

CITY OF KENT
DEPARTMENT OF PUBLIC SERVICE

MEMO

December 15, 2010

To: Dave Ruller, City Manager
From: Gene Roberts, Service Director
RE: Service Department Staffing Changes

Attached is the December 13, 2010 Memo from Mr. Jim Bowling, City Engineer, requesting to elevate a part-time Senior Engineer to full-time status. Currently one Senior Engineer is working a maximum of 24-hours per week and Jim is requesting to take the employee to 40-hours per week based on the increased work load to be experienced with the downtown development projects.

Support of this change as a sustainable and permanent increase to the Engineering Division is based not only on Jim's described work load for the downtown projects and current backlog of work for which there is no staff to assign for the foreseeable future until completion of the downtown projects sometime in 2013 but also on a lengthy list of tasks for which no time has been allocated such as updating construction standards and base mapping updates. Once the back log of work is completed the next decade will be needed to bring the Division current with all operational tasks which does not include the staff needed for yet to be identified future projects.

Initially, Jim requested hiring one additional full time staff member plus the addition of an unidentified amount for contract consultants to carry the Engineering Division through this period of increased project work load and the required compressed time period for work to be completed for the downtown projects. After additional analysis Jim has revised his request and as currently presented is supported by the Service Director.

As an additional benefit for the City's budget and in keeping with the simple phrase, "timing is everything" the Service Director has been approached by another Service Department employee requesting consideration to take their status from full-time to part-time thus providing some offset to the increase cost of the request being made by Jim.

The Service Administration Division's Engineering Aid I has requested, for personal reasons, to decrease her work week from forty hours to twenty four hours. This decrease will offset the cost of the benefits which must be provided to the Senior Engineer when that position's hours are increased from twenty four hours to forty hours per week.

Given the above noted request from the City Engineer and the requested status change for the Engineering Aid I, I respectfully request time to present this issue to Kent City Council at the January 5, 2010 Committee meeting for their consideration.

Cc: Jim Silver, Law Director
David Coffee, Budget & Finance Director
James Bowling, P.E., City Engineer
file

CITY OF KENT
DEPARTMENT OF PUBLIC SERVICE
DIVISION OF ENGINEERING

MEMO

TO: Gene Roberts

FROM: Jim Bowling

DATE: December 13, 2010

RE: Engineering Division Staffing Needs

The engineering division has accomplished many things in 2010. Construction spending topped \$8 million (over \$5.5 million from grants). This amount was greater than any previous year where the Engineering Department kept records (since 2002). The division also finished a complete update of the storm system mapping, continued progressing the design of numerous capital projects and played an integral part of the planning for the downtown redevelopment, including the Kent Central Gateway Project. Considering this has been accomplished with six full-time and one part-time employee (24 hrs per week). In 2007, the division had a budget of eight full-time positions.

However, even with all that has been accomplished we have many critical items that have not been accomplished. These include the following:

- Area Q Phase V Storm Improvements – On Hold
- Northeast-Central Storm Improvements – On Hold
- Rhodes Road Path Improvements – On Hold
- Pine Street Reconstruction – On Hold
- Middlebury Road Water Main – On Hold
- Portage Hike and Bike Trail – Tannery Section – Behind Schedule
- Fred Fuller Park Bridge Replacement – Behind Schedule
- Summit Street Reconstruction – Behind Schedule
- Ex. Traffic Control Management (signals) as needed
- Sanitary Sewer System Model Creation (60%) – on hold
- Water Distribution System model update – on-hold

Reviewing the upcoming needs required for the final design and construction of the downtown re-development it is apparent that the division does not have the staff required to properly manage the current construction projects, essential maintenance projects (street program) and the downtown projects. Therefore the department has three basic options:

1. Hire new staff to manage the projects
2. Hire outside consultants to manage the projects
3. A combination of hiring additional staff and outside consultants to manage the project.

We understand that hiring additional staff adds long term budget expenditures to the division, while hiring outside consultants are 2 to 2.5 times more costly than a full time employee. Therefore, we are requesting to deal with the increased workload by a combination of increased staff time and outside consultants when needed.

I recommend that the department change the current part-time Senior Engineer position to full-time. This would equate to an additional 16 hours per week of staff time. This does not provide enough staff to manage all the needs of the City, however during the current fiscal atmosphere we do not recommend staffing to that level as it would require an additional two full-time employees.

C: file


CITY OF KENT
DEPARTMENT OF PUBLIC SERVICE

MEMO

December 14, 2010

To: Max Gilliland, AFSCME Local 379, President

From: Gene Roberts, Service Director



RE: Engineering Aid I Position Change

Per City of Kent – AFSCME Agreement 2009 – 2011 Article 2.03 provides for notification “when a change is proposed to an existing position description within the bargaining unit, the Employer agrees to consult with the Union at least thirty (30) days prior to the time the change is to take effect” and is the purpose of this communication.

Given the current financial conditions that the City is experiencing and the current bargaining unit employee filling the Engineering Aid I position request to be placed on part-time status the City transmits herewith a draft Memorandum of Understanding based in part on the current Article 2.06 language and modified to meet current Agreement language for a part-time position.

The Human Resource Manager has reviewed the current scope of the Engineering Aide I Job Description and has found no reason for change. The remaining issue is agreement between the Union and City regarding inclusion/exclusion of current Agreement language as appropriate for the change in the Engineering Aide I position from full-time to part-time. To that end Liz and I have prepared the Draft MOU based on the current Article 2.06 and believe that we have included such sections as required by current Agreement language regarding a 52-week per year part time employee. The language that was modified in the current Article 2.06 to create the new Article 2.07 is in red and reflects the current Agreement language where it speaks to part-time employees.

