

ASHTABULA CITY COUNCIL COMMITTEE REPORT

NAME OF COMMITTEE: Community Development / Parks & Recreation

DATE: **Wednesday, July 7, 2010**

TIME & PLACE OF MEETING: **8:12 a.m. - Municipal Building 2nd Fl Conference Room**

MEMBERS PRESENT: **Mr. James Trisket** (Chair/Ward 5), **Mrs. Julie Lattimer** (Ward 4)
Ms. Betty Kist (Vice President)

MEMBER(S) ABSENT: **Mr. Charles Brockway** (President & Ex-Officio member)

COUNCIL/STAFF/
ADMINISTRATION: **Clerk of Council LaVette Hennigan**

VISITORS: Ms. Karen Flack, Ms. Alice Cook, Mr. Earl Tucker, Mr. Doug Monroe
(citizens)

MEDIA: **NONE**

REPORT OF BUSINESS CONDUCTED

1. N.R.D. Funds and Planning (history attached)

The Chair reported:

- * According to the City Manager, discussions regarding Walnut Beach wetland properties are in progress: and
- * Due to present litigation some information may not be made public.

ACTION: The Committee would like clarification on the “progress” of the title searches they requested the Manager have conducted on the wetland properties, (e.g., has a company been hired).

2. 1361 Housing Administration Proposed Amendment

- * The Manager is looking at language to clarify a job description, taxable activities and/or fees; (The Committee would like an update on the status of his review); and
- * It has been over one year since the Committee began this process; the Committee has put quite a bit of effort into it; the Vice President had a tremendous amount of involvement in this process prior to it making its way back from the outside organization’s review into this Committee by way of the Housing Director.

Questions/Comments

Title Searches

The Ward 4 Councilor asked if funds have been secured for the title searches. When the Manager asked where the funds to pay for the search would come from, the Chair informed him that it had been agreed upon they would be taken from the Parks & Recreation (P&R) line item.

Mr. Tucker reported he is trying to have a meeting with the Manager to determine what funds are available to the Parks & Recreation Board.

The Chair reported last year it was stated that there was close to \$40,000.00 placed in the P&R fund; and that there should be close to that amount this year.

ACTION: The Chair would like the City Auditor to provide clarification on the amount of funds in the Parks & Recreation line item.

3. Garage/Yard Sales

The proposed legislation regulating this activity was presented to the full Council on June 7 for a vote, and subsequently referred back to this Committee for more discussion.

The Chair reported:

- * He is tired of the trash found throughout the City;
- * Added to the trash are yard/garage sale signs strung throughout the City on lawns and poles;
- * The Chair showed yard/garage sale signs he pulled from poles and lawns on his way to this meeting; signs that are not being removed by those who are having the sales;
- * These signs are already prohibited from being placed on utility poles; it was suggested this prohibition be added to the proposed legislation;
- * The proposed ordinance will require responsible parties to obtain a permit for a nominal fee; and have a receipt in order to erect their signs as in a fashion permitted by law;
- * If signs remain after the sale ends a fee should be assessed;
- * The idea is not to create a fund, but to just try and clean up the City; and
- * On a Star Beacon newspaper Opine letter regarding this Chair's desire to require permits for this activity.

Discussion

- * The Ward 4 Councilor agrees with the proposed legislation; would like a permit to be required without a charge; would like the person having the sale to be required to sign a document acknowledging they read the legislation; and a fine enacted for signs that are not removed within the a specified timeframe;
- * The department responsible for issuing the permit would have to be determined (it was suggested that perhaps the Police Department dispatch since they are open 24/7);
- * The Committee discussed details such as, but not limited to registration, what the permit/registration form would include, language for neighborhood/block sales, the desire not to fine people but to stop them people from disrespecting the rest of the community; perpetual yard sales, persons who purchase materials from other sources such as auctions and sale it at the yard/garage sale when they should really be at the flea market;
- * More suggestions as to who could be responsible for issuing the permit, given the Police Chief expressed his displeasure with him being the one named in the proposed legislation.

The Ward 4 Councilor suggested the Senior Center could be responsible to issue the permit because they are open more than City Hall, and because they like to do this type work, and could receive a portion of the registration fee;

- * The Chair wants a fee to be charged so no one can say they are losing money by; and
- * The City's "code enforcers" would be responsible for enforcing this activity and for setting the fine/fee amounts.

