Mayor Infeld called the regular meeting to order at 7:32 p.m.

Roll Call: Present: Ms. Frankie B. Goldberg
Mr. Steven D. Bullock
Mr. Kevin Patrick Murphy
Mr. Frank Consolo
Mr. Steven Sims
Mr. Phillip Ertel
Mrs. Susan D. Pardee

Also Present: Clerk of Council Nancy E. English
Law Director Kenneth J. Fisher
Finance Director Jennifer L. Esarey
Chief of Police Gary Stehlik
Fire Chief John Pitchler
Building Commissioner David menn
Service Director Christopher Vild
City Engineer Joseph R. Ciuni

Pledge of Allegiance

Minutes of the public hearing held on June 21, 2010

There were no corrections or additions to the public hearing minutes of the June 21, 2010.

MOTION BY MRS. PARDEE, SECONDED BY MR. ERTHEL to approve the minutes of the public hearing held June 21, 2010. On roll call, all voted “aye.”

Minutes of the regular meeting held on June 21, 2010

There were no corrections or additions to the minutes of the June 21, 2010 regular meeting.

MOTION BY MS. GOLDBERG, SECONDED BY MR. BULLOCK to approve the minutes of the regular meeting held June 21, 2010. On roll call, all voted “aye.”

Minutes of the special meeting held on July 26, 2010

There were no corrections or additions to the minutes of the July 26, 2010 special meeting.

MOTION BY MR. BULLOCK, SECONDED BY MS. GOLDBERG to approve the minutes of the special meeting held June 7, 2010. On roll call, all voted “aye,” except Mr. Bullock, who “Passed.”

Minutes of the special meeting held on August 23, 2010

There were no corrections or additions to the minutes of the August 23, 2010 special meeting.

MOTION BY MRS. PARDEE, SECONDED BY MR. CONSOLO to approve the minutes of the special meeting held August 23, 2010. On roll call, all voted “aye.”

Comments from the Audience:

Winifred Weizer, 2177 Jackson Blvd., addressed the Council about John Carroll University’s (JCU) request for a transitional use special permit through the Board of Zoning Appeals (BZA) for the property located at 4070 Carroll Boulevard. She expressed concern that the structure in question sustained significant damage because it was vacant and the university was unaware that the heat was off and the pipes had frozen and burst.

Ms. Weizer stated that any home which has been vacant for an extended period of time and is damaged by water or lack of maintenance directly impacts the housing values of the homes that surround it. Therefore, she requested that the City administration work with JCU to determine how many of its properties are in the same condition as the house at 4070 Carroll Boulevard.
Ms. Weizer also suggested that legislation be passed to require interior inspections on homes that are vacant for more than 6 to 12 months and owned as investment property to insure that appropriate maintenance is being done on the property.

Ms. Weizer was also concerned about the statement made by JCU’s attorney that any property used for university operations would be subject to an appeal for relief of property taxes. She suggested that JCU apply for a zoning change if it wants to permanently make the site one for university operations that would qualify for tax relief. Ms. Weizer was hopeful that the Mayor and Council would take this into account when proceeding with this issue. She was also hopeful that JCU would be required or voluntarily agree to leave the tax status of the property as it is currently if it wishes to continue with a permit that must be renewed annually.

Patrick Murphy, 4090 Carroll Blvd., inquired as to the results of Council’s August 31, 2010 work session regarding the appeal of the BZA’s decision regarding 4070 Carroll Boulevard. Mayor Infeld responded that a proposed motion was drafted by the Council with additional conditions and John Carroll University submitted a revised proposed motion for Council’s consideration at this meeting.

Bernard Udelson, 4110 Carroll Blvd., inquired if John Carroll University would be able to use 4070 Carroll Blvd. for any use if the special permit is granted and the ROTC outgrows the space. Law Director Kenneth J. Fisher stated that the request for the transitional use special permit is specific to 4070 Carroll Blvd. and only for the ROTC use. He added that the property is zoned U-2, Two-Family Residence District, and the property will remain U-2 and not be rezoned to the U-5, University-College District.

Reports and Communications for the Mayor and the taking of action:

Mayor Infeld announced that the City received a $10,000 grant from the Northeast Ohio Regional Sewer District to develop the lot at 2603 Ashurst Road into a rain garden. Service Director Christopher Vild reported that the property has historically flooded properties immediately to the north and up to Bradford Road. Because of the flooding issue, Mr. Vild stated that the City applied for a small scale demonstration grant to be used to contain storm water on the property and to landscape and beautify the property.

Councilman Sims requested that a copy of the grant application be shared with the Council. He asked if there is a cost to the City with respect to receiving the grant. Mr. Vild replied that the City is obligated to provided in-kind service. Mr. Sims stated that at some point Council would have to accept the grant. Mayor Infeld stated that the Council can receive a copy of the application. She noted that grant agreement was received on September 7, 2010, and forwarded to the Law Director for review and approval as to form. Mayor Infeld added that once the funds are received, Council would hopefully accept them.

Councilman Consolo inquired if the Council formally agreed that this was the direction it would take with respect to the property. He added that the rain garden was one of the options, but a conclusion had not been reached. Mayor Infeld stated that she does not remember Council coming to a decision regarding the lot. But, there is an immediate water remediation issue that needs to be corrected and the funds will help to alleviate that water problem by creating mounds and swales to direct and contain surface water on the property. Mr. Consolo stated that the City expended funds relating to the property and there was discussion when the City took over the property that action would be needed from Council regarding the use of the property. He asked if that was still the case. Mr. Fisher stated that he would have to research the matter, but he noted that Council does have input as to how the property is to be handled. Mr. Consolo inquired if there has to be formal action by the Council. Mr. Fisher mentioned that he just received the agreement and has to review it, but certainly Council is involved.

Mayor Infeld noted that residents from Ashurst Road attended a Council meeting in April and May and weighed in on the possible use of the property. Mr. Consolo agreed, but he also remembered about asking about a water supply to the property and as to who will pay for the water when the idea of a garden was discussed. Councilman Consolo mentioned that the grant is a good idea, but a step was missed in process. Mayor Infeld stated that the grant application was produced administratively. She noted that the plantings would fit the property and help to alleviate a water problem on the site which is impacting the neighbors.

Linda Johnson, 2604 Ashurst Rd., stated that her recollection of the meeting was that the application was going to be submitted and then depending on the response there would be discussion following.
Mayor Infeld noted that a copy of the grant application would be included in the Council’s packets this week. She stated that the City has the option of not accepting the grant. But, it was her hope that the City would take advantage of the opportunity to develop the green space for community use. She requested that the Council review the information and get back to her. Mr. Consolo requested that information also be included in the packets on how water will be provided to the property and how it would be paid for.

Mr. Vild mentioned that the design of the garden would be such that the native plants used will not require as much water as a flower garden or vegetable garden. He added that planting in the fall will reduce the need for watering to get the plants established. Mr. Vild noted that if city water was to be used a meter and vault would have to be installed in the tree lawn, but no plans have been made to do that. He added that water could be provided by the sewer jet. Mr. Consolo requested that the information be included in the packets. Mayor Infeld stated that there has been positive feedback from the neighbors assuring that they would help tend the garden.

Mr. Fisher stated that an agenda item will appear on the next Council meeting agenda so there is opportunity for Council to have input and accept the grant.

Mayor Infeld also announced that the City received an EMS grant award of $3,450 from the Ohio Department of Public Safety. Fire Chief Pitchler explained that revenue is collected by the State Highway Patrol from people who do not wear their seat belt. The funds collected are allocated to the EMS and distributed annually to all municipalities in the state that provide EMS service in order to purchase equipment.

**Agenda Items:**

A. **Appeal to the Board of Zoning Appeals decision of June 16, 2010 regarding the approval of the application by John Carroll University for a transitional use special permit in order to use the residential property located at 4070 Carroll Blvd. for offices and administrative activities of the ROTC with conditions. (Continued from August 23, 2010)**

This item was tabled at the August 23, 2010 special council meeting for further discussion.

