

**SPECIAL CAUCUS MEETING
OF THE COUNCIL OF THE CITY BROOK PARK
HELD ON TUESDAY, JUNE 26, 2018**

The meeting was called to order by Council President Vecchio at 7:00 p.m., who read the meeting notice. The clerk called the roll and the following Members of Council answered:

SCOTT, BURGIO, ORCUTT, STEMM, MENCINI, POINDEXTER, SALVATORE

Also in attendance were Mayor Gammella, Law Director Horvath, Finance Director Cingle and Economic Development Commissioner Adams.

DISCUSSION:

1. ORDINANCE NO. 11027-2018, AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR THE SALE OF (+ -) 3.303 ACRES OF LAND LOCATED AT 16400 AND 16500 BROOKPARK ROAD, PERMANENT PARCEL NOS. 344-30-008 AND 344-30-009 AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella and Councilman Mencini

Motion by Mr. Salvatore, supported by Mr. Scott, to place back in the Finance Committee.

ROLL CALL: AYES: Salvatore, Scott, Burgio, Orcutt, Stemm, Mencini, Poindexter
NAYS: None. The motion carried.

2. ORDINANCE NO. 11028-2018, AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR THE SALE OF (+ -) 3.303 ACRES OF LAND LOCATED AT 16400 AND 16500 BROOKPARK ROAD, PERMANENT PARCEL NOS. 344-30-008 AND 344-30-009 AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella and Councilman Mencini

Mr. Scott asked how did we get to this point, how did this all transpire?

Verbatim excerpts requested by Law Director Horvath for explanation.

Mrs. Horvath - responded I haven't had an opportunity to give you a written but now can give a verbal report which is very good. Obviously, this all began on June 19th when we had our Council meeting and Council's discussions were interested in making sure with regards to this particular real estate transaction. We had certain provisions to protect the city and were looking at the inclusion of the 'Right of Refusal' and also 'Performance Clause', to be added to there. There was some suggestion that Council wished the law department to draft something with those amendments. That motion failed and Council went onto do a First Reading with regard to that piece of legislation. On the floor of Council, Council asked the law department how long it would take to draft some amendments. At that point I told

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Council probably seven to ten days. It turned out that things moved very much faster through Mr. Adams diligence and his skills. He was able in a very short period of time to get the buyer to agree to include those two clauses in the contract and he was also able to get a letter of intent from the buyer. Based on that, I referred a redrafted ordinance to Council along with a page that had two paragraphs that included the two 'Whereas' clauses that Council was interested in. That went over from the law department to Council and a special meeting was called and we had that special meeting last Saturday. Now, our Charter indicates that the Clerk of Council is to provide before the meeting on the place near Council Chambers and another conspicuous place at or near the Council Chambers the special meeting. Along with any ordinances and resolutions that may be the topic of that particular meeting; you would find that in Section 4.08 of the Charter; Section 4.05 (b) of the Charter also details special meetings. Under the special meeting section says any requests for a special meeting has to have basically three things. We have to tell people the date, the time of the meeting and the place and give them the subject or subjects to be considered at the meeting. Those provisions are consistent with Ohio Revised Code 121.22 (f), as part of the Sunshine Law. It says that's what we need to do to advise our residents as to what we're talking about, what the topic of the meeting is. Now, our Charter designates this duty to the clerk, it's not designated to the law department or the President of Council. In this particular instance, it is what is known as a clerical error, happens all the time all over the world. Where rushing to try to produce results as quickly as we can because time is of the essence. So the special notice was drafted the packet included the amended, suggested ordinance, the paper that had the amendments on it and, also, had the new letter of intent but did not include the original piece of legislation that had its First Reading. We're all human that is something that was simply a mistake. So that became apparent at our meeting last Saturday and we had discussions on how best to proceed. So, at that time, I said there is two ways you can do it. Way one would be just to reschedule some special meetings at a later date, amend the ordinance after the packet was complete and do a second reading, or possibly a third reading depending on how things shook out. The other way to deal with it would be to proceed, go ahead have the second reading and amend. So, I guess, we get to the proverbial fork in the road where we have two paths that you have to choose. In my opinion, either path would have been correct. There's a good body of law that says in order to satisfy the Sunshine Law, Ohio Revised Code 121.22 (f) you just have to give people an idea of what is on the agenda and what it is that Council is going to be discussed. I believe the packet that was presented certainly would have given any person in the audience pretty good ideas to what we're talking about. Your ordinance was listed by title, the full body of the ordinance that had its first reading was contained in the ordinance that was presented. Attached to that not only was the letter of intent but also a sheet that showed the two 'Whereas' clauses that were going to be added. So there's a number of cases that

