



City of Green

Central Administration
Building
1755 Town Park Blvd.
PO Box 278
Green, OH 44232

Meeting Minutes

City Council

Barbara Babbitt - Ward 1
Bob Young - Ward 2 - Vice President
Rocco Yeargin - Ward 3
Matt Shaughnessy - Ward 4
Stephen Dyer - At-Large
Chris Humphrey - At-Large - President
Justin Speight - At-Large
Molly Kapeluck, MMC Clerk of Council

Tuesday, February 6, 2018

7:00 PM

Council Chambers

I. Call to Order

The Green City Council met in special session at the Central Administration Building, 1755 Town Park Blvd., Green, OH. President Humphrey presided over the meeting which he called to order at 7:00 p.m.

II. Pledge of Allegiance - Councilmember Humphrey led the Pledge of Allegiance.

III. Roll Call of Council Members

Present: 6 - Barbara Babbitt, Stephen Dyer, Chris Humphrey, Matt Shaughnessy, Justin Speight and Rocco Yeargin

Absent: 1 - Bob Young

IV. Unfinished Business

[2018-R09](#)

A RESOLUTION APPROVING A SETTLEMENT OF PENDING LITIGATION, AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT AGREEMENT AND RELATED DOCUMENTS THERETO, AND DECLARING AN EMERGENCY.

Sponsors: Gerard Neugebauer

Attachments: [2018-R09 Nexus - Signed Legislation](#)
[2018-R09 re NEXUS Settlement.docx](#)
[Summary of Settlement Terms 2 6 18 FINAL.pdf](#)
[2018-R09 re Exhibit A Nexus Settlement Agreement & Release, Grant of Easement, RUMA, Dismissal.pdf](#)

Mr. Humphrey read the title in. He reviewed what took place at the February 5th meeting and explained what will take place both at tonight and tomorrow nights meetings. He advised there will be no public comments at this evenings meeting. He advised at the next meeting they will give 1 hour to public comment instead of the usual 30 minutes that is in the Council Rules.

V. Law Directors Overview

Mr. Humphrey introduced Law Director Mrs. Calta. Mrs. Calta asked if the Mayor could talk first to fill in some of the context on how the Administration had got to the settlement.

Mayor Neugebauer read the attached statement. (See Below)

Mrs. Calta reviewed the terms for the agreement and read the attached statement. (See Below)

Mayor Neugebauer explained what was meant by the pending lawsuits. There are four pending lawsuits and he explained each. He described the 20 acre parcel and why he asked for it. He advised \$165,000 has been spent on legal fees and a portion of the settlement will go towards reimbursing the City for cost associated with legal actions regarding the pipeline. A portion will also go for providing environment inspections during construction, to replace field four at Greensburg park. He proposes that field four be removed from service due to its close proximity to the pipeline. He said he proposed to work together with the community on how best to use the balance of the funds. He talked about the settlement and why Nexus offered so much as a settlement. First, there is a value to these easements, which the very basic is \$17,000. The more important cost is their on going cost of litigation. He doesn't think they want to fight anymore, they want to put a pipe in the ground. He also talked about the fifth fight in court regarding the ware yard. They want a certainty of their schedule. Every time the City stops them from working it creates a cost for them. He said the City defended the property owners and stood behind them during the process. All have settled but one. He advised the City has supported all the residents over the past three years. He talked about those that are near the pipeline but are not on the pipeline that feel they are impacted. Eminent Domain provides nothing if you are not impacted directly. He explained how the City made this a Federal case.

Mr. Humphrey asked Council if they had any questions regarding the settlement.

Mr. Dyer thanked the Mayor and Mrs. Calta. He asked if there were any provisions for remedies if there is a problem.

Mrs. Calta explained the process. It will first be taken to Nexus but it will not stop the City from going to the agency that oversee that piece of construction. She added that the settlement includes a layer that allows the City to immediately go back into court to enforce the settlement agreement if there are terms that are not being adhered to.

Mr. Dyer asked if Greensburg 4 was closed due to the proximity of the pipeline there are other fields that are within 1,100 to 1,500 feet that a people would not be excited to book. We may have to relocate all of Greensburg Park which would eat up a significant portion of the \$7.5 million. His concern is having Nexus pay for what we have now, just in different locations. He asked if there was a concern that all it will do is move these parks to other areas in the city and the city will be coming out as a wash.

Mrs. Calta said she wasn't sure that was a legal question but more a monetary question. She understood the concerns with the ball fields. The engineering department looked at it. If any fields are relocated the City would look to not have to duplicate restrooms and parking lots. She feels the monetary amount affords the city with many opportunities with regards to the amount of ball fields.

Mayor Neugebauer said the City has been talking to the schools about ball fields being built behind the middle school. He said the all in cost for four fields and restrooms would be \$1.7 million. It has been a back up plan because of the option of loosing the fields on the land owned by the airport.

Mr. Dyer asked if the City has talked to the Schools. The Mayor said using this money has not been talked about with the schools.

Mr. Humphrey said this money would have to follow the same process to spend this money as they do now. Mr. Humphrey talked about the options. He asked about the eminent domain proceedings and how they evaluate the land.

Mrs. Calta said in the federal court the determination is not made by a jury but by a three attorney panel which will look at the market value of the property.

Mr. Humphrey clarified they will be looking at the 2.5 acres only when they make a decision. They briefly discussed what was happening in Oberlin and compared it to the City of Green. He said in terms of eminent domain value of that property it is around \$3,500 give or take.

Mr. Speight talked about the settlement summary. He asked if the City let it play its course would any of the items in the settlement be applicable.

