

Council met in **REGULAR SESSION** on Monday, December 10, 2012, at 7:34 P.M. in the Council Chambers with President Maurer presiding. Members present: Avant, Endres, Frey, Lysenko, Megyes, Soyars, and Wagner. Mrs. Debevec was absent. The Pledge of Allegiance to the Flag was recited and Mr. Avant gave the Invocation.

It was moved by Mr. Soyars, seconded by Mr. Avant, to approve the Minutes of the Special Session held on Monday, November 19, 2012, as presented. All Members voted “yea.” Motion carried.

It was moved by Mr. Soyars, seconded by Mr. Avant, to approve the Minutes of the Regular Legislative Session held on Monday, November 26, 2012, 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. 202-2012

ORDINANCE NO. 202-2012. PRESENTED BY: MR. WAGNER. TITLE: ENTER INTO CONTRACT – BURGESS & NIPLE – INFLOW / INFILTRATION PROGRAM – PRIVATE PROPERTY. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH BURGESS & NIPLE, IN AN AMOUNT NOT TO EXCEED \$28,000, TO PROVIDE CONSULTING SERVICES FOR AN INFILTRATION AND INFLOW PROGRAM FOR PRIVATE PROPERTY ON SANITARY SEWERS AND WATER SUPPLY LINES, AND DECLARING AN EMERGENCY.
First Reading Only.

ORDINANCE NO. 203-2012

ORDINANCE NO. 203-2012. PRESENTED BY: MR. WAGNER. TITLE: PURCHASE OF SERVICE TRUCK - UTILITIES. AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ENTER INTO CONTRACT WITH SERPENTINI CHEVROLET, TO PURCHASE A 2013 SERVICE TRUCK FOR THE WATER DISTRIBUTION GARAGE, FOR THE COST OF \$39,948.75, THROUGH THE OHIO STATE COOPERATIVE PURCHASING PROGRAM, PURSUANT TO ORDINANCE NO. 42-1995, AND DECLARING AN EMERGENCY. It was moved by Mr. Wagner, seconded by Mr. Megyes, 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. Wagner, seconded by Mr. Megyes, that **ORDINANCE NO. 203-2012 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 204-2012

ORDINANCE NO. 204-2012. PRESENTED BY: MR. WAGNER. TITLE: PURCHASE OF PROPERTIES – 75-21ST STREET, NW AND 79-21ST STREET, NW. AN ORDINANCE AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE AGREEMENTS TO PURCHASE TWO VACANT PROPERTIES, 75-21ST STREET, NW AND 79-21ST STREET, NW, FOR A TOTAL AMOUNT OF \$26,500, DUE TO THIS AREA BEING IDENTIFIED AS A SOURCE OF SEWER BACKUPS AND FLOODING, AND DECLARING AN EMERGENCY. It was moved by Mr. Wagner, seconded by Mr. Megyes, 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. Wagner, seconded by Mr. Megyes, that **ORDINANCE NO. 204-2012 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 205-2012

ORDINANCE NO. 205-2012. PRESENTED BY: MR. WAGNER. TITLE: AMENDING BARBERTON CODIFIED ORDINANCES – CHAPTER 1040-SEWERS; CHAPTER 1044-WATER. AN ORDINANCE AMENDING CHAPTER 1040, “SEWERS,” AND CHAPTER 1044, “WATER,” OF THE BARBERTON CODIFIED ORDINANCES TO INCLUDE THAT PROPERTY OWNERS ARE RESPONSIBLE FOR SEWER AND WATER LINES CONNECTING THEIR SERVICES TO CITY LINES, AND DECLARING AN EMERGENCY. *First Reading Only.*

ORDINANCE NO. 206-2012

ORDINANCE NO. 206-2012. PRESENTED BY: MR. SOYARS. TITLE: ENTER INTO CONTRACT – GPD GROUP – JUSTICE CENTER PLANNING STUDY. AN ORDINANCE AUTHORIZING THE BARBERTON MUNICIPAL COURT TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH GPD GROUP, IN AN AMOUNT NOT TO EXCEED \$58,000, TO PERFORM THE BARBERTON JUSTICE CENTER FACILITIES PLANNING STUDY, 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. Megyes, that **ORDINANCE NO. 206-2012 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 207-2012

