

Council met in **REGULAR SESSION** on Monday, October 11, 2010, at 7:34 P.M. in the Council Chambers with President Maurer presiding. Members present: Anderson, Avant, Judge, Lysenko, Megyes, Soyars, Suboticki, and Wagner. The Pledge of Allegiance to the Flag was lead by two Girl Scouts in the gallery and Mr. Avant gave the Invocation.

It was moved by Mr. Judge, seconded by Mr. Soyars, to approve the Minutes of the Regular Legislative Session held on Monday, September 27, 2010, as presented. All Members voted "yea." Motion carried.

It was moved by Mr. Avant, seconded by Mr. Anderson, to accept the Finance Department Report for September 2010, as presented. All Members voted "yea." Motion carried.

#### **PETITIONS AND CLAIMS**

None.

#### **MATTERS REFERRED**

Each Council Member, the Mayor and Service Director were given a report prepared by the Council Clerk listing all matters before all committees.

#### **CITIZENS ADDRESSING COUNCIL**

None.

**The following Minutes are not transcribed verbatim. This meeting has been recorded in its entirety and the tape is catalogued in the Clerk of Council's office.**

President Maurer said before the First Reading of Ordinances and Resolutions, there are several changes to the Agenda: 1) The draft of Ordinance No. 153-2010 was changed, so the new wording was given to all Members of Council; 2) Utilities had an emergency piece of legislation, Ordinance No. 162-2010, that was added to tonight's Agenda; and 3) Ordinance Nos. 126-2010 and 127-2010 have been tabled by the Finance Committee.

#### **FIRST READING OF ORDINANCES AND RESOLUTIONS**

##### **ORDINANCE NO. 149-2010**

**ORDINANCE NO. 149-2010. PRESENTED BY: MR. MEGYES. TITLE: PURCHASE OF REPLACEMENT PUMPS – SNYDER AVENUE PUMP STATION. AN ORDINANCE AUTHORIZING THE PURCHASE OF TWO (2) ALLIS-CHALMERS PUMPS FOR THE SNYDER AVENUE PUMP STATION, FROM KING'S PROCESS EQUIPMENT, IN THE TOTAL AMOUNT OF \$49,342, THE LOWEST AND/OR BEST BIDDER, AND DECLARING AN EMERGENCY.** It was moved by Mr. Megyes, seconded by Mr. Lysenko, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted "yea." Motion carried. It was moved by Mr. Megyes, seconded by Mr. Lysenko, that **ORDINANCE NO. 149-2010 BE ADOPTED.** All Members voted "yea." Motion carried.

##### **RESOLUTION NO. 150-2010**

**RESOLUTION NO. 150-2010. PRESENTED BY: MR. MEGYES. TITLE: OPWC GRANT APPLICATION – HOPOCAN AVENUE WATERLINE REPAIR PROJECT. A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BARBERTON TO PREPARE AND SUBMIT AN APPLICATION TO PARTICIPATE IN THE OHIO PUBLIC WORKS COMMISSION STATE CAPITAL IMPROVEMENT AND/OR LOCAL TRANSPORTATION IMPROVEMENT PROGRAMS; AND TO EXECUTE CONTRACTS, AS REQUIRED, FOR THE HOPOCAN AVENUE WATERLINE REPAIR PROJECT, AND DECLARING AN EMERGENCY.** It was moved by Mr. Megyes, seconded by Mr. Lysenko, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted "yea." Motion carried. It was moved by Mr. Megyes, seconded by Mr. Lysenko, that **ORDINANCE NO. 150-2010 BE ADOPTED.** All Members voted "yea." Motion carried.

##### **ORDINANCE NO. 151-2010**

**ORDINANCE NO. 151-2010. PRESENTED BY: MR. SOYARS. TITLE: ENTER INTO CONTRACT – DIRECT INDICTMENT SERVICES. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A ONE (1) YEAR CONTRACT WITH THE COUNTY OF SUMMIT AND THE SUMMIT COUNTY PROSECUTOR’S OFFICE FOR THE DIRECT INDICTMENT SERVICES PROGRAM, IN AN AMOUNT NOT TO EXCEED \$27,000, AND DECLARING AN EMERGENCY.** It was moved by Mr. Soyars, seconded by Mr. Megyes, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Soyars, seconded by Mr. Megyes, that **ORDINANCE NO. 151-2010 BE ADOPTED.** All Members voted “yea.” Motion carried.

**ORDINANCE NO. 152-2010**

**ORDINANCE NO. 152-2010. PRESENTED BY: MR. LYSENKO. TITLE: PURCHASE OF PROPERTY – 922 RAYMOND. AN ORDINANCE AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE AN AGREEMENT TO PURCHASE THE VACANT LOT AT 922 RAYMOND, FOR \$3,000 PLUS CLOSING COSTS, USING CDBG FUNDS, AND DECLARING AN EMERGENCY.** It was moved by Mr. Lysenko, seconded by Mr. Soyars, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Lysenko, seconded by Mr. Soyars, that **ORDINANCE NO. 152-2010 BE ADOPTED.** All Members voted “yea.” Motion carried.

