

CITY COUNCIL MINUTES
November 6, 2006

President Protem Bob Breneman called the regular meeting of City Council to order at 7:30 p.m. in Council Chambers and upon roll call, members answered present as follows: Ansel, Breneman, Cavin, Griffin, Silvestri, Topovski, Ulbright.

Mr. Ansel moved, seconded by Mr. Griffin, to approve the minutes of the October 16, 2006 meeting as received. Motion carried.

The Clerk read two notices from the Ohio Division of Liquor Control. The first request was for a transfer of a C-1 permit from the current Rite Aid Pharmacy in College Hills shopping center to the one being built on Cleveland Road. Mr. Ulbright moved, seconded Mr. Griffin, not to request a hearing. Motion carried. The second request was a transfer of a C-1 permit (beer only) to Ragucchi, Inc., dba Clark Oil, 209 Beall Avenue. Mr. Ansel moved, seconded by Mr. Topovski, not to request a hearing. Motion carried.

The following people spoke to city council during public communications: John Vimmerstedt (regarding funding from the hospital for the economic development fund); Jay Sevenstar (regarding the location of the new library); Rich Monaghan (regarding a police incident).

Mr. Breneman reported on a finance committee held October 23 to review the 2005 CAFR.

Mr. Breneman moved, seconded by Mr. Griffin, to bring off the table Ordinance 2006-28. Upon roll call, motion carried unanimously. Mr. Breneman stated that we all should have an amended version of the ordinance in front of us; Mr. Breneman moved, seconded by Mr. Silvestri, to accept Ordinance 2006-28 as amended. Mr. Breneman moved, seconded by Mr. Griffin, to adopt the ordinance as amended. Mr. Breneman stated that this was the economic development plan that we've been discussing now since April of this year. It is a tool for our economic development team to try to attract businesses into Wooster and was modeled on our existing revolving loan fund that's been in place for 20 years and has done a very nice job in bringing businesses to our community and expanding those already here. Our existing fund started with a community development block grant fund which was a federal funding mechanism and they have the federal requirements attached to them. It started with \$350,000 and the first recipient was Seaman Corporation who moved from Millersburg to Wooster in large part because of the economic impetus provided in creating the fund. After a lengthy discussion, motion to adopt carried by a 6-1 vote; Ms. Cavin casting the negative vote.

Ordinance No. 2006-49 amending Part Eleven, Planning and Zoning Code, of the Codified Ordinances of the City of Wooster, Ohio was read by title, being on second reading. Mr. Ansel moved, seconded by Ms. Cavin, to table this ordinance until after a public meeting scheduled with the Chamber of Commerce on November 20 to discuss a couple issues -- the sign code and an issue regarding allowing multi family dwellings as a conditional use in traditional residential areas. Upon roll call, motion to table carried unanimously.

Ordinance No. 2006-50 authorizing the transfer of property to the Wooster Growth Corporation, and declaring an emergency was read by title, being on second reading. Mr. Griffin stated that back in June, we approved the purchase of a .997 acre parcel from National City Bank for the purposes of creating a new lift station. The City has since carved out the 30 x 200 ft. easement necessary for access to and construction of the new lift station leaving close to $\frac{3}{4}$ of an acre unencumbered. This ordinance would authorize the transfer of this property to the Wooster Growth Corporation for a purchase price of \$10.00 so they can move forward with the marketing and sale of this parcel to future business ventures. Mr. Griffin moved, seconded by Mr. Silvestri, to suspend the rules and place on third and final reading. Upon roll call, motion carried. Mr. Griffin moved, seconded by Mr. Silvestri, to adopt. Upon roll call, motion to adopt carried unanimously.

