

FINDLAY CITY COUNCIL MINUTES

REGULAR SESSION

July 5, 2017

COUNCIL CHAMBERS

PRESENT: Frische, Harrington, Hellmann, Monday, Niemeyer, Russel, Shindlecker, Watson, Wobser

ABSENT: Klein

President Pro-Tem Monday opened the meeting with the Pledge of Allegiance and a moment of silent prayer.

ACCEPTANCE OR CHANGES OF MINUTES AND PUBLIC HEARINGS:

- Councilman Harrington moved to accept the June 20, 2017 Public Hearing minutes for revisions to the Zoning Code (Ordinance No. 2017-039). Councilman Hellmann seconded the motion. All were in favor. Motion carried. Filed.
- Councilman Harrington moved to accept the June 20, 2017 Public Hearing minutes for 221 West Hardin Street rezone (Ordinance No. 2017-049). Councilman Watson seconded the motion. All were in favor. Motion carried. Filed.
- Councilman Shindlecker moved to accept the June 20, 2017 Public Hearing minutes for 607 Central Avenue rezone (Habitat for Humanity) (Ordinance No. 2017-047). Councilman Niemeyer seconded the motion. All were in favor. Motion carried. Filed.
- Councilman Hellmann moved to accept the June 20, 2017 Regular Session City Council meeting minutes. Councilman Harrington seconded the motion. All were in favor. Motion carried. Filed.

ADD-ON/REPLACEMENT/REMOVAL FROM THE AGENDA: - none.

PROCLAMATIONS: - none.

RECOGNITION/RETIREMENT RESOLUTIONS: - none.

PETITIONS: - none.

WRITTEN COMMUNICATIONS: - none.

ORAL COMMUNICATIONS:

Marjorie Ann Perry – principals of the new Design Review of Findlay downtown changes.

Ms. Perry pointed out that she lived in Germany years ago when she was twenty (20) years old and went all over the place to find out what was going on there because it was a Social Democratic place. Now, she watches what goes on here in Findlay. Everything seems to be headed in that same direction. She just received papers stating she has to have a permit if a piece of wood falls over in order to put it back, or to paint a building, etc. She does not think that belongs to anyone but the owner of the building. She thinks the City should give property owners the choice to have their property remain as it is. She and others are upset about the grass that will be down the middle of the street. She talked to a retired Firefighter across the street who told her a fire truck cannot get down there if that is done. He told her that they want fire trucks to only go straight down there, but a fire cannot be fought that way. A rescue vehicle will not be able to get down there either. Everything will be bundled up. She asked why that cannot be just left alone and instead, concentrate on flooding issues which has never been fixed. The first thing on the agenda for this town should be to fix the flood, and then let the citizens choose what they would like to do. She would like to see Council limit themselves on the Main Street project as the rest of the business owners have fixed their buildings up the best they could. They pay their taxes and are doing the work as best as they can. She has worked a long time in her business. The oldest one in her group is ninety-five (95) years old who told her she does not like the way things are going either. She and others know they can say what they think to her. Just before she left Germany, the Russians came into Berlin. All of a sudden, she heard a roar over the house and ran across the hall, got on the toilet, broke the toilet seat, wondered how she was going to buy a toilet seat, and looked out the skylight and saw NATO planes, so she waived at them. That ordeal was scary because they were ready to leave at any time, and the girl next door to her was going to have a baby, so she went to the Library and checked out a book on how to deliver a baby. While it did not work out that way, it all fell into place. When she was going to leave, she saw an attorney on the back porch of his place and asked him what was going on and pointed out that he had not lit his charcoal grill yet to which he replied that he has to get a permit at the rat house (rat house in Germany is the local governmental building where you have to sign up and get permission to do anything). Findlay is starting to be like Germany more and more. Every time her attorney neighbor wanted to grill, he had to get a permit. This is going on and on and they do not like it. It was not how our Constitution was started. She is an Ultra Conservative Constitutionalist for this country and will continue to stay that way. We need to watch our Constitution and the rights of our people. She never saw the guy have his grill on.

Linda Bishop – Ordinance on HWE/AEP

Ms. Bishop read a letter written by George Walton, President and CEO of Hancock-Wood Electric (HWE) that was in the paper Friday titled "Hancock-Wood (HWE) needs Council's help". It is becoming a common occurrence for large, multi-state companies, for executive management to engage in strategic initiatives that intend to monopolize products and services in smaller towns to improve their company's profitability and shareholders value. American Electric Power (AEP) is one of these multi-state companies that utilizes its financial resources to feed money into small municipalities with the hope of gaining special treatment, creating a monopoly for itself. This has become a huge problem for the local electric co-operatives in Ohio such as HWE Co-operative. Last year, AEP cherry-picked the large commercial business Romark, which was located in HWE's territory. Now, AEP is taking Campbell Soup Supply Company, which is also located in HWE service territory. Allowing AEP to continue this approach would create a negative impact on HWE's rates for members and business within Findlay. Recently, HWE and AEP attempted to negotiate on this issue, and during the process, AEP failed to negotiate in good faith, resulting in a breakdown of the negotiation process. AEP wanted the ability to continue to serve all the new commercial accounts in Findlay that would be financially beneficial even if they are in HWE service area. In another words, AEP is attempting to cherry-pick all future profitable commercial properties that locate in HWE's service area in Findlay. This is unacceptable for members, customers, and commercial businesses. HWE's growth inside the City has played a major role in keeping rates competitive and stable for all customers. HWE needs City Council's help to either modify HWE's proposed Franchise Ordinance, or to provide a Resolution clearly stipulating City Council's intent regarding how AEP and HWE will operate with respect to their service territories in Findlay. Smaller businesses in the United States have always provided the majority of American jobs. Please urge Council to act.

Ms. Bishop noted that she has HWE as her electric company, and she hopes Council will use the moral compass in voting on this issue this evening.

George Walton, President and CEO of Hancock-Wood Electric Cooperative – Franchise Agreement

Mr. Walton is before City Council tonight to clarify some points. The AEP negotiations was initiated by AEP. He was instructed to put a proposal together. During tonight's meeting he handed out a copy of a letter and also a text showing communications from AEP's Representative Randy Payne. Mr. Walton put it together and it was given to Mr. Payne the night of the last City Council meeting. Mr. Payne sent a text and said it was going to be reviewed by their executive management team in Columbus, and Mr. Payne called Mr. Walton the next day. What came out of that call was that AEP did not want a written agreement in place, but were open to territorial swaps, but did not like the proposal that he put in place. Additional acreage was offered to justify the value of the land that they were giving up which is where Campbells Soup, Romark, and some of the other loads had located. AEP offered land in North Baltimore that is not equal to the piece of commercial industrial site that AEP took. Mr. Payne also shared with him that some type of a warehouse or manufacturing type of facility that AEP has already been working with to locate in that territory. Mr. Walton informed Council that he is a very honest person and will not lie. He will provide the facts. It is up to Council to decide tonight on his proposed letter and resolution. If Council is not in favor of them, it will impact the stable rates that their members have enjoyed due to the commercial load that they served on the east side of Findlay and surrounding areas. That is their commercial base. Outside of the City of Findlay, they have Equity Meats, GROB Systems, and MARS dogfood plant. Pro-Tec was a territorial swap with AEP. HWE got more acreage from that because it is about a thirty (30) megawatt load. It was a significant load for AEP. It was before his time. He has the paperwork to show the swap. They ended up getting the community college where Owens currently is, along with some Road 5 which is worthless from a development standpoint. HWE swapped a thirty (30) megawatt load for Owens Community College which was less than two (2) megawatts.

Discussion:

Councilwoman Frische asked for clarification on the negotiations with AEP that did not end up coming to fruition. There is a discussion about the 1 to 2 ratio. She asked if it was just for Campbell's Soup or if there were more properties involved. Mr. Walton replied there were more properties. HWE's Vice President of Operations was present during the Cracker Barrel negotiations. It was a territorial swap for Romark and also Campbell's Soup, as well as future loads that Mr. Payne indicated were some type of pet warehouse or manufacturing facility that he felt was going to locate in that same area and for the rest of the land that was there. When Mr. Walton gave the proposal to HWE, and told them up front over the telephone and also here at the last Council meeting, what HWE's was proposing and that they are up for negotiations. What came back was that AEP would not put anything in writing and were only interested in a territorial swap and that the lowest they would go was a one on one ratio. He has no issues with Mr. Payne and will not talk badly about him as it is AEP's Executive Management that made that call. Mr. Payne shared with Mr. Walton that they felt there was potential in North Baltimore, but Mr. Walton knows there will not be the potential there. He has a map that shows the territory that AEP was offering them in North Baltimore. There is no comparison to an industrial site. Councilwoman Frische asked if it was similar to what this offer was. Mr. Walton replied there was more acreage. Councilwoman Frische then asked if the pet manufacturing company is in HWE's territory. Mr. Walton replied it is in the same general area where Campbell's Soup is which is within HWE's service area inside Findlay. Councilwoman Frische asked if HWE was also negotiating with them and if they were made aware that there is a potential load coming into HWE's area. Mr. Walton replied they were not aware. In fact, HWE has been left completely out of the Alliance Group, even though they pay dues just like all other members do. He will not disclose his City contacts that shared that with him because of confidentiality. Mr. Payne contacted Mr. Walton about an October meeting with Campbell's Soup. He did not know that there was a Campbell's Soup being looked at which is not the way it used to be in the City of Findlay. It used to be that when there was a load in HWE's service area, he would be contacted personally and would meet, sometimes at a separate location, and would sit down with a customer. Other times, it was more of a proposal for cause to serve a facility at the site stating what the demand would be and HWE would turn that over within a couple of hours and get it back to the Alliance Group. He does not know everything that is going on, but knows that HWE is being left out of it. He found out about Campbell's Soup in the newspaper, so he called Mr. Payne and asked him what was going on. That area on the map indicated the building was going to be located in HWE's territory, which is how he found out. There is an expansion that is coming down the road. Today, seventy-five percent (75%) is in HWE's service area. HWE is a non-profit organization, not a for-profit entity, so there are not huge profits, but do a good job of maintaining their rates. They are competitive. City Council received letters from commercial accounts in Findlay that showed that HWE is very well supported by their commercial base in Findlay. The reason HWE is not able to grow moving forward not because their rates are not competitive.

