

Newton Falls City Council met in Regular session on Monday, April 19, 2021 at 6:00 p.m. in Council Chambers. Mayor Kline called the meeting to order following the Pledge of Allegiance and prayer.

ALSO PRESENT:

David M. Lynch, City Manager; Gene Fixler, Police Chief; A. Joseph Fritz, Law Director; Anna Musson, Finance Director.

ROLL CALL:

Zimmermann, Baryak, Spletzer, Breymaier, Alberini.

ABSENT:

SPECIAL PRESENTATIONS BY STAFF MEMBERS OR INVITED CONSULTANTS:

PUBLIC COMMENTS:

Rick Kerlin, 611 North Canal Street, commented on the recall. Stated they are allowed and frequent in Newton Falls and he stated the vote needs to be taken and the recall held immediately. We had a recall in 2019 and the motion to set it for 13 months from now seems ridiculous. He said he called different attorneys, judges and a Law Director and asked them about the wording in the Charter. They all agreed the recall should be done in 90 days even though the recall section has changed. Mr. Kerlin read from a letter sent by Attorney Toth in reference to the recall election. He stated Special Elections have been held every time except for once on a recall.

Mr. Kerlin also discussed conflict-of-interest issue. He felt it would be a conflict if anyone and, in this case, the Fourth Ward Councilwoman to vote on setting the date. He said he spoke to an investigator with the Ohio Ethic Commission, Mr. Mark Honley twice. He asked if a Council person could take part in the naming of a date for an election, his response was not it would be conflict of interest but could not make any decision if it has not happened, she has the right to break the ethics if she so desires. Mr. Kerlin stated she swore to uphold the Ethics policy. In our Charter it also refers to 121.03 – 8 and the Ethics Policy. Mr. Kerlin read some information received from the Ohio Ethics Commission.

Mr. Kerlin stated in 2011 the recall election was held within 90 days. In 1992 two councilmen were recalled, none voted. In 2019 it was Mr. Baryak. According to our Charter it has been fulfilled except for a date.

Brian Kropp, 247 Elizabeth Street also stated their Charter, Rules of Conduct, and Ethics are very clear. He stated the Mayor is the elected Mayor of the town and in charge of this meeting. He stated in the past before the meetings we know how the votes will go. He also commented that there does not feel like there is a lot of rules being followed here and that is why the meetings get away from us and turns into a zoo. The rules we are to be following are not being

followed to the letter and equally applied. Mr. Kropp read rule number 1 under Rules of Council that states no more than one member of Council can speak at a time. Rule 2, In order to speak a member of Council must first be recognized by the presiding officer. He stated we have a lot of that with Council staff and they have no legal authority to do so whatsoever.

Mr. Kropp also commented on the Ohio Ethics Policy and that we are required to follow that policy.

Mr. Kropp said he received, and email sent out from a Council member that included there was a small group of people in town that is affecting all the changes in town. On the recall petition there were 191 signatures verified, the entire Fourth ward total votes cast was 165, the sitting Council person only received 85 votes. He felt it was very clear that some people don't know what public service is, and how to represent the people. He hoped they would do the right thing this evening.

Tracy Hurst, 613 Ophelia Street confirmed that the Council had the Charter available in reference to recall and have read it. The petitions have been turned in and verified. She explained misfeasance and nonfeasance and questioned if voting on your own recall or swearing could fall in those categories.

Jamie Kline, 312 Ridge Road stated 211 Ward 4 citizens signed the recalls all ward 4 residents. If it was her, she would leave if 211 people wanted her out. She stated item number two on the agenda goes against the agenda and should be removed.

Lyle Waddell, 2404 East River Road said he would shoot some holes in Mr. Kerlin's presentation and some of the others and would have documents to prove that. The Tribune printed an article on the recall and quoted Mr. Baryak saying he spoke to someone at the Ohio Ethics Commission about Ms. Breymaier. Mr. Waddell asked if Mr. Baryak had an email from the Ethics Commission after he called them. The Ohio Ethics Commission will not answer questions over the phone and will not answer questions from non-elected citizens. Mr. Waddell read from the email he received that stated the Ohio Ethics Commission does not provide advisory opinion over the phone or by email. An advisory opinion is a written document based on a written request disclosing the facts. The response also stated they could not give ethics opinions about another person.