ACTION:

The Committee agreed:

There should be a registration requirement;

The Registration form should include:

- * Contact name, phone number, address;
- * Sale date(s); and the changes noted in the attached proposed ordinance to be codified at Chapter 727 and titled "Garage, Yard and Other Sales".

Ms. Kist moved, Mr. Trisket seconded to amend CO 1154.14(b) to read: Garage Sale Signs. Any sign classified as a garage sale sign shall be no greater in size than three by three feet. No sign shall be placed on a public right-of-way or upon utility poles. No lighted sign shall be used. The sign shall be removed when the use for which the sign has been erected is completed. Signs are to (may) be erected seventy-two (72) hours prior and (must be) removed twenty-four (24) hours after. Persons responsible are designated by the address on the sign; motion CARRIED. The verbiage in parenthesis are the amendments.

The Committee would like the Solicitor to incorporate language for a neighborhood sale.

The Committee asked the Clerk to resubmit the attached proposed legislation, with changes, to the Solicitor for drafting.

Mr. Monroe expressed his displeasure with garage/yard sale signs being prohibited from being placed on treelawns and poles; and accused the City of placing stop signs on poles.

Mr. Trisket moved, Ms. Kist seconded, to adjourn at 9:30 a.m.

Scribe: LaVette E. Hennigan, MMC, Clerk of Council

HISTORY - NRD FUNDS AND PLANNING

- * What was once Lake Erie, engineers, at or before the turn of the century, built a very long break wall to the lighthouse;
- * When the lighthouse and breakwall was constructed is unknown to him;
- * Close to 100 years the waves and wind have helped fill in the area of water; no there is a pond, fair amount of marsh land, and solid sand land;
- * Railroad has continually filled the area in to the point where now they use the original breakwall constructed by the Corps of Engineering somewhere in the 1800's as a road way around their peninsula of land;
- * County plot maps reflected two different numbers, which reference specific deeds; there are several plots listed that went to a specific deed; the specific deed has nothing to do with what is now the coal yard – it actually goes from Pinney Dock through and around the City and out into a County;
- * It was determined to make no sense; and has no reference or correlation to the land; and;
- * The railroad is going to clear the deed in their references; and try to locate; and does not believe it has yet happened because the Chair has not been contacted;

Solicitor: You're speaking of the tax parcel and map maintained by the County;

Chair: Yes;

Solicitor: Creeded land he calls lands that are built up through natural or manmade processes on a shoreline. They were arbitrarily assigned to the railroad on some tax map but there is no deed granting or convey it to the railroad;

Chair: Correct;

Solicitor: Two things come to mind (1) in order to fully understand where those creeded lands might lie I would suggest and recommend that monies be found to hire Chicago or Buckeye Title to carefully research the deeds and maps going back to when that breakwall was built to get an idea of who is in title and what does the deed say; (2) should be aware of or will be coming out in the next few months is that there are plans underway in the Attorney General's Office to bring forward an action in our common pleas court involving Norfolk/Southern Railroad to address some of the water pollution issues; basically discharging coal from the coal conveyor. All these governmental agencies spent all this money to clean up the river and there's still coal and sludge dripping into the river and the EPA would like to see that stopped. We've been in discussions with the AG's office and they have agreed to make us a party plaintiff to that lawsuit so we have a seat at the table. One of the things we'll look at if a violation is determined (it's pretty clear it will be a violation) - there will be a penalty phase in this lawsuit and the AG will be looking for what are called supplemental environmental projects in lieu of penalties. This is where they give a polluter an opportunity to do something to improve the environment by direct action rather than just paying \$10,000 a day for violations to the state. That was why we wanted to be at the table because we wanted to have some input on what those supplemental environmental projects would be and we were hoping they could benefit some of our City facilities. It may be that the dedication and setting aside of some wetlands might claim that they have title to would be an appropriate supplemental environmental project. And, we can certainly pursue that when that lawsuit is filed – now that's going to be years. That lawsuit's going to pend for years.

Chair: The impression the Manager got from them was if you don't want to use this money we're going to take it somewhere else.

Solicitor: Right.

Chair: The culmination of statements that were made in relationship to direct questioning about the usage of the NRD funds was really directing the answers more towards – it really is Ashtabula's money. Although we felt a little bit of a relief with the responses that we were receiving from them, that wasn't the specific language that had been used. It was like they wanted to keep hedging around it without actually saying that. They pretty much made it clear that if you're not going to use the money then we are going to go ahead and find some use for it, somewhere. But they at the same time don't want this to drag out for years.

