

MINUTES OF THE MEETING OF MARCH 17, 2003

The regular meeting of Canton City Council was held on Monday, March 17, 2003, at 7:30 P.M. in the Canton City Council Chamber. The meeting was called to order by President of Council Ray Denczak. The roll call was then taken (as follows) by Clerk of Council Debbie Vanckunas. The invocation was given by Councilmember Joe Carbenia, followed by the Pledge of Allegiance led by President of Council Denczak.

PRESIDENT DENCZAK: With a quorum being present, the Chair calls this meeting of Canton City Council to order. Roll call please.

ROLL CALL TAKEN BY CLERK OF COUNCIL:

12 COUNCILMEMBERS PRESENT: (BILL SMUCKLER, DONALD E. CASAR, MARY M. BABCOCK, GREG HAWK, KATHLEEN ALTIERI BUCHER, RICHARD A. MALLONN II, CRAIG MASSEY, JOHN R. MROCKOWSKI, DAVID R. DOUGHERTY, RICHARD D. HART, ROSEMARY DIAMOND & JOE CARBENIA)

NO COUNCILMEMBERS ABSENT

AGENDA CORRECTIONS & CHANGES

PRESIDENT DENCZAK: Again, before we proceed with this meeting, I have an announcement to make. In the last couple of days, former Mayor Sam Purses' son, Jonathan, passed away in what I understand is a motorcycle accident. And also, the Mayor's father-in-law, William R. Carnes, passed away. I ask that you stay seated, but bow your heads in a moment of silent prayer in tribute to the sympathy of these two families. (*AFTER A MOMENT OF SILENCE*) Thank you very much. To bring your Agendas up to date, Members of Council, you're being asked suspend Rule 24B to add Informal Resolutions 25 and 26 to the agenda; you're being asked to suspend Rule 22A to add second readings of Ordinances 1 through and including #6. Member Smuckler, the Chair will recognize rule 24B suspension.

MEMBER SMUCKLER: Mr. President, I move we suspend Rule 24B and add Resolutions 25 and 26 to the agenda; seconded.

PRESIDENT DENCZAK: Moved and seconded that you suspend Rule 24B to add Informal Resolutions 25 and 26 to the agenda; are there any remarks?... If not, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Rule 24B has been suspended and Resolutions 25 and 26 are a legal part of your agenda.

MEMBER SMUCKLER: Mr. President, I move we suspend Rule 22A and add Ordinances 1 through 6 back to the agenda; seconded.

PRESIDENT DENCZAK: Moved and seconded to suspend Rule 22A to add Ordinances 1 through and including #6 to the agenda; are there any remarks?... If not, roll call vote.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Rule 22A has been suspended and Ordinances for the second reading 1 through and including #6 are a legal part of your agenda.

PUBLIC HEARINGS

PRESIDENT DENCZAK: There's no scheduled public hearing at this time.

PUBLIC SPEAKS (ORDINANCES OR RESOLUTIONS FOR ADOPTION ONLY)

PRESIDENT DENCZAK: No one has signed up for Public Speaks under Ordinances & Resolutions for Adoption.

INFORMAL RESOLUTIONS

PRESIDENT DENCZAK: Informal Resolutions--it will not be necessary to excuse members; let the journal show that all members of Council are present. Resolution #25 please.

PRESIDENT DENCZAK CALLED UPON CLERK OF COUNCIL VANCKUNAS TO READ RESOLUTIONS #25-#27 BY TITLE, AS SHOWN BELOW. THE RESOLUTIONS ARE ON FILE IN THEIR ENTIRETY IN THE COUNCIL OFFICE WITH THE AGENDA ITEMS FILE DATED March 17, 2003.

25. BY THE PERSONNEL COMMITTEE OF COUNCIL: COUNCIL CONFIRMS THE MAYOR'S REAPPOINTMENT OF BERNARD JENKINS TO SERVE AS A MEMBER ON THE CANTON HEALTH BOARD FOR THE TERM 4/1/03-3/31/08 - ADOPTED (See Communication #104)

MEMBER SMUCKLER: Mr. President, I move that we adopt Resolution #25; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Resolution 25; are there any remarks under this resolution?... Very well, by voice vote, all those in favor, signify by saying aye--those opposed, no.

NO REMARKS

ADOPTED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Resolution #25 is adopted.

26. BY THE PERSONNEL COMMITTEE OF COUNCIL: COUNCIL CONFIRMS THE MAYOR'S REAPPOINTMENT OF WESLEY WALTERS TO SERVE AS A MEMBER ON THE FAIR EMPLOYMENT PRACTICES BOARD FOR THE TERM 3/1/03-2/28/08 - ADOPTED (See Communication #103)

MEMBER SMUCKLER: Mr. President, I move we adopt Resolution #26; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Resolution #26; are there any remarks under this resolution?... Very well, by voice vote, all those in favor, signify by saying aye—those opposed, no.

NO FURTHER REMARKS

ADOPTED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Resolution #26 is adopted.

27. CARBENIA, WARD 9 COUNCILMEMBER: SUPPORTING THE PAYMENT OF SHUT DOWN PENSION BENEFITS BY PBGC TO ELIGIBLE REPUBLIC TECHNOLOGY INTERNATIONAL WORKERS. - ADOPTED

MEMBER SMUCKLER: Mr. President, I move we adopt Resolution #27; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Resolution #27; are there any remarks under this resolution?... Very well, by voice vote, all those in favor, signify by saying aye—those opposed, no.

NO REMARKS

ADOPTED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Resolution #27 is adopted.

COMMUNICATIONS

PRESIDENT DENCZAK: All Communications are received as read.

