

EXECUTIVE & FINANCE COMMITTEE MEETING MINUTES
AUGUST 27, 2012

Chairwoman Holzheimer Gail called an Executive & Finance Committee meeting for **MONDAY, AUGUST 27, 2012 AT 7:00 PM** in the Euclid Municipal Center Council Chamber.

AGENDA

Discuss the purchase of 22305 Lake Shore Blvd. property for Waste Water Treatment Plant Improvements. (Legislation passed 8/8/12)

Members Present: Caviness, Scarniench, Jones, McLaughlin, O'Hare, Langman, Van Ho, Holzheimer Gail.

Excused: Lynch

Councilwoman Scarniench moved to excuse Councilman Lynch. Councilwoman Jones seconded. Yeas: Unanimous.

Others Present: Law Director Frey, Community Dev. Director Pietravoia, Finance Director Malone, Service Director Bock, WWT Supt. Hall, Clerk of Council Cahill.

A moment of silence was held for American hero, Ohio Native Neil Armstrong.

President Holzheimer Gail – The legislation was passed at a Special Council Meeting. There continued to be a few questions from Council and residents so we thought it was appropriate to have a committee meeting to discuss any questions and clear up any items that needed to be cleared up. I will start by turning it to Director Frey.

Councilman Langman – Sorry to interrupt, but I thought it might be good, since this is an unusual type of meeting, we're discussing something that already passed, if perhaps we would allow the residents to comment first and sort of add to the questions and then they can go into the presentation.

President Holzheimer Gail – I'd like to start with the presentation because I think several of the questions probably will be addressed. We will leave plenty of time for questions from residents. But as we do in most committee settings, I would like to start with the presentation, thank you though. Director Frey.

Director Frey – With me tonight in addition to the City Directors and Waste Water Superintendent Hall, are attorneys Tony Coyne and Jim Budzik from Mansour Gavin. They have been working as our primary counsel on this purchase of property for the Waste Water Treatment facility, specifically the former Alexander's or Smith's restaurant site. You can see on the handouts that were used in the public discussions earlier on the rate structure where the two equalization tanks are roughly proposed. Those are not exact locations but in the workings with those other two property owners, Walgreen's and the BP station, in the event that we get there, but primarily for tonight is the discussion of the purchase of the Alexander's site from a company controlled by Miles Carter or Carter Properties. Mr. Coyne and Mr. Budzik are here. They will be making the primary presentation to City Council. The rest of us are here to answer additional questions or participate in that discussion as appropriate.

I will say typically, as Council is aware, discussions of land purchases are matters that would be considered in Executive Session. But because of the discussion we had at the Special Council meeting and the subsequent comments from residents, we felt it appropriate we have this discussion here to the extent that we can. We end up getting into privileged matters, then we might ask those be held for a later discussion. With that I will ask Mr. Coyne to get into the discussion of the process of acquiring this property and the relative differences between a negotiated purchase and an eminent domain proceeding in this case.

Mr. Coyne – As background, I'm here this evening with Jim Budzik an associate in my firm, Mansour, Gavin, Gerlack and Manos. I've been practicing in the area of business law and corporate but with a real specialty in land use, legal counsel both in terms of representing private property owners and working through the process of developing property, but also representing governmental entities as well in eminent domain matters for the acquisition of properties for various public purposes.

That process which we're here to discuss I suppose, is the acquisition by the City of Euclid of certain properties along Lake Shore Blvd., or specifically a property. Is one that is not necessarily unusual, it is done really two ways. One is through an arms length transaction where you negotiate with the property owner, but also with the understanding its for a public use you can take advantage of Ohio's eminent domain laws that are governed by Chapter 163 of the Ohio Revised Code. Just for simplicity sake, you really need to have due process and just compensation issues addressed when you do that. First is to have a public purpose or use for the property. The second is to notify the owner of that and if an acquisition is going to occur. In order to do that, you need to offer just compensation, which is defined in the case law primarily as fair market value for the property.

In this case with your Waste Water Treatment facility needing expansion, this property will be integrated into that in some respect, the final plans are not yet completed, but your environmental consultants will do that with your consultation I'm sure.

When we first approached this owner, as you know, the property was under consideration to be developed by McDonald's corporation as a restaurant. We do for full disclosure, do work for McDonald's. We don't represent the owner though, Mr. Carter in any way. We were approached after it was apparent the city needed this property, it would be difficult for Mr. Carter to sell the property or to develop the property and it could become very costly for the city to try to acquire it later on after it were developed.

Consequently, we were authorized to contact, after a letter actually was a received threatening litigation by the lawyer for the property owner. Technically I should say the property owner is, Westminister is the property owner. We then had the property appraised and we entered into negotiations with the property owners' attorneys. Again I want to be careful about the negotiation that I think there are some attorney client privilege I want to be sensitive to, to the city on. But the appraisal was completed in January by Sherman Andrzejczyk group which is an appraisal firm. Bob Andrzejczyk completed this report, he's a licensed appraiser in the State of Ohio. He completed the report under the uniform standards of appraisal practice. The report if we couldn't resolve it in negotiated acquisition, it could be used in an eminent domain proceeding where he would provide testimony.

In that report he comes to two numbers essentially. One is the fair market value, assuming this is just a vacant land acquisition of 1.19 acres. He does a comparable sale analysis where he gets about 4-5 comparable sales that he compares the property to and does his own adjustments to determine what would be an appropriate fair market value. Also since the property was subject to the potential purchase by a national company that's creditworthy, he looked at that, it was in the form of a lease. He looked at that lease and he put a value on that reducing it to present value. He has an addendum in his report where he values that as well.

During the negotiations in consulting with the Law Director and reviewing the appraisal report, we reached a number that I believe this Council has approved to acquire the property for the City of Euclid. The property owner has agreed to accept that number to convey the property to the city and we're about to undertake some due diligence to make that property transfer available.

Just as background on this, in terms of this meeting sort of occurring after you had some discussion about it. It is important to recognize the options that were available to you and are available to you under 163 of the Revised Code. Once you have that appraisal report, once you file the eminent domain proceeding, if you're going to go down that path, in other words you decide not to negotiate with the owner. I might add, under the law, you

have to negotiate with the owner, you have to do that. You have to send a letter. You have to wait 30 days. You have to show your cards and show the appraisal. You have to do all of that before you file an eminent domain proceeding.

Once you file the eminent domain proceeding, the property owner has a right to request mediation and requesting that mediation, a mediator is appointed by the Probate Court Judge. You have to pay for that, the city, the taking authority has to pay for that cost and it depends on who the mediator is, that could be fairly costly but the property owner also has the right to contest the right to take to have a hearing before the Judge. Challenge whether this property really needs to be used by the public, that it is truly a public purpose and the reason for the acquisition is to benefit the public.

After that, presuming that you prevail at that hearing, I might add. Usually the taking authority does, it is rare occasion that does not happen in Ohio. But if the property owner then does not agree to convey the property or settle, you then have the right to have it presented to a jury and then the jury hears the testimony of the city's appraiser, the appraiser for the property owner. The property owner is also allowed to provide testimony for the value of the property. The jury must come in between the ranges of testimony which would mean, the lowest appraisal report, the highest appraisal report and also the property owner's opinion of value. The property can have a wild-eyed opinion of value and sometimes the jury looks at that and says that's the owner's opinion and they discount it. If the property owner is a sophisticated real estate developer and knows real estate, the jury will often look at that owner and say this person knows what they're doing, so they'll give some credence to his opinion of value. Once the jury returns a verdict, you have to pay that verdict and then you get the property.

So, it is a very broad overview of the procedure generally and also where we get at to acquire the property today in an arm's length transaction. If there are any questions, I'd be glad to entertain them at this point in time.

Councilman Langman – Mr. Coyne, when were you actually retained by the city, what date?

Mr. Coyne – What date?

Councilman Langman – Approximately.

Mr. Coyne – Probably in January, or no, I'd have to punt on that, I don't really know that off the top of my head. Hold on a second.

Councilman Langman – While you're looking for that, Law Director Frey, when did the property owner indicate that there maybe litigation involved?

Director Frey – We received the first letter in December 2011 and a subsequent letter in January 2012.

Councilman Langman – We received letters in back to back months, basically stating what?

Director Frey – Essentially stating commence eminent domain proceedings on behalf of the property owner. You've indicated that you were going to need this property for a public purpose and that you've deprived the property owner of his economic value.

Councilman Langman – So how long had we discussed this prior to retention of Mr. Coyne with Mr. Carter? Had we had any discussions prior to the December letter as to our need of the property?

Director Frey – Yes we have as we indicated to you in emails earlier. In the Spring of 2011, Miles Carter contacted I believe Director Pietravoia indicating that he had an interested party in the property. The conversation may have originated with the city making that contact, but it was in roughly April or May of 2011 indicating that there was an interested party. At that point we were working with the proposal for the Waste Water facility that would have used the wet weather facility in an enhanced chemical process that would not have required equalization.

In September 2011, October 2011, it became clear to us that our one year pilot program to use the wet weather facility and a chemically enhanced treatment was not going to yield the consistent treatment quality results that were going to allow us to seriously proceed with that as an approach. Then we looked at the other alternatives that had been designed and those included the equalizations.

It was at that point in the late Fall of 2011, we finally determined we were going to need that property. That property and perhaps adjacent properties for equalization and the head works building.

Councilman Langman – Did we indicate to Mr. Carter that we were awaiting these EPA feedback on the wet weather treatment option?

Director Frey – From the very first conversations, we've indicated that there were potential need for that property for our projects with the Waste Water Treatment facility. We had been cautioning all along, I want to say that though from Director Pietravoia and Director Bock and the Mayor and myself, certainly our intention or our hope was to make the wet weather facility operate as we had hoped and avoid taking prime commercial property for the Waste Water Treatment facility. It was only upon the conclusion that the treatment pilot program was not working as we had hoped, that we turned our attentions to actively acquiring that.

Councilman Langman- What is a reasonable time to wait, as far as, obviously EPA is going to tell us what is acceptable and what is not, visa vie the property owner who wants some resolution. After all it is not simply the City of Euclid saying well we don't know what we want to do, hang on, versus, this is a federal action. I there any idea how long we could have waited under those circumstances?

Director Frey – I know we had a demand from Mr. Carter's counsel that we commence eminent domain proceedings. Had we not done that, they would have, in all likelihood, if we had not taken steps either to negotiate a purchase or commence eminent domain, they would have gone to court seeking writ action against the city to compel us to do so. If we were unsuccessful in defending that and Tony might have more experience with that, we could have ended up with fees associated with that.

Councilman Langman – And either Mr. Coyne and yours opinion, would we have been successful based on the EPA's tardiness in giving us direction over many, many years?

Mr. Coyne – I can tell you this. Mr. Frey can respond as well. I can tell you this, you can't delay a property owner from using his property for a lawful use without consequences. There's a case out of the City of Mentor that an owner was trying to develop his property that was going to be subject to eminent domain and we actually went to the Court of Appeals to request that it be delayed just because of the time that was necessary and the Court said no, you can't do that. You can't just sit on it and say we're not ready to acquire it but we're also not ready to let you develop it. Now you could say, develop it, and they can develop it. Then if you need it later on, you're going to be paying for not only the land, but the new building that's there. If the building involves an occupied business and you put it out of business, you have to pay other damages there. Or if you get any federal assistance, you have to pay to relocate the business. It gets very,

very complicated if you continue to delay taking action. Again, I don't think you could point to the federal government and say it is an excuse. I don't think the federal government would give you a whole lot of assistance on that either.

Councilman Langman – It is not so much as an excuse, obviously we've had our eye on the Alexander property at least according to CT since late 2009. But we can't just decide on a treatment program on our own, it is based on EPA feedback. Even though we had interest in Alexander's long before the purchase by Westminster, we couldn't in all likelihood obtain the, oh we could have and land banked it if we wanted to. I don't know if that would have been the best value for the rate payers if it turns out we didn't need the property. So it just seems that Mr. Carter made a very shrewd deal knowing that there are certain factors beyond our control and we would eventually have to do something with the property.