Resolution No. 2006-75 concerning flood prone areas of the City of Wooster and stating the City of Wooster's intent to participate in the National Flood Insurance Program was read by title, being on second reading. Mr. Griffin stated that as we discussed at the last meeting after the presentation from the Ohio Department of Natural Resources, Wooster was in the minority of cities and counties not participating in this program. To recap the benefits of joining this program to property owners who are affected in the flood zone, they would now have the ability to obtain conventional and federally subsidized financing for the sale or purchase of property, business and residential units, the ability to obtain federally backed flood insurance and the ability to receive federal dollars in the event of a flood. The City of Wooster also receives protection for our infrastructure in the event of a flood. One reason this program now makes a great deal of sense is that Ohio Building Standards mandates high level requirements to build or to enhance properties within the flood zone and those standards are pretty much synonymous with the national flood insurance program and over the next 6-12 months, our plan will synthesize that data for submission to participate in the National Flood Insurance Program. He had received no negative comments or concerns regarding this. Mr. Griffin moved, seconded by Mr. Silvestri, to suspend the rules and place on third and final reading. Upon roll call, motion carried. Mr. Griffin moved, seconded by Mr. Silvestri, to adopt. Upon roll call, motion to adopt carried unanimously.

Ordinance No. 2006-51 authorizing the Law Director to effect a settlement agreement for the purpose of resolving pending litigation; and approving payment of a settlement, and declaring an emergency was read by title, being on first reading. Mr. Breneman stated that this involved a city employee who was driving a city truck and collided with another vehicle at a stop sign or traffic light. The other vehicle had been stopped and the city vehicle bumped them at about 15 m.p.h. There were minor injuries suffered by two occupants in the other vehicle and minor damage to the passenger car. They brought suit against the city for this accident and the case was pending in the Court of Common Pleas. The administration has reached a mutually satisfactory agreement which will resolve the pending litigation. If we move forward with this, we would be authorizing our finance director to issue payment in the amount of \$17,750 plus any necessary expenses related to the cost of such litigation and it would authorize our law director to enter into an agreement to settle this case out of court. A short discussion followed and Mr. Breneman moved, seconded by Mr. Ansel, to suspend the rules and place on third and final reading. Upon roll call, motion carried. Mr. Breneman moved, seconded by Mr. Ansel, to adopt. Upon roll call, motion to adopt carried unanimously.

Ordinance No. 2006-52 authorizing the Mayor to transfer and/or vacate right of way to the Ohio Department of Transportation and Phoenix Industrial Properties, Ltd. was read by title, being on first reading. Mr. Ulbright moved, seconded by Mr. Griffin, to suspend the rules and place on third and final reading. Upon roll call, motion carried. Mr. Ulbright moved, seconded by Mr. Topovski, to adopt. Mr. Ansel recused himself from discussion and voting on this issue. Mr. Ulbright stated that it was his understanding from speaking with Mr. Montgomery and Mr. Ansel that the way this all evolved was that back in the time period of 1989-92, there was a tank that was moved and the EPA was involved. There wasn't a problem until Route 30 was being rerouted and at that point, it was discovered that ownership of those two slivers of land along Route 30 were transferred at some time to the City of Wooster. State route 30 requires a limited access easement and that means that nothing should be inside that limited access easement. ODOT hadn't been brought into the discussion when ownership of the two pieces of land was given to the city. ODOT contacted D & S Distributing and told them that the two pieces of land would have to be vacated, the fence removed and D & S would have to stop using the access. After some negotiations, the state was willing to allow them to use the land if the city was willing to give up its ownership and to clean up everything. Mr. Montgomery advised us to give up the two pieces of land along Route 30 and the triangle where D & S has the parking lot and vacate all three of those properties and retain just the piece that runs along the east side of Spruce Street. A short discussion followed and upon roll call, motion to adopt carried unanimously.

Mr. Breneman moved, seconded by Mr. Ansel, to accept the Fiscal Officer's Certificate regarding Ordinance No. 2006-53 for the issuance of \$1,000,000 Notes. Motion carried unanimously.

