

Utilities Committee Minutes
March 3, 2010

The Utilities Committee meeting was held on March 3, 2010, at North Royalton City Hall, 13834 Ridge Road. The meeting was called to order at 7:00 p.m.

PRESENT: Committee: Chair Don Willey, Vice Chair John Nickell, Dan Kasaris; Council: Vince Gentile, Larry Antoskiewicz, Gary Petrusky, Paul Marnecheck; Administration: Mayor Robert Stefanik, Law Director Tom Kelly, Assistant Prosecutor Donna Vozar, City Engineer Mark Schmitzer, Wastewater Superintendent Tim Tigue, Other: Nick Cinquepalmi, Don Harris, Bob Karl, C.J. Cutter.

APPROVAL OF MINUTES

Moved by Mr. Kasaris, seconded by Mr. Nickell to **approve the Utilities Committee Minutes of February 10, 2010. Yeas: 3. Nays: 0. Motion carried.**

UNFINISHED BUSINESS

1. Pending Gas Wells

Mr. Antoskiewicz asked where this well will be drilled. Mr. Kelly stated that as of today we know where the well will be placed by Cutter Oil and that location is on Mr. Gentile's property which is located just west of Heasley Field. Mr. Kelly stated that at his request Ms. Vozar put together a memo to demonstrate what the modifications are between the agreement in the proposed legislation and the approved agreement in the old legislation. This memo was distributed to Council so they can see what the differences are. Mr. Kelly said he had some discussions with Mr. Karl, Mr. Cutter's attorney, who will in turn discuss those issues with Mr. Cutter.

Mr. Antoskiewicz said Council has always been concerned about the drilling on Heasley Field due to the safety of the children playing soccer. He said now that the well is moving to Mr. Gentile's property, he is still concerned about the safety of the children because we do not know how far over this well is actually moving. He said now that this well will not be located on city property, we have no authority to tell Mr. Cutter when he can drill. Mr. Antoskiewicz said it is his understanding that the reason Mr. Cutter is moving the well is because he feels the city is not being cooperative. Mr. Antoskiewicz disagrees and said the city has cooperated and addressed each of Mr. Cutter's requests. Mr. Antoskiewicz said he reviewed the new lease and said he noticed that the Fire Department gas/oil well training is not included in the lease. He said he feels by not including this training in the lease it shows that Mr. Cutter has no regard for the residents or the city. Mr. Antoskiewicz also stated that the last time Council met with Mr. Cutter the drilling was going to commence on or about February 19th. He said he then received an email stating that a Special Utilities meeting will be held because the well will now not be drilled on city property. He said when he inquired about the special meeting he found out that Mr. Cutter never contacted the city or the Law Department and that the city found out through a third party. He asked Mr. Cutter why we did not receive this information earlier.

Mr. Karl spoke on behalf of Cutter Oil and Mr. Cutter. He addressed Mr. Antoskiewicz's concern about the training for the Fire Department. Mr. Karl said that Mr. Cutter is in fact going to provide the necessary training and said he does not feel it is necessary to repeat the training aspect on every lease Cutter Oil does with the city. Mr. Karl then discussed the drilling time. He said if this ordinance would have passed this evening, he was going to file the necessary paperwork with ODNR so that Mr. Cutter can begin drilling as soon as possible. He said if this goes another two readings before it passes, it will push the drilling time in to late March or early April. Mr. Karl said as far as the safety issues on the soccer field, Mr. Cutter is not going to expose the children on the soccer field to any of the drilling. He said Mr. Cutter will be drilling on another property altogether which he said lessens the potential impact for public health and safety. Mr. Petrusky said there is a gap in the fence around the property. Mr. Cutter said every well he drills is totally enclosed with a six foot high chain link fence.