At its meeting on June 16, 2010, the Board of Zoning Appeals (BZA) passed the following motion with respect to the application of John Carroll University:

“MOTION BY MR. COZZENS, SECONDED BY MR. ADANTE to grant a transitional use Special Permit to John Carroll University for the property located at 4070 Carroll Blvd. to be used to house the ROTC and academic offices of the Department of Military Science, subject to the following conditions: hours of operation shall be from 6:00 a.m. to 6:00 p.m. with limited use of the building granted to normal business occupants during off hours; there shall be no military vehicles at the property; and occupancy of the building shall be as recommended by the Building Commissioner and Fire Chief. On roll call, all voted ‘aye.’”

At its Council Committee-of-the-Whole work session held on August 31, 2010, the Council crafted the following proposed motion:

“MOTION BY ___________, SECONDED BY ___________ to deny the appeal and uphold the Board of Zoning Appeals decision of June 16, 2010 to grant a transitional use special permit to John Carroll University (“JCU”) for the property located at 4070 Carroll Blvd. (“the property”) to be used to house the ROTC and academic offices of the Department of Military Science, with the following conditions:

1. hours of operation shall be from 6:00 a.m. to 6:00 p.m. with limited use of the building granted to normal business occupants during off hours;

2. there shall be no military vehicles at the property;

3. occupancy of the building shall be as recommended by the Building Commissioner and Fire Chief;

4. all parking shall be across the street in the Dolan Science Center parking lot;
5. there shall be no signage on the second story of the building.

In addition, prior to the issuance of any occupancy permit, John Carroll University, through its duly authorized representative, shall have provided the Mayor with a letter confirming that it agrees to the following:

1. JCU agrees that it will not seek tax exempt status for the property and it will remain on the tax rolls, unless and until a different agreement is reached with the City;

2(a) JCU agrees to refrain from purchasing additional property in the Carroll Blvd., Kerwick Rd., Hadleigh Rd. area as highlighted in yellow on the attached map, unless and until a different agreement is reached with the City;

2(b) JCU agrees to refrain from seeking any other zoning changes including special or transitional use permits in the Carroll Blvd., Kerwick Rd., Hadleigh Rd. area as highlighted in yellow on the attached map, unless and until a different agreement is reached with the City."

Vice Mayor Goldberg stated that the Council received proposed amendments to the Council’s proposed motions from John Carroll University. Mr. Fisher read the following amended proposed motion into the record:

“MOTION BY _________________, SECONDED BY _______________ to deny the appeal and uphold the Board of Zoning Appeals decision of June 16, 2010 to grant a transitional use special permit to John Carroll University ("JCU") for the property located at 4070 Carroll Blvd. ("the property") to be used to house the ROTC and academic offices of the Department of Military Science, with the following conditions:

1. hours of operation shall be from 6:00 a.m. to 6:00 p.m. with limited use of the building granted to normal business occupants during off hours;

2. there shall be no military vehicles at the property;

3. occupancy of the building shall be as recommended by the Building Commissioner and Fire Chief;

4. all staff and student parking shall be across the street in the Dolan Science Center parking lot;

5. there shall be no signage on the second story of the building, except as approved pursuant to City ordinance.

In addition, prior to the issuance of any occupancy permit, John Carroll University, through its duly authorized representative, shall have provided the Mayor with a letter confirming that it agrees to the following:

1. JCU agrees that it will not seek tax exempt status for the property and it will remain on the tax rolls, unless and until a different agreement is reached with the City;

2(a) JCU agrees to refrain from purchasing additional property in the Carroll Blvd., Kerwick Rd., Hadleigh Rd. area as highlighted in yellow on the attached map, unless and until a different agreement is reached with the City;

2(b) JCU agrees to refrain from seeking any other zoning changes including special or transitional use permits in the Carroll Blvd., Kerwick Rd., Hadleigh Rd. area as highlighted in yellow on the attached map, unless and until a different agreement is reached with the City.

In addition, the City accepts JCU President Niehoff’s offer, set forth in his letter dated August 30, 2010, to meet with the Mayor and City Administration and to proceed to participate actively in the City’s master planning process at the City’s earliest convenience.
To the extent permitted by law and in the interest of all of the residents of University Heights, Council declares its strong support for the immediate commencement of the City’s master planning process and for the considerations of the following items raised by the Kerwick Carroll residents as integral to this planning process:

1. JCU not seek tax exempt status for the property and it remain on the tax rolls;

2(a). JCU refrain from purchasing additional property in the Carroll Blvd., Kerwick Rd., Hadleigh Rd. area as highlighted in yellow on the attached map;

2(b). JCU refrain from seeking any other zoning changes including special or transitional use permits in the Carroll Blvd., Kerwick Rd., Hadleigh Rd. area as highlighted in yellow on the attached map."

Councilman Consolo stated that the Council deliberated over this issue for many hours, including the special meeting of August 23, 2010 and the August 31, 2010 work session. He stated that it become clear to him that after the August 31 work session, Council was interested in presenting a harmonious decision and resolution of this matter. He added that the Council came up with the specific conditions to be added concerning parking and signage as well as other items. Mr. Consolo felt like the Council was saying to the University, “We want to work with you. We want to come up with an agreement that is in the best interest of the City, the University, and the residents because we are all citizens. Part of that was, work with us on tax exemption, work with us on refraining from further intrusion into the property and into the Carroll/Kerwick neighborhood and don’t come back with any zoning changes.” Mr. Consolo noted that all that was contingent upon the City and the University quickly working on an agreement to address the bigger picture. He noted that is what Council wanted communicated to the University. The Law Director presented the proposed motion to John Carroll University’s legal counsel on September 1, 2010, and they responded.

Councilman Consolo mentioned that to his understanding JCU wants items considered one property at a time rather than as a whole. It became clear to him as he has listened to everything, especially Council members comments during the August 31st work session that a harmonious use would be one that engenders the conditions that the Council proposed. He mentioned that Council is guided by Codified Ordinance Section 1244.03 in deliberating on this appeal, as to whether the Council could find harmony in allowing the transitional use. He added that the code states that the development will be in harmony with the residential community, the development will not discourage future development and use of land and building or impair their value. Mr. Consolo believed that after the August 31st work session, that the Council’s conditions placed on the permit and the offer that Council extended to the University to work with them would have met the definition of harmonious.

The University’s response requested that the Council deal with this on a property by property basis. In that view and in looking at the proposed use for the property at 4070 Carroll Blvd., Mr. Consolo found it not to be harmonious. Mr. Consolo cited three reasons why the use would not be harmonious: 1) the City’s condition for all parking to be across the street in the Dolan Science Center parking lot was changed to just students and staff. This raised an issue for him that harmony will not exist because there will be visitors to the subject location who would park in the driveway and he finds that disharmonious to the neighborhood. 2) With regard to the signage on the building, Mr. Consolo specifically did not want signage on the second story of the building. He heard from the University that they needed to have visibility. If this is to be a building that is going to make itself visible then it would be out of character with the residential community, and, therefore, he did not believe it is harmonious. 3) With regard to refraining from taking that property off the City’s tax rolls, Mr. Consolo stated that the property is in a residential area which generate taxes, not only for the City, but for the school district. He noted to take it off the tax rolls would be disharmonious to the character of the remaining district and found that as another reason why the definition of harmony in the transitional use special permit ordinance had not been met. Councilman Consolo stated that after the August 31st work session and in reviewing the response from John Carroll University, he would entertain a vote to sustain the appeal and overturn Board of Zoning Appeals’ decision.

MOTION BY MR. CONSOLO, SECONDED BY MR. SIMS to sustain the appeal and overturn the Board of Zoning Appeal decision of June 16, 2010 to grant a transitional use special permit to John Carroll University for the property located at 4070 Carroll Boulevard to be used to house the ROTC and academic offices.
Councilman Murphy agreed with Mr. Consolo’s comments in terms of the harmony of the neighborhood. He also felt that the request made of the University through the Council’s proposed motion was reasonable. Mr. Murphy stated that in order to put that into perspective, the Council asked that JCU not take the property off the tax rolls, which is about $7,000 a year. He noted that was a reasonable request. He added that the request not to purchase any more homes in the area until the City and University comes to an agreement was also a reasonable request. With regard to the third request not the ask for any other zoning changes or special permits in the area, he noted that there are eight (8) homes in that area which JCU owns so that too was a reasonable request and it was denied by the University.