Ordinance No. 2006-53 providing for the issuance and sale of \$1,000,000 Notes, in anticipation of the issuance of bonds, for the purpose of paying the property owners' portion, in anticipation of the levy and collection of special assessments, and the city's portion of the cost of improving East Milltown Road and Melrose Drive between certain termini by grading, draining, widening, paving resurfacing, constructing curbs, gutters, sidewalks and driveway approaches, constructing a pedestrian bridge over Little Apple Creek, installing storm sewers, catch basins, manholes, water mains, fire hydrants, and traffic control devices, and acquiring any real estate and interests therein required thereby, all together with the necessary appurtenances thereto, and declaring an emergency was read by title, being on first reading. Mr. Breneman stated that this was the continuation or re-issuance of this; we did this last November for notes in anticipation of bonds in the amount of \$1,000,000 but the note was only good for a year so they will mature this December. We do not have all the final bills in for this project so we need to extend this note for a period of nine months to get all the final bills and then we can let bonds to cover the cost of the improvements, the city's portion and the portion being financed for the property owners' assessments. Mr. Breneman moved, seconded by Mr. Griffin, to suspend the rules and place on third and final reading. Upon roll call, motion carried by a 7-0 vote as follows: Ansel-yes; Breneman-yes; Cavin-yes; Griffin-yes; Silvestri-yes; Topovski-yes; Ulbright-yes. Mr. Breneman moved, seconded by Mr. Ansel, to adopt. Upon roll call, motion to adopt carried unanimously as follows: Ansel-yes; Breneman-yes; Cavin-yes; Griffin-yes; Silvestri-yes; Topovski-yes; Ulbright-yes.

Resolution No. 2006-76 authorizing the Director of Administration to enter into an agreement with the Wayne County Commissioners for the prosecution of municipal ordinances by the Wayne County Prosecutor and for payment for such services, and declaring an emergency was read by title, being on first reading. This was a yearly contract and we have been utilizing the prosecutor's services since 1976; the cost of the contract will not exceed the amount appropriated for this purpose in the law department budget for the general fund of 2007. Mr. Benson advises that we are looking at a 3% raise in this year's contract price. After a short discussion, Mr. Breneman moved, seconded by Mr. Griffin, to suspend the rules and place on third and final reading. Upon roll call, motion carried. Mr. Breneman moved, seconded by Mr. Silvestri, to adopt. Upon roll call, motion to adopt carried unanimously.

Resolution No. 2006-77 authorizing the Director of Administration to enter into an agreement with the Wayne County Humane Society for cat control services within the City of Wooster, and declaring an emergency was read by title, being on first reading. Mr. Topovski stated that this was for the continuation of services for cat control within the city of Wooster for 2007. A short discussion followed. Mr. Topovski stated that this would remain on first reading in order to receive the information requested by Ms. Cavin.

Resolution No. 2006-78 authorizing the Director of Administration to enter into a contract with Riceland Commercial Corporation of Orrville, Ohio for construction services, and declaring an emergency was read by title, being on first reading. Mr. Silvestri stated that the police division was planning some remodeling of the office areas which hadn't been renovated in about 30 years and the renovations would make better use of the space allowed. The total cost was \$18,761 and the project encompassed the detective offices and would include new countertops, filing areas, divider panels, etc. Mr. Silvestri moved, seconded by Mr. Ansel, to suspend the rules and place on third and final reading. Upon roll call, motion carried. Mr. Silvestri moved, seconded by Mr. Topovski, to adopt. Upon roll call, motion to adopt carried unanimously.

Resolution No. 2006-79 authorizing the Director of Administration to enter into a contract with K. E. McCartney & Associates of Mansfield, Ohio for right of way appraisal services related to the Beall Avenue Streetscape project, and declaring an emergency was read by title, being on first reading. Mr. Topovski stated that almost two years ago, we started on the third streetscape project on Beall Avenue. One of the advantages of this project was the removal of overhead wiring that really impedes the view going up Beall. We anticipate installing underground wiring which requires the rights-of-way to install them. This resolution would authorize us to enter into a contract with K. E. McCartney to negotiate and acquire the right-of-way easements so that we may relocate the electric, phone and cable utilities. This firm was the only local firm approved by ODOT that performs this service. Mr. Topovski moved, seconded by Mr. Silvestri, to suspend the rules and place on third and final reading. Upon roll call, motion carried. Mr. Topovski moved, seconded by Mr. Griffin, to adopt. Upon roll call, motion to adopt carried unanimously.

