

Cuyahoga Falls City Council
Minutes of the Public & Industrial Improvements Committee Meeting
March 19, 2012

Members: Jerry James, Chair
Diana Colavecchio
Terry Mader

Mr. James called the meeting to order at 6:42 p.m. All members were present

The minutes from the February 21, 2012 Committee meeting were approved as submitted.

Legislation Discussed

Temp. Ord. A-28
Temp. Res. A-29
Temp. Ord. A-34
Temp. Ord. A-35

Discussion

Temp. Ord. A-28

An ordinance authorizing the Director of Public Service to enter into a contract without competitive bidding with Akron Building and Outdoor Maintenance, Inc. dba Riverreach Construction for the professional and construction services necessary to design and execute the demolition and removal of two dams in the Cuyahoga River, and for associated stream bank restoration, and declaring an emergency.

Mrs. Carr stated that removal of the dams has been discussed for quite sometime and it is finally at the stage in which the City has gone out to hire a company who will do the project. The project will include the removal of the dams and perform the restoration referred to in the ordinance. It will be a design/build project. Riverworks is a specialty firm which specializes in waterway construction dedicated to environmental stream and wetland projects. Most if not all of their work has to do around the water so they are very familiar with these types of projects. They have also partnered with EnviroScience, who is located in Stow and formerly located in Cuyahoga Falls. The City has done work with EnviroScience who is a well-known environmental firm. EnviroScience will be leading most of the restoration side of the work. Also, GPD, a local engineering company, is another part of this team. The City has had very good results with GPD as well. GPD did some of the master planning work with the Park & Rec. Dept. Finally, Tom Dillon & Associates is another partner. Mr. Dillon is a stakeholder/owner of the Sheraton. The City received six proposals for this project. Five of them were very strong and one was adequate. The proposal they felt was extremely outstanding is the company that has been chosen. The pluses in that proposal were the most comprehensive, it had all of the points the City asked for, the company has a strong environmental and restoration approach, excellent education PR ideas, good traffic control plan, good stabilization plan, and they threw in some extras, such as having an archeologist on site. As you know, as the water starts flowing down, it could be bringing with it a lot of the history of Cuyahoga Falls. They want to be able to capture that. When they removed the Kent dam, there were quite a few artifacts that were found and preserved so the archeologist will be helping with that. Also present this evening is Elaine Marsh of Friends of Crooked River, and Bill Zawiski from the Ohio EPA. Mr. Zawiski assisted the City in getting the \$1 million grant and was also part of the selection team and sat in on the interviews with her, Mr. Demasi and Mr. Lohan. Mr. Demasi stated this ordinance will allow the City to hire the design/build team to remove the two dams and perform stream restoration as may be needed due to the lowering of the impounded water elevations. Following the advice of the EPA, the City chose the design/build concept based on the EPA's success in using that in other dam removal projects. It allows for more flexibility, especially in projects such as this where there could be a lot of unknowns. Once the designs are 30% complete, the team will submit them to

be reviewed. Once there is a set the City is satisfied with, they will be submitted to the Army Corps for a final permit and then work can begin. Coordination with the Army Corps of Engineers has already begun, and it is anticipated the City will receive permits for the work soon. Completion of the project will comply with the 2003 TMDL Study, and it is anticipated to be substantially completed this summer in time for the City's Bicentennial celebration, which is the first two weeks in August. Mr. James stated this is an exciting time. Mr. Mader wanted to acknowledge Elaine Marsh's and Bill Zawiski's help in getting this going. It has been a long road. It will be exciting to see this physically happen. Mr. Walters asked what the duration was from start to finish. Mr. Demasi stated that Riverworks should begin a majority of its work in June and will be completely done by the middle to end of July so it will not take that long for the actual removal of the structures. The majority of the work will be in the restoration of the riverbanks behind the dams. The width of the river will probably go from what it is today to maybe 20 – 40 feet wide and obviously wider during heavy storm events.