Councilman Wobser asked Mr. Walton if he will be staying for the rest of tonight's meeting when the legislation is debated later. Mr. Walton replied he will be. Councilman Wobser noted that earlier tonight, Mr. Walton mentioned that HWE stopped being notified of new businesses coming into Findlay and HWE's ability to service those potential new customers. He asked when that started. Mr. Walton replied it was right before Romark. HWE's Engineering group was working on a plan to service and they put a plan of service out there to Dwayne. Because it is so far from their existing lines, their rates were higher than AEP. It was right on the line. This is not a competitive issue. There are plenty of times AEP has done the same thing where they have had to run two (2) spans of primary to get to this customer. That was all negotiable. They have done that before. They were not going to lose a load or run a load from the City of Findlay. They did not hear anything from the time it was submitted. AEP was working behind the scenes to meet with this customer and told them they were serving other building in Tall Timbers, so they could also serve them. AEP utilized their muni-wide franchise to take it which is how they got it. Councilman Wobser pointed out that HWE knew about Romark, but asked if they had hear anything about the others coming to town after that. Mr. Walton replied no, not since mid-2015. Anytime there is a potential commercial account coming into Findlay, it goes right to AEP. That came directly from a reliable source. Councilman Wobser asked Mr. Walton if he feels someone within the Alliance is not giving HWE a fair shot. Mr. Walton replied he absolutely feels that way. Councilman Wobser asked Mr. Walton to expand on what was meant by multi-state companies that utilize financial resources to feed money into smaller municipalities with the hope of gaining special treatment that was stated in the letter that Ms. Bishop read to Council tonight. Mr. Walton replied that it was told to HWE from someone in the Alliance group that there was a contribution of one hundred thousand dollars (\$100,000) made to the Alliance. HWE is non-profit, so they cannot afford contributions like that. They gave twenty-five thousand dollars (\$25,000) to the Marathon Performing Arts Center. They are doing the best that they can for their size. It should not be that a non-profit electric co-op who has done a very good job inside the City of Findlay should be walked over like this. HWE has commercial accounts that are Findlay citizens. They serve Lakeview, Brookstone, etc. All of them are citizens of Findlay. HWE's commercial base is in Findlay, but they are not growing inside of Findlay. They only have a small area left which will impact HWE's rates. There are two (2) ways to capitalize on electric co-op, a non-profit business. One is through debt and the other is through equity. Equity comes from the rates. You cannot just get debt. The board has put him in charge of managing debt. HWE is financially stable because of his managing the debt, but they have to have growth. When growth is taken from them from the limited area they have left in Findlay, the small amount of area that they have left in the city of Findlay will not hurt AEP and would help their members and commercial accounts in Findlay to stabilize rates. Councilman Wobser appreciates what HWE does for the City and their donations to the different causes that they are involved in. He asked Mr. Walton if his theory is that the money that AEP has paid to the Alliance in a donation of some sort has bought them special favors. Mr. Walton replied yes, that is his opinion.

Councilman Watson asked for an explanation of stranded investments and infrastructure and how that directly impacts residential customers. Mr. Walton handed out during tonight's meeting, an itemized statement of where the approximately twenty-three million six hundred thousand dollars (\$23,600,000) that HWE has invested in the City of Findlay has gone. For any distribution utility company, not just HWE, when those investments are made, because they have a franchise that has supported them for over the past thirty plus (30+) years until they lost the Romark load. When they make those investments, they do not make capacity for just those commercial loads. It would be crazy to do that.

HWE makes additional investments into that capacity so that they can serve future loads which is just common sense. That investment is in distribution lines, the substations are as shown on the handout to support the City of Findlay. If their franchise territorial worked like it has always worked, the franchise would support those investments if the loads were commercial accounts that came within their service area, then they would have the capacity to make those investments to support the new growth. HWE has supported Findlay with new growth, especially on the east side of Findlay. Stranded investment comes in when HWE makes those investments with a combination of approximately fifty percent (50%) debt and approximately fifty percent (50%) equity. Their equity ratio is about fifty-one percent (51%) which means they have fifty-one percent (51%) in equity with the remainder in debt that they are paying the debt service along with the depreciation into the plan every year. If HWE cannot grow in their service territory, those lines in that capacity are just setting there and cannot be used. The additional capacity that they have built in the lines, but AEP comes in and pulls a load like Campbell's Soup. The Campbell's Soup load and the Home Depot Distribution load are ones that HWE has made investments with a combination of debt and equity. Some of the loads AEP has taken are five hundred thousand (500,000) kilowatt hours per month in comparison to a residential customer who uses an average of twelve hundred (1,200) kilowatt hours per month. If the commercial loads stops without commercial growth, it forces the utility company to raise rates. If a company has too much debt, they get themselves in trouble. They have banks and covenant agreements that they have to maintain every year. If they are not allowed to grow and pick up large businesses that are coming in, they will have to resort to raising rates to generate enough operating revenue to support their fixed costs and other operating costs.

Councilman Hellmann noted that he is disappointed that the Alliance did not bring this prospect (Campbell's Soup) to HWE as Mr. Walton pointed out earlier. He asked if it is possible that the client requested bids from AEP because they only wanted to deal with them maybe because they deal with them throughout Ohio, so they did not want to deal with any other supplier. Mr. Walton replied yes, that could be the case, but AEP is meeting with those accounts on a national base and are selling themselves to these accounts. In 2000, the State Legislature deemed what was competitive as the wholesale generation portion of the bill which is approximately fifty percent (50%) of the bill no matter what utility company it is. That was the only part that was made competitive, not the distribution part (lines, wires, substations). The reason why the State Legislator did not make the wires part of the business competitive rates is because they know utilities companies had to make the investments years back. If a company comes in that HWE did not build enough capacity into their lines just for the existing base that they have, they would not be able to serve them by the end of the year and would not be able to build that into their rate base, which is why the State decided not to make the distribution part competitive. HWE built those distribution facilities with the premise that they had a territorial franchise for years that has supported those investments. HWE's board feels that they've made those investments, have supported Findlay, have supported the commercial base, and are competitive, but now the rug is being pulled from under them because those investments have been made. The debt service is already in place and are now getting loads that could help support those investments. If this had been going on for years, he would have taken a different perspective. He would have looked at those investments and would have talked to his Board and would have looked at how much they are investing into the City of Findlay because there is no guarantees that HWE will get the next load that comes into their service territory, which wasn't the case for many years. When the Territorial Franchise was first granted (not granted by this Council, but Councils before), the intent was from the beginning that HWE could only serve in their territory inside the City of Findlay, but those rules have changed. If AEP is allowed to continue to do what they are doing, HWE will end up raising rates. The only way to capitalize business for electric non-profit electric co-op is through debt and equity.

Councilman Shindledecker pointed out that there is no question that the past three to four (3-4) years of our economic development arm of the Alliance has been quite successful regardless of the one hundred thousand dollars (\$100,000) contribution that AEP may or may not have made, but it strikes him as a conflict of interest, so HWE should be talking more aggressively to them. Mr. Walton replied he plans on it. He plans on going to the Board, but first thing is first. It makes no sense to go to them today if HWE cannot grow. Without the proposal that is before City Council and if HWE is not allowed to grow, then it is useless to even go to the Alliance and ask them to include HWE. He plans to first bring it to City Council to try to get the Franchise back to what it used to be. He is not asking for anything more than to have his Franchise like it used to operate. Then, he wants to set down with the Alliance Board to talk about why HWE is not being included. HWE is not an entity that is hurting the City of Findlay. They are providing good services to the City. He can provide more letters of support from commercial accounts. They have done a great job within the City. They do the best they can for their size. Their rates are competitive. It is difficult to just let other big multi-state operations take the big loads when HWE's rates are competitive.

