

Council met in **REGULAR SESSION** on Monday, March 25, 2013, at 7:49 P.M. in the Council Chambers with President Maurer presiding. Members present: Avant, Debevec, Endres, Frey, Lysenko, Megyes, and Soyars. Mr. Wagner was absent. The Pledge of Allegiance to the Flag was recited and Mr. Megyes gave the Invocation.

It was moved by Mr. Soyars, seconded by Mrs. Debevec, to approve the Minutes of the Regular Legislative Session held on Monday, March 11, 2013, as presented. All Members voted "yea." Motion carried.

PETITIONS AND CLAIMS

None.

MATTERS REFERRED

Each Council Member, the Mayor and Service Director were given a report prepared by the Council Clerk listing all matters before all committees.

CITIZENS ADDRESSING COUNCIL

None.

The following Minutes are not transcribed verbatim. This meeting has been recorded in its entirety and the tape is catalogued in the Clerk of Council's office.

FIRST READING OF ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 39-2013

ORDINANCE NO. 39-2013. PRESENTED BY: MR. MEGYES. TITLE: ENTER INTO CONTRACT – BOAK & SONS. AN ORDINANCE AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO ENTER INTO CONTRACT WITH BOAK & SONS, THE LOWEST AND/OR BEST BIDDER, TO REPLACE THE ROOFS OF 565 W. TUSCARAWAS AVENUE (THE MAGICAL THEATRE) AND 571 W. TUSCARAWAS AVENUE (THE WEIGAND BUILDING) FOR THE TOTAL AMOUNT OF \$131,560, AND DECLARING AN EMERGENCY. It was moved by Mr. Megyes, seconded by Mr. Endres, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted "yea." Motion carried. It was moved by Mr. Megyes, seconded by Mr. Endres, that **ORDINANCE NO. 39-2013 BE ADOPTED.** All Members voted "yea." Motion carried.

The Clerk said the City Properties, Parks and Recreation Committee voted in their committee meeting this evening to bring Ordinance No. 40-2013 to a Council vote tonight.

ORDINANCE NO. 40-2013

ORDINANCE NO. 40-2013. PRESENTED BY: MR. MEGYES. TITLE: ENTER INTO MITIGATION AGREEMENT – LRC COPLEY INVESTORS LLC. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A MITIGATION AGREEMENT WITH LRC COPLEY INVESTORS LLC, REGARDING THE PRESERVATION OF CERTAIN CONSERVATION PROPERTY, AND DECLARING AN EMERGENCY. It

was moved by Mr. Megyes, seconded by Mr. Endres, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. Mr. Lysenko said he was wondering why Council was going with one reading at this point. Mr. Megyes said the Mayor requested two readings, and Mr. Megyes said he suggested they just do one. President Maurer said he recalled that Mr. Stender was very much in favor of this project and he asked Mr. Stender if he was correct. Mr. Stender, Director of Utilities, said it is a difficult question to give an answer because the reservoir property itself is not involved in this; it is just a part of this. He said it is Wolf Creek, below the Dam. President Maurer said then this does not really affect our drinking water. Mr. Stender said that is correct. He said in that case, it is harmless. President Maurer said we are protecting a freshwater source, so he does not see a problem with that. Mayor Judge said we requested this (vote) now because no questions were received from anyone, so the thought was, why delay it? President Maurer called for the vote on suspension. All Members voted "yea." Motion carried. It was moved by Mr. Megyes, seconded by Mr. Endres, that **ORDINANCE NO. 40-2013 BE ADOPTED.** Mr. Lysenko said what he heard about this was that Planning Commission unanimously chose *not* to recommend this, but at the following meeting, chose *to* unanimously recommend it. He said he was wondering what the basis for that reversal was. Ms. Sheridan, Planning Director, said Planning Commission tabled it at first because they needed more information and Mr. Hart was not at that first meeting. She said he came to the next meeting, they had their questions answered, and they then recommended it. Mr. Lysenko asked why there was no money offered to the City of Barberton to proceed with this. Mr. Hart, representative from Levey, said there is no monetary value in the City of Barberton for this. He said he would like to say that Levey & Co. has quite a bit of holdings in the City ... about \$260,000 in property taxes a year ... and there are other things they do also. He said there is an individual in our office who is a land use planner. Mr. Hart said he has done developments from Chicago to the East Coast for some of the biggest commercial, industrial, and residential developments. He said Larry Levey allows him to participate with the BCDC and the Barberton Community Foundation to help them with a lot of the planning they are doing, looking at the different developments that Barberton has in their plans. He said Levey & Co. is very active in the City of Barberton. He said he feels what Levey contributes to the City right now is pretty considerable. Mr. Hart said to look at what Levey owns in the community. He said he knows they are not actual Levey employees, but they are probably about the fourth largest employer in the City of Barberton. Mr. Avant said when this first came through, the first hearing that was held, it seemed like it was pretty much overnight that they received the information. He said he did not think they had a chance to formulate any questions. He said he does not feel Mr. Levey's holdings have anything to do with mitigating an area of property in the city. He asked, "Who is requiring this mitigation?" and "What is it really all about?" Mr. Avant asked if it was part of the mitigation banking that is going on with ODNR. He said if it is, in looking at the new website, there is something in there about selling 30% of it at one time and 70% of these credits. He asked why we should rent it in credits and perhaps restrict some of our property. He said he has trouble understanding the whole thing and he does not think it was ever made clear what this is all about and why this should be done. Mr. Avant said he knows this is all to do with Walmart, and he does not care if another Walmart is built in Ohio as far as that goes. He said there is wetland up there -- a little creek or ditch, as Mr. Hart called it -- that was taken away. He asked what it had to do with tying that stretch up that is not protecting anything. He said it is our property; we could protect it from anything we want. Mr. Avant said because there is no real clear understanding as to why we are doing it, what it is for, and who is benefiting from it -- he

