

**MINUTES
OF THE
SPECIAL MEETING
OF
LAKEWOOD CITY COUNCIL
HELD IN COUNCIL CHAMBERS
12650 DETROIT AVENUE
FEBRUARY 11, 2016
6:30 P.M.**

Special Meeting of the Lakewood City Council called to order at 6:30 PM by Councilmember O’Leary.

Present: David Anderson, Thomas R. Bullock III, John Litten, Cindy Marx, Ryan Nowlin, Samuel T. O’Leary, Dan O’Malley

Also Present: Mayor Summers, Law Director Butler, Finance Director Pae, Public Works Director Beno, Human Services Director Gelsomino, Police Chief Malley, Fire Chief Gilman, Planning & Development Director Siley, Human Resources Director Yousefi, Approximately 85 members of the public, members of the media.

ORDINANCE NO. 17-16 AN ORDINANCE repealing Ordinance 49-15, adopted on and effective as of December 21, 2015, in its entirety.

Council President O’Leary made opening remarks. He stated that members of the community have urged council to keep Lakewood Hospital open but that specific actions, plans, and proposals to keep it open have not been provided. He stated that Council is called upon to decide whether or not to repeal Ordinance 49-15 which it passed in December. He invited the referendum petitioner committee to give a presentation. He outlined his expectations for the meeting.

Pam Wetula, Tom Monahan, Marguerite Harkness, Edward Graham, and Dean Dilzell introduced themselves as the members of the referendum petitioner committee.

Kevin Young spoke on behalf of the committee. He shared personal accounts from the signature gathering effort, concluding that the petitions indicates that Lakewood residents want the right to decide the future of healthcare in the City and feel that there is something wrong with the current deal with Cleveland Clinic. His expressed hope that Council will act tonight so that the ballot question will go on the March ballot. He extolled the members of Save Lakewood Hospital and their credentials. He expressed hope for a collaborative effort between Save Lakewood Hospital and the City to put together the best deal. He urged Council to repeal the deal and do an open

bidding process, to seek an appraisal of the hospital, and to seek out the best operator who can run a full service hospital.

Brian Essi spoke on behalf of the petitioner committee. Mr. Essi expressed doubt that anything he said would change councilmembers' minds. He remarked on the futility of going back and forth when ultimately the voters will decide the issue. He requested that councilmembers provide their questions to the committee.

President O'Leary replied that both Council and the public are being asked whether or not to repeal Ordinance 49-15. For this reason, the committee should be prepared to make its case to voters and to council as to why the repeal should happen. He encouraged the committee to take advantage of the opportunity to speak on the issue.

Mr. Essi expressed concern about the process. He stated that assets need to be appraised and a fair, open, and honest bidding process should take place. He stated that the non-compete/restrictive clause should be removed and that the property be marketed. He criticized the Huron report. He voiced agreement with certain recommendations of the Active Living Recreation Task Force including conducting a health assessment and others.

President O'Leary opened the floor to councilmembers' questions. He stated that council is open-minded to arguments, opinions, and facts. He expressed hope for an honest and frank dialogue about what Save Lakewood Hospital is asking for. He asked the committee to explain what would happen in the immediate term to hospital operations. He asked the committee to further explain what it means by an open bid process and to provide an overall timeline assuming that the referendum were to pass.

Mr. Essi responded that it all could happen quickly with the help of a broker/dealer. He asserted that the City would be far better off than it is currently because it would have cash, bed licenses, equipment and real estate at its disposal. He recommended that the Columbia Rd. and Detroit properties be immediately listed for sale. He criticized the City and Clinic for acting on the contract knowing that the referendum was in process.

President O'Leary replied that Council needed to act swiftly because of the financial losses at the hospital. Even under the most optimistic estimates, the hospital's assets were predicted to be depleted by 2019. He said that it was misleading for Mr. Essi to say that things could move quickly as little in the process has moved quickly. He referenced Council's efforts to reach out to potential hospital operators and described it as challenging and time-consuming.