Barbara Beer, Ravenna Road has records from April 7, 2020 a records request based on Mr. Baryaks recall. She noted that the petitions were submitted before the deadline. The BOE failed to take the action to have the recall on the May ballot. The City filed a complaint and Mr. Baryak filed a protest stating it was too close to the election and it should be on the November election six months later. The BOE accepted his protest and placed it on the November ballot. Newton Falls Council did not have a say on the date.

On January 22, 1992 Mohan and Langley voted on their own recall date. On July 8, 2002 Mr. Irwin voted on his recall date. On January 7, 2011 Mr. Luonuansuu voted on his recall date. On April 1, 2021 Mayor Kline responding to an email stated his Law Director is wrong. He also stated if Mr. Fritz keeps twisting the truth, he is going to loose his job. She took offense with the

Mayor who is to remain neutral, threatening the Law Director if this continues the Mayor could lose his job.

Olivia Reed Ravenna road speaking for Mr. Granchie who is away for military obligations. She said setting the election day for May of 2022 is absurd. The people spoke to put this recall to a vote, and it is deliberately being pushed aside. Representing the people is the core job of Council. The Ohio Ethics Commission is clear Ms. Breymaier must not vote on anything to do with the recall. Recalling and impeaching is a pillar of our democracy and must not be delayed. Let the people speak at the poles on May 25, 2021.

REPORTS :

Zimmermann:

- Attended the Planning & Zoning meeting on April 6th.
- On April 7th attended the Fire Board meeting. It was budgetary and they adopted appropriations as presented and approved the purchase of a Striker Power Pro T. The next meeting is scheduled for April 20th.
- Attended the Lattes & Legislators event at Roby Lee's.
- On the 15th attended the Scott Street Sewer Project meeting.
- On the 17th participated in the Newton Falls Youth Softball/Baseball Clean up event. Thanked everyone who came out.

Baryak:

- Attended the Lattes & Legislatures and thanked Roby Lee and his wife.
- Attended the Scott Street project meeting.

Spletzer:

- On April 8th attended an election commission hearing. Mr. Waddell filed a complaint against her based on some election issues. That complaint was dismissed.
- On April 12th attended the Lattes & Legislatures.
- On the 15th attended the Scott Street town hall.
- On the 17th spoke to Mr. Tim Stintson about the work that been done at the baseball fields. She said soon we would be welcoming Tonya Kline and Jamie Kline to the Park & Rec. Board.

Breymaier:

- Attending the Planning & Zoning Commission meeting on the 6th. Discussed abandoned cars, and cars without license plates. Also they would like all the houses in the City to have house numbers. The next meeting is May 4th here.
- They have started on the Pickle Ball court at the City Park.

Alberini:

- Thanked everyone who attended the Lattes and Legislatures event. Clarified comments he saw that he did this because it was self-serving. He stated that just was not true. We do this to showcase Newton Falls.

FINANCE DIRECTOR:

Musson stated the Finance Dept. is working on some grants. They will be applying for the Ohio Nature Works Grant for ADA Handicapped playground equipment. The pickle ball court is in progress and is in the 2021 budget.

On April 29th will be attending the Ohio Management Budget training for our local CARES Act money that is proposed.

The investments have been moved to Charles Schwab and will save the City approximately \$9,000 in investment fees annually.

An over 90-page detailed report was provided and listed on the agenda later tonight.

LAW DIRECTOR:

Baryak asked when you lose an election does it disqualify you from being an officer in the Ohio Municipal League. Attorney Fritz said he does not know the Ohio Municipal League rules.

CITY MANAGER:

- Stated he and his Assistant Kathy King began working on a separate CARES Act grant administered by the State of Ohio through the County and grants administrator Julie Green. The request was to redo the interior court yard at this location. It is unusable for the Seniors because the different sections have heaved up and dangerous. Thursday of last week it was announced we would receive \$105,000 of this non matching grant to fix this problem. We expect the work to happen sometime this summer.

