

# FINDLAY CITY COUNCIL MINUTES

**REGULAR SESSION**

**APRIL 21, 2015**

**COUNCIL CHAMBERS**

**PRESENT:** Frische, Harrington, Klein, Monday, Nichols, Niemeier, Russel, Shindledecker, Spence, VanDyne

**ABSENT:** none.

President J Slough opened the meeting with the Pledge of Allegiance and a moment of silent prayer.

## **MINUTES:**

- Councilwoman Spence moved to accept the April 7, 2015 Regular Session City Council meeting minutes as written. 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.

Boy Scout Troop 308 (St. Marks) and 322 (Churches of God) are in attendance. They are working on their communication badges. Each Boy Scout introduced themselves.

## **WRITTEN COMMUNICATIONS:**

**Department of the Army, Buffalo District, Corps of Engineers, Toledo Project Office Project Manager Michael Pniewski**

The Draft Detailed Project Report and Environmental Impact Statement (DPR/EIS) for the Blanchard River Watershed Study is available for review and comment. The Buffalo District of the U.S. Army Corps of Engineers (USACE) prepared the DPR/EIS to develop and analyze flood risk management alternatives in the Blanchard River watershed, develop a recommended flood risk management plan, and to identify impacts of the recommended plan on the affected environment.

The project area is situated in Hancock County, Ohio within the Blanchard River watershed, primarily in the vicinity of the City of Findlay. In addition to the "No Action" alternative, eight flood risk management alternatives are considered in the DPR/EIS. Components of the recommended plan include the following:

- 1) a 9.4-mile diversion channel which diverts flow from Eagle Creek, south of the City of Findlay, to a point in the Blanchard River downstream of the City of Findlay.
- 2) An approximately 1.5-mile levee located on the west bank of the Blanchard River, extending from the Findlay Reservoir to State Route 15. The purpose of the levee is to interrupt crossflow between the Blanchard River and Lye Creek during low frequency flood events.

The DPR/EIS is not a decision document. Instead, its purpose is to inform the public and interested parties of impacts associated with implementing the recommended plan. This DPR/EIS also provides information to other regulatory agencies for use in their decision making process for other permits required for implementation for the project.

The DPR/EIS is available for review online at: <http://bit.ly/lrb-comment>

USACE is soliciting written comments on the DPR/EIS. The forty-five (45) day public comment period for the DPR/EIS will begin on April 10, 2015 and end on May 26, 2015. A CD containing the DPR/EIS is available upon request. Please contact the Buffalo District USACE at 1-800-833-6390 (option 3) to request a CD.

USACE will host a public meeting on April 22 from 5-9:30pm at the Findlay High School, 1200 Broad Avenue, Findlay, Ohio. The meeting will include a poster session from 5:00pm to 6:00pm, presentation from 6:00pm to 6:30pm, followed by a question and answer session. The meeting will provide an overview of the Project, and take public comments on the recommended plan and DPR/EIS. In addition, staff from the Buffalo District will be available on April 23 from 9am-12pm and from 2pm-5pm to answer questions about the project and accept public comments at the Hancock County Engineer's Office, 1900 Lima Avenue, Findlay, Ohio.

Comments on the DPR/EIS should be as specific as possible. It would be helpful if comments referred to chapters and/or sections of the DPR/EIS. Comments may address the adequacy of specific analyses in the DPR/EIS and the merits of the alternatives formulated and discussed in the document (refer to Council on Environmental Quality regulations at 40 Code of Federal Regulations (CFR) Part 1503.3).

For further information, please contact the undersigned at [michael.d.pniewski@usace.army.mil](mailto:michael.d.pniewski@usace.army.mil) or via telephone at (419) 726-9121.

## **ORAL COMMUNICATIONS:** -

**Tom Ross/Kent Hilty (Heartland Board of Realtors) – water shut off policy**

Mr. Ross, President of the Heartland Board of Realtors, introduced Vice President of the Heartland Board of Realtors (HBR) Kent Hilty. Mr. Hilty handed out a letter from the Heartland Board of Realtors and requested that it be a part of the record. HBR fully supports the City of Findlay in its efforts to promote a cleaner and safer community. Addressing health and safety issues in our community is a critical step to maintaining property values. Along with this, HBR, as well as all member boards of the National Association of Realtors have a responsibility to support and protect the rights of private property owners. In doing so, they voiced their concerns on the water turnoff policy rule. The board feels the policy raises fundamental due process concerns for property owners affected by the rule. A lack of clarity as to who may apply the rule to a property, as well as the lack of guidance governing how the rules should be applied is likely to result in arbitrary and inconsistent application of the penalty. This raises the question of how property owners' rights are affected by termination of water service and whether the City satisfies procedural due process by providing a meaningful opportunity for an alleged violator to contest the application of the water shut off penalty. The board would like to ask if the Law Director has provided written opinion as to whether the rule adequately satisfies affected

