

**AGENDA**  
**PIQUA CITY COMMISSION**  
**TUESDAY, APRIL 6, 2010**  
**7:30 P.M.**  
**201 WEST WATER STREET**  
**PIQUA, OHIO 45356**

**CALL TO ORDER**

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**REGULAR CITY COMMISSION MEETING**

**OATH OF OFFICE**

Police Lieutenant Marcos A. Rodriguez

**PROCLAMATION**

Piqua Show Choir – “The Company”

**A. CONSENT AGENDA**

- a. APPROVAL OF MINUTES  
Approval of the minutes from the March 16, 2010 Regular City Commission Meeting
- b. COMMUNICATION FROM CITY MANAGER  
Response to questions raised by Mr. Russ Fashner at the March 16, 2010 Regular City Commission Meeting

**B. NEW BUSINESS**

- a. ORD. NO. R 7-10 (1<sup>st</sup> Reading)  
An Ordinance authorizing an amendment to Ordinance No. 42-96 and the zoning map attached thereto to assign a zoning designation of R-3 (Multi-Family Residential) to parcel J27-032000
- b. ORD. NO. 8-10 (1<sup>st</sup> Reading)  
An Ordinance authorizing an amendment to Ordinance No. 42-96 and the zoning map attached thereto to assign a zoning designation of R-2 (Two-Family Residential) to parcel N44-004010, also known as 316 North Downing Street
- c. ORD. NO. 9-10 (1<sup>st</sup> Reading)  
An Ordinance authorizing an amendment to Ordinance No. 42-96 and the zoning map attached thereto to assign a zoning designation of R-2 (Two-Family Residential) to parcel N44-004000, also known as 320 North Downing Street

- d. ORD. NO. 10-10 (1<sup>st</sup> Reading)  
An Ordinance amending Chapter 111 of the Piqua Municipal Code Peddlers and Solicitors
- e. ORD. NO. 11-10 (1<sup>st</sup> Reading)  
An Ordinance amending Section 94.20 (Section D) of the Piqua Code relating to (Community Swimming Pool Fees) and Section 94.24 (Sections C & F) of the Piqua Code relating to (Regulations for Public Parks and Pools)
- f. RES. NO. R-42-10  
A Resolution of Appreciation for the Public Service of John J. Speer as a City Employee
- g. RES. NO. R-43-10  
A Resolution awarding a contract for the purchase of a 45' Bucket Truck and a Digger-Derrick for the Power System
- h. RES. NO. R-44-10  
A Resolution authorizing the City of Piqua to file an application to the State of Ohio to Participate in the Clean Ohio Assistance Fund
- i. RES. NO. R-45-10  
A Resolution authorizing the City Manager to enter into a lease agreement between the City of Piqua and the Piqua City School District for the lease of Hardman Field
- j. RES. NO. R-46-10  
A Resolution awarding a contract for the Broadway-Phase II Reconstruction Project to Finfrock Construction Co., Inc.
- k. RES. NO. R-47-10  
A Resolution expressing the intent of the City of Piqua to establish a Stormwater Utility Board
- l. RES. NO. R-48-10  
A Resolution authorizing a purchase order to Barrett Paving Materials, Inc. as the primary supplier, and Valley Asphalt Corporation as the secondary supplier of hot mix for the 2010 Street and Alley maintenance program

**C. OTHER BUSINESS**

Monthly Reports – February 2010

**D. ADJOURNMENT**

**MINUTES  
PIQUA CITY COMMISSION  
Tuesday March 16, 2010  
7:30 P.M.**

Piqua City Commission met at 7:30 P.M. in the Municipal Government Complex Commission Chambers located at 201 W. Water Street. Mayor Fess called the meeting to order. Also present were Commissioners Martin, Vogt, Terry, and Wilson. Absent: None.

**REGULAR CITY COMMISSION MEETING**

**Consent Agenda**

**Approval of Minutes**

Approval of the minutes from the March 2, 2010 Regular City Commission Meeting

Moved by Commissioner Martin, seconded by Commissioner Terry, that the minutes of the Regular City Commission Meeting of March 2, 2010 be approved. Voice vote, Aye: Wilson, Fess, Terry, Martin, and Vogt. Nay: None. Motion carried unanimously.

**Old Business**

**ORD. NO. 3-10 (3rd Reading)**

An Ordinance authorizing the submission of a proposed amendment to Piqua Charter Section 3 and 4 The Commission

Mayor Fess stated the Law Director Wall added a paragraph to the Ordinance and read the paragraph with the new language included.

“Redistricting of the wards shall occur every ten years using the census. The redistricting shall be based on an equitable balance of population and shall commence with the 2010 census figures, having the new boundaries of the wards in effect for January 1, 2012. After January 1, 2012, said boundaries of the wards if redrawn shall go into effect at the earliest possible time that the census information can be verified and the boundaries redrawn. **In the event the redrawing of boundaries results in a commissioner being located in a different ward than the ward he ran from for election to commission, the commissioner in office at the time of the redistricting shall remain in office for the balance of his term.** “

Moved by Commissioner Wilson, seconded by Commissioner Martin, to amend Ordinance No. 3-10 with the new language added in Section 3, in the second paragraph, sixth sentence. Roll call vote, Aye: Martin, Terry, Fess, Wilson, and Vogt. Nay: None. Motion carried unanimously.

**Public Comment**

No one came forward to speak for or against Ordinance No. 3-10.

Moved by Commissioner Vogt, seconded by Commissioner Martin, that Ordinance No. 3-10 be adopted, as amended. Roll call vote, Aye: Vogt, Martin, Terry, Fess, and Wilson. Nay, None. Motion carried unanimously. Mayor Fess then declared Ordinance No. 3-10 adopted, as amended.

**ORD. NO. 4-10 (3rd Reading)**

An Ordinance authorizing the submission of a proposed amendment to Piqua Charter Section 33 under Administrative Service

City Manager Enderle explained the changes that were proposed.

Mayor Fess stated Law Director Wall provided a copy of the Policy to the Commissioners previously.

There was discussion on the Policy versus the amendment among the Commissioners, with Commissioner Martin stating the Charter Review Committee felt strongly enough to recommend the amendment be put to the voters, and agrees it should be put on the ballot.

Commissioner Wilson also stated he agrees the changes should go to the voters to decide.

### **Public Comment**

Ben Hiser, Margene Drive, came forward and stated he is a member of the Charter Review Committee, and voiced his opinion on their recommendations.

Frank Patrizio, Sunset Drive, member of the Charter Review Committee, came forward and gave a brief background of their discussion and the reasons the Charter Review Committee chose to put the language on the ballot at this time.

It is clearly stated in the Charter what Commissioner's can or can not do, said Mayor Fess.

Mayor Fess thanked both Mr. Hiser and Mr. Patrizio for their services on the Charter Review Committee, and for coming forward and presenting their information.

Commissioner Terry inquired about the language in Section 33: Commission Not To Interfere In Appointments Or Removals, in the fifth line where it states "However, nothing in this section shall prohibit City Commissioners from communicating with employees, regarding city matters". Commissioner Terry stated she would like to strike the last three words " regarding city matters".

Moved by Commissioner Terry, seconded by Commissioner Martin to amend Ordinance No. 4-10 in Section 33: Commission Not To Interfere In Appointments Or Removals, in fifth line, to strike out "regarding city matters." Voice vote, Aye: Martin, Fess, Terry, Vogt, and Wilson. Nay: None. Motion carried unanimously.

Moved by Commissioner Vogt, seconded by Commissioner Martin, that Ordinance No. 4-10 be adopted, as amended. Roll call, Aye: Fess, Vogt, Martin, Terry, and Wilson. Nay: None. Motion carried unanimously. Mayor Fess then declared Ordinance No. 4-10 adopted, as amended.

### **ORD. 5-10 (2ndReading)**

An Ordinance amending Chapter 55 of the Piqua Municipal Code Stormwater Management

City Manager Enderle stated this Ordinance amends the previously adopted Chapter 55 regarding the Storm Sewer Utility. Ordinance No. 5-10 would change the average square foot of the equivalent residential unit from 2600 sq. ft. and raising it up to 5400 sq. ft., establishing a yearly review of the ERU rate, and establishing a credit program for non-residential users.

Mayor Fess stated if the Ordinance were to be passed, and the three readings waived the collections could begin in April.

Moved by Commissioner Vogt, seconded by Commissioner Martin, that the rule requiring Ordinance No. 5-10 be read fully and distinctly on three separate days be suspended.

### **Public Comment**

Jerry Voisinet, Garbry Road, came forward and voiced his opinion on the Stormwater issue, and asked why he would be paying such a large sum of money when he is not connected to the storm sewers.

City Manager Enderle explained that this is an EPA Mandate, and the City has to comply. The water that is dumping into the river needs to be cleaner, funds will be used to help educate the public, working on getting people involved in cleaning up the waterways, detecting illegal discharges into the river, taking better care of the infrastructure, repairing and getting new infrastructure put into place.

Mr. Voisinet thanked the City Manager for his explanation and stated he hopes the Commissioner stay around to monitor the money so it does not get channeled into other departments.

Commissioner Vogt replied at the last City Commission meeting it was stated a Stormwater Utility Board was going to be set up, and they will monitor the Stormwater. Commissioner Terry stated the Stormwater Utility Board will be made up of citizens, and invited Mr. Voisinet to set on the board.

Mr. Voisinet stated citizens can call and have their gravel tested to help with reduction in their fees.

Mayor Fess stated the money that is allotted for the Stormwater Utility has to stay in the fund that is appropriated for; it cannot be used in any other fund.

Commissioner Terry stated none of us are happy with this. This is a hardship for everyone, it is something the EPA has mandated and we must comply.

We all need to work together as a community, and be good citizens, said Mayor Fess.

City Manager Enderle stated he did not want to mislead anyone, but with the reduced fees we will only be able to meet the bare minimum requirements of the EPA, we will not be able to expand the system with these dollars.

Dave Comolli, College Street, asked if the city gives Mr. Voisinet a credit on his stormwater would it raise the rate for the rest of the citizens? Mayor Fess explained they will not raise the individual residential ERU's, but will cut back on what can be done.

City Manager Enderle stated it is not the credits that could be the problem; the fact is we have a lot of gravel areas in the city, and if citizens take advantage and reduce the ERU's we may have to raise the fees at some point in time.

Commissioner Vogt stated we will have a yearly review, and if everyone does a good job in reducing their ERU's then we will not need the Stormwater Utility.

Commissioner Terry stated the Committee did not bring the credit idea to us previously because they realized it would raise the fees for the rest of the citizens.

Mayor Fess stated they still needed a vote on the suspension of Ordinance No. 5-20 and asked the Clerk for a Roll Call. Roll call, Aye: Fess, Martin, Vogt, Wilson, and Terry. Nay: None. Motion carried unanimously.

Moved by Commissioner Vogt, seconded by Commissioner Wilson that Ordinance No. 5-10 be adopted. Roll call, Aye: Terry, Fess, Wilson, Vogt, and Martin. Nay: None. Motion carried unanimously. Mayor Fess then declared Ordinance No. 5-10 adopted.

### **New Business**

#### **RES. NO. R-35-10**

A Resolution authorizing the City of Piqua to file an application to the State of Ohio, Department of Development and to support an application for assistance under the Ohio Job Ready Sites Program

There was discussion of the purchase of the parcel of land known as the JEB property located south of the Paul Sherry Industrial Park.

Economic Development Director Bill Murphy explained how the grant is filed, and some of the changes that have occurred since the last grant was filed in 2008. In 2008 the City of Piqua's grant was ranked the second highest in the State. Mayor Fess asked how many grants are to be awarded, it was stated ten grants are awarded statewide.

City Manager Enderle stated this is an investment; this will provide available acreage and will have a sale price on it that we control; and bring jobs and value to the property. Mayor Fess stated the City will purchase the property with the grant funds, the city would own the property and if a company comes in and wants to build on the site we can sell it. Mr. Murphy stated this would be a certified site in the State of Ohio, which will make it a more marketable property. City Manager Enderle stated this would bring in a million and a half in and we then own the property, and what ever we sell the property for is a profit for the city that can be put back in for future economic development.

#### **Public Comment**

Brad Boehringer, Mound Street, came forward and voiced his opinion on the purchase of the property. Mr. Boehringer further stated the city now has over 2000 acres of land in the city that has not been developed, and asked why it cannot be made job ready instead of going after more land and spending more money.

Mayor Fess explained the reasons for not putting money into the land at this time; further stating the city does not own the land. Mayor Fess stated we must be able to meet the needs of any company wanting to locate in Piqua, and with ownership of the property the State will steer prospects to the City.

Commissioner Vogt stated the property in question is already located in the city.

Moved by Commissioner Terry, seconded by Commissioner Vogt, that Resolution No. R-35-10 be adopted. Voice vote, Aye: Fess, Terry, Wilson, Vogt, and Martin, Nay: None. Motion carried unanimously. Mayor Fess declared Resolution No. R-35-10 adopted.

#### **RES. NO. R-36-10**

A Resolution approving the fiscal year 2010 Community Housing Improvement program application

There was discussion of the income guidelines and who would be eligible for the applications. Bill Lutz, Community Development Director gave a brief overview of the criteria for applying for the grants. Citizens interested in applying may contact Bill Lutz at 937-778-2062 for more information or applications.

Mayor Fess stated she hopes citizens take advantage of the program for rental rehabs and repairs or for help with their mortgage payments.

#### **Public Comment**

No one came forward to speak for or against Resolution No. R-36-10.

Moved by Commissioner Vogt, seconded by Commissioner Martin, that Resolution No. R-36-10 be adopted. Voice vote, Aye: Terry, Wilson, Martin, Vogt, and Fess. Nay: None. Motion carried unanimously. Mayor Fess then declared Resolution No. R-36-10 adopted.

#### **RES. NO. R-37-10**

A Resolution repealing Resolution No R-106-07 regarding acceptance of the Fairview-Snodgrass Road Bridge No. 0.92 from the Miami County Engineer

There was discussion of the location of the bridge, the storage of the bridge at this time, and why the City is releasing the bridge to The Miami County Park District. Doug Christian, Miami County

Engineer, explained several reasons why The Miami County Park District is interested in the bridge and where they plan to relocate the bridge.

**Public Comment**

No one came forward to speak for or against Resolution No. R-37-10.

Moved by Commissioner Martin, seconded by Commissioner Vogt, that Resolution No. R-37-10 be adopted. Voice vote, Aye: Martin, Terry, Vogt, Fess, and Wilson. Nay; None. Motion carried unanimously. Mayor Fess then declared Resolution No. R-37-10 adopted.

**RES. NO. R-38-10**

A Resolution relating to the application for annexation of certain real property to the City

City Manager Enderle gave a brief overview of the annexation plans stating all parties involved have mutually agreed to the annexation. The proposed annexation accommodates Upper Valley Community Church's interesting consolidating the existing parcels into one tract to allow for a building addition and parking lot expansion. If approved this will complete the annexation process and allow the property owner to continue with replating the parcels into on tract.

**Public Comment**

No one came forward to speak for or against Resolution No. R-38-10.

Moved by Commissioner Vogt, seconded by Commissioner Martin, that Resolution No. R-38-10 be adopted. Voice vote, Aye: Martin, Fess, Vogt, Wilson, and Terry. Nay: None. Motion carried unanimously. Mayor Fess then declared Resolution No. R-38-10 adopted.

**RES. NO. R-39-10**

A Resolution authorizing the Law Director to petition the Board of County Commissioners of Miami County, Ohio for a change in the boundary lines of Springcreek Township

This is the next step in the annexation process. This resolution directs the Law Director to request the change in the boundary lines in Springcreek Township.

**Public Comment**

No one came forward to speak for or against Res. No. R-39-10.

Moved by Commissioner Martin, seconded by Commissioner Wilson, that Resolution No. R-39-10 be adopted. Voice vote, Aye: Vogt, Terry, Wilson, Martin, and Fess. Nay: None. Motion carried unanimously. Mayor Fess then declared Resolution No. R-39-10 adopted.

**RES. NO. R-40-10**

A Resolution authorizing an amendment to Ordinance No. 42-96 and the zoning map attached thereto to designate the zoning of parcel J27-032000 as R-3 (Multi-Family Residential), contingent upon annexation of the subject parcel to the City

This is the zoning recommendation for the property previously stated that is being annexed into the City.

**Public Comment**

No one came forward to speak for or against Resolution No. R-40-10.

Moved by Commissioner Martin, seconded by Commissioner Terry, that Resolution No. R-40-10 be adopted. Voice vote, Aye: Martin, Fess, Wilson, Terry, and Vogt. Nay: None. Motion carried unanimously. Mayor Fess then declared Resolution No. R-40-10 adopted.

**RES. NO. R-41-10**

A Resolution approving the Community Diversity Committee priorities and authorizing the Committee to undertake a Work Program to implement projects consistent with those priorities

City Manager Enderle stated this is the revised resolution that was presented a few months ago, and stated this takes out a lot of detail that was originally written in the resolution.

Mayor Fess stated when the Commission reviewed this previously there was a lot of detail the Commission felt was not needed, and asked the Diversity Committee to revise the resolution, which they did.

Commissioner Terry stated she is a member of the Diversity Committee, and the Committee decided to strike several paragraphs from the original resolution and present a new resolution to the Commission for their approval.

**Public Comment**

No one came forward to speak for or against Resolution No. 41-10.

Moved by Commissioner Martin, seconded by Commissioner Terry, that Resolution No. R-41-10 be adopted. Voice vote. Aye: Terry, Fess, Martin, Vogt, and Wilson. Nay: None. Motion carried unanimously. Mayor Fess then declared Resolution No. R-41-10 adopted.

**ORD. NO. 6-10**

An Ordinance authorizing the amendment to Ordinance No. 42-96 and the zoning map attached thereto to change the zoning designation of parcel N44-077996 from R-2 (Two-Family Residential) to R-3 (Multi-Family Residential)

This is the rezoning of 1.462 parcel of land from R-2 (Two-Family Residential) to R-3 (Multi-Family Residential) at their request.

**Public Comment**

No one came forward to speak for or against Ordinance No. 6-10.

Moved by Commissioner Wilson, seconded by Commissioner Terry, that the rule requiring Ordinance No. 6-10 be read fully and distinctly on three separate days be suspended. Roll call, Aye: Wilson, Vogt, Martin, Terry, and Fess. Nay: None. Motion carried unanimously.

Moved by Commissioner Wilson, seconded by Commissioner Martin, that Ordinance No. 6-10 be adopted. Roll call, Aye: Fess, Wilson, Vogt, Martin, and Terry. Nay: None. Motion carried unanimously. Mayor Fess then declared Ordinance No. 6-10 adopted.

**OTHER BUSINESS**

Economic Development Update

Presented by – Mr. Bill Murphy, Assistant City Manager/Director of Economic Development  
Mr. Chris Schmiesing, City Planner

Mr. Schmiesing presented a power point presentation on the Redevelopment Project. Mr. Schmiesing further stated they received public input from several organizations including Leadership Piqua, Grow Piqua Now, and a Community Workshop. This will be a great marketing tool for Mr. Murphy to use when making presentations to potential businesses looking to locate in Piqua, said Mr. Schmiesing.

### **Public Comments**

Kevin Pryfogle, N. Downing Street, voiced his concern over having five stops signs in a row on Downing Street with the removal of the traffic signals. Mr. Schmiesing explained the reason for the removal of the traffic signals and the application of the stop signs.

Brad Boehringer, Mound Street, voiced his concern over the removal of the traffic signal at the corner of Greene and Wayne Street due to the fact the corner is used for a bus stop for children.

City Manager Enderle stated a study was completed, and it was determined that a stop sign would be safer than a traffic signal at that particular corner.

Mr. Boehringer also voiced his concern over recycling for potential customers who live in properties that have private waste collections and do not have recycling offered. Mr. Boehringer asked if would be possible for them to have recycling only.

Health & Sanitation Director Amy Welker explained that the recycling program is currently only for municipal customers, and the City has a three-year contract for that type of service at this time. There are opportunities for residents to recycle by separating the recycling and taking it to the Miami County Transfer Station.

Steve Stiefel, Brentwood, stated the annual Race Car and Future Stars Show will be held at the Miami Valley Centre Mall from Thursday March 18<sup>th</sup> –March 21<sup>st</sup>, with entry fees going to a local charity.

Russ Fashner, Forest Avenue, came forward and presented the Commissioner's a list of questions he would like to get answers for regarding the city's decision to remove the rail along the bike path, and then putting it back up with employee overtime, the cost of the project and reason for it. Also a Suspicious Person Police Report was filed against him, and wanted to know the reason. (See enclosed copy of questions) Mr. Fashner read his list of questions and asked for public answers to his questions. Mayor Fess stated they would look into the questions Mr. Fashner brought up and respond to him after looking into the issues.

Edna Stiefel, Boone Street, made a statement in favor of Mr. Fashner, stating he has been a real help to the North Parks Neighborhood. Mayor Fess stated they will look into his concerns, and stated we do appreciate all of Mr. Fashner's work.

Dave Comolli, College Street, stated he would like to have some type of information system put in place on projects being done in the city. This would be for the benefit of all the Neighborhood Associations so they know what the city is planning on doing in what areas, and where the Neighborhood Associations are working as not to interfere with each other. Mr. Comolli also voiced his support over Mr. Fashner, and stated he felt citizens should be able to address the City government.

### **Commission Comments**

Commissioner Martin inquired as to the reason the City paid for the survey of the annexations done by Choice One Engineering. City Manager Enderle stated this is common with Economic Development practices. These are property owners we have been working with since 2007 on their interest in developing their property, which led to the discussion of annexation and whether the city would assist with the survey, which is not uncommon. The City already was having work done in the area at the time, and it was cheaper to have it done at the same time since they were in the area.

