

**SPECIAL COUNCIL MEETING MINUTES
CITY OF UNIVERSITY HEIGHTS, OHIO
WEDNESDAY, MARCH 23, 2022**

Mayor Michael Dylan Brennan called the special meeting to order at 7:04p.m.

Roll Call:

Present: Mrs. Michele Weiss
Mrs. Sheri Sax (via zoom)
Mrs. Barbara Blankfeld
Mr. John Rach
Mr. Justin Gould
Mr. Christopher Cooney (via zoom)
Mr. Brian King

Also Present: Law Director Luke McConville
Clerk of Council Kelly Thomas
Finance Director Dennis Kennedy
City Engineer Joseph Ciuni

Mayor Brennan made note that there were five council members present in person and two council members were present via zoom as allowed by HB51. Per HB51 the two council members that are attending via zoom will have the same voting and participation rights as those in person.

Reading and Disposition of Ordinances, Resolutions, Motions and Consideration of Agenda Items:

- A. Discussion referrals and recommendations regarding testimony provided the city council at its march 21 2022 Meeting related to item G on the initial amended agenda on that date, motion to approve for an additional 129,400 \$420 to be placed into escrow for the Cuyahoga cedar road resurfacing project.**

Mrs. Weiss stated that after Monday's council meeting, she was speaking to Councilman Rach since the project failed by a vote. Mrs. Weiss said that Mr. Rach was bothered by the explanation given by Mayor Brennan regarding the TLCI items. Mr. Rock then began to do a deep dive into the Cedar Road project and he found that that vote did not end the Cedar Road project by any means. There is actually a base project which Council already approved in the budget. The \$129,000 was a value add and is not required. Therefore, this brings up questions as to why the project posed was posed as in jeopardy after the vote. Mrs. Weiss said that at the previous council meeting when council asked the engineer and it look like per the draft minutes three times what was the scope of the project? Council was always told resurfacing when council specifically asked if anything was added to the project that necessitated the change, council was told no more than one time. Mrs. Weiss said that this was not been just a resurfacing project, it is actually reconfiguring a major intersection. Mrs. Weiss turned the discussion over to Mr. Rach who is an architect by trade and noted that council is very fortunate to have Mr. Rach as a Councilman to further discuss this item.

Mr. Rach stated that at the March 21 council meeting council was to review \$130,000 line item for the additional Cedar Road project funding. The history as to how this project transpired, in 2020 the city was going to do the Cedar Road project and at that time it was going to be \$1.8 million estimated project. Then COVID hit and the project was parked and placed hold because no one knew what was going to happening with COVID. Fast forward, council was going to commit to do the project this year and it was part of the Mayor's budget, the "putting people first" budget that a \$1.8 million Cedar Road resurfacing project would appear on the budget. As council was going through the budgeting process, they were told that the cost had escalated close to \$500,000, which is now a \$2.3 million estimate for the project. Council was told that the cost increase was due to oil prices, trucking issues, material supply and just inflation in general. Mr. Rach said that he understood that, but now it is a \$2.3 million project. Mind you, ODOT, who at the time had an 80% stake in this capped their fees at \$1.4 million, so they will not be paying another dime. The rest of the cost falls on University Heights. Mr. Rach commented that he could not understand why this project was getting so expensive. So, he kept asking what is in this project, and was repeatedly told it was resurfacing. Council approved a budget for \$2.3 million and approved entering into contract for this project with the

