

Wilmington City Council met on Thursday, September 1, 2011, with President Fred Ertel presiding.

Roll Call: Jaehnig, present; Wells, present; Stuckert, present; Wallace, present; Mead, present; Mongold, present; McKay, present.

Assistant Chief Duane Weyand was also present.

Council gave the Pledge of Allegiance to the flag.

A motion was made by Wells and seconded by McKay to approve the minutes of the last regular meeting, August 18, as received.

Motion passed.

Minutes approved as received.

President of Council – Fred Ertel: At this time, I would like to recognize Cindy Camp and Tanya Snarr to talk to us a little bit about the Murphy Theatre. If you would, please come forward.

Cindy Camp: Good evening. As president of the Board of Trustees for the Murphy Theatre, I would like to introduce to you tonight our new directors of the theatre. After having run the theatre for about seven months, the board decided it was an overwhelming job for one person. So, when we had these two candidates apply, each one of them had special qualities that they could bring to the job. We decided to break it into two different director positions. So, I am pleased to introduce to you tonight our Director of Operations, Rick McCarren, and our Director of Development, Tanya Snarr. And, of course, our Artistic Director is Timothy Larrick and he was unable to be here tonight due to a commitment at the college. We are excited about the Murphy Theatre this year. We feel like we have a great season to offer the community. Something for everyone – all age levels. We have some new things going on. We have online ticketing this year, so you can go on our website themurphytheatre.org and pick your seats and buy your ticket and come to a show. We hope the community will join us in our excitement and support the Murphy and its upcoming season. Always remember, as we always talked about, the theatre does not belong to me or them, it belongs to each of you...all of us...it is a community theatre. We are the guardians of that theatre.

Tanya Snarr: I am very excited. One of my first official roles in this job to personally invite each of you on City Council and elected officials to our first show. It is an appreciation for all of your support and your commitment to the community and to the arts for the help with getting the HUD grant to get our new air conditioning and to replace our heating. You all will be receiving in the mail an invitation. If you will please RSVP, it will be for you and a guest. We have some seating reserved and we want to make sure we have enough and can release some of those tickets if we need to. The first show is "To Honor Their Service." It is next Sunday at 3 p.m. It is directed by our very own Steven Haines. We are very excited for this show. He is going to have a community chorus. Matt Spradlin is going to direct the community band. It is just going to be a spectacular show. It is a tribute to all of those serving in the armed services as well as the people on the home front. It is just a really neat...there is a lot of dialogue within the performances and it will be a very good show. We would love to have you. We have broken the season down. This is the first show in our Time to Remember series. We have a comedy series. We have a family series this year for the kiddos and beyond. Grandparents and for the little ones. It will be a fun series. The tribute series which will of course include Mike Albert as Elvis, Eagles, Pink Floyd, and there will be a Kiss tribute this year. Then our Blues and Jazz series. It is going to be an amazing series with the Dayton Jazz Band. We would love to have you all support the Murphy this year. We are very excited about a lot of things we have brewing there. So, please join us.

Cindy Camp: Also, we would like to thank the City for the grant that enabled us to repair part of our roof that was badly leaking – the matching grant that the Murphy was able to match with your support. So, we really appreciate that.

President Ertel: Thank you.

Councilman Jaehnig: I have a question for you. How is the heating and air conditioning project going?

Cindy Camp: Very well. Tomorrow morning Weller out of Hillsboro will be delivering a chiller unit and they will be placing that on top of the roof and proceeding with getting that connected. We were afraid that we wouldn't get it in time and have air conditioning for our first show, but it looks like that is all going to work out now. So, we are real happy about that.

Councilman Jaehnig: Congratulations.

Cindy Camp: Thank you.

[Applause]

President Ertel: I would like to call on Jonathan McKay. Jonathan, do you have a guest with you tonight.

Jonathan McKay: I have Scotty Liermann with me this evening. He is from my AP government class – another one of my esteemed students. Of course, school board member Bill Liermann is somewhat related to this guy in some form or another. I'm not exactly sure how. Anyway, he is another one of my students – my wonderful group of five. We have one more City Council meeting until I am relieved of my duties. We will get them all up here. I promise.

President Ertel: Very good. Thanks, Jonathan. That does my portion. Mr. Mayor?

