

**THE CITY OF KENT, OHIO
REGULAR COUNCIL MEETING
WEDNESDAY, JUNE 20, 2007**

This regular meeting of the Kent City Council was called to order on Wed., June 20, 2007, by Mayor & President of Council John Fender at 7:30 p.m. Mayor Fender welcomed those present.

PRESENT: MR. BARGERSTOCK, MR. DELEONE, MR. FERRARA, MS. GAVRILOFF, MR. HAWKSLEY, MR. KUCHAR, MS. OSWITCH, MR. SCHULTZ, AND MR. WILSON

ALSO PRESENT: J. FENDER, MAYOR; D. RULLER, CITY MANAGER; L. COPLEY, CLERK OF COUNCIL; AND J. SILVER, LAW DIRECTOR

Mayor Fender called upon Mr. DeLeone for his opening remarks at this time.

Mr. DeLeone expressed his pleasure over the beautiful day, with respect to the weather, and led those present with the Pledge of Allegiance.

MOTION TO APPROVE THE MINUTES OF THE REGULAR COUNCIL MEETING OF MAY 23, 2007.

Motion made by Mr. DeLeone, seconded by Ms. Oswitch, and carried by a voice vote of 9-0.

Mayor Fender called for audience communications at this time. He reminded those members of the audience wishing to speak to sign up with the Clerk of Council.

Fred: Fred said he wished to address Council on an issue affecting the Middlebury neighborhood and some in the Plum Creek Park area. He apologized for being unable to stay for the whole meeting, and noted he had a baby boy born at earlier in the day.

Fred expressed concerns over Procex, a business located at the corner of Overholt Drive and Cherry Street, and is owned by Earl Hamlin. He said that plant is producing an odor of burnt rubber, and the odor was first noticed in 2003. He said there is an odor at night. He said they called the Police Department, who could not find anything on fire. He said he began investigating the source of the odor. Fred said it reoccurred in 2004, and in the fall of 2005, as he was driving down Cherry Street at approximately 2:00 a.m., he saw a huge cloud of smoke, with the odor of burn rubber.

Fred said the plant is a parts reclaimer, and they recycle metal parts by removing the coating. He said the material is heated to 4500 degrees, and they remove the rubber and plastic coatings from the parts. He said they are supposed to use a filtration system to alleviate the odors. He said the system is old, and they are not using proper filtration. Fred said the EPA has recommended an upgrade of the system. He said they may be putting smoke out through open stacks and/or doors that cannot be filtered.

Fred said the plant's hours of operation are 9:00 p.m. to 5:00 a.m. He said no one is available to respond to complaints during those hours. He said the responsible people at the Akron Regional Air Quality go home at 5:00 p.m. He said they are unable to get a response from the police or fire department. Fred said he has talked to many people from both departments who receive calls. He said the Fire Department said they have been called to the plant, from people who think it is one fire. Fred said he was told that the police and fire are not responsible, and it is a matter for the Health Department. He said they pursued the complaint with the Health Department, and the Health Commissioner has said they can call him at any time. Fred said he is uncomfortable to call him at home after midnight, and did not feel it was an effective response.

Fred said the petition was signed by fifty-eight citizens, mostly in the Middlebury Road area, and other affected areas. He said they are asking for an effective procedure to enforce their noxious odor ordinance after business hours.

Fred said he could suggest a few methods. He said the first is similar to the noise odor. He said if there is a strong odor and citizens are calling, the Police Department could send a car to the plant. He said if they witness a large amount of smoke, they could issue a ticket based on the noxious odor ordinance. He said another possible response would be for the City to send a letter to the plant. He said a number of his neighbors have called, and they wrote a letter to the Record Courier. He said the residents are keeping a log of the events and incidents, and are trying to correlate them in case there is a case against plant. He said he hoped the City would help the citizens deal with the nuisances, which is especially strong on hot days. He suggested an investigation.

Fred said he has a fan in the window, adding his attic fan pulls air in the house, resulting in his house filling with this odor. He said they have to close their windows. Fred said it is not an everyday occurrence, but is several times a month. He said it is enough to be a considerable problem for residents.

Fred submitted petitions to the Clerk at this time.

Geneva: Geneva offered her congratulations on the birth of Fred's baby, adding she was glad she did not have one earlier in the day. She told them at their Board of Zoning Appeals meeting that she referred to Council as "beautiful little potato heads," in case someone should say something.

Geneva said she lives off Middlebury Road, and can say she has not smelled anything like rubber in the neighborhood. She said she sits in her back yard on a regular basis. She said they need business in Kent, and if there is someone not doing what government wants and ignoring the Codes, they must do something. She reiterated that she has not smelled rubber, and does sit in her backyard, fighting mosquitos. She said she can understand what he is saying, but she did not think they should tell someone to quit doing business. She asked if this was an ongoing problem, adding she has had no problems with burning rubber on Yacavona Dr.

