

Special Utilities Committee Minutes December 8, 2009

The Special Utilities Committee meeting was held on December 8, 2009, at North Royalton City Hall, 13834 Ridge Road. The meeting was called to order at 6:38 p.m.

PRESENT: Committee: Chair Gary Petrusky, Dan Kasaris; Don Willey; Council: Vince Gentile, Larry Antoskiewicz, Paul Marnecheck; Administration: Law Director Tom Kelly, First Assistant Prosecutor Donna Vozar, City Engineer Mark Schmitzer, Economic Development Director Tom Jordan, (77 residents were also in attendance. The list is on file in the Council Office).

Mr. Petrusky introduced his fellow committee members along with several members from the administration.

NEW BUSINESS

1. Discussion of Horizontal Drilling

Mr. Kelly welcomed residents to the meeting. He stated that the main purpose for the meeting this evening is because Cutter Oil Company proposes to place two new drilling units in our area. He said residents who received the letter from the city may have received it for various reasons including that the resident is located in the drilling area, they are within a 500 foot area of where the drilling will take place or they are in the area but refused to sign on with Cutter Oil Company. He said many residents who received the letter will be far away from the actual drilling experience, but the letter was sent for informational purposes so that if residents have questions they can attend the meeting to voice their concerns.

Mr. Kelly said part of the reason this is before the Utilities Committee is because Cutter Oil wishes to use some of the city's public right of way in order to make his aggregation.

Mr. Petrusky asked if there were any questions.

Mr. Phillips, a Maple Lane resident, asked if residents that want this drilling can add property on to the unit. Mr. Gentile said Mr. Cutter would need an additional 20 acres to do so and if he wants to add more property in the unit that is a private agreement between Cutter Oil and the landowner. Mr. Phillips asked if the city has a choice to be part of a well. Mr. Petrusky and Mr. Gentile told Mr. Phillips that the city has a choice just as a homeowner has a choice to be part of a well. Mr. Petrusky added that the oil company can force pool property owners who do not want to be part of a well. He explained that force pool means that the Ohio Department of Natural Resources would step in to make the decision.

Mr. Lucas, a Forestwood Lane resident, asked where the well locations are and where the public right of way is as well. Ms. Vozar stated that Mr. Cutter from Cutter Oil is in attendance and if the committee chooses to do so, Mr. Cutter can give additional information on the location of the wells and other pertinent information.

Mr. Cutter addressed residents and referenced the maps that residents received. He stated that the Zillich 2 well will be beside the Zillich 1 well. He said the roadways that will be taken from the city include Villa Grande, White Bark Circle, Marcella, Angelina and Bridget. He said as far as city acreage for the Callas 3 well is concerned the streets involved include Foxwood Drive, Fir Tree Drive, Rosewood Oval and a little bit of Jamestown Drive. Ms. Vozar said when Mr. Cutter discusses using the roadway he is referring to using the roadway to make the 20 acres contiguous. This will not destroy the roadway in any way. Ms. Vozar asked Mr. Cutter to tell the residents how much acreage the city will actually have in this well. Mr. Cutter said the city will have 1.917 acres for Callas and 3.145 acres for Zillich. Mr. Cutter said the city will have an additional 2.629 acres due to a portion of Villa Grande being included in the city's acreage.

Mr. Antoskiewicz asked Mr. Cutter if the city does not allow him to use our city streets, will he still go forward with the wells. Mr. Cutter said it could still happen if he uses the mandatory pool process and move forward. He said without the city the acreage is not contiguous therefore the city needs to be part of both wells.

Mr. Kanecki, a Foxwood Drive resident, said it clearly states in his development bylaws that drilling is not permitted. Mr. Kelly said the agreement between a homeowner and an oil driller are private contracts. He said he is not sure which agreement takes precedence, the private agreement between the property owner and oil driller or the development's bylaws. He said this is a matter for judicial determination.

Mr. Fichty, a Foxwood Drive resident, said he received a letter about Callas 4 and asked if this letter pertains to this well or another well. Mr. Cutter said this is for another well. Ms. Vozar said the city does not have anything before them regarding Callas 4. She said this is a private matter between the landowner and the oil drilling company. The city would only become involved if the drilling company requests part of the city's roadway as part of their 20 unit acre or once the drilling company has their acreage, the city would be notified.

Mr. Gentile said he and Mayor Stefanik discussed this subject recently and said their concern is with the location of the well. He asked residents if they have concerns about this well to please let Council know.