**ORDINANCE NO. 153-2010**

**ORDINANCE NO. 153-2010. PRESENTED BY: MR. ANDERSON. TITLE: TRANSFER OF PROPERTY – 922 RAYMOND. AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A “QUIT CLAIM DEED” FOR HABITAT FOR HUMANITY TO TAKE OWNERSHIP OF THE PROPERTY LOCATED AT 922 RAYMOND FOR \$1.00, AND DECLARING AN EMERGENCY.** It was moved by Mr. Anderson, seconded by Mr. Judge, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Anderson, seconded by Mr. Judge, that **ORDINANCE NO. 153-2010 BE ADOPTED.** Mr. Anderson said the draft was changed, as stated. He said two weeks ago we probably erred in donating property to Habitat for Humanity. He said we have never “donated” property -- it was always purchased for one dollar. He said that will be the common practice that we will stay with. President Maurer called for the vote on adoption. All Members voted “yea.” Motion carried.

**ORDINANCE NO. 154-2010**

**ORDINANCE NO. 154-2010. PRESENTED BY: MR. SUBOTICKI. TITLE: ZONING MAP AMENDMENT – VARIOUS PARCELS – WOOSTER ROAD NORTH. AN ORDINANCE AUTHORIZING THE REZONING OF VARIOUS PARCELS ON WOOSTER ROAD NORTH, PARCELS #01.02479, 01.14379, 01.02478, AND 01.10569, FROM RM-18 (RESIDENTIAL MULTI-FAMILY) TO C-3 (COMMUNITY CENTER COMMERCIAL).** It was moved by Mr. Suboticki, seconded by Mr. Wagner, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Suboticki, seconded by Mr. Wagner, that **ORDINANCE NO. 154-2010 BE ADOPTED.** Mr. Wagner, Mr. Judge, Mr. Suboticki, Mr. Anderson, Mr. Soyars, and Mr. Lysenko voted “yea.” Mr. Megyes and Mr. Avant vote “nay.” Motion carried, 6-2.

**ORDINANCE NO. 155-2010**

**ORDINANCE NO. 155-2010. PRESENTED BY: MR. SUBOTICKI. TITLE: ZONING MAP AMENDMENT – 727 WOOSTER ROAD WEST. AN ORDINANCE AUTHORIZING THE REZONING OF 727 WOOSTER ROAD WEST, PARCEL #01.08855, FROM I-2 (MEDIUM INDUSTRIAL) TO C-3 (COMMUNITY CENTER COMMERCIAL).** It was moved by Mr. Suboticki, seconded by Mr. Wagner, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Suboticki, seconded by Mr. Wagner, that **ORDINANCE NO. 155-2010 BE ADOPTED.** Mr. Lysenko and Mr. Wagner voted “yea.” Mr. Soyars, Mr. Suboticki, Mr. Anderson, Mr. Judge, Mr. Avant, and Mr. Megyes voted “nay.” Motion FAILED, 2-6.