My final question for now, back on January 18th, Director Bock you talked of looking not only at Alexander's but at Walgreen's and the BP station. Did we do anything with those properties, appraisal-wise?

Director Bock – Yes, we have done appraisals on both properties, on both Walgreen's and the BP.

Councilman Langman – I guess I'm frustrated hearing that all this work is being done and we don't seem to know anything about it. Didn't know anything about appraisals being completed or underway at Walgreen's or BP. Yes it was mentioned on January 18th, we have received no information since then. I was not aware that we received potential litigation letters from Mr. Carter. That's really not how the process should work. Especially since it is seven months later that we're talking about it. We have done it far better in recent property purchases on the lakefront for sewer projects, where we received appraisals and narratives by Director Pietravoia prior to any vote. That's how the process should work. This is really after the fact. The legislation is passed, the decision at \$900,000 has been made.

We also did the very same thing at the St. Robert's purchase which occurred in June 2010. We had months and months of email conversation about that property. Including any potential environmental concerns about it before executing the purchase. When we bought the final parcel on the lakefront, same thing. We had information up front. Now tonight we learn that appraisals were done on Walgreen and BP and that Mr. Carter was threatening to sue us. We need to know these things prior to voting, not after.

Director Frey – You have this depiction in front of you that was part of the public presentations when we talked about the Waste Water Treatment projects. We clearly indicated in those projects that equalization was a component of that and those were the parcels we were looking at. The Board of Control minutes reflect Councilman, that we approved the invoices for Sherman and Andrzejczyk appraisers for these properties.

There is a public record. Council is represented on the Board of Control meeting and all of Council gets those minutes. This was not hidden in anyway that we were doing the appraisals.

Councilman Langman – Was the litigation on the Board of Control?

Director Frey – There isn't litigation.

Councilman Langman – There was letters from the property owner threatening, don't you think was important for the city council to know?

Director Frey – You were aware that we were working on acquiring that property for equalization for the Waste Water project. It was part of everyone of our public presentations.

Councilman Langman – I don't want to badger Law Director Frey, but your colleague to your right did it much, much better, it went much smoother; that's the way it should be done.

Director Frey – It's a point that we made at the Special Council meeting. I accepted your point. This meeting should have occurred prior to the Special Council meeting, or we should have been in Executive Session. I don't want anyone here or watching this meeting to have the false sense that we were not publicly discussing the acquisition of the Alexander's site for equalization for the head works building for the Waste Water Treatment. We had talked about it many, many times. Again, the invoices that paid for this appraisal and the other two appraisals have been on Board of Control. There is a public record of every action that we've taken.

Councilman Langman – Law Director Frey, you've been over there for a long time as has Director Pietravoia. You were copied on all the emails coming from Director Pietravoia on those other property purchases. Would you not agree that's a better way to do it than this way? After all, I want to remind you that we only have now one at-large council person, not four. We're all busy with ward business and that runs the spectrum as you well know. The only thing I'm asking for is a little forbearance. We can't always ferret through every Board of Control minutes to find everything. If there are developments that affects a price of land purchase, or spending \$900,000, I would think that you would want to make sure that all of our questions are answered before hand. Not rest on, well you can ferret it out on Board of Control. After all, these appraisals were done seven months ago. I looked through the records, I find no correspondence from you or Director Pietravoia or anybody else.

Again, I don't want to badger you over this. I just think that what we did in the past was far more effective and far more smoothly. I think if you review the votes then, it went much, much quicker. Thank you.

President Holzheimer Gail – If I could jump in and Councilman Van Ho's been waiting for questions, so let's hope this will be the last word on the process. I will admit we have done the process differently, we could have done it better and we may have avoided the need for this meeting, or we could have done it ahead of time. We, as council members, need to take equally responsibility. Part of our jobs is to come to council being prepared. We got the agenda on Thursday, the meeting was on Wednesday. I know if I do something at work, if I get a project and its due on a Wednesday and I come in on Wednesday and say you know what I couldn't do it, I don't have the information. That wouldn't fly.

From my perspective, and I know I usually try to call council, that was a busy day for me, I didn't get that chance. That may have remedied it too, but you also please don't count on me for that every single time. We all need to do our homework. If we have questions when the agenda comes out, it is our responsibility equally to, yes, we should have had the appraisal and Director Frey has admitted that. I think we need to put that behind us. We will figure out the process going forward but we all need to agree we're going to do our homework too and if we have questions, make those known. I think it is going to go both ways.

Councilman Van Ho – First question, you described what sounded like a very prolonged legal situation if you were to take it by eminent domain. Roughly based on your experience, how long would it take if we would have went eminent domain on this?

Mr. Coyne – The statute says about 60 days; the reality is, in our county it is not less than nine months to a year and it could be as long as two years.

Councilman Van Ho – If we had started it the first of the year, we probably wouldn't be done with this until Christmas?

Mr. Coyne – If it moved quickly, yes, if it moved quickly.

Councilman Van Ho – Also, what is the approximate cost of doing an eminent domain of this nature?

Mr. Coyne – It depends on the level of litigation that's involved. If there's much discovery or depositions that's undertaken. It can be as little as \$40,000-\$50,000 per case; it could be upwards of \$100,000 easily too. I've had them go well into six figures just for litigation expenses.

Councilman Van Ho – Just a comment too. I had heard that we were taking the BP and Walgreen's appraisals because there might be a possibility of having to take it for this project. I can assure everyone in this chamber, unless I am the Board of Control rep, I do not read Board of Control minutes on a very faithful basis. I believe I had heard it as we were going through the presentation with the EPA.

Councilman O'Hare – A couple of points that are kind of introspective about us as council. Again, I'm not here for very long, Councilman McLaughlin either and Councilwoman Caviness at the end less still. We're still coming up to speed on many, many things. I will say that rightly or wrongly we rely on leadership and we rely on advice formal and informal from a number of people up here. Those notes came, as you said, on a Thursday and a meeting was a Wednesday. I for one read it and read through it. I was expecting there to be a flurry of questions in email. For people in the public, we do a lot of discovery business, finding things out in email, asking questions and it is usually very efficient. There was virtually none on that and I for one was surprised. Rightly or wrongly, I was looking for some of the veterans here who might have been more vocal to say something before that meeting, unless I'm wrong, I didn't see anything. Now, it was a summer meeting and as a summer meeting it had a lot of items on the agenda. So, that's just a comment more than anything else.

Secondly about Board of Control, maybe it is time that we as Council take those Board of Control meetings and the minutes before, more seriously and more diligently. I was on Board of Control today, four relatively small items. Anyone wants to ask about those, I'll tell you about them afterward. You saw them ahead of time, I asked questions.

Along those lines, as a segway, we were asked for questions after the Special Council. I submitted a number of them. I think Councilwoman Scarniench did. Would it be a good step to answer those questions at this time? I think there were a couple of repeats and I think maybe someone had made a duplication of those or whatever. I wonder if that makes sense.

President Holzheimer Gail – Certainly, Director Frey, do you have those questions or do you want me to? One of them was about the dates on the appraisals.

Director Frey – Mr. Coyne has talked to Bob Andrzejczyk as have I. That was a typographical error. The appraisal on the land value is dated January 26th, the supplement doing the present value analysis on the lease should have indicated that it was a supplement to the January 26th appraisal, not the January 6th appraisal. It is a supplement to the January 26, 2012 appraisal.

Councilman O'Hare – I figure that from effects date stamping at the top of the page which was in April if I recall.

Director Frey – Secondly, there was an omission of the comparables. Mr. Andrzejczyk has corrected that. The comparables are in the report. There is a comparable used property on W. 117th, an out lot for a bank. There is a comparable for a fast food facility in Mentor on Mentor Ave. There is a comparable for a bank in Mentor towards Concord Township and then a comparable for a fast food facility in Mayfield Hts., were the four comparables. Not all of that data had been included in, so that has been corrected. I'm not sure I recall the third question.

President Holzheimer Gail – The other question about the appraisal had to do with the seven months between January and now and would that affect the valuation in any way; is that a fairly typical duration between when an appraisal is completed and a purchase offer or negotiation is made?

Mr. Coyne – Depending on what happens in the marketplace that's always relevant. Usually you don't go back longer than three years and you look for comparables based upon zoning, size, things of that nature, so that's not unusual. It is not unusual to change a comparable, pull one in or out that you think is better as well.

President Holzheimer Gail – I'm not doing these in order, but there was another question while we're talking about appraisal, the timing with the reassessment of properties today, there was an article about commercial property and businesses going in for re-evaluations and in most cases those have been lowered. Would today's values be any different from January in your opinion? There's been some confusion of residential versus commercial and would we see the same depreciation on that?

Mr. Coyne – It's a baseline reference in the appraisal report itself because it is an obvious point of inclusion because you're looking at taxes as well. What is the taxes that are doing the properties? Under Ohio law the tax value of a parcel of land is not deemed to be probative in an eminent domain case. In other words, while it can be referenced, you can't use that, that's what the fair market value is worth. In an eminent domain case, you don't even rely on that to dictate value. As a practical matter and this is no critique of the County appraisal process, it is typically not a real accurate appraisal analysis. It just isn't. It is a difficult process, there's so many properties. You really don't look at that as having a lot of value in an eminent domain proceeding.

President Holzheimer Gail – Then there was a question about, did we actually see a signed agreement with McDonald's? Does the fact that we, if we do not actually have a signed lease, I understand there was a letter of intent. If you can address the matter of whether it makes a difference if we have a signed lease or not.

Mr. Coyne – There's a letter of intent that was entered into by the parties. That I think is somewhat privilege between the parties. I suppose we could try to get that if for some reason that was that critical, I don't know. We did get the lease which was completed but not signed because there was no development going forward when this project became apparent, the parties decided not to pursue it any further.

The appraiser did look at that and thought it had bearing on the value of the property because it was apparent the zoning was permitted that if the project proceeded, the parties would have entered into an agreement. Had that happened, that would be a very, very effective and accurate tool for the appraiser to use to determine the value of the property. Over a period of 20 years or so, Mr. Andrzejczyk identified rents would have been paid in the vicinity of a million and a half dollars over that period of time. So he reduced it to a present value of approximately \$900,000 providing a range of between \$830,000 and \$1,024,000. It was all done but that.

Just to back up for a second, in an eminent domain case, you typically don't use an unsigned purchase agreement for purposes of valuing property. However what is very common is if everything is done, the Judge would want to hear, why didn't it get done and then have a hearing on that. If it was only because of either the appropriation case, or the fact the public needed the property or some reason like that, the court will allow that to come in and let a jury make a decision about that being an effective consideration for the value of the property. In this case that would be highly likely that would happen.

Councilman O'Hare – My understanding of eminent domain and a lot of people's I think, stems back from taking a lot of properties for the Shoreway and a number of other cases. Where here's the way the government gets land on the cheap. They take a house and the house might be worth \$40,000, here's \$30,000, here's the government with the hammer, you're going to take this. In fact, I'm sure that still happens in a lot of cases and probably happened more in the past than today.

It sounds like in this case, Mr. Carter was using eminent domain to his benefit, really either to force the issue, to have us whether we're under delay due to the federal government's lack of decision, to just force us to say, I want to develop this, are you doing something or not. In that case, call it a shrewd move, call it whatever, call it impatience, life marches on, people want to do things. Is that an accurate characterization of what happened here, as opposed to again, a lot of us saying, what could be more of a public good than needing a new waste water treatment plant. There it is, it is unfortunate that it is right in the middle of the crosshairs of downtown Euclid, but we need it and we're going to do it. A comment, or I have it correctly that it did force us to do something?

