

RECORD OF PROCEEDINGS
COUNCIL OF THE CITY OF NORTH CANTON

Minutes of

REGULAR Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23, 7:00 p.m. 20 04

CALL TO ORDER:

1. The meeting was called to order at 7:00 p.m. by President of Council Jon Snyder.
2. The opening prayer was delivered by Rev. Mark Sherwindt, Zion Lutheran Church.
3. All present recited the Pledge of Allegiance.

Mr. Snyder: Madam Clerk, please call the roll.

ROLL CALL:

4. The following members of council responded to roll call: Foltz, Kiesling, Lane, Lindower, Peters Sarbach and Snyder. Also present were: Mayor Rice, Director of Administration Miller, Director of Law Pusateri, Director of Finance Herr, City Engineer Benekos and Clerk of Council Bittle.
5. Consideration

Minutes of Council Meeting: 2/9/04

Minutes of Special Council Meetings: 1/30/04 and 2/2/04

Financial Statement: January, 2004

Mayor's Court Receipts: January, 2004

Mrs. Kiesling moved and Mr. Peters seconded to approve the minutes of the council meeting, minutes of the special council meetings, the financial statement and mayor's court receipts as presented. All members present voting:

Yes: Kiesling, Lane, Lindower, Peters, Sarbach, Snyder and Foltz.

No: 0

6. Committee Reports

Mr. Snyder: May I have a motion to accept the committee reports as presented, as amended to you - notating the date and I think the exception of an executive session where the City Engineer was in fact present.

Community & Economic Development Committee: Refer to the minutes on file in the Council Office of the Community & Economic Development Committee meeting held February 17, 2004.

Finance & Property Committee: Refer to the minutes on file in the Council Office of the Finance & Property Committee meeting held February 17, 2004.

Ordinance, Rules & Claims Committee: Refer to the minutes on file in the Council Office of the Ordinance, Rules & Claims Committee meeting held February 17, 2004.

Street & Alley Committee: Refer to the minutes on file in the Council Office of the Street & Alley Committee meeting held February 17, 2004.

Water, Sewer & Rubbish Committee: Refer to the minutes on file in the Council Office of the Water, Sewer & Rubbish Committee meeting held February 17, 2004.

Executive Session (Finance & Property): Refer to the minutes on file in the Council Office of the Executive Session (Finance & Property) meetings held February 9 and February 17, 2004.

Mr. Lane moved and Mrs. Kiesling seconded to approve, as amended, the committee report minutes as presented. All members present voting:

Yes: Lane, Lindower, Peters, Sarbach, Snyder, Foltz and Kiesling.

No: 0

7. Recognition of Visitors

Mr. Snyder: At this time, is there anyone in the audience wishing to speak to the council? If so, please step forward, state your name and address for the record.

Mrs. Kiesling: Kathryn, could you hold on for one second and let Senator Schuring speak? He needs to leave.

Mr. Snyder: Well I apologize. Yes. Mrs. Garcia, I apologize, Senator Schuring is here to speak to us tonight on the same issues. He is pressed for time. He is due at another appointment at 7:30 and I would ask you to ... our indulgence in - Senator, would you step forward, state your name and address for the record?

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday February 23,

20 04

Mrs. Kiesling: Thank you.

Senator Schuring: Thank you. Kirk Schuring, State Senator. 1817 Devonshire - Canton 44708. I'm here at the request of council today as the sponsor of House Bill 434, the piece of legislation that enacted into law the Cooperative Economic Development Agreement proposal that the City of North Canton is looking to embark upon, as well as the Township of Plain. I got involved with that legislation and decided to introduce it back in 1998. And in large part one of the reasons I decided to introduce the legislation was because of the fact that as a life long resident of Stark County and as a legislator, all too often I was witnessing the acrimony between the townships and cities; all the fighting that was going on over land. And land is at a premium and it's not easy to come by and I thought it was time to be able to put our differences aside and start working for the community as a whole. I sponsored, prior to House Bill 434, House Bill 269, which allowed Stark County and all the other counties across the state to enter into joint economic development districts with townships. So the theme of these two bills, now the law of the state, has been cooperation and that's why when we drafted the legislation at one time we weren't going to call these agreements anything and I said no, I wanted to make sure that the theme was something that would resonate each and every time it's used. And the central part of what we're trying to do and the operative word is cooperative. And I think it's really good that the City of North Canton and Plain Township have come to terms on this landmark decision. We have found in other parts of the county that when CEDA's have been used, that they are reused again and again. It sets the framework for cooperation, for communication and I hope that if we see the successful implementation of this agreement, that you will look to Plain Township for other opportunities where you all can work together. So cooperation is important. One thing when we talked about the cooperation and as we drafted the bill, the cooperation is much deeper than just cooperation between the township and the city. Obviously the community as a whole needs to also be actively engaged in the process and we went to great lengths to make that occurred. We made sure that there would be ample public meetings, ample opportunities for both legislative authorities at the township level and the city level to work with their constituents to make sure that the details of the proposal were going to be open to the public and the public would have every opportunity to be engaged and to offer suggestions on how that proposal could be made better. I think the law is true to that spirit. I also would suggest to you that once those public hearings are conducted and the elected decision makers within the respective political subdivisions, the township trustees, the council members of the city, once then they make the decision on behalf of all the people, it's a contract and there's terms and conditions to that contract. That contract is in effect executed. However, we also, in the legislature, when we drafted the legislation, said that and parcel to process is the right to referendum and we made sure that the right to referendum was a part of the CEDA agreement. But once that right to referendum window closes, it's important that the deal - the contract, as written, that's the full consummation of it. And that's when the parties are in the contract and are going to be held accountable to uphold their end of the contract and anything short of that, in my opinion, would be a breach of that contract. So the right to referendum is important. I think that we put that into law duly so and I think that it's something that should be exercised if in fact the people feel like they had not had an opportunity to be engaged in the process. But once that window shuts, it's very important that the contract then be fulfilled because it has been in effect consummated at that point in time. I'm here this evening again at the request of council to give you that legislative insight. I'm also here as a law maker and you all know I'm not a lawyer. So as it relates to all other sections of the revised code and how that works and how that might dovetail with or without this law that I authored and sponsored, I'm not sure how that works. And I would tell you that if we're unsure then I would suggest to you that you need to go someplace where you can get those answers to your questions. And I would suggest that you proceed accordingly and take this to a level where we can assure that in the future that the spirit of the law is being followed and if the law needs to be adjusted, then I as a lawmaker will have to do that. I have found in my 11 years in the legislature that we do a lot of things as lawmakers as far as changing the statute, but it is actually confirmed or affirmed, I should say, by the courts when there's questions that are posed and this seems to be such a case and I would suggest that you take it to that level. I'd be - I'll be very curious to see what the outcome is and as I said earlier, there ... might cause some need for some legislative correction. But I know where the spirit was as the lead sponsor of the bill and I'm here tonight again to just share that with you.

Mr. Snyder: Senator, one question if I may and I know you're time challenged. Am I to understand sir that it was the intention of both the committee that you served under and wrote that legislation as it came out of the committee and the full house that it was the intention that if it would be challenged by referendum it was to be challenged on the initial ordinance, not subsequent ordinances? Is that my understanding?

