

**SPECIAL COUNCIL MEETING
OF THE COUNCIL OF THE CITY OF BROOK PARK, OHIO
HELD ON TUESDAY, JANUARY 3, 2017 IMMEDIATELY FOLLOWING THE
REGULAR CAUCUS MEETING**

The meeting was called to order by Council President Astorino at 6:00 p.m., who read the notice, the clerk and following Members of Council answered:

SCOTT, BURGIO, SALVATORE, TROYER, POWERS, McCORMICK, MENCINI

Also in attendance were Law Director Horvath, Economic Development Commissioner Dolan, Safety Director Byrnes, Service Director Cayet, Mayor Coyne, Building Commissioner Hurst.

Mr. Scott - Point of order, Point of order.

Mr. Mencini - we have a point of order.

Mr. Astorino continued with the Pledge of Allegiance.

Mr. Scott - Point of order, sir.

Mr. Astorino - Councilman, what's your point of order?

Mr. Scott - We have a person sitting up here on the dais that has officially notified you on the 9th of December at 8:14 a.m. Councilwoman, Julie Ann McCormick, notified Council President Astorino that she had resigned effectively immediately. Also stating that she is turning in her set of keys on December 9, 2016. Also Council President Astorino at 9:35 a.m. sent notification to all Council Members, Julie A. McCormick, resigned December 9, 2016 at 8:14 a.m. effective immediately. Notification was also sent to the Board of Elections, attention Brent Lawler, at 9:35 a.m. on December 9, 2016. Why is she on the dais?

Applause from the audience.

Mr. Scott - these are legal and proper notifications of resignation.

Mr. Astorino - She is on the dais because you were right on December 9th she did submit a letter to me and I did announce it at a meeting but since that meeting. On December 14th via certified mail, returned receipt requested Mrs. Julie McCormick was sent a letter from the law director. In the law director's letter, it informed her that an unsigned private email that is published on a third party Facebooks page is insufficient to affect her resignation from City Council. As previously stated, the Mayor of the City of Brook Park is the person to receive and accept her resignation

as he exercises control over all offices, departments and divisions of the city and is the only officer of the municipal corporation authorized to accept her resignation. Upon receipt of this communication I request that you immediately remit a letter of resignation if that is your desire or otherwise directly communicate your intent to the Mayor. That was received from what I understand the receipt was signed on December 19th and this came from the law director. Then on December 23rd, there's a typo with the year reading 2015, to Julie McCormick from Jennifer Sinatra, Commissioner of Human Resources, in that letter to the Councilwoman in an effort to simplify the resignation process the Mayor has directed me to send this email to you directly. If it is your intent to resign your position, please confirm your intent in an email reply to me. Upon receipt of your communication I will see to it that your last check, etc. etc. So even though she had submitted her first letter of resignation she was informed by the law director that it was insufficient form to affect her resignation and then she was also informed by Commissioner of Human Resources with the Mayor's signature on that letter for approval. That if it's her intent to resign she needed to confirm that via email. Since that point in time it's my understanding that after that consultation with her attorney she has rescinded her resignation. So the city law director did not accept it and she is back on the dais. There is nothing in our Charter that allows us to remove a Council representative, nothing in our rules that we can do that tonight. So we'd be outside of our authority and I'm going to rule your point of order as invalid and overrule your point of order.

Mr. Scott - I appeal that overrule, Mr. Chairman.

Mr. Astorino - okay

Mr. Scott - Poll Council please.

Mr. Mencini - if I may.

Mr. Astorino - Councilman Mencini

Mr. Mencini - I'm not going to be scripted, once again as I always state my family's been here since 1958 and I'm not going to lie. As a Councilman, that worked hard to get elected, even though there was no one running against me, I worked hard all my life to get here. We have a lot of things to do and as a Council leader I feel very uncomfortable up here with this situation, we all know what the situation is; so let's not fool ourselves. For our city residents I don't think you're overall happy, we've received the emails and phone calls. It's time to move on, we know what it is, let's move on. I want to go to the law director because I understand she has a couple of things to say on this also. Do we accept her resignation; can we call the roll on that?

Ms. McCormick - Point of order.

Mr. Astorino - Councilwoman, what's your point of order?

Ms. McCormick - this is a special meeting of Council and as such we're limited to topics that are on the agenda.

Mrs. Powers - absolutely right.

Mr. Mencini - Madame, law director I'm asking you through the chair.

Mrs. Horvath - thank you through the chair to Councilman Mencini.

Ms. McCormick - my point of order was not addressed.

Audience - because you're not here.

Mr. Astorino - audience please remain silent, you will have audience participation and can speak then but let's extend us some courtesy.

Mrs. Horvath - through the chair to Councilman Mencini.

Mr. Astorino - real quick law director I'll get to you. As far as the point of order it's always proper to raise a point of order, it's not on the agenda but they're raising about the rules being followed in parliamentary procedure. So it's not an issue so I'm going to have to overrule that you're not in order and is okay for them to raise points of order about how to proceed.

Mr. Mencini - my two questions will be one of which is she does vote today would these meetings be declared later on because of her vote. Do we accept her rescindment of resignation and take a vote on that today?

Mrs. Horvath - through the chair to Councilman Mencini, I've done as much research as I can on this issue and in a short period of time, due to the holiday, I looked at cases going back as 1893 and yes, when someone does resign they have the ability to rescind that resignation, except there is also case law that says that if the individual relinquishes their office then they do not have the ability to rescind their resignation and if the entity, employer or authorized entity does not accept their rescindment of the resignation then basically the resignation is valid. In this particular case after the retentions of facts from the Council President I will point out several things. Number one the resignation that was tendered on December 9th was effective immediately, on that day I believe that keys to the Council office, file cabinet and other cabinets were tendered on December 9th back to the Clerk of Council. There were two subsequent meetings one on December 13th and one on December 20th which were not attended by Councilwoman McCormick. So I would interpret the fact that her intent was to resign immediately and the fact that her actions

showed that she was relinquishing her office, my interpretation would be that Council does not have to acknowledge or accept her attempt to rescind her resignation. If Council does not wish to do so then I would say that her resignation is valid because she relinquished her position. According to some case law that I've cited in a memo after relinquishing a position one may not rescind his resignation unless no rights have been intervened and the appointing authority consents to that rescission. So my position would be that if Council does not consent to the rescission of that resignation, it stands.

Mr. Mencini - that would start on the 9th?

Mrs. Horvath - unfortunately, yes I would have to interpret it on that day. I don't know if there would be any controversy that would ensue due to that; I kind of look at this whole issue as rather extraordinary. Many of the cases I looked at did not have a large gap between rescission and resignation, most of them were less than a week. Here we have over two weeks, I'm very worried that this is a situation that would create tremendous problems for our city and may be a situation that ends up in litigation and/or makes it very difficult for Council to conduct business. With regard to your question concerning the bond ordinance and would it be valid I would opine that if Ms. McCormick was not the deciding vote with regard to the bond ordinance; that it would be valid.

Mr. Mencini - so if you're saying...

Mrs. Horvath - if it passed with four votes, one of which, not Ms. McCormick it would be valid.

Mr. Mencini - we're city leaders and should act as such and also it's very important with the things we have facing our city this year it isn't 2016. It's 2017 and we have to move ahead and get things done as a turning point for the city it's time to move on. Let's do this the right way with the right people and this I want to be on, I don't want to be on I'm not accepting that. I want to move ahead for the seniors, for the children. This is not a political statement this stuff has got to stop we have to move ahead.

Mrs. Powers - a question to the law director, when she sent you a resignation letter why did you not accept it?

Mrs. Horvath - it was not directed to me, I believe her resignation was from her private email address and sent to Council President Astorino's private email address and was circulated later to the administration. Certainly, I believe the proper person to accept it would have been the Mayor, nonetheless, there was never anything tendered in writing. We're in modern times now and don't know what the court would do with the issue of email and that might be quite interesting. The most recent

case that I saw dealing with this issue is a 2009 case but, to me, the factors that I look at are: Number one intent to resign, that intent is expressed immediately it's not a resignation that's effective at a future date. The fact that keys are turned in and two meetings are missed. Had perhaps there been an expression that I'm resigning effective let's say January 3rd then there might be a period of time between the resignation and effective date where the person could go ahead and say I'm rescinding my resignation. However, the resignation was immediate and it appears to me from actions that the office was relinquished.

Mrs. Powers - read a letter into the record dated December 14, 2016 via certified mail, returned receipt requested. Mrs. Julie McCormick at her address Re: Resignation of Council at Large. Dear Mrs. McCormick: You have not attended the last two meetings of the Brook Park City Council and it was mentioned at last night's meeting that you have resigned your position as Council at large. I'd like to advise you that in order to properly resign your position your resignation preferably in writing should be directed to the Mayor, as the Chief Executive Officer of the municipal corporation. As he holds the office that is solely authorized to accept your tenure of resignation. See Charter 3.03 and 4.02 and Davis vs Marion County Engineer, 16th Ohio Street and in 1991 Gallagher vs Ross County Sheriff, 10th District Court of Appeals. I have also been advised that there was an email from your personal email address to Council President at his personal email address and published on Facebook that purports to be your resignation. An unsigned private email that is published on a third party Facebook page is insufficient to affect your resignation from City Council. As previously stated the Mayor of the City of Brook Park is the only person to receive and accept your resignation as he exercises control over all prophecies, departments and divisions of the city and is the only officer in this corporation authorized to accept your resignation. Upon receipt of this communication I request that you immediately remit a letter of resignation if that is your desire or otherwise directly communicate your intent to the Mayor. So this obviously was you as your position as law director saying that she was not resigned.

Mr. Troyer - Through the chair to the law director, the letter just read so your ruling, feeling, opinion is that last year it was an improper resignation; the Councilwoman did not resign. This year, today, and I've yet to read it because we just received it five-minutes before the meeting. You have a memo, which I guess, talks about this and now this year you think she did resign. Is that correct?

Mrs. Horvath - let me restate my position and part of the case laws that I've cited in my memo is the Davis vs Marion County Engineer case. That is the where the case is that discusses that after relinquishing a position one may not rescind his resignation. What I'm saying is her actions equal the relinquishment of Councilwoman. I am basing my decision on that and two other cases that I have cited and, again, would indicate to Council that this is an extraordinary thing. I find this to be very, very adverse for a city perhaps this will end up in litigation. Maybe

a common pleas judge will have to determine the facts here and decide for us whether or not she relinquished her position, which is certainly sad indeed. We also have issues of dates and times and if the resignation was tendered and the position relinquished in December, then we need to have a special election. My understanding is that will cost the city between \$28,000 and \$29,000; so this is a very serious matter. If the court determines for some reason that she is allowed to rescind her resignation, we still have all of the underlying issues going forward. We're going to have a time period, certainly, where if it did result in litigation we're in limbo. Where's that put us, where's that put Council, are all of the roads taken on various resolutions and ordinances? Depending on the courts position would that render those ordinances invalid; in the event if it's a 4-3 vote and the deciding vote is Ms. McCormick. This is a very serious situation and I'm very concerned that this situation could well tie Councils' hands as far as moving forward and doing anything.