Mr. Coyne – Yes, I would say it was less shrewd than practical. His lawyer basically took the position either let us develop this property now as was expected, or if you want to have a discussion about acquiring it, let's do that. If you don't do either, we're going to take legal action. I would look at it in that way. The eminent domain side of it was brought through a letter that was conveyed to the owner, just because there's a procedure. The government, you talk about the old highway cases, maybe that happened, but it's not that you get it on the cheap, you've got to pay fair market value, it is in the Constitution of the State of Ohio and the US Constitution, you have to pay fair market value, you have to pay just compensation. If his lawyer did anything, it was just to make a decision one way or the other. In the city contacted us on this, really I think it was closer to April by the way, that was the decision.

President Holzheimer Gail – Councilwoman Scarniench, a number of those questions were yours and I want to give you the opportunity to follow up if we didn't get them all clear.

Councilwoman Scarniench – Not to belabor the point, I take my job very seriously. I do read everything, especially if I'm putting my name to it. I may not remember it all the time, but I do read it. I have no question with the fact that we need this property. I've understood everything we've talked about over the last two years, I understand it perfectly that we need the property. It is just how we got here this way. The question I have, we sat down and we had meetings about St. Robert's and we talked about doing the environmental study which actually gave us a way to lower the value. Have we done an environmental study on this property yet? Especially because of BP, the old station sat farther back, have we done that because we know the EPA is going to look at that if there is a problem. Has that been done?

Director Frey – We don't have a purchase agreement yet. We have a draft of the purchase agreement. We will have a period of time in that purchase period to do our evaluations. Director Bock is familiar from earlier files both on Walgreen's site and BP site with tank replacements and can address the potential environmental issues there.

Director Bock – I can tell you the tanks were replaced and I believe it was approximately 10-12 years ago. I would have to look up the files which I haven't done. At that time the monitoring wells were placed and the EPA does their check through the State to check that. In addition, by putting the equalization tanks into this property we'll be digging all this material out of the ground to begin with so if contaminated ground, it is going to be removed by us. There might be a slight additional cost in landfilling to a sanitary land fill versus a regular land fill or something with the material but the material will be excavated and the tanks installed. I can look and find the tank replacements that were done most recently there at the BP station and also when Walgreen's was built, there was ground analysis done at that time so I can try to find those also.

Councilwoman Scarniench – It still goes back to the vacant land, we're talking about less than an acre and a half. We're told that it is worth \$212,000. The building was worth \$517,000 and he chose to tear it down. Why should we be paying for that? That was his decision, his speculation on buying this piece of property in hopes and I have no doubt McDonald's was coming, I was here when they came. I understand all of that. That's not the issue. He chose to tear it down, why should we be responsible to pay him for the building that isn't there anymore? I can understand the taxes, I can understand the original cost, the seven point whatever it was, 715. I have no qualms about that because it is a fair value. But we're talking about our city is losing population, losing income, how are we supposed to pay for this and why should we be paying for him for what he wants to do? We've known since 2009 that we would probably need this property. He didn't buy it until 2010. Do you mean to tell me he didn't know that this was possible? He paid \$600,000, a year and a half and we're going to give him and extra \$300,000? I think that is just morally wrong. If we would go to the 715, I would have no argument, would never have had an argument with it and it goes back to we would have had a meeting, I would have been able to say that but we didn't get this information until after. That is my problem with what has taken place here. Not that we need the property, not that McDonald's was not coming in here, because I know they were coming here. It is just how we got to this number I have a real problem with.

President Holzheimer Gail – From a legal point of view

Mr. Coyne – You're really not paying for the building. The comparable sales that were used by the appraiser, Mr. Andrzejczyk were for vacant parcels of land. The appraiser looks at them and he puts a per acre value or a per square foot value on those properties. To give you an example, the Subway in Mayfield Hts., near Maplewood in Mayfield Hts., that property transferred for \$675,000. It is a vacant piece of land. It is only 30,000 sq. ft. The subject property here is 51,000 sq. ft. What the appraiser does is look at that parcel, \$675,000 for 30,000 sq. ft. and he puts an appraised value on the subject, which he concluded to be somewhere around 715, but he wasn't giving any credence to the potential lease on the property.

If you look at his comparable sales, for that one he even concludes that the per acre value in Mayfield Hts., for those properties for retail stores or fast food would be \$964,000 per acre. So this site, is 1.19 acres in size. He has several that he does those comparisons.

Typically when a building is being torn down, it means that they are paying for the land. I don't know the circumstances of the purchase three years ago for \$630,000 or whatever it was. But I do know the appraiser looks at other comparables, not simply that price and that's what he concluded was the figure. When he looks at the potential lease, again, he's between \$830,000 and a million dollars and he concluded \$900,000 was a potential fair market value range. I don't know if that answers your question. He has several in his report that explains that.

Director Frey – Councilwoman if I could, let me just follow up. I just want to make the point, until September, October or November of 2011, we had hoped not to use that property. So it was not a case where in 2009 we recognized that it was property that might be suitable for the Waste Water project, but we hoped until the fall of last year, late fall of last year, our hope was that we were going to make the wet weather facility do what we thought it could do and avoid the need for equalization. It wasn't until then that we realized that we were not going to be able to go forward with the wet weather facility as a chemically enhanced unit and we were going to have to put in equalization. We looked at equalization at different locations in the city. We asked CT as a way to avoid taking this commercial property, to site equalization and other locations in the city. It was a more expensive project to do and it had more expensive maintenance after it was constructed. We went back to this site as the likely best choice. But that didn't happen until late last year.

Councilwoman Scarniench – I understand that. When we went on the tour of the Waste Water Treatment, Supt. Hall explained all that. I get that, I understand that. My colleague will address this, we looked at commercial properties in other cities, why didn't we look at the commercial properties right here in our city and she'll talk about that. Thank you.

Councilwoman Jones – Director Frey that was going to be my question. In the comparisons in the documents for the appraisals are for properties and let me ask a question to start off with. When you're comparing the properties, is it have to be the same size? I'm thinking about properties that I would say in the last few years sold on Lake Shore Blvd. where CVS is on Euclid Ave., where the Fresenius Dialysis Center is, or some of the Century Corner properties, even though they're not zoned for retail, but to go through the same process. Let's say on Lake Shore Blvd., where there are properties like CVS or the Mary Mavec property is, is it the same process or does it have to be the like size of the property? I'm just wondering why weren't these others used in comparison?

Mr. Coyne – You do try to make adjustments but the closer in size the better. Those other examples you gave where the buildings were included as in the buildings were going to be used, or were they vacant lands? Was it vacant land or was there a building on it?

Councilwoman Jones – When they were first sold, it was vacant land.

Mr. Coyne – It was vacant land and then a building was put on them?

Councilwoman Jones – Right. My question is, going through the process to figure out how much per acre will be sold, it is the same process whether it's one acre or whether its 50 acres, is that true?

Mr. Coyne – The smaller the parcel usually the square footage goes up higher than if it is a 50 acre parcel versus a one acre parcel. The square footage usually is higher for the smaller parcel typically.

Councilwoman Jones – In these comparisons, you only selected those properties that were about the same size? I'm not saying you meaning that this report was selected only properties that were of the like size?

Mr. Coyne – Similar zoning. They were 20,000-40,000 sq. ft. It was just land. They were vacant land values for redevelopment for businesses from what I can see were of the variety of retail, fast food, banks, that kind of use. It is not unusual to go outside of the given city. It is a market, people don't look at municipal boundary lines per se and they're not that far away, 15-20 minutes drives from the subject, that's not unusual.

Councilwoman Jones – My other question to Director Frey, you mentioned that it was investigated as far as other locations for the equalizers to be suited for or to be placed and it was too expensive. Was St. Robert's one of the locations that was looked at? When you say too expensive, what do you mean by too expensive? When we first started looking at the Waste Water Treatment process, we didn't look at the membrane because we thought that was too expensive and then it turns out to be the better choice of all of them. I'm just wondering, when you say too expensive, what does that mean? I don't remember seeing anything about that, but how do we determine those other locations were too expensive?

Director Frey – I'm not sure I used the term too expensive. I said it was more expensive to construct and more expensive to operate. We did look at the St. Robert's property as one of the locations. Because there is additional pumping required, there's longer distances that volume is going to be pumped to get to the treatment facility. Ultimately the equalization tanks are going to pump into the regular flow of the plant. This location is where all of those lines converge. If we were to build outside of this area, we were going to need to pump to this location to bring it in. CT, we asked them, as an alternative to this, in this whole discussion to look at that as an alternative to locating here, to put an equalization at St. Robert's property. Put an equalization somewhere on the west-end of the city; to put an equalization somewhere on the southeast side of the city. By doing all of those, we might have had additional land acquisitions, they weren't all city owned property. But we would have had additional construction costs and then we would have had additional maintenance costs going forward. It was both the cost of the initial projects and then the cost of the maintenance that made us come to the conclusion that citing the equalization right at the plant was best from a cost and an operating point of view. Construction cost and operating cost, it was better to put it there than it was out in the system.

Councilwoman Jones – I'm sorry about the words, I said too expensive and you said more expensive, that's okay. Can you just give an estimate of what more would be? Whether it was a million more; \$5 million more; \$20 million more?

Director Frey – I would be happy to get the numbers. I know CT did that analysis. I don't have that in this meeting tonight, but I have that and we will get that to you.

Councilman Langman – Talk a little bit about the appraisal itself and then the McDonald's development. First of all, I'll start with Director Pietravoia. Director Pietravoia I know in the planning process McDonald's wanted to use some of our property next to the gazebo for an outdoor dining area and they may have come back with some other items that I know some of the neighbors were starting to have concerns about. In your opinion as Economic Development Director, would any of those really have scared off McDonald's any of those concerns?

Director Pietravoia – You're speaking of the concerns that were raised by some of the residents?

Councilman Langman – Yes and the requirement of the outdoor dining area and all that. I know all that's negotiable but there is a point where a business may say, you know what I can go find a better location.

Director Pietravoia – I'm happy to offer my opinion. I do believe that McDonald's would have worked through all of the issues that were put on the table that we were at least aware of from some of the area residents. Traffic, concern about using a portion of the park. We even had preliminary discussions about whether there would be a better way to create access by allowing an access drive for all three parcels, Walgreen's, BP and McDonald's

that comes out to Bliss Lane. I am confident if we had gone forward they would have figured out a way to address the issues that were raised by the residents.

Some folks just felt that fast food wasn't the highest and best use, period, and wanted to see another family restaurant or another national chain, but not a fast food restaurant. We were never going to convince those residents that was just their opinion and they were welcome to offer and we were glad to consider it. You have to recall this area has been for sometime zoned for retail and a fast food restaurant is a permitted use. The only thing that would have gone to Planning & Zoning as a conditional use is the drive-thru aspect of it and even conditional by its name implies it is permitted but may need certain protective conditions to be imposed and that is what Planning & Zoning would look at.

Councilman Langman – Did we ever consider based on the potential for a fast food restaurant, like we did at St. Robert's buying the property and land banking it, not just for potential sewer use, but land banking it for a better type of development sometime when the marina goes in or lakefront happens? Did we ever have those discussions?

Director Pietravoia – Not to my knowledge on this particular property. I do want to comment and it is relevant to some of the questions that were asked and to your question councilman, there are two competing public interests here. One is the need for the Waste Water Treatment Plant, but the other is what makes sense from an economic development perspective. Here you have a prime site, well situated in one of our strongest commercial districts in the city. It makes sense from that perspective that this be developed for commercial use. But we have to weigh both needs and in this particular case, given a variety of other factors that were considered, what direction this expansion could go and where it needed to be because of the way gravity flows, it came down to this is the site, at least this site at a minimum will be needed for this purpose.

Councilman Langman – We had a similar discussion a long time ago when Burger King came in and replaced the sit down Big Boy restaurant. Some folks felt that was a bad trend and I think some of those concerns hangs today. But that allows me to pivot over to Mr. Coyne and ask a couple of questions about how the appraisal is actually worded. There's a lot of background information talking about the community, the area, it mentions our downtown redevelopment plan, the Harbor Town development between Harbor Crest and Water's Edge. Is that typical to focus on the sort of good news? The reason why I ask that Mr. Coyne is because the appraisal we received from another firm for the lakefront parcel that we used for the outfall pipe, they empathized some of the challenges the region has had, population decline, inner-ring decline, things like that. Do those factors have any material effect on the final price stated in the appraisal?