Mayor – Mayor Raizk: Yes. I have a proclamation. If I can have the folks from Health Recovery Services. This is a very important week. We are proclaiming from September 4 to September 11 as National Suicide Prevention Week. I'm going to read the proclamation:

***WHEREAS**, The City of Wilmington recognizes suicide as a public health problem and suicide prevention as a responsibility; and*

***WHEREAS**, The 2011 National Suicide Prevention Week is September 4-11. This week overlaps World Suicide Prevention Day that is recognized internationally and supported by the World Health Organization and locally by the Suicide Prevention Coalition of Warren and Clinton Counties; and*

***WHEREAS**, suicide is the 11th leading cause of all deaths in the United States and the 3rd leading cause of death among individuals between the ages of 15 to 24. Suicide is now the 11th leading cause of all deaths in Clinton County; and*

***WHEREAS**, an increase in the overall suicide rate in our country was seen in 2007, representing a change in the recent pattern of stability or slight declines. The suicide rate for those 15-24 years old has more than doubled since the mid-1950s, and the suicide rate remains highest for adults 75 years of age and older; and*

***WHEREAS**, in the United States, one person completes suicide every 15.2 minutes. It is estimated that 4.6 million people in the United States are survivors of suicide (have lost a loved one to suicide); and*

***WHEREAS**, the stigma associated with mental illness and suicidality works against suicide prevention by discouraging persons at risk for suicide from seeking life-saving help and further traumatizes survivors of suicide; and*

***WHEREAS**, a great many suicides are preventable, and suicide prevention efforts should be developed and encouraged to the maximum extent possible; and*

***NOW, THEREFORE, I, DAVID L. RAIZK, MAYOR** of the City of Wilmington, Ohio, in do hereby designate September 4 through September 11, 2011, as:*

“SUICIDE PREVENTION WEEK”

in the City of Wilmington and urge all citizens to join in efforts aimed at increasing education on issues surrounding suicide and suicide prevention.

[Picture taken]

Mayor Raizk: There you go. Thank you all for coming.

Patti Ahting: I am the Associate Director for Mental Health Recovery Services of Warren and Clinton Counties and also the chair of the Suicide Prevention Coalition for the two county area. I am joined with me by three of our coalition members. I have Jessica Braun, Barbara Adams-Marin and Jane VanConey. They came to attend with me. We want to express our thanks to the Wilmington City Council for bestowing this proclamation. Suicide is a public health problem, which is preventable. We know that approximately 90% of those that die by suicide have had some sort of depressive illness. Sometimes that is not diagnosed and sometimes it is not treated. It is important to share the hope and know treatment is available. It is available on a free-to-sliding-scale fee basis, so that should not be a barrier for anyone to reach out and get the help that they need. So, it is important that we work together to share that message and share the hope as well. This is one step, and we certainly appreciate that. I should mention we are always looking for new members to our coalition, so if anyone is interested, please let us know. I put some brochures over on the table to share as well. Please feel free to call us if you have any questions. Thank you.

[Applause]

Mayor Raizk: This is a public health issue and something that everyone should be concerned about. That is all I have, Mr. President.

President Ertel: Thank you, Mr. Mayor. Committee reports. Asset, Acquisition and Use?

Asset, Acquisition and Use –Chairperson Sandy Mongold: No report, Mr. President.

President Ertel: Thank you. Mr. Auditor?

Auditor –Auditor David Hollingsworth: Just real quickly, I spoke with Mary Kay, my Deputy Auditor, this afternoon. We are going to start the budget process. I was going to meet with the mayor. She thought maybe you were having a meeting tomorrow with the supervisors.

Mayor Raizk: Yes.

Auditor David Hollingsworth: You might kind of prompt them that it is time to start the process. We are going to be putting together what sources of revenue we are going to have to work with for the upcoming 2012 year to give to the department heads. We will see what we have to allocate to work with for 2012. We also received word today from the County Treasurer that we are going to be receiving another \$121,000 in inheritance tax, which will put us at right around \$240,000 for the year, which is money that we didn't budget for at the beginning of the year. That will help to alleviate some of the pressure on the general fund. Not all of it, but at least it will help. I just wanted to make you aware that we are starting that process. Sandy, when you get to finance, I just want to clarify. I was unable to attend the meeting on Wednesday. I would like to just clarify the then and now when you get to that. That is all I have.

President Ertel: Okay. Thank you. Finance Committee?

Finance Committee – Chairperson Sandy Mongold: The first item we have tonight is an ordinance making supplemental appropriations.

