

The City Council met in regular session in the Council Chambers on Wednesday, October 3, 2007 at 9:00 a.m.

Council Members present: Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7.

On motion of Mr. Thompson, Seconded by Mr. Schember, the reading of the minutes of the meeting of September 19, 2007 were dispensed with and same adopted with copies furnished to the members of City Council by yeas Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

Copies of the bills under date of September 28th and October 5<sup>th</sup> were given to City Council and same adopted by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0., with the exception of invoices to the NATO Centers on which Mrs. Jenkins-Husband abstained from voting.

-----  
By Mr. Thompson, Council File Ordinance #15,544, Pending Official File Ordinance #53-2007, entitled

an ordinance amending Zoning Ordinance #80-2005, by changing the classification of property located at **857 East 9<sup>th</sup> Street**, from M-1 (Light Industrial District) to that of C-1 (Local Business District) for the Erie Federal Credit Union including a 3,000 sq.ft. branch office and drive-thru service.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mr. Jones, Council File Ordinance #15,545, Pending Official File Ordinance #54-2007, entitled

an ordinance amending Zoning Ordinance #80-2005, by revising Section 405.10 to require a **Petition to Rezone** to include the 500 foot radius notification as required for notice prior to a public hearing; revising the definitions of Auto Repair and Service Garage to allow the sale of not more than five (5) vehicles; (current allotment of four vehicles is in violation of State Code for Automotive Dealers which requires five) and clarifying Section 205.26 to allow for an addition to infringe into side and rear setback areas for non-conforming use.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mr. Schember, Council File Ordinance #15,548

an ordinance appropriating the sum of **\$13,000.00** from Fund Balance #460-0000-0000-3001 (Debt Service Fund Balance) and providing for the expenditure thereof by allocating said funds to #460-1963-0000-4802 Debt Service Print Shop Capital Lease Payment.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 6. Nays. Mr. González. L.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mrs. Jenkins-Husband, Council File Ordinance #15,549

an ordinance partially closing and vacating a public alleyway between **Keats Avenue and Shunpike Road**.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mrs. Jenkins-Husband, Council File Ordinance #15,550

an ordinance amending the Business Regulation and Taxation Code of the City of Erie, Article 381, Local Economic Revitalization Tax Assistance (**LERTA**), by identifying target and non-target areas, with 10 year residential property benefit in target areas and 7 years in non-target, providing a 50% abatement for all new commercial/industrial improvements, with additional abatement for job creation, a 5 year 90% abatement for all additions/alternations to existing structures, establishing an Appeals Board and a five year sunset provision.

October 3, 2007. City Council of motion of Mrs. Jenkins-Husband, Seconded by Mr. Thompson, having read Council File Ordinance #15,550, does hereby adopt on First Reading by yeas Council Members González, Jones, Schember and Thompson. 4. Nays. Cappabianca, Horan-Kunco and Jenkins-Husband. 3.

October 3, 2007. Signed by the President. Attested by the City Clerk.

**HONORABLE MAYOR, PRESIDENT AND MEMBERS OF CITY COUNCIL**

September 20, 2007

The City of Erie Planning Commission at its regular meeting on September 18, 2007 reviewed a Waterfront Conditional Use submittal by the Port Authority for the construction of a Restroom/Concession Stand facility to be located at the East Avenue Board Launch.

Mr. Schreckengost gave an opening introduction to the Commission. He informed the Planning Commission that the Port Authority has received funding from two different state agencies for this project.

Jeff Kidder, of KidderWachter Architecture and Design, excused himself as a Commission member to present the remainder of the project. The exterior of the new structure will be constructed from a concrete material, which resembles a brick façade. A blue standing seam roof will be used and the remaining finishes will be gray. The columns in the front of the structure will be concrete. This is a change from the aluminum wrap which was previously presented to the Design Review Committee.

Also included in the application is a fish cleaning station covered by a pre-fabricated roof with open sides. This structure will have the same blue metal roof as the Restroom/Concession stand. Both structures will be similar to the buildings used at Lampe Marina, which is also owned by the Port Authority.