A resident asked how much revenue the city receives from these wells. He said these oil wells are ruining his quality of life. Mr. Petrusky said he cannot give him a dollar figure. Mr. Willey told the resident that the city is not interested in going into the oil business. He said Council is trying to facilitate the homeowners. He said our interest outside of city owned property is not to promote oil wells. He said as far as private wells are concerned the city has nothing to do with that. The resident asked why those who are not benefiting from these oil wells have to suffer with these wells going up. Mr. Willey said it is private property and it is up to the landowner what they want to do with it. Mr. Petrusky reiterated what was discussed at the beginning of the meeting by explaining the term forced pooling. He said if the city does not want an oil well in the city, the oil driller can force-pool. This means that the oil driller can figure out another way without using any city property and the city has no say in this as this is regulated by the Ohio Department of Natural Resources. He said the other option the oil company has is that they can take the city to court and if it is determined by the ODNR that the city is forced into that contract, the city will have no choice, they must go by what the state says. He said if the oil company gets 20 contiguous acres of private land there is nothing the city can do in this case either. Mr. Gentile said in early meetings regarding oil wells, the city decided they were going to be non-committal when it came to oil wells. Ms. Vozar said that the directive that the Law Department has received from both the Mayor and Council has been consistent since oil and gas wells have been permitted in the City of North Royalton by the State of Ohio. The Law Department has not brought any proposed usage of the roadway to Council unless we have received from the oil and gas company their efforts to sign their majority of the unit. She said the city will not serve as a hammer over residents' heads to join these wells but the city also does not want to stand in the way of residents who do want to join into an agreement.

Mr. Antoskiewicz said he would like to hear from residents who have signed on with these wells if they regret their decision or if they still stand by their decision. He said this information would be helpful to help him make his decision.

A resident asked about forced pooling and the cost of going to court versus the money the city and residents receive as a result of these wells. Mr. Kelly stated that although forced pooling is available under the law, he is not aware of any municipal corporation that has been forced into a unit against its own interest or own desire.

A resident questioned why she was not notified of the meeting at the high school earlier in the week. Mr. Willey said this meeting was announced to the residents affected by these wells. Ms. Vozar said that letters announcing this meeting were sent to residents who live within 500 feet from the edge of the drilling unit on both of these wells. She stated that a notice was also posted at all 5 posting locations announcing this meeting. Ms. Vozar assured the resident that feels Callas 2 residents were not notified that she met with a representative from Callas 2 and was presented with a petition expressing their feelings regarding the experience they had with Cutter Oil. Ms. Vozar said she has in her possession a copy of the petition signed by Callas 2 residents. A resident asked Ms. Vozar if he could hear the concerns that were stated in the petition. Ms. Vozar announced that this petition is from the residents of Mercury Drive

against Callas Oil Well 4 by Cutter Oil Company. Ms. Vozar said Callas 4 is not before this board, but she did tell the representative from Callas 2 that she would be presenting this petition. Ms. Vozar read the petition out loud, but said she cannot confirm that this information is correct.

A resident asked Council to explain the public right of way. Mr. Petrusky said when an oil driller uses our city streets we cannot stop him from using the city streets even if we are not part of the 20 acres. Ms. Vozar said state law permits roadways to be used by individuals and businesses. She said there are requirements in place regarding load limits. She said if a city is in contract with an oil company, we can make an agreement with them where they will use a certain roadway or use certain access.

A resident asked about the landscaping issues associated with these wells. Mr. Kelly said this is all determined by the ODNR. Mr. Gentile said that residents who sign an agreement with an oil company have more leverage on how the landscaping will look than those who do not sign.

Moved by Mr. Kasaris, seconded by Mr. Willey **to accept the Callas 3 and the Zillich 2 wells with the terms and conditions from the Law Department.** Yeas: 3. Nays: 0. **Motion carried.**

Mr. Petrusky asked Mr. Schmitzer to tell the committee what he found in his research of horizontal drilling. Mr. Schmitzer began by stating that most of the research he found occurred in Texas and said he would do his best to apply his research to the city's situation. He said the pros are that there are not gas wells all over the place and it is a little more effective. He said the cons include a possible rupture, but said that could happen anywhere. Mr. Gentile asked Mr. Schmitzer if something did ignite or rupture, would that come up or would it go back to the source of the drilling. Mr. Schmitzer said he is not an expert on horizontal drilling and cannot answer that question.

Mr. Kelly said that the state has already given its approval for horizontal drilling, but the question of whether this type of drilling is safe or not, has already been asked and answered.

2. Access of gas lines to public right of way

Mr. Gentile said this is a topic that he and Mayor Stefanik discussed. He said currently the city is aware that Columbia Gas is reluctant to accept gas from local drillers. Mr. Gentile said he, Mayor Stefanik and Ms. Vozar are going to try to bring Columbia Gas to the table to see if they might be willing to move forward with this effort.