Mayor Kline asked about the July 4th parade being on a Sunday and if he had heard that because when it has fallen on a Sunday, we have always had it on the 3rd. Mr. Lynch said the July 4th committee was meeting tomorrow to discuss this. Mayor Kline said if they stuck with July 4th he would like to see the permit declined it should not be on Sunday. Mr. Lynch said they were looking at other options.

Spletzer said there are two items on the City Manager's Report that she would like more information on. One was Solar Farm Developer and the other was Eastgate Fiber Representatives. Mr. Lynch explained that there is a private company that constructs solar panels for the purpose of generating electricity and then sell it back to the grid. We have no proposal or contract with them at this time. The Eastgate Fiber is Eastgate undertaking a study and met with us, because as you know we have been looking into fiber, in order to see how their feasibility study could interface with our feasibility study. They want to make sure that our fiber system could interface with their fiber system. We will be working very closely with them so all the technical components will interface.

Alberini stated in the last month or so we have had three or four leads come in to see if communities have potential properties available for companies who want to come into the area. We have not landed any of these but Eastgate thankfully has us on the email list.

Zimmermann said it was announced on Facebook last week that Rev. Mike Primmer was appointed the events coordinator. He asked him to explain what exactly his duties will be and his background. Mr. Lynch said Mr. Primmer is organizing a revival meeting later this summer and impressed him with his organizational skills. Mr. Lynch said he asked him if he would volunteer his time to do some work on events for us. He has no official authority to sign anything, but it is not uncommon to solicit volunteer citizens to help with projects.

MAYOR:

- Thanked the individuals and groups in cleaning up our parks and streets.

CHANGES TO TONIGHT'S AGENDA: none

APPROVAL OF PREVIOUS MINUTES:

Alberini made a motion seconded by Spletzer to adopt the minutes from the April 5, 2021 Regular Meeting as submitted by the Clerk.

**ROLL CALL: Baryak aye, Spletzer aye, Breymaier aye, Alberini aye, Zimmermann aye.
MOTION PASSED 5-0**

PUBLIC HEARINGS:

ORDINANCE 2021-03: An ordinance Amending Ordinance 2020-39 Making Appropriations for the Current Expenses and other Expenditures for the City of Newton Falls, Ohio for the Fiscal Year ending December 31, 2021.

Mayor Kline opened the public hearing on this Ordinance. No one addressed Council at this time. Mayor Kline closed this public hearing.

UNFINISHED BUSINESS:

ORDINANCE 2021-03: An ordinance Amending Ordinance 2020-39 Making Appropriations for the Current Expenses and other Expenditures for the City of Newton Falls, Ohio for the Fiscal Year ending December 31, 2021.

Alberini made a motion seconded by Zimmermann to adopt this Ordinance.

Ms. Musson stated this is to amend the salaries for the City employees. There is a chart included and it is retroactive to January 1 for an additional 2%.

Baryak said the budget was passed out a day late and they did not have any input with the supervisors to know what was going on. The budget is flawed. As far as his vote he felt it should be a minimum of 5% for all employees, he would abstain tonight because if he votes he is biting on for a 2% raise he would abstain.

ROLL CALL: Spletzer abstain, Breymaier aye, Alberini aye, Zimmermann aye, Baryak abstain.

MOTION PASSED 3 - 0 – 2 abstentions

NEW BUSINESS:

Mayor Kline read a prepared statement: “It is his responsibility as the Mayor to make sure that all business of his meeting is held ethically. For that reason he is determining and making it very clear that Ms. Breymaier will not be discussing, voting or doing anything in regard to the Ward 4 recall based on the Ethics Commission.”

Attorney Fritz stated that the Mayor does not have the authority to determine who could vote. Mayor Kline stated he did not ask. Attorney Fritz said he has an obligation also.

Alberini made a motion seconded by Zimmermann to set the recall election for Tuesday, May 3, 2022.

Alberini said everyone knows his position on this. He is not wavering and is confident in his decision. This situation does not merit or fall into the category of misfeasance, malfeasance or nonfeasance of a public official being removed from office. Alberini stated we wasted a lot of time on this. We are elected officials and personalities should not be involved, even though they are. We should be running the business of the community and doing what is best for the people. He is not for a recall. It sets a bad precedent for our Village.

