

# Village of Windham, Ohio

## Minutes of Council Meeting

Held July 26, 2016

At 7:00 p.m. Honorable Mayor Deborah Blewitt called the meeting to order and led in the pledge of allegiance to the flag of our country.

Roll Call:	Sandy Patti – present	Sheila Moore – present
	Scott Garrett – present	Phil Snyder – present
	Linda Rininger – present	Cheryl Taylor – present

Also present were: Jim Moore, Tom Brett, Terri McIntee, Eric Breiding, and Matt Merchant.

Mr. Snyder made a motion to approve the minutes of the June 28, 2016 Council Meeting, which was seconded by Ms. Moore and carried by a 6 – 0 vote.

Mr. Garrett made a motion to approve the minutes of the July 6, 2016 Special Council Meeting, which was seconded by Ms. Patti and carried by a 6 – 0.

Fiscal Officer Taylor gave the Financial Reports as follows: The Income Tax collected year to date June 30, 2016 was \$318,059.87. The expenditures for the month of June 2016 were \$173,373.70 in checks and charges. Check numbers 32286 through 32367 were paid from the primary checking account during June 2016 with five checks, numbers 32294, 32295, 32296, 32297, 32363 voided during the month. Direct Deposit Vouchers 248-2016 through 271-2016 and 275-2016 through 290-2016 were also paid during the month of June 2016. The all funds reconciled balance for June 2016 was \$1,396,206.21.

Village Council President's report by Phil Snyder – Mr. Snyder had nothing at this time.

Dispatchers Police Report for June 2016 by Linda Rininger – Mr. Snyder made a motion to accept the Police Report for June 2016, which was seconded by Mr. Garrett and carried by a 5 – 0 vote, with Ms. Patti abstaining.

Mayor's Communication by Deborah Blewitt – Mayor Blewitt said that the Windham Historical Society delivered a check for \$584.00 for the Village's portion of the ticket sales. The Mayor thanked Mrs. Taylor, Mr. Garrett, and Ms. Patti for helping with the circus. Mayor Blewitt said that she and Cheree Taylor attended a grant writing class. The Mayor also attended a grant writing class at Portage County Regional Planning and met their grant writer, Amy and she is coming to meet with Mayor on August 11, 2016 to see if she can help with some grants for the community. National Night Out will be Tuesday, August 2, 2016 at 5:00 p.m. at the Community Center and the Mayor encouraged all the Council members to attend. The Mayor asked why the police have to hand deliver the Council packets and why they can't leave them in the door if no one is home. Mr. Snyder said that there is an issue with the security of the information in the packets. Mayor Blewitt said that she believes it is public record. Mr. Snyder said that it is not public record until Council acts on it. Mr. Reitz said that Mr. Snyder is right, with respect to the minutes; however all of the other documents in the packets are public records because they document the activities of the Council. Mr. Reitz confirmed that the police are not required to deliver the packets, however this is a common practice in many municipalities. Mr. Reitz also confirmed that it does not have to be placed in someone's hand. Police Chief Breiding said it's not a problem to deliver the packets, however it becomes a problem when

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there is no one home to accept the packet. Mr. Garrett suggested making one attempt to deliver it in person and then the next attempt if no one is home, just leave the packet in the door. Mr. Snyder agreed with Mr. Garrett.

Prior requests of guests to speak – None

Finance by Scott Garrett

Mr. Garrett made a motion to approve the Fiscal Officer's expenditures for the month of June 2016 as reported. Mr. Snyder seconded this motion and it carried by a 6 – 0 vote.

Mr. Garrett made a motion to approve the all funds reconciled bank balance for June 2016 in the amount of \$1,396,206.21 as reported. Mr. Snyder seconded the motion which carried by a 6 – 0 vote.

