Mayor Infeld called the special meeting to order at 7:35 p.m.

Roll Call: Present: Ms. Frankie B. Goldberg
Mr. Steven D. Bullock
Mr. Kevin Patrick Murphy
Mr. Frank Consolo
Mr. Steven Sims

Absent: Mr. Phillip Ertel
Mrs. Susan D. Pardee

Also Present: Law Director Kenneth J. Fisher
Clerk of Council Nancy E. English
Finance Director Jennifer Esarey
Interim Chief of Police James Williams
Fire Chief John Pitchler

MOTION BY MS. GOLDBERG, SECONDED BY MR. BULLOCK to excuse the absence of Mr. Ertel and Mrs. Pardee. On roll call, all voted “aye.”

Mayor Infeld mentioned that Councilwoman Pardee was absent due to a family illness. She was not aware of the reason for Mr. Ertel’s absence.

Agenda Item:

A. Ordinance No. 2011-38 Conferring power upon the City Planning Commission to investigate, review and consider conditions 7, 8, 9, 10, 15, 16, 21 and 28 of the September 23, 2002 City Council motion approving use of John Carroll University’s Don Shula Stadium and make recommendations to Council concerning the elimination and/or modification of these conditions and/or the creation of new conditions.

Ordinance No. 2011-38 was presented on emergency to confer power upon the City Planning Commission to investigate, review and consider conditions 7, 8, 9, 10, 15, 16, 21 and 28 of the September 23, 2002 City Council motion approving use of John Carroll University’s Don Shula Stadium and to make recommendations to Council concerning the elimination and/or modification of these conditions and/or the creation of new conditions.

Councilman Consolo stated that he prepared the ordinance which came out of the July 18, 2011 Council Committee of the Whole meeting where the recommendation at that point was for the Planning Commission to consider John Carroll University’s request, which centered around conditions 7, 8, and 9 of the September 23, 2002 motion by Council setting forth the conditions for Don Shula Stadium. However, at the Committee of the Whole meeting, several points were raised by John Carroll University (JCU), the residents and the Council members. Therefore, the Council’s recommendation was to have the Planning Commission investigate and review all the conditions of the 2002 motion, especially those conditions relating to the use of sound and lighting, which is the basis of the ordinance. He mentioned that the ordinance was also prepared because the Planning Commission agenda for August 8, 2011 seemed to be limited to JCU’s request only.

In light of a letter that the Council received on August 1, 2011 from Maria G. Alfaro-Lopez, General Counsel of John Carroll University, which put the City on notice of potential legal action for going outside of the University’s request, Councilman Consolo explained that he specifically requested that several other conditions 10, 15, 16, 21, and 28 be reviewed. His rationale for that request came from the January 12, 2009 document which was sent to the University Affairs Committee from Dora Pruce, Director of Government and Community Relations at JCU. That document touched upon conditions that the University wanted amended. Councilman Consolo stated that the January 12, 2009 document has validity and should be reviewed by the Planning Commission. He added that the Council wanted the Planning Commission to review some other items as well so the additional conditions were added.
Councilman Consolo distributed and reviewed the document entitled, “University Heights University Affairs Committee Working Session, Comments by John Carroll University, January 12, 2009, 7:00pm.” He indicated that the second paragraph of the document reads, “We also wanted to take this opportunity to state that this document has been reviewed and agreed to by Father Niehoff (and will have the action and support of the Board if and when it is needed.)”

Councilman Consolo stated that the January 12, 2009 document included the list of conditions from Council’s September 23, 2002 motion with respect to Don Shula Stadium, which the University altered and added comments for amended language. The conditions in question started on the eighth page of the document. In the document under condition 7, the University’s original request was for the language to be amended to allow lights and sound until 11:00pm, but now the request is for lights only until 11:00pm. Condition 8 limits use of the stadium to John Carroll University only with the exception of high school practices during the daytime. The University requested that the language be amended to allow five (5) night games per semester without prior approval of the City. With respect to Condition 9, the University repeated its request to allow five (5) night events per semester without stating the type of event such as various games, outside events, etc.

In regard to the additional conditions to be reviewed by the Planning Commission, condition 10 relates to the speaker system and bands. In the document JCU had requested use of the sound system from 8:00am to 11:00pm daily, however, they have since dropped the sound portion from the request. Councilman Consolo noted that he wanted condition 10 to be included because of their sentence which reads, “We will commit to not increasing the decibel level and commit to inspecting the system so that the sound it directed toward the field and not the community.” He added that the ordinance empowers the Planning Commission to give careful consideration to the sound system as the University indicated it would as well as the possibility of using experts to inspect the system.

Next, condition 15 deals with parking and shuttle bus service. In the January 12, 2009 document, John Carroll indicated that “Shuttle bus service is not needed: we have found that for any varsity game, our other lots are empty, so parking is not an issue.” Councilman Consolo stated that it is appropriate for the Planning Commission to look at condition 15 to determine if it should be eliminated.

