

RECORD OF PROCEEDINGS

Minutes of

COUNCIL OF THE CITY OF NORTH CANTON

SPECIAL

Meeting

DAYTON LEGAL BLANK, INC. FORM NO. 1014R

Held Monday, November 19

7:00 p.m.

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CALL TO ORDER:

1. The Special Council Meeting was called to order at 7:57 p.m. by President of Council Doug Foltz.

ROLL CALL:

2. The following members of Council responded to roll call: DeOrio, Foltz, Hines, Lane, Magel, Repace, Snyder. Also present were: Mayor Held, Director of Administration Wise, Director of Law McFarren, Director of Finance Herr, City Engineer Benekos and Director of Economic Development Bowles, Council elect Davies, Kiesling, Revoldt and Wright.
3. Mr. Foltz: May I have a motion to read by title only the second reading of Ordinance No. 136-07?

Mr. DeOrio moved and Mrs. Hines seconded to **read by title only the second reading of Ordinance No. 136-07**. All members present voting.

Yes: Foltz, Hines, Lane, Magel, Repace, Snyder, DeOrio.

No: 0

Mr. Foltz: Do you have that?

Mr. McFarren: Just a second here.

Mr. Foltz: It's right in the back here.

Mr. McFarren: I got it.

Mr. Repace: Want some more water?

Ordinance No. 136-07 -2nd Reading – Street & Alley

An ordinance authorizing the vacation of a portion of Newbridge Street NW; the western-most five (5') foot of the dedicated right of way located within the corporate limits of the City of North Canton, Ohio.

Mr. Snyder: Mr. President...

Mr. Foltz: I say Member Lane, you're going to kick it right back to me, right?

Mr. Lane: Yeah, well, my question, as we talked about this quite oft – quite a bit, not only in – in Council but on the phone and – and I know Mr. Snyder has some questions as well. We have some people in the audience that – that could provide a certain level of expertise to answer a couple of questions here and there and I didn't know if we could open up that to the two Chiefs that are here or not. I know Mr. Flechtner is here from the Planning Commission as well, who recommended this, so I – I mean, I know it takes four votes to do that but I thought I would throw that out there, otherwise I'm going to ask you a couple of questions, but I know Mr. Snyder had one as well. But I will throw it back to you to start, so.

Mr. Foltz: Okay. Well, tell you where I'm at with it. Obviously I support the residents that live in that area. It's gone from a vacation to a – a secondary access for emergency vehicles. I have had discussions with our Engineer Jim Benekos, Chief Grimes and...Chief Bacon about the situation. Unfortunately we'll agree to disagree, they don't seem to want to support a secondary access for various reasons. I respect their opinion but I disagree with that type of scenario. I think that we can provide some supervision in that – in that area as far as if it is vacated. So it does allow for landscaping or some type of a secured...inaudible...gate or entry system that will allow EMS, fire, police vehicles to get through in case of an emergency. That it did not seem to happen as far as department head meeting on Tuesday so that's where we're at with it. I'm still asking Council for their support of this with that type of language attached to – to the vacation. That said, I'm going...inaudible...I'll take questions or – or look for some other....

Mr. Snyder: Mr. – Mr. President, I have one question of the Law Director. In consideration of this, the ground to the immediate north of that is vacant. Just was trade – I think the transfer just made on – I would think, and I'd like to know that from the Law Director, is that considered a condemnation of the man's property? That's a take without due process. He has no way to access his property as he does today. Even with an emergency exit, that man, whoever – I'm certain it's a man or a woman, whoever owns the property, bought it with the intent that that property's accessible from Newbridge. You've just eliminated that. Under the Ohio Revised Code you can't take property without due process or you're condemning his right to enter. I'm not an attorney, I'm asking that, but I think that they make a case for condemnation of the man's land which makes us put – liable for the cost of his property and any fault that it may have, his ability to develop or sell the property. Am I correct in that, Mr. McFarren?

RECORD OF PROCEEDINGS

Minutes of COUNCIL OF THE CITY OF NORTH CANTON SPECIAL Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, November 19 7:00 p.m. 07
20

Mr. McFarren: Well I would take the conservative view because I represent the city here, but the – that's spoken like a – a plaintiff's lawyer and unfortunately we are seeing expansion of the concept, if you will, of a – of it – of a compensable taking. I think that's beyond a reasonable extension but I've heard stranger things argued.