NOTE: ALL COMMUNICATIONS WHICH FOLLOW, LISTED BY AGENDA TITLE, ARE ON FILE IN THEIR ENTIRETY IN THE COUNCIL OFFICE WITH THE AGENDA ITEMS FILE DATED March 17, 2003.

118. PLANNING COMMISSION, CITY OF CANTON, SHEILA THARP-BARRINO, SECRETARY: RECOMMENDING APPROVAL OF THE REQUEST BY AULTMAN HOSPITAL FOUNDATION FOR A ZONE CHANGE FROM R-1a SINGLE FAMILY RESIDENTIAL TO PB-1 FOR THE SOUTHWEST CORNER OF DARTMOUTH & 6TH ST SW TO INSTALL A TEMPORARY HELIPORT. - LAW DIRECTOR. **PUBLIC HRG 4/21/2003 @ 7:30 PM**

ORDINANCES & FORMAL RESOLUTIONS FOR FIRST READING

PRESIDENT DENCZAK: There are no ordinances or formal resolutions for the first reading, so there'll be no referrals.

ORDINANCES & FORMAL RESOLUTIONS FOR SECOND READING

PRESIDENT DENCZAK: Ordinances for their second reading. Let the journal show that all ordinances are being given their reading as required by state law. Ordinance #1 please.

NOTE: PRESIDENT DENCZAK CALLED UPON CLERK VANCKUNAS TO READ THE FOLLOWING ORDINANCES #1 THROUGH #6 FOR THE SECOND TIME BY TITLE, AS FOLLOWS. ORDINANCE #7 WAS RETAINED IN COMMITTEE.

- #1 (2ND RDG) AN ORDINANCE VACATING A PORTION OF HURSH PLACE N.W.; AND DECLARING THE SAME TO BE AN EMERGENCY
- #2 (2ND RDG) AN ORDINANCE VACATING STRASSER PLACE S.W. AND A PORTION OF LAWN AVENUE S.W.; APPROVING AND ACCEPTING THE REPLATTING OF LOTS NOS. 4137-4144, 5515-5522 AND 34404; AND DECLARING THE SAME TO BE AN EMERGENCY
- #3 (2ND RDG) AN ORDINANCE AUTHORIZING THE CITY AUDITOR TO PAY TWO MORAL OBLIGATIONS FOR EMERGENCY WORK AT #9 FIRE STATION IN THE TOTAL AMOUNT OF \$42,225.10; AND DECLARING THE SAME TO BE AN EMERGENCY
- #4 (2ND RDG) AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SAFETY TO ENTER INTO CONTRACT WITH FINLEY FIRE EQUIPMENT COMPANY, INC. IN AN AMOUNT NOT TO EXCEED \$52,135.60 FOR THE PURCHASE OF FORTY-FOUR (44) SETS OF GLOBE FIRE SUITS, PBI TURN OUT GEAR PURSUANT TO OHIO REVISED CODE SECTION 125.04; AUTHORIZING THE DIRECTOR OF PUBLIC SAFETY TO ENTER INTO CONTRACT WITH FINLEY FIRE EQUIPMENT COMPANY, INC. IN AN AMOUNT NOT TO EXCEED \$1,638.56 FOR RELATED EQUIPMENT; AND DECLARING THE SAME TO BE AN EMERGENCY
- #5 (2ND RDG) AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ENTER INTO AGREEMENT WITH THE STARK COUNTY BOARD OF COMMISSIONERS FOR THE CONSTRUCTION OF THE INTERSECTION IMPROVEMENT AT FAIRCREST STREET AND DUEBER AVENUE S.W.; AMENDING APPROPRIATION ORDINANCE NO. 236/2002, AS AMENDED, BY MAKING THE SUPPLEMENTAL APPROPRIATION HEREIN DESCRIBED; AND DECLARING THE SAME TO BE AN EMERGENCY
- #6 (2ND RDG) AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AGREEMENT WITH THE UNITED STATES DEPARTMENT OF INTERIOR NATIONAL PARK SERVICE (NPS) TO CONSTRUCT A TRAIN STATION AND PLATFORM ON REAL PROPERTY OWNED BY THE CITY; ACCEPTING THE PLATFORM AND TRAIN STATION UPON CONSTRUCTION; AND DECLARING THE SAME TO BE AN EMERGENCY

PRESIDENT DENCZAK: Ordinance number 7 was retained in committee.

- #7 **RETAINED** AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ACCEPT **IN CMTE** AN EXISTING PRIVATE DRAINAGE EASEMENT, INVESTIGATE IMPROVEMENTS TO THE DRAINAGE SYSTEM AND ENTER INTO EASEMENT AGREEMENTS; AND DECLARING THE SAME TO BE AN EMERGENCY

ORDINANCES & FORMAL RESOLUTIONS FOR THIRD READING

PRESIDENT DENCZAK: Ordinances and Formal Resolutions for their third and final reading. Ordinance #8 please.

NOTE: PRESIDENT DENCZAK CALLED UPON CLERK VANCKUNAS TO READ THE FOLLOWING ORDINANCES #8 THROUGH & INCLUDING #11 FOR THE THIRD & FINAL TIME BY TITLE, AS FOLLOWS. ORDINANCE #11 WAS POSTPONED TO 3/24/03.

#8 (3RD RDG) **ADOPTED AS ORDINANCE NO. 49/2003** AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ENTER INTO AGREEMENT WITH OSBORN ARCHITECTS AND ENGINEERS IN AN AMOUNT NOT TO EXCEED \$22,450.00 FOR PHASE 2, FINAL SITE DEVELOPMENT; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt Ordinance #8; seconded.

PRESIDENT DENCZAK: It's moved and seconded that you adopt Ordinance #8; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #8 is adopted.

