

The meeting of the Council of the Village of Chagrin Falls was called to order at 7:04 p.m. by Mr. Maersch.

Member present: Berkobein, Lutz, Maersch, Muscenti, Newell, Rogoff  
Members absent: Schleper  
Officials present: Himes, Markowitz, Brosius, Alunni, Lannon

Moved by Mrs. Lutz, seconded by Mr. Newell that the absence of Mr. Schleper be excused. Carried. Ayes: Berkobein, Lutz, Maersch, Muscenti, Newell, Rogoff. Nays: None.

### **APPROVAL OF MINUTES**

Moved by Mr. Newell, seconded by Ms. Rogoff that the minutes of the meeting held May 23, 2016 be approved. Carried. Ayes: Berkobein, Maersch, Lutz, Muscenti, Newell, Rogoff. Nays: None.

### **REPORT OF THE MAYOR**

No report.

### **REPORT OF THE FINANCE DIRECTOR**

No report.

### **MEMBERS OF THE PUBLIC TO SPEAK TO AGENDA ITEMS (NOT TO EXCEED TWO (2) MINUTES PER PERSON)**

None.

### **ORDINANCE NO. 2015-41 REPEALED**

Mr. Maersch introduced Ordinance No. 2016-26 entitled:

AN ORDINANCE REPEALING ORDINANCE NO. 2015-41 AND WITHDRAWING A SUBMITTAL TO THE ELECTORS OF THE VILLAGE OF CHAGRIN FALLS FOR A PROPOSAL TO AUTHORIZE THE DESIGN, CONSTRUCTION, AND MAINTENANCE OF PARKING FACILITIES ON A PORTION OF RIVERSIDE PARK.

Moved by Mr. Newell, seconded by Mrs. Lutz that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Berkobein, Lutz, Maersch, Newell, Rogoff. Nays: None. Moved by Mr. Newell, seconded by Mrs. Lutz that the ordinance be adopted. Carried. Ayes: Berkobein, Lutz, Maersch, Newell, Rogoff. Nays: None. Ms. Rogoff said I am kind of concerned about doing that because, as I think I mentioned at the last Council meeting, I wanted to make sure

that the people who had proposed this and that we had the agreement with were definitely in favor of doing this. I see some people here but nobody is speaking to it and I am always concerned about suspending the rules anyway and then two weeks from now somebody comes running in here and says “what happened and why did you do that?”. I understand that if we have some deadline to get it on the Board of Elections. Mr. Markowitz said the deadline would be the last meeting in July. Mr. Maersch said at that point we’d have to pass it on an emergency basis. Mrs. Lutz asked what is established by this? I thought what this establishes is that the people who didn’t want a parking lot now want to not have it even on the ballot because we are not proposing to put a parking lot there. It seems like everyone is in agreement. Ms. Rogoff said it is coming from us; I haven’t seen a letter from any of them. Mrs. Lutz said it initially came from them. Mr. Markowitz said I talked to their legal counsel before we drafted the legislation. He is no longer representing them but he confirmed that it was his understanding too that they didn’t want to see it on the ballot and the Mayor had a conversation with some of the petitioners confirming this. Ms. Rogoff asked if we have anything in writing from any of them? Mr. Markowitz said no. Mayor Tomko said you will never get anything in writing from an Ad-hoc group. I spoke to Diana Nazelli and Mike Carlton.

Mike Carlton, 42 East Orange Street, said the group is very much in favor of the action you are taking.

#### **CODIFIED ORDINANCES AMENDED**

Mrs. Lutz introduced Ordinance No. 2016-27 entitled:

#### **AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 351.141 AND DECLARING AN EMERGENCY.**

Moved by Mrs. Lutz, seconded by Mr. Newell that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Berkobein, Lutz, Maersch, Newell, Rogoff. Nays: None. Moved by Mrs. Lutz, seconded by Mr. Newell that the ordinance be adopted. Carried. Ayes: Berkobein, Lutz, Maersch, Newell, Rogoff. Nays: None. Mr. Markowitz said we thought this was appropriate based on complaints we were getting from some of the business owners and property owners that there was a lot of illegal parking going on in violation of the signs that were posted saying “no parking”. We propose to increase the towing charge from \$70.00 to \$90.00 and increase the storage charges from \$10.00 per day to \$20.00 per day. We looked at some other communities and that seemed to be pretty much in the ballpark with the other communities. We want to create an incentive for people to not violate the parking considering how critical and short parking is in town. Chief Brosius said this also brings us in line with the Ohio Revised Code.