Mr. Foltz: For the record, I – and so Council knows, we've got 26 vacations here this council supported through the years. I do not understand why this has become such a scrutinized situation when I've always supported other fellow council members in their wards for these type of scenarios. It's something the residents want, there's only one access into that development now from Orion, I've gone through this many times with Council and the Planning Commission. If those lots are going to be developed for any type of residential use, they can come in off of Stratavon, off – off Ellesmere or some other secondary streets north of Applegrove and come in off Orion and meet their requirements. In my mind, that would still be available for secondary access for emergency. I mean, I think they're getting the best of both worlds at that type of compromise.

Mr. Lane: Well I did...

Mr. Foltz: That said, I'd love to see other – any other questions from Council.

Mr. Lane: I – I did talk to Mr. Giavasis this morning, and I indicated that to you and he seems to be fine with – and I guess the difference between what's on that list and what we're looking at here and some of those go back before my time so I apologize if I'm – if I error on this, is the fact that most of those vacations, if not all of them, were within our city limits and we controlled both sides of the border. And all that I'm trying to do is to see if there's some way, shape or form that we could pin Plain down that if we go with this extra access, that we have reciprocal access on the other side. And if we don't, then there really isn't any need to have a break-away at all because you don't have any control over where that break-away goes and he indicated to me that he would support that as long as his fire chief did. And his fire chief was supposed to talk to our fire chief, and that's why I brought up Chief Bacon's name, and I didn't know if we could ask him questions tonight briefly and find out where that process is and see if we could get it nailed down before next – next – before the third reading next week.

Mr. Foltz: If Council wants to review – I kind of gave this ... well I don't have a problem bringing up Chief Grimes, Chief Bacon...

Mr. Lane: I mean, I don't want to turn it into a debate, but if we did have some questions, it would give us a chance to maybe get in a comfort zone on something.

Mr. Foltz: I don't think you're going to hear them support any type of access. I mean, vacation. But you know, do we have four votes? We'll bring – bring up the chiefs...

Mr. Lane: I – I don't have a problem; I'd like to at least ask the Chief while he's here.

Mr. Foltz: I mean, we have their letters that say they don't support the vacation. I was looking for support for secondary access for emergency thoroughfare only.

Mr. Snyder: You know, I may – the other question I may have is you say a secondary access. It would be similar to the Briar Weber access; they just built right around it and eliminated the access. There's – what's to prevent the developer on the other side – you put a emergency access there, a pine trees or whatever you build and that person sells that lot and it's a person's backyard, you're not going to go across somebody's yard without an easement. I mean, that's the end of your break-away.

Mr. Foltz: Well Member Snyder, the only difference would be they would control that, if their – if their fire chief is for access there, why would they allow that? I mean...

Mr. Snyder: Are you talking about their planning – original planning commission?

Mr. Foltz: Yes, yes. Or – or their – their fire chief make the recommendation to their trustees in the Plain Township property.

Mr. Snyder: Well again, to assume that that was adequate at the standpoint, it's not – it's kind of against planning to vacate property that's not been developed yet. You have no idea what's going to go there, if anything. And I mean it's – and again, I'm only saying – I'm looking it at from the standpoint of everybody, there's nothing there but fallow ground, and I mean, we're going to build an access to nowhere, 'cause there's nothing there at this point. I mean, I understand what you're saying, you want to vacate or – or at least limit the amount of traffic to use that street.

Mr. Foltz: Right.

Monday, November 19	7:00 p.m.	07 20
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Mr. Snyder: But is that – the question still remains is that – first of all, within good scheme of planning and secondly, what liability does the city assume by taking it without due process to the landowner? I – I mean, I theoretically think that you're reducing the value of his property. He bought that, or she or whomever bought it with the intention of having an access through that road, no matter what they want to build there and now you've eliminated that and you have to be made whole.

Mr. Foltz: Well, we've done it in numerous instances...

Mr. Snyder: Well we did it in – on Briar Weber which come back to haunt us because now we're developing Applegate without access for those people who live at the Sanctuary. They're going to cost – the development is more money because there's only two accesses and when they're working that, we're impairing the ability of the fire service, police service, and every EMS service to enter that property. And I – I mean, the just – see, that's what – that's what we don't know what's going to happen 5, 6, 10 years down the road.

Mr. Foltz: Well, Jon, even with Monticello being developed, there's only two ways in there and there's hundreds of homes.

Mr. Lane: But there is a third...

Mr. Foltz: There's hundreds of homes in...

Mr. Lane: but there is a – there is a third...

