

Council met in **REGULAR SESSION** on Monday, April 26, 2010, at 7:30 P.M. in the Council Chambers with President Maurer presiding. Members present: Anderson, Avant, Judge, Lysenko, Megyes, Soyars, Suboticki, and Wagner. President Maurer requested that Mr. David Stavarz, an Eagle Scout in the gallery, lead us in the Pledge of Allegiance to the Flag. Mr. Avant gave the Invocation.

It was moved by Mr. Judge, seconded by Mr. Soyars, to approve the Minutes of the Regular Legislative Session held on Monday, April 12, 2010, 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.

President Maurer said the Third Reading of **RESOLUTION NO. 33-2010** would be read first.

RESOLUTION NO. 33-2010

RESOLUTION NO. 33-2010. PRESENTED BY: ALL OF COUNCIL. CO-SPONSORED BY: MR. MAURER AND MR. WAGNER. TITLE: COMMENDATION – DAVID ALEXANDER STAVARZ. A RESOLUTION OF THE COUNCIL OF THE CITY OF BARBERTON TO HONOR AND GIVE PUBLIC RECOGNITION TO DAVID ALEXANDER STAVARZ FOR THE DETERMINATION AND COMMITMENT HE DEMONSTRATED TO BECOME AN EAGLE SCOUT. *First Reading – March 22, 2010. Second Reading – April 12, 2010. Third Reading – April 26, 2010.* It was moved by Mr. Wagner, seconded by Mr. Suboticki, that **RESOLUTION NO. 33-2010 BE ADOPTED.** President Maurer said he had the great honor of sitting on the Board of Review to interview Mr. Stavarz. He said that is the last step in becoming an Eagle. He said very few people -- only about 1% -- ever make it this far. President Maurer said it is a tribute to the leadership of his troop, his Scout Master, and the guidance from his parents. He said the old saying, "A natural leader will rise to the top," is true. He said young Mr. Stavarz is quite the leader. President Maurer called for the vote on adoption. All Members voted "yea." Motion carried. It was moved by Mr. Wagner, seconded by Mr. Suboticki, to recess in order to present the resolution to Mr. Stavarz.

Recessed: 7:34 p.m.

Reconvened: 7:36 p.m.

FIRST READING OF ORDINANCES AND RESOLUTIONS

RESOLUTION NO. 52-2010

RESOLUTION NO. 52-2010. PRESENTED BY: ALL OF COUNCIL. SPONSORED BY: MR. SOYARS. TITLE: COMMENDATION – OFFICER DANTON ADAIR. A RESOLUTION OF THE COUNCIL OF THE CITY OF BARBERTON TO HONOR AND GIVE PUBLIC RECOGNITION TO OFFICER DANTON ADAIR FOR 32 YEARS AND 10 MONTHS OF DEDICATED SERVICE TO THE BARBERTON POLICE DEPARTMENT AND TO THIS COMMUNITY. It was moved by Mr. Soyars, 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. Soyars, seconded by Mr. Megyes, that **RESOLUTION NO. 52-2010 BE ADOPTED.** President Maurer said we are losing part of the big "brain trust" of the Barberton Police Department, consisting of Dan and a few others with decades of experience that cannot be replaced. He said he took his knowledge and his wisdom and imparted it on the new men coming up in his training officer capacity. He said Danny is one of those genuine, bona fide, everyday heroes that make our lives better.

President Maurer said everyone appreciates everything he has done throughout his career. He said something not mentioned in his resolution is the special care and compassion he has for disabled people. He said thank God for people like Danny Adair! Mayor Genet said he would like to thank Officer Adair for all of his years of service and all he has given to this community. He said many changes have taken place since he was hired and he adapted to all of them. He said one thing that never changed was Officer Adair's commitment to this community. He said we will be forever grateful for that. Mayor Genet said he knows Officer Adair has made a positive impact on the young officers on our force. He said he has made this city a better place. Mrs. Miller, Law Director, said it has been so great to work with Officer Adair. She said she finds him to be one of the strongest men of character that she has ever met. She said she wants to thank Danny very, very much for his service to this community. President Maurer called for the vote of adoption. All Members voted "yea." Motion carried. It was moved by Mr. Soyars, seconded by Mr. Megyes, to recess in order to present the resolution to Officer Adair.

Recessed: 7:44 p.m.

Reconvened: 7:46 p.m.