#### **NECESSITY OF AN ELECTION**

Mr. Maersch introduced Resolution No. 2016-28 entitled:

#### **A RESOLUTION DECLARING THE NECESSITY OF AN ELECTION ON THE QUESTION OF APPROVING THE PASSAGE OF AN ORDINANCE TO AMEND**

CERTAIN EXISTING SECTIONS OF THE CODIFIED ORDINANCES OF THE VILLAGE OF CHAGRIN FALLS, INCLUDING EXISTING SECTION 124.01, AUTHORITY TO LEVY TAX; PURPOSE OF TAX, AND 124.04(A), WITHHOLDING PROVISIONS, IN ORDER TO PROVIDE FOR A THIRTY-FIVE HUNDREDTHS (0.35%) PERCENT INCREASE IN THE CURRENT LEVY ON INCOME, TO A RATE OF ONE AND EIGHTY-FIVE HUNDREDTHS (1.85%) PERCENT, BEGINNING JANUARY 1, 2017, SOLELY FOR THE PURPOSE OF PAYING COSTS AND DEBT CHARGES ASSOCIATED WITH ROAD REPAIR AND MAINTENANCE, PERMANENT VILLAGE IMPROVEMENTS, INFRASTRUCTURE, MAINTENANCE, AND CEMETERY PERPETUAL CARE AND MAINTAINING SUCH IMPROVEMENTS AND INFRASTRUCTURE OF THE VILLAGE AND DECLARING AN EMERGENCY.

Mr. Markowitz said if you read the resolution you can get confused rather quickly because within the resolution is an ordinance. When you are going on the ballot and you are asking the voters to approve something like this, an income tax increase, you are asking to approve the ordinance so that is the format of what you have to do. You still have language specifying what the ballot language is because you don't put the whole ordinance on there but the changes to the ordinance, which are available to the public this evening as part of the resolution, you have your little box with vote for or against so that they know what they are voting for. The specific language in the ordinance, which is another reason why it is part of the resolution, is to provide for how these revenue sources would be allocated by the collection of this additional revenue. We specify that it is for road repairs, permanent improvements, infrastructure, and the cemetery perpetual care.

Mr. Maersch said Resolution 2016-28 is the resolution that will place this on the ballot and includes the suggested ballot language and Ordinance 2016-29 is the actual legislation that will be effective January 1, 2017 if the ballot initiative is successful. Mr. Markowitz said Council is not voting on Ordinance 2016-29, you are just voting on the resolution to get it on the ballot. The voters vote on Ordinance 2016-29 and once they approve it then you adopt the ordinance after the election is certified by the Board of Elections.

Mr. Maersch said under 124.01, authority to levy tax; purpose of tax, do we not still need language that designates the 85% and 15% split of income tax? Mr. Markowitz said that is in another section. It says that remains in effect through the end of this year but we say at the end of the sentence under section 1 is that that balance, the 1.5%, is still used for general operating and for debt retirement whatever Village Council determines.

Mr. Muscenti asked are we repealing the 1986 legislation? Mr. Markowitz said as of January 1, 2017 it will be repealed. Mr. Muscenti said under 124.01, the stricken language, it says for Street Construction, Maintenance, and Repair Fund. I am trying to reconcile the fact that we received \$544,000 last year from the income tax and how it is allocated and where we see it in the budget. Mr. Himes explained that currently 85% of the income tax would show up in the general fund and

then the other 15% is shown as revenue in the street fund. It is part of the street fund operating budget but is not sufficient to run the total street fund so we transfer additional monies from the general fund into the street fund to make it run in the black. By law the village funds cannot end the year in the red.

Mr. Muscenti asked if we could change the language in the ordinance to redirect 15% of the first 1.5% of the income tax to street paving. Mayor Tomko said “no” that revenue goes to the street fund that pays for snow plowing and service department operations. If it makes you happy to put the first 15% into the street fund like the existing ordinance then we can do that. It makes no difference.