Resolution No. 2006-80 authorizing the Director of Finance to enter into a contract for printing and mailing municipal income tax return forms, and declaring an emergency was read by title, being on first reading. Mr. Breneman stated that this was a contract with an out of town company to print and mail our 2006 income tax forms. It's a budgeted item and was exempt

from competitive bidding as it falls under the \$25,000 maximum and finance felt it would come close to the \$15,000 requiring council approval. Because of the mandatory filing requirement that we instituted in June (which has generated about \$30,000), we have about 8,000 more forms to process this year, thus the increase in cost. Mr. Breneman moved, seconded by Mr. Ansel, to suspend the rules and place on third and final reading. Upon roll call, motion carried unanimously. Mr. Breneman moved, seconded by Mr. Silvestri, to adopt. Upon roll call, motion to adopt carried unanimously.

Resolution No. 2006-81 amending Resolution No. 2006-22 by clarifying the funds from which payment will originate for the purchase of specialized technology, and declaring an emergency was read by title, being on first reading. Mr. Breneman stated that if this felt like déjà vu, that would be an accurate assessment since this was the third time we've seen this legislation. We approved this \$170,000 cost back in June; then it came back in August or September as the items needed to be funneled into the correct department funds. With further investigation, it was found that we need to re-authorize because some of the purchases were to come out of funds other than the capital improvement fund. For auditing purposes, we must appropriate these into the specific funds. Mr. Breneman moved, seconded by Mr. Griffin, to suspend the rules and place on third and final reading. Upon roll call, motion carried. Mr. Breneman moved, seconded by Mr. Silvestri, to adopt. Upon roll call, motion to adopt carried unanimously.

Resolution No. 2006-82 authorizing agreements with various applicants for the use of Economic Development monies was read by title, being on first reading. Mr. Breneman stated that this would remain on first reading. This was a yearly process which we have the pleasure of administering. We collect bed tax monies from people who utilize our hotels and we use those funds for economic development within our city. In the past, we have technically had three applicants, that being Main Street Wooster, the Wooster Area Chamber of Commerce and the Wayne County Convention and Visitors Bureau. In the past three years, these groups have come together to submit one application encompassing all three entities. We did receive only one application this year comprised of those three agencies and their request was if we received up to \$50,000 in bed tax funds, that it be broken down in proportions as follows: 57.5% to Main Street; 37.5% to the Chamber and 5% to the WCCVB. If we are fortunate enough to have more than \$50,000, it would be distributed 50% to Main Street, 30% to the Chamber and 20% to WCCVB. The application booklet is in the clerk's office for review and he encouraged all members of council to review the information prior to the next council meeting. We will have another finance committee meeting to discuss this more fully prior to the next meeting.

Miscellaneous

Mr. Ulbright commented on a letter council received from Kathy and John Cook regarding an article in the Daily Record that stated there would be an appeal by the City of Wooster on behalf of Chesterland Estates (Jerry Baker) to request approval to reduce the required buffer landscaping strip along Akron Road for the Stonecraft facility. These folks are concerned about that and hope that it doesn't happen. Mr. Ulbright asked when the meeting was scheduled. Mr. Sigg stated that the meeting in question had already occurred. The reason for the request was that the city plans to widen Akron Road and Chesterland had agreed to donate the necessary property to the city at no cost if the Board of Appeals would agree to grant a variance on the

buffer requirement. Chesterland had nothing to gain by this, only the city had something to gain by acquiring this right-of-way. The Zoning Board of Appeals did not approve the request, so the 50 ft. buffer would remain as required by the zoning code.

