

Canal Winchester

*Town Hall
10 North High Street
Canal Winchester, OH 43110*



Meeting Minutes - FINAL

May 2, 2022

6:00 PM

Council Work Session

*Bob Clark - Chair
Laurie Amick
Jill Amos
Chuck Milliken
Patrick Shea
Mike Walker
Ashley Ward*

- A. Call To Order** *Clark called the meeting to order at 6:00 P.M.*
- B. Roll Call** *Present 7 – Amick, Amos, Clark, Milliken, Shea, Walker, Ward*

C. Also In Attendance
Mayor Ebert, Matt Peoples, Lucas Haire, Amanda Jackson

D. Request for Council Action

RES-22-013

Finance

A RESOLUTION APPROVING THE DISTRIBUTION OF BED TAX GRANT FUNDS TO THE CANAL WINCHESTER LABOR DAY FESTIVAL COMMITTEE

- Request to move to full Council

Jackson – This is a resolution that was put together at the direction of Council based on discussion at your last meeting. There is an ordinance that goes along with this also on your agenda this evening to actually appropriate the \$30,000 that Council has chosen to give to the Labor Day Committee. Again, this was done based on the conversations that you had and your willingness to give Labor Day Committee some money this year.

Ward – I was approached by a few citizens after our last meeting who had questions. One of the questions was they seem to recall that the Weiser's gave \$100,000 a couple years ago for the 100th Anniversary.

Jackson – Before you get too far into that, any questions you have related to Labor Day Committee, you're going to have to direct at the Labor Day Committee. It is a completely separate organization from the city so I have nothing to do with it.

Clark – Would you be willing to speak to that? (speaking to Mrs. Ebert)

Ward – I do have questions if you're willing to answer. This was a couple years ago, they said \$100,000 was donated for the 100th Anniversary and they were wondering where that went. I'm wondering if that's accurate.

Clark – We can submit questions to the committee and they'll get back to us then.

Ward – I did have another question. There were several people who donated in the past who said they weren't approached this year so just wondering what kind of efforts we've gone through this year for fundraising. I do want to note that I'm very for the Labor Day and making it great but some citizens did ask me questions.

Mrs. Ebert – There is a letter that we are sending out, as far as I know because everybody approaches their own people that have sponsored in the past so those that have asked different organizations or different individuals to sponsor, far as I was aware, those have been approached. We've also constructed a letter to send out basically to all businesses in the community to give them the different levels of sponsorship that they can select if they so choose.

Ward – If I'm understanding correctly, the previous donors have been approached and you're working in a letter to send out to the businesses?

Mrs. Ebert – Several of the donors that we have approached that have previously been our key sponsors have indicated that their finances does not allow them to do so this year, our larger sponsors.

A motion was made by Shea, seconded by Milliken to move RES-22-013 to full Council. The motion carried with the following vote:

Yes 7 – Shea, Milliken, Walker, Ward, Amick, Amos, Clark

RES-22-014
Development

A RESOLUTION AUTHORIZING THE CITY OF CANAL WINCHESTER TO ISSUE EVERSTREAM SOLUTIONS, LLC A TELECOMMUNICATIONS AND ULTILITY PERMIT TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM OR UTILITY WITHIN THE PUBLIC RIGHT-OF-WAYS WITHIN THE CITY OF CANAL WINCHESTER.

- Request to move to full Council

Haire – Everstream Solutions is a telecommunications company operating fiber optic communications. They would be a new provider in the City of Canal Winchester. They don't currently have any infrastructure here. It's my understanding that they have signed Meijer stores as their customer so what they're proposing is connecting from a cell tower to the Meijer store. That's the route you see in your packet there along Kings Crossing and down Basil Western Road but they are an entity that's expanding in the Columbus market and they would like to have more service in the city. What this does is we have permitting requirements to allow them to operate within out right-of-ways and there are certain requirements in that regards in terms of they have to cooperate, they need to get permits every time that they're working within the right-of-ways with being inspected. We have record plans of where those utilities are so that we have needs to move them in the future to move their utilities, they're required to do that at their sole cost. So, it just allows us to keep track of whose working in the right-of-ways. I'd be happy to answer any questions you have about this application or this resolution.