**ORDINANCE NO. 156-2010**

**ORDINANCE NO. 156-2010. PRESENTED BY: MR. WAGNER. TITLE: ENTER INTO CONTRACT – BROWNFIELD RESTORATION GROUP. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH BROWNFIELD RESTORATION GROUP, LLC, TO ASSIST THE CITY IN COMPLETING THE \$400,000 US EPA BROWNFIELD ASSESSMENT GRANT.** It was moved by Mr. Wagner, seconded by Mr. Avant, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Wagner, seconded by Mr. Avant, that **ORDINANCE NO. 156-2010 BE ADOPTED.** Mr. Suboticki said he wishes to speak in opposition to this contract and that is why he did not present this ordinance to adopt. He said his reason is that we have a process in place within the Planning Department with how these contracts have been dealt with in the past. He said they would go out and get groups interested in doing this type of work and the companies would send in people or material to explain their companies -- how they do the work and various things like that. Mr. Suboticki said a lady was brought in from US EPA to sit on the committee, along with the Mayor, Mr. Palmer, Mr. Stender, Mr. Keltyka, and Mr. Lysenko, to question the companies. He said we have a way of coming up with points to evaluate these companies to see who will get the contract. He said after this was done, Malcolm Pirnie was the winner according to the specifications that we were looking for. He said from what he was told, the Mayor had previously told Ms. Sheridan, the Planning Director, that when it came down to two companies -- which were BRG and Malcolm Pirnie -- he would make the final decision. Mr. Suboticki said that had never been done before. He said he is not saying it could never be done, but that was not the process he understood they were taking at the time and he did not think many other people were aware of that either. Mr. Suboticki said he does not mind changing the process of how to select a firm to do this type of assessment work or even if we want somebody outside the Planning Department to do this type of work and for them to make this decision, but it should have been done prior to the process getting underway. He said that is why he is opposed to this. Mr. Wagner said he rises in favor of this motion. He said he has read as much information as he possibly could. He said he was not in attendance to those meetings due to prior commitments, but he did read the documentation submitted, and he was very impressed. He said he does know Mayor Williams in Youngstown and the Mayor speaks very highly of these people. Mr. Wagner said he feels both firms are imminently qualified to do the work. He said he likes the fact that the BRG Group is local -- they are in Copley, Ohio. He said until you try someone and evaluate them, you never know what kind of work they are going to do. He said you have to have some competitiveness out there. Mr. Wagner said this affords that opportunity and he thinks we should give this firm a try. He said they are our neighbors in Copley -- our reservoir is in Copley! He said it is his feeling that we should award the contract to BRG. He said he feels both firms are excellent firms. Mr. Wagner said he recognizes the diligent work the Planning Commission has done, but it is his feeling that we give BRG a try. Mr. Anderson said this is a very difficult decision for him. He said he met with the Planning Department for over an hour and met with the Mayor for approximately that long and he has read everything that was given to him. He said his decision boils down to these facts. Mr. Anderson said we have a very aggressive Mayor. He said the Mayor wanted a rental program and a sweep of the city and, whether the people liked it or not, it went through; he wanted changes in our health care, so he went out and contracted with a firm to help us with our health care; and he asked the Planning Department to select the top two companies and submit those to him, which they did. He said the Mayor selected one over the other, whether the rating was there or not, because that is his power and duty. Mr. Anderson said it is a very hard decision because Malcolm Pirnie has been with us since 2005 to 2010 and we received close to three million dollars through grants. He said people say that maybe we should not change, but maybe we should change. He said he talked to Denny Liddle who worked with a firm for ten years before changing and he said that change may be good, that change is not always bad. Mr. Anderson said he has made his decision to vote for this. He said both companies are going to come to the same result and he feels both firms will be fair to the City. Mr. Avant said he goes along with Mr. Wagner on this. He said competitiveness in business is the American way, the free enterprise way. He said this is the perfect time and the perfect project to look at another firm. He said we know they are all equal because they have the same type of engineering and the same programming and they both will help in getting more grants. Mr. Avant said it behooves them to get more grants. He said this is the perfect time to see what another company can do for us. He said we need jobs and we need all the plants and factories out there that are vacant now to get going ASAP. He said people are begging for jobs and we need a company that is close that could react to any needs as fast as we need them. Mr. Avant said this is a perfect fit to see how another company could do the same function. Mr. Lysenko said he would like to address a

couple of the arguments people made. He said if we wanted to give someone a try with this large amount of money, perhaps what we should have done was competitive bidding, which has its own cost as well. He said that way we would not be thinking, "just give these guys a try." He said we would have a specified contract bid upon by anyone wanting to bid on it and we would know specifically what we are getting. Mr. Lysenko said the utilities and building departments do this all the time. He said in the nature of competition, this was not a bidding situation or a competitive bidding situation at all. He said it never has been and, right until now, it has not been a competitively bid situation. He said we had the request for qualifications submitted and the Planning Commission, with the exception of one person, voted to have Malcolm Pirnie awarded this work. Mr. Lysenko said the Brownfield Committee met twice and went over these and it was Malcolm Pirnie coming out on top. He said if we wanted to give somebody a chance, it should have been a competitively-bid contract ... period. He said as far as Malcolm Pirnie not being local, they have local offices in Akron and Uniontown. He said there is no question they would be responsive because they always have been responsive in the past. Mr. Lysenko said he is sure BRG is a great company. He said he has heard a lot of good things about them as well, but there is a process here. He said he does not think it is broken, but the way to improve it would be through competitive bidding and we would have a very good idea of what we would be getting no matter who we would use. He said that is not what is going on here and it is not what has been going on in the past. Mr. Lysenko said if we want to change it, let's change it, but let's not just give it to somebody else and change it. He said let's competitively bid this and have this money right down to the penny on how it is to be spent and where it is going to go. He said he will be voting "no" on this. Mr. Lysenko said he really does not understand how this got going. He said the Planning Department went out and got this \$400,000 grant, they will be administering the grant, and this company has been used for years with success. Mr. Judge said he attended some Planning Commission meetings and did some research on his own. He said both companies are great companies and would do a fine job; however, two things stuck out when both proposals were read in the Planning Commission. He said BRG's proposal was incomplete. He said the other thing that stuck out was when he contacted some of the people who BRG and Malcolm Pirnie have worked with in the past, he got what he expected. Mr. Judge said they told him they are great companies and they never used the other company -- and the company they are currently with (BRG or Malcolm Pirnie) does a great job. He said neither company has any black marks. He said the thing that sticks out is that Malcolm Pirnie has worked with the City since 2002 -- close to three million dollars -- and we have never had a problem. He said they work well with the EPA and they work well with our department. Mr. Judge said in speaking with some of the people who have worked with both of those companies in other municipalities, he got the result he expected. He said then he asked them, in this economic climate, if they would change contracts and hope that a new contractor would do a better job. He said their answer was, "Absolutely not." He said they told him that all future contracts would go with whomever they were with. Mr. Judge said Barberton is no different -- we do not have that luxury of waiting to see if there is going to be a screw-up or if something does not go right. He said the Mayor said last week that if we go with BRG and something happens, we will address it at that time. He said we really do not have that luxury or the time to look at that. Mr. Judge said he will be voting "no" on this. Mr. Wagner said it is not to say that we would not be using Malcolm Pirnie again on another project. He said that is not what we are saying here. He said we are saying that we want to give Brownfield Restoration Group the opportunity to see what they can do. Mr. Wagner said they have a track record of being very fast and getting through a project rather quickly. He said the name of the game here is to get this thing done so that we can build an industry and start to attract jobs into our city. He said that is his issue. Mr. Wagner said he will be voting "yes" on this issue. President Maurer said his comments are from a different perspective. He said to his knowledge, Malcolm Pirnie has always done a wonderful job for the City ... there is no argument there. He said everybody who has talked has said very, very complimentary things about both companies. He said he does not think we could really make a mistake here one way or the other. President Maurer said the point of it is that we have an administrative function here. He said the Mayor and Council are ultimately responsible for the welfare and operation of this city. He said if the Mayor makes a selection and he is wrong, he is going to be the goat and if he makes the situation right, he is going to be the hero. He said the Mayor is risking his reputation on this thing. President Maurer said there is nothing unusual about the sharing of power between our commissions, commissions he respects to an incredible degree. He said we have a lot of fine people in the city who volunteer their time and make very sound decisions so he certainly is not going to question the Planning Commission. He said he had Mr. Suboticki's job as chairman of the Planning Committee when he was Third Ward Councilman. He said eventually it is going to come down