Mr. Kelly said that he has had several conversations with Mr. Ray Frank from Columbia Gas and he has offered to come to a Utilities Committee to make a one hour presentation on these matters. Mr. Kelly said Mr. Frank indicated that Columbia Gas has what they call higher standards for their gas and suggested that the gas coming out of the ground does not meet their standards for their gas for presentation to their customer base. Mr. Frank suggested that there is technology available for the drillers to use to make sure it is dry enough for their use. Mr. Willey said he would like Mr. Frank to attend a Utilities Committee meeting. Mr. Kelly will make arrangements for Mr. Frank to attend the January Utilities Committee meeting.

3. Two pending gas/oil units

This was discussed in Item 1.

4. Cleveland Water Agreements

Mr. Jordan thanked the committee for considering the city's approval of the Water Line Service Agreement. He explained that there are three separate agreements which will all be included in one ordinance.

Mr. Jordan said the first agreement is the Asset Transfer Agreement that would transfer the assets of the city owned water lines contained within the City of North Royalton to the Cleveland Division of Water.

Mr. Jordan said the second agreement is a Water Service Agreement. He said Mr. Nielsen, the Division of Water Commissioner, is in attendance to explain this agreement. Mr. Jordan said we currently have a Water Line Service Agreement but this would start a new term under that Water Line Service Agreement where the responsibilities of maintenance and the city's participation with the Division of Water would be outlined.

Mr. Jordan said the third agreement is a Joint Economic Development Zone Agreement. He said the State of Ohio, within the last 20 years, authorized a Joint Economic Development Zone Agreement. He said prior to this being developed, two cities were not able to share taxes between each other. He said this agreement is created to allow two different municipalities to share taxes or revenue between each other. Mr. Jordan said this particular agreement outlines a relationship between the cities relative to income taxes that would be generated by companies that move from one city to another. He said Mr. Nielsen has a power point presentation that he will present which summarizes all three of these agreements.

Mr. Jordan said prior to the presentation by Mr. Nielsen he would like to talk about the Joint Economic Development Zone Agreement and the implications of entering into this agreement. He said the basic exchange is that maintenance and long term responsibility of water lines in the City of North Royalton would be transferred from North Royalton to the Division of Water and in exchange the city would enter into a Joint Economic Development Zone Agreement. He said this agreement will do two things between the City of North Royalton and the City of Cleveland. He said if a company moves from one city to another that has a payroll in excess of \$500,000 the city agrees that the city that has the revenue would share 50 percent of the current income taxes that city is paying to the city they are moving from. This would exist for a 5 year period.

Mr. Jordan said some cities have employed a certain incentive that is specifically prohibited in attracting businesses between the two communities which is income tax rebates. He said some cities basically will tell a company if they move to their city, they will forego a certain percentage of income taxes that are generated by the company. He said this is not the practice in North Royalton and not a practice that we are considering. Mr. Jordan said from the Administration's standpoint and from the Economic Development Department, the City of North Royalton is recommending passage of this.

Mr. Nielsen discussed in more detail the three agreements outlined above. He said the City of Cleveland has offered to its suburban communities eligibility to participate in this program. He said the opportunity entered would amend the existing water agreement. He said the primary features of this amendment are that the Division of Water obligates itself to spend their money in North Royalton or other communities where the amended agreement exists, to replace the water mains that are in the local streets, or to clean and line them if the city has unlined pipes. Mr. Gentile asked Mr. Nielsen if he will define what the city's responsibility will be. Mr. Nielsen said pipes that are 20 inches or longer in diameter versus the local water main will be the City of Cleveland's responsibility and the smaller pipes will be the City of North Royalton's responsibility. Mr. Nielsen said the flip side of this is the Economic Development Agreement. He said this agreement places limitations on incentives that can be offered to businesses that move from Cleveland to North Royalton. He said in turn, Cleveland cannot offer incentives to a business that may move from North Royalton back to Cleveland. He said the second part of this is the tax sharing provision that pertains for a five year period.

Mr. Nielsen said the third agreement is the Asset Transfer Agreement. He said in order for the Division of Water and the City of Cleveland to make investments in local water mains they have to own them. These would be transferred and they would then take on this asset and be responsible for it. He said all of these agreements are 20 year agreements and cities have the ability to cancel these agreements after 15 years by giving a five year notice. Mr. Nielsen said they have completed the first two years of the program.