Other notable facts include:

- \* Dumpster will be contained completely within a fence
- \* Security is handled by cameras, which are currently installed and monitored at the Port Authority offices
- \* The entire parcel is open and provides free boating access to the public
- \* The estimated cost of construction is approximately \$35,000
- \* This project will allow for the removal of the existing porta-johns and trailer which houses the bait shop
- \* Signage will be at a minimum, most likely located on a freestanding pole in the landscaped area. The Port Authority will be required to provide a sign stating the agencies who funded the project.

On a motion by Mr. Antalek, seconded by Mr. DeBello, the project is hereby recommended for approval without revision. Mr. Kidder abstained. Motion Carried

By Mr. Thompson, Seconded by Mr. Schember, Resolved, etc.,

That the Communication from the City Planning Commission recommending approval of a request for Waterfront Conditional Use from the Erie Port Authority for the construction of a Restroom/Concession Stand facility to be located at the **East Avenue Boat Launch** is hereby received by City Council, and

Be It Further Resolved, that pursuant to the provisions of Zoning Ordinance #80-2005, the City Clerk is authorized and directed to advertise notice of a Public Hearing to be held on Wednesday, October 17, 2007 at approximately 8:00 p.m. in regard to the said change.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mrs. Jenkins-Husband, Seconded by Council Members Cappabianca, González, Horan-Kunco, Jones, Schember and Thompson, Resolved, by the Council of the City of Erie, That

WHEREAS, Ada Lawrence is a descendent of one of the first African American families in Erie whose roots date back to the 1800's, and

WHEREAS, her grandparents owned and operated one of the first African American businesses in Erie and Ada's father, Earl E. Lawrence owned and operated the first African American Music Studio in Erie and taught some of Erie's most renowned musicians, and

WHEREAS, Ada Lawrence attended and graduated from Strong Vincent High School and Cheyney State Teachers College and was one of the first African American teachers in the Erie School District and performed her obligations admirably educating the youth of Erie until her retirement and graduated from Strong Vincent High School and Cheyney State Teachers College, and

WHEREAS, Ada Lawrence knowing the importance of history lent her expertise and personal materials to aid the Erie Historical Society in establishing archival records of her family and other people of importance in the African American community, so

THEREFORE, BE IT RESOLVED, by the Council of the City of Erie that **Ada Lawrence** is recognized and appreciated for her contribution to the citizens of Erie and this commendation is hereby presented to her in anticipation of her 87<sup>th</sup> Birthday Celebration on October 21, 2007 and we extend to her our best wishes for many more happy occasions.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mr. Cappabianca, Seconded by Council Members González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband, Resolved, etc.,

WHEREAS, James J. Rutkowski, Sr., is an outstanding citizen of the Erie community, and

WHEREAS, Mr. Rutkowski, founder and DEO of Industrial Sales MFG is noted for his many contributions to enrich the lives of our citizens, and

WHEREAS, Mr. Rutkowski, from a small backyard garage operation, merged and grew the small business into one of Erie's leading industries, Industrial Sales MFG and through Jim's vision and planning now employs 135 Erie citizens, and

WHEREAS, Jim Rutkowski is noted for his generosity to civic and charitable endeavors, so

THEREFORE, BE IT RESOLVED, that the Council of the city of Erie pay special tribute to **James Rutkowski, Sr.**, on the occasion of his receiving the Archbishop Gannon Medal of Distinction from Gannon University for his devotion and dedication to this community.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mr. Cappabianca, Seconded by Council Members González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband, Resolved, etc.,

WHEREAS, **Robert "Charlie" Rutkowski** deserves public acclaim and accolades for his outstanding contribution to the John Kanzius Cancer project, and

WHEREAS, Charlie as he is affectionately called by his family and host of friends, manufactured the instrument for transmittal of the cancer eating radio waves as designed by John Kanzius, and

WHEREAS, Charlie has traveled the world over bringing in the latest and newest technology to the community, so

