

NEW PHILADELPHIA CITY COUNCIL MET IN REGULAR SESSION IN COUNCIL CHAMBERS ON SEPTEMBER 22ND, 2014 WITH PRESIDENT OF COUNCIL, SAM HITCHCOCK, PRESIDING.

MR. HITCHCOCK OFFERED A PRAYER AND ALL IN ATTENDANCE RECITED THE PLEDGE OF ALLEGIANCE.

COUNCIL PRESIDENT SAM HITCHCOCK WELCOMED EVERY ONE AND ANNOUNCED, "WE ARE PLEASED TO HAVE WITH US TONIGHT BOY SCOUT TROOP #181."
(A REQUIREMENT FOR A MERIT BADGE.)

COUNCIL MEMBERS IN ATTENDANCE:

MS. SANDY COX
MR. DAN LANZER
MR. DARRIN LAUTENSCHLEGER
MR. ROB MAURER
MRS. CHERYL RAMOS
MS. WINNIE WALKER
MR. JOHN ZUCAL

MS. COX MADE A MOTION TO ACCEPT TONIGHT'S AGENDA.
MR. LAUTENSCHLEGER SECONDED THE MOTION.

ROLL CALL 7 YEAS
MOTION PASSED

MR. LANZER MADE A MOTION TO APPROVE THE MINUTES FROM THE PREVIOUS REGULAR SESSION OF COUNCIL HELD ON MONDAY, SEPTEMBER 8TH, 2014.
MS. COX SECONDED THE MOTION.

ROLL CALL, 7 YEAS
MINUTES WERE APPROVED.

CORRESPONDENCE CLERK, PATRICIA A. MCKAY

1. Mayors Report to Council dated September 22nd, 2014
2. Salary Committee Meeting Minutes from September 8th , 2014
(Original, dated September 19, 2014 and *Revised* as of September 22nd, 2014)
3. August 2014 New Philadelphia Fire Department Month-End Summary dated September 12, 2014

ADMINISTRATIVE REPORTS:

MAYOR'S REPORT/REQUESTSMAYOR DAVID JOHNSON

The Mayor addressed the following:

SINCE OUR LAST MEETING:

1. The Mayor discussed the Gas Aggregation Program with Tom Bellish of Buckeye Energy Brokers, along with the Service Director and Ms. Fragasse, the Executive Assistant.
2. The Mayor met with the Salary Committee
3. The Mayor conducted a Planning Commission Meeting to discuss one item on the agenda regarding approval for a private drive.
4. The Mayor attended the Monthly Airport Commission Meeting.
5. Mayor Johnson met with O.D.O.T. Officials to discuss the West High Avenue Project.
6. The Mayor conducted the monthly Health Board Meeting.
7. The Mayor responded to a citizen complaints.
8. Mayor Johnson and Ms. Fragasse, the Executive Assistant, met with an insurance group.
9. The Mayor reported, Jim Zucal the Service Director, Amy Gilland the Assistant Service Director and the Mayor met with the Law Director Marvin Fete, concerning the Airport and other matters.
10. The Mayor's wife Nancy and the Mayor attended the kickoff for the "Parade of Homes" at the Arts Center.
11. The Mayor interviewed five candidates for the position of General Services Superintendent.
12. The Mayor attended the monthly CIC Meeting.

13. The Mayor represented the City at “Business after Hours” at Uncle Primo's.
14. The Mayor conducted a second round of interviews for the General Services Superintendent position.
15. The Service Director and the Mayor attended the monthly OMEGA Meeting at Atwood.
16. The Mayor met with Eric Hubbard and Ben Wigton regarding the Fixed Based Operator position at the Airport.
17. The Mayor represented the City at the Tuscarawas Valley Safety Council Meeting at Dutch Valley.
18. The Mayor held a meeting with Mr. Mike Brown about a possible savings on our Communication spending.
19. Mayor Johnson finalized the interviews. (Mr. Ray Grewell has been selected as our new General Services Superintendent) later this month the Mayor will be announcing the assistant.
20. Attended the Stark-Tuscarawas-Wayne (S-T-W) Policy Board Meeting in Bolivar.

