

Nelsonville City Council met in regular session Monday, April 25, 2011, at 7 PM in Council Chambers. Mr. Dotson called the meeting to order. Mr. VanBibber offered the opening prayer. All present stood and recited the Pledge of Allegiance. **ROLL CALL:** All Council members were present except Mr. Holmes. Mr. Joe Scherer, City Manager, and Mr. Garry Hunter, City Attorney, were also present.

Mr. Taylor made a motion to excuse Mr. Holmes, seconded by Mr. Hall. **ROLL CALL:** All Council members voted yea.

Mr. Hall made a motion to approve the minutes of the last regular meeting as presented. Mr. Taylor seconded the motion. **ROLL CALL:** All Council members voted yea.

AUDITOR'S/TREASURER'S REPORT

The Clerk gave the Auditor's/Treasurer's Report for March 2011. Total cash on deposit for March 2011 was \$4,352,992.11. Year-to-date expenditures totaled \$1,545,982.64 or 26.269% of the total annual budget. Year-to-date revenues collected totaled \$1,437,393.26 or 26.41% of the estimated total revenue for 2011. Mr. Hall made the motion to approve the Auditor's/Treasurer's report as presented. Mr. VanBibber seconded the motion. There was no Council discussion or public comment. **ROLL CALL:** All Council members voted yea.

CITIZEN'S COMMENTS

Bob Baughman, Jackson Street, reported that the Hocking Valley Scenic Rail Road had its Easter train this past weekend and 1200 people participated. The event grows every year. Mr. Baughman thanked the City for sweeping Jackson Street saying it looks very nice and asked for an update on the brewery site. Melvin Maccombs, Chestnut Street, asked when the brewery site would be cleaned up. It's been five years. What are they going to do with John Clark and his father? Mr. Hunter said the City Prosecutor will address it tonight. The median on Chestnut Street is continuing to deteriorate. Mr. Scherer said we plan to begin work on it as soon as the asphalt plants open. The rain has delayed the opening. Stuart's Opera House is a disgrace. He will stay on this until he finds out something about it. He doesn't understand why they are allowed to drink there. It's sickening to sit beside people who are drinking. Steve Pierson is a good man. Last Thursday the dog warden took 12 dogs out of a house on Third Street. He has been complaining about the smell for two years. Mr. Pierson did his job. He asked who owns the Opera House. Mr. Dotson said it is owned by a private nonprofit board. Mr. Smith said he has contacted the Liquor Board and the only way it can be stopped is for the citizens of that ward vote the precinct dry. Geneva Gambol, Clinton Street, said she is having a problem with two families in her neighborhood. She is being harassed but doesn't call the police because they get upset. If she calls they say she yells and screams. She is having things stolen, her property is being trespassed on, and she has had trouble with accidents at stops signs in the City. Mr. Hunter said the Police Department investigates these types of complaints and he encouraged her to contact them. Mr. Smith told her she needs to make a report. If the Police Department doesn't treat her right she needs to complain to the City Manager. Mr. Hunter noted that the Sheriff's Department also has dual jurisdiction in the City.

COMMITTEE DISCUSSION

Mr. VanBibber reported on the **Street Committee** meeting that was held April 20. The committee met to discuss Rex Lengyel's request to open Walnut and Poplar Streets at the intersection of Rhine Street. It was determined that the City has no interest in further developing the two streets. Mr. Lengyel said he only wanted to know where the rights-of-way were as that would allow him access to his property with equipment needed to build a house on lots 1334 and 1335. It

was agreed that the City would share the cost of a survey. Mr. Lengyel must agree to pay half the survey cost, state in writing that this is all he requests the City to do, and sign a statement that will conclude the matter of opening Walnut and Poplar Streets.

Mr. Hall reported on a joint **Planning and Development and Judiciary Committee** meeting held April 20. The meeting was called to discuss the problem of getting the old brewery site on Jackson Street cleaned up by Gary and John Clarke, and the possibility of changing sections 9.14.06 and 9.14.16 of the Nelsonville Code to provide stiffer penalties for violations of these sections. After a lengthy discussion it was decided that changing the code would cause more harm than good to the citizens of Nelsonville. After another extended discussion Mr. Holmes made a motion to have City Magistrate Rick Hedges appear before City Council to give a complete report on the case and what he plans to do in the future. Mr. VanBibber seconded the motion and all members agreed. Mr. Hedges is here tonight.