Amick – I was just curious what the estimated time frame for completion is? I read through the Fishel and the Everstream documentation and all it said is that they needed to notify us if they were running behind schedule. Do you know how long that project is anticipated to last?

Haire – I don't specifically know that. They'll file an actual permit application as well, as part of once they're granted this authority to work on the right-of-ways then they have to actually file a permit and they'll have those specific details in there. This is unrelated to the cut in Diley Road, that's not part of their project. That's been there since like November of last year, that's an AT&T project.

A motion was made by Amick, seconded by Amos to move RES-22-014 to full Council. The motion carried with the following vote:

Yes 7 – Amick, Amos, Clark, Milliken, Shea, Walker, Ward

ORD-22-016
Development

AN ORDINANCE TO REPEAL ORDINANCE 21-054 AND TO AMEND THE ZONING MAP OF THE CITY OF CANAL WINCHESTER, REZONING APPROXIMATELY 70.625 ACRES OF THE EXISTING TRACTS OF LAND OWNED

BY TERESA L. AND DALE C. SCHACHT, NORMA JEANNE SCHACHT TRUST, THE STATE OF OHIO, AND NP CANAL WINCHESTER LLC, LOCATED ON BIXBY ROAD AND RAGER ROAD FROM EU – EXCEPTIONAL USE TO PID – PLANNED INDUSTRIAL DISTRICT AND DECLARING AN EMERGENCY

- Request to move to full Council

Amos – I think the request is for it to remain tabled while we continue our conversations and that was kind of the conversation that took place with the developer as well.

A motion was made by Amos, seconded by Ward to table ORD-22-016. The motion carried with the following vote:

Yes 7 – Amos, Ward, Amick, Clark, Milliken, Shea, Walker

ORD-22-017

Finance

AN ORDINANCE TO AMEND THE 2022 APPROPRIATION ORDINANCE #21-053, AMENDMENT #3

- Request to move to full Council

Jackson – As I mentioned just a couple minutes ago, this goes right along with that resolution. This is actually appropriating the money that Council has generously decided to give to the Labor Day Committee this year.

Amick – Mr. Shea in the minutes from that meeting, I believe you took an action item to reach out to someone on the board at the Ohio Historical Society to see if because it’s our 100th Anniversary, maybe they would pitch in something. I don’t know if you’ve had a chance to do that yet.

Shea – I have not.

Amick – Do you still intend to do that?

Shea – Yes.

A motion was made by Amick, seconded by Milliken to move ORD-22-017 to full Council. The motion carried with the following vote:

Yes 7 – Amick, Milliken, Shea, Walker, Ward, Amos, Clark

ORD-22-018

Development

AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO AN AGREEMENT FOR BUILDING DEPARTMENT SERVICES WITH DYNASTY INSPECTIONS, LLC FOR THE PROVISION OF BUILDING INSPECTIONS AND RESIDENTIAL BUILDING OFFICIAL SERVICES.

- Request to move to full Council

Haire – This would allow us to enter into agreement with Dynasty Inspection Services for the next three years to provide building inspection and residential building official services. They have provided those services to the city since 2015 and so we would like to continue to have them serve. There are no changes in the contract including the rates have remained the same with this contract. Unless there are any questions, I don’t have anything else to add.

Clark – How much do we pay for like a year or so worth of work for this guy?

Haire – It varies on month to month depending on what projects we have going on, what inspections we have going on but generally it's around \$6,000 a month.

Milliken – When you say the rates haven't changed, is that from the previous contractors from 2015?

Haire – Correct. For this particular one, it's since the last contract. The last contract it went from \$50 per hour to \$55 and so it's the same rate and then I think each service or the residential building official went up \$5 an hour. Well, in the last contract, but the rest of those are unchanged.

Shea – Who is the contract holder prior to this?

Haire – Prior to that, I don't recall the name of his firm but it's Leonard Lewis.

Shea – Is that the one everybody complained about?

Haire – I didn't receive a significant amount of complaints.

Shea – I just heard from builders over the years that one of the inspection services we have used, this has been a couple years ago but they were difficult to work with.

Haire – Prior to 2015, we had in house inspections as well so we had staff members that were residential building inspectors only they didn't do commercial or electrical, only residential.

