

City of Bay Village

Council Minutes, Committee Session
Dwight A. Clark, President of Council, presiding
Council Chambers.

March 13, 2023
7:00 p.m.

Dwight A. Clark, President of Council, called the meeting to order at 7:00 p.m.

Present: Clark, DeGeorge, Greco, Kelly, Maier, Tadych, Winzig.
Excused: Mayor Koomar

Also Present: Law Director Barbour, Finance Director Mahoney, Director of Public Service and Properties Liskovec, Human Resource Director Demaline, Building Director Tuck-Macalla, Clerk of Council Kemper.

AUDIENCE

Denny Wendell, Amanda and Gary Sebrosky, Ed Smith, Dan Sweeney, Martha Raymond, Bob Barker, Dan Rettig, Pat Dokler, Thomas Feser, Samantha Illius.

By Zoom: Ann Marie's I-phone.

ANNOUNCEMENTS

Appointment of Kathleen Messeri as Director of Community Services of the City of Bay Village.

Human Resource Director Demaline introduced Kathleen Messeri, who has accepted an offer to become the Director of Community Services of the City of Bay Village. Ms. Messeri has been at the City of Brooklyn a little over eight years, most recently serving as their Community Services Coordinator, which would be a similar job title to the City of Bay Village Community Services Director. Ms. Demaline stated that Ms. Messeri brings some very good references, expertise and experience in the area of Community Services.

Mr. Clark stated that Council will entertain the motion to confirm Mayor Koomar's appointment of Kathleen Messeri as the Director of Community Services of the City of Bay Village at the Special Meeting of Council to be held this evening.

Appointment of Ivan Lyons to the Planning Commission for a five-year term expiring March 13, 2028.

Law Director Barbour stated that Ivan Lyons is a Bay Village resident, an active-duty Air Force veteran and upon his honorable discharge embarked on a career of medical sales, eventually leading him to start his own business. Mr. Lyons has lived in Bay Village for at least

ten years, has children in the Bay School System and his wife also operates a small business in Bay Village. Mr. Lyons was recommended to the Mayor by the Chairman of the Civil Service Commission. Following an interview with the Mayor, Mr. Lyons expressed interest in the Planning Commission position and attended meetings of the commission. Mr. Barbour noted that he also knows Mr. Lyons socially, and is highly recommended for the vacancy on the Planning Commission.

Mr. Barbour also acknowledged Warren Remein who served on the Planning Commission for approximately ten years and decided to step down. Mr. Remein contributed a great deal to the Planning Commission, was a regular participant, and his views and involvement were deeply appreciated. Mr. Remein was a real benefit to the Planning Commission, and was thanked for his service by Mr. Barbour.

COMMITTEE OF THE WHOLE

Mr. Clark advised that the Council this evening will look for a third reading and vote on the sewer rental rates which have been discussed in great detail. The ordinance has been amended by reading to change the implementation date to July 1, 2023, upon passage of the ordinance.

Ms. DeGeorge stated that prior to the vote at the Special Meeting of Council this evening she would like to make a statement.

ENVIRONMENT, SAFETY, & COMMUNITY SERVICES COMMITTEE- T. Kelly, D. Tadych, S. Byrnes Maier.

Resolution urging Legislative Branches of the Federal Government and State of Ohio to enact legislation to protect the citizens of Bay Village, Ohio from the inherent dangers of a train derailment on the tracks located in Bay Village.

Mr. Kelly advised that he will introduce a proposed resolution with respect to railroads and trying to encourage state and federal individuals and legislators to ensure that something like what happened in East Palestine, Ohio doesn't happen here. It is valuable to amplify concerns in the hopes that progress is able to be made.

FINANCE AND CLAIMS COMMITTEE -D. Tadych, P. Winzig, T. Kelly, D. Clark.

February 2023 Financial Reports of the City of Bay Village prepared by Director of Finance Renee Mahoney.

Mr. Tadych stated that the financial reports of the City of Bay Village for the month of February have been prepared by Finance Director Mahoney and received by Council. Mr. Tadych stated that they look prosperous again, with an almost ten percent gain on municipal income tax receipts. Mr. Tadych will have a meeting of the Finance Committee in early April to review the first quarter of 2023.

**PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE -P.
Winzig, L. DeGeorge, M. Greco.**

Request of St. Raphael Parish to install an 18 inch by 5-foot double sided vertical banner within a 1-inch x 1-inch painted white aluminum frame, set 21 inches into the ground with the top of the frame to be 6 feet, 10 inches and 2 inches wide, grommets and tied within the frame, to be placed 10 to 12 feet back from the Dover Center sidewalk and 10 to 12 feet north of the main church driveway, following approval, for a period of sixty (60) days, advertising The Gabriel Project of St. Raphael's Parish.

Mr. Winzig stated that Council discussed the request of St. Raphael Parish at the last meeting of Council, and it has been clarified that the sign will be installed for a period of sixty days.

Ms. Maier stated that at the last meeting it was requested to move the sign around to different areas of the property. She asked if that is no longer under consideration, and the request is now just for sixty days.

Mr. Barbour stated that the original request at the last meeting appeared to be a request for the sign on a permanent basis, and if that is the case St. Raphael's Parish will have to go through the process outlined in Codified Ordinance 1179, Sign Control.

Mr. Kelly stated that the Council duty here is in respect to whether or not the sign complies with the sign size and other zoning requirements. Based on existing case law with respect to the Supreme Court, the Council is not in a position to have any discussion whatsoever with respect to the content.

Mr. Barbour expressed agreement, stating that the City is never to look at the content of a sign in any application. The way that these signs have been treated, under C.O. 1179.08 is as an informational sign, which, by resolution of Council, can be placed in a permitted use in a residential district, other than a single or double family home. St. Raphael's, and many of the other institutions, are in residential districts, and this is what applies to them. We have always treated these as informational signs, i.e., gala, book fare, fundraiser, etc., and they are generally for a fixed period of time which is around 60 days, depending on the event. The contents and the material are not reviewed and the City is prohibited from taking the content under consideration when decisions are made, per the United States Supreme Court ruling on the case Arizona vs. Gilbert. Sign ordinances and their application have to be content neutral.

A meeting was held this evening of the Planning and Zoning Committee discussing accessory use structures and the details required to possibly update the ordinance and make it clearer for residents and the Building and Law Departments, and add anything new that should be brought up to date. The original ordinances were written in the 1950's and 1960's.

**PUBLIC IMPROVEMENTS/STREETS/SEWERS/DRAINAGE COMMITTEE -L.
DeGeorge, T. Kelly, P. Winzig.**

Additional funding for the LPA Federal ODOT-Let Project Agreement to the intersection of Cahoon and Wolf Roads.

Ms. DeGeorge will introduce an ordinance this evening for additional funding for the Federal/Ohio Department of Transportation agreement for the intersection of Wolf and Cahoon Roads. Mr. Liskovec and Ms. DeGeorge have discussed the different amounts of money that have been applied to this project. Ms. DeGeorge stated the total estimated cost of the project as of last week is \$378,000. Ms. DeGeorge stated that there was some question as to what the amount of this particular ordinance is to be applied to, and called upon Mr. Liskovec for comments.

Director of Public Service and Properties Liskovec stated that the ordinance this evening is for the Cahoon/Wolf intersection improvement project. An estimate was used to prepare the 2023 budget, back in the fall of 2022. In January of this year there was a request from the Ohio Department of Transportation (ODOT) to increase funding for the project based on their estimators. Council had approved additional funding for that which was in the amount of \$34,508. Last Thursday, March 9, 2023, bids were opened and the result was the bids were about 9% over estimated cost of construction. As a result, they have requested the City of Bay Village to weigh in about moving forward with the project, which would require an additional \$38,030, including just under \$30,000 for additional cost of construction, and \$8,030 for the contract administration, engineering and inspection for the project.

Mr. Winzig asked if administration and engineering oversight was not considered when the bid package was put together for market.

Mr. Liskovec stated that it was included in the \$325,000 that the City approved in January. The cost of the project went up due to the bidding market. Engineering and inspection is a percentage base fee. When the cost of construction goes up the percentage goes up along with it.

Mr. Greco asked where the dollars will come from, for the record. Mr. Liskovec stated that favorable bids have been received for paving so there will be a surplus for the roads program that can be used to easily offset the cost.

Mr. Greco asked the amount of the surplus in the roads program.

Mr. Liskovec stated that he is not at liberty to say because the contract has not yet been awarded.

Mr. Clark stated that this is a project for which grant funding has been received. This is the second increase in the contract because the state went through their specifications and found there was a need to have the cost be greater. When the bidding came out, the second component increased the cost. The total is \$378,000. How much is coming from grant funding, and how much is coming from the City?