Senator Schuring: President Snyder, exactly and that's what I'm trying to get at. That the whole process set forth in the legislation that we drafted was to have a process whereby on the township level and on the city level the constituents could come in and ask questions and be actively engaged in the decision making process by the respective legislative authorities. Once that process, that part of the process, concluded and the legislative authorities both on the township and the city level decided to enter into the contract, we also put in there the right to referendum. That's an integral part of process, it's an important part of process. It's something I would never never not put into a law. I think it's so fundamentally important. But once that window closes, the contract, in my opinion, then is consummated. And you

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23, 20 04

cannot have other windows that will open from time to time because the parties involved have to expend funds, time, effort and move forward. And to have it always at a point where you don't know if you're in or out or whatever just does - it flies in the face of what contracts are all about.

Mr. Snyder: Well you be in breach. You couldn't enter into a contract ... you had an ability to not execute it.

Mr. Schuring: Correct. I think that - and that's all the more reason you know, this goes both ways. I mean the City of North Canton and again I'm not an attorney and I would look to your legal counsel, Mr. Pusateri, that there could be some exposure if in fact you know you decide to expose this and have it overturned then you in effect could possibly be in breach of contract. Because your contract stated very exclusively that - what the terms and conditions were and so it's an interesting question to say the least. And it's something, that as we drafted the bill, it's something that - this part that we're talking about now, this part that's in question, there's another question there's another section of the revised code. So it's something that we didn't consider coming into play because we wrote a bill. A bill that was then put into the Ohio Revised Code and then also it has to then play with all the other sections and all the other elements of the code and this is not unusual, this happens quite often. And this is the first time however, since the law has been in effect, it was one of the last acts that former Governor Voinovich signed in late 1998, I think it was on December 21st of 1998. And there's been a lot of folks who have used it since then and this is the first time that this question has been posed and I think it's a very interesting one and I think it's one that should be decided by an adjudicated authority that can settle it once and for all and no ifs, ands or buts. One other thing real quickly if I might. I have to go to Perry Township for a trustees' meeting there. I just don't want you to think I have some other appointment that maybe is of a personal nature. I have a meeting with the Township Trustees on a matter that they want me to help them with.

Mr. Snyder: Senator, thank you for your time and your eloquence, we appreciate it very much.

Senator Schuring: Thank you

Mr. Sarbach: Thank you.
Mrs. Kiesling: Thank you.
Mr. Foltz: Thanks.

Mr. Snyder: Mrs. Garcia...

Kathryn Garcia: Inaudible.... Okay, I'm Kathryn Garcia. 1036 Park Avenue NE. And I'd like to talk to you about smart growth and the Sanctuary. Surprised?

Unidentified: We can't hear you.
Mrs. Garcia: You can't hear me?
Mrs. Kiesling: We can, but they can't.
Unidentified (speaking from audience): Inaudible... microphone.
Mrs. Kiesling: You can even use the microphone if you like.

Mrs. Garcia: Shall I shout? Okay, we've witnessed a great deal of growth in the past 10 years or so with both commercial and housing developments springing up around us like mushrooms. What am I doing? Gosh...inaudible...

Unidentified (speaking from audience): You're the star - the star of the show.

Mrs. Garcia: Inaudible... Okay. We finally began to realize that the developers pocket the profits and leave us with the bills for added services, upgrading infrastructure and streets and after the experience of last summer, flood control. Suddenly the townships all around us are working on new rules to control development and promote smart growth - smart growth. North Canton had the opportunity to lead the smart growth movement and with some cooperation from the developers, this Sanctuary project could of been well underway by now. But no, foolish and greedy choices were made and we are - here we are still talking about what we're going to do. Nobody can fault developers for making the most profit possible, if they followed the rules. But we can and we do fault the politicians who fail to make rules to protect our quality of life, that's what you're here for. It's beyond my comprehension how you can spend our money and even put us deeply in debt to buy a golf course in the name of preserving open space and ... and then obsessively support a development with extremely dense housing and almost no honest to God green, oxygen producing, water absorbing open space to offset it. Yet here you sit ready to call lakes and even a clubhouse and a swimming pool open space and totally ignoring the fact that part of this parcel is a flood plain. What is it about this particular development that makes you support it so? Why do you want to put aside a referendum which we designed to give this new council time to make new rules and promote smart growth. It can't be the income taxes, because when you share that with the schools and Plain Township, it's not going to be very much. And it certainly isn't income from the sale of water, since there won't be any. So why, why, why, why? With your unequatable ...inaudible... anti-city and smart growth attitudes you make us wonder why we were foolish enough to elect this council. You may even be pushing some of us towards changing the membership of the Republican

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23, 20 04

precinct committees, since this attitude seems to have started there. And I certainly hope you will carefully consider what you are doing to our city with all this nonsense and very publicly explain what rules you are going to make to ensure smart growth, so the people can have confidence in their government once again. And I thank you for this opportunity to speak.

Mr. Snyder: Well one correction I'd like to make Mrs. Garcia, income tax will not be shared with anyone. It all mirrors...

Mrs. Garcia: If there is any.

Mr. Snyder: No I don't believe so, I believe it all comes to the city.

Mrs. Kiesling: The schools only get property tax.

Mr. Snyder: The property tax...

Mrs. Herr: Income tax comes to the city.

Mrs. Garcia: Inaudible...

Mr. Snyder: The property tax...

Mrs. Herr: It's not shared with the schools.

Mr. Snyder: The property tax, the city gets the same amount no matter what, the 9.3 or whatever it is. Anyone else wishing to speak to the council? Inaudible...

Benny Griffiths: I'm Benny Griffiths. I live 1259 Westview Circle SE, North Canton. And on behalf of Mr. Thomas Shoup, Superintendent of the North Canton City Schools, I'm here to read a letter that he would like to present to you. Dear North Canton City Council Members. Attached to this letter is a valuation spreadsheet prepared by the Stark County Auditor's Office that outlines the essential (estimated) financial impact of the Sanctuary Development to our schools. Based upon this valuation, prepared by the Auditor and developer, it appears this development will generate over \$620,000 to the North Canton Schools annually. It appears, based upon the information provided by the developer and the size and proposed cost of lots and structures in the development, this development should not place a hardship upon our existing facilities and system to accommodate and educate the children from this allotment. For these reasons, the school system believes this allotment would be beneficial. Sincerely, Thomas Shoup, Superintendent of the North Canton City Schools. Thank you.

Mr. Snyder: Thank you sir. Anyone else?

Miriam Baughman: 320 Weber Avenue. I just want to make a comment on the letter that was just read. Even if the development is built in Plain Township, it is still North Canton schools, so the same benefit would be available. Coming to North Canton, annexation makes no different - it's North Canton schools either in Plain or in North Canton.

Mr. Snyder: Anyone else wishing to speak? Mr. Kinkema.

Dave Kinkema: 8401 West Wadora, North Canton 44720. No letter, no lecture, just from somebody that feels very strongly about the city. I've worked almost 30 years as Director of the Y. I've worked over 30 years and many of you who will attest to it, because you've served on different boards and committees that I've been on. I've chaired or presided over almost every leadership group within this city and I did it for one reason only, no private agenda, I did it because I love the city and it's been good to my family. All I can say is I urge this group to do whatever they can to see that this development continues and goes on and makes this community a better place to live. Thank you.