This modification to the Engineering Aid I position will require approval by Kent City Council and as such has been scheduled for their consideration at the next Council Committee meeting scheduled for Wednesday January 5, 2011. If at all possible please review the attached MOU draft and provide comments December 20, 2010. The return date of the 20th is required to meet Council’s required deadline for information to be presented prior to their scheduled meeting.

Your consideration of this issue is appreciated and please feel free to contact with any comments or concerns with the draft MOU.

Cc: ✓ Dave Ruller, City Manager
Jim Silver, Law Director
David Coffee, Budget & Finance Director
Liz Zorc, Human Resource Manager
file

City of Kent – AFSCME AGREEMENT 2009 – 2011

DRAFT

Memorandum of Understanding

This Memorandum of Understanding/Agreement between the City of Kent, hereinafter referred to as the “Employer” and the American Federation of State, County, and Municipal Employees Local 379, hereinafter referred to as the “Union” regarding changes to the Engineering Aid I position in the Service Department creating new Article 2.07 hereby agree as follows:

2.07 The parties agree that the classification of Engineering Aid I, in the Service Department, is included in the bargaining unit, in accordance with the terms and conditions set forth below:

1. The classification shall consist of One (1) position.
2. The classification shall be considered to be part of the bargaining unit.
3. The classification shall be authorized to work up to 1,248 regular hours per year.
4. The employee in the classification shall contribute to PERS and Medicare as defined by law. The City shall make PERS and Medicare contributions as required by law on behalf of employee in the classification.

5 Other terms and conditions of employment applicable to the classification of Engineering Aid I shall be defined as follows:

CONTRACT ARTICLE	APPLICATION	NOTE
1 – Preamble	YES	
2 Recognition	YES	
3 - Management Rights	YES	
4 - Dues Deduction/Fair Share/PEOPLE	YES	2.07.a
5 – No Strike/No Lockout	YES	
6 - Residency	YES	
7 - Non-Discrimination	YES	
8 - Union Rights	YES	
9 - Labor Management Committee	YES	
10 - Waiver in Case of Emergency	YES	
11 - Supervisory/Management Personnel	YES	
12 - Safety and Health	YES	
13 - Probationary Period	YES	2.07.b
14 - Work Rules	YES	
15 - Seniority	NO	
16 - Lay-Off and Recall	NO	
17 - Transfers and Work Assignments	NO	

City of Kent – AFSCME AGREEMENT 2009 – 2011

DRAFT

18 - Vacancies and Job Postings	NO	2.07.c
19 - Hours of Work	NO	2.07.d
20 - Hazardous Weather, Reporting & Call-Back	NO	
21 - Equalization of Overtime	NO	
22 - Sick Leave	YES	2.07.c
23 - Personal Leave	NO	
24 - Physical Fitness Incentive	NO	
25 - Substance Abuse Program	NO	
26 - Employee Assistance Program	NO	
27 - Injury Leave	YES	2.07.f
28 - Funeral Leave	YES	
29 - Absent Without Leave	YES	
30 - Jury Duty	YES	2.07.g
31 - Fraudulently Obtaining Payment	YES	
32 - Vacation	NO	
33 - Holidays	YES	2.07.h
34 - Union Leave	NO	
35 - Group Insurance	NO	
36 - Wage Rates	YES	2.07.i
37 - Longevity Benefits	YES	2.07.j
38 - Uniforms and Shoe Allowances	NO	
39 - Shift Differential	NO	
40 - Contracting Out	YES	
41 - Obligation to Negotiate	YES	
42 - Total Agreement	YES	
43 - Severability	YES	
44 - Gender and Plural	YES	
45 - Successors	YES	
46 - Commercial Drivers License	NO	
47 - Continuing Education	NO	
48 - Ohio AFSCME Legal Services	NO	
49 - Discipline	YES	
50 - Grievance Procedure	YES	
51 - Arbitration Procedure	YES	
52 - Duration	YES	
53 - Execution	YES	

2.07.a Union to certify to the City the deduction amount and date(s) to commence and/or cease deductions.

City of Kent – AFSCME AGREEMENT 2009 – 2011

DRAFT

2.07.b Probationary period will apply to any newly hired employee per Article 13.

2.07.c Engineering Aid I shall have the opportunity to bid on a full-time position in the Service Department when there are no full-time bargaining unit members who bid on the position. The Engineering Aid I accepted in a full time position by the bid process shall follow the requirements of Article 18.05.

2.07.d The Engineering Aid I position shall be defined as part-time and shall work the hours and schedule determined by their immediate supervisor, but shall not exceed twenty-four (24) hours per week. The position shall be entitled only to the required benefits of sick leave, PERS and Medicare contributions on their behalf by the City and said employee positions shall be entitled to no other fringe benefits from the City. This position will work a maximum of 24-hours per week and as such will not be eligible for payment for time and one-half.

2.07.e Sick leave provisions will apply with the exception of Sections 22.13 (retirement cash payment) and 22.14 (year's end cash benefit).

2.07.f Article 27 benefit shall not exceed 24-hours per week.

2.07.g Article 30 benefit shall not exceed 24-hours per week.

2.07.h Will receive paid holidays per Article 33.02.

2.07.i The wage rates and steps shall apply to the Engineering Aid I classification as outlined in EXHIBITS A, B, and C of this Agreement. Initial placement of any employee into a step will be done at the discretion of the Department Director. Step wage rate increases shall be provided per Article 36.02.

2.07.j Will receive Longevity Benefits per Article 37.04.

Further both the City and the Union agree to incorporate the changes agreed to in this Memorandum of Understanding creating new Article 2.07 and revision to attached Appendix A - Unit Classification into their next Agreement.