Mr. Mencini - Tie the city's hands.

Mrs. Horvath - yes, tie the city's hands also.

Mr. Salvatore - The way I see it is we only have one thing before us, is Julie McCormick's resignation valid. Did she resign and if so what is she doing sitting up here? I'm looking at an invitation to a special meeting and her name's not even on it but yet she's saying she was invited to this meeting. I personally, as one Councilman, do not want to jeopardize any future actions that may take place tonight, tomorrow or at the next meeting until this is resolved. I personally would recommend that Julie remove herself from the dais this evening until this can get resolved. If it's going to go to court then so be it but I do not want to put the city at risk for decisions that are going to be made tonight and into the future, until we know for sure she does have a seat at the table.

Mr. Troyer - Madame, law director you basically said once a Councilperson resigns in general and relinquishes the keys that makes it official. But you, yourself ruled in this case she did not resign, it was not proper, it was not to the proper person, she did not resign. Five minutes before the meeting I get a ruling that seems to say different and last year it was improper; this year you're saying maybe it was proper.

Mrs. Horvath - I think you mean like three weeks a difference. Last year and this year obviously we're not even talking a month. Let me be clear the initial letter that was sent out maybe the 14th or 15th was a follow-up, because we were concerned that there be something in writing. The email was not sent through regular channels, nor was it signed. As I indicated that generally is not how resignations are handled. So my attempt in sending that letter to Ms. McCormick was to get her to respond but there was no response. Jennifer Sinatra, Human Resources Commissioner, also reached out to her saying just send us an email confirming it to the administration

that will be good enough; I think that would have been accepted at this point. The difficulty we're having here is number one do email communications, it seems like that is the way that people are tending to do that in the modern world. Also, the fact that she resigned immediately and many of these cases have spaces between someone indicates their resigning and an effective date. There are a number of cases where they talk about whether or not there needs to be an election and the effective dates are sometimes an attempt to get beyond the election to allow some authority to appoint. There's also an attorney general opinion that goes back to 1963 that I didn't cite in here but it's consistent with the other case law. Mainly if your intent is to relinquish your position, if that's what your actions show, then the appointing authority or entity, or employer, whatever you want to term the person depending on the various agency would have to consent to the rescission. So what I'm doing is I'm advising Council that's my reading of the law and I'm also advising Council that if Council chooses not to consent to the rescission, that's an option for Council. My interpretation of the actions, now at this point in time, after looking back over the entire history of the matter is I feel that she did in fact relinquish her position. I would note that she attempted to rescind her resignation as of the 28th of December and think that was received after 2:00 p.m. I'm sorry I couldn't be quicker in getting this information and this memo to you but due to the holidays and the fact the city being closed for the extra day I couldn't produce it any quicker.

Mr. Troyer - these are more concerns and it's going to be hard for me to have a vote on this tonight because I have to read your ruling and may have to consult my legal authority. The question being is if Councilwoman McCormick were not to continue and it's later ruled that she should have been able to continue, could that develop into a lawsuit against the city?

Mrs. Horvath - it could either way maybe it's her action, maybe it's the city's action asking a judge in the court of common pleas to make some kind of determination on these issues of fact. Because I don't think the city can exist in this state, I think everything will be obstructed until this matter is resolved, one way or the other.

Mr. Troyer - is there any way to alleviate both problems?

Audience moans yes there's a way.

Mrs. Horvath - I clearly can't at this point address that, I'm just looking at the facts that are before me. If you're hinting if there's some way that this can be resolved I don't see how that could be resolved at this meeting. Certainly, we've done our best to make certain of the facts and try and find out exactly what everybody's position here has been. There was a resignation effective immediately, actions indicating that you were leaving your post and your office. There was a memo that came out saying I rescind my previous offer of resignation from Brook Park City Council, I have no further comment. I don't know under those facts how you can have a resignation.

Mr. Troyer - what's bothering me is you ruled that she did not resign.

Mrs. Horvath - I sent a letter it was not an official opinion. I sent her a letter saying please would you let the administrative side, or the city know what's going on. Usually when people resign the payroll department finds out the person is gone. Maybe human resources might want to know for other reasons opening and closing of files. So mainly that was the purpose of the letter to help us determine and close out what was going on, but this is my opinion that was a letter.

Mr. Mencini - to the law director, if we don't act tonight inaction is actually an action of acceptance, number one. Number two I want to go very basic if I hypothetically called the Council office that I won't be at the meeting tonight, that would be accepted; it wouldn't have to go through City hall.

Mrs. Horvath - the Council Rules address procedures and power a Councilperson can be excused. I'd have to relook at the rule I don't think it says who is the person who determines that but certainly people are ill, have ill family members, etc.

Mr. Mencini - I call in sick and it's been accepted, the meeting goes on. If I called the Council office and said I resign they accept that also, correct?

Mrs. Horvath - would seem to be the case.

Mrs. Powers - read into the record another letter from Jennifer Sinatra, Commissioner of Human Resources dated December 23, 2015 (typo should have been 2016). Dear Mrs. McCormick the law director has received acknowledgement of your December 19, 2016 receipt of her recent letter to you regarding your alleged resignation from City Council. She has also advised that you have not contacted her or the Mayor to formally resign your position. In an effort to simplify the resignation process the Mayor has directed me to send this email to you directly. If it is your intent to resign your position, please confirm your intent via email reply to me. Upon receipt of your communication I will see to it that your last check December 30, 2016 is mailed directly to your home. If you desire to pick up you last check in person please advise in your email Thank you, Jennifer Sinatra. So it clearly seems that no Mayor, no law director, no Human Resources Commissioner was willing to accept her resignation because she didn't do it the way they want her to do it; so she was not resigned.

Mr. Scott - this is from the Regular Caucus meeting held on December 13, 2016. Roll Call: Scott, Burgio, Salvatore, Troyer, Powers, Mencini. This is per Council President Astorino. Council President Astorino stated there being no minutes to be approved for this meeting before proceeding I want to make a short announcement; that Councilwoman at Large, Julie McCormick, has submitted her resignation from her position. I'm just going to read that her message simply said I hereby resign

from my position on Council effective immediately. I have turned in my keys for the door, drawers and file cabinet. Should you have any questions please feel free to contact me. Julie McCormick. Council President Astorino continued that as everyone is aware of what went on she is now has resigned her seat. Council will follow the Charter and our restrictions on taking actions. One thing that actually, I think, ended up expediting the matter was the law director had made an inquiry into the insurance aspect and received a response back that she had been suspended from our insurance company so it made it very difficult. So then with that information she made a decision to resign from her position so she has now resigned and I put into the record for removing it from the agenda. This is per Council President Astorino - Regular Caucus meeting held on December 13, 2016. There was no McCormick on the roll call and no McCormick on the roll call for the December 6th meeting also.

Ms. McCormick - the Charter of the City of Brook Park does not grant any powers to the Council to either accept or reject resignations. This is probably something that should be looked at in Charter Review or something a Member of Council should bring up. But as it stands now the Charter does not grant such power to Council or anybody else. There's actually nothing in there, there's no guidelines. That being said we have important business to tend to tonight and wasting valuable time and to alleviate any concerns about the vote that will be taken during this meeting and this evening. I willing to abstain on those votes.

Person in audience you need to remove yourself.

Mrs. Powers - nobody accepted her resignation and that for the people who are not members of the goon squad out here that might want to know what's happening. Is that the rule says that if she resigns in December we would have a special election to replace her. If she resigns in January, then we get to appoint somebody for her and the 'we' being four yes votes for the Mayor. So, you know, where we stand.

Mr. Scott - Point of order

Mrs. Powers - my point is that this man over here that keeps calling point of order has two sons working for the Mayor.

Audience uproar

Mr. Astorino - Councilwoman.

Ms. Powers - So he not be objective.

Mr. Astorino - Councilwoman, there's been a point of order called. Audience please the control is we may have to empty the room if you can't control yourselves.

Mr. Mencini - it's one son and Mark Elliott hired him.

Audience uproar.

Mr. Astorino - you're allowed to attend but you're not allowed to disrupt the meeting, it's up to us to talk about it not you.

Mr. Scott - my point of order is do not accuse me of being on anybody's side, I do not appreciate her comments. Number two I do not have two sons working for the city, I have one son that works for the city and was hired by Mayor Elliott. He was laid-off by Mayor Coyne, he was off for four-and-a-half years, so do not lay that on me. Turn my mic off. I've put up with that for months and I will not put up with it again. My son has done nothing.

Mr. Astorino - Councilman, please.

Mrs. Powers - I just said.

Mayor Coyne - Mr. Chairman.

Mr. Mencini - Mr. Chairman.

Mr. Astorino - Council, a point of order was called on the Councilwoman's comments, nobody wanted to seem to wait for the ruling of the chair. The ruling of the chair is we need to talk about the issue, not about the personalities. So Councilwoman please refrain from bringing in personal comments. Councilman, when you call a point of order you wait for it and address your comments to the chair, you don't go back and attack somebody when you're complaining she's attacking you.

Audience she started it.

Mr. Astorino - two wrongs don't make a right. Audience please we're trying to get through this and it's very difficult if you keep disrupting the discussions. I told the Councilwoman that her comments were out of order and we should stick to the topic.

Mr. Mencini - on this if there's anybody caught in the middle here on the votes is me; so to say four votes and last meeting you said you would listen to Tom Greenlee, when you have lawyers talking and others; you would listen to Tom Greenlee, that was your statement. But don't accuse me of being the fourth vote of anybody because that was a big mistake in that paper saying that about me being a bobble-head.

Mr. Astorino - I've given Council plenty of opportunity to speak and was going to wait until you were done and make one question or comment to the law director and then go to the Mayor.

Mr. Astorino - to the law director I had a chance to review a little of this letter and do notice that the cases being cited in your opinion, what would you call it?

Mrs. Horvath s- an initial opinion and is a short period of time I looked at about 12 cases and this is not an area that has a ton of case law.

