

CITY OF FENTON COUNCIL WORK SESSION PROCEEDINGS
Monday, June 2, 2014
City Hall Conference Room
301 South LeRoy Street
7:30 PM

Mayor Sue Osborn called the meeting to order at 7:30 PM.

Present: Bland, Grossmeyer, Jacob, King, Lockwood, McDermott, Osborn.
Absent: None.
Others Present: Lynn Markland, City Manager and Mike Burns, Assistant City Manager.

CITIZENS COMMENTS – None.

REQUEST FROM WATER’S EDGE VILLAGE HOMEOWNER’S ASSOCIATION

Markland stated the Association asked to address the City Council regarding their streets. Les Beare, representing the Homeowner’s Association, stated the Association is looking for help to repair deteriorating roads within the subdivision. He stated in October 2009, the Association spent \$25,000 installing the topcoat on roads the builder did not finish; after that, the City took over the roads. In 2010, 2011 and 2012 the Association took care of crack sealing the roads as needed. He provided photos to the Council showing the current conditions of the roads. He is approaching Council to see what needs to be done to get the roads and curbs repaired.

Osborn asked if the streets were dedicated to the City. Bland responded the only streets dedicated to the City were the two that were overlaid, which are Shoreline Drive and Shoreline Court. Beare stated those are the only streets the Association is concerned with. Osborn asked if the roads were brought up to City specifications. Bland responded the roads were brought up to specifications when they were overlaid.

Markland stated he looked at the streets on Saturday and the part that was recently overlaid looks fine. Beare stated the roads were taken down to the base before the overlay was applied.

Osborn stated it seems highly unlikely for that amount of deterioration to happen in such a short period time as there is not that much traffic, unless there was a lot of heavy equipment driven on the roads. Beare stated there probably was heavy equipment on the roads during construction and clarified the damage shown is from the time the construction project began, which was over ten years ago and is not on the newer portion of the roads.

Lockwood asked if the roads in question are on the five year roads maintenance plan. Markland responded he is not sure and he will talk to the D.P.W. Director about repairs, but cannot guarantee the roads will be repaved any time soon. Bland suggested looking at the Act 51 report turned into the State when those roads were paved as he believes only a certain portion of those streets were submitted on the report since only a portion of the roads were repaved. He doesn’t know if the portions that were not repaved were accepted as City streets through Act 51. Markland will check into this and follow up with the Association. He commented the City is in the process of looking at options to fund street improvements and one option being looked at is a street millage.

King commented she feels for the homeowners, but that there are other streets within the City in a lot worse shape. She stated it's important for the City to require a bond from developers so if the developer goes out of business, situations like this can be taken care of.

PROPOSED ICE RETARDANT SYSTEMS ORDINANCE

Cairnduff stated the subject of ice retardant systems ("bubblers") was brought to his attention last year by residents in the Silver Lake area. He stated Fenton Township passed a bubbler ordinance in 2007 that prohibits the use of ice-retardant systems. He stated parts of Lake Fenton and Silver Lake sit both in Fenton Township and the City. Currently the bubbler requirements are different for different parts of the lake. He did some research on bubblers and typically they are used in commercial areas (i.e. harbors, marinas) to keep ice off of barges or commercial docking facilities. They've become popular on private and smaller lakes so people don't have to remove docks, but they create a safety issue depending on water conditions, weather, etc. The devices can create weak ice well beyond the area intended to have no ice and people out on the ice may not realize the potential for weak ice because the bubblers are quiet and not marked. Cairnduff stated after looking at all the concerns, he suggested an ordinance be considered and Fenton Township has also requested the City look at adopting an ordinance similar to theirs so there is consistency on the lakes.

Schultz commented there have been challenges to these types of ordinances and there is a Court of Appeals decision related to an ordinance adopted by Harrison Township. He stated if the City chooses not to ban bubblers altogether, the ordinance needs to have very clear standards if there will be any exemptions. Another challenge that has been raised is that in addressing the public safety approach, there are less restrictive ways to address public safety issues without an outright ban on bubblers. One of the issues is whether or not in an appropriate case, a commercial use would be allowed. If there was a need to have open water for a bona fide commercial use and that is balanced against public safety concerns and the ordinance can accommodate the public safety concerns as well as allow the commercial use that will go a long way towards making the ordinance more valid and less likely to be challenged. The risk is if bubblers are allowed for commercial use, what the potential impact in terms of public safety will be. Another issue is if exemptions are allowed, what signage would be required so the public is aware there is a risk of open water or thin ice. He stated signage is addressed in the proposed ordinance but in discussions with the Fire Chief, what is proposed probably is not enough and the signs should be reflective signs and lit so they can be seen at night.

Osborn asked what commercial use would there be with open water. Cairnduff stated there are very few commercial properties on the lake and stated some of the larger marinas keep open water to be able to put boats in the water and work on them throughout the year. The majority of bubblers are used to keep docks in the water. Lockwood commented docks can be removed from the water.