A motion was made by Mongold and seconded by McKay to give the first reading only on the ordinance Making Supplemental Appropriations.

Motion passed

Director of Law read ordinance by title only.

A motion was made by Mongold and seconded by McKay to suspend the rules and give the second and third reading on the ordinance by title only.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Director of Law read the ordinance by title only.

A motion was made by Mongold and seconded by McKay to pass the ordinance as read.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Motion passed.

President of Council declared Ord. No. 4983 passed as read.

Councilwoman Mongold: The second item is an ordinance making miscellaneous transfers.

A motion was made by Mongold and seconded by McKay to give the first reading only on the ordinance Making Miscellaneous Transfers.

Motion passed

Director of Law read ordinance by title only.

A motion was made by Mongold and seconded by McKay to suspend the rules and give the second and third reading on the ordinance by title only.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Director of Law read the ordinance by title only.

A motion was made by Mongold and seconded by McKay to pass the ordinance as read.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Motion passed.

President of Council declared Ord. No. 4984 passed as read.

Councilwoman Mongold: The third item tonight is a resolution authorizing payment of expenses, the then and now notification.

Auditor: I thought I would just give some clarification as to what is happening or what the state is making us do. In this particular, this is probably a pretty good example. This is in regard to the Nelson Ave. project. That project was under contract in 2010. It was pretty much, I think, finished. With those purchase orders, when it comes to the end of the year, we do not cancel those open purchase orders that we have committed contracts to. They simply roll over from one year to the next. But since it is a 2010 in this case project, we are not expending it until 2011, any expenditure like that where it carries over from one year to the next, if it is more than \$3000, the state auditors mandate that we notify you that we are spending money that was actually committed in the prior year, but we are not paying for it in the current year. So, it is reflected in our year-end balances. When you look at our cash report that is generated on our system, we show an unexpended balance and then we show encumbrances. Included in those encumbrances are outstanding POs that we have contracts on plus any checks that have not cleared the bank yet that we've actually cut. Then we come to an actual unencumbered balance on our report. So, that money is actually reflected in the year-end balances, but we have to formally notify you that we are spending money in the current year that was actually a prior-year project that was under contract.

Councilwoman Mongold: Thank you. Any questions over that?

A motion was made by Mongold and seconded by McKay to give the first reading only on a resolution Authorizing Payment of Expenses Incurred in Prior Fiscal Year.

Motion passed

Director of Law read resolution by title only.

A motion was made by Mongold and seconded by McKay to suspend the rules and give the second and third reading on the resolution by title only.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Director of Law read the resolution by title only.

A motion was made by Mongold and seconded by McKay to pass the resolution as read.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Motion passed.

President of Council declared Res. No. 2254 passed as read.

Councilwoman Mongold: The last item tonight is another resolution to approve liens pursuant to chapters 729.49, 743.04 of the Ohio Revised Code and Chapters 923.09, 929.03 and 1729.03 of the Codified Ordinances of the City of Wilmington. This is for the utility delinquencies, mowing, debris removal, etc.

A motion was made by Mongold and seconded by McKay to give the first reading only on a resolution Approving Liens Pursuant to Chapters 729.49, 743.04 of the Ohio Revised Code and Chapters 923.09, 929.03 and 1729.03 of the Codified Ordinances of the City of Wilmington.

Motion passed

Director of Law read resolution by title only.

A motion was made by Mongold and seconded by McKay to suspend the rules and give the second and third reading on the resolution by title only.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Director of Law read the resolution by title only.

A motion was made by Mongold and seconded by McKay to pass the resolution as read.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Motion passed.

President of Council declared Res. No. 2255 passed as read.

Councilwoman Mongold: That is all. We will be letting you know when the next finance committee meeting will be held.

President Ertel: Thank you. Water Committee?

Water Committee – Chairperson Mike Wallace: There is no report this evening.

President Ertel: Thank you. Streets Committee?

Streets Committee – Chairperson Wells: Mr. President, we have two items on the agenda tonight. The first is the second and third reading on an ordinance changing the traffic control map of the City of Wilmington, adding a no parking zone on the east side of Grant Street. We had a Street Committee meeting. We had thought about making an amendment, but after further discussion, we are going to leave the ordinance as is. Tonight, I would ask for the second and third reading. Are there any questions or discussion?

