

June 16, 2018

PROCEEDINGS

Lordstown Village Council Special Meeting

(WHEREAS, the special meeting before the Lordstown Village Council commenced on Saturday, June 16, 2018, at 12:21 p.m. and proceedings were as follows:)

MAYOR HILL: We are now going into the special Council meeting. Mr. Blank, if we could have roll call, please.

MR. BLANK: Mayor Hill?

MAYOR HILL: Present.

MR. BLANK: Mr. Bond?

MR. BOND: Here.

MR. BLANK: Mrs. Jones?

MRS. JONES: Present.

MR. BLANK: Mr. Liming?

MR. LIMING: Here.

MR. BLANK: Mr. Radtka?

MR. RADTKA: Present.

MR. BLANK: Mr. Reider?

MR. REIDER: Present.

MR. BLANK: Mr. Sheely?

MR. SHEELY: Present.

MR. BLANK: Solicitor Dutton?

SOLICITOR DUTTON: Present.

MR. BLANK: Clerk Blank, present.

MAYOR HILL: I'll entertain a motion for adoption of the agenda.

MRS. JONES: So moved.

MAYOR HILL: Moved by Jones. Second?

MR. SHEELY: Second.

MAYOR HILL: Second by Sheely. Comments?
(NO RESPONSE FROM COUNCIL.)
All in favor?

COUNCIL: Aye.

MAYOR HILL: Opposed?
(NO RESPONSE FROM COUNCIL.)

(VOTE: 6, AYE; 0, NAY; 0, ABSTAINED.)

Motion carried.

Mayor's remarks. These should be going first reading. I have no further comments at this time.
Are there any Council remarks?

MR. BOND: Yes, Mr. Mayor. When we spoke a minute ago about getting something in writing about these areas to protect them, can you have that done this week?

MR. WALKER: Absolutely. We can put a letter—

MR. STRASFELD: We can commit in a letter. We cannot commit on the other third parties.

MR. BOND: Well, can you give us what third parties are possible and under consideration?

MR. STRASFELD: We are working with the Ohio EPA. We can put it in writing that it's our full intent to restrict that property, but we cannot tell you Thursday that we already have somebody who is going to take the property. We have met with several different groups as far as our plans. We can definitely tell you that we are going to commit that this property will not

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be used as part of our project and that we will leave it in its current condition.

SOLICITOR DUTTON: Can you articulate in that letter that the land will be turned over to the parties that you have identified at this public hearing or another third party in conjunction with consultation with the Ohio EPA? And that it will be put in some legal status where in perpetuity it will not be subject to development?

MR. STRASFELD: Yes, but sitting here today, we do not know if it will be a conservation easement or if we can transfer title and fee. We have no ability to tell you that—

SOLICITOR DUTTON: —in the alternative.

MR. STRASFELD: We have no ability—excuse me, sir—

SOLICITOR DUTTON: The word "perpetuity" is important.

MR. STRASFELD: We have no ability to tell you to commit to third parties. Based upon my experience, and I'm sure yours, some of these conservation groups simply want a conservation easement. Others will accept fee Title. So we will cooperate with whatever the third party requires in conjunction with the Ohio EPA. We can commit to doing that.

MAYOR HILL: Are there any other Council remarks?

MR. RADTKA: Yes, Mr. Mayor. Just like my last statement, I'd like to get it on the record for the Council meeting here that I'll be abstaining from any votes and discussion and recuse myself from this issue.

MAYOR HILL: Any other Council remarks?
(NO RESPONSE FROM COUNCIL.)

MR. MCGRAIL: Hearing none, are there any public remarks? Mark?
My apologies to Council. I think my heritage got the better of me. But H.B. 292, Section 12, Subsection C, "If the Ordinance is subject to the referendum, and the referendum petition concerning the Ordinance is filed with the Village Clerk not later than the thirteenth day after the Ordinance is passed, the following procedures will take place..." 13 days. Thank you, Mr. Dutton—Attorney Dutton for that discussion because I think—and with all respect to you Mr. Strasfeld, correct?

MR. STRASFELD: Correct.