to who makes the decision and that is the Mayor's job. President Maurer said this is not unlike the Parks Commission. He said they run the parks, but ultimately Mr. Palmer is responsible for the maintenance. He said we have this advisory function and we have a charter requirement to have these commissions that do wonderful jobs, but ultimately it comes down to the Mayor. President Maurer said that is the situation he wants and on that basis alone, we should honor the Mayor's request. Mayor Genet said first of all he would like to address Mr. Judge's comment. He said Mr. Judge had indicated in a committee meeting he said, "If they screwed up, he would address it then." He said what he said was that if down the road we did not like the successes, and you want to revert back, you can. He said never once did he say that if they screwed up, we would address it at that time. Mayor Genet said first of all he wants to start at the very beginning, on our "RFQ" process. He said when we went out for RFQs, they were listed on the website and people were notified. He said he met with our Planning Director and she explained to him that she assembled the review committee. He said he then indicated to her that when the review committee got it down to two firms, he would like to make the final decision. Mayor Genet said she told him that the review committee would make that recommendation. He said he told her that he would like to make it once it is down to two firms. He said she told him that he was invited to the assessment committee meeting they were having. He said he attended, but he could not stay for the entire meeting. Mayor Genet said as he was exiting, he made sure the committee was well aware that when the committee got it down to two firms, he wanted to make the final decision. He said prior to that day, he got a call from Jim Smith from BRG after he had seen the posting. He said he wanted to know if the City was going to actually take a good look at the firms. He said he told him that he has been Mayor for two-and-on-half years and he is looking for change; he is looking into every avenue. Mayor Genet said if we are doing something properly and he feels it is the best process, then we are going to continue with that; however, with something like this, he really wanted to take a look at it. He said he did submit then. He said after the review committee looked at that and he made his comment about wanting to make a final decision, Ms. Sheridan took it to the Planning Commission. He said talk about changing the process, *she* changed the process because it was never going to go to the Planning Commission. Mayor Genet said he altered his plans and attended the Planning Commission meeting and each company presented a thirty-minute type of interview. He said the Planning Commission selected Malcolm Pirnie. He said he indicated to the Planning Commission that they had no jurisdiction on this at all -- it was an administrative function -- but they still went ahead and voted on it. He said it was a majority; it was not a unanimous vote to hire Malcolm Pirnie. Mayor Genet said he did his research. He said he and Mr. Avant visited Youngstown last year and met with Jay Williams. He said he did not know Jim Smith of BRG until this September when he came in. He said the fact of the matter is that the Mayor -- no matter who it is -- is the one who is ultimately responsible for economic development. Mayor Genet said it is not the Planning Commission; it is not the Planning Director; it is not BCDC; it is not City Council; and it is not the Barberton Community Foundation. He said the *Mayor* is responsible for economic development. He said it is his request that Council support his decision to hire BRG. He said Jim Smith is the principal owner of BRG. Mayor Genet said he has seventeen covenants not to sue, with another one coming, and his Certified Professional, Mark Butler, has four. He said between the two of them -- from a local, small firm in Copley -- they have twenty-two covenants not to sue. He said many of you have said it is not that important. He said according to Larry Lallo, who was Executive Director of BCDC for probably twenty years, it is like getting the gold medal. Mayor Genet said the comment has also been made that the covenants not to sue have been for land with no end users. He said he found out that of those twenty-two covenants not to sue, more than fifty percent of them had end users on their sites. He said BRG is implementing more Clean Ohio funding in the State of Ohio than any other firm. He said they assisted Youngstown in achieving the #1 rating for manufacturing growth in the Nation in August of this year. Mayor Genet said when they were able to clean up environmental contaminated areas in Mahoning Valley, Youngstown was awarded that honor. He said this is not a start-up company; this is not a company with a couple of years under their belts. He said they are very experienced individuals. He said this is not a knock on Malcolm Pirnie. He said at the Planning Commission, one of the questions asked was, "Why would you be best suited for the City of Barberton?" Mayor Genet said BRG said they were small, local, and they take the project from A to Z, not a department of a large corporation. He said Malcolm Pirnie said their reason was because they are a large international corporation. He said it was interesting on a different mindset. He said if you are talking about the covenants not to sue, Malcolm Pirnie was just bought out by Arcadis and if you add their CPs in Ohio between Arcadis and Malcolm Pirnie, and add up their covenants not to sue, he believes the number is around nine. Mayor Genet said in his opinion, BRG does have more of a success story. He said he is not asking