- Mayor Johnson gave a report on Mondi Bag.
(Which use to be Great Plains and known as many other company names.)
 Mondi Bag is a Multinational Company; they have three other plants in Ohio, one in Mexico and several around the world including one in Africa.
 They only information Mondi North America has given us is what was in the newspaper.
 They announced it to the Atlanta Paper before they let their employees know or the City of New Philadelphia. Mayor Johnson told them that we have things at our finger tips that might help them, we have programs available. We were told “No”.
 This Company is coming off of one of their best years.
- I have had three of our Management Team that resigned in the last several months.
 All are waiting to find out if they can be paid their vacation time which is earned time.
 The hand book of 2007 states they do get that.
 “If I don’t hear any objections I’m going to ask the Auditor to pay those three people.”
- I would like to recommend passage of Ordinance 22-2014.

Comment from Councilperson Mrs. Ramos:

Your first item:

Gas Aggregation Program is that an Op-In or Op-Out?

Comment from the Mayor:

Op- in we are trying to get what is best for the citizens.

Comment from Councilperson Ms. Walker:

Isn’t our time up the end of October?

Comment from the Mayor:

That is probably when it is up.

We will have something in place before that.

SERVICE DIRECTOR.....MR. JAMES ZUCAL

The Service Director reported on the following:

Service Director reported:

- Continue to report on the West High Avenue Project.
 The Contractor did close for the Sixty Day Closure August 18th, 2014 and ODOT did do a press release on that.
 Police Chief and the Fire Chief have looked at the area.
 The Service Director reminded the traveling public on a regular basis to avoid the area.
 The Service Director reported we’ve only had a few complaints.
 It is progressing well.
 Contractor is gearing up and we hope they will have the portion of the project complete within the sixty days that they want, which is about 90% completion.
- Jim Martin, our temporary General Services Superintendent has done a very outstanding job for the City, for the Management Team and has led the group out at the garage very well.
- We do have a new General Services Superintendent. We are excited about the upcoming opportunities he will look to changing and his working with us.
- All the other departments (Water, Wastewater, Cemetery and Parks) are busy and very productive.
- The Service Director complimented the Parks and Cemetery Department, grass never slowed down, they do a very good job.

- Distributed a copy of the Purchase Agreement to Members of Council for the potential Fire Station and purchase of land.
The Service Director announced that Mr. Craig Barnett is with us this evening.
Ms. Cox did mention to Mr. Zucal the address on the addendum, the 142 address is missing.
Mr. Zucal said he will work with Craig to get that changed and initialed.
We will put everything in order.
Amy worked with the Mayor, looked at the maps, and checked out all the parcel numbers and All the numbers are accurate.
Mr. Zucal said he will make the one change and move forward.

Comment from Councilperson Ramos:

The buyer has to pay the closing cost, what do you estimate those to be?

Reply from Mr. Barnett:

The Law Director can do that.

Reply from the Law Director:

“I will be happy to do closing but I’m not licensed to do title insurance.”

Reply from Mr. Craig Barnett:

“The cost at the most would be \$1,500 to \$1,700.”

The Service Director informed Mrs. Ramos:

When we get to that point, he would be happy to sit down with Mrs. Ramos and discuss that.

Comment from Councilperson Ramos:

“Just trying to get a picture of the true cost.

The property is \$250,000.

How much do you estimate for tearing down the structure?”

You said there is an EPA Level I that means there is probably a Level II.

Comment from Fire Chief:

On Page 12 of the Phase I Environmental Site Assessment
5.0 Findings and Conclusions:

It states:

Based on the lack of recognized environmental conditions, the observations made during the site visit and a review of the reasonably available information obtained during the investigation, it is Diversified Engineering Inc. (DEI)’s recommendation is that a Phase II Environmental Site Assessment is not necessary at the present time.

Basically they did not find anything that would promote going to a Phase II.
Demolition of the Buildings, the Safety Director had an excellent idea with the Mayor and Service Director we do nothing with them at this time, but roll that into the construction phase.

