

Minutes of the Regular Meeting of Stow City Council held on Thursday, August 10, 2017, at 7:20 p.m.

Council Members Present: D'Antonio, Lowdermilk, Pribonic, Rasor, Riehl, Adaska & Costello

City Officials Present: Mayor Kline, Finance Director Baranek, Law Director Zibritosky, Director of Budget & Management Earle, Service Director Wren, City Engineer McCleary, Director of Planning & Development Kurtz, Lieutenant Titus, Traffic Engineer Donovan & Clerk of Council Ema-hiser

Press Representatives: Stow Sentry

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### **Call to Order**

Mr. Rasor called the meeting to order and Mr. Pribonic led the prayer and pledge of allegiance.

### **Approval of Minutes**

#### **MOTION:**

Mr. Riehl moved and Mr. D'Antonio seconded to approve the Minutes of the Regular Council Meeting of July 27, 2017 as circulated.

Yes Votes: D'Antonio, Lowdermilk, Pribonic, Rasor, Riehl, Adaska & Costello

No Votes: None. The motion carried.

### **Committee Reports**

Mr. Pribonic reported on the Planning Committee Meeting of August 10, 2017 as follows:

1. He was available to answer questions.

Mr. Rasor reported on the Committee-of-the-Whole Meeting of August 10, 2017 as follows:

1. One item would be introduced in legislative form.

### **City Officials' Reports**

Mayor Kline reported as follows:

1. Regarding Regional Dispatch Services, she had indicated to Council that they were looking at potential candidates to be a consultant on two portions of the potential project. One was a CAD System that would be a multijurisdictional CAD System. Another was the process of putting together a multijurisdictional dispatch center.

They met with three vendors. The primary vendor has been selected and they are in final negotiations to ascertain what their final bid will be as well as the entire scope of work. Once that is completed, she would have more information

for Council at their next meeting. She anticipated potential legislation for Council to vote on for the City's share if they are going to join-in on that consultant.

2. The Summer Sunset Blast is coming up on September 2<sup>nd</sup> and 3<sup>rd</sup> (Labor Day Weekend). They would have fireworks on Sunday the 3<sup>rd</sup>. They had put together a committee this year of many employees around the City who had made great changes to it, amongst them a petting zoo and all kinds of new attractions for families. She asked people to mark their calendars.

Finance Director Baranek reported as follows:

1. On July 18<sup>th</sup> they had had their exit conference with the Auditor of State's office. Since then, they had published their final audit along with their Comprehensive Financial Report for 2016. That was available on the City's web site under the Finance Department. There were also additional years there.

Mr. Razor had participated in their exit conference. They did have some action items that they would be working on this year.

City Engineer McCleary reported as follows:

1. Thanked Mayor Kline for the comments she had made at the Committee meeting concerning the Engineering Department.

Mr. Donovan, the City's Traffic Engineer, has been with the City of Stow since 1978 or 1979. He was one of the top engineers in the State of Ohio and in the country. He has been the Past-President of the American Society of Civil Engineers Transportation and Development Institute. They were very fortunate to have him. He appreciated him being here this evening.

Mr. Razor stated Council echoed that as well.

Mr. Costello asked when S.R. 91 and Norton Road would be done? Mr. McCleary stated it had a schedule date of September 15<sup>th</sup>. They were currently, weather dependent, shooting for the first week in September or right around Labor Day.

### **Disposition of Ordinances & Resolutions**

Mr. D'Antonio introduced Ordinance No. 2017-65, entitled:

AN ORDINANCE REPEALING CHAPTER 747, C.O.S., ENTITLED "SECOND-HAND DEALERS", IN ITS ENTIRETY, AND REENACTING THE SAME IN ORDER TO UPDATE THE CITY'S TECHNOLOGY.

which was read by title by the Clerk for the third time.

Mr. D'Antonio moved and Mr. Costello seconded for the adoption of Ordinance No. 2017-65.

Mr. Lowdermilk asked Mrs. Zibitosky if this was applying to basic dealers? An individual who wanted to sell their laptop on Craig's List or Ebay wouldn't have to comply. Mrs. Zibitosky stated that was correct. It was not intended to cover that.