Mr. Essi countered that the hospital was financially well-positioned prior to January 2015 and that the forecasted losses were too pessimistic. He criticized the Council's informal efforts to reach out Metro and stated that it needed an investment banker to do this.

Councilmember Nowlin asked what would happen to the hospital space between now and when a replacement is found. Who would work there?

Mr. Essi responded that if the ordinance is repealed that all of the assets including the bed licenses will be returned. He said that the answer depends on the reactions that Cleveland Clinic has to the deal being undone. He said that the ER is currently run by Team Health, a subcontracted entity. He criticized LHA, remarking that it has lost credibility.

President O'Leary stated that council is reluctant to take action given the uncertainty and how that may affect the availability of emergency care to residents.

Councilmember Nowlin suggested that it was irresponsible to push people to vote on this issue without a clear path forward for continuing emergency health services. He questioned who would work at and staff a full-service hospital.

Mr. Essi urged Councilmembers to either repeal the deal or not instead of looking ahead to what would come afterwards.

President O'Leary said that Council and the citizens need Save Lakewood to make its case for repeal and what we would do if we did repeal it.

Mr. Essi replied that a fair, open, and honest bidding process would get the City a better price and better health care. He said that Team Health and Cleveland Clinic would have the choice to restore services.

Councilmember Litten remarked that he is looking for an assurance or a guarantee at a level equal to or better than the current master agreement that the City could keep uninterrupted healthcare. He indicated the concern of debt spending on a hospital.

Councilmember Bullock asked about a point of order about the process of readings. He asked if there was any recommendation if there was a strong case to re-do the process?

Mr. Essi indicated there was no public process.

Councilmember Bullock indicated the literature disseminated did not provide an accurate depiction of the facts.

Mr. Essi indicated the petitioners have asked for an election and that he has not received documents he has requested.

Councilmember Bullock indicated that if the committee's recommendation was to re-do and opt for a different outcome that he couldn't support it. He indicated that LHA and Council have worked thoroughly and transparently. He indicated he disagreed there was a flaw in the process, and that unless there were new facts it would be irresponsible to vote the repeal.

Councilmember Anderson referenced allegations that the process was illegal, dishonest and asked Mr. Essi to explain.

Mr. Essi indicated that he didn't mean illegal in the criminal sense. He said the process at LHA was deeply flawed. He stated the City's assets and property weren't properly bid.

Law Director Butler indicated that because the City was a home rule municipality it is provided freedom to navigate separate from State rules with regard to complex purchases and sales of property. He indicated Ordinance 49-15 did that legally.

Mr. Dilzell complained of the structure of the meeting and asked why the city put out to bid for all other basic items but not a hospital?

Law Director Butler indicated the City relied on LHA's recommendations and expertise, its own due diligence and its consultants. It concluded that the agreement was the best for the city.

Council President O'Leary indicated that bidding makes sense when comparing apples to apples. He indicated that reducing it to a matter of selling land will not get the best results for the city.

Mayor Summers indicated that trustees viewed responsibilities as looking at the broad view of healthcare, citizen needs, and a capable partner not just an issue of best bid. He indicated that it was not only about a bid for assets about a healthcare need within a system it was who is able and willing to commit to services? He indicated the focus was on needs and the system. Questions were discussed as to who would supply physicians? How would they be organized? Who would make such an investment? What commitment would they make? Reasonable and strategic questions that SLH should answer. Who would Surgical Development Partners partner with locally?

Mr. Essi indicated that the Mayor didn't understand how healthcare works. He said there were differences of opinion on healthcare deliver and that the City didn't attempt to find another buyer or tenant. He said this was simple and not complex. He said Council was fighting the referendum.

Council President O'Leary indicated that Council would address the question of sending to the ballot but first council must consider to repeal.