A motion was made by Wells and seconded by Wallace to suspend the rules and give the second and third reading on the ordinance Changing the Traffic Control Map of the City of Wilmington Adding a No Parking Zone on the East Side of Grant Street.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Director of Law read the ordinance by title only.

A motion was made by Wells and seconded by Wallace to pass the ordinance as read.

Roll call: Jaehnig, yes; Wells, yes; Stuckert, yes; Wallace, yes; Mead, yes; Mongold, yes; McKay, yes.

Motion passed.

President of Council declared Ord. No. 4985 passed as read.

Councilman Wells: The second item would be the third reading on an ordinance changing the traffic control map of the City of Wilmington, adding a no parking zone on the east side of Josephine Street.

A motion was made by Wells and seconded by Stuckert to give the third reading only on the ordinance Changing the Traffic Control Map of the City of Wilmington Adding a No Parking Zone on the East Side of Josephine Street.

Motion passed

Director of Law read ordinance by title only.

A motion was made by Wells and seconded by Stuckert to pass the ordinance as read.

Motion passed.

President of Council declared Ord. No. 4986 passed as read.

Councilman Wells: That is all we have under streets, Mr. President.

President Ertel: Okay. Thank you. Solid Waste/Recycling?

Solid Waste/Recycling Committee: Chairperson Don Wells: No report.

President Ertel: Okay. Wastewater/Sewer?

Wastewater/Sewer Committee: Chairperson Mark McKay: No report.

President Ertel: Thank you. Judiciary Committee?

Judiciary Committee: Chairperson Rob Jaehnig: We have three items on the agenda tonight, Mr. President. Our first item is the first reading on an ordinance authorizing an amendment to the Enterprise Zone Agreement between the City of Wilmington and the Board of the Commissioners of Clinton County. This is the expansion of the enterprise zone to cover the territories that were annexed into the City that are not currently covered. Any questions in regards to that?

A motion was made by Jaehnig and seconded by Mongold to give the first reading only on the ordinance Authorizing an Amendment to the Enterprise Zone Agreement by and Between the City of Wilmington, Ohio, and the Board of Commissioners of Clinton County, Ohio.

Motion passed

Director of Law read ordinance by title only.

Jaehnig requested that the second reading be on the Agenda for the next meeting.

Councilman Jaehnig: The second item is the first reading on a resolution for the submittal of a proposal to the Ohio Department of Transportation for a Grant through the USDOT Federal Transit Administration. This is in regards to funding for our taxi service. Are there any questions?

A motion was made by Jaehnig and seconded by McKay to give the first reading only on the resolution Authorizing the Submittal of a Proposal with the Ohio Department of Transportation for a Grant Through the U.S. DOT federal Transit Administration (FTA), as Authorized under Federal Transit Law, as Codified, 49 USC Section 5311, Financial Assistance for Other than Urbanized Areas and Fund Available from the Ohio Public Transportation Grant Program and Executing a Contract with the Ohio Department of Transportation Upon Grant Proposal Acceptance.

Motion passed.

Jaehnig requested that the second reading be on the Agenda for the next meeting.

Councilman Jaehnig: The last item is the first reading on a resolution authorizing the mayor to enter into a contract with the Ohio Department of Transportation for the Elderly and Disabled Transit Fare Assistance Program. Again, this has to do with our taxi services. Are there any questions in regards to this?

A motion was made by Jaehnig and seconded by McKay to give the first reading only on the resolution Authorizing the Mayor to Enter into a Contract with the Ohio Department of Transportation for the 2012 Elderly and Disabled Transit Fare Assistance Program.

Motion passed.

Jaehnig requested that the second reading be on the Agenda for the next meeting.

Councilman Jaehnig: That is all we have, Mr. President.

President Ertel: Thank you. Safety Committee?

Safety Committee- Chairperson Rob Jaehnig: No report, Mr. President.

President Ertel: Thank you. Downtown Revitalization Committee?

Downtown Revitalization Committee - Convener Mark McKay – We don't have any legislation tonight, Mr. President, but I think I would be remiss if I didn't mention that we are going to have a very unusual event downtown tonight after council about dusk. In what used to be the Little Giant area, they are going to be showing a movie on the wall where the Coke mural is. It is put on by the folks that have been occupying the Little Giant this summer. It is a film called *Mon Oncle* which translates as my *My Uncle*. It is a 1958 film and that year it won the Academy Award for Best Foreign Language film – the Oscar – a special prize at Cannes, as well as the prestigious New York Film Critics Award. So, there you go. Who says there isn't anything happening in downtown Wilmington? That's tonight at dusk. They are going to have giant milkshakes and dessert burgers. Just bring something to sit on. Head on downtown after council.