Mr. Coyne – Property, the old saying goes, location, location and location. The background that you're talking about is fairly typical that you look at a demographics of a community, general trends, up or down, the current economy. Some appraisers get into the national economy, some get into capitalization rates, lending rates. It depends on how far the appraiser chooses to take that because of relevancy with the report. This in my view is pretty basic and pretty straightforward in terms of what is going on in the region and Euclid. I would say that's pretty typical.

Councilman Langman – It does have that material effect on the price by empathizing the good things?

Mr. Coyne – The appraiser will tell you he doesn't emphasize anything, he looks at what he sees is going on in the marketplace and then he reaches a conclusion based upon that. If something is not in there, it is not because he's empathizing one thing over another. He's just looking and he's supposed to be looking at objectively what the marketplace

shows. Then he does a comparative analysis and he looks at things like the location of the property, the size of the property, the frontage, the utilities, water, sewer, zoning, is it level. All of those things are relevant to his decision and it is his professional opinion what the value is based upon doing that type of analysis. I think it can sometimes be somewhat subjective but I think a lot of the times it is a pretty straightforward analysis. You'll get one appraiser saying one thing and another appraiser saying another thing. Again it really depends upon the opinion of the appraiser.

Councilman Langman – Thank you Mr. Coyne. Madame Chair, I think it is worth noting that when we look at the lakefront parcels, especially for the outfall purchase, we looked at lakefront parcels all over the region, just to try to gain a comparative. So even though I've always been told that our downtown is tough to bring business to because north, you have the Lake and it is tough to draw. But it doesn't seem like that's really a factor in this appraisal. Is that a fair statement Mr. Coyne?

Mr. Coyne – No I think for the type of use in zoning again, I'd say that's not a huge factor because if you look at the size of the parcel, it is not a shopping center. I would say the redevelopment of Shoregate would be a better example because you're looking at much more significant retail space and you're right, there are only fish when you go north of Lake Shore Blvd. A larger development that might be more of an issue, but when you're looking at a drugstore, a fast food restaurant, a bank, I don't know if that's as big an issue. If you're looking at a more redevelopment type of a project that's going to involve more than 5-10 acres, I think that's probably going to be much more of a factor.

Councilman McLaughlin – About the location being near the Lake, I'm sure McDonald's looked at what Wendy's has been doing because they've done quite well in the City of Euclid.

Going back to eminent domain. We're going to have these equalization tanks, we really don't know how big they're going to be. There could be a possibility in the next ten years when the project is near completion that we find out that we're going to have frontage available for commercial use. In the case of eminent domain, who gets the rights to those properties?

Mr. Coyne – Some of this gets into sort of strategy on how we did this. I will tell you under the Ohio Revised Code now, if you take it under eminent domain, you don't have an arm's length transaction, there's a right under Section 163.211, it is a provision called the Right of Repurchase. The city can maintain that property but let's assume you acquire the property but you abandon the project. If you go to privately sell it to a third party, you'd have to go back to the prior owner and give them an opportunity to buy it back from you. If you do it in an arm's length transaction, you could avoid some of that because you can waive that right.

Councilman McLaughlin – Is there any condition on the price that you can ask for it if you abandon it?

Mr. Coyne – No, candidly you should look for disposing of any municipal asset to get fair market value is what you would do if you wanted to do it in an auction that would be separate. Under eminent domain, if you didn't waive that, the owner could re-purchase it for what you paid for it.

Councilman McLaughlin – That's what I was getting at. So you can't up the price, if you take a property away under eminent domain and a year later you resell it and you give him the opportunity to buy it back, you can't raise the price on him?

Mr. Coyne – You have to give him the right to buy it back for what you paid them for it. If you get them to waive it, which I don't want to say, is the direction we're going here, then you can do whatever you want to do with the property.

Councilman McLaughlin – What I'm getting at here, if we buy it outright, we bought it for \$900,000. If there is any frontage available, we now have the right to sell it for whatever price we want.

Mr. Coyne – Right.

Councilman McLaughlin – Furthermore, if we went through eminent domain, we might have some litigation costs that would be upwards to \$100,000 possibly?

Mr. Coyne – That's correct.

Councilman McLaughlin – Just trying to run some figures through my head. That's all for now, thank you.

Councilman Van Ho – I noticed in the examples that we've heard tonight, we used Mentor and we used Mayfield Hts. When I was reading through this appraisal, there were two pieces of property bought by Key Bank that I thought were, one was in Willowick and one was on 185th Street, that would seem to be more to the point because of the neighborhood. And because, in both instances, they're both on a highly traveled street. Both of those, when I looked at it and factored back because of the size of the lots, the one on 185th Street which was .640 acres, as opposed to ours which was 1.19, it sold for \$195,330. If you factored in because of the size, on the Alexander property, that would have been \$1,422,000. The one for the Willowick Key Bank was \$795,471 and that was on .440 acres. That price would have been \$946,000. That's why I'm a little bit confused because I look at that. When you average those out it is \$995,000 on using a per acre.

Mr. Coyne – Correct. Again, I'm not the appraiser, I'm just telling you the methodology though is you have to take into account, not just the size of the parcel but the other factors I previously mentioned. Is it level, is there a building that has to be removed, the zoning on the property, traffic counts are not uncommon to be looked at. I know the appraiser looked at traffic counts here. Those are all factors. The appraiser makes that decision. I don't do it, I don't tell them what to include. He does it on his own and he does it objectively as possible.

Councilman Van Ho – That's where I'm confused. There was no building to tear down on this property. There was no building to tear down on the one on Vine & 354th Street. I believe there was an old travel agency that needed to be torn down on 185th Street. These came in massively higher on a per acre basis than what we are paying for.

Mr. Coyne – He adjusts the values. He adjusts those values. I gave you the one in Mayfield Hts. He has one at W. 117th Street in Cleveland on the west side, but it was for a new bank and it was an out parcel, but a small parcel. That sold for \$825,000. He would consider that a much superior location though because it was closer to a freeway. He looks at that, he looks at traffic counts. He looks at whether it is a square parcel, or rectangular parcel, or triangular parcel. If it is square, it is more valuable than a rectangular parcel. All I can tell you is those are his methods and then he adjusts the price based on, that's just how they do it.

Councilman Van Ho – When I did this adjustment, it came within a little bit, \$95,000 lower than what we were paying Miles Carter. That's why I felt we were getting a fair deal.

Mr. Coyne – On three of the parcels that I looked at, the per acre value of the Mayfield Hts. piece is \$964,000 per acre. Cleveland piece is \$1.2 million per acre. The Mentor parcel is \$750,000 per acre. There's one in Willoughby he had at \$795,000 per acre. That tells me when you cross-reference to the opinion he rendered, it is in the ballpark certainly.

Councilman Van Ho – I'm not defending perhaps our internal process could have been better. If we pay the \$900,000 based on this supplemental appraisal, we're not getting screwed too badly are we?

Mr. Coyne – You're doing the public's business so I'd say that given the circumstances, I think it is a prudent decision. It is your decision so I can't really make that for you. Based upon the information presented, it would seem to me to be a prudent decision for the city.

Director Frey – Obviously the appraiser is not here, but this is an appraiser who has appraised for State government, for a number of municipal governments and for many private clients both for profit and non-profit including University Hospitals and has a long history of professionalism. We have used this firm on some of our lakefront appraising processes as well and we're very confident in the quality of the appraisal that he would provide. Because of his commercial appraisal experience for governmental units as well as non-profits, that was the reason we selected that firm to do this project. I'm certain there are other subject parcels that could have been used for comparisons, but again as Mr. Coyne has pointed out, that's part of the professional process of the appraisal. It is not the city directing or Mr. Coyne, his firm, didn't have any role in the selection of the appraiser, that was totally on our end that we selected that firm to do this. There's no where we're saying to the appraiser, here's the number we want you to get to. We say, here's the property, we want you to appraise. This is what we believe we're going to do with it. This is what the private developmental project was for the parcel, give us the value.

Councilman Van Ho – I want to be clear on the timeline. The original appraisal, the one that came in at \$715,000 or \$745,000, that was done on the 6th of January, is that correct?

Director Frey – Dated 26th of January, that was a typographical. January 26th is the date. The data collection is certainly prior to that. That's the point where we had a final report.

Councilman Van Ho – The one with the \$900,000 was done after the \$745,000.

Director Frey – That's correct, it is a supplement to it.

Councilman Van Ho – Based on looking at the McDonald's lease.

Director Frey – Yes, correct. Thank you.

President Holzheimer Gail – I think we've got to all the questions. Councilman O'Hare you had some questions that were more long term thinking in terms of other commercial properties and their tax evaluation and we can save that okay? At this point I would like to see if the public has additional questions or comments, while we're here on this topic.

Director Pietravoia – I want to add a comment to Councilman Van Ho's question. There seems to be a lot of confusion about the data in the report. It is important from the appraiser's standpoint and their licensing and certification that they date the report at the primary time period that they did their research. While we didn't accept the report until later in the year, the bulk of his research was done around January 26th date. He's going to date the report, no matter how long it takes for us to accept it in a final version, unless it goes on for an unreasonable amount of time. He's going to date it around the time that the

bulk of his research was done because the time of the research is critical to the value he concluded.

That's why there's been some confusion about why we're discussing a January 26th report now. The fact is that we did have discussions well after January 26th, but we accepted the report at a later date. The appraiser is going to date it when they did their research. This occurred in previous appraisals that we did for the lakefront and other projects as well.

Councilman Van Ho – My question was, he did not have all of the information to do the complete appraisal when he made the \$745,000 appraisal and once he got additional information, then that kicked it up to \$900,000, is where I was trying to come from.

President Holzheimer Gail – It is actually two different appraisals. The \$715,000 is the appraisal for the vacant property. The supplement takes into account that they had a lease with a national chain. There's a different value if it was vacant versus if they had that lease. He was adding that on as a supplement, not necessarily new information, but additional information.

Councilman Van Ho – That's what I guess I was trying to say what you said so nicely.

Mr. Christopher Michael Litwinowicz – 21970 Morris Ave. What did McDonald's offer to buy the property originally?

Mr. Coyne – It was a lease.

Mr. Litwinowicz – What's the difference between a lease?

Mr. Coyne – A lease is when you

Mr. Litwinowicz – I know what the difference is between a lease is, but what I'm saying, there was laughing, what I'm saying originally you had a purchasing price which is a lease. So the value of that, did you really care, or, right now it seems like we're being juiced and because that area was redeveloped and CVS moved across the street which raised the property value. We're just trying to get into a nice price. We want to buy your property, we have to buy your property.

President Holzheimer Gail – Mr. Litwinowicz, he does not represent McDonald's. He represents the city in our negotiations for the property. I just want to make sure that's clear.

Mr. Litwinowicz – I understand that. Is there a set price or can the city get into a lease, free lease?

Mr. Coyne – The city is going to use a portion of the property for the Waste Water Treatment facilities. So, the property has to be purchased for that. Some of it can be set aside, but that's unknown if that's even possible. It is a purchase, McDonald's had a lease on the property, they weren't purchasing the property.

The value of that was estimated by the appraiser to be around \$900,000.

Mr. Litwinowicz – Just to lease it?

Mr. Coyne – Over 20 years. It is reducing it to present value.

Mr. Litwinowicz – I know about business because I did purchase a property in the City of Euclid where it was \$300,000 taxed appraised. But I say I paid \$600,000, with \$100,000 management and \$50,000. I understand that. My argument today is really to voice that we

need this for the City, but can we work a lower price. It seems like when I heard the price value of what the city is offering and what your offer is for the table, if we can save a couple hundred thousand, it would be lovely.

