

Village of Windham, Ohio
Minutes of the Special Council Meeting
Held August 11, 2009

At 6:00 PM, the Honorable Mayor Robert W. Donham II called the meeting to order.

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

Also present, Village Solicitor Tom Reitz, Maurice Hankins, Mike Whan, Tom Brett, C. James Moore, Mike Iwanyckyj, Brenda Slusher

Mayor Donham said the first item of business for this evening is Resolution R-2009-27 which comes under the Safety, Personnel and Rules Committee with Phil Snyder as Chair.

Mr. Snyder gave the second reading of Resolution R-2009-27 A RESOLUTION SUBMITTING THE QUESTION OF AN ADDITIONAL TAX LEVY FOR FIRE DEPARTMENT AND EMERGENCY MEDICAL SERVICE PURPOSES PURSUANT TO SECTION 5705.19(I) OF THE REVISED CODE AND DECLARING AN EMERGENCY.

Mayor Donham explained that this is on second reading because he knows there will be at least one more meeting with the Township to try to persuade them or see what direction they are heading. If there are any questions concerns from the audience or from Council members, this is the forum to discuss them.

Mr. Slusher asked the Mayor if he knew the amount by which a Village Resident's taxes would increase if the levy passes. The Mayor said that it would be 20 cents for every \$100 valuation on a house or \$2.00 per \$1000. Most of the houses in the village are in the \$70,000 range so there would be \$14.00 additional per year additional taxes for a house in that price range. The levy committee, should Council pass this Resolution, will do the same thing we did with the other one this past Spring, make it painfully obvious what is going on, what the need is for, and point out that this Council has exhausted every measure. We only have until the eighteenth to make a decision and here we are on the 13th (the next Special Township Trustee Meeting) still negotiating and making every effort. We have had four meetings in four weeks, special meetings to discuss this and try to make sure we are doing everything we can. That's all we can do. I didn't see any other special meetings being scheduled on the other side.

Mrs. Rininger said call me an optimist but if we can get everything resolved but not before the eighteenth can we withdraw it from the ballot. Atty Reitz said we could.

Mr. Snyder said there is a meeting scheduled with the Trustees for this Thursday and I want to be perfectly clear what we will find acceptable to agree to with coming out of this meeting what we will accept and what we will agree to accept. This will be a Joint Fire District, correct? Mrs. Meszaros said that's the direction we are going. Mayor Donham said I think the direction the three members of Council who will meet with the Trustees are going to discuss is our last proposal which is the last proposal which has been put upon the table and hasn't been responded to yet. Mr. Snyder clarified that this is the Village's last proposal. The Mayor said yes, our last proposal which was the last proposal that was given. That is the formation of a Joint Fire District effective January 1, 2010. I think those members of Council are going to go

thru each line of the agreement and ask agreeable yes or no and find out what the problems are with it. We know it is a legal agreement. Both legal counsels from the Township and our side co-drafted it. It is a pretty standard agreement. Last time we met with them, the change that they requested was that the additional funding the \$13,000 extra dollars that it would cost to run a joint district would be shared by each entities general fund in a proportional amount based upon call volume. So we pay, if we run 60% or 70% of the calls we will pay 60% to 70% of the additional \$13,000. That is actually in the agreement that they have. So they haven't really come back and given us what is disagreeable. So I think this committee's task is to go find out what is disagreeable and negotiate up until the last minute.

Mr. Snyder said that's find, I agree with that. I just don't very much trust the Trustees. I trust the group that's going from the Council completely. I know they will do the best job they can, I find it hard to find much trust in the other side. Mrs. Meszaros said we are going to do our very best. The Mayor said he has told Council and has told the Trustees if it is a legal Joint District you really can't go wrong with that. Keep us posted on that; obviously it's Thursday and we are going to consider this Resolution for a vote on Tuesday, August 18, 2009 at Council Meeting and after that the Committee is going to be putting information out to the public that we need this levy to replace funding we no longer have because the Trustees have decided to form their own Fire Department to own and operate independently of the Village and from what I've seen in the past their feelings are ruffled pretty easily and that's going to really cause a rift if we have to actually try to pass this levy in the absence of an agreement because it's going to be pretty clear to the general public that we need to replace revenue that the Trustees are withdrawing.

Mrs. Meszaros reiterated that they are going to the very best job they can on Thursday. The Mayor said that he really hopes so, he doesn't want to be the governing body who is in control even though I think we have done everything we can possibly do and I think it is defensible, the bottom line is I don't want to be in control when this thing does split and unfortunately it seems like it's going that way. I also hope that if for some reason we don't get an agreement, all of Council supports the additional levy because we are going to need additional funds to maintain the same level of service from the Fire and EMS standpoint. And you only have to look at the recent news to realize how important it is. A lot of times there are these barbs going back and forth in negotiation and gotcha politics and laughing but you realize real quick it is not a game when somebody gets hurt. Mrs. Meszaros pointed out the cost to the taxpayers on both sides will increase. Mayor Donham said the Joint Fire District is the cheapest available option to the taxpayers. Anything short of that is not acting in the best interest of the residents, so if we can get one and we can agree to it we will have a bunch of heroes. If not, we're going to have to sell this to the public and I hope everybody is on board with it.

Mrs. Rininger said she would like to request that when we get ready to vote on this Tuesday, we will have those numbers so, because we are going to have to answer questions. Mayor Donham said he would have those financial stats for the Tuesday meeting. Mayor Donham asked if there were any questions on the Resolution from Council and from the audience. Hearing none, he said he would move on to the next item on the agenda.