Commissioner Martin stated he contacted the City Manager with an issue with the Pump Station, and wanted to commend the City Manager and the Street Department on their quick response time.

Mayor Fess stated the issues are with the contractor's right? City Manager Enderle stated the pumps did not start automatically like they should have, and someone had to come and start them manually, and is not sure who is responsible yet but is looking into it. Commissioner Martin asked who would pay for the city employee to stay there to operate the pump manually. City Manager Enderle stated he is not sure. Law Director Wall stated there is litigation with the contractor at this time and explained the circumstances.

Commissioner Vogt reminded citizens to fill out and return their 2010 census information. This information will be very beneficial to the City when applying for grants and etc.

Commissioner Terry stated the program Dickens in Ohio has been rescheduled for Thursday, April 8<sup>th</sup> at 7:30 in the Piqua Plaza, and invited citizens to attend.

City Manager Enderle stated an informational meeting is scheduled on the Stormwater issue to be held on March 25, at 6:00 P.M. at the Piqua Area Chamber of Commerce, and is open to the public.

Mayor Fess stated the Piqua Show Choir will be in attendance to accept a proclamation from the City of Piqua, and to perform at the next Piqua City Commission Meeting on April 6, 2010.

Mayor Fess stated a fundraiser is being held for Ben Justice who is a former employee of the Piqua Mall on March 20<sup>th</sup> from 3-7 at the Amvets Post 66 in Covington, Ohio.

Executive Session

Pursuant to Charter Sections 4(b) and (c) for purposes to consider pending or imminent litigation and to prepare for and review negotiations on compensation or other terms and conditions of employment for City personnel.

Moved by Commissioner Vogt, seconded by Commissioner Martin, to adjourn into Executive Session at 9:35 P.M. Voice vote, Aye: Vogt, Martin, Terry, Wilson, and Fess. Nay: None. Motion carried unanimously.

Moved by Commissioner Martin, seconded by Commissioner Wilson, to adjourn from the Executive Session at 11:25 P.M. Voice vote; Aye: Martin, Vogt, Terry Fess, and Wilson. Nay: None. Motion carried unanimously.

Moved by Commissioner Terry, seconded by Commissioner Martin, to adjourn from the Piqua City Commission Meeting at 11:25 P.M. Voice vote, Aye: Martin, Terry, Fess, Vogt, and Wilson. Nay: None. Motion carried unanimously.

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LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_

REBECCA J. COOL  
CLERK OF COMMISSION



## CITY COMMISSION MEETING REPORT

*For the Regular Meeting of  
April 6, 2010*

TO: City Commission

FROM: Fred Enderle, City Manager

SUBJECT: Response to Mr. Russ Fashner March 16, 2010 Questions to City Commission

**PURPOSE:** To provide City Commission with City Administration's responses to Mr. Fashner's March 16, 2010 questions.

**RECOMMENDATION:** None. For informational purposes only.

### **BACKGROUND:**

In response to the City Commissions' request for a formal response to the comments made by Mr. Russ Fashner at the March 16, 2010 City Commission meeting, I have reviewed the incidents that took place between March 3, 2010 and March 16, 2010 regarding the above referenced matter. My findings follow under the discussion section of this memorandum.

I must start off by indicating that we certainly appreciate everything Mr. Fashner has done to assist in neighborhood and other city projects, such as the roofing of the picnic shelters, installation of the playground equipment at Das Park, etc. We also appreciate that as a citizen of Piqua he has a right to register complaints or concerns over how and when work is done by City employees and/or contractors.

All the questions Mr. Fashner asks are legitimate questions and deserved to be answered.

### **DISCUSSION:**

I have broken Mr. Fashner's concerns into two major categories: first, those dealing with the employee complaint and police investigation, and last all the other questions relating to the work issue.

## Investigation

The facts of the situation are that there were indeed six Street/Parks Department employees working after 3:30 pm on March 3, 2010 repairing the fence along the bicycle path just north of Park Street. At times, Don Seeberger, Asst. Street Superintendent was also present. As Mr. Fashner suspected the hourly employees (Mr. Seeberger is salaried, thus not on overtime) were in fact working overtime. Mr. Fashner took it upon himself to approach the group to ask them what they were doing and why they were working overtime. That in of itself is not a problem, it is reasonable for a citizen to ask an employee what they are doing or why. However, Mr. Fashner did not ask a simple question or two and leave the employee to their work. He in fact provided an onslaught of questions; most of which they as employees performing the job they were instructed to do were not capable of answering. Working Supervisor Brian Brookhart indicated he told Mr. Fashner what they were doing and why and indicated to Mr. Fashner that anything else would need to be directed to the Street Superintendent. Mr. Fashner ignored Mr. Brookhart's response and continued asking other employees questions. These questions all related to administrative policies or directives that were more appropriately made to the Department Head or City Manager. Mr. Fashner is familiar enough with City operations to know that. Although all the employees present would state that they were not threatened by Mr. Fashner's appearance, he was clearly interfering with them carrying out their assignment.

The City does have a policy prohibiting the transport of non-employees in City vehicles except for official City business. However, that has nothing to do with the fact that Mr. Fashner opened the passenger door on a city vehicle and entered it. The driver states he did not invite Mr. Fashner to get into the truck. The fact here is; no one has the right to enter a vehicle, whether a taxpayer is entering a city vehicle or a private citizen entering another person's vehicle, without being invited to do so. By doing so Mr. Fashner opened himself to the potential for a charge of criminal conduct.

Regarding Mr. Fashner's question of why the Police complaint was not filed until seven days later, Street Superintendent Doug Harter explains that it was not until March 10, 2010 when he, Don Seeberger, Israel Carnes and Brian Brookhart were meeting to discuss various issues that Brian informed the group that Mr. Fashner entered a City vehicle on March 3, 2010 while they were working on the bike path. Brian informed Doug that this incident "scared Doug Cantrell (the driver) to death." Doug Harter called Amy Havenar, his immediate supervisor, the next morning and informed her of the situation and asked what, if anything, should be done. Amy advised him to contact Stacy Wall to see if we should pursue this any further. Doug called Stacy and she informed him that a police report should be filed.

Mr. Fashner also questions the appropriateness in which the complaint was handled. Specifically; he questions if the "chain of command" was followed. This complaint was handled correctly in every aspect. The working supervisor reported to Doug Harter, Street Superintendent who reported to Amy Havenar, City Engineer (his department head), who told Doug to call the Law Director. It is not unusual for the Law Director, who is also the City Prosecutor, to receive calls regarding complaints of activity either from a citizen or in this case an employee. That complaint was directed in the right direction. Since this complaint was derived from a city employee where there were potential liability and safety issues, as well as

what initially appeared as criminal conduct, seeking direction from the Law Director is proper. The Law Director spoke to the police department regarding an investigation. The information she received was that there were city employees on a job site where Mr. Fashner jumped into the city truck, without invitation or privilege to do so and frightened the city workers. These facts certainly warranted an investigation, as disorderly conduct certainly fit if those facts were true. The investigating police officer let the Law Director know after his investigation (which she had no part of other than requesting an officer look into the matter) that in his opinion there was no criminal offense. After hearing the evidence, the Law Director concurred. That was the end of the discussion other than she explained to Doug Harter why no criminal charges would be filed. As Law Director (and Prosecutor) Ms. Wall can file charges or can recommend an investigation be done. In this case, she believed an investigation was warranted given the seriousness of the allegations. Again, within the realm of the Law Director/Prosecutor's duties, she reviewed the statements given and agreed no charges should be filed.

As far as Mr. Fashner's question: "What is the police department's standard procedure in these cases?" The Police Department responds to any complaint that alleges potential violation of the criminal law. There is no reporting party more credible to them than the City Law Director and Prosecutor. It is not unusual for her to ask them to investigate an allegation of criminal behavior. When they receive such a request, they hear the allegation and determine who should be interviewed as a witness. The Police Department, due to City liability and safety issues, as well as because of their experience in conducting investigations, also responds to other city incidents. The most common example is private property damage and/or accident reports. In instances where the Law Director/Prosecutor wants an issue/incident investigated, she will contact the Police Chief or a Deputy Chief in his absence. In this case she provided the general allegations and the names of those involved, and the case was assigned by Deputy Chief Grove to an officer based on the police protocols related to an officer's geographical assignment, current workload, and other factors. When the department gets a case like this it really isn't too important to them as to exactly what the Law Director understood to be the facts; she had talked to someone and determined an investigation was in order. That is sufficient for the police department to investigate. The Law Director goes through police management because it is their job to decide *who* should conduct the investigation and performance-related issues as to *how* it is conducted. Deputy Chief Grove sent an officer out to do an investigation per standard procedures.

When the officer felt that he had gathered all the victim information and it lacked probable cause for any criminal charge, he contacted the Law Director. When she was presented with all the facts, she and the officer agreed no crime had been committed and the department closed their investigation after a few efforts to contact the alleged offender.

Chief Jamison has explained to Mr. Fashner some of the details about the title of our report.

The officer has some discretion in this area. The other alternative would have been carrying this as an unfounded crime. When the allegations were already third-hand when they came to them, the department tends to avoid this. If the officer decided to carry it as, say, Disorderly Conduct – it would have been closed as "unfounded" and Mr. Fashner would have been listed as a "suspect." The department does not like to see anyone listed in our records as a suspect without an interview. Closing it as a non-criminal "suspicious" case was an expedient way for

them to dispose of this as a police matter. Chief Jamison indicates that from previous experience that closing it as “unfounded” might be the most technically correct means, but it tends to leave both sides offended. The person that reports tends to think that disposition means they never should have reported their concern. The person who was investigated is offended that they are listed as a suspect when they didn’t commit a crime. When Mr. Fashner was asked if he would like to be contacted by the investigating officer so his statement could be added to our record; he said enough time had already been wasted on this and he did not need to do that.

Summarizing the above complaint I find the conduct of all city employees in this matter proper. In fact was I to admonish any employee it would be for not calling the police immediately upon Mr. Fashner climbing into the truck. The employee should have exited the vehicle and contacted the police immediately. In addition, after Mr. Fashner’s initial questions of what they were doing and who directed them to do it, the employees should have informed Mr. Fashner that they where doing as directed and that he would have to contact their supervisor with any further questions, returned to the work at hand and when Mr. Fashner persisted called their Supervisor. Regarding entering the vehicle, whether the driver knew Mr. Fashner or not, he has no idea why he is climbing to his truck or what his intentions were. Being a taxpayer, etc. does not entitle Mr. Fashner to any special consideration. He is and will continue to be treated with the same respect and consideration as any other citizen and all citizens will be held to the same standard of conduct. We will be happy to answer his questions and take his suggestions; however, they must be presented in the proper manner. We will not tolerate anyone interfering with employees doing their job; and we will investigate allegations, employee or citizen, of wrong doing.

Could this whole affair have been handled differently? It most certainly could have; however, I believe it started with the manner in which Mr. Fashner handle his concern for what the City was doing. I encourage Mr. Fashner to direct his concerns in the future to the Streets Superintendent, City Engineer, City Manager or City Commissioner and to not disturb the employees working. .

Other Questions:

***Why was the fence taken down?*** The portion of the fence between Echo Lake & Park Ave. was taken down because the existing posts were rotted and we were going to replace them. Other fencing along the path has or will be taken down but not replaced. This portion was deemed important because of the pitch of the slope adjacent to the path.

***Who ordered it taken down?*** The Street Dept. Superintendent issued this request due to the poor condition of the posts.

***Was overtime paid?*** Yes.

***How do I get that money back as a citizen if it was a poor choice?*** This was a judgment call made by the Streets Superintendent based on the complaints he received. In review I, as City Manager, can say I would have liked him to fill the holes immediately using less personnel and time, and scheduled the rest of the work on regular hours. However, I cannot say he was

wrong. He as the person responsible, used his best judgment based on the information at hand and made a decision. I cannot fault him for that. I would rather a supervisor err on the side of doing something to address a concern, than to leave something go they should have addressed, and provide post-incident coaching on how the situation was handled and review other options available.

***And if so what was so important?*** Two complaints were received that day, one from the Law Director and the other through the E-Gov Action Line. Once the complaint was received and the department was made aware of it, it was the Superintendent's feeling they had an obligation to try and alleviate the problem and to prevent any future accidents/incidents from occurring.

***Why were the holes not filled when it was taken down?*** The Department was going to reuse the existing holes to install the new fence posts. However, this happened the same time we received the large of amount of snowfall, therefore, crews were needed to plow the roadways and we did not immediately get back to the fence repairs.

***Why was the section not closed if it was dangerous?*** The missing fence was not considered a dangerous situation in of itself. Also the holes were off the path and close to the edge of the slope; it was not likely someone would wonder that close to the edge. Finally, due to the weather conditions, the entire bike path could have been considered unusable and staff felt they had time to get back to it within a short period of time to get the fence back up.

***Why not fix just what was bad?*** The majority of the posts were rotted and it was decided to install all new posts rather than leave a few and have to go back and replace them in the future. They were all installed at the same time when the path was originally constructed.

***...would you want this in your front yard? Or pay me to do this for you?*** For the type of fencing (split rail) the repairs are acceptable workmanship. The soil around the posts has been tamped down and the fence is as secure as split rail fencing can be. The intent was to get the fence up and securely in place. Once weather is more conducive to the type of work a crew will go back and will do final finishes.

***Are we putting the entire fence back?*** No. The only portion of the fence that will be put back is this portion between Echo Lake Drive and Park Ave.

***Was OUPS called before holes were drilled?*** No. The City reutilized the original hole locations. These would have been OUPS when the posts were originally installed. We just had to clean them out because they had collapsed with all of the snow that we received during that timeframe.

## **CONCLUSION:**

While Mr. Fashner, or any citizen for that matter, has a right to register complaints or concerns over how and when work is done by City employees and/or contractors. There is a proper

manner for registering those complaints or issues. Interfering with the work of employees, at any time, is not the proper way.

We want all our employees to be customer friendly and responsive. Stopping to ask them a question or two about what they are doing is acceptable and we hope they will provide a courteous reply. However, the employees are assigned to complete certain tasks, and can tell folks what they are doing and why, but beyond that it gets into an area of work or policy direction provided by their supervisors and they cannot answer those questions. These questions should be directed to the Streets Supervisor, City Engineer or City Manager as the parties responsible for the duties of the Streets Department employees. It is also proper for citizens to address their questions to City Commissioners for their information and/or inquiry to the department head or the City Manager.

The Street Superintendent, City Engineer or I would be happy to discuss any questions or concerns with anyone having an issue or concern with City services.

Russ Fashner

March 16, 2010

801 Forest Ave

I am 40 years old.

Lived in Piqua what I consider all my life.

Since my father was hired by the city of Piqua in the early 70's

On the same street.

In the same home.

In business and have done business here in Piqua for over 20 years as a contractor.

I know the commission is busy, but I have some questions written out that I am asking publicly and would like answered publicly.

I and the North Parks Neighborhood Association have taken our time to put roofs on picnic shelters, to help save the city money, at the golf course and Kiwanis Park.

By my numbers it is \$ 3900.00 to date and done once.

This is why I am upset about the rail on the bike path. Along with other citizens.

The bike path in front of my home had the fence removed and hauled off.

Why did we take it down?

Who ordered it to be taken down?

I was told a maintenance issue.

Now it has been put back up.

7 employees and a supervisor worked on this after 3 PM

Was overtime paid?

How do I get that money back as a citizen if it was a poor choice?

And if so, what was so important?

I have been told a dog fell in a hole.

Why were the holes not filled when it was taken down?

Why was this section not closed if it was dangerous?

Why not fix just what was bad?

What has been put back is used and held together with nylon ties.

Now I ask would you want this in your front yard? Or pay me to do this for you?

Are we putting the entire fence back up?

Was OUPS ( Ohio Utilities Protection Service) called before holes were drilled?

It is the state law. We are training new employees.

And the question has been asked why citizens are upset?

So if we can not afford to do it right the first time we will just keep repeatedly paying

until we get it right?

Remember the Nicklin Ave. tree project and going back to fix all the problems with the trees, dirt and grass seed?

There were many citizens upset with that project.

I am just seeing things that I am educated in and related to my profession.

Consulting for free.

We need pride and quality in all are departments. People are fed up with the things they are seeing.

Item 2

I thought I was respected a little more with the City of Piqua.

After shelter work and playground equipment.

I have provided you with a Suspicious Person Police Report.

I would like to know who the original complainant was along with times and dates of the complaint.

Any citizen would be concerned to see their name on a police report, especially a suspicious person report when all involved are familiar with me.

Why did it start in the law director office?

What is the police department's standard procedure in these cases?

Is it normal to go straight to the Law Director?

Is there not a chain of command?

Or does the Law Director have an "open door" policy that allows anyone to go straight to that office without contacting anyone else?

As the report states none of the employees felt threatened. My demeanor was calm and civil.

Thank you to who initiated the report. I now have a public police record of that.

These are the same employees I wave at around town and have stopped to help from time to time. I do not see them filing this report towards me days later.

Notice the time frame. 3-3-10 was the alleged incident. The report is on 3-11-10.

Notice it is a suspicious person report. (Yet in the report they all know my name)

Would you not report a suspicious person just a little quicker?

To me a suspicious person is an unknown to people, not a city resident talking to city employees, in a civil manner practically in there own front yard.

What could possibly be suspicious with my actions with the city employees?

I would have thought it would have been an information only report.

What is in the city's mind or better yet the complainant that made it suspicious enough to

Call the Police in to do a report?

And why has there been no more effort to contact me if it were so suspicious?

What is the complaint?

Further more the Police Department has been misled with erroneous information.

Stated in commission meetings I have heard the statement do your homework.

I have, and the police report is incorrect.

The City Manager made a comment that you can not always trust what a city employee says at the pool meeting last Thursday.

I see that in this report. Not on the police department side.

I am very disappointed with the city in there handling of this matter.

I hope this does not happen to another citizen who voices there opinion to a city worker in a calm and civil manner.

What more can you ask of the citizens.

Further more you probably should put those shelter roofs out for bid again.

I will bet you do not get a bid for \$0.00 like you had before.

I think the phrase is "you shot yourself in the foot"

Thank you commissioners and I am looking forward to your answers.

Russ Fashner

A handwritten signature in cursive script that reads "Russ Fashner". The signature is written in black ink and is positioned below the typed name.

stem: HTE  
ogrm: CHF004P

PIQUA POLICE DEPARTMENT  
Narrative Print

Page: 1

se Number: 2-10-003402

\*\*\*\*\* N A R R A T I V E # 2 \*\*\*\*\*  
SPICIOUS PERSON Reported By: TAYLOR, JAMES R. 3/11/10

On Thursday, March 11, 2010, at 10:47 hours, I was advised by Lieutenant Collins to make contact with Doug Harter, superintendent of the City of Piqua Street Department, in reference to an incident that occurred between his employees and a citizen. Mr. Harter had advised the Law Director of this incident, which prompted a complaint.

I went to the City of Piqua Street Department, 859 South Main Street, where I made contact with Mr. Harter. He informed me that he had just been made aware of an incident that occurred involving a citizen named Russ Fashner and his employees. Mr. Harter indicated that at one point Fashner got into a city owned dump truck. Mr. Harter did arrange for the employees that were involved to meet with me in the conference room. There I met with city employees Douglas A. Cantrell, 28, Alex E. Steinbrunner, 29, Gregory A. Snipes, 30, and Brian S. Brookhart, 34. All four employees provided written statements concerning this incident. This incident occurred on 3-3-10 at approximately 1700 hours. I also learned from Brian Brookhart that he was not present at the scene but was told about the incident upon the other employees' return to the Street Department afterwards.

According to the employees they were working at a site on the bike path between Park Avenue and Echo Lake Drive. A subject known to them as Russ Fashner, 801 Forest Ave., spoke to them about his disagreement with the work that they were performing on the bike path. Fashner told the employees that he had voiced his complaints to the city commissioners as well as the city manager. At one point Fashner also got into the city owned dump truck that was being driven by Mr. Cantrell and also told him the same information and then exited the truck. There was no information from Mr. Cantrell that when Fashner entered the truck that he was ordered out.

After reviewing their written statements, I asked the city employees supplemental questions involving Mr. Fashner's behavior at the time, as well as, how they felt about his conversation with them. All the employees indicated that during their interactions with Mr. Fashner they did not feel threatened, alarmed, or annoyed. They reported that Mr. Fashner's demeanor was calm and civil when speaking to them.

I then met with the City of Piqua Law Director, Stacy Wall, and consulted with her on this incident. We both agreed that Mr. Fashner's behavior did not rise to the level of a criminal violation.

I did attempt to make contact with Mr. Fashner at his residence, and by telephone, however, Mr. Fashner was not located.

No further action taken at this time.

**ORDINANCE NO. 7-10**

**AN ORDINANCE AUTHORIZING AN AMENDMENT TO ORDINANCE NO. 42-96 AND THE ZONING MAP ATTACHED THERETO TO ASSIGN A ZONING DESIGNATION OF R-3 (MULTI-FAMILY RESIDENTIAL) TO PARCEL J27-032000**

WHEREAS, a public hearing has been conducted to study the proposal and Section 154.141 of the Piqua Code of Ordinances has been complied with in all respects; and

WHEREAS, the City Commission by Resolution No. R-38-10 approved the petition to annex parcel J27-032000 into the City of Piqua corporation limits; and

WHEREAS, the City Commission by Resolution No. R-40-10 accepted the Planning Commission recommendation and declared their intent to assign a zoning designation of R-3 (Multi-Family Residential) to parcel J27-032000 upon the annexation of the parcel into the City of Piqua corporation limits; and

NOW, THEREFORE, BE IT ORDAINED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: The zoning designation of R-3 (Multi-Family Residential) to parcel J27-032000 is hereby approved.