THEREFORE, BE IT RESOLVED, that the Council of the City of Erie honor Robert "Charlie" Rutkowski for his gallant efforts in effecting a cure for cancer and that a copy of this resolution be placed in the archives of the City.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

NOTE: A CERTIFICATE OF RECOGNITION WAS ALSO PRESENTED TO **JAMES RUTKOWSKI, JR.**, FOR HIS OUTSTANDING ACHIEVEMENTS IN THE MANUFACTURING INDUSTRY

-----  
By Mrs. Horan-Kunco, Seconded by Mr. Cappabianca, Resolved, etc.,

WHEREAS, the Erie City Council recognizes the intrinsic value of the environmental assets of the City of Erie and its metropolitan area embodied in our air, water and land, and

WHEREAS, Council recognizes the value of sustainable, progressive economic development for the city and our region, and

WHEREAS, Council recognizes that a healthy environment and positive economic growth go hand in hand, and

WHEREAS, Council is aware of a proposal by **Erie Renewable Energy, LLC**, for the construction of a waste tire to energy facility to be located on the site of the former south yard of the International Paper Co, and

WHEREAS, Council is aware of the concerns expressed by many citizens of the city and surrounding communities regarding this proposal and its possible consequences on our environment, and

WHEREAS, Council endeavors, in good faith effort, to alleviate misconceptions and perceived doubt regarding this proposal and how it will impact the health and well being of the residents of the City of Erie and surrounding communities and wishes to act in all parties best interests, so

THEREFORE, BE IT RESOLVED, that the Council of the City of Erie requests that Erie Renewable Energy, LLC prepare an Environmental Impact Statement (EIS) addressing the operation of the proposed plant and the probable environmental outcomes that this facility would generate.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco and Jenkins-Husband. 4. Nays. Jones, Schember and Thompson. 3.

October 3, 2007. Signed by the President. Attested by the City Clerk.

TO: City of Erie City Council  
FROM: Laura Schaaf  
SUBJECT: Andrew Flatley Web Design

September 28, 2007

This memo is attached to the proposed resolution for a web master designer for the City of Erie as an explanation to what the administration is proposing regarding this new initiative.

Andrew Flatley Web Design is a local company specializing in internet web site development. They have worked on a multitude of web site design for companies as seen by his included resume. His work will be in the initial design stages and as a consultant for any future major web site changes. Internally, our computer department (IT) does not have the technical expertise to design a web site that would be proper

for an organization of our size. They will, however, maintain the site under the direction of the Mayor's Office.

It is felt using a professional web site design firm will help the City of Erie to maximize our internet technology for use in information giving and also incoming revenue stream enhancements. The firm we will use for the implementation of our upgraded web site will be paid on an hourly basis (agreeing to give the City of Erie a discounted rate below its normal billing rate) and be monitored closely by the Mayor's Office.

By Mr. Thompson, Seconded by Mrs. Horan-Kunco, Resolved, etc.,

That the proper City officials are authorized and directed to enter into an agreement with **Andrew Flatley Web Designs** for professional Services. Andrew Flatley Web Designs is being contracted to provide the City of Erie Computer Department (IT) with creation and organization of the City of Erie web site. Andrew Flatley will be paid on a contracted basis at the rate of \$40.00/hour not to exceed \$10,000.00 for work done on the City of Erie web page. The update of our web page will help the City of Erie to advance our technology through better appearance of our web site and easier navigation for our users (this update of our web site should give citizens the ability to pay bills online).

Be It Further Resolved, that the City Council does hereby ratify and confirm the said transaction which is to be charged against Budget Code #002-0535-0000-4041.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Thompson and Jenkins-Husband. 6. Nays. 0. (Mr. Schember abstaining)

October 3, 2007. Signed by the President. Attested by the City Clerk.

TO: Erie City Council September 18, 2007  
FROM: Paul Lichtenwalter  
SUBJECT: Resolution for release of Water Reserve Funds Monies

It is requested that Erie City Council authorize \$181,975.34 be released from the Water Reserve Fund held at Morgan Stanley Investments. The requested amount will come from the quarterly interest income earned in this account and will not reduce the principal balance. A list of all 2007 capital expenditures is attached.