The contractor for the building will be responsible for the site preparation.

Comment from Service Director:

We will have some time probably close to a year to get this in order, we will keep Council informed.

Comment from Councilperson John Zucal:

Given the very fair value of that property we have been asked to pay.

It is a nice generous offer the City has been provided for this land

And typically the cost wouldn’t be astronomical in that regard.

In the long run we are probably getting a much better deal than anything we looked at in the past. With standard closing costs the Law Director can help us.

We want the citizens of New Philadelphia to know we were able to find a prime piece of real estate that will meet our needs not for just now but into the future. I think we would be remiss in not taking advantage of the opportunity.

Comment from the Mayor:

The family came to me; they wanted to do something for the City they grew up in so that is why they made us this offer. “They are very generous people.”

AUDITORMS. BETH GUNDY

The Auditor reported she has two things to discuss:

1. There is an invoice and purchase order in front of you.

That’s there because it is a technicality to be in total compliance with what the State expects to see.

Asking Council to approve that payment tonight.

The invoice is dated before the purchase order and this is over \$3,000.

2. Income Tax Budget will need some adjustment in the personnel area because of retirements and that kind of thing so she will have that for a Finance Committee Meeting sometime soon. This is to remind other people, too, if you see your budgets need adjusted for the rest of the year please get with the Auditor. She will be calling everybody anyway.

Ms. Cox made the motion
 Mr. Zucal seconded the motion
 Roll call
 7-0 Motion passed

SAFETY DIRECTOR.....MR. GREG POPHAM

1. Last Friday was Captain Sheldon Demattio's last day as Police Captain for the New Philadelphia Police Department with over 35 years of service.
2. The Civil Service Commission has finished all their testing and certified all of the results.
3. There are twenty-eight applicants that are potential candidates for a police positions.
4. Tomorrow Brian Graham is retiring after thirty-five years they are having an Open House Between 12:30 PM and 4:00 PM tomorrow and are inviting everyone to stop by and see Brian on his last day after thirty-five years.
5. We will be making promotions soon in the Police Department.
 The Police Chief is on vacation and as soon as he gets back on September 29th, 2014 We will announce the winners of the testing and their promotion.

President Sam Hitchcock's thanked the Safety Director for handling the traffic inquiry, on the South Side.

TREASURERMR. AARON HILLYERNO REPORT
 PRESIDENT SAM HITCHCOCK ANNOUNCED THE TREASURER HAS AN EXCUSED ABSENCE FOR TONIGHT'S MEETING.

LAW DIRECTORMR. MARVIN FETE

The Law Director reported the following:

- September 16th and 18th 2014 the Law Director prosecuted in the New Philadelphia Municipal Court. (One of the prosecutors attended a CLE (Continuing Legal Education Seminar.)
- Met with the Mayor, Service Director, and the Assistant Service Director to discuss issues related to the Airport. Along with that he drafted a proposal for the Airport Commission on behalf of the Service Director which was the administration recommendation as to how we want to renegotiate our contract with the Fixed Base Operator.
- Conference with Ed Wilson discussing an issue between a lien and a shut off.
 The Policy in the Water Department if somebody is not paying their bill there are two options shut their water off or put a lien on the property.
 The problem is some apartment buildings might have three water lines for that apartment building two might be paying and one not.
 To shut one off you are shutting the other two off in compliance.
 in this case the Law Director authorized a lien to go against the property and not a shut off.
- The Law Director had a conference with Aaron Hixenbaugh, one of the people we are going to be losing to the City of Twinsburg.
- At the last meeting the Law Director was asked by Councilperson Zucal to make a recommendation in regards to 39-97.
 The Law Director has looked very carefully at 39-97 and looked at the information that was supplied to him by someone who is threatening to sue the City. (Saying the Ohio Revised Code over rides it.)
 The Law Director did research this and the conclusion was the Ohio Revised Code does not over ride 39-97. The Law Director would never recommend that we change policy because someone has threatened to sue us particularly when the facts do not support that.
 Over three fourth of the employees are able to cash in their Vacation Time.
 Looking over 39-97 the Law Director did not see anything in it that would mandate we keep it.
 It has only been modified one time by this Council that was when an Assistant Service Director was added and they modified 39-97 to include the Assistant Service Director. Other than that it has not been modified directly.
 The issue came up previously about raises and 39-97 guarantees a certain raise but they left an escape clause, unless modified by subsequent legislation. Subsequent legislation had that affect sometime there