Mr. Walters stated there is a lot of old debris behind the Sheraton, such as massive slabs from Vaughn Machinery, and asked if that would be part of the removal as well. Mr. Demasi stated that could be part of the restoration. They will talk to Riverworks about that. He added they may find other dams inside the impounded waters just based on the research he has done. Mrs. Klinger asked if any water would be diverted while doing the removal. Mr. Carneal of Riverreach Construction stated that diversion will not be practical in this instance because there is such a defined corridor to work within. They do divert whenever they can because it is a helpful construction methodology but what they will be doing here is lowering the impounded areas in a staged manner before working in the river proper. Mrs. Pyke asked how they planned to get down there to remove the dams. Mr. Carneal stated they have been working on a couple different methods. One idea will potentially be removing some of the guardrail from the exit ramp and coming down the eastside of the river bank to create a staging area. They anticipate lowering the Sheraton dam first and potentially will float a barge down to the dam with a piece of equipment on it. Another idea is to create a staging area for some men to work off of on the eastside of that dam and have a manual cut-down but they are not sure that will work. It may be too risky from a safety standpoint. Mrs. Pyke stated this would be such a learning experience for university students and asked if they planned to work with them or let them come in and see what is being done. Mr. Carneal stated they are always willing to work with students, but safety will be an issue. They are definitely willing to bring students in if they want as long as it is in a safe manner. Mrs. Pyke asked if it would change the flow of the river. Mr. Carneal stated that rivers fluctuate with their base flow. Typically, midsummer is at a low ebb, and storm events and snow melts in the spring are higher. They will affect the impounded areas behind the dams so those lakes that are man-made will no longer exist. The dam lowering will ultimately be good for public safety and will be fantastic for kayaking. Mrs. Pyke asked if this would help with the flooding that occurs behind Waterworks. Mr. Carneal could not answer that question at this point. Bill Zawiski, Ohio EPA, stated they will be removing the wells in the river which will help by increasing the velocity. The dams do not make water so the volume of water will not change. Whatever came into the river is going to leave the river with or without the dam. It is the impoundment and the time it would sit there which allows chemistry to occur that degrades oxygen and creates more silting places. They will actually restore the river's ability to heal itself. As far as the flooding issues, the anticipation is that some of the flooding in the park will be lessened, however, the park is the flood plain and it is going to get wet. Once both dams are removed, the water will move through faster downstream, so there will be less water backing up but they won't know how much until this process occurs. They will continue to monitor everything from an EPA standpoint. Mrs. Pyke asked if the environmental studies on the silt behind the First Energy dam have come back. Mr. Zawiski stated the report is being prepared and they are waiting for that to be submitted. They have an estimate of the volume, which is about 800,000 cubic yards which is higher than they previously anticipated. They are working with the U.S. EPA and Great Lakes Restoration Initiative Funding to get the first study completed, which is going to be a sediment management study. Mrs. Pyke asked who owned the dam. Mr. Zawiski said he has seen different comments on that and did not feel it was his place to say. It will be removed regardless of who owns it.

Ray Dietrich, River Estates, is not as enthusiastic about this project as everyone else is because his is the last house with the pool behind it and his dock will no longer be able to be floated. He has resigned himself to the fact this is going to happen. He did not feel anyone was looking at the upstream side of what will happen. He wanted to know the direction of the flow of the river that goes through Waterworks Park. If it goes one way,

which he felt is the natural way, it will go past his house. If it goes the other way, however, it will be on the Silver Lake side, which will leave him high and dry. Mr. Zawiski stated they have somewhat of an idea from the flow study that was done. Once you get out of the Waterworks area, it is a bedrock gorge so it doesn't matter which way the stream wants to flow. It will probably be flowing evenly over most of that bedrock. At the upper end of Waterworks until it enters the bedrock area, it is carving out a deeper channel which will change tremendously because that is the sand and material that has been moved down from Kent and Munroe Falls. It wants to move further downstream but because of the impoundment, it slows up at that upper end, so that will flush away fairly rapidly and the nature of what happens at Waterworks is going to be different. Which way it is going to flow, he does not really know but considering the bedrock channel, it is not something they are worried about because it will be steadily confined in there. If they have to address accelerated erosion or protection of a structure or a property at a certain place, habitat restoration is included in addition to the dam removal. Mr. Dietrich stated that the City spent a lot of money on the Waterworks dock a few years ago and, if the river goes the other way, the dock will be high and dry. Mr. Zawiski stated the river will go in the only direction it can. Mr. Demasi added that on the EPA permit that was applied for, he included a nominal amount of dredging to allow them the ability to help things along in moving the sand and silt if they need to.