Manager: \$636,000.00 is sitting in the bank.

Solicitor: The title search will be something other than a flat fee because you're talking about multiple properties, extended chains of titles, and mapping, which is time sensitive. So the cost will probably be quoted on an hourly basis. I'd be surprised if a good, thorough examination of everything could be performed for than \$1,000.00; and believe it would cost between \$1,000.00 and \$2,000.00, I'm wondering if that cost could be written into the proposal for the NRD monies.

Chair: They pretty much said we can't release any funds until we know where or who owns the property.

Manager: When they cleaned up the river; the NRD said you fouled the river, you clean it up. This lasted for years and was part of the dredging process. The companies that fouled the river paid NRD money. The NRD spent a lot of it doing some things that I felt were a little silly, but the money's gone. One of them was they spent a year and a half eviscerating fish to see how many PCBs they had in their entrails and they spent about a million dollars doing that. There's about \$635,000.00 sitting in the bank. I went to the NRD twice, in Cleveland, with the law firms that sued NRD. I said, okay with that money you have can we go (not in this order of importance), can we do some decent work at Walnut Beach and fix the concession stand; they said no. Can I go buy a dump truck to work at Walnut Beach; they said no. Can I buy a beach cleaning machine to clean the beach; they said no. On, and, on, and, on, and on. And their response always was that you have to use that money for nature. You have to do something with the environment and putting up a new concession stand or fixing the old concession stand doesn't do that. So the people who paid the money into this fund as their response to damages they're the ones who gave us the beach cleaning machine because they felt sorry for us. So they wrote a check for \$60,000.00 to buy the machine. So I went back to NRD twice and basically what they came back to and they said you can spend this money but you have to come to us to get permission, but it's got to be environmentally connected to how the river was made dirty. That's easily said, but here's the problem. if you want to do something on the river, okay what do have in mind and what do you want to fix. Our problem is the City of Ashtabula doesn't own any of the bank on either side of the river.

So if you take the river south and you go up past 24th Street, up past the hospital (I'm going up but technically I'm going south) to the City line, we don't own any bank, that's all privately owned. They came back and said if you own the transfer dock, which we do, you can fix the transfer dock – well there's nothing to fix there because it works perfectly fine. Sidley owns this, the railroad owns this, the federal government owns the old Coast Guard station, then there's Sutherland then there's a railroad – we don't own anything so you can't say we're going to go spend the money to do something. My argument then was, okay then we'll slide down to Walnut Beach. They came back and said okay but it has to be environmentally connected to Walnut Beach. Where we gave them a hook and their chewing on this and that is to take part of the concession stand and turn it into a marine, a biology environmental museum. That one they may have to live with. But, that would mean the when the concession stand is no longer such, you have to build a new one. Or the old one could be fixed with the City's money and then build a new environment museum - a historical museum about Ashtabula's birds, bees and fish.

Chair: It was very important to get him to comment on this. Mike and I had already talked about this. Keeping the understanding that they always have stressed nature and no brick and mortar or pavement. The closet they would get to brick and mortar was observation decks, synthetic walkways, synthetic decks, elevated things – so I asked what's the possibility of using NRD funds as seed money for a brick and mortar grant. They said no. I explained to them I was thinking about something that could hold 200 capacity for the purpose of education – it has tables, a kitchen, everything's handicapped accessible, it has projection capabilities, posters, sand tables for erosion, all sorts of biology related things. That made them listen. They asked why look at something so big. I replied because I'm looking at a multi-use structure. The idea is for the City to rent it out for wedding receptions, graduation parties, family reunions; that way the building earns an income that takes care of the structure's maintenance; and may help pay a portion of the utilities. They said they didn't have any problem with that; which came right from Fish and Wildlife Dave DeVault. He the one that has his fingers on the purse strings, although it's the trustee's council – he's the one that really carries the weight in the decision. He openly said he has no problem with that as long as we know that if you borrow \$200,000.00 from this for that grant, or whatever it maybe, that \$200,000.00 is put into the requirements of the Trustee's Council. And, that means education, preservation, restoration and about 8 total things. That in conjunction with your idea of the concession stand operation, they're acceptant to this. now it's up to us to find a grant. But once again, they fell right back to the response of until we know who owns the land we can't do anything. That is our big hurdle.