By Mr. Schember, Seconded by Mr. Thompson, Resolved, etc.,

That City Council will release authorizing **\$181,975.34** from the Water Reserve Fund quarterly interest income to the Capital Project Fund with proper documentation. The release of the above stated amount will take place with the proper notification to Morgan Stanley.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mrs. Horan-Kunco, Seconded by Mr. Thompson, Resolved, etc.,

That the Mayor and other appropriate City officials are hereby authorized to enter into an agreement with the U. S. Department of Housing and Urban Development for a **Lead Based Paint Hazard Control Program Grant** in the sum of \$3,000,000.00.

October 3, 2007. City Council adopt by yeas Council Members, Cappabianca, González, Jones, Schember, Thompson and Jenkins-Husband. 6. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mr. Thompson, Seconded by Mr. Schember, Resolved, etc.,

That the proper City officials are authorized and directed to enter into Articles of Agreement with the **Erie Federal Credit Union** for the sale of approximately 1.523 acres of land located between East 9<sup>th</sup> and East 10<sup>th</sup> Streets on the east side of the Bayfront Highway in Erie, Pa., having Erie County Tax Parcel Nos. (15) 2038-100, (15) 2043-123; (15) 2043-124; (15) 2043-1127, (15) 2043-128 for the purchase price of \$273,300.00.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mr. González, Seconded by Mr. Jones, Resolved, etc.,

That the proper City officials are authorized and directed to prepare an Easement Agreement between the City of Erie and **Gerard and Susan Jaskiewicz**, owners of 19 West Lakeview Boulevard, Index (18) 5346-401, in compliance with the City Engineer's metes and bounds description locating an elevated walkway in the West Lakeview Boulevard right-of-way.

October 3, 2007. City Council adopt by yes Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson, and Jenkins-Husband. 7. Nays 0.

October 3, 2007 Signed by the President. Attested by the City Clerk.

By Mr. González, Seconded by Mr. Jones, Resolved, etc.,

That the Plan Revision for New Land Development submitted pursuant to Section 5 of the Pennsylvania Sewage Facilities Act, for Sewer Tap-Ins requested by **Hamot Medical Center**, and developer, for the development of a parcel of land identified as Bayview Medical Office Building, West 2<sup>nd</sup> and Peach Streets is hereby approved by City Council.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mrs. Jenkins-Husband, Seconded by Mr. Jones, Resolved, etc.,

That the proposed Repository Sale of Property commonly known as **1025 East 4<sup>th</sup> Street** and identified by Erie County Assessment Index #(14) 010-036.0-211.00 by the Erie County Tax Claim Bureau to David Abrams in the amount of \$250.00 is hereby approved.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mrs. Jenkins-Husband, Seconded by Mr. Jones, Resolved, etc.,

That the proposed Repository Sale of Property commonly known as **548 East 14<sup>th</sup> Street**, and identified by Erie County Assessment Index #(15) 020-028.0-233.00 by the Erie County Tax Claim Bureau to David Abrams for the sum of \$280.00 is hereby approved.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7 Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mrs. Jenkins-Husband, Seconded by Mr. Jones, Resolved, etc.,

That the proposed Repository Sale of Property commonly known as **517 East 13<sup>th</sup> Street**, and identified by Erie County Assessment Index #(15) 020-028.0-214.00 by the Erie County Tax Claim Bureau to Joseph Balbuza for the sum of \$500.00 is hereby approved.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mr. Cappabianca, Seconded by Mr. Thompson, Resolved, etc.,

That the following amounts are hereby transferred in the **2007 Police General Fund**:

