

Village of Windham, Ohio

Minutes of the Special Council Meeting

Held September 2, 2010

At 6:09 PM, the Honorable Mayor Robert W. Donham II called the meeting to order and asked for the roll call.

Roll Call: Rachel Barrett – present, Scott Garrett – present,
 Kelly Meszaros – present, Jena Miranda – present,
 Linda Rininger – present, Phil Snyder – present

Also present were Atty. Tom Reitz Solicitor, C. James Moore, Mike Iwanyckyj Village Administrator, Bruce Rininger, and Sheryl Prem

Mayor Donham said I would like to apologize to all of the Council Members. I do not believe Lloyd had time to put together an agenda for tonight's meeting, but we only had two items which were on the special notice meeting for tonight being OPWC award for Main Street and the second which was requested of me by Mrs. Miranda which is an executive session to discuss the personnel issue as it relates to the suspension of a couple of police officers. Mrs. Miranda said I was going to ask for a workshop for a free unregulated discussion. I know you have to have certain reasons to go into executive session. You can't just go into executive session to talk. I wanted an open forum amongst us all to work out our problems.

Mayor Donham said I'm willing to go in under whatever parameters are permissible to speak about whatever we can. I just want everybody to know, it's not my request for the session but I spoke to Jena on the phone and I think we kind of wanted to have the same discussion as a group that the two of us had. Mrs. Rininger questioned is that what you wanted to discuss? Mrs. Miranda said I just wanted to discuss that we all need to work together. Mrs. Rininger said that's not what he is saying, so we have to be specific. I think what you want is a workshop where everybody can be open about how they feel about things, correct? Mrs. Miranda said yes and to be sure that we're all going in the same direction, that things aren't happening that we don't know about, that we're not mislead and things like that. Mayor Donham said we can have that discussion, but it will have to be out here. I don't know that we would be able to do that in executive session. Mrs. Miranda said I don't think that what I want to do is appropriate for executive session. Atty Reitz said I agree. Mayor Donham said does Council want to have an executive session at all to discuss any of the parameters. Mrs. Miranda said my goal was simply to get us on the same page. Mr. Snyder said I certainly would like to have an executive session to find out what's going on. I don't know what's going on. Mrs. Rininger asked if it is to the point where it needs discussion by Council yet. Atty. Reitz said no, some events took place last week and they are all under investigation. The investigations have not been concluded, normal procedures have not run their course. I don't have anything to report to you at this point. The officers who were involved have been placed on an administrative leave with pay. The reason for that is they are receiving their compensation so they are not damaged while the investigation goes on. The investigation may show that they acted entirely appropriately, it may not. The point is we haven't penalized our officers while the investigation continues. I did speak with the individual who is doing the investigation earlier today and it is not completed, so I don't have anything that I can report to you. Mrs. Miranda said the reason that I asked for the discussion was because when we hired these ... Mayor Donham interrupted to ask if we got a roll call yet. He was answered that we had. Mayor Donham asked if Council just wanted to open it up for discussion before we have the OPWC. I'll just open the floor. I want to make

sure we are following some type of... Mrs. Rininger said let's do the OPWC and get the official stuff out of the way.