Following no further audience comment, Mayor Fender called upon the Clerk for the written correspondence.

The Clerk reported that notification was received on June 1, 2007 from the Ohio Division of Liquor Control, advising that a request for a new D 1 liquor license has been received from Thomas Simpson, dba the Kent Stage, 175 E. Main Street, Kent, OH. She reported that the deadline for objections is June 25, 2007. The Clerk reported that Safety Director Lillich explained this is for a beer only permit for sale on-premise and for carry out, and has no objections to this request.

MOTION TO RETURN WITH NO OBJECTIONS.

Motion made by Mr. Wilson, seconded by Mr. DeLeone, and carried by a voice vote of 9-0.

The Clerk reported that an email was received on May 31, 2007 from Council member Bargerstock reiterating his public records request, and noting that he has made this request twice before. She said a second email was sent to the Manager, carbon copied to the Clerk, thanking the Manager for the information in the packet. She said that Mr. Bargerstock pointed out that it was all of the information he received previously and requested if additional information was available. The Clerk reported that both emails were forwarded, previously, to Council electronically.

The Clerk reported that letters were carbon-copied to Council, from the Service Director, to twelve individuals announcing a Watershed Action Plan meeting for June 19, 2007. She said that the Service Department forwarded the same information electronically, along with the agenda, and said information was forwarded to Council, electronically, on June 14, 2007.

Hearing no further written correspondence, Mayor Fender called for the Manager's report at this time.

MOTION TO APPROVE ITEMS #1 THROUGH #6.

Motion made by Mr. Wilson, seconded by Ms. Gavriloff, and carried by a voice vote of 9-0.

The following items were approved by the aforementioned motion:

- 1) Authorization of Draft No. 07-59, \$25,000 grant to Don Joseph Toyota
- 2) Agenda time, Health & Safety Committee, July 11, review/discussion of old hotel
- 3) Agenda, time, Finance Committee, July 11, Summit Street Incubator, new tenant
- 4) Agenda time, Policy & Procedures Committee, July 11, update on status of pending list items
- 5) Agenda time, Finance Committee, July 11, Staffing issues as related to code enforcement functions
- 6) Agenda time, Community Development Committee, July 11, update on Main Street program

MOTION TO RECESS INTO EXECUTIVE SESSION FOR PENDING LITIGATION, PRIOR TO THE ADJOURNMENT OF THIS MEETING AND PERFORMANCE EVALUATIONS FOR EMPLOYEES.

Motion made by Mr. Wilson, seconded by Mr. Hawksley.

Roll call was taken on the motion. Voting aye: Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch, Mr. Schultz, Mr. Wilson, and Mr. Bargerstock. The motion carried by a roll call vote of 9-0.

Mr. Ruller extended his personal thanks to Home Savings and Woodsy's. He said they had a wonderful time on the Home Savings Plaza cheering on the Cavaliers. He said they watched the game with about 200 or 300 other people on the big screen television, adding there was a great mix in the crowd. He said that most stayed through the third quarter, and it was a great event. He said he spoke with the police, and there were no issues nor problems. He said the merchants were happy. Mr. Ruller said that Home Savings wants to televise baseball games on the plaza also.

STANDING COMMITTEE REPORTS

POLICY & PROCEDURES COMMITTEE

MOTION TO APPROVE THE WRITTEN REPORT OF JUNE 6, 2007, INCLUDING THE RECOMMENDED ACTION, TO DEFER DISCUSSION ON THE PENDING LIST UPDATE.

Motion made by Mr. Hawksley, seconded by Mr. DeLeone, and carried by a voice vote of 9-0.

FINANCE COMMITTEE

MOTION TO APPROVE THE WRITTEN REPORT OF JUNE 6, 2007.

Motion made by Mr. Wilson, seconded by Mr. DeLeone, and carried by a voice vote of 9-0.

Members of Council requested that the first, fourth, sixth, and eight actions be separated for approval.

MOTION TO APPROVE RECOMMENDATIONS B, C, E, AND G.

Motion made by Mr. Wilson, seconded by Ms. Gavrilloff, and carried by a voice vote of 9-0.

The following items were approved by the aforementioned motion:

- 1) TO ASK THE ADMINISTRATION TO RETURN WITH THE FEASIBILITY OF HIRING A HEADHUNTER WHEN THE RESULTS OF THE BUXTON STUDY ARE RECEIVED.
- 2) TO AUTHORIZE THE REVISED LOCAL GOVERNMENT FUND FORMULA.
- 3) TO REFER TO THE ADMINISTRATION A REVIEW OF THE CITY'S POLICY ON LIVEABLE RENTAL PROPERTIES
- 4) TO AUTHORIZE AN AMENDMENT TO THE APPROPRIATIONS ORDINANCE

MOTION TO APPROVE RECOMMENDED ACTION #A, TO PROCEED WITH THE BUXTON GROUP STUDY, PHASE II, FOR \$35,000.