Councilman Russel asked who has the McLane load. Mr. Walton replied AEP. Councilman Russel asked when McLane came in, why this discussion did not take place then. Mr. Walton replied because they were in AEP's service territory. Councilman Russel asked if AEP's territory is a city-wide franchise. Mr. Walton replied it is a city-wide franchise that have followed the territorial laws. They always operated that way up until the Romark load. Councilman Russel asked if Romark and Campbells are within the city limits. Mr. Walton replied yes. Councilman Russel asked if they are within AEP's territory. Mr. Walton replied it depends on how you look at it. It is within the city limits and is under the muni-wide franchise, but the way the two (2) franchises overlap and the intent of Council who issued them originally, are that they are in HWE's territory. It was done that way for thirty some (30+) years. AEP never went over into HWE's territory during that timeframe. Councilman Russel noted that when Mr. Walton was talking with Council about Romark, Council made it clear when Mr. Walton expressed his desire to bring this in front of the Public Utilities Commission of Ohio (PUCO), he asked why after last year that this conversation did not end up at the PUCO. The PUCO is also the body that looks at stranded costs for relief. In fact, he and Mr. Walton had a conversation where he was asked to speak at the PUCO on his view of what happened, but he never heard anything on it. He asked what happened after that and why it didn't end up going to the PUCO. Mr. Walton replied that up until HWE received the letter, they had nothing. After they received the letter, they had it evaluated by their General Counsel in Columbus (Buckeye's General Counsel represented HWE). What came out of that, was that it was not strong enough because it was not endorsed, was not a resolution, was just a letter, so it did not mean anything, and it was not voted on by City Council. When something is taken to the PUCO, it is expensive. What came back from the General Counsel was that the Administrative Judge at the PUCO wanted to know what the official intent of Findlay City Council was. If Findlay City Council's intent was to create competition between the two (2) utilities on the distribution side, then there is was no reason for HWE to even taking it to the PUCO. If Findlay City Council wants, as the letter stipulated, for the two (2) utilities to operate as they have always operated in past years, and if the two (2) utilities want to serve in the other's territory, then they should utilize the territorial swaps like they had for the past thirty plus (30+) years. He has a stack of paperwork on when that had occurred, but it does not occur anymore. AEP just goes and takes what they want. He does not even get a phone call asking to swap some land. HWE did not have enough to take it to the PUCO for them to even consider it. If the letter from City Council is shown to HWE's Attorneys, they will not see it as an official letter because it is not a resolution. The only reason he came back to City Council is to ask for a resolution or a vote on the letter so HWE has something stronger to the PUCO and fight it out between the two (2) utilities and keep City Council out of it.

Councilwoman Frische noted that even though there is a territorial franchise, each utility company has territorial lines with the PUCO. She asked how old the maps are and once the territorial lines are established, if they stay the same for life. Mr. Walton replied they stay the same until the two (2) utility companies make swaps. It is a process in itself that is initiated by the utility company that is wanting the swap and is wanting the other utility company to serve their territory. When that happens, there is a form that is to be filled out and is to go to the PUCO to review it for formality. If approved, the territorial lines are changed on the territorial map and a notification is sent to both utility companies stating that from this point forward, which utility company's territory it falls under. Councilwoman Frische asked if AEP had a muni-franchise instead of a territorial franchise like HWE does, if the entire City of Findlay would be their territory or if the original map shows it all as AEP with overlapping gray areas since then. Mr. Walton replied that according to the territorial map rules, if AEP was given a territorial franchise, then

AEP would follow the territorial law which is the map that was identified years ago. When a property annexes into the city, it becomes an issue for HWE, even more important than losing the Campbell's Soup account because as someone annexes into HWE's service area, then AEP can bring the reach even further out into HWE's service area. Councilwoman Frische asked what the benefit is of the muni-franchise over a territorial franchise. Mr. Walton explained that when HWE received their territorial franchise (AEP had a muni-wide franchise), Council ruled on it back when they received the original territorial franchise, they stipulated that every co-op in the state has a territorial franchise, and were given those territorial lines. The investment on the utility will stay within their territorial lines, but that is exactly what has happened over the last thirty (30) years. When one utility wanted someone's territory, they negotiated and did swaps, but that has stopped. He handed out a CFC sheet showing that AEP did the same thing last year with Homes Wayne Electric Co-op. This time, the electric co-op won in the Village of Wooster. In that case, City Council denied AEP the right to go over into that electric co-op's territory. Since it had operated that way for years, it was ruled down. AEP tried to change the electric co-op franchise to a muni-wide franchise so that they could then cherry-pick out of the co-op's territory. Homes Wayne and also Wooster's City Council ruled against it.

Councilman Hellmann asked how and why this this went from a letter a couple of weeks ago that explained the City Council's position to full blown ordinance that is being looked at tonight. Mr. Walton replied he is unsure as he did not originally initiate it. The franchise language that HWE proposed last year is what HWE wanted from the beginning. He approached Councilman Monday and a few others for the letter because that was their only out. If they do not get the letter or the franchise language that they have proposed, there is nothing he can do at the PUCO and will have to allow AEP to continue to cherry-pick loads. The franchise language is what they really want. It is what City Council has been split on whether or not they would grant HWE the language under that franchise. He asked Council what HWE has done inside the City of Findlay that they cannot continue to operate like they have for thirty plus (30+) years. Councilman Hellmann replied he does not believe anyone thinks HWE has done anything bad or poorly. He is a client and customer of HWE and he sits on the Alliance Board. This is the first time he has heard any of these issues that Mr. Walton has brought up. It is his preference that this be tabled so that it could be discussed at a Committee of the Whole meeting as there are some things he does not understand and does not agree with. This deserves broader discussion than what can be conducted tonight. Mr. Walton replied he believes HWE still needs both which is why he started the process of bringing them (Franchise Agreement and letter) to Council to address. He would like to meet with the Alliance Board to address why, when they are paying their money just like any other member of the Alliance group, are they being left out. Councilman Hellmann replied he will make that request to the Alliance Board at the next meeting.

Councilwoman Frische pointed out that she and Councilman Wobser requested the Ordinance from last year be re-addressed because some Councilmembers were contacted about the Campbell's Soup load that had taken place. The letter from Council President Slough was sent approximately a year ago. The letter was sent to both AEP and HWE. It stated that nine (9) members of Council supported the desire for both entities to place nice, and if they did not, City Council was willing to re-address it. By bringing it back up this year, it is standing behind our word. It is not just for what HWE wants, but as a Councilmember, she feels very strongly from an economic development standpoint. There are commercial customers that are on HWE's lines, so not only the new customers that are coming in need to be considered and if we want to potentially let them choose who they want for their servicer, but also need to consider the business they have brought to our community to make us great, to keep their loads down too. Otherwise, we will be causing not only residential, but also a commercial hardship to those customers, and those business customers are going to feel not important in the community. So for economic development, she feels this ordinance needs to be revisited since it was discussed a year ago between the City Law Director, HWE's and AEP's legal teams who came up with the language of the ordinance. It was not passed last year, but a letter was sent to both entities stating Council's opinion. For that reason, she believes the ordinance needs to be passed tonight for the betterment of the community inside the city and county. Mr. Walton added that he also represents the residential members of Findlay. Some are on fixed incomes that HWE has done their best to maintain stable rates for. In fact, some of the rates for their commercial accounts are approximately eight cents (\$.08). AEP cannot touch that. HWE is spending millions of dollars putting scada systems in and distribution automation so that if HWE loses service to a residence off of the substation it is fed off of, they do not have to send a crew out to work on a transmission to that substation. He can simply swap that residence to a different substation from his home via an iPad or computer. AEP does not have that capability. HWE is a non-profit organization that is all about service and competitive rates.

Safety Director Schmelzer noted that the word City gets misused. City in this case is referenced to the boundary of the City of Findlay. There has been no representation from the Administration or anyone on his staff, the Mayor's staff or Council that has provided preferential treatment to anyone. Councilwoman Frische begged to differ since the Safety Director stated on the record once already that there was no documentation, but then he sent two (2) letters to City Council stating that there was. The Council Clerk was going to email the documents that she has made a public records request for twice, so she begs to differ whether it is signed or not, there was communication of some kind. She also heard during some board meetings that there was a letter discussed. Safety Director Schmelzer replied that if Councilwoman Frische is implying that he is being disingenuous, then he feels the need to respond. The letter that was referred to on the City's preference to AEP over HWE did not exist. It does not exist to his knowledge. It may have been proposed and written from Campbell's to AEP, but there was no letter, nor any representation from the Administration or anyone, to his knowledge, that works for the City that would have implied that AEP would be preferred or that any preferential treatment was given which is why the public records was asked for but nothing was provided, because nothing exists. Councilwoman Frische again begged to differ because the Safety Director stated there were conversations. She will ask to discuss it at another time, but she begs to differ. Law Director Rasmussen added that the language in the ordinance is not his language. It is purely HWE's language that was submitted to him. All he did was put it into the format of an ordinance. Councilwoman Frische asked if he reviewed that document as the City's legal counsel and if the language is okay with him. Law Director Rasmussen replied the language is their language which is what they requested and what Councilwoman Frische requested he reintroduce. He never introduced that language. Councilwoman Frische then asked as the City's Law Director communicating to City Council if it is a legal change that is allowable or not. Law Director Rasmussen replied it is what they are requesting so that they can go to the PUCO and get a decision. Mr. Walton replied that is correct and that it also does two (2) things: allows them to be able to serve in a territory like they have served for the last thirty plus (30+) years prior to that.

REPORTS OF MUNICIPAL OFFICERS AND MUNICIPAL DEPARTMENTS:

Treasurer's Reconciliation Report – May 31, 2017. Filed.