Councilmember Marx indicated disappointment that Save Lakewood Hospital elected one person to speak for it. She indicated she was offended by charges of illegality. She indicated she has worked to understand the situation and was not willing to put healthcare at risk on the chance that something would come. She said there were misleading statements and stated to stop telling community that it's not an ER. She said she was not willing to put it to bid and have no one show up. She said SDP is a venture capital and the only distressed hospital they bought went under. Akron, Parma were not put into an open bidding process when sold. Closed sales without open bidding process. She asked who would like to come in and compete with UH and the CC.

Full service ER discussion was had;

Dr. Welsh indicated that doctors in ER are Cleveland Clinic employees and board certified; Dr. Kilroy indicated the referendum was the chance Save Lakewood Hospital to make its case to the people and Council could do the same.

Council President O'Leary indicated that he was reluctant to repeal an ordinance that executed an agreement.

Councilmember Anderson indicated that absent any information that Council acted illegally rather than flawed that he was not inclined to repeal.

Councilmember Bullock asked if we should invite Surgical Development Partners to make a presentation? He indicated if there is an alternative offer then it's a game-changer. If they did make that offer then would consider changing vote.

Discussion was had on sending it to the ballot.

Letter was Read from Pat McDonald; Director; Cuyahoga County Board of Elections

I would like to provide you with an update on the status of the March 15, 2016, Presidential Primary Election, and how adding an additional issue to the ballot at this point will affect voting in the City of Lakewood, as well as the tabulation of results County -wide.

As stated in my affidavit to the Ohio Attorney General, which I have previously provided to you, the deadline to make significant changes to the ballot, and successfully administer this election in a traditional manner, was February 5, 2016. Since we are now past this deadline, the Board of Elections would have to employ unprecedented and untested procedures that would both risk the successful execution of the election as well as pose potential consternation and inconveniences to voters.

From an administrative perspective, we would have to either segregate the additional issue, or the entire City of Lakewood, from the rest of the election. This segregation would potentially require voters in Lakewood to sign two poll books, receive two ballots, and scan each ballot with a different machine. We would then have to manually combine the results on Election Night, which would significantly delay our results reporting time, not only in Lakewood, but also County-wide during what is likely to be a competitive presidential primary election.

There would also likely be substantial delays in sending vote -by -mail ballots and for early in -house voting at the Board of Elections for Lakewood voters. Voters in Lakewood would not be able to vote early at the Board of Elections for up to the first five days of early voting, thereby reducing their early in- person voting days by approximately 23 percent. Further, voters who requested a vote -by -mail ballot would experience an equivalent delay in receiving their ballot. Additionally, military and overseas voters would need to have new ballots sent to them, as their ballots were already mailed on January 30, 2016.

While I do believe that we would be able to successfully conduct this election if we had to add this additional issue to the ballot, I wanted you to be aware of the specific risks and challenges that will likely be experienced by both my staff, as well as voters in Lakewood. If you have any questions or would like any additional information, please feel free to contact me.

Motion was made to receive and file the letter from Board of Elections Director Pat McDonald. From 2/9/16. Will forward to be put on website and available upon request. Read letter.

Discussion on what would happen if council put it on the March ballot verses later ballot.

Law Director Butler indicated the Charter provides that cut off is February 14 by 4pm on 2/12 would have to deliver Ordinance to the Board.

Councilmember Anderson asked if the overseas ballots were mailed? – Jan 30th 2016. He indicated too he wanted 3 readings in December to have new council members to receive proper time.

Council President O’Leary indicated he was ready to vote indicating he had concerns about military ballots, delays in vote by mail, concerns about delay in early voting. He asked if it was sent to the ballot and voters overturned it. What would be the impact?

Law Director Butler read substantially the following statement:

Councilmembers, the question that is before you, and the question that would be before Lakewood’s citizens if this matter were put to a popular vote, is this: Should the ordinance that was adopted and signed into law on December 21 stand?