was a raise and sometime there wasn't. In the Law Directors opinion each one after that modified it so therefore that portion of of 39-97 doesn't apply.

Law Directors recommendation is to repeal it. (Please request, if you should want the recommendation in writing)

The Law Director looked at the current handbook from 2007.

The Law Director recommend we repeal 39-97 allow and put in our legislation for non-bargaining employees the handbook shall be their contract. That is what is going to be the guide post with what follows.

Our new handbook it already says this will take the place of any subsequent legislation. So that is already going to override 39-97. (If you should need a copy of the handbook please request one.) 39-97 sets salary caps with various positions throughout the City but they are based on 1997 wages for what was paid at that time. Again it is only been revised one time and it is not a Codified Ordinance. If you want to pay someone that has done a good job for the City and has earned his vacation time you are going to have to do what you did for the Police Chief and do it on a case by case basis. If you start doing for some and not others you are looking at an Equal Protection Claim or Violation of Equal Protection under the laws according to the 14th and 5th Amendment.

Comment from Councilperson John Zucal:

Thank you for your input and the information you shared.

Two things come to mind and part of that are protections.

39-97 has more application toward non-bargaining than it does anyone else.

Their opportunities and what they do have in place potential gain is always protected as well as members of our unions under their negotiated agreements so I would always want to make sure that we as a Council we are very diligent in making sure that we don't pass any legislation that is negatively impacting them. I think we see the ramifications already with some of our non-bargaining members being able to find better employment outside of New Philadelphia, and that is always a loss for us.

The other thing I want to look at is how that will impact us down the road. With the handbook do we continue to update that on a more consistent annual basis; to reflect what is transpiring within Council.

It is a lot of food for thought.

Comment from the Law Director:

39-97 sets salaries but the handbook does not it says what you are entitled to when you retire or leave a position. It kind of infringes on the administration ability to hire and fire. To put in those positions people they feel deserve it or be able to discipline accordingly.

I think the intention of 39-97 was to set some guidelines for the non-bargaining. It was never followed up on. It probably should have been codified so it would be on everybody's radar.

Comment from Councilperson John Zucal:

We are not talking about vacation time because it is still in place.

Ask if there was anything on the books that prohibits Mr. Hixenbaugh from receiving his vacation time?

The Law director answered:

39-97 prohibits it.

Comment from Councilperson John Zucal:

It would prohibit by the nature of it.

We will have to do like we did before is what you are saying

The Law Director answered:

Do it on a case by case basis and pass Special Legislation if you want Mr. Hixenbaugh to collect his money.

I can't tell Council that it is okay or the Mayor when there is something on the books that prohibits it.

I'm recommending we repeal that part of it or do it on a case by case basis and decide what you want to do with that.

Comment from Councilperson John Zucal:

We can repeal portion of 39-97 to be compliant with the law. So they are able to receive compensation for their unused vacation time.

Comment from Auditor:

I can't do anything because the existing handbook does not say it supersedes all other legislation the vacation time can't be paid and the ordinance exists that prohibits it.

The Law Director:

The new handbook says it supersedes.

1997 this Council decided it did not want to pay vacation time

That portion is going to have to be repealed, as it is the Law Director cannot tell Council that it is okay or the Mayor when there is something on the books that prohibits it.

the Law Director is recommending we repeal that part of it or do it on a case by case basis and decide what you want to do with that.

The Law Director:

You would have to have an Ordinance to repeal 39-97 or a portion of 39-97.

