

## KIRTLAND CITY COUNCIL MINUTES

January 23, 2019

The meeting of Kirtland City Council was called to order at 7:01 p.m. by Council President Kevin Potter. Mr. Schulz led the prayer which followed the Pledge of Allegiance. The members of Council present were: David Kirek, John Lesnick, Richard Lowery, Kevin Potter, Matthew Schulz, Robert Skrbis and Joseph Smolic.

Administrative personnel present were: Mayor Douglas E. Davidson, Law Director Daniel Richards, City Engineer Philip Kiefer, Police Chief Lance Nosse, Fire Chief Anthony Hutton and Economic Development Manager Monica Drake.

### MINUTES OF THE JANUARY 7, 2019 WORK SESSION:

Mr. Kirek moved to waive the reading of the minutes, with the second by Mr. Lowery. The motion of Council passed by unanimous vote. Mr. Kirek moved to approve the Minutes, as presented, with the second by Mr. Lowery. **ROLL CALL: MOTION CARRIED 6/0/1 (VOTING YEA: KIREK, LESNICK, LOWERY, POTTER, SCHULZ, AND SKRBIS. VOTING NAY: NONE. ABSTAINING: SMOLIC).**

### MINUTES OF THE JANUARY 7, 2019 COUNCIL MEETING:

Mr. Kirek moved to waive the reading of the minutes, with the second by Mr. Lesnick. The motion of Council passed by unanimous vote. Mr. Kirek moved to approve the Minutes, as presented, with the second by Mr. Lesnick. **ROLL CALL: MOTION CARRIED 6/0/1 (VOTING YEA: KIREK, LESNICK, LOWERY, POTTER, SCHULZ, AND SKRBIS. VOTING NAY: NONE. ABSTAINING: SMOLIC).**

### DEPARTMENT REPORTS:

**Fire Chief Anthony Hutton** stated the Department has not been too busy. Chief Hutton stated he believes Kirtland has the best snow removal group in Lake County, which is evident around town.

The Chief stated there was one fire responded to in Willoughby. Otherwise there has been no activity regarding fires, but there is a good deal of flooding in the Eastlake area by the river.

**Police Chief Lance Nosse** reported everything is going well in the Police Department right now, and said he was open to any questions.

Councilman Lowery asked Chief Nosse if he had been getting any correspondence or had been putting citations out relating to the new off-street parking ordinance. Chief Nosse responded there was correspondence received concerning equipment located at the south end of town. Chief Nosse stated they respond to all correspondence received and that the citizen is given 10 business days to move it, cover it, or get in compliance with the ordinance. Chief Nosse reported so far all correspondences addressed have come into compliance or have removed the offending item, as requested. The most recent item has been a little difficult to deal with, and there have been 15 additional complaints from the same neighborhood. Chief Nosse stated one person was reported on, the situation was taken care of, the individual was spoken to, and now there are 10 more offenses in the same area. Chief Nosse stated he is trying to get the situation under control and taken care of in a neighborly fashion, and so far everyone has been complying with the requests.

**DEPARTMENT REPORTS (continued):**

Councilman Lesnick stated a few residents have spoken to him about problems with cars not slowing down or yielding to pedestrians as they are out for daily walks/runs in their neighborhoods. Mr. Lesnick asked if there was something that could be put out on the City website or social media, some sort of a reminder to watch out for pedestrians in residential areas. Chief Nosse stated he would work with the Mayor on getting something done, such as additional signage, as he's also received complaints. The Chief stated his Department has tried to curb the problem by increasing their presence in the neighborhoods.

Chief Nosse stated it's also a two-fold approach. The speed limit is 25 miles per hour in a residential neighborhood, and his Department has been actively enforcing this limit. Chief Nosse stated he would also like to point out to the residents that there are ordinances relating to walking in streets without sidewalks, one is to walk against traffic. The reason for this ordinance is to be able to see the vehicle and take evasive action in time to avoid injury. Chief Nosse stated he is more than willing to post information on social media.

Chief Nosse stated the speed trailer they borrow from a neighboring community helps a little and will be going back out in the spring. He reiterated the residents should follow the rules set for pedestrians as well, and hopefully there will be no situations. Chief Nosse stated signage could help; it has helped other neighborhoods. He said the biggest deterrent has been the residents themselves putting up signs that read "Drive as if your children play here." He closed by saying there are things the Department is working on, and he hopes everyone will slow down in the residential areas.

Fire Chief Hutton stated it also helps if the walkers dress in clothing that is reflective and not wear black clothing at night. If a driver cannot see a walker/runner, it causes an unsafe condition.

Chief Nosse restated he is more than happy to post something on the website and put reminders on social media as soon as tomorrow. Chief Nosse stated although he is limited on manpower, his Department has been working diligently on the problem.

