the industrial corridor are quite low, in the five to six percent range.

Mr. Myers commented that part of the reason for the program was to make it look better. They are also trying to drive rental rates higher and occupancy rates lower. He would like to see those trends over the life of this program.

Mr. Troper commented on the portion of the scoring sheet related to the applicant's length of operation in Worthington and suggested "for some time" be clarified. Mr. McCorkle replied that they can look at that.

Ms. Dorothy expressed appreciation for the changes, especially movement toward reimbursement for the grant.

There being no additional comments, the motion to adopt Resolution No. 04-2017 carried unanimously by a voice vote.

REPORTS OF CITY OFFICIALS

Discussion Item(s)

- Grant Review Committee

Mr. Greeson introduced this item by stating the City Council authorized staff to announce and distribute the grant application materials for community groups in December. The materials were distributed to groups that previously indicated interest in the program and they were placed on the City's website.

Ms. Stewart reported the City received 12 applications totaling about \$51,000 in requests. The City has a budget of about \$31,000, thus the application need to be screened. Mr. Greeson commented that the City Council has expressed an interest in using a review committee as they did last year and wanted to know if City Council wanted to have the same committee composition as last year, which consisted of two City Council members and a representative from the Community Relations Commission, the Griswold Center and Worthington Schools.

Mr. Troper stated the committee's primary questions last year were related to a lack of clarity on the priorities. Ms. Dorothy commented that the application materials contained the priorities for this year.

Ms. Michael asked if the Council wanted the same makeup of the committee.

Mr. Myers asked if Mr. Troper and Mr. Foust would be willing to serve on the committee again. Mr. Troper commented he thinks City Council should do the screening rather than using a Committee. Ms. Michael asked if anyone besides Mr. Troper wanted the full council to review rather than committee. Mr. Myers stated he is assuming City Council will get all the materials to be able to review in addition to the committee's recommendations.

Mr. Smith volunteered for the committee and Mr. Foust indicated he is willing to serve again.

MOTION Mr. Norstrom made a motion to utilize the same committee composition as last year, with Doug Smith and Doug Foust serving as the City Council representatives. The motion was seconded by Mr. Myers.

There being no additional comments, the motion carried by a voice vote.

REPORTS OF COUNCIL MEMBERS

Mr. Norstrom reported that the Old Worthington Partnership is sponsoring a chocolate walk on Thursday night. The cost is \$15 and people can get tickets online. The Columbus Dispatch had an article on the Ohio State University airport and the commitment of the OSU Board of Trustees to keep the airport and to upgrade facilities. A key issue of concern for Worthington is the extension of the north runway. That was not addressed at this point in time but a master plan will be developed and he expects the runway to be part of the consideration.

Mr. Myers reported that the Ohio Health Building at the UMCH property is back on the agenda for the Architectural Review Board on Thursday night.

Ms. Dorothy reported on her participation in the Cemetery Board meetings. The Board had a member from City of Columbus & Franklin County Soil and Water talk about the erosion issue on the City of Columbus property along Rush Run. The erosion is eating into the bank at the cemetery and is an ongoing issue. It is a multi-jurisdictional issue in that the property is in the city limits of Worthington, the park is owned by the City of Columbus, the cemetery land is owned by Worthington and the adjacent parcel is owned by Sharon Township.

Mr. Troper commented on a proposed lot split which will be in front of the Municipal Planning Commission. It is on Highland Avenue and if it gets split, there will be a sidewalk to nowhere. He would like to look into regulations related to people paying for sidewalk. He wants to know options for extending the sidewalk to fill in the gaps. Mr. Greeson indicated the staff will follow up on this issue. Ms. Michael commented that when the City approves new developments like The Heights, which doesn't connect to mall, we have a way to require the connection.

Ms. Michael reported on legislative discussions from the Central Ohio Mayors and Managers group (COMMA). There is a proposal to change the formula for the Local Government Fund. It is currently based on population, and the proposal would be to take into account the financial resources of the jurisdiction. So if a city like Worthington has agreed to tax itself, it will be held against it in the allocation amount. The State is also considering central control of income tax collections. For Worthington, 70% of our revenue is from income tax. The State would not only collect it for us, but it would also charge us one percent for doing so. We are seeing yet again removal of local control with these issues. The business gateway is how the taxes would be collected and it is broken at best right now. The City would lose interest on the revenue. The timing of payments are not clear and that can relate to a municipality's ability to pay its obligations like bond payments.

Mr. Greeson reported on the State of Ohio Auditor financial indicators report for fiscal year 2015. Worthington looks pretty good. The City received a cautionary outlook on one indicator and a critical outlook on another. He has a page that explains both those issues and we're not really concerned. It's important to look at the story behind the data. It is posted in the finance section of our website. Additionally, staff was asked to keep City Council apprised on various community center roof projects. There is a memo in front of them that explains the project underway over pottery studio. Staff is in the process of a qualifications based selection process for a consultant for the larger roof project for the south end roof and evaluation of its feasibility for solar. There will be a recommendation coming to City Council soon.

Ms. Michael stated there is a need for a short executive session for the purpose of personnel compensation.

EXECUTIVE SESSION

MOTION Mr. Smith made a motion to meet in Executive Session to discuss personnel questions around compensation. The motion was seconded by Mr. Myers.

The motion carried by the following voice vote:

Yes 7 Norstrom, Dorothy, Smith, Myers, Foust, Troper, and Michael

Council recessed at 8:46 p.m. from the Regular meeting session.

MOTION Mr. Norstrom made a motion to return to open session at 8:56 p.m. The motion was seconded by Mr. Smith.

The motion carried unanimously by a voice vote.

ADJOURNMENT

MOTION Ms. Dorothy made a motion to adjourn. The motion was seconded by Mr. Troper.

The motion carried unanimously by a voice vote.

President Michael declared the meeting adjourned at 8:57 P.M.

/s/ Robyn Stewart
Temporary Clerk of Council

*APPROVED by the City Council, this
21nd day of February, 2017.*

/s/ Bonnie D. Michael
Council President