

**CITY OF MAPLE HEIGHTS  
SPECIAL MEETING OF COUNCIL MINUTES  
OCTOBER 26, 2015**

---

Council President Jackie Albers called the meeting to order at 7:00 p.m. at Maple Heights City Hall in Room 7. Those present were Council President Jackie Albers, Council members Alex Adams, Toni Jones, Anthony Cefaratti, Ron Jackson, Richard Trojanski, and Edwina Agee. Councilman Bill Brownlee was absent and excused.

Also present were Mayor Jeffrey Lansky, Assistant Law Director Blair Melling, Finance Director Irene Crowell, Police Chief John Popielarczyk, and Council Clerk Leonette Cicirella. Law Director John Montello, Human Services Director Linda Vopat and City Engineer Ed Hren were absent and excused.

Mr. Adams made a motion, seconded by Mr. Jackson to suspend all regular items and reports from the meeting except for the legislation. All voted aye, none opposed, the motion passed.

**LEGISLATION:**

**2015-71 A RESOLUTION AUTHORIZING SETTLEMENT OF STATE EX REL JOHN CHAPMAN, ET AL VS. CITY OF MAPLE HEIGHTS, OHIO, ET AL, CUYAHOGA COUNTY CASE NUMBER CV-15-839493. AND DECLARING AN EMERGENCY**

Council President Albers stated that the purpose of the meeting was to discuss the possible settlement of the Brownlee litigation as represented by **Resolution 2015-71** and to ask Attorney Melling any questions regarding it. Mr. Adams made a motion, seconded by Ms. Jones, to suspend the rules and place the resolution in its third and final reading.

Ms. Albers asked if there was any discussion before the vote to suspend. Councilwoman Jones asked how Mr. Chapman could file the lawsuit since he was not present at the meetings in question and why Councilman Brownlee's name wasn't also in the title of the lawsuit listed in the resolution. Assistant Law Director Melling said that any resident/taxpayer can sue under the Sunshine Laws and the captions of litigation complaints are generally titled by the first party on each side. Councilman Jackson asked since Mr. Chapman was not at the meetings, how could the actions be verified. Mr. Melling said that since these lawsuits involved public activities the actions can be verified by the public records. Mr. Melling said there were two (2) allegations in the complaint which by state law could result in a fine of Five Hundred Dollars (\$500.00) per violation. He said the resolutions of these types of lawsuits are injunctions against continuing the illegal actions alleged in the complaint. Mr. Jackson asked for clarification of the allegations made in the lawsuit. Mr. Melling said the two (2) allegations were that council held an illegal executive session during a council meeting and the second was that council failed to keep minutes of caucus meetings. He said the settlement would cover both issues.

Councilman Cefaratti asked if there was an agreement in place to which Mr. Melling said there was only a proposed judgment entry. Mr. Cefaratti said that nothing had been presented to

council though. Mr. Melling said he had been given written authorization through Council President Albers to settle the litigation for an amount not to exceed Twenty-two Thousand Dollars (\$22,000.00). Mr. Melling said the proposed judgment entry was forwarded to Ms. Albers who then notified council as to the terms of the settlement. Ms. Albers said she did not forward Mr. Melling's actual correspondence since it was marked "confidential."

Councilman Adams said he was concerned about the issue of guilt or innocence concerning Council's behavior, stating that if Council knew things were not being done correctly such as keeping the minutes, etc., they would have stopped the incorrect actions. Ms. Jones said Council acted without malice, even if it did make mistakes under the law. Mr. Melling said it wasn't an issue of guilt or innocence but a statutory requirement to take the minutes which was not done. He said the City corrected that issue, but the City's position was indefensible so the statutory damages would be awarded. Mr. Melling said the state legislature hurts communities however, by allowing the award of attorney fees which usually require expert testimony to verify.

Mr. Adams said he thought Council had acted appropriately under the Sunshine Laws when it went into executive session to question Councilman Brownlee's conduct, but he left the meeting. He said instead of working with Council, Mr. Brownlee filed the lawsuit. Mr. Melling said the problem with the executive session was that the reason given to go into executive session was not explicit enough. Mr. Melling said another problem was that since Mr. Brownlee is an elected official and his conduct involved a public issue, the meeting should have been a public meeting. Mr. Adams said Council used the executive session as a way not to embarrass Mr. Brownlee. Ms. Adams asked how the Court will resolve this issue to which Mr. Melling said attorneys cannot predict how Courts will resolve the cases before it. Ms. Albers said that given this inherent uncertainty, Council will need to decide what to do to stop the bleeding. She said since the lawsuit was at the point of depositions, there will be more lawyers involved and more money spent.

Councilman Trojanski asked how the settlement figure of Twenty-Two Thousand Dollars (\$22,000.00) was reached. Mr. Melling said he was instructed to start at Fifteen Thousand Dollars (\$15,000.00) but he started at Twelve Thousand Dollars (\$12,000.00). He said he tried to cap the damages at Twenty Thousand Dollars (\$20,000.00) but then ended at Twenty-Two Thousand Dollars (\$22,000.00). Mr. Trojanski asked how the damages would be paid such as stipulating a payment arrangement or a structured settlement. Mr. Melling said that would need to be decided.