#8 ADOPTED AS ORDINANCE NO. 49/2003

#9 (3RD RDG) **ADOPTED AS ORDINANCE NO. 50/2003** AN ORDINANCE ESTABLISHING THE FAIR MARKET VALUE OF REAL PROPERTY IN CONJUNCTION WITH THE 4TH STREET N.E. RECONSTRUCTION PROJECT; AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO NEGOTIATE AND PURCHASE SAID PARCELS AT THE ESTABLISHED FAIR MARKET VALUES, ENTER INTO WORK AGREEMENTS AND SANITARY SEWER EASEMENTS; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt Ordinance #9; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Ordinance #9; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #9 is adopted.

#9 ADOPTED AS ORDINANCE NO. 50/2003

#10 (3RD RDG) **ADOPTED AS ORDINANCE NO. 51/2003** AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE, RECEIVE BIDS AND ENTER

INTO CONTRACT IN AN AMOUNT NOT TO EXCEED \$550,000.00 FOR THE CONSTRUCTION ASPECT OF THE WATER POLLUTION CONTROL CENTER (WPCC) DIGESTER PROJECT; AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ENTER INTO CONTRACT WITH CT CONSULTANTS, INC. IN AN AMOUNT NOT TO EXCEED \$23,900.00 FOR ENGINEERING SERVICES ASSOCIATED WITH THE PROJECT; AMENDING APPROPRIATION ORDINANCE NO. 236/2002, AS AMENDED, BY APPROPRIATING FROM THE UNAPPROPRIATED BALANCE AND ALLOCATING SAME TO ITEMS HEREIN DESCRIBED; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt Ordinance #10; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Ordinance #10; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #10 is adopted.

#10 ADOPTED AS ORDINANCE NO. 51/2003

#11 (3RD RDG) **POSTPONED TO 3/24/03** AN ORDINANCE AMENDING APPROPRIATION ORDINANCE NO. 236/2002 TO APPROPRIATE ADDITIONAL MONEYS NEEDED FOR THE OPERATING AND CAPITAL EXPENSES OF THE CITY OF CANTON FOR THE REMAINDER OF FISCAL YEAR 2003; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt Ordinance #11; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Ordinance #11; are there any remarks under this ordinance?...

MEMBER SMUCKLER: Mr. President, I move we postpone Ordinance #11 to 3/24/03; seconded.

PRESIDENT DENCZAK: Moved and seconded to postpone this ordinance until 3/24, year 2003; are there any remarks?... If not, by voice vote, all those in favor, signify by saying aye—those opposed, no.

NO REMARKS

MOTION APPROVED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Ordinance #11 is postponed until March 24th, year 2003.

ORDINANCES & FORMAL RESOLUTIONS – POSTPONED MATTER

PRESIDENT DENCZAK: Ordinances and Formal Resolutions; Postponed Matters. Number 12.

POSTPONED FROM 3/10/2003:

#12 **POSTPONED TO MARCH 24, 2003** (RECEIVED ALL 3 RDGS) AN ORDINANCE AMENDING

EXHIBIT A TO ORDINANCE NO. 164/2001, THE CLASSIFICATION PLAN FOR MANAGEMENT AND NON-BARGAINING UNIT PERSONNEL EMPLOYED BY THE CITY OF CANTON; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt Ordinance #12; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Ordinance #12; are there any remarks under this ordinance?...

MEMBER SMUCKLER: Mr. President, I move we postpone Ordinance #12 until 3/24/03; seconded.

PRESIDENT DENCZAK: Moved and seconded to postpone Ordinance #12 until March 24th, year 2003; are there any remarks?.... If not, by voice vote, all those in favor, signify by saying aye—those opposed, no.

NO REMARKS MOTION APPROVED BY MAJORITY VOICE VOTE (DIAMOND VOTED NO)

PRESIDENT DENCZAK: Ordinance #12 is postponed until March 24th, year 2003. Ordinance #13, Member Smuckler.

POSTPONED FROM 3/3 & 3/10/2003:

#13 **POSTPONED TO MARCH 24, 2003** (RECEIVED ALL 3 RDGS) AN ORDINANCE AMENDING CHAPTER 787, SEXUALLY ORIENTED BUSINESSES OF THE CODIFIED ORDINANCES OF THE CITY OF CANTON; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we postpone Ordinance #13...I'm sorry, Mr. President, I move we adopt Ordinance #13; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Ordinance 13; are there any remarks under this ordinance?...

MEMBER SMUCKLER: Mr. President, I move we postpone Ordinance #13 until 3/24/03; seconded.

PRESIDENT DENCZAK: Moved and seconded that Ordinance number 13, be postponed until March 24th, year 2003; are there any remarks?... If not, roll call vote please....I'm sorry, by voice vote, all those in favor, signify by saying aye—those opposed, no.

NO REMARKS MOTION APPROVED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Ordinance #13 is postponed until March the 24th, year 2003. Number 14, Member Smuckler.

ALL PORTIONS OF THE FOLLOWING ORDINANCE WERE ADOPTED AT THE DECEMBER 23, 2002 COUNCIL MEETING, WITH THE EXCEPTION OF SECTION 3 WHICH WAS POSTPONED TO JANUARY 27, 2003; AGAIN TO FEBRUARY 24, 2003; AGAIN TO MARCH 10, 2003 & AGAIN TO MARCH 17, 2003:

#14 **POSTPONED TO MARCH 24, 2003**

ADOPTED AS ORDINANCE NO. 246/2002 ON 12/23/2002 AN ORDINANCE SUSPENDING WAGE INCREASES FOR MANAGEMENT AND NON-BARGAINING UNIT PERSONNEL; AMENDING CHAPTER 151, EMPLOYMENT PROVISIONS, AND REPEALING CHAPTER 152, RESIDENCY, OF THE CODIFIED ORDINANCES OF THE CITY OF CANTON; AND DECLARING THE SAME TO BE AN EMERGENCY