In the second version they really closed all of those potential loopholes. The definition of secondhand dealer now talks about holding yourself out and advertising to purchase things. That was somebody saying that he wanted to purchase used electronics or jewelry and was holding himself out publically to do that.

You wouldn't see that on a Craig's List or Ebay transaction. This was for a brick and mortar building that was marketing itself out as a business to purchase and then sell used items.

Mr. Lowdermilk knew Mrs. Zibritosky was working with some businesses trying to fine tune this. Mrs. Zibritosky stated they had worked with a number of them. A couple of them they had met with 4-5 times.

Mr. Lowdermilk asked if everybody seemed to be able to live with it? Mrs. Zibritosky stated she had no knowledge of anyone having any major problems with the legislation.

Yes Votes: D'Antonio, Lowdermilk, Pribonic & Costello

No Votes: Razor, Riehl & Adaska. The motion carried.

Ordinance No. 2017-65 was declared to be adopted by Council and, upon its signature by the Mayor, shall take effect in thirty (30) days.

Resolution No. 2017-84 was held.

Mr. Pribonic introduced Resolution No. 2017-88, entitled:

A RESOLUTION GRANTING CONDITIONAL ZONING CERTIFICATE, SITE PLAN AND VARIANCE APPROVAL TO TRENT WALTER OF 4571 INVESTMENTS, LLC, APPLICANT, FOR THE CONSTRUCTION OF A CAR WASH FACILITY AT 4573 KENT ROAD, IN THE CITY OF STOW, AND DECLARING AN EMERGENCY.

which was read by title by the Clerk for the second time.

Mr. Lowdermilk moved and Mr. Costello seconded for the suspension of rules.

Yes Votes: D'Antonio, Lowdermilk, Razor, Riehl,  
Adaska & Costello

No Votes: Pribonic. The motion carried.

Mr. Costello moved and Mr. Lowdermilk seconded for the adoption of Resolution No. 2017-88.

Mr. Costello moved and Mr. D'Antonio seconded to amend Resolution No. 2017-88 by adding the following condition:

- "9. If the business ceases operation, all equipment must be removed from the site and the building. The building must be repurposed by an acceptable tenant within nine months of the ceasing of operation. If the above conditions are not met, the owner, at his expense, will raze the building, return the property to green space and will also be responsible for its maintenance."

Mr. Lowdermilk thought the Law Director might want to comment on this.

He wanted to make sure he was clear on what was being asked. If for some reason they decide to close the business and they don't have another buyer for the property, they will tear down the building and remove the equipment within nine months. He asked if that was correct? Mr. Costello stated it was.

Mrs. Zibritosky stated she didn't know if that was a legal condition. This was the first she had heard of it so she hadn't been able to research it. However, she was fairly certain that even if they did add that on there, they wouldn't have a way to enforce it.

This was a zoning hearing. We're not the property owner. If they were leasing property from the City of Stow they could put all sorts of conditions on it because they were the property owner. However, they weren't in this case, so they had to go by what the zoning laws say they can and can't do.

She believed this property was zoned as a matter of right. Mr. Kurtz stated it was zoned C-4. Mrs. Zibritosky stated that she did not think they could put something like that in there. She could look into it more. However, she didn't think it was going to be legally permissible or enforceable.

Mr. Lowdermilk stated they had had an indication that they would have no problem doing that. He didn't know if legally they could amend it. However, they certainly would have it in the minutes of the meeting that they had agreed to do it.

Mayor Kline stated obviously she was coming at this from a little bit different perspective. This was not a comment specifically on this project. She wanted to be very clear about that. This was not a comment specifically on the car wash.

In general, however, the City Administration works very hard to be business friendly so that they have income taxes to run services for residents. If this city has a reputation of being unfriendly to businesses, it would have a detrimental effect on the overall quality of services and quality of life eventually in this community.

She wanted to remind Council Members that yes there was a balance between many competing interests at times, but from the Administration's perspective, she asked them to be cognizant of the message that they send in general to businesses who support the city services that they and all the residents depend on.

Mr. Costello stated, again, this has nothing to do with the car wash. The people at the car wash have agreed to do this. He just didn't want to see another Taco Bell on S.R. 59 like the previous one that sat vacant until Little Caesars came in and demolished it.