Shea – So, it's not the same people from back then?

Haire – Correct.

A motion was made by Ward, seconded by Amos to move ORD-22-018 to full Council. The motion carried with the following vote:

Yes 7 – Ward, Amos, Clark, Milliken, Shea, Walker, Amick

ORD-22-019
Development

AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO AN AGREEMENT FOR BUILDING DEPARTMENT SERVICES WITH ARCHITECTURE! OHIO INCORPORATED FOR THE PROVISION OF CHIEF BUILDING OFFICIAL AND MASTER PLANS EXAMINER SERVICES.

- Request to move to full Council

Haire – This is the second part of that agreement to be a certified building department and to review commercial plans. You have to have a master plans examiner who has to be an architect or an engineer in the state of Ohio to be able to perform those services. We have a contract with Architecture Ohio. We've been in contract with them since 2015 to provide both master plans, examiner services and chief building official services. We would like to continue that relationship for another three years. There is an increase in

this contract amount of \$10 an hour for the chief building official services and \$5 an hour for master plans examiner services. Everything else remains unchanged in the contract there. So, I would be happy to answer any questions that you have.

Clark – I'll start out with the same question. What are we running a month cost for this person?

Haire – This one is much less than that. So, I would say this one generally runs us in the range of \$2,000 to \$3,000 a month but again it's all project based and depending on complexities of project, how much review time those take.

Clark – Reason why I was asking those is just to see if it makes sense to look, you know going someone in house versus out.

Haire – This is a position that is very difficult to fill. There's very few people qualified to provide this service in Central Ohio. Many municipalities contract out master plans examiner services so like the gentlemen who does our contract, Mike Barreca also contracts with the City of New Albany, City of Dublin and Grandview Heights. So, those are his other clients, he'll sometimes do special services for complex projects even for municipalities that have their own plans examiner just if they're not comfortable because they don't see enough of a specific type of project, they'll do that. In my opinion, he's one of the most qualified people in the state of Ohio to provide this service and we're happy to have him providing it for Canal Winchester.

A motion was made by Amos, seconded by Amick to move ORD-22-019 to full Council. The motion carried with the following vote:

Yes 7 – Amos, Amick, Clark, Milliken, Shea, Walker, Ward

E. Old/New Business

OTH-22-006

Comprehensive Plan Steering Committee

Haire – This is an item I wanted to list. I sent out an email, a note to all. We did enter into contract on Friday with McKenna to perform the comprehensive plan. The next step is to form the Steering Committee and so in meeting with McKenna they'd ask that we kind of keep that Steering Committee between 15 to 20 individuals to keep it manageable and to really try to get people that are engaged and will be present and participate in the process. They made a recommendation on some groups and organizations and some homeowners associations to fill out those to try to get broad representation of the city. I sent that out to you all of the lists of kind of 15 different organizations. We have reached out to many of those organizations and ask them to appoint members to serve on that committee at their next board meetings. Many of those, I think all the homeowners associations have now appointed someone of the floor that were requested and then we've asked many other groups, Chambers of Commerce, The Downtown Merchants Association, The Historical Society at their next board meetings to have someone appointed. I think they're working through those depending on where that falls on their schedule to get those folks appointed. I wanted to see what Council thoughts were on those lists, if it needs to be expanded and how that should be done. There's also a recommendation that Council either have a Council member appointed to that Steering Committee or they appoint someone. So, wanted to talk about who that should be as well.

Amick – Some of you may have seen a note from me about since the recommendation from McKenna is 15 to 20 people and we've got organizations sort of already identified that we consider a five community member at large. I'd just like to hear your thoughts on that. My hope would be that would get new people involved in community organizations so their voice can also be heard. Then ultimately, have a little bit of an ulterior motive and that I would hope that they would start joining some of these organizations that are laid out on the list. I thought through a little bit about what that process would look like and I thought, you know, there's a simple interest form and someone could fill out an interest form and make sure that they understand the commitment of time that they would be asked to fulfill over the ten to twelve months. Essentially to be fair, you put those in a hat and you simply draw from the hat and those would be our 5 community members at large.

Milliken – In order to respond to that, I need to ask Lucas, was destination added to the list officially and where they reached out to.