Mr. Snyder: Thank you sir. Anyone else wishing to speak this evening? Inaudible...

Kathy Magel: My name is Mary Smith. What? My name is Kathy Magel. Can the people in the back hear me? I live on 1025 East Maple Street. I speak tonight only because the CEDA was discussed when I was on council. I promised that I would not come up to this council and put in my agenda for anything - anything new. But I was sitting in that chair when this was discussed. And I come to clarify some things and also I'm speaking because I feel Gail needs more to transcribe. From my standpoint, I feel council stretched several executive sessions and discussed the CEDA inappropriately per the Ohio Revised Code 121.22. This is our Know Your Government book, it's passed out to everybody in the city. The very first page - well it's called page 2 but it's the insert cover, Law on Open Meetings, Sunshine Law. The Sunshine Law, if you read through it, section - and it discusses there's six ways in which you can have a executive session. And I know you broke - because there was pending or imminent court action and I know that to be true and so therefore it was a legal meeting, but I think then you got on to another subject concerning the CEDA. Let me tell you the definition, conferences with an attorney for the public body, meaning council, concerning disputes involving the council that are subject of pending or imminent court action. I discuss - I can't - I do not know of any court action that was brought against

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23, 20 04

this council. Now maybe it's just because I don't know about because you discussed it in executive sessions. The other thing I have a question about, in this book it says according to the Sunshine Law, Ohio Revised Code 121.22, the minutes of any regular, special or executive meeting, of any public body shall be promptly recorded and be open to public inspection. On behalf of the Referendum Committee, I would promptly like a copy of those minutes for the executive session. Okay, now again, according to where I sit, there was executive sessions, which we have no idea what was discussed, then council further kept the people in the dark by not putting the CEDA on the Council of the Whole agenda, but rather without notice amended the agenda and with very little discussion, voted to have a first reading at the next regular meeting, which is today. And now I look at the agenda and that meeting is on an emergency. This atmosphere reeks of shutting out the people's input. If McKinley Development has a question about the contract that we have, why doesn't it petition the court for whatever this declaratory opinion is? After all McKinley Development wrote the CEDA. This council has in effect operating under a style of government of the developers, by the developers and for the developers. For the record there was a misstatement last week - 661 names were required for the referendum. That's 10 percent of the voters of the last general election, that would be 6,610. Sorry Bernie, I made a mistake on that. However, twelve and a half percent of the people - that's approximate twelve and a half percent of the people signed this in two and a half weeks. By next November nearly 100 percent of the people will know who took their voice away. Please remember tonight when the people request a payment of a moral claim, for the cost of an appeal so that we the people, the tax payers, have equal representation as do the developers. That's the end of my formal speech. I would like to say I have nothing but the best respect for Kirk Schuring. I believe every word he said. But I'll tell you what that's a lot of Monday night footballs and I know a lot of quarterbacks who wouldn't have thrown a football if they could of known on Sunday what the result was on Monday. This body knows, this President knows, there's three other members on this council who know, I did my best to bring out the procedures. What was the procedure of the CEDA? What did we say? We said the procedures would follow our charter. We said it would be referendable. We gave our word on that. Jon, it's in the minutes. So I don't mind you deciding what the right answer is and what it should be, but I don't think it should hurt - I don't think it should touch this current referendum. If there's something needs changed then get it changed. But it can't affect something that twelve and a half percent of the public already did cause we told them to. The other thing is, also I have, as he knows, much respect for Benny Griffiths. He taught my daughter and we still talk even though she's 28 years old. But it is true that the financial impact to the school will be the same whether it's annexed or not annexed into the city. It's a North Canton school system and that does not change. And I will tell you anything I've ever done for this city, on or off council, I never had an agenda either, I did it because I loved this city. Thank you.

Mr. Snyder: Thank you. Anyone else wishing to speak to the council this evening. Mam.

Delores Garcia: I'm Delores Garcia. I live at 155 Woodside Avenue SE. This is the first council meeting I've come to and it's been very interesting. I've been hearing things back and forth and my biggest concern about all this is that it seems like people keep changing their minds and changing the rules as things have gone along. With the idea of open space I'm a big proponent of the environment. And anybody who would think that a building can be considered green or open space is totally illogical - doesn't do anything with CO2, doesn't help the grass grow or anything. So as you're building and all these new houses that are taking up a lot of our open space. Just keep that in mind that open space is very important and if we don't keep it, I think we are going to pay the consequences as we see with the flood plains and everything like that. That's all I have to say.

Mr. Snyder: Thank you. Sir...

Kevin Ellis: Good evening. My name is Kevin Ellis. I live 1014 Danielle. That's not North Canton, that's Louisville, Ohio. And why I'm here, I really came to listen, but I'm concerned for North Canton and the people of North Canton because of something that I've been closely related with and that's water - that's flood waters. And as all of you know, Louisville suffered like no one in Stark County. We had over ten million dollars damage in commercial property. Many homes - thousands of damage - dollars damage. One of the frustrating things for me has been has been one development in Louisville owned by McKinley Development, Mr. Lemmon and Mr. DeHoff, and one of the frustrations is that development, and it's supported by good engineering calculations, saying that it needs, does not need a permanent detention pond. The one thing I heard from Miriam Baughman and I thought was fantastic was DeHoff making a commitment on this property that would be meeting a 100 year storm. I used that in a pitch to Louisville Council that this was one of two subdivisions where DeHoff is doing beyond the call of duty really and I thought it was fantastic. Another one is, I believe, it's St. James in Plain Township, where they're promising to retrofit what was a 10 or 25 year detention pond going to a 100 year. What concerns me about what's happening in the breakdown and the referendum, will Mr. DeHoff and Mr. Lemmon and McKinley Development have that same commitment to a 100 year detention? Because I know North Canton has no, that I know of, written saying that 25 year or 30 or whatever year detention pond and that is in a 100 year plain. That is a critical area which could forever damage the existing properties in North Canton. That's my only caution that to ...inaudible... water - Louisville, we're still suffering, we're still fighting, we're - I - almost every week, every time that Louisville is addressing this issue. So I beseech council to certainly give every thought to the flooding, the possible potential flooding and the promise that Mr. DeHoff is doing in this subdivision and whatever green space ... anything else to get the best possible development and North Canton deserves no less. One last thing I just want to mention, and I don't know

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23,20 04

how much everyone is aware of whether the ... here or at council, this Wednesday night at Canton South there is a task force meeting addressing county wide the water - flood water issues. I left with council a copy of that that was supposed to be going out to the media. However, it never got. But I think it would be - behoove all council and attendees at this meeting to Wednesday night, 6:00, Canton South High School and it should last about two and a half hours. Mr. Schuring is going to be there, a lot of everybody - who's who in county - county government. Thank you very much.

Mr. Snyder: Thank you sir. Anyone else wishing to speak? Yes sir. Step forward, state your name and address for the record.

Doug James: Good evening. Doug James. 1227 Lynhurst Circle SW. I've lived on the corner of Lynhurst and Bonnett for 12 years. And as all of you know - hopefully you know, Bonnett Street is in disarray. It perplexes me how a street such as Mississippi or the street next to Suzanna's, which the name it alludes me right now...