<u>Transferred From</u>			<u>Transferred To</u>		
<u>Amount</u>	<u>Account</u>	<u>Title</u>	<u>Amount</u>	<u>Account</u>	<u>Title</u>
\$4500	002-0613-0000-4031	Office Supplies	\$ 26,995.00	002-0613-0000-4058	Repair & Maint.Serv.
2000	"	4033 Oper.Supplies			
3000	"	4035 Repair/Maint.Suppl.			
3000	"	4043 Tptn/Seminars			
2000	"	4045 Communications			
4745.50	"	4059 Other Serv./Chgs.			
7750	"	4096 Oper.Trans. Out			
\$26995.00					

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Jones, Schember, Thompson and Jenkins-Husband 6. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mr. Jones, Seconded by Mr. Thompson, Resolved, etc.,

That the following amounts are hereby transferred in the **Department of Economic and Community Development**, Economic Development Project

<u>Transferred From</u>			<u>Transferred To</u>		
<u>Amount</u>	<u>Account</u>	<u>Title</u>	<u>Amount</u>	<u>Account</u>	<u>Title</u>
\$4,982.38	306-1306-2002	Professional	\$ 1,027.16	306-1306-2002-4033	Oper.Supplies
	4041	Services	3,955.22	4043	Tptn/Seminars
			\$ 4,982.38		

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Jones, Schember, Thompson and Jenkins-Husband. 6. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mr. Jones, Seconded by Mr. Cappabianca, Resolved, etc.,

That the Mayor and City Controller are authorized and directed to execute contracts between the City of Erie and the following individuals and/or companies for goods and/or services s noted and the City Council does hereby ratify and confirm the said transactions which are to be charged to the respective Budget Code Numbers, viz

1. **Executive Pulse, Inc.**, 11 East Fourth Street, Erie, Pa., for a Software License Agreement to provide web hosting, system maintenance and normal and customary system upgrades for the Rental Licensing Software Package, at an annual fee of \$5,000 through 6/30/08, \$7,500 7/1/08 through 3/31/09 and \$10,000 for each successive year, starting April 1st of each year.

2. **New World Systems**, 888 W Big Beaver, Suite 600, Troy, Michigan for a one year (11/1/07-10/31/07) Maintenance Agreement for the AS400 Computer Aided Dispatch System, for the Bureau of Police for the sum of \$56,680.00.

October 3, 2007. City Council adopt by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays. 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

By Mr. González, Seconded by Mr. Jones, Resolved, etc.,

That the City Purchasing Agent is authorized and directed to issue purchase orders to the following individuals and/or companies for goods and/or services as noted and the City Council does hereby ratify and confirm the said transactions which are to be charged to the respective Budget Code Numbers, viz:

1. **Tom Tushak, Inc.**, 318 Mechanic Street, Girard, Pa., for proposed Curb Ramps at 402 Park Way, southwest corner, they being the lowest of three (3) bids received, for the sum of \$2,726.00.

2. **Northwest Restoration, Inc.**, 4460 Phyllis Drive, Erie, Pa., for proposed Deck Joint Repairs at the McBride Viaduct (East Avenue Bridge), they being the lowest of two bids received (4 bids solicited), for the sum of \$9,400.00.

3. **Gary's Auto Sales & Service**, 1118 Buffalo Road, Erie, Pa., for a 2000 GMC Safari AWD for the Bureau of Police, Accident Investigation Unit for the sum of \$4,000.00.

4. **Interstate Chemical Co.**, P. O. Box 1600, 2797 Freeland Road, Hermitage, Pa., for three (3) Totes of Intercool (glycol) for the Bureau of Sewers for the sum of \$8,289.00.

5. **A. R. Beatty**, 5251 Kuhl Road, Erie, Pa., for parts and labor to repair Streets Vehicle #1385 at a cost of \$2,416.71.

October 3, 2007. City Council adopt Item Nos. 1 and 2 by yeas Council Members Cappabianca, González, Jones, Schember, Thompson and Jenkins-Husband. 6. Nays. 0.

October 3, 2007. City Council adopt Item Nos. 3, 4 and 5 by yeas Council Members Cappabianca, González, Horan-Kunco, Jones, Schember, Thompson and Jenkins-Husband. 7. Nays 0.

