

**The FINANCE COMMITTEE held a Meeting on
MONDAY, MAY 9TH, 2022 beginning at 6:10 P.M.**

FINANCE PRESENT: Chair Stewart, Tollett, Cerra, Davis, Schneider

CD PRESENT: Chair Callahan, Mitchell, Lipian, Oswald, Schneider

OTHERS PRESENT: Law Dir Deery, Safety Service Dir Brubaker, Asst Finance Dir Farrell, Parks Dir Reardon, Asst Dir Williams, WWPC Supt Korzan, Councilpersons Simmons & Corbin

1. Approval of the Finance Committee Meeting Minutes ~ April 25th, 2022.

Mr. Cerra moved, second by Mr. Tollett to approve the ‘said’ meeting minutes.

2. The matter of a Moral Claim as submitted by Justin Masaitis and Michelle Masaitis.

Referred By: Safety Service Director Brubaker

Chair Stewart read the Committee Report and asked for a motion to get it on the floor.

Dir Brubaker said the claimant is not here at this meeting and he will concur with the Law Director in regards to denying this claim. This claim was damage from a pothole.

Mr. Tollett moved and Mr. Schneider seconded to recommend denial of the ‘said’ Moral Claim.

MOTION MADE

COMMITTEE REPORT WRITTEN

3. The matter of a Moral Claim as submitted by Larry Balls and Regina Balls.

Referred By: Safety Service Director Brubaker

Dir Brubaker said this is another pot hole claim.

Mr. Balls of 382 Concord Ave., Elyria. He stated that on March 26th, 2022 he was driving on Henry St. in front of 312 Henry and hit a pothole. He heard a loud bang and since he only lives around the corner, he went home and looked at the right front tire and the rim was bent and the tire was messed up. He came to the City Council Finance Meeting the following Monday and he asked the Mayor what to do. It was recommended that a claim be filed, which he did. He said he and his wife said the City probably won’t do anything about it, so they drug their feet on it, but then finally did turn it in on April 6th.

Mrs. Davis asked if Mr. Balls went back to Henry St. to assess that hole and take a picture of it? Mr. Balls said no, he didn’t and he didn’t make a report with EPD because he didn’t know what to do.

Mrs. Davis asked if the pothole has been patched?

Mr. Balls said yes. He hasn’t had the vehicle repaired as of yet.

Mr. Mitchell asked if the City was aware of this pothole? Dir Brubaker said no.

Dir Deery said according to the Ohio Revised Code; an individual must use their own insurance policy to cover damages. If insurance covers damage, the deductible could be reimbursed. If a deductible is \$500 that’s ORC 2744.05. It does appear that the estimates that were provided would be in excess of that.

Mr. Lipian asked if the Law Dir can educate the committee as to the distinction between actual versus constructive knowledge.

Dir Deery said basically if the City, which could be the Street Dept or the Administration or in fact if the Law office had received other claims for the same area in a similar time frame then that could lead to a constructive knowledge or actual knowledge. That would be prior to the incident date in question.

Mr. Lipian asked Dir Deery to explain in which there was no reasonable way for the City to have actual or constructive knowledge individually based on those definitions so they can understand why the committee is denying the claim, if that is the action.

Director Deery said it's difficult to prove a negative, though she said that in past practice when actual or constructive knowledge has been found, messages or memos or emails from the Street Dept have been produced showing other complaints that have been made as well as claims for the certain block in question and none of those things were the case here.

Mr. Lipian said the way he grasped actual knowledge, as far as he understands, it seems, it's raining outside so therefore he knows it's raining. Constructive knowledge is, I see you coming inside and your umbrella is wet, therefore he induces inductively that it must be raining outside. While he agrees that the City doesn't have actual knowledge, the City might have constructive knowledge if they were aware of the issues of potholes in a particular area. Or if a City employee or maintenance vehicle had driven down that street and observed several potholes, that would be constructive knowledge.

