

KIRTLAND CITY COUNCIL MINUTES

September 21, 2009

The meeting of Kirtland City Council was called to order at 7:07 p.m. by Council President R. Robert Umholtz. Councilman Webbe led the prayer which followed the Pledge of Allegiance. The members of Council present were: Royal Brettrager, Douglas Davidson, David Kirek, Timothy Powell, Robert Skrbis, R. Robert Umholtz and Donald Webbe.

Administrative personnel present were: Mayor Mark A. Tyler, Law Director Daniel Richards, Finance Director Keith Martinet, City Engineer Philip Kiefer, Service Administrator Carm Catania, Police Chief Wayne Baumgart and Fire Chief Anthony Hutton.

MINUTES OF THE SEPTEMBER 9, 2009 WORK SESSION:

Mr. Kirek moved to waive the reading of the Minutes, with the second by Mr. Davidson. The motion of Council passed by unanimous vote. Mr. Kirek moved to adopt the Minutes, with the second by Mr. Davidson. **ROLL CALL: MOTION CARRIED 6/0/1 (VOTING YEA: BRETRAGER, DAVIDSON, KIREK, POWELL, SKRBIS AND WEBBE. VOTING NAY: NONE. ABSTAINING: UMHOLTZ).**

MINUTES OF THE SEPTEMBER 9, 2009 COUNCIL MEETING:

Mr. Kirek moved to waive the reading of the Minutes, with the second by Mr. Davidson. The motion of Council passed by unanimous vote. Mr. Kirek moved to adopt the Minutes, with the second by Mr. Davidson. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: BRETRAGER, DAVIDSON, KIREK, POWELL, SKRBIS, UMHOLTZ AND WEBBE. VOTING NAY: NONE).**

DEPARTMENT REPORTS:

Fire Chief Anthony Hutton did not present a formal report and no questions were asked of him.

Police Chief Wayne Baumgart advised that he attended the AAA Award Luncheon today with Mayor Tyler, Lynn Kravos and Amy Buchanan; he noted that 80 communities were represented. Chief Baumgart advised that, for the 30th year, the City of Kirtland received an award for no pedestrian fatalities. Chief Baumgart also reported that, for the 5th year, the City of Kirtland received the platinum award as a result of all of the safety programs and improvements in the City. He noted that only 7 of the 80 communities received the platinum award. Chief Baumgart commended Lynn Kravos and Amy Buchanan for their efforts in putting the report together. Council offered congratulations to Chief Baumgart on receiving the award for the City.

Service Administrator Carm Catania did not present a formal report. Councilman Davidson thanked Mr. Catania and Chief Baumgart for following up on the issue at 8995 Chillicothe Road.

Councilman Webbe noted that he has received a few more calls from residents who are pleased with the traffic light improvement at the Route 6 and Route 306 intersection.

Mr. Catania advised Councilman Skrbis that the issue on Billings Road has been addressed.

DEPARTMENT REPORTS (continued):

City Engineer Philip Kiefer advised that he and Mr. Catania met last week with Alicia Silverio, Senior Environmental Specialist, from the Ohio Department of Natural Resources to review the flood plain regulations. Noting that maps were posted in Council Chambers last year, Mr. Kiefer advised that those maps have become official and that the City must update its flood plain regulations, to be in effect by February 3, 2010. Mr. Kiefer noted that draft language will be submitted to the Planning and Zoning Commission next month, and that legislation will be brought before Council in late November or December.

Finance Director Keith Martinet advised that the meeting of the Board of Tax Review, scheduled to meet following tonight's meeting, will need to be delayed to a future date.

Law Director Daniel Richards did not present a formal report and no questions were asked of him.

MAYOR'S REPORT/ANNOUNCEMENTS:

Mayor Mark Tyler commended Mr. Catania and the Service Department for the work done in Kirtland Lakes Estates.

Noting that he attended the AAA award luncheon today, Mayor Tyler commended the City departments for their accomplishments in keeping the City safe. The Mayor noted that credit should be given to Mrs. Buchanan and Mrs. Kravos for their efforts in preparing the report.

As a reminder, Mayor Tyler noted that "shred day" will be held on October 3, 2009 at the Community Center.

STANDING COMMITTEE REPORTS:

Councilman Powell noted that the fence ordinance will be discussed during Old Business.

CORRESPONDENCE:

None.

PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA:

None.

OLD BUSINESS:

ORDINANCE NO. 09-O-37
(Council President Umholtz)

- (Tabled) - AN ORDINANCE AMENDING
CHAPTER 1290 OF THE CODIFIED
ORDINANCES OF THE CITY OF KIRTLAND,
RELATING TO FENCES.