property owners substantive and procedural due process rights under Federal and Ohio Constitutions. If not, the Board requests that one be provided to the Board. Secondly, the rule attempts to regulate matters that may be outside the scope of authority given to the Service-Safety Director. The Rules and Regulations under the City Water and Wastewater Department states that they are created under authorities through Ohio Revised Code Section 743.01-743.02. Based on the statute, it appears that the Service-Safety Director would have sufficient authority to adopt and enforce rules on termination of services due to non-payment because this rule is necessary for the "safe economical and efficient management of the waterworks system". By contrast, it is unclear how the termination of water service is for non-compliance with the City ordinances referenced under the water shut off policy could reasonably be considered necessary for the safe economical and efficient management of the waterworks. Instead, the rule attempts to compel compliance with City ordinances with threatening the imposition of a penalty for violations. If anything, the turnoff policy interferes with the efficient management of the waterworks by using threats and actual termination of water service as an enforcement mechanism for addressing matters unrelated to the operation of the water system. The Board would like to ask the City if the Law Director has provided a written opinion regarding the Service-Safety Director's authority to adopt and apply the turnoff policy to terminate water service for non-compliance with other City ordinances that concern matters unrelated to the operation of the water system. If not, the Board requests one be provided to them. The Board requests the City remove this rule from enforcement and allow for sufficient dialog with homeowners, property owners, and other private sector representatives to develop a collective rule that satisfies the concerns of all parties. Clarity and certainty regarding how and to whom the rule is applied is required with emphasis on health and safety concessions regarding the City's most vulnerable population (i.e. elderly, disabled, and/or young children). HBR and the City of Findlay share the same desire to promote a cleaner and safer community, however, as written, it appears that this rule is subject to unfair application by terminating water service to parties who are not responsible for the violation (i.e. tenants). HBR would like to emphasize that it is poor public policy to fight zoning and other ordinance violations with relatively minor health and safety implications by intentionally depriving residents of a service that is essential to their health and well-being.

#### **John Bauer – MS4 regulations (Ordinance No. 2015-037)**

City of Findlay Ordinance No. 2015-037 is related to EPA requirements in the MS4 permits that the City has. Other than the IRS, the EPA is just about the most intrusive agency in the Federal Government and one of the most prolific writers of administrative law that is enacted by faceless bureaucrats without even appearing before the elected officials. Ordinance No. 2015-037 is disturbing because of the arbitrary nature of potential enforcement. Regulations like this one and the water shut off rule previously discussed are designed to force compliance. These are necessarily broad to allow the enforcement threat to imply that anyone in Administration that wants to single out this regulation 2015-037 is an example. It is easier to list the events that are not violations than those specific ones that are. 935.06(A)(1) exempts a few things but leaves the broad scope undetermined. Mr. Bauer read the following from Ordinance No. 2015-037:

The City of Findlay or its Authorized Agent, upon proper identification and upon stating the purpose and necessity of an inspection, may enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples, examine or copy any records to determine compliance with this Chapter and the rules adopted under it. The City of Findlay or its Authorized Agent may apply for, and any judge of a court of record may issue, an appropriate search warrant necessary to achieve the purposes of this Chapter if entry is refused or the inspection or investigation is refused, hindered, or thwarted. The City of Findlay or its Authorized Agent shall be permitted to enter and inspect any Facilities subject to this Chapter as often as may be necessary to determine compliance with this regulation.

He would prefer Council stand up to the EPA and refuse to accept the broad language of this rule and instead demand more specific language that cannot be arbitrarily enforced. If all else fails, it is his hopes that the Mayor will take another page from President Obama's playbook and refuse to enforce this flaw.