does not feel that he can support it. Mr. Megyes said he would first like to say how much he respects Mr. Hart and all he has done for the City. He said with that said, he is going to vote "no" on this. He said his main concern is condition #6 in the Barberton Mitigation Agreement. He said it states: Barberton and LRC agree that LRC may assign all of its rights and duties under this Agreement without obtaining the consent of the City. Mrs. Miller, Law Director, said she wished Mr. Megyes had asked her about this because she could have explained it to him like she did the Planning Commission. She said that is standard language in a contract. She said if LRC Investors Inc. is transferred to ABC Investors Inc., they become a party to that Agreement. She said it could be RPJ Inc. buys LRC Inc. Mrs. Miller said all that does is substitute that party in the Agreement. She said the City would have agreements where it would say the City of Barberton or its assign ... which means we could assign an agreement that we had for any agreement we have. She said we could assign our agreement to someone else. She said that is a normal clause in a contract, especially for businesses that change their corporate structure, maybe from an LLC, to a fully incorporated company, to something else. Mr. Megyes said Walmart already owns the land that it is being built on -- not LRC. He said when you get Walmart involved with anything, it is their way or the highway. He said he cannot see any benefit to the City of Barberton on this and he also believes that the City should be compensated in some way. President Maurer said he would like to make a suggestion to the committee. He said it appears there is still a lack of clarity in the minds of the members and he asked if Mr. Megyes would just want to make this a first reading or go ahead and go for it. Mr. Megyes said he would like to go for it. Mayor Judge said to Mr. Hart to correct him if he is wrong, but it is his understanding that a wetland area can be developed if you re-create that somewhere else. He said this has been done in the past in the City of Barberton. He said even though there is no monetary compensation to the City, there is some value in protecting that stream and the area around it. He said we do own it, so we do have some protection ourselves. Mayor Judge said this will protect it here and out so the next twenty/fifty years from now, that area is still protected. Mr. Hart said compensation to the City of Barberton has come up in the Planning Commission and in meetings with the City. He said the development Levey has in the City of Barberton, Mr. Avant might not care about. Mr. Avant said he did not say that. Mr. Hart said it is important to have that development here in Barberton. He said they are constantly looking at more types of development in the City of Barberton. He said another thing he feels would help Barberton is bringing Atwell, the largest consulting group on wetland preservation, to the City and introducing Sean Peffer to Alan Keltyka, Stormwater Engineer, to look at different projects. He said Atwell can bring developers to the City of Barberton to correct some of the problems the City has, especially in the water area. Mr. Hart said that is going to be a big benefit. He said he has worked with the City of Barberton probably the last four or five months, he has answered as many questions as he possibly could, so if anybody has any other questions, he would be very happy to answer them. He said it is pretty straight forward. Mr. Lysenko asked if this is not approved by Council, will the project that Walmart is planning have to be delayed or changed. Mr. Hart said Walmart is going in. He said Levey would go to a different area and start over. He said again, Levey & Co. has put out a significant amount of money already in having their consultants here from Columbus -- Atwell and Sean Peffer -- so they have done a lot of work in putting this together in the City of Barberton. He said people may not like Walmart; he might not like Walmart. Mr. Hart said Walmart on Rothrock Road will produce 900 jobs, a significant amount of jobs for Summit County. He said it is not just for Copley Township; it is also for the County. He said it is important that these types of developments go forward even if we might