Council to believe the Planning Department or him when it comes to ECS Tuning, but you need to talk to the principal owner, Brian Dombrowski, about what happened at ECS Tuning as to why they are in Wadsworth. He said he believes that large firms at times may lose sight of the interests of the end user, which is what we are focusing on because if you have an end user, you have a company, you have income tax collections, and you are not relying on your CDBG budget to balance your budget in difficult years. He said more importantly, it has taken him almost twelve months to be able to align all the stars to be able to get site control of Seiberling Tire & Rubber Company. Mayor Genet said it is still not signed on the dotted line, but it is going to be, hopefully, relatively soon. He said he was able to convince the Foundation to invest in BCDC and he was able to work with BCDC to be able to take ownership of this facility, a twenty-acre industrial site. He said it needs some remediation. He said if Council gives him the authority to use BRG, this assessment money can be used to do Phase II and he knows they will be behind the eight ball on this, and we could possibly apply for CORF funding in January. Mayor Genet said he has two potential clients as end users right now for Seiberling. He said if Council votes “no” on this, and he does not have the ability to use this assessment money to apply for the CORF funding in January, that will put us over twelve months behind. He asked, “Will those end users be here in twelve months?” He said he doubts it. Mayor Genet said that is the problem he has been facing. He said he believes with BRG’s success stories in Mahoning Valley, they are the ones to provide the success opportunities for Seiberling. He said he has been working with the Greater Akron Chamber of Commerce regarding private investors on the Seiberling site. He said through the Chamber, we are in conversation with Corporate Properties LLC out of New York. Mayor Genet said they are going to come down here and hopefully do a strategic plan on Seiberling -- take a look at what is there, take a look at the value and how we would add value, and how to create an industrial campus on Seiberling. He said again, if he does not have the flexibility to use BRG, it would put us twelve months behind. He said he would really hope that City Council would consider supporting him on this. He said if your final comment is to say that you are going to vote “no” because we have always used Malcolm Pirnie and we need to continue to use Malcolm Pirnie, that, to him, is a very lame excuse. Mayor Genet said as a matter of fact, the Barberton Community Foundation always used Legacy Asset Management since its inception and they have always had a good response with Legacy -- they always did what was asked of them and they never had a problem with Legacy. He said they went out with RFQs and they ended up changing managers. He said the Investment Committee commented that they should have changed sooner. He said again it had nothing to do with Legacy -- they merely hired a firm that met their needs much better. Mayor Genet said there is also the reason to keep our funds local. He said the reason he buys water heaters at West End Hardware and not at Lowe’s is the reason why he buys his appliances at Tom Daly’s and not at Home Depot -- you keep your money local and you get better quality service. He said he would appreciate Council’s support and hopefully we will move forward to generate the economic development we are all looking for in the City. Mr. Lysenko said the Mayor said the property at Seiberling needs remediation. He asked if anyone knows what that is or how we came to find that knowledge? Mayor Genet said we are not sure of the extent of the remediation. He said obviously it is an old industrial site and it has been a rubber facility since 1918, so there will be some remediation on that site just like any other site. He said the other site that is empty right now is Rockwell. He said without having an environmental assessment, he is sure there will be remediation on that site also. Mr. Lysenko asked if there was a Phase I site at Seiberling? Mayor Genet said it is not complete; it is in draft form. Mr. Lysenko asked who did Phase I? Mayor Genet said it was done by Malcolm Pirnie. Mr. Lysenko asked if the Mayor knows the results of that? Mayor Genet said he did not, that it was in draft form. Mr. Lysenko asked who has it? Mayor Genet said that our legal counsel has it. Mr. Lysenko asked who that was? Mayor Genet said that Roetzel and Andress has it. Mr. Lysenko asked if that was a public record? Mayor Genet said that it was not public yet. Mr. Lysenko asked if the Mayor felt that would be helpful in making their decision? Mayor Genet said, “Not at all.” Mr. Suboticki said with all due respect, the Mayor has some very good points. He said he talked to Mr. Lallo, who filled him in on a lot of things, he talked to the Mayor several times, and he met with Ms. Sheridan and Mr. Stefan over this issue. He said he did not hear about the Seiberling thing during presentations to decide which group was to be awarded the contract. He said this just comes up tonight. He said he thinks this is wrong. He said we need to have an open, honest transparent decision-making process. Mr. Suboticki said if you want to change the process, he is all for it ... but do that prior. He said not to do it now when the chips are on the table and we are expected to make a decision. He said it is the wrong way to go about it. Mr. Suboticki said he is all for change, but let’s do change the right way -- transparently and out in the open. Mayor Genet said before the assessment committee even met, he told Ms. Sheridan the process he wanted to

