

Council met in **REGULAR SESSION** on Monday, July 25, 2011, at 7:30 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 recited and Mr. Megyes 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, July 11, 2011 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 June 2011, 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

President Maurer explained that normally, at Legislative Sessions, citizens are able to address Council with issues on the Agenda only; however, due to the recent flooding in Barberton and throughout Summit County, there are a number of people who would like to speak on this topic. He said the rule will be waived for people who would like to speak on the flooding issue.

Mayor Genet asked if he could first address that issue. He said there are three measuring devices throughout the City and they measured between 4.6" and 5.5" of rain in a three-hour period last Tuesday morning. He said there were significant flooding issues in the community -- five foundations were damaged and cars were destroyed. He said he spent most of Tuesday visiting and assessing the damage throughout the community. He said it has flooded in Barberton before -- in the South End and the Near West Side. He said this is a regional issue. He said in June, it hardly rained in Barberton but Barber Road had to be closed once again. He said 2.7 inches of rain fell in Wadsworth, and two hours later, it made its way to Barberton. He said to picture a big funnel. He said we collect the water from Medina, Wadsworth, Copley, and Norton -- and it all comes to Barberton, to the four tributaries. He said once those tributaries crest, that water starts backing up. He said we have spent a considerable amount of time and effort to try to help relieve these flooding issues, but it is an ongoing issue. He said we need to work more closely with other elected officials throughout the County. He said as long as the funds exist, we have offered for those who have the flooded basements to call the Planning Department at 848 6729. He said we have a contractor in town that will go in and help remediate some of the water/mold issues and help disinfect the basements. He said for those individuals who have lost a vehicle, they have partnered with METRO to be able to offer passes for a period of time to get people transportation back and forth to work. He said he has pictures for our Stormwater Engineer, Mr. Kelyka, so that we are aware of each individual situation. He said Saturday morning he was at

the Challenger Baseball Series at the Foundation Fields. He said there must have been fifty pounds of gravel that created a sandbank. He said that gravel was washed from Norton into the Foundation Fields in Barberton. He said the torrential rain was very significant and the amount of pressure created by that water was also significant. He said he knows the citizens want to share their stories with us and we will listen. He said if we can assist you, we will certainly do so.

Mr. Tommie Ferguson of 283 Stanley Avenue, Mr. Martin Bellar of 433 Bell Street, Mr. Jack Mynes of 243 Haven Avenue, Mr. Howard Sharier of 273 Stanley Avenue, Mr. Joseph Sharier of 320 S. Van Buren Avenue, Mr. James and LaSara Johnson of 289 Stanley Avenue, and several other citizens in attendance shared their stories of flooded basements and continuing flooding problems in the South End of Barberton.

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.

FIRST READING OF ORDINANCES AND RESOLUTIONS

RESOLUTION NO. 110-2011

RESOLUTION NO. 110-2011. PRESENTED BY: ALL OF COUNCIL. SPONSORED BY: MR. MEGYES. TITLE: COMMENDATION – JAMES E. ULICHNEY. A RESOLUTION OF THE COUNCIL OF THE CITY OF BARBERTON TO HONOR AND GIVE PUBLIC RECOGNITION TO JAMES E. ULICHNEY FOR 25 YEARS OF DEDICATION AND PUBLIC SERVICE TO THE CITY AND ITS CITIZENS. 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 **RESOLUTION NO. 110-2011 BE ADOPTED.** Mr. Stender, Utilities Director, said Jim was a diligent, hard working man who worked his way up to Group Leader in the Water Department. He said Jim was invaluable in his skills. He said for the first time in his lifetime he saw someone use a divining rod. He said there was a water break on private property which was complicated. He said there were a lot of people, including a contractor, there who wanted to fix it. He said Ulichney took a divining rod -- he does not know if it was a coat hangar or what -- walked around, then told them where to dig. He said he was right on the spot! President Maurer called for the vote on adoption. All Members voted “yea.” Motion carried.