State of Ohio Department of Transportation at which they were told the city would have to put the money into escrow. The money would just be held in escrow and the funds could be removed if and when we did not move forward with the project. That gave Mr. Rach comfort so that he could say okay, let's approve this project even though it was not known what the bids would look like and did not know if there would be funding from NOACA, given that the funds will just be parked into an escrow account and can be pulled out if need be. Mr. Rach said that he later found out that that can't be done. Fast forward to Monday, council was were told that there is a cost overrun, the bids were open on the 17th of March. Council was informed that the low bid was about \$2.4 million from Park Construction for \$400,832 and that the administration needed another \$129,000 placed into escrow to make hold on the project. Again, Mr. Rach said he was having a lot of trouble understanding how this project ballooned so expensively and asked again, what is the scope of work in this project. Mr. Ciuni responded that it was mostly a resurfacing job and a couple of other things are in there as well, at which time the Mayor said that there were TLCI items. Mr. Rach said thank goodness Mayor you said it, this was the first-time council heard that there were TLCI items in this project. Mr. Rach added that he was on council in 2020 when this originally came before council and that he was on council in 2021 when it was not considered and he is on council now when council approved this project. Never, ever, ever, was it said that this project was going to include other items beyond resurfacing. There were a couple things in there for bus pad repair, curbs, crosswalk which Mr. Rach assumed was the painting of the crosswalk, but it was of a very vague nature. No backup was given and on Monday council was expected to approve an appropriation of \$130,000 without and backup. Mr. Rach stated that he couldn't go forward with it and voted no. The motion did not pass, it failed and the Mayor said you just kill the Cedar Road project. To which Mr. Rach said he replied no, council did not because council could value engineer the project to get it back into budget. Mr. Rach continue to say that in most government entities when a project is over budget in his profession when he does work for a government entity it is his duty to get the project back into budget. There are deduct alternates, which means you can deduct from the project or value engineer the project to get it within budget because the budget is the budget and it is hard to amend a budget. That did not happen with this. Council was asked for another \$130,000 to which Mr. Rach said he was a little turned off by that. Mr. Rach said that he asked Mr. Ciuni, do we cut anything out and Mr. Ciuni said well no because he had not seen the bid tabulation. Mr. Rach stated that he had an email from ODOT with the bid tabulation if Mr. Ciuni wanted to see it. Mr. Rach said that Mr. Ciuni could not really think of anything to value engineer out and that later Mr. Rach said he found out that GDP estimated the project so they should know what can stay on what can go because they estimated the project. Mr. Rach stated that he went home after the council meeting and went onto the ODOT website, became an interested bidder, download the bid documents from the bid portal and found a 69-page drawing set of Cedar Road, that drawing set was never included in council's packet when we voted on this, but it was available for online viewing for the bidders. Mr. Rach said that in looking at the drawing set he was seeing work and not just resurfacing. The entire intersection at Washington and Cedar are being reworked. Mr. Rach asked when was he going to be told that the entire intersection was being reworked, was it going to be when he was driving on Cedar and had to be inconvenienced because it would be down to two lanes. Mr. Rach added this was the first time for this project that he heard about curb bump-outs for this project was on Monday and as soon as the Mayor said the word TLCI red flags went up in his head and the thought money, money, money and that this was going to cost us some money. That is why this project got so out of control expensive. Mr. Rach said he asked what were the TLCI items that were being referred to when Mr. Ciuni said crosswalks, curbs, curb cuts, bump outs and the \$200,000 decorative concrete. Mr. Rach stated he was ticked that Mr. Ciuni miss represented this project to council. Council has the fiduciary responsibility of the city, council approves expenditures of the city. Mr. Ciuni you told council that this was a resurfacing job. This is not a resurfacing job, the intersection is NOT a resurfacing job, there's all these additives in there. Council worked our tails off to get as close to a balanced budget as possible. We had a dip into savings to pay for this project. And no one said that it was going to have all these extra elements because it was just a resurfacing job. And it isn't like the other streets that has been resurfaced. Mr. Rach said that he went into the budgeting process knowing how important it was to resurface Cedar Road but had he known it was going to include all those other elements, it may have changed his vote on the budget. Mr. Rach stated that he was having total buyer's remorse now and said that he went into the budgeting process thinking that the project was to just resurface the road. And had he known there were hundreds of 1,000s of dollars in added items to this project council could have taken portions of that out and implemented other things in the Mayor's budget that council had to cut, but instead other things were cut because council saw the importance of this.

Mr. Rach spoke to City Engineer, Mr. Ciuni who Mr. Rach said is hired to have council's back. Mr. Ciuni, you are hired to make recommendations of what projects are needed for this city and that are in the best interest of the city. But, nowhere did Mr. Ciuni say that there was an alternate one and alternate two. Mr. Rach said again that he asked Mr. Ciuni if there was anything that could be taken out of the project? And Mr. Ciuni said no. To that Mr. Rach said nothing needs to be taken out of this project because you already put alternates in the project, all you have to do is not take an alternate. According to ODOT emails as of probably last week (which Mr. Rach currently has) tells the Mayor that the project can move forward with the base bid, which includes the resurfacing. Using the base bid University Heights will not owe any

additional funding. ODOT will be requisitioning requests for \$912,616 from the city's escrow deposit and the remaining will be released back to University Heights. The escrow deposit will also cover the first added alternate for a mid-block crosswalk on Cedar Road at Thayne Road. Alternate two is to do decorative concrete on the crosswalks. ODOT's additive alternates can't be picked and chosen, you take either the base bid, and if you want alternates you go alternate one, then alternate 234, etc.

Mr. Rach asked his fellow council members if they remember hearing anybody talking about mid-block crosswalk and \$200,000 worth of decorative concrete in this project?

Mr. Rach stated that Mr. Ciuni misled council, misrepresented the project and misrepresented how the funds were going to be used to pay for the project. Noting that he had to vote on the project and that he supports the project, he did not know he was voting on all those things. Why was that not in his packet? The drawings are beautiful, they should have been provided. Mr. Rach asked Mr. Ciuni who draw the renderings and what did GPD do.

Mr. Ciuni replied that the drawings were done by Stephen Hovancsek and Associates prepared the entire set of plans but they do not have any traffic experts on their staff so GPD did the wiring in the pedestrian push buttons for the mid-block crossing for alternate number 1. South Euclid's City Engineer, Andy Blackly stamped the plans.

Mr. Rach asked what was Hovancsek's contract amount for this project, noting that he did not remember council approving any payment to Hovancsek. Mr. Rach asked if the project was competitively bid.