not like them. Mr. Hart said if Walmart did not go there, they would have gone further on Route 18 in Medina County and Summit County would have lost those 900 jobs. He said we were fortunate that we were able to keep them here in Summit County. Mr. Lysenko said he appreciates the comments from Mr. Hart and he understands there are interests that they may not know about, and that if they deny this, they could change in the future; however, he does not feel we need a conservation easement for this piece of property. He said we own it and this Council is here to protect that interest. He said as long as Council does not agree that the property be sold and the Planning Commission does not agree that the property be used for some other purpose, his question was and remains, "What is in it for Barberton?" Mr. Avant said an article in today's *Beacon* stated: "There are several methods listed to remove the 1.59 acres of wetlands and 1498 feet of stream on the site. The wetlands would be restored at the Wilderness Center's Fox Creek Mill Tract, just north of Wilmot in southwestern Stark County." He said this is telling him that they already have a mitigated area for this. He said he wants to know why they are coming back to Barberton. He said plus, there is a conflict between two communities north of us and, quite frankly, he thinks he would rather not be a part of that conflict by favoring one over the other, from one community to the other. Mr. Avant asked if they already have a mitigated area and are they asking for more. He said the questions about banking and credits have still not been answered. He asked if this would yield credits to some other organization that they could sell to other people. He said it is much like the problem with utilities, with the Air Pollution Control, when they sold credits for cleanup. Mr. Avant said that is what it sounds like to him. He said it sounds like they want another chunk of land that they can mitigate so they could sell these credits to somebody else. He said he does not think we should get involved in that. Mr. Hart said part of the mitigation was done in southern Stark County. He said this is an additional portion of it. He said we are not going to sell those credits to anybody. He said it is for that project. Mr. Hart said Sean Peffer did mention to the City that the City of Barberton has prime property to sell to developers on a large scale. He said theirs is a very minor scale. He said as Sean explained to the City, they could do an analysis of 1,000 acres of reservoir and determine what wetlands in mitigation can be used for developers when developers come to them requiring a certain percentage of property for mitigation, like a wetland, that the City of Barberton could then sell that to that developer for their mitigation. He said Mr. Avant is right; you can do that. Mr. Hart said Sean Peffer has brought that to the attention to the City and talked to Alan Keltyka about that. He said that is again one of the benefits -- to bring Sean Peffer and Atwell into the City to help correct a lot of those problems that they currently have at a lot less, or at no cost, to the City of Barberton. President Maurer called for the vote on adoption. Mrs. Frey and Mr. Soyars voted "yea." Mr. Lysenko, Mr. Megyes, Mr. Endres, and Mr. Avant voted "nay." Mrs. Debevec voted "abstain." Motion failed, 2-4-1.

ORDINANCE NO. 41-2013

ORDINANCE NO. 41-2013. PRESENTED BY: MR. MEGYES. TITLE: 31ST STREET NW / CLEVELAND MASSILLON ROAD – WATERLINE REPLACEMENT PROJECT – COST SHARING AGREEMENT – CITY OF NORTON. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A COST SHARING AGREEMENT WITH THE CITY OF NORTON TO PROVIDE FOR THE CITY OF BARBERTON'S SHARE FOR THE CONSTRUCTION OF THE 31ST STREET NW / CLEVELAND-MASSILLON ROAD WATERLINE REPLACEMENT PROJECT (AN OPWC FUNDED PROJECT), WITH TOTAL PROJECT COSTS BEING DETERMINED AS NOT TO

EXCEED \$2,072,946, AND DECLARING AN EMERGENCY. It was moved by Mr. Megyes, seconded by Mr. Avant, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Megyes, seconded by Mr. Avant, that **ORDINANCE NO. 41-2013 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 42-2013