Motion made by Mr. Wilson, seconded by Mr. Ferrara.

Mr. Bargerstock explained he has no problem with the credibility of the Buxton Group, but did not think the data would solve their problem. He said he was unsure it would help Kent, and felt it would help the outlying areas more. He said he received an email from a constituent, with an article attached from the Akron Beacon Journal, agreeing that the Cascades think they are in Kent. He said they are wasting money.

Mr. Kuhar said he mentioned previously they are out of sync on a lot of things, and he did not feel that at the present time any of the results of the Buxton Company would benefit them. He said if developers were lined up to build and things were being planned, the data may be good. He told the Council that whatever starts today does not break ground for at least one year, and in a year, the Buxton data will be outdated and obsolete. He said it will not be fruitful. Mr. Kuhar said if they had a Right Dimensions type project or someone in the south end building large retail, he could support it. He said he cannot support it now, adding it is not a good thing.

The motion carried by a voice vote of 7-2, with Mr. Bargerstock and Mr. Kuhar dissenting.

MOTION TO APPROVE RECOMMENDED ACTION "D", TO PROCEED WITH THE LEASE AT 803 FAIRCHILD

Motion made by Mr. Wilson, seconded by Mr. Hawksley.

Ms. Oswitch said she would be abstaining. She explained she was absent previously, and reviewed the minutes. She questioned why they would lease something, while looking at razing the same property.

Mr. Bargerstock said he continues to have issues with leasing property to someone when it was not competitively advertised. He said it continues to create problems, and after a long search for information, the Parks Director gave them

more information at the last meeting. He said it is the process, not the tenant, that bothers him, and the City's processes are being ignored. He said they are harming the City if they continue in this fashion.

Mr. Kuhar said he would vote to accept the action, but said they need a standardized process. He said he cannot see a problem with leasing the property.

Mr. Wilson said, for clarification, the reason why Action "F" was included was that it was a secondary motion after they already passed authorization of the lease. He commented that he was unsure why it was included.

The motion carried by a voice vote of 7-1-1, with Mr. Bargerstock dissenting and Ms. Oswitch abstaining.

MOTION TO APPROVE RECOMMENDED ACTION H, TO AUTHORIZE AN AMENDMENT TO THE SALES AGREEMENT WITH ABC LANDSCAPING.

Motion made by Mr. Wilson, seconded by Mr. Hawksley.

Mr. Bargerstock said he would vote against this for the same reason as the previous issue. He said they have bypassed their normal channels and process. He said they are making sales agreement without competitive bidding, adding they are short circuiting the process. He said their Parks Director is acting as a real estate broker, and that is not the correct process.

Mr. Wilson said in this particular case, they were about to lose a business in Kent, adding he is still losing the business in Ward 3. He said they were lucky that the Parks Director and Community Development Department were able to keep them in Kent, and it was a smart move on their part.

The motion carried by a voice vote of 8-1, with Mr. Bargerstock dissenting.

MOTION TO APPROVE RECOMMENDED ACTION #F, TO ASK THE ADMINISTRATION TO REVIEW THE FEASIBILITY OF RAZING THE PROPERTY AT 803 FAIRCHILD AVE.

Motion made by Mr. Hawksley, seconded by Ms. Gavrilloff.

Mr. Kuhar said when the property first came up for purchase, they discussing buying it. He said they purchased it on the basis that it was a tremendous investment, would pay for itself, and was a good piece of property. He said it was to stand there until the property would be developed for recreational purposes. He said he would vote against the motion.

Mr. Wilson agreed with Mr. Kuhar. He said that was their agreement with the Parks Department, and they should stay with it.

Mr. Bargerstock said he agreed with Mr. Hawksley when he made the motion. He said discussion is not harmful, and whether they do it is an item for discussion. He said he understood the original presentation, but does have a problem with how the City has handled the management and administration of the property since it was acquired. He suggested if it is being mismanaged, it may be meritorious to tear it down.

Mr. Wilson suggested that is a heck of a reason to tear down a building, adding it was the wrong reason.

The motion failed by a hand vote of 4-4-1, with Mr. Hawksley, Mr. Bargerstock, Ms. Gavrilloff, and Mr. Wilson supporting the motion. Mr. Schultz, Mr. DeLeone, Mr. Kuhar, and Mr. Wilson dissented. Ms. Oswitch abstained.

The Mayor asked the Clerk to read Draft No. 07-57, which stands on first reading, by title only.

AN ORDINANCE ACCEPTING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT SELLING A 2.2203 ACRE PARCEL OF PROPERTY TO GARY PHILLIP BERARDINELLI, FOR \$50,000.00 AND DECLARING AN EMERGENCY.