ORDINANCE NO. 207-2012. PRESENTED BY: MR. SOYARS. TITLE: PURCHASE OF TWO PARCELS – STANLEY AND GEORGE STREETS. AN ORDINANCE AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE AN AGREEMENT TO PURCHASE TWO VACANT PARCELS, #01.03413 AND #01.03414, LOCATED ON THE SE CORNER OF STANLEY AND GEORGE STREETS, FOR \$7,000, PLUS CLOSING COSTS, USING CERTAIN STORMWATER FUNDS, 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. 207-2012 BE ADOPTED. President Maurer asked if that area was going to be excavated deeper to put in stormwater storage. Mr. Keltyka, Stormwater Engineer, said they are looking at that as one of the options. He said it is going to be for stormwater overflow. President Maurer asked how deep it would be. Mr. Keltyka said it would depend on how deep the groundwater is. He said they have not done any real studies on that issue yet. President Maurer called for a vote on adoption. All Members voted “yea.” Motion carried.

ORDINANCE NO. 208-2012

ORDINANCE NO. 208-2012. PRESENTED BY: MRS. FREY. TITLE: ILLICIT DISCHARGE DETECTION & ELIMINATION PROGRAM – CITY OF BARBERTON. AN ORDINANCE OF THE COUNCIL OF THE CITY OF BARBERTON TO ADOPT A BARBERTON ILLICIT DISCHARGE DETECTION & ELIMINATION (IDDE) PROGRAM; AND TO INCLUDE THIS PROGRAM INTO THE BARBERTON CODIFIED ORDINANCES, AND DECLARING AN EMERGENCY. It was moved by Mrs. Frey, seconded by Mr. Wagner, 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 Mrs. Frey, seconded by Mr. Wagner, that **ORDINANCE NO. 208-2012 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 209-2012

ORDINANCE NO. 209-2012. PRESENTED BY: MR. MEGYES. TITLE: SUBMIT GRANT APPLICATION – PARKS – OHIO DEPARTMENT OF NATURAL RESOURCES. AN ORDINANCE APPROVING THE SUBMISSION OF A GRANT APPLICATION BY THE DIRECTOR OF PARKS AND RECREATION TO THE OHIO DEPARTMENT OF NATURAL RESOURCES, DIVISION OF WATERCRAFT, FOR A BOATER SAFETY EDUCATION GRANT, IN THE AMOUNT OF \$13,242.80, 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. 209-2012 BE ADOPTED.** All Members voted “yea.” Motion carried.

RESOLUTION NO. 210-2012

RESOLUTION NO. 210-2012. SPONSORED BY: MR. AVANT. PRESENTED BY: ALL OF COUNCIL. TITLE: OPPOSING HB 601. A RESOLUTION OF THE COUNCIL OF THE CITY OF BARBERTON TO STRONGLY OPPOSE THE PASSAGE OF HB 601 BY THE OHIO GENERAL ASSEMBLY WHICH PROPOSES UNIFORMITY MEASURES FOR MUNICIPAL INCOME TAX IN THE FORM OF UNFUNDED MANDATES AND A SUBSTANTIAL LOSS OF REVENUE, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, seconded by Mrs. Frey, 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. Frey, that **RESOLUTION NO. 210-2012 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 211-2012

ORDINANCE NO. 211-2012. PRESENTED BY: MR. AVANT. TITLE: APPROPRIATION – FY2013 CDBG FUND. AN ORDINANCE APPROPRIATING APPROXIMATELY \$600,000 FROM THE UNAPPROPRIATED ITEM OF THE COMMUNITY DEVELOPMENT BLOCK GRANT FUND TO THE COMMUNITY