MR. MCGRAIL: I understand your position, too. The Environmental Protection Agency has a program in place called Environmental Covenant. It takes care of all those issues, all the environmental issues, it also takes care of the "in perpetuity" issue because it can never go back to the owner—not unless there's an act of God and God bless you going against—V Title, all those other things, we've opened the possibility that down the road—and, again, no disrespect for the folks at TJX—but you may not own that property forever. And that opportunity for the new owner to change it from an environmental protected area will exist unless you go through the Environmental Protection Agency. Mr. Radtka, thank you for answering my question. If you don't mind, I have a concern. Again, going back to H.B. 292, Section 12, currently under Ohio Revised Code, when dealing with this type of issue, the majority of the elected members of the body must vote for passage of this type of thing. Currently, there are six members. That means four

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have to vote to pass this. Currently, to my knowledge, there's only three. H.B. 292 puts in place, "If a member of the legislative authority is present but abstains"—as you've suggested—"from voting on the Ordinance, the member's seat on the legislative authority shall not be counted for the purpose of determining the required number of votes for the legislative authority to pass." In other words, Mr. Radtka abstains. That's not five. The majority of five is three. I don't think that's a coincidence, folks.

In reality—and I respect your decision. Don't get me wrong—but by attending and abstaining, you trigger this part of the amendment. The only way for this to pass in an uncontroversial manner—and this is just my opinion. Again, it's your decision—is for yourself to recuse yourself from the vote. With all due respect. That's all I have to say.

MAYOR HILL:

Are there any other public remarks? Paul?

SOLICITOR DUTTON:

Mr. McGrail—well, actually the audience and my clients, members of Council. We did not play a role in changing the law. I would direct your attention to our state legislators and other interested parties. But we did not play a role in that. But we were asked questions about whether or not the village was a home-ruled charter village or a statutory charter village. We're a statutory charter village, which means we do not create our own protocol and procedures for things such as a referendum. So we must adhere to the state statute. And when this started brewing down there, the members of the General Assembly, who were interested, consulted the Legislative Service Commission and wanted to know what would happen. And the existing law up until Thursday—because the Governor signed them on Thursday, is my understanding—was that if you enacted an Ordinance on third reading that would be subject to a referendum—in other words, it's not emergency legislation and a zone change cannot be emergency—you would have 30 days before it becomes effective. And in that 30-day window, you would have the right to circulate a petition. And under the immediate prior law, the clerk didn't have to certify the Ordinance until there was enough signatures on the petition. So the clerk—Mr. Blank would have to certify these seven Ordinances to the Board of Elections, along with the referendum petition. Then the Board of Elections essentially takes over. And then they would schedule an election to be held in the next general election.

Now, historically, there was always an issue—and I'll get to that in a moment—whether or not someone who had abstained due to a conflict was considered as simply abstaining or vacating the position. The statutory language that we have to subscribe to since we are a statutory village—and, frankly, most of the villages throughout the State of Ohio—was ambiguous about whether there would be an abstention or a vacation, vacated.

There is a court case—I think 1992 or something like that—and an Ohio Attorney General's opinion that interpreted that language because the law is statutory and it's pertinent. It said that it would create a vacancy — in other words, if you have six Council members who are legally eligible to

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vote and someone cannot vote because of a conflict—and they're not abstaining, okay, they are not abstaining simply because they want more information or, you know, they got sick and can't show up. But if you have a conflict, you are not legally eligible to vote.

There are two—there are these case laws plus there's an Ohio Ethics Commission opinion, Number 8, which we've circulated to all the members of Council, the mayor, and the members of the Planning Commission well in advance of this when this thing started off. And, to my knowledge, everybody has adhered to this. Now, so Mr. Radtka, according to our opinion—we gave an opinion on May 15. And I'm not going to read it. It's a public record. If anyone wants the opinion, they have the right to have it—we interpreted the law, the statutes, along with the case authority and the A.G.'s opinion. And it was our opinion that Mr. Radtka, in this case, or frankly any other Council member who would have to recuse themselves because of a conflict, an ethics conflict, that he is duty bound to show up at the meeting. He counts towards a quorum, and he—or anyone else—would have to identify for the record that they have a conflict. And if there are three meetings, they have to identify in each meeting. Then they must refrain and recuse themselves from participating in any discussion, vote or influence.