N.E.A.T. Departmental Activity Report – May 2017. Filed.

Officer/Shareholders Disclosure Form from the Ohio Department of Commerce Division of Liquor Control for Daisy Dukes Corporation & Patio & Fenced Area, located at 1851 Tiffin Avenue, Findlay, Ohio, for D5 and D6 liquor permits. This requires a vote of Council.

John E. Dunbar, Chief of Police, – Daisy Dukes Corp & Patio & Fenced Area, located at 1851 Tiffin Avenue. A check of the records shows no criminal record on the following

Tracy J. Snow
Sherri D. Snow

Councilman Harrington moved for no objections be filed. Seconded by Councilman Russel. 8 Council members in favor, 1 opposed. Filed.

Officer/Shareholders Disclosure Form from the Ohio Department of Commerce Division of Liquor Control for Bivco Incorporated dba Bellacinos Pizza & Grinders, located at 2320 Tiffin Avenue, Findlay, Ohio, for a D1 liquor permit. This requires a vote of Council.

John E. Dunbar, Chief of Police, – Bivco Incorporated dba Bellacinos Pizza & Grinders, located at 2320 Tiffin Avenue. A check of the records shows no criminal record on the following

Nadya M. Shihadeh

Councilman Harrington moved for no objections be filed. Seconded by Councilman Hellmann 8 Council members in favor, 1 opposed. Filed.

City Auditor Jim Staschiak – Revenue Estimates for fiscal year 2018

City Auditor Staschiak will provide, in the July 18, 2017 City Council packet, the estimated revenues for the next fiscal year. This is the first step required under Ohio budgetary law and the figures are a best estimated of what is expected in revenues over the next eighteen months. In order to meet the statutory requirements for the distribution of the local government money, this document should be accepted by Council at the July 18th meeting so that it can be filed with the County Auditor no later July 20, 2017. A motion for acceptance of the revenue estimates will be needed during the July 18, 2017 City Council meeting. A public hearing before the July 18, 2017 City Council meeting will be scheduled and published in ten (10) days before the hearing, during which period two (2) copies will be available for public inspection in the City Auditor's Office. Council's motion to accept this is needed. A Public hearing to be held at 7:25pm on July 18, 2017. Filed.

City Planning Commission minutes – June 8, 2017; agenda – July 13, 2017. Filed.

Service Director/Acting City Engineer Brian Thomas – Sandusky Street Resurfacing (HAN SR 23/568 0.20/0.23, PID 76823) Project #32831100

This project was part of the 2013 Capital Improvements Plan. ODOT prepared the plans for resurfacing Sandusky Street from East Street to Bright Road and used the Engineer's estimate to determine what the City's share of the project cost would be. The project was completed in 2014 and ODOT is now closing out the project. Engineering has received an invoice that states that the City's share of the project was higher than estimated and an additional \$29,056.66 is now due. Legislation to appropriate funds is requested. Ordinance No. 2017-069.

FROM: CIT FUND – Capital Improvements Restricted Account	\$ 29,056.66
TO: General Expense #2101000-other	\$ 29,056.66

Filed.

Service Director/Acting City Engineer Brian Thomas – 3rd qtr appropriations

In an effort to minimize the financial impact on the beginning of the year CIT Fund – Capital Improvements Restricted Account balance, the fund appropriation requests were split into quarterly breakdowns. The first and second quarter appropriation requests were authorized on February 7, 2017 with Ordinance No. 2017-006, and on April 18, 2017 with Ordinance No. 2017-025. Legislation to appropriate funds is requested. Ordinance No. 2017-070 was created.

FROM: CIT Fund – Capital Improvements Restricted Account	\$ 220,775
TO: Airport #25010000-other	\$ 40,000
TO: Police Department #21012000-other	\$ 70,775
TO: Fire Department #21014000-other	\$ 25,000
TO: Parks Maintenance #21034000-other	\$ 85,000

FROM: CIT Fund – Capital Improvements Restricted Account	\$ 482,250
TO: Apex multiband mobile radios for 27 marked cars #31970200-other	\$ 180,000
TO: Concrete repair/replacements-S West St & other areas #31971000-other	\$ 25,000
TO: Parker Building siding and interior repurpose #31971100-other	\$ 8,000
TO: Airport Drainage Improvements #35250600-other	\$ 135,750
TO: Seal parking lots at Reservoir #31976600-other	\$ 15,000
TO: Manley lean-toos #31972700-other	\$ 20,000
TO: 2017 Riverside Park Lighting Project (parking lot final) #31971300-other	\$ 30,000
TO: 2017 Cooper Park Improvements #31971400-other	\$ 5,000
TO: 2017 Swale Park Improvements #31971500-other	\$ 5,000
TO: Recreation Locker Room Upgrade #31972200-other	\$ 25,000
TO: Downtown Street Light Upgrades #31973000-other	\$ 12,500
TO: ODOT FY18 Resurfacing #32876300-other	\$ 1,000

FROM: Water Fund	\$ 20,000
TO: Supply Reservoir #25073000-other	\$ 20,000

FROM: Sewer Fund	\$ 38,000
TO: Pave Sewer Maintenance parking lot and sealcoat drives at WPC #35674900-other	\$ 38,000

Filed.

Findlay Fire Department Chief Joshua Eberle – Hamlet Protein donation

On behalf of the Findlay Fire Department and the Findlay Firefighters, Chief Eberle thanked Hamlet Protein for their one hundred dollar (\$100.00) donation. The Fire Department, in cooperation with Findlay Firefighters Local 381, operates a smoke detector program that aims to provide city residents with smoke detectors at no cost. This donation will assist the Findlay Firefighters in this endeavor and will be used to purchase smoke detectors which will increase safety for area residents. Legislation to appropriation funds is requested. Ordinance No. 2017-072 was created.

FROM: General Fund (Hamlet Protein donation to FFD) \$ 100
TO: Fire Department #21014000-other \$ 100

Filed.

Service Director/Acting City Engineer Brian Thomas – Municipal Court Expansion/Municipal Building Renovations Project No. 31949800

The Municipal Court expansion and renovation project is now near completion. During the project, the Court requested several such as upgrades for additional security and upgraded flooring material that resulted in increased cost. The Court originally budgeted five hundred thousand dollars (\$500,000) for the remodel project, but an additional appropriation of thirty-four thousand dollars (\$34,000) is now needed to account for the upgrades. Legislation to transfer funds is requested. Resolution No. 019-2017 was created.

FROM: Municipal Court Improvements #24020000-other \$ 34,000.00
TO: Municipal Court Expansion/Municipal Building Renovations #31949800

Filed.

COMMITTEE REPORTS:

The **APPROPRIATIONS COMMITTEE** to whom was referred a request to discuss the Safety Director Department appropriation of funds via Resolution No. 015-2017.

FROM: Service Director #21020000-personal services \$ 70,000.00
TO: Safety Director #21017000-personal services \$ 70,000.00

FROM: Service Director #21020000-other \$ 10,000.00
TO: Safety Director #21017000-other \$ 10,000.00

We recommend approval of the above request. Resolution No. 015-2017 received its first reading during the June 6, 2017 City Council meeting and its second reading during the June 20, 2017 City Council meeting.

Councilman Harrington moved to adopt the committee report. Councilman Shindledecker seconded the motion. All other Councilmembers were in favor.

Discussion:

Councilwoman Frische asked what kind of travel Safety Director Schmelzer will be doing now that he is the Safety Director for Police and Fire, or what else will the ten thousand dollar (\$10,000) part of this appropriation will cover. Safety Director Schmelzer replied that last time sandbags were purchased, it cost ten thousand dollars (\$10,000). Councilwoman Frische asked if that is done through Police and Fire Departments. Safety Director Schmelzer replied it is budgeted for miscellaneous items related to safety. Councilwoman Frische then asked if those are usually done through line items. Safety Director Schmelzer replied that is correct. Filed.

LEGISLATION:

RESOLUTIONS

RESOLUTION NO. 012-2017 (*opposition of State Governor's proposed 2017-2018 budget*) **tabled after first reading on 4/18/17**
A RESOLUTION STRONGLY OPPOSING THE STATE OF OHIO GOVERNOR'S PROPOSED 2017-2018 BUDGET, WHICH PROPOSES CENTRALIZED COLLECTION OF NET PROFIT TAX RETURNS AND OTHER PROVISIONS RELATED TO THE MUNICIPAL INCOME TAX WHICH WILL CAUSE A SUBSTANTIAL LOSS OF REVENUE NEEDED TO SUPPORT THE HEALTH, SAFETY, WELFARE AND ECONOMIC DEVELOPMENT EFFORTS OF OHIO MUNICIPALITIES, AND DECLARING AN EMERGENCY.

RESOLUTION NO. 015-2017 (*Safety Director Department*) requires three (3) readings **third reading adopted**
A RESOLUTION TRANSFERRING FUNDS WITHIN APPROPRIATED FUNDS, AND DECLARING AN EMERGENCY.

Councilman Harrington moved to adopt the Resolution, seconded by Councilman Hellmann. Ayes: Frische (changed vote to nay in Old Business), Harrington, Hellmann, Monday, Niemeyer, Russel, Shindledecker, Watson, Wobser. The Resolution was declared adopted and is recorded in Resolution Volume XXXIII, and is hereby made a part of the record.