Elaine Marsh, Friends of the Crooked River, stated her group is very excited about this and very thankful to everyone in the City for being such great "river partners." It is amazing that this project is being considered and also that consideration is being given to removing the big dam. She indicated that Friends of the Crooked River is very interested in working with the team, as is David Hill who works with the Keel Haulers and American Whitewater. There is also a group of people working on a water trail and this has been the topic of much discussion among them. She stated they only want the very best kayakers on the river because it will be a Class 4 to 5 rapids so they are concerned that the proper information is distributed to the public to educate them on the safety is required by the City. Her group has worked with EnviroScience in the past and finds them to be excellent partners. They do wonderful work and her group is excited to be working with them again.

Denise Dido from River Estates is concerned. They purchased their property because of the river. She asked how low the river will be and wondered whether they will see mud or would there actually see water. Mr. Demasi stated there will always be water in the river. Mrs. Dido was concerned how the level would affect where they can put their kayaks into the water and also about other people who fish and canoe. Mr. Demasi stated she will be able to walk down to the river but it will be a little further to get down there. He felt the elevation would drop about two feet at her location. Mrs. Dido also asked if there would be a special place for the public to enter the river with their kayaks and canoes, similar to the pontoon boat that used to travel the river. Mrs. Carr stated they will be transitioning from pontoon boats to kayaking. It is still being determined where they will enter the water based on how the water takes shape. They will be consulting with whitewater specialists in the future to get their input. The City is not doing this without some foresight. She wanted to clarify that "Riverworks" encompasses all of the team members and "River Reach" is the construction company. She added that the team purposely made sure they were timing this with the Bicentennial. They also want to educate people as to how the City is taking the river back to how it was more than 200 years ago prior to any dams being built. Both dams were built in 1914 and have been there for a long time so this will be an opportunity to teach the public that the river is healing. Construction will be completed in terms of taking the dams out but the healing process will take more than three months so work with the team will continue into 2013.

Mark McCullough asked what will happen to the property lines when the river drops and properties are extended. Will they be permitted to put no trespassing signs or will there be a right-of-way where people can walk. Mr. Janis stated it would depend on what the deed says. If the deed does not say anything about where the property ends, then the property would go to the thread of the stream, which is where the main flow of the river is. Then, when the water level drops, the property would increase to wherever the edge is. Unless your deed says otherwise, your deed currently limits you to where the water's edge is now, then your line stays there. Property owners would have to do a title search to find out for sure.

Mrs. Colavecchio moved to bring out A-28 with a favorable recommendation, second by Mr. Mader. Motion passed (3-0).

Temp. Res. A-29

A resolution declaring the necessity of and intention to appropriate certain interests in real property necessary for the improvement of State Road between Graham Road and Steels Corners Road, and declaring an emergency.

Mr. Demasi stated on the State Road widening project, there are three types of property acquisitions needed. First are warranty deeds to allow the road widening and installation of new sidewalks. These vary from a couple feet to over 15 feet in some cases. The majority of acquisitions are temporary easements, which will allow the City to grade and restore the property as part of the project. They also vary from a couple feet to over 20 feet. The third type of acquisition is utility easements for overhead electric wires, which will overhang some of the properties. Throughout this project, they have been negotiating with 81 property owners representing 97 parcels. As of this afternoon, the City has settled with 67 property owners for about 83 parcels. There are 14 parcels who have not signed and those are listed in the resolution being discussed. There are some properties who indicated they would sign but the documents have not yet been returned. If they are not received this week, there will be a substitute resolution listing those properties as well. Also, some of the properties listed have signed and that will all be cleaned up later this week. URS has been doing the negotiating on behalf of the City on this project. The final utility tracings are due to be submitted to ODOT on April 2, final roadway tracings and right-of-way clearance are due to be submitted to ODOT on May 1, the plan package will be submitted to ODOT's central office on August 31, and a planned projected sale date of December 10, 2012. Mr. James asked about the east side of the intersection of State and Bath, specifically the Mandarin House. He did not feel there was a current problem with people currently turning right if someone else was waiting to go straight onto Bath. He didn't understand the wisdom of wanting to do an easement on that area for a right turn lane when he didn't think there was a problem there to begin with. Mr. Demasi stated that funding is predicated on the City improving the congestion and safety out there. The consultant prepared studies in 2008 that have been reviewed and approved by ODOT which support the improvements being done not only at that location but for the entire project. He spoke to ODOT this afternoon and they indicated these were key components to the project that meet the funding goals, purpose and need. If the right-turn lane were to be removed, it could jeopardize funding.