SEC. 2: The zoning map attached to Ordinance No. 42-96 as subsequently amended is hereby revised and amended to assign a zoning designation of R-3 (Multi-Family Residential) to parcel J27-032000 and the City Planner is hereby authorized to make said change on the original zoning map.

SEC. 3: This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION



**CITY COMMISSION MEETING REPORT**

*For the Regular Meeting of March 16, 2010*

TO: Fred Enderle, City Manager

FROM: Chris Schmiesing, City Planner

SUBJECT: Zoning of parcel J27-032000, a +/-1.462 acre lot recently annexed into the city of Piqua corporation limits.

**PURPOSE:**

Approve an Ordinance to amend the zoning map to complete the process of designating the R-3 (Multi-Family Residential) zoning for a 1.462 acre tract recently annexed into the City.

**RECOMMENDATION:**

Approve the Ordinance to amend the zoning map and designate the R-3 (Multi-Family Residential) zoning of the subject parcel.

**BACKGROUND:**

The Upper Valley Community Church (UVCC), 1400 Seidel Parkway, recently purchased a 1.462 acre parcel located adjacent to and immediately north of the church property. UVCC has demolished the single-family dwelling unit that formerly occupied the site and has completed the process of annexing the parcel into the city of Piqua. The intent of the church is to combine the acreage with the church property located at 1400 Seidel Parkway to accommodate a planned expansion of the UVCC facilities.

Resolution R-40-10 adopted by the City Commission on March 16, 2010 accepted the Planning Commission recommendation to zone the property R-3 (Multi-Family Residential) upon the property being annexed into the City; and, declared the City Commissions' intent to proceed with assigning the R-3 (Multi-Family Residential) zoning designation upon the annexation process being completed.

**ALTERNATIVES:**

- 1) Approve Ordinance to authorize an amendment to the official zoning map to designate the zoning of the subject property R-3 (Multi-Family Residential).
- 2) Defeat the Ordinance to deny the R-3 (Multi-Family Residential) zoning of this parcel and refer the request back to the Planning Commission for further study.

**DISCUSSION:**

The Planning Commission previously studied this request and referred their recommendation to the City Commission. City Commission action on Resolution R-40-10 affirmed City Commission intent to support the Planning Commission recommendation and designate the zoning of the property as R-3 (Multi-Family Residential).

**FINANCIAL IMPACT:**

UVCC proceeded with the development construction documents and applied for permits based upon the City Commission stated intent to support the zoning request. Any change in the Commission's position concerning the zoning at this time may adversely affect the churches planned construction project.

**COMMUNITY IMPACT:**

The approval of the zoning designation will serve to reinforce the commercial/institutional development patterns already found along the CR25 corridor.

**CONFORMITY TO CITY PLANS & POLICIES:**

The proposed zoning is consistent and compatible with all adopted City plans and policies, including the Conservation and Development Map and the Goal, Principles, and Objectives and Strategies outlined in the Land Use chapter of the Plan It Piqua Comprehensive Plan document.

**ORDINANCE NO. 8-10**

**AN ORDINANCE AUTHORIZING AN AMENDMENT TO ORDINANCE NO. 42-96 AND THE ZONING MAP ATTACHED THERETO TO ASSIGN A ZONING DESIGNATION OF R-2 (TWO-FAMILY RESIDENTIAL) TO PARCEL N44-004010, ALSO KNOWN AS 316 NORTH DOWNING STREET**

WHEREAS, a public hearing has been conducted to study the proposal and Section 154.141 of the Piqua Code of Ordinances has been complied with in all respects; and

WHEREAS, the Planning Commission by Resolution No. PC 09-10 has recommended that the current B (General Business) zoning designation be repealed and a zoning designation of R-2 (Two-Family Residential) be assigned to parcel N44-004010; and

NOW, THEREFORE, BE IT ORDAINED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: The zoning designation of R-2 (Two-Family Residential) for parcel N44-004010 is hereby approved.

SEC. 2: The zoning map attached to Ordinance No. 42-96 as subsequently amended is hereby revised and amended to assign a zoning designation of R-2 (Two-family Residential) to parcel N44-004010 and the City Planner is hereby authorized to make said change on the original zoning map.

SEC. 3: This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION



**CITY COMMISSION MEETING REPORT**

*For the Regular Meeting of March 16, 2010*

TO: Fred Enderle, City Manager

FROM: Chris Schmiesing, City Planner

SUBJECT: Zoning of parcel N44-004010, also known as 316 N. Downing Street.

**PURPOSE:**

Approve an Ordinance to amend the zoning map to change the designating of 316 N. Downing Street from B (General Business) to R-2 (Two-Family Residential).

**RECOMMENDATION:**

Approve the Ordinance to repeal the existing zoning designation and amend the zoning map to assign the R-2 (Two-Family Residential) zoning designation to the subject parcel as recommended by the Planning Commission.

**BACKGROUND:**

The applicant is the owner of the subject property and initiated the request based upon his desire to have the zoning accurately reflect the current use of the premises, a two family-dwelling unit.

A review of the zoning map records indicated that the parcel was previously zoned R-2 at the time 1971 zoning map was adopted. A subsequent zoning code update in 1982 and the map amendments adopted at that time resulted in the property being included in a business zoning designation. Whether or not this change was intentional or in error is unknown. The same business zoning designation was continued when the zoning code and the accompanying map was last updated in 1996.

**ALTERNATIVES:**

- 1) Approve Ordinance to authorize an amendment to the official zoning map to designate the zoning of the subject property R-2 (Two-Family Residential).
- 2) Defeat the Ordinance to deny the R-2 (Two-Family Residential) zoning of this parcel.

**DISCUSSION:**

The proposed R-2 zoning of the subject parcel would be consistent and compatible with the surrounding land uses and zoning designations, and be appropriate for the use types found at the subject premises. The Planning Commission has conducted a public hearing concerning this request and received no comments in opposition to the proposed zoning. The Planning

Commission concluded that the proposed zoning designation is a more appropriate zoning for this parcel than the current zoning designation.

**FINANCIAL IMPACT:**

The change in the zoning of this property will result in a down-zoning of the parcel and place greater limits on how the property can be used in the future. That said, the proposed zoning accommodates the current two-family dwelling unit use of the property which is the use the structure was originally designed and constructed to facilitate.

**COMMUNITY IMPACT:**

The approval of the zoning designation will serve to reinforce the one and two family development patterns already found at this location and within the surrounding neighborhood.

**CONFORMITY TO CITY PLANS & POLICIES:**

The proposed zoning is consistent and compatible with all adopted City plans and policies, including the Conservation and Development Map and the Goal, Principles, and Objectives and Strategies outlined in the Land Use chapter of the Plan It Piqua Comprehensive Plan document.

RESOLUTION No. PC 09-10

WHEREAS, Scott Thobe has submitted a request to change the zoning designation of parcel N44-004010 change from B General Business to R-2 Two-Family Residential, said parcel also known as 316 N. Downing Street; and,

WHEREAS, sections 154.141 of the City of Piqua Code of Ordinances provides the procedure for considering zoning designation change; and,

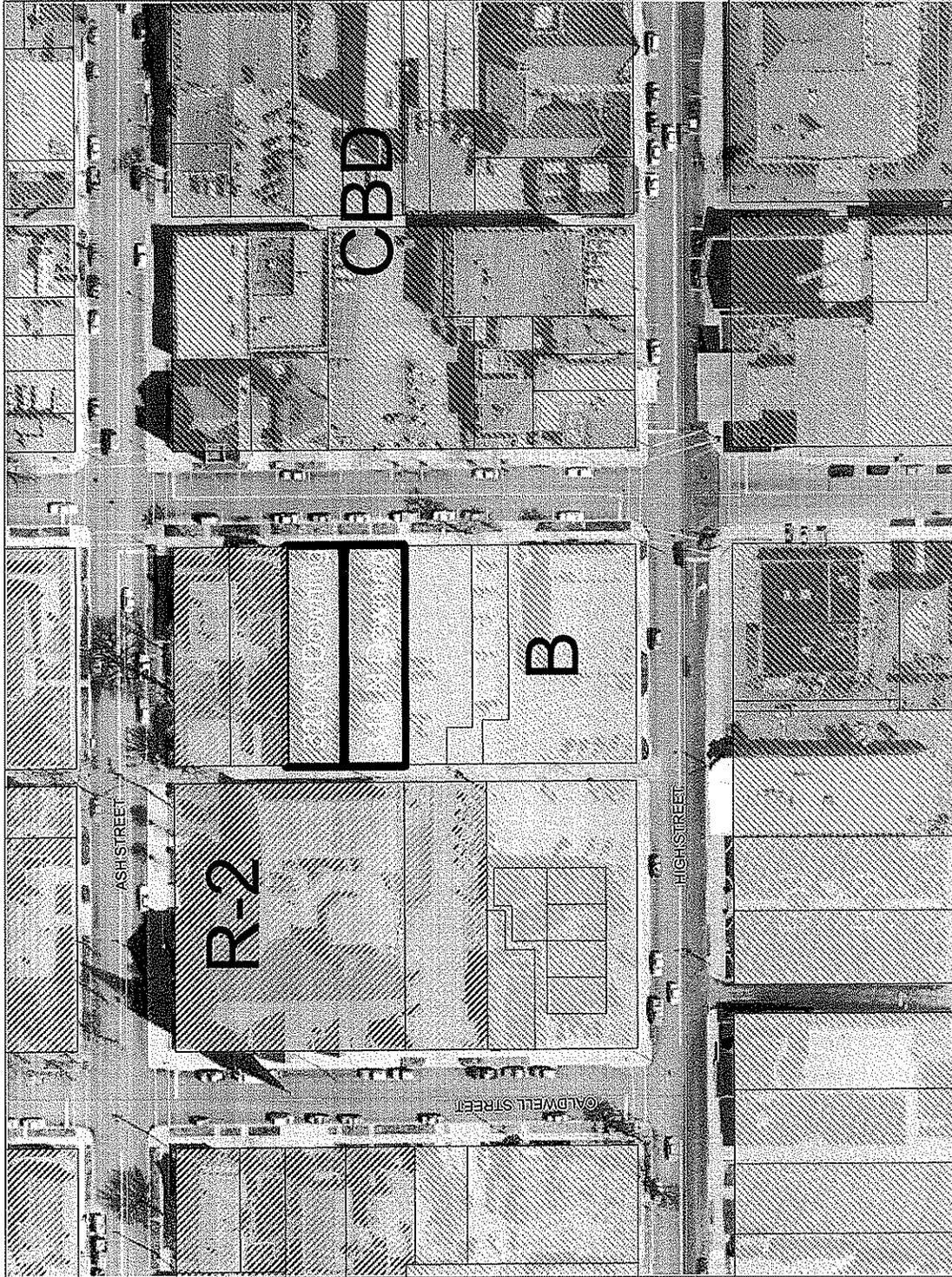
WHEREAS, the Planning Commission has studied the request, included herein, and conducted a public hearing on the matter;

NOW THEREFORE BE IT RESOLVED, board member Taylor hereby moves to approve the request made, as described by this resolution, the testimony provided, and the documents attached hereto, the motion is seconded by board member Franz, and the voting record on this motion is hereby recorded as follows.

---

|                   | AYE                                 | NAY                      | ABSTAIN                  | ABSENT                              |
|-------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|
| Mr. Jim Oda       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |
| Mr. Brad Bubp     | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Mr. Mike Taylor   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |
| Mrs. Jean Franz   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |
| Mr. Mark Spoltman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |

# ZONING MAP



|                         |                               |
|-------------------------|-------------------------------|
| <b>Zoning</b>           | R3-Multi-Family Residential   |
|                         | R2-Two-Family Residential     |
|                         | R1AA-One-Family Residential   |
|                         | R1A-One-Family Residential    |
|                         | R1-One-Family Residential     |
|                         | OS-Open Space                 |
|                         | I2-Heavy Industrial           |
|                         | I1-Light Industrial           |
|                         | F-Floodplain                  |
|                         | CBD-Central Business District |
|                         | B - Business                  |
| Buffer layer            |                               |
| <b>Parcels</b>          | Parcels (auto-on)             |
| <b>Transportation</b>   | StreetNames                   |
|                         | Railroad                      |
|                         | Street Centerlines            |
|                         | Major Highways                |
| <b>Natural Features</b> | Water Bodies                  |
| Redline                 |                               |

**ORDINANCE NO. 9-10**

**AN ORDINANCE AUTHORIZING AN AMENDMENT TO ORDINANCE NO. 42-96 AND THE ZONING MAP ATTACHED THERETO TO ASSIGN A ZONING DESIGNATION OF R-2 (TWO-FAMILY RESIDENTIAL) TO PARCEL N44-004000, ALSO KNOWN AS 320 NORTH DOWNING STREET**

WHEREAS, a public hearing has been conducted to study the proposal and Section 154.141 of the Piqua Code of Ordinances has been complied with in all respects; and

WHEREAS, the Planning Commission by Resolution No. PC 10-10 has recommended that the current B (General Business) zoning designation be repealed and a zoning designation of R-2 (Two-Family Residential) be assigned to parcel N44-004000; and

NOW, THEREFORE, BE IT ORDAINED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: The zoning designation of R-2 (Two-Family Residential) for parcel N44-004000 is hereby approved.

SEC. 2: The zoning map attached to Ordinance No. 42-96 as subsequently amended is hereby revised and amended to assign a zoning designation of R-2 (Two-family Residential) to parcel N44-004000 and the City Planner is hereby authorized to make said change on the original zoning map.

SEC. 3: This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION



**CITY COMMISSION MEETING REPORT**

*For the Regular Meeting of April 6, 2010*

TO: Fred Enderle, City Manager

FROM: Chris Schmiesing, City Planner

SUBJECT: Zoning of parcel N44-004000, also known as 320 N. Downing Street.

**PURPOSE:**

Approve an Ordinance to amend the zoning map to change the designating of 320 N. Downing Street from B (General Business) to R-2 (Two-Family Residential).

**RECOMMENDATION:**

Approve the Ordinance to repeal the existing zoning designation and amend the zoning map to assign the R-2 (Two-Family Residential) zoning designation to the subject parcel as recommended by the Planning Commission.

**BACKGROUND:**

The applicant for this request is the City of Piqua and the request was initiated as a result of research conducted for a rezoning request pertaining to the neighboring property. The research discovered that the current zoning of the property does not accurately reflect the current use of the premises, a one-family-dwelling unit.

A review of the zoning map records indicated that the parcel was previously zoned R-2 at the time 1971 zoning map was adopted. A subsequent zoning code update in 1982 and the map amendments adopted at that time resulted in the property being included in a business zoning designation. Whether or not this change was intentional or in error is unknown. The same business zoning designation was continued when the zoning code and the accompanying map was last updated in 1996.

The current owner of the property was contacted and advised of the discovery and has stated his support of the proposed zoning change.

**ALTERNATIVES:**

- 1) Approve Ordinance to authorize an amendment to the official zoning map to designate the zoning of the subject property R-2 (Two-Family Residential).
- 2) Defeat the Ordinance to deny the R-2 (Two-Family Residential) zoning of this parcel.

**DISCUSSION:**

The proposed R-2 zoning of the subject parcel would be consistent and compatible with the surrounding land uses and zoning designations, and be appropriate for the use types found at the subject premises. The Planning Commission has conducted a public hearing concerning this request and received no comments in opposition to the proposed zoning. The Planning Commission concluded that the proposed zoning designation is a more appropriate zoning for this parcel than the current zoning designation.

**FINANCIAL IMPACT:**

The change in the zoning of this property will result in a down-zoning of the parcel and place greater limits on how the property can be used in the future. That said, the proposed zoning accommodates the current one-family dwelling unit use of the property which is the use the structure was originally designed and constructed to facilitate.

**COMMUNITY IMPACT:**

The approval of the zoning designation will serve to reinforce the one and two family development patterns already found at this location and within the surrounding neighborhood.

**CONFORMITY TO CITY PLANS & POLICIES:**

The proposed zoning is consistent and compatible with all adopted City plans and policies, including the Conservation and Development Map and the Goal, Principles, and Objectives and Strategies outlined in the Land Use chapter of the Plan It Piqua Comprehensive Plan document.

RESOLUTION No. PC 10-10

WHEREAS, the city of Piqua, with the consent of the owner of the subject property, has submitted a request to change the zoning designation of parcel N44-004000 change from B General Business to R-2 Two-Family Residential, said parcel also known as 320 N. Downing Street; and,

WHEREAS, sections 154.141 of the City of Piqua Code of Ordinances provides the procedure for considering zoning designation change; and,

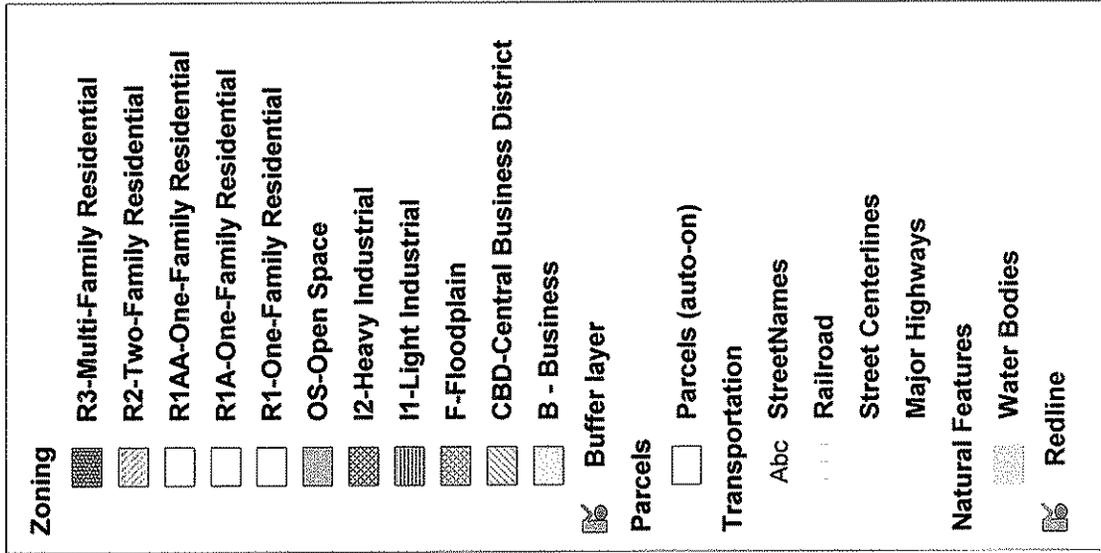
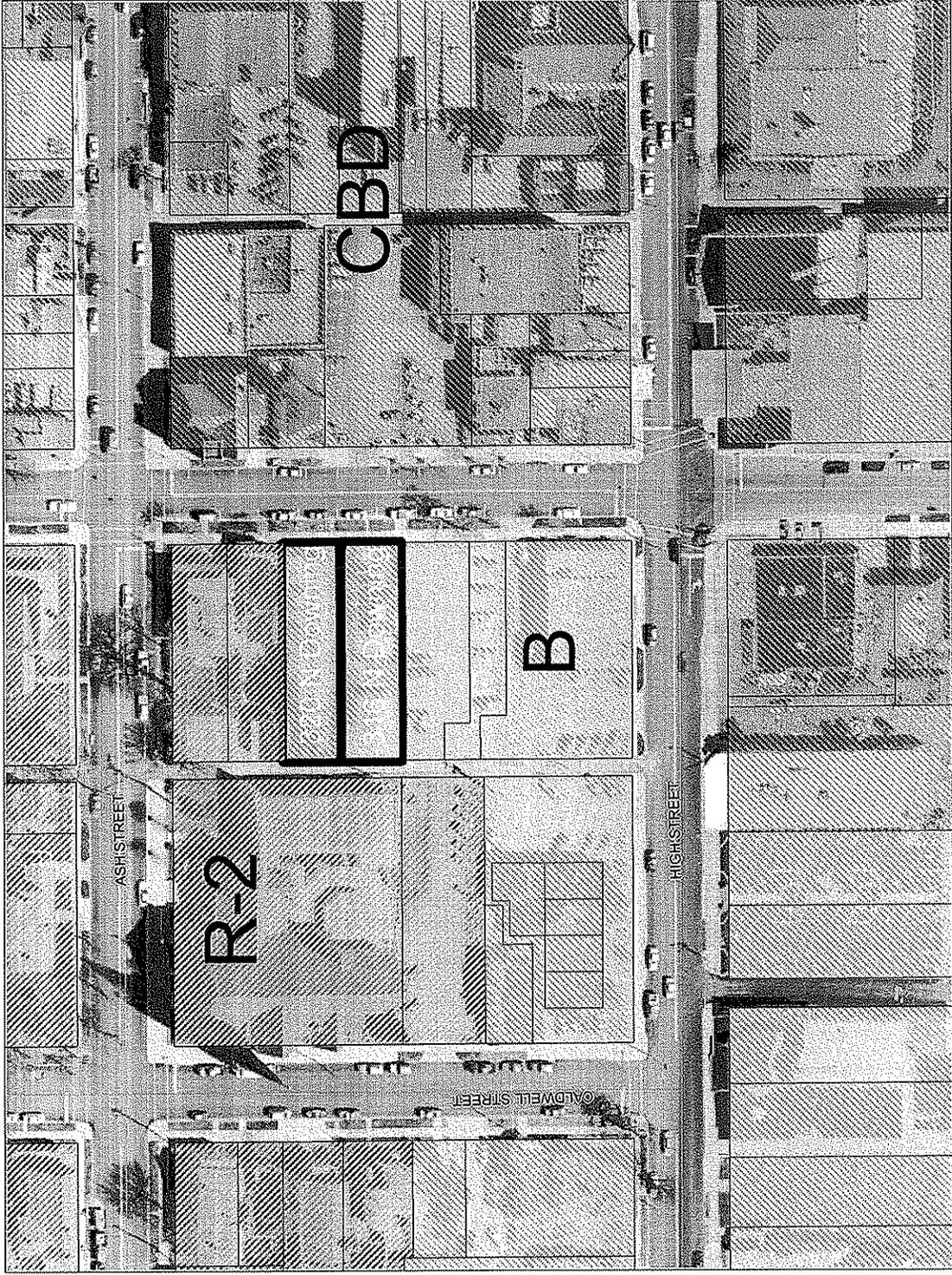
WHEREAS, the Planning Commission has studied the request, included herein, and conducted a public hearing on the matter;

NOW THEREFORE BE IT RESOLVED, board member Franz hereby moves to approve the request made, as described by this resolution, the testimony provided, and the documents attached hereto, the motion is seconded by board member Taylor, and the voting record on this motion is hereby recorded as follows.