If they cannot legally enforce that, which Mrs. Zibritosky said she would have to re-search, which he understood, then so be it. However, he would like it to be at least in the minutes that they have agreed to do that in their defense.

Mayor Kline stated, again, this was not about the car wash. However, there were many ways that municipalities can encourage redevelopment from municipal grants to using the CIC or CDC (the City had a CIC) to using investment opportunities in creative ways that, perhaps, in the City of Stow they had not explored.

The Administration fully supports the notion of redevelopment and not having vacant properties. However, again, she wanted Council to be mindful of the reputation this community has towards businesses. She thought there were very creative, solid and documented ways that they might want to explore to do more redevelopment efforts in this community that don't involve things that give the impression that we're unfriendly to businesses.

Mr. Lowdermilk agreed with Mayor Kline. They had a business owner who he thought would be willing to say he would work with the City to do whatever if something did happen. Therefore, he thought it may be a non-issue. It was something that he thought was workable.

Yes Votes: Rasor, Riehl & Costello

No Votes: D'Antonio, Lowdermilk, Pribonic & Adaska.  
The motion to amend failed.

Mr. Pribonic stated there is no dispute that we need a car wash. He was not going to dispute that fact whatsoever. They had one. It was great. They need one in the City the size of Stow – 35,000 people.

As it had been said over and over, it isn't the car wash. He was very concerned of that area over there. He lived around there. He went thru that intersection daily. It wouldn't matter whether it was a car wash or any other business.

He believed they were empowered to make safety their No. 1 concern. They all knew what a sign does. It does nothing. They could look at Speedway at Graham Road. They have a sign. They see people go thru it all the time. It is not a deterrent. So, without a right-turn barrier he thought they would be accomplishing nothing.

This was not just about the Dayton Avenue residents. It was about all the residents and people who travel thru the City. He was very concerned about the traffic in that area. He thought they had an ability to correct that area at really no consequence to the car wash. He didn't think it would hurt their business at all. He was just looking at this from a safety aspect.

MOTION:

Mr. Pribonic moved and Mr. D'Antonio seconded to amend Resolution No. 2017-88 by adding a condition that there would be a barrier put in-place to require right-turns only when exiting onto Kent Road.

Mr. Pribonic stated he knew that would affect other businesses such as Eddy's. However, he felt this was an opportunity for them to correct something that was wrong to begin with.

They had received information from the Mayor. They had also received information that documented that from Mr. Kurtz. However, a lot of things had changed since 2000. His concern, again, was safety. He knew that was all of their concerns. He knew whatever way Council Members voted they wouldn't be relying on public safety. However, it concerned him.

Mr. D'Antonio stated that he knew he hadn't studied this, but he asked Mr. Donovan for his opinion on what a right-hand turn only would do with the traffic exiting onto Fishcreek Road and turning left?

Mr. Donovan stated, from his perspective, when you look at the traffic volume that is expected to be generated from this car wash it is very small, especially if you look at what was there before – a fast-food restaurant. They were looking at 189 vehicles per day compared to nearly 2,000.

As far as the right-turn is concerned, it is generally considered to be a safer movement because you have less conflict points to make a right-hand turn than you do to make a left-hand turn particularly across multiple lanes.

He would not be opposed to it. He didn't see the great need for it. However, he certainly wouldn't jump up-and-down and say absolutely not.

Mr. Lowdermilk stated of course everybody wants it to be as safe as it can. They have to do things when they can. However, they weren't going to be able to protect everybody from everything.

His concern, from the beginning based on some of the questions he had asked, was even if they put a right-turn only lane there, you move the left-turn to Fishcreek on another four-lane road that's between two other businesses that are both restaurant-type businesses with a drive-thru at one.

This is the problem with government trying to keep everybody safe. The guy on S.R. 59 might be a little bit safer, but the guy driving down Fishcreek isn't going to be. Therefore, he thought the better option was to allow flow out both directions in a safe manner and hopefully people would follow the rules-of-the-road.

Mr. Razor asked for Mr. Walter's thoughts on a barrier? Mr. Walter stated he wasn't a traffic expert by any means. However, based on what they had done at other car washes, traffic flow and volume, for example their Marion Ohio car wash was 35 feet from the exit of the tunnel to the road, there were 35,000 cars per day on that road

which is approximately 15,000 more cars than they see on this road, they didn't have any egress issues.