Mr. Ciuni replied he did not have Hovancsek's contract cost with him, but believed it was around \$70,000 and that University Heights paid its portion of the cost. Mayor Brennan replied that he believed it was in the \$80,000 but Mr. Kennedy was not present to verify that figure. Mr. Ciuni said that there was an agreement with Hovancsek that went before council and was signed. The project was not required to be competitively bid because the locals were paying for the engineering and that there was a meeting at South Euclid City Hall with Mayor Brennan, himself, Anny Blackly and the city Planners were all there. At that meeting it was decided that the Hovancsek and Associates should do the designing of the project.

Further discuss between Mr. Rach and Mr. Ciuni was had regarding the engineering fees. Mr. Ciuni stated that the engineering fees for Hovancsek and GPD group were separate from the construction engineering cost, which was not ready yet.

Mr. Rach asked who would be managing the project.

Mr. Ciuni replied ODOT would manage the project. In terms of Mr. Rach beliefs that he misrepresented the project to Council Mr. Ciuni said that the recommended project included both alternates and that was why it was before council at the previous council meeting on Monday, in order to do the recommended projects \$129,420 is needed. If the project was going to be accepted without the alternates there would have not been the need to be in front of council for approval. Mr. Ciuni added that he sat in meetings with the both city planners and both mayors and they wanted those recommended items in the project. And that is the recommended project that he was recommending to council. If council does not approve that dollar amount for it, then it doesn't get built. This is the recommended project that the City of South Euclid also wants and they have their money in it. The alternate items are safety recommendations made by NOACA. Mr. Rach asked if decorative concrete was safer. Mr. Ciuni replied yes because there is an element where you can see it better, it is safer because it stands out more.

Noting the spreadsheet where there is a description on the right side of the page with a heading of traffic control and one of maintenance of traffic and then the incidentals are listed. Then there is a heading of additive alternate one. Mr. Gould asked if everything that was above additive alternate one included in the base bid. Mr. Ciuni replied yes. And then for additive alternate one that goes down until the heading of additive alternate two and so additive alternate two includes everything in the base bid and then additive alternate one. Mr. Ciuni replied yes.

Too clarify Mr. Gould's questions they were restated as everything under the heading additive alternate one is not correct until you get to add a development to correct and in order to select additive alternate one, you must do the base project as well. Mr. Ciuni replied yes. And then additive alternate two is that only the item under additive alternate two. Mr. Ciuni replied that there is only one item there and that was correct. And in order to add additive alternate two, you need to do both the base project and additive one. Mr. Ciuni replied yes according to the rules that were given by ODOT. The only item that is an additive alternate two is decorative concrete crosswalk. Mr. Ciuni replied correct.

Mr. Gould added that his concern was the responses when he asked questions. Mr. Gould said he knew that Vice Mayor Weiss asked clearly if this was mandatory twice, do we have to do this additional \$129,000? And Mr. Ciuni's response to her was? Yes. Mr. Gould had asked if there were any additions or alternatives options that could be taken out to lower the price? And Mr. Ciuni's response was that he would have to do the analysis that Mr. Rock had referred to. And to that comment Mr. Gould said, so there is nothing we can just take out? And Mr. Ciuni said that was correct. Mr. Gould asked Mr. Ciuni if he received the March 18 2022 email from ODOT. Mr. Ciuni responded that was correct. Mr. Gould then asked Mr. Ciuni if it was his understanding from the options where they presented three options A, B, and C, in the email. A base price, and under the base price, we would receive a refund of our escrow dollars of approximately \$100,000. Mr. Ciuni answered that was correct. Mr. Gould continued to say and if we did the base level and additive alternate one, then we would have all of those things completed. And we would also receive a refund of approximately \$100,000 from our escrow account. And the base option and additive alternate one included all of the bus pads, all of the bump outs, the reconfiguration of Washington Boulevard with the corners extended into the intersection for safety, the painted crosswalks and the other intersection at Thayne. Mr. Ciuni replied that was correct, including the mid-block crossing with rapid flashing beacon lights. Mr. Gould asked Mr. Ciuni if the third option that they provided us with C was for the \$129,000 additional cost and for that we would have to put that additional \$129,000 into the escrow account. That is what you were approaching council about on Monday and that \$129,000 is for nothing other than decorative concrete crosswalks in the two intersections. Mr. Ciuni replied yes, because it needed more funds for Council to approve the other two options. Mr. Ciuni made note that he would not have been if we didn't need any more funds.

Mr. Gould said what was most concerning to him was that when he asked Mr. Ciuni if there were things that could be removed, to lower cost, or when the Vice Mayor asked, is this a mandatory fee, or if they could choose not to do it? Mr. Gould said he would expect the response to those questions to be you can get all the lights, all the safety, all the crosswalks, all the reconfiguration, all of the repaving all of the potholes, most of the things except for decorative concrete that NOACA wanted, and then Mr. Ciuni would be able to proceed and get a \$100,000 refund to the city accounts from the escrow that was put in; but, that is not what Mr. Ciuni said.

Mayor Brennan stated Mr. Gold, the questions as you paraphrase them that you said that you and Mrs. Weiss asked are not what you said on the record. And you have misstated the questions that you asked Mr. Ciuni. And anybody can go back and play that video as I did today. And here are the questions that you asked and those aren't the questions you ask. Mr. Gould said well they are the questions that I asked. Mayor Brennan said maybe you have those questions now or maybe that's what you meant to ask, but that's not what you asked Mr. Ciuni and Mr. Ciuni answered the questions that was put before him.