---

|                   | AYE                                 | NAY                      | ABSTAIN                  | ABSENT                              |
|-------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|
| Mr. Jim Oda       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |
| Mr. Brad Bubp     | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Mr. Mike Taylor   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |
| Mrs. Jean Franz   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |
| Mr. Mark Spoltman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |

# ZONING MAP



**ORDINANCE NO. 10-10**

**AN ORDINANCE AMENDING CHAPTER 111 OF THE PIQUA MUNICIPAL CODE PEDDLERS AND SOLICITORS**

WHEREAS, on February 16, 2010, a decision was issued in *Ohio Citizen Action v. City of Englewood*, S.D. Ohio Case No., 3:05cv263, opining on the constitutionality of requirements regarding soliciting; and

WHEREAS, the City desires to be in compliance with the decision issued by the Southern District of Ohio Federal Court; and

WHEREAS, for more than a year, the City of Piqua, through the representation of its Police Chief has been involved with issues regarding homelessness in Piqua and whether there is a need for a homeless shelter; and

WHEREAS, the community has expressed concern that in the event a homeless shelter is located in Piqua, there will be an increase in panhandling in the residential area; and

WHEREAS, Chapter 111 does not address panhandling, a legitimate association with homelessness.

NOW THEREFORE, BE IT RESOLVED BY the Piqua City Commission, a majority of its members concurring that;

SECTION 1. That the City of Piqua hereby amends Chapter 111 Peddlers and Solicitors as set forth below: (new language is underlined and deleted language is indicated by strikethrough):

**§ 111.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

***ITINERANT VENDOR*** or ***TRANSIENT DEALERS FOR PROFIT***. The activity of any person who intends to engage in or conduct a temporary or transient business of selling goods, wares and merchandise for a period of not more than 120 days and hires, leases or occupies, either in whole or in part, a room, building or other structure for the purpose of conducting his or her business.

**PANHANDLING**. To beg, ask, or solicit personal financial assistance to obtain an immediate donation of money or other item having value. Purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, is a donation for the purpose of this chapter. Panhandling does not

include passively standing or sitting with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.

**PEDDLING FOR PROFIT.** The activity of any person who transports with him or her, for immediate sale and delivery, goods, wares or merchandise, or who offers the immediate performance of services.

**REGISTERED SOLICITOR.** Any person who has obtained a valid certificate of registration, which certificate is in the possession of the solicitor and prominently displayed on his or her person while engaging in soliciting.

**RESIDENCE.** Every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

**SOLICITING FOR PROFIT.** Any one or more of the following activities:

(1) Seeking to obtain orders from the purchase of goods, wares, merchandise, foodstuffs or services of any kind, character or description whatever, to be delivered or performed in the future.

(2) Seeking to obtain subscriptions to books, magazines, periodicals and every other type or kind of publication except newspapers of general circulation.

**SOLICITING NOT FOR PROFIT.** Includes seeking to obtain, by order or otherwise, gifts or contributions of money, clothing or any other valuable thing for the support or benefit of any charitable political, medical, religious, civic or other nonprofit association, organization, corporation or project.

## **§ 111.02 APPLICABILITY.**

This chapter shall not apply to the following.

(A) ~~Minors.~~

(B) Persons selling on behalf of or making or seeking delivery of goods, wares, merchandise, foodstuffs or services sold by an establishment having a permanent place of business ~~within the city~~ that is in good standing with the State of Ohio and the City of Piqua.

(C) Persons soliciting and peddling at non-residences.

(D) Wholesalers.

~~(E) A person making sales of the following items for household consumption.~~

- ~~—— (1) Baked goods.~~
- ~~—— (2) Fruits, vegetables, eggs and similar agriculture products.~~
- ~~—— (3) Dairy products except dealers of frozen desserts from vehicles.~~

**§ 111.03 APPLICATION FOR SOLICITOR'S CERTIFICATE.**

(A) No person, firm or corporation shall engage in the business or activity of soliciting for profit, soliciting not for profit or peddling for profit or being an itinerant vendor or transient dealer for profit within the city without first applying for, receiving and prominently displaying a solicitor's certificate, as provided in this chapter. The certificate shall be carried by the solicitor at all times. Solicitations not for profit by city residents or local organizations located in the city shall not require a solicitor's certificate.

(B) Persons engaged in soliciting for profit or peddling for profit, including itinerant vendors or transient dealers for profit, shall apply to the Police Department for a certificate of registration upon a form provided by the city. The applicant shall truthfully state in full the following information requested on the application.

(1) Name and address of present place of residence and length of residence at that address, also business address if other than present address.

(2) Address and place of residence during the past three years if other than present address.

(3) Age of applicant.

(4) Physical description of the applicant.

(5) Name and address of the person, firm or corporation or association whom the applicant is employed or represents and the length of time of employment or representation.

(6) Name and address of employer during the past three years if other than the present employer.

(7) Description sufficient for identification of the subject matter of the soliciting in which the applicant will engage.

(8) Period of time for which the certificate is applied.

(9) The date, or approximate date, of the latest previous application for certificate under this chapter, if any.

(10) Has a certificate of registration issued to the applicant under this chapter ever been revoked.

(11) Has the applicant ever been convicted of any violation of a felony under the laws of the state or any other state or federal law of the United States.

(12) Names of the three most recent communities where the applicant has solicited house-to-house.

(13) Proposed method of operation.

(14) Signature of applicant.

(15) Social security number of applicant.

(C) All statements made by the applicant on the application or in connection therewith shall be under oath.

(D) The applicant shall submit to fingerprinting and photographing if requested by the Police Department of the municipality in connection with the application for the certificate.

(E) The Chief of Police shall cause to be kept in his or her department an accurate record of every application received and acted on, together with all other information and data pertaining thereto, and all certificates of registration issued under the provisions of this chapter, and of the denial of applications. Applications for certificates shall be numbered in consecutive order as filed, and every certificate issued and any renewal thereof shall be identified with the duplicate number of the application on which it was issued.

(F) No certificate of registration shall be issued to any person who has been convicted of a felony theft offense, fraud offense, sex offense, drug offense, or offense of violence under the laws of the state or any other state or federal law of the United States within five years of the date of the application, nor any person who has been convicted of a violation of any of the provisions of this chapter, nor to any person whose certificate of registration issued hereunder has previously been revoked.

(G) Applications for solicitor's certificates shall be filed with the Police Department and all certificates shall be issued therefrom.

(H) Persons engaged in soliciting not for profit that are not residents of the city, or whose organization is not located within the city, shall complete an application for a nonprofit solicitor's certificate upon a form provided by the city. The applicant shall truthfully state in full the following information requested on the application.

- (1) Applicant's name and address.
- (2) Name, address and purpose of nonprofit cause or organization.
- (3) Name and address of applicant's supervisor or group leader, if any.
- (4) Period of time for which the certificate is applied.
- (5) Proposed method of operation.
- (6) Signature of applicant.

(I) Any certificate of registration issued hereunder shall be revoked by the Chief of Police if the holder of the certificate is convicted of a violation of any of the provisions of this chapter, or has made a false material statement in the application, or otherwise becomes disqualified for the issuance of a certificate of registration under the terms of this chapter. Immediately on such revocation, written notice shall be given by the Chief of Police to the holder of the certificate in person or by certified United States mail addressed to his or her residence address as set forth in the application. Immediately on the giving of the notice, the certificate of registration shall become null and void.

(J) The certificate of registration shall state the expiration date thereof.

(K) The Chief of Police should be notified of solicitations not for profit by residents of the city or whose organization is located within the city.

## **§ 111. PANHANDLING REGISTRATION.**

(A) No person shall panhandle without a registration issued by the Chief of Police. The registration shall include the name and photograph of the person to whom it is issued. Any person who has been registered shall display the registration in plain view on the front of that person at all times while panhandling. No person whose registration has been revoked shall panhandle for a period of two years following the revocation.

(B) The Chief of Police shall issue the registration, without fee, to any eligible person who presents himself or herself at the City of Piqua Police Department, states his or her true name, presents a photo identification or signs a declaration under penalty of perjury that he or she has no such identification, and permits himself or herself to be photographed and fingerprinted.

(C) A person is ineligible to register if, and only if, within the past five years he or she:

(1) Has pleaded guilty to or been convicted of two or more violations of § 111. (Registration);

(2) Has had a registration revoked pursuant to subsection (F) below; or

(3) Has pleaded guilty to or been convicted of two or more offenses under the laws of any jurisdiction which involve aggressive or intimidating behavior while panhandling or false or misleading representations while panhandling.

(D) Upon receipt of an application for registration in accordance with subsection (B) above, the Chief of Police shall issue a temporary registration valid for ten days and shall determine eligibility for a regular registration before the temporary registration expires. An eligible applicant shall receive a regular registration upon determination of the applicant's eligibility. The regular registration shall expire one year from the date of issuance. Along with the registration, the Chief of Police shall give the applicant a copy of this section.

(E) No person shall make a false or misleading representation while applying for registration under this section.

(F) Upon arrest for any violation of §§ 111. , 111. , 111. , 111. , 111. , or 111. , a panhandler shall release to the arresting officer any registration issued under this section to the arrestee. The arrestee may apply to the Chief of Police for consecutive 30-day temporary registrations pending adjudication of the arrest case. The Chief of Police shall revoke any registration issued under this section to a person who has pleaded guilty to or been convicted of a violation of §§ 111. , 111. , 111. , 111. , or 111. , or to a person convicted of two violations of § 111. .

The City Manager shall direct the Chief of Police to issue the registration if the applicant has met the criteria set forth in this section for issuance of a registration. The applicant may appeal the decision of the City Manager to a court of competent jurisdiction.

#### **§ 111.04 FEES.**

For certificates to be issued to solicitors for profit under the provisions of this chapter, each applicant shall pay to the city the sum of \$15. All certificates shall expire on the date specified in the certificate, which shall not exceed 12 months. ~~Certificates for soliciting not for profit shall be issued without charge.~~

#### **~~§ 111.05 APPEALS. (moved toward end of chapter)~~**

~~—Any applicant who has applied for a certificate in accordance with this chapter and to whom the Chief of Police has, after an investigation, denied a certificate or revoked a certificate, may appeal to the City Manager. Notice of an appeal shall be filed with the City Manager within five days after the denial or revocation by the Chief of Police. The City Manager on appeal may affirm or reverse the action of the Chief of Police.~~

#### **§ 111.06 DISPLAY OF CERTIFICATE.**

The certificate issued under the provisions of this chapter shall be exhibited in the place of business by itinerant vendor or transient dealer and shall be prominently displayed by the peddler or solicitor at all times when peddling or soliciting, and shall be exhibited to any person being solicited or any police officer on request.

### **§ 111.07 RESTRICTIONS.**

Every person to whom a registration certificate is issued under the terms of this chapter shall be governed by the following rules and regulations.

(A) All circulars, samples or other matter shall be handed to an occupant of the property or left in a secure place on the premises.

(B) No peddler or solicitor shall enter or attempt to enter the house, apartment or dwelling of any resident in the city without an express invitation from the occupant of the house, apartment or dwelling.

(C) No person subject to the terms of this chapter shall make any false, fraudulent, misleading or deceptive statement during the course of that person's soliciting activity within the municipality.

(D) No person subject to this chapter shall make any solicitation where solicitors are notified by sign that peddling or soliciting is prohibited.

(E) No peddler, solicitor, itinerant vendor or transient dealer shall engage in or transact any type of business or solicitation other than that specified on the registration application.

### **§ 111.08 PROHIBITED ACTS.**

(A) No person, while engaged in any profit or non-profit solicitation, shall knock at the door or ring the bell of any home, apartment, apartment building or other dwelling unit in the city upon which is displayed at the entrance a notice which reads "No Peddlers or Solicitors Allowed," or which otherwise clearly purports to prohibit peddlers or solicitors on the premises, unless the peddler or solicitor is or has been invited on the premises by the owner, lessee or occupant thereof.

(B) No peddler, solicitor, itinerant vendor or transient dealer, or any person on his or her behalf, shall shout, make any cryout, blow a horn, ring a bell, or use any sound device, including any loudspeaking radio or sound amplifying system, upon any of the streets, alleys, parks or other public places of the city or any private premises in the city, where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other

public places, for the purpose of attracting attention to any goods, wares or merchandise which is being proposed to be sold.

(C) No person shall knowingly make a false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to, the following:

(1) Stating that the donation is needed to meet a specific need, when the solicitor already has sufficient funds to meet that need and does not disclose that fact;

(2) Stating that the donation is needed to meet a need which does not exist;

(3) Stating that the solicitor is from out of town and stranded, when that is not true;

(4) Wearing a military uniform or other indication of military service, when the solicitor is neither a present nor former member of the service indicated;

(5) Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;

(6) Using any makeup or device to simulate any deformity;

(7) Stating that the solicitor is homeless, when he is not.

#### **§ 111.09 TRANSFERABILITY.**

No certificate or registration shall be assigned or transferred. No registrant shall authorize any person, firm or corporation other than the one named to do business. No registrant shall conduct any other business than is listed in his or her application to be transacted. A separate certificate shall be required for each individual peddler or solicitor, whether or not employed by one person, firm or corporation.

#### **§ 111.10 REVOCATION.**

Any certificate or registration issued under the provisions of this chapter may be revoked at any time, should the person to whom it is issued be guilty of any fraud, misrepresentation, or unlawful act in connection with his or her business, or is found to be a person not fit to be engaged in such business, or violate any of the provisions of this chapter.

#### **§ 111. TIME OF SOLICITING OR PANHANDLING.**

No person shall solicit, panhandle or conduct any other activity subject to this Chapter after sunset or before sunrise. The times of sunset and of sunrise shall be as published by the United States Naval Observatory.

#### **§ 111. PLACE OF PANHANDLING.**

No person shall panhandle when either the panhandler or the person being solicited is located at any of the following locations:

(A) At any bus stop;

(B) In any public transportation vehicle or facility;

(C) In any vehicle within the public right-of-way;

(D) Within 20 feet of any entrance or exit of any bank, savings and loan association, credit union, or check cashing business during its business hours or within 20 feet of any automated teller machine during the time it is available for customers' use;

(E) On private property, unless the panhandler has permission from the owner or occupant; or

(G) From any person exiting or entering a motor vehicle.

### **§ 111. MANNER OF PANHANDLING.**

No person shall panhandle in any of the following manners:

(A) By coming within three feet of the person solicited after that person has indicated that he does not wish to make a donation;

(B) By blocking the path of a person who attempts to walk or drive away from the panhandler;

(C) By following a person who walks away from the panhandler;

(D) By making unreasonable noise or offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language, either during the solicitation or following a refusal;

(E) By panhandling in a group of two or more persons;

(F) By any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat, harassment or intimidation; or

(G) By touching the solicited person without a statement, gesture or other communication that the person being solicited consents to the touching.

### **§ 111. CAUSING A MINOR TO PANHANDLE.**

No parent, guardian, or adult person having legal care, control, or custody of a minor shall cause, allow, or procure such minor to panhandle in or upon any public or private property.

### **§ 111.05 APPEALS.**

Any applicant who has applied for a certificate or a panhandling registration in accordance with this chapter and to whom the Chief of Police has, after an investigation, denied a certificate or registration or revoked a certificate or registration, may appeal to the City Manager. Notice of an appeal shall be filed with the City Manager within five days after the denial or revocation by the Chief

of Police. The City Manager on appeal may affirm or reverse the action of the Chief of Police. The City Manager shall direct the Chief of Police to issue the certificate or registration if the applicant has met the criteria set forth in section 111.03 or 111. for issuance of a certificate or registration.

**§ 111.99 PENALTY.**

Whoever violates any provision of this chapter shall be deemed guilty of a minor misdemeanor and shall be fined not more than \$100. Each day's violation shall constitute a separate offense. Whoever violated any provision of this chapter after a previous conviction thereof shall be deemed guilty of a misdemeanor of the fourth degree and shall be fined not more than \$250.

SECTION 2. All other sections of Chapter 111 of the Piqua Municipal Code not amended herein shall remain in effect as is.

SECTION 3. This Ordinance is declared an emergency for the immediate preservation of the public peace, health or safety in the City of Piqua and so that the City of Piqua may comply with the opinion in *Ohio Citizen Action v. City of Englewood*.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION

***For Regular Meeting of City Commission  
April 6, 2010***

**To: Fred Enderle, City Manager**

**From: Stacy M. Wall, Law Director**

**Date: March 30, 2010**

**Re: Amendment of Chapter 111, Peddlers and Solicitors**

***PURPOSE:***

To amend Chapter 111 Peddlers and Solicitors to follow the recent decision of *Ohio Citizen Action v. City of Englewood* and to adopt provisions regarding panhandling.

***RECOMMENDATION:***

To adopt the Ordinance amending Chapter 111 to enable the regulations regarding soliciting to satisfy the constitutional standards established by the Southern District of Ohio and to adopt regulations for panhandling.

***BACKGROUND:***

The City of Englewood's ordinance regarding soliciting was constitutionally challenged by the Ohio Citizen Action group in federal court. Specifically, the provisions of the ordinance that were subject to a constitutional challenge were those regulations regarding (1) a curfew; (2) the "do-not-solicit" list; and (3) who was subject to the soliciting regulations. The challenge was filed in 2005 and Judge Rice rendered a decision on February 16, 2010.

Judge Rice found that the City's curfew for soliciting activity, which ended at 6:00 p.m., was constitutional for a variety of reasons, primarily focusing on safety. The second challenge regarding the list maintained by Englewood is not applicable to the Piqua. Lastly, Englewood's ordinance was not applicable to minors. The court found this exclusion to be unconstitutional as there was no legitimate purpose to exclude minors from those conducting the same activity.

On a constitutional challenge, the ordinance must be able to withstand the intermediate test in order to be found to be content-neutral in regulating time and

place: (1) does the ordinance contain adequate standards to guide the official's decision; (2) is it based on the content of the message; (3) is the ordinance narrowly tailored to serve a significant government interest; and (4) does the ordinance leave ample alternatives for communication. *Ohio Citizen Action v. City of Englewood*, 3:05cv263 (S.D., Dec. Feb. 16, 2010). Free speech or the content cannot be regulated.

The amendment of the ordinance addresses the concerns or issues raised in the *Englewood* decision.

Additionally, the ordinance amends the chapter to include provisions regarding panhandling. There has been a lot of community involvement in the past year regarding the establishment of a homeless shelter in the City of Piqua. The neighborhood has been very vocal about its thoughts regarding increased homelessness in Piqua as the result of a shelter. There is a fear of safety and increased crime. Along, the same lines as those soliciting, panhandlers would be required to register with the Chief of Police. The Chief may deny a registration or could revoke the registration pending certain elements such as fraudulently requesting money from an individual or another violation of the chapter. Police Chief Bruce Jamison has met extensively with those involved including citizens, county agencies and the Bethany Center. Chief Jamison is also in concurrence with the need for the panhandling regulations.

The primary focus of the Chapter is to protect the citizens of Piqua. The registration requirements include background checks and other requirements that allow for the police department to know who is in the neighborhoods and allows citizens the protection of knowing that the person must display the proper certificate or registration to solicit.

#### **ALTERNATIVES:**

1. Adopt the ordinance to stay current with case law and to protect the citizens regarding panhandling activity;
2. Do not adopt the amended ordinance;
3. Amend the ordinance in some other fashion.

#### **DISCUSSION:**

It is recommended that the ordinance be adopted in order to remain in compliance with the federal court's decision. The amendments to the solicitation sections are based on the federal decision where a similar ordinance was challenged. Furthermore, given that panhandling can be seen as similar conduct and the need to protect the citizens remains, it is recommended that the panhandling regulations also be adopted. Not adopting the amendment would leave the City's ordinance out of compliance with federal court's decision and

subject to potential challenge. Amending the ordinance in some other fashion will require further discussion and direction from Commission.

***FINANCIAL IMPACT:***

None

***CONFORMITY TO CITY PLANS & POLICIES:***

The proposed changes are consistent with focusing on protecting Piqua citizens.