Mayor Kline said he does not have the authority, the Clerk/Law Director is correct. But council rule number 8 says that we shall follow the Ohio Ethics Policy, Codified Ordinance 121 also says we shall follow the Ohio Ethics Policy. The Policy says, conflict of interest, a public official may not take action in matters that directly effects themselves such as voting or discussing. He stated he does not have the authority, but it is not about our own decision, but according to the Ethics Policy you don’t vote on anything that pertains to yourself like this. A vote on this is to set the date of the election. It has nothing to do with guilt or innocent. For us as a Council we are going to do things correctly and that is what we are going to do tonight.

Mayor Kline said he does not have the authority, but he will see to it that we follow the Ethics Policy. Every individual in this room has signed something that says you have received the Ethics Policy and you will follow the policy. He indicate that the law required that those with a conflict must “completely abstain”. Mayor Kline read sections from the policy and gave his interpretation of those sections.

Mayor Kline said it doesn’t have anything to do with how we feel about her or what is going on. He stated he does not like recalls himself. He wants to get along and make decisions, but we are

going to follow the Ethics Commission. He said he does not have the authority, but the Ethics Commission does and we are going to follow that.

Spletzer believed the date Mr. Alberini chose is a direct violation of what it says should be done by our Charter. She read from Article 7, Section 4 of the Charter, “the Council shall thereupon fix a day for holding a recall election, not more than ninety (90) days after the date of such delivery”. She has confirmed with the administration that all of us have received our certified letters on April 8th and there was one received on April 9th. Spletzer stated we have 90 days to set the date for the election.

Zimmermann commented that this is a very grave issue facing us and a recall needs to be taken very, very seriously by everybody involved. Council has been lambasted for ramming things down people’s throats. We need to give people plenty of time to make up their minds on this, this is a huge decision. This need to not be settled on emotion. It needs to be settled on facts and people need to explain their sides with people being given the chance to speak. He believed if we acted quickly on this it would be done on emotion alone and not on facts. We need to have time to let the facts settle themselves out.

Mayor Kline stated some of the things are beyond our control. There is an ethics commission we follow, and certain truths are immovable. Tonight isn’t guilty or innocent, the facts are to set the proper date and time so 200 people out there can determine the truth.

Alberini said the body of language as far as conflict of interest goes, he did not see a conflict with Ms. Breymaier voting, it did not warrant that. We are crossing in to a very grey area where we think someone said something we are going to recall them. To him it just does not merit that, and he stands his position.

Mayor Kline said he does not base any of this on his authority, but he is following and studying ethics policies and things and he would be criminal if he did not follow the ethics policy if it is to be his meeting. He said he does not know the problems the individuals have. He did not believe it was the curse word, that was a disciplinary matter and it ended there. The fact is individuals got signatures for whatever reason. Mayor Kline read from when Mr. Lynch was hired and he was Mr. Baryak’s attorney, there was a connection there. At that time Mr. Alberini said because an elected official cannot vote on a motion directly pertaining to him or her so he expected the motion to be a tie with the Mayor being called upon to break the tie. Alberini said with all due respect those were not his comments. Mayor Kline said we follow the Ethics Policy.

Baryak said when he went for the recall in 2019 there was nobody, in fact Mr. Beer took petitions out against him a sitting councilman. Let the people speak and let them decide and that is what his position was. He had no hand in setting it nor did he say anything derogatory about what they did, he let the people speak. Today in his heart he wanted the people to know it is not about him, but what they want.

Zimmermann said he did not believe anybody had the authority or right to say Ms. Breymaier does not have the right to vote on this issue.

Mayor Kline stated the Ohio Ethics Commission board. Zimmermann asked if he could finish. Mayor Kline said yes if he finished correctly. Zimmermann repeated that he did not believe anyone could tell Ms. Breymaier before hand how she can vote. Mayor Kline said the Ohio Ethics does and she signed it. Zimmerman said if she votes and it is found to be unethical that is on her after the fact. Mayor Kline stated she was not voting tonight. Zimmermann stated before hand that cannot be determined who can vote. Mayor Kline stated she cannot vote tonight. It is his meeting and she is not voting tonight.