RESOLUTION NO. 017-2017 (*W Hardin St Sewer Separation Project No. 32542700*) requires three (3) readings **second reading adopted**
A RESOLUTION TRANSFERRING FUNDS WITHIN APPROPRIATED FUNDS, AND DECLARING AN EMERGENCY.

Councilman Russel moved to suspend the statutory rules and give the Resolution its third reading, seconded by Councilman Harrington. Ayes: Harrington, Hellmann, Monday, Niemeyer, Russel, Shindledecker, Watson, Wobser, Frische. The Resolution received its third reading. Councilman Harrington moved to adopt the Resolution, seconded by Councilman Niemeyer. Ayes: Hellmann, Monday, Niemeyer, Russel, Shindledecker, Watson, Wobser, Frische, Harrington. The Resolution was declared adopted and is recorded in Resolution Volume XXXIII, and is hereby made a part of the record.

RESOLUTION NO. 018-2017 (*W.O.R.C. budget*) requires three (3) readings **second reading**
A RESOLUTION TRANSFERRING FUNDS WITHIN APPROPRIATED FUNDS, AND DECLARING AN EMERGENCY.

Second reading of the Resolution.

A RESOLUTION TRANSFERRING FUNDS WITHIN APPROPRIATED FUNDS, AND DECLARING AN EMERGENCY.

First reading of the Resolution.

ORDINANCES

ORDINANCE NO. 2017-021 AS AMENDED (bicycle riding in downtown business district)

tabled after third reading on 4/18/17

AN ORDINANCE AMENDING SECTION 373.11(a)(2) AND REPEALING SECTION 373.13 OF CHAPTER 373 OF THE CODIFIED ORDINANCES OF THE CITY OF FINDLAY, OHIO.

During NEW BUSINESS portion of the May 2, 2017 City Council meeting, a motion was made and seconded to accept the proposed amendments (second amendment to the Ordinance), which was approved. A motion was then made to lift it from the table, but no second to that motion was given, so it was not lifted from the table and remains tabled.

ORDINANCE NO. 2017-056 (HWE Franchise Agreement) requires three (3) readings

referred to Committee of the Whole meeting after 3rd reading on 7/5/17

AN ORDINANCE GRANTING TO HANCOCK-WOOD ELECTRIC COOPERATIVE, INC. ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO ACQUIRE, CONSTRUCT, MAINTAIN AND OPERATE IN THE STREETS, THOROUGHFARES, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF FINDLAY, STATE OF OHIO, AND ITS SUCCESSORS, LINES FOR THE DISTRIBUTION OF ELECTRIC ENERGY AND OTHER SERVICES TO PARTS OF THE CITY OF FINDLAY AND THE INHABITANTS THEREOF FOR LIGHT, HEAT, POWER AND OTHER PURPOSES AND FOR THE TRANSMISSION OF THE SAME WITHIN, THROUGH AND ACROSS SAID CITY OF FINDLAY, STATE OF OHIO, SUBJECT TO AND IN COMPLIANCE WITH THE CERTIFIED TERRITORIES FOR ELECTRIC SUPPLIERS ACT (OHIO REVISED CODE SECTIONS 4933.81 TO 4933.90).

Councilwoman Frische moved to adopt the Ordinance, seconded by Councilman Wobser.

Discussion:

Councilman Wobser noted that there have been a lot of discussion on this topic over the last year. They have learned a lot about how these work legally and how they work in local areas in different groups and how things can get turned around. He asked Mr. Walton if it is his opinion that this legislation will put HWE back into the same position that they were in prior to the problems starting with Romark and if it will give them a chance to compete fairly. Mr. Walton replied absolutely. Councilman Wobser then asked Law Director Rasmussen if his opinion is the same. Law Director Rasmussen replied it goes back to the Certified Territorial Act. Whether it accomplishes that or not, he has been pretty clear all along that it is not his decision, it is the PUCO's decision. There have been some rulings in 2000 that talks about it that recognizes the City's home rule authority. This is the language HWE requested. He does not represent HWE. It is up to the PUCO whether it puts them back in the same position or not. Councilman Wobser noted that the letter from AEP's TJ Wells to the Law Director discusses this legislation and the Certified Territories Act, etc. and cites several different legal cases. It states that AEP's understands that is the legislation is passed, they will have to go back to doing business the way it was. Law Director Rasmussen replied he is uncertain if that is what they believe or not. All he knows is that this issue cannot be resolved here without the parties agreeing to resolve that issue. If they cannot resolve the issue, it will go to the PUCO. Councilman Wobser replied that is what Council has wanted all along. A year ago, what Council wanted was to stay out of the middle of it, to give them equal standing in front of the PUCO, and let the PUCO take care of it. Law Director Rasmussen replied that was his position a year and a half ago. He was and is not going to prepare language and represent HWE. They presented the language and Council voted it down. Council sent a letter and told them to play nice, then Council thought they were not playing nice, so Council decided to bring the legislation back, and then wrote a letter which is where we at now. Councilman Wobser agreed and added that his opinion is that they are not playing fairly and are not doing what Council requested of them. It is unfortunate that someone from AEP decided not to show up tonight to answer some questions on an issue that is an important issue to this community. He has heard enough on this and when looking at the ability for HWE to recover their stranded costs. If AEP continues to move forward and pick up the larger loads leaving HWE with stranded costs that they will eventually have to pass back on to their commercial and residential customers, he does not think it is the right way to do things for our city and/or our citizens.

Councilman Russel noted that Mr. Walton stated earlier that this ordinance enables HWE to continue to serve the City. He asked if the ordinance does not pass, if HWE will no longer serve the City which would seem like a strong statement. Mr. Walton replied that if the ordinance does not pass, two (2) things could happen: AEP will continue to cherry-pick the large loads and HWE cannot stop them which will create the stranded investment he previously talked about. The other is if AEP takes a load, HWE would not have the language and ability to take it to the PUCO to get a ruling or recommendation from the Administrative Judge to the Commissioner with the Commissioner making the final ruling based on the recommendation from the Administrative Judge. Councilman Russel asked if that is the ruling of the certified territories from the Electric Suppliers Act. Mr. Walton replied that is correct. Councilman Russel asked if without it if HWE has an avenue to go to the PUCO. Mr. Walton replied they would not. Councilman Russel noted that he is not an expert on the Certified Territories Suppliers Act and has not studied how HWE can recover stranded costs, so he is not comfortable in doing anything and is what he thought the PUCO is for. A couple of weeks ago, Mr. Walton asked for a letter from President Slough and said that if City Council passes it, they will never hear from Mr. Walton again. That was all Mr. Walton needed. Now, this week, it has changed to him needing the legislation and the letter. In order for Councilman Russel to vote in favor of the legislation, he would need to have more knowledge on the Certified Territories Suppliers Act and how it affects not only Hancock County, but also how it affects AEP, existing customers, as well as customers in the future, so he thinks this needs to go to a Committee of the Whole meeting. He asked Mr. Walton if he thinks there is more that City Council needs to hear on this. Mr. Walton replied he has given everything possible about the Home Rule which allows a municipality the ability to grant franchises. There is no impact on the language to AEP if they go back and serve like they did for the past thirty (30) years. All the language that they added into the franchise stipulated that HWE would be allowed to, based on City Council's approval, operate within its service territory. They cannot go outside of that and impact AEP's territory. If a commercial business comes to Findlay into their service area, under the Certified Territorial Act, HWE cannot touch it, so there is no impact on AEP. All that it would impact AEP is that they could no longer serve loads in HWE's service territory. If that were to happen, it gives HWE the standing at the Commission to be able to make the complaint to state that it is wrong because it would be in their franchise that AEP is serving in their Certified Territory. In another words, they went over the line. It keeps City Council completely out of it moving forward. There is no impact to AEP if City Council agrees to allow HWE to continue to serve in their territory like they have for the past thirty (30) years.

Councilman Shindledecker requested to go back to Mr. Walton's earlier statement about not being in on the ground floor through the Economic Development Department of the Alliance. He too is uncomfortable with this for two (2) reasons and thinks a Committee of the Whole meeting is needed to involve HWE and AEP. If HWE can resolve their concerns with the Economic Development Department of the Alliance, they have accomplished what they said they needed in order to have the ability to compete with them on rates, etc. He moved to table this legislation and a Committee of the Whole meeting be scheduled to involve AEP, HWE, and a representative from the Economic Development of the Alliance. Mr. Walton asked if he could reply to that. Council President Pro-Tem Monday replied he cannot since a motion is on the floor. Councilwoman Frische raised her hand to which Council President Pro-Tem Monday asked if she was seconding the motion. Councilwoman Frische replied she thought she already had a motion on the floor when she made the motion to adopt the ordinance. Council President Pro-Tem Monday replied a motion to table proceeds any motion on the floor. The motion was seconded by Councilman Hellmann. Council President Pro-Tem Monday noted that a separate motion for a Committee of the Whole meeting is needed if Council decides to have one. Councilman Shindledecker withdrew his motion to table this ordinance. Council President Pro-Tem Monday noted that no discussion is allowed when a motion to table is made.

Councilman Wobser noted that Council President Pro-Tem Monday changed the motion right there. While he understands why Council is not allowed to have discussion now, at the same time, he cannot change the motion halfway through the conversation.