Mr. Foltz: that allotment, let's be fair about how we're reasoning this out.

Mr. Lane: Yeah, there is a third at Grassmere that is a break-away that we control.

Mr. Snyder: Yeah we, yeah we built...

Mr. Lane: That's the third entrance that could be used.

Mr. Foltz: Okay, right.

Mr. Lane: And that was the perfect example of what I'm trying to do here if we can do it. And again, it doesn't – I mean, I think everybody here is at least in the comfort zone to support stopping that road in order to – to eliminate the traffic. All I'm trying to do is take it the next step, to try and get Plain to come to our table and say yeah, we will not...

Mr. Foltz: Oh.

Mr. Lane: We – we will allow access from the other side. And I'm not sure where that stands. I mean, I – I don't know if they don't want to do it, if they're not following up or if our chief isn't following up with their chief or – or whatever, and we've been back and forth about this a hundred times and I think we're all pretty close. We just need to try and nail down that other side of the line, that's all.

Mr. Foltz: I – I don't know if Member Snyder's for this vacation, hearing his comments.

Mayor Held: Inaudible...

Mr. Snyder: No, I...I just want to have some questions answered and I think, excuse me Mayor...

Mayor Held: Certainly.

Mr. Snyder: I – I have to go through our president, and maybe – maybe you might want bring Chief...

Mr. Foltz: That's fine.

Mr. Snyder: Bacon up here. He's to – I'm sure...

Mr. Lane: I think we have to vote on it and I – I said I don't...inaudible...

Mr. Snyder: They have the com - yeah, they have the camaraderie of talking to each other.

Mr. Foltz: Can we have a – four votes in to – to motion to allow the chiefs to come up here and discuss this?

Mr. Lane: Yeah, I – no problem. I've – I don't know.

Mr. Foltz: Member Lane? Snyder? DeOrio? Hines?

Mr. Repace: Absolutely, yeah.

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

Monday, November 19

7:00 p.m.

07
20

Mr. Foltz: Alright. Chief Grimes, Chief Bacon, Dutch was here. Like to come up and address this situation with us?

Unidentified: There's chains on this property.

Chief Grimes: Guess from a police point of view, we get the – these things go across our desk all the time from planning, asked to respond about it from a police point, we just like multiple accesses into an area to patrol it. Like the Council President said, we had discussions on it. We agreed to disagree on it and we've had discussions over the years. It's not, you know, the end of the world if you do shut it off to the police department, it's just that I was asked, as the Police Chief what my preference was, and I – for patrol purposes, I'd rather have other access into that area.

Mr. Lane: Plus right now you'd need an ATV to get the other access anyway. I mean, you got no way to – there's nothing there.

Chief Grimes: I'm just hoping for cruisers.

Mr. Lane: We'll get you stud tires.

Mr. Foltz: You didn't submit that on the budget here request for next year yet.

Mr. Lane: Yeah, Chief Bacon, when I talked to Trustee Giavasis today, he indicated that his fire chief was going to talk with you and you guys were going to possibly come up with a possibility that would bind the trustees much as what I'm trying to do here to have something on the other side and I don't know where that stood. I haven't had a chance to...

Chief Bacon: The last I talked to Chief Sabo was the letter that I believe you received where he was in support of the letter that Chief Grimes and I had wrote. I have not talked to him today or nor over the weekend did he try to contact me. I didn't know that he was going to try to contact me but there was no attempt.

Mr. Lane: Well, Lou – Lou seemed to leave that door open that that was a compromise that was coming that he could live with and – and he thought his chief could too, but I don't know if there's just no communication or if his chief isn't being as adamant to him and you are to us. I don't know.

Chief Bacon: I can't answer that for Chief Sabo, I – I won't speak for him other than the letter that he – I received from him. I, like Chief Grimes, received the request. I respond the fire – fire and EMS are the same, we would not – not have vacated but Councilman Foltz did talk to me. There's several issues that I have. The gate issue, the police have an issue with. They don't carry keys, they don't carry bolt cutters. The issue the fire service has is they're taking about grass, they're talking about shrubbery and I know that there's several people up here who do not want me to take a \$750,000 ladder truck over grass, 'cause when the truck gets stuck and they're all looking at me saying why'd you drive it over the grass? So we're against it. But as Chief Grimes says and I'll echo him, if they decide to make the decision, then we'll work around it, we'll take the long way to get there and we'll do like we do everywhere else that they've vacated streets, we'll just adapt and do what we have to do.

Mr. Lane: That was the only question I had. Anybody else?