MOTION TO SUSPEND THE REMAINING TWO READINGS.

Motion made by Mr. Wilson, seconded by Mr. DeLeone.

Roll call was taken on the motion. Voting aye: Mr. Ferrara, Ms. Gavrilloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch, Mr. Schultz, Mr. Wilson, and Mr. DeLeone. Mr. Bargerstock dissented. The motion carried by a roll call vote of 8-1.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Mr. Wilson, seconded by Ms. Oswitch.

Roll call was taken on the motion. Voting aye: Mr. Ferrara, Ms. Gavriloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch, Mr. Schultz, Mr. Wilson, and Mr. DeLeone. Mr. Bargerstock dissented. The motion carried by a roll call vote of 8-1.

2007-52: AN ORDINANCE ACCEPTING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT SELLING A 2.2203 ACRE PARCEL OF PROPERTY TO GARY PHILLIP BERARDINELLI, FOR \$50,000.00 AND DECLARING AN EMERGENCY.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

The Mayor asked the Clerk to read Draft No. 07-59, by title only.

A RESOLUTION AUTHORIZING THE CITY MANAGER AND DIRECTOR OF BUDGET AND FINANCE TO ISSUE A \$25,000.00 ECONOMIC DEVELOPMENT GRANT TO DON JOSEPH TOYOTA TO AID THE DEALER IN DEVELOPING A NEW SERVICE DEPARTMENT AND STAYING IN THE CITY OF KENT, OHIO, AND DECLARING AN EMERGENCY.

MOTION TO SUSPEND THE THREE READINGS.

Motion made by Mr. Wilson, seconded by Ms. Gavriloff.

Roll call was taken on the motion. Voting aye: Ms. Gavriloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch, Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, and Mr. Ferrara. The motion carried by a roll call vote of 9-0.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Mr. Wilson, seconded by Ms. Gavriloff.

Roll call was taken on the motion. Voting aye: Ms. Gavriloff, Mr. Hawksley, Mr. Kuhar, Ms. Oswitch, Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, and Mr. Ferrara. The motion carried by a roll call vote of 9-0.

2007-53: A RESOLUTION AUTHORIZING THE CITY MANAGER AND DIRECTOR OF BUDGET AND FINANCE TO ISSUE A \$25,000.00 ECONOMIC DEVELOPMENT GRANT TO DON JOSEPH TOYOTA TO AID THE DEALER IN DEVELOPING A NEW SERVICE DEPARTMENT AND STAYING IN THE CITY OF KENT, OHIO, AND DECLARING AN EMERGENCY.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

The Mayor asked the Clerk to read Draft No. 07-60, by title only.

AN ORDINANCE AMENDING ORDINANCE NO. 2006-130, THE CURRENT APPROPRIATION ORDINANCE, PASSED NOVEMBER 28, 2006, AS AMENDED BY ORDINANCE NO. 2007-32, PASSED APRIL 18, 2007, SO AS TO INCREASE APPROPRIATIONS IN FUND 001, GENERAL, AND DECLARING AN EMERGENCY.

MOTION TO SUSPEND THE THREE READINGS.

Motion made by Mr. Wilson, seconded by Ms. Oswitch.

Roll call was taken on the motion. Voting aye: Mr. Hawksley, Ms. Oswitch, Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, and Ms. Gavriloff. Mr. Kuhar abstained. The motion carried by a roll call vote of 8-0-1.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Mr. Wilson, seconded by Ms. Oswitch.

Roll call was taken on the motion. Voting aye: Mr. Hawksley, Ms. Oswitch, Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, and Ms. Gavriloff. Mr. Kuhar abstained. The motion carried by a roll call vote of 8-0-1.

2007-54: AN ORDINANCE AMENDING ORDINANCE NO. 2006-130, THE CURRENT APPROPRIATION ORDINANCE, PASSED NOVEMBER 28, 2006, AS AMENDED BY ORDINANCE NO. 2007-32, PASSED APRIL 18, 2007, SO AS TO INCREASE APPROPRIATIONS IN FUND 001, GENERAL, AND DECLARING AN EMERGENCY.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

The Mayor asked the Clerk to read Draft No. 07-62, by title only.

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A LEASE AGREEMENT WITH KELLY J. WORTMAN FOR PROPERTY LOCATED AT 803 FAIRCHILD AVENUE, KENT, OHIO, AND DECLARING AN EMERGENCY.

MOTION TO SUSPEND THE THREE READINGS.

Motion made by Mr. Wilson, seconded by Mr. DeLeone.

Roll call was taken on the motion. Voting aye: Mr. Kuhar, Mr. Schultz, Mr. Wilson, Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff, and Mr. Hawksley. Ms. Oswitch abstained, and Mr. Bargerstock dissented. The motion carried by a roll call vote of 7-1-1.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Mr. Wilson, seconded by Mr. DeLeone.