THE FOLLOWING SECTION 3 OF ORDINANCE NO. 246/2002 WAS POSTPONED TO THIS 3/17/2003 COUNCIL MEETING:

Section 3. Subsection (b) to Section 151.08, Overtime and Compensatory Time for Nonexempt and Exempt Employees, of the Codified Ordinances of the City of Canton be and the same is hereby amended to read as follows:

- (1) Professional, administrative, executive and other employees who are exempt from the Fair Labor Standards Act of 1938, as amended, shall be entitled to one compensatory hour for each full hour actually worked in excess of and contiguous with their regularly scheduled work day. No fractional portions of hours shall be used to compute compensatory time, except for off-duty compensatory time earned through an approved call-back, which shall be computed in quarter hours. Employees may not accrue more than 120 hours of unused compensatory time for overtime hours worked.***
- (2) Compensatory time entitlements shall be approved by the appointing authority and shall be properly recorded as to when it was earned and when it was used on a biweekly basis when the payroll is submitted. The records on file in the Auditor's office shall be final.***
- (3) Exempt employees may use accrued compensatory time with the approval of the appointing authority taking into account the scheduling needs of the department.***
- (4) Upon termination of employment, employees with unused compensatory time shall be paid at their final regular rate for a maximum of 120 hours. Any accrued but unused hours in excess of 120 hours are forfeited upon termination of employment.***

MEMBER SMUCKLER: Mr. President, I move we adopt Ordinance #14; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Ordinance 14; are there any remarks under this ordinance?

MEMBER SMUCKLER: Mr. President, I move we postpone Ordinance 14 until 3/24/03; seconded.

PRESIDENT DENCZAK: Moved and seconded that Ordinance 14 be postponed until 3/24, year 2003; are there any remarks?... If not, by voice vote, all those in favor, signify by saying aye—those opposed, no.

NO REMARKS

MOTION APPROVED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Ordinance 14 is postponed til March 24th, year 2003.

ANNOUNCEMENT OF COMMITTEE MEETINGS

PRESIDENT DENCZAK: Announcement of Committee Meetings please.

MEMBER MROCKOWSKI: Mr. President, the Finance Committee and all Members of Council will meet on Wednesday, what is that date?...whatever that is, on Wednesday at 6:00, the 19th?...thank you....Wednesday, the 19th, at 6:00. What we're going to talk about at that meeting is the critical things of the budget, the postponed matter of Resolution #11 and how it also fits in with other postponed matters of 12 and 14. So hopefully by next meeting on the 24th, we'll have everything ready to adopt and move forward from the temporary budget into the permanent budget.

PRESIDENT DENCZAK: There is no other committee meetings because there were no ordinances for the first reading. Member Hawk, are you going to have one about the one you have retained in your committee?

MEMBER HAWK: No, we'll wait for other information and then release that one.

PRESIDENT DENCZAK: Okay.

PUBLIC SPEAKS (OPEN FORUM--CITY BUSINESS ONLY)

PRESIDENT DENCZAK: Public Speaks, Open Forum, City Business Only. We have one person signed up to speak, Joe Thompson. State your name and address please.

MR. THOMPSON: My name is Joe Thompson, I live at 318 Schwalm Avenue NE in Canton, Ohio. I want to address Council about the impending war in Iraq. Do you feel like we have completely lost our participation in our government? I have. Ever since the fiasco that took place in our last presidential election. It's the same frustration, helplessness and anger I felt when President John F. Kennedy, his brother Senator Robert Kennedy, Martin Luther King Jr. and Malcolm X were all assassinated. These were heroes in our government, and all the coverups, sound bites, polls and government-controlled propaganda in the world will not convince most of us otherwise. We have simply lost representation by our elected leaders unless somehow get it back. And to make sure that this never, ever happens again. We now have a corporate-controlled lobbyist infested system that is surely in overload. It's unbelievable that our legally appointed, not elected President, is to me the most dangerous and most misguided man on the planet. This puppet from monopolistic business interests is determine to murder mostly poor, innocent men, women, and children—not terrorists—and to finish the young men and women that his father didn't murder 12 or so years ago. Now I'm not a supporter of Iraq or any other nation—my concern is here in America. And I just can't see spending billions and billions of dollars bombing ignorant and innocent people overseas again and we can't even get adequate police protection here at home because of the diverted funds propagating war and not peace overseas. I'm not going to even mention joblessness, health care costs for the unemployed and elderly, and our ever present racial prejudice that will probably never go away. Someone needs to ask George W. about his affiliation with the corporate-funded, neo right-wing, conservative fascist group called the Project for a New America that was exposed on ABC's *Nightline* this month. And how many of his cabinet members were or are now still a part of it or sympathetic to its belief. They're a unique group of people that believe that America is not aggressive enough in the world matters and that there is no longer a need for the United Nations any more since we now have a superior military force, not waste this time. 9-11 was a terrible, cowardly, insane terrorist act that angered and frightened everyone, and it must be punished, but not with bombs. With all our technology, resources and resourcivness [*sic*], where the heck is our leadership? We undoubtedly have the best educated imbeciles and yes men and women in the world. But you can't teach wisdom, insight and leadership in ivy league colleges. We Americans are electing only wealthy, successful men of family and money and power who are political party and corporate soft money

supporters. I ask you all that you pray for peace. Thank you.

MISCELLANEOUS BUSINESS

PRESIDENT DENCZAK: We're now under Miscellaneous Business. Is there any Miscellaneous Business?...

