

## RULES & ORDINANCES COMMITTEE MINUTES

April 3, 2007

The Rules & Ordinances Committee meeting was held on April 3, 2007, at North Royalton City Hall, 13834 Ridge Road. The meeting was called to order at 6:32 p.m.

**Present:** Chair Robert Stefanik, Kurt McKee, Larry Antoskiewicz; Denise Bobulsky, Don Willey, Lisa Uffman-Kirsch; Law Director Tom O'Donnell, Legislative Services Director Laura Haller, Terry Gibson, Jim Frangias, Tony Santangelo.

Moved by Mr. McKee to approve the minutes from the July 5, 2006, meeting, seconded by Mr. Stefanik. 2 yeas/0 nays. Motion carried. (Mr. Antoskiewicz excused.)

### NEW BUSINESS

#### 1. **Proposed Ordinance 07-29 amending 220.06 Rules of Council, Rule XII**

Mrs. Haller discussed her memo of March 26, 2007, proposing amendments to this legislation introduced by Mrs. Uffman-Kirsch. She said that they spoke and Mrs. Uffman-Kirsch is in favor with the preferred version #1 changes as presented. The changes involve some house keeping issues such as removing language stating that a recording secretary will take minutes. This no longer occurs; minutes are taken from audio tapes. The procedure for distribution of minutes will no longer be codified. A policy and procedure will be used as explained in the memo. The flexibility is needed to change any procedure or policy based on the circumstances of the office. The procedure outlined is thought to help everyone—the office, the public and Council.

Mrs. Uffman-Kirsch said that she has no opposition to the proposed changes. They do nothing to the intent of the proposed legislation. She thought it was especially a good change with the procedure of distributing minutes to everyone after they are final because it is confusing as to which are the actual final minutes that have been distributed. She supports the changes proposed by Mrs. Haller.

The Law Director proposed an amendment to the terminology of “full and accurate” to “accurately summarize sufficient facts and information.” This recommendation was submitted in his memo.

Mrs. Uffman-Kirsch said that she sent a memo dated March 30, 2007, explaining fully that she is opposed to this change. The language used to propose the change is in the State Auditor's manual, and it is in the handouts distributed from the Auditor's office regarding how detailed meeting minutes must be. This is also the language cited in two legal cases where the question was whether or not the minutes were thorough. She stated in her memo that it is difficult for something like this to be on one hand specific enough to be clear and on the other hand not too specific so that it is too limiting. In this case this language she proposes has been tested in her opinion.

She disagrees with the comment from the Law Director saying that the language she proposed could be construed to require verbatim minutes. The language stating that the minutes must contain sufficient facts and information implies that the minutes are not intended to be verbatim. If it were meant to be verbatim the language would say all the facts and all the information.

The Law Director responded that he is uneasy about the language “full and accurate.” That term he feels would cause dispute if every fact were not included. He understands the Supreme Court said “full and accurate.” This is in response to the White case dealing with the County Commissioners and it is a specific statute that does not apply to our city and it reads completely differently. No where in Section 121.22 ORC does it say “full and accurate.” While he fully respects the decision of the Supreme Court in the cases cited there are distinct differences with the communities not being chartered. A charter community has more authority to establish rules and regulations on its own to govern itself. We are a charter community. He feels the language he stated is accurate and it does not necessarily deviate from what the Supreme Court had said and it is just as easy to follow “to accurately summarize sufficient facts and information.” By

adding the words full and accurate it would imply more. More is not necessarily better or worse he thinks it would lead to more disputes as to what is full.

Mrs. Uffman-Kirsch pointed out regarding the change Mr. O'Donnell recommended with the wording "to understand the rationale behind the actions" that in the manual from the State Auditor it was their underline emphasis in the section where it said "to understand and appreciate the rationale" and this was a change in their language from what they were saying. She understands the first use of the language was in the White case, but it was also used in the Cardington case. She understands regarding statutory versus charter community, but we don't have anything that speaks directly to the effect of how detailed our minutes must be in our rules.

Mr. O'Donnell advised that the Charter authorizes the Council to establish its rules for how it operates giving more authority to establish rules we think are necessary. He thinks it is not necessary to adopt the exact language "full and accurate." For example, the City of Cleveland does not keep minutes at all of their committees, it has not been challenged, they are a charter community and they decide the rules under which they operate. While it is astounding, it has not been found to be a violation of Ohio law. We do need accurate minutes that provide sufficient facts that includes who made a motion, and seconded.

Mrs. Uffman-Kirsch said it also has to be various points of view presented and who made those points of view, and not just the final action. It is the recording of the officials' points of view of the public body. In summary she feels that since the minutes have become such a challenge for some reason, her concern is if there is language in our codes different than what has been used and tested and interpreted and defined by the courts, she does not want to see us having to get into a situation where we would have to re-argue or re-defend our language as compared to something that has already been tried.