ORDINANCE NO. 11-10

**AN ORDINANCE AMENDING SECTION 94.20 (SECTION D) OF THE PIQUA CODE RELATING TO (COMMUNITY SWIMMING POOL FEES) AND SECTION 94.24 (SECTIONS C & F) OF THE PIQUA CODE RELATING TO (REGULATIONS FOR PUBLIC PARKS AND POOLS)**

BE IT ORDAINED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: Section 94.20 (Section D) of the Piqua Code is hereby amended to read as follows (with deletions lined out and additions underlined):

**CITY PARKS**

**§ 94.20 COMMUNITY SWIMMING POOL FEES.**

The Park Department shall charge the following fees for the use of the community swimming pool:

~~(D) Group pool rental. Sessions run from 7:30 to 9:30 p.m. on Monday, Tuesday, Wednesday and Thursday only.~~ Rentals are for a 2 hour block of time. Availability will be set prior to May 1<sup>st</sup> by the City Manager. The cost to rent the pool with city lifeguards is:

|                       |       |
|-----------------------|-------|
| 1 - 100 persons       | \$200 |
| more than 100 persons | \$300 |

SEC. 2: Section 94.24 (Sections C & F) of the Piqua Code are hereby amended to read as follows (with deletions lined out and additions underlined):

**§ 94.24 REGULATIONS FOR PUBLIC PARKS AND POOLS.**

The following rules and regulations shall govern the use of the public parks, pools and tennis courts and shall be enforceable by the City Manager or his or her designated representatives:

~~(C) Fountain Park Wading Pool.~~

~~(1) Hours: 1:00 p.m. to 5:00 p.m. daily.~~

~~(2) There will be a rest period of ten minutes every hour.~~

~~(3) Only persons wearing swimming suits will be allowed in the pool.~~

~~(4) No running will be allowed inside the fenced area of the pool.~~

~~(5) There will be no diving.~~

~~(6) There will be no food or refreshments inside the fenced area.~~

~~(7) Flotation devices in pool must be approved by the lifeguard.~~

~~(8) There will be no disorderly conduct or abusive language permitted.~~

~~(9) No animals shall be permitted inside the fenced area.~~

~~(10) All children under six years of age shall be accompanied by a person at least 17 years of age.~~

~~(11) Only children under eight years of age may use the wading pool, unless participating in programs sponsored by the Parks and Recreation Department.~~

~~(12) Violations of these rules and regulations may result in forfeiture of the violator's use of the wading pool for up to one month following the violations.~~

(F) *Community swimming pool.*

(1) *Pool.*

(a) *Hours.*

1. The pool will be opened for Memorial Day Weekend and from the first day of summer recess for Piqua City Schools until the day before school resumes classes. ~~from 11:30 a.m. to 7:30 p.m.~~ **Hours of operation will be set prior to May 1st by the City Manager.** The pool manager may change hours due to inclement weather, **when attendance falls below the designated minimum** or when the temperature is less than 70°F. The city reserves the right to set special hours as deemed necessary by the City Manager.
2. Monday through Friday from 9:00 a.m. to 12:00 noon will be designated as the time for all swimming instructions, **however hours may change upon notification by the City.**
3. There will be a rest period of ten minutes every hour. Only adults will be permitted in the pool during the rest period.
4. Children under the age of eight must be accompanied by a paying adult, or a member at least 18 years old.
5. Each member, upon entering the pool, will surrender his or her season pass, to be picked up upon exit. Upon failure to present the pass, admission will be denied or each person will be required to pay the appropriate daily fee

SEC. 3: Section 94.20-Section D (Community Swimming Pool Fees) and Section 94.24-Sections C & F (Regulations for Public Parks and Pools) of the Piqua Code as previously enacted, are hereby amended;

SEC. 4: This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION



Do not adopt the ordinance thereby leaving these sections of code unchanged

**DISCUSSION:**

These proposed amendments facilitate a timely process by which changes to hours of operation can be implemented by administration thereby streamlining the process for more efficient operation. Such changes may result in increased revenue and/or lower costs.

**FINANCIAL IMPACT:**

The proposed amendments have no direct financial impact. However, it allows administration to enact changes in policy that may potentially result in cost reductions and the potential to generate additional revenue and pool attendance.

**COMMUNITY IMPACT:**

The proposed amendments will have very limited impact on service to the community.

**CONFORMITY TO CITY PLANS & POLICIES:**

The proposed amendments offer a more efficient way for the city to manage pool operation.

*Please Note: The attached Municipal Pool Information Sheet is provided for reference only.*

# CITY PARKS

## § 94.20 COMMUNITY SWIMMING POOL FEES.

The Park Department shall charge the following fees for the use of the Community Swimming Pool

~~Group pool rental. Sessions run from 10:00 to 12:00 p.m. on Monday, Tuesday, Wednesday and Thursday only. Rentals are for a 2 hour block of time. Availability will be set prior to May 1<sup>st</sup> by the City Manager.~~ The cost to rent the pool with City lifeguards is

|                      |       |
|----------------------|-------|
| 0 to 10 persons      | \$100 |
| more than 10 persons | \$150 |

## § 94.24 REGULATIONS FOR PUBLIC PARKS AND POOLS.

The following rules and regulations shall govern the use of the public parks, pools and tennis courts and shall be enforceable by the City Manager or his or her designated representatives

### ~~1. Fountain Park Wading Pool.~~

- ~~1.1 Hours from 10:00 a.m. to 12:00 p.m. daily.~~
- ~~1.2 There will be a rest period of ten minutes every hour.~~
- ~~1.3 Only persons wearing swimming suits will be allowed in the pool.~~
- ~~1.4 No running will be allowed inside the fenced area of the pool.~~
- ~~1.5 There will be no diving.~~
- ~~1.6 There will be no food or refreshments inside the fenced area.~~
- ~~1.7otation devices in pool must be approved by the lifeguard.~~
- ~~1.8 There will be no disorderly conduct or abusive language permitted.~~
- ~~1.9 No animals shall be permitted inside the fenced area.~~
- ~~1.10 All children under six years of age shall be accompanied by a person at least 16 years of age.~~
- ~~1.11 Only children under eight years of age may use the wading pool unless participating in programs sponsored by the Parks and Recreation Department.~~
- ~~1.12 Violations of these rules and regulations may result in forfeiture of the violator's use of the wading pool for up to one month following the violations.~~

### 2. Community swimming pool.

#### 2.1 Pool.

##### a. Hours.

The pool will be opened for Memorial Day weekend and from the first day of summer recess for K-12 city schools until the day before school resumes classes from

from 8:00 a.m. to 4:00 p.m. **Hours of operation will be set prior to May 1<sup>st</sup> by the City Manager.** The pool manager may change hours due to inclement weather, **when attendance falls below the designated minimum** or when the temperature is less than 60 degrees. The city reserves the right to set special hours as deemed necessary by the city manager.

Monday through Friday from 8:00 a.m. to 12:00 noon will be designated as the time for all swimming instructions. **however hours may change upon notification by the City.**

There will be a rest period of ten minutes every hour. Only adults will be permitted in the pool during the rest period.

Children under the age of eight must be accompanied by a paying adult or a member at least 18 years old.

Each member upon entering the pool will surrender his or her season pass to be checked upon exit. Upon failure to present the pass, admission will be denied or each person will be required to pay the appropriate daily fee.



## **POOL ADMISSION AND MEMBERSHIP PASS POLICY**

Pool Memberships are non-transferable. **A PASS MAY ONLY BE USED BY THE PERSON TO WHOM IT WAS ISSUED.** Violation of this rule will result in revocation of the membership. Violators may swim only by paying the daily admission fee or by purchasing another membership at full price.

Admission to the pool may be refused to anyone with colds, coughs, inflamed eyes, infections, athletes foot, recent vaccination or anyone wearing bandages.

Use of the Kiddie Pool is limited to preschool age children. These children **MUST** be accompanied and supervised by a parent or responsible adult age 18 years of age or older.

## **CLOSURE POLICY**

Hours of operation are weather dependant. The City reserves the right to close the pool if the outdoor temperature is less than 70 degrees or if inclement weather makes operation unsafe.

If at any time the attendance at the pool falls below the city reserves the right to close

no refunds will be given in the event of a closure due to weather if it appears as those attendance may be below the required staff will advise you prior to taking your payment

## **REST PERIOD**

There will be a rest period of 15 minutes every 90 minutes. Only adults will be permitted in the pool during the rest period.

## **LOCKERS**

Lockers are available for your convenience. Those wishing to use lockers must provide their own locks. All locks are to be removed from lockers before the end of day. The city of Piqua will not be responsible for loss or damage of personal property.

## **RULES**

1. NO SMOKING PERMITTED IN THE DESIGNATED POOL AREA.
2. **CHILDREN UNDER AGE EIGHT MUST BE ACCOMPANIED BY A RESPONSIBLE PERSON 18 YEARS OF AGE OR OLDER.**
3. NO ABUSIVE OR VULGAR LANGUAGE.
4. NO BEER OR OTHER INTOXICATING BEVERAGES PERMITTED.
5. NO GLASS CONTAINERS WITHIN FENCED AREA.
6. NO CUT-OFF JEANS.
7. NO PETS.
8. NO RUNNING, PUSHING, WRESTLING, OR PLAYING BALL IN THE BATHHOUSE OR ON THE CONCRETE DECK.
9. ALL SWIMMERS MUST SHOWER BEFORE ENTERING THE POOL.
10. ONE DIVER AT A TIME PER BOARD.
11. NO HARD BALLS OR SHARP EDGES ON SWIMMING ACCESSORIES.
12. NO DOUBLE SPRING DIVES. DIVE STRAIGHT OFF END OF BOARD.
13. NO HORSEPLAY.
14. SLIDE USERS MUST OBSERVE POSTED RULES.

FAILURE TO COMPLY WITH ANY OF THE RULES MAY RESULT IN THE SUSPENSION OF PRIVILEGES WITHOUT REFUND OF FEES. IF THE INFRACTION IS DEEMED SERIOUS ENOUGH, SWIMMING RIGHTS MAY BE TERMINATED FOR THE REMAINDER OF THE YEAR.

**RESOLUTION NO. R-42-10**

**A RESOLUTION OF APPRECIATION FOR THE  
PUBLIC SERVICE OF JOHN J. SPEER AS A  
A CITY EMPLOYEE**

WHEREAS, John J. Speer has retired as Lieutenant with the Piqua Police Department; and

WHEREAS, his retirement follows over 31 years of faithful and dedicated service to the City and its citizens;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, all members elected thereto concurring, that:

SEC. 1: In recognition and appreciation of the public service of John J. Speer as Police Lieutenant, this Commission tenders its unanimous and respectful tribute by this Resolution, which shall be a matter of public and permanent record.

SEC. 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION

**RESOLUTION NO. R-43-10**

**A RESOLUTION AWARDED A CONTRACT FOR  
THE PURCHASE OF A 45' BUCKET TRUCK AND A  
DIGGER-DERRICK FOR THE POWER SYSTEM**

WHEREAS, the present operations of the City require the purchase of a 45' bucket truck and a digger derrick for the Power System; and

WHEREAS, after solicitation by The Ohio Department of Administrative Services, bids were received through the State Cooperative Purchasing Program, resulting in the lowest, responsible bid from Altec Industries, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: A contract for the purchase of a 45' bucket truck and a digger-derrick from Altec Industries, Inc. is hereby approved as the lowest, responsible bidder and the City Manager is hereby authorized to execute a contract with said bidder pursuant to contract specifications.

SEC. 2: The Finance Director is hereby authorized to draw her warrants on the appropriate account of the City treasury in payment according to contract terms, not exceeding a total of \$323,290.

SEC. 3: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION



## CITY COMMISSION MEETING REPORT

*For the Regular Meeting of April 6, 2010*

TO: Fred Enderle, City Manager  
FROM: Bob Bowman, Power Distribution Manager  
SUBJECT: Power System Vehicles

### **PURPOSE:**

Approve the resolution R-43-10 authorizing the City Manager to enter into a contract with Altec Industries, Inc. for the purchase of a 45' model #AT40P bucket truck on a Dodge chassis and a 45' model #DM45 digger-derrick on an International chassis with required options. Resolution R-43-10 is needed to replace two aging vehicles.

### **RECOMMENDATION:**

Approve Resolution R-43-10 authorizing the City Manager to enter into a contract with Altec Industries, Inc. for the purchase of a 45' model #AT40P bucket truck on a Dodge chassis and a 45' model #DM45 digger-derrick on an International chassis with required options.

### **BACKGROUND:**

The purchase of a new 45 foot bucket-truck will replace vehicle E-25, Altec TA40, which is an Altec 45' bucket truck on a GMC chassis. E-25 was purchase in 2000 and currently has 76,083 miles and 9,339 hours. Overall, E-25 is in fair condition. The power system has spent around \$10,000 the past two years on maintenance and repairs. Piqua Power System has a ten-year replacement cycle program on bucket-trucks, and E-25 has reached that constraint.

The purchase of a new digger-derrick will replace vehicle E-37, Altec D-947TR, which is an Altec 47' digger-derrick on a Ford chassis. E-37 was purchased in 1998 and has 23,567 miles. Overall, E-37 is in fair condition. However, the power system has spent over \$15,000 the past two years on maintenance and repairs. Piqua Power System utilizes a twelve-year replacement cycle program on digger-derricks, and E-37 has reached that constraint.

The Power System currently owns and operates a total of four (4) Altec bucket trucks and two (2) Altec digger-derricks and they have all performed to our complete satisfaction. In addition, Altec provides excellent service for these vehicles through their road-service and maintenance facility in Indianapolis, Indiana.

**ALTERNATIVES:**

- 1) Approve Resolution R-43-10 awarding the contract for purchases of the two needed vehicles at a not to exceed cost of \$323,290.
- 2) Delay the replacement of E-25 and E-37
- 3) Do not approve the Resolution and provide staff with further direction

**DISCUSSION:**

The Power System targets replacement of our bucket trucks and digger-derricks at 10 years and 12 years respectively. The timely replacement of older vehicles will reduce maintenance costs, decrease vehicle downtime and improve the overall efficiency of our operations. The approval of Resolution R-43-10 will allow the Power System to continue with the vehicle replacement program. In addition, it will allow the Power System to maintain the safety and reliability of the vehicle fleet.

A possible alternative is to delay the replacement of E-25 and E-37. This delay will mean that E-25 and E-37 will have additional sunk costs in maintenance to assure the proper working condition. Also, the delay will change the Power System's vehicle replacement program, which will alter future vehicle replacements. The impact of this change will increase future maintenance costs, increase vehicle downtime, and have the potential to decrease the overall efficiency of our operations.

The final alternative is to reject Resolution R-43-10. The benefit will be a savings of \$323,290 to the power system. However, the rejection will increase future maintenance costs, increase vehicle downtime, and have the potential to decrease the overall efficiency of our operations. Ultimately, E-25 and E-37 will need to be replaced, which subjects the replacement vehicles to inflated costs.

**FINANCIAL IMPACT:**

Included in the Power System's 2010 budget is \$325,000 to replace both E-25, a 2000 Altec 45' bucket truck on a GMC chassis and E-37, a 1998 Altec 47' digger-derrick on a Ford chassis with Resolution R-43-10 has a not to exceed cost of \$323,290, which is below budget.

**COMMUNITY IMPACT:**

The approval of Resolution R-43-10 will provide the Power System with essential equipment, which is necessary in providing our community with excellent service and reliability.

**CONFORMITY TO CITY PLANS & POLICIES:**

Resolution R-13-10 was passed on 1/19/2010, which authorized the City of Piqua to participate in the State of Ohio Cooperative Purchasing Program. The quotes that we received from Altec utilized Ohio STS Contract #7751501908. This resolution allows for the participation of the Ohio's Cooperative Purchasing Act. The Power System has purchased vehicles utilizing this process in the past and has been completely satisfied with these purchases.

**RESOLUTION NO. R-44-10**

**A RESOLUTION AUTHORIZING THE CITY OF PIQUA TO FILE AN APPLICATION TO THE STATE OF OHIO TO PARTICIPATE IN THE CLEAN OHIO ASSISTANCE FUND**

WHEREAS, the State of Ohio, Department of Development, provides financial assistance to local governments for the purpose of addressing local needs; and

WHEREAS, the City of Piqua desires to participate in the Program to receive financial assistance for the Piqua Hospital Site under the Clean Ohio Assistance Fund and

WHEREAS, the City of Piqua has the authority to apply for financial assistance and to administer the amounts received from the State of Ohio, Department of Development, Clean Ohio Assistance Fund; and

WHEREAS, the City Commission of the City of Piqua must direct and authorize the City Manager, Frederick E. Enderle, to act in connection with the application and to provide such additional information as may be required;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Piqua, Ohio, a majority of all members elected thereto concurring:

SEC. 1: That the City of Piqua authorizes Frederick E. Enderle, City Manager as the official representative of the City of Piqua's Piqua Hospital application to participate in the State of Ohio, Department of Development, and provide all information and documentation required in said Application for State of Ohio, Department of Development, Clean Ohio Assistance Fund submission.

SEC. 2: That the City of Piqua hereby approves filing an application for financial assistance under the Clean Ohio Assistance Fund.

SEC. 3: That the City of Piqua hereby understands and agrees that participation in the Program will require compliance with program guidelines and assurances.

SEC. 4: This Resolution shall take effect and be in force from the and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION



## DEVELOPMENT OFFICE

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William Lutz – Development Program Manager  
201 West Water Street • Piqua, Ohio 45356  
(937) 778-2062 • FAX (937) 778-0809  
E-Mail: [blutz@piquaoh.org](mailto:blutz@piquaoh.org)  
Web: <http://www.piquaoh.org>

To: Fred Enderle, City Manager

CC: William Murphy, Ass't. City Manager/Development Director

From: William Lutz, Development Program Manager

Date: March 17, 2010

Subj.: Resolution for Consideration by Commission: Authorization to Submit Application to the Clean Ohio Assistance Fund for a Phase II Environmental Assessment for the Piqua Hospital

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Fred:

Please present the attached resolution for discussion by the City Commission in regards to an application to the Clean Ohio Assistance Fund for a Phase II Environmental Assessment for the Piqua Hospital.

### **Purpose of the Legislation**

Adopt a resolution authorizing the community to submit an application for funding to the Ohio Department of Development for Clean Ohio Assistance Fund for a Phase II Environmental Assessment for the Piqua Hospital.

### **Recommendation**

City Staff recommends that the City Commission adopts the resolution authorizing the City to submit an application for funding to the Ohio Department of Development for Clean Ohio Assistance Fund for a Phase II Environmental Assessment for the Piqua Hospital.

### **Background**

In 2000, the State of Ohio has administered the Clean Ohio Program. Voters of the state originally authorized the program in 2000 and the program was recently reauthorized in 2008. The Program provides funds to local governments in for major areas; brownfield revitalization, green space conservation, farmland preservation and recreational trail development. This particular application seeks funding through the Clean Ohio Assistance Program, which provides funding for environmental services and clean up to distressed areas. It should be noted that the Miami County Park District, with the assistance of the City of Piqua recently had a Clean Ohio Assistance Fund grant approved for \$219,955 for a Phase II Environmental Assessment for the Piqua Power Plant at 919 S. Main St.

### **Alternatives**

The City Commission may take the following actions:

1. Approve the resolution and authorize the filing of the application to the Clean Ohio Assistance Fund for a Phase II Environmental Assessment for the Piqua Hospital.
2. Reject the resolution and deny the filing of the application to the Clean Ohio Assistance Fund for a Phase II Environmental Assessment for the Piqua Hospital. The City could re-apply at a later time. However, failure to make a timely application puts future funding for environmental remediation at risk.

### **Discussion**

The Piqua Hospital has been abandoned since 2001 and past efforts to redevelop the site have been unsuccessful. The previous owner attempted to have the property demolished, but through those efforts, environmental hazards were uncovered and the United States Environmental Protection Agency was brought in to oversee and monitor environmental remediation efforts which dealt with only those hazards that were an immediate threat to public health, safety and welfare. The United States Environmental Protection Agency has since left the premises and the previous owner has worked with an environmental consultant to prepare a Phase I environmental assessment and a work plan for the Phase II environmental assessment, which become the most pivotal elements of not only the Clean Ohio Assistance Fund, but any future efforts to remediate environmental issues on the property.

The Phase II environmental assessment is required since environmental remediation efforts must meet the Ohio Environmental Protection Agency's Voluntary Action Program in order to protect the liabilities of current and future owners of any property which are classified "brownfields". A "brownfield" is classically defined as a developed piece of underutilized property which may or may not have environmental contamination. The Voluntary Action Program required brownfield remediation projects to go through a three part process. The first part or Phase I environmental assessment, is a general sketch of the history of the property and a discussion on any potential environmental issues that may exist at the site. The Phase II environmental assessment is a more detailed sketch of what environmental contamination exists at the site and also provides guidance on how those environmental concerns are eliminated. The final phase, remediation, brings the property to a condition that can be redeveloped with the assurance that there are no environmental concerns.

### **Financial Impact**

The Clean Ohio Assistance Fund is a unique program in which no matching funds are required. The funds received through the Clean Ohio Assistance Fund would not need to be matched, however, staff time will need to be dedicated to ensure the requirements of the grant are met to the satisfaction of the Ohio Department of Development.

### **Community Impact**

The impact of this Clean Ohio Assistance Fund application can be far reaching. Fully realizing that this particular application is just a first step in a long process to bring the site back to a condition which can allow the parcel to be redeveloped, this application brings the necessary resources to the community to begin the remediation process with the old Piqua Hospital. The physical impact of this particular resolution may not be

substantial; however, having the Phase II environmental assessment completed is a key step in redeveloping the site.

### **Conformity to City Plans and Policies**

The City's comprehensive plan, Plan-It-Piqua, clearly outlines that the city should dedicate time and search for resources which will play a pivotal role in the redevelopment of sites throughout the community. The city is currently working with consultants on the City's ReDo (Redevelopment Opportunities) project which has outlined the hospital site as a top priority redevelopment site in the community.