Mr. Mader asked if removing the right-turn lane would be saving money. Mr. Demasi stated it would jeopardize the entire \$9 million project, not just jeopardize what is being done at that intersection. Mr. Mader wondered why that would be if the City were trying to save money on a project. Mr. Demasi stated there would be no improvement made to the congestion or safety out there at all. Mr. Mader agreed with Mr. James. He goes through that intersection all the time and has never seen a problem either. He also understood that there were still negotiations going on with the property owner and that other alternatives were being looked at. Mr. Demasi confirmed that.

Mrs. Colavecchio asked what some of the alternatives might be as opposed to inserting a right-turn lane. Mr. Demasi stated they were still in active negotiations with not only this property owner but all the other property owners listed in the ordinance so he was not able to get into any specifics. In general terms, they could make some small, nominal geometric changes to the plans that do not change the purpose and need of the project but may lessen some of the impacts. There will still be a turn lane, improvements to the intersection, widening, sidewalks, bike lanes, and things of that nature. Mrs. Colavecchio asked how long the negotiation process would continue and wanted to know when the City absolutely had to have a decision on this. Mr. Janis stated the appropriation process is a two-step process. Tonight's resolution announces Council's intent to consider appropriation of the parcels. If negotiations fail after this resolution is passed, then the Administration would come back to Council with an ordinance authorizing the specific appropriation of any properties that do not settle. The amount of time between those two items is at least 30 days.

Ed Davidian went over a diagram on the intersection. He referred to review booklet he prepared that is detailed and has better, more up-to-date data than what was provided by URS. The decisions have been based on 2008 and 2005 information, which do not justify a right turn at Bath Road. URS' report indicates that at the peak hour in the morning, 193 cars turn right, and at the peak hour in the afternoon, 193 cars turn left onto Bath, which means that everyone who turns right, comes home and turns left to the exact number. He finds that hard to believe. Those are the only numbers in their stats that are the same. The statistics in the data he distributed do not warrant a right-turn lane at Bath Road going north. There have been no complaints made to Council. The outdated material does not take into consideration the left turn arrow that was installed at Bath Road a few years ago, which helped take some of the pressure off that intersection. There was a great improvement to Mark Drive which was not done in the 2005 and 2008 studies so people cutting across can now use Mark Drive. The turn lane is also not needed based on the accident ratio. State Road and Sackett is recorded as number 8 and State Road and Chestnut is recorded as number 6. State Road and Bath is number 11. They think the solution is better control of the traffic instead of adding more lanes. The present system does not take into consideration bicycles, motorcycles or pedestrians and yet a bike lane and sidewalk are being constructed. There are modern control devices that can consider all of these things and will help make it safer for bikers and walkers. Further, the AMATS study only shows an increase of 10 cars between now and 2032. The URS report states the vast majority of crashes at this location were rear-end collisions and indicates that there wasn't a significant history of angle crashes reported. The 2011 accident reports show that there were seven accidents, none of which were involved in the right-turn lane being discussed. They were rear-enders. All the turn lanes in the world will not solve this problem. The City would be better off installing the technology for the bicyclers that will be on the road and not make another turn lane for traffic to go around the corner. The Mandarin House is owned and operated by Mr. Hwee and is one of a shrinking number of restaurants in the City. Mr. Hwee has four employees who have been with him for over 30 years. Mr. Davidian stated he didn't want to jeopardize a \$9 million project but he can't believe that taking the right-turn lane out would jeopardize the whole thing. Mr. Hwee is not objecting to the project but only to the part that will take a good portion of his parking. Granted, a lot of his parking is in the right-of-way but it has been that way for 30 years. The charrettes called for a bike and hike trail about six to eight feet wide on the west side of State Road to eventually go up and hopefully connect to the bike trails. It did not ask for a bike lane on the roadway. The City should show more concern for the people who have stayed in the City and invested money. Mr. Hwee has invested more than \$120,000.