MEMBER CASAR: Mr. President, I'd like to make it clear how and why I voted on the division of the property on 47th Street last week, at last week's Council Meeting. I voted for the split, which the Planning Commission's decision was. Although our local newspaper had me voting for...against the split. And the reason I voted for the split, is because I thought it was the proper thing to do. However, this piece of legislation was blown out of context and made very controversial by the republican mayoral candidate, who claims Council's vote was politically motivated. I personally don't know why my fellow democratic Councilmembers voted the way they did, however, it is their prerogative to vote how they choose and I'm sure their reason or reasons were justified. The remarks that was directed to this democratic Councilmembers by the republican mayoral candidate do not go unanswered. Some of the remarks that were quoted in our local newspaper are as follows and I quote, "they're making this a political issue," she said, "and shame, shame on them." "If it is not politically motivated, then let them give their reason; they don't have the guts to talk about it, and that is why we need a new Council down there." "I've lived and worked by whole life in the City of Canton, and I beg any of them to put their record against mine." End of quotes. How can this person who knows nothing about City government or City Council question the integrity of a Joe Carbenia—a life resident of the City of Canton, a retired Firefighter, a man who put his life on the line many times to help save the life or property of others. Joe was dedicated and respected as a Captain on the Canton Fire Department. Joe is a hard working and very knowledgeable Councilman. I would put his record against hers. Richard Mallonn. R.A. is also a life resident of the City of Canton. The son of a former City Councilman and City Auditor. I served on Council with Richard Mallonn Sr. and have been a friend of the family for many years. R. A. owns two successful businesses in the City of Canton. R. A. has been an outstanding for 8 years, serving his constituency well, and working hard to make Canton a better and safer place to live. I would put his record against hers. John Mroczkowski—also a life resident of the City of Canton, retired from the Timken Company. John served many years as President of the Timken Steelworkers Union, which is the largest union in this area. John negotiated contracts for the Steelworkers, which made their quality of life better for them and their families. As a Member of Canton City Council, John took the job, the very difficult job, of Finance Committee Chairman. As a result of his hard work and his perseverance, the City finance problems are looking a little better. And I would put his record above hers. I singled out these 3 democratic members of Council because they have been my personal friends for many years. The rest of my fellow democratic Councilmembers are just as dedicated and hard working. I ask what gives this political opportunist the right to question their integrity? Remember, fellow democratic Councilmembers, we hold 10 of the 12 seats on Canton City Council. And this is not by accident. We were elected by the majority of the citizens of Canton which are democrats. "That's why we need a new Council down there." "That's why we need a new Council down there." I urge each and every democrat member of Council and President Denczak to remember this quote. This quote in my opinion will give us the fuel and provide the spark to ignite our campaign engines and drive our democratic motorcade to victory in November. Thank you.

PRESIDENT DENCZAK: Is there any other Miscellaneous Business?

MEMBER SMUCKLER: Mr. President, at this point in time, could we get a ruling for the record from the Law Director on the Daniels plat that we asked for from last week?

PRESIDENT DENCZAK: Yes....Law Director?

UNDER THE MISCELLANEOUS BUSINESS PORTION OF THE 3/10/03 MEETING, ORDINANCE #18 WAS REFERRED TO THE LAW DIRECTOR FOR CONSIDERATION & CLARIFICATION CONCERNING THE FINAL VOTE DECISION.

3RD RDG O.#18 ON 3/10/03 AGENDA: AN ORDINANCE APPROVING AND ACCEPTING THE REPLATTING AND RENUMBERING OF PART OF LOT NO. 35828; AND DECLARING THE SAME TO BE AN EMERGENCY. ROLL CALL: 3 YEAS, 8 NAYS, 1 ABSTENTION. (CASAR, HART & DIAMOND VOTED YES. BABCOCK, HAWK, ALTIERI, MALLONN, MASSEY, MROCZKOWSKI, DOUGHERTY & CARBENIA VOTED NO. SMUCKLER ABSTAINED FROM VOTING)

LAW DIRECTOR MARTUCCIO: Mr. President, Member Smuckler. The issue was referred to me last week as to whether or not the ordinance approving and accepting the replatting and renumbering of part of Lot No. 35828 in the City of Canton was approved or defeated given the vote it received. It was a fairly routine replat, as you recall, with an amendment to add some language for some easement for drainage. The vote was one abstention, three for and eight against. The question presented to me was whether or not Section 1165.09 of the Canton Codified Ordinances, which provides for a three-fourths vote of the full membership in order to override a Planning Commission, whether that applies to a replat or not. For the reasons that follow, I conclude that that rule does not apply. That rule is contained in a chapter of the Zoning Code. That chapter is entirely devoted to zoning. Therefore, in my opinion, it does not apply. The ordinance that was before Council was properly here on a recommendation of the Planning Commission, after they met and considered this replat on February 11th, 2003. It came before Council as a recommendation. It was for a replat. A plat is basically a map or a tract of a parcel of land. It's a little different than subdivision, which is generally a smaller part or a parcel of land that's taken from a larger tract because an owner wants to split it. Both those things, platting and subdivision, are similar to but are not zoning. They are not a substitute for zoning according to the Ohio Jurisprudence and the Attorney General of Ohio. After consulting the applicable Ohio Revised Code sections and the City ordinances and other law, it was clear to me that replats are permitted. They are duly considered by our Planning Commission, which by State law is also our platting commission. They were properly brought here; however, because the ordinance that talks about the three quarters rule only addresses zoning issues, this rule doesn't apply. For example, tonight there was an ordinance that was read that has to do with vacating a street, which is a zoning matter. That has to have a public hearing—that's a zoning matter. If that were to come before Council as a recommendation, Council would need three quarters of its full membership or 9 votes, to override it. That is considered a legislative act because it further subdivides or changes the zoning, which is within your prerogative. What you have in front of you is what the law considers an administrative or an executive act. And that was a Supreme Court's call in Donnelly versus City of Fairview Park. In other words, when Canton is not enacting an law, an ordinance, or a regulation, but is instead executing or administering a law that's already in existence, it's taking an administrative or executive act. That act can be appealed, probably, under State law. So it's important that Council has the last say, but it's not like the legislative act, which is only subject to referendum. I mention all that because I'm about to make my conclusion and recommendations. Again, I conclude that a simple majority was all it took to defeat that ordinance. Seven votes was sufficient to defeat it. Seven votes is a simple majority. Seven votes, then, is also sufficient to defeat the Planning Commission recommendation because the three-quarter rule doesn't apply. Should Council want to have a three-quarter rule that applies to replats, it would have to do so through its subdivision regulations. We can address that at a later time. My recommendations. You have three courses of action. If Council does nothing tonight, if it chooses not to act on what happened last week, the ordinance asking for the replat of Lot #35828 is defeated. The Planning Commission recommendation regarding that replat is defeated. On the other hand, Council can alternatively move to reconsider, because it's not too late—it is the next meeting following that act under Rule 41. Either the abstainer or the prevailing side, which were the people who voted in the 8 nays, can move to reconsider. Should you move to reconsider, you have two courses of action...two choices. This Council can either re-vote from scratch, indicating its reasons if it chooses so on the