Councilman Smolic asked if a speed trailer such as the smaller one in Willoughby Hills would help at all. Chief Nosse responded he believes the trailer his department is currently borrowing from Kirtland Hills has more of an awe-factor approach, due to its size. Chief Nosse did state the one thing he likes about the sign in Willoughby Hills is it flashes blue and red, but he is not impressed by the size as it is not as visible. Chief Nosse did mention that particular model is more cost effective.

Mr. Smolic asked if, in Ohio, the camera tickets are allowed. Chief Nosse responded the State allows use of photo enforcement as long as there is an officer present at the site and views the violation. Chief Nosse stated he's not sure he believes that's a path the City should be looking at, but it's an option.

Councilman Lowery stated he's been involved with the youth basketball at New Promise Church for the last four years, and he's noticed this year at some of the events there were two officers, and other occasions there was only one. Mr. Lowery asked Chief Nosse to explain how that is determined. Chief Nosse responded it is dependent on the situation. The church requests an officer work the sideline. Usually, if there are two officers, one is working in the area and has decided to stop by and check in. Chief Nosse confirmed the church requested the officer be present for the game, and most likely paid the officer a side job fee.

**Economic Development Manager Monica Drake** reminded everyone that the Strategic Planning kickoff meeting is scheduled February 6, 2019, from 6:00 to 9:00 p.m. It is being held at Lakeland Community College, in the Holden University Center. All are welcome, and it will be wonderful to see everyone there.

**DEPARTMENT REPORTS (continued):**

**City Engineer Philip Kiefer** had no formal report. Mr. Kiefer stated there were four bidders for the streambank stabilization, one of which had to be thrown out because it did not meet the EPA's design.

Concerning the bid that was thrown out, Mr. Kiefer stated the EPA wanted work done on the west side of the river, to cut the bank down to a more gradual slope to provide some additional flood plain area and do some plantings. Mr. Kiefer stated the language in the rejected bid specifically said they wanted to do a few plantings and spend more money on the east side.

In response to Council President Potter's questions concerning the project budget, Mr. Kiefer stated Lake County Stormwater provided additional funding to make the project viable. When asked if the County would be providing the funding for the vein installation, Mr. Kiefer responded affirmatively and went on to explain the funding for the project.

Mr. Kiefer stated the original budget was \$242,000.00, and there was no more money to be allocated. Mr. Kiefer continued to state when the bids came in, and the City realized the budget would not cover the project, the project was scaled back to meet budget. The City will be removing the guard rail, and bidders were advised if it comes in over budget the City will determine the best way to handle the situation at that time. Mr. Lesnick stated he had been concerned how the numbers had worked out, and now understands the situation a little better.

Councilman Schulz publicly thanked Mr. Kiefer and the Mayor for putting the funding package together, and finding the funds for the project, so that it is no cost to the City other than some in-kind work.

Mayor Davidson stated the yearly membership for Chagrin River Watershed Partners is \$2,800, noting that the City has received multiple times the value of that membership back.

Responding to Council President Potter regarding flooding from the melting snow, Mayor Davidson stated Mr. Shultz had been in contact with him, and there is possibly one spot on Route 306 south of Route 6 that there is still some water crossing the road, which may need more work; he noted there is discussion of putting a high-water sign there. The Mayor noted there was another time a high-water sign was placed on Route 6, just east of Route 306, which is also a difficult spot. Brief discussion ensued. Councilman Schulz stated the water was out to the centerline of the road near Bertha's Gallery and needs to be looked at; he noted it was pre- and post-construction.

Responding to Councilman Lowery, Mr. Kiefer confirmed the asphalt was redone on Booth Road on both sides of the bridge, however there was no asphalt put on the bridge due to the County's restrictions. Mr. Lowery stated the bridge needs repairs. Mr. Smolic questioned if the County would allow the City to patch the bridge, to which Mr. Kiefer responded he will contact the County. Mr. Schulz inquired if the bridge was programmed for replacement anytime soon, to which Mr. Kiefer stated it was not. Mr. Schulz stated the weight rating has been changed multiple times on the bridge.

Councilman Lesnick asked Mr. Kiefer to check when the Road Plan would be available in Excel format.

Responding to Mr. Lesnick, Mr. Kiefer stated there is no update for the Kirtland Recreation Park, and there is progress being made on the bid packages for Fox Hill. Mr. Kiefer stated the current bid package does not include the current problems with culverts in Fox Hill; that is something he plans to look into separately.

Noting that there are four roads on that bid, Mr. Smolic inquired about the culvert that was fixed last year on Raccoon Hill and if there is additional work or grading this year that has to be done. Mr. Kiefer stated there was remedial seeding and grading that was done.