6/7/2010 Council referred back to Committee for further consideration

ORDINANCE NO. _____

AN ORDINANCE ENACTING NEW CODIFIED ORDINANCE CHAPTER 727
ENTITLED GARAGE, YARD AND OTHER SALES

WHEREAS, the daily operations of the City of Ashtabula and the Office of the City Manager require the enactment of this legislation; and,

WHEREAS, it is necessary to provide for reasonable provisions to safeguard the public peace, health and safety;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Ashtabula, Ohio:

SECTION 1. That Codified Ordinance Chapter 727, entitled Garage, Yard and Other Sales, a complete copy of which is attached hereto, shall be, and the same is hereby, enacted;

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning and related to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its Committees that resulted in such formal action were in meetings open to the public in compliance with the requirements of Section 10 of the Municipal Charter of the City of Ashtabula, Ohio, and of Section 121.22 of the Revised Code of Ohio.

SECTION 3. For the reasons stated in the preamble, this ordinance, if approved by the votes of five (5) or more members of Council, shall take effect immediately, otherwise 30 days thereafter.

PASSED: _____

Charles P. Brockway
President of Council

Vote:

	Yea	Nay
Brockway:	___	___
Kist:	___	___
Rose:	___	___
Pugliese:	___	___
Stranman:	___	___
Lattimer:	___	___
Trisket:	___	___

ATTEST: _____

LaVette E. Hennigan
Clerk of Council

APPROVED: _____

Anthony J. Cantagallo
City Manager

Approved as to form and correctness this _____ day of _____, 2010.

(legislation requests & drafts/2010/returned to committee - enact new co 727 garage and yard sales)

Michael Franklin, City Solicitor

CITY OF ASHTABULA
CHAPTER 727

Garage, Yard and Other Sales

727.01	Definitions	727.06	Nuisances
727.02	Property Permitted to be Sold	727.07	Inspection
727.03	Permit Required	727.08	Parking
727.04	Display of Sale Property	727.09	Revocation or Refusal of Permit
727.05	Signs	727.10	Exceptions; Charities
		727.99	Penalty.

727.01 DEFINITIONS.

For purposes of this Chapter, the following words, terms, phrases and derivations thereof shall have the meaning given herein.

(a) "Residential sale" means and includes all general sales of personal property, open to the public, conducted from or on residential premises in any residential zone as defined by the zoning ordinances of the City, including but not limited to sales commonly referred to as "garage," "yard," "lawn," "porch," "patio" "attic," "rummage" or "flea market" sale.

(b) "Personal property" means objects, goods or things which are owned, maintained and utilized by an individual or member of his or her household or residence and which were acquired or purchased primarily for use by such individual, but does not include goods, merchandise, items or things which were acquired primarily for purposes of sale or resale.

(c) "Consignment" shall mean any arrangement whereby the owner of personal property places said property in a residential sale in which said owner is uninvolved with an express or implicit agreement that said owner shall received all or a portion of the proceeds of sale of such property.

727.02 PROPERTY PERMITTED TO BE SOLD.

No person shall offer any services or any thing other than personal property for sale at any residential sale.

727.03 PERMIT REQUIRED.

No residential sale as defined herein shall be advertised, held or conducted unless or until the person or persons desiring to conduct such sale shall obtain a permit therefore from the Chief of Police or other person the City Manager may designate. Members of more than one residence may join in obtaining a permit for a sale of personal property from each participating household at a single sale to be conducted at the residence of any one of them.

(a) Application shall be made not less than five (5) business days before the first date upon which the sale is proposed to occur. Application shall be made upon a form supplied by the responsible official, and shall include the following information:

- (1) The full name, address and telephone number of the individual primarily responsible for holding the sale;
- (2) The location at which the sale is proposed to be held;
- (3) The date or dates upon which the sale is to be held;
- (4) The date or dates and locations of any other residential sales in which the applicant participated within a 12-month prior to the date of application; and
- (5) The following statement: "The undersigned hereby affirmatively states that the personal property to be offered for sale as set forth above currently belongs to members of his or her residence or household, or the residences or households of other individuals who are actively participating in such sale, and that no property to be offered for sale was acquired for purposes of sale or resale or has been consigned to such sale."

(b) A non-refundable processing fee of ten dollars (\$10.00) must accompany the application for the permit required herein.

(c) The permit shall set forth the time(s), date(s) and location of the residential sale. No permit shall allow a residential sale to commence prior to 8:00 a.m. or continue after 6:00 p.m., or allow a sale to be held for more than three (3) consecutive days, within (2) consecutive weeks. No more than one (1) permit shall be issued to the same individual or for a sale at the same household within a period of 30 consecutive days, unless the second sale is conducted by a professional auctioneer or liquidator and is necessary due to relocation of all of the occupants of the household or the death of any member of the household. Insert allowance for rain date.