record in the event an appeal is taken. Or it can remand this case back to the Planning Commission for further analysis and education. As I understand there were some zoning issues, or rather some drainage issues that were related to the drainage basin in a similar ordinance that's still pending. Again, your choices are: do nothing and it's defeated, or reconsider and either re-vote or remand to the Planning Commission. Thank you.

MEMBER SMUCKLER: Mr. President, I move at this time to reconsider Ordinance #18 on the last agenda replatting of Lot 35828; seconded.

PRESIDENT DENCZAK: Moved and seconded...you abstained, didn't you?

MEMBER SMUCKLER: Yes, sir, I did.

PRESIDENT DENCZAK: Okay. Moved and seconded that Council reconsider Ordinance 18; are there any remarks?... I'm going to ask for a roll call on this.

NO REMARKS

ROLL CALL: 1 YEAS, 1 NAY (BABCOCK VOTED NO)

PRESIDENT DENCZAK: The question before Council now is Ordinance 18. Are there any remarks under Ordinance 18 that was...?

MEMBER DIAMOND: Mr. President, these are comments on the ordinance in and of itself, correct?

PRESIDENT DENCZAK: Correct.

MEMBER DIAMOND: I am not...my comments are not based upon the newspaper article from another public official and Member Casar. He feels she doesn't have the right to ask the questions she's asking, that's their issue. I feel that this Council is responsible for the 80-some thousand people that live in the City of Canton. The at-large Councilmembers are responsible to my 7800 people that live in the 8th Ward. Those people, of which Mr. Daniels is one, does deserve an explanation from someone that represents him. Again, I was not contacted during this first reading for this issue, during the second reading, at the committee meeting or prior to the third meeting with anybody here that has some engineering expertise who felt that the drainage was going to be a problem—with the exception of Mr. Hawk. I spoke with Mr. Hawk during the committee meeting; however I called him last week after this vote and I asked him if he had any questions and he said he was going to clear them up. And I hadn't heard from him since until I understand that because Ordinance #7, which is another drainage problem in my ward nearby, is being held in hostage until this ordinance is determined. He was told by Safety Director, or Service Director Miller that one has nothing to do with the other. By holding that ordinance up, I began meeting with the neighbors in January. We were hoping before Spring or early Spring to start this project to alleviate a serious drainage problem on Kings Row for 6 or 7 neighbors. We wanted to explore that. Now I'm told that that will not be happening. That will not come out of committee. And despite my letter to the constituents telling them in the normal course of action that the vote would be next week, they will have to receive another letter stating that until the Chairman decides to take it out of committee, it will not be up for a vote at all. For those people that took the time to find out the background of this replatting, this was before the Planning Commission in January. The Planning Commission had concerns because in the 8th Ward, there are numerous drainage problems. They had the foresight to postpone the matter. Mr. Daniels was asked to wait one more month until the City could examine if this replatting would cause a problem, either for the property that was being replatted or the existing neighbors...

PRESIDENT DENCZAK: Your 3 minutes are up.

MEMBER DIAMOND: I'm not finished.

PRESIDENT DENCZAK: I don't care—your Council rule says you've got 3 minutes. I don't care whether you're finished or not. You'll have another opportunity to speak.

MEMBER HART: Mr. President, I move Member Diamond have an additional 3 minutes; seconded.

PRESIDENT DENCZAK: Here we got with politics again. Moved and seconded that she speaks another 3 minutes, is that what you're saying?...

MEMBER HART: Yes, Mr. President.

PRESIDENT DENCZAK: Roll call vote.

NO REMARKS ROLL CALL: 3 YEAS, 9 NAYS (DOUGHERTY, HART & DIAMOND VOTED YES)

PRESIDENT DENCZAK: You will have another opportunity to speak, Member Diamond. Your time just isn't continuing. Anybody else have anything to say under Miscellaneous Business?

MEMBER HART: Yeah, Mr. President, just a question for the Law Director. This week, I had 2 cars that were towed from my ward and both were...

PRESIDENT DENCZAK: One moment. What are you getting at?

MEMBER HART: It's a question for the Law Director.

PRESIDENT DENCZAK: What does that have to do with the motion that's on the floor?

MEMBER HART: Oh, I apologize, I thought he said Miscellaneous Business.

PRESIDENT DENCZAK: We are under Miscellaneous Business, but there's a motion on the floor to reconsider this ordinance.

MEMBER HART: Okay, I apologize, sir.

PRESIDENT DENCZAK: Hold your remarks germane to that issue. Anybody else have anything to say?