Roll call was taken on the motion. Voting aye: Mr. Kuhar, Mr. Schultz, Mr. Wilson, Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff, and Mr. Hawksley. Ms. Oswitch abstained, and Mr. Bargerstock dissented. The motion carried by a roll call vote of 7-1-1.

2007-55: AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A LEASE AGREEMENT WITH KELLY J. WORTMAN FOR PROPERTY LOCATED AT 803 FAIRCHILD AVENUE, KENT, OHIO, AND DECLARING AN EMERGENCY.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

HEALTH & SAFETY COMMITTEE

MOTION TO APPROVE THE WRITTEN REPORT OF JUNE 6, 2007, AND THE RECOMMENDED ACTIONS.

Motion made by Ms. Gavriloff, seconded by Mr. Ferrara, and carried by a voice vote of 9-0.

The following actions were approved by the aforementioned motions.

- A. TO ABANDON THE LEASE FOR THE MASONIC TEMPLE'S PARKING LOT
- B. TO AUTHORIZE THE ADMINISTRATION TO RETURN WITH INFORMATION ON THE UTILIZATION OF THE CITY-OWNED LOT ON THE CORNER OF MAIN AND GOUGLER AVENUES.

LAND USE COMMITTEE

MOTION TO APPROVE THE WRITTEN REPORT OF JUNE 6, 2007, AND THE TWO RECOMMENDED ACTIONS.

Motion made by Mr. Ferrara, seconded by Mr. Hawksley, and carried by a voice vote of 9-0.

The following actions were approved by the aforementioned motions.

- A. TO AUTHORIZE STRIKING THE EXEMPTION FOR DECKS LESS THAN THIRTY INCHES , IN THE CODE.
- B. TO INSTRUCT THE ADMINISTRATION TO CONTINUE WORKING ON ALL THREE IDEAS FOR CODE ENFORCEMENT AND NEIGHBORHOOD INITIATIVE; FURTHER EXPLORING RAMIFICATIONS AND COSTS; MAKING RECOMMENDATIONS ON INVOLVING THE PUBLIC, INCLUDING PROPERTY OWNERS, TO BE SCHEDULED RELATIVE TO THE SCHEDULING OF THE BUDGET.

The Mayor asked the Clerk to read Draft No. 07-61 by title only at this time.

AN ORDINANCE AMENDING §1312.08 OF THE CODIFIED ORDINANCES OF THE CITY OF KENT, ENTITLED “PATIOS, DECKS AND PORCHES” SO AS TO REMOVE THE EXEMPTION THAT DECKS LESS THAN THIRTY INCHES TALL DO NOT REQUIRE PERMITTING.

MOTION TO SUSPEND THE THREE READINGS.

Motion made by Ms. Gavriloff, seconded by Mr. Kuhar.

Roll call was taken on the motion. Voting aye: Ms. Oswitch, Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff, Mr. Hawksley, and Mr. Kuhar. The motion carried by a roll call vote of 9-0.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Mr. Wilson, seconded by Ms. Oswitch.

Roll call was taken on the motion. Voting aye: Ms. Oswitch, Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff, Mr. Hawksley, and Mr. Kuhar. The motion carried by a roll call vote of 9-0.

2007-56: AN ORDINANCE AMENDING §1312.08 OF THE CODIFIED ORDINANCES OF THE CITY OF KENT, ENTITLED “PATIOS, DECKS AND PORCHES” SO AS TO REMOVE THE EXEMPTION THAT DECKS LESS THAN THIRTY INCHES TALL DO NOT REQUIRE PERMITTING.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

STREETS, SIDEWALKS & UTILITIES COMMITTEE

The Mayor asked the Clerk to read Draft No. 07-64 by title only at this time.

AN ORDINANCE ACCEPTING, FOR DEDICATION PURPOSES, THE STREETS, EASEMENTS AND DEDICATED OPEN SPACES OF THE LAKES OF FRANKLIN MILLS SUBDIVISION PHASE IV, AND DECLARING AN EMERGENCY.

MOTION TO SUSPEND THE THREE READINGS.

Motion made by Ms. Oswitch, seconded by Mr. DeLeone.

Roll call was taken on the motion. Voting aye: Voting aye: Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff Mr. Hawksley, Mr. Kuhar, and Ms. Oswitch. The motion carried by a roll call vote of 9-0.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Ms. Oswitch, seconded by Mr. Ferrara.

Roll call was taken on the motion. Voting aye: Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff Mr. Hawksley, Mr. Kuhar, and Ms. Oswitch. The motion carried by a roll call vote of 9-0.