Mr. Garrett read Resolution R-2016-26 **A RESOLUTION AUTHORIZING THE VILLAGE FISCAL OFFICER OF THE VILLAGE OF WINDHAM TO CREATE A THEN AND NOW PURCHASE ORDER(S) TO PAY OHIO EDISON AND DECLARING AN EMERGENCY.** and made a motion to suspend the rules, which was seconded by Ms. Patti and carried by a 6 – 0 vote. Mr. Garrett made a motion to adopt Resolution R-2016-26, which was seconded by Mr. Snyder and carried by a 6 – 0 vote.

Mr. Garrett read Ordinance O-2016-18 **BEING AN ORDINANCE AUTHORIZING TRANSFERS AND APPROPRIATIONS FOR THE VILLAGE OF WINDHAM AS SET FORTH BELOW AND DECLARING AN EMERGENCY** and made a motion to suspend the rules, which was seconded by Ms. Moore and carried by a 6 – 0 vote. Mr. Garrett made a motion to adopt Ordinance O-2016-18, which was seconded by Ms. Patti and carried by a 6 – 0 vote.

Mr. Garrett made a motion to approve the Mayor paying Robert Donham II for his services for the month of May 2016, which was seconded by Mr. Snyder. Ms. Moore asked what this pay was for. Mayor Blewitt explained that payroll came out for the month of May and Robert Donham did not get paid. The Mayor said that Mr. Donham texted Cheree Taylor asking about his paycheck for the month of May. The Mayor said that Mr. Donham said he answered grant questions in the month of May. Mayor Blewitt said she believes that Mr. Donham did not know at the beginning of May that his contract was up. Ms. Moore said that his contract was tabled at the April Council Meeting and then at the May Council Meeting it was removed from the agenda. Cheree Taylor explained that Mr. Donham was on a month to month basis. Ms. Moore said that she was told that the month to month basis was no longer in effect. Mayor Blewitt said she had no idea that Mr. Donham was answering these grant questions. Mayor Blewitt said that when Mr. Donham said he answered grant questions and was looking for his pay. Mayor Blewitt said she instructed Cheree Taylor to pay Mr. Donham. The Mayor and Lori Lee then drafted a letter advising anyone that the Village does business with that Mr. Donham no longer works for the Village of Windham. Ms. Patti asked if Mr. Donham had any paperwork, showing the work that he had done. Mayor Blewitt said that Council has never made Mr. Donham provide paperwork for his services. Ms. Moore said that if his contract was tabled in April, and he continued to work with no contract, then it is like him accepting there is a possibility that he may not get paid. Ms. Moore said that Mr. Donham has not returned the codified ordinance book, he did not leave the architectural plans for the new administration building, and then he left the Village in the red by six figures because he didn't complete grant stuff on time while he was here. Mayor Blewitt said that is the reason she drafted the letter, so