**DEPARTMENT REPORTS (continued):**

**Law Director Daniel Richards** had no formal report but was open to answer any questions. Mr. Richards mentioned he would not be in attendance for the combined meeting later in the evening but had gone over the agenda. Mr. Richards stated he would be working closely with the Planning Commission and the Administration relative to the various items on the agenda.

Mr. Richards stated the sign ordinance legislation, or modification, is essentially driven by the court decisions made over the last several years, especially the United States Supreme Courts and Federal Districts, relative to content neutrality distinction between commercial speech, political speech, or religious speech, and how that affects the regulatory authority of communities to put sign restrictions that, in the past, were taken for granted. Mr. Richards stated he would be working with the Commission on that item and obtaining additional information from other similarly situated municipalities on what had been done that were current with the legislation and up-to-date.

Mr. Richards stated in terms of multi-family density in the historic town district, he would be looking at that agenda item again, but it would essentially be driven by the Planning Commission and the City Council's determination more so than a legal analysis.

Mr. Richards noted that economic development will be addressed by Ms. Drake.

Concerning the zoning process review, Mr. Richards stated he is aware there has been discussion relative to departure from the current referendum zoning mandated by the City Charter. Mr. Richards stated prior to that being put together, a survey should be taken to determine if there will be a significant amount of political opposition to a modification of the zoning referendum, which many seem to think is very important.

Mr. Richards referred to small cell wireless, stating it specifically has to do with the utilization of the municipal right-of-way. Mr. Richards stated he believes it is important to look at the regulations of the municipal right-of-way utilization by anyone, whether for utilities or others. For that reason, Mr. Richards stated he looked at the ordinance that is currently in place that had not been updated for many years. Mr. Richards stated a meeting was held within the past month with the City Engineer, the Service Administrator and the Council Clerk; and there was a productive discussion about the relationship between the small cell modifications, as well as an overall re-drafting of the right-of-way portions of the Code. Mr. Richards stated he will be working with the Planning Commission; although these are not necessarily Planning and Zoning issues, Mr. Richards believes they are intertwined with the concept of Planning and Zoning and it is important to have the participation and involvement of the Commission.

Mr. Richards stated if anyone has any questions or inquiries concerning these or any other issues, please e-mail him and he will be happy to respond.

Councilman Lesnick questioned Mr. Richards on the City's responsibility, if any, for failed culvert systems that back up and cause damage to the homeowners' property. Mr. Richards stated it is not a simple answer, noting that municipal government is not liable; it is immune under the immunity statutes, particularly with regard to the design and construction of such facilities. It becomes a problem when the City has engaged in what would be considered a proprietary, revenue-generating type of function. Mr. Richards used the example of sewers that residents would pay a sewer charge for, and in that situation, there would be restrictions to the maintenance and operation of the sewer only. Mr. Richards went on to say for each instance when a resident makes a complaint based upon the failure of a sewer, or problems created by a sewer, each incident has to be factually analyzed to determine if there is any municipal liability, noting that failure of a sewer doesn't necessarily mean the City is responsible. Municipal liabilities are generally handled by the insurance companies who are providing coverage to the City. Discussion ensued in this regard.

**MAYOR'S REPORT/ANNOUNCEMENTS:**

Mayor Davidson stated that he gave his comments in the Work Session.

Councilman Schulz questioned Mayor Davidson about the letter that was to be sent out to residents concerning testing of septic systems. Considering Lake County General Health District had decided not to further pursue funding for testing, Mr. Schulz inquired if the letter was still sent out. Mayor Davidson responded the letter was drafted by Mr. Kiefer and approved to go out; however, the residents who initially were tested had it done at the county's expense. Therefore, any further testing would be at the resident's expense since the County will no longer be funding any testing, as they are awaiting the State's final orders, which they will be enforcing at the county level as assigned. Therefore, the Mayor stated the letters would not be beneficial and were not sent to the residents.

Mr. Kiefer stated there was no word yet on the expected timeframe for the findings and orders.

Discussion ensued regarding the possibility of further testing and requiring residents to pay for the testing. Mr. Kiefer noted the cost is \$240 per parcel for the testing. Mayor Davidson stated that he is not sending the letter to residents requiring them to pay for their own testing; he noted that the County has turned the matter over to the Ohio EPA.

Mr. Lesnick requested to go on record as disagreeing with not sending the letter to the residents. Mr. Lesnick stated if the administration is not going to send the letter, then Council needs to take over and let the residents know where they stand and what's going to happen.