2007-57: AN ORDINANCE ACCEPTING, FOR DEDICATION PURPOSES, THE STREETS, EASEMENTS AND DEDICATED OPEN SPACES OF THE LAKES OF FRANKLIN MILLS SUBDIVISION PHASE IV, AND DECLARING AN

EMERGENCY.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

The Mayor asked the Clerk to read Draft No. 07-63 by title only at this time.

AN ORDINANCE DIRECTING THE APPROPRIATION OF AN EASEMENT IN CERTAIN REAL PROPERTY OWNED BY THE METRO REGIONAL TRANSIT AUTHORITY FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING WATER PIPES TO PROVIDE A WATER SUPPLY TO THE CITY OF KENT AND ITS INHABITANTS AT PART OF ORIGINAL FRANKLIN TOWNSHIP LOT 9, NOW IN THE CITY OF KENT, OHIO, AND DECLARING AN EMERGENCY.

MOTION TO SUSPEND THE THREE READINGS.

Motion made by Ms. Oswitch, seconded by Mr. Hawksley.

Roll call was taken on the motion. Voting aye: Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff Mr. Hawksley, Mr. Kuhar, and Ms. Oswitch. The motion carried by a roll call vote of 9-0.

MOTION TO ADOPT THE DRAFT ORDINANCE.

Motion made by Mr. Wilson, seconded by Mr. DeLeone.

Roll call was taken on the motion. Voting aye: Mr. Schultz, Mr. Wilson, Mr. Bargerstock, Mr. DeLeone, Mr. Ferrara, Ms. Gavriloff Mr. Hawksley, Mr. Kuhar, and Ms. Oswitch. The motion carried by a roll call vote of 9-0.

2007-58: AN ORDINANCE DIRECTING THE APPROPRIATION OF AN EASEMENT IN CERTAIN REAL PROPERTY OWNED BY THE METRO REGIONAL TRANSIT AUTHORITY FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND REPAIRING WATER PIPES TO PROVIDE A WATER SUPPLY TO THE CITY OF KENT AND ITS INHABITANTS AT PART OF ORIGINAL FRANKLIN TOWNSHIP LOT 9, NOW IN THE CITY OF KENT, OHIO, AND DECLARING AN EMERGENCY.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council

SPECIAL COMMITTEE REPORTS None

UNFINISHED BUSINESS None

NEW BUSINESS

MOTION TO REQUEST THE LAW DIRECTOR OR MANAGER TO SEND A LETTER TO STATE REPRESENTATIVES, ASKING FOR THEIR OPINION ON THE CITY’S ABILITY TO USE LAND VALUE TAXATION.

Motion made by Mr. Hawksley, seconded by Mr. Ferrara.

Mr. Hawksley said he had a brief discussion with State Representative Kathleen Chandler who thought it could be done, but based on Mr. Silver’s previous comments, he felt it could not be done. He said he would like a decision, and State Representative Chandler said she could ask “the Columbus people.”

The motion carried by a voice vote of 8-1, with Mr. Kuhar dissenting.

Mr. Bargerstock said some of the conversation in their committee meeting about 803 Fairchild Avenue brought forth some information. He said one item was that a city employee was given permission and authorization to work “off the clock.” He said he believed it would violate a number of laws, including Worker’s Compensation, by allowing an employee to prepare a property that the employee had not yet leased; using City materials and tools on City property. He said this process is hazy, can create a lot of difficulties, and concerns him.

MOTION TO HAVE THE SAFETY DIRECTOR INVESTIGATE THE SITUATION REGARDING WORK DONE AT 803 FAIRCHILD AVENUE, WITH THE LAW DIRECTOR'S ASSISTANCE, REPORTING BACK ON LAWS BROKEN, WITH A RECOMMENDATION FOR DISCIPLINE.

Motion made by Mr. Bargerstock, seconded by Ms. Oswitch.

Mr. Bargerstock said they have set a serious precedent, adding it was dangerous. He said that people have been dismissed for similar things. Mr. Bargerstock said this creates a great deal of liability to the employee and to the City. He said if it occurred, using the proper channels, it would not be a problem. He said from what he can tell, from the little information he received, the individual was given permission to do this work. He said from what he knows, there are a lot of improprieties and liabilities, exposing the City to liability and risk. He said that the Safety Director is more than qualified to investigate this, adding he was sure the Law Director would add his assistance.

Ms. Oswitch said she was not present, but read the minutes, and reviewed the questions and comments. She said it would not hurt to investigate the situation, adding she does not fault the employee, but they need new insight. She said it does not seem property to have a City employee on City property if they are not doing City business. She said it would not hurt to do a little further review of the situation.

Mr. Wilson asked that the motion be restated, and the Clerk did so at this time. Mr. Wilson asked if it was "Council's recommendations for discipline", and the Clerk said she understood that it was a report from the Safety Director with his recommendations for discipline. Mr. Wilson asked Mr. Bargerstock for clarification, and he said the motion was for the Safety Director's recommendation. He said it was to be a report back on any laws **and policies** that were broken. Mr. Wilson said the Administration does not need to report to them on the discipline of their employee and they are overstepping their boundaries. He said they are policy setters, not administrators. Mr. Wilson said he would vote against the motion.