But again, I'm going to close on that and my only other question is, has it been taken into effect the development over there with the CVS moving over?

Mr. Coyne – The appraiser looked at the area, so I can only tell you that he took into account what is going on in that part of Euclid.

Mr. Litwinowicz – Okay. My questions are to the city. As far as we can see our property values have lowered down over the last year since we had this appraised. Is there a way we put in public money to have it appraised before this meeting?

President Holzheimer Gail – The property has been appraised.

Mr. Litwinowicz – But not since this meeting. It has been appraised since January. So from January until now since a person has been found guilty of stealing money from Euclid, we're just asking a public question that we should have it reappraised right now.

President Holzheimer Gail – I don't understand whose been

Mr. Litwinowicz – Go on the County records and find out what the records are stand right now. Nobody can say what the County has appraised it at right now, we're just going off of company appraisals and somebody who owns a piece of property. It is business in Euclid, but just to look at our tax payer dollars if we can know the facts before we submit and agree to pay over a lot of money. Over \$900,000 for something that we did pay for a church. Again, eventually what is going to happen to that property? We're looking at the Waste Water treatment and it is a good idea to buy it, but could we look at the value of it and I think we're getting ripped off a couple hundred thousand. If we can negotiate maybe \$800,000 I'd appreciate it.

President Holzheimer Gail – I want to just say I'm not sure what he's talking about somebody being charged for stealing from the city. I don't know where that comment is from. Mr. Coyne, would you address, can we work to a lower price? You addressed it earlier but do the recent property reassessments have any bearing, would that have any bearing on this price?

Mr. Coyne – The recent property reappraisals by the County would have no affect on the appraisal, I don't believe.

President Holzheimer Gail – You did negotiate on our behalf. This was not the price that was started at.

Mr. Coyne – Using an appraisal from a very reputable appraisal firm.

Director Pietravoia – Just a general point that we have to stay focused on, is the value of the lease is not going to change regardless of the market value of properties or regardless of whether we did another appraisal in August versus January. The market value of the lease will remain the same, that's what's driving the negotiated price that we landed on.

Mr. Jeffrey Beck – 25540 Chatworth. I missed the August 8th meeting due to a business conflict, but I was able to watch it later. I wrote down several questions, some have been answered, I don't think very well but. One of the ones that I still don't quite get my hands around is why are we paying this developer a \$300,000 profit after owning this land for less than 2 years? Is the administration aware of the steep decline of both residential and

commercial property in this County? Lincoln Electric an ongoing business and the city's largest employer just had a 37% reduction, \$10 million, in their property value. We're giving Carter a 50% profit.

That land was bought by BP Oil, I don't remember the exact year, but it wasn't that long ago from Alexander's for \$700,000. BP then quit claimed that at a cost basis of \$300,000 to their franchisee a few years later. I'm assuming when BP bought that for \$700,000 they did their appraisals and they did their due diligence too. When Carter bought that property for \$600,000 in December 2010, I would assume he also did his due diligence and had appraisals done at that time.

So since then, we've had a tremendous drop in commercial property in this county and yet he's getting a 50% profit. The reason that was explained at the August 8th meeting, was that McDonald's was ready to sign a lease and we have to value the property based on the value of that non-existent lease. Let's put aside the fact that this McDonald's would have been located next to a sewer plant, it seems unlikely to me. Concentrate instead on the so-called agreement. McDonald's would incur the expense of building their own building, which would de-value the lease by the cost of that building. Yet we're basing the sale price on a non-existent building.

Also, since that land for decades has been on or next to a gas station, has the land been cleared by the EPA? That question was answered. I for one, would like to see the paper trail between the developer and McDonald's. Since public money is involved and we're being told this excess profit being paid for this land is dependent upon this agreement, I don't think anyone can hide behind confidentiality. The County currently values this land at \$212,000. With commercial property values declining, I would think the developer would be happy to get what he paid for it. But that's not apparently the way we do business. I'm sure this \$900,000 will stand.

I have attended many council meetings and many committee meetings in the past several years. This meeting ranks among the oddest I have ever attended. We're here to ask questions on a piece of legislation that Council has already passed. Why? Clearly, there were four council people who had all their questions answered on August 8th and needn't even be here tonight. This Council has seem to adopted a vote first and ask questions later policy. How does that serve the city and how does that benefit the residents? If any of the council people who voted to pass this legislation asks one question tonight and they did, it throws their entire creditability into question. This is why legislation is put into committee. In order to study the ramifications of that legislation and have all the questions answered fully. It then should be voted on at a council meeting, not backwards the way it was done.

I have heard that Council relied on one of their own who was an expert in this area and didn't need to ask any questions since this council person said it was a good idea. It is this type of flawed thinking and mis-guided thinking that has sent this country to war and will send the city to bankruptcy. I hope these members of council take off their dunce caps and put on their thinking caps and never again repeat this stunt.

One final note, one of the council people said he looked toward the three veteran council people to ask questions the night it was voted on. If that were true, three veteran council people sitting on his side of the table all voted no. Thank you.

Director Frey – As was related earlier this evening and just prior to this comment, it the present value of the lease that is driving this purchase price, not the county's market value or tax value of the property or the purchase price that BP paid for the property or that BP transferred the property or that Miles Carter paid for the property. Miles Carter secured a national tenant for that property and had a lease that was not executed because the city indicated that we were going to need to take that property for purposes of the Waste Water Treatment facility. It is that value of the lease, as Director Pietravoia just stated, is what's driving the pricing on this. All of the comments to the contrary, those are not relevant discussions when it came to pricing this. Absolutely the city would like to pay any amount less. This was a negotiated price. We believe tonight, as we did on August 8th when we

presented this to you that this was in our best interest and the best value that we were going to obtain in our total cost. If we had gone to eminent domain as Mr. Coyne has indicated, we would have had fees somewhere in the neighborhood of \$40,000 maybe up to \$100,000. If we had competing appraisers on this property; if we had mediation the city would have had to pay for. All that's going to do is add to those expense items. We believe this was the prudent approach for the city to take to acquire this property and in our best interest. It was predicated on the value of that lease. It is not a fiction that lease exists. It was not executed as we said on August 8th and we repeated tonight because of the need for that property for Waste Water Treatment.

Ms. Audrey Kaplan Goodman – 20201 Glen Russ Lane. At the last special meeting, August 8th, this Council approved the purchase of the old Alexander's property at a cost to the taxpayers of \$900,000. I attended that meeting and after it was over, I became very angry at what I witnessed within this chamber. I'm still angry today.

My anger stems from normal procedure not being followed when it comes to this city acquiring land for future use. With other purchases the city has made, for example St. Robert's or the lakefront properties, Council was kept in the loop. They were given documentation, appraisals, detailed explanation regarding the appraisals and other supporting reasoning regarding the purchase price. Not this time. None of the supporting info was given to Council to review before Council was to vote on the legislation.

I'm still asking myself why not. I'm still asking myself how four council members could have voted yes with no information to support anything. There's no doubt the city needs the parcel for the mandated improvements to the water system. But when you're going to spend \$900,000 of public money, more information should be provided, not less and it never should have been an emergency piece of legislation.

When a senior member of council asked why they were not given the appraisal to review prior to the meeting, the administration answered and I quote, no one on council asked for it. That was absurd. For prior purchases Council didn't have to ask for the supporting documentation. It was given to council to review, to ask questions, which led to an informed decision making a result. It wasn't as if the appraisals just became available in August. The appraisals on the property were completed in January. In speaking with some current council members, they told me that they could find no communication from the administration regarding the appraisal process or even anything regarding negotiations to obtain the property. Again I ask, why not? How could the four of you who cast a yes vote on the legislation do so with no information? Without any supporting facts, this council should not even have begun to consider if the purchase price was right, wrong, too high or too low. The legislation should have gone down in a resounding defeat. Blind trust ladies and gentlemen is dangerous and does not protect the constituents you all swore to protect when you took the job.

On a positive note however, you can rectify the situation. I urge you to put the legislation back on the Agenda for the first council meeting in September, with a recommendation to rescind the prior legislation. There are way too many questions that are unanswered at this point. More detailed discussion is needed. I hope you've listened to my thoughts this evening and do the right thing for the City of Euclid. I remind you again, you all took an oath to protect the people you represent. You represent us, not the administration. Do the right thing for the people.

Ms. Alice Turner – 619 Hemlock Dr. I had things planned to say but after sitting here all this time my head is exploding. It is very difficult for the average person to go through all this mumbo jumbo. What I want to say is I sent an email out and I want to explain why I called this deal fishy. It was not anything to do with the water, the retention, that stuff I don't know anything about. But I do know that the process sounded fishy.

First of all, I want to thank the people that answered me. Council President Holzheimer Gail, Madeline Scarniench, Councilman McLaughlin and Councilman Langman. My own Councilman O'Hare did not answer me, but he did send me an email

about the St. William's Festival, thank you. You did mention a little while ago about looking for a lot of emails, but I don't know why mine didn't get answered.

Anyhow the people, we don't have a newspaper here, so people don't know anything that's going on. It is very, very difficult and a lot of people don't get engaged with political things, so they don't know anything. I tried to help out with some people but they're sitting home watching TV, they don't care. What I wanted to say is the fact that you knew that this was something you were going to have to do in 2009-2010, it looked like you dragged your feet until the last minute. So in a way that looked a little fishy. Then Mr. Carter bought the property for \$600,000 and he seemed to be a friend of the Mayor's, donated money to him, that sounded fishy. Then you had your little meeting and come up with the legislation and nobody here had any information. That didn't make any sense. How do you vote for something if you don't understand it. Then it comes out the Law Director had all these appraisals but nobody asked for them, so why pass them out, nobody needs to look at them.

They decide they want to vote. It looked to me like okay we got enough votes, let's vote right now. The bum's rush, that's what it looked like. The bum's rush, it sounded fishy. Three people said no, they wanted more information. Councilman O'Hare says he votes because the leaders here he trusts or he follows them, but it looked like a rubber stamp because he didn't know what he was even voting for. Or at least he wasn't looking out for the people.

President Holzheimer Gail – If you could keep your comments to the issue and not a specific person. We do have rules against comments to a specific person.

Ms. Turner – I'm sorry. So anyhow back to this, it just looked like all the way down the line this wasn't done properly. \$900,000 is a lot of money. Everybody in this city is hurting, I walk around and I see so many houses empty. I've lived here since I was six years old and I can't believe what's going on. When we have council people voted to work for us, they're supposed to be looking out for us and I would hope that the rest of the leaders in the council would be looking out for us too. My thought is, I think you should rescind this offer and put it on for September when all the council members are here and they have all the information and they can answer it properly, whatever the cost ends up being.

The other question I have is, how are we going to have to pay this back? Is it all going to go on our water bill? Or will we get a special tax to get this \$900,000 back?

President Holzheimer Gail – It is part of the total cost of the Waste Water Treatment Plant and the most recent rate increase that was passed for our sewer bills include a portion of that. We will have to be discussing this fall the total cost of the plant improvements that we're required to make by the EPA and most likely look at a rate structure that will go out. It is paid by the users of the Waste Water Treatment plant.

Ms. Turner – Also I understand you're going to add more charges in September or October.

President Holzheimer Gail – We have not decided. We will need to consider that, yes.

Ms. Turner – Okay, thank you.

President Holzheimer Gail – Director Malone, I don't know if you have any additional comments about the funding of this particular project?

Director Malone – The property purchase is being funded by a loan with the Ohio Water Development Authority, not to exceed \$1 million. There are other items that we put in there. I did have somewhat good news because the City of Euclid, it's credit rating did

pay off a loan last year, the estimated rate was 3.86. We get a half a percent discount over 25 year period at 3.36. That's tentative but until we hear back from the Ohio Water Development Authority. The annual cost of the loan from the users of the system which are over 17,800 users as far as I can tell, will be about 59.5 per year over 25 years.