The Mayor and the Law Director requested:

Council President Sam Hitchcock put 39-97 in Committee to be acted on.

- The Law Director reported:

He began the Recording Process for Oak Shadows Phase V.

The Law Director takes the Final Plat to the Map Office at the County and to various offices for recording.

BOARD/COMMISSION REPORTS:

PLANNING COMMISSION.....MAYOR DAVID JOHNSON

Mayor Johnson announced the Planning Commission Meeting is set tentatively for Tuesday October 14th, 2014 at 1:00 PM in Council Chambers. We have no matters at this time.

BOARD OF ZONING APPEALS.....MR. JAMES ZUCAL

Mr. James Zucal announced providing there is an agenda; the Board of Zoning Appeals will meet Tuesday October 14th, 2014 at 5:00 PM in Council Chambers.

AIRPORT COMMISSION.....MR. JOHN ZUCAL

Mr. Zucal updated Council and Guests.

“In regard to the recent work at the Airport Commission the negotiations taking place with Fixed Base Operator.

After a long and lengthy discussion at different levels and different times, one of the things we came to consensus is that right now, any situation that involves a Fixed Base Operator:

Negotiation, that new contract, some of the issues Mr. Hubbard has he would like to see addressed, some of the issues the City has that they would like to see addressed, really require not any action at this time on the part of Council.

We truly believe it is an administrative function of our leadership and they are best served in their capacity to be able to deal with that situation. We encourage Mr. Hubbard to set down with the Mayor the Service Director and those directly involved to try to talk with them about some of the issues he has. Some of the concerns they have. I think Mr. Farbizo has made the recommendation to the administration on behalf of the Airport Commission that they continue to do the same.

Our hope is that we can moderate positions and come to an agreement where both sides can be happy with what transpires, if not we will have to move forward and be proactive in our search for a new Fixed Base Operator.

Right now the recommendation of the Airport Commission is any negotiation process not involve Council directly, since we are just a legislative arm of it, but rather be best served by the work of administration.”

PARK BOARD.....MR. DARRIN LAUTENSCHLEGER....NO REPORT

HEALTH BOARD..... MS. SANDY COX

Ms. Cox announced that the next scheduled meeting for the Health Board is Wednesday, October 8th, 2014 at 12:00 (Noon) at the Health Department.

STANDING COMMITTEE REPORTS:

FINANCE COMMITTEEMS. SANDY COX....NO REPORT

SALARY COMMITTEEMR. JOHN ZUCAL

Mr. Zucal announced that you do have the Revised Salary Committee Meeting Minutes from September 8th, 2014 in front of you.

And a reminder, we will be looking to suspend the rules and pass on first reading tonight ordinance 22-2014 (To expedite the payment, we have agreed upon, for the purchase agreement for the potential property for a new fire station.)

President of Council Sam Hitchcock Assigned the Law Director's request in regard to 39-97 to the Salary Committee.

SAFETY HEALTH & SERVICE COMMITTEE.....MR. ROB MAURER....NO REPORT

PUBLIC WORKS & ECONOMIC DEVELOPMENT COMMITTEE ...MR. DARRIN LAUTENSCHLEGER....NO REPORT

ZONING & ANNEXATION COMMITTEEMRS. CHERYL RAMOS....NO REPORT

SPECIAL & CONTACT COMMITTEE MR. DAN LANZER....NO REPORT

PARKS & CEMETERY COMMITTEEMS. WINNIE WALKER....NO REPORT

VISITOR'S COMMENTS:

NONE:

READING OF ORDINANCES AND RESOLUTIONS

ORDINANCES:

18-2014 AN ORDINANCE TO APPROVE, ADOPT AND ENACT THE CURRENT REPLACEMENT PAGES TO THE CODIFIED ORDINANCES AND DECLARING AN EMERGENCY. (3rd READING)