Mr. Kasaris said he does not feel the first lease has been broken and said he does not see the need for a second lease. Mr. Kasaris said however, if we are going to proceed with the second lease, he feels the language for the Fire Department training needs to be included in that lease. Mr. Karl said this language is in one lease that has been executed and two additional leases which are 10-17 and 10-18 and the lease being discussed today which would mean there would be four separate trainings. Mr. Kasaris said that is not the case. He said the language should be included in all leases in case a lease is invalid for some reason. Mr. Karl said his understanding is that the Fire Department has not yet taken Mr. Cutter up on his offer to be trained as stated in Ordinance 08-222. Mr. Cutter said he spoke to the Fire Chief who said he would get back to Mr. Cutter about the training. Ms. Vozar said each lease is independent and in certain circumstances we wanted more protection for the city in some of the leases than in others. She said all of the leases have an expiration period of time to train. She said she would recommend that this language be included in each lease agreement. Mr. Karl said he has a copy of the lease agreement and there is no time period for the training. He said it is effective throughout the lease. Mr. Karl said Cutter will provide the amount of training that is necessary, but asked if the Fire Department will need four training sessions. Mr. Antoskiewicz said this could be an issue of the only lease that contains this language expiring then we do not have the training requirement in existence in any other leases. Mr. Kelly stated that he and Mr. Karl may be able to work out a schedule wherein Mr. Cutter would agree to provide the training but no more than every two years. Mr. Marnecheck requested that we consult with the Fire Chief to see how often he feels the Fire Department should be trained.

Mr. Antoskiewicz said there was an understanding that Mr. Cutter would comply with our conditions and that Mr. Cutter is regulated under the Ohio Law and has always been willing to comply with these other issues. Mr. Karl said to the extent a written document is given to Mr. Cutter or there is an ordinance on the books, Mr. Cutter will comply. Mr. Kelly asked Mr. Karl if Mr. Cutter is willing to comply with our local ordinances. Mr. Karl said he will comply with all lawfully issued ordinances that are not pre-empted by Ohio Revised Code Chapter 1508. Mr. Kasaris asked what Mr. Cutter agreed to in the original lease agreement in Ordinance 08-223. Ms. Vozar said he agreed to comply with all of the requirements of the Building Commissioner, Fire Department and Planning Commission.

Mr. Antoskiewicz said after Council received notification that Cutter Oil was no longer going to drill on Heasley Field they discovered that Mr. Cutter was already talking to people about re-forming the unit. He asked if the city is going to get shut out once again. Mr. Antoskiewicz said for 18 months Mr. Cutter led the city to believe he was going to drill on Heasley Field when he already had a drill lease with someone else. Mr. Antoskiewicz said he knew Mr. Gentile had an agreement to be part of the unit, but he did not know the well was going to be drilled on his property. Mr. Gentile said he called Mr. Antoskiewicz to ask him if he had an issue with the well being drilled on his property. He said Mr. Antoskiewicz said he did not feel it was in the city's best interest.

Mayor Stefanik asked Mr. Cutter why he kept negotiating with us when he knew he was not going to drill on the property and when he changed his mind about not drilling on city property. Mr. Cutter said he made his decision on Friday when he received the letter from the Law Department. He said he would still like to include the city's 10 acres with the non-drill into the unit and he is hopeful this can be negotiated. Mayor Stefanik said the city does want him to drill this well and said the city has done nothing but bend over backwards for him. Mayor Stefanik said it is a shame that we put so much energy into this thinking that the city was going to reap all of the revenue from this well and feels that this is a slap in the face. He said he feels we can still do business with Cutter Oil, but said this has left a sour taste in his mouth.

Mr. Willey asked Mr. Kelly and Ms. Vozar if we want to include the Fire Department training in the lease. He also asked about Mr. Cutter's willingness to comply with our ordinances. Mr. Kelly said it is clear that we are not going to get the same language in this lease as in prior leases relative to Mr. Cutter's willingness to abide by our ordinance packages. Mr. Karl said he does not feel that by signing this lease Mr. Cutter should have to sign away his due process rights. He said he does not want an issue of the Fire Department training or speeding ticket to be used as a reason for the city to claim that Mr. Cutter is in

breach of this contract. Mr. Kelly said Mr. Karl's analogy is not one he would subscribe to. He said if Mr. Cutter were to get some type of a ticket, it is beyond the pale to believe that the city would use that as a basis to attempt to call a breach on his contractual arrangements with the city for oil and gas. Mr. Kelly also stated that his due process rights would not be impaired to any significant degree were he to comply with or agree in writing to our ordinance package. Mr. Kelly stated that if Mr. Cutter or any other oil and gas drillers choose not to comply with our ordinances we have to decide how to proceed. He said we hope we would be able to secure the cooperation of these drillers and said the city thought they had this with Cutter Oil Company.