Dir Deery said she understands what Mr. Lipian is saying but the legal conclusion that was determined by assistant law dir, was based upon the records and in conferring with the Safety Service Dir and reaching out to the Street Dept with the idea that we would have constructive knowledge that we would be able to fix the problem prior to the damage being done so, it's their conclusion that this was not in fact the case in this situation. It's up to the committee to make the determination that the roads at this time of year are in exceptionally rough shape. If there is a snowfall and the plows go through and they rip up the temporary patch. That is not a legal definition of constructive knowledge. It needs to be based on, perhaps the neighbor at 300 Henry made a complaint two weeks earlier about a pothole therefore the City had constructive knowledge and anyone driving on the 300 block of Henry Street would be likely to incur damage to a vehicle if they hit that pothole. She said it would not be enough that we know the road conditions in the City or in that section of town, maybe rough. She agrees that perhaps a City maintenance person had been driving on that road and had taken notice of it and there was a record of that, than that could be enough, but that is no so in this case.

Chair Stewart said the City is doing the best they can with the weather we had this year. There is potholes all over and we rely not only on our crews, but on our residents to reports potholes and to make a conservative effort to fill those.

Mr. Lipian suggested that we take a look at the streets that the Engineer's office had ranked as a 'one' in terms of poor conditions and the worst potholes and try to do an audit of problem potholes. That might put us on the hook for having constructive knowledge, at least it puts us in a position where we can protect our residents from running into problems like Mr. Balls has incurred here.

Mrs. Mitchell commented that Henry Street was not on The Ward One street list and wasn't ranked. She said one of the jobs as Ward Councilpersons is to drive around our wards and monitor our streets and reach out to the Street Department.

Mr. Lipian said, like there's a distinctive between active and constructive knowledge, there's a distinctive between the list of the streets that are going to be worked on and the original list that they selected the streets from. Henry was on the original list. That was the street list he was referring to.

Mr. Tollett moved and Mrs. Davis seconded to recommend denial of the 'said' Moral Claim.

MOTION MADE

COMMITTEE REPORT WRITTEN

4. The matter of a Moral Claim as submitted by Sarah Barnes.

Referred By: Safety Service Director Brubaker

Dir Brubaker said this was a city flooding issue that backed up into Mrs. Barnes basement. The total cost was \$770.00. Up to \$500 can be approved. In speaking to Supt Korzan and his team it would be appropriate to approve the full amount of \$770.00

Mrs. Barnes came to the microphone, Sarah Barnes, 327 S. Maple Street, Elyria.

She said their was work being done in the street and during the construction of gas and sewer lines and water lines. They [City crews] chipped a drainage pipe. The damage was not apparent to her for some time because it happened over a period of time. It must've been a slow leak. She doesn't go down the basement a lot unless she's bringing holiday decorations or changing the furnace filter. Until the kitchen sink absolutely wouldn't drain at all, is when she discovered the basement was flooded. It took a while to figure our what happened. She had a plumber come out and they discovered the drain that had been worked on in the street had been damaged and that was cause of the leak. And everything is working fine now. She has a statement from the plumber; they ran 100 feet from the line, they ran a camera through to inspect it, from the basement out to the street and located where the damage was. The plumber informed the City of this problem and the City came out and fixed it. But she still had to pay the plumber. Mrs. Barnes said this was a financial burden, her only income is Social Security and this was three-fourths of her monthly income.

Law Dir Deery said if the Committee agrees to waive council rules, council is in the position to waive it's rules and award the full amount.

Mr. Tollett moved and Mr. Schneider seconded to recommend the approval of the 'said' Moral Claim for the full amount of \$770.00.

MOTION MADE

COMMITTEE REPORT WRITTEN

5. The matter of a Moral Claim as submitted by Thomas Barnette.

Referred By: Safety Service Director Brubaker

Mr. Brubaker said this is another pothole claim that happened on Feb. 21st of this year.