Mrs. Weiss stated I have the minutes right here. Mrs. Thomas typed them up. Mrs. Weiss asked if it was mandatory to place the request requested extra funding. Because from the Mayor's explanation, it did not sound mandatory, it was more of an ask.

Mayor Brennan said that those were unofficial minutes at this point and I've watched the video I have not read Mrs. Thomas' draft minutes.

Mr. Gould continued and said, Mayor first of all, I appreciate you correcting if there's a quotation that you'd like to share that is different and you certainly can. These are the questions that were asked I've reviewed the items in detail and Mrs. Weiss not only asked whether or not the funding was mandatory once, but she did it twice because the initial response was non-responsive to the question of whether or not the items were required and that he was going to return back to his line of questioning because he had the floor.

Mayor Brennan replied that Mr. Gould was welcomed to return to his line of questioning, but he was noting for the record that he (Mr. Gould) misstated those questions and anybody can go back and watch the video and see what was actually asked and stated and that he was the chair of the meeting and would let Mr. Gould know when he could resume talking. After a brief moment Mayor Brennan stated that Mr. Gould could resume speaking.

Mr. Gould stated to Mayor Brennan that he was interrupting and was out of order.

Mayor Brennan replied to Mr. Gold that he had the gavel and was the Mayor and that he ran the meeting.

Mr. Gould stated that he would then make a motion to overrule the Mayor as Council can by their council rules to stop interrupting him while he had the floor to ask questions of Mr. Ciuni.

Mayor Brennan remarked that he was going to rule Mr. Gould comment as dilatory, but stated that Mr. Gould could continue to ask Mr. Ciuni questions.

Mr. Gould stated that he had made a motion and that it was on the floor. Mr. Gould asked if there was a second to his motion to overrule the Mayor?

Mrs. Blankfeld replied second.

Mr. Gould stated that there was a motion and a second and that council rules allow Council to overrule the Mayor as chair of the committee or chair of the council meeting by a vote of Council.

Mayor Brennan said that that particular motion was being made to disrupt the proceedings and that it is within the prerogative of the chair to view that motion is dilatory, and that he was not going to allow it.

Mr. Gould asked Mr. McConville if he had a copy of the City's Charter with him to look up the section regarding the chair of the meeting.

Mr. McConville noting that he did not think that Article Five Section (4)(b) particularly addressed that issue, Mr. McConville read Article Five Section (4)(b) titled General Powers and Duties be Legislative into the record. The Mayor shall preside at all meetings of the Council and shall have the power to veto as specified in Article Three Section 7 of the Charter. The Directors of all departments established by this charter or by ordinance also shall be entitled to seats in the Council. Neither the Mayor nor any Director of any department shall have a vote in the Council. But the Mayor shall have the right to introduce ordinances and take part in the discussion of all matters coming before the council. And the Directors of departments shall be entitled to take part in all discussions in the Council relating to their respective departments. Mr. McConville said that he was not sure whether there was a provision Robert's Rules that governed this situation, because there is a provision in the city charter that indicates that parliamentary procedure is governed by Robert's Rules of Order.

Mr. Gould stated that for the purposes of the moving on with the meeting, he was withdrawing his motion and continued to state that his concern was that when he asked Mr. Ciuni questions regarding whether or not the charges were mandatory, and whether or not the \$129,000 needed to be paid in order to go forward with the project, his response was that it did and that Council was notified that this was not killing the Cedar Road project, but it was for the removing of stamped concrete from the Cedar Road project he thought that he would have had a different feeling at the end of the meeting. Mr. Gould asked if there was something that he was not aware of that would have stopped the ability for the project to go forward without decorative stamped concrete in the crosswalks?

Mr. Ciuni replied no, that there was nothing Mr. Gould and Council was not aware of. Mr. Ciuni said that he interpreted the question from Mrs. Weiss as being if the dollar amounts were mandatory and yes, they were mandatory for the recommended project. Mr. Ciuni added that he sat in meetings with both mayors and both city planners where the decision was made to put those items in the plans. And we design the plans, and we put them in there. And at the time before the war in Europe, inflation and everything, there was enough dollars to do it and the recommended project included all of those items. The project is still a 95% of resurfacing job. And the dollars that went up were on the asphalt side, not on the decorative concrete.

Mr. Gould commented that it was not just Mr. Ciuni, it was also the Mayor, who at the end of the last Council meeting said well, I guess we just killed the Cedar Road project. It was the totality of responses from Mr. Ciuni and the Mayor, that led Mr. Gould me to believe that if council did not proceed with the project and with the \$129,000, that it would be a death knell to the entire project. Mr. Gould added that he appreciated the explanations, and Mr. Ciuni apologized for the misunderstanding.

Mr. McConville noted for the record, that members of a body do have the right to make a motion to object to procedure or personal affront and he thought that was perhaps analogous to the motion that Mr. Gould was making.