The Committee of the Whole also requested that condition 16, which deals with the amount of illumination of the lights during varsity games (75 foot-candles) and intramural sports (30 foot-candles), be reviewed by the Planning Commission. This condition was struck out in the University’s January, 2009 document. Councilman Consolo stated that it is the Council’s obligation to ask the Planning Commission to review this condition to determine if the intensity of the lights is reduced during intramurals.

Condition 21, which deals with the design of the lights and various elements to control light spills, was also struck out by the University in its January, 2009 document as a condition the University believes is no longer necessary. Mr. Consolo mentioned that this condition should be presented to the Planning Commission to ensure that the inspection of the lighting has been done as indicated in the last sentence in the fourth paragraph on the second page, which reads, “We will also commit to having a professional look at the lighting to ensure if shields should be installed.”

Condition 28 deals with installation of a sound wall/fence plus mounding with landscaping on the east side of the JCU property which backs up to the Claver Road residential properties. In the January, 2009 document the University indicated, “We will consider looking into this and will confer with Claver Rd. residents.” Councilman Consolo stated that the Council Committee of the Whole requested that the Planning Commission consider this item to determine the status of the landscaping and how it affects the sound.

Councilman Consolo reiterated that the concern for lights, sound and parking was the rationale behind the recommendation at the July 18, 2011 Council Committee of the Whole meeting as well as resident comments and also the rationale as to why they are included in Ordinance No. 2011-38. He noted that the ordinance clarifies for the Planning Commission what the Council wants it to do. Councilman Consolo added that hopefully the Planning Commission will conduct an investigation and review, and then present a report and recommendation to the Council.

**MOTION BY MR. CONSOLO, SECONDED BY MR. SIMS to approve the passage of Ordinance No. 2011-38 as an emergency measure.**
Mayor Infeld commented that she believes Ordinance No. 2011-38 violates the City Charter for the Council to give such level of direction to the Planning Commission. She added that the Charter in Article 7, Section 2, the second paragraph reads, “The City Planning Commission shall have such powers as may be conferred on it by ordinance of the Council concerning the plan, design, location, removal, relocation and alteration of any public buildings or structures or those located on public streets or property; the location, relocation, widening, extension and vacation of streets, parks, playgrounds and other public places, the approval of plats for the subdivision of land; the zoning and rezoning of the City for any lawful purpose and such other powers as are now or may hereafter be conferred upon it by ordinance of the Council or the general law of Ohio.” Mayor Infeld stated that, within her estimation, the use of private property does not fit within that definition.

Mayor Infeld expressed concern of the Council broadening upon an agreement that was made almost 10 years ago, which she believes was a covenant entered into between the City and the University allowing John Carroll University to use its land. She added that if Council chooses to violate that covenant it may have severe and unintended consequences for the City in terms of any entity’s ability to believe that the City will follow through on its commitments. She was also concerned about what message it would send to the business community. Mayor Infeld was not in favor of the ordinance.

Mayor Infeld also noted that it is not the Council’s obligation to ask the Planning Commission to look at the use of private property. Further, she did not think it was in Council’s purview to clarify what the Council wants the Planning Commission to do. She added that the Planning Commission has a directive established by Charter and did not think it was appropriate for the Council to try to direct the Planning Commission.

In regard to having the Planning Commission investigate whether the lighting at the stadium has been reviewed, Mayor Infeld was concerned because the Council heard three (3) presentations from the University and had ample opportunity to ask whether the studies had been done and request to see them. She also expressed concern that the Council was putting off a decision which will eventually return to the Council. Mayor Infeld stated that Council’s action was not sending a good message to the region as to how the City of University Heights works with its partners.

Councilman Sims noted that the ordinance was drafted and included in the Council’s packets on Friday, July 29, 2011. He asked Mayor Infeld if she had communicated her concerns relating to this matter to the Council. Mayor Infeld responded that she just found out about the ordinance over the weekend and this meeting was the first time she had seen the Council members. Councilman Sims stated that this was an example of the lack of communication between City Council and the administration and often times it is an absolute lack of communication that emanates from the office of the Mayor. Mayor Infeld stated that the Council meeting was called by two (2) members of Council and a notice as sent out on Friday announcing a special council meeting, but she did not know what was going to be on the agenda. She added that this is a daunting item which was introduced by Council and the meeting was only called Friday afternoon in enough time to give public notice, which was appropriate and proper, but there was no communication to her that the ordinance was to be considered by Council. Therefore, Mayor Infeld made her comments at this meeting and reiterated that she was not in favor of the ordinance. Councilman Sims commented that the Mayor did not have to be in favor of the ordinance, but they have to work together. He added if those were her feelings then he would have expected her, as a courtesy to the Council, to communicate her feelings in advance of the meeting if only to the Vice Mayor.