Councilman Murphy preferred to pass the motion that the Council spent hours talking about and preparing because he holds out hope that JCU will understand that the Council’s requests were reasonable and will revisit it. Mr. Murphy added that he still wants to work with the University and keep the option open. He feels that if the Council upholds the appeal without attaching the Council’s conditions, it may send the wrong message. He still wants to be a City that is welcoming the University in a conversation with open arms. Councilman Murphy reiterated that his motion would be to pass the motion which the Council crafted at its work session on August 31, 21010, which essentially grants the transitional use if JCU would agree to the conditions contained in the motion.

Councilman Consolo stated that he would have gone that way, but he does not see an agreement forthcoming. He thinks the City would not be able to enforce the motion. Mr. Consolo stated that this is not something, especially on his part, that is going to cut off communications with the University. Instead, he feels there is a sense of urgency and this is a statement that the City wants to get to the table immediately. He added that if the Mayor is not going to come forth with the dialogue, then the University Affairs Committee will, and the three conditions that the Council wants to impose will be the first matters on the agenda for a meeting. Mr. Murphy said the City will not know until it receives a flat out rejection. He thinks the City has just received a semi-rejection. Mr. Murphy stated that the motion was never officially passed by Council. It was sent to the University for its review as a courtesy and the response was less than favorable, but it is a negotiation. Mr. Murphy did not want to pull the offer from the table before it has been formally rejected.

Councilman Sims expressed concern about the proposed use specifically in the context of a single building consideration given that the use is different than what the zoning would allow. Because of that, he noted that it is important to understand how the proposed use would set a precedent for other uses in the neighborhood. Mr. Sims stated that until he has a greater sense of that, he will not have a true way of determining whether the use would be in harmony with the neighborhood or not. He added that it has been expressed on several occasions that the focus is on what has been described as conditions that are being imposed (He did not agree with that terminology.) However, more importantly the larger sense has been that it would be that the conditions would be in place until such time that a plan for the University is completed. He also heard a suggestion that the Council may be tying the hands of the University, and the Council does not want to do that. Mr. Sims stated that he certainly does not want to do that. However, he wanted to have some sense and assurances of what the University has planned, where it has it planned, and that it is acceptable to the city as a whole. He added that Councilman Murphy raised a good question, and Council has not had an opportunity to collectively decide which is the best way to go. Mr. Sims stated that he would hold his second until there is further discussion of this matter.

Councilman Sims expressed concern about a particular statement in the motion that Council crafted which ties the conditions to the an occupancy permit, which would occur too far down in the process. He explained that the University may invest money into the property, but still may not have responded to the concerns of the City. Then, the City would be faced with saying “well you have already invested a certain amount of money into the property, but you have not responded at all or partially.” Mr. Sims stated that if the Council was to proceed with what was crafted at the work session, he suggested that rather than tying the permit to occupancy that it be tied to the issuance of a building permit. So that there will not a building permit issued until such time that the City has received a response to any conditions that might be attached to the motion.

Councilman Bullock understood what Councilman Murphy was trying to accomplish and has that wish also. In fact, he had that wish at the last meeting when he agreed to second the motion that would allow the University to move forward -- thinking that the Council would take a leap of faith with the hope of having a more positive and stronger partnership between the City and the University. Mr. Bullock noted that he has lost some of the faith that he had at that time based on JCU’s response. He added that after the meeting that Mr. Sims, Mayor Infeld and he had with the
University, he thought progress had been made. Mr. Bullock commented that he needs assurance that promises will be kept.

Mr. Bullock stated that the response, in addition to the lack of harmony as expressed by Mr. Consolo, and refusal by the University to include removal of the property from the tax rolls sends a strong message for him. He added that it has nothing to do with the dollar amount, but rather it is a matter of respect and willingness to cooperate which is missing. Therefore, to go in the direction that Mr. Murphy advocates, he does not believe the City will see anything. Councilman Bullock believes it is time to take a stand and hope the outcome will be for the best for both the City and the University. Mr. Bullock added that he does not see that as it currently stands.

Mr. Murphy understood where Mr. Bullock was coming from. He mentioned that the Council asked for a binding enforceable agreement and in return the University crafted the response to make the proposed motion non-binding and non-enforceable. However, Mr. Murphy wanted to give John Carroll University the opportunity to formally reject the motion. Councilman Murphy mentioned that this situation with the University has been going on for decades so he understood Mr. Bullock’s position.

Councilwoman Pardee agreed with Councilman Murphy and deferred to her colleague’s seniority. But, she inquired if the Council was not going to consider the revised motion received today from John Carroll University. Mr. Consolo replied that she was free to consider anything, but his motion did not consider it. Mrs. Pardee stated that the Council had carefully crafted its proposed motion that met with everyone’s agreement after a lot of discussion at the Committee-of-the-Whole meeting. She added that it also met the agreement of a couple of key neighborhood leaders. Mrs. Pardee mentioned that it was sent to JCU and was rejected, perhaps precipitously. But, to her, the revised proposed motion the Council received today was a very similar agreement with the same kind of wording, but some limitations. Mr. Murphy stated that the difference is that it is non-binding and non-enforceable. Mr. Consolo added that the rewording says “Council declares its support,” but had it said “the University and Council agree to declare strong support,” it would be different. He added that it specifically does not mention the University, rather the language is drafted for the City. Councilwoman Pardee mentioned that items 1, 2A and 2B, which are essential to the residents, were included in the revised motion. She heard what everyone was saying, but preferred to pass the proposed motion that the Council crafted because the Council and neighborhood leaders agreed upon it. She added that once it is passed, then allow John Carroll University the opportunity to reject it if that is its choice. Mrs. Pardee supported Councilman Murphy’s motion.

Councilman Bullock inquired as to what Mrs. Pardee’s next step would be. Councilwoman Pardee replied that the she is planning to put master planning on the next Committee-of-the-Whole meeting agenda. She has meetings lined up to look into it. She has looked at other cities and is waiting for the financial information to see what the costs are. She has also talked to foundations. Mrs. Pardee mentioned that she has talked with the Mayor and knows about her time lines so that the planning process will not get in the way of projects she has planned or special work that is going on. She believes if the City goes through a comprehensive master planning process which includes all elements, updating the City’s master plan; including the community; including the neighborhoods; look at zoning, and John Carroll University comes to the table and works with the City or the City work with the neighborhood and urban planners, whoever the facilitators will be, then the end result will be that the City will determine with or without the University how or where JCU will grow relative to the U-5 zoning and to not ever entertain anything outside U-5 as a Council. Councilman Consolo stated that the Council asked JCU to consider that with the stipulation that it be in place until a different agreement is reached, which would have encompassed the master plan. And, as he reads it, the University rejected it.

Vice Mayor Goldberg stated that the decision is bigger than 4070 Carroll Boulevard. She commented that it might not be good that she has a history with JCU, because there is a track record. She remembered when JCU was going through its master planning process with Sasaki, Temple Emanu El was not on the University’s master plan. Yet in the eleventh hour, the University purchased the Temple Emanu El property, which could have been a commercial use. Therefore, she is looking at the University’s track record and she is looking at what a neighborhood is, families, harmony, consistency, practicality, a sensitivity to community, and interdependence for the Council and the City. She added that to say that John Carroll University is not a vital asset and a vital resource, not only of this city, but of this area, would be absolutely false and everyone would be deceiving themselves.
Vice Mayor Goldberg was hopeful that after the vote they could move forward and work together to provide tuition breaks for residents and work on programs and projects for the next 5 to 10 years. But, she stated that continuing to develop the area and the neighborhood house by house has to stop. She added that if it means to sustain the appeal at this meeting, then that is what the Council has to do. Vice Mayor Goldberg stated that the City must take a wholistic approach to planning the community.

What bothered Vice Mayor Goldberg more than anything else was that she felt good leaving the work session. She felt the Council members had rolled up their sleeves, and that the Council and neighbors, who live in that community and who raise their families, attend schools and keep the community vibrant, all came together and everyone compromised. She did not feel a need to contact anyone from the University because she really felt that the Council did right by the proposed compromise. She thought they helped the City with the zoning code and helped John Carroll University grow in a certain sector of the neighborhood. She hoped this would be a true engagement and that it would lead to true dialogue.

