

**THE CITY OF KENT, OHIO
STREETS, SIDEWALKS & UTILITIES COMMITTEE
WED. , OCTOBER 3, 2007**

This meeting of the Streets, Sidewalks, and Utilities Committee of Kent City Council was called to order at 9:27 p.m. on Wed. October 3, 2007 by Beth Oswitch, Chair.

PRESENT: MR. BARGERSTOCK, MR. FERRARA, MR. HAWKSLEY, MR. KUCHAR, MS. OSWITCH, MR. SCHULTZ, AND MR. WILSON.

ALSO PRESENT: J. FENDER, MAYOR; D. RULLER, CITY MANAGER; J. SILVER, LAW DIRECTOR; S. CHESTNUTWOOD, ACTING CLERK OF COUNCIL; G. ROBERTS, SERVICE DIRECTOR; W. LILLICH, SAFETY DIRECTOR; AND J. PEACH, POLICE CHIEF

**ABSENT: MS. GAVRILOFF & MR. DELEONE, COUNCIL
L. COPLEY, CLERK OF COUNCIL**

Ms. Oswitch said the first item on their agenda was the condition of streetlight poles on SR 59. **Dave Ruller, City Manager**, said that **Gene Roberts, Service Director**, would give a presentation on this issue.

Mr. Roberts said there was a motor vehicle accident at the end of 2006 that resulted in discovering a problem that the staff did not know existed inside the bases of the streetlights on State Route 59. He referred to some overhead slides that showed the lights on Haymaker Parkway. He said they are looking at the streetlights with the long mast arm because this is a wide section of pavement and the mast arm extends out well past the curb lane and berm. Mr. Roberts said this specific installation included what is called a transformer base; which is the square box at the bottom, and the transformer base is designed to break away from an impact of a motor vehicle. He said a whipping action could occur when a motor vehicle accident occurs and the pole falls backwards on the car. Mr. Roberts said they are specifically designed to break away and for the pole to fall away from the vehicle preventing additional injuries to the occupants of the vehicle. He said the base itself is made out of cast aluminum and the pole is constructed of galvanized steel. He said the current poles were installed circa 1975, with the plans showing 1973 and the grand opening for Haymaker in 1976 so he guessed the poles are 30+ years old. He showed Council a slide of the actual foundation. He said they took a picture after the accident and pointed out the square box as well as the lower left anchor bolt that is bent over and rusted. He said the slides showed that the anchor bolt is starting to rust and would have to be cut off because a wrench would not work. He said in some of the poles, the nut is completely gone.

Mr. Roberts said there are 81 poles on Haymaker, with ten light poles showing corrosive failure on all four bolts. He said that sixteen poles have three bolts rusted and one with no rust; seventeen poles have two rusted bolts; ten poles have one rusted bolt; and twenty-eight show no rust. He said it has been determined in the preliminary analysis that it appears that the poles that are mounted on the downhill slope from the roadway where the salt and slush are running down to the pole, with freezing and thawing have the majority of the failure. He said there are some on the uphill side.

Mr. Roberts said their initial recommendation was to do one project for their recommendation, based on the worse case scenario if they have to redo everything, for a cost of \$650,000. He said they have discussed this issue with other communities that have gone through this process. He said the city of Akron tried a process where they literally cut the concrete away from the bolt and tried to put a connector and new stud to mount the pole on. He said they had some success with that although they have concerns that the foundation is now weaker because the concrete is weaker, but the bolts are stronger. He said he has spoken to a supplier that has given him a name of an engineer in Massillon that specializes in this and had tremendous success in epoxing in to a new anchor bolt drilled into the concrete foundation. He said he has spoken to some structural engineers who have some concerns about this process. He said that this engineer has a great deal of faith in his process to the point that he would be happy to load test his process in which they literally bring out a device to try to pull the bolt out of the concrete. He said this man would be happy to talk to the staff about this process. He said their intent is to begin in the spring with the money that is available to begin the repairs, but to take down some of the lights before the wind does it for them.

Mr. Hawksley asked if all of the poles would be replaced, and Mr. Roberts said their intent is to reuse as much as they can. He said they have some success in doing that when they took the poles down on State Route 261 and SR 43, and had them re-galvanized and then reinstalled them. He said they have not seen premature failure. He said that option would save about 30% of the cost.

Mr. Hawksley asked if there was any State or Federal money available to help with this, and Mr. Roberts said he has spoken with the Ohio Department of Transportation. He said this is still a new issue. He said if Kent had a project where they were rebuilding a road, it would be eligible. He said he asked specifically for highway safety funds, and they are checking with the State office in Columbus to see if there are funds available. He said there is the possibility they could go after Issue II funds but in the past, those funds have always been used to leverage the storm water funds.

