

## CITY OF ROCKY RIVER

**April 4, 2022**

The Committee-of-the-Whole Meeting of Council was called to order by Mr. Moran, President of Council, at 7:08 p.m. in the David J. Cook Council Chambers.

Council Members Present: Mr. Hunt, Mr. Shepherd, Mr. Furry, Mrs. Morris, Mr. Sindelar, Mr. Moran

Council Member Absent: Mrs. Gallagher

Administration: Mayor Bobst, Mr. Snyder, Mr. Thomas

Law Director: Mr. O'Shea

### **MAYOR'S REPORT:**

- Mayor announced some very good news in that the Morewood Parkway paving is going to be commencing shortly, which indicates the water line is completed, the sewer work is completed, and now we will move on to paving and related items. Mayor Bobst will provide more details of where they will start and end. Mayor Bobst shared feedback from the onsite inspector who is there on a daily basis – a very big thank you to the residents that live along Morewood Parkway. The project was long and messy, with deep digs, especially during the holidays and the winter. Residents appreciated the regular updates from the City, but they were very kind and very understanding. There are a few months left to complete the entire project.
- Mayor Bobst indicated Oak and Collver will go for bid next, with a federal earmark for Buckingham, Argyle and Arundel.
- Mayor Bobst informed Council that in Recreation we received 6 proposals for Morley Park for equipment and installation, which will be evaluated by the Recreation Department, and then a proposal will be provided to Council recommended by them. Also regarding Recreation, this morning Mayor Bobst received from Director Holub some information regarding revenue, reporting that last month is the highest month since 2017. Mayor Bobst thanked the Recreation Department staff for their diligence in evaluating, adjusting, creating new and interesting programming that is of interest to the public, maintaining equipment and facilities, and their successful marketing efforts. And finally, Elle's Enchanted Forest is a recipient of the Swim-a-Thon fundraiser funds. The event on March 6 raised almost \$24,000 for some additional equipment for the playground, plus we received a large contribution that is a memorial to one of our employee's mother. Thank you for Harlan Radford and the Rotary, along with 20 swimmers, many volunteers, and 106 separate donations and contribution to the effort.
- At Rocky River Park the new railing will be installed on the new stairs this week, weather permitting. There are also 2 bike maintenance stations being installed, one at RR Park and the other outside the rink near the outdoor pool.
- This Saturday, April 9 is the Community Shredding event from 9-11:00 a.m. here at City Hall. Thank you to the Community Emergency Response Team for their volunteer assistance.
- Mayor Bobst stated she met with the Joint Veterans Council to plan the Memorial Day events. They will be placing U.S. flags on approximately 3,900 graves at the cemetery early on the Saturday morning of Memorial weekend. Donations have been secured for refreshments at the event due to the generosity of community businesses. The Auxiliary will be serving the refreshments. On Monday, Memorial Day, there will not be a parade, as the Joint Veterans Council has requested that there be no parade; there will be a full ceremony at the cemetery with the RRHS band, 21 gun salute, military honor guard, and a number of other things. We hope

everyone can attend. As further details become available, Mayor Bobst will share them with Council.

- Next week, Mayor Bobst will hopefully provide an update on the state of the state legislature.
  - Mr. Sindelar inquired about the bike rack at the Civic Center. Mr. Snyder indicated it would be reinstalled soon, as it had been removed prior to the paving program in the area.
  - Mrs. Morris inquired if the Morewood Parkway paving was occurring early or is it on schedule. Mr. Snyder stated it was on schedule.

## **COMMITTEE REPORTS: NONE**

## **COMMUNICATIONS FROM COUNCIL: NONE**

## **UNFINISHED BUSINESS:**

**ORDINANCE NO. 71-21:** Mrs. Morris said this continues to be referred to the Planning Commission and is still on hold.

**ORDINANCE NO. 105-21:** Mr. Moran said this ordinance has been read twice. It was referred to Planning. There is a Public Hearing on April 11<sup>th</sup>. Following the Public Hearing, the ordinance will be read for the third time.