President Ertel: Very good. Thank you, Mark. Parks & Recreation?

Parks and Recreation Committee - Convener Bob Mead: No report, Mr. President.

President Ertel: Thank you. Mr. Service Director?

Service Director- Service Director Larry Reinsmith: I have a couple of items. I took a couple of pictures today. This is our new solar panel project. We are getting those completed and ready to power up on those.

President Ertel: Good. When do these go into operation?

Service Director Reinsmith: We're doing the interior inverter work right now. They're about ready to go.

Councilman Jaehnig: They look really impressive.

Service Director Reinsmith: Go ahead.

Clerk Laura Curliss: Those panels are going to be on the Green Ohio Energy Tour, which is happening around the state October 1 and 2. We will have people out there staffing all day those two days. We will get visitors around the state coming through. We might do a ribbon cutting on that Saturday. We're trying to work on that too.

Service Director Reinsmith: I also want to discuss a new policy and procedure we're doing on picking up old furniture by our landfill personnel. There's a serious outbreak of bed bugs in the city and all over, to tell you the truth – in all the cities. Our personnel have been picking up mattresses just full of bed bugs and sofas and chairs. You can see them laying around the city. Our employees don't want to pick them up and take them home. We've come up with different ideas. We've checked with different cities and how they've handled these problems. Some wear Tyvek suits. The problem is, you wear the suit and then you get back into the truck, and now you've got the bed bugs in the truck. We've come up with a plan. If you've got this type of furniture that you need to get rid of and you can put it in a pickup truck, you can bring it out to the landfill and we'll take it. It's not a problem. However, if you can't bring it to the landfill, we want it wrapped in plastic and sealed with duct tape. So far, it has been working out pretty good. If you can't buy plastic and duct tape, we will provide it for you. All you have to do is call the landfill and we'll drop off a little duct tape and a little bit of plastic so we can accommodate you. We're here to help you. We want to control these bugs. As we talked

in the meeting about some of the things you can do is take a can of spray paint and put a big red B on the mattress because I've seen situations where some mattresses are going out and the next day they've picked up, but not by our landfill people. So, they are going down to someone else's house. Then, that just spreads them more. So, if you can do something where you even take a knife and just rip the sofa if they are full of bed bugs it shows that they are unusable. Because people do take them home. We've put together this little brochure. This is going to start being mailed out with your water bills tomorrow. We'll help you out any way we can. We'll pick it up. If you can't seal it, we'll give you the materials to seal it and then we'll pick it up.

President Ertel: Very good. Thank you.

Service Director Reinsmith: One other item: we did open bids today on our street paving project and that engineering establish was \$188,000 and the bid came in at \$185,000. Melvin asphalt got the bid.

President Ertel: Very good. Thank you. Safety Director?

Safety Director – Mayor Raizk: No report, but just to follow up with what Larry said. We've been meeting and did a lot of research to put this together. Larry and Don Maher and Andrea did a tremendous amount of research on this. I want to recognize Andrea. She put this brochure together. She had done some research prior to this and so forth. I think it is important to understand about bed bugs that this is not an economic, social strata problem. Anybody can get them. I would also like to say that we did track down a rumor. We got a phone call earlier this week on Monday that there were bed bugs in bedding or things offered for sale Wal-Mart. Maybe some of you may have seen some signs. We have contacted the Wal-Mart people and that is not true. Someone had purchased something that... I don't know... we've all gotten some of those imported boxes. Something was in a box and it had a dead bug in the box. Not in what they bought. It was a rather large bug... like a water bug or something. It was not a bed bug. They have been going out there and making signs and sticking them on things in the store. We even doubt the validity of the call that we got. I know that people had called here and said, "Hey, we saw this sign." Wal-Mart assured us that they are not selling anything with bed bugs in them and they have procedures in place corporately that they do. I did want to say that publically because I think they may have been getting a bad reputation for no reason because people were saying... yes?

Linda Gallagher: Is there a way? Would people be able to call up the Health Department to verify rumors like that? I periodically have heard rumors like that...