RESOLUTION NO. 111-2011

RESOLUTION NO. 111-2011. PRESENTED BY: ALL OF COUNCIL. SPONSORED BY: MR. AVANT. TITLE: COMMENDATION – DONALD NOTT. A RESOLUTION OF THE COUNCIL OF THE CITY OF BARBERTON TO HONOR AND GIVE PUBLIC RECOGNITION TO DONALD NOTT FOR HIS SERVICES AND ENTREPRENEURSHIP OF OPERATING THE CORNER COFFEE SHOP FOR 27 ½ YEARS, FROM 1983 TO 2011. 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. 111-2011 BE ADOPTED.** Mr. Avant said some of you may wonder who

is going to miss this little coffee shop on the corner of 21st Street and Wooster Road. He said every time he drives by and sees all that glass with nothing inside, he has an empty spot inside because he cannot go in and see Don and the other patrons to chat. He said there was an interesting article from the '80s in *The Barberton Herald* that said, "Don Nott doesn't run his coffee shop on Barberton's West Side for profit. He runs it for his friends." It said, "There was a lot of city talk here and residents would come in to get the scoop on the latest activities. You could chat with his patrons that would maybe include a council member, a school board member, or some local politician. The welcome mat was always open and the atmosphere was always warm." Mr. Avant said he wants to thank Mr. Nott for providing those wonderful times. President Maurer said he learned very quickly that if you want to get hold of the political climate, you stop by Don's Coffee Shop. He said Don was always ready for a real quick opinion and he did not much care if that is what you wanted to hear or not. He said we thank you for your political and civil contributions. President Maurer called for the vote on adoption. All Members voted "yea." Motion carried. It was moved by Mr. Avant, seconded by Mr. Anderson, to recess in order to give Mr. Nott his resolution. All Members voted "yea." Motion carried.

Recessed: 8:17 p.m.

Reconvened: 8:19 p.m.

ORDINANCE NO. 112-2011

ORDINANCE NO. 112-2011. PRESENTED BY: MR. JUDGE. TITLE: ENTER INTO CONTRACT – 2011 STREET MAINTENANCE PROGRAM. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO CONTRACT WITH KARVO PAVING, THE LOWEST AND/OR BEST BIDDER, FOR THE 2011 STREET MAINTENANCE PROGRAM, IN AN AMOUNT NOT TO EXCEED \$600,000, AND DECLARING AN EMERGENCY. 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 **ORDINANCE NO. 112-2011 BE ADOPTED.** Mr. Judge said the reason the company name and amount were blank on the Agenda is because the bid opening was not until this past Friday. He said when it was called for, the contractor and amount was not known. He said it is Karvo Paving and the amount is not to exceed \$600,000. President Maurer called for the vote on adoption. All Members voted "yea." Motion carried.

ORDINANCE NO. 113-2011

ORDINANCE NO. 113-2011. PRESENTED BY: MR. MEGYES. TITLE: ENTER INTO CONTRACT – BURGESS & NIPLE – PHASE 3 STUDY – WATER STORAGE TANK PROJECT. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH BURGESS & NIPLE, IN AN AMOUNT NOT TO EXCEED \$95,000, FOR THE PHASE 3 ENGINEERING EVALUATION OF THE WATER STORAGE TANK IMPROVEMENTS 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. 113-2011 BE ADOPTED.** Mr. Stender said this is the third

part of the engineering evaluation of the Water Tank Project. He said the first part was the feasibility study of models to see the best approach for the use of the funds, including which tank to replace, if indeed they needed replacement. He said that was verified. He said the second phase was detailed engineering. President Maurer called for the vote on adoption. All Members voted “yea.” Motion carried.