Mr. O'Donnell thought the argument would not amount to that much of an issue. If it becomes an issue for Mrs. Uffman-Kirsch he suggested that she challenge it as soon as it is passed and we will find out. He does not think we have to go there. He is making his decision solely on the issue of the words "full and accurate." He is not comfortable adding the words "full and accurate." He feels it is redundant and it adds meaning that will cause more of an issue than is needed. He does not feel the version he submitted deviates in any substantial way. He thinks it gets the same results. It just does not have the extra redundant word "full."

Mrs. Uffman-Kirsch said she understands, but can see an argument over the word "summarize" and hopes that it does not happen.

Mr. O'Donnell said that summarize is acceptable as the Supreme Court has said. As long as it is a full summary is the concern of Mrs. Uffman-Kirsch. Mrs. Uffman-Kirsch sees the argument continuing over the term summary.

Mr. Willey said that summary implies that it is a collection of thoughts within the body of the information and not verbatim and is reflective of what it is. Mrs. Uffman-Kirsch agreed but said which thoughts and which views. Mr. Willey felt it would be up to the author. Mr. O'Donnell said with regard to the question of which thoughts, ideas, arguments are to be presented in the summary; if it is not verbatim then it is a summary. Mrs. Uffman-Kirsch said it would not be a full summary.

Mrs. Uffman-Kirsch gave an example of the difference of summary and full summary would be the recent Utilities Committee minutes. There was summary of a discussion about a proposed amendment and the way it came out it said something like there was discussion about the fact that the minutes as presented reflected an accurate overview of the discussion. That was not a full summary of what happened. There was a whole other point of view presented that the minutes did not reflect. While those minutes were a summary, they were not a full summary and did not present both points of view. They did not name who had the points of view as the courts said should be done.

Mr. O'Donnell asked why language was not presented that said all points of view must be listed, all motions must be identified, and list everything that must be included.

Mrs. Uffman-Kirsch said it was discussed in the Supreme Court opinion and thought if we used the language that the courts used, they define what full means. Mr. O'Donnell said years from now when this body is gone those in place will look at the language "full and accurate," and will not know what it means. They will not have the case before them. Mrs. Uffman-Kirsch said they will have the legal opinion of Mr. O'Donnell. Mr. O'Donnell said then he would almost rather see that language in the code then.

Mr. Willey said Mrs. Uffman-Kirsch is the only one that presents this as a problem. Mrs. Uffman-Kirsch said she might be the only one on Council, but there are residents that care about this. Where are they and how many have complained was asked.

Mr. Stefanik said when there was a recording secretary doing the minutes everything was fine. With the budget cuts last year the committee chairs started doing minutes. Some members of Council had difficulty doing accurate minutes. We are now back to where we were where the Council Office is now doing the minutes. It is anticipated that this will go away with that.

Mrs. Haller said that the problem being discussed is with the Utilities Committee minutes that were done by the Council Office. There was a decision in the office to try to keep the minutes as third person as possible. The majority of the committee felt that the minutes were ok with Mrs. Bobulsky, the nay vote, representing the dissent in the summary.

Mrs. Uffman-Kirsch responded to the comment of being the only one who has a problem with the minutes. Government is supposed to be transparent. We are supposed to make it easy and available; the records are the public's records. We should be working diligently to make it as accurate and as inclusive as reasonably possible.

Mr. Stefanik said that the audio tapes are available to the public. He said he would pay for them so the public can have them for free. It was suggested by Mrs. Haller that instead, we could change the code to make them free.

Mr. Willey said he has worked in government for a number of years and is retired. He has gone through annual audits for the last 40 years from State Auditor, the Internal Revenue Service, internal auditors, etc. When they are reviewing minutes to determine authorizations for action they look at the minutes, in this instance it is the vote of Council. As he sees it when Council comes to vote on an issue that is recommended by a committee, there should be adequate discussion based on the legislation at that point if necessary for voting for it. Our legislation is what the auditors, external and internal, look at when they are validating the city spending money, taking actions, settling law suits, etc. Mr. Willey felt if there were emails from citizens, that it was discussed with them and that they just didn't come out of the blue to say that the minutes are not accurate.

Mrs. Uffman-Kirsch said that not everything we do ends up with legislation. One legal opinion says that minutes of committee meetings are required to comply with Ohio law; then somewhere else it says that there is no Ohio law that pertains. She is going by what she was told when we were trained of how they have to be done. Regarding the citizens contacting her about minutes, one is not in her ward but was there last evening is from Ward 4 and contacted her via email about it after reading her resident email. She contacts her residents every week about every piece of legislation and everything that is on the committee agenda. She has done this for three and a half years. It was not specific about the one issue. The emails that she got on the topic of the tapes included two requests to consider posting the audio tapes in digital format on the Web.

Mr. Stefanik moved to approve the recommendation of the Legislative Director for version one amendments to the legislation. Seconded by Mr. Antoskiewicz. 3 yeas/0 nays. Motion carried.

Mr. Stefanik moved to approve the recommendation of the Law Director's amendment to the legislation which reads "The minutes shall accurately summarize sufficient facts and information to permit the public to understand the rationale behind the actions or decisions of the committee." Seconded by Mr. Antoskiewicz. 3 yeas/0 nays. Motion carried.