Mr. Maersh said the code language is confusing. It says the 15% of the income tax goes to a “fund” not street operations which is what it is used for. The new ordinance designates the additional .35% tax to enumerated projects and not to a particular fund. We could leave the 1986 split of income tax alone and have the additional funds go to capital projects as enumerated in the proposed capital plan. Mr. Markowitz said yes that can be done but it might confuse the voters. Mayor Tomko said the voters would have to understand government accounting and clearly that is confusing to people.

Mr. Maersch said here is what I recommend that we do. We have satisfied the requirement for a first reading. Does anyone in the audience wish to speak to this? Hearing none, he said between this meeting and the next let’s make sure everyone is comfortable with the language and if you have questions about the language or where the funds go, reach out to Ben or Mr. Markowitz. I personally understand why it was drafted this way and I am comfortable with it but I can see what you guys are saying and I don’t think it changes the outcome of it.

Mrs. Lutz said every year we go through the budget with a fine tooth comb and council has the opportunity to determine how the money is spent. We always need to spend more than the 15% of the income tax allocated by ordinance to the street fund and make up the balance by transferring out of the general fund. So whether the 15% is written into the law or not doesn’t change the way the money is ultimately spent. All funds are spent according to the needs of the Village and only with council’s approval.

Mr. Berkobein said that does not change how we bring it in and where it is going to be housed until we spend it. This wording changes that. Mr. Maersch asked what is your concern with the wording? I thought your concern was that any new income tax be properly designated and it seems like you have broadened your concerns. Mr. Berkobein said the reallocation of the 1.5% so that all of it is being put into the general fund. Mr. Tomko said they are concerned that it is a back door way of reducing the .35% tax increase by the 15% that is going to the street fund. Ms. Rogoff said I think that is exactly what it is doing.

Mr. Maersch asked Ms. Rogoff if she had any other concerns and she said that she does not agree with the whereas clauses. Mayor Tomko said they are meaningless and can be deleted. Ms. Rogoff said she does not believe we discussed debt at the Finance Committee meeting. Mr. Maersch said

we did. The Mayor proposed \$850,000 of debt in 2017 and \$500,000 in 2019 as well as leasing of the sewer jet. The Mayor explained that debt is used to provide some inter-generational fairness. It makes no sense for residents today to pay with cash for improvements that have a useful life of 20 or 30 years. Debt allows future residents who will enjoy these improvements to share in their cost.

Mr. Maersch placed this resolution on readings.

### **CODIFIED ORDINANCES AMENDED**

Mr. Maersch introduced Ordinance No. 2016-29 entitled:

AN ORDINANCE AMENDING EXISTING SECTIONS 124.01(A) AND (B) AND 124-04 (A) OF THE CODIFIED ORDINANCES OF THE VILLAGE OF CHAGRIN FALLS IN ORDER TO INCREASE THE INCOME TAX RATE FROM 1.5% TO 1.85%, BEGINNING JANUARY 1, 2017, WITH THE INCREASE TO BE USED SOLELY FOR THE PURPOSE OF PAYING COSTS AND DEBT CHARGES ASSOCIATED WITH ROAD REPAIR AND MAINTENANCE, PERMANENT VILLAGE IMPROVEMENTS, INFRASTRUCTURE, AND CEMETERY PERPETUAL CARE AND MAINTAINING SUCH IMPROVEMENTS AND INFRASTRUCTURE OF THE VILLAGE (COLLECTIVELY THE “ROAD AND INFRASTRUCTURE IMPROVEMENTS”) AND DECLARING AN EMERGENCY.

Mr. Markowitz said this is the companion ordinance to the resolution. This resolution will be adopted by the voters if the ballot issue passes.

Mr. Maersch placed this ordinance on readings.

### **HICKORY HILL SLOPE FAILURE PROJECT**

Mr. Newell introduced Resolution No. 2016-30 entitled:

A RESOLUTION AUTHORIZING THE VILLAGE ENGINEER TO PREPARE PLANS, SPECIFICATIONS, AND BIDS FOR THE HICKORY HILL SLOPE FAILURE REPAIR PROJECT AND DECLARING AN EMERGENCY.