Entered into on the _____ day of _____, 2011

CITY OF KENT

AFSCME LOCAL NO. 379

(Date)

(Date)

(Date)

(Date)

DRAFT

APPENDIX A - UNIT CLASSIFICATION

Laborer
Clerk Typist
Junior Account Clerk
Account Clerk
Engineering Aid I **
Plant Mechanic
Senior Account Clerk
Tax Auditor
Sr. Parks Crew Leader
Repair Operator
Service Technician Gardner
Water Plant Operator
Engineering Aid II
Waste Water Laboratory Technician
Waste Water Plant Operator
Service Worker
Master Mechanic
Mechanic
Mechanic Helper
Public Health Sanitarian
Water Laboratory Technician
Maintenance Worker/Carpenter
Park Maintenance Laborer
Tax Auditor
Clerk Typist **
Chief Operator-Water Plant
Chief Operator-Water Reclamation Facility
Chief Operator-Central Maintenance
Seasonal Laborer

** DESIGNATES PART-TIME



CITY OF KENT, OHIO

DEPARTMENT OF FINANCE

To: Dave Ruller, City Manager

From: David A. Coffee, Director of Budget and Finance

Date: December 14, 2010

Re: FY2011 Appropriation Amendments, Transfers, and Advances

The following appropriation amendments are hereby requested:

Fund 201 – Water

Increase \$ 13,000 Capital / Reappropriate 2010 funds - Fairchild Ave. Bridge Constr. Project
Increase \$ 11,000 Capital / Reappropriate 2008 funds - Middlebury Road Water Main Project

Fund 202 – Sewer

Increase \$ 44,000 Capital / Reappropriate 2010 funds - Fairchild Ave. Bridge Constr. Project

Fund 208 – Storm Water

Increase \$ 50,000 Capital / Reappropriate 2010 funds - Plum Creek Stream Restoration Project
Increase \$ 75,000 Capital / Reappropriate 2009 funds - Fishcreek Watershed Study Project
Increase \$ 81,000 Capital / Reappropriate 2009 funds - Arca Q Phase 5 Irma/Diedrich Project

Fund 301 – Capital

Increase \$ 50,000 Capital / Reappropriate 2010 funds - Finance Computer System Replacement Project
Increase \$ 614,300 Capital / Reappropriate 2010 funds - Fairchild Ave. Bridge Constr. Project
Increase \$ 2,300 Capital / Reappropriate 2007 funds - SR 59 Street Light Repair/Replacement Project
Increase \$ 30,000 Capital / Reappropriate 2009 funds - Summit St. Traffic Signal Coordination Project
Increase \$ 487,000 Capital / Reappropriate 2009 funds - SR 59 Signalization Project
Increase \$ 250,000 Capital / Reappropriate 2010 funds - Erie & Depcyster Street Reconstruction Project
Increase \$ 11,400 Capital / Reappropriate 2010 funds - Downtown Demolition - Phase 1 Project
Increase \$ 50,000 Capital / Reappropriate 2010 funds - Annual Street & Sidewalk Program Projects
Increase \$ 29,900 Capital / Reappropriate 2010 funds - Esplanade Project

Fund 302 – M P I T I E

Increase \$ 887,000 Capital / Reappropriate 2010 funds - Downtown Development Projects



CITY OF KENT, OHIO

DEPARTMENT OF SAFETY

To: Mr. Ruller
Mr. Bowling
Mr. Giaquinto
Mr. Locke
Chief Peach
Mr. Roberts
Chief Williams
Capt. Lee

From: William Lillich

Subject: Traffic Engineering & Safety Meeting report
TE&S 2010-08

Meeting Date: December 14, 2010

The committee met to provide further input and follow-up to the Engineering Div. on several aspects of the Acorn Alley II development project. Although the planning for these activities is a work in progress, the issues and recommendations are as follows:

1. License to occupy- The committee briefly discussed the current license to occupy that is intended to enable work on the building footers. This issue is on the City Council agenda on Dec. 15. The LTO for a portion of the proposed dining area was not currently reviewed, as additional planning has been requested before consideration.