implement. He said if that information did not get to you or the committee, he does not know where that fault lies. He said that was directed to her. Mayor Genet said secondly, the last time the USEPA Assessment Grant was ever done, he was not Mayor. He said it was done in 2007. President Maurer said he is going to close conversation on this issue now. Mr. Wagner, Mr. Megyes, Mr. Avant, and Mr. Anderson voted "yea." Mr. Suboticki, Mr. Soyars, Mr. Lysenko, and Mr. Judge voted "nay." The Clerk said the vote was 4-4 and she called upon the President to vote. President Maurer voted "yea." Motion carried, 5-4. President Maurer said he appreciates the fact that you each spoke your mind and voted your conscience.

**ORDINANCE NO. 157-2010**

**ORDINANCE NO. 157-2010. PRESENTED BY: MR. SUBOTICKI. TITLE: AMENDING – INTERNATIONAL PROPERTY MAINTENANCE CODE. AN ORDINANCE AMENDING SECTION 404, "OCCUPANCY LIMITATIONS," BY ADDING "TEMPORARY HOUSING"; AND AMENDING SECTION 202, "GENERAL DEFINITIONS," BY ADDING THE DEFINITION OF "TEMPORARY HOUSING" TO SAID SECTION.** It was moved by Mr. Suboticki, seconded by Mr. Wagner, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted "yea." Motion carried. It was moved by Mr. Suboticki, seconded by Mr. Wagner, that **ORDINANCE NO. 157-2010 BE ADOPTED.** All Members voted "yea." Motion carried.

**RESOLUTION NO. 158-2010**

**RESOLUTION NO. 158-2010. PRESENTED BY: MR. AVANT. TITLE: CERTIFYING PROPERTY TAX RATES. A RESOLUTION ACCEPTING THE AMOUNTS AND RATES OF PROPERTY TAX AS DETERMINED BY THE BUDGET COMMISSION OF SUMMIT COUNTY, AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE SUMMIT COUNTY AUDITOR FOR THE YEAR 2011, AND DECLARING AN EMERGENCY.** It was moved by Mr. Avant, seconded by Mr. Anderson, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted "yea." Motion carried. It was moved by Mr. Avant, seconded by Mr. Anderson, that **RESOLUTION NO. 158-2010 BE ADOPTED.** All Members voted "yea." Motion carried.

**RESOLUTION NO. 159-2010**

**RESOLUTION NO. 159-2010. PRESENTED BY: MR. AVANT. TITLE: ADVANCE OF LOCAL TAXES. A RESOLUTION OF THE COUNCIL OF THE CITY OF BARBERTON AUTHORIZING THE ADVANCE OF LOCAL TAXES BY THE COUNTY FISCAL OFFICE FOR THE 2010 TAX YEAR, PAYABLE IN 2011, AND DECLARING AN EMERGENCY.** It was moved by Mr. Avant, seconded by Mr. Anderson, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted "yea." Motion carried. It was moved by Mr. Avant, seconded by Mr. Anderson, that **RESOLUTION NO. 159-2010 BE ADOPTED.** All Members voted "yea." Motion carried.

The Clerk said before reading Ordinance No. 160-2010, it is necessary to read the Fiscal Officer's Certificate from Mr. Raymond E. Flickinger, Finance Director, dated October 11, 2010.