Haire – They were added to the list. I'm not sure if Andrew has reached out directly

Milliken – So that would take it down from five to four at large?

Amick – I think that's okay.

Milliken – Like I said, my initial concern with the at large is, you know, kind of overloading the committee but reconsidering if you're already at 16, what's another four, right?

Amick – I am guessing that McKenna would have said 15 to 20 because that's been their experience.

Amos – I think to your point Laurie, bringing in the at large people who are not necessarily involved in anything, their opinion is going to vary quite differently than those who are well invested in the city's different groups so I think it's important. I like the random draw, the big thing for me would be just making sure that we're very crystal clear on the commitment for this. As you pointed out, this is not a small schedule that goes with it.

Milliken – If everybody is okay with adding the four at large, if there's no objections of that, we need to determine a Council member or Council representative out of this. Is that correct, Lucas?

Haire – Yes.

Amos – I nominate Laurie.

Ward – I'll second that.

Clark – I'll third it.

Shea – Fourth.

Milliken – Do you accept that?

Amick – I do.

OTH-22-007

Park Rules Update

Peoples – We just did the process of looking at our park rules. I think we did it in 2013 but I guess the way it's done, I'm not really sure why we did it. It's actually no offense but it's dictated by Council. It makes it very hard to change anything without going for legislation. This is really the only thing that we could think of from as rule standpoint that is dictated by Council rather than administratively. I guess one of the things that we would like to do is pull that back out of there to make this more of an administrative process but as we're looking at this, we're gearing up for a couple things. First of all, with looking at DORA right now, we have it in the park rules that there's no alcohol. Obviously we would need to change that so being able to be a little bit more flexible with some of these. We have McGill Park coming on online, there might be some specific things looking forward a little bit more into if we have an event center at McGill Park, some sections of the park would be alcohol allowed with the way the event center was planned like a wedding reception. Just making that a little bit more flexible. We've got a couple things we would like to review for that so we're not quite ready to bring any changes like that to Council. There's some provisions in there that go in with the code for as far as enforcement action, misdemeanors if they're breaking rules, kicking them out, that type of thing. We want to make sure that those are still kept enforceable in the code so if we do have someone who's causing a problem in our parks were able to get that person basically trespassed if it goes far enough along. Park hours, same thing. Park hours are set from dusk to dawn. Looking on we have a review meeting this week for the McGill Park, the next phase that we're looking at we don't know what we'll stick with but it is baseball fields so we're talking about lighting baseball fields so those are the type of things that would be a little bit more flexible with changing those. We wouldn't want Hanner's Park to be something that's past dusk but allow McGill Park so again just a little bit more flexibility with that and being able to do some changes administratively.

Amick – Did you have an opportunity to review some of the park rules from other communities and see a comparison? Are we on par with other communities?

Peoples – We are on par. When we did it last time in 2013, we did look around at other parks. It is all over the place. We do have some stuff in there on our existing rules that are about ponds and that type of thing while we do have Howe Pond Park on Howe Parkway so some of that doesn't really apply to our other park rules. We get the main rules, I mean we have no fighting on there, I mean it's kind of a given with those types of things but I'm just trying to figure out how we would do that with the way the code is.

Amos – If I understand correctly, you're hoping to take the park rules in-house, be able to modify them in-house versus bringing them all to Council? Do you want our input on them at all?

Peoples – Yeah, I mean there's some things we will include with the existing ordinance and it has that list that's actually in the codified ordinances right now so we'll include that list in there. I don't see us making a whole lot of changes, it just being able to do those tweaks as needed if something comes up that's unforeseen. If we have to find a rule, for example the pool. The pool rules are not part of Council at this point so it would be treated the same way.

Amos – Which was beneficial last year, we had to change them.

Peoples – I mean it could take up to 75 days or so if we're doing 3 readings in 30 days, that type of thing

without any emergencies or waiving of reading, it can be a cumbersome process if we're talking about something that might come up right away.