**PETITIONS:** - none.

#### **REPORTS OF MUNICIPAL OFFICERS AND MUNICIPAL DEPARTMENTS:**

**N.E.A.T. Departmental Activity Report** – March 2015. Filed.

**Board of Zoning Appeals Minutes** – February 12, 2015. Filed.

**Officer/Shareholders Disclosure Form from the Ohio Department of Commerce Division of Liquor Control** for VYC8 LLC located at 2411 Tiffin Avenue, Findlay, Ohio for a D1, D2, D3, and D6 liquor permit. [This requires a vote of Council.](#)

Gregory R. Home, Chief of Police – VYC8 LLC, located at 2411 Tiffin Avenue, Findlay, Ohio. A check of the records shows no criminal record on the following:

Victor Jimenez-Gonzalez

Councilman Harrington moved for no objections be filed. Seconded by Councilman VanDyne. 9 Council members in favor, 1 opposed. Filed.

**Officer/Shareholders Disclosure Form from the Ohio Department of Commerce Division of Liquor Control** for Speedway LLC dba Speedway 5282, located at 752 Trenton Avenue, Findlay, Ohio for a C1 and C2 liquor permit. [This requires a vote of Council.](#)

Gregory R. Home, Chief of Police – Speedway LLC dba Speedway 5282, located at 752 Trenton Avenue, Findlay, Ohio. A check of the records shows no criminal record on the following:

Glenn Plumby  
Anthony Kenney  
Ronald Edmiston  
David Ball

Councilwoman Spence moved for no objections be filed. Seconded by Councilman Harrington. 9 Council members in favor, 1 opposed. Filed.

**Findlay W.O.R.C. Financial Analysis Report – January 1, 2015 through March 31, 2015.** Filed.

**Findlay Fire Department Activities Report – March 2015.**

**Discussion:**

Councilwoman Spence asked when the next testing will be. Mayor Mihalik replied that the Administration is in the process of deliberating this knowing that there are some pending retirements coming up, but also the potential changes in leadership positions (Captains) applying for the Chief position. Filed.

**Findlay City Board of Health minutes – March 18, 2015.** Filed.

**Mayor Lydia Mihalik - monetary donation**

The City of Findlay received sixty dollars (\$60.00) in memory of Shirley Koehler for the purchase of American flags for Main Street. The funds have been deposited in the General Fund. An appropriation is respectfully requested as follows:

FROM: General Fund	\$ 60.00
TO: Mayor's Office #21002000-other	\$ 60.00

Ordinance No. 2015-035 was created.

**Discussion:**

Councilman Harrington noted that Skip Koehler was a neighbor of his for a number of years and a good friend for over thirty (30) or forty (40) years. This is a nice memorial on her behalf. It is his hope to pass this and move it along quickly. Filed.

**City Auditor Jim Staschiak – summary financial reports**

A set of summary financial reports for the prior month follows including:

- Summary of Year-To-Date Information as of March 31, 2015
- Cash & Investments as of March 31, 2015
- Open Projects Report as of March 31, 2015
- Financial Snapshot for General Fund as March 31, 2015

Filed.

**COMMITTEE REPORTS:**

The **PLANNING & ZONING COMMITTEE** to whom was referred a request to rezone 724 North Main Street from C-2 General Commercial to R-2 Single Family Residential.

*We recommend move for approval as requested. Ordinance No. 2015-033 was created.*

Councilman Nichols moved to adopt the committee report. Councilman VanDyne seconded the motion. All were in favor. Filed.

The **PLANNING & ZONING COMMITTEE** to whom was referred a request to rezone 306 West Bigelow Avenue from R-1 Single Family Low Density Residential to O-1 Institutions and Offices.

*We recommend move to approval as requested. Ordinance No. 2015-034 was created.*

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

The **APPROPRIATIONS COMMITTEE** to whom was referred a request from the City Auditor to discuss the City's financial position, as related to debt.

*We met and discussed the issue.*

Councilman Monday moved to adopt the committee report. Councilman Klein seconded the motion. All were in favor. Filed.

The **APPROPRIATIONS COMMITTEE** to whom a request was made to adjust the Police and Fire contributions.

*We recommend an increase from 11.5% to 12.25% as the employee contribution for the Police and Fire. Resolutions No. 011-2015 & 012-2015 were created.*

Councilman Monday moved to adopt the committee report. Councilman Nichols seconded the motion. All were in favor. Filed.