To the Council of the City of Barberton, Ohio:

As fiscal officer of the City of Barberton, Ohio, I certify in connection with your proposed issue of \$240,000 notes (the Notes), to be issued in anticipation of the issuance of bonds (the Bonds), for the purpose of paying the City's cost of improving Robinson Avenue, between certain termini, by reconstructing approximately 5,200 feet of street, sidewalk/pedestrian ways, curbs, waterline and inlets, together with all necessary appurtenances thereto:

1. The estimated life or usefulness of the improvement is at least five years.
2. The estimated maximum maturity of the Bonds, calculated in accordance with Section 133.20, Ohio Revised Code, is 20 years. If notes in anticipation of the Bonds are outstanding later than the last day of December of the fifth year following the year of issuance of the original issue of notes, the period in excess of those five years shall be deducted from that maximum maturity of the Bonds, thus the maximum maturity of the Bonds is 17 years.
3. The maximum maturity of the Notes is December 5, 2022, which is 20 years from December 5, 2002, the date of the original note issued for this purpose.

**ORDINANCE NO. 160-2010**

**ORDINANCE NO. 160-2010. PRESENTED BY: MR. AVANT. TITLE: NOTE ORDINANCE – ROBINSON AVENUE IMPROVEMENT PROJECT. AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$240,000 OF AGGREGATE PRINCIPAL AMOUNT OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING THE CITY’S PORTION OF THE COST OF IMPROVING ROBINSON AVENUE BETWEEN CERTAIN TERMINI, BY RECONSTRUCTING APPROXIMATELY 5,200 FEET OF STREET, SIDEWALK/PEDESTRIAN WAYS, CURBS, WATERLINE AND INLETS, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.** It was moved by Mr. Avant, seconded by Mr. Anderson, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Avant, seconded by Mr. Anderson, that **ORDINANCE NO. 160-2010 BE ADOPTED.** All Members voted “yea.” Motion carried.

The Clerk said before reading Ordinance No. 161-2010, it is necessary to read the Fiscal Officer’s Certificate from Mr. Raymond E. Flickinger, Finance Director, dated October 11, 2010.

To the Council of the City of Barberton, Ohio:

As fiscal officer of the City of Barberton, Ohio, I certify in connection with your proposed issue of \$160,000 notes (the Notes), to be issued in anticipation of the issuance of bonds (the Bonds), for the purpose of paying the City’s portion of the cost of improving Fifth Street, S.E., between certain termini by widening, curbing, constructing sidewalks and driveway approaches, street resurfacing, storm sewers, adding street lighting and street trees, together with all necessary appurtenances thereto:

1. The estimated life or usefulness of the improvement is at least five years.
2. The estimated maximum maturity of the Bonds, calculated in accordance with Section 133.20, Ohio Revised Code, is 20 years. If notes in anticipation of the Bonds are outstanding later than the last day of December of the fifth year following the year of issuance of the original issue of notes, the period in excess of those five years shall be deducted from that maximum maturity of the Bonds, thus the maximum maturity of the Bonds is 16 years.
3. The maximum maturity of the Notes is December 20, 2021, which is 20 years from December 20, 2001, the date of the original note issued for this purpose.

**ORDINANCE NO. 161-2010**

**ORDINANCE NO. 161-2010. PRESENTED BY: MR. AVANT. TITLE: NOTE ORDINANCE – FIFTH STREET IMPROVEMENT PROJECT. AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$160,000 OF AGGREGATE PRINCIPAL AMOUNT OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING THE CITY’S PORTION OF THE COST OF IMPROVING FIFTH STREET, S.E. BETWEEN CERTAIN TERMINI BY WIDENING, CURBING, CONSTRUCTING SIDEWALKS AND DRIVEWAY APPROACHES, STREET RESURFACING, STORM SEWERS, ADDING STREET LIGHTING AND STREET TREES, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.** It was moved by Mr. Avant, seconded by Mr. Anderson, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted “yea.” Motion carried. It was moved by Mr. Avant, seconded by Mr. Anderson, that **ORDINANCE NO. 161-2010 BE ADOPTED.** All Members voted “yea.” Motion carried.

The Clerk said as President Maurer stated prior to the First Reading of Ordinances and Resolutions, the following Ordinance has been added to tonight’s Agenda:

**ORDINANCE NO. 162-2010**

**ORDINANCE NO. 162-2010. PRESENTED BY: MR. MEGYES. TITLE: ENTER INTO CONTRACT – H.M. MILLER CONSTRUCTION – GRAND BLVD. WATER MAIN REPLACEMENT PROJECT. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO CONTRACT WITH H.M. MILLER CONSTRUCTION, THE LOWEST AND/OR BEST BIDDER, IN THE AMOUNT OF \$228,200, FOR THE GRAND BOULEVARD WATER MAIN REPLACEMENT PROJECT, TO SUPPORT THE REQUIRED “REQUEST TO PROCEED” FROM OPWC, AND DECLARING AN EMERGENCY.** Mr. Megyes said this piece of legislation was brought up in our committee tonight. He said the rules were suspended in order to add it to the Agenda. He said the street is