Officer Adair said he would like to thank the citizens for giving him the opportunity to serve them and he would like to thank Council, past and present, and the Administration for giving him the tools to be able to do that. He said he would also like to thank his family.

ORDINANCE NO. 53-2010

ORDINANCE NO. 53-2010. PRESENTED BY: MR. MEGYES. TITLE: PURCHASE OF MIUS - UTILITIES. AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO PURCHASE 400 METER INTERFACE UNITS (MIUS) FROM CELL NET TECHNOLOGY, INC., WITHOUT COMPETITIVE BIDDING BEING A SOLE SOURCE PROVIDER, FOR A TOTAL COST OF \$40,800, AND DECLARING AN EMERGENCY. It was moved by Mr. Megyes, 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. Megyes, seconded by Mr. Lysenko, that **ORDINANCE NO. 53-2010 BE ADOPTED.** All Members voted "yea." Motion carried.

ORDINANCE NO. 54-2010

ORDINANCE NO. 54-2010. PRESENTED BY: MR. MEGYES. TITLE: ENTER INTO CONTRACT – SUMMIT ROAD / GLENN STREET WATER MAIN PROJECT. AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH QCI FOR CONSTRUCTION / FIELD SERVICES FOR THE 24" SUMMIT ROAD / GLENN STREET WATER MAIN REPLACEMENT PROJECT, IN THE AMOUNT OF \$128,000, AND DECLARING AN EMERGENCY. It was moved by Mr. Megyes, 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. Megyes, seconded by Mr. Lysenko, that **ORDINANCE NO. 54-2010 BE ADOPTED.** All Members voted "yea." Motion carried.

ORDINANCE NO. 55-2010

ORDINANCE NO. 55-2010. PRESENTED BY: MR. AVANT. TITLE: AMENDING ORD. NO. 242-2009 – EMPLOYEE COMPENSATION AND PAY GRADES FOR NON-BARGAINING EMPLOYEES. AN ORDINANCE AMENDING ORDINANCE NO. 242-2009 BY REMOVING THE POSITION OF DIRECTOR OF PARKS AND RECREATION FROM PAY GRADE 8 AND ADDING THE POSITION OF DIRECTOR OF PARKS AND RECREATION TO PAY GRADE 7, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, seconded by Mr. Anderson, 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. Anderson, that **ORDINANCE NO. 55-2010 BE ADOPTED.** All Members voted "yea." Motion carried.

ORDINANCE NO. 56-2010

ORDINANCE NO. 56-2010. PRESENTED BY: MR. AVANT. TITLE: APPROPRIATION – SENIOR CENTER PROGRAMS. AN ORDINANCE APPROPRIATING \$15,000 FROM THE UNAPPROPRIATED ITEM OF THE SENIOR CENTER TRUST FUND TO THE SENIOR CENTER TRUST FUND OPERATING BUDGET, DUE TO A GRANT FROM THE TUSCORA PARK HEALTH AND

WELLNESS FOUNDATION, TO UTILIZE FUNDS FOR UPCOMING PROGRAMS, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, seconded by Mr. Anderson, 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. Anderson, that **ORDINANCE NO. 56-2010 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 57-2010

ORDINANCE NO. 57-2010. PRESENTED BY: MR. AVANT. TITLE: APPROPRIATION – COURT COMPUTER FUND. AN ORDINANCE APPROPRIATING A TOTAL AMOUNT OF \$40,000 FROM THE UNAPPROPRIATED ITEM OF THE COURT COMPUTER FUND, \$30,000 TO THE COURT COMPUTER FUND OPERATING BUDGET AND \$10,000 TO THE COURT COMPUTER FUND CAPITAL BUDGET TO MAINTAIN AND UPDATE COMPUTERS IN THE OFFICES OF THE JUDGES, THE CLERK OF COURTS, AND THE PROBATION DEPARTMENT, 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. 57-2010 BE ADOPTED.** All Members voted “yea.” Motion carried.

SECOND READING OF ORDINANCES AND RESOLUTIONS

None.

THIRD READING OF ORDINANCES AND RESOLUTIONS

RESOLUTION NO. 33-2010

RESOLUTION NO. 33-2010. PRESENTED BY: ALL OF COUNCIL. CO-SPONSORED BY: MR. MAURER AND MR. WAGNER. TITLE: COMMENDATION – DAVID ALEXANDER STAVARZ. A RESOLUTION OF THE COUNCIL OF THE CITY OF BARBERTON TO HONOR AND GIVE PUBLIC RECOGNITION TO DAVID ALEXANDER STAVARZ FOR THE DETERMINATION AND COMMITMENT HE DEMONSTRATED TO BECOME AN EAGLE SCOUT. (Voted on before First Reading.)