In his professional opinion he didn't see it being necessary. However, he would defer to the experts. He was a typical engineer, he wasn't a civil engineer/traffic engineer. However, he, personally and professionally, based on other car washes that they had built, did not see this as an issue.

They were talking about one car every four minutes. Given the cycle time of the stop-light there, that should be ample time. So, he professionally did not see an issue. However, again, he would defer to their expertise.

Yes Votes: D'Antonio, Pribonic, Rasor & Riehl

No Votes: Lowdermilk, Adaska & Costello.  
The motion to amend carried.

Mr. D'Antonio stated he wanted to take the time to comment on a few things because they hadn't had a chance earlier due to time constraints.

A couple people had mentioned this was a done deal. Personally he still didn't know if it was a done deal, so he didn't think that was ever the case. Certainly nobody had ever called him and asked him and he never told anyone that this was a done deal. So he hoped there wasn't.

There had been a lot of talk about the Dollar General Store and this car wash and the zoning. Although there were a few similar things, he thought the difference here was people just didn't want a Dollar General Store. It wasn't that they just don't want a car wash. He didn't think that was the case here. There were certainly some concerns safetywise.

He stated that the property was still zoned for this business. He didn't think the car wash would be coming after them. However, if he was McDonald's, he would see a great chance to make more money off of his land than he was going to make to begin with if the City turns them down.

He believed the only variance here was that they could operate under 32 degrees. Therefore, he didn't think there was enough to say no to this car wash. He had empathy for the people living over there. He wouldn't want a car wash in front of his house any more than anyone did.

He had a bike trail coming thru his yard. He happened to like seeing people on the bike trail. However, the other half of the neighborhood doesn't like to see that. He certainly wouldn't want to see them crossing a main road in front of him.

He believed this was a good thing for the other businesses there. A gentleman had commented about Eddy's. However, personally, if he could draw 189 more cars in his parking lot, he would have a good shot of getting a couple of them to come in and utilize his business.

He would be voting yes for this tonight. He felt terrible, but from what they had looked at and everything they had heard he could not find a good enough legal reason to say no to somebody selling this property and somebody putting up this particular car wash there.

He was glad they had gotten the right-hand turn. Hopefully, that would relieve some of the residents. He also thought that they had an ownership that was going to work with them on some of the sound issues.

Mr. Rasor stated he had two things that he wanted to bring up that were not appropriate for this legislation but were in terms of traffic.

As Mr. Dietz had addressed, we have a 25 m.p.h. speed limit in Kent, we have a downward hill and then it is 35 m.p.h. It somewhat feels like it's off to the races there. Therefore, he was going to ask the City to go thru the legitimate process to expand 25 m.p.h. all the way to the light. That would make it easier for the Dayton Avenue residents to get out of their street.

He also intended to follow-up with the City's Engineering Department on tweaking the light at Fishcreek a little bit to give people a little more of a break so they could turn left with a little more safety.

He thought this was making the best of what the Dayton Avenue residents see as a bad situation.

He thought Mr. Gamble had asked if this was a done deal? It was not a done deal in the sense that everybody had already made their minds up, but in some sense the U.S. Constitution, particularly the Fifth Amendment, how the Supreme Court has interpreted that, how the Ohio Legislature has set-up their zoning laws and how their zoning laws have been for a long time, all dictate that a car wash is appropriate for this location.

They were trying to make the best of the situation. They were trying to give the residents a little more assurance on safety and maybe leave them just a little bit better than they were before in certain respects.

That was his perspective. He would be voting yes as well.

Yes Votes: D'Antonio, Lowdermilk, Pribonic, Rasor,  
Riehl, Adaska & Costello

No Votes: None. The motion carried.

Resolution No. 2017-88 was declared to be adopted by Council and, upon its signature by the Mayor, shall take effect immediately.

Ordinance No. 2017-89 was held.