Mr. Snyder: Pearl - Pearl Court.

Mr. James: Pearl Court, could have curbs and yet Bonnett Street, as you all know, has bus traffic in the Spring and in the Fall. And if I had documentation on how many times the street was repaired in the last 12 years you know in terms you know of bandaids, it's really bad. So something needs to be done soon. And in addition to that, because there are no curbs, the children can't walk to Orchard Hill. My children have gone through Orchard Hill, except my son who's still in third grade there and because the snow you know obviously in the winter, gets pushed up against the yards, there's no room for the children to walk up that street. Yet Hallum was curbed over three years ago. And you know I urge council to take a look at this. In the 12 years I've been there we're lucky because of ... narrowness between Bonnet, Lehigh and the other street that comes around...

Mrs. Kiesling: Watkins.

Mr. Snyder: Watkins.

Mr. James: Watkins, we're very lucky at this point that no children have been hit in addition to that. So that's a concern of mine. Secondly, I just had a question. The two phases of street scape were done a number of years ago and I have read nothing or have heard nothing of street scape phase 3 somewhere in the neighborhood of Main and Schneider heading down to East Maple. And then the last issue is simply because in our neighborhood it seems like mufflers are real bad with the students, is there a noise ordinance in the city in terms of mufflers and is it being enforced? Thank you.

Mr. Snyder: Thank you sir. Anyone in the audience still wishing to speak to the council yet? Alright, seeing none we'll move along.

Mrs. Kiesling: Alright, we'll move along.

OLD BUSINESS:

8. Mr. Sarbach moved and Mr. Peters seconded to **read by title only, third reading** of Ordinance No. 8-04. All members present voting:
Yes: Lindower, Peters, Sarbach, Snyder, Foltz, Kiesling and Lane.
No: 0

Ordinance No. 8-04 - Third Reading

Ordinance No. 8-04 authorizing the Director of Finance of the City of North Canton to make payment of a moral claim to Mr. & Mrs. W.D. Wallick in the amount of \$184.50 for reimbursement for clearing a blockage which caused a sewer backup.

Mr. Snyder: Chairman Peters.

Mr. Peters: Yes, thank you Mr. President. What this is - this was damage done to the lateral line by a tree root. And it's the responsibility - I'll say this one last time, responsibility of the homeowner to take care of that lateral line all the way to the trunk line. But they did, some time ago, I don't know exactly when, they replaced the clay pipe with PVC pipe. Now they didn't go all the way to the trunk line, I believe they just went to the curb. But based on that good faith effort, I support the payment of this.

Mr. Sarbach: Yes, for the same reasons. They did make an expenditure and an effort to correct a potential problem and when they got to the right of way they thought that was the extent of their liability. And even though that was not correct, I think we should pay this modest moral claim for their losses.

Mr. Lane: I agree.

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23, 20 04

Mr. Lane moved and Mr. Peters seconded to **adopt the third reading** of Ordinance No. 8-04. All members present voting:
 Yes: Peters, Sarbach, Snyder, Kiesling, Lane and Lindower.
 No: Foltz.

9. Mr. Sarbach moved and Mrs. Kiesling seconded to **read by title only, third reading** of Ordinance No. 13-04. All members present voting:
 Yes: Sarbach, Snyder, Foltz, Kiesling, Lane, Lindower and Peters.
 No: 0

Ordinance No. 13-04 - Third Reading

An ordinance authorizing the Board of Control of the City of North Canton, through the Director of Administration, to advertise and receive bids according to specifications now on file in the office of the Director of Administration and the Mayor, through the Board of Control, to enter into a contract for the purchase of gasoline and diesel fuel for use by all city departments, for a one year period commencing June 1, 2004 and terminating May 31, 2005.

Mr. Snyder: We're trying to get a little jump on most of this, as you'll find the second ordinance behind this. It's a yearly commitment to go to bid. And we found ourself in the past periods, passing it because of time being of the essence on an emergency basis. So we've moved through it. It's something we need which drives our vehicles. And if there is no discussion...

Mr. Sarbach moved and Mr. Peters seconded to **adopt the third reading** of Ordinance No. 13-04. All members present voting:
 Yes: Snyder, Foltz, Kiesling, Lane, Lindower, Peters and Sarbach.
 No: 0

10. Mr. Sarbach moved and Mr. Peters seconded to **read by title only, third reading** of Ordinance No. 14-04. All members present voting:
 Yes: Foltz, Kiesling, Lane, Lindower, Peters, Sarbach and Snyder.

Ordinance No. 14-04 - Third Reading

An ordinance authorizing the Board of control of the City of North Canton, through the Director of Administration, to advertise and receive bids according to specifications now on file in the office of the Director of Administration and the Mayor, through the Board of Control, to enter into a contract for Asphalt Mixes for use by the Street Department.

Mr. Snyder: Again, this is a yearly thing we do. This is what fills the potholes and different mixes that we fill things when we open the street. If there's no other discussion...

Mr. Sarbach moved and Mrs. Kiesling seconded to **adopt the third reading** of Ordinance No. 14-04. All members present voting:
 Yes: Kiesling, Lane, Lindower, Peters, Sarbach, Snyder and Foltz.
 No: 0

11. Mr. Sarbach moved and Mrs. Kiesling seconded to **read by title only, third reading** of Ordinance No. 16-04. All members present voting:
 Yes: Lane, Lindower, Peters, Sarbach, Snyder, Foltz and Kiesling.
 No: 0

Ordinance No. 16-04 - Third Reading

An ordinance authorizing the Board of Control of the City of North Canton, through the Director of Administration, to advertise and receive bids according to specifications now on file in the office of the Director of Administration and the Mayor to enter into a contract for the purchase of fire hydrants for use by the City of North Canton.

Mr. Snyder: Again, this we put into storage. The hydrants wear out, they are hit by cars and destroyed and vandalized. And as we need an inventory we have them and that's the purpose of this. Being - any other further discussion?

Mr. Lane moved and Mrs. Kiesling seconded to **adopt the third reading** of Ordinance No. 16-04. All members present voting:
 Yes: Lindower, Peters, Sarbach, Snyder, Foltz, Kiesling and Lane.
 No: 0

RECORD OF PROCEEDINGS

Minutes of COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23, 20 04

12. Mr. Foltz moved and Mr. Peters seconded to **read by title only, third reading** of Ordinance No. 17-04. All members present voting:
 Yes: Peters, Sarbach, Snyder, Foltz, Kiesling, Lane and Lindower.
 No: 0

Ordinance No. 17-04 - Third Reading

Ordinance No. 17-04 authorizing the Mayor of the City of North Canton, through the Board of Control, to enter into an amended agreement (change order), in an amount not to exceed \$148,833.00 for the construction of the water treatment plant expansion (phase 2), said contract authorized by Ordinance No. 126-03.

Mr. Snyder: Unlike the first portion where we did the update, we're asking for this figure that it be there if there be ... any authorized change orders to the original contract allowing the Mayor, and Administrator, Engineer to go ahead and pay that accordingly. And that's a - that figure is the percentage allowable by law.

Mr. Sarbach: And that is due to the change in the Ohio Revised Code. Is that correct?