Mayor Donham said you have an ordinance before you to award the Main Street Resurfacing Project to the lowest and best bidder. Ronyak Paving of Mantua is the apparent. Mrs. Rininger corrected to say Ronyak is from Burton. Mayor Donham continued saying, is it Burton? Ok, Ronyak Paving of Burton is the apparent lowest and best bidder. The base bid amount was \$150,454. Remember we talked about A and B? There's really not enough going to be left in there to do B which goes all the way to the railroad tracks, however the arsenal project, the water lines where they are going to have to make the pits to put anyway is going to be in that section so we are going to have between what's available in the base bid and what's available on the grant about an extra \$7,000. So my recommendation is going to be doing what we did with the catch basins and allow the Village Administrator to adjust quantity during construction so that we use the entire grant amount. We are sending anything back. So we have \$157,000. Mrs. Rininger said maybe you can try the Commissioners for the paving. Mayor Donham said they have repaving as part of the project. We always ask. The bid books are in there. I think we had six bidders. This Ronyak was \$18,000 lower than the second highest. Mrs. Rininger asked about their quality of work. Sometimes when you chose the lowest amount, you get the lowest quality. Mayor Donham said they do all of Geauga County so they are reputable. The engineer is responsible for checking out their references and stuff but Ronyak is Geauga County Engineer's only paving contractor and also the City of Painesville. Atty. Reitz said Ronyak also does paving in the City of Hiram and you can inspect their work at the brand new Ravenna High School. I have very good experiences with them through my clients. Mr. Garrett said he had a real basic question; our grant was in the amount of \$136,500 based upon \$170,700. Because the cost came in under that, does that reduce the grant amount? Mayor Donham said we still can spend up to \$170,700 including our matching funds. If we don't spend up to that amount we will lose 80% of every dollar we don't spend. That is why I want to spend that extra \$7,000 because we are getting an extra \$14,000 roughly in match for it. What we'll do is, the estimated quantities get us to \$150,000 but we will be approving the least bid cost so I think it is \$125 per yard of asphalt. So we will run that until it runs out. It will either be additional asphalt or additional gutter milling. Those are really the only two projects and that will be up to Dove (Fall, Street Superintendent) really whether he wants to instead of doing gutter mill which is what we are doing milling ten feet on each side, we may mill the entire surface. I'll be asking to go ahead and approve and authorize Lloyd and I to enter into a contract. So we'll need a suspension of the rules. Mr. Snyder made a motion to suspend the rules on Ordinance O-2010-26 **AN ORDINANCE MAKING A DETERMINATION OF THE LOWEST AND BEST BID FOR THE MAIN STREET PROJECT, AWARDING THE CONTRACT TO RONYAK PAVING, INC. AND DECLARING AN EMERGENCY** which was seconded by Mr. Garrett. The vote of Council was 6 – 0 in favor of the motion. Mr. Snyder made a motion to adopt Ordinance O-2010-26 which was seconded by Mr. Garrett and carried by a 6 – 0 vote of Council.

Mayor Donham said the schedule on this is tomorrow they will receive their award letter, preconstruction meeting is scheduled for Monday, September 13th here at 3:30 P.M. We will get them a notice to proceed on September 14th and they have 45 days to complete the project so November 1st is the cutoff for the project. Mike, if you have any questions on this, you can call me but Burgess and Niple will be a better contact. We should have contract documents in the office. He just needs to come in and we'll swap out some pages, but first Ronyak will get it and he will have all the signature spots. He will ship it here. There will be signatures for you two, Lloyd and Tom. And then when I get back I'll sign everything and it should be away. The floor is open for discussion.

Mrs. Miranda said I guess I wouldn't want it recorded, I just want to have a discussion. Mrs. Rininger said it has to be. Atty. Reitz said yes. Mrs. Miranda said a workshop doesn't have to be. Atty. Reitz said you have to keep a record. Mrs. Miranda said well then I don't have much to add; the whole point of mine so we could talk about it and air. I guess there is a hierarchy that is supposed to be followed. People are supposed to be informed of everything. The Mayor would more than likely report to the President (of Council) and the President would carry things to us. The behind the scenes stuff doesn't work. It makes for mistakes. Mayor Donham said you mean something specifically or? Mrs. Miranda said you know hiring a second prosecutor or solicitor. I was trying to show agreement and support, but to have it come out the way it is, all this to be undermined and people behind each other's backs, I'm not into that. Mayor Donham said if there is a concern about the hiring of a special prosecutor to prosecute an elected official. Tom is just physically not able to... Mrs. Miranda said we didn't know, all we knew two months ago was something was going down. We had yes votes because I believed it was for assessing taxes and things like that. I had no idea there were going to criminal charges or something like that. Mayor Donham said I wasn't at the meeting where you guys discussed it with Tom, but at least my discussions and what I knew about it was that one of us, and one of us being one elected official had problems and a special prosecutor needed to be hired because Tom would be conflicted. Mrs. Miranda said I think it was a committee meeting where Tom was able to and we were able to express it a little bit openly that there were greater problems than what we see before us. When we are bringing in a new Chief, he can't answer to seven bosses. He needs to answer and he should only ask to talk to us or ...