**LEGISLATION:**

**RESOLUTIONS:**

**RESOLUTION NO. 011-2015** (12.25% pick up FPD)

**first reading**

**A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF FINDLAY, OHIO TO COMPLY WITH SECTION 742.31 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.**

First reading of the Resolution.

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF FINDLAY, OHIO TO COMPLY WITH SECTION 742.31 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

First reading of the Resolution.

**ORDINANCES**

**ORDINANCE NO. 2015-025** (YMCA operate Riverside Swimming Pool)

**third reading**

**adopted**

AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR OF THE CITY OF FINDLAY, OHIO, TO ENTER INTO AN AGREEMENT (CONTRACT) WITH THE YMCA TO OPERATE THE RIVERSIDE SWIMMING POOL FACILITY AND ASSOCIATED YMCA PROGRAMS FOR PUBLIC AND RECREATIONAL USE FOR THE CITY OF FINDLAY FOR THE 2015 SEASON, AND DECLARING AN EMERGENCY.

Councilwoman Spence moved to adopt the Ordinance, seconded by Councilman Niemeyer. Ayes: Frische, Harrington, Klein, Monday, Nichols, Niemeyer, Russel, Shindledecker, Spence, VanDyne. The Ordinance was declared adopted and is recorded in Ordinance Volume VV, Page 2015-025 and is hereby made a part of the record.

**ORDINANCE NO. 2015-027** (222 Center St rezone)

**third reading**

**adopted**

AN ORDINANCE AMENDING CHAPTER 1100 ET SEQ OF THE CODIFIED ORDINANCES OF THE CITY OF FINDLAY, OHIO, KNOWN AS THE ZONING CODE BY REZONING THE FOLLOWING DESCRIBED PROPERTY (REFERRED TO AS 222 CENTER STREET REZONE) WHICH PREVIOUSLY WAS ZONED "R-3 SINGLE FAMILY HIGH DENSITY" TO "C-1 LOCAL COMMERCIAL".

Councilman Shindledecker moved to adopt the Ordinance, seconded by Councilman Nichols.

**Discussion:**

Councilman Russel clarified some of Ms. Thompson's (earlier Oral Communications) comments about what C-1 zoning consists of. Conditional use has to be approved by the City Planning Commission. The regular use of the facility would exclude a drive thru unless the City Planning Commission would specifically approve it. It includes: fueling stations, funeral services, bars, nightclubs, sports, and recreational facilities. All of these would have to get further approval. Their permitted uses are professional activities, libraries, arts and antiques shops, bakeries, book stores, business services. C-1 zoning is a restricted type of use. If the building is not in use now, but the traffic is there, the building is probably not causing the traffic. If a daycare were to go in, everyone would show up at one time. He feels this is a good zoning for this property.

Ayes: Harrington, Klein, Monday, Nichols, Niemeyer, Russel, Shindledecker, Spence, VanDyne, Frische. The Ordinance was declared adopted and is recorded in Ordinance Volume VV, Page 2015-027 and is hereby made a part of the record.

**ORDINANCE NO. 2015-028** (YMCA swimming pool expenses)

**second reading**

**adopted**

AN ORDINANCE APPROPRIATING FUNDS AND DECLARING AN EMERGENCY.

Councilwoman Frische moved to suspend the statutory rules and give the Ordinance its third readings. Councilman Russel seconded the motion. Ayes: Klein, Monday, Nichols, Niemeyer, Russel, Shindledecker, Spence, VanDyne, Frische, Harrington. The Ordinance received its third reading. Councilman Nichols moved to adopt the Ordinance, seconded by Councilman Niemeyer.

**Discussion:**

Councilwoman Frische noted that she made the motion to suspend the rules and give the Ordinance its third reading because Council adopted Ordinance No. 2015-025, so in order to enter into a contract, the money needs to be appropriated.

Ayes: Monday, Nichols, Niemeyer, Russel, Shindledecker, Spence, VanDyne, Frische, Harrington, Klein. The Ordinance was declared adopted and is recorded in Ordinance Volume VV, Page 2015-028 and is hereby made a part of the record.

**ORDINANCE NO. 2015-029** (MPC reimbursement)

**second reading**

**adopted during  
OLD BUSINESS**

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF FINDLAY, HANCOCK COUNTY, STATE OF OHIO TO ENTER INTO CONSULTING AGREEMENTS FOR THE DESIGN PHASE OF THE DOWNTOWN REVITALIZATION PROJECT NO. 31942400, APPROPRIATING FUNDS THERETO, AND DECLARING AN EMERGENCY.