DEVELOPMENT BLOCK GRANT FUND OPERATING BUDGET, IN ORDER TO CARRY OUT ELIGIBLE FY2013 CDBG ACTIVITIES, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, seconded by Mr. Soyars, 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 Mr. Soyars, that **ORDINANCE NO. 211-2012 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 212-2012

ORDINANCE NO. 212-2012. PRESENTED BY: MR. AVANT. TITLE: APPROPRIATION – CDBG FUND – PROGRAM INCOME. AN ORDINANCE APPROPRIATING \$4,162.07 OF PROGRAM INCOME FROM THE UNAPPROPRIATED ITEM OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUND TO THE COMMUNITY DEVELOPMENT BLOCK GRANT FUND BUDGET, TO BE USED FOR THE SOUTH BARBERTON SIDEWALK PROGRAM, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, seconded by Mr. Soyars, 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 Mr. Soyars, that **ORDINANCE NO. 212-2012 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 213-2012

ORDINANCE NO. 213-2012. PRESENTED BY: MR. AVANT. TITLE: AUTHORIZE PAYMENT – KENMORE CONSTRUCTION – NORTH OF THE FAIRVIEW AVENUE INTERSECTION. AN ORDINANCE AUTHORIZING THE DIRECTOR OF FINANCE TO PAY AN INVOICE TO KENMORE CONSTRUCTION COMPANY, IN THE APPROXIMATE AMOUNT OF \$48,000, FOR AN EMERGENCY REPAIR OF THE SANITARY SEWER LINE ON 5TH STREET, NE, NORTH OF THE FAIRVIEW AVENUE INTERSECTION, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, seconded by Mr. Wagner, 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 Mr. Wagner, that **ORDINANCE NO. 213-2012 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 214-2012

ORDINANCE NO. 214-2012. PRESENTED BY: MR. AVANT. TITLE: AUTHORIZE PAYMENT – KENMORE CONSTRUCTION – SOUTH OF THE FAIRVIEW AVENUE INTERSECTION. AN ORDINANCE AUTHORIZING THE DIRECTOR OF FINANCE TO PAY AN INVOICE TO KENMORE CONSTRUCTION COMPANY, IN THE APPROXIMATE AMOUNT OF \$43,000, FOR AN EMERGENCY REPAIR OF THE SANITARY SEWER LINE ON 5TH STREET, NE, SOUTH OF THE FAIRVIEW AVENUE INTERSECTION, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, seconded by Mr. Wagner, 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 Mr. Wagner, that **ORDINANCE NO. 214-2012 BE ADOPTED.** All Members voted “yea.” Motion carried.

RESOLUTION NO. 215-2012

RESOLUTION NO. 215-2012. PRESENTED BY: MR. AVANT. TITLE: BARBERTON COMMUNITY FOUNDATION “NUMBER AND QUALIFICATIONS OF DIRECTORS.”

A RESOLUTION OF THE COUNCIL OF THE CITY OF BARBERTON AUTHORIZING AN AMENDMENT TO ARTICLE III, SECTION I, OF THE CODE OF REGULATIONS OF THE BARBERTON COMMUNITY FOUNDATION ENTITLED, "NUMBER AND QUALIFICATIONS OF DIRECTORS," AND DECLARING AN EMERGENCY.
First Reading Only.

The Clerk said the Streets Committee voted to add Ordinance No. 216-2012 to tonight's Agenda.