ORDINANCE NO. 42-2013. PRESENTED BY: MR. SOYARS. TITLE: PURCHASE OF CRUISERS – POLICE DEPARTMENT. AN ORDINANCE AUTHORIZING THE MAYOR TO PARTICIPATE IN THE COMMUNITY-UNIVERSITY AND EDUCATIONAL COOPERATIVE AND PURCHASING PROGRAM (CUE) TO PURCHASE TWO (2) VEHICLES FOR THE POLICE DEPARTMENT, FROM MONTROSE FORD, FOR A TOTAL AMOUNT OF \$53,145.58, AND DECLARING AN EMERGENCY. It was moved by Mr. Soyars, seconded by Mr. Lysenko, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Soyars, seconded by Mr. Lysenko, that **ORDINANCE NO. 42-2013 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 43-2013

ORDINANCE NO. 43-2013. PRESENTED BY: MR. ENDRES. TITLE: AMEND BARBERTON DEVELOPMENT CODE – LIMITED OUTDOOR STORAGE, SPECIAL. AN ORDINANCE AMENDING THE BARBERTON DEVELOPMENT CODE BY ADDING “LIMITED OUTDOOR STORAGE, SPECIAL,” TO TABLE 1130 H: LOCAL BUSINESS USE GROUPS, GROUP 10C AND ADDING THE DEFINITION OF “LIMITED OUTDOOR STORAGE, SPECIAL” TO CHAPTER 1360(B) AS (115B), AND DECLARING AN EMERGENCY. It was moved by Mr. Endres, seconded by Mr. Avant, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Endres, seconded by Mr. Avant, that **ORDINANCE NO. 43-2013 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 44-2013

ORDINANCE NO. 44-2013. PRESENTED BY: MR. AVANT. TITLE: ENTER INTO CONTRACT – HUMAN RESOURCES – EMPLOYEE LIFE INSURANCE. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A THREE-YEAR CONTRACT WITH THE STANDARD (LIFE INSURANCE COMPANY), IN THE AMOUNT OF \$6,653 PER MONTH, FOR LIFE INSURANCE FOR CITY EMPLOYEES, FROM APRIL 1, 2013 THROUGH MARCH 31, 2016, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, seconded by Mrs. Debevec, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Avant, seconded by Mrs. Debevec, that **ORDINANCE NO. 44-2013 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 45-2013

ORDINANCE NO. 45-2013. PRESENTED BY: MR. AVANT. TITLE: APPROPRIATION / TRANSFER – LAKE CINEMA COMPLEX FUND. AN ORDINANCE APPROPRIATING \$532,558 FROM THE UNAPPROPRIATED ITEM OF

THE LAKE CINEMA COMPLEX FUND TO THE LAKE CINEMA COMPLEX FUND DEBT SERVICE BUDGET FOR PAYMENT OF THE HUD 108 LOAN PRINCIPAL AND INTEREST; AND TRANSFERRING \$42,400 FROM THE LAKE CINEMA COMPLEX FUND DEBT SERVICE BUDGET TO THE LAKE CINEMA COMPLEX FUND OPERATING BUDGET, TO PAY REPAIR AND MAINTENANCE EXPENSES REQUIRED IN THE PROPERTY SALE AGREEMENT WITH THE NEIGHBORHOOD DEVELOPMENT SERVICE, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, seconded by Mrs. Debevec, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Avant, seconded by Mrs. Debevec, that **ORDINANCE NO. 45-2013 BE ADOPTED.** President Maurer said it is nice to have that off the books. He said the City does a really good job running things, but the City does not really want to be a landlord. President Maurer called for the vote on adoption. All Members voted “yea.” Motion carried.

SECOND READING OF ORDINANCES AND RESOLUTIONS

None.

THIRD READING OF ORDINANCES AND RESOLUTIONS

None.

APPOINTMENTS

PARKS & RECREATION COMMISSION – Barberton Board of Education Appointment
5-year Term

T. Michael McKenzie re-appointment Immediately – December 31, 2017
It was moved by Mr. Megyes, seconded by Mr. Endres, to confirm the re-appointment of Mr. T. Michael McKenzie by the Barberton Board of Education to the Parks & Recreation Commission. All Members voted “yea.” Motion carried.

BOARD OF HEALTH – BARBERTON HEALTH DISTRICT

Dr. Frank Lazzerini appointment Immediately - December 31, 2013
It was moved by Mrs. Frey, seconded by Mr. Endres, to confirm the appointment of Dr. Lazzerini to the Board of Health. All Members voted “yea.” Motion carried.