We can imagine all sorts of ramifications that are tied to the outcome of that question. I’m inclined in my role on behalf of the city government to encourage you to understand the legal ramifications. To do so properly, we must first look at what the December 21 ordinance does.

Ordinance 49-15, as far as legislation goes, is pretty simple. It authorizes the mayor to enter into a contract. We know that contract as the “Master Agreement.” The master agreement may involve a great many moving parts we’ve heard about this evening —the closure of the inpatient hospital, the amendment of the lease, the transfer of real estate, the payment of moneys, the creation of a foundation — but the ordinance itself is merely an act giving the city permission to enter into a contract.

By now, the moving parts of the contract approved by Ordinance 49-15 are certainly moving. The contract was signed. The hospital is now closed. The employees have been largely moved to other facilities or found other work. The overnight patients are gone. The doctors are gone. The Clinic operates what is now a standalone emergency department. LHA’s property at 850 Columbia Road is now the Cleveland Clinic’s property, and the city is currently \$6.8 million flusher than it was before December 21. EMS protocols governing emergency transports have changed. The community health building and a number of homes are now back under control of the city, which has in turn contracted the management of those properties to an outside entity. Additional properties —the family health center site, the Curtis Block building and a few remaining residential properties — have been prepared for transfer to various parties.

In other words, the contract authorized by Ordinance 49-15 is not latent. It’s not awaiting the approval or rejection by you or by Lakewood’s citizens. Instead, it’s actively being performed by all three parties to it, and it’s binding on all of them.

These are the same circumstances the Ohio Supreme Court considered when it decided a case out of Middletown, Ohio, in 1986. In that case, the city of Middletown entered into a contract with the Ohio Department of Transportation for road improvements. Citizens who disagreed with the ordinance authorizing that contract gathered signatures and caused a measure to be placed on the popular ballot that, if adopted, would have repealed any and all legislation enabling the road project. An election occurred, and the Middletown residents ultimately voted to repeal the legislation.

In that case, which is called *Middletown v. Ferguson*, the Ohio Supreme Court held that notwithstanding the popular vote to repeal that ordinance, the contract authorized by the Middletown ordinance remained legally binding. The court wrote that neither a legislature nor an electorate is free to impair a city’s ability to perform its obligations under a binding contract, because to do so would amount to a violation of what’s known as the contract clause, Article I, Section 10, of the United States Constitution.

The contract clause of the Constitution mandates that “[n]o State shall ... pass any ... Law impairing the Obligation of Contracts.” This prohibition reaches any form of legislative action — including direct action by the people. In other words, as the Supreme Court in *Middletown v. Ferguson* wrote, “Once having granted certain powers to a [city], which in turn enters into binding contracts with third parties who have relied on the existence of those powers, the legislature (or here, the electorate) is not free to alter the [city]’s ability to perform.”

The Supreme Court found meaningful in this case a few important facts that are significant and that are similar to our circumstances: The road construction had begun; it was well underway by the time the popular vote to repeal the legislation occurred; and the city had by then obligated itself to pay for its share of the costs. In the *Middletown* case, as in our situation, the legislation sought to be repealed authorized the city’s entry into a contract — a contract that, like the master agreement authorized by Council in December —was by the time of the popular vote actively being performed by the parties to it, well underway, with monies having changed hands and work undertaken pursuant to its terms, and was binding on all of them.

The *Middletown* case remains the law of Ohio to this day. And what its precedent means to me—someone who concerns himself with the legal ramifications of this referendum effort—is this: No matter when it occurs, this vote —an effort driven by well-meaning, hardworking people —means nothing to the legal effectiveness of the master agreement. If you or the voters vote to uphold this legislation, the master agreement will live on despite that vote. If you or the voters vote to repeal this legislation, the master agreement will live on despite that vote. This is the city’s legal position, and it’s worthwhile to share it now, before campaigns get underway and votes occur.

I would be pleased to continue to discuss my position with you at any time in the near or long term.