MEMBER CASAR: I'd like to ask the 8th Ward Councilperson a question if I may. Member Diamond, when this issue was first brought up, maybe a little better than two weeks ago starting legislation, were for this split?

MEMBER DIAMOND: Mr. President, am I allowed to answer Member Casar?

MEMBER CASAR: Yes, he asked you a question.

MEMBER DIAMOND: When this was first brought up, when Mrs. Daniels contacted me and asked for my support, I said that no, I could not give her my support....

MEMBER CASAR: Thank you. Thank you.

MEMBER DIAMOND: I'm not finished speaking.

MEMBER CASAR: You answered my question, thank you.

PRESIDENT DENCZAK: Please...please...

MEMBER DIAMOND: I told her I would not support something, as with any issue, until I researched it, until I examined it, until I made certain it would not cause a further drainage problem in my ward. I then contacted the Planning...

PRESIDENT DENCZAK: You answered the question, Member Diamond. Member Casar, you still have the floor.

MEMBER CASAR: Thank you, Member Diamond.

PRESIDENT DENCZAK: He asked for a yes or no answer, and you gave him an answer.

MEMBER CASAR: Thank you, Member Diamond and I voted that way; that's why I asked the question. Thank you.

MEMBER DIAMOND: Mr. President, are you to determine when I've finished answering a question? And is every question just to be said yes or no? I don't think that's a fair explanation.

PRESIDENT DENCZAK: For a person that works for a law firm, you ought to know what procedure goes on in a courtroom. How many times have you heard a lawyer say, simply answer yes or no. That's all he asked you is a yes or no answer.

MEMBER DIAMOND: Mr. President, Member Casar's not an attorney.

PRESIDENT DENCZAK: You're not going to monopolize this Council's session, Member Diamond. Member Casar, are you finished?

MEMBER CASAR: Yes, President Denczak.

PRESIDENT DENCZAK: Anybody else have anything to say?

MEMBER DIAMOND: Mr. President, as I was continuing. The Planning Commission, which I get the feeling now, although not one person here in this Council has bothered to contact me or discuss it or ask my opinion, they want to send it back to the Planning Commission. The Planning Commission took 60 days to determine whether or not a drainage problem would exist. A civil engineer, not a member of Council, went out and looked at the drainage to determine that it would not cause a drainage problem. So, number one, if you want to refer it back to Planning Commission, there is no more education, there is nothing else for them to do. Should you choose not to refer it back and since an engineer has indicated there is not a drainage problem, regardless of what any other public official asks you, I will ask for your opinion or your reservation or your explanation as to why not. Thank you.

PRESIDENT DENCZAK: Is there any other comments relative to the motion to reconsider this?...

MEMBER HAWK: Mr. President, I move we send it back to the Planning Commission; seconded.

PRESIDENT DENCZAK: Moved and seconded that it be sent back to the Planning Commission. Are there any remarks?

MEMBER DIAMOND: Mr. President, I would ask Member Hawk what his purpose for sending it back is and what he hopes to learn from delaying it another 30 days, other than not allowing a resident of the City of Canton to divide property that he owns.

PRESIDENT DENCZAK: Do you wish to respond to that, Member Hawk?

MEMBER HAWK: It was an option—I'll send it back to the Planning Commission for their reconsideration. Thank you.

MEMBER DIAMOND: Mr. President, a question can't be answered unless it's been asked. I am asking the Chairman of that committee, what is the question that is not answered. What is the investigation that needs to be done? How can we solve a problem rather than tying a property owner's hands? What is it that the Chairman of this committee is looking for?

MEMBER HAWK: I'm going with the Law Department's consideration we send it back to Planning—that's one option. That's where it will go. When Planning comes back after they're reconsidered it, we'll deal with it at that time. Thank you.

MEMBER CASAR: Mr. President, I'll support the move to send it back to Planning Commission is because being the fact that it was ruled by the Law Department that it was defeated and it cannot be split, (*TRANSCRIBER UNABLE TO UNDERSTAND SOME WORDS HERE*) ...and hopefully it may come back and this Council may decided to split it, so I think if there's an opportunity or a chance, I'm for that.

MEMBER DIAMOND: Mr. President, again, I'll ask Member Casar, they studied it and they approved it. Are you expecting them to go back and say now we don't approve it...and that's what you're waiting for in order to approve it? I don't understand your question nor what answer you want. The Planning Commission approved it.

MEMBER CASAR: Mr. President, first of all I don't have a question and second of all I don't have an answer. I'll give you my opinion why I think it would be a good reason to send it back. Hopefully in the time element, there may be some changes of mind or attitudes of this Council and it may pass. Simple as that.

MEMBER MROCZKOWSKI: Mr. President, one of the reasons that I personally did not vote the last time is because I wasn't here and could not make a determination without getting some data. After going out and looking at the property, seeing what's going on, I think there's a lot of questions. One, what assurance from anybody do we have that we're not going to be caught with another financial problem downstream because this is where all the problem starts, at that end of town. Secondly if that, if there is an assurance, we need to have that so that downstream for us, at City Council, that we're not caught with this financial burden of the problems. So until we have that assurance, I don't know how anybody on Council can support this until we know for sure that the City is not going to be trapped with more money just because somebody wants to make money on their property at a cost to the City of Canton. That's why I personally did not support that. And I will not support it until I get an assurance from someone that the City is not going to be caught with financial problems down the road because of the splitting of this property. Thank you.

PRESIDENT DENCZAK: The question before Council now is referring this back to the Planning Commission.