However, Vice Mayor Goldberg stated that when she referred back to Father Niehoff’s letter dated August 30, 2010 and he says “on behalf of John Carroll University I want to confirm that the University welcomes the opportunity to participate actively in the City’s master planning process,” she questioned why he did not include the University’s planning process. Also when she looked at the redactions and the changes in the counter-proposal of the decision that the Council presented, the onus is on the City. She was okay with this because the City needs to do that, but with regard to the wording “to the extent permitted by law and in the interest of all residents of University Heights, Council declares its strong support for the immediate commencement of the City’s master planning process,” she noted that the City does not work in isolation and questioned “what about the University?” and “What about the interdependence?” To her this was not a compromise that she felt was about or that there was consensus among her colleagues to move forward in a positive direction in order for John Carroll to grow. Therefore, Vice Mayor Goldberg supported Mr. Consolo’s motion to sustaining the appeal.

Councilman Ertel stated that it has been a rewarding process and a disappointing process. He noted that it was great in the work session to come together with the residents and work out a creative solution that gave the residents something, gave the University something, and gave the City something. Obviously, the University does not have any interest in that. Therefore, Councilman Ertel was in favor of Mr. Consolo’s motion.

For clarifications purposes, Councilwoman Pardee asked if the language that Council presented was binding. Councilman Murphy stated that it would have been if the University agreed to it. Councilman Consolo stated that the Council asked JCU to sign a letter of agreement to the Mayor.

Mayor Infeld requested that Council consider, before the vote, that John Carroll University is a vital and integral part of the city and community. She noted that it is the largest employer and the largest single contributor to the City’s tax rolls. She mentioned that many people in the community have ties to the University – they have been student there, their children have been student there, they work there, and neighbors are employees of the University, including many professors. Mayor Infeld was concerned about the statement that it would make to the community and the University if the City Council decides to summarily dismiss what she views as a negotiation by the University. She considered what JCU submitted today to be differential. It is not coming in, stumping its foot, and saying “our way or the highway.” Rather it is an entity that is deferring to the City and saying “City what do you want and we will actively participate.” So, she not only saw that today, but she saw that with the University’s initial attempt when they talked about incorporating the sentiment behind Father Niehoff’s letter in terms of the City’s master planning process in the first draft of their negotiations. In the second draft, which the City received today, which was even more firm and strong, in her estimation, in terms of the University expressing its willingness to work with the City. She noted that is something that the City has not seen happen before and she was very hopeful. Mayor Infeld was disappointed that everyone reads it a different way.

She stated that everyone values the importance of the University to the City, yet by not accepting the University’s offers to work with the City and summarily dismissing it as not being the proper language, especially when the University is freely admitting that it will be an active participant in the planning process.
Mayor Infeld noted that there is grant funding available for master planning right now through the County and through foundations. She has had those talks and has talked to Councilwoman Pardee about her Council committee following up on that process. Mayor Infeld supports her in that. She thinks that the City needs to send a different message to the University then it has in the past. In the past, at least in her estimation, she has seen the City’s saying, “no, no, no, you sell us back the houses. You do this. You do that.” Until you do it we won’t do that.” which as not produced successful results. Mayor Infeld thinks that it is much better to approach the University in a positive way and say “how can we work together?” This is the sentiment she has received from Father Niehoff and the senior staff at the University. Therefore, she is hopeful for very strong, positive, collaborative relations with the University. She hoped the Council would support her and recognize that the University is trying and wants to work with the City.

Mayor Infeld stated that the request is for a low impact use of a building which is next to a parking lot. She mentioned that the request came before the City as a zoning issue and now there are planning conditions tied to it. She added that the University has recognized those planning conditions and has sent out a feeler in the form of a letter to strengthen the fact that they really are willing to work with us.

Councilman Ertel asked Mayor Infeld if she would feel that the City would be giving John Carroll University due consider if the Council was to pass the proposed motion which was crafted by the Council at its August 31, 2010 work session. Mayor Infeld stated that the difference between the motion drafted by the Council and the one submitted by John Carroll University was “lawyering”. Councilman Murphy stated that is important because the motion presented by JCU is non-binding. He explained that in some contracts if a word is removed it could result in a completely different contract, and that is what happened in this case. Mr. Murphy stated that is something that cannot be overlooked because the two proposed motions are not the same – what the City proposed and the counter proposal are two very different things. He added that if JCU really does want to sit down with the City in good faith, then it would sign a binding letter of agreement and begin to talk. Mr. Murphy commented that he could not trust the University if it does not do that. He wants JCU to stand by its words. He does not want a letter from the University and he does not want a re-draft of the Council’s motion. He wants to University to agree to what the Council sent, sign it, and then start working together.

Mayor Infeld said that was putting up a stone wall saying, “It’s our way or no way.” She noted that the City has evidence of two efforts by the University to show that they are willing to work with the City. She understood that the Council did not like the language that JCU drafted, but the Council’s motion mixes zoning issues with planning issues and seems to be mixing apples and oranges. She would prefer that the City deal with the zoning issue at hand and that they take Father Niehoff at his word as well as the positive feedback that she has had from the University and start with this process. She suggested that the two issues be separated because there is funding available for the planning process.

Councilman Consolo stated that he would find Mayor Infeld’s wishes more persuasive if she could say that since the August 23, 2010 or the August 31, 2010 meetings that she has made an effort to meet with Father Niehoff and tell him that the City would like to reach an overall agreement, establish a schedule, and move the process forward. Mayor Infeld replied that Father Niehoff has been out of town. Mr. Consolo understood.

Mayor Infeld added she has had a long history with John Carroll University and all her dealings with the University have been very positive. She mentioned that everything may not have worked out the way the City would have liked and there has been little glitches here and there, but what she has seen over the years is that the University has made a good faith effort to correct situations that have been brought to their attention by the City. Mayor Infeld stated that to treat largest employer and the jewel of our city in a way that looks as though the City is not willing to actually work with the University does not sit well with her.

Councilwoman Pardee agreed with Mayor Infeld comments about John Carroll University. She asked herself what upholding the appeal will accomplish for the City and she did not see it advancing anything. She also agreed with Vice Mayor Goldberg that it is clearly a much bigger issue than 4070 Carroll Boulevard, which is why Council crafted the proposed motion at the Committee of the Whole meeting. She desired to bring forth the Council’s proposed motion because the Council felt really good about it and that was what Council wanted to put forward. She mentioned that it was a good work product and was agreed to by the neighborhood as well.
Mrs. Pardee preferred to move forward with that motion rather than upholding the appeal because she did not think that would send any kind of message that is workable. Councilwoman Pardee stated that she is very sympathetic to the neighborhood and the residents concerns.

Councilman Sims stated that he was frustrated and he was not sure where that frustration should be directed. Mr. Sims noted that he was engaged all day on employment matters and the new draft, which was sent to the Council today at the last minute in an attempt to accommodate what might be a compromise, was unknown to him. And, because he did not know about it, he did not have an opportunity to give it any consideration. In reviewing the latest version, he had a better sense of where Mrs. Pardee was coming from and he also understood the conversation about binding and non-binding. However, he would have felt better about Councilman Murphy’s proposal had he had the privilege of seeing it. Mr. Sims mentioned that his colleagues saw it, but they did not have it with them so how could the Council consider something that was not in front of them. He added that it would have been good to have a copy provided to the Council at this meeting.

He suggested that there may be an opportunity for further consideration. He noted that if the motion read slightly different it would show a greater intent on the part of the University. He noted that it currently reads, “To the extent permitted by law and in the interest of all of the residents of University Heights, Council declares its strong support for the immediate commencement of the City’s master planning process and for the considerations of the following items...” However, he thought this would have been more acceptable had it said; “To the extent permitted by law and in the interest of all of the residents of University Heights, John Carroll University declares its strong intent to participate in the immediate plans for a master plan and for its considerations of the following...” He added that it is not binding necessarily to these individual items, but a least it gives some indication that it is something the University will plan to take under advisement and under consideration. For him, that was an important difference. Mr. Sims did not want to close the door on talking to the University and so if there is a way to keep the conversation going, he was happy to do that.