Council President O’Leary indicated he was ready to vote and send to Board of Elections as it was helpful to understand the implications.

He asked if all were in favor of a motion to receive and file the communication.
Motion adopted. All members voting yea.

He asked that the Law Director’s remarks to be made available to the public.

Councilmember Bullock asked to have a 2nd reading to receive testimony from any perspective suitors.

Motion by Mr. O’Leary, seconded by Mr. Anderson to place on 1st reading and refer to the Committee of the Whole.

Councilmember Litten indicated he was not present at Council’s executive sessions prior to election and would like the opportunity to be in the information discussed in executive session.

Mr. Graham indicated it was customary to have public comment before a vote.

On the motion:

Six members voting yea

Nay – O’Malley

Motion adopted. Ordinance 1st Reading & Referred to Committee of the Whole.

Mr. Graham indicated there was no valid reason delaying the vote. Mr. Graham referenced Executive Sessions - Restriction of the use of the Hospital by City. He asked why restricting use of City property could benefit citizens of Lakewood.

Mr. Graham indicated that a former administrator stated there was nothing wrong with the hospital building.

Council President O'Malley indicated that there were a number of architectural professionals commissioned to do studies who disagreed with that provided an unbiased and unvarnished, professional level, industry level report on the condition of the building.

Mr. Graham interspersed that the person running it didn't see it that way and he would be in an excellent position to make such a determination. Mr. Graham said it is unjustified to put a restriction on the use of the property.

Mr. Graham challenged the "commit to healthcare services" – indicating the contract doesn't require the Clinic to perform endlessly. He indicated that the Clinic can build the building and decide at any time to close it.

Mr. Graham indicated that in 2010 the City should have sued the Clinic when it was violating its lease agreement, contractual obligations. Mr. Graham indicated that there was no danger of the hospital going into bankruptcy. He indicated that Council was provided false information in private and asked how citizens could rely on Council. He said Council did not get input from people who didn't have a stake in the matter.

Mr. Graham referenced Law Director's statement "we just came up 6.8 million flusher". He indicated that considering Lakewood Hospital Association has \$50,000,000 which Mr. Graham indicates is really "our money" and the Foundation has \$30,000,000 stating "and that's really our money" ...

Council President O'Leary indicated that as a point of order he was not entirely sure of what the Foundation has to do with the present discussion.

Mr. Graham indicated that City Council has voted to give away millions and millions of City money.

Council President O'Leary indicated it was his concern that Mr. Graham referenced the Lakewood Hospital Foundation balance sheet as though it has some sort of bearing on the point and it does not. They're not a party to this transaction. He indicated that that's been a misunderstanding that has been heard several times from this group. He indicated that he'd like to dispel that.

Mr. Graham indicated that this was an opinion Mr. O'Leary held and that he did not agree with it.

Council President O’Leary asked for clarification – he asked if Mr. Graham didn’t agree that the Foundation was not a party to this transition.

Mr. Graham indicated he disagrees with the opinion that the \$30,000,000 in the Foundation has nothing to do with the City. It’s money that is for keeping a hospital in the City of Lakewood running so it is effectively “our” money.

Mr. Graham stated, “...to say that ‘we are 6.8 million flusher when we are deprived of all that money... in other words the Clinic is putting our money into its facility”. In the end we don’t have a Family Health Care Center. It’s not the City’s it might be located in the City but the City doesn’t own it, control it. Mr. Graham said that the Clinic can shut it any time and asked “then where are we at” – He concluded then we have “zippo”.

Mr. Graham indicated Lakewood Hospital was perfect functional before the Clinic started violating its obligation. He asked how would he know if Council did its due diligence when it held its meetings in Executive Session.

Mr. Bullock indicated that no decisions could be made in Executive Session and did not agree with narrative.

Council President O’Leary indicated a move into Public comment.