Mr. Snyder: No, not on this one. That, I believe, by Ohio Revised Code you permit 10 percent of the original bid to exceed without councilmatic action. Am I correct on that - Julie, is that ...? You can - they can go - that's - you can go 10 percent of the original bid. The next piece of legislation will cover that on that, but that's what that's for. Rather than coming to you for things, that empowers them to use that as they need it if there would be - that would come up. Of course they would submit to you then a copy of it ... for your approval. Any questions on it?

Mr. Sarbach moved and Mrs. Kiesling seconded to **adopt the third reading** of Ordinance No. 17-04. All members present voting:
 Yes: Sarbach, Snyder, Foltz, Kiesling, Lane, Lindower and Peters.
 No: 0

13. Mrs. Kiesling moved and Mr. Peters seconded to **read by title only, third reading** of Ordinance No. 18-04. All members present voting:
 Yes: Snyder, Foltz, Kiesling, Lane, Lindower, Peters and Sarbach.
 No: 0

Ordinance No. 18-04 - Third Reading

Ordinance No. 18-04 amending Section 1. and Section 2. of Ordinance No. 53-84, as amended, providing for change order on public contracts.

Mr. Snyder: Presently, the ceiling was 15,000 statutory limit. Was increased to 25,000 and this is where it's giving authorization for the administration to move on \$25,000.00, should the need arise. Any questions to that?

Mr. Sarbach moved and Mrs. Kiesling seconded to **adopt the third reading** of Ordinance No. 18-04. All members present voting:
 Yes: Foltz, Kiesling, Lane, Lindower, Peters, Sarbach and Snyder.
 No: 0

NEW BUSINESS:

14. Mr. Sarbach moved and Mr. Lane seconded to **read by title only, first reading** of Ordinance No. 21-04. All members present voting:
 Yes: Kiesling, Lane, Lindower, Peters, Sarbach, Snyder and Foltz.
 No: 0

Ordinance No. 21-04 - First Reading

An ordinance authorizing the Board of Control of the City of North Canton, through the Director of Administration, to advertise and receive bids according to specifications now on file in the office of the Director of Administration and the Mayor, through the Board of Control, to enter into a contract for the Everhard Road Rehab project and declaring the same to be an emergency.

Mr. Snyder: Chairman Lane.

Mr. Lane: This is a \$460,000.00 project for paving Everhard from Main all the way out to the corporate line and the request is for an emergency as well.

RECORD OF PROCEEDINGS
 COUNCIL OF THE CITY OF NORTH CANTON REGULAR

Minutes of

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23, 2004

Mr. Snyder: One thing I might want to point out Chairman Lane, last year there were several council members that requested under the mayor's repaving program that Everhard be done. But that - as you can see, the price would almost double our actual paving program, so it was setup as special project in itself. And anyone who has traveled that in the last few months knows the condition of that road. It's a major - one of our major east, west thoroughfares in the city. So it ...

Mr. Lane: Therefore the reason for the emergency.

Mr. Snyder: but I do need a motion to adopt the first reading of that if there's no question on that.

Mr. Sarbach moved and Mr. Lane seconded to **adopt the first reading** of Ordinance No. 21-04.

All members present voting:

Yes: Lane, Lindower, Peters, Sarbach, Snyder, Foltz and Kiesling.

No: 0

Mr. Lane moved and Mrs. Kiesling seconded to **suspend the rules** for Ordinance No. 21-04.

All members present voting:

Yes: Lindower, Peters, Sarbach, Snyder, Foltz, Kiesling and Lane.

No: 0

Mrs. Kiesling moved and Mr. Foltz seconded to **adopt under suspension of the rules** Ordinance No. 21-04. All members present voting:

Yes: Peters, Sarbach, Snyder, Foltz, Kiesling, Lane and Lindower.

No: 0

15. Mrs. Kiesling moved and Mr. Foltz seconded to **read by title only, first reading** of Ordinance No. 22-04. All members present voting:

Yes: Sarbach, Snyder, Foltz, Kiesling, Lane, Lindower and Peters.

No: 0

Ordinance No. 22-04 - First Reading

An ordinance authorizing the Board of Control of the City of North Canton, through the Director of Administration, to advertise and receive bids according to specifications now on file in the office of the Director of Administration and the Mayor, through the Board of Control, to enter into a contract for the Bel Air Drive project and declaring the same to be an emergency.

Mr. Snyder: Chairman Lane.

Mr. Lane: This is for a paving, curb, gutter, water and sewer work - a total of 675,000. It was in the budget we passed.

Mr. Snyder: Any comment?

Mr. Foltz moved and Mr. Peters seconded to **adopt the first reading** of Ordinance No. 22-04.

All members present voting:

Yes: Sarbach, Snyder, Foltz, Kiesling, Lane, Lindower and Peters.

No: 0

Mr. Foltz moved and Mr. Lane seconded to **suspend the rules** for Ordinance No. 22-04. All members present voting:

Yes: Snyder, Foltz, Kiesling, Lane, Lindower, Peters and Sarbach.

No: 0

Mr. Foltz moved and Mrs. Kiesling seconded to **adopt under suspension of the rules** Ordinance No. 22-04. All members present voting:

Yes: Foltz, Kiesling, Lafe, Lindower, Peters, Sarbach and Snyder.

No: 0

16. Mr. Lane moved and Mr. Foltz seconded to **read by title only, first reading** of Ordinance No. 23-04. All members present voting:

Yes: Kiesling, Lane, Lindower, Peters, Sarbach, Snyder and Foltz.

No: 0

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23,20 04

Ordinance No. 23-04 - First Reading

An ordinance authorizing the Board of Control of the City of North Canton, through the Director of Administration, to advertise and receive bids according to specifications now on file in the office of the Director of Administration and the Mayor, through the Board of Control, to enter into a contract for the Bitzer Street Realignment project and declaring the same to be an emergency.

Mr. Snyder: Chairman Lane.

Mr. Lane: This is a - is there a next to final or the final end on this, Bitzer Street realignments for the YMCA project as we get prepared to choke off McKinley. And it's not to exceed 65,000, but we discussed this last week and it's going to come in...

Mr. Snyder: That's correct.

Mr. Lane: considerable less, right?

Mr. Snyder: Right.

Mr. Lane: Or it should anyway. So I would recommend passage on this and also the emergency clause.

Mr. Snyder: Alright sir. Is there a second to that motion?

Mr. Sarbach: I second it.

All members present voting:

Yes: Lane, Lindower, Peters, Sarbach, Snyder, Foltz and Kiesling.

No: 0

Mr. Sarbach moved and Mr. Lane seconded to **suspend the rules** for Ordinance No. 23-04.

All members present voting:

Yes: Lindower, Peters, Sarbach, Snyder, Foltz, Kiesling and Lane.

No: 0

Mr. Lane moved and Mrs. Kiesling seconded to **adopt under suspension of the rules** Ordinance No. 23-04. All members present voting:

Yes: Peters, Sarbach, Snyder, Foltz, Kiesling, Lane and Lindower.

No: 0

17. Mr. Sarbach moved and Mr. Peters seconded to **read by title only, first reading** of Ordinance No. 24-04. All members present voting:

Yes: Sarbach, Snyder, Foltz, Kiesling, Lane, Lindower and Peters.