SAFETY DIRECTOR CONCATTO: Mr. President, as a member of the Planning Commission, I believe that most of what you said, Mr. Mroczkowski, was taken into consideration. It was, the Planning Commission was in favor of it, and I would ask, I don't care how you vote, I would just ask that you put a question at what you want us to look at, because we already approved it. So I have to agree with Member Diamond, I'm not sure what you want now from the Planning Commission. And as a member, I would welcome it back if you tell me what you want us to do. And we took into consideration the engineer's looking at it. And I'm not sure what else you want us to do.

MEMBER MROCZKOWSKI: Very simple. What I think...sorry, Mr. President, Safety Director and a member of that Commission, I think that it behooves everyone here to be assured, not just given the opportunity that they said that it wouldn't, what assurance to do we have in their decision, that we are not going to have on-going financial problems, or on-going water problems? It's easy to make that determination, but what assurances are there? To make that, and then later say, oops, we didn't see that. I'm not longer ready for that. I think this City has done a lot of that in the past and we want to assure, especially in a problem area—if this was probably anywhere else in the City of Canton that was downstream from where the problem is, has started for the most part from what I understand from the Service Director, that that upstream water is what caused us a heck of a lot of problems, then I want to make sure that there is a system and a system that not only assures in that area, but downstream too that we're not going to have a problem.

MEMBER CARBENIA: Mr. President...

PRESIDENT DENCZAK: Privileged question for the Safety Director. You're a member of the Planning Commission, is that correct?

SAFETY DIRECTOR CONCATTO: Yes.

PRESIDENT DENCZAK: For my information, what was the count of the vote on this issue when it came before the Commission?

SERVICE DIRECTOR MILLER: Mr. President, the vote was three for, one against, one abstention.

PRESIDENT DENCZAK: Who's asking for the floor now?... Member Carbenia.

MEMBER CARBENIA: Yes, I also am not in favor of sending it back to the Commission or to the committee, whoever it is. We've been in, this is a political football that's just been going on and on. Just like anything else, if you're a democrat nowadays, you're a liberal and everything you do is against the other side. But all I have to say is, we voted against it once, bring it up for a vote again, and I'll vote against it again. If somebody wants to pressure me, I'm under so much pressure that I'm still voting no.

PRESIDENT DENCZAK: Any other remarks or comments under Miscellaneous Business?...I'm sorry, I'm going to throw this timer away...the question before you now is to send this back to the Planning Commission. No more remarks?... Roll call vote please.

NO FURTHER REMARKS

ROLL CALL: 7 YEAS, 4 NAYS, 1 ABSTENTION

(CASAR, BABCOCK, HAWK, ALTIERI, MASSEY, MROCZKOWSKI & DOUGHERTY VOTED YES.

MALLONN, HART, DIAMOND & CARBENIA VOTED NO. SMUCKLER ABSTAINED FROM VOTING)

PRESIDENT DENCZAK: The question goes back to the Planning Commission. We are now under Miscellaneous Business again. Is there more Miscellaneous Business?

MEMBER SMUCKLER: Mr. President, I move that we go into executive session to discuss pending litigation for the sexually-oriented business in Federal court and also to discuss two personnel matters; seconded.

PRESIDENT DENCZAK: Moved and seconded to go into executive session; are there any remarks?... Who all do you want to go into executive session, Member Smuckler?

MEMBER SMUCKLER: Everyone on this side of the aisle, including two members from the Law Department, and also the Budget Director and the...what is your title Linda Patterson?...Linda Patterson and...that's it Mr. President.

PRESIDENT DENCZAK: Are there any remarks?... If not, roll call vote please.

NO FURTHER REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: All those invited to go into the executive session, please do so, and remember to return back here for the remainder of the matter.

AT 8:26 P.M., COUNCIL ADJOURNED INTO EXECUTIVE SESSION TO DISCUSS PENDING LITIGATION IN THE SEXUALLY-ORIENTED BUSINESSES LEGISLATION, & TWO PERSONNEL MATTERS. THE COUNCIL MEETING WAS RECONVENED AT 9:27 P.M. BY PRESIDENT DENCZAK.

PRESIDENT DENCZAK: We need a motion to end the executive session.

MEMBER SMUCKLER: Mr. President, I move that Council go back into general session; seconded.

PRESIDENT DENCZAK: Moved and seconded that Council go back into session; are there any remarks?... If not, roll call please.

NO REMARKS

ROLL CALL: 11 YEAS, 0 NAYS (BABCOCK EXCUSED)

PRESIDENT DENCZAK: Council is back in session after the executive session. You are still under Miscellaneous Business. Is there any Miscellaneous Business?

MEMBER HART: Yeah, Mr. President, just a very quick question for the Law Director. Can you please educate me at a further date on what constitutes an abandoned vehicle? There was a situation that had arisen where cars that were legally licensed were parked out in front of the houses and were towed even though they were out longer than 72 hours. And I guess my question was talking to the Safety Director, is the ordinance does say it needs to be moved within 72 hours...but much of the time I guess this is more complaint generated. And I just would hate to think if people are in violation of the law, then, you know, I guess conceivably, tow everybody—just don't pick out somebody that's, you know, maybe had a complaint. And the one resident was home and the police officer told them it was an abandoned vehicle, even though it was parked in front of their property, and it was still towed. No sticker or anything, just the tires had been marked. So if you could let me know, I'd appreciate it. Thank you.

PRESIDENT DENCZAK: Is there any other Miscellaneous Business?...

MEMBER SMUCKLER: Mr. President, I move we adjourn; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adjourn. Roll call please.

NO REMARKS PERMITTED ON THIS MOTION -- ROLL CALL VOTE: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: This meeting is adjourned. (SOUNDS GAVEL)

ADJOURNMENT TIME: 9:32 P.M.

ATTEST:

DEBRA VANCKUNAS
CLERK OF COUNCIL

APPROVED:

RAY DENCZAK
PRESIDENT OF COUNCIL