Mr. Foltz: Okay...

Mrs. Magel: Are – are you going to be the fire and the police for Plain Township over there?

Chief Bacon: If it's in Plain Township, no. But if it gets annexed, yes, it'll be my responsibility.

Mrs. Magel: But right now, while it's in Plain.

Chief Bacon: Right now it's in Plain.

Mrs. Magel: So you wouldn't be taking your trucks.

Chief Bacon: No, and if it's...

Mr. Foltz: Unless it's a mutual aid call or something.

Mr. Lane: But – but you would if there was a – a – you couldn't get in through off of Orion. You would take...

RECORD OF PROCEEDINGS

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DAYTON LEGAL BLANK, INC. FORM NO. 1014B

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Monday, November 19

7:00 p.m.

07
20

Chief Bacon: What's that?

Mr. Lane: you would take the roundabout if you couldn't get in off of Orion, that's your point. You – you would come around and use that if it was available.

Chief Bacon: If it was available. I – I don't know. We always like two ways into all the neighborhoods. I mean, as in – up in – I've talked to Councilman Foltz about when we had the fire at Sturbridge Village when the house burned, there were several residents that had to walk and get rides out on Everhard to get to work when we had the garage fire up there because there's only one way in and one way out, but that's our...inaudible ...ditto – ditto what...inaudible...

Mrs. Magel: How many entrances are – are in there now?

Mr. Snyder: How many what?

Mr. Foltz: Any other questions for the chiefs?

Mr. Lane: Yeah, does anybody have anything 'cause that does answer my question. I'll – I'll talk to Mr. Giavasis one more time and see if I can nail him down on what he's saying because it just...

Mr. Repace: Somebody give me a little history of exactly what's changed here from the way it was? What's changed? I mean why – why are we even doing this?

Mr. Lane: I – I don't get your question, I'm sorry.

Mr. Repace: What – what's bringing this about?

Mr. Foltz: Alright thank you, thank you Chief.

Mr. Lane: Apparently some fear – thanks guys – apparently fear of what's going to be developed on the other side of that line. I think that's the big concern.

Mr. Repace: Okay, well we don't know anything's going to be developed right now, right?

Mr. Lane: Right now the only thing to develop there is a couple of divots and some clover I think. That's it.

Mr. Repace: Who brought this out that they wanted to vacate that property?

Mr. Lane: That came from the residents.

Mr. Foltz: The residents of that – the neighborhood.

Mr. Lane: Well, apparently I think the property's been sold is what it is and that indicates to them that something could be coming so.

Mr. Foltz: Member Repace, I think what happened there was some brush being cleared there and there was some inquiries about what type of development was going to occur seeing that. They'd like to keep the neighborhood as quiet and not over....inaudible...

Mr. Repace: But whoever – whoever bought that property, if they come in and build a cul-de-sac...

Mr. Foltz: On the other side.

Mr. Repace: on the other side, then nothing's going to change.

Mr. Lane: Right. And that – that...

Mr. Foltz: Exactly. My point of contention. There's just two ways into those properties from Stratavon and Orion. Right now there's only one way into that development and that's off Orion, existing North Canton neighborhood.

Mr. Lane: Which is where I'm going, Jim, that if we could get some assurance from Plain that they would make that happen on their side, I'm very comfortable with it. I know the Chief isn't but at least it would give us that compromise and an ability to get to that neighborhood in the event Orion was closed.

Mr. Repace: You know, I don't think you could possibly get that assurance Plain, 'cause they don't know what's going to happen there. So that wouldn't...

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

Monday, November 19

7:00 p.m.

97
20

Mr. Lane: Or perhaps Stark County.

Mr. Benekos: An access.

Mr. Lane: What I think, when we originally talked about it almost a month or so ago was that Jim was going to talk to Stark County Regional Planning and make that part of our ordinance. I believe that's where we – that's where we...inaudible...

Mr. Benekos: This is the ...inaudible...with access off of Orion.

Mr. Foltz: Well that came up, I do remember that conversation. I don't know if – have you been able to talk to Stark Planning – Regional Planning?

Mr. Benekos: Well I was going to talk to them if it was vacated and let them know that it was vacated and we would like – like that to tie in at that time as – as an emergency access. But as far as – I don't think – I didn't think you wanted input from them. That's not the impression that I got.