Now, as to the number of eligible voters then, members of Council, it would be reduced from six to five. So, what about the recent amendment you referred to? That amendment did two things, as I understand it. We were given a copy of that amendment after it was introduced in the Ohio General Assembly, in the House. It did two things. Number one, it clarified statutorily the ambiguity that existed about whether you abstain or you vacate your position for purposes of voting. That was a clarification. And it was in adherence to the case in the A.G.'s opinion and the one cited case. There's not a lot of law on this.

Now, the another thing that it did was, it did make a change. But it did not change or alter the 30-day window. The 13 days that you're referring to is that immediately upon passage, rather than waiting to the 30th day to see whether or not there is a petition and the signatures for the Clerk to certify to the Board of Elections, the Clerk must certify immediately this legislation before the Clerk knows whether there's going to be a referendum or not. Automatically. And Bill will have to certify—if it passes, Bill will have to certify all seven Ordinances, either day one, day two, day three—I'm talking about June 22nd, 23rd, 24th—and that's a Saturday. But no later than the 13th. But individuals—and I'm assuming you might be one of them—who, if it passes, you could begin the circulation process on day one, on the day after. In fact, you could prepare the petitions in advance and, you know, just plug in the date, the effective date. You can't sign the petition prior to June 22nd, but you can prepare them in advance. So you have not lost the 30-day window.

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The only substantive change is that rather than having the election in November, the next general election, it is within 60 days of passage. So the clock starts to run, if this is enacted, on June 22nd and then 60 days later it will be on the ballot. Now, you can argue, you know, whether or not this is a perversion of the law, whether it's fair, whether it makes sense. But, being in this business for 46 years, there are situations where someone—legislation becomes effective, say, in less than 120 days before the November election. Count the months. And under the current law, you couldn't get on the ballot on a zone change until the following general election. So, in our scenario, if we got too far into August, this wouldn't go on the ballot until 2019. Also, if this happened, say, January or February, it would still be on November, 2018. A lot of people, who are in the real estate development business or in the zoning business, they look at this as a freak of nature. In other words, the circumstances dictate when this is going to be on the ballot. And you can suffocate and starve a project. As my law school professors mentioned to us one time in a zoning matter, he said, you know, property owners have rights too.

So I think this was an interest in trying to balance the timing here. And I can see the timing of this where everyone can think it's manipulation of the law. But it is not. It didn't deny those opponents less than 30 days to circulate the petition.

MRS. JONES: Paul, I think that clarification needs to be made on what the difference between passage of an Ordinance and effective date of an Ordinance is. Because passage would be next Thursday.

SOLICITOR DUTTON: Right. It passes on Thursday and—

MRS. JONES: So—

SOLICITOR DUTTON: —all Ordinances, unless there's an emergency clause, all Ordinances don't become effective until 30 days later.

MRS. JONES: So, how does that section of the House Bill reflect with this? Because it says passage. Effective date is not until 30 days after the passage vote.

SOLICITOR DUTTON: Well, the clock starts to run upon passage. And the 13 days only applies to the Clerk certifying them over to the Board of Elections. But passage takes place on June 21st, if it does, in fact, pass.

MRS. JONES: Well, effective—

SOLICITOR DUTTON: No. Effective date would be 30 days later. In other words, it becomes enforceable after 30 days later.

MRS. JONES: In July.

SOLICITOR DUTTON: In July, yes. I hope I haven't confused you.

MR. MCGRAIL: Can I ask you a question with regard to that issue—

MAYOR HILL: Are there any other public remarks?

MR. MCGRAIL: I just want to ask. I appreciate everything you said. Thank you very much.

MAYOR HILL: Please come to the microphone, Mark.

MR. MCGRAIL: The question I have I think kind of goes to the same issue Mrs. Jones is dealing with. I'm looking at what it says. It says nothing in here about 30 days. How does that get clarified? In other words, what I'm saying to you is, it says

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the petition has to be filed by the 13th day following passage. So passage being—let's say Council voted positively—

SOLICITOR DUTTON: I didn't write the legislation. I'm just—I did a review of it, and this is my understanding of what was enacted. It's 13 days that sets the trigger for the Clerk to certify to the Board of Elections to allow the Board of Elections anticipation that we are going to have an election.