ORDINANCE NO. 114-2011

ORDINANCE NO. 114-2011. PRESENTED BY: MR. MEGYES. TITLE: SUPPLY AGREEMENT – CONSTELLATION NEW ENERGY – GAS AGGREGATION PROGRAM. AN ORDINANCE AUTHORIZING ALL ACTIONS NECESSARY TO SUPPORT THE CONTINUATION OF A GOVERNMENTAL NATURAL GAS AGGREGATION PROGRAM WITH OPT-OUT PROVISIONS PURSUANT TO SECTION 4929.26, OHIO REVISED CODE, DIRECTING THE MAYOR TO EXECUTE A SUPPLY AGREEMENT WITH CONSTELLATION NEW ENERGY TO CONTINUE A NATURAL GAS AGGREGATION PROGRAM BEYOND NOVEMBER 2011 WHEN THE CURRENT SUPPLY AGREEMENT ENDS. 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. 114-2011 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 115-2011

ORDINANCE NO. 115-2011. PRESENTED BY: MR. SOYARS. TITLE: FOUNDATION GRANT REQUEST – FIRE – CITY TORNADO WARNING SYSTEM. AN ORDINANCE APPROVING THE SUBMISSION OF A GRANT APPLICATION BY THE DIRECTOR OF PUBLIC SAFETY / FIRE CHIEF TO THE BARBERTON COMMUNITY FOUNDATION, IN THE AMOUNT OF \$94,763.50, TO REPLACE THE CITY TORNADO WARNING SIREN SYSTEM, 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. 115-2011 BE ADOPTED.** All Members voted “yea.” Motion carried.

President Maurer said the ordinance Council will be voting on this evening is Ordinance No. 116-2011 dated 07-21-2011.

ORDINANCE NO. 116-2011

ORDINANCE NO. 116-2011. PRESENTED BY: MR. AVANT. TITLE: FIREFIGHTERS LABOR CONTRACT – FACT FINDING REPORT. AN ORDINANCE ACCEPTING THE RECOMMENDATIONS OF THE FACT FINDING REPORT ON THE UNRESOLVED ISSUES BETWEEN THE CITY OF BARBERTON AND IAFF LOCAL 329 AS THE REPRESENTATIVE FOR THE BARBERTON PROFESSIONAL FIREFIGHTERS BARGAINING UNIT, 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. 116-2011 BE ADOPTED.**

Mr. Wagner said he has spent a great deal of time going through this and he feels it is an honorable agreement. He said he knows there are differences of opinion here, but he stands firm in the fact that he feels it is an honorable and equitable contract. Mr. Lysenko said he sees there were concessions made on both sides. He said he was out of town so he was not able to be at the special committee meeting. He said he read the Fact Finding Report and he would have liked to have had more time, as Mr. Judge said in the Finance Committee Meeting, to consider these things. Mr. Lysenko said a strong consideration for him is that he does not know if things will improve from here on end, whether it be by negotiation after this evening or by the decision of an arbitrator. He said this seems to be an honorable agreement, as Mr. Wagner said, so he will be voting to accept. Mr. Judge said this is probably one of the most difficult votes for him. He said it is kind of unfair that we had this over the weekend and because of the rules, we have to vote on this within seven days of it being released, which gave us about forty-five minutes to one hour to have a discussion and questions. He said you can definitely tell that there have been concessions on both sides and the firemen have given up a lot. He said there are things in here that he likes and things that he does not like. Mr. Judge said there is a section in here that *could* have the possibility of affecting other employees down the road. He said that is a sticking point for him. He said all the non-bargaining and other groups have given concessions as well, but when we pass one ordinance that could have an effect upon other employees in the city, he is not sure that it is doing the city as a whole a disservice or doing right by them at all. Mr. Avant said he is not too sure what we are allowed to discuss from this Fact Finding Report and the meeting we had being an executive session, but there is a hint that, based on this fact finder, the IAFF is going to get a little bit better situation than the other two bargaining units. He said every employee in the City is as equally important as the other and he thinks we need to come down to have an equal type of contract for everyone. Mr. Avant said when my waterline breaks outside, who is going to fix it? He said when there is a rash of burglaries in the city, who will resolve it? He said when there is a fire or someone is having a heart attack, who will be there for the rescue? Mr. Avant said everyone is important and everyone should have an equal contract, especially in today's financial crisis and situation. He said we cannot afford to spare more for one than the others. He said the money is just not there and this is the same situation for this ordinance as well. President Maurer said Mr. Lysenko was unavailable at the time, but you might want to review the comments of our Safety Director. He said as he understands the situation, this is not a be-all / end-all. He said it may just force a little more negotiation to try to resolve a few other issues. He said nobody has more respect for our firefighters than he does. President Maurer said having been a member of the safety forces in a neighboring township for twenty-two years, he certainly appreciates everything every fireman and policeman does. Mr. Lysenko said he has read this report thoroughly, twice. He said he is fully confident of his decision after reading it. He said he feels he is making this decision partially because of what has happened in Akron because of the arbitrator's decision. He said there was a lawsuit filed. He said he does not know that an arbitrator's decision or any negotiations will improve what we have before us now ... for any bargaining unit. He said that is a big reason he is voting to accept this agreement. He said he has complete confidence that he is able to make that decision right now. President Maurer called for the vote on adoption. Mr. Suboticki, Mr. Wagner, and Mr. Lysenko, voted "yea." Mr. Megyes, Mr. Anderson, Mr. Soyars, Mr. Judge, and Mr. Avant voted "nay." The Clerk said the vote was 3-5. President Maurer voted "nay." Motion failed, 3-6. Mr. Lysenko asked if the Ohio Revised Code provided a threshold to accept or reject this. President Maurer said it is a 3/5