Mr. Hawksley asked if LED heads could be installed on these lights when they are taken down. Mr. Roberts said they hoped to do that at SR 261 and SR 43. He said the sample evaporated. Mr. Roberts said no one in this environment has been able to provide lights with LED but they will definitely check into that.

Mr. Kuhar said about thirty-eight of the poles are in good shape, with seventeen in half good shape. He asked if some kind of protective coating could be put on the bolts when they are down rather than the galvanizing to prevent future problems. Mr. Roberts said they could check on that. He said that in preparing the Capital Plan, they knew they had some issues that must be dealt with right now. He said there are three different circuits on State Route 59, so they could turn off one and do the poles and then turn off another to do more. He said one of the things they take into consideration is how they can minimize the impact of the Capital Plan. He said if this coating and rethreading gives them the ultimate tensile strength needed to resist the wind load, it would definitely be an option.

Mr. Kuhar said that between the galvanizing breaking down and the electrolysis happening between the dissimilar metals, it might not be the best solution. Mr. Roberts said one of the options if the City goes to a new anchor bolt epoxy, would be to switch from standard steel to stainless steel, which is the same type of bolt configuration that is used to mount the trash cans downtown.

Mr. Bargerstock stated that stainless steel does not have the same tensile strength as galvanized stainless steel. He asked if they could assure the proper loading of the bolt. Mr. Roberts replied that it is his understanding that a 7/8" bolt is needed for standard steel that has a higher tensile strength and stainless steel is more brittle so they might have to use 1 1/8" bolt. He said there are going to drill a hole but it does not matter if it is for 7/8" or a 1 1/8" bolt. He said they could make that transition and in the long term prevent this recurrence.

Mr. Bargerstock said he had read the report and asked if the engineer was willing to load test each installation or a sample, and Mr. Roberts said he would load test a sample. He said the strength of the concrete is a concern and they did not know if they would have to drill down 12" or 18" down with the epoxy system. He said the transformer base is being made to retro fit for different bolt patterns so the city might have to buy a retro plate to fit the bolt pattern. He said it is still in a state of flux.

Mr. Ferrara asked if any of the poles could be expanded to the boundaries of the historically aesthetics in the down town area. Mr. Roberts replied that they have to maintain, at the city's cost, the electric for the downtown decorative streetlights, as they are not part of the standard inventory that is maintained by Ohio Edison. He said if they extended them down the parkway, it would be at the city's expense. He said the maintenance is included in the City's cost to maintain the streetlights as long as they are on Ohio Edison's standard list, which these are currently. He said if they can retrofit 1/6, they would save 5/6 of the cost. He said if the point is reached is to reinstall all the streetlights at the cost of approximately \$600,000, perhaps the decorative ones should be considered.

Mr. Kuhar asked why all them should be replaced if some of them are in fairly good condition, and Mr. Roberts said that if this is an ongoing problem, whether it is now or 5 – 10 years from now, the streetlights are going to continue to deteriorate. He said they are trying to get them all done as one project especially if they get assistance from the State. He said they would try to retro fit the ones that are not bad with whatever process they come up with. He said if that process is as simple as lowering the pole down, sending it out to have it galvanize, drilling a new anchor bolt using the special epoxy and can be done in any sequence then they probably will not touch the 28 that show no corrosion. He said if they need to buy special pieces, they would probably buy for all the poles. He said the concern also is the concrete that has been exposed to the same environment. Mr. Kuhar said he was thinking about getting the bolts coated so they would not have future corrosion.

Chair Oswitch called for audience comment at this time, and there was no comment.

Chair Oswitch asked if action was needed, and Mr. Roberts said it was just an update.

Chair Oswitch said the next item on the agenda dealt with the issues raised by K. Egler regarding signs in the public right of way and free speech.

Mr. Ruller said this has a challenge in every city he has been in to manage signs in the right of way and the way Kent handles the issue is consistent with the majority of communities. He said some communities do have provisions in their Code to permit signs in the right of way for twenty-four hours. Mr. Ruller said everyone tries to discourage the use of the public right of way for signs for a variety of reasons including the visual blight that occurs. He said there have been questions as to whether everything was treated the same way and he said they are treated the same way. He said the City does not patrol all the time looking for signs in the right of way, but will respond to a complaint about signs. He said if they get a complaint, or there is a cluster, the city crews collect all of the signs. Mr. Ruller said it is similar to the speeding laws, as not every speeder is caught. He said when they see speeding, they catch and cite the speeder. He said they rarely see someone hanging the signs.