Amos – I just wanted to update Council. Thank you to Mr. Haire and the Mayor, we have it in Mr. Boggs hands as well. The DORA should be on the May 16th agenda so it's written. Mr. Haire threw in lots of extra stuff for us, which was awesome. So we should see that on May 16th for our first read so you understand how it goes, it will go for three reads, we will publicize in the newspaper back to back two weeks in a row, giving the opportunity for public to come in and talk with us on the two different occasions. After that we will put it through on the third read which will fall into about 44 to 45 days and then from there we have about 15 to 20 days. We have a total of 60 days from the day that we started to get it to the state and then we're done. So, hopefully we'll cross our fingers we should be in time for some of The Music and Art in the Park.

Clark – Do we want to use this time to talk about the fence issue on Trine?

Milliken – For the newer Council members, I emailed everyone the minutes from the last time that we discussed this. I think from here we just maybe open up the floor if any of the members have questions. I guess this would be kind of a Mr. Boggs area. Where we left it last time, Council chose not to take up the issue. We can choose to do that again or if we do choose to take up the issue we would have to adopt an ordinance and we would go through that process so we're clear on what the process looks like.

Shea – Mr. Boggs help me understand what a right-of way is and why it's so important.

Boggs – Right-of-way is land in this case that is owned by the city, meaning that the city holds legal title to it and the right of use to it. That is held in trust for the benefit of the public to be able to travel and to be able to run utility services, those are the primary uses of right-of-way. It is a valuable asset of not only this city but cities in general having the ability to widen streets, maintain streets, provide pedestrian thoroughfares and provide space for utility infrastructure running in that right-of-way. Now by the state law, there are certain users of right-of-way that have to be given priority such as the electric company. That's why many of their polls run in the right-of-way. So, hopefully that answers at least your question of what the right-of-way is and why it is important because once the city relinquishes control of that, particularly if it were to transfer title, then it's gone forever without having to then reacquire it. There are lesser interests that could be transferred in terms of granting, licenses to use the right-of-way or permits to use the right-of-way, but perhaps that goes beyond the scope of your question, so I'll stop there.

Amick – If I understand through all of the documentation that someone researched this back to the 1800's and could not find clear documentation as to excitedly where that right-of-way is. Is that correct?

Boggs – I am not sure that is totally correct. There is Platt from the 1800's that dedicates that right-of-way. I believe it was Mr. Moore who did that research or at least part of it. I wouldn't want to speak out of term for him.

Clark – I've got a question I think maybe to Mr. Peoples and it might be unfair if we could research it. I know the fence that is there in the backyard but how far down does the right-of-way go to Columbus Street? Is it the fence line that continues all the way down or is that private property? We would only be getting like this little box of the fence. I guess my question is, that street is going to become more and

more busy now that we have the city building, there's more business there, out town is growing, possibly going to need three lanes, one to turn right, turn left and continue the other way. If we lose the right to do that in the future or is that not the case?

Peoples – While we would have the room at Columbus Street to have three lanes maybe. I don't think we have it up at Waterloo Street just because the house on Waterloo Street is in a different position than the house on Columbus Street so there's a completely different right-of-way.

Clark – You could still do it on the one intersection, right? If we had access to that lane.

Peoples – From a width standpoint it shows roughly 46 feet. You'd probably get 33 feet of street with 11 foot lanes. It's a little bit smaller lanes but typical is usually 12 foot lanes but then that's without including sidewalk. 36 feet you have two 5 foot sidewalks, no tree lawn then nothing behind the sidewalk. Can it? Yeah but it gets to be very tight.

Ward – How close to the house would that be?

Peoples – I wouldn't be able to see that just because of the aerial photo is going to have a skew on it. I measure right-of-way lines right now, if I try to measure the house it might be a little bit skewed just based on the aerial photo.

Ward – Would an estimate be like 10 feet, less than 10 feet?

Peoples – I guess that would be a question for Mr. Demkowicz.