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that the grant consultants knew not to contact Mr. Donham. Ms. Moore said that there is not even an amount on the agenda. Mayor Blewitt said it was the normal pay. Ms. Moore questioned \$900 with no proof or benchmarks. Mr. Reitz asked if anyone in the Village informed Mr. Donham that his contract was over. Ms. Moore said she remembers that Mayor Blewitt said she had a conversation with Mr. Donham about it. Mr. Reitz said that if Mr. Donham has been being paid every month and Council decided to stop paying him, then he has to be told. Mayor Blewitt said she had a conversation with Mr. Donham and he knew he wasn't going to be retained on a month to month basis. Mr. Reitz said that if Council is uncomfortable with this, then charge the administration in finding out what was said to whom. Mayor Blewitt said that this whole thing ended at the end of May. The Village paid him in April and in May. Ms. Moore asked why the Village paid him in April, when his contract just came before Council at the April Council Meeting. Cheree Taylor explained that Council took a motion, second, and vote to retain Mr. Donham on a month to month basis at the March Council Meeting. Mayor Blewitt said at the end of May, Council said that this relationship is no longer valid. Ms. Patti asked if the Village has already cut Mr. Donham a check. Mayor Blewitt said yes. Mr. Reitz said that he was concerned with this because Council has the authority to enter into contracts and authorize payments. The Mayor used her discretion and judgement to pay Mr. Donham for the month of May. Mr. Reitz asked that this motion vote be placed on the agenda, not as it was written, but to ratify the actions of the Mayor authorizing the payment to Rob Donham. Mr. Reitz said he was unaware of the concerns that were raised by Council. Mr. Reitz said that Council can table this motion, in order to investigate what formal actions were taken by Council and what was said in conversation. Ms. Patti asked who actually contacted Mr. Donham in May. Mayor Blewitt said Mr. Donham had a list of people who contacted him about the grants and there were phone calls. The Mayor said she questioned all of these things; however she couldn't prove that Mr. Donham didn't do the work that he said he did. Ms. Moore said that Mr. Donham didn't prove that he did do the work. The Mayor said she could see people calling him about the grants, especially if they did not know that he was no longer the Mayor. Mr. Garrett questioned why Mr. Donham did not tell the consultants that his contract was severed and he was no longer the contact person. The Mayor explained that it was not official that Mr. Donham was no longer retained on a month to month basis until the end of May. The Mayor said she stands behind the decision that she made. Mr. Reitz recommended that the motion be amended to say "ratify the Mayor authorizing paying Robert Donham for the month of May 2016". Mr. Garrett accepted the amendment to the motion and Mr. Snyder seconded the amendment to the motion. This motion passed with a 4-3 vote, with Mayor Blewitt voting yes to breaking the tie. Mr. Snyder made a motion to approve the amended motion of paying Robert Donham. Mayor Blewitt and Mr. Reitz told Mr. Snyder that, that is what, was just passed. Mr. Snyder said he thought that they just made a motion to amend the previous motion. Mr. Reitz said he understood why Mr. Snyder was confused, because the procedure that he is used to following is the procedure that is done with amending legislation. If legislation needs the wording changed, then you would move to amend after someone has moved to approve and there is a second and then Council would vote on it. Mr. Reitz said that is not what happens on a motion vote because there was no action taken. Mr. Reitz said that Mr. Garrett accepted the amendment and Mr. Snyder seconded the amendment. Mrs. Taylor said that she misunderstood also. Mr. Reitz said if Council was confused on what they were voting on, Council should set aside the most recent vote on the motion and then take the vote again. Mr. Snyder made a motion to set aside the most recent vote on the motion to pay Robert Donham, which was seconded by Mr. Garrett and carried by a 5 - 1 vote, with Mr. Garrett being the dissenting vote. Mr. Snyder made a motion to ratify the Mayor's approval of payment to Rob Donham as a consultant for Donham's services to the Village in the month of May 2016, which was seconded by Mr. Garrett. Mr. Snyder said he does not like paying this anymore than anyone else in Council did, but the Village did enter into a contract with Rob Donham and