Mr. Wilson said he was the one that referred this to Committee. He said that Mr. Egler and his attorney had some recommendations that they would like to give to Kent for changes to the City's Code. He said he would like to see what they have to offer.

Mr. Bargerstock asked why the Law Director chose to drop the charge against Mr. Egler, and if what is on the books now is unenforceable. He said he would like to hear from the Law Director before they hear recommendations to change it.

Mr. Silver said dismissal seemed to be appropriate, adding that he felt the City Code is enforceable.

Ms. Oswitch reminded them that they needed a motion to extend the meeting past 10:00 p.m.

MOTION TO EXTEND THE MEETING PAST 10:00 P.M.

Motion made by Mr. Wilson, seconded by Mr. Hawksley, and carried by a voice vote of 7-0.

Mr. Egler thanked them for allowing him the opportunity to speak. He said they understand the situation is difficult to appease everyone. He said he tried to think what would make him happy to protect political speech, and what would make realtors happy, since they have a job to do also. He said he found it hard to believe that he has been the first person putting up a sign. He questioned whether it was the message; instead of the fact it was a sign being posted. He said he realizes he is more sensitive, but since all of this started, while driving around town, he has witnessed three people putting up signs. He said he found it hard to believe the police were not seeing it also.

Bob Fittrakis stated he was the attorney representing Mr. Egler. He said he did not disagree with the City Manager. He said the fact that Mr. Egler was criminally charged is the crux of the situation. He said if one is criminally charged, others should be also. He said restaurateurs putting up the "OPEN" sign are violating the law. He said the problem is that it went to criminal prosecution so if this is going to be enforced, it should be enforced equally, but perhaps a civil penalty would be more appropriate. He said the Law Director made a good decision, as it would have been a hung jury, since his client was charged as to whether the sign was sightly or unsightly. He said it would have depended on whether the jury liked George Bush. He said the City does have the right to regulate the time, place and manner of the signs and a police officer does have the right to approach Mr. Egler and give him a warning that if he does it again, he will be criminally charged. He said that the enforcement should be evenly applied.

Ms. Oswitch asked if he had any recommendations that he wanted Council to review. Mr. Fittrakis said there should be an even enforcement of the law and the logical thing would be to use a warning if anyone is caught. He said the City could not selectively enforce the law, but with limited resources, enforce it if they catch someone. He said the proper procedure would be to warn someone who is caught and put them on notice that they would be criminally prosecuted the second time. He also recommended that it not be included as a nuisance, with littering, but rather in some other section that addresses signs of all kinds.

Mr. Kuhar asked if the officer asked Mr. Egler to take the sign down, and Mr. Egler replied the officer wanted him to admit to littering and he would not do that. He said the officer never gave him the option of taking the sign down and going on his way.

Mr. Bargerstock stated he was confused because as a real estate agent, he has put signs up on private property but there are other real estate agents as well as auctioneers that put their signs up in the public right of way and they do not get cited. He said he has never received a citation. He said in some cities, the signs are permitted in the public right of way. Mr. Bargerstock said there are times the signs are moved by the residents, and they were picked up. He said he did not understand the enforceability issue. He asked what they are doing about signs in public right of ways, and is that enforceable. Mr. Silver said it is enforceable, and said that the State's right-of-way code and the State Highway Code has

been involved as well as the City Code with enforcement. Mr. Bargerstock asked when they have prosecuted for signs in the right of way, and Mr. Silver said there have been two others in the past six years.

Mr. Wilson said in this particular incident the man put up his sign in front of the officer and if someone else had put up a sign in front of an officer, he would want to believe that the officer would have handled it the same way. He said he had the Service Department remove signs, previously, that were in the right of way. He said if someone put up a sign and no one saw who did, it would be difficult to cite anyone. He said if the officer witnessed it, he could understand the citation being written. He said his problem with this situation is that it was done in front of the officer.

Jim Peach, Police Chief, said he would add some facts. He said Mr. Egler left out that when the officers do see it, they generally take enforcement action. He said they have nothing that mandates a warning action. He said that generally when the officers do see a violation, they will take action, but if people see a cruiser, they do not put something on the wall, ground or a pole. He said if an officer sees a sign, regardless of what type, it has to be proven in court beyond a reasonable doubt who put it there. Chief Peach said there is no way an officer can prove beyond a reasonable doubt if he does not see who puts up the sign. He said they would not win in court if that were not proven. Chief Peach said that if probable cause cannot be established, they would not be able to prove anything beyond a reasonable doubt.