Mrs. Calta said that Nexus thinks they are preempted from local laws like our Road Use Maintenance Agreement. The briefings, the training, the meetings, the project liaison would all be something they would not be required to do. They will be monitoring the pipeline when it is in service. That isn't anything different.

Mr. Dyer said the Mayor laid out five reasons why Nexus wants to settle. He said some might say why wouldn't they just wait three months and not pay the City anything. He said they were good points but we might win. He said he knows the chances are slim, they were slim for the City to get the temporary stay and the City won that. He knows they are slim to win but he knows what they will be if we accept this agreement. They will be zero. Its a big decision with little time to act.

Mr. Humphrey asked when the City looks at a win in the Sixth Circuit of Appeals, the oral argument that was made last week, it was essentially the City's position that the Ohio EPA issuing the 401 and 404 permits did not adequately have the information it needed to evaluate the impact on the wetlands because some Ohio Rapid Assessments were not done to determine the impact to the wetland. If we succeed and the Sixth Circuit Court of Appeals agrees with the City, it is still not an option that the Sixth Circuit can say Green you win, there is no pipeline going through city.

Mrs. Calta explained there are no legal remedies through the current lawsuits to reroute the pipelines and she explained. She said there are other legal remedies but they do not result in a reroute of the pipeline. For example: The 401 certification, if information is found to not have been done or not complete, Nexus would be required to do it. She said they were talking low end \$17,000 or high end maybe \$100,000. There are no legal remedies available that provided direct remedy that would require Nexus to reroute the line. She did not agree with Mr. Dyers statement.

Mr. Humphrey said if the Sixth Circuit said they agreed with Green, lets send it back to the Ohio EPA. The Ohio EPA approved and issued these permits based on what the City considers to be shotty information but they went ahead and approved them. If the Sixth Circuit of Appeals tells the Ohio EPA you have to accept upgraded paperwork from Nexus then the Ohio EPA who approved this project based on shotty paperwork, you would fully expect to approve based on the improved paperwork.

Mrs. Calta said she did not think there would be a new approval, they would just accept the paperwork.

Mr. Humphrey asked Mrs. Calta if she saw any path for the City of Green to have, at this point, to have the pipeline rerouted outside of our community. She said she did not.

Mr. Dyer clarified that he did not say this pipe could be reroute. He thinks the City could win some cases that delay and delay and maybe they don't reroute the whole thing but maybe away from our parks.

Mayor Neugebauer said part of the original plan present to Council a year ago, approved the Administration to move forward in preparing for litigation. At the time FERC did not have a quorum. The city's strategy was to slow things down and make Nexus make an economical decision not to come through Green. We wanted to throw up barriers to make it impossible for them to come through Green. The team that worked on that did an excellent job. Ultimately, since the City made that decision, FERC got their quorum and within 30 days with two new members they were able to make an important decision to approve the Nexus pipeline. So the City went to the Ohio EPA and said you are given up to twelve months to review this 401 certificate, we think it would be a good idea if you take your time on that process. He said, in fact, Lt. Governor Mary Taylor actually did write a letter to the Ohio EPA that said politely for them to take their time. The Ohio EPA issued their decision well under 30 days. The dominos kept falling. Nexus was given eminent domain authority. They don't have to buy the land from us, they have the right to take it. If we don't agree on a payment, they can still build the pipe and come later and talk about the value. This all forced the City to negotiate.

Mr. Shaughnessy asked if the City argued the public purpose requirement of the eminent domain. Mrs. Calta said it was and explained it was denied. When the eminent domain was filed, Nexus filed a partial motion for summary judgment arguing they had the right of eminent domain. In response to that motion the City argued that the City had a public purpose and our public purpose would trump their public purpose. There is no federal legal case precedence on that but they did make that argument and that was denied. The court granted Nexus the right of eminent domain.

Mr. Shaughnessy asked if the City argued that they did not have a public purpose. Mrs. Calta said yes, because the City has a public purpose. Mr. Shaughnessy said that it did not make sense. Mrs. Calta explained the City's land is a public use. Mr. Shaughnessy said their issue should be independent as a private company. Whether they are doing something for a public purpose is independent of the land they want to cut through. Mrs. Calta apologized and said he was new to Council and those briefings were filed in October, November, December and she can get them for Mr. Shaughnessy.

Mr. Humphrey asked Mrs. Calta how many years experience does she have in eminent domain. She replied approximately twenty years and added that she learned about eminent domain when she was in middle school because her father had a business that was taken by eminent domain by the state, moved the business and the next piece of property was taken by the federal government.

Mr. Yeargin asked Mrs. Calta asked if the City retains the ability to sue if anything goes wrong in the future. Mrs. Calta said the City did maintain that right.

Mr. Humphrey advised the next meeting will be Wednesday night and explained the procedure again.

Discussion took place regarding time limit for Council to speak at the Wednesday meeting. It was decided each would get up to 7 minutes.

[TMP-1931](#) Mayor's Statement regarding Settlement Agreement.

Attachments: [2-6-18 Nexus Settlement Mayor Update\[2379\]](#)

[TMP-1933](#) Law Director, Diane Calta's Statement regarding Settlement

Attachments: [2-6-18 Calta's statement](#)

[TMP-1912](#) Summary of Settlement Terms

Attachments: [2018-R09 Summary of Settlement Terms 2 6 18 FINAL](#)

VI. Adjournment

Mr. Dyer moved to adjourn at 7:56 p.m.

ATTEST: _____
MOLLY KAPELUCK, CLERK OF COUNCIL

APPROVED: _____
CHRIS HUMPHREY, PRESIDENT

Upon approval by City Council, this official written summary of the meeting minutes shall become a permanent record and the official minutes shall consist of a permanent video recording, in accordance with Green City Council Ordinance 2014-12, adopted on November 25, 2014.