Mrs. Weiss stated that she knew that Council as a whole wanted this project to go forward. But, she did not believe that Council was aware of the additive alternate one verse additive alternate two because they are not versed in this type of project and they did not have this same information in front of them. Mrs. Weiss suggested and asked Mr. Ciuni if since additive alternate one was part of the base program and would not need the additional \$129,000 that it would be appropriate to possibly take another vote because this project would not be dead without additive alternate two.

Mr. Ciuni replied that the project could be built without alternate two.

Mr. King voiced his disappointment that Council was having this conversation now as opposed to all the other times. This project had been approved and to his knowledge, nothing in the scope of the project had

changed. If this was approved last year, it was approved in the budget. The decorative concrete that is being talked about was all in the public eye; it was in the Mayor's budget, it was highlighted on the city's website. Mr. King said there should not be any surprises here and as far as whether this was a repaving job versus all the other extras, he did not know, all he saw was a good project. A project that not only serves cars, people, drivers, but it recognizing pedestrians, as well as the users of the road. The project was designed with partners; the County and most importantly the City of South Euclid. It was not until Monday night's Council meeting that people started trying to dissect the totality of the project. Mr. King added that he was very concerned that Council was having this discussion from Monday night again at this time. If there were concerns about the cost, as was a concern in the discussion about the budget; why did it go up? Why didn't Councilmembers ask for the drawings that it was approved in the budget without them? Mr. King noted that Mr. Keith Benjamin from the City of South Euclid was present at this meeting and was working hard to find additional funding for the project. Mr. King said that he was really disappointed with tonight's discussion.

Mayor Brennan stated that Mr. Benjamin was part of the team that had been working on this project for the last three years and that there had been numerous meetings at South Euclid with Mr. Benjamin, Mr. Ciuni, Mrs. Drucker, Mr. Zak, personnel from the City of South Euclid and others. Mayor Brennan said that drawings were available for viewing. Mayor Brennan asked Mr. Ciuni to explain the project.

Mr. Ciuni said that because this was a resurfacing job, and that in a normal resurfacing job ODOT does not do these elements of work as listed as alternate one and alternate two. ODOT does pavement work, curbs, striping and redo signage. With this project the signage all along Cedar Road will be redone because the signs are outdated and they don't meet the new reflectivity rules. Mr. Ciuni said that Mr. Rach was correct in that ODOT capped their dollar amounts and anything above that cap and anything cost that was alternate one or alternate two would have to be picked up by the locals because that was their choice to put that in. As in this project, it was the city's choice to put it in and that is why the alternates were split out that way and why additional funds are required.

Mayor Brennan added that when NOACA chose to fund this project, they were looking at the entire project, including the alternates and their bid includes alternates because of ODOT regulations. Mr. Ciuni replied that was correct and that the items are eligible for federal dollars.

Mayor Brennan continued to say that when NOACA bided and when they awarded a \$1.4 million award on this project it was not just a resurfacing project, it was a resurfacing project with these additional elements. Mr. Ciuni replied that was correct. Mayor Brennan stated that in talking with Grace Gallucci, Executive Director of NOACA and Mr. Benjamin, at the City of South Euclid that the position of NOACA, South Euclid and in fact, the position of University Heights has been that this is the project and that the project includes all these parts, and always has. They were not added on at a later date but had always been a part of the project. The Mayor said that Mr. Benjamin contacted County Councilperson Cheryl Stevens, about County ARPA money for this project. Mayor Brennan made note that every County Councilperson has some ARPA money to distribute to various communities and that he had been working with Mrs. Stevens to see if it would be possible for the County to grant ARPA funded projects in University Heights although nothing has been selected yet. But Mr. Benjamin did approach County Councilperson Stephens for a possible commitment of \$129,420 difference in County ARPA money. And Mr. Benjamin was able to secure that commitment from Councilperson, Stephens.

Mayor Brennan said that he understood County Councilperson Stephens met with Councilperson Gould and Vice Mayor Weiss, and as he understood somehow represented to her on behalf of the city that the city was rejecting that offer (for ARPA funds) for that purpose. Mayor Brennan said that he had also spoken with County Councilperson Stevens and revived the offer and let her know that yes, the City of University Heights was interested in completing the project as envisioned by NOACA, as envisioned by South Euclid and as envisioned by University Heights. University Heights would be happy to take the necessary \$129,420 to bridge the gap and take the lowest bid on the project as it was always conceived.

Mayor Brennan added members of Council should not be rejecting offers on behalf of the city, because they have no authority to do that. Council also has no authority to call ODOT and obtain extensions. That is an administrative function and something he was working on with Mr. Ciuni. Mayor Brennan stated that he had received a cc'd email that Mr. Gould had contacted ODOT and that ODOT had provided the city with an extension until 6:30 the next morning in order for the city to get a response to have this meeting. That was not something administration asked for. The Chief Executive and Chief Administrative Officer of this City is the Mayor and the Executive Administrative functions of the Charter of the City are in the Mayor's office. While the Mayor can delegate that from time to time, at no time, did he ever delegate that authority to Mr. Gould to contact ODOT and begin negotiating. Mayor Brennan informed Mr. Gould that he had no right to usurp the authority of the Mayor's office and asked Mr. McConville to provide him with a brief prepared a memo prepared on what the remedies are. And what can be done about council members who

contact outside agencies and begin negotiating on behalf of the city when that is strictly the administration's job.