Mr. Astorino - in reading what was provided you're talking about an employee who has not relinquished their position may rescind any time prior to the effective date as long as the employer has not yet formally accepted the resignation. The cases being cited is dealing with employees and an employer, this situation deals with an elected official whose employer is the electorate of the city, that's one of the questions. The second question I have regardless of any of the rules is going back to the city Charter section 15 is the only section that deals with removal of a Councilperson or elected official and the procedure outlined in there. I don't think we have anything other than that Charter provision as to how someone can be removed from office. So if Ms. McCormick is saying she's still in office as a Council President I have no authority to say no to it and don't think the Councilmembers have any authority unless they follow the procedure in the Charter.

Mrs. Horvath - the case of State vs Moorehead deals with an elected official's resignation of the Mayor of Newton Falls from Trumbell County and in that particular case there was a contentious Council meeting. The Mayor spoke at the podium and made the decision to resign at a future date. Roughly two days later he notified Council that he was rescinding his resignation. Because he made his resignation effective to a future date the court agreed and said he had the ability to rescind his resignation. However, in this particular case the resignation was effective immediately and also looking at comments from the Trumbell County Court of Appeals where they use the same language in Davis vs Marion and also in 2004 involving a police chief vs Miller uses the same language to apply to an elected official. Someone relinquishing a position cannot rescind their resignation, I think this is the key point, unless the appointing authority consents to the rescission. Since there is no appointing authority but do have a Council who has resignation submitted to them. Not sure if Newton Falls has a Charter or operating on the statutory format the city's Charter lays out certain factors for a Councilperson to be removed; but this is not a removal. This is a resignation and a relinquishment of a position where later someone after relinquishing their position comes in and asks to rescind their resignation. My point is that, I believe, the appointing authority has to consent to that rescission.

Mr. Salvatore - in the Charter the process used to remove someone I don't think Council is at that point, I think the person should remove themselves. We're talking about a Councilperson coming back and there is no provision for Council to accept or deny somebody.

Mr. Astorino - interjected the person sitting there is saying she didn't remove herself now and that decision is supported by a letter from the law director and human resources that they did not accept it. So yes they are accepting it now but the concern is to sit there and say it's clear it's really not. If any action is going to be taken this is something there's going to have to be a court that decides this or Council is going to have to take the actions provided in the Charter. Council can't go on this opinion because this opinion is in conflict with an opinion from two weeks ago.

Mr. Salvatore - it became official when read into the minutes, therefore, the resignation was accepted and the appointing authority as I read in the Charter 'before January 1st the appointing authority would be the electorate' the people of Brook Park. After January 1st the appointing authority is Council and if Council fails to act within 30 days then the appointing authority becomes the Mayor. Mr. Salvatore reiterated that Julie McCormick has resigned and city business needs to get done and it seems that the consensus is that is going to end up in court. It's clear to me that Julie McCormick resigned and it doesn't matter who she resigned to, a document was read into the minutes that clearly states that she resigned her position as a Councilperson for the City of Brook Park.

Mayor Coyne - Julie McCormick sent you personally an email indicating that she was resigning her position to City Council, it was read into the record with some stipulations. Once Council passes meeting minutes, that are in the rears, the resignation has been accepted. The response from the law director and myself is once Council passes those meeting minutes there are three different divisions of government that need clarification. The law department needs legal clarification, the human resources department that needs process clarification and the finance department to pay. The finance director cannot pay unless there is some document saying that there should be payment for various reasons. If Council gets current on their minutes they approve that being read into the record, therefore, they have accepted her resignation based on the approval of minutes. The law director has a document that must go to the board of elections and I have a document that processes her through the various human resources situations and the finance director has the ability to pay. Absent that Council meetings cannot be scheduled and cannot vote on minutes, Ms. McCormick has resigned. In my memo all the city was trying to do is have a process that whereby Ms. McCormick could get paid. There could be arguments that Ms. McCormick quit December 8th or 9th the city is trying to determine how much payment; Council gets paid monthly. When Ms. McCormick showed up at City Hall with the Council President on the last day of business for the city demanding her paycheck. The city submitted a paycheck and on the ledger

stating final payment, Ms. McCormick indicated the check would not be cashed and wanted another check issued, which the city has no intention of doing. Mayor Coyne stated there is no good reason that Ms. McCormick can justify to this Council or the people of the city to continue in this position; nor should the people of Brook Park continue to bear this burden. Also, Council should review the minutes of the excused absence of Councilwoman McCormick, the fact is I don't believe the Council President has the authority to excuse any elected official from any meeting for any reason, I believe that only lies with Council. If that is the case and that is deleted from those minutes, Ms. McCormick has missed the required number of meetings to be removed. So according to the Charter City Council can remove her and accept her resignation both by amending, deleting and approving subsequent minutes. For no other reason Council should take the appropriate action and quite frankly, Mr. President, I have to tell you I've seen a lot of behavior in public life, manipulation of legislative movements and can tell all of you right now I don't want to appoint any Councilperson. Mayor Coyne commented the Hometown News has put a stranglehold on this city and think the last thing Ms. McCormick said was the best; that she would abstain from voting this evening.

Motion by Mr. Mencini, supported by Mr. Scott, to go out of the Regular Order of Business, to audience participation.

Ms. McCormick stated this is a special Council meeting and remarks can only be on agenda items only.

ROLL CALL: AYES: Mencini, Scott, Troyer, Salvatore, Burgio

NAYS: Powers

ABSTAIN: McCormick The motion carried.

REMARKS FROM THE AUDIENCE ON ORDINANCES AND/OR RESOLUTIONS THAT PERTAIN TO THE AGENDA ONLY:

Susan Booker

13855 Franklyn Blvd.

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Ms. Booker asked Council to move forward and rebuild Brook Park by passing this legislation.

Mike Vecchio

14417 Park Drive

Mr. Vecchio stated the recreation center is the focal point of Brook Park and implored Council to pass Ordinance No. 10060-2016.

Remarks from the audience on ordinances and/or resolutions that pertain to the agenda only: cont.

Jeffrey Duke

15914 Remora Blvd.

Mr. Duke encouraged City Council to adopt Ordinance No. 10060-2016 on third reading tonight.

Jessica Roberts

5368 West 151st Street

Ms. Roberts expressed concerns with the recreation center remodeling and the discrepancies on the amounts of monies for the remodeling.

Ray Peterlin

5811 Wengler Drive

Mr. Peterlin read a 20-page manifest (on file in the Council office for public review).

Thomas Greenlee

15841 Paulding Blvd.

Mr. Greenlee expressed concerns with the awarding of the contract to Brewer-Garrett for remodeling of the recreation center without having other proposals from other companies.

Joan Markusic

13911 Bellbrook Drive

Ms. Markusic expressed concerns with the lack of miscommunication and facts being presented about the remodeling of the recreation center.

Ted Hurst

16683 Crickett Lane

Mr. Hurst asked Council to take the first step and do what is right for the people of Brook Park and pass this legislation.

Motion by Mr. Burgio, supported by Mr. Mencini, to go back to the Regular Order of Business.

ROLL CALL: AYES: Burgio, Mencini, Powers, Troyer, Salvatore, Scott

NAYS: None.

ABSTENTION: McCormick. The motion carried.

Motion by Mr. Scott, supported by Mr. Mencini, to withdraw Ms. McCormick's resignation.

Mr. Astorino ruled that motion out of order there is no authority to do that; a motion cannot be allowed that is in violation of the city Charter. Section 15.02 is titled

Remarks from the audience on Ordinances and/or Resolution that pertain to the agenda only: cont.

'Removal of Council or other elected officials and read (b) of the Charter into the record - '(b) The Council may by at least five (5) votes of all the Members of Council eligible to vote thereon remove any Member of Council including the President of Council, or any other elected official for gross misconduct; malfeasance, nonfeasance, misfeasance in or disqualification for office; for violation of his oath of office, for persistent failure to abide by the Rules of Council; or, in the case of Councilmen, for absence without justifiable excuse from three (3) consecutive regular meetings'. Prior to any such action by Council, the accused person shall be notified in writing of the charge or charges against him at least fifteen days in advance of any hearing upon such charge and he and his counsel shall be given an opportunity to be heard, present evidence or examine under oath any witness appearing in support of such charge or charges.

Mr. Burgio stated the law director clarified with the difference between removal.

Mrs. Horvath stated this is not pursuant to that provision of the Charter Council is not removing; rather it is being determined whether or not Council wants to consent to a rescission of a resignation, where an individual relinquished her position that is not covered in the Charter. The Charter speaks to someone who has not resigned. In this particular case there was a resignation effective immediately and actions indicating a relinquishment of the Council position and think it's incumbent upon Council to determine whether or not to consent to that rescission. This has nothing to do with the Charter and in review of case law that is consistent and didn't see any mention of Charter with the particular removal issue in any of these case laws. This is a determination of Council will consent to the Councilwoman's rescission of a resignation.

Mr. Burgio stated there is a motion on the floor to withdraw that resignation and a roll call is in order?

Mrs. Horvath responded yes, Council has the authority.

Mr. Scott asked who has the authority to accept this letter of rescindment?

Mr. Astorino stated I received the email and notified Council and made an announcement at a meeting of Ms. McCormick's resignation. After that announcement the law director explained her opinion that was insufficient to affect the resignation as well as human resources; and told the Councilwoman that she did not resign. In both letters the Councilwoman was asked to express her intent and her intent is that she is not resigning. After that the law director then reversed her opinion, it's just an opinion, the Charter prevails. The only way Council can remove Ms. McCormick and the result of your motion would be removing the Councilwoman

Remarks from the audience on Ordinances and/or Resolution that pertain to the agenda only: cont.

from the dais, that you don't have the authority to do and neither do I. Ms. McCormick has stated that she will abstain from all voting so if there truly was an interest of all of Council to move this forward this would be moved forward.

Mr. Mencini call the question.

Mr. Scott stated there is a question of legality, is Ms. McCormick legally allowed to be up here? Is she legally allowed to participate?

Mr. Astorino responded no one has provided a legal order from a court saying Ms. McCormick can't be here. Two opinions from the law director one saying Ms. McCormick can be here and one saying no, she can't be here and it's just an opinion.

Mr. Scott stated there is a motion that has been properly seconded.

Mr. Astorino interjected I won't allow a motion that is in violation of the Charter.

Mr. Salvatore - Point of Order

Mr. Astorino - what is your point of order, Councilman.

Mr. Salvatore - I would like the motion restated.

Mr. Mencini - call the question

Mr. Scott - The motion was to have Councilwoman McCormick's withdrawal of the rescission.

Mr. Salvatore - you don't want to accept the resignation.

Mr. Scott - correct.