**RESOLUTION NO. R-45-10**

**A RESOLUTION AUTHORIZING THE CITY  
MANAGER TO ENTER INTO A LEASE  
AGREEMENT BETWEEN THE CITY OF  
PIQUA AND THE PIQUA CITY SCHOOL  
DISTRICT FOR THE LEASE OF HARDMAN  
FIELD**

BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: The City Manager is hereby authorized to enter into a lease agreement between the City of Piqua and the Piqua City School District for the lease of Hardman Field (attached hereto as Exhibit "A"). The term of the Lease shall be for the period of March 1 through May 31, 2010.

SEC. 2: The tenant (The Piqua City School District) at its sole option shall have the option to renew this Lease for successor, March 1<sup>st</sup> through May 31 periods, one calendar year at a time, for the next fifty (50) calendar years, by providing notice of such intent by January 1<sup>st</sup> of the year of renewal of said lease agreement.

SEC. 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION

**HARDMAN FIELD  
LEASE AGREEMENT**

THIS LEASE AGREEMENT (herein "Lease"), is made by and between The City of Piqua, an Ohio Municipal Corporation (herein "City") whose address is 201 West Water Street, Piqua Ohio 45356 and The Piqua City School District, (Tenant), whose address is 719 E. Ash Street, Piqua Ohio 45356;

**§1 PREMISES.**

City, in consideration of the payments to it by Tenant of the rents herein contained, which Tenant agrees to timely pay, and in consideration of the performance by Tenant of the covenants hereinafter provided, which Tenant agrees to fully and promptly perform, does hereby lease to Tenant:

The real estate identified in Miami County, Ohio with Property Identification Number N44250012, as depicted in the Boundary Survey Map attached hereto as Exhibit A , and including all the land, building and improvements together with all easements and appurtenances belonging or in any way appertaining thereto, whether public or private, and all rights of City in and to any public or private thoroughfares or roadways abutting the above described property are hereinafter referred to as the "Leased Premises" or "Premises".

**§2 INITIAL TERM.**

The Term of this Lease shall be for the period of March 1 through May 31, 2010. Tenant, at its sole option shall have the option to renew this Lease for successor March 1<sup>st</sup> through May 31 periods, one calendar year at a time, for the next fifty (50) calendar years, by providing notice of such intent by January 1<sup>st</sup> of the year of renewal of said Lease.

**§3 IMPROVEMENTS TO LEASED PREMISES.**

Tenant agrees to accept the Premises in its present "as-is" condition, subject to the representations and warranties contained in this Lease.

**§4 LEASE PAYMENT**

Beginning on the Rent Commencement Date, Tenant agrees to pay Landlord as annual rent One dollar (\$1.00). The Lease payment shall be payable by Tenant to City at the Piqua Municipal Complex, Office of the City Manager, 201 West Water Street.

**§5 UTILITIES; SERVICES.**

Tenant, at its sole cost and expense shall be responsible for providing the Leased Premises with all utilities and services, including janitorial and landscape services.

## **§6 REPAIR AND CARE OF PREMISES.**

Tenant shall, at its expense, maintain the Leased Premises and buildings and improvements and appurtenances thereto, in as good order and condition as at the commencement of this Lease, reasonable use and ordinary wear and tear excepted; and Tenant shall make any and all repairs, replacements and improvements, foreseen or unforeseen, necessary for such purpose. Tenant shall not call upon City to make any such repairs or replacements, this being a net lease and the intention of the parties being that the rental to be received by City shall be free of any expense in connection with the care, maintenance, operation or repair of the Premises or of the improvements and appurtenances located thereon; provided, however, that Tenant shall not be required to make any structural or capital repairs to the Premises during the final year of any Lease term unless Tenant (and as the case may be, the City and Tenant mutually agree and consent) has exercised its option to renew the Lease for an additional term.

In the event that Tenant terminates this lease, any or all said structures, appurtenances, equipment and signs or affixed to the structures and Premises may, at City's sole option, be considered abandoned by the Tenant and become the property of the City.

## **§7 ALTERATIONS AND CAPITAL IMPROVEMENTS.**

Tenant shall have the right to make such alterations or capital improvements to the Premises as Tenant deems necessary; provided, however, that Tenant shall make no structural alterations or improvements reasonably estimated to cost more than one hundred thousand dollars (\$100,000.00) nor exterior alterations which attach, affix or deface the exterior of the Premises without the prior approval of City, which approval shall not unreasonably be withheld. City shall have no obligation to reimburse Tenant for any cost of alterations or capital improvements.

Tenant shall also have the right to install, attach, affix or otherwise place in or upon the Premises any and all structures, appurtenances, equipment and signs deemed by it to be necessary for its proper use of the Leased Premises provided conformance with all applicable laws and regulations.

In the event of termination or expiration of this lease, any or all said improvements, structures, appurtenances, equipment and/or signs affixed to the structures and Premises may, at City's sole option, be considered abandoned by the Tenant and become the property of the City.

## **§8 REAL ESTATE TAXES; ASSESSMENTS.**

(a) Tenant shall pay all taxes (collectively the "tax"), including assessments (including public or private storm water, water, sewer and special lighting assessments), assessed, levied, confirmed, or imposed during the term of this Lease whether or not now customary or within the contemplation of City and Tenant.

## **§9 RIGHTS RESERVED TO CITY**

City shall have the following rights exercisable with notice and without liability to Tenant:

- (b) To have access to the Leased Premises at reasonable times and for reasonable purposes provided City notifies Tenant at least twenty-four (24) hours prior to City's coming onto the Leased Premises. However, City should not be required to give such prior notice in the event of an emergency.
- (c) To utilize the Leased Premise for public events, subject to availability of the facility at no cost to the City. However, City shall be responsible for the cost of electric use for field lighting.

## **§10 INSURANCE.**

(a) Tenant shall keep the Premise at all times insured against loss by fire or other casualty under an "All-Risks" policy of insurance in an amount equal to its replacement cost or pursuant to an "agreed amendment" endorsement and which also includes loss of rents coverage. Tenant shall at all times and at its costs maintain public liability insurance on the Leased Premises with minimum amounts of \$ 1 million combined single limit with a \$ 3 million aggregate. The limits of liability shall be adjusted as needed during the term of the Lease by agreement of City and Tenant and in conformity with the then prevailing custom of insuring liability in the State of Ohio. City may also maintain umbrella liability insurance in a reasonable amount as determined by City. Upon request, Tenant shall deliver copies or certificates of insurance to evidence coverage.

(b) Tenant shall at all times and at its cost maintain comprehensive general liability insurance (including contractual liability and broad form property damage coverage) on the Leased Premises with limits of \$1 million combined single limit with a \$ 3 million aggregate. The limits of liability shall be adjusted as needed during the term of the Lease by agreement of City and Tenant and in conformity with the then prevailing custom of insuring liability in the State of Ohio. Such liability policies shall carry both the names of City and Tenant as the named insured and Tenant shall provide City with a Certificate of Insurance to evidence coverage.

(c) Each party hereto, on its own behalf and on behalf of its respective property insurers, hereby waives all liability and corresponding rights of subrogation against the other to the extent that the party suffering any loss is or would be insured by business interruption insurance or by an "All-Risk" policy of property insurance in the amount of the replacement value of the property owned by the respective party.

## **§11 WARRANTY OF QUIET ENJOYMENT.**

Tenant, upon paying the rents and keeping and performing the covenants of this Lease to be performed by Tenant, shall peacefully and quietly hold, occupy and enjoy said Premises during said term or any renewal thereof without any let, hindrance or molestation by City or any persons lawfully claiming under City.

## **§12 ASSIGNMENT AND SUBLETTING.**

- (a) Tenant shall not voluntarily assign or sublet all or any portion of its interest in this Lease or in the Leased Premises without obtaining the prior written consent of City, which consent may not be unreasonably withheld or delayed. Any such attempted assignment or subletting without such consent shall be null and void and of no effect.
- (b) Tenant may enter into field use agreements with local youth baseball organizations, which share or reimburse Tenant expenses for maintaining or operating the premise through cash or in-kind contributions, without the consent of the City.

## **§13 FIRE OR OTHER CASUALTY.**

(a) Should the structures located on the Lease Property be damaged or destroyed by any cause and such damage or destruction be of such a nature that it may be repaired or restored within a period of one year after the occurrence, then this Lease shall not terminate but it shall be the obligation of Tenant to repair or restore the Premise as nearly as possible to its condition prior to such damage or destruction and the Tenant shall proceed promptly to make such repairs or restoration. Should the damage or destruction be of a character that will not, in an independent engineer's or contractor's reasonable estimate, permit repair or restoration of the Leased Premises, within the period of one year after the occurrence thereof, Tenant shall notify City within thirty (30) days after the occurrence. In the event that it is determined that restoration cannot occur within the one year period, then the City shall have the right to cancel the unexpired term of this Lease upon giving written notice to Tenant within thirty (30) days after receipt of such notice. In the event that City does not cancel the unexpired terms of the Lease aforesaid, Tenant shall repair and restore the Premise as set forth above.

## **§14 EMINENT DOMAIN.**

If less than the whole of the Leased Premises or any structures thereon shall be taken by any public authority under the power of eminent domain, (or any voluntary transfer by agreement in order to avoid court proceedings under the threat of condemnation) but Tenant can continue to operate its business, this Lease shall not terminate.

If the whole of the Leased Premises shall be taken by any public authority under the power of eminent domain (or any voluntary transfer by agreement in order to avoid court proceedings under the threat of condemnation), or less than the whole of the Lease Premises shall be so taken or transferred but Tenant in its reasonable discretion does not believe it can continue to operate its business, then the term of this Lease shall cease as of the day possession shall be taken by such public authority. The entire amount awarded for any total or partial taking under the power of eminent domain including, but not limited to, any award for consequential damages, shall belong to and be the property of the City, and Tenant hereby assigns to City all of Tenant's rights to any portion thereof, except any award made for the loss of its leasehold interest, made solely to compensate Tenant on account of Tenant's interruption of business, Tenant's cost of moving to a different location, and the replacement cost or removal cost of Tenant's equipment and personal property, which shall be the property of Tenant.

## **§15 WAIVER.**

No waiver of any of the covenants and agreements herein contained or of any breach thereof shall be taken to constitute a waiver of any other subsequent breach of such covenants and agreements or to justify or authorize the non-observance at any other time of the same or of any other covenants and agreements hereof.

**§16 REMOVAL OF FIXTURE AND EQUIPMENT.**

Tenant shall have the right at any time to remove any of their fixtures or equipment from the Leased Premises, provided, however, that any damage to the Leased Premises or structure caused by the removal of said fixture or equipment shall be repaired. However, any capital improvement, as provided in §7 herein, that becomes a fixture shall not be removed without the consent of the City.

**§17 NOTICES.**

All notices required under this Lease to be given to Tenant may be given to it at Superintendent, Piqua City School District, 719 E. Ash Street, Piqua Ohio 45356 or such other place as Tenant may designate in writing. Any such notice to be given to City under this Lease shall be given to it at: City Manager; City of Piqua; 201 West Water Street; Piqua, Ohio 45356, or at such other place as City may designate in writing. All notices shall be in writing and shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested. Notice shall be effective when received or if mailed, on the third (3rd) day after being mailed.

**§18 SUBORDINATION, NON-DISTURBANCE.**

With respect to future mortgage lenders, Tenant shall not be required to subordinate the priority of its lease or attorn to such lender unless: (i) such lender agrees to execute a reasonable non-disturbance agreement that will prevent such lender from terminating the Lease as long as Tenant is not in default hereunder; and (ii) provides loan proceeds which will be used in connection with the Leased Premises and any structures thereon.

**§19 COOPERATION**

The City and Tenant understand and recognize that mutual cooperation and assistance will be needed to properly implement the provisions of this Lease. Each party agrees to cooperate with the other to the extent reasonably necessary or desirable to effectuate the provisions of this Lease.

**§20 RISK OF LOSS TO PERSONAL PROPERTY.**

All fixtures installed by Tenant and all equipment, stock, supplies and all personal property of any kind or description whatsoever in the Leased Premises belonging to Tenant, shall be at Tenant's sole risk and City shall not be liable for any damage done to or loss of such property or loss suffered by the business or occupation of Tenant regardless of the cause of such damage or loss, unless City's employee, agents or independent contractors negligence was the sole proximate cause of such damage or loss.

**§21 REDELIVERY OF PREMISES.**

Tenant shall, on the expiration of this Lease, deliver up the Leased Premises good condition as it now is or may be put by City, free of all hazardous or toxic materials used, placed, or stored in the Leased Premises by Tenant, reasonable use and ordinary wear and tear thereof and damage by fire or other casualty, condemnation or appropriation excepted.

**§22 EXAMINING AND EXHIBITING PREMISES.**

Within six (6) months from the date of the expiration of the Lease, City or its authorized agent shall have the right to enter the Leased Premises at all reasonable times after twenty-four (24) hours advance notice for the purpose of exhibiting the same to prospective tenants.

**§23 CLEANLINESS OF PREMISES.**

Tenant will keep the interior and exterior of the Leased Premises in a safe, clean condition and will not store any refuse, trash, toxic or hazardous materials or wastes in or around the structures or on the Premises.

**§24 SIGNS.**

Tenant may install a sign or signs on the Leased Premise provided it obtains all necessary permits from government authorities, and provided that any signs affixed to any structure do not in anyway damage the structures.

**§25 INTERRUPTION OF SERVICE.**

City does not warrant that any utility service or other services to be provided by City will be free from interruption due to causes beyond City's reasonable control. In the event of temporary interruption of services or unavoidable delay in the making of repairs the same shall not be deemed an eviction or disturbance to Tenant's use and possession of the Leased Premises nor render City liable to Tenant for damage by abatement of rent or otherwise nor shall the same relieve Tenant from performance of Tenant's obligations under this lease.

**§26 DEFAULTS AND REMEDIES.**

(a) Defaults by Tenant. The occurrence of any one or more of the following events shall be a default under and breach of this Lease by Tenant:

- (1) Tenant shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from City; provided, however, that if the term, condition, covenant or obligation to be performed by Tenant is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such default shall be deemed to have been cured if Tenant commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same and does so complete the required action within a reasonable time.

(d) Remedies. Upon the occurrence of any event of default set forth herein, City shall have the following rights and remedies, in addition to those allowed by law, any one or more of which may be exercised without further notice to or demand upon Tenant: City upon notice to Tenant may terminate this Lease as of the date of such default, in which event; (i) neither Tenant nor any person claiming under or through Tenant shall thereafter be entitled to possession of the Leased Premises, and Tenant shall immediately thereafter surrender the Leased Premises to City; (ii) City may re-enter the Leased Premises and dispossess Tenant or any other occupants of the Leased Premises by any means permitted by law, and may remove their effects, without prejudice to any other remedy which City may have for possession or arrearages in rent; and (iii) notwithstanding the termination of this Lease, Tenant will remain liable to City for damages in an amount equal to the rent and other sums that would be owing by Tenant under this Lease.

**§27 BROKERS.**

City and Tenant respectively represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Leased Premises. Each of them will indemnify the other against and hold harmless from any claims for fees or commissions from anyone with whom either of them has consulted or negotiated with regard to the Leased Premises.

**§28 AUTHORITY.**

The persons executing this Lease on behalf of City hereby covenant and warrant that: City is a duly constituted political subdivision of the State of Ohio; and such persons are duly authorized by law and its City Commission to execute and deliver this Lease on behalf of the City.

**§29 SEVERABILITY.**

If any clause or provision of this Lease is illegal, invalid or unenforceable, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause as a provision as may be possible and be legal, valid and enforceable. If such invalidity is, in the sole determination of City, essential to the rights of both parties, City has the right to terminate this Lease on written notice to Tenant.

**§30 FORCE MAJEURE.**

Neither party shall be liable to the other for breach of this Lease if the breach is caused by circumstances beyond its reasonable control, including, without limitation, acts of God; fire, flood, earthquake or other natural disaster, war, riot or civil disobedience; governmental action or inaction, and strikes, lockouts, picketing or other labor dispute.

**§31 TIME IS OF THE ESSENCE**

Time is of the essence with regard to the terms and provisions of this Lease.

### **§32 INDEMNIFICATION.**

(a) Tenant does hereby agree to indemnify, defend and save harmless City from all losses, costs, damages and expenses (including fines, penalties, and attorneys' fees) resulting from any claim, demand, liability, obligation, right or cause of action, including, but not limited to, governmental action (collectively, "Claims") that are asserted against or incurred by City or the Premises (a) as a result of Tenant's breach of this Lease or any representation, warranty, or covenant hereof; or (b) arising out of the operations or activities or presence of Tenant, its employees, representatives, agents, contractors or customers at the Premises ("Tenant's Indemnified Matters").

(b) City does hereby agree to indemnify, defend and save harmless Tenant from all Claims that are asserted against or incurred by Tenant or the Premises (a) as a result of City's breach of this Lease or any representation, warranty or covenant hereof; (b) arising out of the operations or activities or presence of the City or any other person or party, other than Tenant, its employees, representatives, agents or contractors, at the Premises prior to the date of this Lease; or (c) arising from environmental conditions or violations or Environmental Laws at the Premises, including, without limitation, the presence of Hazardous Substances at, on, or under the Premises, providing that such environmental condition or violation was based on something other than Tenant's Indemnified Matters. City hereby waives and releases Tenant from any and all Claims, known and unknown, foreseen or unforeseen, which exist or which may arise under common or statutory law, including CERCLA or any other statutes now or hereafter in effect, other than those arising as the result of Tenant's indemnified Matters.

### **§33 LANDLORD'S WARRANTIES.**

City covenants and warrants the following:

(a) City has full right to make this Lease and carry out its obligations hereunder, and City has duly and validly authorized the execution and delivery of this Lease and any other documents contemplated by this Lease.

(b) To the best of City's knowledge, neither the execution and delivery of this Lease, nor the performance by City of any acts contemplated hereby, will violate the terms and conditions of the organizational documents of City or any contracts or agreements to which City is a party or to which the Premises are subject;

(c) As of the Commencement Date, the Premises shall be owned by City in fee simple, free of any liens, restrictions and encumbrances (except as contained herein, recorded in the public records of the County in which the Premises is located or disclosed to Tenant in writing);

(d) City has no notice of violations relating to the Leased Premises from any governmental agency, except as disclosed to Tenant in writing.

IN WITNESS WHEREOF, Landlord and Tenant have hereunto executed this Lease as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

Landlord:  
City of Piqua  
By: \_\_\_\_\_  
Frederick E. Enderle, City Manager

Date: \_\_\_\_\_

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

Tenant:  
\_\_\_\_\_  
Piqua City Schools

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Stacy Wall  
Law Director

**EXHIBIT A**

**Boundary Survey Map**



**CITY COMMISSION MEETING REPORT**

*For the Regular Meeting of April 6, 2010*

TO: City commission  
FROM: Fred Enderle, City Manager  
SUBJECT: Reference Agenda Item Title

**PURPOSE:**

To approve a proposed lease of Hardman Field with the Piqua City School District

**RECOMMENDATION:**

Adopt Resolution No. R-45-10 authorizing the City Manager to enter into a lease with the Piqua City School District for a 50-year of Hardman Field.

**BACKGROUND:**

Hardman Field has been utilized primarily as a High School, American Legion and Acme League baseball facility for over 50 years. The City owns and with the help of a good many volunteers and the School District has maintained the field over that period of time. Except for the referenced groups the City recreation program has had little use of the facility over the years.

Within the last year or two, I have had off and on discussion with School Officials and other interested groups about the use of the field and need for improvements. Because the City recreation program has little use of the field, and no opportunity for generating revenues from its use it has become increasing difficult to justify spending general City revenues to make any improvements; especially when they do not benefit the general population of the City.

Over the last year I have been discussing possible terms of a lease of the facility by the Piqua School District. We began talking about a long- term lease; something the District needs if it is to invest in improvements for the field. We began talking about the District leasing the field and subleasing leasing to the other users of the facility. However, the liability of year-round maintenance, when their season was relatively short (3 – 4 months) is difficult for the District to justify. Therefore, Superintendent and I began discussing an annual 3-month lease of the field, renewable annually at the sole discretion of the School Board.

## **ALTERNATIVES:**

- 1) Approve Resolution R 45-10 authorizing the City Manager to execute a lease with the Piqua City School district for Hardman Field.
- 2) Reject Resolution R 45-10 and provide further direction.

## **DISCUSSION:**

Major provision of the proposed lease include:

1. The initial term - March 1 to May 31, 2010.
2. Renewal at the sole option of the District for successor March 1<sup>st</sup> through May 31 periods, one calendar year at a time, for the next fifty (50) calendar years, by providing notice of such intent is given January 1<sup>st</sup> of the year of renewal of said Lease
3. Rent is \$1 per year.
4. The District accepts the facility in its present "as-is" condition
5. The District is responsible for all utilities and services during the lease period.
6. The District will at its expense maintenance and repair.
7. If the District terminates lease all improvements, at the discretion of the City, become City property.
8. Any structural improvements or alterations costing more than \$100,000 or alterations which attach or affix to the property must have City approval prior to construction.
9. The District will carry property and liability insurance for the premise as agreed to by the City.

The proposed lease meets the objective of the City and School District. The City desire is to have the field maintained and improved by the primary users of the field and not the general public; as well as to have the field maintained in good condition, so as not to diminish it value to the community. The School District on the other hand, wishes to maintain and improve the field to meet its Athletic program needs, but at the same time not have the liability for maintenance and upkeep beyond their normal sports season. The District also needs leasehold interest in the property in order to spend the funds necessary to make the improvements they desire. A long-term (50-year) lease will provide the necessary property interest.