Mr. Monahan referenced a previous conversation with Mr. Marx regarding Council saving Lakewood Hospital. Discussion about hospital systems calling members of the public and not calling the mayor or one of Councilmembers.

Discussion about taxes going up – indicated the clarification about taxes going up was in reference to part of the lawsuit requested that city take over the hospital. It was stated that it was not true that the master agreement will make taxes go up. It was indicated that the electorate gets to vote if City raises taxes.

Linda Beebe – 1490 Mars Ave In favor of deciding not to repeal the ord and allow to go fwd. Looking fwd to what city has accomplished with the MA. People want to look to the future.

Mary Osburn – 1655 Elmwood indicated a Cleveland Clinic - Support the proposal to replace hosp with state of the art facility. Either support the plan or end up with nothing. She indicated Mayor Summers won election, Issue 64 failed. Wisdom of Lakewood voters prevailed. Council should not rescind its vote.

Ron Petrie - 1538 Northland

Ref. to election results. Council voted unanimously. Let’s move forward.

Ann Spence - 13939 Edgewater

Need for in-patient beds has gone down. Examples. Respect to SLH, Council, and admin.

Council don’t change its decision. Citizens have voiced their opinion by defeating issue 64 and re-electing Mayor Summers.

Pam Smith – 1528 Elmwood

Thanked Council for December decision. Saw decision not taken lightly by council. Issue was decided by nov. election results and council. Voters make choices and the city moves fwd. Asked Council to please keep its decision.

Matt Kuhns – 17305 Madison

Indicated that in the Sagamore Hills ER news the ER facility to close.

Dr. Gearganne Vartorella Council has a great realistic and sustainable plan. Will be a national benchmark for healthcare and economic development.

Bill Sanderson – 11917 Detroit

Thanks to Jenn for detailed economic analysis. Public vote was clear about what the citizens desired. Council made the correct decision. Don't repeal.

Jay Carson –

Thanks to council for diligence. Applaud leadership moving forward

Jeanne McKay – 13432 Lake Ave

Citizens being swindled. Spoke with hundreds during petition efforts. Moved by people's experience with LH. How would this actually effect resident's lives? Put the decision on the march ballot

Gerald Phillips – served on hospital expansion in 1976. Involved in keeping Metro public. Meeting is a smoke screen and dog and pony show. Council wants to delay to make a special election for lower turn out. The more its delayed...deceiving the people.

Law Director Butler indicated Council was not under obligation to act on referendum immediately. Given the opportunity to consider repeal thoughtfully. Council not obligated to send to a special election. Can be sent to November election.

Coletta Graham – 1286 Chase – support placing on ballot.

Captain Eggert – 902 Beach Rd.

What is the cash flow of the hospital? Questions about hospital's profitability. Using cash flow is a more honest measure. Creative accounting. Hospital would probably have a positive flow now

Tara Peppard – 1278 Edwards Ave

Great injustice in community. Hoping that there was reflection on repeal so city can have an open bid. \$1 million hole in income tax revenues. Tortious interference prevented offers from being made. Repeal the ord and put an open bid out.

Maryann Monahan – 1487 Waterbury – support placing on ballot

Paul Csia – 2107 Concord Dr.

Let the majority decide

Marguerite Harkness – let people decide

Ken Haber – 1789 Lake Rd

Pres of Lakewood Hospital Foundation. Lakewood Hospital Foundation not a party to the agreement. Plans to continue to exist and fulfill mission to health and wellness. He indicated they were an independent board and will fulfill its role to support community. Money doesn't belong to the Cleveland Clinic and does not belong to the City. Entrusted to foundation trustees to honor donors wishes.

Mayor Summers asked to provide information. He indicated in 2010 \$15 million was lost. It was offset but an investment gain of \$6.9 million. So that operating loss in 2010 was \$7.9 million.

Motion by Mr. O'Leary, seconded by Mr. Anderson to adjourn.
Meeting adjourn at 10:03 PM.

ADOPTED

CLERK

PRESIDENT