Mr. Antoskiewicz asked Mr. Nielsen if by signing this agreement it will increase the city's rates. Mr. Nielsen said indirectly yes. He said when the agreements were authorized by the Cleveland City Council as well as the authority to do the first five years of projects, the Division of Water had to increase

their rates a minimal amount. He said it costs approximately 35 cents per thousand cubic feet of water that a customer consumes to be able to take on the program. He said a typical customer uses approximately 2.5 thousand cubic feet. Mr. Gentile asked Mr. Nielsen if the Division of Water has already started collecting for the capital. Mr. Nielsen said yes.

Mr. Kasaris asked when the rates are increased, are they increased citywide or countywide. Mr. Nielsen said they do it service area wide. Mr. Kasaris also asked how many municipalities have entered into agreements. Mr. Nielsen said there are currently 18 and approximately 10 communities are pending. Mr. Kasaris asked about the expense per year. Mr. Nielsen said the Division of Water budgeted approximately \$10,000,000 per year, per service area. He said they borrowed the money and raised the money to fund the first five years of this program. He said during the first two years of this program they spent approximately \$8.6 million the first year and \$9.2 million the second year.

Mr. Gentile read an email he received from the city's Finance Director, Mrs. Fegan, in response to a question he posed to her asking how much the city is putting away and what our recent history of expenditures has been based on our current agreement with Cleveland Water. Mrs. Fegan's response indicates we may have some financial challenges that we may face in the future where we may not have the capital to maintain or replace our water lines. Mr. Gentile said the last water main project in North Royalton was the water main at the corner of Bunker Road and Ridgedale Drive which cost \$522,120 and we received a 0 percent loan with the terms on the loan being \$26,000 per year. Mr. Willey asked how the transfer of these assets to the Division of Water is going to affect this loan. Mr. Nielsen said a debt that the city already has an agreement on will not be assumed by the Division of Water until the debt is paid off. Mr. Kasaris asked Mr. Nielsen the age of the current lines that will be taken over by the Division of Water. Mr. Nielsen said he will get a map to Mr. Schmitzer which will show the age of the water mains.

Mr. Gentile asked what the average life expectancy is of the ductal iron. Mr. Nielsen said typically he would say 100 years, but said it is affected by soil conditions, quality of construction and quality of the pipe itself. He said to some extent it is how it is operated. Mr. Gentile asked if under this agreement the Water Department would be responsible to come out to fix all the breaks at their own expense and if someone hits a fire hydrant, the Water Company would come out to fix this as long as we are able to submit a police report for insurance purposes and asked if they have a criteria for so many breaks per mile that would determine if it would be a total reconstruction of the water line in that area. Mr. Nielsen said it would be up to the municipality to know how many projects there are. He said the Division of Water would evaluate those on four different criterias. The first criteria is the break history. He said when a water main hits a certain number of breaks per mile, per year that would be qualifying criteria. He said the second criteria is water quality. Mr. Nielsen said if there is unlined pipe that is corroding and causing dirty water that may deem a project eligible. The third criteria is fire flow. He said typically where institutions have grown around a smaller diameter main it may get to the point where there is not adequate fire protection which would also qualify. Mr. Nielsen said the fourth is preservation /integrity of the streets. Mr. Nielsen said this refers to a municipality that may have a water main that does not qualify under any of the criteria, but the street is being reconstructed. He said in such a case, the Division of Water would like to get under that street. Mr. Nielsen said there are additional points awarded to communities when they take projects through Issue 1. Mr. Petrusky asked as far as water quality what the property owner is responsible for versus what the city is responsible for. Mr. Nielsen said under the current agreement, the Division of Water will be responsible for the service line from the water main into the curb line and the property owner is responsible for the curb line to their home. Mr. Kasaris asked Mr. Nielsen if any community has said no to this agreement. Mr. Nielsen said Twinsburg and Bentleyville both said no.

Mr. Marnecheck asked how the Division of Water arrived at the \$500,000 figure. Mr. Nielsen said the agreement was drafted by a member of the Cleveland Law Department along with two representatives from Parma Heights and Orange. He said they worked out a lot of the details and Mr. Nielsen was then involved to try to negotiate an agreement that was in everyone's best interest.

Mr. Gentile asked Mr. Nielsen if there has been an addendum to this agreement. Mr. Nielsen said there have been some minor clarifications, but no addendum.

Moved by Mr. Kasaris, seconded by Mr. Willey **to authorize the Utilities Committee to recommend to the Mayor and Council to enter into the Asset Transfer Agreement, the Joint Economic Development Zone Agreement and the amendments to the Water Service Agreement for district service between the City of Cleveland and the City of North Royalton.** Yeas: 3. Nays: 0. Motion carried.

ADJOURNMENT

Moved by Mr. Willey, seconded by Mr. Kasaris **to adjourn the meeting.** Yeas: 3. Nays 0. **Meeting adjourned at 8:30 p.m. Motion carried.**