Councilman Powell noted that Council members have been provided with a copy of the amendments recommended by the Planning and Zoning Standing Committee, along with the recommendation received from the Planning and Zoning Commission with regard to the Standing Committee's proposed amendments.

OLD BUSINESS – ORDINANCE NO. 09-O-37 (continued):

Councilman Powell led discussion with regard to the Standing Committee's recommended amendments, along with the Planning and Zoning Commission's concerns and recommendations.

With regard to agricultural fences, Mr. Powell noted that concern about safety to children was expressed by one of the Planning and Zoning Commission members regarding electrical fences being placed close to the property line in residential districts. It was noted in discussion that the standard for an electric fence is defined in the ordinance and that an electric fence must conform to that standard.

There was discussion concerning the definition of "vision impairing fence". Mr. Powell provided a diagram prepared by Planning Consultant Ken Crandall to explain the Commission's recommended language. Mr. Powell read the Commission's recommended definition, noting that it provides for a setback of 20 ft. and a sight line within the vertical height band between 2-1/2 ft. to 6 ft. above street level. Mr. Powell questioned whether this language would eliminate fences in the front yard. Responding to Councilman Powell, Mr. Kiefer advised that the distance from the edge of the road to the right-of-way is 18 ft. Following discussion of the matter, it was the consensus of Council that there is adequate sight distance as long as fences are not placed in the right-of-way.

With regard to barbed-wire fences, Mr. Powell noted that he agrees with the Commission's recommendation that Section 1290.03(g)(3) and Section 1290.04(b) should reference one another for clarification purposes.

It was noted that the Planning and Zoning Commission also recommended the addition of "A vision-impairing fence" as Section 1290.04(c) relating to prohibited fence construction. Upon discussion, it was noted that Council members agreed with this recommendation.

Mr. Webbe moved to remove Ordinance No. 09-O-37 from the table, with the second by Mr. Davidson.
ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: BRETRAGER, DAVIDSON, KIREK, POWELL, SKRBIS, UMHOLTZ AND WEBBE. VOTING NAY: NONE).

Mr. Powell moved to amend Chapter 1290 Fences as follows:

Section 1290.02(a) shall read:

"Agricultural fence" means any of the permitted fences used to contain livestock and protect agricultural or nursery products. Examples of permitted agricultural fences are:

(1) Post and rail fence: A fence that consists of vertical posts and horizontal rails or split rail.

(2) Woven wire fence.

(3) Electric fence. An electrified fence whose controller meets the requirements of Underwriters Laboratories Standard UL69 Electric-Fence Controller and which is installed in accordance with the manufacturer's recommendations.

Section 1290.02(g) shall read:

"Ornamental fence" means a fence that is designed and constructed of conventional material commonly utilized for the construction of decorative fencing, consistent and in harmony with the other uses in the zoning district in which it is located to achieve beauty or decorative effect. Exotic and/or unusual fence materials and/or design, not normally found or customarily utilized in the district in which it is located are prohibited, subject to Section 1290.03(g). Examples of permitted ornamental fences are:

Subparagraphs (1) through (3) – no change.

Section 1290.02(i) Solid Living fence is eliminated.

OLD BUSINESS – ORDINANCE NO. 09-O-37 (continued):

Section 1290.02(j), now Section 1290.02(i) shall read:

Vision-Impairing fence: A fence that is located within the right-of-way.

Section 1290.03(a) shall read:

Privacy Fences. Privacy fences shall be permitted only in a side and rear yard, with a height not to exceed six feet six inches. Privacy fences must be erected no less than six inches from the common property line of an adjacent lot.

Section 1290.03(b) shall read:

Ornamental Fences. Ornamental fences shall be permitted as follows:

- (1) Front yard. Ornamental fences shall be permitted in a front yard with a height not to exceed four feet six inches, must be not less than six inches from the common property line of an adjacent lot and must be not closer than six inches to a street right-of-way line.
- (2) Side and Rear yard. Ornamental fences shall be permitted in a side and rear yard with a height not to exceed six feet six inches and must be not less than six inches from the common property line of an adjacent lot.

Section 1290.03(c) shall read:

Chain Link Fences. Chain link fences must be dark green or black in color, and must be vinyl-coated or painted, and shall be permitted only in a side and rear yard, with a height not to exceed six feet six inches, and must be not less than six inches from the common property line of an adjacent lot.