MR. MCGRAIL: I guess my question is—

SOLICITOR DUTTON: But the rest of law hasn't changed since the acceleration of the—

MR. MCGRAIL: I understand that. My question is, that's not what this says. Is anyone here going to hold—anyone that wants to do this referendum—to a count and say no, no, no. You had 13 days. It says so right here.

MAYOR HILL: That's what you're saying. I don't think anybody up here has said that.

MR. MCGRAIL: I'm asking a question, Arno.

MAYOR HILL: I know that. I'm saying nobody up here has said that.

SOLICITOR DUTTON: We will follow the law. We'll advise the village accordingly. I was asked this question today. I didn't come—in fact, I was handed copies of my opinion letter—or our opinion letter. It is our understanding, that the people, the individuals, wanting to initiate a referendum petition will have 30 days from passage, which would be June 21st and 30 days later they must be filed with the Board of Elections.

MR. MCGRAIL: You're saying if the petition is signed, petitions have to be filed in 30 days.

SOLICITOR DUTTON: 30 days.

MR. MCGRAIL: That clarification is great. I get that. Just one more question if you will indulge me. With regard to the recusal or the abstention, the interesting—believe me, I understand the issue with regards to abstentions, what they mean and what they don't mean. There's a lot of controversy. I do understand that. And I wish Senator O'Brien was still here because in the remarks that he made publicly, he said that this was an attempt to clarify that.

SOLICITOR DUTTON: That's my understanding.

MR. MCGRAIL: And I take him at his word, except for one thing. This only takes place from May 15 to 9/1. If it's really going to address that issue, why such a short time frame? It just happens—

SOLICITOR DUTTON: I don't know the—

MR. MCGRAIL: I'm conjecturing now.

SOLICITOR DUTTON: I was not aware nor was I informed that this legislation would have a limited life. It was my understanding that it would be a permanent amendment or a fix to that issue. But you're going to have to ask them.

MR. MCGRAIL: I've tried, but I can't get through. My final comment about this is this, again, going back to your comment about abstentions and what they mean and how they're counted, I get that—

SOLICITOR DUTTON: It's abstention versus vacancy.

MR. MCGRAIL: I'm sorry. Yes, you're right. The short time limit just seems very suspicious to me. That it was tailored to meet this issue. And I know you can't comment on that, but I'm just saying that's my problem.

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SOLICITOR DUTTON: I have no knowledge of that—
MR. MCGRAIL: I mean it's right here—
SOLICITOR DUTTON: I know it's in there. I have no knowledge as to why it was done that way.
MR. MCGRAIL: I'm making an assumption, of course, but I think it's an educated assumption. Thank you.
MAYOR HILL: Are there any other public remarks?
(NO RESPONSE.)
Hearing none, the purpose of this special meeting. Lordstown Village Council will conduct a special Council meeting on June 16, 2018, immediately following the public hearing at 11 a.m. to consider the following legislation. Mr. Blank.
MR. BLANK: Before I start, I'd just like to say, when this is over, please exit this door, everyone. There's an open house upstairs, and they won't want people out in the hall talking. Thank you.
From Planning Commission, **AN ORDINANCE AMENDING THE LORDSTOWN ZONING MAP TO RECLASSIFY 121.003 ACRES OF REAL PROPERTY OWNED BY HARVEY AND DOLLY LUTZ, BEING PARCEL NO. 45-117512 FROM R-1 (RESIDENTIAL) TO I-1 (INDUSTRIAL).**
MAYOR HILL: Comments or motions?
(NO RESPONSE FROM COUNCIL.)
Hearing none, I'll declare this Ordinance to have had its first reading. Next, please.
MR. BLANK: **AN ORDINANCE AMENDING THE LORDSTOWN ZONING MAP TO RECLASSIFY 52.5 ACRES OF REAL PROPERTY OWNED BY DBR OF OHIO, LLC, BEING PARCEL NO. 45-117511 FROM R-1 (RESIDENTIAL) TO I-1 (INDUSTRIAL).**
MAYOR HILL: Comments or motions?
(NO RESPONSE FROM COUNCIL.)
Hearing none, I'll declare this Ordinance to have had its first reading. Next, please.
MR. BLANK: **AN ORDINANCE AMENDING THE LORDSTOWN ZONING MAP TO RECLASSIFY 2.4558 ACRES OF REAL PROPERTY OWNED BY HOMEGOODS, INC., SITUATED AT 2527 HALLOCK YOUNG ROAD, LORDSTOWN, OHIO, PARCEL NO. 45-027550 FROM R-1 (RESIDENTIAL) TO I-1 (INDUSTRIAL).**
MAYOR HILL: Comments or motions?
(NO RESPONSE FROM COUNCIL.)
Hearing none, I'll declare this Ordinance has had its first reading. Next, please.
MR. BLANK: **AN ORDINANCE AMENDING THE LORDSTOWN ZONING MAP TO RECLASSIFY 3.674 ACRES OF REAL PROPERTY OWNED BY HOMEGOODS, INC., SITUATED AT 2547 HALLOCK YOUNG ROAD, LORDSTOWN, OHIO, PARCEL NO. 45-048950 FROM R-1 (RESIDENTIAL) TO I-1 (INDUSTRIAL).**
MAYOR HILL: Comments or motions?
(NO RESPONSE FROM COUNCIL.)
Hearing none, I'll declare this Ordinance to have had its first reading. Next, please.