Mr. Salvatore - in all the years that I've been on Council a motion is always in order; this is official city business. It's not the Council President's meeting it's the Council meeting. Therefore, if there is a motion on the floor whether it's in the Charter or

Remarks from the audience on Ordinances and/or Resolution that pertain to the agenda only: cont.

not in the Charter and goes to court and a judge rules. The roll call should be made on the motion made and properly supported.

Mrs. Powers stated the city Charter is what Council is supposed to live by and the audience will get upset with spending \$28,000 on a special election but not get upset about spending \$7 million dollars for recreation center improvements.

Ms. McCormick stated the Charter does not grant any powers to Council or anyone else to accept or reject a resignation. The Charter tells how someone can be removed but there is a process. Such a vote cannot be taken at this time because it would be in violation of the Charter; abusing powers that Council does not have. Furthermore, this is a special meeting of Council and this item is not on the agenda and the Council President already stated that the agenda has been moved to Verbal Approval by starting to read it and then interrupted by a point of order.

Motion by Mr. Mencini, supported by for personnel matters.

Mr. Astorino stated motion fails for a lack of a second.

Mr. Salvatore stated there is a motion on the floor before another motion can be recognized.

Mr. Astorino stated I ruled that motion out of order due to direct violation of the Charter.

Mrs. Horvath stated the Council President has no authority to make that determination.

Mr. Astorino to the law director you are out of order.

Mrs. Horvath continued you are denying this entire Council the ability to hear a legal opinion by refusing to acknowledge me. You do not have the authority to determine whether something violates the Charter or not. The only person who can do that is the law director.

Mr. Astorino law director you're out of order, please sit down.

Mrs. Horvath - I will be happy to sit down if you will proceed and allow this to be voted on.

Mr. Astorino - you're setting conditions on how proper decorum.

Remarks from the audience on Ordinances and/or Resolution that pertain to the agenda only: cont.

Mrs. Horvath - on how to allow this to be proceeded on.

Mr. Astorino you're setting conditions.

Mrs. Powers - you are the law director you are the Mayor.

Mayor Coyne - Council should take the chair's authority away to chair this meeting and put the pro-tem in and get city business done, this is pathetic.

Audience moans

Mr. Scott - the ruling of the chair.

Mr. Astorino - the item before Council is verbal approval for the fact-finding report.

Mayor Coyne - you can't do that.

Mr. Scott - sir, there's a motion on the floor.

Mr. Astorino - there's no motion on the floor.

Motion by Mr. Scott, supported by Mr. Mencini, to remove Council President Astorino and have the pro-tem take the chair.

Applause from the audience

Mr. Scott - you're ruling is way off base.

Mrs. Powers - point of order, Mr. Mencini cannot vote on that.

Mr. Astorino - I would like a point of clarification on what authority you're making that motion, is in compliance with Council Rules? Or are you just making this up as you go along?

Mr. Scott - I'm not making this up as I go along.

Mr. Astorino - you've already made up the one about...

Mayor Coyne - is any city business going to be conducted this evening? You accepted the resignation, if not you lied to the people of this city and it's on tape. You took that resignation we processed it, we didn't deny her resignation we had to process it and you know it. You have no right to make the ruling and you have

Remarks from the audience on Ordinances and/or Resolution that pertain to the agenda only: cont.

no right not to recognize a challenge to the chair and the authority of Council look at your Charter. You are only elected and have the authority to do one thing. Preside over meetings according to the rules and regulations set by this Council and if they challenge your rule and challenge you're sitting there to chair; they are in the realms and authority of the Charter of the City of Brook Park and that's what they ought to do because you're not capable, sir.

Applause from the audience.

Mr. Astorino - Councilman Scott can you point to the rule that your relying on because you've already made one motion that would be in direct violation of the Charter, you choose to ignore that.

Screaming from an audience member.

Mr. Astorino - now I'm asking.

Mr. Scott - I stay with my statement and stand by what I say.

Motion by Mr. Mencini, supported by Mr. Salvatore, to go into Executive Session.

Moans from the audience for the roll to be called.

Mr. Astorino - Councilman, I've asked for a point of information and you haven't provided any.

Mr. Scott - I made the motion to have you removed.

Mr. Astorino - I've asked you for a point of information, under what authority, under what rule. I know you made the motion based on something the Mayor said now maybe the law director can provide you the rational why you're doing that but I've asked you for a point of information. Before we can move forward on your motion you need to provide.

Mr. Scott - I challenged the ruling of the chair and was not granted any decisions on that. We had a law director who was going to speak on the issue at hand, you totally violated that. Mr. Mencini asked you to allow the law director to speak upon the issue and you refused.

Moans from the audience call the roll.

Remarks from the audience on Ordinances and/or Resolution that pertain to the agenda only: cont.

Mr. Astorino - ruled Mr. Scott's motion out of order for the same reason as the first motion was ruled out of order. The only way a Councilperson can be removed from office and this motion to take me from the chair removes me from office. You do not have that ability and if you want to do that then charges would have to be filed and provide 15-days' notice and five votes to do that, you can't do that tonight so the motion is out of order. The item on the agenda before Council is the verbal approval on the fact-finders' report.

Moans from the audience there's a motion on the floor and the motion to be acknowledged and the roll to be called. Mr. Astorino read item number one under verbal approval.

Motion by Mr. Troyer, supported by Mrs. Powers, to verbally approve.

Moans from the audience.

Motion by Mr. Mencini, supported by Mr. Scott, to go into Executive Session for personnel matters.

Moans from an audience member don't go behind closed doors and chat away get it settled. You're here for the people of this city.

Mr. Astorino - Councilman Mencini a motion to adjourn into executive session must specify which particular personnel matters listed in the statute, you propose to discuss. A motion of personnel matters does not comply with the statute.

Mr. Mencini - I've called the question, I've asked for an executive session and can't even go to the law director.

Moans from the audience Council Rule No. 8 is not being followed that was stated by the audience member.

Mr. Astorino - audience please this is a Council meeting.

Unintelligible moans from the audience.

Mr. Astorino - the motion before Council is for verbal approval for the fact-finding report of the City of Brook Park, Council what is your pleasure.

Moans from the audience there's a motion on the floor.

Moans from the audience the motion on the floor was not recognized, call the roll.

Remarks from the audience on Ordinances and/or Resolution that pertain to the agenda only: cont.

Mrs. Horvath - I believe you do need to call the question; I believe you need to address the motion on the floor.

Applause from the audience.

Mr. Astorino - the motion on the floor is about verbal approval of the fact finding report.

Someone from the audience Mr. Mencini take over the meeting so the public can get this done.

Mr. Mencini - I called the question...

Mrs. Powers - the Charter states that the pro-tem does not take office unless the Council President is not here, he is here, so read your Charter before you...

Unintelligible moans from the audience.

Mr. Astorino - Any discussion on the motion to verbally approve the fact-finder's report. Seeing none.

The clerk called by the roll by Mr. Troyer, supported by Mrs. Powers, to verbally approve the fact-finder's report.

Mr. Mencini - I've called the question twice.

Moans from the audience call it again.

Motion by Mr. Burgio, supported by Mr. Scott, to recess.

Clerk - calling the motion on the floor for verbal approval of the fact-finding report for the City of Brook Park and the International Association of Firefighters, Local 1141.

Unintelligible remarks from the audience.

ROLL CALL: AYES: Troyer...

Mr. Salvatore - a motion to recess is always in order, Mr. Chairman.

Remarks from the audience call for a recess.

Remarks from the audience on Ordinances and/or Resolution that pertain to the agenda only: cont.

The clerk continued with the roll call.

ROLL CALL: AYES: Powers

ABSTENTION: McCormick

NAYS: Mencini, Scott, Burgio, Salvatore. The motion failed by a vote of 2-4 with one abstention.

Mayor Coyne - I'm going to ask anybody in the audience there have been two calls for the police department, does anybody think police are needed here this evening.

Audience - no

Mayor Coyne - thank you very much, whoever is doing it remember we get phone numbers. Mr. Greenlee do you think a policeman is necessary here.

Mr. Greenlee - yes

Audience - No.

Mayor Coyne - okay, at any rate stop calling the police. The safety and service directors are here and the Mayor is the chief law enforcement officer, I'll protect you.

Unintelligible remarks from the audience.

Mr. Astorino - five votes are needed to reject the factfinders report and since there are only four votes the factfinders report has been accepted by Council.

THIRD READING OF RESOLUTIONS AND ORDINANCES:

1. ORDINANCE NO. 10060-2016, AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS IN A MAXIMUM PRINCIPAL AMOUNT OF (\$5,200,000) FOR THE PURPOSE OF PAYING THE COSTS OF INSTALLATIONS, MODIFICATIONS AND REMODELING OF CITY BUILDINGS TO CONSERVE ENERGY AS FURTHER DESCRIBED HEREIN AND TO PAY THE COST OF ISSUANCE FOR SAID BOND; AND DECLARING AN EMERGENCY. Introduced by Mayor Coyne and Councilman Mencini

Motion by Mr. Troyer, supported by Mrs. Powers, to place Ordinance No. 10060-2016, back in committee.