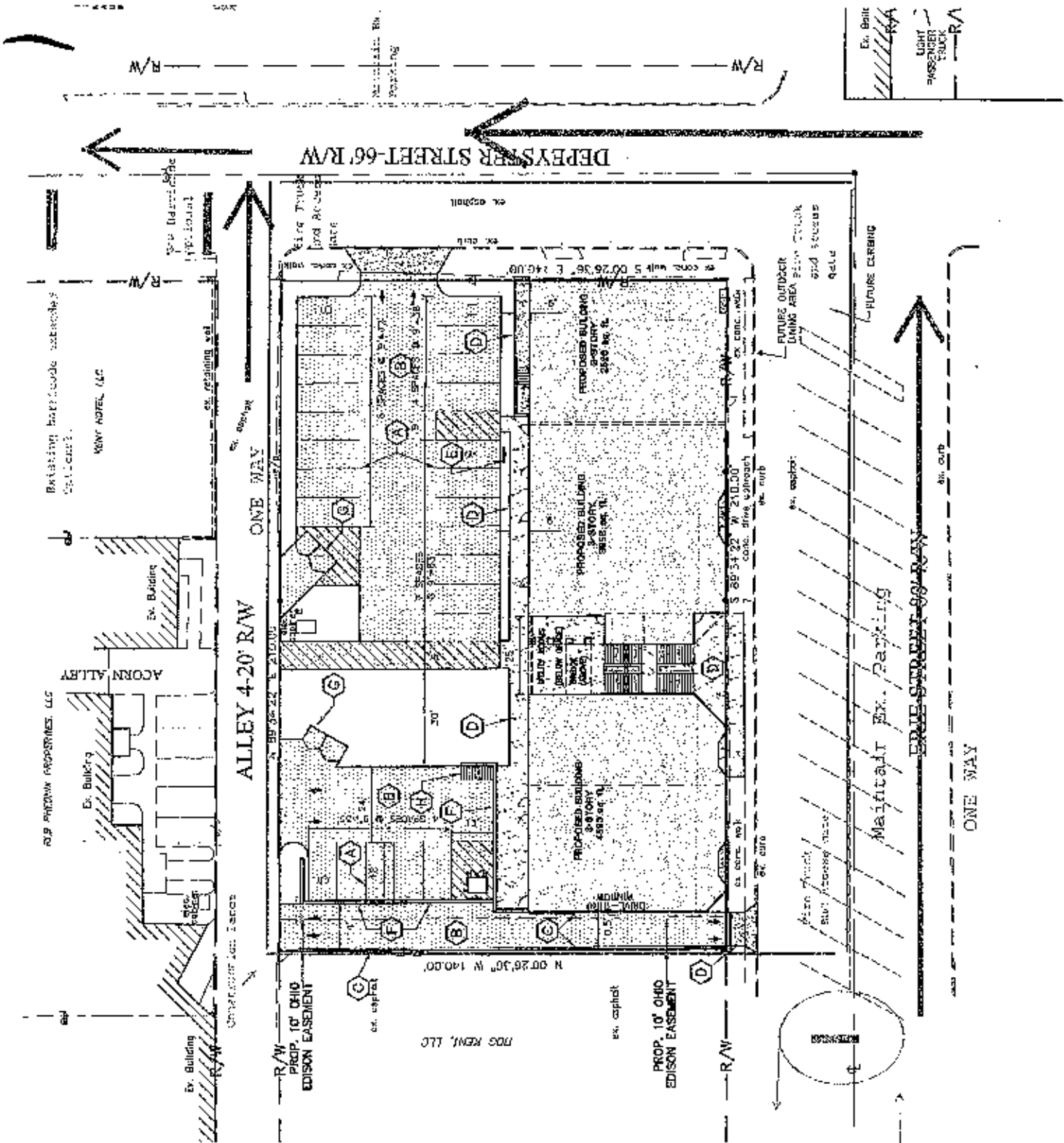
Further discussion took place regarding the potential closing of adjacent street area around the construction site, which was first discussed in the November 12 meeting. Generally, the committee felt that the closure of partial lanes on S. Depeyster and E. Erie could be accommodated to assist in providing effecting construction space that is limited on site due to downtown design standards. The need for this assistance is exacerbated by the upcoming construction of Alley #4 from April through November.

After review of several alternatives, it was determined that closing of the northern side of Erie, and the southbound side of Depeyster will provide sufficient space while still providing for some parking in the area. A u-turn area would need to be installed to provide full use of the street and private parking areas on Erie. Barricades and signage advising motorists of the temporary changes and providing effective sight distances will be posted. (Please see attached sketch).

2. North Mantua St traffic issues were next discussed
 - a. Sheetz Project traffic needs further regulation to enforce the "no left turn" from northbound Mantua St. traffic trying to turn left into the station, as well as a similar restriction for vehicles exiting via this drive. Restrictive signs will be installed until the street and development projects are completed.
 - b. Messaging sign messages will be revised advising of these limitations.
 - c. Due to the weather-related delay on the full opening of Fairchild Ave., the intersection of Stinaff and Mantua will be opened to try to relieve some of the traffic tension in the area

streets and neighborhoods.

- d. Cuyahoga St. will remain closed until the opening of Fairchild in later January, due to the current Mantua St. lane restrictions and the traffic back-ups that may result from motorists attempting left turns in close proximity to Crain & Mantua.



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12-14-10

**KENT POLICE DEPARTMENT
NOVEMBER 2010**

	NOVEMBER 2009	NOVEMBER 2010	TOTAL 2009	TOTAL 2010
CALLS FOR SERVICE	1651	1475	20473	19363
FIRE CALLS	379	337	3741	3756
ARRESTS, TOTAL	210	130	2300	1986
JUVENILE ARRESTS	14	15	189	182
O.V.I. ARRESTS	17	12	291	197
TRAFFIC CITATIONS	206	207	3391	3054
PARKING TICKETS	225	167	3694	2701
ACCIDENT REPORTS	67	74	734	750
Property Damage	42	48	457	467
Injury	6	8	96	107
Private Property	16	14	150	134
Hit-Skip	3	4	31	42
OVI Related	1	0	16	12
Pedestrians	1	3	7	9
Fatals	0	0	0	0
U.C.R. STATISTICS				
Homicide	1	0	1	1
Rape	1	0	10	11
Robbery	3	1	15	9
Assault Total	30	18	245	200
Serious	5	0	37	21
Simple	25	18	208	179
Burglary	12	16	117	148
Larceny	41	43	402	429
Auto Theft	3	0	27	21
Arson	0	1	32	19
TOTAL	91	79	849	838
CRIME CLEARANCES				
Homicide	1	0	1	1
Rape	0	0	2	1
Robbery	1	1	7	4
Assault Total	22	16	157	154
Serious	4	0	22	10
Simple	18	16	135	144
Burglary	2	6	14	21
Larceny	10	2	69	46
Auto Theft	0	0	4	7
Arson	0	1	6	3
TOTAL	36	26	260	237

**City of Kent
Income Tax Division**

November 30, 2010

Income Tax Receipts Comparisons - RESTATED - (NET of Refunds)

Monthly Receipts

Total receipts for the month of November, 2010	\$880,655
Total receipts for the month of November, 2009	\$820,876
Total receipts for the month of November, 2008	\$887,150

Year-to-date Receipts and Percent of Total Annual Receipts Collected

	<u>Year-to-date Actual</u>	<u>Percent of Annual</u>
Total receipts January 1 through November 30, 2010	\$9,548,117	
Total receipts January 1 through November 30, 2009	\$9,629,976	91.87%
Total receipts January 1 through November 30, 2008	\$9,807,607	91.55%