Mr. Stefanik moved to recommend approval to Council with the two recommended amendments. Seconded by Mr. McKee. 3 yeas/0 nays. Motion carried.

## 2. **Proposed Ordinance 07-32 Conditional Use Permit for Avis Rent-A-Car Systems**

The Law Director provided an amendment for review and explained if the Planning Commission makes a recommendation and Council desires to modify that it takes 2/3 vote of Council to do so. This amendment is proposed so that it is clear what the Planning Commission recommended since the language was not as defined with regard to bollards. The applicant is present tonight and the Law Director wanted to clarify the proposed conditions. It should have said that the area should be marked with bollards or designated in some fashion so that it is noted that this parking area is for Avis. He wants to make sure the legislation is clear. He is proposing that Council accept as an amendment to the legislation the following change: "that a limited parking area shall be marked off with bollards."

Mr. O'Donnell then discussed with the applicant what was said at the Planning Commission meeting with regard to an area or a specific number of parking spaces. A specific number of spaces were not to be used so growth could be accommodated. The parking for the rental cars was to be along West 130<sup>th</sup> for the rental cars.

Mr. O'Donnell continued with his recommended amendment "that a limited parking area shall be marked off with bollards or designated in some other way such as painting on the pavement or painting on curb markers that will expressly designate a specific area for the limited number of rental vehicles that Avis Rent-A-Car will be parking in the parking lot of the subject property; that such designated area shall be located in the parking lot closest to West 130<sup>th</sup> Street and is subject to the approval of the landlord and subject to periodic review by the Building Commissioner; and such number of rental vehicles shall not be excessive to the point that it restricts access to parking by other tenants or their customers or church members." He felt that this was the intent of the Planning Commission. The representative present from Avis agreed to this.

Mr. Willey said that he doesn't think the city wants to start enforcing leases. He thought that the parking spaces could be painted in different colors to accommodate the church, bar and rental car areas. With our current parking requirements, there are a number required per square foot of building.

Mr. O'Donnell said the Law Department was asked to review Conditional Use Permits and that this proposed language indicates that a review will be done here. Mr. Willey asked whether the same standard would be applied for everyone asking for a Conditional Use Permit and the Law Director explained that the Planning Commission and Council has a right by law and by the ordinances of the city to impose conditions. He said we are not obligated to grant it, but if it is granted we have the right to impose conditions. In this particular plaza, there is a church and a dance studio competing for parking spots with Avis. All tenants pay rent to a landlord who arguably may come to the Building Department and complain if the two tenants take up all the parking. We cannot do anything about it. We can impose a condition on the one; it would be difficult to impose on the church because their membership is varied. Avis is working with the city requesting the designated spots and the city can impose a reasonable condition. The Law Director recommended not making it excessive where that could be argued. Mr. Willey said that with businesses in the shopping centers there is expansion and contraction and Mr. O'Donnell said most of these are not under Conditional Use Permit. In this instance there are two that have one. It makes sense to have the permit for Avis because they are parking vehicles overnight. It is reasonable to hold them to a certain area so all will know they are not to park there. The Avis representative said in normal course of business in other areas they have the spots marked. It is easier for customers.

Mrs. Uffman-Kirsch said she agrees with the Law Director. She said the definition of excessive is between the tenant and the landlord. Mr. Willey responded that many times the landlord will offer certain spots to tenants for parking. Since the landlord is in control of his tenants and the parking lot, that it should be the problem of the landlord and not the city.

Mr. O'Donnell said that parking complaints may be made to the city from tenants or customers over the parking. He tried to draft the language in a way that the landlord and tenant can decide what is excessive. In the event that the Building Commissioner receives a complaint, under these conditions he can talk it over with those involved.

Mr. Antoskiewicz moved to recommend approval to Council of the proposed amendment. Seconded by Mr. McKee. 3 yeas/0 nays. Motion carried.

Mr. Stefanik moved to recommend approval to Council of 07-32 as amended. Seconded by Mr. McKee. 3 yeas/0 nays. Motion carried.

### **3. 1060.07. Hours of Collection and Transportation**

Mr. Stefanik explained that the Law Director was asked to draw legislation. There are several residents that live next door to commercial property or on commercial property through no fault of their own due to rezoning. This proposed legislation will try to have their property treated as any other resident by not allowing commercial rubbish pick-up or deliveries between the hours of 6:00 a.m. and 7:00 a.m. moving the time to 7:00 a.m. as the rest of our residential area. This will not affect the Industrial Park where it is kept at 6:00 a.m.

Mr. Willey asked if the city will have a way of notifying the companies involved. Mrs. Haller responded that there are two in her area that she will make sure are notified. She will look at obtaining a list to make notification.

Mr. Antoskiewicz moved to recommend approval to Council of the amendment to 1060.07. Seconded by Mr. McKee. 3 yeas/0 nays. Motion carried.

Mr. Antoskiewicz moved to adjourn the meeting, seconded by Mr. McKee. 3 yeas/0 nays. Meeting adjourned at 7:16 p.m.