evidently to his knowledge he was still under contract until the end of May. Mr. Snyder said consequently he thinks that it is reasonable for Mr. Donham to expect to be paid for that time. Mr. Snyder said that the Village cannot prove or disprove that Mr. Donham did the work, and he believes that it is Council's responsibility to pay Mr. Donham and he believes that the Mayor did the right thing. Ms. Moore said that she respected what Mr. Snyder said, however in business receipts are very important and logged time is pretty important and she understands the situation as it has been explained. This motion failed 2-4, with Mrs. Taylor, Ms. Patti, Mrs. Rininger, and Ms. Moore being the dissenting votes. Mayor Blewitt asked Mr. Reitz what we should do now because the motion wasn't ratified. Mrs. Taylor said she would like to know why Council does not know who Mr. Donham talked to about these grants. The Mayor said that Mr. Donham told her he was in contact with the grant writers and she assumes that was Burgess & Niple and CT Consulting and that Council did not officially release Mr. Donham until the end of May. Mr. Snyder said the only thing Council could do was ask Mr. Donham to repay the money. Mr. Garrett asked when we paid him this money. Cheree Taylor said it was the first pay in July. Cheree Taylor explained that Mr. Donham did not receive a paycheck the first pay in June because that is how his paychecks are processed, the same way as Council. Cheree Taylor said that she was instructed not to pay Mr. Donham on the first pay in June. Ms. Taylor said Mr. Donham texted her at the end of June asking her if she was in the office because he wanted to come pick up his paycheck for May. Ms. Taylor told Mr. Donham that she did not have a paycheck for him. Mr. Donham told Ms. Taylor that he did work at the beginning of May before Council decided not to approve his contract and he didn't understand why he didn't have a paycheck. Ms. Taylor told Mr. Donham that she was instructed not to pay him and that he needed to discuss this with Mayor Blewitt. Mayor Blewitt said that Council could have Mr. Reitz try to get the money back, but it would probably cost double from what the Village has already paid Mr. Donham. Ms. Patti said that this is a lesson learned and in the future, Council needs to demand documentation for anyone that the Village pays. Mayor Blewitt said that normally anyone we pay has to provide documentation, however Council never demanded documentation from Mr. Donham. Mr. Snyder said that Council could ask Mr. Donham to pay the money back. Mr. Garrett said if Mr. Donham would say no, there's not a whole lot the Village could do except take him to court and that would cost the Village additional money. Mayor Blewitt said if Mr. Donham said he did work, she is thinking that he did because she could see Burgess & Niple and CT Consultants contacting him because Mr. Donham did have all the figures for the grants. Ms. Moore questioned that he did \$900 worth of work. Mayor Blewitt explained that, that was his pay rate when Council approved in a motion vote to retain him on a month to month basis in March. Mr. Garrett said that the reason Council decided to retain Mr. Donham in March was because there were two grants that he had knowledge on that Council did not. Ms. Moore asked Mr. Reitz for his advice on this. Mr. Reitz advised that the first thing would be to look at March's Council Meeting minutes and see what Council actually authorized. Mr. Reitz said that if Council did not specify that Mr. Donham needed to report his hours and activities and if Mr. Donham said he did work for the Village, then he should get paid for the work he said he did. Mr. Reitz said the next thing that Council should look for is documentation informing Mr. Donham that he was fired and unless Council can prove that they communicated that to him, Mr. Donham should have been paid for the month of May. Mr. Garrett said that Council did not act on this until the end of May. Ms. Moore said that Mr. Donham knew that he was not going to be retained by the Village of Windham. Mayor Blewitt said that Mr. Donham was aware that the Village would not be retaining him, by phone conversations, however Council did not take action on this until the end of May. Mr. Reitz said this situation is very sloppy and the action that Council decided on today (asking for the money back) is an action that can be approved. Ms. Moore said that she is not in favor of asking for the money back, but she is also not okay with the check being issued and asked Mr. Reitz for his advice. Mr. Reitz said Council may decide not to pursue trying to get the money back and



everything remains as is. Or the Auditor may say something about this at the next audit and determine if Council made the right decision. Mr. Garrett and Ms. Moore said that the month to month motion vote was discussed in executive session. Ms. Moore said that when the actual contract came before Council in April, Council tabled it and then in May decided to remove it from the agenda. Mayor Blewitt said that the Village had already paid Mr. Donham for the month of April, so he had to be under some sort of contract. Mr. Reitz said that is an indication that Council was not of one mind as what the contract would be. Mr. Reitz said he drafted the contract under the Mayor's direction and Council didn't like it, but didn't specify how they wanted it changed and decided to table it instead and then the next month Council decided they weren't interested at all. The Mayor said that Council never instructed Mr. Donham to give them documentation for the work he was doing. The Mayor said she did communicate to Mr. Donham that Council was not going to approve his contract in April; however Council did not take official action on that until May. The Mayor said she was unaware that anyone was contacting Mr. Donham with questions, or she would have stopped it immediately. Ms. Moore asked if Council just leaves it lay, would it be just maybe an auditor's issue. Mr. Reitz said that auditors do not go through every entry, they do spot checks. He said the auditor may not notice it at all. If they do notice it, they may say "don't do that again" or they may say it's a finding of recovery and make the Village go get the money back.