Outside of the High School baseball season (March 1 – May 31), the daily maintenance of the field will continue to be the City's. We will be free to enter into agreements with other users for the use of the fields at terms the City deems appropriate (with proper consideration given to the care and maintenance of the improvements the District has made to the facility).

## **FINANCIAL IMPACT:**

The fiscal impact to the City is positive. We will be relieved of the financial responsibility for field maintenance and operation for one-quarter of the year. In addition, the District will improve the facility, at no cost to the City.

## **COMMUNITY IMPACT:**

The impact to the community will be an improved facility with clearer lines of responsibility of maintenance and upkeep of the field and its ancillary improvements.

**CONFORMITY TO CITY PLANS & POLICIES:**

Approval of this Resolution would support Plan It Piqua goals, objective and strategies to enhance existing parks

**RESOLUTION NO. R-46-10**

**A RESOLUTION AWARDING A CONTRACT  
FOR THE BROADWAY – PHASE II  
RECONSTRUCTION PROJECT TO  
FINFROCK CONSTRUCTION CO., INC.**

WHEREAS, on January 4, 2010, this Commission passed Resolution No. R-5-10 authorizing the City Purchasing Analyst to advertise for bids, according to law, for the Broadway – Phase II Reconstruction Project; and

WHEREAS, after proper advertisement, bids were opened on March 23, 2010 resulting in the tabulation of bids as listed in Exhibit “A” attached hereto;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: A contract with Finfrock Construction Co., Inc. as the lowest, responsible bidder for said project is hereby approved and the City Manager is hereby authorized to execute a contract with said bidder pursuant to contract specifications;

SEC. 2: The Finance Director is hereby authorized to draw her warrants from time to time on the appropriate account of the city treasury in payment according to contract terms, not exceeding a total of \$963,600;

SEC. 3: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION

**EXHIBIT "A"**

| Ref. No. | Item No. | Description                             | Qty.   | Units | Finrock Construction Co.<br>301 Adams Street<br>Covington, OH 45318 |             |             |              | Silver Hawke Construction<br>8657 N. Gilmore Rd<br>Fairfield, OH 45014 |             |             |              | Associated Excavating Inc.<br>10632 Westbrook Rd<br>Brookville, OH 45309 |             |             |              |
|----------|----------|---|--------|-------|---|-------------|-------------|--------------|--|-------------|-------------|--------------|--|-------------|-------------|--------------|
|          |          |   |        |       | Unit Material   | Unit Labor  | Unit Cost   | Total Cost   | Unit Material  | Unit Labor  | Unit Cost   | Total Cost   | Unit Material  | Unit Labor  | Unit Cost   | Total Cost   |
| 1        | 201      | TREE REMOVED, 30"                       | 3      | EACH  | \$0.00  | \$840.00    | \$840.00    | \$2,520.00   | \$140.00   | \$960.00    | \$1,100.00  | \$3,300.00   | \$250.00   | \$850.00    | \$1,100.00  | \$3,300.00   |
| 2        | 201      | TREE REMOVED, 40"                       | 4      | EACH  | \$0.00  | \$1,035.00  | \$1,035.00  | \$4,140.00   | \$150.00   | \$1,050.00  | \$1,200.00  | \$4,800.00   | \$250.00   | \$1,200.00  | \$1,450.00  | \$5,800.00   |
| 3        | 201      | TREE REMOVED, 48"                       | 1      | EACH  | \$0.00  | \$1,598.00  | \$1,598.00  | \$1,598.00   | \$200.00   | \$1,374.00  | \$1,574.00  | \$1,574.00   | \$250.00   | \$1,500.00  | \$1,750.00  | \$1,750.00   |
| 4        | 202      | WALK REMOVED, AS PER PLAN               | 14,587 | S.F.  | \$0.00  | \$1.00      | \$1.00      | \$14,587.00  | \$0.25   | \$1.50      | \$1.75      | \$25,527.25  | \$0.50   | \$1.00      | \$1.50      | \$21,880.50  |
| 5        | 202      | CURB REMOVED, AS PER PLAN               | 4,307  | L.F.  | \$0.00  | \$2.50      | \$2.50      | \$10,767.50  | \$0.40   | \$2.15      | \$2.55      | \$10,982.85  | \$1.00   | \$2.00      | \$3.00      | \$12,921.00  |
| 6        | 202      | REMOVED, AS PER PLAN                    | 1      | LUMP  | \$0.00  | \$13,919.00 | \$13,919.00 | \$13,919.00  | \$27,000.00  | \$16,000.00 | \$43,000.00 | \$43,000.00  | \$5,000.00   | \$15,000.00 | \$20,000.00 | \$20,000.00  |
| 7        | 202      | STORM CONDUIT REMOVED                   | 611    | L.F.  | \$0.00  | \$10.00     | \$10.00     | \$6,110.00   | \$10.50  | \$5.75      | \$16.25     | \$9,928.75   | \$6.00   | \$6.00      | \$12.00     | \$7,332.00   |
| 8        | 202      | CONCRETE PAVEMENT REMOVED               | 100    | C.Y.  | \$0.00  | \$13.00     | \$13.00     | \$1,300.00   | \$6.00   | \$81.65     | \$87.65     | \$8,765.00   | \$40.00  | \$50.00     | \$90.00     | \$9,000.00   |
| 9        | 202      | EXCAVATION, AS PER PLAN                 | 5,450  | C.Y.  | \$0.00  | \$10.00     | \$10.00     | \$54,500.00  | \$1.00   | \$6.60      | \$7.60      | \$41,420.00  | \$4.00   | \$4.00      | \$8.00      | \$43,600.00  |
| 10       | 204      | SUBGRADE COMPACTION                     | 9,813  | S.Y.  | \$0.00  | \$0.50      | \$0.50      | \$4,906.50   | \$0.15   | \$0.95      | \$1.10      | \$10,794.30  | \$1.00   | \$1.00      | \$2.00      | \$19,626.00  |
| 11       | 204      | UNDERCUTTING, AS PER PLAN               | 300    | C.Y.  | \$13.00   | \$13.00     | \$26.00     | \$7,800.00   | \$16.50  | \$9.35      | \$25.85     | \$7,755.00   | \$22.00  | \$8.00      | \$30.00     | \$9,000.00   |
| 12       | 204      | SUBGRADE STABILIZATION, AS PER PLAN     | 500    | S.Y.  | \$5.00  | \$1.00      | \$6.00      | \$3,000.00   | \$6.50   | \$0.70      | \$7.20      | \$3,600.00   | \$5.00   | \$3.00      | \$8.00      | \$4,000.00   |
| 13       | 254      | PAVEMENT PLANING, ASPHALT CONCRETE      | 528    | S.Y.  | \$0.00  | \$8.00      | \$8.00      | \$4,224.00   | \$0.00   | \$7.35      | \$7.35      | \$3,880.80   | \$6.00   | \$6.00      | \$12.00     | \$6,336.00   |
| 14       | 301      | ASPHALT CONCRETE BASE                   | 1,396  | C.Y.  | \$100.00  | \$16.50     | \$116.50    | \$162,634.00 | \$82.00  | \$27.45     | \$109.45    | \$152,792.20 | \$80.00  | \$35.00     | \$115.00    | \$160,540.00 |
| 15       | 304      | AGGREGATE BASE, AS PER PLAN             | 2,098  | C.Y.  | \$10.00   | \$11.50     | \$21.50     | \$45,107.00  | \$17.00  | \$5.65      | \$22.65     | \$47,519.70  | \$17.00  | \$5.00      | \$22.00     | \$46,156.00  |
| 16       | 408      | TACK COAT                               | 872    | GAL.  | \$2.25  | \$1.00      | \$3.25      | \$2,834.00   | \$2.40   | \$0.75      | \$3.15      | \$2,746.80   | \$1.25   | \$1.00      | \$2.25      | \$1,962.00   |
| 17       | 408      | PRIME COAT                              | 3,356  | GAL.  | \$1.00  | \$1.00      | \$2.00      | \$6,712.00   | \$3.05   | \$1.00      | \$4.05      | \$13,591.80  | \$2.50   | \$1.00      | \$3.50      | \$11,746.00  |
| 18       | 411      | STABILIZED CRUSHED AGGREGATE            | 7      | C.Y.  | \$10.00   | \$48.00     | \$58.00     | \$406.00     | \$19.00  | \$13.00     | \$32.00     | \$224.00     | \$17.00  | \$5.00      | \$22.00     | \$154.00     |
| 19       | 448      | ASPH. CONC. SURF. TYPE 1, PG 64-22      | 371.1  | C.Y.  | \$60.00   | \$70.00     | \$130.00    | \$48,243.00  | \$92.00  | \$30.00     | \$122.00    | \$45,274.20  | \$85.00  | \$50.00     | \$135.00    | \$50,098.50  |
| 20       | 448      | ASPH. CONC. SURF. TYPE 1, DRIVES        | 6.2    | C.Y.  | \$60.00   | \$65.00     | \$125.00    | \$775.00     | \$92.00  | \$30.00     | \$122.00    | \$756.40     | \$80.00  | \$60.00     | \$140.00    | \$868.00     |
| 21       | 448      | ASPH. CONC. INT. TYPE 2, PG 64-22       | 349.0  | C.Y.  | \$60.00   | \$53.50     | \$113.50    | \$39,611.50  | \$82.00  | \$27.45     | \$109.45    | \$38,198.05  | \$85.00  | \$50.00     | \$135.00    | \$47,115.00  |
| 22       | 452      | NON-REINFORCED CONCRETE PAVEMENT, 6"    | 403.0  | S.Y.  | \$20.00   | \$22.50     | \$42.50     | \$17,127.50  | \$25.00  | \$22.75     | \$47.75     | \$19,243.25  | \$10.00  | \$35.00     | \$45.00     | \$18,135.00  |
| 23       | 452      | NON-REINFORCED CONCRETE PAVEMENT, 8"    | 142.9  | S.Y.  | \$25.00   | \$25.00     | \$50.00     | \$7,145.00   | \$31.50  | \$31.50     | \$63.00     | \$9,002.70   | \$15.00  | \$35.00     | \$50.00     | \$7,145.00   |
| 24       | 603      | 6" CONDUIT, TYPE 'B' (PVC SDR-35)       | 200    | L.F.  | \$7.00  | \$10.00     | \$17.00     | \$3,400.00   | \$9.00   | \$10.40     | \$19.40     | \$3,880.00   | \$25.00  | \$25.00     | \$50.00     | \$10,000.00  |
| 25       | 603      | 12" CONDUIT, TYPE 'B' (706.02, CLASS 4) | 575    | L.F.  | \$10.00   | \$16.00     | \$26.00     | \$14,950.00  | \$14.60  | \$19.70     | \$34.30     | \$19,722.50  | \$15.00  | \$25.00     | \$40.00     | \$23,000.00  |
| 26       | 603      | 15" CONDUIT, TYPE 'B' (706.02, CLASS 4) | 963    | L.F.  | \$12.00   | \$16.00     | \$28.00     | \$26,964.00  | \$17.65  | \$19.70     | \$37.35     | \$35,968.05  | \$17.00  | \$25.00     | \$42.00     | \$40,446.00  |
| 27       | 603      | 18" CONDUIT, TYPE 'B' (706.02, CLASS 4) | 353    | L.F.  | \$20.00   | \$18.00     | \$38.00     | \$13,414.00  | \$35.30  | \$35.30     | \$70.60     | \$24,921.80  | \$19.00  | \$27.00     | \$46.00     | \$16,238.00  |

EXHIBIT "A"

| Ref. No. | Item No. | Description                              | Qty.   | Units | Finrock Construction Co.<br>301 Adams Street<br>Covington, OH 45318 |            |            |             | Silver Hawke Construction<br>8657 N. Gilmore Rd<br>Fairfield, OH 45014 |             |             |             | Associated Excavating Inc.<br>10632 Westbrook Rd<br>Brookville, OH 45309 |             |             |             |
|----------|----------|--|--------|-------|---|------------|------------|-------------|--|-------------|-------------|-------------|--|-------------|-------------|-------------|
|          |          |  |        |       | Unit Material   | Unit Labor | Unit Cost  | Total Cost  | Unit Material  | Unit Labor  | Unit Cost   | Total Cost  | Unit Material  | Unit Labor  | Unit Cost   | Total Cost  |
| 28       | 604      | TYPE 3 STORM MANHOLE, AS PER PLAN        | 16     | EACH  | \$760.00  | \$1,000.00 | \$1,760.00 | \$28,160.00 | \$884.00   | \$548.00    | \$1,432.00  | \$22,912.00 | \$650.00   | \$450.00    | \$1,100.00  | \$17,600.00 |
| 29       | 604      | TYPE 1 CATCH BASIN, AS PER PLAN          | 18     | EACH  | \$500.00  | \$600.00   | \$1,100.00 | \$19,800.00 | \$648.00   | \$410.00    | \$1,058.00  | \$19,044.00 | \$650.00   | \$450.00    | \$1,100.00  | \$19,800.00 |
| 30       | 604      | CATCH BASIN, ODOT 2-2B                   | 1      | EACH  | \$400.00  | \$934.50   | \$934.50   | \$934.50    | \$300.00   | \$405.00    | \$705.00    | \$705.00    | \$380.00   | \$300.00    | \$680.00    | \$680.00    |
| 31       | 604      | MANHOLE ADJUSTED TO GRADE                | 6      | EACH  | \$100.00  | \$100.00   | \$200.00   | \$1,200.00  | \$104.00   | \$190.00    | \$294.00    | \$1,764.00  | \$150.00   | \$150.00    | \$300.00    | \$1,800.00  |
| 32       | 608      | CONCRETE WALK, 4" AS PER PLAN            | 14,754 | S.F.  | \$2.25  | \$1.00     | \$3.25     | \$47,950.50 | \$2.00   | \$1.70      | \$3.70      | \$54,589.80 | \$1.50   | \$2.00      | \$3.50      | \$51,639.00 |
| 33       | 608      | CONCRETE STEPS, AS PER PLAN              | 14.0   | L.F.  | \$40.00   | \$41.00    | \$81.00    | \$1,134.00  | \$40.00  | \$50.00     | \$90.00     | \$1,260.00  | \$10.00  | \$50.00     | \$60.00     | \$840.00    |
| 34       | 608      | CURB RAMP W/ TRUNCATED DOMES             | 9      | EACH  | \$200.00  | \$180.00   | \$380.00   | \$3,420.00  | \$285.00   | \$241.00    | \$526.00    | \$4,734.00  | \$250.00   | \$200.00    | \$450.00    | \$4,050.00  |
| 35       | 609      | COMB. CURB & GUTTER, TYPE 2, AS PER PLAN | 4,717  | L.F.  | \$5.00  | \$5.00     | \$10.00    | \$47,170.00 | \$5.75   | \$5.80      | \$11.55     | \$54,481.35 | \$5.00   | \$6.00      | \$11.00     | \$51,887.00 |
| 36       | 614      | MAINTAINING TRAFFIC, AS PER PLAN         | 1      | LUMP  | \$0.00  | \$7,190.00 | \$7,190.00 | \$7,190.00  | \$3,100.00   | \$9,588.00  | \$12,688.00 | \$12,688.00 | \$5,000.00   | \$7,000.00  | \$12,000.00 | \$12,000.00 |
| 37       | 616      | WATER                                    | 5,000  | GAL.  | \$0.10  | \$0.10     | \$0.20     | \$1,000.00  | \$0.15   | \$0.15      | \$0.30      | \$1,500.00  | \$0.25   | \$0.50      | \$0.75      | \$3,750.00  |
| 38       | 616      | CALCIUM CHLORIDE                         | 1      | TON   | \$150.00  | \$150.00   | \$300.00   | \$300.00    | \$200.00   | \$100.00    | \$300.00    | \$300.00    | \$1,000.00   | \$500.00    | \$1,500.00  | \$1,500.00  |
| 39       | 623      | CONSTRUCTION LAYOUT STAKES               | 1      | LUMP  | \$0.00  | \$6,400.00 | \$6,400.00 | \$6,400.00  | \$1,800.00   | \$9,000.00  | \$10,800.00 | \$10,800.00 | \$1,500.00   | \$7,000.00  | \$8,500.00  | \$8,500.00  |
| 40       | 624      | MOBILIZATION                             | 1      | LUMP  | \$0.00  | \$5,595.00 | \$5,595.00 | \$5,595.00  | \$1,800.00   | \$10,000.00 | \$11,800.00 | \$11,800.00 | \$1,500.00   | \$14,500.00 | \$16,000.00 | \$16,000.00 |
| 41       | 630      | GROUND MOUNTED SUPPORT, NO. 2 POST       | 240    | L.F.  | \$10.00   | \$3.65     | \$13.65    | \$3,276.00  | \$8.40   | \$0.00      | \$8.40      | \$2,016.00  | \$6.00   | \$3.00      | \$9.00      | \$2,160.00  |
| 42       | 630      | SIGN, FLAT SHEET                         | 66.20  | S.F.  | \$10.00   | \$10.00    | \$20.00    | \$1,324.00  | \$11.00  | \$0.00      | \$11.00     | \$728.20    | \$8.00   | \$3.00      | \$11.00     | \$728.20    |
| 43       | 630      | SIGN ERECTED, FLAT SHEET                 | 66.20  | L.F.  | \$5.00  | \$5.00     | \$10.00    | \$662.00    | \$0.00   | \$4.75      | \$4.75      | \$314.45    | \$3.00   | \$2.50      | \$5.50      | \$364.10    |
| 44       | 630      | SIGN, DOUBLE FACED                       | 10.00  | EACH  | \$50.00   | \$50.00    | \$100.00   | \$1,000.00  | \$79.00  | \$0.00      | \$79.00     | \$790.00    | \$60.00  | \$20.00     | \$80.00     | \$800.00    |
| 45       | 630      | SIGN ERECTED, DOUBLE FACED               | 10.00  | EACH  | \$20.00   | \$18.00    | \$38.00    | \$380.00    | \$0.00   | \$21.00     | \$21.00     | \$210.00    | \$20.00  | \$5.00      | \$25.00     | \$250.00    |
| 46       | 630      | STREET NAME SIGN SUPPORT                 | 5.00   | EACH  | \$100.00  | \$171.00   | \$271.00   | \$1,355.00  | \$147.00   | \$0.00      | \$147.00    | \$735.00    | \$100.00   | \$50.00     | \$150.00    | \$750.00    |
| 47       | 638      | 6" WATER LINE (AWWA C-151)               | 168    | L.F.  | \$20.00   | \$25.00    | \$45.00    | \$7,560.00  | \$25.50  | \$17.00     | \$42.50     | \$7,140.00  | \$35.00  | \$35.00     | \$70.00     | \$11,760.00 |
| 48       | 638      | 8" WATER LINE (AWWA C-151)               | 60     | L.F.  | \$20.00   | \$21.00    | \$41.00    | \$2,460.00  | \$35.50  | \$23.70     | \$59.20     | \$3,552.00  | \$36.00  | \$36.00     | \$72.00     | \$4,320.00  |
| 49       | 638      | 20" X 6" TAPPING SLEEVE AND VALVE        | 1      | EACH  | \$2,000.00  | \$1,312.00 | \$3,312.00 | \$3,312.00  | \$2,250.00   | \$968.00    | \$3,218.00  | \$3,218.00  | \$1,900.00   | \$1,500.00  | \$3,400.00  | \$3,400.00  |
| 50       | 638      | 16" X 6" TAPPING SLEEVE AND VALVE        | 4      | EACH  | \$2,000.00  | \$1,140.00 | \$3,140.00 | \$12,560.00 | \$2,120.00   | \$900.00    | \$3,020.00  | \$12,080.00 | \$1,700.00   | \$1,500.00  | \$3,200.00  | \$12,800.00 |
| 51       | 638      | 16" X 8" TAPPING SLEEVE AND VALVE        | 1      | EACH  | \$2,500.00  | \$1,071.00 | \$3,571.00 | \$3,571.00  | \$2,537.00   | \$1,100.00  | \$3,637.00  | \$3,637.00  | \$2,200.00   | \$1,500.00  | \$3,700.00  | \$3,700.00  |
| 52       | 638      | 8" - 22 1/2° BEND                        | 1      | EACH  | \$300.00  | \$176.00   | \$476.00   | \$476.00    | \$200.00   | \$52.00     | \$252.00    | \$252.00    | \$180.00   | \$50.00     | \$230.00    | \$230.00    |
| 53       | 638      | 8" - 11 1/4° BEND                        | 1      | EACH  | \$300.00  | \$166.00   | \$466.00   | \$466.00    | \$190.00   | \$50.00     | \$240.00    | \$240.00    | \$170.00   | \$50.00     | \$220.00    | \$220.00    |
| 54       | 638      | 8" X 6" REDUCER                          | 1      | EACH  | \$300.00  | \$145.00   | \$445.00   | \$445.00    | \$165.00   | \$50.00     | \$215.00    | \$215.00    | \$160.00   | \$50.00     | \$210.00    | \$210.00    |
| 55       | 638      | 6" CUTTING-IN-SLEEVE                     | 1      | EACH  | \$300.00  | \$326.00   | \$626.00   | \$626.00    | \$412.00   | \$200.00    | \$612.00    | \$612.00    | \$410.00   | \$100.00    | \$510.00    | \$510.00    |