No: 0

Ordinance No. 24-04 - First Reading

An ordinance authorizing the Board of Control of the City of North Canton, through the Director of Administration, to advertise and receive bids according to specifications now on file in the office of the Director of Administration and the Mayor, through the Board of Control, to enter into a contract for the Werstler Waterline Replacement project and declaring the same to be an emergency.

Mr. Snyder: Chairman Sarbach.

Mr. Sarbach: This is the ongoing upgrading of our distribution system that Mayor Rice has implemented and we've all agreed to proceed with this, it's budgeted. And I move that we adopt the first reading of Ordinance No. 24-04.

Mr. Sarbach moved and Mrs. Kiesling seconded to **adopt the first reading** of Ordinance No. 24-04. All members present voting:

Yes: Snyder, Foltz, Kiesling, Lane, Lindower, Peters and Sarbach.

No: 0

Mr. Sarbach moved and Mrs. Kiesling seconded to **suspend the rules** for Ordinance No. 24-04.

All members present voting:

Yes: Foltz, Kiesling, Lane, Lindower, Peters, Sarbach and Snyder.

No: 0

Mr. Sarbach moved and Mrs. Kiesling seconded to **adopt under suspension of the rules** Ordinance No. 24-04. All members present voting:

Yes: Kiesling, Lane, Lindower, Peters, Sarbach, Snyder and Foltz.

No: 0

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23, 20 04

18. Mr. Lane moved and Mr. Sarbach seconded to **read by title only, first reading** of Ordinance No. 25-04. All members present voting:
 Yes: Lane, Lindower, Peters, Sarbach, Snyder, Foltz and Kiesling.
 No: 0

Ordinance No. 25-04 - First Reading

An ordinance authorizing the Board of Control of the City of North Canton, through the Director of Administration, to advertise and receive bids according to specifications now on file in the office of the Director of Administration and the Mayor, through the Board of Control, to enter into a contract for the Royer and Willaman Waterline Replacement project and declaring the same to be an emergency.

Mr. Snyder: Chairman Sarbach.

Mr. Sarbach: Yea, this is similar to the previous one. It will better serve our long suffering customers in those areas to upgrade our distribution system. And I move that we approve the first reading of Ordinance 25-04.

Mr. Sarbach moved and Mr. Peters seconded to **adopt the first reading** of Ordinance No. 25-04. All members present voting:
 Yes: Lindower, Peters, Sarbach, Snyder, Foltz, Kiesling and Lane.
 No: 0

Mr. Sarbach moved and Mrs. Kiesling seconded to **suspend the rules** for Ordinance No. 25-04. All members present voting:
 Yes: Peters, Sarbach, Snyder, Foltz, Kiesling, Lane and Lindower.
 No: 0

Mr. Sarbach moved and Mr. Peters seconded to **adopt under suspension of the rules** for Ordinance No. 25-04. All members present voting:
 Yes: Sarbach, Snyder, Foltz, Kiesling, Lane, Lindower and Peters.
 No: 0

Mr. Snyder: A little levity is well welcomed this afternoon ...

19. Mr. Lane moved and Mrs. Kiesling seconded to **read by title only, first reading** of Resolution No. 26-04. All members present voting:
 Yes: Snyder, Foltz, Kiesling, Lane, Lindower, Peters and Sarbach.

Resolution No. 26-04 - First Reading

Resolution No. 26-04 authorizing participation in the Ohio Department of Transportation contracts for the purchase of machinery, materials, supplies or other articles which the Department has entered into pursuant to Ohio Revised Code Section 5513.01(B).

Mr. Snyder: If we buy under the state purchase agreement, this will allow buying under this new transportation contract purchases. And an affirmative vote will pass the resolution on a first reading. If there's any questions on that. It should be a substantial savings to us. Although I do think we can look at it both ways, both from the private sector and the ...inaudible...

Mrs. Herr: And this - the ODOT contracts currently right now they have been the manufacturer that the Street Department and the Water Department prefers, versus what is available through state purchasing. So it's just another alternative you know...

Mr. Snyder: Inaudible...get us what we need.

Mrs. Herr: But still getting definitely good prices.

Mr. Snyder: Good. Any questions?

Mr. Sarbach moved and Mr. Peters seconded to **adopt the first reading** of Resolution No. 26-04.

Unidentified: Inaudible...

Mr. Snyder: You do?

Unidentified: Inaudible...

All members present voting:

Yes: Foltz, Kiesling, Lane, Lindower, Peters, Sarbach and Snyder.

No: 0

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23,

20 04

Mr. Snyder: Excuse me. I stand corrected to the record, the Law Director does tell me we do need three separate readings to adopt that.

Mr. Pusateri: Yea, that's correct.

- 20. Mr. Sarbach moved and Mr. Peters seconded to **read by title only, first reading** of Ordinance No. 27-04. All members present voting:
Yes: Kiesling, Lane, Lindower, Peters, Sarbach, Snyder and Foltz.
No: 0

Ordinance No. 27-04 - First Reading

Ordinance No. 27-04 authorizing the Mayor of the City of North Canton, through the Board of Control, to enter into an Amendment to Lease Agreement to the City of North Canton North Water Tower Lease Agreement, dated November 23, 1998 and authorized by Ordinance No. 142-98, by and between the City of North Canton, Ohio, a municipal corporation ("Landlord") and Ameritech Wireless Communications, LLC, a Delaware limited liability company, d/b/a Cingular Wireless, successor to Ameritech Wireless Communications, Inc. ("Tenant") and declaring the same to be an emergency.

Mr. Snyder: We're moving, in this case Cingular and Ameritech are moving their equipment from inside the tower, outside the tower into their own building. Consequently, the original lease we had with them from the '98 lease would be void and we're just changing it or amending it so that we'll now be in compliance again. But they will - they'll actually get out of the property and go behind the property in a site predetermined by the administration and the Water Distribution Department. Any questions on that?

Mr. Sarbach moved and Mr. Peters seconded to **adopt the first reading** of Ordinance No. 27-04. All members present voting:
Yes: Lane, Lindower, Peters, Sarbach, Snyder, Foltz and Kiesling.
No: 0

Mrs. Kiesling moved and Mr. Peters seconded to **suspend the rules** of Ordinance No. 27-04. All members present voting:
Yes: Lindower, Peters, Sarbach, Snyder, Foltz, Kiesling and Lane.
No: 0

Mr. Sarbach moved and Mr. Lane seconded to **adopt under suspension of the rules** Ordinance No. 27-04. All members present voting:
Yes: Peters, Sarbach, Snyder, Foltz, Kiesling, Lane and Lindower.
No: 0

- 21. Mrs. Kiesling moved and Mr. Peters seconded to **read by title only, first reading** of Ordinance No. 28-04. All members present voting:
Yes: Sarbach, Snyder, Foltz, Kiesling, Lane, Lindower and Peters.
No: 0

Ordinance No. 28-04 - First Reading

An ordinance authorizing the Mayor of the City of North Canton to execute a Release of All Claims in conjunction with the Amendment to Lease Agreement by and between the City of North Canton and Ameritech Wireless Communications, LLC, d/b/a Cingular Wireless and declaring the same to be an emergency.