Demkowicz – You got four power poles on the other side of the street. I don't think you're going to be able to move that because if you move them anywhere you're going to move them in front of one of my neighbor's house about 5 feet from his home. We're not asking to have the right-of-way, that's not the whole point of the discussion. I'm working with Andrew Moore and he has been very helpful, I will say that. This request was approved by landmarks with a minor modification and style. It was forwarded to Planning and Zoning with a recommendation for approval. Planning and Zoning wouldn't act on it or couldn't act on it because of the five foot right-of-way. Mr. Moore advised me that it was your decision whether you would allow us to put the fence to replace the fence at the existing fence that's there. We're not asking for the right-of-way, all we're asking is for your permission to replace that fence, the wood fence with a metal fence. I will tell you this, I asked in the landmarks meeting at least once, I can replace that fence just as long as it's a wood fence. It doesn't have to go to landmarks, it doesn't have to go for a permit because we've already replaced it once with the wood fence like kind and quality. We want to put in a metal fence because it looks better. It'll add some value to the home and I think it'll add a little something to the neighborhood. When this first came up, we agreed total if that fence has to come down, we will take it down at our expense and we will replace it at our expense. When they redid Trine Street, they redid the sidewalk on our side of the street. They never had to take the fence out even though we offered two or three times for the contractor to make it easier. So, basically what Mr. Moore told me was Council has to approve it now. I don't know what form that approval has to take whether it go ahead and replace it. I don't think it needs an ordinance. I don't think it needs a resolution. I'm not sure. The other thing too about the centerline, we did have the property surveyed and they did go back into the 1800's. They were not able to determine where the center line is. I mean originally middle alley was the street

that's now Trine Street. They massaged it around a little bit but if you're talking about changing it and making it wider, you need to consider the white wall. Who is going to move that? That's on my side of the street. Are you going to put a street down my side and run straight into the wall? This is not that big of a deal folks. It's a fence. It's not a warehouse. It's 90% transparent. You can see through it, we've had that fence in place now for 28 years. Since 1994, we never had a problem with it, no one's been injured. The only thing that happened was two kids stole some pickets about a month after we first installed, that's it.

Ward – Thad, could we allow him to replace the wood fence with the metal fence and keep our right-of-way? If so, what form would we need? An ordinance, would we need to make a motion?

Boggs – To answer your question that goes to the sort of degrees of action that the Council could take. Anywhere from nothing, to transfer of title, to allowing some kind of right-of-way encroachment agreement. Now Mr. Demkowicz referenced the Landmark Commission, the Landmark Commission reports its purview is design, architecture review. This goes to ownership of the property itself and the rights to use that property so that's why only Council has the authority to act to grant, you know, the cliché of law school is property rights or a bundle of sticks, right? It's up to you as Council whether you're going to hand out any of those sticks with regard to city property.

Ward – It sounds like we can allow him to replace the fence.

Boggs – You can allow.

Ward – If Canal Winchester maintains the right-of-way.

Boggs – Yes, if that is Council's desire then I would recommend that be done by an ordinance that authorizes an agreement with Mr. and Mrs. Demkowicz that provides conditions under which that right-of-way usage would be allowed. So, that if there is an accident or something that there would be insurance and indemnification requirements in the event that the city was sued because of some injury by defense.

Demkowicz – Mr. Moore and I discussed that and we will provide the city with the hold harmless agreement for the existing fence along with the appropriate certificates of insurance to cover any accident but we will sign a hold harmless agreement.

Amos – Mr. Boggs my concern comes with not the current property owner nor the fence because I've seen the design, it's beautiful. My concern comes with when Mr. Demkowicz sells the house. Does the agreement made with him for the right-of-way transfer to the new owners potentially in the future? Is there anything legally they have to transfer, or does it just get washed because it's no longer with that owner?

Boggs – We could write it either way. We could write that it has to be removed upon transfer of the property, and that a memorandum of that agreement has to be filed in the chain of title so that any purchaser would have constructive notice of that. Like any type of agreement that assumes people are going to be diligent in doing their record searches and following up in the future years, or if Council wanted it to be transferable, we could write it up that way.

Amos – My biggest concern is just if this property gets transferred while we have a responsible landowner

right now, there's no guarantees the next person is going to be willing to take it out if we need to get to the right-of-way. I personally would never concede to putting another third lane in there. To me that would be like squeezing a Cadillac into a doghouse.

Demkowicz – Can I offer a compromise? If you allow us to put up a fence and we sell the house, we'll take the fence down. Problem solved.

Ward – I don't know if we need to go that far.

Demkowicz – Like I said, we don't want the right-of-way, we just want to replace the fence. That's it, nothing more. If you want us to take it down, we'll take it down.