Mayor Donham asked what does that have to do with the special prosecutor? Mrs. Miranda said I'm just saying behind the scenes stuff. Mayor Donham said I'm just thoroughly confused Jena. I'm not trying to be difficult.

Mrs. Miranda said I'd like a workshop where we don't have to entertain anybody. We get our cards into piles. Mayor Donham said I don't know that there is any procedure that I'm aware of that allows us to meet as a group without ... Mrs. Miranda said you've got to be kidding me. Mayor Donham said I don't; as public officials any time we discuss public business, it's my understanding that it has to be in an open meeting. Atty. Reitz said that's correct. Mrs. Miranda said what's a workshop? Atty. Reitz said it's a meeting; it's a meeting of your Village Council where no action is proposed but where Village business, options, dialogue takes place. And if that's what's taking place, it is an open meeting. It's got to have a record. It goes to such an extreme as this. If you were to have a social gathering with the Township Trustees for the purpose of promoting a dialogue between the Village and the Township, if you had at that meeting four Council members talking about Village business with Township Trustees present, that's technically a meeting where minutes should be taken. Mrs. Miranda said what if we wanted Tim Ryan to come in and trained us on something? Would that have to be, you know, that learning session, that's what I'm trying to get at. Atty. Reitz said that's perhaps a little different. Mrs. Miranda said that's what I'm looking for, something where I know then that my lead person is my President, the solicitor always costs us money, the Mayor always has plenty on his plate, the Fiscal Officer is very busy. You know, just those sort of things, there's no, if she (President Rachel Barrett) doesn't know then she can't tell us. And if that's going on then it has to stop. Atty. Reitz said Mrs. Miranda, I think that, let me see if I can get you to where you want to go. Because if you are talking about a session where some third party comes in for the purposes of educating the Council as to what the laws are and what the procedures are in place, and the Council doesn't transact any business, they are simply there to educate themselves, that's not going to require meeting minutes. An example of that would be, you all have to go to an Open Meeting and Open Records Training Session as part of your requirements for being members of Council, and the Mayor. The Mayor has to do that also. Now you can designate somebody to attend in your stead and many municipalities do that, but I wish they wouldn't because the Council members can go to these sessions and even if you all go to the same one, it