ORDINANCE NO. 216-2012

ORDINANCE NO. 216-2012. PRESENTED BY: MR. LYSENKO. TITLE: INCREASE OF CONTRACT – MID OHIO CONCRETE. AN ORDINANCE AUTHORIZING AN INCREASE IN THE AMOUNT OF THE CONTRACT WITH MID OHIO CONCRETE FOR THE SIDEWALK REPLACEMENT PROGRAM, IN THE AMOUNT OF \$3,000, PLUS THE ADDITIONAL COST OF COLD WEATHER CONCRETE APPLICATION, FOR THE REPLACEMENT OF SIDEWALK ON WEST LAKE AVENUE, AND DECLARING AN EMERGENCY. It was moved by Mr. Lysenko, seconded by Mrs. Frey, 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. Lysenko, seconded by Mrs. Frey, that **ORDINANCE NO. 216-2012 BE ADOPTED.** Mr. Palmer, Director of Public Service, said this is a city project where a building was torn down and the sidewalks needed to be replaced. He said this ordinance was needed because the contract has exceeded the amount they went out to bid for the whole year, therefore, they needed to increase that contract. Mr. Megyes asked if this is where the apartment building was torn down. Mr. Palmer said that he was correct. Mr. Megyes asked if the sidewalks should be put in and then have someone build something in that lot and may damage the sidewalks. Mr. Palmer said the City tells other residents to replace sidewalks, so it would not be wise if the City did not follow their own rules. He said they do not know if, or when, someone would build, so they felt it was appropriate to proceed with the sidewalks. President Maurer asked if it was not the responsibility of any builder to replace damaged sidewalks when they do a construction project. Mr. Bauschlinger, Building Commissioner, said when they are developing a new property or re-developing, the builder is obligated to do the walks. He said in this particular case, there are currently handicap ramps and sidewalks on the side streets, so they decided they needed to connect them. 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

PLANNING COMMISSION

4-year Term

David Wynn re-appointment January 1, 2013 - December 31, 2016

It was moved by Mr. Endres, seconded by Mr. Avant, to confirm the Mayor's re-appointment to the Planning Commission. All Members voted "yea." Motion carried.

UTILITIES BILLING REVIEW BOARD

| | | |
|--------------------|-------------|----------------------------------|
| Pat Betts | appointment | 3-year term to December 31, 2015 |
| Keith Jones | appointment | 2-year term to December 31, 2014 |
| Ron Cline | appointment | 1-year term to December 31, 2013 |

It was moved by Mr. Wagner, seconded by Mr. Megyes, to confirm the Mayor’s appointments to the Utilities Billing Review Board. All Members voted “yea.” Motion carried.

BARBERTON COMMUNITY FOUNDATION – Board of Directors ***First Reading Only.***
2-year Term

| | | |
|-------------------------|----------------|------------------------------|
| Michael Chisnell | re-appointment | January 2013 – December 2015 |
| Stephen Kelleher | appointment | January 2013 – December 2015 |

Mr. Avant said when he requested two readings for these appointments, it went along with the request for the change in the Code of Regulations. He asked if it would be appropriate to vote on the approval of these appointments tonight instead of waiting for these appointments next week. It was determined that Mr. Chisnell could be voted on this evening, but the vote regarding Mr. Kelleher would have to wait until the next Legislative Session. Mr. Avant said he would withdraw his motion.

MISCELLANEOUS AND UNFINISHED BUSINESS

Notice of Purchase – Public Notice:

Notice of a purchase of an NSP home to a City of Barberton employee, Chris Stefan, to fulfill a public disclosure requirement of a potential conflict of interest.

Ms. Sheridan, Planning Director, read the following letter from Mayor William B. Judge to Barberton City Council, dated November 5, 2012:

Dear Council Members,

A potential conflict of interest has arose and HUD rules dictate that this disclosure be made including feedback from you. Below is a timetable depicting the facts. The short summary is that Chris Stefan, son of Joe Stefan (both employed by the city) wishes to purchase a house rehabbed by NDS, which included money that came through the county to the Planning Dept, then to NDS. Please read the facts below and provide me with feedback as soon as possible. Thank you for your time.

- The County of Summit has a Neighborhood Stabilization Program (NSP) sub agreement with the City of Barberton. The City of Barberton has an agreement with Neighborhood Development Services (NDS) as a contract agency to administer their NSP contract. All NSP units purchased were put into NOS's name for rehabilitation. The purpose of this program is to revitalize delinquent or foreclosed property and create a homeownership opportunity to a qualified low to moderate income resident.