Mr. Schultz agreed with Mr. Wilson. He said a referral to the Administration is appropriate. Mr. Schultz said he did not remember a time when personnel issues and disciplinary actions came to them. He said that "Mr. Bargerstock and Company" has had a long time feud with the Parks Department that is continuous. He said he would not support the motion.

Mr. Kuhar said as a landlord, he can understand that type of work from a perspective tenant. He said he cannot understand it as a City. Mr. Kuhar said a lot has been said, and they have made steps so this does not occur in the future. He said they need uniformity on what they do. He agreed that it was not appropriate to ask for discipline, and said he could not support that. He said if the motion was simply a referral that would be one thing. Mr. Kuhar said that it is a case of "no harm, no foul", adding it is time to move on.

Mr. Bargerstock said it appears that some are attempting to muddy up the situation. He said if there was a recommendation of discipline, because of nature of the Charter and separation of authority, Council cannot make such a recommendation, which was the purpose for the motion. He said if the Parks Director or some other member of that Department was responsible, and put them in the situation of violating laws or policies, they need a recommendation for action. He said the City Manager may not have the authority for discipline. He said it may be something the Council deals with, with the assistance of our Law Director. He said the Charter is unusual, adding there are no clear cut lines of authority, which puts the Manager in a bad situation. He said the Council is responsible for the sale and leasing of property, and since it is under Council's control, the Manager has authority. He said a lot of the actions are out of the Manager's purview, and could result in dire circumstances. He said they need to act. Mr. Bargerstock said he did not know if something went wrong. Mr. Bargerstock said he has a great deal of confidence in Mr. Lillich to investigate something. He said if there is nothing wrong, they will know the facts. He said to this point, everything given to them is hazy, sketchy, and not fully accurate. He said he wanted to stop this from happening in the future.

Ms. Gavriloff had a question for the Law Director, and Mayor Fender reminded her there was a motion on the floor.

The motion failed by a voice vote of 2-7, with Ms. Oswitch and Mr. Bargerstock supporting the motion, while all others dissented.

Ms. Gavriloff asked, if the Council could recommend disciplinary action, in accordance with the Charter, and Mr. Silver said Parks and Recreation Department discipline is handled by the Parks and Recreation Board.

MOTION TO REFER TO THE ADMINISTRATION A REVIEW OF THE SITUATION, PRIOR TO THE LEASE, OF 803 FAIRCHILD AVENUE, TO SEE IF ACTIONS WERE CONSISTENT WITH PRACTICES AND WHETHER ACTION

SHOULD BE TAKEN.

Motion made by Mr. Kuhar, seconded by Mr. Schultz.

The motion carried by a hand count of 5-4, with Mr. Hawksley, Mr. DeLeone, Mr. Wilson, and Mr. Ferrara dissenting.

MOTION TO REFER THE NOXIOUS ODOR PROBLEM TO COMMITTEE.

Motion made by Mr. Schultz, seconded by Ms. Oswitch.

Mr. Schultz said there appears to be problems and confusion on who does what and how to do it. He said they need to know the proper procedure followed, and asked for the procedure's clarification.

Mr. Wilson agreed with the motion. He said Mr. Ferlito offered them the opportunity to call, and they have not called him.

Ms. Gavrilloff said they have called him, adding she knows they called him at 11:15 p.m. She said the Board of Health and Akron Air Quality are aware of the situation, and Akron Air Quality is going to place a monitor on Mr. Pierre's house to monitor noxious odors. She said that the proper people have been notified, and all of the proper channels are handled. She said this is an ongoing problem in the ward, adding at first they thought it was Akro Plastics. She said they have other issues, including a locomotive that runs at night. She said she was unsure they can point their finger at this particular business, and suggested they wait for Akron Air Quality's findings.

Ms. Oswitch said they owe it to the residents to help them in some way. She said the frustration is there, and they know it is a problem. She said they are still encountering the problem in the summer with their windows open. She said they need to know where to call.

Ms. Oswitch said she had a similar situation in Ravenna, and had to move her company. She said it was a huge inconvenience. Ms. Oswitch said the residents are being asked to deal with something obnoxious, and she feels they owe it to the residents to have further discussion. Ms. Oswitch said she did not feel it was right to call Mr. Ferlito at night, and they need a better method.

Mr. Ferrara said he did not have a problem discussing the procedure, but they should not get into whether or not the company is actually emitting those odors. He said from everything he has read, the company is conforming to the EPA standards. He said he supported discussion on the proper procedure.