October 3, 2007. Signed by the President. Attested by the City Clerk.

-----  
-----  
**Erie Renewable Energy, LLC ("ERE") response to City Council proposal to  
Require an Environmental Impact Study**

**1) Erie City Council lacks the legal authority to request an Environmental Impact Study**

An Environmental Impact Study, or "EIS" is a requirement arising under the National Environmental Policy Act, commonly referred to as NEPA, Section 203 of NEPA provides, In pertinent part, that "all agencies of the Federal Government shall ..... include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible office ..... (potential environmental impacts) (emphasis added). Several legal problems arise in the context of the City's proposed request for an EIS:

- \* The ERE project is not a major Federal action. In fact, it is not a Federal action at all. As such, NEPA does not apply and does not provide any legal authority for requesting an EIS.
- \* Under NEPA, an EIS is prepared by an official of a Federal Government agency, not the proponent of a project and not a prospective host municipality.
- \* NEPA and its requirements are the exclusive province of the Federal Government. The City of Erie is preempted from attempting to regulate projects under NEPA.
- \* A review of Pennsylvania environmental statutes reveals that Pennsylvania does not have a State-based NEPA-style statute, so there is no legal authority at the state level for the City to request an EIS (State-based or otherwise).
- \* Likewise, a review of the Erie City Code reveals that the City lacks any legal authority to require an EIS or anything comparable.
- \* A request by the City for ERE to prepare something like an EIS violates Due Process guarantees for development within the City. There are currently no established criteria, standards, or procedures to determine what information or analysis should be part of a City-based Study. Assuming that it could overcome the preemption problem, the City would need to provide criteria, standards, and procedures through an enabling ordinance.
- \* The proposal to require an EIS also violates Equal Protection guarantees because the City has not requested other project proponents to prepare an EIS. For example, Lake Erie Biofuels was not requested to perform an EIS, or was an EIS required before money was loaned for a proposed juice plant. Is an EIS going to be required before the GAF site is demolished, or before Cathedral Prep can construct its planned athletic complex, or before the Erie Golf Course property is sold?
- \* If an EIS is required for every proposed industrial project moving forward, City Council will discourage industry from locating or expanding here. This is not sound economic policy.