Mayor Stefanik said this might be a good time to exercise some good will with Cutter Oil and abide by the original contract. He said in lieu of what has happened in the last week or two he would appreciate it if Cutter Oil would give the city the money in lieu of the free gas that we would have received if the well was on the city's property. Mr. Karl said in regard to the spud fee, Mr. Cutter will now be paying two spud fees. He said the city will get the \$5,000 signing bonus, the spud fee and the \$300 annual late fee and the 15 percent royalty. Mr. Karl said the only difference the city will not be receiving between the two agreements is the free gas. Ms. Vozar said all of the city's non-drill leases require a per acre fee and that is what Council and the Mayor suggested we do. She said we will receive \$1,500 per acre as well as 15 per cent. She said we would also require the spud fee on a non-drill which in this case is in the amount of \$18,000.

Ms. Vozar said soccer season is upon us. She said she would renegotiate these lease agreements if necessary. She said the longer we go the later we will be in to soccer season. Ms. Vozar said she recommends if Council does want to move forward with a new lease wherein Mr. Cutter would drill on an adjoining property and enter into a new lease there are a couple of concerns that need to be addressed. She said the first are the safety concerns. She said if Mr. Cutter can get in and drill prior to the start of soccer season, all of these safety concerns will be addressed. Mr. Cutter asked if it would be acceptable to Council if he puts up a temporary six foot chain link fence that will be in place 24 hours before drilling commences and will be in place until 24 hours after drilling is finished. Council agreed. The next issue is the training of the Fire Department. Mr. Karl suggested holding a training once a year.

Ms. Vozar asked about the timeline. Mr. Cutter said he cannot submit anything to ODNR until this is approved by Council.

Mr. Antoskiewicz said this can be approved at the next Council meeting. Mr. Nickell suggested holding a special meeting to pass this so the paperwork can be submitted to ODNR and Mr. Cutter can start drilling.

Mr. Willey asked if this is approved at the next council meeting will Cutter Oil be able to start drilling by the end of the month. Mr. Cutter said assuming there are no problems with ODNR it will take approximately three days to get approval from them.

Mr. Willey asked Mr. Kelly if the lease agreement can be ready by Friday so that a special meeting can take place before Mr. Antoskiewicz and Mr. Willey go on vacation. Mr. Kelly said it is possible he can have this ready by Friday.

Mr. Willey said we need to give 24 hours notice for a special meeting.

Mr. Willey asked Mr. Kelly and Mr. Karl to put the lease together so it can be voted on at a special meeting.

Council suggested holding a special Council meeting on Friday, March 5th at 6:00 p.m.

2. **Ridge Road sewer update**

No update.

3. Wiltshire Road sewer odor status

Mr. Tigie said there have not been any odor complaints.

4. Sanitary sewer connection (tap in) request City of Parma and City of Broadview Heights

Mr. Kelly said Ms. Vozar is working on the language that Parma was having trouble with. He said she is going to make the necessary changes then send it to Parma. Mr. Kelly said the Parma Law Department does a wonderful job, but in this instance they needed our help in putting together this language.

5. Inflow/Infiltration of storm water

Mr. Tigie said this work will start back up the first week in April. He said they will start on Albion Road where they left off last year.

6. National Pollutant Discharge Elimination System Permit

Mr. Tigie said the A and B plants are compliant. Mr. Tigie said there is a mercury problem at the A Plant and copper limits at the B Plant. Mr. Gentile asked if mercury business site inspections will be put in place. Mr. Tigie said the city will be visiting businesses and asking them to voluntarily look at their site for any elemental mercury that they use to see if they can replace it with non mercury type of equipment. He said dentists will be their focal point. Mr. Tigie said there is a permanent value which eventually will be 2.8. Mr. Gentile asked if there is anything that Council can do legislatively to help enforce this. Mr. Tigie said he looked at the code and said there is enough in the code that he can work with. He said the city is going to start with a very soft type plan to assist the dentists. Mr. Tigie said he had to write an annual report to the Ohio EPA to let them know what the city is doing so they will ease up on the actual numeric value at the end of our efforts which means they will not enforce us to meet the 1.3. He said our numbers currently range from 2.0 to 2.5.

