

CITY OF WICKLIFFE CHARTER REVIEW COMMISSION

TUESDAY, MAY 13, 2008

Meeting Minutes

The Wickliffe Charter Review Commission held its meeting on Tuesday, May 13, 2008 in Council Chambers. The meeting was called to order at 7:05 p.m. by Chairperson Cindy Marino.

Commission Members present: Cindy Marino, James Schall, Don Contenza, Ron Ely, Joe Oboczky, Cookie LoSchiavo and Mary Ann Surtz. Also in attendance were Civil Service Commission members Jim Cain, Ron Cooper and Rich Winter. Pete Formica and Brian Rogers from CT Consultants were also present. Building Commissioner Ray Sack was present. Nancy Cole and Judy Powers were absent.

Cindy Marino asked if there were any additions or corrections to the minutes from the April 29 meeting. A motion was made by Mary Ann Surtz to accept the minutes as published; Joe Oboczky seconded. All were in favor.

The meeting began with the Civil Service Commission. Cindy Marino made a statement noting that when discussing the Building Commissioner's position on becoming a Civil Servant, she would like all in attendance to generalize and state Building Commissioner because she does not want it always to be associated with Ray Sack as an individual because eventually whatever this Commission votes on will affect future Building Commissioners. With that, Jim Cain, the Chairman of the Civil Service Commission spoke on their behalf. He began with general information regarding the Civil Service commission.

This has been going on for several years now, prior to his time on the Commission. The most recent was in January 2006. The Building Commissioner came to a meeting and presented to them what he wanted to do. They listened and basically went through some ordinances, their rules, the Charter and had their legal counsel look through the documents. Following their meeting, they drafted a letter to the Commissioner based on the response from their legal counsel. The letter quotes Article 6 Section 3 of the Charter. "The Civil Service Commission has the authority and power to determine which employees or classes of employees are included in the jurisdiction of the Commission. The exception would be those specifically excluded by Charter. The Building Commissioner is excluded by charter." The bottom line is the Building Commissioner, at this point in time, cannot be a Civil Servant due to the fact that he is the head of the department and any other heads of departments are excluded from being Civil Servants by Wickliffe Charter. They have to follow the Charter of the City of Wickliffe. However, the inspectors in the Building Department are not excluded and, through a process, could be brought in as civil servants. "It is the Civil Service

Commission's opinion that the best approach, if so desired, is to amend the Charter to include both the Department Head and the inspectors as Civil Servants." That was their opinion at that time based on their legal counsel.

Ron Cooper cited Ordinance 1105.2, which was read by Rich Winter, that specifically states that "the Building Commissioner shall be appointed by the Director of Public Safety with the concurrence of 2/3 of all members of elected Council and may be removed by the Director of Public Safety.....and is not subject to Civil Service." This was passed April 15, 1953. It is up to this Charter Review Commission to either recommend or not recommend the Building Commissioner be subject to Civil Service.

Jim Cain added that if the Charter is amended and changed that it could remain that way possibly forever. He was not sure whether Ray Sack, as current Building Commissioner, could be grandfathered in. Bill Gargiulo already wrote up the legal verbiage for grandfathering in Ray Sack, if the Charter Review Commission recommended it; he would have to be asked to grandfather in the Inspectors also, if they were to be included. Without the Grandfather clause, the job would be posted publicly for applicants with the base qualifications, applications accepted, there would be a test, and then the Mayor would interview based on the top scorers. Ray stated that by law, he would have to be grandfathered in, because he could not ask for something from the Charter Review Commission that would cause him to lose his job.

Cindy asked if the Building Commissioner were to be included in the Civil Service what type of backing would he/she get from the Civil Service Commission. Jim Cain responded that, essentially, classified employees' terminations would have to go through the Civil Service Commission. The Civil Service along with legal counsel reviews any appeals. A Civil Servant cannot be terminated without Civil Service Commission approval. It is another step in the process before they can be let go. Ron Cooper noted that if Mr. Sack was a Civil Servant, and he believed he was wrongly disciplined or terminated, he would come to the Civil Service Commission and ask them to make an objective decision as to whether the discipline or termination was a correct thing that happened or not. Otherwise, the Civil Servant status does not affect his job. Right now he can be disciplined or terminated by the Mayor with 2/3 Council approval according to the 1953 ordinance. Ron Cooper said that their job would not be to protect the Building Commissioner, it would be to review the reasons for his being disciplined or let go and to decide whether, objectively, it were right or wrong, in their opinion. The Civil Service Commission can overrule his being let go, in that way protecting him if indeed the circumstances were that he really should have been let go. Jim Cain said that technically the Mayor would request discipline/termination and

then the employee would have to appeal to the Civil Service Commission and they would make a decision. Joe Oboczky asked if the Mayor is bound by the Civil Service Commission decision. Ron Cooper answered that yes the Mayor is bound by their decision, but they are not sure if the Mayor can go elsewhere after the Civil Service Commission decision. The question arose as to whether or not any other cities include their Building Commissioner under Civil Service. The only city that they believe does this is Willoughby. All Wickliffe Police and Fire personnel are Civil Servants and have to go through Civil Service testing.