Mr. Cefaratti said that he would vote to suspend the rules but that he would be doing so under duress. He said he did not agree with the lawsuit, that the behavior was not wrong based on precedent over a long period of time. He said furthermore he does not agree with Mr. Brownlee's actions especially since the City does not have money for lawsuits. Mr. Jacksons said he agreed with Mr. Cefaratti and that the issue of executive session is in the Charter as to when it can be called and for what can be discussed. Mr. Jackson said he wasn't sure how to vote because of the question of wrongdoing and admission of guilt and the fact that by not being named in the caption Mr. Brownlee would be hiding behind Mr. Chapman. Mr. Cefaratti continued that with regards to Mr. Brownlee's approach to resolving issues, the City can't afford litigation and Mr. Brownlee knows this, but he sued the City, not only once but twice.

Mr. Melling said again that it is not a question of guilt or innocence but that the City takes corrective action.

Ms. Jones made a motion, seconded by Mr. Jackson, to amend the resolution to add "Councilman William Brownlee" in the title of the resolution. All voted aye, none opposed, the motion passed.

Ms. Jones asked if mediation was possible to which Mr. Melling said this was not an option in litigation involving injunctive action.

Mr. Adams asked Finance Director Crowell how the City would pay for the settlement. Ms. Crowell said money would need to be cut from some other expense such as eliminating a lease or a vehicle repair or reducing the amount of salt to be purchased. Ms. Crowell said at present the City had suspended spending for the rest of the year, paying only for necessities. She said Council would be the body to decide how to pay for the settlement. Mr. Adams said he does not like the idea of settlement because by paying it, Council would be admitting guilt. He said the public won't understand the law and what Council did. Ms. Jones said Council would settle to stop the bleeding. Ms. Albers said that fact could be publicized. Mr. Jackson said he was concerned that Council would be creating a problem that others would be encouraged to sue the City for whatever reasons. Mr. Melling said the relator is limited to the Five Hundred Dollar (\$500.00) fine, and the other thousands of dollars are paid to the attorneys who profiteer from the litigation. Mr. Adams said if the Council does settle, there should be a settlement statement as to why the City settled the case.

Councilwoman Agee said it doesn't feel right to vote for settlement right now. She said Council was not guilty and the residents should be told what happened. Ms. Albers said the longer Council waits though, more money will need to be paid. Mr. Melling said that Council is no different than other councils that have been sued trying to do the right thing. He said what Council needs to do is decide whether it is appropriate to stop the litigation now or not at this settlement figure. Mr. Melling said he had tried to negotiate a settlement using his best skills within the confines of the authority given him by Council under the tight timeline given by the Court.

Mr. Cefaratti reminded everyone that this lawsuit was not covered by insurance and that if it had been covered, it would be a different matter since the City would just need to pay the deductible and could fight on.

Mr. Adams stated he is still concerned with the public perception if Council settles. He said there would still be the perception of admitting wrongdoing which could affect council members in future elections.

Mr. Melling suggested that Council amend the legislation a second time to insert in Section 1 after "by the parties" the wording "'as the most cost-effective method' to resolve the matter..." He said this would be more explanatory as to why Council agreed to settle. Ms. Albers said that regarding the issue of guilt she did not feel guilty and that Mr. Brownlee could have worked with Council but instead just sued.

Mr. Cefaratti made a motion, seconded by Mr. Jackson, to amend the legislation as stated by Mr. Melling to insert the clause “as the most cost-effective method” in Section 1. All voted aye, none opposed, the motion passed.

Ms. Albers returned to the motion to suspend the rules to which Mr. Jackson asked about the letter from Mr. Melling which was mentioned but had not been seen by the council members. Ms. Albers said she had sent the information received from Mr. Melling via e-mail to council but didn’t send the copy of the actual letter since it was marked “confidential.”

Mr. Melling suggested that Council keep the legislation on a first reading and he would make the changes discussed.

Mr. Adams asked Mr. Jackson what he wanted to question in the letter since Mr. Melling was at the meeting to answer any questions. Mr. Jackson used the analogy that a person wouldn’t sign papers to buy a car before seeing them, so Council shouldn’t vote without reading the information from their attorney.

Ms. Albers asked that Council continue with the vote to suspend the rules. There was discussion as to the number of votes needed to suspend. The council clerk asked if it was six (6) votes. Mr. Melling said it was five (5), with the number of votes determining the effective date of the legislation, for example: with a vote of 6-0, the effective date of the legislation would be upon the Mayor’s signature; with a simple majority, the legislation would be thirty (30) days after the Mayor’s signature. ROLL CALL: Adams, Yes; Jones – Yes; Cefaratti – No; Jackson – Yes; Trojanski – Yes; Agee – Yes. Council Clerk deferred to the Law Department regarding number of votes necessary to suspend with the vote of 5 ayes to 1 nay. Mr. Melling said the rules had been suspended.

Mr. Trojanski made a motion, seconded by Mr. Jackson to adopt the resolution. ROLL CALL: Adams – Yes; Jones – Yes; Cefaratti – No; Jackson – No; Trojanski – Yes; Agee – No. The vote was tied 3 ayes to 3 nays, Council President Albers voted Yes. The resolution passed by the simple majority of 4 ayes to 3 nays and will be effective thirty (30) days after signature by the Mayor.

The Meeting adjourned at 8:05 p.m.

NOTE: Upon review of the proceedings by Law Director Mr. Montello, it was determined that a vote to suspend the rules required six (6) votes, therefore the rules were not suspended and the vote to adopt Resolution 2015-71 was moot. This resolution had its first reading.

Passed: December 16, 2015

S/S Leonette F. Cicirella, Clerk of Council