ORDINANCE NO. 30-2010

ORDINANCE NO. 30-2010. PRESENTED BY: MR. WAGNER. TITLE: CANCELLATION OF CONTRACT – BARBERTON BOARD OF HEALTH / CITY OF BARBERTON. AN ORDINANCE AUTHORIZING THE MAYOR TO CANCEL THE CURRENT CONTRACT BETWEEN THE BARBERTON BOARD OF HEALTH AND THE CITY OF BARBERTON, AND DECLARING AN EMERGENCY. *First Reading – March 8, 2010. Second Reading – March 22, 2010.* President Maurer said a Parliamentary error was made when this ordinance was postponed last week -- a motion to table was passed. He said our Law Director corrected us stating that rather than being tabled, it should have been postponed for a specific date. He called on Mr. Wagner to restate the motion. Mr. Wagner said this has certainly been a popular ordinance; it keeps coming back. It was moved by Mr. Wagner to postpone Ordinance No. 30-2010 until a later date. President Maurer asked for a specific date. Mr. Wagner said he did not believe, according to *Robert’s Rules of Order*, that a specific date was needed. Mr. Wagner said he would share that with everyone. President Maurer said the Rules Chairman is Mr. Lysenko. Mr. Lysenko said he is. He said it is rather complicated, but he could tell us what he thinks. President Maurer said to Mr. Lysenko that he is the Rules Chairman. Mr. Lysenko said he thinks we have already passed on this, so he does not see what purpose we are serving by going back on the record and doing something to add to it. He said he could be wrong. He said if someone can tell him what purpose we would be serving by voting again on this, he is open. President Maurer said our Law Director, Mrs. Miller, has an opinion. Mrs. Miller said we attempt to do things the proper way. She said two weeks ago Mrs. Matuch, the Council Clerk, tried to bring it to everyone’s attention, but she was not able to do that. She said we conferred, we read the rules, and we came to the conclusion that you postpone to a certain date. She said her understanding was that Mr. Wagner had a certain date in mind, so she suggested to just add a couple of weeks to that date to make sure it gives Judge Stormer enough time. Mr. Wagner said as far as the judge goes, he does not know when exactly she will do it. He said by his count, it would be tomorrow, but he is not sure that will happen -- none of us are sure that will happen. He said according to *Robert’s Rules of Order*, this can be stated to