Year-to-date Receipts Through November 30, 2010 - Budget vs. Actual

<u>Year</u>	<u>Annual Budgeted Receipts</u>	<u>Revised Budgeted Receipts</u>	<u>Year-to-date Actual Receipts</u>	<u>Percent Collected</u>	<u>Percent Remaining</u>
2010	\$ 10,500,000	\$ 10,500,000	\$ 9,548,117	90.93%	9.07%

Comparisons of Total Annual Receipts for Previous Five Years

<u>Year</u>	<u>Total Receipts</u>	<u>Percent Change From Prior Year</u>
2005	\$ 10,188,261	6.33%
2006	\$ 10,151,202	-0.36%
2007	\$ 10,540,992	3.84%
2008	\$ 10,712,803	1.63%
2009	\$ 10,482,215	-2.15%

Submitted by David A. Coffey, Director of Budget and Finance

2010 CITY OF KENT, OHIO
Comparison of Income Tax Receipts
for Month Ended November 30, 2010

Monthly Receipts				Comparisons	
Month	2008	2009	2010	Amount	Percent Change
January	\$ 1,012,461	\$ 731,968	\$ 952,296	\$ 220,328	30.10%
February	782,239	1,083,705	785,233	(298,472)	-27.54%
March	852,617	845,720	809,613	(36,107)	-4.27%
April	1,207,724	993,055	1,026,687	33,632	3.39%
May	749,292	988,003	877,364	(110,639)	-11.20%
June	848,840	867,634	798,635	(68,999)	-7.95%
July	921,824	824,083	828,960	4,877	0.59%
August	757,111	858,853	865,224	6,371	0.74%
September	827,748	729,239	762,176	32,937	4.52%
October	960,601	886,840	961,274	74,434	8.39%
November	887,150	820,876	880,655	59,779	7.28%
December	905,196	852,239			
Totals	\$ 10,712,803	\$ 10,482,215	\$ 9,548,117		

Year-to-Date Receipts				Comparisons	
Month	2008	2009	2010	Amount	Percent Change
January	\$ 1,012,461	\$ 731,968	\$ 952,296	\$ 220,328	30.10%
February	1,794,700	1,815,673	1,737,529	(78,144)	-4.30%
March	2,647,317	2,661,393	2,547,142	(114,251)	-4.29%
April	3,855,041	3,654,448	3,573,829	(80,619)	-2.21%
May	4,604,333	4,642,451	4,451,193	(191,258)	-4.12%
June	5,453,173	5,510,085	5,249,828	(260,257)	-4.72%
July	6,374,997	6,334,168	6,078,788	(255,380)	-4.03%
August	7,132,108	7,193,021	6,944,012	(249,009)	-3.46%
September	7,959,856	7,922,260	7,706,188	(216,072)	-2.73%
October	8,920,457	8,809,100	8,667,462	(141,638)	-1.61%
November	9,807,607	9,629,976	9,548,117	(81,859)	-0.85%
December	10,712,803	10,482,215			
Totals	\$ 10,712,803	\$ 10,482,215			

2010 CITY OF KENT, OHIO
Comparison of Income Tax Receipts from Kent State University
for Month Ended November 30, 2010

Month	Monthly Receipts			Comparisons	
	2008	2009	2010	Amount	Percent Change
January	\$ 328,155	\$ 344,562	\$ 422,779	\$ 78,217	22.70%
February	304,739	346,921	328,502	(18,419)	-5.31%
March	359,268	344,276	349,936	5,661	1.64%
April	324,465	346,865	350,591	3,726	1.07%
May	321,356	340,901	348,819	7,918	2.32%
June	321,029	335,596	345,261	9,665	2.88%
July	304,548	320,155	334,650	14,495	4.53%
August	320,946	366,601	381,241	14,640	3.99%
September	306,590	287,150	291,775	4,625	1.61%
October	341,832	348,108	370,956	22,848	6.56%
November	342,612	353,917	370,551	16,634	4.70%
December	343,999	355,737			
Totals	\$ 3,919,539	\$ 4,090,788	\$ 3,895,061		

Month	Year-to-Date Receipts			Comparisons	
	2008	2009	2010	Amount	Percent Change
January	\$ 328,155	\$ 344,562	\$ 422,779	\$ 78,217	22.70%
February	632,894	691,483	751,281	59,798	8.65%
March	992,162	1,035,758	1,101,217	65,459	6.32%
April	1,316,627	1,382,623	1,451,808	69,185	5.00%
May	1,637,983	1,723,524	1,800,627	77,103	4.47%
June	1,959,012	2,059,120	2,145,888	86,768	4.21%
July	2,263,560	2,379,275	2,480,538	101,263	4.26%
August	2,584,506	2,745,876	2,861,779	115,903	4.22%
September	2,891,096	3,033,026	3,153,554	120,528	3.97%
October	3,232,928	3,381,134	3,524,510	143,376	4.24%
November	3,575,540	3,735,051	3,895,061	160,010	4.28%
December	3,919,539	4,090,788			
Totals	\$ 3,919,539	\$ 4,090,788			

2010 CITY OF KENT, OHIO
Comparison of Income Tax Receipts from Kent State University
for Month Ended November 30, 2010

Comparisons of Total Annual Receipts for Previous Five Years

<u>Year</u>	<u>Total Receipts</u>	<u>Percent Change</u>
2005	\$ 3,452,767	2.42%
2006	\$ 3,542,080	2.59%
2007	\$ 3,707,931	4.68%
2008	\$ 3,919,539	5.71%
2009	\$ 4,090,788	4.37%



CITY OF KENT, OHIO

DEPARTMENT OF SAFETY

To: Mr. Dave Ruller, City Manager
Subject: Kent Police Chief promotional
Date: December 16, 2010

Mr. Ruller,

As you are aware, Chief Peach has been planning to take his retirement in January of next year. In preparation, the Civil Service Commission recently had a promotional assessment done by the Ohio Association of Chiefs of Police for the position of Police Chief. The results were previously posted by the Commission.

