

Water Board Meeting
October 25, 2018
9:02 A.M.

Members in attendance: Administrator De Orio, Chair
Finance Director Brown
Director of Law Fox
Council Mark Cerreta

Clerk: We are on the record.

Patrick De Orio: We're on. All right. I'd like to call to order the North Canton Water Board meeting for Thursday, October 25, 2018. It is 9:02 a.m. I am going to ask the Clerk to call the roll.

Clerk: Mark Cerreta.

Mark Cerreta: Here.

Clerk: Tim Fox.

Tim Fox: Here.

Clerk: Laura Brown.

Laura Brown: Here.

Clerk: Patrick De Orio.

Patrick De Orio: Here. Thank you. Everyone is present. I'd like to let the record reflect that City Engineer Rob Graham is also here in attendance. We move to the Agenda. You have received in your packet the Minutes from the August 30, 2018 meeting. Are there any comments or corrections? If not, I'd ask for a motion to approve.

Tim Fox: Motion.

Mark Cerreta: Second.

Patrick De Orio: Moved and seconded by Member Fox and Member Cerreta. All those in favor signify by saying "Aye".

Members Collectively: Aye.

Patrick De Orio: All opposed? Motion carries.

Item two on the Agenda, is analyze any appeals regarding overages of water utilities. Member Brown, do we have anything in that department?

Laura Brown: We do. We have two that came in recently. They are both very similar. They are both situations where the account has had no issues or high usage in the past and then all of a sudden we spiked to high usage on the August reading, so we sent one of our technicians out. He checked both properties and found no leaks, no problem with the meter. The meter was functioning as normal, not spinning rapidly. In both cases, the high usage has now stopped. They're back to their normal usage when we went back out and did another reading. So, the likelihood is that they had a leak at the time, maybe a running toilet, or something of that nature. What we typically do in these cases is just charge them at the minimum rate to give them a little bit of a price break to help out. Then we continue to monitor them over the next couple of months to make sure we don't see another spike. If we did we'd go back and check the meter and do some further investigating.

Mark Cerreta: It seems like a fair situation alternative.

Tim Fox: I move that we follow the past practice.

Mark Cerreta: I'll second.

Patrick De Orio: Moved and seconded by Member Fox and Member Cerreta. We will do a roll call vote.

Clerk: Mark Cerreta.

Mark Cerreta: Yes.

Clerk: Patrick De Orio.

Patrick De Orio: Yes.

Clerk: Tim Fox.

Tim Fox: Yes.

Clerk: Laura Brown

Laura Brown: Yes.

Patrick De Orio: Motion carries. The final item on the Agenda is applications to provide water to new locations outside the city limits. You'll find in your packet that there was one application from Gary's Contracting, LLC. Mr. Engineer, would you like to opine?

Robert Graham: Yes, sir. Thanks, Mr. De Orio. This is for a property that's a single family residence located at 3693 Stratavon, Plain Township. The builder is building a spec home. He is looking for water service for this single family home. This is the second lot it is close to what is possibly the third. I tried to talk him into signing the other agreement that would allow for annexation, but he said his legal counsel, since he is selling the home, advised him against it. This is located on the west side of Stratavon, which dead ends in the City and where it picks up again in the Township.

Patrick De Orio: You said this developer has a couple other lots, or...

Robert Graham: Yes. For sure I think we've already granted him one agreement and possibly a second *{inaudible}*.

Mark Cerreta: Where was that other one at?

Robert Graham: The other one was to the east on that aerial of one of the three vacant properties, it was one of those lots.

Mark Cerreta: And for those three vacant lots...so he has an agreement for those three lots to get water from us?

Robert Graham: At least one for sure, but I'd have to check the records to see if he has more than one.

Mark Cerreta: Did he sign an annexation...

Robert Graham: He did not.

Mark Cerreta: Okay. Did we even ask him?

Robert Graham: At that time, I believe someone else asked him about it, but his legal counsel said since he's selling to someone else, he's

basically building a spec home and he didn't want to tie a future buyer to that annexation.

Mark Cerreta: Is that pink line at the top our line for our City?

Robert Graham: No, I believe the pink line is just something with our printer probably.

Mark Cerreta: And how close are we to our...

Robert Graham: Oh, we are probably fifteen hundred feet. It goes further east and there's kind of just a field where there's no roads and there's Getz's Body Shop, which is just in the City.

Tim Fox: I'd move that if an applicant isn't willing to sign an annexation agreement that the City has no obligation to provide water to an outside line customer. We have on our Codified Ordinance that this is provisioned to look out for the best interests of the City and should we have the ability to annex the property because we provided this municipal utility that the City should take advantage of that and henceforth for those that ask to receive this utility, which is certainly a valued resource of our tax payers, through their other types of taxes not just paying for water utility to help provide those public services. So, if someone is unwilling to agree to annex in and receive the inside rate at that point that it should be the City's policy to deny providing this public utility that our tax payers have paid for for a number of years. Moving forward we should do that as a matter of course unless we can find some other type of economic development tool, such as Sierra Jet or something else that may come forward in the future, but for right now it is an annexation agreement and our Ohio Supreme Court has held that those municipalities that maintain public utilities can sell these services outside of their boundaries. It's bound by basic contract law they can agree to do so, they can also deny it. They can also make conditions. Here the condition is an agreement that should we have the opportunity to be able to annex the property for the ability to receive the City's water that they're willing to voluntarily participate in the annexation process. That document will be recorded with the County Recorder, it will run with the land, so future owners will have this obligation and if their legal counsel states it's an impediment that they should not have it there, the Supreme Court says otherwise and I don't know why we should waive this because it would be better for this person

and perhaps the sale of this property in the future. We're looking out for the best interests of our residents and in that light I believe this Board should deny the application for water for the reason that the applicant refuses to sign the annexation agreement.