Mayor Raizk: Linda, interestingly enough, you mentioned about the Health Department. We referred some people to the Health Department. They called them and they said they don't deal with bed bugs; that's not our deal. So then they called back and that's when we made some calls on their behalf to Wal-Mart. Again, we're not sure... when someone calls in, we're not sure of the validity of the caller. It may have been the person who is trying to start the rumor and so forth. We felt obligated to at least track it down. We did call the management of Wal-Mart.

Unknown female speaker: How is that not a Health Department issue?

Service Director Reinsmith: Theatres are good places to pick up bed bugs and, of course, hotels. You can go to a website called bedbugregistry.com. If you are going to stay somewhere out of town, you can check out and see if the hotel is listed on there because all of these people who have encountered bed bugs are real good about reporting to this website. You can go there and check that out.

Mayor Raizk: We are going to pursue the Health Department issue a little bit more just to see if there could be some coordination. We asked them to take the call, the people called and they ended up calling back. We did track down.

Unknown female speaker: If you wanted to hurt your competition in business that...

Mayor Raizk: I think that was the motivation maybe in this particular case. I did want to say publically if people have heard that rumor it's not true. This is still a serious issue and we need to be aware of it.

Paul Hunter: Why wouldn't the Health Department consider it part of their obligation. We're paying...

Mayor Raizk: I'm just saying to you what happened, Paul. I agree. I don't know why. We had the people call and they called right back and said... Again, we're not on the end of the call. So, when someone says they called them and they told me they're not going to help me or they don't deal with it. I don't know what was said. They may have said something else or may have told them to call someone else. I don't know what steps happened in that phone call. We're just on the other end of the other phone call.

Unknown female speaker: It may be because up until this point they hadn't found bed bugs actually carry any diseases.

Mayor Raizk: That could be. That could be. I don't know.

Unknown female speaker: It could be painful and upsetting, but there...

Mayor Raizk: That could be. I don't know how that works. Anyway, I think it is important. We want to put these in the utility bills and get them out so people can start doing that. We will pick this stuff up that is properly handled, or if they want to bring it, we'll do that. Donnie, I know, in some cases, I know some of you have seen some things around... He has gone actually to each individual house and talked to them about it. In a lot of cases, people have said, okay I'll get it out there," and they did bring it. We haven't had a confrontation or anything like that. Everyone was willing to work together to try to get rid of the problem.

President Ertel; Okay. Very good.

Dick Unger: I have a question related to the bed bugs. On the abandoned properties, such as the one next to me, there is clothing and things that have been thrown out against the house by the previous owners, yet we're not allowed to go over there because of the trespass law to do anything about it, yet the potential is there for bed bugs or whatever yet.

Mayor Raizk: I don't know, Dick. I'll have to look into this. I know where you're talking about. There are some soft goods. Most of that was hard. I didn't know there was some other stuff as well.

Dick Unger: Not only that place, but other properties where people have just packed up and gone and left. It is a breeding area there for bed bugs, lice, fleas, etc.

President Ertel: Very good.

Reports:

A motion was made by Wells and seconded by Mongold to approve the Income Tax Report – August 2011, as received.

Motion passed.

Reports accepted as received.

President Ertel: At this point, I would like to open the meeting up to the general public and/or members of council to address council while in session.

Brian Stanforth: 620 Bernice Street. I want to know where my rights are as a landowner and a taxpayer in the city. The city has lied to me and given me nothing but the runaround on problems in my neighborhood on enforcing code violations for years that they've made. So why even make all of these codes up? If nobody wants to do their job, then get rid of them, fire them. If you want to bring business into this town, let's clean it up. You're letting it go. It's a joke about the cemetery because it has been in such poor

shape and that goes for the rest of this town. Why would anybody want to come to this town with it being a mess and nobody wants to enforce the codes? I have reported several violations in the neighborhood a couple of weeks ago and nothing has been done yet. The Code Enforcer says he is too busy to take care of it right now. I called the Law Director trying to get some answers about some stuff and never got my phone call returned. For some reason, the neighbors found out that I complained and that is not supposed to happen. We feel like we're not being treated fair. Where's our justice in all of this as a property owner?

President Ertel: Thank you.

President Ertel again asked if anybody else from the public or the council wished to address council while in session.

Councilman Jaehnig: I just want to comment back in regards to these delinquent accounts that we assessed to property taxes. One of the things that really caught my eye that I find very discouraging was the amount of banks or financial institutions on here, like Midwest Ohio Finances, BAC and Countrywide that are not taking care of their properties, are forcing us to do so, and aren't paying their utilities. I know they are not hurting as badly as the community residents are and I find it very disappointing. I felt they deserved special mention.