Spletzer read from Article 3, Section f of the Charter “An accused Member of Council shall not vote on the question of his removal.”

Alberini asked for an address. Mayor Kline stated “go ahead”. Alberini made a motion to override the Chair. Mayor Kline stated he did not have the floor. Zimmermann seconded the motion.

Alberini again made a motion to override the Chair which was seconded by Zimmermann. Mayor Kline stated “no”.

Mayor Kline asked to call for the role and stated she was not voting. Attorney Fritz stated with all due respect he was calling her name when calling the role. Mayor Kline stated if he could not follow his instruction at his meeting “there was the door”. Attorney Fritz asked if he was being replaced. Mayor Kline said yes. Mayor Kline said if he was going to break the ethics policies then he was going to take over as the clerk tonight. Attorney Fritz said he is not breaking the ethics policy. With all due respect as Mr. Zimmermann pointed out.... Mayor Kline asked if that was his legal opinion, he did not know if he was the Clerk tonight or legal counsel and if that was his legal opinion what he was stating right now. Attorney Fritz said he does not give legal opinions he has repeatedly said to individuals with regard to conflict of interest. It resides with the individual. If we believe they are doing something wrong we contact the Ethics Commission thereafter. We had this very same conversation at the time they were looking at discipline on her. Attorney Fritz said his position has been clear. Mayor Kline said the ethics policy does not state that. The ethics policy does not say that after the fact. Mayor Kline stated she is not voting. He would take over. You guys could go to the Ethics Policy afterwards and file something on me. Do whatever you want. We are going to do things correctly. Mayor Kline stated “if you don’t want to call things properly he would call them. At this time Mayor Kline started roll call.

Alberini made a motion to override the chair seconded by Zimmermann. Attorney Fritz noted that this motion has been on the floor twice now to the Mayor. Mayor Kline stated “go, get, see ya” and asked for an officer to get him out of here. Mayor Kline said stop interrupting his meeting. They were not going to interrupt his meeting.

At this time Attorney Fritz, City Manager Lynch, Council members Alberini, Breymaier and Zimmermann all left the meeting. Leaving two members of Council and the Mayor in attendance.

Mayor Kline told the audience to keep it down we had a meeting to finish. It is the Mayor's meeting, Council's meeting. These individuals are visitors if they want to leave, "see ya."

Someone commented they do not have a quorum. Mayor Kline stated we already had a quorum we can have a meeting.

Baryak asked that the Mayor direct the Police to bring them back in. Mayor Kline asked for council to come back in for the vote anyone else could go. Baryak said it was in the Charter. Mayor Kline asked where. Spletzer stated they need to come back in. Mayor Kline said he did not need them back in anyways. Spletzer said yes we do because we have one more issue to vote on. Mayor Kline stated that there were three of them here, we are fine. Spletzer stated we need one of them and stated to the Mayor he needed to compel them to come back in. Mayor Kline asked why and told Spletzer she was going to make a motion to put the next one on the table, he (Baryak) was going to second it, we were going to vote and it would pass. Spletzer said she did not know that the Mayor counted as a quorum. Mayor Kline stated we already have a quorum, we called roll call at the beginning of the meeting so we are good.

Mayor Kline said we were voting on number one first.

Baryak stated under our Charter the Mayor has the right to direct the Police to go find them and bring them back. Mayor Kline said he did not believe we need to. The meeting has been started. In each of the motions we have two council people to put it on the floor and we have a vote.

Mayor Kline called the roll on the motion to set the date for the recall for Tuesday, May 3, 2022.

ROLL CALL: Zimmermann (Mayor abstained for him), Baryak nay, Mayor Kline asked to make sure someone in tv land was taking votes. Spletzer nay, Mayor Kline stated Ward 4 is not voting, Alberini (Mayor abstained for him) Mayor nay.

Mayor Kline declared the motion FAILED:

Spletzer made a motion seconded by Baryak to set May 25, 2021 as the recall date for Ward 4.

Mayor Kline stated we don't have a scribe to write it down so stated "somebody write it down".