Mr. Kuhar said he is split on this issue. He said he feels for those having a problem. He said he knows they need to deal with the residents, adding that he knows the City has pursued those complaints. He said to his knowledge, the City has met the standards of being located in an industrial area. Mr. Kuhar said he grew up in Kent, and could smell rubber from Akron. He said it is a Catch-22 situation, adding there must be some definitive way to say they are legal or they are not legal. He said he would support the motion, but unless they have conclusive information that exonerates or condemns them they are just "blowing smoke."

Mr. Bargerstock agreed with Mr. Ferrara that they need to discuss the process. He said if they act on the process, it could affect someone's pay check. Mr. Bargerstock said they used to have problems with the smoke stacks at Kent State. He said they had a soot problem, and they smelled awful. Mr. Bargerstock said that people on Summit St. complained bitterly, and ultimately things improved. He said whether it is Procex or another company creating the nuisance, there are better experts than Council. He agreed it is unfair to call Mr. Ferlito at 3:00 p.m., adding they need someone who can properly investigate and return with a finding. He said the company should know their limits.

Mr. Hawksley said that Mr. Pierre made it clear that this was a nuisance. He said they may be complying with air quality standards, but are still a nuisance. He said he did not know how bad it was, as he has not been there at 2:00 a.m. He said it is good neighborhood policy to talk it through for those people trying to sleep at night. He said the discussion is worthwhile.

Mr. Wilson said he did have a lot of problems with the motion, adding he sympathizes with the neighbors. He said he did know a monitoring system would be put in place. He said they, on Council, would be asking where it came from, and would be waiting for a response anyway. He recommended they vote the motion down, and allow the Health Board and Air Quality to determine where the problem was originating.

Mr. Schultz disagreed, adding the residents are clear. He said he has had experience with this type of problem. He said Kent State did put out a lot of odor and smell, residents complained, and complaints were filed with the EPA. He said

they were damaging cars in the parking lot, which pressured them, ultimately, to go with natural gas. He said for many years, on a Wednesday night, at the end of West Oak Street, they had a company that cleaned railroad tanks. He said the odors only occurred after about 10:00 or 11:00 p.m. He said it was smelly. He said knowing what to do and how to deal with something is difficult, and they need a clear process. He said if it is not the City's process, the residents need to know who to contact so they do not get frustrated and feel the City does not care.

Ms. Gavriloff agreed with Mr. Schultz, in theory, adding it is not just that business. She said since she has been on Council, some thought it was a business in Ward 3, others thought it was a business on Stow Street. She said another piece is a locomotive running at night. Ms. Gavriloff agreed with looking at the process, as the residents should know. She said she has been in touch with Mr. Ferlito and Akron Air Quality, and both are well aware of the problems in Ward 2. Ms. Gavriloff said her concern is that some might point fingers at a company, as they did with two other companies, only to find out it is not them. She said she did not want fingers pointed, and Mr. Schultz agreed. He said the issue is to tell the residents who to contact, so they can determine who is causing the problem.

Mr. Kuhar asked if the monitoring equipment will do a chemical analysis or just say there is bad air quality. He suggested they may be back to pointing fingers without evidence.

The motion carried by a voice vote.

MOTION TO REFER TO THE ADMINISTRATION, ON A PROCEDURE FOR CALL MONITORING THIS TYPE OF PROBLEM.

Motion made by Mr. Kuhar, seconded by Mr. Schultz.

Mr. Schultz said that once they have a procedure, the Administration would know where to point people for the purpose of solving problems.

Mr. Kuhar suggested a relationship between the City and some air quality body where they can direct people. Mr. Wilson suggested they discuss this at their committee meeting. Mr. Kuhar agreed, but said this would allow the Administration to review the issue. Mr. Wilson said his guess is that the Administration would do that in preparation of the meeting. Ms. Gavriloff suggested it may be a moot point, adding that the Health Department has a procedure once complaints are made. She said it may be a matter of knowing the procedure.

The motion failed by a voice vote of 2-7, with Mr. Schultz and Mr. Kuhar supporting the motion, while others were opposed.

Mr. Kuhar called for a moment of silence for Bob Diss, a former Kent police officer who passed away.

MAYOR'S REPORT

MOTION TO RECESS INTO EXECUTIVE SESSION.

Motion made by Ms. Oswitch, seconded by Ms. Gavriloff, and carried by a voice vote of 9-0.

Mayor Fender recessed this meeting at 8:24 p.m.

Mayor Fender reconvened this meeting at 9:50 p.m.

MOTION TO ADJOURN THIS MEETING

Motion made by Ms. Gavriloff, seconded by Mr. Ferrara, and carried by a voice vote of 9-0.

Hearing no further business before this Council, Mayor Fender adjourned this meeting at 9:51 p.m.

Linda M. Copley, Clerk of Council

John Fender, Mayor & President of Council