Discussion: cont.

say that's close enough, you're not violating Ohio Revised Code 121.22 (h) which basically would say if you failed in telling people the date, place of the meeting and the purpose of the special meeting that would invalidate whatever, it is, that you're passing, I think Council certainly would have made and passed that particular test. Nonetheless, after Saturday I spent a bit of time looking at some different cases and was fortunate enough to be able to discuss the matter almost immediately Saturday with Councilman Salvatore. Who always have safe advice and who is certainly knowledgeable about City Council and, also, was able to speak with Council President Vecchio. We talked about which fork in the road, which way would be the best way to go but I didn't stop there. So Monday, I decided to call the Attorney General's office after looking at some of their opinions and granted they didn't have very much online that fit into our specific fact-pattern. I did have an opportunity to talk with Mr. McIver and I explained our Charter and the circumstances that we had and he gave me an oral opinion. That he did not believe that what was presented would have violated that particular Ohio Revised Code Section of 4.05 which is what we have designated here for a special meeting. I asked him how long if he were going to give an opinion would it take and the answer I got it would take longer than if we went the other route which is too simply call the special meetings and pass it through.

Mr. Mencini - Point of clarification, when he said that he was talking about particular about Saturday, about the special meeting.

Mrs. Horvath - yes, that's correct.

Mr. Mencini - he meant on Saturday that we would have been okay?

Mrs. Horvath - yes, it was explained to him what was contained in the packet that's placed at the door. His opinion based on the contents of the packet is certainly anyone coming in would, obviously, understand that the purpose of the meeting was to talk about the sale of these parcels of real estate. Clearly, you would be able to see through the packet that there were amendments that were proposed. Based on that he felt that, yes, it certainly would be sufficient to comply with the Sunshine Law.

Mr. Mencini - okay.

Mrs. Horvath - which basically fit in with the case law that I saw. However, if I were to get an opinion from him and send him all of this stuff and write it and so forth. It probably would take longer than if you just did the special meetings as you are plan. Of course, we have time is of the essence, we have a buyer that has agreed to everything that the city, at this point, has asked him with regard to the 'Performance Clause and 'Right of First Refusal'. So, as I said, we have two ways

Discussion: cont.

that we can go. After discussion with the Administration and other Council personnel the best way to do it at this, point in time, and certainly for other reasons so we don't have any particular issues that we need to write opinions about. Would be to go and move this ordinance along, let it have a first reading, second reading, third reading probably would be faster and easier. So, therefore I believe, that's why Council in its wisdom has decided to go ahead and put the previous ordinance in committee and the special meeting is called for the second ordinance which I drafted. Which is slightly different than the amended ordinance that Council had presented...was presented to Council. So I kind of want to note because...just to inform the public that there isn't any missed apprehension the law department when it drafts legislation does so at the request of someone. Every time we have piece of legislation that's amended by Council I go ahead and do a redraft and present it to the Council Clerk, that's ordinary and customary. The law department, in and of itself, does not alter legislation. We don't need to alter it we draft it, that's one of the duties the law department has. This particular case, knowing time is of the essence, and that the buyer had agreed to all of the terms. I went ahead also knowing that Council had requested on the 19th that they wanted to have some assistance in coming up with some amendments to that particular legislation. It was sent over to the Council office and so I think we're at the point now where, as I said we could take either path. But, the best path, at this point, and the suggested point would be to go ahead and have your special meetings and readings and follow through with that. Again, I would note the Council President's duties are delineated in the Charter along with the clerk's duties. Everyone is human, we all make mistakes, a simple clerical error was made and there isn't anything suspicious about it. Or anything is problematic it's just something that was done during the rush, during the 2 ½ days to formulate all of this and get it over so it could be posted. This is basically how we got from 6-19 and that first reading up through now. I don't know if anybody has any questions I'm very sorry to take so long to explain it.

End of verbatim transcripts:

Mr. Vecchio stated to Law Director Horvath I have a question for you, obviously, to rehash so that...there was no alterations to the original documents aside from the amendments. Nothing was, in this case, an altered document per say. Along with the fact of human error played into this, plain and simple, with the rush. No fault of anyone just an oversight.