President Holzheimer Gail – There was a question in the email about why are we going for a loan and like any large purchase we all make, that helps spread it out over the course of 20 years as opposed to having to pay it upfront and come up with that money right away.

Director Malone – The current rate structure supports the loan criteria for that. We have filed for; the loan application has already been filed with the Ohio Water Development Authority for their review, as timely as it was.

Mr. Victor Goodman – 20201 Glen Russ Lane. Due diligence, is the process in which one makes sure that the “i’s” are dotted and the “t’s” are crossed and the questions are answered. On August 8th, in this very chamber, due diligence had cardiac arrest. Two council people went on record that even if they had the appraisal in front of them they doubted it would have changed their vote. They voted yes. A third council person who called for the vote and voted yes, then after the vote sent out an email with pertinent questions that should have been addressed before the vote.

Lastly the Council President herself, who sat there questioning one after the other about answers not being answered, information not here, stuff not submitted, time and time again, called for an extra meeting and then proceeded to vote yes and passed the legislation on her vote.

Being that due diligence was voided by this council and this administration, a group of concerned citizens of which I am proud to say I'm among, met with a prominent real estate and business attorney on Friday. He fully vetted both appraisals and after more than an hour of his time, he brought forward a series of facts and questions that still have not been addressed.

Fact, no where in the second appraisal which includes the revenue stream for the proposed restaurant was there a structure cost included. A revenue stream cannot be gotten from dirt. Without a structure and a structure cost within the appraisal of whether the lessee or the leasor was going to pay, then it means no such revenue stream can even exist. This comes from a prominent real estate business attorney. Thus creating the property to be simply property and no structure.

An easy example, if Alexander's structure had stayed on the property, then the building could generate income and I don't think Mr. Coyne you can deny that. No structure cost, you cannot conclude there is one. Dirt does not generate anything.

Secondly, there was no certification of EPA. Why should the city have to incur extra cost? Mr. Bock even indicated that there might be extra cost. Miles Carter, AKA Westminister, LLC purchased the property from BP and as the owner they made the decision to demolish, the city owes them no consideration and no reimbursement.

The fact that the Law Director choose on this piece of legislation to omit the documentation that would even warrant this purchase, is ludicrous. This argument which I've heard again tonight and even from the Council President, that it is the responsibility, I'm sorry you've given me work to do, you also have to give me the tools in order to do the work. I don't pick them out of the sky. There is no two-way street. This administration was required to give this group of people every stitch of information to make honest decisions. That failed.

You know what it was? It was as if this council was told by this administration, we're going to buy a used car, there is no Car Facts, just trust us, I guaranty you it rides.

There is no justification for any council person to vote in ignorance. Whether this administration provides or does not provide the job of this council is simply to protect the people of the City of Euclid. There is no question the city is in need of the land and a fair

and reasonable profit by the seller is justified. But you cannot include a revenue stream on a lease of an appraisal on which no structure is included in the appraisal at all.

I implore this Council at the next meeting to rescind its legislation and again re-evaluate and re-vote on it. In conclusion, one council member stated, which absolutely irritated me, that this was no big deal because this only represented one percent of the whole project. Let me remind that Councilman that this is not his money, and that \$200,000 could have paid for the entire water park to be built at Indian Hills, or even repaved my street or other projects. My street built in 1969 has never been resurfaced.

President Holzheimer Gail – Mr. Goodman, that was your time. Thank you.

Ms. Mary Jo Minarik – 18870 Abby Ave. I'm very pleased to see that three of the four mayoral candidates from November are here, we're just missing the victor of the November election.

The process again, I have to reiterate what my friends have been saying in the audience that when you have a 3 to 3 vote and three of the veterans on council have said we don't have enough information. One member has been on council at least 10 years. The other two veterans have been on it at least 4 years and the Council President who passed the deciding vote to go forward with this with no information has been on, served, longer than any of them, alright. To use it as the excuse that you didn't get any questions from your residents, or you didn't get any questions from anybody else, you have three elder members of Council raising serious questions. When I was on Council, I distinctly remember the Council President saying that when Council people wanted something to go into committee because they had questions, the Council President felt an obligation to put it into committee. That was not done on August 8th and I would like to know what the rationale is behind choosing to go ahead with this and not honoring three of your colleagues concerns.

The other question I have, is I just heard that the loan application was filed. Is that what I heard? What I heard August 8th was that no loan application was going to be filed until the legislation was approved and signed. It has not been signed yet, alright. So I'm curious as to why an application has been filed because that was part of the reason for the rush, that it had to get voted on on August 8th.

The other thing, I know the question was asked about clean land but the question was not answered. Mr. Bock, has a study been done to determine, you can answer when I'm done, has a study been done yet to determine if the land is clean? Shouldn't we know if the land is clean before we honor Miles Carter's \$900,000 demand? Because if it is not clean, we're going to incur additional costs like we did at E. 205. We did it for St. Robert's we should do it when this is sitting next to a BP station.

Finally, Director Pietravoia, I'm very curious about the whole McDonald's thing. The appraisals were done in January. McDonald's a national franchise. They did not know that there was a potential that this land was needed for eminent domain until October or November, 10 months after the appraisals? You can answer me okay. My question is, when did the City first make McDonald's aware, since they were dealing with Mr. Carter; when did McDonald's first become aware that the city might need the land? Did they express any kind of hesitancy or like we'll still go forward with this?

The second question is, for that November P&Z meeting, did they have detailed plans that required a lot of money on their cost factor and were they a little bit upset that at the last minute they were pulled out?

Finally I would urge the councilmen, please rescind this. We've got 30 days from August 8th. You can rescind it, you can go back. The loan has already been applied for, alright according to our Finance Director. Obviously it is not that big a deal that it gets signed. What is a big deal is that when the residents have questions alright, they get answered. The other big deal is when veteran council people who know what they're doing have reservations about legislation, it would behoove the newcomers to honor their

concerns. That is part of the reason we've gone to this whole new structure because the veterans were supposed to mentor the newbie's. Thank you very much.

Director Frey – Council President if I could explain the loan process. They was a companion piece of legislation that was on the August 8th agenda authorizing the city to apply for the Ohio Water Development Authority loan for this purchase and that piece of legislation passed unanimously. The loan application based on that vote of city council was processed to the Ohio Water Development Authority. It has not been voted on yet as Director Malone has indicated, it is on their agenda for I believe August 30th. However if that loan is approved, it will not be dispersed until this piece of legislation that authorized the purchase of the property becomes effective.

President Holzheimer Gail – Director Bock, the EPA study?

Director Bock – As we stated earlier, it has not been completed as yet but will be done before we close on the property.

President Holzheimer Gail – If there were findings that would be part of the negotiated purchase agreement?

Director Bock – Correct.

Mr. Coyne – We also are going to seek before closing on the property, there was environmental analysis undertaken by the owner. We expect to request and receive that for assistance with whichever environmental firm would advise the city as well.

President Holzheimer Gail – I'll save my comments to the end. I'll be happy to explain my decision.

Mr. Dan Bertosa – 22470 Nicholas Ave. I listen and I have to admit I have a lot of questions before I came and a lot of them the Council kind of cleared up. I find this kind of funny. There's supposedly a lease right? There's a lease and it is confidential between this individual and McDonald's. And yet we put a value on the lease. The appraiser must have seen the lease, the proposed lease, to put a value on that document, correct? But yet the Council can't see it but the appraiser saw it. Does that make any sense to anybody? Yes or no?

Director Frey – There is a confidentiality, the appraiser did get a copy of that unexecuted lease for its lease terms to be able to establish a value.

Mr. Bertosa – The appraiser saw it but the council couldn't see it.

Director Frey – It is in the appraiser's report. The summary of that lease is in the appraiser's report. It is not a document that the city created. It is a document between the McDonald's corporation and the owner of the property. We can get it by their consent, but they showed it to the appraiser for purposes of

Mr. Bertosa – Did this appraiser, I haven't seen anything, did he deem that lease to be iron clad? In other words, McDonald's, if that lease would have been signed, they would have been obligated for the lease payments, under that lease even though supposedly the site plans haven't been approved yet? I cannot believe that McDonald's didn't have an out on that deal prior to complete approval by the City Council.

Director Frey – Again, it is not the City Council, it was the Planning & Zoning Commission and Architectural Review Board.

Mr. Bertosa – So it most not have been an iron clad lease then?

Director Frey – I'm sure they had a provision that allowed them to avoid the lease in the event that they didn't get those approvals. I'm sure of that.

Mr. Bertosa – This appraiser, he supposedly discounted that because, for that matter, the whole thing could have, McDonald's could have walked on it, on the deal.

Director Frey – Yes, they could have and in fact they did. They never executed the lease.

Mr. Bertosa – They only walked because they thought they weren't

Director Frey – That we were going to take the property.

Mr. Bertosa – In absence of that, they must have had an out. For example, you mentioned this Bliss and the access. Who was going to, that supposedly would have had to been negotiated, who was going to pay for that?

Director Frey – Obviously the developer would have had that responsibility. The City wasn't going to pay for a roadway.

Mr. Bertosa – Okay, thank you.

Ms. Linda McGreevy – 2051 E. 226 St. Fifty of my 61 years I've been in the city and loved it, I still love it. I'm an arts person, so the phrase a picture's worth 1,000 words, kind of applies to my heart and my mind tonight. All I can say is there's a whole lot of this picture that isn't pretty, it isn't positive. It is very upsetting to be present here tonight to witness what is going on. Because I'm one that likes to create beauty, I'm asking myself the question right now and to all of you, what is the best resolve? What is the best response to all of what is taking place August 8th and tonight for the sake of the city and all of us residents? For all you council people, you do represent us. Those of us like myself that love this city, and have been applauding, so thankful, the school buildings, the renovation of Lake Shore and the hopes for Euclid Ave. There's been so much positive development that's taken place in the last five years. I am so excited by being here still and have encouraged others to move into this city as a result. My neighborhood, new families, new generations are taken home here. It is great to see this happening.

There's so many other cities that have such turmoil for other reasons, whether racial or ethnic or that. There is a community aspect here and I would like to see the picture of community where people are working together, they're tying the knot in a good way, a strong way. Working together because it does matter. What happens here and even with this issue, there are a lot of pieces of this puzzle that don't fit well is my observation tonight. I don't know, I am wondering a few questions like, eminent domain, what would the city have had to pay if that really took place? Can someone answer that? I'm curious. I know there's been extra fees, maybe \$100,000 as expressed. But what would the city have had to pay if it was eminent domain?

Mr. Coyne – It would be depending upon how far that litigation process you want. You can still settle it in mediation. The city has to pay all the costs of that, for what it is worth, but aside from that, if you go through the entire process a jury determines the value of the property and that's what the city has to pay. That's based upon the range of evidence presented to the jury and then a decision is made and that's what you have to pay.

Ms. McGreevy – What is the reality though? What is your guess as in other situations where land has been taken for governmental reasons, sound good reasons as this one is?

Everyone in this room has agreed, yes the city needs land for this water treatment deal, but it's the procedures. We all make mistakes in life, mind you. Every professional person in this place has made mistakes and procedures and summer vacation and council and the timing of all of this. However, it has become a mish-mosh, it has become that. What's the best way to resolve? I'd still like to know the reality of that eminent domain because my guess is maybe that might have been a lot less in the hundreds of thousands that the City would have wound up paying and even if you had \$100,000 of fees, it still would be a lower figure than \$900,000. Jumping from \$600,000 to \$900,000 in a year and a half is terribly troubling.

I guess the best to me would be to vote for, there's 30 days, we wouldn't be here tonight if there wasn't still time to reconsider. To have it be put back into a good procedure where all the citizens of this city would say, hey, we all make mistakes and we did it goofy and it had error or misconception in it, but hey in the end we pulled together and we did it right.