about ready to be torn up and we want to put in waterline when the sewers are put in. It was moved by Mr. Megyes, seconded by Mr. Anderson, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. President Maurer said ordinarily legislation is not run through like this, but this is a good way to go about this project. Mr. Suboticki said he is very happy to see this come before us. He said they have been waiting on this project for about three or four years. He said he would like Mr. Stender, Utilities Director, to elaborate on H.M. Miller Construction. Mr. Stender said they are a firm out of Mogadore. He said the engineering firm they used was Floyd Brown. He said he asked them if there was any reason not to use this firm, and the lead engineer, who is a retired Summit County Director of Engineering, said they have been used in the past with no problems. Mr. Stender said they were significantly lower, by \$60,000, than the second place firm. He said there was too much of a difference to ignore. President Maurer called for the vote on adoption. All Members voted "yea." Motion carried. It was moved by Mr. Megyes, seconded by Mr. Lysenko, that **ORDINANCE NO. 162-2010 BE ADOPTED**. All Members voted "yea." Motion carried.

## **SECOND READING OF ORDINANCES AND RESOLUTIONS**

### **RESOLUTION NO. 144-2010**

**RESOLUTION NO. 144-2010. PRESENTED BY: MR. JUDGE. TITLE: ENTER INTO CONTRACT – ODOT – REPLACE AND REMOVE SIGNS – SR76. A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO CONTRACT WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) TO REPLACE AND REMOVE SIGNS ON IR76 WITHIN THE CITY LIMITS, AND DECLARING AN EMERGENCY. *First Reading – September 27, 2010. Second Reading – October 11, 2010.*** It was moved by Mr. Judge, seconded by Mr. Suboticki, to amend Resolution No. 144-2010 by deleting Section 5, Maintenance. Mr. Palmer, Director of Public Service, said he would like to thank Council for their patience in this. He said Section 5 is regarding maintenance and this is an ODOT project. He said this is Route 76 and we have never done maintenance on their property and we do not want to get started. Mr. Palmer said ODOT understood. He said they sent out a blanket contract with that section included, but we caught it. President Maurer called for the vote to **AMEND RESOLUTION NO. 144-2010**. All Members voted "yea." Motion carried. It was moved by Mr. Judge, seconded by Mr. Suboticki, that the rule as required by Section 5.10 of the Barberton City Charter be suspended. All Members voted "yea." Motion carried. It was moved by Mr. Judge, seconded by Mr. Suboticki, that **RESOLUTION NO. 144-2010 BE ADOPTED, AS AMENDED**. All Members voted "yea." Motion carried.

President Maurer said the following ordinances have been tabled by the Finance Committee:

## **THIRD READING OF ORDINANCES AND RESOLUTIONS**

### **ORDINANCE NO. 126-2010**

**ORDINANCE NO. 126-2010. PRESENTED BY: MR. AVANT. TITLE: AMENDING ORD. NO. 243-2009 – EMPLOYEES NOT INCLUDED IN NON-BARGAINING PAY GRADES. AN ORDINANCE AMENDING SECTION 1 OF ORDINANCE NO. 243-2009 REGARDING EMPLOYEES WHO ARE NOT INCLUDED IN THE NON-BARGAINING EMPLOYEES PAY GRADE ORDINANCE BY DELETING PRESIDENT OF COUNCIL AND MEMBERS OF COUNCIL IN THIS ORDINANCE AND INCLUDING THEM IN ORDINANCE NO. 127-2010 WITH OTHER ELECTED OFFICIALS. *First Reading – September 13, 2010. Second Reading – September 27, 2010.***

### **ORDINANCE NO. 127-2010**

**ORDINANCE NO. 127-2010. PRESENTED BY: MR. AVANT. TITLE: AMENDING ORD. NO. 17-2007 – COMPENSATION FOR ELECTED OFFICIALS. AN ORDINANCE AMENDING ORDINANCE NO. 17-2007 TO ESTABLISH THE COMPENSATION FOR CERTAIN ELECTED OFFICIALS; AND TO INCLUDE THE PRESIDENT OF COUNCIL AND MEMBERS OF COUNCIL IN THIS ORDINANCE. *First Reading – September 13, 2010. Second Reading – September 27, 2010.***

## **APPOINTMENTS**

None.

**MISCELLANEOUS AND UNFINISHED BUSINESS**

Mr. Avant said the Finance Committee will be scheduling a Special Finance Committee Meeting on November 1, 2010, at 5:30 p.m. to discuss Ordinance No. 126-2010 and Ordinance No. 127-2010.

**COMMUNICATION FROM THE MAYOR**

None.

A motion was made by Mr. Judge, seconded by Mr. Soyars, to adjourn.

Adjourned: 8:40 P.M.

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Frederick S. Maurer  
President of Council

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Susan Matuch  
Clerk of Council