Mayor Brennan noted that there had been numerous instances where this council has taken exception to the conduct or the performance of certain employees of this city. Council has the ability to go into executive session to have those discussions. Mayor Brennan noted that this special meeting was not noticed to go into executive session to have a discussion with Mr. Ciuni if this council had a question about his performance, Mr. Ciuni has served this city for decades. You can go back into minutes from the 90s and see that every name in those minutes is different than anybody who is here, except for Mr. Ciuni. He has served with distinction and honorably here in the City of University Heights. Over the course of the past year, we have publicly criticized various employees, various public officials and it has been disgraceful. And here we are doing it again; we did it to Mrs. Thomas, we did it to Mrs. Scalise, we did it to Ms. Weiser and now we are doing it to Mr. Ciuni. It's disgusting. It's disgraceful. And it's shameful. If you have a question, an issue with Mr. Ciuni's performance and if you want to call meeting for it, we should have gone into executive session to do that. Instead of delivering a public flogging, instead of tanning his hide, so you can wear it to cover your backsides for the terrible decision you made two nights ago to reject this project.

Mrs. Blankfeld commented in answer to Mr. King's question, that she believed that council was "dissecting" to use the Mayor's word, the project as we did Monday night, and are further doing this evening because additional funds were being asked that were not the original budgeted amount. Council was being asked for an additional \$129,420. Council had to, as the Mayor knows, scrape and scramble to really get figures as close to a budget, a balanced budget. Everybody knows that is hard to do with a city this size, when it not a rich community. Council has the power of the purse and is the legislative body. Mrs. Blankfeld said to Mr. King that as a new member of Council, it is a learning experience. But that he and every member of council has that power and that it is their responsibility to do that. As far as discussions going on with esteemed members of other communities regarding the project, those discussions were not shared with council and because no one communicates with council, except possibly an occasional email from the Mayor's assistant. Therefore, Council would have no way of knowing that there was all this other extraneous conversation going on with our Council, County Council representative, Mrs. Stevens and that there would be funds to cover this where it would not be necessary to have to try and amend the budget and cut something else beyond what had already been cut. Council should not have to guess or have to go looking and begging at the Mayor's office to look at documents to backup to things that Council is being asked to legislatively approve. That information should have been shared with Council all along in a regular flow of respectful communication, collaborative communication from our administrative employees. So yes, that is why we are having this discussion. Mrs. Blankfeld said that she would rather have a spirited discussion and q & a with the employees because she would like to see everything above board.

Mr. Gould wanted to address a couple of the things that Mayor Brennan said about his actions on behalf of the city. Mr. Gould said that he did not need permission from him to act in his capacity as a City Council person and that he did not know what the Mayor had been told or who he had been told it by. Mr. Gould said that he did call ODOT and that he was absolutely able to call ODOT and ask questions as a city council person. Mr. Gould said he identified myself to the project manager on this case, Miss Laurie Scaramucci, and asked her when their acceptance committee would be meeting so that he would understand how much time Council had to call this special meeting that was after speaking with Mrs. Weiss. It was once Mrs. Scaramucci informed Mr. Gould that they would be meeting at 8am the next in the morning tomorrow. And that if they let them know any time before then that we would be proceeding with either the base level, or the base level with alternate one, or the base level with alternate one and alternate two, and that the committee would be able to act within the seven-day period established by the Federal Government to accept bids. Mr. Gould said that at no time did he request an extension, he simply asked and if, as the Mayor characterized in the email, it said that Mr. Gould called and that the State has provided an extension. Mr. Gould said that he did not ask for extensions, he has no authority to act on behalf of the city, as you've already highlighted and that you, the Mayor is the only person that can accept this bid. But what Mr. Gould did want to understand was whether or not what the Mayor said was truthful regarding the death of the deal. Mr. Gould said he was led to believe by the Mayor's comments at the meeting on Monday that the deal was dead. We would have no repaving, citizens would be calling in continuing to call in about the state of the roads, we would not have the bump outs, we would not have the bus pads. That may not have been what the Mayor's intention was, but that was what the impression that Mr. Gould was left with at the end of the meeting. Thus, he called the State understand that position.