#### Safety, Personnel, Rules (SPR) by Phil Snyder

Mr. Snyder made a motion to enter into executive session to discuss employee discipline and invited Chief Breiding. This was seconded by Mr. Garrett and carried by a 6 – 0 vote at 7:41 p.m.

Mr. Snyder made a motion to return from executive session, which was seconded by Mr. Garrett and carried by a 6 – 0 vote at 8:06 p.m.

Mr. Snyder made a motion to place Trisha Fall to full-time police officer and Jeffrey Aynes to part-time police officer. This was seconded by Mr. Garrett. Mrs. Taylor asked Chief Breiding what shift Trisha Fall would be working. Chief Breiding said she would not be scheduled for day shift, but he couldn't guarantee that she would never work day shift because he may need her to cover someone else's shift. This motion passed by a 6 – 0 vote.

#### Utilities by Scott Garrett

Mr. Garrett read Ordinance O-2016-13 **AN ORDINANCE TO REVISE AND AMEND SECTION 923.03 OF THE VILLAGE OF WINDHAM UTILITY CODE TO ADJUST WATER RATES FOR THE PURCHASE OF WATER FROM THE VILLAGE.** This was a second read.

Mr. Garrett read Ordinance O-2016-14 **AN ORDINANCE TO REVISE AND AMEND SECTION 921.01 OF THE VILLAGE OF WINDHAM UTILITY CODE TO ADJUST SEWER RATES FOR THE DISCHARGE OF WASTEWATER TO THE VILLAGE.** This was a second read.

Service Committee by Scott Garrett – The Mayor said that the lift station on West Center Street is totally down. He needs to buy a new pump for \$3,000.00. There was discussion among Council as to whether this needed to be approved by Council and if this purchase would be a then and now purchase order. Cheree Taylor explained that if Bill Pennington got a price for the pump tomorrow and came and got a purchase order before he ordered the pump, it would

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not be considered a then and now purchase order, so therefore no legislation would need to be approved. Mr. Reitz confirmed that was indeed true and no action had to be taken by the Council tonight. The Mayor said she just wanted to make sure that Council was aware of this purchase ahead of time.

Economic Development by Phil Snyder – Mr. Snyder said that the Economic Development Committee continues to do a great deal of work and they are making some progress in coming up with solutions to the current problems.

Parks and Recreation by Mr. Snyder – Mr. Snyder said that Octoberfest is going to be a very big event and they are looking to make this an annual event. He said that they will need Council's participation in this. Mayor Blewitt said that they were looking for sponsors and NOPEC agreed to be a sponsor. The sponsor's money will help to pay for the band. Mr. Snyder said at the August Parks and Recreation Committee meeting they will establish the sponsor's costs.

Planning and Zoning by Deborah Blewitt – Tom Brett said that Matilda McDivitt has put in an application for a lot split on her property that runs parallel and south to the Turnpike on North Main Street. The frontage that will be a result of the splitting will be 24.4 feet, which is more than we originally thought. The terms of the agreement were that Matilda McDivitt approached the Board of Education to donate the land and the Board of Education said they would love to have the land, but they wanted to pay for it, so they offered her a nominal amount and she accepted it. The Board of Education has no intent for the land at this time. Mr. Snyder made a motion to accept this lot split of Matilda McDivitt in order for the Board of Education to buy this land. This was seconded by Mr. Garrett and carried by a 6 – 0 vote.

Solicitor's Report by Tom Reitz—Mr. Reitz had nothing at this time.

Guest Recognition – Terri McIntee introduced herself and said she is running for the Ohio House in the district that starts in Chardon and runs south.