Patrick De Orio: Mr. Graham, was there also something earlier in the year, and I have to call upon you to help refresh my memory, calculations regarding something...

Robert Graham: Yes, *{inaudible}* earlier and we felt in reading the ordinance, the way we interpreted it, since it's been X number of years since the line on Stratovan was constructed that he would be obligated to pay this one time dollar per foot frontage fee. The City further looked at that and we interpreted it and Mr. Fox looked at it and felt that the fee did not need to be paid per the ordinance and so he wasn't charged a frontage fee.

Mark Cerreta: So he was not charged?

Robert Graham: He was not charged. He paid the inspection fees and whatnot, roughly a hundred, two hundred whatever it was *{inaudible}* two grand, whatever it is.

Patrick De Orio: And the other parcel that you indicated that may have received a go ahead on water service, was that something that was recent or was that...

Robert Graham: It would've been late spring, early summer of this year.

Patrick De Orio: This year. Okay. So, times change. All right, then, Mr. Fox I would ask that certainly this Board, would we agree that the Board has the right to proceed in a manner to which the times they find themselves in are suited. You know, economic circumstances change and prior actions don't bind us to a future course. It's on a case by case basis. We have the ability to make those kinds of decisions.

Tim Fox: I would agree with that statement, yes.

Patrick De Orio: Okay. Is there any other discussion on this...

Mark Cerreta: Well, I know we have changed our way of selling our water over the last six months and I know that's been an issue, but we need to continue with that. You know, this guy has three other lots right down through there. Nobody is going to

think well that's not fair, but at the same sense we've given him footage. The odds of us being contiguous may not be in the future, but there's no reason why that guy cannot sign that waiver that if it is contiguously I don't see how that hurts him in any way.

Robert Graham: He and I had a long discussion on that. Basically, it's been relayed *{inaudible}* that it really doesn't behoove us *{inaudible}* annex the neighborhoods.

Mark Cerreta: Right.

Robert Graham: *{inaudible}* somewhere else. There's really *{inaudible}*.

Mark Cerreta: So this seems to be the theory that we're moving with right now and he happens to be in that position right now that we're in right there, so... I don't see any down side for him, especially since we've given him all the frontage for that, so I have no problem denying him. That's what we're looking at, denying, not approving this, so I don't have a problem with making him sign the water agreement, let's put it that way.

Laura Brown: I have a question.

Patrick De Orio: Yes.

Laura Brown: We talked earlier about when Stratovan was originally put in and people would pay the frontage fee because there were a lot of existing homes that had been there for quite some time. When that street was put in do you have any information on did all of those lots sign annexation agreements?

Robert Graham: I don't know that information off the top of my head. I didn't research that far back.

Mark Cerreta: At that time we wouldn't have been in the situation we are.

Laura Brown: At that time I believe everyone would have. I don't think we had two versions or two options.

Patrick De Orio: Well, let me respond to that. On a personal note that street runs through the end of the development that I lived in on Arnesby Circle and Eastwind. All of this was Plain Township and our development was built in 1994 in Plain Township and we have always had City of North Canton water. There

was no requirement to annex and it was actually the neighborhood by 2006 had petitioned the City to annex us. That went to the Ohio Supreme Court for a decision because the developers were litigating against it, but the Supreme Court upheld the neighborhood's right to petition the City to annex. So I would say, as I look at Hearthstone Circle and all of that that was kind of developed at the same time that there probably was not and it was just an opportunity to expand water services 20-30 years ago.

Mark Cerreta: Okay.

Patrick De Orio: I think we've all had an opportunity to opine on it and Mr. Fox spoke so eloquently, could I interpret your recommendation as a motion?

Tim Fox: Yes, my motion is to deny the application for the applicant's refusal to sign the annexation agreement.

Mark Cerreta: I'll second it.

Patrick De Orio: Moved and seconded by Members Fox and Cerreta. We'll do a roll call vote.

Clerk: Mark Cerreta.

Mark Cerreta: Yes.

Clerk: Patrick De Orio.

Patrick De Orio: Yes.

Clerk: Tim Fox.

Tim Fox: Yes.

Clerk: Laura Brown.

Laura Brown: No.

Patrick De Orio: All right. Motion is carried to deny the application. There is no other item on the Agenda. I would ask for a motion to adjourn.

Tim Fox: Motion.

Mark Cerreta: Second.

Patrick De Orio: Moved and Seconded. We'll do a voice vote. All those in favor signify by saying "Aye".

Members Collectively: Aye.

Patrick De Orio: Opposed? Meeting is adjourned.

Patrick A. De Orio
Director of Administration