Mr. Gould continued to say that he had known Cheryl Stevens since he was a child and did not need the Mayor's permission to speak to their County Council person or his friend. Mr. Gould assured the Mayor that he does not accept or reject signed contracts or do any of that order for the city. Neither can the Mayor appropriate ARPA dollars, that is the work of this body. Therefore, Mr. Gould invited our Vice Mayor, to meet with my friend and our County Council person Cheryl Stevens, we had a conversation about our recent Council retreat and the priorities that our council set, including how we would address issues which

universally seem to be of a concern to council in the Jackson Blvd. neighborhood. And whether or not we thought that a couple's crosswalks of decorative stamped concrete met those priorities. I cannot control whether or not a county council person makes an official offer of her funds to the city of University Heights. I can only state what my vote would be regarding stamped decorative concrete in sidewalks and whether or not I felt that that was an appropriate use of \$129,000. We also talked about additional requests for \$600,000 that may be committed to the city of University Heights for our sewers that you've talked to her about. We talked to her about up to another \$500,000 of funding for other priorities that council has. So, we had a universal conversation. Mr. Gould informed the Mayor that he would not reject an offer of something on behalf of the city if there was such a thing I can't do that. County Councilwoman Cheryl Stevens doesn't listen to one Council individual, if she wanted to give us that money, and have us vote on it, she would do that. She's not controlled by me or any conversation that I have. She's an independent thinker, an independent woman. And I trust her implicitly. Mr. Gould continued and said that for him, as he had explained, his concerns were about what the impression that he was left with at the end of the meeting. Mr. Gould said that he did not share Councilman Rach concerns regarding the scope of the project and that his concerns lied with the end of the meeting and based on the Mayor's and Mr. Ciuni's comments he understood that the only choice he had was to expend another \$129,000 or leave a Cedar Road with potholes and other issues, that did not feel right so Mr. Gould said he voted the way he did and that was why he called the State, because he did not trust what he was understanding to be true.

Mr. Gould said that the State sent him a copy of a March 18 2022 email, which clearly stated that there were three options as already outlined and although they had set a deadline of Wednesday at 11am, that was not a deadline. That was not set in stone and that Council could still act within the seven days. As the Federal Government requires that a bid be accepted by a city within seven days of the time that the bid is returned. If after that seven-day period, the bid is not accepted, or it is extended in some way, as he understood from Mr. Ciuni or they can be contacted to extended the extension of the bid if it is still valid, we can still accept it. But the low bidder has the opportunity to walk away from that bid. Mr. Gould said that he felt misled and that he did not have full information. Based on that he would not be voting for the \$129,000 in decorative concrete crosswalks.

Mr. Rach spoke in order to clear up a few points where Mr. King asked him why he did not ask for these drawings before. Mr. Rach said that he did not think he had to; he trusted the Administration, trusted the City Engineer and trusted the Mayor that they were making sound decisions on behalf of the city. Mr. Rach said that for him that would never happen again and that he wants to see drawings, specifications, every piece of backup possible before spending any more public funds on public spaces; including the right of ways and the infrastructure buildings. Secondly, during the retreat, Council recommended that it would start an infrastructure and building committee, similar to what an Architecture Review Board would do but that committee would review infrastructure projects and building projects that the city is a partner in on city land on any city property. Mr. Rach asked the Law Director if University Heights and South Euclid were exempt from the rule regarding contracts over \$50,000 and those contracts had to be competitively bid?

Mr. Benjamin from South Euclid stated that South Euclid had passed a Resolution in July, 2020 to enter into an agreement with the City of University Heights to share a portion of costs and engineering services associated with the Cedar Road resurfacing project. Mr. Benjamin noted that Council was doing their due diligence in asking the questions, that the Council was doing what it needed to do as city council people elected by the citizens. Mr. Benjamin noted that this was also a South Euclid project and that they were paying 3% of the bill for the project. South Euclid has already sold their notes and is paying the interest.

Mr. McConville pointed out that the city did enter into a contract that was approved by University Heights Council with the City of South Euclid to share the engineering cost of Hovancsek. The larger point relating to contracts over a certain dollar threshold, whether it's the state law of \$50,000, or the city's law of \$15,000 is not interpreted to apply to contracts that relate to professional services. Municipalities do have the ability to pick and choose their own vendors for professional services. For example, you do not have to seek public bidding in connection with hiring legal counsel. Mr. McConville said it was always his interpretation that the same thing would apply to engineering services because they are professional services.

Mr. Rach noted Ohio Revised Code 153.71 which refers to Professional Services Firms and states that any public authority planning to contract for professional design services or design build services may adopt, amend or rescind rules in accordance with Chapter 119 of the Ohio Revised Code where it cites the elements that do not apply for a project with an estimated professional design fee of less than \$50,000 and states that one of the listed conditions have to be met. Mr. Rach asked Mr. McConville to review that section of the ORC more carefully. Lastly, Mr. Rach said that he believed in partnerships and that Mr. King was right. The city has a very good partnership with NOACA, with South Euclid, with all the surrounding neighbors. But the one partner that was missing in this entire process was the person with the purse with a checkbook. Council was not involved in the process. Council was not told about any of the design so they were left out

of the process. But yet, Council is expected to pass an ordinance for the taxpayers to foot the bill for something it knew nothing about.

Mr. King replied that this project had been approved several times already by council. And that there was not an issue until Council meeting Monday evening. Council is changing the scope of the project that all member all of the partners agreed to and he did not feel right in doing that at the last moment over a \$87,000 difference in a multi-million-dollar, multi-agency project. That is not a very large sum of money in the scope of all of this. The Administration is working with NOACA to get more funds and Mr. Benjamin went to the mat for University Heights to get more funds. Mr. King said that he thought that trimming back this project at this last moment, just feels pennywise pound foolish.