Ron Ely asked why Civil Service exists in Ohio and Wickliffe. Ron Cooper responded this is for 2 reasons: 1) to make sure, through a testing process, that those who are hired are qualified to be a Policeman or Fireman or for promotion within those departments; and 2) in the case of discipline or firing, to have an objective group to turn to that can oversee it. When asked what his opinion was regarding whether or not to include the Building Commissioner in Civil Service, Ron Cooper said if this Commission does recommend this, the inspectors should also be included because they also cite residents for violations. They would prefer that if the Charter Review Commission is going to change the Charter to bring in the Building Commissioner that the Charter would also be changed to be specific to include the inspectors, as well. Joe Oboczky asked if the Department Head is the only one that the Civil Service Commission cannot make a Civil Servant; they all agreed. Joe asked if they could bring in the secretaries, inspectors or anyone other than department heads. Ron Cooper believes that there is also an exception (Section 6-3) in the Charter that states that the secretaries would not be covered.

Ray explained to the group that last April 26, the Building Department got certified by the State of Ohio. This means that he, as Building Commissioner, has to have an IC Certification, which is a national test that he has to take to have his certification to run the Building Department. Also, all his inspectors have the certification and they have to take continuing education hours. They have this certification so that they know exactly what the rules are regarding building and zoning. He is required to attend a Code Academy for the state of Ohio which he will be attending next year. He did not have to get certified, he wanted to. If he was not certified, he would have to bring in someone who is certified to do inspections. Ray mentioned that the Mayor must have him rehired every year if he wants him to remain Building Commissioner.

Ron Ely asked Ray why he feels so strongly about becoming Civil Service. Ray responded it is not job security; it is having that extra step where he can go the Civil Service Commission if he feels that he was not treated right. The Civil Service Commission would then make a decision if he was or was not. Ray stressed that he has arresting powers and that his job is becoming more and more law enforcement. He believes that 20 hours of his week is involved in law enforcement. Ray appreciates this

Commission hearing him and talking with him to better understand his reasoning for asking for this Charter change. He stated this is not about him, it is about the person who is hired after him and the credibility of the department and Commissioner and inspectors.

There was much discussion to understand the duties of the Civil Service. Discussion began regarding the procedures that are put in place through the Charter. Some believe that the backing of Civil Service Commission is not necessary because the Charter has procedures in place for this. Cindy believes that the Building Commissioner is already covered by the Charter and the rules and regulations of the Zoning Board. Cookie noted that the Building Commissioner job is just as important as Police officers and Firefighters. His job is one of the most important jobs, just as people have to follow the laws regarding Police and Fire, how the people take care of their properties is as important to this city. She believes the Building Commissioner needs the backing of the Civil Service Commission. She doesn't care how much it costs. Ron Ely agrees.

Joe Oboczky feels either way, with or without Civil Service, the Mayor still needs 2/3 Council vote to terminate/discipline someone. Cindy believes it is enough that when a person is fired/disciplined by the Mayor, the Mayor has to get 2/3 Council approval. She believes that it is not very easy to discipline/fire someone unless it is justified. Joe cannot think of anyone that has been let go for political reasons. Jim Cain has been on the Civil Service Commission for 7 years, and they have never had a case like that brought before them. The Civil Service Commission has in the past but not in the past 7 years. Ron Cooper stated that this is about a Building Commissioner being able to feel secure in his job away from political ramifications of citing possibly the Mayor or members of council.

Ray has been asking since 2003 for this change, and the Civil Service Commission has told him each time that their hands are tied. Their interpretation and their separate attorney have told them that it must be changed in the Charter in order for this to occur. Cindy stated that this is not an easy process...this has to be brought to council and then to the voters. Putting this on the ballot is another expense. Ron Cooper suggested that the Charter change grandfather in the Building Commissioner and the Inspectors.