Mr. Willey asked if dentists might be able to install a piece of equipment in their offices so the mercury does not have to be discharged. Mr. Tigie said this is an option, but said we are not talking only about solution, but also pieces of teeth and teeth that are pulled and what they do with these. Mr. Tigie said the NEORSD is working with the city's C District on a mercury plan and said we will use their guidance.

Mr. Gentile said if we close down the sludge plant and we haul this, would we have to have the maximum amount of contaminants before they will accept it. Mr. Tigie said it depends on where we send it. He said with Quasar Environmental there is a laundry list of analysis we have to do and limits we have to meet. He said if we take it to a regular landfill, there are no requirements. He said he is not sure what the requirements are at Enviro in Mahoning County.

Mr. Gentile asked if we recycle fluorescent bulbs. Mr. Tigie said no. He said we currently box up the bulbs and take them to a mercury collection annually. Mr. Tigie said there is no fee for this service. Mr. Gentile said we should research this to see if we can make this service available to residents so they have a place to dispose of their bulbs. Mr. Gentile said he will check if the county's Solid Waste Department has an assistance program where they provide containers for hazardous materials.

7. Home Sewage Treatment Systems

Mr. Schmitzer said we are trying to get the contractor the money they are owed. He said the problem is that the homeowner has filed a complaint with the Ohio Attorney General against the contractor. Mr. Schmitzer said he received a copy of the complaint and sent a letter back to the resident and requested they pay the money that is not in question by March 8th. He said if we do not get receipt that the money was paid to the contractor by that time this matter will be handled by the Law Department. Mr. Schmitzer said we will see what we can do in the meantime to help out the contractor with the 25 percent that has to be proven to the Federal Government that is in our possession in order for them to release the other 75 percent. He said we want to get the contractor paid, but we cannot do anything until we know the 25 percent is paid. Mr. Gentile asked if we can pay the contractor and file a lien on the property. Mr. Schmitzer said there was one item on their final summary which is a permit fee that

Bowen submitted to the city. He said the homeowner's cost was \$400 or so as this was a shared cost between all four homeowners. He said in the last letter the city sent to the homeowner it has forgiven that amount and asked them to pay the remainder by Monday, March 8th.

Mr. Schmitzer said the contractor will not start the second system until he is paid by the homeowner on the first property. Mr. Schmitzer said the problem we could possibly run into is a timing issue as the grant expires sometime in the spring. He said he does not have an exact date.

Mr. Gentile asked if the city has the right to file a lien on the property. Ms. Vozar said she does not know if we can file the same type of lien as the contractor can file, but we can take action. She said the Law Department will look at all of their options.

8. First Energy/Wastewater Department

Ms. Vozar said there was some confusion on this. She said First Energy said the City of Cleveland had gone out for bid on this, but they did not. She said the City of Cleveland just went out and got some quotes. Ms. Vozar said she feels we are going to have a hard time going out to bid on this. She said we are trying to get a third quote and Mr. Jones had a difficult time doing this as there were some companies on the website that are no longer good companies. She said as of now we do not have a third quote. Ms. Vozar said one of the first things we need to do is contact NOPEC and see the process they use since they are already doing this. She said we should have something in place by the next meeting.

NEW BUSINESS

1. Chapter 1030 Use of right of way for utility service providers

A representative from Gonz Oil was in attendance and said when they drilled a well back in January they used Dominion East Ohio so they were able to gain access to our right of way. Mr. Kasaris said he and Mr. Gentile sent this to the Law Department to make sure they were comfortable with the oil companies being able to install a production line in the right of way for drilling purposes. Mr. Kasaris said the city's intent is to allow the oil drillers to place a line in the right of way and if any other oil drillers want to use that line they would be permitted to do so. Mr. Gentile said if the line goes in it will go in under a PUCO regulated utilities guideline and will ultimately be turned over to them so they would be able to offer service to the adjoining properties and we would have competition for our residents and businesses in the city. He said there is an initial expense to putting in the line. Mr. Gentile said we may set up something in the line for a reasonable, customary tap in fee. He said the whole reason behind this is to open up the mineral exploration on municipal property and private property throughout the community to allow the people to get their minerals to market. Mr. Gentile said he feels that currently the right of ways for this specific mineral are under the control of Columbia Gas who does not want to be cooperative. He said this is not designed to give any one company full authority.