Mr. Coyne – Follow up on one part of that question. I want to make sure there is no misunderstanding where there's some complexity in this appraisal report. That is, the fair market value, ignoring the lease is around \$715,000 something like that. If the lease is taken into evidence by the Court, that's the floor. For the sake of discussion, what you're sort of risking or you're banking on is would a Judge look at this and ask a city official, ask a representative of the landlord or representative of the likely tenant, how close were you to get this done. If you got your permits would you have in fact signed this? If the answer by everybody is yes, that's your floor. That means the jury is going to come back with at least \$900,000. Then the appraisal for the property owner testifies and the appraiser for the owner testifies. That's the kind of risk you have in terms of going through that whole procedure. I don't think that should be ignored and I assume that was given some consideration. I know the Law Director has been concerned with that and I think that should be understood.

President Holzheimer Gail – In your legal opinion, eminent domain under no circumstances

Mr. Coyne – In this case, I don't know if it could have been pursued to save you money, if you're worried about saving money. I don't know how it would have saved you money both with the cost and the appraisal analysis that was done. Unless you have a second opinion, somebody can contradict that, but I don't see it. The property owner and his appraiser I'm sure will be higher. The property owner's appraiser is never lower than the government's offer, I can assure you of that, ever. But that's just the way it would have been handled and that's the risk. If you can keep that lease out of court, then you're at least at \$715,000 as your floor but I'm not so sure you could do that.

President Holzheimer Gail – I want to go back, Mr. Hiscott if you don't mind waiting one second. I want to go back, there was a question about the structure on the land and whether that would impact the lease or the appraisal?

Mr. Coyne – I wasn't sure, Mr. Goodman I think had those questions. I don't know where he was coming from precisely. The tenant, it was essentially in that lease as we understand it and they would have put a structure of a million, million three on the property at the tenant's cost. The landlord would pay nothing and the taxes would also be paid by the tenant, not the landlord. So, at the end of the day, the landlord really gets the rent and the tenant is paying for all the other expenses and costs, both putting up the building and the...

Mr. Goodman from audience, unable to hear.

Mr. Coyne – Keep in mind too with the appraisal, it is not unusual for an appraiser not to disclose every element of a transaction. They do get some of them, they get some of them confidentially and in this particular occasion he did review the entire lease we're relying upon. He outlines exactly how much the rent would be received over a 20 year period and it totals close to \$1.5 million over 20 years and that's not unusual.

In terms of the details of the lease itself, I can talk to the Law Director about that, but the fact of the matter is the appraiser was provided that.

President Holzheimer Gail – Director Pietravoia, you had a response to Ms. Minarik's question?

Director Pietravoia – I took a couple of notes, she had a couple of questions. The first question was whether or not, or at what point McDonald's was informed about the potential for the EPA decision requiring the city to need the property. We did early in the process about Spring 2011 when we first started serious discussions with them, we put that on the table right away, that while it wasn't a certainty, if you remember at that point as Director Frey indicated, we were still looking at the other technology as the desired approach. So, while they knew it was possible, none of us, even at this table could say with any certainty in the Spring of 2011 that that's where we would land at that property was needed. They were informed early and throughout the process in all our discussions we gave them updates about where we were with EPA.

By the time of their decision to withdraw from the P&Z meeting, they had developed site plans for the property and they had developed three dimensional architectural renderings of what the building could look like. I would imagine that was a significant cost to them, but that's a business decision they make, every site that they look at. In essence they were willing to take the risk to start going through their due diligence while they were waiting to determine if that property was going to be needed for the Waste Water Treatment plant. When it became fairly evident that it was going to be needed, that's the point at which, actually we recommended and they agreed that they should withdraw until we really had some certainty. That was around November, December 2011.

Did they have any reservations during the process? Certainly they expressed concerns and asked for regular updates from us on whether we had any final decision from EPA or any final certainty to whether the property was going to be needed. Although we did inform them early on that likely wouldn't happen until closer to the end of the year and reality I think it ended up being after the end of the year when we did get a final decision from EPA. I think that addressed all the questions.

Mr. Dave Hiscott – 1970 E. 224 St. I think my favorite TV show is In Session Court TV. I have a question for Mr. Coyne that comes right from In Session, this is a yes or no answer. If I have an unsigned lease agreement, do I have an enforceable lease agreement?

Mr. Coyne – No.

Mr. Hiscott – I didn't think so. So, we don't have a lease agreement that really means anything, it is non-existent. Just a comment, when you're talking about the appraisal and Mayfield Hts. came up. I'm thinking Mayfield Hts., that's where I go to Costco. There's a lot of big stores up there, wow. I'm thinking well at least he didn't say Mentor, oh but he did. As you know retailers are killing to get into Mentor, Ohio. That's where Melt Restaurant is going and I don't see Melt Restaurant coming around Euclid for any reason. When I hear Mayfield Hts. and Mentor, which is not even in Cuyahoga County, and then Willoughby another very popular area, I think I'd tell the appraiser to go back and let's find some comparables. I just had my house appraised for about the fifth time, it was finished in June and he did comparables and one was on my street and one was on the

other street and one was over there. I don't know if he did the Cleveland location and threw that in, that would be good enough, you know.

The question about commercial property values. I know Director Frey said we shouldn't be concerned with that, yet Mr. Coyne is the one who keeps talking about commercial values have not dropped. Well my home value dropped almost 30% and most of them went from 25-30% throughout Euclid. Again I think another appraiser report needs to be done with comparable and comparable means within Euclid, maybe Eastlake, maybe Cleveland something like that, but Mentor, Mayfield Hts., no.

The only other thing I can say is I work a guy that was a pretty smart guy and he always had a saying. He said you know, a bad deal is a bad deal is a bad deal. This is a bad deal.

Councilman Van Ho – Mr. Hiscott just brought up Costco. Is my memory correct that Mayfield Hts. held off zoning that property and stayed in the way of the property owner making money and it was taken to Court? To free up basically where Costco and Best Buy are now and the City of Mayfield Hts. had to pay for holding that property hostage for lack of a better way to phrase it?

Mr. Coyne – I wouldn't use those words at all, with all due respect to the Councilman. The City and my firm was involved in that for the City of Mayfield Hts. They did pay a significant amount of money due to the delays in how the property was not used. So that is true, that did happen in that particular matter.

Director Malone – A footnote to the Councilman. You're absolutely correct, the City of Mayfield Hts. lost in the court proceedings and had to issue judgment bonds. I knew the Finance Director quite well over there. They're still paying on those judgment bonds, they had to issue them for 25 years.

Councilman Van Ho - Could that happen to us?

President Holzheimer Gail – Mr. Coyne indicated earlier that if a property owner is not able to develop or sell their property that yes we could be liable. He did say that. I want to make sure, is that the end of the public comments? Okay.

Director Pietravoia – I would like to comment on the comparables. Keep in mind while they are outside of the city, these are community shopping areas similar to our downtown district that serves a neighborhood shopping needs. The appraiser looked to find comparable community shopping areas. Also on the Mayfield example that Mr. Coyne explained this earlier. Each comparable is never an exact fit, so they make adjustments. For location there was a 15% reduction in the price paid in Mayfield, given the comparable location to Lake Shore Blvd. here in Euclid. That was the case in each situation, there are adjustments up or down, depending on how the comparable related to the Lake Shore Blvd. setting. It is not a straight match where just because the value was \$964,000 per acre in Mayfield Hts. By the time it is adjusted that translated to \$22 per square foot and the adjusted price was \$15 per square foot. They were all community shopping areas and there were adjustments made if they weren't exact same sites.

Councilman Langman – Just to close, Law Director, as an academic exercise, if you can write up what it would take to actually rescind the legislation, the pros and cons to that. Can you do that for us?

Director Frey – Are you asking for legislation?

Councilman Langman – No I'm not. I'm asking for an opinion first on how it would be done, the steps involved and the risks of doing that.

Director Frey – I can answer that now, if a Council person asks

Councilman Langman - I would prefer that that's in writing.

Director Frey – I will answer that if Council asks for it, we'll write the legislation and it would have the effect of repealing the ordinance that was passed that was set to become effective September 8th. It will put the loan process, either we would have to withdraw our loan application, or it would certainly at the very best put it on hold pending some future application.

Councilman Langman – Thank you. I think the reason why I ask is that it points out the deficiencies of having conversations after the fact. I know somebody brought it up, why are you doing this. I know Councilwoman Scarniench and myself, even though it is already done and the legislation is passed, we felt that it is important, along with other council members, that you hear the rationale behind it. Something we did not get on August 8th.

Finally, I don't think there's equal responsibility here Madame Chair. We're the part-time council. I work, other members of Council work, you work. We don't have time to keep track of everything that goes on every second. Basic information in support of spending \$900,000 should be provided, no questions asked. We have full time staff in the Law Dept., Economic Development Department, the Engineering Dept., etc. There should have been no question about getting that information.

I did do my homework Madame Chair, I watched because I've been here long enough to see how the process should work. So, in the future, I expect much more without having to go through the shell game of asking the right question at the right time. Thank you.

President Holzheimer Gail – I want to answer or address why I voted the way I did in the process. I will say that the process, given that we've had to go to a special meeting could have been better and we will take steps to remedy that. That being said, I did not come into the meeting with no information and I'm assuming that my colleagues who supported the ordinance came in with information as well. The fact that we didn't have the appraisal in front of us didn't mean we didn't ask questions, doesn't mean that I didn't have a conversation with Director Frey, doesn't mean that I didn't talk to people about it. I did my homework, I was prepared to vote that night.

I do appreciate the fact that we use committees and we have committee processes. Somebody would have asked, I was prepared to vote and I was ready to support that vote positively. If somebody would have made the motion to send it to committee, and I did make the comment that it appears that it needs to go to committee because there were questions. My job is to try to coordinate the meetings and be effective with our time. That being said, nobody made the motion to send it to committee. There was no motion made, people wanted to vote and voted it up or down. I was prepared to vote for it but I probably would have supported a vote to send it to committee if someone had made that motion. That motion was not made.

We can debate the process. We all agree the process did not happen in the smoothest of ways. I don't want anyone to think that Council is not doing their job because they voted for that. I don't know what each of the council members did to prepare for that vote. I know what I did and I was ready to vote so that's what I did. If that was the fourth vote, that was the fourth vote.

We've learned something through this process, everybody has learned something from this process. I will look at the agenda differently and when I notice things aren't there, I will ask the administration to do that. I have talked to the administration about providing memos, providing details. I do think it is our responsibility to ask questions and if we know information is missing to ask for it.

I would be happy to talk to anyone about my decision and why I made it. I will admit that the process was not the best that it could have been and I will do my best to remedy that as we go forward.

Councilman McLaughlin – I think what I'm hearing from the public is that they're upset that somebody is making money off the city and it is our money that has to pay for that profit. It is my job to represent my constituents. In addition to that I remember clearly because it wasn't that long ago that I also took an oath to protect and defend the Constitution. The fifth amendment clearly states in the last sentence that no private land property shall be taken for public use without just compensation, I think is what it says.

So for me, to take something by eminent domain is about the worst thing a government can do to a private citizen. You're taking his land away. It's like to say, I'm hearing people without a signed lease, there was no lease. That's like saying, I forgot the painter. She paints a beautiful painting and then the government comes in and she gets an offer to sell it for \$100,000. It hasn't been sold yet but the government comes in and says I'm going to need that painting and you know I'm just going to pay you for the canvass and the paint. There was no agreement, where is your signed agreement. We all know that it existed and we know McDonald's is a Fortune 500 company, they're going to be around, they want to be here, they've done their homework, they would be in Euclid.

So I took all of that into consideration. I think it is a fair price. I think \$900,000 is a fair price for this property in considering the lease agreement. Thank you.

Councilwoman Scarniench – First I want to thank the residents that came out tonight and spoke. It is very difficult to do things in this city with no newspaper and you have to rely on and getting word of mouth. Thank everybody for coming out. Thanks to Mr. Coyne and Mr. Budzik for coming out. You didn't get to say anything, thanks,

I do have one question. When an appraisal is done, okay I'm going to sell my house and I want \$100,000 for it and the appraisal comes out \$100,000. But Councilman Jones doesn't want to pay more than \$90,000. So it comes to a negotiation and maybe we end up at \$95,000. Did we do anything like that? The appraisal is \$900,000 and this is what we're giving them.