EXHIBIT "A"

| <p align="center"><b>Broadway Reconstruction ~ Phase II</b><br/>                     City of Piqua<br/>                     Bid Tabulation - March 23, 2010</p> |          |  |       |       |   |            |            |  |                       |            |  |             |               |            |            |             |  |
|---|----------|--|-------|-------|---|------------|------------|--|-----------------------|------------|--|-------------|---------------|------------|------------|-------------|--|
| Ref. No.  | Item No. | Description                            | Qty.  | Units | Finrock Construction Co.<br>301 Adams Street<br>Covington, OH 45318 |            |            | Silver Hawke Construction<br>8657 N. Gilmore Rd<br>Fairfield, OH 45014 |                       |            | Associated Excavating Inc.<br>10632 Westbrook Rd<br>Brookville, OH 45309 |             |               |            |            |             |  |
|   |          |  |       |       | Unit Material   | Unit Labor | Unit Cost  | Total Cost   | Unit Material         | Unit Labor | Unit Cost  | Total Cost  | Unit Material | Unit Labor | Unit Cost  | Total Cost  |  |
| 56  | 638      | FIRE HYDRANT                           | 5     | EACH  | \$1,500.00  | \$700.00   | \$2,200.00 | \$11,000.00  | \$2,040.00            | \$300.00   | \$2,340.00   | \$11,700.00 | \$2,000.00    | \$750.00   | \$2,750.00 | \$13,750.00 |  |
| 57  | 638      | WATER VALVE ADJUSTED TO GRADE          | 1     | EACH  | \$100.00  | \$115.00   | \$215.00   | \$215.00   | \$85.00               | \$190.00   | \$275.00   | \$275.00    | \$75.00       | \$75.00    | \$150.00   | \$150.00    |  |
| 58  | 638      | WATER METER AND PIT RELOCATED/RENEWED  | 19    | EACH  | \$200.00  | \$355.00   | \$555.00   | \$10,545.00  | \$390.00              | \$198.00   | \$588.00   | \$11,172.00 | \$100.00      | \$450.00   | \$550.00   | \$10,450.00 |  |
| 59  | 638      | CURB VALVE AND BOX RELOCATED/RENEWED   | 51    | EACH  | \$100.00  | \$128.00   | \$228.00   | \$11,628.00  | \$194.00              | \$194.00   | \$388.00   | \$19,788.00 | \$135.00      | \$300.00   | \$435.00   | \$22,185.00 |  |
| 60  | 638      | 3/4" COPPER WATER SERVICE, AS PER PLAN | 1,855 | L.F.  | \$10.00   | \$13.00    | \$23.00    | \$42,665.00  | \$12.00               | \$14.75    | \$26.75  | \$49,621.25 | \$6.00        | \$22.00    | \$28.00    | \$51,940.00 |  |
| 61  | 638      | TYPE III CUT AND PLUG                  | 4     | EACH  | \$100.00  | \$160.00   | \$260.00   | \$1,040.00   | \$270.00              | \$400.00   | \$670.00   | \$2,680.00  | \$1,000.00    | \$1,000.00 | \$2,000.00 | \$8,000.00  |  |
| 62  | 644      | CENTER LINE                            | 0.45  | MILE  | \$3,500.00  | \$3,500.00 | \$7,000.00 | \$3,150.00   | \$5,472.00            | \$1,368.00 | \$6,840.00   | \$3,078.00  | \$5,500.00    | \$1,000.00 | \$6,500.00 | \$2,925.00  |  |
| 63  | 644      | EDGE LINE                              | 0.37  | MILE  | \$2,100.00  | \$2,100.00 | \$4,200.00 | \$1,554.00   | \$3,292.00            | \$823.00   | \$4,115.00   | \$1,522.55  | \$4,000.00    | \$1,200.00 | \$5,200.00 | \$1,924.00  |  |
| 64  | 644      | STOP LINE                              | 45.00 | L.F.  | \$3.50  | \$3.50     | \$7.00     | \$315.00   | \$5.00                | \$1.30     | \$6.30   | \$283.50    | \$10.00       | \$5.00     | \$15.00    | \$675.00    |  |
| 65  | 644      | TOPSOIL FURNISHED AND PLACED           | 362   | C.Y.  | \$12.00   | \$11.00    | \$23.00    | \$8,326.00   | \$8.25                | \$8.25     | \$16.50  | \$5,973.00  | \$10.00       | \$10.00    | \$20.00    | \$7,240.00  |  |
| 66  | 653      | SEEDING AND MULCHING, AS PER PLAN      | 2,305 | S.Y.  | \$1.00  | \$1.00     | \$2.00     | \$4,610.00   | \$1.20                | \$2.00     | \$3.20   | \$7,376.00  | \$1.00        | \$1.00     | \$2.00     | \$4,610.00  |  |
| 67  | 900      | TYPE 3 SANITARY MANHOLE, AS PER PLAN   | 13    | EACH  | \$1,000.00  | \$1,730.00 | \$2,730.00 | \$35,490.00  | \$1,320.00            | \$670.00   | \$1,990.00   | \$25,870.00 | \$1,500.00    | \$1,000.00 | \$2,500.00 | \$32,500.00 |  |
| 68  | 900      | 8" SANITARY SEWER (PVC SDR-35)         | 50    | L.F.  | \$25.00   | \$26.00    | \$51.00    | \$2,550.00   | \$14.00               | \$31.45    | \$45.45  | \$2,272.50  | \$10.00       | \$30.00    | \$40.00    | \$2,000.00  |  |
| 69  | SPEC     | WATER LINE FILLED WITH GROUT           | 2,380 | L.F.  | \$1.00  | \$1.00     | \$2.00     | \$4,760.00   | \$2.00                | \$3.00     | \$5.00   | \$11,900.00 | \$3.00        | \$3.00     | \$6.00     | \$14,280.00 |  |
| 70  | SPEC     | GRAVEL CURB INLET SEDIMENT FILTER      | 18    | EACH  | \$60.00   | \$60.00    | \$120.00   | \$2,160.00   | \$81.00               | \$40.00    | \$121.00   | \$2,178.00  | \$60.00       | \$25.00    | \$75.00    | \$1,350.00  |  |
| 71  | SPEC     | LANDSCAPE PLANTER REMOVED AND REBUILT  | 1     | LUMP  | \$0.00  | \$1,200.00 | \$1,200.00 | \$1,200.00   | \$112.00              | \$1,010.00 | \$1,122.00   | \$1,122.00  | \$100.00      | \$500.00   | \$600.00   | \$600.00    |  |
| 72  | SPEC     | STONE WALLS REMOVED AND REBUILT        | 1     | LUMP  | \$0.00  | \$3,610.00 | \$3,610.00 | \$3,610.00   | \$630.00              | \$2,370.00 | \$3,000.00   | \$3,000.00  | \$500.00      | \$2,000.00 | \$2,500.00 | \$2,500.00  |  |
| 73  | SPEC     | TEMPORARY ASPHALT PAVEMENT             | 1     | LUMP  | \$0.00  | \$2,020.00 | \$2,020.00 | \$2,020.00   | \$1,750.00            | \$1,750.00 | \$3,500.00   | \$3,500.00  | \$500.00      | \$1,000.00 | \$1,500.00 | \$1,500.00  |  |
| 74  | SPEC     | OPWC PROJECT SIGN AND SUPPORTS         | 1     | LUMP  | \$500.00  | \$240.00   | \$740.00   | \$740.00   | \$1,340.00            | \$448.00   | \$1,788.00   | \$1,788.00  | \$700.00      | \$200.00   | \$900.00   | \$900.00    |  |
|   |          |  |       |       |   |            |            | <b>Subtotal =</b>  | <b>\$876,000.00</b>   |            |  |             |               |            |            |             |  |
|   |          |  |       |       |   |            |            | <b>Subtotal =</b>  | <b>\$986,587.00</b>   |            |  |             |               |            |            |             |  |
|   |          |  |       |       |   |            |            | <b>Subtotal =</b>  | <b>\$1,009,876.30</b> |            |  |             |               |            |            |             |  |



**CITY COMMISSION MEETING REPORT**

*For the Regular Meeting of April 6, 2010*

TO: Fred Enderle, City Manager  
FROM: Amy Havenar, City Engineer  
SUBJECT: Award of Broadway Phase II Reconstruction Project

**PURPOSE:**

*Request for City Commission authorization to award a contract to Finfrock Construction Company for the Broadway Phase II Reconstruction Project. Total cost not to exceed \$963,600.*

**RECOMMENDATION:**

*Approval of the Resolution to allow for the reconstruction of Broadway from Lindsey Street to Washington Avenue.*

**BACKGROUND:**

*On March 23, 2010, three bids were received for the Broadway Phase II Reconstruction Project and they are as follows:*

| <b>CONTRACTOR</b>                               | <b>BASE BID TOTAL</b> |
|---|-----------------------|
| Finfrock Construction Co.<br>Covington, Ohio    | \$876,000.00          |
| Silver Hawke Construction<br>Fairfield, Ohio    | \$986,587.00          |
| Associated Excavating, Inc.<br>Brookville, Ohio | \$1,009,876.30        |

*The project will consist of the reconstruction of Broadway from Lindsey Street to Washington Avenue and will include new granular base, asphalt pavement, concrete curb & gutter, sidewalks and the installation of new storm sewer, fire hydrants, and sanitary sewer manholes.*

*Finfrock Construction Company has completed many successful projects for the City of Piqua, including the McKinley Avenue Reconstruction Project and the Brook Street Reconstruction Project. The request for authorization includes approximately 10% contingency for items of*

work which may be required which are not included in the original plans and specifications. The engineer's estimate was \$1,214,000.

**ALTERNATIVES:**

- 1) *Approve the Resolution to award a contract to Finfrock Construction Company.*
- 2) *Do not approve the Resolution and do not complete the reconstruction project.*

**DISCUSSION:**

*The reconstruction project will begin late April/early May with the City of Piqua Power Department and Vectren both mobilizing to begin their respective work. Piqua Power will be installing all new power poles throughout the project limits and Vectren will be installing all new gas main.*

*All through traffic will be detoured via a detour route set up by the Ohio Department of Transportation. This route will consist of following SR 185 to SR 48 to SR 66. The intersection of Washington Avenue and Broadway will be closed to all traffic throughout the duration of the project with the exception of Labor Day weekend. The intersection will be accessible for traffic traveling on Washington Avenue going north on Broadway over the Labor Day weekend due to the large volume of traffic expected for the Heritage Festival. However, at all other times throughout the construction, this intersection will not be accessible.*

**FINANCIAL IMPACT:**

*The City received a total of \$525,000 in grant money from the Ohio Public Works Commission for the project. The City will also be assessing the property owners for their concrete curb & gutter and sidewalk work which will result in approximately \$99,000. A total of \$1,120,000 was budgeted for this project in the 2010 Budget.*

**COMMUNITY IMPACT:**

*A public meeting was held on March 16, 2010 for all of the property owners. City representatives were present, as well as the design Engineer, Mote & Associates, Inc., to answer any questions. The project was discussed in detail and the residents were given an opportunity to view the proposed improvements on their individual properties and to express any concerns they had.*

**CONFORMITY TO CITY PLANS & POLICIES:**

*As stated in the Comprehensive Plan Update, one of the main goals is to improve the entrances to the City. The reconstruction of Broadway (SR 66) will complete the reconstruction of one of the main entrances. This project was part of the Ten Year Plan for major capital improvement projects and has been in the planning stages for approximately 4 years.*

**RESOLUTION NO. R-47-10**

**A RESOLUTION EXPRESSING THE INTENT  
OF THE CITY OF PIQUA TO ESTABLISH A  
STORMWATER UTILITY BOARD**

WHEREAS, the Piqua City Commission does hereby recommend the establishment of a Stormwater Utility Board.

NOW, THEREFORE, BE IT RESOLVED, by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: The City of Piqua does hereby establish a Stormwater Utility Board consisting of five community members from the City Of Piqua to be appointed by the City Manager in accordance with the City Charter of said city.

SEC. 2: The citizen members of the Stormwater Utility Board shall be appointed by the City Manager, by applicant review, for the terms provided by the Charter of the City. Vacancies in the Stormwater Utility Board caused by removal from the City, refusal or inability to serve, shall be filled by appointment for unexpired term in the office in which the vacancy occurred.

SEC. 3: The term of appointed board members shall be for five years, except that two of the original appointments shall be for one year, one shall be for two years, one shall be for three years, one shall be for four years respectively.

SEC. 4: The members of said Stormwater Utility Board shall have the qualifications and be vested with the powers as provided by the City Charter.

SEC. 5: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION



**CITY COMMISSION MEETING REPORT**

*For the Regular Meeting of April 6, 2010*

TO: Fred Enderle, City Manager

FROM: Devon Alexander, Stormwater Coordinator

SUBJECT: Reference to establishment of the Stormwater Utility Board

**PURPOSE:**

*Approve the resolution authorizing the City of Piqua Commission to establish a Stormwater Utility Board, which would consist of five citizens of the City of Piqua.*

**RECOMMENDATION:**

*Approval of the resolution to establish the Stormwater Utility Board, where as the City Manager, by applicant review, will appoint all members of the Stormwater Utility Board. All members must live within the City of Piqua corporation limits, and shall have qualifications and be vested with the powers as provided by the City Charter.*

**BACKGROUND:**

*City staff has been working on the development of the Stormwater Utility Board, with intent to model after the City of Piqua Energy Board. The establishment of this board will allow for member input on issues regarding the functionality of the stormwater utility. This board will only be an advisory committee, and will not make policy decisions. This board will also hear any appeals as a result of the orders from the Stormwater Utility Coordinator and discrepancies concerning the number of ERU's being charged to a property. This board will also allow for input on large capital projects/events that the stormwater utility plans to undertake.*

**ALTERNATIVES:**

- 1) Approve the resolution to allow the City of Piqua Commission to establish a Stormwater Utility Board.*
- 2) Do not approve the resolution to allow the City of Piqua Commission to establish the Stormwater Utility Board.*

**DISCUSSION:**

*This board would consist of five individuals who live within the City of Piqua corporation limits. All potential candidates will have to submit an application for review by the City Manager. The City Manager will approve and pick said members of the board, for the term set forth.*

**FINANCIAL IMPACT:**

*There is no financial participation required of the City for the establishment of the Stormwater Utility Board.*

**COMMUNITY IMPACT:**

*The establishment of the Stormwater Utility Board will allow for an overview from the public, of the Stormwater Utility. It will give the opportunity for the public to oversee and give comment and input on Stormwater projects, including capital improvements.*

**CONFORMITY TO CITY PLANS & POLICIES:**

*The overall goal is to provide the opportunity for public individuals to be able to oversee, and give purposed recommendation for the Stormwater Utility Program. This will be in conformance with the City Charter.*

**RESOLUTION NO. R-48-10**

**A RESOLUTION AUTHORIZING A PURCHASE ORDER TO  
BARRETT PAVING MATERIALS, INC. AS THE PRIMARY SUPPLIER, AND  
VALLEY ASPHALT CORPORATION AS THE SECONDARY SUPPLIER OF HOT  
MIX FOR THE 2010 STREET AND ALLEY MAINTENANCE PROGRAM**

WHEREAS, on December 26, 2009, the Purchasing Analyst publically advertised for bids for Hot and Cold Mix; and

WHEREAS, after proper advertisement, bids were opened on January 8, 2010 resulting in the tabulation of bids as listed in Exhibit "A" attached hereto;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: A purchase order is hereby authorized to Barrett Paving Materials, Inc. as the primary supplier of Hot Mix pursuant to the bid specifications;

SEC. 2: A purchase order is hereby authorized to Valley Asphalt Corporation as the secondary supplier of Hot Mix pursuant to the bid specifications should the primary supplier not be able to meet the demands of the City of Piqua;

SEC. 3: The Finance Director is hereby authorized to draw her warrants from time to time on the appropriate account of the city treasury in payment according to contract terms, not exceeding a total of \$80,000 between both the primary and the secondary supplier;

SEC. 4: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

\_\_\_\_\_  
LUCINDA L. FESS, MAYOR

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
REBECCA J. COOL  
CLERK OF COMMISSION



## CITY COMMISSION MEETING REPORT

*For the Regular Meeting of April 6, 2010*

TO: Fred Enderle, City Manager  
FROM: Doug Harter, Street & Parks Superintendent  
SUBJECT: Approval of Resolution to purchase asphalt.

### **PURPOSE:**

- 1. Approve a resolution authorizing the City Manager to enter into a contract with Barret Paving Materials, Inc. to purchase asphalt, at a price not to exceed \$80,000.*
- 2. Approve Valley Asphalt as the secondary supplier, should Barrett Paving Materials, Inc. not be able to supply the amount of asphalt needed at the time it is requested by the City.*

### **RECOMMENDATION:**

*Approve a resolution allowing the City Manager to enter into a contract with Barret Paving Materials, Inc. for the purchase of asphalt; with Valley Asphalt being the secondary supplier should Barrett not be able to supply what we need. The resolution should be not to exceed \$80,000.*

### **BACKGROUND:**

*The Purchasing Agent went out for asphalt bids, sending specifications to several companies. The specifications sent to Valley Asphalt were sent to the wrong address and therefore, Valley Asphalt missed the bid deadline. Advice was sought from the Law Director and we were informed that we could not accept Valley's bid, however, we could use them as a secondary alternative. The bid from Barrett is \$60.00 per ton; it is the same for Valley Asphalt as indicated in the attached letter from Valley Asphalt.*

*It is important to have a secondary supplier due to the problems we had getting asphalt from Barrett last year. Their plant only has one hopper, which means they can only produce one type of asphalt at a time, so if they are making base course and we need a finish course, we have to delay our project. This happened to us several times last year because they produce*

*what the larger contractors need. Also, if their plant breaks down we are at their mercy as to when we can work.*

**ALTERNATIVES:**

- 1. Do not approve the resolution, which in turn would mean no in-house paving.*
- 2. Contract out all the patching and resurfacing, which would result in less being done for the \$80,000.*

**DISCUSSION:**

*In 2009 Commission directed the City Manager to have the Street department become more involved in patching and paving local streets. The program was successful, and positives were noticed by the City and its residences. To not approve this would be taking steps backwards, and thwarting the progress that has been accomplished in the past year.*

**FINANCIAL IMPACT:**

*The money has already been budgeted and approved. The financial impact is only positive, as it is cheaper for the City to handle smaller local streets and patches in house as compared to hiring a contractor.*

**COMMUNITY IMPACT:**

*This will improve the streets throughout the city, and will continue to shed positive light as to the cities aggressive approach to rectifying problems. Citizens like to see their tax dollars being used in their neighborhoods, and the positive feedback we gain by doing this rolls over and helps us gain their support on other projects.*

**CONFORMITY TO CITY PLANS & POLICIES:**

*This was a Commission directive in 2009, and should continue for years to come. We made great strides last year, and will continue to improve upon that success.*

# Valley Asphalt

CORPORATION

1780 Enon Rd., Springfield, Ohio 45502  
Telephone: (937) 882-6234

01/14/2010

City of Piqua yearly FOB Asphalt Bid, IFB 1003 Hot & Cold Mix – Aggregate Stone

To: City of Piqua, Beverly Yount  
From: Valley Asphalt, Jason Combs

Beverly,

Per our conversation on 1/13/2010, we would like to request an exception be made due to circumstances outside of anyone's control. The bid documents that were mailed had an incorrect address of 1617 Enon Rd, Enon, Ohio 45323. The correct address should be 1780 Enon Rd, Springfield, Ohio 45502. When these documents were returned to the City of Piqua, they were then mailed to the asphalt plant on file, which was not in operation over the winter months.

While we understand that the bid date was missed, we would like to offer a solution that would possibly benefit the City of Piqua with their future asphalt needs. In the past, the City of Piqua has awarded both a primary and secondary contract for the yearly FOB Asphalt bid. Valley Asphalt has bid to the City of Piqua for over 10 years. We would appreciate a chance to supply the city with asphalt on days when other plants may be closed or closed to outside sales. On behalf of Valley Asphalt, we would like to offer to match the 402 asphalt and 404 asphalt prices of \$59/ton and \$60/ton of the other bidder in order to receive a secondary contract with the City of Piqua. I would be more than happy to discuss this matter further and/or provide further documentation to clarify this matter.

Thank you,

Jason Combs  
Sales Representative  
Valley Asphalt  
937.477.0400

**EXHIBIT "A"**

**Bid Tabulation for IFB 1003  
Opened 1-8-10 at 2:00 p.m.**

**Hot & Cold Mix - Aggregate Stone**

|                               | <b>Freisthler Paving<br/>Sidney, OH</b> | <b>Piqua Materials<br/>Piqua, Ohio</b> | <b>Barrett Paving Materials, Inc.<br/>Dayton, Ohio</b> | <b>Barrett Paving Materials, Inc.<br/>Dayton, Ohio</b> |
|-------------------------------|---|--|--|--|
| <u>All prices are per ton</u> |   |  |  |  |
| 402 Asphalt                   | No Bid                                  | No Bid                                 | \$ 59.00   | No bid   |
| 404 Asphalt                   | No Bid                                  | No Bid                                 | \$ 60.00   | No bid   |
| Cold Patch                    | \$ 95.00                                | \$ 120.00<br>HPM                       | \$ 105.00  | No bid   |
| 304 Stone                     | No Bid                                  | \$ 8.20                                | Seneca- Moraine Plant Only<br>No Bid                   | 7.50   |
| 411 Stone                     | No Bid                                  | \$ 8.30                                | No Bid   | 7.50   |
| # 9 Stone                     | No Bid                                  | \$ 9.30                                | No Bid   | 7.50   |
| Renewal option for 2011       | No                                      | No                                     |  |  |
| Terms                         | Net 30                                  | Net 30                                 | Net 30   | Net 30   |

**Barrett Paving Materials, Inc.  
Miami River Quarry  
Dayton, Ohio**