

**From:** nbrazz@gmail.com <nbrazz@gmail.com>  
**Sent:** Tuesday, May 8, 2018 9:20 AM  
**To:** Justin Speight <jspeight@cityofgreen.org>  
**Cc:** Molly Kapeluck <Mkapeluck@cityofgreen.org>  
**Subject:** Resolution 2018-R09 Referendum Effort

Greetings Councilman Speight,

We are writing to you today to express concern over the continuing efforts by a small group of residents to cause a negative outcome that would be devastating to the community as a whole. We speak, of course, of the ongoing issue of the referendum that would nullify the settlement agreement with Nexus.

At a prior Council meeting (March 27, 2018 Committee Meetings) you assured Council that the petitioners would withdraw their support of the referendum if there was no benefit to be gained by its passage. Are you now prepared to do the honorable and correct action for the city and call upon the referendum supporters to drop this matter?

We want to know, explicitly, what any perceived benefits of a "yes" vote are, given that there is now a 0% chance of the courts taking any action to change the reality - that this pipeline is going into the ground and that gas will be flowing through it by Q4 of this year. If you are not directly aware of what any benefits are we implore you to challenge this petitioner group to produce well-reasoned, researched conclusions (with supporting evidence) as to why this referendum action should continue.

Specifically, you should require that any legal opinions on the benefits of the referendum would be supported by the relevant case law citations and with an attorney's name and registration number attached to it. Facts matter, we want to see them. Anyone can claim anything on Facebook. Produce a compelling argument as to how this referendum would benefit all the residents of the city or withdraw it.

Below, are some personal opinions on the arguments for the referendum that we have seen supported in discussions before Council and online.

Before we engage in an issue by issue analysis we would like to stipulate some facts and assumptions regarding this analysis.

1. The pipeline would be under construction with or without the settlement. The Federal District Court granted the necessary preliminary injunctions for Nexus to take the land in contest and begin work on April 5, 2018.
  - a. The moment to stop the pipeline was before it received FERC and Ohio EPA approval.
  - b. Side note - it should be a given that the city should conduct an extensive retrospective on how this issue was handled. In hindsight, the place to stop this pipeline was the Ohio EPA. If half of the outrage and activity over this referendum had been directed toward the EPA prior to their decision, then perhaps there would never have been a pipeline.
2. The expedited time table for Council to discuss and consider the settlement was due to the fact that the Sixth Circuit Court of Appeals was likely to lift the stay of construction that was ordered

on November 22, 2017. The cause of this time table was due to the fact that oral argument was heard on January 31, 2018 and the court was likely to make a decision in the fairly immediate future.

- a. The bat deadline was a non-issue for any time table for negotiations as evidenced by the FWS Biological Opinion.
3. \*Assumption\* Nexus had strong incentives to negotiate with the City of Green to reach a settlement. Nexus's primary goal is to construct the pipeline and put it in the ground as soon as possible. The stay of construction was a major hurdle to them accomplishing this goal. Therefore, it follows that they were brought to the table to remove this obstacle, so they could start construction.
4. The lawsuits that were dismissed cannot be refiled, and the settlement agreement cannot be altered.
5. The former Law Director and outside counsel retained by Council and the City used their expertise to obtain the best negotiated deal out of any municipality in Ohio.
  - a. This is not to say that it is the best deal possible, but empirically no other municipality received a settlement that matches the scope or scale of the one accepted by Council.
6. Nexus has engaged in bad behavior in the past and these acts do deeply disturb us. A settlement is a legally binding contract that has legal remedies available to seek enforcement of the terms.
  - a. Acceptance of the settlement did not constitute a pro-pipeline action. Here, here, and here are examples of what pro-pipeline rhetoric looks like.
7. We are not Nexus shills. We are just as unhappy about the pipeline affecting our City as anyone.
8. This discussion is not about the right to referendum. We support that right under the Ohio Constitution and ORC. This is about the *consequences of this referendum*.

For each of the following issues we ask, "how does an affirmative vote for the referendum address this issue?"

- The City should have negotiated to move the route off City property.
  - Rejecting the settlement does not allow the City to renegotiate this.
  - Personally, we think it is better for the City's land to soak up the easements rather than affecting private landowners' deeds.
- There is pending litigation that could stop the pipeline if successful.
  - The courts granted a preliminary injunction to allow Nexus to possess that contested land.
  - If that litigation is successful, then the entire project will be halted anyways.
  - Rejecting the settlement does not affect the outcome of that case.

- *This is probably the crux of any argument in support of the referendum - but as mentioned before, there is now a 0% chance that the courts will act to stop this pipeline. If any attorney claims otherwise, they should offer convincing evidence of a legal strategy that is likely to prevail, and such legal strategy should be presented for an independent analysis (evidence matters - anyone can say anything on Facebook).*
- Procedural concerns (new members of council, three-day passage, one-hour of public discussion, charter provisions)
  - Rejecting the settlement does not affect any of these issues.
  - Communication improvements are necessary to ensure that everyone is operating with the same facts.
  - The public only spoke for 44 minutes and did not max out the hour allotted for comment.
  - The charter needs some TLC. It has many provisions in conflict with the ORC and Ohio Supreme Court decisions.
- The settlement did not adequately require enough safety features.
  - Rejection of the settlement does not mean the addition of more safety features and it does mean the removal of the non-required safety provisions contained in the agreement.
  - The settlement money can be used for ensuring the safe operation of the line.
- The probability of an accident occurring.
  - Rejection of the settlement does not reduce the likelihood of an accident occurring for the pipeline.
  - I will defer to the Pipeline Safety meeting for an adequate discussion of this topic.
- If the referendum has no benefit, why has Nexus filed a protest with the BoE?
  - One benefit of the settlement is that there is certainty provided by its existence. This helps Nexus accomplish its primary goal.
  - They (and the City) are required to defend the settlement's existence.
  - Stopping it at the BoE level is cheaper than fighting it through the Ohio courts.
- Why has the City changed its tone and language concerning the safety and concerns of the pipeline?
  - Prior to the settlement and resulting court decisions the primary goal of the City was to stop the project from entering Green entirely. As such, it was more effective to use more evocative language and focusing on the magnitude of an incident rather than the probability.

- The settlement language “City agrees to: ... cooperate with NEXUS to defend against and oppose any efforts by third parties to challenge this Agreement.”
  - An affirmative vote on the settlement could potentially destroy this language, but at the expense of all the consideration of the settlement.
  - The settlement does not outline the extent, nor scale of such cooperation.
  - Generally, people don’t create contracts with the intent of allowing parties to challenge them. Remember, Nexus wants certainty above all else.

As we have noted before, it would certainly be advisable to do a retrospective on the way the city has handled this crisis, particularly focusing on the messaging strategy and how communications were handled

Mr. Speight, we voted for you because we think you are an honorable person and committed to filling the role of an at-large council person - someone who represents the interests of ALL the residents of Green, not just those of a small minority (no matter how vocal they may be). Please show us we are not mistaken - it is time to honor your earlier statement about the referendum supporters pulling this initiative since it now can do nothing except harm the city. It is time to speak out and withdraw your support for this referendum.

Regards,

The Braswell Family

Steven, Marie, Nathan and Lauren Braswell