Section 1290.03(d) shall read:

Living Fences. Living fences shall be permitted in a front, side and rear yard and must be maintained not less than six inches from the common property line with an adjacent lot and must be maintained not less than six inches from a street right-of-way line. There is no height requirement for living fences.

Section 1290.03(e) shall read:

Solid Wall Fence. Solid wall fences shall be permitted as follows:

- (1) Front yard. Solid wall fences shall be permitted in a front yard with a height not to exceed four feet six inches and shall be constructed in a manner that will not interfere with the natural flow of water.
- (2) Side and Rear yard. Solid wall fences shall be permitted in a side and rear yard with a height not to exceed six feet six inches and shall be constructed in a manner that will not interfere with the natural flow of water.

Section 1290.03(g)(1) relating to privacy fences is eliminated; Section 1290.03(g) subparagraphs (1) through (4) shall read:

- (1) Any fence that exceeds six feet six inches in height, including but not limited to fences for recreational purposes, agricultural deer fences, and privacy fences where unusual topography creates the need for increased fence height to maintain privacy.
- (2) All non-residential fences or an agricultural fence in the front yard.
- (3) Any fence that uses barbed-wire, as outlined in Section 1290.04(b).
- (4) Any ornamental fence that utilizes exotic and/or unusual fence materials and/or design.

Section 1290.04(b) relating to electrified fences is eliminated.

OLD BUSINESS – ORDINANCE NO. 09-O-37 (continued):

Section 1290.04(c), now Section 1290.04(b) shall read:

No person shall erect or maintain within the City a barbed-wire fence. This section does not prevent the placement and use of not more than three strands of barbed wire on top of a fence, other than a barbed-wire fence, provided such strands are not less than seventy-two inches from the ground and are used for security purposes, upon approval of the Planning and Zoning Commission as outlined in Section 1290.03(g)(3).

Section 1290.04(c) is added, to read:

A vision-impairing fence.

The motion to amend as stated was seconded by Mr. Webbe. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: BRETTRAGER, DAVIDSON, KIREK, POWELL, SKRBIS, UMHOLTZ AND WEBBE. VOTING NAY: NONE).**

Mr. Webbe moved to waive the three readings, with the second by Mr. Davidson. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: BRETTRAGER, DAVIDSON, KIREK, POWELL, SKRBIS, UMHOLTZ AND WEBBE. VOTING NAY: NONE).** Mr. Webbe moved to adopt, as amended. Mr. Kirek provided the second. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: BRETTRAGER, DAVIDSON, KIREK, POWELL, SKRBIS, UMHOLTZ AND WEBBE. VOTING NAY: NONE).**

NEW BUSINESS:

RESOLUTION NO. 09-R-45
(Mayor Tyler)

- **A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR.**

Read by title only. Finance Director Martinet advised that the readings should be waived and the ordinance adopted at tonight's meeting to meet the deadline for submission to the County Auditor. Mr. Webbe moved to waive the three readings, with the second by Mr. Davidson. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: BRETTRAGER, DAVIDSON, KIREK, POWELL, SKRBIS, UMHOLTZ AND WEBBE. VOTING NAY: NONE).** Mr. Webbe moved to declare an emergency and adopt, with the second by Mr. Powell. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: BRETTRAGER, DAVIDSON, KIREK, POWELL, SKRBIS, UMHOLTZ AND WEBBE. VOTING NAY: NONE).**

* * * * *

CONTINUING CONCERNS:

None.

COUNCIL COMMENTS:

Councilman Davidson noted that he received a second inquiry with regard to shoveling of snow on sidewalks, in preparation for winter. Mr. Davidson inquired whether the City will maintain the status quo and not plow the sidewalks or whether it is possible for the City to clear the snow on the sidewalks once it reaches a specified depth. Mr. Davidson stated his concern for the safety of pedestrians, and he noted that the sidewalk was not installed by the resident of the property. Mayor Tyler advised that there is no funding in next year's budget for this purpose; he stated that the City will maintain the status quo, noting that the City will address situations individually on an emergency basis. However, the Mayor noted that it is the responsibility of the homeowner or business owner to clear the sidewalk.

Council President Umholtz thanked Councilman Powell for all of his work on the fence ordinance, noting that Mr. Powell has attended Planning and Zoning Commission meetings on a regular basis, and he committed a great deal of time and effort to the passage of this ordinance.

PUBLIC COMMENTS:

None.

ADJOURNMENT:

Mr. Brettrager moved to adjourn, with the second by Mr. Davidson. The motion of Council passed by unanimous vote. The time was 7:55 p.m.

President of Council

Clerk of Council