Chief Peach said that looking for signs in the right of way is not a priority as they are short-staffed. He said it is Council's decision to permit signs to be posted for twenty-four hours. He reminded them that a sign could say anything, can be defaming or embarrassing. Chief Peach said the Council could control what is on the public right of way as it is City property. He said the Police Department would agree with whatever is decided. He said one way would be no enforcement, while the other way would be to continue as they have all along.

Mr. Fitrakis said the question is whether it would be enforced under the nuisance law, like littering, which invites jury participation as well as appeals. He said he was confident that the result would have been a hung jury.

Mr. Kuhar said he has been around Kent for a while. He said he participated in marches around the country, defending their Constitutional rights, and would defend the right to hold a sign in his hand. He said the City has removed real estate signs, or call to tell him to move signs. He said he put hooks on garbage cans to keep them from going in the street, and they were all removed. He said Council cannot permit sign bedlam in Kent, but at the same time, freedom of speech and expression must be protected.

Mr. Hawksley asked Mr. Silver how he felt about moving this issue to a different section of the Code, and Mr. Silver said his preference would be to sit down with the Police Chief to tweak Section 503.02. He said he did not like the advertising part of the Code, adding he felt it should just say there are no signs permitted in the public right of way.

Mr. Hawksley asked if someone's name was on a sign, whether they could contact that person, give them a warning, and ask that the sign be removed. He said when this first hit the newspaper; he counted thirty-five signs in the public right of way from his house to the high school. He said he did not think the police officers should have to do that. He said if they agree that Council wants the public right of way free of clutter, there should be a different way of doing it. He asked if they needed an ordinance putting enforcement with the Service Department, and Mr. Ruller said it is less time consuming to simply take them down. Mr. Hawksley said there are open house signs all weekend, and will be there, unless people are told not to do it. Mr. Silver said it all comes down to a priority of what Council wants the staff to do.

Mr. Bargerstock asked his problem is the enforceability issue, adding he does not fault the police officer. He asked for the definition of sign, saying there are signs in the Greek housing, including drive aprons or sidewalks. He said they do nothing about it. Mr. Bargerstock said if it is a commercial business, the Planning and Zoning Department is all over them. He questioned what could be done to create an enforceable ordinance, asked if that was going to be criminalized all the time.

Mr. Schultz questioned the need that it be criminalized, and Mr. Silver said they can change it, as it is their prerogative.

Mr. Kuhar suggested that a simple solution would be to make a non-criminal ordinance be created, placing City signs on the public right-of-way, with the ordinance stating that no signs were permitted.

Mr. Fender said he liked the idea of reviewing the Code, and having the Law Director review the ordinance with the Chief, returning with any comments.

Mr. Ferrara asked how many nuisance cases for signs go to a jury, and Mr. Fitrakis said a person could face anywhere from 60 days to 6 months in jail and a \$500 fine. He said there are signs all over town and they are allowing the nuisance law to be used at the discretion of the police officers. He said they could raise revenue by treating it in a non-criminal manner. He said he runs for office in Columbus, and signs are everywhere. He said he said that he would take the situation to a jury because this one sign seems to have been singled out. He said he believes in equal protection under the law. Mr. Fitrakis said he is sure one person on the jury would disagree, hanging the jury.

Mr. Ferrara asked how else a situation like this could be treated, and Mr. Fitrakis said that it could be treated as a civil offense with a fine attached and no jail time with penalties attached to it, which might be far more motivational. He said to put a realtor in jail is far less likely. He said if it were a routine fine, evenly enforced, it would be applied equally to everyone.

Chief Peach said that there is no jail time for littering in Portage County. He said that generally community service is assigned and there is a fine. Mr. Fitrakis said it is still a criminal conviction, and Mr. Schultz said it is a serious issue.

Mr. Ferrara asked Chief Peach if he would be amenable to the issue being a civil fine, which is easier to enforce, instead of a criminal offense. Chief Peach asked what kind of leverage would be provided if a person does not want to do it whether it is criminal or not. He said that reasonable doubt has to be proven. He said he was not sure what was bad about the criminal aspect because the administration of it is no different from a civil offense with an administrative fee. He said they have to prove who puts it there, which is the hard part.

Mr. Ferrara asked if it was easier to charge a fine on a civil offense versus a criminal offense, and Mr. Silver said it was much harder and much longer process in a civil process.