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MR. BLANK: **AN ORDINANCE AMENDING THE LORDSTOWN ZONING MAP TO RECLASSIFY THREE (3) ACRES OF REAL PROPERTY OWNED BY RONALD E. AND CYNTHIA S. RADTKA SITUATED AT 3640 ELLSWORTH BAILEY ROAD, LORDSTOWN, OHIO, PARCEL NO. 45-904644 FROM R-1 (RESIDENTIAL) TO I-1 (INDUSTRIAL).**

MAYOR HILL: Comments or motions?
(NO RESPONSE FROM COUNCIL.)
Hearing none, I declare this Ordinance to have had its first reading. Next, please.

MR. BLANK: **AN ORDINANCE AMENDING THE LORDSTOWN ZONING MAP TO RECLASSIFY 104.46 ACRES OF REAL PROPERTY OWNED BY DBR OF OHIO, LLC, BEING PARCEL NO. 45-003359 FROM R-1 (RESIDENTIAL) TO I-1 (INDUSTRIAL).**

MAYOR HILL: Comments or motions?
(NO RESPONSE FROM COUNCIL.)
Hearing none, I'll declare this Ordinance to have had its first reading. Next, please.

MR. BLANK: **AN ORDINANCE AMENDING THE LORDSTOWN ZONING MAP TO RECLASSIFY 13.13 (per Auditor website) ACRES OF REAL PROPERTY OWNED BY DBR OF OHIO, LLC, BEING PARCEL NO. 45-003357 FROM R-1 (RESIDENTIAL) TO I-1 (INDUSTRIAL).**

MAYOR HILL: Comments or motions?
(NO RESPONSE FROM COUNCIL.)
Hearing none, I'll declare this Ordinance has had its first reading.
Any old business?
(NO RESPONSE FROM COUNCIL.)
Hearing none, any new business?
(NO RESPONSE FROM COUNCIL.)
Hearing none, any additional public remarks?
(NO RESPONSE.)
Hearing none, I'll entertain a motion to adjourn.

MR. LIMING: So moved.

MAYOR HILL: Moved by Liming. Second?

MR. REIDER: Second, Mr. Mayor.

MAYOR HILL: Second by Reider. Comments?
(NO RESPONSE FROM COUNCIL.)

All in favor?

COUNCIL: Aye.

MAYOR HILL: Opposed?
(NO RESPONSE FROM COUNCIL.)

(VOTE: 6, AYE; 0, NAY; 0, ABSTAINED.)

Motion carried. Meeting adjourned. I'd like to thank everybody for coming this morning.

(WHEREAS, THE SPECIAL MEETING BEFORE THE VILLAGE OF LORDSTOWN COUNCIL ADJOURNED AT 12:50 P.M.)

_____ Mayor

_____ Clerk

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STATE OF OHIO)
)
COUNTY OF TRUMBULL)

I, Sharon K. Vigorito, a Notary Public, within and for the State of Ohio, do certify that the foregoing special meeting before the Lordstown Village Council was written in the presence of witnesses and by me transcribed. I further certify that the foregoing is a true and accurate transcript to the best of my abilities.

Sharon K. Vigorito, Notary Public
My commission Expires May 9, 2022