President Ertel: Bob? Yes?

Councilman Mead: I just want to thank and compliment the Streets Committee. I am not on the Streets Committee. I've been on the corner of Grant and Sugartree for fourteen years now. I have watched the trucks go through there and have problems for fourteen years. I've tried for many years to get something done with the parking over there. Fortunately, we tried again, and the Chairman of the Streets Committee, Don Wells, handled the request professionally, methodically, invited the adjacent residents there, and also had no problem at all. I want to say thank you, thank you, thank you. I'm not a truck driver, but truck drivers are people too and they need some respect. Thank you.

President Ertel: Very good.

Councilman Wells: I would just like to ask the mayor a question about Mr. Stanforth's problem. What do we have to do to get Ernie out there to kind of check out some of these problems? Is there anything specific we can do?

Mayor Raizk: Unless we have probable cause. Kathryn? We don't have any probable cause to go into the back yard. I can't ask somebody to trespass illegally. We have had some complaints about the front yard. The Service Director has been out there. He took pictures the other day. There is nothing enforceable.

Service Director Reinsmith: After the last meeting, I know the comment was made that the front yard is a mess. I couldn't go into the back yard, but I did take pictures of the front yard. I know sometimes there are things that people don't like, but it's not really illegal.

Paul Hunter: Why can't Code Enforcement use his authority in the ordinance to walk in any property.

Councilman Wells: Yes. That's sort of my...

Law Director Kathryn Hapner: The fourth amendment! Hello?! Search and seizure.

Mayor Raizk: Unless there is probable cause to do it, Paul.

Paul Hunter: I'm just going by the ordinance. It says he is authorized.

Mayor Raizk: He does have authority, but it has to be something that is defensible. You have also made mention a time or two about public nuisance...where the police can enforce a public nuisance.

Paul Hunter: It's never been done.

Mayor Raizk: You're saying it from that standpoint, Paul, but the reality of it is that you have to prove that it is a public nuisance to be able to enforce it. It is very difficult to prove.

Law Director Kathryn Hapner: There is a difference between a public nuisance and a private nuisance.

Polly Stanforth: Mice and snakes. Do you want them in your house or your yard? I don't.

Law Director Kathryn Hapner: But that may be a private nuisance and you have civil remedies for that. It is not necessarily a public nuisance. There is a difference between the two.

Paul Hunter: It's defined. One of the nuisances is defined, for example, junk cars. A couple of junk cars is a public nuisance. We don't use that old ordinance. I understand that. It should be taken out of the books, but it is in there.

Mayor Raizk: I am just saying...we will be glad to enforce when we have something that we can enforce and the court will uphold.

Polly Stanforth: So, we need more pictures of the back yard? What happened to the ones we took before?

Law Director Kathryn Hapner: No. You need a court order or a search warrant.

Brian Stanforth: How do you get those?

Law Director Kathryn Hapner: You apply to a court. A judge has to sign a search warrant or a judge has to sign a court order.

Paul Hunter: But the Code Enforcement would have to go get it, not the complainant.

Law Director Kathryn Hapner: And it has to be based upon probable cause.

Brian Stanforth: He investigated it a couple of years ago and said it had to stay covered. Now you are saying he can't do anything about it. He covered up for two weeks and that was it.

Polly Stanforth: You're twisting the story on us here.

Law Director Kathryn Hapner: I don't know what was said two years ago. My advice to you is that you should consult an attorney to see whether you have a cause of action as a private nuisance.

Brian Stanforth: This [expletive].

Polly Stanforth: Yes it does.

Brian Stanforth: So we are still getting the run around.

President Ertel: Okay. Go ahead.

Councilman Wells: So Ernie can't even go onto the property to look in the back yard.

Law Director Kathryn Hapner: He cannot cross up close. There is something known as the curtilage, which is the area surrounding your house. If the curtilage is closed with a fence so that it can't be seen from the public street or sidewalk, he can't cross that without proper authority. If it is not...if you can't see it...if it is out in general site and plain view then he can do something about that. If it is not in plain view, he can't.

Paul Hunter: So, the council's authority to the Code Enforcement is not valid. It says he can enter any property. It doesn't say he has to go to court. It says he is authorized to go into property to investigate whatever.

Polly Stanforth: That's how we read it.

Dick Unger: Otherwise, what you're saying is he could go...