Councilman Consolo reiterated that the ordinance evolved out of the recommendation made at the July 18, 2011 Council Committee of the Whole meeting where all the points contained in Ordinance No. 2011-38 were made during that meeting. He requested that the Law Director comment on the Mayor’s thought that the ordinance violates the Charter.

Law Director Kenneth J. Fisher stated that it was his position that Ordinance No. 2011-38 does not violate the Charter. He stated that language under Article 7 of the Charter is very general and although there are many specific provisions, the catch-all phase in regard to the Council establishing and conferring powers upon the Planning Commission reads “…for any lawful purpose and such other powers as are now or may hereafter be conferred upon it by ordinance of the Council....” Mr. Fisher did not comment on the substance of the ordinance, but noted that it was correct as to form.
Councilman Consolo clarified that by passing the ordinance, the Council was not making a decision at this meeting whether to maintain, eliminate, or modify any conditions or even comment on the use of the stadium, rather they are asking that the Planning Commission help by reviewing the matter and presenting its report and recommendation to the Council.

Mr. Fisher stated that the request from John Carroll University was considered at the June 20, 2011 Council meeting. At that meeting, Council decided to hold public work sessions, which took place on July 11, 2011 and July 18, 2011. He mentioned that Council decided at the July 18, 2011 meeting to refer this matter to the Planning Commission. Mr. Fisher advised that the Planning Commission does have jurisdiction of the matter and that Ordinance No. 2011-38 is consistent with the motion made on July 18, 2011. He added that the Planning Commission has been convened by the Mayor for Monday, August 8, 2011 and the matter will go forward. Mr. Fisher noted that the request from the University is a proper request to modify conditions as it relates to the use of the stadium. He added that the Planning Commission will consider the matter and make a recommendation to the Council after looking at all of the various issues.

Councilman Bullock stated that he is supporting the ordinance and he hopes they can focus on making the modifications that make the relationship better, which is what he expects to come out of the discussions to held by the Planning Commission and when the recommendation is made to the Council. He added that this action is about trying to resolve issues, not about finding anyone in violation. Mr. Bullock encouraged everyone to focus on efforts to resolve their issues. He added that it does not solve anything for John Carroll’s general counsel to send letters stating that the University is going to take the City to court. Mr. Bullock expressed that he believes they have a chance to resolve a lot of the issues and make things better for the University and for the residents. He mentioned that at the work sessions, they saw the history where John Carroll University and the City grow up together and now they just have relate to each other differently. Mr. Bullock suggested that the University and the City work out how they relate to each other so that the University can do its work and the City can provide for the safety and comfort of the citizens.

Mayor Infeld expressed concern that JCU came to the Council with a request to change three (3) conditions and the Council expanded upon that request. She stated that it is tremendously unfair to the University and makes it look as if the City does not keep its word. She added that the City has to keep its word to its business partners; otherwise, the City will get a reputation that it is unfriendly and not a reliable partner.

Vice Mayor Goldberg stated that the Council is entrusted to keep its word to the residents. She viewed this as an opportunity for a fresh set of eyes to look at the recommendations which were made in 2002. If items, such as lights, are not working and are having an adverse impact on the residents, they should come back and be reviewed. She suggested that this be looked at as an opportunity to talk about compromise, to talk about the future and working together. Vice Mayor Goldberg emphasized that the Council is entrusted with quality of life issues for the residents in the area and the city. The Vice Mayor added that she will do everything she can to protect the quality of life for the residents and for John Carroll University to succeed, grow and be the best university it can be.

Councilman Consolo renewed his motion to pass Ordinance No. 2011-38 on emergency.

Prior to a vote on the motion, Mr. Fisher mentioned that, he received a letter, dated August 1, 2011, from Maria G. Alfaro-Lopez, General Counsel of John Carroll University, notifying the City as to their specific objections. He added that Mrs. Alfaro-Lopez is a tough advocate for her client, but she is also fair and professional. Therefore, he did not take exception to her expressing the position of her client. Mr. Fisher stated that he will respond to the University in writing.

Councilman Sims clarified that the ordinance does not instruct the Planning Commission to do anything other than investigate, review and consider the conditions. He noted that as far as the genesis of the ordinance is concerned, he specifically asked why they could not ask the Mayor to add these items to the agenda because there was a concern that the Planning Commission was going to meet and not consider the additional items that had been requested of the Mayor, specifically. Mayor Infeld stated that she did not understand Mr. Sims’ line of reasoning. She added that she has a different viewpoint and thinks that the University’s request should be honored.
VOTE ON THE MOTION BY MR. CONSOLO, SECONDED BY MR. SIMS to approve the passage of Ordinance No. 2011-38 as an emergency measure. On roll call, on suspension of rules, all voted “aye.” On roll call, on passage, all voted “aye.”

Councilman Consolo noted that he will provide the Clerk with a copy of the January 12, 2009 document for the record.

There being no further business to discuss, the special meeting was adjourned.

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Susan K. Infeld, Mayor

Nancy E. English, Clerk of Council