Rick Hedges, City Prosecutor, addressed Council. John Clark and his attorney will be in Mayor's Court on Thursday night. At that time Councilman Smith will serve as Magistrate for the case. At the last hearing Mr. Clark's attorney entered a plea of not guilty on his behalf and they requested discovery, which has been provided. Mr. Keller, Mr. Clark's attorney, is aware of what specifically we are talking about and what needs to be resolved. Over a month ago a directive was issued to Mr. Clark to get the property cleaned up. He was given a time span which, in theory, will be this Thursday. For the first several weeks there were people there taking pallets of bricks. Since then it was been intermittent. The basement is still there. According to Mr. Keller, Mr. Clark intended to bring equipment in to fill it in. The property was supposed to be completed in August 2010. Mr. Clark did not show up in court, a warrant was issued and he was arrested. A \$5,000, 10% bond was placed on him, which was paid and he is out on bond. Mr. Hedges said the problem is the current ordinance states it is a minor misdemeanor, which carries a maximum penalty of \$150. However, the ordinance also says it can be \$150 per day. It is unclear is whether the \$150 per day has to be the product of a citation each day. Another problem is if the \$150 per day was levied and the case went to municipal court would the judge actually levy that kind of fine. This would be a lot of money. What he expects to happen in Mayor's Court on Thursday given the evidence Mr. Clark will be found guilty. If the ordinance is upheld he will be charged \$150 and given an order to clean up the property. Mr. Hunter sees the problem as there is only one \$150 charge pending for a minor misdemeanor. In his opinion the ordinance elevates to a fourth degree misdemeanor on the second offense. He is aware of the policies of the municipal court judges of separating the charges and say you can't file multiple charges, but that has never happened in Mayor's Court. He feels multiple charges can be filed in Mayor's Court and let the Magistrate consider them that way. He suggested that Mr. Hedges file a charge every day until it reaches a significant amount. Mr. Hedges said that is what he wants to do also but simultaneously he would like to pursue it through code and the health department for condemnation. Mr. Hunter said condemnation is a slow process and it would involve the City paying the cost of the clean-up. That is not the way we want to go. We want to go the criminal route and force them to clean the property up. Mr. Smith said the charge was made under the old codification in which the penalty is \$100 per day and three charges were made. The new codification does elevate to a fourth degree misdemeanor. His question for Mr. Hunter was would Mr. Clark have to be convicted under the new city code to be able to charge him with a fourth degree misdemeanor. Mr. Hunter said his impression is that once the new code was adopted the charge can be amended. Mr. Smith talked about his recommendation at the last meeting that something be written into the ordinance making it a fourth degree misdemeanor but only after 60 days. It would not affect others who clean up property sooner. Mr. Hunter said there is an Ohio Statute that says the highest

misdemeanor that a Mayor's Court can go to is a third degree misdemeanor with a \$500 fine and 60 or 90 days in jail. Mr. Smith said if someone goes 60 days he would like our ordinance to allow a fourth degree misdemeanor charge. Mr. Hunter said that the charges should be made every day and a fourth misdemeanor can be charged the second time. If Mr. Clark is convicted on Thursday he can be charged on Friday with a minor misdemeanor and on Saturday he can be charged with a fourth degree misdemeanor. Mr. Hunter said Mr. Clark is thumbing his nose at this community and could care less about a potential \$150 fine. Mr. Theisen said the City already has Ordinance 14-88 that already allows a fourth degree misdemeanor charge. Let's use it. Why haven't we used it before now? Mr. Hedges said that is what he is doing now. Mr. Hall said the consensus of this Council is that the property should have been cleaned up in August. We should be done with this by now. He doesn't know who files the charges but somebody needs to be making the charges ever day or he will be answering to Council. As to why it is not being done. Mr. Theisen said he works for us. If the people we have working for us can't get the job done we need to find new peoples. Our ordinances are not worth the paper they are written on unless we have people working for us that will follow the ordinances. Mr. Smith said as an impartial judge if he were presented a case with these facts and he had the ability he would put that person in jail as soon as possible and keep them in jail as long as he could. Mr. Hall said we must move forward with this. He was very disappointed in whoever made the decision to give Mr. Clark until August. We are in worse shape now than we were then. If the City ends up cleaning the property up there were materials on the site that we could have gotten money for. Mr. Clark has taken everything off the property of any value and the cost of the clean up would be several thousand dollars. Council is not being good stewards of the City's monies. Any time are not moving forward someone in administration needs to explain why we are not moving forward. He is ashamed to sit on Council and to have people in that neighborhood have to look at the site day after day. Mr. Smith said the trial will be held on Thursday night and if there is evidence to find him guilty he will find him guilty and fine him accordingly. Mr. Hunter suggested holding the hearing on the first charge and then entertain a motion to amend the count to a fourth degree misdemeanor before the hearing on the second charge. Mr. Clark will be charged every day following. Mr. Hedges reminded Council that Mr. Clark can appeal to municipal court but he can continue to be charged every day. Mr. Hunter suggested having citizens attend court to tell how bad it is for the people who live there.