is not a Village meeting because you are not discussing Village business in that, or at least you shouldn't be. What you are doing is you are learning about the law as it applies to your behavior. These training sessions are put on by the Attorney General's Office and they are statutorily required. That would be an example of a situation where there would be dialogue about procedures generally, not just for Windham. But if you are talking about a work session, not an educational session, but a work session where there is an open dialogue about airing differences, deciding that you don't like current procedures and you want to change the internal procedures here in the Village. Even though it's a work session without any formal action taken, that is a Public Meeting which must be open to the public and where minutes must be taken. Mrs. Rininger said, now can they go into executive session? I don't think she wants the dirty laundry out there before we have some sort of resolution out there in front of the public, but I think, maybe I'm misinterpreting, but I think she would like to have a private session. Can we go into executive session to discuss procedures that need to be corrected, or concerns she has regarding procedures and communication within the Council and the Mayor's office or is that something that we must do out here in public? Mayor Donham said I think it would have to be procedures as it relates to discipline or personnel. Mrs. Rininger said well for tonight it does, because you kind of hog tied that, but ... Mayor Donham said, no it just says personnel on there. Atty. Reitz said if we are going to go into executive session, we must confirm with the Open Meeting Laws, Section 121 and 122. There are specified reasons for going into executive session; personnel is one of them, but you can't just say broad personnel. You must be more distinct than that. An example that would apply this evening would be motion to go into executive session to discuss discipline of personnel within the police department. It is my view that would be sufficiently detailed enough to comply with the Open Meetings Law and to justify an executive session. But, in a representation to you earlier, that investigation hasn't been complete and the fact that I don't have anything conclusive to report to you stands. Mrs. Miranda said I've got a thing to add; at the last meeting I said the twenty page minutes; and I said why we go summary. I know by law they have to be summarized. They do not have to be verbatim. And then to have this recorded and have it be documented that the Mayor thinks Jena is confusing. It's ridiculous, it's not appropriate, it's not helping the Village in any way. Because he's not on the same page as me doesn't make me the idiot. Mayor Donham said I just said I was confused. Mrs. Miranda said it's on tape and it's going to be written so let it be written let it be heard. Mayor Donham said but that's what happened here. That should be reported. I don't necessarily think it needs to be typed up verbatim. Mrs. Miranda said at the official council meeting when it was opened for discussion you ruled the roost and said we can't. Lloyd, do you think twenty pages of minutes is a lot of work? Mr. Billman said, if Council would decide by motion to make it so that I could be more general, and say in general the Fiscal Officer (Clerk of Council) should make general statements about minutes and it was so passed by a five to one vote of Council, I could certainly do that. Mrs. Miranda said what needs to be recorded is who motions, who seconds, any discussions. Mr. Billman said the other caveat on that if an individual, and I'm not signaling out any person in particular, but if an individual wanted to make a point and that individual wanted those statements to the best of my ability to accurately reflect what was said, then maybe the person should say from this point forward my speech or my statement needs to be in total or whatever. Mrs. Rininger said, or statement for the record. Mr. Billman said we could do that way. Atty. Reitz said you could pass a motion like your Fiscal Officer has suggested, but you have the final say. You review the minutes. You can say these are accurate as far as they go, but they don't say all the things I think are essential and so they need to be elaborated on in these specific sections and truly your Fiscal Officer has a difficult task because he is supposed to be clairvoyant with respect to all six of you. Mayor Donham said the reason they are so detailed is this Council decided they weren't detailed enough. I don't have a problem either way. Mrs. Rininger said what happened with that was some speeches were being put in and some were being omitted. If we do either one or the other, I've got no problem with it. Summarize or verbatim but make up your mind, because

it still happens. Some of the stuff is left out and some of the stuff is put in. Just get it where it needs to go. Mayor Donham said I'm fine with as little or as much. Atty. Reitz said I get a little bit apprehensive as far as too little goes. I'm not saying twenty pages is the standard you should try to go to, but I do really strongly recommend that it is money well spent to figure out how to use this recording system that you purchased six or eight months ago. If it costs you five hundred dollars to get somebody trained to operate that, you are going to save it in the not too distant future by virtue of your Fiscal Officer isn't going to have to spend a day typing up minutes. Mr. Billman said the minutes still have to be prepared, you have to keep a paper copy of everything. Atty. Reitz said you do, but in the event a question is raised in the future the summary minutes didn't encompass everything that was said that evening with this recording system, you've got it all there. You've got a much better likelihood of being able to identify the speakers. And we've got this recorder sitting right here but you can tell by reading the minutes that it's difficult to differentiate between voices. Mrs. Meszaros said I thought we were going to try the voice recognition software. Mrs. Rininger said, yeh, but I haven't been able to get down there to get into that. Mr. Billman said he called the company that manufactured Linda's product and what they told me was they had no one who was using it in a Council scenario. They said that the voice recognition was currently attuned to one individual and what I could do is to put on the headphones and dictate into the thing which really only saves me typing. I would still have to back up. That might even be worse. Mrs. Rininger said that's funny because mine does. Mr. Billman said that's the company I called, the dragon. Mrs. Rininger said I set it up for three different voices and it recognizes them. Mr. Billman said that's why I asked if you could bring it in. Mrs. Rininger said, I will. Like I said I have been working and haven't been able to get here before the office closed. Atty. Reitz said the point is if you start using that system, you can have a higher level of confidence in minutes that are more toward the summarized end of the spectrum as opposed to the verbatim, because in the event there is a question in the future, you have a good copy of what was literally said. Mrs. Miranda said it is good to have it on tape, but I'm sure it takes more than eight hours, it takes longer than a day. And we are currently behind two months, right. We got one set of minutes which were approved from a previous month and then another set of minutes from last month. So it's that backlog and then no actions are being taken which really stinks. There is so much stuff to do and we are fighting losing battles. Mayor Donham said I do like having accurate minutes, but if it takes up too much time, it's just not worth it. Mr. Garrett said one possible solution would be to make the minutes general and if you wanted something verbatim for the record, then you could say I want this reported for the record. Mrs. Miranda said are you allowed to preface it with off the record, and then shut the tape off? Mrs. Rininger said no, you can't do that. Mayor Donham said why don't we just get a camera and put it up there. We've heard that somewhere. Mrs. Rininger said we could try using for the record, but that's going to be a nightmare also. I know I've requested them on CD, can you still do that, Lloyd? Mr. Billman said it was not an easy process and I had to involve the police department and goodness knows they have enough to do without involving Gordon Fischer to try to get because I don't have the equipment to do it. Mrs. Rininger asked wouldn't the new system do it? Mayor Donham said none of it, whatever we want to do, the technology is out there to do it. I guess making a decision of whether we want very detailed minutes and voice recognition software and everything that goes along with that or is an old fashioned tape and summary minutes good. And if somebody wants it, they can get a copy of the tape, or do you get electronic? To me it is whatever is Council's pleasure. If I have something that is important to me, I'll hand it to Lloyd and say make sure this get's reflected in the minutes. Mrs. Rininger said how about we get training on the system we have now and maybe in six months looking at a little bit better situation. We've got the equipment, we need to learn how to use it. Mayor Donham said feel free to contact me in numbers less than a quorum if you have any questions.