**RESOLUTION NO. 14-22:** In Councilwoman Gallagher's absence, Mr. Moran stated that this resolution supports the placement of a proposed shore structure on Frazier. This has been read twice and will be read for a third time next week. Mr. Moran requested this item be placed on the Consent Agenda.

**ORDINANCE NO. 15-22:** Mr. Moran said this is adjusting the rates for the Lakewood Wastewater Treatment Plant in the Valleyview district area that has approximately 102 houses. The price increasing from \$90.80 mcf to \$94.90 mcf with an additional \$12.58 base for a total of \$106.78. The Valleyview residents pay the same amount as all Rocky River residents, and the city pays the difference. This will be read for a third time next week. Mr. Moran requested this item be placed on the Consent Agenda.

**RESOLUTION NO. 16-22:** Mr. Shepherd stated this resolution is for an agreement between Fairview Park and Rocky River relating to the Spencer Road resurfacing and sanitary sewer improvements. Issues in that area include that certain lateral connections for both storm and sanitary sewers need to be corrected. The Ohio Public Works Commission wants Rocky River to handle the bidding and payment and bill the City of Fairview Park. Fairview Park's percentage interest of this project is 2.7%. This will be read for the second time next week.

**RESOLUTION NO. 17-22:** Mr. Shepherd said this is the salt contract to participate in the ODOT purchasing program. It will be read for the third time next week. Mr. Shepherd requested this item be placed on the Consent Agenda.

**ORDINANCE NO. 18-22:** Mr. Hunt said this ordinance is to authorize a supplemental agreement with Zenith Electric, Inc for electric work performed as part of the construction of the new police station. The original contract was authorized in March 2020 with a cap in an amount not to exceed \$1,328,808.00. The supplemental agreement is for overages authorizes payment to Zenith in an amount of \$95,408.54. The original contract included a base bid of \$1,210,658, alternates of \$42,150.00 for the vehicle garage and vehicle lift, and a 6% contingency of \$76,000. Based on work performed, we exceeded the contingency and those charges were based upon change orders that occurred during the course of the

construction. The procedure for approving change orders involved the extra work being presented to Bowen's representatives for review and then Mr. Snyder would discuss any they felt to be valid with Bowen before making final approval.

- Mr. Sindelar requested clarification regarding whether change order is with respect to what was originally agreed to, something came up in the interim that cost a little more. Mr. Snyder indicated it was, and it could also be considered an extra work order, as anything additional to the original contract, or it could be less.

Mr. Hunt continued that as Mr. Snyder had indicated it was the administrations opinion that some of the change orders, while necessary to complete the electrical work that needed to be done to finish the project, were due to oversight or errors by Bowen, so that is why the three party agreement and release is attached to the ordinance. Bowen has agreed they made errors and have agreed to waive claims and payment for services that they were providing in the amount of \$45,408.55. They also had outstanding billings for services they provided under the contract as well, so those support and consulting services were an additional \$94,152.50. Their contract ended in July of 2020 and they are still providing services despite the contract terminating. Contingency and change order costs are roughly \$171,408, the \$76,000 contingency, with the ultimate number owed Zenith for the extra work was \$95,408, which is the amount of the ordinance. The agreement and release, Bowen has determined that based upon some of their errors that they will, as part and parcel of resolving and having a universal resolution to what the City still owes Zenith and what the City owes Bowen, the City will pay the unpaid base charges for their design services in the amount of \$109,891.77, which is part of the contract outstanding that the City owes them for services. Bowen also had provided over and above the contract for additional value of approximately \$45,408, plus \$94,152 described earlier. So Bowen has decided to waive those two figures and in turn the City will pay Zenith directly the amount that we owe for the services rendered through the change orders. Ultimately, Bowen is waiving over \$130,000 of services provided based upon their good faith.