Moved by Mr. Newell, seconded by Mrs. Lutz that the resolution be adopted. Carried. Ayes: Berkobein, Lutz, Maersch, Newell, Rogoff. Nays: None. Mr. Newell said we held a Utilities committee meeting tonight to discuss this. Last year during the heavy rains in June the storm sewer outfall on Hickory Hill suffered from severe erosion that contributed to a slope failure that is affecting the driveway of the resident at 257 Hickory Hill. The committee unanimously recommended that this project be put out to bid. Bid results will come back to council for award.

### **PLANNING AND ZONING CODE AMENDED**

Ms. Rogoff introduced Ordinance No. 2016-31 entitled:

AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE OF THE VILLAGE OF CHAGRIN FALLS, AND AMENDING SECTIONS 1107.07 (g), (h) AND (I), ADDING SECTION 1125.02 (a)(3), AMENDING SECTION 1125.05 (b) AND ©), ADDING SECTION 1127.02(c)(3) AND (d)(10), AMENDING SECTION 1127.02 (d)(9), ADDING SECTION 1129.02 (a)(3) AND (b)(9), AMENDING SECTION 1129.02 (b)(8), ADDING SECTION 1130.03 (e)(4) AND (f)(12), AMENDING SECTION 1130.03 (f)(11), AMENDING SECTION 1137.02 (a)(4), AMENDING SECTION 1137.03(a), AMENDING SECTION 1137.05(g), AMENDING SECTION 1138.02 (a)(4), AMENDING SECTION 1138.05(f), AMENDING SECTION 1139.02 (a)(6)(b)(4), AND AMENDING SECTION 1141.05, REGARDING SHORT-TERM RENTALS IN VARIOUS ZONING DISTRICTS IN THE VILLAGE.

Ms. Rogoff said this change to the ordinance was recommended by the Planning and Zoning Commission and it will make short-term rentals illegal in the residential districts. The code already does not allow bed and breakfasts or hotels in the residential districts and this just clarifies that short-term rentals of all kinds are not permitted in residential districts because they are commercial uses.

Mr. Maersch said I understand the need to regulate these uses but I am opposed to an outright ban.

Chris Lockhart, 50 East Summit, said I own the house on Summit Street and that is the reason for this ordinance. I live in the home part-time and I rent it to people with a connection to the area for weddings and other local events. I screen who I rent to very carefully and have never had a problem with tenants.

Mary Ann Ponce spoke in opposition to the ordinance and explained the need for short-term rentals during art events like the film festival. Molly Gebler from the Chamber of Commerce spoke against the ordinance citing the fact that the number one question the Chamber gets is where can I stay when I visit Chagrin Falls? Joanne Zettle, 68 Olive Street, spoke in opposition to the ordinance. Grant Cleveland, Solon Road, spoke in favor of the ordinance.

Mayor Tomko said I am absolutely in favor of this regulation because I do not want transients in a house next to me.

Moved by Mr. Newell seconded by Mr. Muscenti to refer this back to the Planning and Zoning Commission for further study.

**VARIANCE REQUEST - 414 FALLS ROAD**

Mr. Maersch introduced Administrative Order No. 2016-32 entitled:

FINAL ORDER OF COUNCIL AND CONCLUSION OF FACT REGARDING A  
VARIANCE REQUEST OF JOHN MICKELS AND DESIREE GRAVES FOR  
PROPERTY LOCATED AT 414 FALLS ROAD.

Moved by Mr. Newell, seconded by Mrs. Lutz that the administrative order be adopted. Carried. Ayes: Berkobein, Lutz, Maersch, Newell, Rogoff. Nays: None. Mr. Maersch explained that the subject property is triangular shaped at the intersection of North and Falls Road. The applicant requests a rear yard variance of eleven feet four inches for an addition. The rear faces North Street and there is a row of heavy vegetation and trees at the roadway that blocks this from view. He also noted that there are no homes across the street behind this house due to the steep slope. The board of zoning appeals recommended this variance unanimously.

**VARIANCE REQUEST - 262 SOUTH FRANKLIN STREET**

Mr. Maersch introduced Administrative Order No. 2016-33 entitled:

FINAL ORDER OF COUNCIL AND CONCLUSION OF FACT REGARDING A  
VARIANCE REQUEST OF CPD REALTY & HOLDINGS LLC FOR PROPERTY  
LOCATED AT 262 SOUTH FRANKLIN STREET.