In addressing Mayor Infeld, Councilman Sims noted that he was aware that she had expressed her hope that Council would be able to reach an agreement with the University. He felt that the way she stated it tonight was a lot different then he had heard it in the past. He noted that often times that is exactly what Council is looking for. For her to say exactly what she would like to see happen and for the specific reasons that she is asking for the Council’s support. Mr. Sims suggested that in the future she state her case up front which could make for a better process. He mentioned that a better result could be probably be achieved if the Council know up front exactly what the Mayor’s interests and concerns are and how the Council could support those things. He added that the Council has a true interest in supporting the Mayor because she is the chief administrator of the City and they would like to see her and the City succeed.

Councilman Bullock stated that he saw the revised motion, but, commented that it says nothing as it is written. He noted that the original proposed motion that was agreed to on August 31, 2010 was the statement which really said what the Council wanted. But, the Mayor did not want the Council to go back to that statement. He did not see it as telling JCU what to do. The University could have responded in a lot of different ways and could have used a lot of different words, but somebody took all the strength out of it.

Councilman Consolo stated that all the Council asked for was a moratorium on three items until they could get a new agreement together. By upholding the appeal, the Council is not closing any door, rather it is sending a clear message this is what the Council wanted, a moratorium on three items until a new agreement is reached. He added that there was no intent to close any doors or to tarnish the jewel of the city. Mr. Consolo noted that the Council has to stand up for everyone’s rights – John Carroll University, the residents, and the City. He reiterated that all the Council was asking for was a moratorium until they get a new agreement as quickly as possible.

Councilman Sims believed that if the Council sustains the appeal, this process will end. He added that if there is an interest in continuing consideration with the City for the use of that property for ROTC, then it would have to start all over again under one of the two provisions in the code that would allow it. He did not see any reason to start the process over. He stated that Councilman Murphy had a good approach as a possible compromise and opportunity to keep the door open. But, he expressed his concern with setting those conditions based on an occupancy permit and believed that it should be building permit so that nothing can start until the City hears back on those items. Councilman Murphy stated that he would support that because it is an important distinction.
Councilman Bullock asked Mr. Murphy to restate his proposal. Councilman Murphy proposed that the work product of the Council’s work session of August 31, 2010 be voted on at this meeting with the only change being Mr. Sims’ suggestion that rather than prior to the issuance of any occupancy permit, it would be prior to the issuance of any building permit. Mr. Murphy stated that this has long been a matter of perspective, the University’s perspective versus the City’s perspective. He noted that even if Council denies the motion, the University may perceive it as slamming the door. He added if the Council passes the motion that it worked on and felt good about it, it leaves the door open for conversation. If the University chooses not to then it choose not to, but there is no finality. He understood everyone’s frustration and suggested that they use a third party to come in and assist with the dialogue. Councilman Murphy stated that procedurally the Council would deny the appeal and then pass the proposed motion as originally prepared.

Mr. Fisher advised that the motion be amended to read “building and/or occupancy permit.” Councilman Consolo wanted it clarified that if a letter is not given to the Mayor agreeing to items 1, 2A and 2B, then a building permit would not be issued. Mr. Fisher clarified building and/or occupancy permit would not be issued. Mr. Sims objected to the language and/or occupancy permit because he felt the City needs to know what the University will or will not do as soon as possible and it could put the action that the City is seeking from the University too far in the future.

Mr. Fisher stated that he listed both building and/or occupancy permit because the University could hypothetically decide to use the property as is even though it is not suited for offices as is. That way, the University may not come in for a building permit even though they stated their intention to do so. Mr. Consolo noted that was a good point. Mr. Sims stated that he could go along with that. But, added that would be a terrible show of lack of good faith and he did not believe the University would do that. Mr. Fisher stated that he was not suggesting they would, but it is his job to protect the City and raise these issues. Mr. Bullock commented that he believes JCU would do anything.

Councilman Bullock stated that he could consider that, but was concerned about Mr. Fisher’s observation and what it would mean. He inquired if there a time limit by which the University would have to respond. Mr. Fisher replied no, the building would remain a U-2 residential use. Mr. Bullock stated that there is nobody in this city who wants to support, not just show support, but support John Carroll University as an asset in this region more than him. But, there is also no one who has more concerns about what he has observed. Mr. Bullock stated that he could not truthfully state that everything has been wonderful and the University has always been responsive because that has not been his experience. However, at the last meeting, he said “let’s go, I’ll take a leap of faith,” but the Council did not go that route. Since that time, the University has done nothing to help move him to a more positive position in terms of how they behave. He agreed that John Carroll University is a powerful asset in this region and they live in University Heights, which is powerful. But, he noted that the University would be even more powerful if it had a little bit of humility and would think about others around them and behave in a way that they demonstrate a concern and a sensitivity towards the people who are really trying hard to work with them, including the residents who live in that community. He does not see that and cannot image why that would be. However, he understood that a large institution like John Carroll does not want its hands tied, and he does not want them backed into a corner. He just wondered why the City do not get a different response. Mr. Bullock stated that he does not think that John Carroll University has been a good citizen, but he is willing to give the University the support that it needs to demonstrate that it can be a good citizen.

Councilman Ertel noted that a lot of people thought the Council’s proposed motion was a good proposal and he still does. He mentioned that the Council and neighbors spent a lot of time and invested a lot of energy on it. Mr. Ertel stated that the Council submitted it to the University once and he does not see the logic in getting turned down again.

Councilman Consolo stated that there is a possibility this will go into court even if the Council passes the compromised motion that has these conditions. He added that if JCU is not going to go along with it, it is cleaner to sustain the appeal. He added that good grounds have been stated for sustaining the appeal and disharmony was found. Mr. Consolo stated that it was not an arbitrary decision, the Council thought about this long and hard and that would be the only reason he would do that and then get to the table. He added that if the compromise motion is passed it gets it off the City’s plate, off the University’s plate, and it will go sit somewhere for a while and nothing is going to get done again until the University needs something. Mr. Consolo stated that it is not closing the door, rather he believed it would make it clear to everyone the urgency to get a comprehensive agreement.
Mayor Infeld said that nothing is going to get done is a negative way of looking at it. The University has said it will work with the City. She was concerned that this is really shutting a door. She thinks the message it is sending is that the City will not work with the University. And, she does not know how this leaves the door open even a little bit. It basically says you have to do it our way or its not going to happen and that doesn’t sound like a give and take type of situation at all.

Councilman Consolo called for a vote.

On roll call, on the motion to sustain the appeal and overturn the Board of Zoning Appeal decision of June 16, 2010 to grant a transitional use special permit to John Carroll University for the property located at 4070 Carroll Boulevard to be used to house the ROTC and academic offices, Mr. Ertel, Ms. Goldberg, and Mr. Consolo voted “aye” and Mr. Sims, Mr. Murphy, Mr. Bullock and Mrs. Pardee voted “nay.” Motion failed.

MOTION BY MR. MURPHY, SECONDED BY MRS. PARDEE to deny the appeal and uphold the Board of Zoning Appeals decision of June 16, 2010 to grant a transitional use special permit to John Carroll University (“JCU”) for the property located at 4070 Carroll Blvd. (“the property”) to be used to house the ROTC and academic offices of the Department of Military Science, with the following conditions:

1. hours of operation shall be from 6:00 a.m. to 6:00 p.m. with limited use of the building granted to normal business occupants during off hours;
2. there shall be no military vehicles at the property;
3. occupancy of the building shall be as recommended by the Building Commissioner and Fire Chief;
4. all parking shall be across the street in the Dolan Science Center parking lot;
5. there shall be no signage on the second story of the building.

In addition, prior to the issuance of any building and/or occupancy permit, John Carroll University, through its duly authorized representative, shall have provided the Mayor with a letter confirming that it agrees to the following:

1. JCU agrees that it will not seek tax exempt status for the property and it will remain on the tax rolls, unless and until a different agreement is reached with the City;
2(a). JCU agrees to refrain from purchasing additional property in the Carroll Blvd., Kerwick Rd., Hadleigh Rd. area as highlighted in yellow on the attached map, unless and until a different agreement is reached with the City;
2(b). JCU agrees to refrain from seeking any other zoning changes including special or transitional use permits in the Carroll Blvd., Kerwick Rd., Hadleigh Rd. area as highlighted in yellow on the attached map, unless and until a different agreement is reached with the City.