Mr. Liskovec stated that \$148,500 is the grant received toward the project. The balance is due from the City. The estimated time of completion of the project is the end of August, 2023.

Mr. Winzig stated that, to confirm, the bid document came in at \$330,097. We are adding an additional \$38,000.

Mr. Liskovec stated that the \$330,097 bid was just for cost of construction. Originally the cost of construction was \$300,000. There is a \$30,000 increase of construction, plus the increased cost for engineering and contract administration.

Mr. Clark commented that it is a very important project and one Council certainly wants to support, but, like everything else we have seen on the capital side, all the projects have become more expensive over the past two or three years, which is not likely to change any time soon. In the interest of public safety, it is a critical project.

RECREATION AND PARK IMPROVEMENTS COMMITTEE –S. Byrnes Maier, M. Greco, D. Tadych.

Ms. Maier reported that a Recreation Commission meeting has been scheduled for March 23, 2023 at 7 p.m. at the Bay Village Community House.

SERVICES, UTILITIES & EQUIPMENT COMMITTEE –M. Greco, S. Maier, L. DeGeorge.

Mr. Greco had no report this evening.

AUDIENCE

Thomas Feser, 349 Kenilworth, stated that he has a problem and is questioning how a decision is made by the City to put residents under notice that their property is not meeting requirements. Mr. Feser stated that he was notified, when he was getting his deck inspected by Building Director Tuck-Macalla with a stack of paperwork stating that he broke laws for the last five months, but he didn't really see any letters in his mailbox that Mr. Tuck-Macalla said he left. The point is now he is in criminal court, in Rocky River Municipal Court, facing three charges he didn't even know he had as of two weeks ago. Mr. Feser stated that he is not saying that his yard isn't perfect, and the addition going up isn't perfect, and his backyard isn't perfect, he is not saying that he is not at fault. But he didn't know he had a problem until two weeks ago. He asked if the city is going to consider putting someone in criminal court, actually putting someone in the possibility of going to jail, having to get a law firm involved, anytime that the City Building Department considers anybody's property. It could be fifty properties a month that are being correctly taken care of, during that month there should be a list, maybe on the website that people could check and the list should be kept up on how they were contacted, i.e., registered mail. He noted that Mr. Tuck-Macalla stated that he left letters in his mailbox which he did not see. There should be some oversight because the outcome is risky for Bay Village residents and

March 13, 2023

the people here deserve a decent amount of time to be notified that they did something wrong and not mistakenly fall through a crack and find out that you are facing all these problems and now you are in criminal court, which is exactly what happened to him three years ago under the same circumstances. He stated that he should be able to check the list, perhaps on the internet, and make sure he is not on the list and not thrown on a list and said he did something wrong months ago. There should be some oversight of the Building Department's ability to keep a record of everybody. Residents could check if they are on the list, the list checked at the end of the month and nothing more added for that month.

Mr. Clark stated that this more of a City administrative matter. The Council meeting is more of a legislative meeting but they allow residents to speak their minds and Council appreciates Mr. Feser coming in tonight.

Mr. Feser stated further that he thinks it would be nice if residents could check the list to see if there is an address on the list that they live at before they find out five months later that they are in criminal court.

Law Director Barbour addressed Mr. Feser and stated he does not want to talk too much about this because Mr. Feser is now in court for the third time with the City of Bay Village, and has had multiple offenses he has had to correct in the five years Mr. Barbour has been the Law Director. It has been constant that Mr. Feser has been on the radar, to use Mr. Feser's term, so in the interest of full disclosure for all the members of the public and City Council, instead of checking the internet if you simply check your mail and your door, because those notices were placed at your house. When you came to city hall to discuss this, you were told that if you felt you didn't receive proper notice you could raise that at court. Mr. Barbour noted that he does appreciate Mr. Feser's coming to the Council meeting and wants the full story to be told, lest the residents think the Building Department is not doing its job.

Mr. Kelly stated that in any proceeding like this it is to place the individual on notice, not to place the public on notice. The whole point is if you are not served, for example, with a summons to court that is the thing that matters. The issue of having something on line for the public to view would still not place you directly on notice. What you are talking about is notice by publication which is what you do when you can't get service on someone. That is not what is required if they are going to be dragging you into court.

Mr. Feser stated that there should be some type of service to make sure that there was an attempt, not Mr. Tuck-Macalla stating that he dropped off a piece of paper. You have to serve through the post office or some way to say that you actually did it. He asked if there is a record of serving him.