Mrs. Prem said I checked out the sound system and it doesn't seem that hard to hook it up, but I was told you had to take it down each time. That was one of the problems. Mr. Garrett said couldn't it be left here. Mrs. Rininger said different groups use this room. I think that's where the problem was last time. Mayor Donham said it doesn't have to be turned on. Mr. Billman said you run the risk of having it damaged or disappear or something like that. We have had folks from the library use our room. Mayor Donham said I don't think they are stealing our microphone system. Mrs. Miranda said it just comes down to when you say on the minutes and we are going to approve this and you just hope everybody is up to speed on having read it and is prepared. You know we set deadlines and do things. Mayor Donham said it depends on what you are talking about. Mrs. Miranda said S.O.P.s and manuals. Mayor Donham said you would basically would come from the Department from which it is covered. So the S.O.P.s are going to be at the direction of your Police Chief. Mrs. Miranda said we have them out there. I know I have a copy of the new manual that just went through. Don't you want to set a deadline and say everybody be ready to vote, we are going to vote on this day. Mayor Donham said I've done that at least four times and it just went back to the Committee. Ultimately the Safety Committee would have to recommend the S.O.P. and then it goes to Council and Council would have to approve it. We get a lot of Safety Committee recommendations and then it gets to Council and it gets backed off. That's been my historical experience with it. Mrs. Miranda said I think some of that reason is because people are uninformed. You don't want to vote yes if you don't know what is going on with it. It's not that there's dissension. It's that people are uninformed. The more you use your people and share the direction we are going and go somewhere with it; if only one person knows where we are going it doesn't go anywhere. Mayor Donham said I don't have anything specific that I'm not giving anybody. I haven't asked for any legislation to be passed that is new. Mrs. Miranda said that whole tax assessing, I felt mislead. Atty. Reitz said I'm sorry if you felt mislead because I'm sure what I said was there are prosecutions which are being contemplated where I have a conflict because I represent all of you. And I can remember the deer in the headlights looks around the table as many of you around the table looked around toward each other and several of you looked at me and I purposely didn't give any clue as to who might be involved because I have purposely kept out of it. I had guesses only; I didn't actually know and that's because I represent you. I'm the one who brought that forward. The Attorney involved was my recommendation. I selected him because Tom is experienced and I believe he is a very good lawyer. If you felt mislead by that I'm sorry, it was not my intention to mislead you, but it was for prosecutions. Mrs. Miranda said you are supposed to act on behalf of us as a Village if any of us ask for advice and we want to lead the Village in this direction, we probably would want to clear it with you to make sure we wouldn't do anything wrong. But directly representing or prosecuting any one individual, I'd see where you wouldn't want to do that. You are out of it because you represent the Village and you are unbiased to give advice to us. Atty Reitz said to all of you. Mrs. Miranda said all of us in the most favorable way for Windham and wouldn't a solicitor then know what was going on and make the suggestion to take it outside of his job. Atty Reitz said yes, and I did. Mrs. Rininger said if I may, I think once the resolution comes it is going to be clear by all. I think the questions that you have are going to be clarified when this is all done. Atty. Reitz said I am frankly looking forward to the opportunity to tell you our investigation revealed these events. I am not the prosecutor on the criminal charges which have been brought. On the personnel issues, I am involved. Because they are involved with that prosecution, having the special prosecutor do independent investigation on what actually happened. I have directed him to give a written report to the Mayor because the Mayor is the one who is the acting Chief of Police who has to determine whether disciplinary action is merited and if it is what that action should be. I've not come to any conclusions and have told the Mayor that he shouldn't either until that investigation is done because we don't have the whole picture yet. I've probably not heard all the rumors you have but I've heard a lot of rumors about what has happened and I'm purposely not reaching any conclusions because it's premature. I had hoped to be able to give