Mr. Snyder: By them moving and leaving the inside of the tower, should there be any type of problem that they deem necessary there for any particular reason, they're releasing the city from its liability and releasing us from any future liability that might of occurred for any action that possibly could of happened inside that water tower. Is there any questions on that?

Mr. Lane moved and Mr. Sarbach seconded to **adopt the first reading** of Ordinance No. 28-04. All members present voting:
Yes: Snyder, Foltz, Kiesling, Lane, Lindower, Peters and Sarbach.
No: 0

Mr. Sarbach moved and Mr. Peters seconded to **suspend the rules** for Ordinance No. 28-04. All members present voting:
Yes: Foltz, Kiesling, Lane, Lindower, Peters, Sarbach and Snyder.
No: 0

RECORD OF PROCEEDINGS
COUNCIL OF THE CITY OF NORTH CANTON

Minutes of

REGULAR Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23, 2004

Mr. Sarbach moved and Mrs. Kiesling seconded to **adopt under suspension of the rules** Ordinance No. 28-04. All members present voting:
Yes: Kiesling, Lane, Lindower, Peters, Sarbach, Snyder and Foltz.
No: 0

22. Mr. Sarbach moved and Mrs. Kiesling seconded to **read by title only, first reading of** Ordinance No. 29-04. All members present voting:
Yes: Lane, Lindower, Peters, Sarbach, Snyder and Kiesling.
No: Foltz.

Ordinance No. 29-04 - First Reading

Ordinance No. 29-04 authorizing the Director of Law of the City of North Canton to file a Declaratory Judgment Action, pursuant to RC 2721 et al., petitioning the court to make a determination as to whether Ordinance No. 120-03 (accepting the annexation of the territory known as The Sanctuary) is exempt from referendum and declaring the same to be an emergency.

Mr. Snyder: Chairman Kiesling.

Mrs. Kiesling: Yes, I think I'm just going to say exactly what we said last week, we're here to try to clarify the legislation. And I think we're in a gray area as far as CEDA's and referendums and when they can be referendum, Senator Schuring made that very clear tonight. He made the intent of his legislation very clear. And if we don't take this to a judge at this moment, if somebody decides to referendum let's say the zoning in the future or the plats in the future, we're going to be in the same boat we're in right now. We don't know if it's the law or not. So we either respond now and ask a judge to let us know what the law is or we respond if there's another referendum. Which we have good thought to know that there'll be another referendum. We also know that we entered into this agreement with McKinley Development and Plain Township and it was a contract and in the contract it's very clear as to what we were going to do as a city. How we were going to follow through with it and that included annexing the land, doing the zoning and bringing the plats in. All that was spelled out in the CEDA very thoroughly. And that is the intent of the CEDA law is for everybody to work together and build this process together and put it in one contract and that's what we all agreed to. I think we're just here tonight to send it off to a judge to decide what the law is. We're - none of us up here are attorneys and we need somebody to give us the best opinion they possibly can. Right or wrong, we need to do what's in the best interest of the city and I think that's - we need to find out what the law is. Doug, Dave...

Mr. Foltz: Well I don't know who's next. Whoever wants to talk...

Mrs. Kiesling: Either one.

Mr. Foltz: I'll want to say something but... Excuse me...

Mrs. Kiesling: Doug - I guess Mr. Lane - Doug Lane.

Mr. Lane: Oh okay, which Doug you want?

Mrs. Kiesling: That Doug.

Mr. Lane: This Doug, alright. I wasn't on council when the CEDA was put together. I think I would of, given all the facts, supported it. And I certainly do support bringing the property into the city. I think it would a wonderful development for us and I would like to see them there hopefully as soon as possible, under our guidelines from planning and on up the line through council. The problems that I have is that there are three parties that are going to benefit from this the developer, the City and Plain. We're the only ones taking the lead on it - that bothers me. I would rather see a three way challenge. And I am troubled by the appearance and I am not going to say this is what we're doing, but the appearance of the city going to court effectively to possibly disenfranchise the people that signed that petition. But I do understand there may be a case, I think Senator Schuring made it, I think some of the information that we have does. So I'm going to go with my head as opposed to my heart and reluctantly vote yes on the matter and on the emergency so we can get this thing decided as soon as possible and find out if indeed we do have a referendum ... this November so we can move on and get this thing developed and hopefully the follow the wishes of the majority of the people. So...

Mrs. Kiesling: Thanks. Doug Foltz...

Mr. Foltz: I think ... everybody knows where I stand that attended any council meetings the last couple years. I think McKinley Development has a quality product, we've seen it at Washington Square, hopefully we'll see it at the Sanctuary. I think there's been some compromise on this already. I think they've looked at R70 and R50 and we're bringing in a good neighborhood. Backed off from assisted living to more of a condo, apartment situation in the northeast, excuse me, northwest corner of the subdivision and I'm very much in favor of that. Councilman Peters

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23,20 04

and I are working on some open space. Eventually that hopefully gets to park property that I so diligently want done here for the citizens. But saying that, I just think that I cannot support this on council at this time. Maybe I don't agree with the petitioners, but I respect their right as voters, as constituents, as citizens, to referendum this. Twelve percent, that was brought up, 12 percent of our constituents have signed this petition and it's hard for me as a councilperson not to respect that and to let the process work in that regard. I understand the arguments or the comments that Law Director Pusateri has made you know I agree with a lot of them. Maybe this is - there needs to be some clarification. But just because I don't agree with the petitioners or they agree with me here, doesn't mean I don't respect their right for a referendum. I'm quite confident saying that that I think the voters will overwhelmingly support the Sanctuary here in our city. But over 700 of them were valid signatures and they deserve that right to put it on the ballot. So that's my comments at this time.

Mr. Snyder: Chairman Kiesling, if I may, sitting here listening to the opponents and the proponents to both this, I don't believe it's the intent of this council at this time to disenfranchise the elected - the voters of the City of North Canton as to their right to referendum any type of ordinance. It is the intention I understand and the spirit of this particular action to determine, as we have entered into contractual obligation as Senator Schuring has told you, but it seems to me that the biggest problem, the major concern of the proponents of the referendum, are open space, water retention, flooding and zone - those are all zoning issues. And as you recall, the CEDA agreement that we passed must meet the minimum requirement of a subdivision and the new zoning laws of the City of North Canton. So consequently, they will have and again the trier of fact will determine this. It's not a precluded situation that the person hearing the case has already determined that he will rule in the favor of the petitioner. So we don't know that. It's - we're just asking for clarification. Should we be fortunate enough with the administrator we have in place now who has more experience at CEDA's and JEDD's than probably most people in the county and we hope to use this for economic tools. And for another township to come to us or we go to them and ask them for this, I don't know that they would welcome us. Of course that's my opinion only as to whether we can deliver on our contractual obligation. So I think again, we're allowing the trier of fact to determine this, a neutral party. A judge will be chosen by a peaball so there is no ... impropriety. It's never been determined so you won't know the judge until the actual complaint is filed. So I think that we are - we take an oath of office to follow the law. We've entered into a contract representing the 16,000 plus people of North Canton and I think that's what we ought to follow through. And if it rules, whichever way it rules, we'll know which way to go from there on. But I don't think we're disenfranchising them from that because that has not been determined. They have the right to - but again as Senator Schuring told you, the window is open and unfortunately being so new maybe no one knew that and that's what we have to find out for the future. But again, sometimes you don't always get what you want. And a - but that's all I have to say on that.