Mr. Barbour stated that there is a record, and as you were told last week at city hall that you would have an opportunity to raise these issues at court.

Mr. Dan Sweeney spoke about the Flock Cameras that were installed in the City. He said there has been discussion in the community as to how this was approved, based on some privacy

issues that have been raised nationally about the Flock System. Mr. Sweeney stated that from his understanding it didn't go through Council; this was between the Mayor and Police Chief. The Police Chief made the decision, and Mr. Sweeney stated that he doesn't know if Council was involved in the decision and looked through all the issues that are involved in having these cameras in our community or throughout the country. He asked if the Council was involved in it, and does the Council understand what the Flock System is about and why there is controversy about it.

Mr. Kelly stated that there was no legislation. Based on the dollar amount involved is why the Chief of Police felt he could undertake that action in the fashion that he did. Mr. Kelly stated that he is not as familiar with the controversy Mr. Sweeney names, only that things in terms of privacy have come up from time to time. There is case law, historically, that when you are on a public right of way you didn't have any privacy, right, claim, or interest in respect to your license plate. Mr. Kelly stated that he is certainly open to hearing whatever Mr. Sweeney has to say.

Mr. Sweeney stated that the issue that is part of it is that it is a public/private partnership. They are storing City data and the data of everyone that is screened for 28 days and there are issues about that.

Mr. Sweeney stated that he would recommend reading a paper on this issue published by the American Civil Liberties Union (ACLU) that talks about the national issues on this matter. There have been two Supreme Court cases that have been looked at in terms of when it is public and you don't have any right. There are two cases, one limiting how long the data is kept. One state, (New Hampshire) only keeps it for three hours, after an event is listed. Some other places for a week. Doing twenty-eight days of holding on to this invites all kinds of invasions of privacy. The recommendation in regard to looking at public and private individuals is that if these things are adopted, Flock System, or any other automatic license system, the legislative body should be involved in making that decision. This should have gone to Council in order to discuss all the issues of privacy around this technology, and I would recommend strongly that be done.

Mr. Sweeney asked when the body cameras are coming in for the Police Department, stating that the reason he asks is that part of this is that the City will be more liable now. As that stolen car is going through on Lake Road, our police officers are going to be asked to intervene. That means that maybe we are going to be intervening with a felon, and not having the body cameras at this point puts you at liability as well. That is another issue that also means that we as a Police Department and a City are going to be spending a lot more money based on people going in and out that our Police Department may now have to be involved.

Mr. Clark stated that Council is moving forward to purchase the body cameras through a grant that has been received.

Finance Director Mahoney stated that the City is in the process of purchasing the body cameras.

Law Director Barbour stated that the grant was received in 2023.

Mr. Sweeney recommended that Council receive the ACLU paper and provided a copy to be copied and distributed to Council. Information is also on the ACLU on the website. Information can be seen as to the privacy issues.

MISCELLANEOUS

The next meeting of City Council will be a Regular Meeting of Council on Monday, March 20, 2023.


Mr. Kelly noted the presence of Mr. Ed Smith in the audience. Mr. Smith is chairman of the Special Improvement District (SID), trying to avoid erosion on the lake shore. Friday, March 10, at about 10:30 or 11:00 p.m. the hard-working attorney Kevin Butler sent draft legislation, which arrived too late to be on the agenda for this evening, for the first individual application, that of Mrs. Carolyn Young on Lake Road, to be part of the SID. The City's involvement is limited to blessing this opportunity for people on the lakefront to make these improvements and secure financing. The City does not pay for it. The improvement costs become a special assessment that runs with the land that runs with the property. This is the project that the Youngs have completed and this has to do with the ability to secure financing that then will end up on their property taxes. It is a complicated vehicle, but it is intended to encourage further improvements that would benefit the lakeshore and property owners.

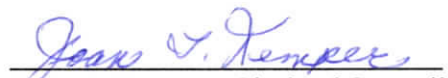
Mr. Barbour noted that information will be provided to Council.

Mr. Ed Smith stated that they have found many challenging details in this process. Carolyn Young was the first test subject, to make sure they could actually get to this point. Mr. Smith will meet with Finance Director Mahoney to find out more detail about the assessment process.

ADJOURNMENT

There being no further discussion this evening, the meeting adjourned at 7:35 p.m.


Dwight A. Clark, President of Council


Joan T. Kemper, Clerk of Council