Approximately ten days ago Chief Peach formally submitted his retirement letter, with the retirement date set for the end of the day on January 23, 2011.

After receiving Chief Peach's letter, I submitted the formal request for certification of the top candidate, consistent with the Ohio Civil Service standards. Captain Michelle Lee's name was certified as the number one candidate for promotion to the position.

Early this week, I had the opportunity to meet with Captain Lee to formally offer her the promotion. She has accepted this opportunity and is looking forward to her future as the leader of the Kent Police, and as a member of the City of Kent Administration to serve the community. I take pride in providing you with this formal notice of the upcoming change in departmental leadership. I will keep you informed of the schedule for the formal promotional events, and Chief Peach's retirement activities.

Respectfully,

William C. Lillich
Safety Director



CITY OF KENT, OHIO

DEPARTMENT OF LAW

TO: DAVE RULLER, KENT CITY COUNCIL
FROM: JAMES R. SILVER, LAW DIRECTOR *JRS*
DATE: NOVEMBER 22, 2010
RE: LIVESTOCK - SUPREME COURT DECISION

Pursuant to City Council's request, I spent about 1-1/2 hours reviewing the decisions of the United States and Ohio Supreme Courts from 2009 and 2010.

There is no decision I can locate dealing with livestock on a local level.

I did find the attached case which just shows what happens when a Judge has too much time on his hands.

Not Reported In N.E.2d, 1986 WL 2333 (Ohio App. 6 Dist.)

Only the Westlaw citation is currently available.

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Sixth District, Lucas County.
STATE of Ohio, Plaintiff-Appellee,

v.

Thomas A. CORDLE, Defendant-Appellant.

No. L-85-258.

Feb. 21, 1986.

Oregon Municipal Court

No. 85-CR-B-150

John J. Weglian, for appellant.

Thomas A. Dugan, City of Oregon, Prosecuting Attorney, for appellee.

IN MEMORIAM

WILKOWSKI, Judge.

*1 Communiques received 1 October and 1 November, 1985, inform that subject, unidentified by name but otherwise described as an undisciplined "marauder," while on a search, seize and consume mission, crossed enemy lines and, as a consequence, thereof, subsequently came under hostile fire.

We are advised that the foray initially met with success in that marauder, through stealth, had infiltrated enemy store-houses, specifically, the area where foodstuffs were maintained in their natural state, i.e., as live geese, and succeeded in reducing to possession a part of the inventory; namely, one live goose. Apparently, the goose resisted capture and the struggle which ensued was of such intensity that the camp was alerted, thereby.

Experienced in his craft and sensing imminent danger, marauder, while still in possession of the booty, executed forthwith, a strategic withdrawal, the objective of which was a speedy return to friendly lines. The pursuit, it appears, was only of brief moment as enemy fire power proved decisive. Just as marauder crossed over friendly lines, seemingly, having secured territorial refuge, the rogue was struck with the full force and velocity of missiles ejected from a shotgun of unknown gauge. And there-on the Plains of Oregon-by the shores of the waters called Erie, in the northwestern reaches of the Ohio Country, marauder fell mortally wounded. During the skirmish, the goose, likewise, expired but whether from fright, the struggle with marauder or accidentally, as a consequence of friendly fire, we cannot be certain.

Thusly, under such ignominious circumstances, did marauder, a dog, and anonymous goose reach the end of life's trail. The passing of marauder, it is clear to this tribunal, was not without bereavement. The goose, sadly, appears to have died, "unknown, unhonored and unwept." But rogue though marauder may have been, "and in disgrace with fortune and men's eyes" suffering an "outcaste state," we are moved to memorialize both-anonymous goose and undisciplined marauder-*non obstante verdicto*. 'Twas simply, "*The Call Of The Wild*," as Jack London put it.

THE ARGUMENT OF COUNSEL

Defendant-appellant's brief states: "[T]he facts of this case clearly illustrate that the dog historically had run at large, had previously inflicted damage upon the Appellant's domestic fowl, and that the culprit was executed while he was in the process of murdering yet one more goose."

Defendant's brief further states: "The trial Court's analysis of the facts * * * indicate that the Appellant would have been perfectly justified in blowing the dog to pieces at any point in time prior to the dog returning to his master's property line." (Emphasis added.)

Counsel for defendant then analyzes the consequences of the trial court's rationale with vivid imagery which, most assuredly, will both please and brighten the spirit of Victor Hugo, now resident of that Valhalla reserved exclusively for Literature's immortals. Counsel writes: "Miraculously, however, * * * the dog which had been running at large, was suddenly transformed into a peaceful citizen of the community the moment he crossed his property line even though he still had the goose in his mouth. The Judge's reasoning conjures up the image of Charles Laughton swooping from the bell tower of Notre Dame Cathedral snatching the murderous beast away from his righteous executioner and crying 'sanctuary' as he deposited the *bete noire* inside the confines of his master's property line, and then seeing the beast turn to his would-be assailant, goose feathers still dangling from his mouth, and chortle cacophonously over the success of his foray."

*2 The government argues in response that the owner of domestic fowl killed by a dog cannot go to the dog's residence and kill the animal that once the dog returned to its owner's property, it was not subject to extermination for reason that other remedial measures are duly provided for by law. In a word, that in the Ohio country, the law "West of the Pecos" is unavailing and this jurisdiction will not countenance the actions of a "vigilante dog-hunter." In effect, so argues the government:

THE ISSUE STATED

May the owner of domestic fowl whose livestock has suffered damage by a dog known to be owned by a neighbor, pursue the animal as it flees the livestock owner's property upon interruption of an act of damage, and kill the dog upon land known to be owned or in possession of the dog's purported master?