postpone to a later time, but not to specify the time. He asked how he could specify the time when he does not know when the judge will rule. Mr. Wagner read from Robert's Rules: The President can rule the motion out of order or restate the motion as to the motion to postpone to a later time. He said he showed that to Mr. Lysenko also. Mayor Genet said if you look in Council Rules the book that was adopted was *Robert's Rules of Order, Newly Revised*, and that is not the book. President Maurer said the Chair can rule it out of order, but he does not want to keep dragging this thing out interminably. He said Judge Stormer said two weeks and asked if that was correct. Mr. Wagner said Judge Stormer indicated to every one of us that she would give both sides thirty days to file the briefs and after the briefs were filed, she would rule within ten days. He said the tenth day would be tomorrow, the 27th. He said that is how he made his calculation. President Maurer said this is a bit of unchartered ground for him. Mrs. Miller said she did not believe this was unchartered ground at all. She said she is the law director and her legal opinion is that Mr. Wagner needs to postpone it to a certain date. She said President Maurer can either take her legal advice or take Mr. Lysenko's advice; it is his choice. Mr. Lysenko said he apologizes; he did not want to step on anyone's toes. He said someone was asking him a question. He said he was telling everyone what he thinks as a councilman. He said it just so happens that he is also an attorney, but he does not want anyone to take it the wrong way. Mr. Lysenko said he certainly respects Mrs. Miller's legal advice as opinion; however, that does not mean that he has to agree with it all of the time. He said he does not see a downside leaving things as they are. He said he certainly appreciates everyone wanting to do the right thing, but he does not really know what the complaint is at this point. Mr. Avant asked if Mr. Wagner could postpone this for a date two weeks from today, and then next week postpone it again for another date. He asked if this could be done on a continual basis. Mrs. Miller said her recommendation is that it be postponed to a date certain. She said you could say one month or two months, giving the judge time to consider it; you just need a date. Mr. Wagner said he thinks that is what they are doing ... giving the judge time to consider it. He said no one knows when she is going to issue her finding, but he thinks it will be relatively soon. He said he cannot possibly tie a date to it. President Maurer said if that were the case, then the entire thing would stay deadlocked ... and what if she decides not to do it at all? Mr. Wagner said she will do it; we just do not know when. President Maurer said it is the opinion of the Chair to go with the opinion of our Law Director. He said she is our legal counsel by Charter. President Maurer said to Mr. Wagner that he would like him to call a motion for a specific time. Mr. Wagner said he would restate his motion to postpone using thirty days. It was moved by Mr. Wagner, seconded by Mr. Soyars, to postpone the motion for thirty days from this date. President Maurer said today is the 26th; the 24th would be the next legislative meeting, which is twenty-eight days. Mrs. Miller said to go to the following legislative meeting. President Maurer said the next Monday would be June 7th. Mr. Wagner said he certainly thinks the judge would rule well before that. Mr. Judge said he believed Mr. Avant was asking if we get to that 30 day date and there is no resolution, can it be pushed back further ... can we make it longer? Mrs. Miller said you just follow whatever rules -- if you want to postpone it to a date certain at that point or you could call for the vote. It was moved by Mr. Wagner, seconded by Mr. Soyars, to postpone (the Third Reading of) Ordinance No. 30-2010 until Monday, June 7th, pending the outcome of Judge Stormer's ruling. Mr. Avant said if Judge Stormer gives her opinion before then, can this be brought back to the floor? Mrs. Miller said, "No." President Maurer called for the vote on postponement. Mr. Judge, Mr. Megyes, Mr. Wagner, Mr. Soyars, and Mr. Lysenko voted "yea." Mr. Anderson, Mr. Avant, Mr. Suboticki voted "nay." Motion carried, 5-3.

APPOINTMENTS

None.

MISCELLANEOUS AND UNFINISHED BUSINESS

Mr. Avant said on behalf of the Magic City Democrats, he would like to thank Mr. Judge, Mr. Suboticki, and Mr. Soyars for doing some street cleaning for Clean Up Barberton Day.

Mr. Avant said this Thursday, April 29th, he will be having a ward meeting at the Active Adult Center at 7:00 p.m. He said Mr. Otterman, the Mayor, and Mr. Keltyska will be there to answer any questions.

Mr. Megyes said he would like to thank the people of the Fourth Ward for the cleanup on Saturday. He said it was a great turnout, and he would especially like to thank two groups. He said one group, the Van Hyning Neighborhood Watch Group with about fifteen people, collected sixty bags of trash. He said they tore out a 40-foot chain-link fence and the foundation holding it

up on the corner of Van and Newell Street. He said it has never looked so good. He said the other group, the Brown Street Neighborhood Watch Group, cleaned up by the railroad tracks on Brown Street, went about three blocks each way, and went to Etling. He said this group collected eighteen bags of trash, including five tires and one fan.

President Maurer said the MRDD is having a grand opening of its new facility across the street from the YMCA. He said it would be a good place to show support for our disabled residents and helping a fine organization do an outstanding thing to meet the challenges of today's society.

COMMUNICATION FROM THE MAYOR

Mayor Genet said he would like to thank everyone who participated in the Clean Up Barberton event. He said it did make a difference.

Mayor Genet said last Friday he, Mr. Avant, and Mr. Suboticki traveled to South Euclid, a community that made the headlines recently when they adopted a "vacant structure ordinance." He said they brought back a lot of ideas. He said they are very aggressive when dealing with their vacant and owner-occupied structures. He said they list all the streets they are going to inspect for that summer to give the people a heads up. He said they inspect *all* the houses -- rental and owner-occupied -- and they come back and write them up. He said they have good compliance. He told Mr. Megyes that he would be thrilled with one of their concepts when they demo a house. He said they put in a community garden. He said they have a brick path up to a picket fenced area where they use crushed brick to section off about twenty-four plots. He said they charge ten dollars a person and they have a local gardener from the street oversee it. He said it was pretty innovative. He said this was an opportunity to bring ideas back to our City without trying to re-invent the wheel.

A motion was made by Mr. Judge, seconded by Mr. Soyars, to adjourn.

Adjourned: 8:10 P.M.

Frederick S. Maurer
President of Council

Susan Matuch
Clerk of Council