Mr. Fitrakis said Mr. Silver's suggestion would have merit, because it is currently a 3rd degree misdemeanor. Mr. Ruller asked Mr. Fitrakis how it is handled in Columbus, and he said the city of Columbus picks up all the signs immediately. He said there is no tolerance for signs in the public right of ways and medians, for safety purposes, and are heavily policed. He said they have sent letters previously, with the threat of a fine, but the Council has backed away from that thought at this time.

Chair Oswitch called for audience comment at this time.

Norm Fisher, Linden Street: Mr. Fisher said that prosecuting Mr. Egler criminally was very foolish and very bad, adding it made Kent look foolish in the national media. He said it was very bad because the 1st amendment is directed against state officials. He said the state official showed selectivity, and violated the fundamental 20th century interpretation of the 1st amendment, which is that everyone has the right to his or her viewpoint. He said the fact is there are many, many signs out there, and the one sign that got a criminal prosecution was an "Impeach Bush" sign. He said they should look at the prosecutor, as it made Kent look bad. Mr. Fisher said it was a very bad decision and it was a violation of the 1st amendment.

MOTION AUTHORIZING LAW DIRECTOR TO MOVE THE VIOLATION FOR THE PLACEMENT OF SIGNS IN THE PUBLIC RIGHT OF WAY TO A DIFFERENT SECTION OF THE CODE THAT HE BELIEVES APPROPRIATE AND REMOVE CRIMINAL ASPECT.

Motion made by Mr. Schultz, seconded by Mr. Bargerstock.

Mr. Schultz said with all the signs that are up, he felt the public had a problem with why this one was singled out and why Mr. Egler was criminally prosecuted. He said it does not make sense. He said they need a standard that is equally enforceable. He said they are not going to arrest realtors, and should not arrest anyone else.

Mr. Bargerstock said he does not want to see signs in the public right of way that clutter or endanger people. He said the level of criminality is a serious issue as well as the prosecution. He said they look foolish. He said the Police Department was put in a no-win situation and the officer was doing what he was supposed to do but it did not sit very well with the public. He said he would not like it if someone gave him a criminal citation because his sign was in the public right of way. He said there has to be a better way to deal with this situation. He said he would not want a criminal citation as a licensed professional. He said it might preempt employment for some because of the conviction. Mr. Bargerstock said there was a song about signs during the political protest. He said they must limit clutter, but protect people's rights.

Mr. Kuhar said he would support the motion. He said he thought that the criminal aspect of the placement of a sign rubbed him wrong too. He said that some people might not realize they cannot put a sign in the right of way. He said that people have to be informed of the rules.

Mr. Ferrara asked for clarification of the motion, and Mr. Schultz said it was to have the Law Director place it somewhere other than the nuisance law, removing the criminal aspect.

Mr. Ferrara said the Law Director would prefer to have it as a minor misdemeanor. He said he agreed with what everyone had said but felt that the Council should go with the recommendation of the Law Director about the issue of enforcement. He suggested he would offer a friendly amendment.

Mr. Wilson said that this is something that is not discussed on a regular basis. He said he thought it should stay right where it is at this point. He said if the Law Director, City Manager, Safety Director and Police Chief find a better place to put it, the Council could consider that option. He said if the officer sees someone committing litter, they should be charged. He said they can only do it in the manner it was done, adding it was fair. Mr. Wilson agreed that it would have been a hung jury, but that is a flaw of the court system.

Mr. Kuhar said the burden of proof is an aspect whether the summons is civil or criminal. He said that one could only be given a citation when he is seen in the act of doing it. He said everything would be the same, but they would remove the criminal issue.

Mr. Bargerstock said there is nothing stopping the City's safety forces or service department from confiscating signs. He said it was a little over the top to single out one or two people and charge them with a criminal citation and that is probably what created this whole issue.

The motion carried by a voice vote of 5-2, with Mr. Ferrara and Mr. Wilson dissenting.

Hearing no further business before this Committee, Chair Oswitch adjourned this meeting at 10:15 p.m.

ACTION RECOMMENDED:

- 1) REPORT GIVEN ON STREETLIGHT POLES ON HAYMAKER PARKWAY; NO ACTION REQUIRED
- 2) TO AUTHORIZE THE LAW DIRECTOR TO MOVE THE VIOLATION FOR THE PLACEMENT OF SIGNS IN THE PUBLIC RIGHT OF WAY TO A DIFFERENT SECTION OF THE CODE THE HE BELIEVES APPROPRIATE AND REMOVE CRIMINAL ASPECT.

Transcribed by Linda M. Copley, Clerk of Council, on the 7th day of November 2007.