Prior to the vote, Mr. Bullock stated that he was going to vote in favor of the motion, but he hoped that the City officials will not look like fools in a few months when John Carroll University tells them where they can stick it, which is what he feels has happened before. He noted that it really is an appeal to the conscience and the goodness of an institution that he has a lot of respect for. However, he expressed his concern with the leadership. He added that even if he was not involved as a Councilperson in University Heights, he would have that concern because he has a concern about the institution. Mr. Bullock added that he said that without knowing how sound the University is or knowing what the health is, but the kind of behavior that he has observed has not been good. It certainly is not good for the community. Councilman Bullock reiterated that he will support the motion and hoped that everyone will be happy down the road.

On roll call on the motion, Mr. Sims, Mr. Murphy, Mr. Bullock and Mrs. Pardee voted “aye,” and Mr. Ertel, Ms. Goldberg and Mr. Consolo voted “nay.” Motion carried.
B. Ordinance No. 2010-45 Amending Section 1474.11(c) of the Codified Ordinances exempting County Land Reutilization Corporations from escrow requirements when purchasing property in the city. (Tabled on August 23, 2010)

Ordinance No. 2010-45 was tabled at the August 23, 2010 meeting in order to allow time to research the terms of the agreement.

Building Commission David Menn reported that the ordinance was amended such that Section 1474.11(c) of the Codified Ordinances would be amended to exempt County Land Reutilization Corporations (Land Banks) under Chapter 1724 of the Ohio Revised Code from escrow requirements only when purchasing property in the city. The Land Bank will sign a written agreement to correct all violations listed on the Certificate of Inspection.

MOTION BY MR. CONSOLO, SECONDED BY MR. ERTEL to approve the passage of Ordinance No. 2010-45, as an emergency measure, as amended. On roll call, on suspension of rules, all voted “aye.” On roll call, on passage, all voted “aye.”

C. Resolution No. 2010-46 To seek financial assistance from the State Public Works Program for the University Heights Street Rehabilitation Program - 2011

Resolution No. 2010-46 authorizes the Mayor to seek financial assistance from the Ohio Public Works Commission (OPWC) State Public Works Program to fund the University Heights Street Rehabilitation Program for 2011. Mayor Infeld requested that the resolution be removed from the agenda.

City Engineer Joseph R. Ciuni reported that Issue 2 applications are due on September 17, 2010 which requires Council approval for the Mayor to apply for the grant. He thought the University Heights Street Rehabilitation Program for 2011 was a project that might have a chance to be awarded. The project involved the resurfacing a street where waterline repairs were made. Mr. Ciuni mentioned that the City’s chances of receiving the grant are slim and the grant award would require a large match by the City, which cannot be done at this time.

Mr. Ciuni also reported that the City has committed to the County’s resurfacing project of Belvoir Blvd. from Fairmount Boulevard to Mayfield Road in a joint project with the City of South Euclid. He mentioned that the County is paying 100% of the construction costs and the cities are paying for engineering fees. Therefore, it has been decided to seek a grant for the engineering fees for the resurfacing of Belvoir Boulevard. Mr. Ciuni stated that South Euclid will be submitting the grant application so Council action is not required. However, a letter of support will be needed from Mayor Infeld to the City of South Euclid.

MOTION BY MR. CONSOLO, SECONDED BY MRS. PARDEE to remove Resolution No. 2010-46 from the agenda. On roll call, all voted “aye.”

D. Ordinance No. 2010-47 Levying a special assessment for street lights

Ordinance No. 2010-47 levies a special assessment on all properties served by street lights at a rate of seventy cents ($0.70) per front foot for the tax year 2010. This is an annual renewal with no increase.

Councilman Sims requested that in the future that the Council be presented with a presentation or written briefing when such ordinances are brought forth so that Council may consider the items before they are brought to the floor. He noted that the Council was not aware whether or not there were increases, what the current balances are, and if the amounts are sufficient.

MOTION BY MR. CONSOLO that Ordinance No. 2010-47, Ordinance No. 2010-48, and Ordinance No. 2010-49 be removed from the agenda, referred to committee, and reinstated after they come out of committee. Motion died for lack of a second.

Mayor Infeld explained that the ordinances are required to be submitted to the County by September 13, 2010. She added that this is the County’s normal way of collecting taxes and are passed every year. Councilman Consolo stated that levying taxes may be the norm, but it should not be treated that way. He added that Council should be given the opportunity each year to reassess whether the amounts are sufficient.
Mr. Fisher stated that there is a time constraint; the ordinances must be adopted so that the assessments can be placed on the tax duplicate by the County. He added that delays could prejudice those collections and the assessment process. On the other hand, Mr. Consolo stated that the citizens of University Heights could be prejudiced in the event there is a chance it is not needed. Mr. Sims commented that the ordinances went through committee for the last two years. He explained that the Council should have a level of confidence that the amounts being levied are adequate. He added that the Council may need to abate the assessments because there are an excess of funds or increase the assessments because the amounts are not sufficient.

Councilman Bullock questioned why Council is seeing this for the first time when it has been meeting all summer. Mayor Infeld replied that the ordinances could have been placed on the one of the summer agenda’s but were not. Therefore, she suggested that the ordinances be placed on first reading and a special meeting be called prior to September 13, 2010 for passage of the ordinances.

Councilman Consolo inquired if the dollar amounts that the Council is being asked to levy on the citizens are due and appropriate. Mayor Infeld responded that the Council agreed to the amounts last year. Mr. Consolo stated that this is a renewal for this year and reiterated it is still appropriate to levy the amounts as proposed. He stated that the Council cannot be asked to levy taxes on the residents just because it is convenient and timely. Mayor Infeld stated that Council had the opportunity to change the amounts by ordinance.

Councilman Sims stated that he did not ask to have the ordinances tabled or removed from the agenda, he just asked for a courtesy in the future because if he is going to vote to levy an assessment against the residents then he has a responsibility to make sure that it is the right amount every year. He added every time the ordinances come before the Council, the members should have the opportunity to know what they are voting on and to have a level of confidence that the amounts are in the proper proportions. Mr. Sims asked the Mayor to extend the courtesy in the future and to recognize that there are matters that Council has a responsibility for and should be considered under the advisement of Council before they appear on the Council’s agenda. Mayor Infeld stated that she will get from the Clerk a list of all ordinance and resolutions that are passed on an annual basis for the last three years and distribute it to everyone on Council and asked that they be reviewed and indicate which ordinances or resolutions they would like to see and a time line of when they would like to see them. Mr. Consolo stated that would be perfect for the October work session.

Mayor Infeld stated that the ordinances can be placed on first reading, but she noted that there is a deadline of September 13, 21010 to submit the ordinances to the County. Mr. Sims mentioned that he is not available for a special meeting on or before September 13, 2010 and suggested that the Council be polled to determine if they are available in the interim period. Mayor Infeld stated that the ordinances could be taken off emergency and place them on first reading at Council’s pleasure.

MOTION BY MR. ERTEL, SECONDED BY MR. CONSOLO to suspend the rules on Ordinance No. 2010-47. On roll call, on suspension of rules, all voted “aye.”

MOTION BY MR. MURPHY, SECONDED BY MR. BULLOCK to approve the passage of Ordinance No. 2010-47 as an emergency measure. On roll call, on passage, all voted “aye,” except Mr. Consolo, who voted “nay.”

E. Ordinance No. 2010-48 Levying a special assessment for tree maintenance

Ordinance No. 2010-48 levies a special assessment for improving streets by spraying, planting, maintaining and removing shade trees at a rate of eighty cents ($.80) per front foot for the tax year 2010. This is an annual renewal with no increase. Service Director Christopher Vild reported that the previous rate was forty cents ($.40) per front foot for several years and that amount was doubled in 2008 to the current rate.

MOTION BY MR. SIMS, SECONDED BY MS. GOLDBERG to suspend the rules on Ordinance No. 2010-48. On roll call, on suspension of rules, all voted “aye,” except Mr. Consolo, who voted “nay.”