Responding to Mr. Smolic, Mayor Davidson stated he received his e-mail, though it was unclear. The Mayor noted the audit results from the State were excellent and the money is where it is supposed to be. Mr. Smolic stated it was pertaining to Arborhurst and Singlefoot, and whether it was supposed to go against the road levy. Mayor Davidson responded the Council asked for the projects to be put in that format so they could compare it to the use of outside contractors; any accounting questions more specific to that should be referred via e-mail to Mr. Martinet or his successor.

Councilman Skrbis questioned if there are cities that have culvert maintenance programs. Mayor Davidson responded that one of the considerations for the Service Director is a registration of culverts. He noted that Mr. Schulz has, over the last couple years, forwarded examples of that program, and it is a good time for implementation with a new service director coming. The culverts can be identified, with all their characteristics. Mr. Lowery stated his understanding that the City does not currently have a program, which Mr. Kiefer confirmed. Mr. Smolic stated he believes there are a few cities that do have similar programs, and they clear leaves, branches, etc., because they find preventative maintenance cheaper.

With regard to bridges, Mr. Schulz stated that the State of Ohio inspects all the bridges yearly, though Federal law requires bridges to be inspected every two years. There are legalities that define what is considered a bridge, the definition being anything 10 foot long and spanning. With regard to culverts, Mr. Schulz stated there are thousands in the three-county area. He noted there are two bridge inspectors that are hired as outside consultants; the rotation schedule for culverts, 10 feet and under, is a three-year or five-year inspection, and the people on the ground know which culverts have the issues. However, it is very expensive to clear those because it requires larger equipment, as it is dangerous to get in there for trees, logs, etc. and there is a chance of injury. It typically comes down to a labor issue, because there are only so many people kept on payroll due to the infrequency of these inspections. Mr. Smolic responded it would generally be, by way of maintenance, cleaning as opposed to repairs.

**STANDING COMMITTEE REPORTS:**

Council President Potter reported there was an Economic Development Committee meeting prior to the City Council meeting, relative to the February 6 Strategic Planning meeting. Mr. Potter repeated Ms. Drake's invitation to all to attend the February 6 meeting at the Holden University Center. The Committee is looking forward to feedback from everyone in the community, whether they are residents or members of the schools or businesses. Mr. Potter stated that questions can be addressed to him, Ms. Drake, or the Mayor.

Councilman Lowery reported that a Planning and Zoning Standing Committee meeting will be held after the Council Meeting on February 4, to finalize Ordinance No. 18-O-31 and get that ordinance in front of the Council and off the table, and to discuss architectural review and fees.

**CORRESPONDENCE:**

Council President Potter reported on the following:

Notice was received from the Ohio Ethics Commission, as a reminder of the annual filing; May 15 is the filing deadline this year for anyone who served anytime during 2018 or 2019.

**PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA:**

None.

**OLD BUSINESS:**

**ORDINANCE NO. 18-O-31** - (Tabled) - AN ORDINANCE ADOPTING CHAPTER 1468  
(Council President Potter) OF THE CODIFIED ORDINANCES OF THE CITY OF KIRTLAND RELATING TO ALTERNATIVE ENERGY.

The legislation remains tabled.

**NEW BUSINESS:**

**RESOLUTION NO. 19-R-2** - A RESOLUTION ACCEPTING THE PROPOSAL OF  
(Mayor Davidson) APPLIED ECOLOGICAL SERVICES FOR THE KIRTLAND EAST BRANCH CHAGRIN RIVER STREAMBANK STABILIZATION PROJECT, AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH APPLIED ECOLOGICAL SERVICES, AND DECLARING AN EMERGENCY.

Read by title only. Given that the selection was made by Committee and the funding of the project is not costing the City, except for removal of the guard rail, Mayor Davidson requested that the three readings be waived and passage of the resolution be considered tonight. Mr. Lowery moved to waive the three readings, with the second by Mr. Lesnick. **ROLL CALL: MOTION CARRIED 7/0 (VOTING YEA: SMOLIC, KIREK, LESNICK, LOWERY, POTTER, SCHULZ AND SKRBIS. VOTING NAY: NONE).** Mr. Lesnick moved to declare an emergency and adopt, with the second by Mr. Lowery. Mr. Schulz asked if the difference between the budgeted amount and the bid amount was available for cost overruns; Mr. Kiefer replied affirmatively. **ROLL CALL: ADOPTED 7/0 (VOTING YEA: SMOLIC, KIREK, LESNICK, LOWERY, POTTER, SCHULZ AND SKRBIS. VOTING NAY: NONE).**

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**CONTINUING CONCERNS:**

None.

**COUNCIL COMMENTS:**

None.

**PUBLIC COMMENTS:**

None.

**ADJOURNMENT:**

Mr. Lowery moved to adjourn, with the second by Mr. Smolic. The motion of Council passed by unanimous vote and the meeting adjourned at 8:02 p.m.

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President of Council

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Clerk of Council