Mrs. Carr stated they are aware of the issues with the Mandarin House. They have met with them and with Mr. Davidian. They are trying to work through some alternatives, which is why Tony talked to ODOT. They were hopeful that the requirement of the turn lane could have been changed more than what the City is getting but that does not mean they are giving up. ODOT has provided the City with alternatives that Tony alluded to. The only reason those are not being disclosed tonight is because it will affect the negotiation in terms of the right-of-way and they cannot discuss that in an open forum. If Council wanted to go into Executive Session, it could be discussed then or they can work out the issues with Mr. Hwee and bring back a package for everyone. They need time to work out the issues. Maybe \$9 million doesn't look that important to one business owner but it is extremely important to the City. The Mandarin House is using the current right-of-way for parking and ODOT sees that so it doesn't see that as an issue because it is already the City's right-of-way. Mr. James asked about Council holding this resolution. Mrs. Carr indicated this resolution just states that it is the City's intent to go to appropriations. The City cannot do anything without Council's approval. Mr. Demasi added he has to tell ODOT by May of this year that all of the right-of-way has been acquired.

Warner Mendenhall, 190 N. Union Street, Akron, represents Mr. Hwee. He has been involved in several eminent domain cases around the state and is familiar with the takings regarding street projects. The City has a lot of power to take property, put in the street and deal with consequences later. That is why Mr. Davidian and Mr. Hwee put together such a detailed description of what is happening. Mr. Hwee has no objection to any of this other than the little piece on Bath Rd. He showed a photograph showing the impact on the parking. Adding a right-turn lane will reduce the number of parking spaces by 20, some of which are reduced because of the right-of-way. Mr. Hwee does not want to go to litigation. He wants to negotiate to save his business and employees. He's willing to deal with a lot of construction, which can be damaging to businesses during the time of construction. One of the things that concerns him is that Council has a power that is declaring an intent. Mr.

Mendenhall asked that Council think about that intent because once it is handed off, that power goes away and then negotiations are solely with the Administration. He urged Council to exercise the power it has right now to protect a local business by holding this resolution.

Ed Hwee has been property owner and manager of Mandarin House for the past almost 30 years. He requested his office manager, Maryann Schrader, read a statement for him. The statement indicated Mr. Hwee has seen a lot of money spent by the City to develop State Road businesses through grants and other programs. He has never asked for nor received any help through these programs. The proposed widening of Bath Road would reduce his parking from 58 to 38 parking spaces. He acquired full share of Mandarin House in 1986. He has remodeled the interior of the restaurant three times and the exterior once. The last remodeling was done two years ago. He is not objecting to the sidewalk and bike bath on State Road even though that will take away five to six parking spaces. His sole objection is to the right-turn lane from Bath Road onto State Road, which he feels is totally unnecessary. It is a waste of City money and resources, and it would cause great hardship to his business, customers and property value. The URS data indicates that, in the next 20 years, there will only be an additional 10 cars during peak hours during the day. He felt that modernizing the traffic control device would be a much better option. He feels the City should use its resources to not only attract new businesses, but also preserve and protect the small, independent existing businesses. This is what makes Cuyahoga Falls a unique city. He feels this project may force him to close, putting 14 people out of work. Mrs. Colavecchio stated that the restaurant has seating for 96 patrons and 68 parking spaces to accommodate patrons plus their employees. She asked what the Code required. Mrs. Carr stated if the parking lot were laid out according to Code, there would be no where near the spaces they need. She understands why they are counting the spaces in the right-of-way. However, as issues are worked through on projects, things have to be corrected along the way. Mr. Demasi stated the Code requires a restaurant to have a function of the number of tables, number of employees, and things of that nature. For this particular business, they calculated the required number of parking spaces to be in the 60 to 70 range. Mr. Lee does not meet the required number today, let alone after the project. Mrs. Colavecchio asked what the square footage of the building was. Mr. Lee stated it is almost 6,000 sq. ft. He has 3,000 and the tenant has 2,750. The tenant is called "New to Us" and has a six-year lease that was signed last July. He believed there was an "out" provision in the lease for eminent domain. Mrs. Carr stated that her preliminary thoughts were that it is still midway through March and recommended this be held to give everyone on Council a chance to view this site. She has viewed the site and met briefly with Mr. Hwee. Also, for the record, as the Ward 5 Council person for this area, she has not had one constituent in six years call and ask for a right-turn lane at this intersection. She had many call for a right-turn lane from Graham Road onto State Road but not at Bath. She is hopeful that both sides would continue to work together and come up with a resolution.