Mrs. Horvath responded that's absolutely correct. Like I said the law department doesn't alter documents, we produce them and produce them at the request of the Administration or Council. That second piece was produced because it was, my understanding, that Council wanted to have those provisions in. The buyer within about two days agreed to both of those provisions. So, it would seem to be best to strike while the iron is hot. It was sent over and it would have been best if the

Discussion: cont.

original ordinance that had first reading were attached to the packet. But, 2 ½ days to go from drafting something to posting to the average person may sound like a long time, often isn't. To get all the paperwork right and the copying and getting it sent over. Then giving the clerk an appropriate amount of time to be able to do that. I know a lot of times the clerk will stay over on a Friday. Or she'll work in an extra diligent manner in able to get that out. I know, in the past, I've asked her...because really and truly she should have everything that she's working on by Thursday. I've had a number of times where I've asked her if she could, perhaps, wait until Friday. Because the law department is trying to get something done and can't always get it done in the two days between a Tuesday meeting. To the time where something would need to be obtained by Council so there could be a posting on Thursday.

Mr. Vecchio continued I, for one, will say I understand the human error portion and I hold harmless on this, it's a mistake. In human nature we all make mistakes and we all learn from them and that's the way this is.

Mr. Salvatore stated tonight, we're not really actually voting on the actual contract, we're voting on a procedural change to clean up the legislation which is going to be passed, I think that's important. I think the two clauses that were added one, obviously, is the safety valve and the other is the safety net. Whether I'm in favor of the actual deal or not is irrelevant but I am in favor of doing it the right way. Whether I vote for the final vote but, definitely, want to make sure that any legislation is prepared properly, voted upon properly and all the safety valves are in place. To protect the integrity of the legislation, City Council and most importantly the city. Having said all that, Mr. Chairman are we going to move this to a Special Council meeting is that the intent this evening.

Mr. Vecchio stated the intent would be to move this to a Special Council meeting to move this forward, sir. I would propose if all members are available I would like to call one for 7:00 p.m., Friday.

Mr. Vecchio polled Council for availability of a Special Council meeting for 7:00 p.m. Friday. All Councilmembers are available on Friday.

Mr. Mencini stated obviously, again as I said before, the Mayor and my name is on this and I'm proud to have my name on this piece. Mr. Adams worked very hard on this and a lot of times the city has dealt with grants, selling property or building. This is probably the first time I've dealt with this kind of a land part but know it's been done before. The key part is get it correct, we got it corrected. Are we ready to proceed and move on, I say let's move on. People want to see this go through.

Discussion: cont.

Mr. Poindexter stated I've supported this legislation from the very beginning and think it's time to move forward.

Mr. Vecchio interjected stating that per Council Rule No. 12 this legislation will be assigned to the Finance Committee.

Mr. Salvatore commented this is brand new legislation.

Mr. Stemm thanked Law Director Horvath and Economic Development Commissioner Adams on all their hard work.

Mr. Vecchio thanked Mr. Salvatore for all his due diligence over the weekend and up to today and also thanked Mrs. Horvath, Mr. Adams and Mayor Gammella. This is for the betterment of the city and the best interest in moving forward and having the city's best interest for the future.

Mrs. Horvath reiterated my thank you to Mr. Salvatore for making himself available for discussion over the weekend, Mr. Vecchio and other Councilmembers; most particularly Mr. Sackett who is an excellent person to discuss any legal issue.

Mr. Salvatore commented you're very welcome and will always make myself available for any help.

Mr. Scott stated as Finance Committee Chairman, I would like to pull this out of committee for Friday meeting.

Mr. Vecchio stated that is noted and this will appear on Friday's special agenda.

Motion by Mr. Poindexter, supported by Mr. Mencini, to call a Special Council meeting for Friday (June 29th) at 7:00 p.m.

ROLL CALL: AYES: Poindexter, Mencini, Stemm, Salvatore, Scott, Burgio, Orcutt

NAYS: None. The motion carried.

Motion by Mr. Scott, supported by Mr. Poindexter, to place the legislation on the Special Council agenda (First Reading).

ROLL CALL: AYES: Scott, Poindexter, Salvatore, Mencini, Stemm, Orcutt, Burgio

NAYS: None. The motion carried.

There being no further business to come before this meeting a **motion** by Mr. Scott, supported by Mr. Orcutt, to adjourn.

ROLL CALL: AYES: Scott, Orcutt, Burgio, Stemm, Mencini, Poindexter, Salvatore
NAYS: None.

Council President Vecchio declared this meeting adjourned at 7:27 p.m.

RESPECTFULLY SUBMITTED *Michelle Blazak*
Michelle Blazak
Clerk of Council

APPROVED *August 26, 2018*

THESE MEETING MINUTES APPROVED BY BROOK PARK CITY COUNCIL ARE A SYNOPSIS, NOT TRANSCRIBED IN THEIR ENTIRETY (EXCEPT WHERE NOTED) ALTHOUGH ACCURATE.

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