Mr. Pribonic introduced Resolution No. 2017-90, entitled:

A RESOLUTION GRANTING SITE PLAN APPROVAL TO MARY MCSHANE, APPLICANT, TO PERMIT THE CONSTRUCTION OF A 9,680 SQ. FT. OFFICE-WAREHOUSE FACILITY ON A THREE-ACRE VACANT SITE LOCATED AT 822 SEASONS ROAD, IN THE CITY OF STOW, AND DECLARING AN EMERGENCY.

which was read by title by the Clerk for the first time.

Mr. Pribonic moved and Mr. Costello seconded for the suspension of rules.

Yes Votes: D'Antonio, Lowdermilk, Pribonic, Rasor,  
Riehl, Adaska & Costello

No Votes: None. The motion carried.

Mr. Pribonic moved and Mr. D'Antonio seconded for the adoption of Resolution No. 2017-90.

Yes Votes: D'Antonio, Lowdermilk, Pribonic, Rasor,  
Riehl, Adaska & Costello

No Votes: None. The motion carried.

Resolution No. 2017-90 was declared to be adopted by Council and, upon its signature by the Mayor, shall take effect immediately.

Mr. Riehl introduced Ordinance No. 2017-91, entitled:

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$700,000 OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING COSTS OF IMPROVING THE CITY'S STORM WATER MANAGEMENT SYSTEM BY CONSTRUCTING AND IMPROVING STORM WATER DRAINAGE FACILITIES INCLUDING STORM SEWERS AND FACILITIES FOR THE RETENTION AND CONTROL OF WATERS, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO AND ACQUIRING ANY REAL ESTATE OR INTERESTS IN REAL ESTATE NECESSARY THEREFOR, AND DECLARING AN EMERGENCY.

which was read by title by the Clerk for the first time.

Mr. Riehl moved and Mr. Pribonic seconded for the suspension of rules.

Yes Votes: D'Antonio, Lowdermilk, Pribonic, Rasor,  
Riehl, Adaska & Costello

No Votes: None. The motion carried.

Mr. Riehl moved and Mr. D'Antonio seconded for the adoption of Ordinance No. 2017-91.

Yes Votes: D'Antonio, Lowdermilk, Pribonic, Rasor,  
Riehl, Adaska & Costello

No Votes: None. The motion carried.

Ordinance No. 2017-91 was declared to be adopted by Council and, upon its signature by the Mayor, shall take effect immediately.

Mr. Rasor introduced Ordinance No. 2017-92, entitled:

AN ORDINANCE BANNING THE PURCHASE, INSTALLATION AND USE OF TRAFFIC LAW PHOTO-MONITORING DEVICES TO ENFORCE TRAFFIC LAWS AT INTERSECTIONS CONTROLLED BY LIGHTED TRAFFIC CONTROL SIGNALS OR TO ISSUE TICKETS OR FINES FOR SPEED VIOLATIONS.

which was read by title by the Clerk for the first time.

### **Disposition of Bills**

#### **MOTION:**

Mr. D'Antonio moved and Mr. Adaska seconded to approve the release of the checks for the current Bill Listing.

Yes Votes: D'Antonio, Lowdermilk, Pribonic, Rasor,  
Riehl, Adaska & Costello

No Votes: None. The motion carried.

**MOTION:**

Mr. Riehl moved and Mr. D'Antonio seconded to authorize the President of Council, or in his absence the Vice President of Council, to approve the release of the checks prior to the next Council Meeting.

Yes Votes: D'Antonio, Lowdermilk, Pribonic, Rasor,  
Riehl, Adaska & Costello

No Votes: None. The motion carried.

**Committee Meetings Scheduled**

Planning Committee  
Thursday, September 14, 2017  
at 6:00 p.m.

Finance Committee  
Thursday, September 14, 2017  
to Follow the Planning Committee

C.O.W.  
Thursday, September 14, 2017  
to Follow the Finance Committee

City Council  
Thursday, September 14, 2017  
at 7:00 p.m.

**Adjournment**

**MOTION:**

Mr. Costello moved and Mr. D'Antonio seconded to adjourn.

Yes Votes: D'Antonio, Lowdermilk, Pribonic, Rasor,  
Riehl, Adaska & Costello

No Votes: None. The motion carried.

The meeting adjourned at 7:52 p.m.

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Bonnie J. Emahiser  
Clerk of Council

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Mike Rasor  
President of Council