Mr. Troyer - I've written a lot of stuff and actually received some more information based on 27th (December) and went through last night. The ordinance should be

Third Reading of Resolutions and Ordinances: cont.

placed back in committee for several reasons, first one this legislation has already had two readings and Council were provided w2ith a document that exceeds 100 pages containing information about the project. If this information had been provided at the start of the process would give Council time to ask questions about the document; withholding the document for the first two meetings was improper. Going through this I will get into information as to the RFQ (Request for Qualifications) was actually changed. The RFQ is not the same as is sitting right there the 116 pages received on the 27th are different then what is in the book. Next, this legislation should be placed back in committee because I believe the ordinance as written is in violation of the city's Charter because it contains more than one subject. There is no doubt that one subject of the ordinance is 'the sale and issuance of bonds', that subject is contained in the title of the ordinance and enjoined with the content of the ordinance, however, this ordinance also contains a subject of awarding an energy conservation contract. The awarding of the contract is a completely different subject from the sale and issuance of bonds and should be a separate ordinance. Finally, and most importantly I'd like Councilmembers to place this back in committee because I think there is a better plan that can be discussed in committee relative to this ordinance. The better plan Council should take is to make these improvements to the John A. Polonye using the city's unencumbered cash reserves. I think the City of Brook Park would be better served if Council proceeds with the main part of this project by using current cash reserves and not go through the process of issuing bonds or a combination; let's pay cash and get this done faster and less expensive. As I see it, the November financial reports show beginning balances of \$6,718,468.00 in the General Fund, \$361,186.00 in the Admission Tax Fund, \$356,177.00 in the Hotel/Motel Tax Fund for a total of \$7,436,431.00 available in the General Fund unencumbered cash reserves, some of that may have changed because of the Dalebrook project. The December beginning funds consisted of \$679,084.00 in the city income tax fund and more than \$1 million dollars in the capital improvements fund. The city's reserve policy needs to have a little under \$4 million dollars of cash reserves for the general fund and currently have less than \$7 million dollars. The information provided to Council the cost to operate the community center being less than \$2 million dollars. If cash reserves are used for the project the city will have more than \$5 million dollars in the general fund and unencumbered cash reserves, and more than enough to meet the fund balance reserve policy standard of two months. This would eliminate the 60 to 75 days wait for processing of the bond sale and the project can begin sooner. The city won't incur the \$155,000 bond cost of issuance nor the \$50,000 audit cost, or the cost of the hundreds of thousands dollars to pay for the bonds. By placing this legislation back in committee and look at doing the upgrade to the community center the city will be looking at spending \$2 million dollars instead of nearly \$8 million dollars the current plan commits the city to. Spending \$2 million dollars to fix up the community center as opposed to spending \$8 million dollars makes more sense. I would be in support of having the law department draft an ordinance authorizing the Mayor to

Third Reading of Resolutions and Ordinances: cont.

advertise for bids and enter into a contract with the lowest and/or best bidder to upgrade the HVAC (Heating, Ventilation and Air Conditioning) system and exterior lighting systems for the recreation center by using the city's unencumbered cash reserves to pay for the project. Moreover, this 116-page document that Council received on the 27th as I stated does not match that RFQ, the RFQ's have changed. So one of my biggest issues with this is that from the start early in 2015 this was done wrong. Because Council did not make the decision to go with Brewer-Garrett as shown in Ohio Revised Code (ORC) 717.02 requires, that's my biggest problem with this. Then when looking at other things and other avenues that could have been taken and were never discussed, it was just here's the plan, here's what we're doing and that's it. The plan did go from \$4.3 million dollars which was presented to the public and then all of a sudden went to over \$5 million dollars and Council was told that was because of the roof that needed to be done. If I remember the roof was included in those original proposals, in fact, I have documents that show in September, 2015 the roof was included in the proposal. So how did it get adding that kind of money for the roof when it was in there. I have documents showing that Brewer-Garrett's bid included numbers for the roof and the roof was going to be done by a document dated September, 2015. Many points have been changed where they've been eliminated...

Mayor Coyne - Mr. Chairman, for clarification he's talking about the contract?

Mr. Troyer - I have the floor, sir.

Mayor Coyne - I'm asking for a point of clarification.

Mr. Astorino - Councilman.

Mayor Coyne - let me tell you something you'll be on the floor; I'm asking you to clarify what you're talking about.

Mr. Astorino - Mayor, Mayor.

Mr. Troyer - did you just threaten me?

Mayor Coyne - you're damn right I did.

Mr. Astorino - Mayor. Councilman he's asking for a point of clarification.

Mayor Coyne - that's correct.

Mr. Astorino - what do you want clarified, Mayor?

Third Reading of Resolutions and Ordinances: cont.

Mayor Coyne - he's saying in here is he referring to the contract, is that what he is referring to. He's saying in here, in here where?

Mr. Troyer - I'm referring to, it starts off with the performance contract and goes through to the Schedule A - Exhibit 1.

Mr. Astorino - I think I can clarify, he's comparing the RFQ received in May, 2015 to the document provided to Council on December 27th.

Mayor Coyne - right now he's referring to things have changed from the RFQ into the format of the contract? Is that what's he's saying?

Mr. Troyer - Yes.

Mayor Coyne - Okay, that's all I want to know.

Mr. Troyer - the whole 116-page book provided on the 27th which a lot of it is the same or the same pages but changed as were in the RFQ. For instance, the schedule on the first page from the performance contract. Schedule C Request for Proposal, Exhibit 1 Request for Proposal (RFP) with a space for the date has been eliminated on the new one. There's been seven, eight and nine of Schedule B - Service agreement added. There's a line except for legal conditions that would have been revealed only by undertaking destructive tests and as stated on page 4 of the whole packet or 2 of 6 of the performance contract, Article 1 - Nature of Performance Contract - 1.5 the line at the end of that 'except for local conditions that would have been revealed only by undertaking destructive testing, core sampling and demolition; that's less in favor of us. Would that have changed the grading system back in May. On page 5 or 3.06 there is 3.3 that speaks about contracts failure to complete all the work within the period of time specified or failing to have a portion of the work completed. Basically, this is liquidated damage schedule has been removed from this legislation, this new contract. The owners right to recover the liquidated damages amount does not preclude any right of recovery for actual damage or breeches by the contractor, that's removed, again against us. These are items not in the city's favor they are in Brewer-Garrett's favor. Page 4 of 6 - 5.7 number four, it only has three now, but number four removed was 'schedule C - Request for Proposal, why was that removed? So there are some other things removed like Attorney General and State changed to City. I'm very concerned about this because I asked the gentleman to come up here and show me where certain things were in the RFQ and he said it's all in there. I said no isn't that generic and he said no it's not generic. Then why did these item all have to be changed. It mentions State in there where it should have been City, it had Attorney General in there which wasn't appropriate because it wasn't for the State, so I was not told what the truth was. So now we get this other document and it's different, the basic changes were made but

Third Reading of Resolutions and Ordinances: cont.

now there's changes that I think hurt and would have made the city score differently on those evaluations, it's right in here. That's just the first part and I did go through this for four hours to find all the changes. Let me state I'm not against doing the recreation center, the recreation center obviously needs these HVAC systems and needs the roof done. The lighting would be the easiest thing to do and the most cost-effective. Looking at Schedule A - Exhibit 3 - Contract and Definitions page 22 - Contracts and Definitions guaranteed bond was deleted; liquidated damages the heading was removed and this is the performance of getting this done in on time. In this new package we were told 365 days and now it's over 400 days for completing this project, again not in our favor. On the next page 23 between contract and provide (word) proposal was removed. Original offer to perform the contract submitted in response to the RFP accompanied by other required documents, just removed. Page 23 - missing heading - Proposal the whole line removed. Another heading State Architects, State Architects Office or SAL that needed to be removed and that completes the Schedule A - Exhibit 3 - Contract and Definitions. Moving on to Schedule A - Exhibit 4 - General Conditions, by picking out a couple and not going through the whole thing. On page 59 of Schedule A - Exhibit 4 - General Conditions - Energy Conservation Project, City of Brook Park. Section 9-5-3 was eliminated and says not used and would have said all liquidated damages was removed. Section 9.6 - Payments withheld - 9-6-1 reads the owners field representative may recommend to the owner that the payments be withheld from. Keep that point and continue with A - Contractor Payment Request is how it reads now and used to read Owners Field Representative may recommend to the owner that payments be withheld from or the liquidated damages be assessed against a contractor payment request. Page 60 - Article A - identified by pay as unsettled at the time of the final contract of payment request was added and not in the original. Schedule B - Service Agreement starts on page 77 includes several 'Whereas'. Exhibit 4 not used previously said guaranteed bond form in the original. Page 79 or 3 of 19 - Schedule B - Service Agreement the line added reads the owner shall hereto and implement a maintenance responsibility set forth in Schedule B - Exhibit 1 - customer maintenance responsibilities. Does that bear more burden on the city? Page 81 or 5 of 19 of the Schedule B - Service Agreement - Article 5 - the work as stated in Exhibit 1 - Service Scope of Work shall be commenced on January 1, 2018 and concluded on December 31, 2018, the first one should be 2017. Section 5.3 - Term of service agreement shall be completed no later than 15 years from the date that the owner executes the final certification of contract completion. The term of service shall be completed in 15 years and thought there was an agreement of 20 years to do the service agreement. Article 6.1 - the cost of the first year of the maintenance contract is \$5,014.00 and included in Article 2 - Compensation of Schedule A - Conditions of the Performance Contract. Page 6 of 19 - Article 6.7 - removed was it is expressly understood and agreed by the parties that none of the rights, duties or obligations described in the service agreement shall be binding on either party. Until all relevant statutory provisions of the Ohio Revised Code,

Third Reading of Resolutions and Ordinances: cont.

including but not limited to O.R.C. section 126.07 have been complied with and until at such time all necessary funds are available or encumbered and when required such expenditure of funds is approved by the controlling board of the state. That would be the city but why was that whole paragraph removed stating that the city must follow the O.R.C. Page 8 of 19 - Article 8 which contains five sections. Article 8 - Guaranteed Bonds has been all removed from the original RFQ that was considered. As a condition precedent to the execution of this service agreement the contractor must follow guaranteed bond payable to the owners. The guaranteed bond shall serve as assurance that the actual energy-savings will meet and exceed the guaranteed savings schedule set forth in Exhibit 2 hereto; again this is all about energy savings. As a condition precedent to this execution of the service agreement the contractor must file a guaranteed bond payable to the owner has been removed. Article 8-1-1 the initial guaranteed bond shall be a three-year bond in a total amount of the first three years of guaranteed savings. The amount of the bond shall decrease for second and third years on a pro-rated basis. Article 8-1-2 the guaranteed bond shall be signed by an authorized agent with a power of attorney for an assuring authorized by the Department of Insurance to transact business in the State of Ohio. Article 8-2 if the contractor cannot reimburse the owner for savings shortfall because of bankruptcy or any other reason the owner shall collect on the contractor's guaranteed bond. If the owners are unable to collect the guaranteed bond the owner shall collect the remaining amount of guaranteed savings directly from the contractor. If the contractor is in bankruptcy the owner shall be a creditor in any bankruptcy proceedings for any remaining amount of the guaranteed savings. 8.3 the contractors failing to maintain a guaranteed bond when required by the owner during the term of the service agreement shall be considered a default under the service agreement; all that has been removed from the original RFQ and agreement. Mr. Troyer mentioned for 20 years the city will have the costs and payment of \$5.2 million dollars and whatever it may go up to after everything is settled and done; somewhere between \$7 or \$8 million dollars and don't think it is something that should be taken lightly. I'm taking this seriously that there are some changes on adding Brook Park which makes it Brook Park's agreement; I'm still not happy that Brewer-Garrett hasn't signed this yet, therefore, it could be changed again. Mr. Troyer continued Schedule B, Exhibit 1 Service Scope of Work does not include coils and circuit boards, wiring, etc. so as Mr. Peterlin mentioned some of this electronic equipment is really a pain to work with and expensive and it's not covered. Excluded terms shall be considered as coils, air handling, ductwork so it's not all inclusive. I stand by my motion to have this placed back in committee and should spend more time on this and should actually get the information needed. Instead of getting these six weeks after the initial introduction on November 12th. Now on December 27th I'm getting 116 pages, there is some new information here, and it's part of the RFQ and it's been changed. Did anybody go back and compare this new RFQ to the RFQ's from the other companies? Ratings were given to Council based on the old RFQ now there is a different one. From what I read is less advantageous to the city and takes

Third Reading of Resolutions and Ordinances: cont.

some things away from the city. Again, this should be put back into committee and look at this further.