Mr. Barnette, 380 Hilliard Rd. said he was on his way to work early on President's Day and he was driving a loaner car from Mike Bass, and it's dark and he hit a pothole. He called his insurance and was told he had a \$1,000 deductible. He went and paid to fix the tire so he could drive the car. He's looking to get reimbursed. He's never had a problem and damage from hitting a pothole before. He said that one side of Hilliard is full of potholes, but the City does fix them. He called ODOT [I think he meant The City] and the holes were filled up right after he called.

Chair Stewart asked if the City had prior knowledge of this?

Dir Brubaker said no, but this was on President's Day and the City did call out a crew on overtime to fill that hole because it was a big hole.

Mr. Barnette said the tires on the loaner car he was driving, which was a Ford Fusion are low to the ground. He didn't get any other estimates because Bass told him they needed the car back by 4:00 that day. He did his part and paid it to be fixed.

Mrs. Davis said this hole was so large and their were other potholes on this street and nobody called about these sooner? No communications?

Dir Brubaker said when he came in the next day, he checked with the Street Dept and Engineering, CMG employees and there had been no other calls on this particular pothole other that the day that it happened.

Chair Stewart asked if there is any further discussion? And he read the Committee Report. And a motion was made.

Mrs. Mitchell asked why we would approve Mr. Barnette's claim and deny Mr. Ball's claim there was no prior knowledge on either of them?

Chair Stewart said we amended the original motion and committee report that was already read and he is waiting for a motion.

Mr. Tollett said that he doesn't like it, but he will make a motion, out of consistency because past practice is that the City has to have prior notification.

Mr. Tollett moved and Mr. Cerra seconded to recommend Denial of the 'said' Moral Claim.

MOTION MADE

COMMITTEE REPORT WRITTEN

6. The matter of inactive/delinquent EPU Accounts to be certified to Lorain County Auditor's Office. (Standing Referral)

Referred By: Public Works Supervisor Conner

Dir Brubaker said this standard procedure.

Mr. Schneider moved and Mr. Tollett seconded to authorize a resolution to certify the 'said' accounts to the Lorain County Auditor's Office.

MOTION MADE COMMITTEE REPORT WRITTEN

7. The matter of Amendments to the 2022 Permanent Appropriations. [Standing Referral]

Referred By: Finance Directors Pileski and Farrell

There are none for this evening.

Mr. Lipian asked to make a comment regarding the denied moral claims.

Chair Stewart said the City does the best they can to fill the potholes. It's unfortunate, but if the City doesn't know about it, they can't tend to it. They try to make every effort to fill them. If there's a snow storm the next day like was mentioned, the patch becomes loose and comes back out and the pothole is still there.

Mr. Lipian said he wants to make sure that we're not setting a precedent.

Councilperson Mitchell alluded that we're setting a precedent if we approve one and deny the other. The precedent we're setting is that the City rarely has actual knowledge, but the burden of proof for the City's constructive knowledge is so high that we should consider having maintenance do routine investigations of streets that have one or two and try to determine if some of these potholes are so bad that we should be feeding information to the Safety Service Director so we get ahead of these problems before they happen.

Mr. Lipian doesn't want to see a denied claim resident disgruntled and upset and we should be protecting the citizens and we're not just protecting the City and that we do take time to keep our streets as clean as possible and that the maintenance department is doing its part to feed information to the Director's Office so we have constructive knowledge.

Mrs. Mitchell reminded the committee that it's the ward council's job to drive around the wards and report potholes and other issues.

Mrs. Davis said she makes calls all the time on issues she sees, even if it isn't in her ward and then she'll communicate to the other ward councilpersons.

Mr. Cerra moved and second by Mr. Davis to adjourn this evening's Finance Committee Meeting at 6:50 P.M.

MOTION CARRIED

Respectfully submitted by,

*Colleen Rosado,
Council Clerk Secretary/Administrative Assistant*

CMR/