Motion to vote on passage by Mr. Lanzer

Seconded by Ms. Walker

Roll call, 7 yeas

Ordinance 18-2014 has been passed

22-2014 AN ORDINANCE BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO, TO APPROVE AN AGREEMENT BETWEEN THE CITY OF NEW PHILADELPHIA AND SUSAN E. GROVER FOR THE PURCHASE OF REAL ESTATE FOR THE PURPOSE OF CONSTRUCTING A NEW FIRE STATION AND AUTHORIZATION TO BEGIN MAKING PAYMENTS ON THE SAME, AND DECLARING AN EMERGENCY. (1st READING)

Motion to suspend the rules made by Mr. Zucal

Seconded by Mr. Lanzer

Roll call, 6 yeas, 1 nay (Mrs. Ramos)

Suspension of the rules has passed for Ordinance 22-2014

Motion to vote on passage by Mr. Zucal

(As long as we correct the addendum #6 and add 142 to it)

Seconded by Ms. Cox

Roll call, 6 yeas, 1 nay (Mrs. Ramos)

Ordinance 22-2014 has been passed

RESOLUTIONS:

27-2014 A RESOLUTION BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO FOR SUPPORTING THE DEVELOPMENT OF NP2R TRAIL. (2nd READING)

28-2014 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 AND DECLARING AN EMERGENCY. (2nd READING)

29-2014 A RESOLUTION BY THE COUNCIL OF THE CITY ON NEW PHILADELPHIA, OHIO TO COMMEND JUDITH BAKER FOR HER 21 YEARS OF SERVICE AND DEDICATION TO THE CITY OF NEW PHILADELPHIA AS A DATA PROCESSING CLERK IN THE CITY'S INCOME TAX DEPARTMENT. (1st READING)

30-2014

A RESOLUTION BY THE COUNCIL OF THE CITY ON NEW PHILADELPHIA, OHIO TO
COMMEND EUGENE H. NEMITZ FOR HIS 30+ YEARS OF SERVICE AND DEDICATION
TO THE CITY OF NEW PHILADELPHIA AS BOTH A PROSECUTOR AND AN ASSISTANT
PROSECUTOR. (1st READING)

UNFINISHED OR OLD BUSINESS:

NONE

NEW BUSINESS:

Comments from Mayor Johnson:

The Mayor thanked Council for moving New Philadelphia into the future.
This Fire Station has been going on for 10 to 15 years and we have taken the first step to
correct something that is very dangerous.

The Mayor announced that he will not be at Council for both Council Meetings in the Month of
October 2014.

The Mayor is on vacation for the first meeting and he was told that that he needs to attend the
Dover/ New Philadelphia Banquet for the second meeting.

Please excuse him the Service Director will give the Mayor's Report and answer any questions.

Comments from Councilperson John Zucal:

Councilperson John Zucal reported on the potential of the new Fire Station.

Some of you may or may not have caught some of the local news. The number of fireman whose
lives are at risk not because of boots on the ground fighting fires, they have an abnormally high
instant rate of death from cancer. A lot of it is because of the toxic fumes they inhale.

Any time the body temperature increases by five degrees those impacting there ability to contract
many of those issues that lead to cancer.

He had the opportunity to spend some time with the Chief, our Fire Department and those from
around the area learning more about the issues of carbon monoxide and what that can do to people.

The Chief and Mr. Zucal brainstormed about following:

There is a potential with the new location to be able to provide education and training grounds for
our Fireman and those around the area where we can potentially subcontract out, hold classes to
help pay for things that allow them to help take better care of themselves and therefore reducing the
mortality rate among them at a very young age.

There is a ton of potential opportunities and I am thankful for those who did support that this
evening.

Comment from President Sam Hitchcock:

Mr. Hitchcock thanked Mr. Zucal for his time that he spent on this.

(Actually in two different Committees.)

I'm sure you are pleased with this next step we are moving into for the potential Fire Station.

The President congratulated Mr. Zucal and his work and also the Fire Chief, Jim Parrish,
for all the time, and effort, he has put into this study.

MS.COX MADE A MOTION TO ADJOURN THE MEETING AT 8:16 PM.

CLERK OF COUNCIL _____

APPROVED _____

PRESIDENT OF COUNCIL _____