Mrs. Powers - concurred with all of Mr. Troyer's statements and also want to commend Mr. Greenlee and Mr. Peterlin because of all their work on this. They made it very clear that this has problems that need to be resolved before going any further with it. We're still waiting to see those three other estimates that Council supposedly had and were supposed to have four. Anyone in this city was going to go out and get a roof, furnace, an air conditioner they would get at least three estimates from three different companies. So if we're that concerned about the \$500.00 charge why in the world wouldn't we be just as concerned about a \$7 million to \$9-million-dollar charge. This is taxpayers' monies and we're here to guard the taxpayers' monies. When talking to residents when campaigning we said we would do what is best for the city. So how can you vote yes to say this contract is all right and still think that you're doing what's best for the city and the people who elected to you to office; to do what was best for them.

Moaning from the audience.

Mr. Mencini - I don't know how many times Brewer-Garrett has approached us with this through the energy efficient. As crazy as that might sound that 20 years we've been guaranteed that we'll get our money back and more. Let me go another way let's look at our property values for the city where we're at right now. How important is the recreation center? In this community it is very important. I think one of the things that has to be realized is when campaigning it was streets, houses and recreation center, probably not in that order. The tax didn't pass and I believe the Mayor asked the residents to get a tax passed to fund the recreation center, they didn't pass it. So there was talk that the center might close and people weren't happy; you guys weren't happy and we heard it. I couldn't go anywhere without hearing about the recreation center, don't close that center; probably 80% of the people didn't go there. The truth is it is the heart of the city and matters a lot to property values. What type of city do you want? There's a time to move on and we've worked on this and my name is on this legislation and I'm ready to go. Something else will happen next Ford might shut down, who knows. It's time to move on, we keep pedaling backwards and spinning our wheels. These buildings we're in now in the day they were great buildings and are still adequate buildings, maybe we should have looked at this should have been the senior center; we're moving on and this is a big recreation issue.

Audience member why are you ignoring the law director.

Third Reading of Resolutions and Ordinances: cont.

Mrs. Powers - Councilman Mencini says we should move forward and listening to the three people I mentioned earlier who spoke on this issue. They made total sense and I would never vote for something that costs \$7 million-dollars when it's been pointed out it could be done for \$2 million-dollars. In all of this paperwork received from Brewer-Garrett one time these two buildings are being demolished and the next time we are refurbishing all three buildings; so we don't have any clear, concise information on what is being voted on this evening. We need to pull back and get our facts and figures straight then decide how we're going to use this money. I cannot see possibly spending \$7 million-dollars for something that could be done in the neighborhood of \$2 million-dollars.

Mr. Mencini - through the chair, can we go to the law director, please?

Mr. Astorino - I was going to let her speak, if Councilmembers raise their hand they get recognized first.

Mr. Troyer - I just want to make it clear I don't think there's a person on this dais or in this room that doesn't want to get the recreation center fixed up to par i. e. HVAC and roof fixed; because I sure want to get those fixed. When you're talking about over \$5 million-dollars and it's going to cost close to \$8 in the long-run we have to get it right. If you did not realize that RFQ's and the performance contract was changed from the RFQ.

Motion by Mrs. Powers, supported by Ms. McCormick, to call the question.

Mrs. Powers - the question is to put this back in committee, not to pass it and place it back in committee for further study.

Unintelligible moaning from the audience.

The clerk called the roll on the motion by Mrs. Powers, supported by Ms. McCormick to call the question.

ROLL CALL: AYES: Powers,

ABSTENTION: McCormick

Mr. Salvatore - Point of order, Mr. Chairman.

Mr. Astorino - What is your point of order?

Mr. Salvatore - Mr. Chairman, you made a commitment to allow the law director to speak and said the Mayor could speak. To call the question now is just totally unprofessional and out of character for this Council; that I've never seen before, ever.

Third Reading of Resolutions and Ordinances: cont.

Applause from the audience.

Mr. Astorino - so you will be a no vote then.

Mr. Salvatore - I think that you should allow the law director...the question has been raised to contract and I think the law director has a right to speak to it. I don't know if she prepared it or if bond counsel prepared it. I would like to hear what the Mayor has he has four stacks of paperwork over there to explain to us. Maybe some of these questions Councilman Troyer raised will be answered.

Mr. Astorino - Councilman Salvatore, as you know there's been a call for the question that has been properly supported. It's not debatable. You raised a point of order you're now discussing it.

Moaning from the audience.

Mr. Salvatore - Mr. Chairman, I've heard more point of orders and I've heard more call the questions that have ever been called.

Mr. Astorino - I understand that.

Mr. Salvatore - In thirty years I've never seen as many as I've seen this year, so to do it one more time isn't going to hurt you any.

Laughter from the audience.

Mr. Astorino - there's been a call for the question. Carol, you know the procedure, so please. There's been a call for the question and properly supported, it's not debatable. He raised a point of order there is none so we're going to do the call for the question. Clerk, call the roll.

Mr. Burgio - Mr. Chairman.

Audience member let her talk. Other audience member Liz.

Mr. Mencini - Mr. Chairman.

Mr. Burgio - Mr. Chairman.

Mr. Mencini - Mr. Chairman.

Mr. Astorino - there is a two-third (2/3) vote needed to end debate so Clerk please call the roll.

Third Reading of Resolutions and Ordinances: cont.

The clerk started over we have a motion on the floor by Mrs. Powers, supported by Ms. McCormick to call the question.

ROLL CALL: AYES: Powers, McCormick, Troyer

NAYS: Mencini, Scott, Burgio, Salvatore. The motion failed.

Mr. Astorino - the debate has not ended, law director.

Mrs. Horvath - yes, I wish to answer the earlier question that Councilman Troyer asked about the one subject rule. Obviously, I felt that was important and if you had wished to hear not only my opinion but also bond counsel's with regard to that issue. I did draft a memo to Council that was presented earlier. I cited a number of cases that were post 1991 that indicated this does not violate the one subject rule. Because the multiplicity of topics is permissible so as long as each topic is related to a single, central issue which it is here. I communicated with bond counsel via telephone and email earlier today and she confirmed for me that the bond ordinance does not violate the one subject rule; as it all relates to the compliance of 717.02 (ORC). Which dictates the requirements for issuing bonds exempt from debt limitations as well as the contracts that are related there. She also assisted me in pointing out that an addition to the cases I cited. She presented me with several other cases including a recent 2016 case entitled 'Capital Care Network of Toledo vs. State of Ohio Department of Health' which also supports the idea that this would not violate the one subject rule. Therefore, glad that I was able to provide this information to Council at this point and am very thankful that I was able to do so after being called upon. I would indicate that, I believe, that bond counsel prepared this contract and I would ask the Mayor if he would discuss for Council the idea and concept of a negotiated contract.

Mayor Coyne - thank you, if I may proceed.

Mr. Astorino - go ahead Mayor.

Mayor Coyne - let me start at the beginning if I may. Once upon a time the City of Brook Park had cash to pay for this. As a matter of fact, they did just that in 1972, I think, \$1.5 million and change. Through the years had the money to have towel attendants, assistant towel attendants and locker room attendants; once upon a time is over reality is here. There's competition for every single dollar that the city has both operating and capital. Councilman Mencini related that I put a forth a proposal right after being elected Mayor that would have provided for the recreation center, senior programs and those kinds of things; the citizens said three-to-one (3-1) they weren't going to pay for that. As a matter of fact, some of the people sitting behind me said we didn't need that money and could be done other ways and continue to bring things forward on that. Let's get back to the recreation center, what I did here, however, consistently is we want our recreation center, we want our senior

Third Reading of Resolutions and Ordinances: cont.

programs, we want all of those things. I have a little bit of experience in public management, well over two decades and am proud to say pretty successful ones. You heard me talk about we have to deliver our services in a different way. You heard one of our citizens, Jeff Duke, who is very experienced with design-build and negotiated contracts as a private citizen of our city. I relied on him because I've never done this before and wanted to make sure that it was something that made some sense for us. Could we proceed and how would that work and want to thank Jeff Duke for coming forward tonight. I also had Edward Orcutt who was a former employee of the Brewer-Garrett company and is now owns his private contract business. I said to Ed is this the way we should proceed and he said Mayor, I'm going to tell you this. I don't know how else you're going to accomplish this project; so I relied upon two citizens. The third citizen is the co-sponsor of this legislation, Jim Mencini, and we can make light of the fact and have a few laughs that he lives at the recreation center, to the fact that he does. Almost 24-hours a day or as long as the center is open and converses with people and they wanted the recreation center. They wanted their hours and wanted the pool and wanted this and that. So how were we going to do that? This year was the first time the city paid cash for roads and that's the only way to get it done. Next year is going to be a challenge our capital side is going to be challenged, make no mistake about it. So anyone who gets up there and suggests that we have cash money for this project clearly doesn't know what they're talking about, they just don't. You can't have it both ways, you can't have reserves and take on everything with the same money. The fact is we've negotiated smart contracts, employees are contributing on the operating side, have the right number of employees and if we stay within those numbers on the operating side. We're going to be okay but make no mistake about it and Mr. Greenlee said that I said 15 years ago we should have demolished the recreation center. My proposal was to build a brand new recreation center for around \$8 million-dollars and it was about \$6 million in the improvements back over 20 years ago. 20 years ago was the last time there were any improvements in the recreation center. Today, no city would build one that big because even the ones in Strongsville and Middleburg Hts. are starting to see that they have to charge their people a lot more money to belong to the centers. We put substantial new equipment in that center and the people are appreciating it. The pool was a drain you can see the money saved just by closing the pool and I don't believe any Mayor sitting in any city would propose to build another Olympic size pool with diving board, doesn't make any sense. Because of the maintenance, energy costs and the people that have to be staffed. The seniors were in there and there were 12 people in the pool and six people supervising their security because that's a requirement. So looking at this how could we attain the level of service, attract new members, bring families back to the recreation center and secure an amenity that's been part of this city for anyone. As anyone knows this was modeled after Midland, Michigan

Third Reading of Resolutions and Ordinances: cont.