Solicitor Reitz addressed Council and said two meetings ago an issue was raised by Mrs. Rininger about whether proper notice had been issued before the meeting. And she called out as her authority and reading it on the surface it indicated that proper notice had not been given for that meeting. The next morning, I looked up that section to try to get an understanding about why there was something having to do with a notice of a meeting for a Village that I wasn't familiar with. It turns out that you need a little bit of an explanation about the forms of government so that I can explain what happened.

The Ohio Revised Code which is the enabling legislation allows municipalities in Ohio to have municipal corporation establishes two regular generally used forms of government one is for Cities and one is for Villages. It's called statutory form. In the event a municipality decides to, they can elect an alternative form of government and there are three alternative forms of government. The first is the city manager plan, in Portage County Kent has a city manager. That's the only one I'm familiar with. The second one is a commission plan. This is not one that is used with any regularity. Summit County has a board of commissioners. That's the only one in the state that I know of. The third one is the federal plan which is patterned loosely after the federal government. The citation that was brought to your attention two meetings ago is the notice provision from the federal plan, and it is different from the general statutory plan of the Villages. And I've never represented a federal plan community frankly I don't know of any. That's why I wasn't familiar with it. I did check with your fiscal officer who is the custodian of all of your records and there is no record in the Village of Windham of you electing one of these optional forms of government, so you are a statutory Village. That means that that provision didn't apply. That being said, that means that the notice for that meeting was defective, and so I would like to tell you about what the actual notice should be, and that is the procedure that has been followed for a special meeting both the one you held last Thursday and the one you are holding tonight.

First who can call a Special Meeting, I'm not talking about an Emergency Meeting because that's a separate issue, but a Special Meeting can be called by under the Ohio Revised Code three members of Council or the Mayor. You have an ordinance here which says that a Special Meeting can only be called by three members of Council. Because you are not a Charter Municipality, I have my doubts as to whether you could take that power away from the Mayor, but I would rather not fight about it, so you should have received a notice both for last Thursday and tonight that the meeting was called by three of your colleagues. So that complies not only with the Ohio Revised Code, but also with your local Ordinances. That's the authority you called a special meeting. The notice for the Special Meeting must contain the time, the place, and the purpose of the meeting. That's in conformity with the Ohio Revised Code 121.22. I anticipate that someone would want to know, well Tom are we limited to just the things that are provided in the notice or can we use a general anything that was going to come before us. Well you certainly are limited to the things that are listed in the notice, however next week when you are having your regular Council Meeting but not at your regularly scheduled time, that's technically a Special Meeting and your notice for that meeting should say all of the things that would come before the Council on a Regularly Scheduled Council Meeting. That's legally permissible as long as its not used as subterfuge for what you really want to talk about. It is not permissible to say anything that comes before the Council when two or three or four, however many of you are actually deciding well we really only want to talk about this levy we are going to put on the ballot. That is not permissible. Why didn't I go over that first? That's a factually specific situation, but I warn you about that so that you don't get yourself into difficulty. The notice has to be given to the Council members. There is no statutory requirement that says it has to be in writing, but it is better to be in writing because that removes any question what notice was given and to who. The notice to members of the Council must be given at least 24 hours in advance of the special meeting. It is also a question of what notice is required to be given to the press or to the general public. There is no requirement of publishing it in a newspaper, so although you did have a notice placed in the newspaper for two meetings ago it wasn't necessary the reason that that meeting was defective was that the Council members didn't get adequate notice. So I think you made the right decision by not conducting any business at that meeting and you didn't compromise your ability to act on the important matters that are coming before you. There is a provision that indicates that if the press or any citizen is interested in a specific issue, they need to tell the designated person by rule that they are interested and in that case the individual is entitled to notice. In one of my other municipalities, I have a citizen who is very interested in the zoning of municipal land. They have filed a

standing request of the clerk of the city council that anytime the council is considering any issue concerning this, I want to know. And if the council holds a special meeting for that purpose that citizen is entitled to notice and if they don't give that citizen notice, any action taken by the council is improper and council cannot act. Those are standing rules that apply to Special Meetings of your Council. The Ohio Revised Code in Section 121.22 indicates you should have a couple of other things in place which I think are probably, well they are questionable in your present case and so it is my intention to come before your Rules Committee and submit some suggested changes to bring you in full compliance. And you won't be wondering, hey did we comply with this or that and your Ordinance guidelines will all be in the same place and anyone will be able to tell quickly without any second guessing. I wanted to let you know about this. I know some of this is inconvenient, but you handled yourself well and kept yourself out of trouble.

Mayor Donham asked if anyone had any questions. Mrs. Rininger asked even though we aren't under the Federal Plan we were in violation of the open meetings act isn't that correct? Given that you didn't have proper notice for it, it would be a technical violation but the sanction would be minimal. Mrs. Rininger said that any action taken would have been nullified. Mr. Reitz said yes, but the only action taken was that did we have proper notice, no we didn't motion to adjourn. So you didn't hamstring yourself by going forward. Mrs. Rininger inquired if we had gone forward, it would have made those issues invalid. Mr. Reitz said, so you should thank your colleague, Mrs. Rininger because she did you all a service by calling it out.

Mr. Snyder made a motion to adjourn which was seconded by Mr. Slusher. Vote of Council:
Ayes: Mrs. Barrett, Mr. Garrett, Mrs. Meszaros, Mrs. Rininger, Mr. Slusher, Mr. Snyder.
Nays: None. Motion carried at 6:19 PM.

Respectfully submitted,

Attest

Lloyd C. Billman, Clerk of Council

Robert W. Donham II, Mayor