Mayor Kline called roll:

ROLL CALL: Zimmermann (Mayor Abstained for him) Baryak aye, Spletzer aye, Mayor Kline stated Ward 4 can't vote, Alberini (Mayor abstained for him), Mayor aye.

Mayor Kline declared this motion PASSED and stated to the Tribune that the Special Election was May 25, 2021 and asked that they report that for us.

Spletzer made a motion seconded by Baryak to acknowledge receipt of the Finance Department March monthly report, and attachments as presented.

Mayor Kline asked all in favor. Declared it passed.

PUBLIC COMMENTS:

Tom Gregory asked if this was still a legal meeting. Mayor Kline said it was. This is a Council meeting, he is the head of Council. The other individuals are visitors so if they are not back next meeting that was fine with him to. Mr. Gregory said he has been asked to stop recording and live streaming. Mayor Kline said keep recording it was still a meeting.

Julie Lemon, 2750 East River Road talked about accountability and read the definition. Their lack of accountability has eroded public respect. She stated to the Mayor, Tesa and Mr. Baryak and said those three had the integrity, character and dignity that this community was built on. The ones that walked out is the lack of respect and accountability. She thanked them for being people of honor.

Tracy Hurst, 613 Ophelia closed with "accountability fills like an attack when your not ready to acknowledge how your behavior harms others." She thanked the Mayor, Tesa and John for all they did tonight.

Jamie Kline 312 Ridge Road thanked the remaining three because this was a long time coming. She said she received an email today that kind of tore her up. It talked about citizens in Newton Falls who are against the recall are either renters who don't pay taxes or get public assistance. She said she is tired of hearing that, they work, own their own home, pay taxes. Anybody in Newton Falls no matter where they live, if your over 18 you pay city tax. Anybody in this city has a right to speak on anything and anybody in the Township. Newton Falls is part of Newton Falls. She thanked them for taking charge. She thanked the Mayor and stated he has shown them a lot and they appreciate him.

Richard Kerlin, 611 North Canal felt we had a quorum when they decided to vote on a quorum it was there. It was a shame that it has come to this. The facts of the matter is what the Mayor stated, that's what ethics is and what they swore to obey as a council. It is not an opinion.

Charlotte Simmons 365 Warren Road said she has lived there for 40 years, in 2003 she paid it off. She loves Newton Falls. She ran for office but ended up having to remove herself because of health issues. Every year in April 22 she tries to clean the underpass and said to love the town we are in take care of surroundings. April 22 is Earth Day love the town your in, pick up the trash.

Tom Colosimo, 4196 Carson Salt Spring Road, announced the Spring Peddler, May 8th they are still looking for vendors.

CLOSING REMARKS; MAYOR, CITY MANAGER AND COUNCIL:

Baryak said you can go back and research it. Article 14 is to overrule the Chair. When he, Mr. Stimpert and Mr. Battisti tried to overrule the Chair Mayor Waddell did not accept that. The Law Director didn't say anything he let it go through. Baryak said there comes a time when we

have to stand up and be accountable and not flip flop. That is what the people in this town vote. He wants to let the people have the right to speak. Let them judge for themselves he stands by his convictions for this community.

Spletzer thanked everyone coming out and supporting council and know that what they were doing tonight was very important stuff. She also received the email from Mr. Alberini and thought about addressing some of his demeaning and degrading remarks to the people in our town who are “renters”, and he calls “non taxpayer” but got to the point where she did not care where you come from or if you live in the City or Township we are all Newton Falls.

Mayor Kline apologized to the Police Officer for being put into a difficult position tonight. But the fact of the matter is the rest of you here he talks to a lot of people in the community and tells them it is going to get better sooner or later. His prayer is that it is sooner a thanked them who sent messages to him today. When he ran for Mayor he had one thing to say, “this one’s for you Newton Falls”.

MOTION TO RECESS INTO EXECUTIVE SESSION:

ADJOURN:

After no further comments or questions Baryak made a motion seconded by Spletzer to adjourn.

Mayor asked all in favor. Meeting adjourned.

Mayor, Kenneth A. Kline

ATTEST: _____
City Clerk/Clerk of Council