and that Mayor and Council built the recreation center and also brought apartment buildings in Miami to send their people there by lotteries. Because like the City of Brook Park there was a Pontiac General Motors Division there. We build one bigger and better than that and think the population during that time was over 30,000 people. Most of them being little children like Greg Cingle and Jimmy Mencini that had to go someplace to get out of their parents' hair. So how do we take care of the recreation center within the existing monies that we have? Some people are insinuating that I have some relationship with the Brewer-Garrett company, I have none. They had no contracts with the city when I was Mayor the owner of Brewer-Garrett, the principal, worked for me when I was a Superintendent of the City of Middleburg Hts. and was a hard worker then and, I believe, he's a hard worker today. I think that company was retained by Mayor Elliott for well over a decade to take care of our buildings. I think Mr. Peterlin is a sincere citizen, once upon a time in America there were and everything was easy. We could fix televisions by putting aluminum foil on the rabbit ears, can't do that anymore. Everything costs and running a building like this because our citizens will never pay for that building. When I was here the first time around we were subsidizing it for its operation, I think, in the excess of \$2 million-dollars a year. I cannot justify to the residents of this city spending operating monies and if they came up and asked me how do you justify this; I simply can't. This is a priority of our city so how are we going to do this? So in talking to Brewer-Garrett in 2011 they did a similar analysis of the city operations and said the same thing they're saying today. We can't get parts to fix things because they don't exist anymore. I was over there one day and there was a guy jerry-rigging the control, I can't have that. I can't have a non-functional system that's put children and citizens in danger at the recreation center, I can't have that and won't have that. So I said let's take a look at our problems, our problems are this building and the recreation center. Since I've been Mayor I've moved employees and consolidated everything into one building in this city. The fact of the matter is, that we looked at and had Bowen do a space study of moving all the operations into the recreation center going into where the concession stand is. I got criticism by leasing two portions of the building generating about \$40,000 a year to offset the costs; I was criticized for closing the recreation center one room at a time, remember that. By some people in this room I was closing the recreation center one room at a time. Actually, after the tax was defeated I should have closed it all all-together and it was never closed. We downgraded operations, we cut the payroll to make it work and with that staff over there. Anyone that challenges their dedication, young and old, they are magnificent and the things they are doing are magnificent. So how are we going to solve these

Third Reading of Resolutions and Ordinances: cont.

problems? So Brewer-Garrett made me aware of a provision in the state law that was enacted primarily for schools. So they could resolve their problems and really not affect their general obligations debt. Therefore, they could do this under a system that guarantees savings that would pay for the improvements and that was expanded to cities. So, they convinced me that this was the right way to go because there wasn't any other way. You heard a citizen come up here that I told stories about us keeping the area cool by oscillating the sprinkler, everybody laughed at me. When they found out it was true they weren't laughing anymore because that's how we're operating right now. An analysis was available to me that showed what the cost would be for the energy conservation project by consolidation and what it would cost without it. Without it was \$4.4 million-dollars and with it was \$4.383 without the guaranteed savings. The original recreation center analysis was over \$3 million-dollars and the City Hall building was around \$695 and the City Council was \$658.00. This building is energy-efficient, also basically non-functional and the HVAC was designed by a civil engineer and never functioned correctly and is not functioning correctly now. The fact of the matter is we need a community center that functions for our people. Looking at going into the recreation center and again the first thought was to re-subdivide areas over there that, I believe, would have caused some inconvenience to the public. So looking at the overall picture, where would be the best place for City Hall to go and not infringe on the operation of the recreation center. That would be in the daycare upstairs that for many years didn't pay any rent to the city until just recently. So that's how I determined that we should move forward. There was an ordinance passed 9960-2015 authorizing the Mayor to advertise for requests for proposals for an energy-efficiency project. Section 2 that the Mayor read in entirety. The legislative authority of this city passed that ordinance authorizing me to go forward, which is the normal course for advertising. Most of the time included in the legislation authorizes the Mayor to enter into contract as well and we didn't do that on this one, could have done it and gave me authority but didn't do that; because this was a new way of us doing this. In the RFQ's it says those in the energy-efficiency related capital improvements services that reduces the city's utility and operating costs at the John A. Polonye Community Center and other city-owned facilities to be designated by the city. The selection process will involve each responder responding to the RFQ's the city intends to award a negotiated contract to one firm to provide the services and/or equipment under the terms and conditions considered most favorable among the submissions...

Mr. Troyer - Excuse Me Mayor, point of clarification.

Mayor Coyne - Point of clarification of what?

Third Reading of Resolutions and Ordinances: cont.

Mr. Troyer - what are you referring to right now?

Mayor Coyne - I'm referring to what you have in your packet, sir, request for qualifications that were referred to in the contract.

Mr. Troyer - where was that promulgated?

Mayor Coyne - it was promulgated by me and my staff for the qualifications, I'd like to finish my presentation.

Mr. Troyer - I'm done with my question.

Mayor Coyne - responders shall be willing and able to facilitate the financing of this project in accordance with federal, state and local laws. The financing terms shall be limited to 15 years in accordance with Ohio House Bill 300 and thus shall conform to ORC 133.05, 133.20 and 717.02. Since this the Ohio Legislature has provided that you can go 20 years and our bond counsel assured us that would be in conformance. This is important and the RFQ was advertised in the Cleveland Plain Dealer and the RFQ and the contracting process has four phases. The respondents shall submit their response to this RFQ the qualifications will be of evaluated according to the entire criteria outlined in Section 3 of this document. The city will select the best respondent and sign a letter of intent and as of the final step a formal contract will be entertained into. In other words, these steps we never signed a letter of intent to Brewer-Garrett because we had an understanding we were going to move forward and we didn't enter into a formal contract because, again, we left that out of the ordinance to sit and explain to Council why we thought they were the best. Responding to the RFQ will be completed at no charge to the city; so the city has expended no money in this effort. So there are an additional eight more pages of all the things that they have to do to conform to the RFQ, it's quite substantial. As a matter of fact, it's probably one of the most substantial requirements that we've put forward. So, therefore what we had is this, we advertised in the Cleveland Plain Dealer accordingly with the qualifications that everyone had to meet and generally three in the biggest industry all responded to us. According to the RFQ there would be an evaluation process and let me tell you about these hand-picked people that worked for me; they have pretty substantial qualifications. Louis Cayet is probably more familiar with these buildings than any service director ever and has spent his whole life with the city and I brought him back to work with me; so if anyone wants to challenge his knowledge of the buildings so be it. Michael Dolan is a practicing lawyer and City Engineer Piatak who is qualified in understanding the evaluations of

Third Reading of Resolutions and Ordinances: cont.

bids, qualifications that are the same thing by the way. Everyone is saying you didn't get three bids we'll show you later where we did get three bids. Mr. Art Sheperd, a resident of the city and retired architect who one day sent me a letter saying he'd like to volunteer to help the city and accordingly there was scores that were awarded by everyone. Those scores ranges from Brewer-Garrett of 254.5 down to Tremco of 131, Honeywell at 244. They were judged on technical response, financial response, technical approach, past performance and again Brewer-Garrett was recommended by this particular group, as required in our qualifications. From that standpoint, with the design-build we said this is what we want done in our community, in our building. They reviewed and said this is what you have to do and the most important thing is conforming to the code to qualify for the financing. Again, the savings the project costs and the savings must pay for that project. Can there be changes after awarding of the RFQ yes there can and should be. We can say we don't want to do that but we want to do that. As long as the aggregate form conforms to what the law says we're fine; if it doesn't we can't do that. So a presentation was made to the Recreation Commission outlining what we wanted to do with the building. The commission has to advise on this and were very excited about the proposed changes and believe that every single Councilmember was at that meeting. I remember Mr. Troyer saying he like everything but was worried about where people were going to park; I assured him that we would find places for people to park. At the October 24, 2016 meeting the people of this city for the first time were able to see the sprinkler. If you look at all these presentations that we gave and particularly before the people everything there is over an excess of 20 years-old. You can see the rusting, rotting and in that presentation we also made a presentation of utility consumption analysis that was presented to the public at that time. This analysis showed the square-foot reduction the utilities spend and the total building square-footage and the existing and future savings; that was presented to the public and believe all Councilmembers were there. It also showed Brewer-Garrett's proposed project costs and energy-savings that was analyzed by our financial consultant, Matt Stuczynski, and anyone that knows Matt knows he is extremely conservative. Therefore, that was presented again with the comparisons of the City Hall being done independently and the Recreation Center being independent and how it was better for the city to move forward.

Mr. Troyer - Point of clarification, could you show that picture again, that was not included.

Mayor Coyne - okay, if it wasn't included I don't know why to you because I had it.

Mr. Troyer - that's the first time I'm seeing that.

Mayor Coyne - were you there for the slideshow, sir? No response. Okay, the fact of the matter is the comparison was done, Council claim they didn't receive this and

Third Reading of Resolutions and Ordinances: cont.

submitted that to them recently. The fact of the matter is you had this as part of the slideshow and this just itemizes that; so it's the same figures just an itemization. If you didn't get it, I don't know why because we presented it verbally to the public. There was also a commented recently in the periodical of the city that there's no pool in this project, that's not true. There's no pool in the energy-saving portion of this project and you heard me say that these pools would be part of a separate capital project of the city. Why is that? So that we don't jeopardize the ability and it's debatable whether this would fall into the category of the energy-savings. Just like the audio/visual component for Council, you've heard me say at every meeting, that's not included in this either; we're not going to move over there and not be able to make presentations. That will be part of a separate capital project this year for various departments of Council and the recreation center will include those. The other issue that keeps coming up is the roof that came up at the October 24th meeting and I said before the pool we are not doing anything; it was never included to reopen the pool in any one of these projects whatsoever, nor should it ever be, it's not cost-effective for the community. Then a special meeting was held on November 12th with City Council I gave a whole packet of all kinds of things including the roof. I along with Mr. Dolan, Jen Roth from legal compliance, Matt Joseph; Mr. Wilbanks, Mr. Stuczynski, Don Hart and Greg Cingle to talk preliminaries about how to move forward and gave Council information. Again, as we start these things and like Saturdays because there's no other subject to get involved with so that we can move forward. A presentation was made and one of the concerns that kept getting raised was about this roof. In the original proposal by Brewer-Garrett on the roof basically was to deal with the areas that the new utilities were going in. The air conditioning systems and we argued about this and I said I want something put up there, the life of the equipment is supposed to be 20 years. So I want to revisit the roof to make sure whoever is the Mayor-elect doesn't have to deal with this for 20 years. So I insisted after talking with Councilmembers want to make sure that roof is going to work. The question is that additional expenditure, increase in cost, how will that be viewed under the criteria of the energy-savings. We found that it would work and there's an increase and believe to do the whole roof at the recreation center was about \$2 million dollars, to do everything, and that is a whole another issue to deal with. So we moved through this project and walked through with people and have provisions in the contract to make improvements at the locker rooms, steam and sauna that people are most concerned with using the recreation center; right now it doesn't make sense to do that. We've heard criticism there's no blueprint, there's no floor plan that's because there isn't and doesn't have to be. It's pretty simple like the mountable partitions at City Hall we can construct the rooms in the daycare and have more than enough room in the center. If you go over there the major area of City Hall is taken up by files that are retained by the tax department; two-and-a-half rooms of those files and have the capability to contract them to somebody to store those offsite and can still access the records the tax department needs, therefore, there is more space than needed to provide services to the city.