Councilman Shindledecker pointed out that he withdrew his motion.

Discussion:

Councilwoman Frische noted that a Committee of the Whole meeting is not needed since there has already been a Committee of the Whole meeting, and that they have met with HWE and AEP one-on-one. If there is confusion on not understanding anything over the last year, she asked if Council could go into recess and pull the minutes and/or video from May of last year when HWE and AEP were here when AEP said on the record that the request that HWE made would not hurt them. It would only not allow them to cherry-pick. If that is allowable, she will make that motion instead of having another Committee of the Whole. Council President Pro-Tem Monday asked Councilwoman Frische to repeat her motion. Councilwoman Frische replied that she is asking to take a recess and watch the video of HWE and AEP sitting here in Council a year ago stating both sides of their story which is what got them to the point of getting the letter sent last year telling both parties to play nice or Council would re-address the issue. Councilman Watson asked to repeat what the motion was again. Councilwoman Frische asked that Council go into recess to watch the Council meeting. Motion died for lack of a second.

Councilman Shindledecker moved to table the Ordinance, seconded by Councilman Harrington. Ayes: Monday, Russel, Shindledecker, Harrington, Hellmann. Nays: Niemeyer, Watson, Wobser, Frische. Council President Pro-Tem Monday asked the Law Director if six (6) votes is the majority, then the motion is defeated. Law Director Rasmussen replied that is correct. Motion defeated.

Discussion:

Councilman Watson pointed out that to those who are watching, it appears as though Council is talking in circles and have been talking about this for a long time, but one of the things that has bothered him is that while he appreciates HWE coming to Council to discuss this and that it is an important issue for the community, but there has been little to no input from AEP, which speaks volumes. He asked why they would care. The previous motion a year to a year and a half ago died. For whatever reason, HWE did not have the support of the Ordinance, so Council voted it down and sent a letter. That reminds him of his kids in that if he were to tell them to stop doing something and they do it again and he tells them to stop but they do it again. It bothers him that Council is just a paper tiger of some kind. Council has no teeth unless this Ordinance is passed. AEP will continue to do the same thing over and over again. He supports the legislation.

Councilwoman Frische noted that the Law Director started communicating with AEP this last week (email was from the 5th – Tim Mayle from the Economic Development provided it to her) and asked why he was communicating with AEP and what he was trying to figure out and if he got his answers. She asked if the Law Director feels changing the Franchise Agreement is what should be done or what is a better way for Council to say that they do not want to put the City in the middle. She asked if that could be done as a resolution and be voted on, or if this Ordinance is passed if it will take care of it because the Law Director. She is trying to figure out what Economic Development wants and what the Law Director wants. Law Director Rasmussen replied it is not important what he wants. He was not in communications with them as he was on vacation. He returned to the office on Monday. He had a message to call Tim Wells at AEP who wanted to know the status of it to which he replied he does not know. When he reviewed the last meeting minutes, he noticed that it was given a second reading while he was gone on vacation and that it was up for a third reading tonight, so he advised him of such. He asked him if someone from AEP would be here tonight to which he replied he did not believe they could get anyone here. Mr. Wells sent him a copy of the 2000 cite for the case (not of the transcript or the case) that talks about Home Rule Authority. He will not represent HWE and does not represent them. Mr. Hollister prepared the language which was the language that HWE wanted, not him. It is before City Council for the second time now. It is not important what he thinks. He does not have a vote. He is not Council. He does not understand where Council is going with this. Councilwoman Frische replied that as a Parliamentarian and as Council's Law Director, she is not asking him to represent HWE. She is asking him to represent Council and the community, be it the City of Findlay. Law Director Rasmussen replied she is asking him about the language when he did not draw the language. It is the language that they wanted. It is the language they think will get them to be successful at the PUCO, so it is their deal. It is not illegal language. Councilwoman Frische asked if this language for both commercial and residential citizens in the City of Findlay gives them protection of safety to know that they will not have stranded infrastructure or if different legislation is needed. Law Director Rasmussen replied this legislation is not going to take care of it if AEP still does what they are doing and HWE is doing what they are doing until they go to the PUCO and get a ruling on it. That has been his position for over a year now, and he does not know why she would think it would change. They are the ones who take care of these issues, not the City of Findlay. Councilwoman Frische replied that we write the Franchise Agreement.

Councilman Niemeyer moved to vote on this in favor of HWE, leave it up to the PUCO, seconded by Councilwoman Frische.

Discussion:

Councilman Wobser asked if Councilman Monday/President Pro-Tem counts in this situation. Council President Pro-Tem Monday replied yes. He is a Councilmember conducting the meeting in the absence of the Council President. He is not the President of Council. So, he still has a vote. He can still discuss issues and can make motions, but has not done that so far tonight. With Councilman Klein absent, there will be nine (9) votes cast tonight.

Ayes: Niemeyer, Watson, Wobser, Frische, Monday
Nays: Russel, Shindledecker, Harrington, Hellmann

Motion denied. Six (6) votes in favor are needed to pass an ordinance.

Discussion:

Councilman Shindledecker pointed out that he very reluctantly voted nay. He has talked with both HWE customers and employee within the last couple of days and told them he was leaning in their direction and still feels that way. He very reluctantly voted nay because what Mr. Walton said about the Alliance was very significant to him and felt it was important from the Economic Development Department of the Alliance. Council President Pro-Tem Monday interrupted stating that this conversation needs to be addressed during Old Business. Council is in between Ordinances and there is not to be discussion after it has been decided. He asked him to hold his comments until then. Councilman Shindledecker replied he would.

ORDINANCE NO. 2017-059 (*Downtown Design Review Board*) requires three (3) readings. Public hearing on 8/15/17.

**tabled after 3rd reading
on 7/5/17**

AN ORDINANCE ENACTING NEW CHAPTER 1138 OF THE CODIFIED ORDINANCES OF THE CITY OF FINDLAY, OHIO, ENTITLED DESIGN REVIEW REGULATIONS ORDINANCE FOR THE CITY OF FINDLAY, OHIO.

Councilman Harrington moved to adopt the Ordinance, seconded by Councilman Russel.

Discussion:

Councilman Russel moved to table the Ordinance until after the public hearing on August 15, 2017, seconded by Councilman Wobser. Ayes: Shindledecker, Watson, Wobser, Frische, Harrington, Hellmann, Monday, Niemeyer, Russel. The Ordinance is tabled.

ORDINANCE NO. 2017-065 (*Ashland Business Park Phase II cul-de-sac final plat/ROW*) requires three (3) readings

second reading

AN ORDINANCE ACCEPTING THE CUL-DE-SAC RIGHT-OF-WAY DEDICATION AS SHOWN ON THE ASHLAND BUSINESS PARK PHASE II RIGHT-OF-WAY DEDICATION PLAT, AND DECLARING AN EMERGENCY.

Second reading of the Ordinance.

ORDINANCE NO. 2017-069 (*Sandusky St Resurfacing (HAN SR 330/568 0.20/0.23, PID #76823)*) requires three (3) readings

first reading

AN ORDINANCE APPROPRIATING AND TRANSERRING FUNDS AND DECLARING AN EMERGENCY.

First reading of the Ordinance.

ORDINANCE NO. 2017-070 (*3rd qtr appropriations*) requires three (3) readings

first reading adopted

AN ORDINANCE AUTHORIZING THE SERVICE DIRECTOR AND THE SAFETY DIRECTOR OF THE CITY OF FINDLAY, OHIO, TO ADVERTISE FOR BIDS WHERE REQUIRED AND ENTER INTO A CONTRACT OR CONTRACTS FOR CONSTRUCTION OF VARIOUS PROJECTS IN ACCORDINANCE WITH THE 2017 DEPARTMENT EQUIPMENT LIST WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT A, APPROPRIATING AND TRANSFERRING FUNDS FOR SAID CAPITAL EXPENDITURES, AND DECLARING AN EMERGENCY.

Councilman Russel moved to suspend the statutory rules and give the Ordinance its second and third readings, seconded by Councilman Wobser. Ayes: Watson, Wobser, Frische, Harrington, Hellmann, Monday, Niemeyer, Russel, Shindledecker. The Ordinance received its second and third readings. Councilman Harrington moved to adopt the Ordinance, seconded by Councilman Hellmann. Ayes: Wobser, Frische, Harrington, Hellmann, Monday, Niemeyer, Russel, Shindledecker, Watson. The Ordinance was declared adopted and is recorded in Ordinance volume XX, Page 2017-070 and is hereby made a part of the record.

ORDINANCE NO. 2017-071 (*Spring Lake 1st Addition final plat/ROW*) requires three (3) readings

first reading

AN ORDINANCE ACCEPTING THE STREET RIGHT-OF-WAY DEDICATION AS SHOWN ON THE SPRING LAKE FIRST ADDITION RIGHT-OF-WAY DEDICATION PLAT, AND DECLARING AN EMERGENCY.

First reading of the Ordinance.

ORDINANCE NO. 2017-072 (*Hamlet Protein donation to FFD smoke detector program*) requires three (3) readings

first reading adopted

AN ORDINANCE APPROPRIATING FUNDS AND DECLARING AN EMERGENCY.