Mr. Petrusky asked if the line will be turned over to the utility company. Mr. Gentile said this is not yet put together. He said it will probably be the same process that is on the Planning Commission agenda on March 10th. He said it does not matter who pays for the line, it is a matter of who is the final applicant. Mr. Petrusky asked who is ultimately responsible for the line. Mr. Gentile said it is Dominion East Ohio Gas. Mr. Petrusky asked if a private entity is going to run a line in our right of way, hook it up to a public utility and at that point turn it over to the public utility and the public utility will take over that line. Mr. Gentile said this is the way it is done now. He said it is the same process but we are trying to break the hold that Columbia Gas has. Mr. Gentile said he wants to make it clear that the second time around, the public entity will have to allow use of the line.

Mr. Antoskiewicz asked if Dominion wanted to run lines throughout the city would they be able to do that. Mr. Kelly said they would have to go through the Planning Commission. He said he does not know if PUCO regulates by geography in order to discourage competition. Mr. Kelly said Council has control over the public right of way. He said they can decide what comes in and what stays out, but he does not know where the connection is between the relationship of municipal corporations' use of their right of ways and the public utilities governance over the utility companies and the utility providers. Mr. Gentile said he has seen multiple municipalities that have multiple providers of this mineral alone. He said with

Cutter Oil bringing the line down Wallings Road to service three wells, the residents have the opportunity to become Dominion customers versus Columbia Gas if they choose to do so. He said this will also allow Valley Vista to place a two way switch on their boiler which Columbia Gas will not allow. He said this would allow Valley Visa to utilize all of the gas they are entitled to and purchase gas at the well head price minus tax and transportation. Mr. Kelly said the line that Dominion is putting in is a four inch flexible line as opposed to a two inch steel line. He said the industry has their standards as to what is appropriate and what is acceptable and not acceptable. He said there may be standards that they will apply which may or may not include a steel line.

Mr. Gentile said he feels it would be best if Council modified this to make this a service line rather than a high pressure TPL line. He said he feels this gives residents another competitive edge in purchasing this mineral at better pricing.

Mr. Kasaris said he feels what this does is send a message to Columbia Gas that they need to change their standards because we are tired of the monopoly.

Mr. Gentile said there is currently no regulation on the books. He said this will set a standard for the right of way. He said anyone who puts a line in will have to offer service to the property both ways.

Mr. Schmitzer asked for some clarification of Section 1030.04, Item b and asked if this would allow Company ABC to come in and put a line in our right of way. Mr. Gentile said this is a draft and asked Mr. Schmitzer to come back to us with his comments and expertise. Mr. Kelly said this piece of legislation is going to need a lot of work. Mr. Gentile said there is no sense of urgency on this.

Mr. Schmitzer asked if the intent is to allow a company such as Gonz Oil to pay for a line that will be installed by Dominion East Ohio Gas why do we need the legislation. Mr. Kasaris said this is being done so that when the line is put in it is put in the right way. Mr. Gentile said he does not want one company monopolizing all of the land in one area of the city.

Mr. Petrusky asked what is going to force a company such as Columbia Gas to open up a line to anyone else. Mr. Gentile said if they are in our right of way they will have to allow other people to tap in. Mr. Kelly said that in order to get Columbia Gas or East Ohio to accept the line they are going to require that they control the line 100 percent and they will not subject themselves to our regulations. Mr. Gentile said we do not know that this is the case.

2. Ordinance 10-37

Moved by Mr. Kasaris, seconded by Mr. Nickell **to remove Ordinance 10-37 from the Utilities Committee and send to Council for action at a Special Council meeting on Friday, March 5, 2010 at 6:00 p.m. Yeas:3. Nays: 0. Motion carried.**

ADJOURNMENT

Moved by Mr. Kasaris, seconded by Mr. Nickell **to adjourn the meeting. Yeas:3. Nays 0. Meeting adjourned at 9:03 p.m. Motion carried.**