Discussion ensued regarding the testing process that is involved and how that is handled. The Civil Service Commission would have to contact a consultant to draw up a test appropriate for the Building Department and administer a test to any applicants for Building Commissioner and inspectors positions when they come up. Currently the process for a Police Department position is the Civil Service Commission tests all qualified applicants and finds the four (4) highest scoring candidates. Those four (4) then go to the Police Department for interviews and the Police Department chooses the one they feel is the best for the job. When it comes to promotions, the highest scorer

on the test gets the promotion. Ron Cooper said if the Building Commissioner were put under Civil Service, they would then be charged with the responsibility to write the rules and make that process work. The process is based first of all on qualifications for the specific job. The cost is \$10,000 for a test with scientific backing to help the Civil Service Commission find the best qualified candidate. Every time a Civil Service test is given it costs \$10,000. Ron Cooper strongly believes that the Civil Service Commission system works in regards to the hiring/promotion process that is in place.

Cindy Marino thanked the Civil Service Commission and Ray Sack for coming and noted that this will be discussed at the next meeting.

Pete Formica of CT Consultants introduced himself and Brian Rogers. Mr. Formica is a life-long resident of the City of Wickliffe and is a certified engineer. Brian Rogers is also a resident of Wickliffe and he writes the contracts. Pete began with the Wickliffe Charter Article 8 Section 7 Purchases, Contracts, Public Bidding. This states that if the City of Wickliffe wants to do any work over \$10,000 it has to be put out for public bid. This means Pete has to prepare a specification book and put it out for public bid. This dollar amount was great in 1999, because that was the state minimum. He referred to the Ohio Revised Code 735.05 that has this language in there. However, the state raises their limit every other year or so. Right now Wickliffe is still at \$10,000 and before that \$2,500 in 1989. Now the state limit is \$25,000. So when the Mayor or someone wants to put a pole barn at Green Ridge Golf Course, for example, that costs \$15,000 or \$12,000, he has to put this up for public bid. This means that we cannot just hire someone; it ends up costing the city more money. Cindy noted we are aware of this. Pete suggested that the City can change the Charter to just follow the State ordinance. The Charter Review Commission said that they have already done that. Cindy told them that the Commission passed a motion to change it to follow the state. The City's Charter is going to match the State and will change whenever the state changes. Joe Oboczky noted that the only caveat that will be put in would read that anything above 50% of what the state cap is would have to have the approval of Council. For example, the state cap is \$25,000. Wickliffe's would also be \$25,000 but anything over \$12,500 would have to be approved by Council.

Cindy Marino told them the question to them is the process of putting the ad in the paper. This Commission has come to the conclusion that it's 2008 and why put all of this information in the paper and pay for an expensive ad when it can be shortened and refer to a website for the specifications, etc. Pete told the Commission that the ads have been shortened for years now and have been referring bidders to their website (copy attached). In some cases, they may have to put some extra verbiage. Brian Rogers noted that part of the language; for example, when you get funding from certain funding agencies they require certain paragraphs as part of their funding issue.

After talking with CT Consultants, this has been taken care of. Attached is a copy of the ORC 735.05 and an advertisement for a bid from CT Consultants.

Brian suggested that the verbiage in Wickliffe's Charter that states "lowest and most responsive bidder" is incorrect language. He said that this is not what the law says and it should say the lowest, responsive and responsible. By state law municipalities, villages and cities are lowest and best. You can only be lowest, responsive and responsible if you passed an ordinance switching it from lowest and best to lowest, responsive, and responsible. He does not know if Wickliffe ever enacted this ordinance. Lowest, responsive and responsible indicates that you have to give your bid to the lowest bidder as long as they are responsive (filling out all the forms correctly) and they are responsible which means they meet the minimal requirements. Jim Schall clarified that Brian is suggesting that our Charter read lowest and best. Brian agreed unless an ordinance was enacted. Joe Oboczky stated that if we mirror the state of Ohio it is the way it should be, unless there is an ordinance conflicting with the State of Ohio. Many believe it is the Law Director's responsibility to make sure there is no ordinance conflicting with this. We already have lowest and best by default unless the ordinance was enacted changing to lowest, responsive and responsible. The Commission will talk to Bill Gargiulo about this.

The Commission then thanked Pete and Brian for coming and helping them to understand the bidding process. Cindy stated that May 27 will be the last meeting. The Commission will ask Bill Gargiulo to come to the last meeting.

Cookie LoSchiavo motioned to adjourn at 8:45 p.m.; Jim Schall seconded. All were in favor.

Maria Matiyasic, Secretary

Cindy Marino, Chairperson

Next Meeting: May 27, 2008