Ward – Can we structure it so that it comes back through?

Shea – Why can't you just put it out of the right-of-way? I'm looking at the original application and it said your 6 year old son.

Demkowicz - I don't want to kick that ball tonight because that's another session that we're going to have to go through with part of the property was vacated by this city, the village at that time but it was never filed. Part of the property from our house, 14 feet from the end of the garage out was vacated by the city but the village at that time but was never filed. I don't want to do that, I just want to know, can we put up the fence?

Ward – How would everybody feel if we allowed the fence to be replaced and then that agreement ends when there's a new owner?

Ebert – I agree with Jill on the transfer of title at some point in time. Does Mr. Demkowicz have to declare that to the new owner or how does it get declared?

Boggs – That would be one of the reasons why I would suggest that the agreement or memorandum of the agreement be recorded in the chain of title to the property so at least it's there so that it could show up and diligence on transfer.

Demkowicz – Would that be accomplished by an easement entering in the movement?

Boggs – I would say I would call it an encroachment agreement or license agreement, but you know that's splitting hairs and ultimately up to Council what is comfortable.

Walker – I believe Andrew Moore had to come in and spoke the last time at the Council here before so it'd be nice to have him come in again as well.

Boggs – I would say that if Council is interested in moving forward with Mr. and Mrs. Demkowicz request then we would prepare legislation that would give direction to the administration to follow through with that and we'd have at least one more work session and probably 3 readings to have any discussion necessary.

Milliken – I don't see the harm and going ahead and drawing it up then so we can look at it and make any changes we feel that would be necessary to make sure that everybody is on board with the same thing. I remember when we talked about this last time, the major hang up seemed to be legal questions. I mean looking through the minutes and I don't recall us talking about maintaining the right-of-way. I think that was a great point you brought up Mrs. Ward. If that's doable then I mean I agree with you sir the libertarian in me says you should be able to build your fence. This is a tricky situation, we just want to make sure that we are doing our due diligence.

Demkowicz – Oh no, I understand. Like I said, we do not want the right-of-way. That's not even in discussion. We just want to replace the fence. Please tell me I can go home and tell my wife that it's being worked on, it has been discussed and agreed to so that I can have a happy life.

Amos – We can't say we agree yet, but we can say we'll consider it further.

Walker – As far as the legal part on the insurance even if they were to take all responsibility, that still doesn't clear the city from any lawsuit. Is that correct?

Boggs – You're correct in the sense that nothing I do, nothing Mr. Demkowicz does, or that the city does can keep somebody from naming the city in a lawsuit and because the city would be maintaining the underlying property if there were an incident in that right-of-way, the city would be named. The idea of the insurance and hold harmless agreement is that the Demkowicz would be agreeing to cover the cities expenses in defending that lawsuit and providing insurance sufficient to enable them to do that. So, that at least you know we're always dealing with a spectrum of risk and so that moves us toward the less risky spectrum.

Amos – As we move forward for consideration, something else we could ponder if we're putting all these stipulations in place would be that the fence would need to be moved prior to sale of the home. We just need to make sure.

Ward – It is a beautiful fence though.

Amos – So, one of the things Mr. Demkowicz had said was he could remove it when they sell it. My thoughts would be to put it back on the original easement line if they move and then they maintain the fence, it's just maintained but not in the easement. So that we don't have to worry about insurance and hold harmless after that.

Ward – I am personally supportive of dropping an ordinance. I don't feel the need to have it removed upon a new owner.

Clark – I am with Mrs. Ward. I think if we make it crystal clear that in the selling document that is not their property, it is the cities and then the next buyer absolutely knows that. I guess it's taking a little bit of risk that you got a realtor that's disclosing all this but I would hope that if that happens and we get the indemnity clause and we're held harmless. Matt feels that is a tight squeeze of a three lane road. I know people are going to be sitting on that road years down past wondering why we can't do that but I'm okay with this. I was most concerned with the lawsuit of the city is what I had most concerns last time when this came up previously.

Walker – We're back to that, if it would transfer. That new owner would have to take the responsibility of paying that insurance. The same insurance that would hold us harmless as a city, so that if it were to remain, you know, will that new owner do that?