Councilman Watson moved to suspend the statutory rules and give the Ordinance its second and third readings, seconded by Councilman Niemeyer. Ayes: Frische, Harrington, Hellmann, Monday, Niemeyer, Russel, Shindledecker, Watson, Wobser. The Ordinance received its second and third readings. Councilman Hellmann moved to adopt the Ordinance, seconded by Councilman Harrington. Ayes: Harrington, Hellmann, Monday, Niemeyer, Russel, Shindledecker, Watson, Wobser, Frische. The Ordinance was declared adopted and is recorded in Ordinance volume XX, Page 2017-072 and is hereby made a part of the record.

UNFINISHED BUSINESS: **OLD BUSINESS**

Councilwoman Frische noted that earlier, Council voted on a Resolution that she voted in favor of, but meant to vote against it. She asked if she can amend her vote for Resolution No. 015-2017 changing it from aye to nay. Council President Pro-Tem Monday asked the Law Director if that is allowed. Law Director Rasmussen replied it is if there is no objection from Council. Council President Pro-Tem Monday asked Council if there is any objection. None given. Councilwoman Frische's vote on Resolution No. 015-2017 is changed from aye to nay.

Councilman Russel noted that during the June 20, 2017 City Council meeting there was a letter submitted from Council President Slough read into the record about the Franchise Agreement with HWE and the City of Findlay. He asked what it takes to get the letter officially endorsed by Council and sent to the PUCO. Councilman Monday replied a motion and a second. Law Director Rasmussen confirmed that is correct. Councilman Russel moved to send the letter from Council President Slough that was in the June 20, 2017 City Council packet concerning the Franchise Agreement with the City of Findlay and HWE be adopted by Council, seconded by Councilman Shindledecker.

Discussion:

Councilwoman Frische asked if the letter will be turned into a resolution or ordinance that Council will vote on. The Law Director replied it does not mean anything unless it is made into legislation. Councilman Monday replied the motion is just to authorize the mailing of it to the PUCO. Councilman Russel replied that is the motion at the present time. Councilman Russel noted that this letter was created at Mr. Walton's request and asked how this should get to the PUCO in a proper manner that shows the support of Council and what is Council's desire. Law Director Rasmussen replied it needs to be adopted either by ordinance or resolution or adopted by a voice vote registered in the minutes of the meeting. Councilman Russel then asked if it has to be resolution. Law Director Rasmussen replied it does not have to be. There are a lot of things Council does by resolution that could be done by a motion. It is written that way. It is supported and approved by an act of Council. Councilman Russel asked that the letter be read into the record.

Councilwoman Frische asked if the letter would have to be redone every two (2) years as Council terms change. Law Director Rasmussen replied even if Council amended it by resolution, it would not have to be redone every Council term. Council has passed it and it is still on the record. Councilwoman Frische then asked if it would show the City's intent even though it is not legislation. Law Director Rasmussen replied that is correct. Councilman Shindledecker added that the letter would reflect the vote.

Councilman Niemeyer asked why Council would send a letter if they voted on the ordinance. He suggested revoting on the ordinance and pass it. The letter will do nothing. Mr. Walton already had the letter. Councilwoman Frische replied she will second that and will echo his statement. Council President Pro-Tem Monday asked what Councilwoman Frische is seconding as Councilman Niemeyer is just asking a question that he does not have an answer to. Councilman Niemeyer noted that he just mentioned what the letter is going to do. Council President Pro-Tem Monday replied he is unsure it will do anything. Councilman Niemeyer noted that all Council needs to do is pass the ordinance before us tonight.

Councilman Wobser feels the ordinance will relay some of the fears of how some voted going forward. He moved to amend the letter to have it signed by all Councilmembers, seconded by Councilman Russel.

Discussion:

Councilman Harrington asked how it would affect Councilman Wobser's proposal if a member of Council does not want to sign the letter or is not in attendance tonight. Law Director Rasmussen replied that no one is required to sign it. If it was a unanimous vote, it would show that at least nine (9) Councilmembers agree with it. The issue would be that the majority of Council would not be voting either way tonight.

Councilman Niemeyer re-stated that the letter does not mean anything.

Council President Pro-Tem Monday reminded Council that the motion is to amend the letter to ask Councilmembers to sign it if they wish to do so. Councilman Wobser agreed, but feels all Councilmembers should be forced to sign it, even though he realizes that cannot be done.

Councilwoman Frische asked what the difference is with legislation versus a letter and asked if the letter could be written so that not everyone has to sign it. She asked if Councilman Russel were to go before the PUCO to speak on behalf of HWE, if it would mean anything. She asked if the legislation is not passed if it means anything. She asked the Law Director to explain what the differences are between the legislation and the letter. She asked Council if they are really voting on what is best for the community by doing the letter and not doing the ordinance. Law Director replied whatever is sent within the letter is what the PUCO is going to see. If there are enough votes to pass legislation. It would require a majority of the entire board even if they are short members, six (6) votes in favor are needed to pass something which is why this did not happen tonight. That is the State law. The letter is going to say what it says which is a little bit different than what the ordinance says that has the language that HWE proposed.

Council President Pro-Tem Monday reminded Council that there is a motion to amend the letter that is about to be read by the Council Clerk. The Council Clerk read the letter in its entirety:

Thank you for your willingness to meet with Council several times over the last few months. Council values both AEP and HWE as electric utilities both inside and outside the city limits. Franchise agreements are necessary agreements to have in place to service our community's electric needs. We appreciate both utilities competitive rates and customer satisfaction that was shared by your customers.

Our goal for the community is to make sure the customer is able to get the best rates and service available. We feel that the PUCO is where changes and negotiations need to continue to take place because they manage the territorial lines. Because both utilities are good community partners, City Council does not want to decide who gets a customer if a piece of territory is acquired outside the standard process of the PUCO and a case is taken to the commission for final decision.

Please let this letter be a reminder that we strongly encourage both utilities to follow the long standing process of working out swaps through the PUCO and not using the overlap in territories as a way to acquire customers outside the standard process. Although we did not vote to change the HWE franchise agreement at this time and if the standard process we have followed for the last 30 years does not continue, we are open to readdressing this matter.

Again, thank you for the service you provide to Findlay and Hancock County.

Councilman Niemeyer noted that half way through the letter, it stated that City Council does not want to make a decision, so he would like to reconsider Ordinance No. 2017-056. Council President Pro-Tem Monday asked if an ordinance can be reconsidered if it has already been voted down. Councilman Niemeyer asked why Council is going to sign a letter. Council President Pro-Tem Monday replied that the letter is a different matter than the ordinance. The letter was introduced at the last Council meeting. Councilman Niemeyer noted that somewhere it states that City Council does not want to make a decision. Council President Pro-Tem Monday asked if the defeated ordinance can be reconsidered. Law Director Rasmussen replied Council can move to reconsider it, but would be more appropriately be done in New Business.

Councilwoman Frische noted that the letter is from a year ago. If Council is going to certify a letter to send out, it needs to be updated. Council President Pro-Tem Monday replied the letter was dated last Council meeting. Councilwoman Frische disagreed saying the date was updated on it, but it is the same letter from a year ago. Council President Pro-Tem Monday replied the letter was dated June 20, 2017. Councilwoman Frische replied it is the same letter. Council President Pro-Tem Monday replied it is the same letter, but dated June 20, 2017. Councilwoman Frische asked if some of the verblage in the letter can be amended if Council is going to certify it. Council President Pro-Tem Monday replied Council can make a motion to do so. The letter is date June 20, 2017. Councilman Niemeyer disagreed stating the letter is dated May 15, 2016. Councilwoman Frische noted that it is the exact same letter just with a date change. Councilman Monday replied that it may be the same letter, but the date of the letter is June 20, 2017.

Councilwoman Frische moved to amend the letter to be more of a follow-up that would state after the letter that was sent May 2016 stating that City Council wants HWE and AEP to play nice and follow the practice of the last thirty (30) years. The warning needs to be taken out and needs to state that City Council do not want to encourage competition on the line. Seconded by Councilman Wobser.

Discussion:

Councilman Russel asked for a point of order. He asked if he has to consent to have his initial motion amended. Council President Pro-Tem Monday replied anyone can make a motion to any motion.

Councilman Wobser asked Mr. Walton if this is time sensitive. If Council found the time to have a quick Committee of the Whole meeting between now and the next City Council meeting, if it would allow HWE the ability to do what they need to do. Mr. Walton replied it is not time sensitive as long as they do not lose another commercial load in the meantime. Councilman Wobser will request to revoke on this legislation in New Business and go back to the original motions to table until a Committee of the Whole meeting can be conducted and give some of the other members the ability to ask some questions that they would like to have answered that could possibly change their vote. Council President Pro-Tem Monday noted that Council is only discussing the amendment to this letter right now. Council President Pro-Tem Monday reminded Council that the motion to amend the letter has been made to state the exact language that has been suggested by Councilwoman Frische. Councilman Harrington asked if a letter for City Councilmember signatures could be presented at the next City Council meeting. He is not going to sign a letter that is so generic at this point in time. He wants to see it in its final form before he will sign it.

Councilman Russel withdrew his motion on the letter, seconded by Councilman Wobser. Council President Pro-Tem Monday clarified that there is no letter. Council officially voted on it, so there is no amendment that needs to be done. The amendment will be defeated because the letter does not exist.