Third Reading of Resolutions and Ordinances: cont.

There were all kinds of questions from the Council President, pages and pages of questions and in some cases accusations and challenges, you can say. All these questions, maybe not to him ever, were answered by legal counsel and even the challenge here about lawyers and I violated the Charter and all these other things. I did not such thing and as a matter of fact in my 20 year-career there is no one that has ever charged me or convicted me with operating outside the law of this city, under no occasion has that ever occurred. The fact of the matter is after that we were prepared to go forward and why did the Mayor call for three meetings. Because it's been the practice of this Council to have three readings whether needed or not but in this particular case I wanted three readings. I called for those meetings and no I did not want it put into committee because they would never see the light of day. It is interesting to look at these proposals and these are the RFQ's by the way every one of them with the exception of Tremco have numbers. While we didn't have these, didn't have three proposals, didn't have three bids, yes we did and selected the most qualified by the process laid out in the law. That is what we did, make no mistake about it. The only one that didn't have numbers in here I think was the roofing guy, Gardner, we're not sure what he was proposing. We didn't have one of these people issue a challenge to our city about the process or evaluation. This is a pretty big business and none of these things are cheap, therefore, not one of them protested about our evaluation and the process of awarding things. Mr. Troyer said today there's a difference between the RFQ and the performance contract, there should be. Because one is qualifying, one is a draft and the contract is compelling, as it should be. I can assure you this is basically a boiler-plate contract that is done throughout the state, so in some cases those things had to be changed. Our bond counsel reviewed this and made some changes in it. The fact of the matter is, the prevailing part of this ordinance - Section B - Mayor read in its entirety regarding the performance contract and continued apparently a week was enough to go through 108 pages of that contract and cites figures and things from proposals not received. With such changes therein as are not inconsistent with this ordinance and not materially averse to the city. Which are permitted by the Charter and shall be approved by the officer's execution of such documents. The most beneficial part of this thing that Mr. Duke spoke of is this. All of the risks are on Brewer-Garrett it's all on them. I'm not signing any contract that doesn't have provisions in it to make sure that's what occurs. They have to guarantee the equipment, they have to guarantee the costs, they have to guarantee the improvements and they have to guarantee the savings of this project, that's what they have to do. So, therefore, I will not sign any contract and this contract gives me the authority under that Section D to make all of those worries that Mr. Troyer has will be addressed. It's not signed by Brewer-Garrett yet because they haven't agreed to it yet and it's not signed by me because the city hasn't agreed to it yet. It's no different than any other contract I was given the authority to do this project under these specifications. They didn't give me authority to enter into a contract and that is how I wanted it so we can have this dialogue as a city. This recreation center can't be improved unless we move

Third Reading of Resolutions and Ordinances: cont.

forward and let me tell you this. There is no way that you're going to do this individually and there is no way you can address the problems of the recreation center with \$2 million-dollars and do it right. Lightbulbs can be changed for a little savings but realistically it's an asset that you're not willing to pay for out of your direct pocket. Indirectly, if we can entertain and take advantage of a state law that was put there for the very reason. I was here when the last recreation center renovation and Brook Park resident, Bernie Zofcin, did the layout. The logistics of doing that project were not good there were no owner reps and things like that because what happens is everybody tells you this public bid is the greatest thing in the world; well, maybe not. You have all kinds of things that you have to deal with whether it be minority requirements, prevailing wages, all these kinds of things. The bottom line get the engineers, architects and the contractors in a room and you know who pays? The city with the deepest pocket because I've seen it with the RTA (Regional Transit Authority) a multiple-dollar contract and have seen it here. This is guaranteed by Brewer-Garrett, they have to guarantee it or they pay. I can't think of a better situation for us and have to tell you this. What's amazed me since I've been back here I'm asking to do these things with no money and you can hear about all these thousands of dollars we have, yeah we do, but they're dedicated to something else or should be dedicated to something else. Everybody is competing for this same pot how do you make this money work for the citizens of this community? How do you give people that care about going to the recreation center, maybe we have 2,500 or 3,000 members out of 19,000 but what I see is young and old in there, that I haven't seen since the heyday of this city. I can't tell you what a valuable asset that is to new families coming into this city, particularly young single mothers and our seniors, Silver Sneakers, coming back. There's nothing I talked about that generates a tremendous amount of revenue that paid for what I just talked about. So, Mr. Chairman and Members of Council there is no reason to go back into committee because the facts are not going to change. The same arguments against this that exists yesterday, the day before and tomorrow are going to exist; we have to move forward. The comment about the interest rates, unfortunately, in the world today things are changing and hope they are changing for the better. That is a reality of where we are at today and we have no control over. I believe that long-term, just like with the leasing of cars and trucks, gives us control costs over a longer period of time to deal with the problems. Those who tell you there's an easy solution to this or they tell you this procedure is wrong there's nothing unlawful in this process. Because you can't sell the bonds, no one is going to invest in this city. One final comment when people look at investing their money and buying these things they look at stability of the city. We are financially stable, we're not broke, we have challenges to meet in this city but the more we have reports of what's going on. People are going to start questioning whether or not they should take that risk. You think I'm exaggerating look at some of the cities that people won't buy their bonds, it's a reality happening all over America today. In attendance is Mr. Wilcox to speak on the performance contract, Mr. Stuczynski to speak on the financing, Mr.

Third Reading of Resolutions and Ordinances: cont.

Dolan and Mr. Cayet to speak on the evaluation of the RFQ's and we have the law director who has been in constant contact with bond counsel.

Mr. Peterlin - I'd like to speak because he mentioned my name.

Mr. Astorino - I'm sorry Mr. Peterlin.

Mr. Peterlin - he mentioned my name.

Mr. Astorino - I understand that he mentioned a lot of names.

Mr. Peterlin - he talked about jerry-rigging I talked about a work-around. What's a sprinkler on the roof is that a work-around or is that jerry-rigging, I never used the word jerry-rigging.

Mayor Coyne - I apologize.

Mr. Peterlin - I'm very upset about that and you said that lightbulbs can only save a little bit of money, it can save 90%.

Mr. Astorino - Mr. Peterlin, please.

Mayor Coyne - I was complimenting you, I wasn't challenging you.

Mr. Troyer - I was wondering if the Mayor could show me the numbers for the proposals; Brewer-Garrett and Honeywell.

Mayor Coyne - the evaluation or the numbers.

Mr. Troyer - the numbers, the proposal.

Mayor Coyne - have you seen these before?

Mr. Troyer - yes, sample project summary without knowing the savings. These are samples they're not actual numbers.

Mayor Coyne - that's correct. You said these are sample numbers because that's what it is. The RFQ is this that's what it is. It's a suggestion on how you can resolve the problem; technically and financially. It's a proposal on how you generate the savings, so therefore, from the technical and financial proposal in their models. They were deemed with this, so therefore, you take that and then you transform that into a project with real costs; that's what the qualifications is that's how it works.

Mr. Troyer - I follow what you're saying. It was a committee that you came up with that was improper.

Mayor Coyne - I beg your pardon, sir.

Mr. Astorino - Council, Council.

Mayor Coyne - I'm going to answer his question, what did he say.

Mr. Astorino - Council, you need to go through the chair.

Mr. Troyer - I'm done.

Mr. Cayet - he's making comments about me and I don't like it.

Mayor Coyne - easy.

Mr. Astorino - Mr. Director please.

Mr. Astorino - any other discussion about putting back in committee. Seeing none we'll call the roll.

The clerk called the roll on placing the legislation back in committee.

ROLL CALL: AYES: Troyer, Powers

ABSTENTION: McCormick

NAYS: Mencini, Scott, Burgio, Salvatore. The motion failed with a vote of 4-2 with one abstention. Motion failed.

Motion by Mr. Scott, supported by Mr. Mencini, to adopt.

Mr. Troyer - I'd like to state again I'm not against fixing up the recreation center and not necessarily against this program. Although I wish we would have had an option to look at it but believe it violates the Charter if this passes. Anybody voting for this you're violating the Charter and/or against the rule of law. So, I cannot vote for this.

Mr. Astorino - Before we call the roll I would just like to express to Council that you've received an awful lot of information from me, I've expressed my opinions to you. I've given you a lot of information on my feelings, and want to express to you that my feelings really haven't changed based on the explanations that have been given either by the Mayor or the law director. Because it really goes back to the very beginning with Ordinance No. 9960-2015; I think that there was no express authority

Third Reading of Resolutions and Ordinances: cont.

given, I've provided you my explanation for that and I just want to let you know I would ask that you not approve this ordinance I think it needs to come another way and be done. The project should be done but the project should be done properly and not through an avoidance of that. So clerk please call the roll.

The clerk called the roll on the motion by Mr. Scott, supported by Mr. Mencini, to adopt.

ROLL CALL: AYES: Scott, Mencini, Burgio, Salvatore
ABSTENTION: McCormick
NAYS: Powers, Troyer

Mr. Astorino - Ordinance No. 10060-2016 has been adopted.

Motion by Mr. Mencini, supported by Ms. McCormick, to adjourn.

ROLL CALL: AYES: Mencini, McCormick, Powers, Troyer, Salvatore, Burgio, Scott
NAYS: None. The motion carried.

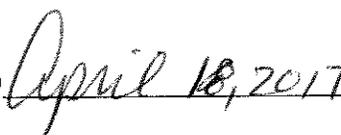
There being no further business to come before this meeting Council President Astorino declared this meeting adjourned at 9:47 p.m.

RESPECTFULLY SUBMITTED



Michelle Blazak
Clerk of Council

APPROVED



THESE MEETING MINUTES EXCERPTS APPROVED BY BROOK PARK CITY COUNCIL ARE A SYNOPSIS, NOT TRANSCRIBED IN THEIR ENTIRETY.