you some information this evening. Mrs. Miranda said she had heard of situations where we were bring charges against individuals for back taxes based upon the tax administrators decision and then it gets to court and the citizens were advised to plead guilty and it gets to court and the judge is like what's going on, why did you plead guilty, you have already paid your fees and so it just goes through the system so to me that's a waste of money and court time as the judge spoke, this is a waste of my time. We have to have that in order. We can't just prosecute for \$14. You don't want that tax administrator taking that to court wasting that judge's time, wasting the prosecutor's time. That's crazy. I have they are throwing our cases out left and right. Atty. Reitz said that is not true. We have not had a single dismissal since I have been here that was not directed after my review and I can tell you without exception, I have not lost a case on your behalf. Not a single one. The procedure is this. When a violation of the code is determined, notice is given, attempted notice is given to the individual involved. If there is no response then we do go ahead and file criminal charges. Once the charges are filed with the court, then we have a pretrial which is a meeting at the courthouse between the prosecutor and the defendant and at that point whatever the Village decides to do depends upon how the defendant has reacted at that time. Mrs. Miranda said so we made that call we got the list, we got that list at the last meeting that was the Council's call to proceed and we hoped that it was all in good order, right? Atty. Reitz said that is assessing unpaid taxes, that's not what I'm talking about. Mayor Donham said that's assessing unpaid water bills. Atty. Reitz said that's not what I'm talking about. I'm talking about criminal prosecution for failing to comply with the tax code and as far as fourteen dollars, there is a fifteen dollar non-filing fee and if you don't file your taxes you will get prosecuted for not filing your taxes and yes we do that and my direction has been every individual is treated absolutely uniformly. I can tell you what the recommendation is going to be what the sentence will be depending on what the offense was and when the defendant made it right. We make every effort to do it exactly the same for every entity and every individual. Mrs. Miranda said innocent until proven guilty and it is up to the Village to prove their guilt. Atty. Reitz said absolutely, and at their pretrial Lori and I don't take a sneak approach. We go to these people and say here is the letter we sent you, here is the tax return, here is why we think you live in the Village. This employer has reported income and you haven't filed a tax return. We show them all our evidence. By the time you are at the end of that pretrial I've shown you my hand because I don't think it is a game of gotcha. It's a matter of here is what we have and we have dismissed cases but only when the defendant shows that he didn't do it or he paid or they didn't live in the Village but they didn't tell us about it until we filed the lawsuit. So we are very conscious.

Mrs. Meszaros made a motion to adjourn which was seconded by Mr. Garrett and by a 6 – 0 vote the motion was carried and Council adjourned at 6:50 P.M.

Respectfully submitted,

Attest

Lloyd C. Billma4n, Clerk of Council

Robert W. Donham II, Mayor