Ms. Cavin brought a concern to city council that she had agonized over but felt compelled to bring forward. After the October 23 finance committee, she and councilman Topovski went to Leroy's for a bite to eat and we were there for about an hour and a half and toward the end of the evening, Mr. Topovski told me some things that have led me to believe that he compromised his integrity when he participated in the vote for the Compak tax abatement. She also believes that Mr. Topovski has convinced himself that's not the case. She wished to make it clear that she had no reason to believe that anyone within the organization that received the tax abatement had anything to do with this or acted unethically in any way. At her request, she met with Mr. Topovski October 28 and expressed to him very directly that she felt strongly that he had violated the trust of the people who elected us and he should resign his council seat. She stated that she would no longer acquaint herself with Keith other than when necessary to carry out her responsibilities as a member of this council and she will carry out that responsibility to the best of her ability no matter what obstacles she might encounter. She notified the law director Dick Benson and council president Judi Mitten early last week of what Keith had said to her and she also met with two officers of the Wayne County Democratic Party on October 28 and told them what she thought she knew. In conversations she had had with one of those officers since, she asked them if Keith had denied this conversation directly and was told that he did not deny the conversation. She was also told by one officer of the party who had expressed to him that they would accept his resignation and he has declined. She has struggled with this the past two weeks. The conversation Keith and she had did not pertain to council; it was a personal matter and when people confide personal matters to her that she knew wouldn't harm anyone else she took that confidence very seriously. However, when in her mind that conversation took a turn that caused her to believe that she was hearing something she felt violated the trust of the people we represent, the bigger priority became upholding her oath to the people of Wooster. Since Keith had not resigned she felt that if she did not come forward with her feelings that she would be compromising her integrity and committing a sin of omission in her relationship with the people of this city. She felt by notifying the public tonight and everyone here of these matters and how she felt about them that she has met her obligation to hold the public in Wooster in the highest regard and she hoped that they will feel that way also and take this statement in the spirit it was intended and knowing that it has been very difficult to do this.

Mr. Breneman stated that these were some very serious allegations and we'd be remiss if we did not consider those in that light. He asked Mr. Benson's opinion. Mr. Griffin asked that out of respect for his fellow councilman, he would move that council adjourn to executive session. Mr. Silvestri seconded the motion. Upon roll call, motion failed by a 5-2 vote. Mr. Topovski acknowledged that he and Ms. Cavin did have a meeting on October 28 where she expressed her opinion that potentially her integrity was compromised and made a suggestion which he followed. On Monday he contacted the law director who was not in town at that time, so he met with Mr. Benson on Tuesday. The president of council was also notified about this on Monday and there have been other conversations with Mr. Benson and at the end of our meeting on Tuesday in his office, it was the opinion that there was nothing here that showed him there were any red flags involved.

Mr. Benson stated that he would remind council that he did not represent any one of them, but council as a whole so when he takes action or investigates something, he would do so at the direction of council as a whole, not at the direction of individuals. That said, what he has done up to this point has been done primarily on an informal basis and not because council has voted to direct an investigative action. He did receive a phone call from Ms. Mitten briefing him on the situation; he spoke with Mr. Topovski who came in and they discussed the situation and he received Mr. Topovski's point of view; he also had lengthy conversations with Ms. Cavin and had received her point of view. He discussed this issue with two other members of city council and finally this afternoon, he had a conversation with a gentlemen who is the executive director of the Ohio Ethics Commission. To put it all in a nutshell, his conclusion was that Ms. Cavin firmly believes that statements were made in her presence that indicated to her that Mr. Topovski cast a vote, while in her view, having a personal interest or potential personal interest in a matter separate and apart from that which was pending before council. Mr. Topovski does not believe that his judgment was in any way impaired. The result was that it was inconclusive or not conclusive enough on which to base any sort of finding so that being the case, he explained to both Mr. Topovski and Ms. Cavin that his primary concern was not whether Mr. Topovski may have done something improper but whether city council's vote or the integrity of that vote was protected. At this point, he can't say that it wasn't. If council chooses otherwise, that's another conversation for another day, but at this point he has done all he could do on an informal basis.

Mr. Ansel moved, seconded by Mr. Griffin, to adjourn. Motion carried and meeting so adjourned at 9:55 p.m.

Judith Mitten
President of Council

Sheila Stanley
Clerk of Council