majority. Mr. Lysenko asked if that would change the outcome. It was determined that it did not.

ORDINANCE NO. 117-2011

ORDINANCE NO. 117-2011. PRESENTED BY: MR. JUDGE. TITLE: INCREASE OF CONTRACT – GPD GROUP – STREET MAINTENANCE PROGRAM. AN ORDINANCE AUTHORIZING AN INCREASE IN THE AMOUNT OF THE CONTRACT WITH GPD GROUP BY \$15,000, FOR GENERAL ENGINEERING SERVICES AND TO SUPERVISE THE CITY’S STREET MAINTENANCE PROGRAM, AND DECLARING AN EMERGENCY. 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 **ORDINANCE NO. 117-2011 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 118-2011

ORDINANCE NO. 118-2011. PRESENTED BY: MR. AVANT. TITLE: APPROPRIATION – STREET PROJECTS. AN ORDINANCE APPROPRIATING \$300,000 FROM THE UNAPPROPRIATED ITEM OF THE PERMISSIVE LICENSE TAX FUND TO THE PERMISSIVE LICENSE TAX FUND CAPITAL BUDGET, FOR THE REPAIR / RESURFACING OF CERTAIN STREETS, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, 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. Avant, seconded by Mr. Judge, that **ORDINANCE NO. 118-2011 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 119-2011

ORDINANCE NO. 119-2011. PRESENTED BY: MR. AVANT. TITLE: APPROPRIATION – STREET PROJECT / SIGNAL PROJECT. AN ORDINANCE APPROPRIATING \$300,000 FROM THE UNAPPROPRIATED ITEM OF THE INFRASTRUCTURE IMPROVEMENT RESERVE FUND TO THE INFRASTRUCTURE IMPROVEMENT RESERVE FUND CAPITAL BUDGET, TO REPAIR THE INTERSECTION OF AUSTIN DRIVE AND S. AZALEA BOULEVARD AND TO REPLACE THE STREET SIGNAL AT THE INTERSECTION OF 4TH STREET, NW, AND NORTON AVENUE, AND DECLARING AN EMERGENCY. It was moved by Mr. Avant, 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. Avant, seconded by Mr. Judge, that **ORDINANCE NO. 119-2011 BE ADOPTED.** All Members voted “yea.” Motion carried.