MOTION BY MR. ERTEL, SECONDED BY MRS. PARDEE to approve the passage of Ordinance No. 2010-48 as an emergency measure. On roll call, on passage, all voted “aye,” except Mr. Consolo, who voted “nay.”
F. Ordinance No. 2010-49 Levying a supplementary assessment for sewer maintenance

Ordinance No. 2010-49 levies a supplementary assessment for the purpose of establishing a sewer fund to maintain, repair and reconstruct the sewerage system and waterlines with the city at a rate of $78.00 per year per dwelling unit for the tax year 2010. This is an annual renewal with no increase.

MOTION BY MR. ERTEL, SECONDED BY MR. BULLOCK to suspend the rules on Ordinance No. 2010-49. On roll call, on suspension of rules, all voted “aye,” except Mr. Consolo, who voted “nay.”

MOTION BY MR. ERTEL, SECONDED BY MR. BULLOCK to approve the passage of Ordinance No. 2010-49 as an emergency measure. On roll call, on passage, all voted “aye,” except Mr. Consolo, who voted “nay.”

G. Ordinance No. 2010-50 Levying a special assessment for providing city services in the removal of nuisance conditions at various locations throughout the city

Ordinance No. 2010-50 levies special assessments against properties in which the city provided services in the removal of nuisance conditions such as grass cutting at various locations throughout the city. The total amount to be assessed is $14,232.00.

Building Commissioner David Menn reported that the homeowners were cited for not maintaining their properties, the nuisance was abated by the City, and the property owner was billed. He noted that since the bill was not paid, the amount will be assessed to the property taxes. Mayor Infeld stated that the abatement of nuisance conditions was contracted out by bid and is performed at no cost to the City.

MOTION BY MR. SIMS, SECONDED BY MS. GOLDBERG to suspend the rules on Ordinance No. 2010-50. On roll call, on suspension of rules, all voted “aye.”

MOTION BY MR. BULLOCK, SECONDED BY MR. SIMS to approve the passage of Ordinance No. 2010-50 as an emergency measure. On roll call, on passage, all voted “aye.”

H. Ordinance No. 2010-51 Abating the special assessment for tax year 2010/collection year 2011 on certain parcels within the city at University Square

 Ordinance No. 2010-51 abates the special assessment for the tax year 2010/collection year 2011 on certain parcels within the city for the University Square parking garage and authorizes the Finance Director to file the report on the abatement of special assessments with the Cuyahoga County Auditor on or before September 13, 2010.

Ms. Virginia Benjamin, the City’s bond counsel with Calfee, Halter & Griswold, stated that this a voluntary assessment petitioned for by the owners of the property in University Square, other than Macy’s and Target, and the City levied the assessment at the voluntary request of the property owners in 2001. However, the assessment was to be collected only if the amount of service payments in lieu of taxes to be received from the property was insufficient to pay the debt service on the bonds issued by the Cleveland-Cuyahoga County Port Authority. She noted that every year the administrator, who was appointed by the Port Authority, prepares a report indicating whether the available assets, which is amounts currently in funds plus the payments in lieu of taxes expected to be received in the second half of the current year and in both tax collections in the next year, will be sufficient to pay the debt service remaining in 2010 and in 2011. Ms. Benjamin noted that the City received the report last week and it indicated that no assessment needed to be collected for calendar year 2010/collection year 2011. Therefore, there is no need to collect the assessment and Ordinance No. 2010-50 will abate the special assessment. She added that like all assessment legislation, the Ohio Revised Code requires that the legislation be filed with the County Auditor by the second Monday in September. Therefore the deadline this year is September 13, 2010.

Mayor Infeld announced that there is an unusual situation with the Tax Increment Financing (TIF) payments, which is not related to the ordinance, and deferred to Ms. Benjamin for an explanation. Ms. Benjamin stated that the way the Port Authority bonds are paid is the County collects the service payments in lieu of taxes, those monies are distributed semi-annually to the City just like tax payments. The City in turn is to transmit those monies received as pilot payments to the bond
trustee, which divides the money up into different pots. She explained that in order to approve the
TIF we needed the Cleveland Heights-University City School District’s approval and the City
entered into a TIF financing agreement with the school district which provided that the school
district would agree to the TIF on certain conditions and there was a provision on the flow of funds.

Monies received by the bond trustee was to be used first to pay to the school district any amounts
that represented the amounts that would have been paid as taxes on new levies passed after 2001.
Therefore, if the TIF was generating what it would have generated in 2001 and any increase was to
go to the school district. Second, the payment was to be used to pay the debt service on the
outstanding bonds and any amounts remaining in that revenue fund were to be used to pay to the
school district up to the amount the district would have received in taxes. She further explained that
service payments in lieu are the amount that would have been paid as real estate taxes on the
incremental increase in the value of the property as a result of the development. Therefore, if the
project was very successful and the amount of real estate taxes received was enough to pay the
school district for the new levies, pay the debt service on the bonds, and then pay the school district
all that they would have received otherwise. It turns out there was a surplus in the revenue fund
which was not paid over. This was not the City’s problem and just to inform the Council that there
was a surplus in the revenue fund that was not paid over to the school district. So as part of the
administrative report, the administrator was asked to figure out what should have been paid to the
school district. Ms. Benjamin stated that she, Mayor Infeld and Finance Director Jenny Esarey met
with the school treasurer today and indicated that the surplus money that is owed to the school
district will be paid to the school district.

In addition, there was a TIF payment made to the City by the County in the second half of 2008 that
was never turned over by the City to the bond trustee. It was fully accounted for on the City’s books
and shows as a fund balance. It was not, to the best of Ms. Benjamin’s knowledge, misused in any.
It was just not turned over to the bond trustee. Ms. Benjamin noted that the payment is
approximately $1.9M. It has been concluded that the City owes that money to the bond trustee.

Ms. Benjamin stated that there are no problems with the bonds. There has been no missed payments
on the bonds. There has been no shortfall in the amount of money available to pay debt service on
bonds. The City retained the amount in the Urban Redevelopment Tax Increment Financing Fund
and should not have for the second half of 2008. She pointed out that the trustee did not catch it.
The administrated noted it in the report, but did not bring it to anyone’s attention. Ms. Benjamin
noted that there were actually two payments turned over in 2008 because there was a late payment
from a previous year turned over in 2008 that should have been turned over earlier so it is
understandable that the non-payment was not caught. But, the City has the funds in the Urban
Development Fund, which should go to the bond trustee.

In the meeting with the treasurer of the school district, the fact that this money has not gone over to
that fund means that the school district has not gotten it, but the school district has not gotten
anything that they should have gotten so they did not miss it. During the conversation with the
treasurer, it was indicated that it is the City’s intent to pay that money over. This issue is really a
cash flow issue and they asked the treasurer to consider allowing the City to make a portion of that
late payment in 2010 and an additional portion in 2011. However, the trustee will be asked to take
the surplus that is currently in the trustees possession and pay that over in 2010 to the school district.
That way, the school district will receive some money this year that is already there. Then,
depending on the timing proposal, some portion of the money from 2008 that was not paid, will also
be paid over to the trustee this year so the trustee will have more of a surplus to pay to the school
district. She added that the treasurer was amenable to receiving the balance in 2011 so as not to
affect the cash flow situation of the City. Ms. Benjamin stated that the trustee has to consent to the
proposal as well. They have every reason to belief that the trustee will do so because there has been
no jeopardy to the payment of the bonds. They would anticipate that the trustee would ask the City
to if there were to be a shortfall to accelerate that second payment to cover the timing of any debt
service requirement.

Councilman Consolo inquired as to why there is a cash flow problem if the money is in the Urban
Development Fund. Ms. Benjamin stated that the City’s cash is co-mingled. The City has separate
funds, but there is not a different bank account for each of those funds.

Councilman Sims asked the Finance Director to comment on the cash flow problem as well. Finance
Director Jennifer Esarey was not actually sure why the payment was not made in 2008, but a lot of
things have pointed to the fact that it was used as some type of float for the City. In fact, even
though the line item is sitting on the statement of cash position on the $1.9M, it appears the money was used to pay for operating expenses, such as payroll, electric, gas, etc.