LAW AND OPINION

Historical hearsay attributes to William Pitt, Earl of Chatbam (1708-1778) perhaps the most succinct if not the most eloquent defense of private property ever expounded as a fundamental principle of Anglo-American law. During the reign of George III, the Elder Pitt is acclaimed to have penned those immortal lines which today forms the quintessence of the Fourth Amendment's human rights guarantee against unlawful seizure. Thus, are property rights made an incident of something vastly more critical-human or individual rights. Wrote Penn:

"The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail-its roof may shake-the wind may blow through it-the storm may enter-the rain may enter-but the King of England may not enter-all his force dares not cross the threshold of the ruined tenement."

Although the government may not enter upon the lands and tenements of its subjects for the purpose of taking property except upon process, the character of which must be defined and issued in accordance with law, it is advanced by counsel for defendant that a citizen may do what the Crown may not; that is, unilaterally-without legal process-constitute himself a court of exclusive jurisdiction with the powers to seize or destroy the property of another with irrevocable finality. We do not perceive such to be the law.

Recognizing the close bond between dog and man which had its inception somewhere along the evolutionary trail eons ago and that dog ownership is as natural an incident to an advanced society as it was in more primitive times, the General Assembly, in Chapter 955 Revised Code, has established an elaborate regulatory scheme for control of the animals. Unfortunately, it may be noted, that the proscriptions and prohibitions therein contained are experienced more in the breach thereof than in their observance. Effective regulation is costly and, available program funds are, at best, inevitably meager. Nevertheless, adherence to the law is mandated.

Defendant was charged under complaint filed pursuant to R.C. 959.02 which provides in part as follows: "No person shall maliciously, or willfully, and without the consent of the owner, kill or injure a * * * dog * * * or other domestic animal that is the property of another: * * *" Chapter 959 is entitled: *Offenses Relating To Domestic Animals*. R.C. 959.99 sets forth as a penalty either a first or

second degree misdemeanor predicated upon whether the value of the animal lost or injury inflicted amounts to less than \$300 or more. Defendant was found guilty of a second degree misdemeanor and fined \$150 and costs.

*3 Defendant does not debate the statement of fact found by the trial court that he chased the dog, which still had the goose in its mouth, back to the property boundaries of the Complainant, the owner of the dog, and did proceed to kill the dog on the Complainant's property. But defendant argues that he killed the dog under license granted pursuant to R.C. 955.28, the pertinent portion of which provides that a *dog running at large* " * * * that chases, worries, injures or kills a person, sheep, lamb, goat, kid, *domestic fowl* * * * can be killed at any time or place. * * * The owner or keeper shall be liable for any damage or injuries caused by a dog * * *." (Emphasis added).

Essentially, defendant argues that: (1) his actions were not motivated by the requisite perverseness constituting malicious or willful criminal conduct and (2) his right to kill the dog, even on the dog owner's property, is accorded by the R.C. 955.28 language, "any time or place."

Counsel for defendant has, in his brief, articulated with obvious professional competency a defense for his client which cannot be lightly dismissed or ignored. Taken literally, "any place or time" may be given a construction of indiscriminate application resulting in the killing of a dog months removed in time and many miles distant from the *locus delicti*. Thus, if defendant's contention is meritorious, we must accept the proposition that it was the collective wisdom of the General Assembly to allow, under circumstances set forth in R.C. 959.02, for a damaged owner of livestock to enter, as trespasser, upon the property of a third party and, finding the dog present, kill the animal, leaving to the non-involved third party such mundane tasks as scrubbing up spilled blood and disposing of the carcass; or worse, yet, tending to an animal in extremis.

The court in Perkins v. Hattery (1958), 106 Ohio App. 361, 365, recognized the potential danger incident to an uncontrolled application of the "any time or place" language when it observed: "so interpreted a dog could be killed inside his master's house at three o'clock in the morning. We do not think the Legislature could have intended that the statute should be so broad in its operation. It is a general rule of construction that statutes which permit the summary divestiture of title of a person to property must be strictly construed." We agree.

Counsel for the government argues, persuasively, the ameliorating provisions of R.C. 955.28, 955.29 and 955.30 as an alternative to the "self-help" feature of R.C. 955.28 which, in our judgment, if resorted to under certain circumstances such as present in the incident case, is laden with potential violence. R.C. 955.28 establishes that the owner of a dog shall be liable for any damages or injuries caused by the dog. R.C. 955.29 provides for the County Commissioners to create a fund to compensate the owner of **livestock**, including **domestic fowl**, killed by dogs; and under the authority of R.C. 955.30, the County Prosecutor is authorized to bring an action against the dog owner to recover the damages paid from public monies.

*4 We observe that R.C. 955.29 establishes a threshold amount of ten dollars or more in aggregate damages in order to qualify for payment from the fund and while we would like to think that the anonymous goose exceeded in value such paltry sum, more probably than not, its cold market value was less. Be that as it may, most assuredly, if the representations of the owner of the domestic fowl, herein, are subject to proof, that is, other fowl were killed on prior occasions, the ten dollar threshold presents no problem. If, on the other hand, the burden of proof cannot be met, then the killing of an undisciplined marauder, where the monetary loss was less than ten dollars, was utterly unwarranted. In a word, killing a dog on the premises of its owner may be described as inherently explosive as to further bloodshed which could conceivably follow. The law, hopefully is designed to curb violence, not create it.

One final thought: It is not the function of a court under the separation of powers doctrine to legislate, but to interpret. Here, we border on infringement but, trusting, that we have not passed that judicial Rubicon which stays the hand of arbitrary exercise of power.