Mr. Walters stated if he is at the light, he can pull up a bit and the car behind him can turn. As long as all of the cars behind him want to turn, they can all go. When Crocker's was done at Front Street, the City had to acquire the whole property. He asked if there was a threshold where the City is bound to purchase the property and, if so, what threshold is. Mr. Demasi stated that if a situation leaves a property owner with economic remnant, it could become a total take. However, the appraiser for this project, the review appraiser, ODOT and the City all looked at the impact that the project would have on this particular business, and none thought the impact would leave the business with an economic remnant. Mr. Walters stated if he were heading west on Bath to go north on State during rush hour, he would take Hunter Parkway to bypass that. Mr. Janis wanted the Committee to recognize the fact that this resolution declares Council's intent to appropriate all the parcels listed. If this resolution is not brought out, negotiations on all of the parcels stop, not just on Mr. Hwee's parcel. This would stop the project. There is another piece of legislation that would come later that would appropriate the property should negotiations fail. Mr. James believed in all fairness to everyone else, that the legislation should not be held. Mr. Mendenhall asked if this parcel could be pulled out of the ordinance. Mr. Janis stated the Committee could make a motion to amend the piece to provide for that or he could provide a substitute at the next meeting if it is brought out tonight. Mrs. Colavecchio stated that would be fine. She did not want to stall negotiations with the other property owners.

Bonnie Valentine stated she is a small business owner. Her observation would be if this project takes enough of his property so that he does not have enough parking to run his business profitably, perhaps Council could

consider moving him at the City's expense. Mr. James stated that might have been a consideration but that would be up to Mr. Hwee. He has been there for over 30 years and he may not want to change his venue.

Mr. Mader moved to bring out A-29 with a favorable recommendation, second by Mrs. Colavecchio. Motion passed 3-0.

Temp. Ord. A-34

An ordinance authorizing the Director of Public Service to purchase certain real property located at 4033 State Road, a portion of Parcel No. 35-02093, necessary for the improvement of State Road, and declaring an emergency.

Mr. Demasi stated property acquisition is needed for the State Road improvement project. The right-of-way consultant, URS, prepared appraisals, performed title searches, presented the offers and negotiated with the property owners. In this and the next legislation, the property owners accepted the offers and, because the amounts were over \$25,000, legislation was needed. This property is located at 4033 State Road and is on the northeast corner of State Road and Steels Corners Road. The City's fair market value was accepted. The take will be 1,800 sq. ft. of new right-of-way, which represents anywhere from 10 to 20 feet from the existing right-of-way, and a little over 3,000 sq. ft. of temporary easement which also represents about 10 to 15 feet of temporary easement for this property.

Mrs. Colavecchio moved to bring out A-34 with a favorable recommendation, second by Mr. Mader. Motion passed (3-0).

Temp. Ord. A-35

An ordinance authorizing the Director of Public Service to purchase certain real property located at 4005 State Road, a portion of Parcel No. 35-00705, necessary for the improvement of State Road, and declaring an emergency.

Mr. Demasi stated this property is at 4005 State Road, and is on the southeast corner of Steels Corners and State Road. The property owner accepted the City's offer. The City will be taking a little over of 1,500 sq. ft. of new right-of-way, representing five to ten feet from the existing right-of-way, and nearly 5,000 sq. ft. of temporary easement. At this intersection, they are doing the same improvements that are being done at Bath, adding right-turn lanes, extending left-turn lanes, widening, adding sidewalks, bike lanes, etc.

Mr. Mader moved to bring out A-35 with a favorable recommendation, second by Mrs. Colavecchio. Motion passed 3-0.

Meeting adjourned at 8:00 p.m.