She stated that it appears that the school district would agree to the terms in order for the City to try to mitigate the bank account from being completely depleted of the $1.9M. She added that it would give time to make sure the funds are still not being used for float because she was not sure. And, at the same time, they would have a better understanding of how the bank statement and expenses would be affected.

Mr. Sims inquired as to why the audits did not catch it. Ms. Esarey stated that because she is new, she could not address the audits. But, she noted that she did raise the question as to why an account that was suppose to be a pass through account with a zero balance had a balance in it. Ms. Benjamin mentioned that it was referenced in the 2009 report from the administrator, but no one followed up on it.

Mr. Sims asked when the City will get to select its auditor. Mr. Esarey stated that the contract with Zupka is up, and she is waiting to hear from the State Auditor’s office on whether the State will perform the audit or if they want the City to go out to bid.

Councilman Murphy stated that the City has an operating budget of approximately $12M and questioned how $2M could not be caught. He added that the question is how do we pay for it. Mayor Infeld replied that the best they can determine is the previous Finance Director was using it for float. However, they are trying to determine to what extent it was being used for float. Mayor Infeld added that they know the expenses until the year on certain items such as payroll. However, there are other items which vary such as the cost of gasoline. What they are trying to do by working out a payment plan is to not deplete the City’s funds so as not to go into a deficit situation. That is why they want to determine if the treasurer would be amenable to working out a payment plan so that the City would not be cut to the bone by this. Mayor Infeld noted that she just found out about this report from Argus at the end of last week and notified the Council members as soon as possible so that they would be aware of it. But, the entire situation is trying to be unraveled. They do not have enough information.

Councilman Murphy asked the Law Director if the City has a potential malpractice claim against the auditor or is there malpractice insurance that would cover the Finance Director’s gross negligence. Mr. Fisher stated that the former Finance Director was bonded and that the carrier has been put on notice. Mr. Fisher added that he does not have any reason to believe, based on conversations with Ms. Benjamin and Ms. Esarey, that there has been any misappropriation of the payment in lieu of taxes that was received. He has been assured that there has not been based on all available information. He would not know what the claim would be against the former Finance Director except that the payment was not paid. Mr. Fisher inquired if there is now interest that would be due.

Mr. Murphy stated that the auditor carries malpractice insurance and he believed the City has a valid claim. Mr. Fisher noted that he had not considered that. Mr. Murphy requested that it be looked into because this is a big mixup. He added that Zupka has a terrible history and this is at least the third time it has come up that they have missed glaring items in the budget. Mr. Fisher stated that the City would have to be able to prove negligence and what the City’s damages are as a result of the negligence. However, the City does not know what it is out at this point. Ms. Benjamin stated that at this point no one is asking that the City pay anything other then the amount that should have been paid in 2008. Mr. Bullock asked if there are any interest or penalties due. Ms. Benjamin stated that no one has requested that. She added that the trustee did not ask for the money either.

Vice Mayor Goldberg stated that she cannot understand why the administrator and the trustee did not ask for the money. Ms. Benjamin responded that the administrator noted in the annual report that the payment had not been turned over. The trustee received two payments in 2008 and there was sufficient money there to pay debt service so they did not look any further. She added that it was discovered because of the new administrator and Ms. Esarey’s question as to why there was a balance in the fund.

Councilman Consolo asked if it is proper to have one checking account with all funds flowing into it. Ms. Benjamin replied yes, it is appropriate and is what most municipalities do. Mr. Consolo mentioned that the $2M should have been collecting interest. Ms. Benjamin stated that the $2M should have gone immediately to the revenue fund held by the bond trustee and been used to either pay the school district or pay the debt service on the bonds. She added that the funds are required to be transferred within ten (10) days of receipt. Ms. Benjamin stated that she does not see a reason
to change the City’s standard of banking and account practices, particularly now that the Finance Director is aware of the mechanism and the process and the chance that it would happen again is slim.

Councilman Bullock asked if everyone who should know about this knows about it. Ms. Benjamin stated that they do. Mr. Bullock commented that its hard to believe that someone would not find a way to collect a penalty. Ms. Benjamin noted the trustee would be to hard pressed to ask for a penalty and the school district is pleased to receive the surplus funds in a time when finances are tight. She added that the school district was fine with delaying receipt of a portion of those funds to accommodate the City’s cash needs because they were not expecting to receive anything.

Councilman Consolo asked why the $2M cannot be paid if it is not in the City’s cash flow. Ms. Esarey stated that the funds are properly accounted for in a separate fund in the account package software, but all funds are in one bank account. Councilman Ertel explained that the $2M in TIF funds were not spent, but $2M more was spent elsewhere and the bottom line shows that it nets out. Mr. Consolo asked how do they account for the $2M more spent. Ms. Esarey and Mayor Infeld stated that is what they are trying to figure out.

Councilman Sims asked if the City is billed to remit payment to the trustee. Ms. Benjamin replied that the City is not billed. The procedure is set up in the TIF Agreement, the Cooperative Agreement and Trust Indenture. When the City receives the payment from the County Auditor, the City has to determine what the payment is for, deduct the TIF payment, and then turn it over to the trustee based on what the receipts were from the University Square properties included in that TIF. She added that a bill is not received because no one other than the County knows how much the City receives.

Councilman Murphy stated that he still believes that the City was harmed because this error was not caught. He added that a year and a half later the City is looking at the prospect of paying out $2M because the process which is used to catch these errors failed. He mentioned the City pays accountants to catch that. Whether it was used to buy anything, they did not catch it and that is their job. It is gross negligence and is inexcusable. Councilman Murphy recommended that the City pursue this a claim. He noted that Zupka’s failure to catch this allowed an employee to steal from the City. He added that until “float” is defined that is what it looks like to him. Mr. Bullock added that the City needs different controls of its own as well. Mr. Fisher stated that the points are all well taken and this is a highly unusual situation. He added that all available information was presented publicly and as soon as it is available a follow report will be presented as to how the matter will be resolved.

MOTION BY MR. BULLOCK, SECONDED BY MRS. PARDEE to approve the passage of Ordinance No. 2010-51 as an emergency measure. On roll call, on suspension of rules, all voted “aye.” On roll call, on passage, all voted “aye.”

I. Motion to approve a contract with Neopost for new postage machine

Finance Director Jennifer Esarey stated that the existing postage machine a City Hall is having issues. She noted that the current agreement is in effect until June of 2011. Neopost has offered to provide the City with a new machine, a new agreement and to consolidate billing. Currently, the City receives separate annual bills for maintenance and the meter and a quarterly bill for the equipment. The new agreement will be a 5-year contract and will save the City approximately $10 per month.

Councilman Consolo stated that at the end of lease, the City would have spent $10,000 to lease a postage machine. He inquired if there are competing quotes. Councilman Ertel stated that there is only Neopost and Pitney Bowes. Mr. Consolo mentioned there is another company and he would provide the information. Mayor Infeld stated that quotes will be obtained.

This item was referred to the Finance Committee of Council.

J. Motion to hold an executive session immediately following this regular meeting for the purpose of discussing personnel, litigation and real estate matters

An executive session was not required.
Directors’ Reports:

**Service Director** Christopher Vild reported that the State Urban Forester has confirmed that a tree in University Heights has been infected with the Emerald Ash Borer. He noted that the tree has been infected for 3 to 5 years. He suspects that other cases will be found. Mr. Vild noted that there are fifty (50) Ash trees on the tree lawns throughout the City that will be removed. He will advise residents of the infection and suggest that their Ash trees on private property be removed also.

Mr. Vild also reported that the Cuyahoga County Board of Health applied the rabies vaccine for raccoons in the Bellefaire area and the wooded area near Gearity School.

Committee Reports:

**Governmental Affairs Committee** Chairman Susan D. Pardee stated that her committee will meet at the Council Committee-of-the-Whole meeting at 6:30 p.m. on Monday, September 13, 2010.

**Finance Committee** Chairman Seven Sims reported that the Finance Committee meeting will be rescheduled to the week of September 20, 2010.

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

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Susan K. Infeld, Mayor

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Nancy E. English, Clerk of Council