Grossmeyer stated he is not in favor of an exemption. He doesn't want to make the determination of how big of a hazard area the bubbler would create. He also doesn't think people on the lake would like lighted signs. He asked if exemptions were allowed, would the City be able to restrict the type of system used. He stated some bubblers shoot air bubbles, some create water turbulence and there is a hose system that heats the immediate water, which he thinks would create less hazards.

Lockwood asked Cairnduff if he talked to any of the marinas. Cairnduff responded he did not. Lockwood stated at this point she is in favor of a total ban unless between now and

when it is brought forth to a City Council meeting for action, there is outcry from businesses on the water that want to discuss the issue. Cairnduff stated there are only a few commercial properties on the section of the lakes that fall within the City, and one of them is using an ice retardant system.

Bland commented he is in favor of a ban so there is consistency across the entire lake. Jacob agreed.

King commented marinas can work on boats without putting them in the lake. She would also like to know the point of view of the marinas. Cairnduff stated there will be a public hearing at a later date and the businesses affected can be contacted to inform them of the hearing. King stated she would like to know if Fenton Township has had a lot of issues with the ordinance.

Jacob asked if there was going to be an exception, he would like to know how far reaching the effect of the heat system is as he thinks that system would not have as far reaching of an effect as the other systems.

Osborn asked Attorney Schultz if he has talked to Fenton Township's Attorney. Schultz commented he has not and stated no court has stated without an exemption, the ordinance is invalid. In looking at what his office researched, he put in an exemption option for discussion purposes, but it can be taken out of the draft ordinance. Fenton Township's ordinance has been challenged, but has not been found to be invalid.

Osborn agreed with Bland's earlier comment that the City should be consistent with what Fenton Township is doing. King agreed and suggested the commercial business owners along the lake be sent a letter notifying them of the public hearing.

McDermott agreed that continuity across the lake is a good idea. He also doesn't think it is fair to make it the responsibility of the Fire Chief to tell an individual why they can't have an exception. He thinks the ordinance shouldn't include a provision for exceptions and if business owners have an issue, they can be addressed during the public hearing.

AMENDMENTS TO NATIONWIDE RETIREMENT PLAN

Markland stated the City offers self-funded retirement plans through Public Act 457 which is deferred compensation employees elect to participate in through payroll deduction. Some employees in the Nationwide program have requested they be allowed to borrow from their plan for major purchases and then pay back the funds over a period of time. They would also like to have the option of a Roth IRA account, which is designed for after tax contributions.

Ken Kelbel from Nationwide Retirement Solutions stated a lot of plans were written in the early 1980s and at that time the primary way to invest dollars into 457 accounts were through pre-tax payroll deductions. The tax code has changed to allow for other options. These options include a Roth IRA account option, loan options and a managed account option, which allows an employee to have their money professionally managed by one of Nationwide's money managers. He stated these options were not available when the City's plan was initially adopted and in order to make them available, a plan document amendment is required.

Bland asked how it is guaranteed that money borrowed for a loan would be paid back. Mr. Kelbel responded the loan agreement calls for a direct debit from the employee's personal bank account. If the loan is defaulted, it creates a taxable event for the employee. He noted the repayment does not go through the City; it is a private transaction between the employee and Nationwide and does not add an administrative burden or cost to the City.

Lockwood asked what the maximum amount is that can be borrowed. Mr. Kelbel responded it is half the account balance or \$50,000, the lesser of the two.

Council was in favor of allowing the amendments to the plan to allow for loan, Roth IRA and managed account options. Item will be placed on the next City Council meeting for action.

PROPOSED ANTI-DISCRIMINATION ORDINANCE

Schultz stated this was discussed at the last work session and his office has put together a draft ordinance for Council to review. He stated it is a broad ordinance that covers discrimination based on sexual orientation and gender identity but also covers all other forms of discrimination covered by state law. The ordinance contains a proviso which states if there is a state law that prohibits discrimination on the basis of some protected classification, the state law applies. He commented this ordinance will apply until such time the state enacts a law the covers discrimination on the basis of gender identity or sexual orientation. At that point, this ordinance would have no effect as state law would control. If a law goes into effect, it takes the City out of the enforcement business as the enforcement mechanism would be provided for in state law. Until that time, enforcement falls on the City. The first step in enforcement is for a complaint to go to the City Manager who will attempt to facilitate the dispute. If that is unsuccessful, it is referred to the City Attorney to decide whether there is sufficient basis to look at a violation.

Schultz stated his office has spoken to a number of other municipalities that have similar ordinances in effect and the complaints are very few. He reviewed section 15-7 of the proposed ordinance that lists the exemptions to the Ordinance. He stated the essence of the ordinance is a clear statement of policy and prohibits discrimination on the basis of sexual orientation or gender identity until such time a state law is enacted.

Jacob clarified that the ordinance covers housing, employment and services rendered to the public, outside of the exemptions listed in Section 15-7. Schultz responded that is correct and the ordinance is broad in that respect.

Bland commented he thinks the ordinance is well written and covers everything discussed at the last meeting but that it is his understanding that there is movement at the state level to get a state law passed. Schultz commented the larger corporate employers in the state have formed a coalition and have asked the Governor and Legislature to take this up, but he does not know if the Legislature will act on this before adjourning for the summer.