Amick – They might incur a cost for an umbrella policy or something of that effect that they would not be willing to agree to or for the expensive part.

Ward – In that case they would just have to move the fence or remove it.

Demkowicz – When the house sells, it's as is. It's not going to be negotiated. You take it or leave it. I and wife already agreed that there's going to be, you know, I want this or I want that. That's all out, there's nothing going to be done. You either take it or you walk. It's a prime property as far as we're concerned and we put a lot of money into it and we want to keep it that way.

Ward – My concern is just making sure we still maintain the right-of-way.

Boggs – I would say Mr. Demkowicz said it was surveyed and I believe him but I don't know what efforts that city itself has undertaken to do that survey so I wouldn't want to say conclusively that we don't know or can't find out precisely where it is.

Walker – Was there any research on why there was a given time on the fence that is there now?

Demkowicz – Are you talking about the original fence?

Walker – Yeah.

Demkowicz – The reason it was drawn up that way was because at that time there was a transportation thoroughfare plan being worked on. I was on the village Council at that time so the only thing is that I did not vote on anything but just added to the discussion. It was an either or situation. The intent of that was if the thoroughfare plan was approved or six years occur, whichever came first, the permit reverted to a permanent permit. You can interpret all you want, I was there. I know what was said and I know the intent was to make that a permanent permit at either the end of the transportation plan or six years. Whichever came first, unfortunately that was never done. It dropped through the cracks and it shouldn't have but nobody paid any attention to it.

Amos – So, what's the general consensus of Council?

Clark – I think we move forward with an ordinance and have Thad write it up. I think make it as ironclad that the insurance policy is in place and negate our legal liability in this and then I think anything that can be put in place that is drawn up that this agreement has to be shown to a relator or the next owner. This would help make sure that the people buying it see this and know that there's this issue there.

Amos – Is it possible for this agreement to be filed with a deed?

Boggs – That would be the idea recording it and referencing the existing chain of title with Mr. Demkowicz property.

Amos – I assume that would be part of the agreement that it would be required or would we be the ones recording it with a deed?

Boggs – We'll work that out. I presume that we can probably have Mr. Demkowicz take care of the recording and provide a receipt.

Ward – I agree with Bob.

Milliken – As do I.

Demkowicz – So in summary, we're going to move forward, everything is okay and I can tell my wife that she will be happy.

Shea – Would you mind moving it back a couple feet? It's pretty tight there.

Demkowicz – Would you mind moving the railroad back a couple feet? It's pretty tight there.

Shea – It is tight.

Walker – I would like to have Mr. Moore come in as well if this is going to move forward because safety is something first to consider.

Shea – My fear is a kid learning to ride his bike and he bounces off his bike and he pokes his eye out through one of these spikes on your fence. I mean it's a great picture but looking at this fence that's kind of what it looks like, it's got points on the top.

Demkowicz – That's what Landmarks wanted.

Shea – I understand. All I'm saying is, what if we move it back two or three feet from the sidewalk? You're still in the right-of-way, you still got everything you want. You've lost three feet of our fenced in yard. Is that unreasonable for child safety?

Demkowicz – We'd like to have it where it is. Where it is now adds the most value, both in the neighborhood and our property. Go back to any pictures from 1900's in this town, you'll see fences just like that.

Ward – How high is the fence?

Demkowicz – 42 inches tall.

Ward – I mean a little kid would have to kind of bounce upward against gravity there.

Demkowicz – As far as what could happen, nothing has happened. We can say something may happen, we don't know. We'll give you a hold harmless, they can sue us. You guys are off the hook. By the way, a hold harmless doesn't cost anything. It's an additional policy.

Ward – It sounds like he does not want to move his fence.

Amos – We will have three reads to go through this further.

Clark – I like the idea of bringing Mr. Moore back in.

Amos – So, Council will take it under consideration, we'll be bringing forth something from Mr. Boggs, and we'll have three additional readings to discuss further.

F. Adjournment @ 6:59 P.M.

***A motion was made by Ward, seconded by Amick to adjourn. The motion carried with the following vote:
Yes 7 – Ward, Amick, Amos, Clark, Milliken, Shea, Walker***