ORDINANCE NO. 120-2011

ORDINANCE NO. 120-2011. PRESENTED BY: MR. AVANT. TITLE: SALE OF LOTS – NEW HAVEN DEVELOPMENT. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH FORREST CITY BARBERTON, LLC, TO ALLOW FOR THE SALE OF TWO LOTS IN PHASE 2B OF THE NEW HAVEN DEVELOPMENT, 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. 120-2011 BE ADOPTED.** Mr. Judge asked Mr. Flickinger if this would come up every time a lot is sold in the current Phase. Mr. Flickinger said for any other lots to be sold -- if payments are not brought up-to-date by Forrest City -- another resolution of some form would probably be needed. Mr. Judge asked if he knew if there was going to be any resolve in the discussion. Mr. Flickinger said the Foundation and the Mayor have all been involved with Forrest City to resolve this. He said to the best of his knowledge, there has not been anything. Mr. Judge said this is the first time he has heard about this. Mayor Genet said he did submit the letter last week. He said they have been in discussion with Forrest City. He said as far as a resolution, they have not come to a resolution on how they are going to move forward. Mayor Genet said that allotment has struggled, especially in light of the fact that the housing market is very stagnant and weak right now. He said there is an opportunity for the sale of two lots and they felt that this was the best way to move forward. President Maurer called for the vote on adoption. All Members voted “yea.” Motion carried.

The Clerk said due to the bid opening late Friday afternoon, Ordinance No. 121-2011 was not listed on the Agenda and it was not given to Council until this evening. President Maurer said this legislation was passed in the Streets Committee to suspend rules.

ORDINANCE NO. 121-2011

ORDINANCE NO. 121-2011. PRESENTED BY: MR. JUDGE. TITLE: ENTER INTO CONTRACT – PAVE 5TH STREET, NE – 2011 STREET MAINTENANCE PROGRAM. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO CONTRACT WITH BARBICAS CONSTRUCTION AND PAVING COMPANY, INC., THE LOWEST AND/OR BEST BIDDER, FOR THE 2011 STREET MAINTENANCE PROGRAM, IN AN AMOUNT NOT TO EXCEED \$100,000, TO PAVE A CERTAIN SECTION OF 5TH STREET, NE, AND DECLARING AN EMERGENCY. 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. Mr. Palmer said the contract was broken up into two parts and Barbicas was lower on the Fifth Street Project. He said overall, Karvo was the lowest bidder by far. He said GPD chose to offer this particular part to Barbicas. He said if Barbicas chooses not to accept it, they will be covered with Karvo for the whole contract. President Maurer called for the vote on adoption. All Members voted “yea.” Motion carried. It was moved by Mr. Judge, seconded by Mr. Suboticki, that **ORDINANCE NO. 121-2011 BE ADOPTED.** All Members voted “yea.” Motion carried.

SECOND READING OF ORDINANCES AND RESOLUTIONS

None.

THIRD READING OF ORDINANCES AND RESOLUTIONS

None.

APPOINTMENTS

None.

MISCELLANEOUS AND UNFINISHED BUSINESS

Liquor License Request:

To: Dolgen Midwest LLC, DBA Dollar General Store #9395, 747 Wooster Road N., Barberton.
The Clerk said no objections were received.

President Maurer said he guesses everyone feels pretty helpless after hearing our citizens this evening discussing their flooding problems. He said he cannot minimize their being upset. He said water does flow downhill and when we get that much rain in that short of time He said his heart goes out to these people.

President Maurer said this is our last meeting before the August Recess. He said to stay close with City Hall, as you always do.

COMMUNICATION FROM THE MAYOR

Mayor Genet said last Saturday the Challenger Baseball Tournament was held at the Foundation Field with a lot of teams from the State of Ohio and beyond. He said it is a very exciting event.

Mayor Genet said due to the inclement weather, the NCS “Paint Your Heart Out” was postponed until this coming Saturday.

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

Adjourned: 8:51 P.M.

Frederick S. Maurer
President of Council

Susan Matuch
Clerk of Council