SECOND READING

ORDINANCE 26-11. AN ORDINANCE AMENDING THE 2010 APPROPRIATIONS ORDINANCE TO TRANSFER FOUR HUNDRED FIFTY DOLLARS (\$450.00) FROM FULL TIME FIRE WORKER'S COMPENSATION LINE ITEM #100-200-10060 TO PART TIME FIRE WORKER'S COMPENSATION LINE ITEM #100-201-10060.

Mr. Hall made a motion to adopt. Mr. VanBibber seconded the motion. There was no public comment. Council discussion: Mr. Hunter said he contacted the State Auditor's Office about the need for this ordinance. The money has been appropriated and is only being transferred. The person he spoke with confirmed there really wasn't a need for Council action. Mr. Hunter reiterated that Council give some consideration to an ordinance giving the Auditor authority to a certain dollar amount like \$5,000. **ROLL CALL:** All Council members voted yea.

Ordinance 26-11 adopted.

CITY MANAGER'S REPORT

Mr. Scherer reported the Fire Department has been busy starting with the fire at the Coffee Cup. The fire was contained and did not spread to nearby structures. The owner is researching code in order to rebuild. Last night the Fire Department

responded to a house at 231 Madison Street that began to slip from the hillside causing the house to be deemed too dangerous to go back into. The resident, a young mother with three small children, has been working with the Red Cross to find a place to live. Steve Pierson has begun the condemnation process. The department has also been conducting building and life safety on local businesses. Mr. Pierson initiated the complaint at the house where the 12 dogs were taken out of the house. The house will be placarded as a structure unfit for human habitation.

The Street Department has been running the City flood pumps. Two plugged storm drains on Route 278 have been identified. We will have to have a commercial company come in and clear them.

Last Wednesday the warning sirens were sounded by the Fire Department through the county EMA with regard to a severe thunderstorm warning that had been received. The storm had winds exceeding 55 MPH and hail associated with it. When the sirens are sounded people are supposed to go inside and turn on the tvs or radios to find out what is going on so they can take appropriate action.

The tour of the bypass with ODOT was cancelled and Mr. Scherer will work with them to reschedule.

The contract for the new waterline booster station on Route 78 has been awarded and construction should begin in the near future. It is scheduled to be completed by mid June.

The City has received the official census proclamation from the Secretary of State recognizing Nelsonville as a City with a population of 5,392.

Pool demolition has been delayed by weather but Mr. Scherer has been told it will begin tomorrow but the project will be completed for the pool opening Memorial Day weekend.

Mr. Scherer has been reappointed to the Buckeye Hills Executive Committee for the next round of OPWC funding.

GOOD OF THE ORDER

Mr. Smith plans to call a Utility Committee to discuss what we want to do with regard to the Ameresco project.

Mr. Theisen asked the status of the new water plant. Mr. Scherer said he is trying to set a meeting with Poggenmeyer next week to confirm where we are, finalize paperwork and find out what the next steps are. He will then schedule a meeting with the Utility Committee.

Mr. Theisen asked the Auditor of her reports show that all of the money has been paid to Poggenmeyer. The Auditor said some has been paid but not all. She is holding some of the bills to be paid from the OWDA loan.

With regard to the Rex Lengyel request Mr. Smith made a motion to have Mr. Scherer draft and send a letter to Mr. Lengyel outlining the stipulations as outlined by the Street Committee at the April 20 meeting. Mr. Theisen seconded the motion. Council discussed the financing. **ROLL CALL:** All Council members voted yea.

Mr. Hall made a motion to adjourn. Mr. VanBibber seconded the motion. **ROLL CALL:** All Council members voted yea.

NELSONVILLE CITY COUNCIL

President of Council

Clerk of Council