Last Chance of Council to Speak on Any Subject – Ms. Moore asked if the Village was going to advertise for the Village Administrator position. The Mayor said Bill Pennington's resignation is effective July 31, 2016. The Mayor said she was told by David Fall that it does not need to be advertised, that it has always been filled from within, however she has not had the opportunity to confirm this yet. Mr. Reitz said that there is no prohibition against advertising the position. The Mayor said that the Village would advertise it in the Villager. Ms. Moore said that we should advertise in order to reach the largest pool of applicants. Mr. Garrett said the fact of the matter is that it is a part-time position, with part-time pay so that narrows the pool of applicants. Mr. Garrett said in the past they tried to hire people that had full-time jobs, but that didn't work because they were never around. Ms. Patti said that it would be a great position for someone who was retired. Mr. Snyder asked what the pay rate was. Cheree Taylor said \$578 a month. Mrs. Rininger said to advertise in the Villager because we might find someone who is local and retired and willing to work a part-time job. The Mayor said to advertise the position for two weeks. Ms. Patti asked if there has been any new information on the missile defense system. The Mayor said the recommendation will not be made until September. Ms. Patti asked Mr. Snyder about stump removal and the Ace Hardware grocery store. Mr. Snyder said he Buehler grocery and he doesn't know anyone who does stump removal. Ms. Patti asked about the potential coffee shop on North Main and about them tying into the sewer lines. The Mayor said it was discussed in committee, but the cost is \$15,000. The Mayor said it would take the Village forever to recoup our investment. Mrs. Rininger asked about the modular home on East Center that she thought the Village had condemned.

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Tom Brett said it is on the list of properties that are being reviewed for tax foreclosure. Ms. Moore asked if there was a time frame for this and Tom Brett said no. Ms. Moore said she thinks this property needs to be boarded up. The address of the property is 9521 East Center Street. Mr. Reitz said that the taxes on that property are delinquent enough that the County Treasurer has filed a tax foreclosure case. Usually no one responds to these tax foreclosures and 28 days after the service and the property is foreclosed upon and then deeded to the Portage County Land Bank. Mr. Reitz said this property is unfit for habitation so the Village can placard it and board it up. The Mayor asked Mr. Reitz what it would take to condemn the three fire properties. Mr. Reitz there are two procedures depending on the circumstances. Two of the properties are tax delinquent, so action has already been taken and the process usually takes 3 to 4 months. The burnt property on North Main is current on property taxes, so there no assistance from the Land Bank or Prosecutor's Office. Mr. Reitz said he would have to prepare an affidavit and go to one of the Judges in Portage County to get an administrative search warrant. He would then go in the buildings with a representative from the Fire District, County Building Department, and Health Department. These departments would investigate the building and prepare a written report that would be shared with the land owners and give them a period of time, that is typically 30 days to come up with a plan of action. If the land owners do not come up with a plan of action, then Mr. Reitz would file a suit in the Commons Pleas Court asking for the court to order the Village to tear down the building. Mr. Reitz said this procedure is very expensive. Council gave Mr. Reitz the go ahead to obtain the search warrant for 9116 North Main Street.

Council looked at the calendar for August. The Council Meeting will be Tuesday, August 23rd, 2016 at 7:00 p.m. and the committee meetings will the first Tuesday, August 2, 2016 and the second Tuesday August 9, 2016, both starting at 6:00 p.m. The Mayor said the possible dates for Thomas Denvir's hearing would be August 16<sup>th</sup>, 18<sup>th</sup>, 25<sup>th</sup>, and 30<sup>th</sup>.

Mr. Snyder made a motion to adjourn the meeting which was seconded by Mrs. Taylor and by unanimous vote the meeting was adjourned at 8:54 p.m.

Respectfully submitted,

Attest,

Cheree M. Taylor, Clerk of Council

Deborah Blewitt, Mayor

**\*\* NOTE: THESE MINUTES ARE SUMMARY BY DIRECTION OF COUNCIL \*\***

All Council & Committee Meetings will be held in Windham Council Chambers, unless otherwise noted.