- A home at 181 25th Street NW was rehabbed and placed on the market for sale using NSP monies.
- This home was open to the public to see and to make an offer as long as they met the low to moderate income qualifications.
- Joe Stefan is employed by the City of Barberton as the Assistant Planning Director.
- These funds flowed through the City of Barberton Planning Commission.
- Chris Stefan wishes to purchase this house and is the son of Joe Stefan.
- Chris Stefan is an LMI resident of the City of Barberton. Chris is an employee of the City of Barberton Street Department. Chris was hired 4 years after Joe after passing the Civil Service and physical condition tests. The house was listed on the open market and anyone could make an offer. The only offer made to-date is that of Chris Stefan. Chris was shown the house as a normal course of business by the real estate agent.
- Chris' father is Assistant Director of the Planning Department and as such is not responsible for the execution of the NSP program which is funded by the County of Summit. The funds do pass through the Planning Commission and are processed by the Director of the Planning and the City of Barberton Finance Office.
- The ability to purchase the house is open to the public. This particular house was completed with NSP funding which was not available prior to either Joe or Chris being hired.
- The possible conflict was identified by the NDS Housing Counselor to the Executive Director of NDS. NDS then notified its corporate attorney, Director of Community Development for the County of Summit, the Mayor of Barberton and the client. The County of Summit referred the possible conflict to the legal department as did the City of Barberton.
- Opinions were provided by the county of Summit and the City of Barberton. Summit County recommended that an application be made for a HUD exemption.
- The house is an acquisition/Rehab/resale house in Barberton Ohio. It is located in an LMI community and its sale was open to the public and widely advertised. The purpose of the program is to provide housing to LMI residents while addressing vacant and foreclosed property. The sale of the house to Chris Stefan would accomplish these goals. A hardship would be created for Chris in that he would not be able to purchase a quality house in Barberton without the

financial assistance provided by the NSP funding. Chris is in the process of completing the NeighborWorks Homebuyer Education course.

- Chris Stefan qualifies for this program and without Joe working in the Planning Dept, we would not need to request an exemption from HUD. Having Chris Stefan purchase this house meets all goals of the NSP regulations and will help stabilize the neighborhood as another young professional will be in an owner occupied home. We believe that there is no conflict of interest and that an exemption should be requested and granted by HUD.

The letter was signed and acknowledged by all Council Members on November 5, 2012.

President Maurer said he reviewed the facts of this case several weeks ago and he did not see why a City employee should be denied the opportunity given to every other resident of the City simply because he is related to a person in City government. He said it would be grossly unfair and a disservice to the younger Mr. Stefan. He said he sees no conflict here.

Mrs. Okolish Miller, Law Director, said the purpose of Ms. Sheridan re-reading a letter that all of Council already received was that this issue had to be included in the Agenda and it had to be in the minutes to be certified. She said the second issue is that it is not because of Mr. Chris Stefan's relationship with Mr. Joe Stefan, it is because Chris is an employee of the City of Barberton. She said the City receives the funding; that is evidence of a conflict. She said, however, the house was up for sale to anyone who wanted to buy it, but Mr. Stefan was the only one to put in an offer. She said both she and the County Law Director had to sign a document that there was a conflict because he was an employee of the City.

President Maurer said his point of view stands and he thanked Mrs. Miller for her explanation.

President Maurer asked if there were any remarks from the Body. There were none. He said to let the records show that there were no objections from the Body.

President Maurer said he would entertain a motion to excuse Mrs. Debevec from the meeting this evening. It was moved by Mr. Avant, seconded by Mrs. Frey, to excuse Mrs. Debevec from this evening's meeting. All Members voted "yea." Motion carried.

COMMUNICATION FROM THE MAYOR

None.

It was moved by Mr. Soyars, seconded by Mr. Avant, to adjourn.

Adjourned: 8:14 P.M.

Frederick S. Maurer
President of Council

Susan Matuch
Clerk of Council