MISCELLANEOUS AND UNFINISHED BUSINESS

Executive Session

Mayor Judge has requested an Executive Session in order to discuss the OPBA Fact Finding Report.

It was moved by Mr. Soyars, seconded by Mrs. Debevec, to go into Executive Session to discuss the OPBA Fact Finding Report. All Members voted “yea.” Motion carried.

Adjourned into Executive Session: 8:22 p.m.

Roll Call: President Maurer, Mr. Avant, Mrs. Debevec, Mr. Endres, Mrs. Frey, Mr. Lysenko, Mr. Megyes, and Mr. Soyars. Mr. Wagner was absent.

Also in Attendance: Mayor Judge, Mrs. Miller, Ms. Savula, Chief Morber, and Ms. Adkins (Summit County Counsel).

It was moved by Mr. Soyars, seconded by Mrs. Debevec, to adjourn the Executive Session and reconvene into the Regular Session. All Members voted "yea." Motion carried.

Reconvened into Regular Session: 8:39 p.m.

President Maurer said he would entertain a motion to vote on the Fact Finding Report. A motion was made by Mr. Soyars, seconded by Mrs. Debevec, to vote on the OPBA Fact Finding Report. Mr. Lysenko asked if the vote on the motion would make any difference since the Union has already approved this. President Maurer said it would be a simple majority. Mr. Lysenko asked if the Fact Finding Report failed if it would still be adopted. President Maurer said, "No." Mr. Lysenko asked what the outcome would be if no vote was taken vote on it. Mayor Judge said it would then be adopted. The Clerk said normally there would be an ordinance to "accept the Fact Finding Report," and asked if an ordinance should be drafted. Ms. Adkins, Summit County Counsel, said it should be documented that there is a document that the Report was approved by the legislative body. President Maurer asked Ms. Adkins if she recommends there be an ordinance. Ms. Adkins said that is how it is done in Summit County with a resolution, to show that it was adopted. She said if a decision has to be made tonight, it could be put in the ordinance. Mrs. Miller, Law Director, said as Mr. Lysenko pointed out, if nothing is done tonight, it would be adopted, and she asked Ms. Adkins to concur. Ms. Adkins said that has never been done before. She said there has to be some recording of what has happened in terms of this (issue). President Maurer said it would be in the Minutes that we accept, but we would not have the formal document. Ms. Adkins said she felt that would be sufficient. President Maurer said it was his understanding that this has already been ratified by the OPBA and that there needed to be action on this tonight. Ms. Adkins said it had to be acted upon within seven days. She said the report was received on Friday. After more discussion, Mrs. Miller said she felt that we could transcribe the Minutes and have the certified copy of the Minutes delivered to Ms. Adkins. Ms. Adkins said she felt that would be sufficient documentation to show that there was a vote taken and it was approved. She said it has been presented to the legislative body and the decision was made. Mrs. Miller said a certified copy of the Minutes could be delivered to Ms. Adkins next Monday after the Minutes have been approved. Ms. Adkins said she felt that would be sufficient. President Maurer said if the Law Director does not have a problem with this procedure, then he does not have a problem with it either.

President Maurer said there is a motion on the floor by Mr. Soyars, seconded by Mrs. Debevec, to accept the OPBA Fact Finding Report. The Clerk called the roll: Mrs. Debevec, Mrs. Frey, Mr. Avant, Mr. Soyars, Mr. Endres, Mr. Lysenko, and Mr. Megyes voted "yea." Motion carried 7-0.

President Maurer said the certified copy of the Minutes will then be forwarded to the appropriate body.

President Maurer said the City Building will be closed this Friday because of the Good Friday holiday.

It was moved by Mr. Soyars, seconded by Mrs. Debevec, to excuse Mr. Wagner from this evening's meeting. All Members voted "yea." Motion carried.

COMMUNICATION FROM THE MAYOR

Mayor Judge said he would like to thank everyone who attended the Job Fair this past Saturday. He said they had three vendors cancel, but they still had sixteen. He said there were over 150 participants from the public. He said they received very good comments for the Job Fair itself. He said they are hoping to extend it in order to grow each year. He said they may do one in the Fall as well.

Mayor Judge said the Easter Egg Hunt is this Saturday at Tuscora Park.

It was moved by Mr. Soyars, seconded by Mrs. Debevec, to adjourn.

Adjourned: 8:48 P.M.

Frederick S. Maurer
President of Council

Susan Matuch
Clerk of Council