Mr. Snyder: Excuse me, Mr. President, is – what's to prohibit us from just building a cul-de-sac in there which would give access. The other side would have to almost mirror it in order to – they're not just going to come down there with a street and stop it and that way it's, you know, at that point you got less than a couple foot – foot and a half of grass between the two if you have anything between the two cul-de-sacs. And I think that's what we did over at your...

Mr. Lane: At Grassmere.

Mr. Snyder: over at Grassmere. And that actually eliminated the problem; it didn't stop anybody's ability. If need fire services drive over a little tiny curb, police service over a little curb and it worked out because it didn't allow through traffic.

Mr. Foltz: You're saying instead of vacate the street, just build a cul-de-sac.

Mr. Snyder: Put a little cul-de-sac in there and it's – it takes care of the situation and I respect your efforts to take care of your – your constituency.

Mr. Benekos: Get...inaudible...

Mr. Snyder: But also takes everybody in a comfort zone, it's the end of it.

Mr. Benekos: inaudible...take their property...they're not going to want...inaudible...

Mr. Snyder: That way, you know, I mean, I realize we're not a position just to go spend \$20,000...

Mr. Benekos: We don't own this property.

Mr. Snyder: but again, those people have as much right to the city treasury as anybody...

Mr. Benekos: ...you put a cul-de-sac there and there, you take property from these people.

Mr. Snyder: and this eliminates the problem and we'll be done with it.

Mr. Foltz: Well, if you don't vote for the vacation even through a – as a secondary access type of vacation, I'll be more than happy to pursue that. I mean, I'd rather...

Mr. Snyder: Well, I think it – I think it makes just...

Mr. Foltz: I'd rather vote it out to know that I represented my constituents of what they're immediate concerns were. I respect the Planning Commission obviously, our chiefs of police and fire, but I also have, as you do or any council member, have to represent the constituents, what they feel they need to protect the integrity of their neighborhood, so.

Mr. Snyder: Well I think...

Mr. Foltz: I'm more than happy to look at that if this does not pass so.

Mr. Snyder: Well, I mean, we can't – can we – can we not amend this ordinance to require that and...

Mr. Lane: Could you incorporate that into it?

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Minutes of

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DAYTON LEGAL BLANK INC. FORM NO. 10148

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Monday, November 19

7:00 p.m.

20⁰⁷

Mr. Snyder: Just incorporate – we'll build the cul-de-sac and we'll be moving on and then it eliminates – it puts everybody in a comfort zone, planning and our chiefs and – because...

Mr. Foltz: Well let me do this – let me – let me...

Unidentified: Just do that.

Mr. Foltz: if we could pass a second reading, let me contact some of the immediate neighbors there next to that thoroughfare, get their reaction to that.

Mr. Lane: I mean, there is \$400,000 that still sits there that's from – from the estate taxes that a very, very small portion of that could, and again I don't want to build \$100,000 street...

Mr. Foltz: Okay, and maybe through – through the week, that's a short week, you want to get any other questions answered from some of the Plain Township Trustees that's fine, or anybody want to do any other leg work on it.

Mr. Snyder: Well that's a fair request.

Mr. Foltz: Okay?

Mr. Lane: Yeah, no, I'll support you on the second reading and then again, I'm not trying to be political about it...

Mr. Foltz: I understand. I'm just trying to...

Mr. Lane: I just want to do it the right way.

Mr. Foltz: let you guys know where I'm at in the process, you know.

Unidentified: Don't...inaudible...

Mr. Snyder: That's fine, that's no problem.

Mr. Foltz: I'm – I was looking for that secondary access for emergency purposes so. That said, do I have a motion to adopt the second reading of Ordinance No. 136-07?

Mr. Lane moved and Mrs. Magel seconded to **adopt the second reading** of Ordinance No. 136-07. All members present voting:

Yes: Hines, Lane, Magel, Repace, Snyder, Foltz.

No: 0

Abstain: DeOrio.

ADJOURN:

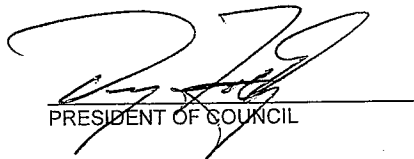
4. Mr. Foltz: Seeing no other business, can I have a motion to adjourn?

Mr. DeOrio moved and Mrs. Hines seconded to **adjourn** the Special Council Meeting. All members present voting:

Yes: Lane, Snyder, DeOrio, Hines, Repace, Magel, Foltz.

No: 0

The meeting ended at 8:17 p.m.


PRESIDENT OF COUNCIL

ATTEST:


CLERK OF COUNCIL