**ORDINANCE NO. 2015-033** (724 N Main St rezone)

**first reading**

AN ORDINANCE AMENDING CHAPTER 1100 ET SEQ OF THE CODIFIED ORDINANCES OF THE CITY OF FINDLAY, OHIO, KNOWN AS THE ZONING CODE BY REZONING THE FOLLOWING DESCRIBED PROPERTY (REFERRED TO AS 724 NORTH MAIN STREET REZONE) WHICH PREVIOUSLY WAS ZONED "C-2 GENERAL COMMERCIAL" TO "R-2 SINGLE FAMILY RESIDENTIAL".

First reading of the Ordinance.

**ORDINANCE NO. 2015-034** (306 W Bigelow Ave rezone)

**first reading**

AN ORDINANCE AMENDING CHAPTER 1100 ET SEQ OF THE CODIFIED ORDINANCES OF THE CITY OF FINDLAY, OHIO, KNOWN AS THE ZONING CODE BY REZONING THE FOLLOWING DESCRIBED PROPERTY (REFERRED TO AS 306 WEST BIGELOW AVENUE REZONE) WHICH PREVIOUSLY WAS ZONED "R-1 SINGLE FAMILY LOW DENSITY RESIDENTIAL" TO "O-1 INSTITUTIONS AND OFFICES".

First reading of the Ordinance.

**ORDINANCE NO. 2015-035** (*American flags donation*)

**first reading**

**adopted**

**AN ORDINANCE APPROPRIATING FUNDS AND DECLARING AN EMERGENCY.**

Councilwoman Spence moved to suspend the statutory rules and give the Ordinance its second and third readings. Councilman Shindledecker seconded the motion. Ayes: Nichols, Niemeyer, Russel, Shindledecker, Spence, VanDyne, Frische, Harrington, Klein, Monday. The ordinance was given its second and third readings. Councilman Harrington moved to adopt the Ordinance, seconded by Councilman Klein. Ayes: Niemeyer, Russel, Shindledecker, Spence, VanDyne, Frische, Harrington, Klein, Monday, Nichols. The Ordinance was declared adopted and is recorded in Ordinance Volume VV, Page 2015-035 and is hereby made a part of the record.

**ORDINANCE NO. 2015-036** (*new Section 931.06*)

**first reading**

**AN ORDINANCE ENACTING NEW CODIFIED SECTION 931.06, KNOWN AS THE DEFINITIONS FOR STORM WATER REGULATIONS FOR THE CITY OF FINDLAY, OHIO.**

First reading of the Ordinance.

**ORDINANCE NO. 2015-037** (*new Chapter 935*)

**first reading**

**AN ORDINANCE ENACTING NEW CODIFIED CHAPTER 935 KNOWN AS THE ILLICIT DISCHARGE AND ILLEGAL CONNECTION CONTROL TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) FOR THE CITY OF FINDLAY, OHIO.**

First reading of the Ordinance.

**ORDINANCE NO. 2015-038** (*new Chapter 937*)

**first reading**

**AN ORDINANCE ENACTING NEW CODIFIED CHAPTER 937 KNOWN AS DRAINAGE, EROSION AND SEDIMENT CONTROL FOR THE CITY OF FINDLAY, OHIO.**

First reading of the Ordinance.

## **UNFINISHED BUSINESS**

### **OLD BUSINESS:**

Councilwoman Frische moved to suspend the statutory rules of Council and give Ordinance No. 2015-029 its third reading, seconded by Councilwoman Spence. Councilwoman Frische does not see a reason not to put those funds from Marathon back over to Capital. Ayes: Russel, Shindledecker, Spence, VanDyne, Frische, Harrington, Klein, Monday, Nichols, Niemeyer. The Ordinance received its third reading. Councilwoman Spence moved to adopt the Ordinance, seconded by Councilwoman Frische. Ayes: Shindledecker, Spence, VanDyne, Frische, Harrington, Klein, Monday, Nichols, Niemeyer, Russel. The Ordinance was declared adopted and is recorded in Ordinance Volume VV, Page 2015-029 and is hereby made a part of the record.

### **NEW BUSINESS:** - none.

President J Slough adjourned Council at 8:05pm.

  
CLERK OF COUNCIL

  
PRESIDENT OF COUNCIL