Mrs. Blankfeld said that Mr. King was right in that everybody agreed that it is an important project. And that all of the components are important. All of Council recognizes and appreciates all of the different professional and personal relationships that have come together to make this move forward. The issue lied Monday evening with the fact that Council was being asked for more money beyond what had been approved, without any backup information. Now having Mrs. Stephens and Mr. Benjamin come up with those funds, with which Council would have had to somehow claw out of a budget that was already very stretched, places a different color on it. But that was not the case Monday evening, if it had been no different, it would not have been on the agenda for the additional \$129,000.

Further conversation and discussion occurred relating to the cost, the additive alternatives.

Mrs. Weiss thanked Mr. Benjamin for his attendance and noted that council valued the partnership between the two cities. Mrs. Weiss added that she wanted to do the right thing for the residents, that it was not to do just for herself and that it is never about her. Mrs. Weiss said she was elected for the constituents, not for herself. Furthermore, she was the one who called this special meeting to get this passed, because all council members wanted this to pass. Mrs. Weiss added that personally she was never aware of the alternates, and yes, she may have seen a drawing but there was never an explanation of an alternate. Also, \$186,000 is not insignificant to budget. South Euclid might be in a different operating space than we are. But that's not an insignificant amount to our budget. However, the other point is that she hopes that the County comes through because there aren't any assurances yet. With all of that said though, Mrs. Weiss stated that she felt that this this project should be approved, as is even with the additive alternate two because of the various partnerships and because of everything that was said here. Lastly, Mrs. Weiss stated for the record that council was not advised properly about these alternatives and that has to change going forward. But again, council is here for its constituents, not for grievances that it has with possible misinterpretations or with possible people who have misled them but she was ready to make a motion.

Mr. McConville noted that if he was hearing Mrs. Weiss correctly in that the motion may be substantially similar to what was on the agenda the other night, that the first order of business would be to entertain a motion for reconsideration, that motion must be made by someone who voted no. After that Mrs. Weiss's motion could be entertained.

Mr. Gould asked for a brief recess in order to make sure that the ARPA money that was discussed in regards to the budget would still be on the table.

MOTION BY MR. GOULD, SECONDED BY MRS. BLANKFELD to recess for five minutes. On roll call, all voted "aye."

MOTION BY MR. GOULD, SECONDED BY MRS. WEISS to reconvene the regular special session. On roll call, all voted "aye."

Mr. Gould stated that he wanted to confirm that the city still had the \$129,000 from County Councilperson Stevens. Mr. Gould also said that he did not want to harm any partnerships, or the community and while he may not value decorative stamped concrete; as it has been explained tonight there is a more to it than its decoration, perhaps that name needs to change because the wording descriptive. With all the discussions that have been had surrounding this project, the additional money, the money that could come from ARPA, and projects that are happening in the city. If there is something that Mr. Gould said he needed to do as a council person, was to work more collaboratively with the Mayor to get information that is full and complete. Noting that he was a no on the original agenda item, Mr. Gould made the following motion.

MOTION BY MR. GOULD, SECONDED BY MRS. BLANKFELD to reconsider the motion to approve an additional \$129,420 to be placed into escrow for the Cuyahoga Cedar Road Resurfacing Project.

Mrs. Sax commented that she was glad that there was a public debate and not via social media so that the facts could finally come out. But it seemed that it was a lot of work on the part of council to extract the basic needed information and in a manner that was appropriate. Mrs. Sax strongly asked that the administration presents all the facts to council in a timely manner so that everyone can truly honor each other and move together cohesively and collaboratively.

Mr. Rach reiterated for the record, that he supports the project of resurfacing Cedar Road and that he has been very vocal about that for years. Cedar road is in bad condition and that he had been supporting this project through the budgeting process. Mr. Rach said that he still supported the resurfacing of it but would be a no vote because this is over budget and that he has for almost every single thing in the city that has come before council over budget he has voted no on and he was not going to change his stance now. Mr. Rach added that he was glad funds were found that were not there the previous day and that that made him feel a little bit better. Mr. Rach will be a no vote on this, but not that he doesn't support the project, because it is over budget. Council is putting more money into something and he did not like the whole process that they went through.

Mr. Cooney added that agreed with Mr. King in that council voted on this project several times. Mr. Cooney also agreed with Mr. Rach and although he was aware of the decorative category and elements he accepted personal responsibility because he should have asked for more information and plans in regards to this project.

On roll call, all voted "aye."

Mayor Brennan announced that the motion for reconsideration passed. The next item is for the approval of an additional \$129,420 to be placed into escrow for the Cuyahoga Cedar Road Resurfacing Project.

MOTION BY MR. GOULD, SECONDED BY MRS. BLANKFELD to approve an additional \$129,420 to be placed into escrow for the Cuyahoga Cedar Road Resurfacing Project. On roll call, all voted "aye," except Mr. Rach, who voted "nay."

MOTION BY MR. RACH, SECONDED BY MR. GOULD to adjourn the meeting. On roll call, all voted "aye."

There being no further business, the meeting was adjourned at 8:51p.m.

Michael Dylan Brennan, Mayor

Kelly M. Thomas, Clerk of Council