- Mr. Sindelar inquired regarding the fact that some of the change orders were a result of Bowen's error, which is the \$94,000, so if we can point directly to their error, why would we pay that portion of the \$94,000, if it's Bowen's error? Why is it not their fault to pay for it? Mayor Bobst indicated we still needed the work, even though it was omitted from the plan, so we still received the benefit. Mr. Snyder indicated there were a variety of reasons for the error. Mr. Sindelar indicated that regardless of their error, he wants to make sure it is not causing the City unnecessarily more money. Mayor Bobst indicated that actually, the City is saving money. In the long run the City is saving money because Bowen is taking responsibility for those omissions, which is something that the City still needed in the long run.
- Mr. Shepherd indicated Bowen is taking a hit for close to \$140,000, which covers the \$95,000.
- Mr. Furry spoke regarding some of the history of the project and inquired if there are any other surprises to come? Mayor Bobst indicated this is the final payment to Bowen on the project. Mr. Snyder indicated the prime contractor, Vendrick, has been paid everything including retainage to this point. The City has paid out all the contractors. We did receive a letter from Imperial with concerns over delay, which is being addressed.
- Law Director O'Shea indicated the Administration did a fabulous job at negotiating this agreement.
- Mr. Shepherd added that in spite of problems we had with Bowen, but for a public contract and a construction of this nature, we are pretty close to budget. It is less than 10% over and, recall will show, part of the expense was from when the old station was torn down the soil underneath was substandard. He does not feel it is a bad job at all to come in this close to budget.
- Mr. Furry did not disagree with Mr. Shepherd, but noted the decrease in size of the project from what it was originally presented to be.
- Mayor Bobst indicated that working with Bowen and having them address things quickly so the project could move forward and we didn't have delays, they have really been at the City's side.

This was over \$1M contract with an overage of \$95,000 for things we needed to have, so the legal advice we received indicated this was a good path forward.

- Mr. Snyder expressed to Council that he, the rest of the administration went to bat for the City on every single one of the change orders, nothing got by him without approval. He fought when it was needed, he agreed when it was in the best interests of the City, and to do this project during a pandemic that none of us have ever dealt with before with the material delays and everything like that is something he hopes he never has to do again. But, it was an incredible learning experience for himself and the other members of the administration who all pulled together as a team. The Building Commissioner, the Facilities Manager, and others all came together and provided a great building. They worked very hard to make sure it was done right and done cost effectively, and done as efficiently as we possibly could. He did everything he could to stay on budget.
- Mr. Moran indicated that throughout the entire project Law Director Bemer provided direction, and looking at the final details he is glad the project was done when it was because having waited it would have cost a minimum of 20% more if the process were started today.

**ORDINANCE NO. 19-22:** Mr. Moran stated that this is amending Ordinance No. 1-22 creating positions and salaries for the appointed non-union, which has been read twice. This acknowledges some of the changes that came through on our other contract. Mr. Moran requested this item be placed on the Consent Agenda for next week.

**ORDINANCE NO. 20-22:** Mr. Shepherd said this ordinance authorizes the Mayor to enter into a collective bargaining agreement with the Teamsters Local Union. We will read it for a third time next week. Mr. Shepherd requests the item be placed on the Consent Agenda.

**ORDINANCE NO. 21-22:** Mr. Shepherd stated this ordinance is with Specialized Construction for crack and joint sealing on Center Ridge Road from Wagar Road to Wooster. It will be read for the second time next week.

**ORDINANCE NO. 22-22:** Mrs. Morris stated this is an ordinance which allows the completion of the 2017 WWTP project. There were mistakes made by a previous contractor AECOM which resulted in a settlement amount of \$100,000. This ordinance fixes what they were not able to complete and what we settled for at \$100,000. This project started in 2017 with AECOM and in 2019 pumps were turned on and they did not work properly. The new consulting contractor, Hazen & Sawyer, evaluated the situation, found that AECOM had miscalculated and so we settled with AECOM for about \$100,000 in Ordinance 94-20 in November 2020. This new ordinance pays for and finishes the project replacing the pumps that were not correct. They have been verified and checked by Hazen & Sawyer and currently the pumps are being operated manually. This will allow for automation as planned so there will be full use and efficiency at the plant. This will be read for a second time next week.