[TRANSCRIPTION INTERRUPTED. END OF TAPE]

Law Director Kathryn Hapner: ...unless the person looking over it is six feet tall and can see over it...

Dick Unger: If there is no fence...

Law Director Kathryn Hapner: I don't know if there is or not.

Brian Stanforth: I put a privacy fence up so I don't have to look at it. I'll take it down if he wants to come and look at it.

Polly Stanforth: If that makes a difference, we will. That way, it will make a difference. Okay? We'll take a section down so it can be seen by us, then you'll have to do something about it.

Brian Stanforth: Your definition of a junkyard says two vehicles. They've got vehicles, they've got glass, they've got...

Law Director Kathryn Hapner: You cannot run a salvage yard there. That's clear.

Brian Stanforth: It doesn't say nothing about a salvage yard. It says the definition of a junkyard. So, you are twisting it to say what you want it to say now...like you're protecting them.

Law Director Kathryn Hapner: No I am not. My understanding is you had a complaint that he was running a salvage yard. He has been served with that. He has been told to cease and desist. My understanding is that in compliance with that. That is not an issue.

Service Director Reinsmith: Kathryn. You're mixed up.

Law Director Kathryn Hapner: Is this a different property?

Service Director Reinsmith: It's on the east side of town...the junkyard is.

Polly Stanforth: Two junk cars is classified as a junkyard when there's glass. Where does it say that?

Brian Stanforth: It's right here, under 1131.31 Junkyard.

Councilman Jaehnig: Is it operating as a business?

Brian Stanforth: No.

Paul Hunter: It doesn't say...

Brian Stanforth: It doesn't say anything about business. It says when it is owned, possessed, collected, accumulated, dismantled or assorted, including, but not limited to... It doesn't say anything about a business.

Polly Stanforth: And it don't say nothing about a fence making it okay to have a junkyard or a mess.

Brian Stanforth: It says right here, the Code Official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions.

Law Director Kathryn Hapner: That's constitutional restrictions: the Fourth Amendment.

Mayor Raizk: Also, it is the structure. If there were a safety issue regarding the structure, he does have the authority to enter. If we were talking about the structure, that would be the house because it is a housing maintenance code.

Paul Hunter: Which includes the surrounding area too.

Mayor Raizk: If we can get the probable cause to do that, then we will do that, but I am not sending him out there and getting him arrested for trespassing.

Brian Stanforth: What about the one sitting in the drive that I complained about two weeks ago? There is one sitting in the drive that has been sitting there for several months.

Polly Stanforth: And we think somebody told them...

Brian Stanforth: As soon as we complained about it, they started working on it.

Mayor Raizk: I can't answer to that. If you're working on it, you're allowed to do that in your driveway. Until we have the authority to do that, I can't send the man out there to do that. He would be glad to go.

Brian Stanforth: What about the one sitting in the drive? I told him about the one in the drive.

Polly Stanforth: That doesn't run. Gary Fisher towed it in. Call Gary Fisher.

Brian Stanforth: It won't move.

Polly Stanforth: It won't run.

Councilman Jaehnig: Does it have current tags and registration?

Brian Stanforth: It don't matter. It still falls under number two. It has to be five years or older or not operable.

Kathryn Hapner: There are certain things that take it out of the junk vehicle category. If it has current tags or registration, if it is operable or can turn on. I forgot off the top of my head what the third one is. Anyway, two of those three. I don't know what the particulars on this case are.

President Ertel: So that is of importance – if it is registered or has current tags.

Paul Hunter: Not under that particular ordinance.

President Ertel: Not under what you are talking about. But it is important.

Paul Hunter: There are so many of them and they are so confusing.

Councilman Wells: Would it be possible that we can maybe set up a meeting and review the law as it is. Maybe invite everybody.

Mayor Raizk: Sure. We just revised those last year.

Polly Stanforth: If it makes a difference, we could knock one fence panel out so you can see it for yourself and see if you would like to live there beside them. It's okay out front now. They cleaned it up a little, but out back it looks bad.

President Ertel: Okay. We understand the situation now. Let's see what we can do.

President Ertel again asked if anybody else from the public or the council wished to address council while in session.

Seeing no one else who wished to speak, President Ertel asked for a motion to adjourn.

A motion was made by Mongold and seconded by Wallace to adjourn.

Motion passed.

Council adjourned.

ATTEST:

President of Council

Clerk