Mr. Sarbach: May I add something to that?
Mrs. Kiesling: Definitely.

Mr. Sarbach: If in fact and the judge says that this referendum is not exempt, why I perceive that this body will rush to the election. It's still within the time frame of doing this and getting this on the ballot. So we're not disenfranchising anyone. We're getting a legal ruling as we proceed, which is what we're charged to do, is to do it legally. So I will vote yes on this legislation.

Mrs. Kiesling: Jeff...

Mr. Peters: Well there are compelling arguments on both sides. But like Doug said you know - Doug Lane I should say, you got to separate between going with your heart and your head. And you know we're charged, as elected officials, to follow the law and it's a gray area right now and I think we need clarification of the rules and procedures of the process. So I'm going to vote with my head tonight, yes. That's it.

Mr. Snyder: Is there any other comment?

Mrs. Kiesling moved and Mr. Peters seconded to **adopt the first reading** of Ordinance No. 29-04. All members present voting:

Yes: Lindower, Peters, Sarbach, Snyder, Kiesling and Lane.

No: Foltz.

Mr. Sarbach moved and Mrs. Kiesling seconded to **suspend the rules** for Ordinance No. 29-04. All members present voting:

Yes: Peters, Sarbach, Snyder, Kiesling, Lane and Lindower.

No: Foltz.

Mr. Sarbach moved and Mr. Peters seconded to **adopt under suspension of the rules** Ordinance No. 29-04. All members present voting:

Yes: Sarbach, Snyder, Kiesling, Lane, Lindower and Peters.

No: Foltz.

RECORD OF PROCEEDINGS

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR Meeting

Minutes of

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23, 2004

REPORTS:

Mr. Snyder: Thank you. Director of Law any report?
Mr. Pusateri: I do not have a report. Thank you very much.

Mr. Snyder: Good. Director of Finance.
Mrs. Herr: No report.

Mr. Snyder: Director of Administration.
Mr. Miller: None this week. Thank you.

Mr. Snyder: Mr. Mayor.
Mayor Rice: No report.

Mr. Snyder: Mr. Engineer.
Mr. Benekos: No report.

Mr. Snyder: Madam Clerk.
Mrs. Bittle: No report.

REPORTS - COUNCIL:

Mr. Snyder: Member Foltz.
Mr. Foltz: No report.

Mr. Snyder: Member Lindower.
Mr. Lindower: No report.

Mr. Snyder: Member Lane.

Mr. Lane: Just one comment. Next - March - March 1st is next Monday, right?
Mr. Peters: Yes.
Mrs. Kiesling: Yea.

Mr. Lane: Okay, the 29th always throws me off when we get into these leap years. Next Monday immediately following our council meeting, approximately 8:00, we sent letters out to all the people affected in the area of the South Main, Everhard and Easthill interchange project asking them to come in. It's not a town hall meeting or a forum or anything like that, but it's an opportunity for people to see the plan and interact with Jim and the Mayor and Mike and the rest of the Council that's interested. It primarily affects Jon's side of the street and mine, but at the same time everybody is - particularly at the at large members are invited to stay. It's just to give people a chance to take a look at it, give us some comments, let us know so as we're proceeding we can alleviate some fears regarding the trees, we can explain a little bit where this is coming from, where the money is happening, traffic counts and things along those lines. So that's scheduled for 8:00 next Monday. If we happen to run a little bit long with the at large we'll just do it right after that. So I just wanted to remind everybody about that.

Mr. Snyder: Thank you. Member Kiesling.
Mrs. Kiesling: No report.

Mr. Snyder: Member Peters.
Mr. Peters: No report.

Mr. Snyder: Member Sarbach.
Mr. Sarbach: No report.

Mr. Snyder: I have nothing.

FINAL CALL FOR NEW BUSINESS:

Mr. Snyder: Final call for business. Mr. Osborne.

Chuck Osborne: My name is Chuck Osborne. 307 Fairview Street SE - North Canton, Ohio. I just have one little item here to address. On your Item 12 on your agenda, Ordinance No. 17-04, you were attempting to explain how this figure I guess is derived. State law states that 10 percent of the original contract amount is the maximum figure to qualify as a change order. I don't think that was brought out. And even though its already passed, I hated to see that passed. Basically what you have done, you have given the contractor on this job - you have allowed him to increase his low bid on the project by 10 percent is what you've done. This council could of very easily of rushed through an emergency appropriation if there ...inaudible... additional funding needed. And I would be very interested and I hope that maybe Mr. Benekos can keep me informed, I'd like to

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

REGULAR

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, February 23,

20 04

know when the project is all done if they actually wound up using the additional 10 percent that you just authorized. And I would suspect a substantial part of it would probably be spent. Do you have any feeling on that already or - Mr. Benekos...

Mr. Benekos: No.

Mr. Osborne: You don't know of any issues right now that are going to require a change order?
Mr. Benekos: Not at this time.

Mr. Osborne: That's what you've done, you've just automatically allowed the low bidder to increase his low bid by 10 percent.

Unidentified: Ten percent? It's not 10 percent.

Mr. Snyder: Thank you sir.

Mr. Osborne: Thank you.

Mr. Snyder: You're welcome. Mrs. Magel.

Mrs. Magel: I recognize this is just supposed to be new business. But as I told you, I didn't know this was on an emergency. And I don't know the answer to my question, but I would ask the Mayor, can you veto this?

Mayor Rice: What? What were you talking about? I'm sorry.

Mrs. Magel: This declaring the petition to be - the referendum - the looking into the referendum. I'm sorry Mr. Mayor, I don't know a whole lot about this because this was all done behind the scenes.

Mr. Sarbach: That's why we don't know a whole lot about it. That's why we're asking for a declaratory judgment so we do the right thing Mrs. Magel.

Mrs. Magel: Well I did the right thing and I asked for the procedures in the first place.

Mr. Sarbach: Who did you ask?

Mrs. Magel: Well we had two lawyers up here telling us the procedures and we agreed on the procedures.

Mr. Sarbach: Probably didn't get your money's worth then because that's not the story that we got on the issue - the ruling that we got.

Mrs. Magel: Well you can...

Mr. Sarbach: So we can only go by what our law director ...inaudible...

Mrs. Magel: You can go by the minutes. We'll talk. But anyway, Mr. Mayor, would you step in for the people please and veto whatever that ordinance is? I have no idea what's in the charter. I'm not prepared for this, but this was certainly new business. I had no idea this was going to be done on an emergency basis. As a matter of fact, I was told this probably was not. But it's a question. Please consider it sir.

Mayor Rice: Inaudible...

Mr. Snyder: Anyone else wishing to speak to the council? Any comment of the council? If not, I'll entertain a motion to adjourn.

ADJOURN:

Mr. Foltz moved and Mr. Peters seconded to adjourn the council meeting. All members present voting:

Yes: Snyder, Foltz, Kiesling, Lane, Lindower, Peters and Sarbach.

No: 0

The meeting adjourned at 8:20 p.m.

ATTEST:

Nancy Louise Bettler
CLERK OF COUNCIL

[Signature]
PRESIDENT OF COUNCIL