Moved by Mrs. Lutz, seconded by Mr. Berkobein that the administrative order be adopted. Carried. Ayes: Berkobein, Lutz, Maersch, Newell, Rogoff. Nays: None. Mr. Maersch explained the specifics of the variance request.

**STREETS AND SIDEWALKS COMMITTEE**

No report.

**FACILITIES AND SERVICES COMMITTEE**

No report.

**PLANNING AND ZONING COMMISSION**

Ms. Rogoff announced a meeting for Tuesday, June 20, 2016 at 7:30 p.m.

**SAFETY COMMITTEE**

No report.

**UTILITIES COMMITTEE**

Mr. Newell said we had a meeting this evening to discuss the Hickory Hill slope failure and the

committee recommended that the project to repair this be put out to bid.

### **BOARD OF ZONING APPEALS**

No report.

### **ADMINISTRATION AND COMPENSATION COMMITTEE**

No report.

### **FINANCE COMMITTEE**

No report.

### **PARKS COMMISSION**

Mrs. Lutz announced a meeting for Tuesday, June 28, 2016 at 8:30 a.m.

### **SHADE TREE COMMISSION**

Mrs. Lutz said this is a great group and they are very busy. The Arbor Day celebration at the Ben King Arboretum was a great success. Shade Tree Commission members were joined by the Mayor, members of Boy Scout Troop 241, and residents to begin the process of landscaping the arboretum.

Boy Scout Troop 241 will design and install paths and a bench in the arboretum to fulfill the requirements for Eagle Scout. It is expected that this work will be finished by Thanksgiving.

Terry Rounds, Rob Jamieson, and John Brockway met with James Funai, the director of the horticulture program at the Cuyahoga Community College, at the Ben King Arboretum. As a result of this meeting, Mr. Funai agreed to direct his students in the construction of a rain garden at the arboretum. The rain garden will include all native plants and require very little maintenance. Mr. Funai's students will design the rain garden in the fall and construct the garden in the spring. Other possible projects in the Village were discussed, and it is hoped that this will be the beginning of an effective collaboration between the Village and Cuyahoga Community College.

The need to air knife small trees, which are languishing, was discussed and dates for the work will be set soon.

Water bags have been placed on all newly planted trees. It is hoped that residents will fill the bags on the tree lawn in front of their residence. A letter requesting activity will be drafted.

During the month of June, each member of the Shade Tree Commission will inspect his sector for



any trees in a state of serious decline or in need of high level pruning. A list of these trees will be compiled at the July meeting, and all trees on the list will be referred to a certified arborist from the Van Curen Company for final determination of any work or removal needed.

Representatives from surrounding municipalities have been invited to discuss plans for creating a consortium to engage in contract growing of trees. Marie McConnell from the Lake County Nursery will attend to answer any questions. Contract growing has the potential to reduce purchase cost and to ensure high quality, right sized trees for our spring plantings.

### **ARTS COMMISSION**

No report.

### **PARKING COMMISSION**

No report.

### **REPORT OF THE CHIEF ADMINISTRATIVE OFFICER**

No report.

### **REPORT OF THE ENGINEER**

No report.

### **REPORT OF THE POLICE CHIEF**

No report.

### **REPORT OF THE FIRE CHIEF**

No report.

### **MEMBERS OF THE PUBLIC TO SPEAK TO ANY MATTER (NOT TO EXCEED FIVE (5) MINUTES)**

Todd Lyle, South Russell resident, said he has a rental house on Bell Road and during the Bell Road construction a small wet spot developed. In May of 2015 the water department tested it and concluded that it was ground water. In April of 2016 his tenants had low water pressure and a leak was found on the service line. Mr. Lyle feels he was mistreated by the water department and the report issued by the department is inconsistent with what happened. Mr. Maersch said this is an administrative, not a legislative, matter and you should take it up with the Mayor as the Chief

Executive of the Village and Mr. Himes, the Chief Administrative Officer. Mr. Himes said he agrees with Mr. Lyle that there are two very different sides to this story.

**MISCELLANEOUS**

None.

**ADJOURNMENT**

Mr. Maersch adjourned the meeting at 9:02 p.m.

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President of Council

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Clerk of Council