- \* A Federal Agency typically prepares and EIS for a major use permit in a National Forest). The EIS is prepared by the agency, not the project proponent or host municipality, to support a decision to approve or deny the applicable permit. However, an EIS is not necessary to obtain City-based permits (such as a Building Permit). Such a requirement would obviously necessitate a new or amended ordinance. On the other hand, if an EIS is not needed to obtain a City-based permit, what is the purpose of the Study?
  - \* Aside from the NEPA preemption problem, the City is also preempted by Federal and State law with respect to what environmental permits are required for a project.
  - \* In short, the legal problems associated with City Council's proposed misapplication of NEPA are substantial and numerous. At a minimum, Council should review this issue with the City Solicitor before taking the matter up in a public forum.
- 2) **The information provided by the various permit applications in this case will provide the information apparently sought by City Council.**
- \* An EIS often provides environmental information that would otherwise be required for a project. This is why NEPA was enacted to require Federal agencies to consider the environmental consequences of proposed legislation and major projects in a public manner before acting. In this case, however, ERE is required to apply for a number of specific environmental permits, the applications for each of which is designed to elicit information to allow the DEP/EPA to consider the environmental consequences of the proposed project. More specifically, the Air Quality Plan Approval application will analyze the projects emissions. An NEPA permit application will need to be submitted if a discharge to Lake Erie is proposed (or City of Erie pretreatment program approval will be needed for a discharge to the public sewer system) a waste management permit application for notice of intent for coverage under a general permit) will need to be submitted for tire/ash handling and storage and a stormwater construction NPDES permit application (or notice of intent for coverage under a general permit) will need to be submitted for earthmoving activities, which also requires PNDI (endangered animals) and PHMC (historical) input. In short, unlike a typical Federal project requiring special use permitting (and not much else) on Federal land, the environmental aspects of Air, Water, and Waste will all be addressed for the ERA project through the DEP's various permitting processes, all of which meet or exceed minimum Federal standards, and all of which provide for public participation.
  - \* In addition, because the IP site is already subject to the Pennsylvania Land Recycling Act and Environmental Remediation Standards Act (or Act 2), substantial information already exists concerning site conditions and infrastructure and development of the ERE project must conform with DEP approved cleanup Plans (thereby ensuring acceptable soil, groundwater, and soil vapor standards at the site). If City Council wishes to review the voluminous submissions concerning the IP site to better understand soil, groundwater, soil vapor, and infrastructure conditions, arrangements can be made to provide this information.
  - \* In short, the ERE project is already being subjected to intense scrutiny in all of the medium-specific areas of Air, Water, and Waste, including air emissions, wastewater discharges and soil and groundwater conditions, in addition to the normal earthmoving, stormwater and PNDI and PHMC issues applicable to any development of this size. It is unnecessary to require additional information in the form of an EIS.
- 3) **By requesting an EIS, City Council is effectively opposing the project.**
- \* Performing an EIS is costly and time-consuming, and creates additional opportunities (that is, in addition to other permitting processes) to mount opposition to a proposed project. As such, a common tactic of project opponent is to convince public officials to require an EIS. ERE assumes that this is what occurred here. City Council's willingness to implement an opposition tactic is inappropriate (in addition to being not legally authorized).
  - \* From a policy standpoint, City Council should not act as an advocate for KEEP or other project opponents.
  - \* If City Council believes that it should act as an advocate for project opponents, it should directly state now, on the record, that City Council is opposed to the ERE project. This will potentially save ERE wasting effort and resources, but it will also force ERE to assess its options. ERE will react accordingly and we believe that other industries thinking of locating or expanding in Erie will also react accordingly to a Council which obviously is sending a message that complying with extensive existing regulations is not enough... Erie City Council wants industries to do major things which are not even legally required. It essentially makes developing a business in the City not much more than a crap shoot. As such, City Council should carefully consider whether it wishes to signal its opposition to the ERE project.

October 3, 2007. The foregoing communication was submitted by Gregory Rubino and is entered in the minutes for information.

-----  
 Attachment to 2008 Minimum Municipal Obligation to the presented to City Council

The Minimum Municipal Obligation for the pension plans of the City of Erie is being Certified with City Council. This procedure is required under Act 205 which pertains to the funding requirements of State regulated Employee Retirement Programs.

The 2008 Minimum Municipal Obligation totals \$6,148,176. This year's Minimum Municipal Obligation is \$177,244 (2.9%) more than last year's Minimum Municipal Obligation. The increase is the result of payroll increases compared to last year.

In order to certify this MMO timely, we used the January 1, 2005 actuarial valuation report to prepare this Minimum Municipal Obligation. This is the last actuarial valuation report completed for the Plan and it is acceptable to use this valuation at this time.

The January 1, 2007 actuarial valuations have been delayed since the Pension Boards have been waiting for an answer to a question posed to the Auditor General regarding the Plan assets. The Auditor General recently responded to the request. In their response they didn't answer the question but instead changed their audit and eliminated their initial finding.

According to the Pennsylvania Retirement Commission, if we complete the valuations by the end of the calendar year we have the opportunity to revise our MMO and use the more updated factors.

There have been no changes in the actuarial methods or assumptions since last year.

Respectfully submitted,  
S/ Casimir J. Kwitowski

October 3, 2007. City Council receive and enter in the minutes for information.

---

October 3, 2007. City Council on motion of Mr. Cappabianca, Seconded by Mr. Schember adjourned at 11:35 a.m. by yeas Council Members Cappabianca, González, Jones, Schember and Jenkins-Husband. 5. Nays. 0. (Mrs. Horan-Kunco left the meeting at 10:55 a.m. and Mr. Thompson left at 11:10 a.m.)

Attest:

---

City Council President

---

City Clerk