(d) If a residential sale is not held or is terminated on the first day of sale due to inclement weather, the issuing office or other designated officer may issue a substitute permit for another date or dates within thirty (30) days of the original date. No fee shall be charged, but the issuing office or other designated officer shall require a written statement, signed by the original applicant, setting forth the reason for cancellation or postponement of the original sale. No more than one (1) substitute permit shall be issued.

~~(e) Before issuing the permit the Chief of Police or other designated official may conduct such investigation as is reasonably necessary to enforce the terms of this Chapter and the required conditions of a proposed permit~~

(f) A permit issued under this Section must be present at the premises or must be in the possession of the person(s) involved all times that the sale is being conducted.

727.04 DISPLAY OF SALE PROPERTY.

~~Personal property offered for sale may be displayed within the residence, in a garage, carport or rear yard, but only in such areas. No personal property offered for sale at a residential sale shall be displayed in any front or side yard areas of such residence or in or on any~~ Items may not be displayed in or on treelawn, sidewalk or public way.

727.05 SIGNS.

~~One sign is permitted to be posted at the premises at which a residential sale is being conducted from 24 hours before the sale commences until one (1) hour after it is concluded. The sign shall not exceed three (3) square feet in area. No sign shall be posted on any treelawn, utility pole, or public way. (use the same language found in Codified Ordinance No. 1154.14(b), with the insertion of the amendments noted in motion above.)~~

727.06 NUISANCES.

The person applying for the permit to be issued hereunder shall be responsible for maintaining order and assuring the free flow of pedestrian and vehicular traffic during any residential sale. Permitting loud or boisterous conduct, or an unreasonable blockage of traffic, shall be deemed to be a public nuisance.

~~727.07 INSPECTION.~~

~~Any police officer, fire inspector, building inspector or other code enforcement officer shall have the right to enter any premises at which it appears a residential sale is being conducted in order to verify compliance with this Chapter. If it is determined that a residential sale is being conducted without a permit or in violation of a permit issued for such sale, the officer or official may order the immediate termination of the sale and require members of the public in attendance to vacate the premises forthwith.~~

~~727.08 PARKING.~~

~~Persons attending a residential sale are required to observe all parking laws, ordinances and rules and to obey all traffic control devices. The Chief of Police or his designee may enforce temporary controls to alleviate any hazards or congestion created by a residential sale. If any officer is required to perform traffic direction duties during a residential sale, the persons operating the sale shall be responsible for reimbursing the City for the actual cost of the officer's pay during the time the officer is required to direct traffic, with a one (1) hour minimum to apply.~~

727.09 REVOCATION OR REFUSAL OF PERMIT

Any permit issued under this Chapter may be revoked by the City of Ashtabula upon any violation of this chapter Chief of Police or other official designated by the City Manager for any violation of this Chapter or if any false or misleading statement is made in connection with an application for a permit under this Chapter. The permit issued hereunder is not a property right and is not transferable. A person who has previously been convicted of a violation of this Chapter may not receive a permit hereunder for a period of two (2) years after the date of such conviction.

727.10 EXCEPTIONS; CHARITIES

(a) "Residential sale" does not include any offer of sale of five or fewer specific items of personal property at a single location unless surrounding circumstances indicate an intention to evade the requirements of this Chapter.

(b) The provisions of this Chapter shall not apply to or affect any sale of goods pursuant to an order or process of a court of competent jurisdiction or to any person acting in his or her capacity as a public official in the performance of his or her official duties.

(c) The provisions of this Chapter shall not apply to any sale conducted by a merchant at the merchant's regular place of business.

(d) Any bona fide charitable, educational, religious, cultural or governmental institution or organization conducting a sale of not more than three (3) consecutive days' duration in which the proceeds are used directly for the institution or for the organization's charitable purposes and where no goods are sold on a consignment basis shall be exempted from the requirements of this Chapter, except as set forth herein.

(1) A sale qualifying for exemption under this Section may be conducted at a residence, but such residence may not be utilized in such activity more often than once in any 180-day period.

(2) A charitable sales event must conform to the requirements of Section 727.06, above.

(3) The institution or organization holding the sale shall notify the Chief of Police or designee not less than 24 hours before such sale.

727.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a minor misdemeanor. Any such violation shall constitute a separate offense on each successive day continued.