Mr. Coyne – The initial demand was around \$1.4 million and that was the initial demand that was made by the property owner.

Councilwoman Scarniench – He wanted more than what the appraised value was?

President Holzheimer Gail – Yes.

Councilwoman Scarniench – That is something we didn't know.

Mr. Coyne – Again I was presuming from his attorney that they were talking to and ready to get an appraisal report done and that cost money as well. When we had our discussions, it worked out to looking out, they were insisting that the lease was ready to go and we saw nothing to indicate that weren't the case, had the approvals been received, and that's how we got to that figure.

Councilwoman Scarniench – My last comment, is I definitely would like a piece of legislation that states that we're rescinding that piece of legislation. I want every council person has heard everything that went on tonight, which we should have heard before, but that's over with, we've heard it now. I want everybody to vote on it. I think it is very important that all nine of us make a decision, not some of us. I'm assuming Councilman Lynch will be back for that meeting? I'm hoping he's been keeping track. But I would like that piece of legislation, not that I will change my vote, but I think it is only fair that everybody has the chance to vote on it. I'm asking for the piece of legislation.

Councilwoman Caviness – I'd like to also thank the residents of Euclid and everyone who is present tonight. As you noticed I haven't had much to say, because I was one of the persons who voted yes on August 8th. I spoke with two of the most seasoned representative colleagues that we have here prior to that vote, prior to that evening and came to my conclusion that evening because of my conversations with them.

However, in the process in between there and now, there have been swarms of questions and doubts in people's minds as to why this is going on and if there should be any negotiations to lower this cost. I understood at that point in time on August 8th that going through eminent domain would possibly cost us more money than what we're offering now. However, I would like to agree with my colleague Madeline Scarniench that I think we should have full representation of Council and this decision since there have been so many people who have expressed, so many people who are residents of Euclid who have expressed some doubts about this. I think we should have more people. If it were to be a vote now with all of the other questions and information, I would probably abstain at this point because I am new and I would like to have the time to really consider everything else. Thank you.

Councilwoman Jones – Director Frey, if the legislation is on the Council Agenda for our first meeting in September to rescind that decision and it is passed, what's our next step as far as we have to put legislation on again to pass a sale of the property at a lower price?

Director Frey – We would need to obviously inform the Ohio Water Development Authority that we are withdrawing the loan application, or ask that it be put on hold. We would have to notify the property owner that Council has rescinded the legislation. I don't know that the property owner is going to do anything other than demand that we file the eminent domain action in court.

I'm not quite sure I'm following the rational of this conversation. You have the information in front of you. You've had the information in front of you. You've asked the questions. The residents have asked the questions. This group has been here to answer those. I haven't heard one individual indicate that they don't need, the city doesn't need the property. If it is a matter of negotiating the price, Mr. Coyne has been involved in that negotiating process. We started out with an offer and a price. Miles Carter started out with a demand and a price. We had many back and forth conversations. We landed on a price. We presented that price to City Council.

I'm not sure what else we would do at this point other than file the eminent domain proceeding in Court. Then we wait the year or whatever it is to get to that price, to get to that conclusion. We have all the cars that are attached to the lead car in the train, for all of the different phases of the projects that we put on hold because we don't have the property on which to construct those projects. We run the risk of losing those dollars that are grants and low interest loans.

Again, if City Council is looking for additional, I'm going to write the legislation for September 4th to rescind the ordinance. If City Council has some other information that they don't have tonight that they would like to have before September 4th, please identify what that is because I don't know what it is that you don't have that you'd like to have. You'd have a full opportunity to hear this matter tonight. You've had since August 8th to consider, August 9th when I sent you the draft copies of the appraisal to look at the appraisal reports. You've had this group tonight from which to gather information. Again, no one has indicated that we don't need the property.

If it's an issue of how we came to the conclusion that \$900,000 was a fair or just compensation, it was a negotiated process. We started lower. Carter started higher. We went back and forth. Just as you suggested in your discussion, Councilwoman Scarniench that you would have this back and forth negotiation with the buyer. That's what we did and we arrived at this price. We'll have the legislation September 4th and Council can vote to repeal the ordinance or they can vote to affirm the ordinance. If this Council votes to

repeal the ordinance, then I'm going to suggest to you that I instruct Mr. Coyne to file the eminent domain proceeding.

Councilwoman Jones – That's the only option we would have at that point, to file?

Director Frey – I don't think the property owner is going to come back and say, okay, you guys reconsidered, I'll lower my price by \$100,000. We already have gone through the negotiations. We've already gone through all of the back and forth to arrive at the price we arrived at. I only know of one other option and that's to, well two options, to say we don't need the property at all and suffer those damages for the delay in the development. I don't think we're there. Or the other option is to file the eminent domain proceeding.

President Holzheimer Gail – Director Frey, is an option, I heard that you want all of council to be there to vote on it. Do we also have the option to have a resolution to affirm that decision? I know we don't technically need it, but that would be another option. If you're just looking for, that you want all of council to be able to vote again on it, we could do it in that way too.

Councilwoman Scarniench – It doesn't matter to me.

President Holzheimer Gail – Is that your issue about you want everybody to vote?

Councilwoman Scarniench – I want everybody to vote. I think everybody should vote. On August 10th I sent Director Frey an email, thanks for the information but I still have a question. It has been stated over and over McDonald's pulled out of the deal back in 2011, so why are we still considering \$900,000? I would have no problem with the \$714,000 plus the cost of the demo.

Your answer to me that day. I will ask our outside counsel to put together the history of the negotiations and his analysis of the relevant facts of law. However, this will not happen until I get back on the 20th.

I would like to see that because again this is the first time I heard another number before the \$900,000. So if we could get a timeline and get that sent to us as soon as possible, that could help another decision easier.

Director Frey – That would be an appropriate conversation for an Executive session.

Councilwoman Scarniench – Okay, that's fine, then I would ask that we have an Executive session before the council meeting.

Councilman O'Hare – Along those lines with that is a jumping off point. First I want to thank Alice and now known as the arts person here. Democracy is messy and if anything is worse than hearing a lot of protests and angry words, what is even worse is hearing nothing. Most council meetings there are 1, 2, 5 people. I know a lot of people watch on cable channel and that's wonderful and that's appropriate. It is wonderful you're here. It is not easy to get up to that podium, I know its not.

Along those lines, one reason where I was voting and it was very magnanimous of the Council President to say yes I cast a deciding vote, that's not true. It is like a fumble happening in the last minute of the football game, Brown's fans do remember that. It is not necessarily that fumble. It could be any number of plays all the way along the way that led to things being there, so was any of the other votes.

If I've done things ahead of time to get information, I can't apologize for that and I won't apologize for that. Yes, things weren't as apparent to all and all the information wasn't there, true. It was a fumble if you will that led us to being here.

One of the reasons that I looked at, that council meeting, we were sitting back there if you recall because we were projecting up things here so we could see what we were

discussing. I looked up at the Council President, no one was saying anything. It was, what are we going to do with this. There was dissention, there was, I don't want to do this, I want to do this. And nobody said let's move it to committee. Nobody said anything and that's where it was moments of silence and I said, we have seven people, we could vote and if it fails, then it fails, let's vote on it. Along those lines, somebody could have at that point said let's return it to Executive Session to hear all the details, the negotiating and other things like that. That could have been done too, I wasn't aware that was an option.

So you're talking about going to Executive Session. This is Monday, we've got Labor Day weekend coming up. You've got Tuesday. We're going to do Executive Session, I would make a motion that we retire and do Executive Session right now.

Councilman McLaughlin – Second.

President Holzheimer Gail – There's a motion and a second, are there questions on that motion going into Executive Session?

Councilwoman Jones – I would like to go into Executive Session maybe tomorrow or Thursday. Not the same day as the Council meeting, instead of tonight, tomorrow or Thursday.

Councilman Langman – I have a general comment, not on the motion, but I will support the motion.

President Holzheimer Gail – Mr. Coyne, do you have time tonight to? We're paying outside counsel to be here, it makes the most sense. I don't think, are there a lot more questions other than getting that kind of update of the negotiation process and the back and forth?

Councilwoman Scarniench – That's the only question I had.

Councilwoman Jones – If the decision is that we're paying outside counsel to be here and he's already here, we can do it tonight, that's fine.

President Holzheimer Gail – Councilman Langman, take a general comment.

Councilman Langman – I was at the meeting, I made the suggestion it go to committee. The issue was the Law Director would be out of town, Councilman McLaughlin would be out of town. Nobody sat there dumbfounded. We talked about it. We couldn't come to a decision, we had a vote. There's nothing wrong with that, absolutely not. In fact, it passed. If that's the will of the majority, I don't have a problem with that.

I'll say it again, it's the process and I will continue to say that because maybe some members of Council received information that others didn't and if that's the case, then that's a problem because we should all have the same amount of information when we go into a meeting. Whose responsibility is that, well technically it is yours, but is it mine too and everybody else's so that we could have a cohesive working arrangement. Because what I'm hearing is that we have current legislation that is passed where the 30 day limit is ticking. If we're going to do anything with that, we have to rescind it, if I'm understanding what the Law Director said. I don't know if there's any new information that's going to emerge that's going to lead us to that point. Appraisals are very subjective. We had similar conversations on the lakefront parcels about who owned it, how much we were paying. But since we had the information upfront, it wasn't quite as contentious. Went through the same thing at St. Robert's, for \$600,000.

I guess I would go along with it but we've heard enough and unless there's a strong feeling to rescind the current legislation, I don't think we need to waste Mr. Coyne's time

and all that. If we have additional questions, we can funnel them through the Law Director and I'm sure he will provide us with the answers.

President Holzheimer Gail – There is a motion and a second on the floor to go to Executive Session. Was your comment about that Councilman Van Ho?

Councilman Van Ho – No.

President Holzheimer Gail – Let's do a roll call to go into Executive Session.

Roll Call:

Yeas: Caviness, Scarniench, Jones, O'Hare, Holzheimer Gail

Nays: McLaughlin, Langman, Van Ho

Passed 5-3.

President Holzheimer Gail – We will go into Executive Session very quickly to discuss, get an update on the negotiation the process that happened. For those of you who are here, we are not acting on anything this evening. There is no legislation on the agenda. We will come back and reconvene into the public but I don't expect there will be much discussion at that point. This is to get additional information that is covered by attorney-client privilege.

Councilman Van Ho – I do have one comment and it has nothing to do with Executive Session.

President Holzheimer Gail – We have to go since we made the motion. Can it wait until we get back because we made the motion and have to go.

Council recessed into the Law Department Conference Room.

President Holzheimer Gail – We'll take a motion to reconvene into public.

Councilwoman Caviness moved to reconvene in public session. Councilwoman Scarniench seconded.

Roll Call:

Yeas: Caviness, Scarniench, Jones, McLaughlin, O'Hare, Langman, Van Ho, Holzheimer Gail.

Into public session.

President Holzheimer Gail – One final comment, Councilwoman Scarniench asked for legislation to be drawn up for the next Council meeting, would you like to affirm what that will be.

Councilwoman Scarniench – What will happen is it will be legislation to reaffirm the vote that was taken on August 8th which will allow all council people to vote however they choose and we'll go from there.

President Holzheimer Gail – We will have that on the next council meeting. Information that was provided to us in Executive Session was not meant to hide things from the public, except there are certain items that can only be discussed in private, you cannot talk about negotiations of real estate in public. We will come back and have that legislation at our next meeting. I will thank Mr. Coyne and Mr. Budzik for being here.

Councilwoman Scarniench moved to adjourn, Councilman Van Ho seconded. Yeas: Unanimous. Meeting adjourned.