Lockwood commented she thinks it is a good ordinance and was well written. Grossmeyer agreed.

King asked for an explanation of Section 15-7, item (g) on page six of the ordinance. Schultz stated that is to make clear those businesses that provide adult entertainment (such as a bookstore), are not required by this ordinance to admit people under 18 years of age.

McDermott commented if the state passes a law that only covers sexual orientation and not gender identity, what would happen. Schultz stated the ordinance would apply to the area the state law does not address.

Item will be placed on the next City Council agenda for action.

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING TRANSFER

Burns commented the City received \$80,700 from the 2013 CDBG award from Genesee County; \$68,595 was set aside for the Community Center elevator. The remaining 15% must be used for public service projects, which equates to \$12,105, which is provided to the City in three

annual installments of \$4,035. In 2013, City Council directed Administration to give the money to the Director's salary at the Loose Senior Center for fiscal year (FY) 2014 (as has been done in years past) and then in FY 2015 and 2016, utilize a portion of the installments for FARR for a Needs Assessment Study.

Burns stated the City was informed by the County when the contract was signed that the first year of funding was for the Loose Center and funding for the Needs Assessment Study would be set aside in FY 2015 and 2016. As a result, Loose was paid the full \$4,035 of the annual funding. When the City sought reimbursement from the County for the payment to Loose, Administration was informed that \$1,257 of the annual funding was set aside for the Needs Assessment Study and the City was not reimbursed the full amount.

Burns further stated that as of this date, no action has been taken towards a Needs Assessment Study and the CDBG program fiscal year ends on July 31, 2014. The County informed the City the reimbursement error can be corrected by transferring this year's funds from the Needs Assessment Study to Loose operations. The County would need minutes of the City Council meeting approving the action and a letter from the City Manager requesting the transfer. He stated this action does not provide any negative impact to efforts in funding either Loose's operations or the future Needs Assessment Study as both can move forward as planned. He is recommending Council direct the City Manager take the actions presented to transfer \$1,257 of the City's CDBG Public Service Funds to Loose Senior Center Operations.

Lockwood clarified what is being asked for is to transfer \$1,257 to the Loose Senior Center Operations. Burns responded the funds wouldn't actually go to Loose, it would be taken care of administratively and just go to the City's CDBG fund because Loose has already been paid.

Lockwood asked about money going towards the Director's salary and stated she thought the CDBG funds went towards programs. Markland responded the money goes towards operations and then Loose decides how to use it.

Regarding the Needs Assessment Study, Lockwood asked that the Director of FARR come to a Council meeting to talk about the Study. Grossmeyer gave an update on the FARR Board meetings stating meetings were held and different members of the community were brought in to look at needs in the community and what the community has to offer to meet those needs, etc. A meeting was scheduled last month to work on goal setting but was rescheduled to June 10th and thinks after that meeting, the Needs Assessment Study can be looked at.

Lockwood asked if the money allocated for Loose is for three years or year by year. Burns responded it is annual and commented if Council wants to change the use as to where the money goes, they have the authority to do so.

Lockwood stated she is in support of the Loose Center, but would like to see the money go towards senior programs. King commented there are a lot of programs at Loose and it costs money to have them. The Center has directors that do a lot for the programs and an additional person was recently hired. Lockwood asked for a copy of the Loose Center budget. King responded she will provide a copy.

Bland commented he did not know funds were being used for salaries. Osborn stated she did not realize that either and thought the money was going towards programs for seniors and asked if Fenton Township or the City of Linden donates their CDBG funds. King responded the Township does not but Linden has recently started contributing. Regarding Fenton Township's funding, Lockwood commented statements have been made that Fenton Township has been contributing through the City of Fenton. King responded that is not true. Lockwood suggested

Loose's Director contact Fenton Township, as they were told by the County they contribute through the City. King stated the Township did use CDBG funds to purchase smoke detectors for senior citizens.

Bland stated he supports the Loose Center, but is not in favor of money going towards salaries and thinks the money should be used for senior programming. King stated she will pass on Council's concerns to the Loose Board.

Consensus was to bring to the next City Council meeting for action.

COUNCIL MEMBER COMMENTS

Osborn thanked everyone that volunteered for the Community Planting Day.

Lockwood asked if a traffic count could be done at the intersection of North and Torrey roads. She thinks traffic is becoming an issue there. She thanked everyone for their help with the Community Planting Day. She gave an update on Southern Lakes Parks and Recreation.

King commented regarding mosquito spraying. Lockwood commented spraying was done this past Friday.

Bland thanked the Tri-County Times for the recent article profiling him and his family.

Markland gave an update on the D.P.W.'s ongoing efforts regarding brush removal and wood chipping.

CALL TO THE AUDIENCE – Dawn Overmyer, thanked Councilwoman Lockwood for her help coordinating the Community Planting Day. She stated local businesses donated food and coffee for the volunteers. She commented items such as sidewalk and building conditions were brought to her attention and asked where she should direct those concerns. Bland responded any concerns should be relayed to City Administration.

Meeting was adjourned at 8:56 P.M.

Mayor Sue Osborn

City Clerk, Renee Wilson

Date approved: June 23, 2014