Discussion:

Councilwoman Frische asked if Council needs to table anything since they voted on it, or if they can bring back the ordinance a third time after a Committee of the Whole meeting and start it all over again. She asked what the point of tabling it and asked if Council can bring it back at any time. Law Director Rasmussen replied at this point, it dies. Councilwoman Frische asked if can be brought back to life. Law Director Rasmussen replied Council can at a later meeting move to reconsider something further which means to bring it back up. It does not have to be done at this meeting. It can be done at the next meeting. Councilwoman Frische asked if they can bring back the same ordinance or something different. Law Director Rasmussen replied the same ordinance to reconsider it again. Councilwoman Frische asked if Council can make the request to reconsider the ordinance yet again under New Business tonight and then refer it to committee. Law Director Rasmussen asked if she wants to ask again for it to be voted on again. Councilwoman Frische replied ask for a new ordinance number and do it again and send it to committee. Council President Pro-Tem Monday asked if she wants to reintroduce a new ordinance with the same language that Council just defeated. Councilwoman Frische replied that is correct and then send it to the Committee of the Whole. Council President Pro-Tem Monday replied two (2) Councilmembers can ask for an ordinance. Councilman Harrington added that it would have to go through three (3) readings. Councilwoman Frische replied it would not have to if Council suspends the statutory rules. Councilman Shindledecker noted that he would second that. Council President Pro-Tem Monday asked what the motion is. Councilwoman Frische replied that under New Business, she is going to ask for the ordinance to be brought back in as a new piece of legislation with a new legislation ordinance number and then send it to committee. Councilman Niemeyer suggested just voting on it again. Councilwoman Frische replied Council does not want to vote on it tonight and only discuss it. Law Director Rasmussen pointed out that it is not a motion, so there is no discussion.

Council President Pro-Tem Monday asked Council to keep order and not be talking amongst themselves. If anyone has something to say, they should raise their hand and he will acknowledge them. Councilwoman Frische pointed out that Council President Pro-Tem Monday just asked what Councilman Shindledecker seconded and she responded that Council can suspend the statutory rules to give the new ordinance it second and third readings so it does not have to go through three (3) readings at three (3) separate City Council meetings.

NEW BUSINESS

Councilman Niemeyer moved to revoke on Ordinance No. 2017-056, seconded by Councilman Watson.

Discussion:

Councilman Wobser appreciates what Councilmembers are trying to do on the revoke, but has a feeling that will not change anyone's minds until they have the opportunity to get additional information in which they feel that a Council of the Whole meeting is needed to do that. It would be great if someone would back up that assumption. Councilman Harrington confirmed Councilman Wobser's assumption and supports it. Council President Pro-Tem Monday informed Council that the discussion is the motion to reconsider the vote that was defeated.

Councilman Shindledecker noted that it was not his intention to hold Council hostage over this. Regardless if a Committee of the Whole meeting is held to discuss this or not, he will vote in favor of this, but he sincerely and passionately believe Council needs to hear from the Economic Development Department of the Alliance on what their position is. Regardless of what they would say, he would vote in favor of the legislation.

Councilwoman Frische pointed out that she asked Tim Mayle for a letter from the Economic Development supporting the community and not encouraging competition. Economic Development does not want to get in the middle because they do not feel it is their job. She is more than happy to have them come to Council, but they are not the City. It is a separate issue. Council President Pro-Tem Monday reminded Council that the motion is to reconsider the vote and asked if there is any further discussion on that motion.

Councilman Wobser asked Councilman Niemeyer to reconsider his motion in lieu of withdrawing it and making it a motion for a Council of the Whole meeting to discuss this. He asked if Council can annul the vote that they just had or is it there for eternity because Council is going to reconsider it on a new ordinance. Law Director Rasmussen replied unless Council wants to reconsider it. Councilman Wobser asked if Council can reconsider it at a later date. Law Director Rasmussen replied that is correct.

Councilman Niemeyer thinks Council should vote and not be in the middle, protect HWE from cherry-picking as it is known they will do it again. Council President Pro-Tem Monday reminded Council that the motion is to reconsider the vote of Ordinance No. 2017-056. Ayes: Frische, Niemeyer, Watson, Wobser. Nays: Harrington, Hellmann, Monday, Russel, Shindledecker. Motion does not carry.

Councilwoman Frische moved to re-instate legislation as a new ordinance number for Ordinance No. 2017-056 be re-entered at the next City Council meeting under a new ordinance number and ask for a Committee of the Whole meeting to start the process again. Council President Pro-Tem Monday noted that it only takes two (2) Councilmembers to request legislation. Councilwoman Frische's motion is the one of two and asked if anyone else wants to second the motion. Seconded by Councilman Watson. Council President Pro-Tem Monday noted that legislation has been asked for and can now ask for a Committee of the Whole meeting. Two (2) Councilmembers can request legislation, so since that has already happened, it does not need to be voted on.

Discussion:

Councilman Harrington was going to make a suggestion before Councilwoman Frische's motion. He was going to suggest, not a motion, for a recount to have a Committee of the Whole meeting prior to any new ordinance number and that the following be invited to that COW meeting: someone from AEP, HWE and their counsel, and the Alliance. If any of them choose to attend or choose not attend, that is up to them. If they want to remain neutral, that is their choice. If AEP decides they do not want to be in the middle and leave it to the PUCO, that is their choice. HWE has been very vocal, and he commends them for that. Further discussion needs to be made prior to a revote. Until a Committee of the Whole meeting is held for all sides to have the opportunity for their side of the story, he thinks the outcome will be the same. He is open to changing his vote if he feels that certain things can be explained. He thinks not only has HWE done a good job, but he would also like to hear AEP's side of the story. Some accusations were made against the Alliance tonight that were very troublesome, so he would also like to hear their response. Council President Pro-Tem Monday pointed out that when Councilman Harrington started out, he noted that it was just a suggestion and not a motion. Councilman Wobser appreciates Councilman Harrington's suggestion and wants to accomplish the same thing by getting the legislation started. Worse case is that it goes three (3) more readings, so there is plenty of time to have a Committee of the Whole meeting. He moved to have a Committee of the Whole meeting to discuss it further. Seconded by Councilman Russel. Council President Pro-Tem asked for suggestions on when. He suggested July 25, 2017 and asked if it would give enough time for everyone to be notified and attend. Councilman Russel replied he will be out of town then. Councilman Shindledecker replied he will also be out of town. Councilwoman Frische asked if it could be held before the next City Council meeting. Council President Pro-Tem Monday replied the legislation can have it first reading whenever its prepared. Unless the statutory rules are suspended, it will take six (6) weeks to pass or deny, so there is six (6) weeks to have the Committee of the Whole meeting. Councilman Wobser asked for Wednesday, July 19, 2017, the day after the next City Council meeting. Mr. Walton noted that he will be on vacation from the 13th through the 28th. Councilman Niemeyer asked how long Council is going to kick this can down the road. Council President Pro-Tem Monday noted that the motion is to have a Committee of the Whole. Acting Mayor Slough suggested July 11, 2017 at 5:00pm. Council President Pro-Tem Monday asked if all the entities cannot attend, if Council wants to change the date and/or time. Councilman Hellmann replied they will want to change it if that is the case. They do not want to have two (2) Committee of the Whole meetings. Councilman Russel pointed out that even if either of the entities cannot find someone to attend the meeting with this much notice, they should still have the meeting. Councilman Wobser agreed.

Council President Pro-Tem Monday: **COMMITTEE OF THE WHOLE** meeting on July 11, 2017 at 5:00pm in the third floor conference room of the Municipal Building (CR1).
agenda: HWE Franchise Agreement (new ordinance)

Councilman Hellmann asked if there would be any merit to inviting the PUCO to attend. Council President Pro-Tem Monday replied Council can invite anyone they want. Councilman Wobser agreed that if they would come and answer questions, that would be helpful. Council President Pro-Tem Monday asked the Law Director if he can invite them. Law Director Rasmussen replied they will not come here as a Hearing Officer and give an opinion or even discuss it. They will be the ones to hear the case. Councilman Hellmann asked if there would be a staff person there that understands the electric utilities that could attend. Councilwoman Frische added that she tried calling the PUCO and could not find anyone who would come. Law Director Rasmussen added that they will not speak for the PUCO. Assuming that HWE and AEP have attorneys, they can discuss with Council the holdings and cases, etc., but he cannot see any attorney at the PUCO presenting a case or ruling on a case coming up here and discussing it ahead of time. He does not know who that person would be.

Councilman Harrington asked if a letter could be sent to invite them and see if there is any kind of response and report back what their response is. He agrees that he thinks it will fall on deaf ears down there. Councilman Wobser replied he will look it up and send a letter and will call someone at the PUCO and will let Council know who he contacted.

Councilwoman Frische asked if a County Commissioner could be invited since Council is representing City and County on this issue. The County weighs in. They do not do franchise, but HWE is City and County. Council President Pro-Tem Monday replied it is an open meeting, so anyone can come.

Councilman Harrington made a motion to excuse the absence of Councilman Klein. Seconded by Councilman Russel. All were in favor. Filed.

President Pro-Tem Monday adjourned Council at 9:40pm.


CLERK OF COUNCIL


PRESIDENT OF COUNCIL PRO-TEM