The legislature, in the exercise of its power to declare what shall constitute a crime or punishable

offense, must inform the citizen with reasonable precision what acts it intends to prohibit, so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid. 25 Ohio Jurisprudence 3d (1981) 106, Criminal Law, Section 8. "Void for vagueness" is not what we have found in the instant case and, more likely than not, would not have so found even if constitutional impediment had been raised. But here, like the melody of the remembered dance was-a thought has lingered on, long after the opinion was written. Appellant's assignment of error is found not well-taken.

The judgment of the trial court will stand. Costs to defendant-appellant. Cause remanded for execution of judgment and assessment of costs.

JUDGMENT AFFIRMED.

CONNORS, P.J., concurs.

RESNICK, J., concurs in judgment only.

RESNICK, Judge.

I concur in judgment only, inasmuch as I cannot participate in the majority's allegorical attempt to make light of a case which is serious to the participants and should be taken seriously by this court. Of all levels of courts, an appellate tribunal should be a *no nonsense* court. I concur, therefore, only in the affirmance of the trial court.

JOURNAL ENTRY

Finding appellant's assignment of error not well-taken; judgment of the trial court will stand. Costs to defendant-appellant. Cause remanded for execution of judgment and assessment of costs. See Opinion by Wilkowski, J., and Concurrence by Resnick, J., on file.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. See also Supp.R. 4, amended 1/1/80.

JOHN J. CONNORS, P.J., and ARTHUR WILKOWSKI, J., concur.

ALICE ROBIE RESNICK, J., concurs in judgment only.

Ohio App., 1986.

State v. Cordie

Not Reported in N.E.2d, 1986 WL 2333 (Ohio App. 6 Dist.)

END OF DOCUMENT

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City of Kent - Snow Fall Data December 2010 (as of 12/17/2010)

					Totals
Storm Timing					12/1/2010
Storm No.:	22	23	24	25	Through
Shift No.:	1	8	4	9	12/17/2010
Date Storm Started:	12/1/2010	12/4/2010	12/8/2010	12/12/2010	
Day of Week :	Wednesday	Saturday	Wednesday	Sunday	
Time Storm Started:	16:00	22:44	20:00	11:00	
Date Storm Ended:	12/2/2010	12/8/2010	12/10/2010	12/15/2010	
Day of Week :	Thursday	Wednesday	Friday	Wednesday	
Time Storm Ended:	0:00	18:00	18:00	23:00	
Date Roads Cleared:	12/2/2010	12/8/2010	12/10/2010		
Day of Week :	Thursday	Wednesday	Friday	Ongoing	
Time Storm Cleared:	0:00	16:00	16:00		
Storm Description					
Dry Snow:	N	y	Y	Yes	
Wet Snow:	Y	n	N	No	
Sleet:	N	n	N	No	
Freezing Rain:	N	n	N	No	
Temperature Minimum:	24	19	25	14	
Temperature Maximum:	34	26	44	24	
Depth of Snow Fall (In.):	trace	8	4	19	31
Depth of Snow Drift (In.):					
Wind Direction:	WSW	WNW	SW	NW	
Wind Speed (MPH):	23	19	24	23	
Gust:	30	25	30	33	
Storm Response					
No. of Apps. Salt:	1	12	5	8	
No. of Times Plowing:	0	12	5	18	
Results					
Salting (Excl-Gd-Poor):	E	Good	Good	Good	
Plowing (Excl-Gd-Poor):		Good	Good	Good	
Labor Equipment & MU.					
Labor Hours:	26.7	474.3	153.8	534.5	1189.3
Labor Cost:	\$ 1,200.43	\$ 20,041.74	\$ 5,534.61	\$ 22,057.74	\$ 48,834.51
Tons Salt:	45.5	563.5	147	271.25	1027.25
Cost Salt:	\$ 1,965.60	\$ 24,343.20	\$ 6,350.40	\$ 11,718.00	\$ 44,377.20
Gallons Salt Brine:	200	5350	2162	0	7712
Cost Salt Brine:	\$ 12.00	\$ 321.00	\$ 129.72	\$ -	\$ 462.72
Gal.s Calcium Chloride:	0	800	0	3050	3850
Cost Calcium Chloride:	\$ -	\$ 768.00	\$ -	\$ 2,928.00	\$ 3696
Sub Total Cost Material:	\$ 1,977.60	\$ 24,664.20	\$ 6,480.12	\$ 11,718.00	\$ 44,839.92
Cost of Storm per Shift:	\$ 3,178.03	\$ 44,705.94	\$ 12,014.73	\$ 33,775.74	\$ 93,674.43
Storm Duration (Hours)	8	89	44	84	
Avg. Staff per Hour	3.34	5.33	3.50	6.36	
Max. Snow Rate In/Hr	0.00	0.50	0.50	1.00	
Avg. Snow Fall Strm Duration	0.01	0.09	0.09	0.23	
Ton Salt per Inch of Snow Fall	569	70	37	14	
Hours Worked Regular	0.0	184.0	96.0	224.0	504.0
Hours Worked OT (1.5 x)	26.7	208.7	57.8	237.0	530.2
Hours Worked OT (Sun. 2 x)	0.0	81.6	0.0	73.5	155.1
Total Hours Worked	26.7	474.3	153.8	534.5	1189.3
Cost Reg. Time	\$ -	\$ 5,502.28	\$ 2,911.25	\$ 6,749.03	\$ 15,162.55
Cost OT (1.5 x)	\$ 1,200.43	\$ 9,451.02	\$ 2,623.36	\$ 10,742.95	\$ 24,017.76
Cost OT (2.0 x)	\$ -	\$ 5,088.44	\$ -	\$ 4,565.76	\$ 9,654.20
Total Labor Cost	\$ 1,200.43	\$ 20,041.74	\$ 5,534.61	\$ 22,057.74	\$ 48,834.51