## **NEW BUSINESS:**

**ORDINANCE NO. 23-22:** Mr. Shepherd stated this ordinance is the initial stage of Phase II of the Bradstreet's Landing project. This is Phase II for design and engineering contract with SmithGroup in an amount not to exceed \$139,700. This will cover through design and consultation through the construction phase of the Upland Access Improvements. Mr. Shepherd referred to drawings provided to Council, noting it consists of the boardwalk, the revetment to the north of the boardwalk, the parking lot, and the pedestrian bridge. SmithGroup did engineering for the pier demolition and replacement and we experienced a good working relationship with them. The drawing shows the boardwalk extending both east and west of the pier; heading east it comes to the bridge and then continues on the other side; the

revetment is along the front of the boardwalk. Mr. Shepherd posed a question to Mr. Snyder regarding future planning for walking paths on the other side of the bridge and where the property line is in this regard. Mr. Snyder indicated there is a stretch of land on the east side of Spencer Creek that the City does own, so this current phase sets us up well for the Spencer Creek portion, which is an additional phase of the project for the dechannelization of Spencer Creek and the natural wetland. Mr. Shepherd continued to reference the drawings regarding the circular drop-off area which will have perpendicular parking spots for short-term parking close to the lake. Access to the water is maintained for kayakers and standup boarders. Mr. Shepherd inquired about a structure for restrooms. Mayor Bobst indicated those would be located further up the hill in the future, in an effort to protect the view of the lake from being obstructed. In addition, having the facilities up the hill closer to the road is better suited from a plumbing standpoint for access to the sewer main without the need for a pump.

- Mr. Furry inquired regarding the ingress/egress location. Mayor Bobst indicated it will be on the east end of the park via the same opening. Mr. Furry also asked regarding the number of parking spots compared to what was there previously. Mr. Snyder indicated there will be less parking, but based on usage the parking has not typically been full. The extra green space can be used for passive recreation purposes. He will provide the exact number of spots once he knows the number. Discussion ensued regarding potential parking areas across the street from the park on City owned property.
- Mr. Snyder indicated he anticipated this project will be advertised next week for construction bid.
- Mrs. Morris inquired about the meaning of biofiltration. Mr. Snyder indicated the opportunities for storm water management include a biofiltration rain garden and some porous concrete in the parking lot. Future phases will also include rain gardens as part of the dechannelization of Spencer Creek, as well as natural floodplains, etc. Mrs. Morris asked if this will be helpful in oil runoff from the parking lot. Mr. Snyder indicated whenever there are new construction processes and there is incorporation of impervious surfaces, there has to be certain stormwater management into it. Instead of doing typical practices of catch basins and running it into a storm sewer, by a more green option this is the better way to go.

Mr. Shepherd continued his presentation of the ordinance by letting Council know that the first page of the attachment to the ordinance (items 1-7) provides a great summary of the contract.

#### **MISCELLANEOUS BUSINESS:**

Mr. Hunt presented information and lead discussion regarding proposed legislation regarding the City's fireworks ordinances in light of State of Ohio Amended House Bill 172. He thanked Mayor Bobst and Law Director O'Shea for providing the proposed ordinance. He desired feedback from Council prior to it being placed on the agenda to the extent that there has been any feedback from the community. Several communities have proposed and ultimately passed similar legislation of this regard. Amended HB 172 was passed in October 2021 by the Ohio General Assembly, Governor DeWine signed it into law in November. It provides for 20 days that would be permissible for individuals to set off fireworks in the State, as opposed to the blanket prohibition that currently exists. Director O'Shea indicated that without legislation and action by the City regarding the permit, possession and discharge of fireworks, individuals will be permitted to do so, unless we reaffirm our existing ban codified in Chapter 1519. The State legislation requires the City to reaffirm its ordinances. Mr. Shepherd put on the record he will be abstaining from voting or discussion of this matter due to a conflict of interest. Discussion regarding the need for councilmanic action ensued.

President Moran said the next meeting will be April 11<sup>th</sup> in Council Chambers, along with the Public Hearing regarding Ordinance 105-21.

As there was no further business by members of Council, the meeting was adjourned at 8:15 p.m.

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James W. Moran  
President of Council

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Mary Ellen Umerley  
Clerk of Council, Acting