

Minutes of Regular Council Meeting

Held April 28, 2020

At 7:42 p.m. the Honorable Mayor Scott Garrett called the meeting to order and led in the pledge of allegiance to the flag of our country. The meeting was called to order late because several people had difficulty logging into the virtual meeting.

Roll Call: Cheryl Belknap – present Lawrence Cunningham – present
Terrie Altieri – present Cindy Cale – present
Cheryl Taylor – present Sherri Pennington – present

Also present were: Tom Reitz, Eric Breiding, Denise Bly, Elizabeth Derthick, Tom Brett, Bill Chacko, Sheila Moore, and Mike Mikulski.

Mrs. Cale made a motion to approve the minutes of the March 24, 2020 Regular Council Meeting, which was seconded by Mrs. Altieri and carried by a 6 – 0 vote.

Fiscal Officer Taylor gave the Financial Reports as follows: The Income Tax collected year to date March 31, 2020 was \$118,495.21. The expenditures for the month of March 2020 were \$184,120.40 in checks and charges. Check numbers 35958 through 36031 were paid from the primary checking account during March 2020 with check number 35992, voided during the month. Direct Deposit Vouchers 114-2020 through 141-2020 and 148-2020 through 174-2020 were also paid during the month of March 2020. The all funds reconciled balance for March 2020 was \$1,569,639.68.

Village Council President's report by Terrie Altieri – Mrs. Altieri had nothing at the time.

Dispatchers Police, Fire and Rescue Reports for March 2020 by Cindy Cale – Mrs. Cale made a motion to accept the Police, Fire, and Rescue Reports for March 2020, which was seconded by Mrs. Taylor and carried by a 6 – 0 vote.

Mayor's Communication by Scott Garrett – Mr. Garrett said he encourages everyone to support local businesses during the pandemic.

Prior requests of guests to speak – None

Finance by Cindy Cale

Mrs. Cale made a motion to approve the Fiscal Officer's expenditures for the month of March 2020 as reported. Mrs. Altieri seconded this motion and it carried by a 6 – 0 vote.

Mrs. Cale made a motion to approve the all funds reconciled bank balance for March 2020 in the amount of \$1,569,639.68 as reported. Mrs. Taylor seconded the motion which carried by a 6 – 0 vote.

Mrs. Cale read Resolution R-2020-7 **A RESOLUTION AUTHORIZING THE LEASE AND SUBSEQUENT PURCHASE OF A 2020 FORD UTILITY POLICE INTERCEPTOR ALL WHEEL DRIVE VEHICLE** and made a motion to suspend the rules, which was seconded by Mrs. Taylor and carried by a 6 – 0 vote. Mr. Garrett doubled checked with Chief Breiding to make sure that this was still in the budget and he was okay in the Police Fund. Chief Breiding said that this is what Council discussed in previous months and the money has already been budgeted for the two year lease option. Mrs. Cale made a motion to adopt Resolution R-2020-7, which was seconded by Mrs. Altieri and carried by a 6 – 0 vote.

Safety, Personnel, Rules (SPR) by Terrie Altieri

Mrs. Altieri read Ordinance O-2020-8 **AN ORDINANCE AMENDING THE CURRENT PAY ORDINANCE TO ESTABLISH AND REVISE THE SALARIES AND WAGES OF FULL-TIME AND PART-TIME EMPLOYEES WITHIN THE VILLAGE OF WINDHAM, COUNTY OF PORTAGE AND STATE OF OHIO, REPEALING ALL PRIOR INCONSISTENT ORDINANCES.** This was a second read.

Mrs. Altieri read Resolution R-2020-5 **A RESOLUTION RECOGNIZING THE EFFECT OF THE COVID-19 STRAIN OF THE CORONAVIRUS ON THE VILLAGE OF WINDHAM AND DECLARING A STATE OF EMERGENCY** and made a motion to suspend the rules, which was seconded by Mrs. Cale and carried by a 6 – 0 vote. Mrs. Taylor said she had an issue with the end of this Declaration of Emergency because there was no end date mentioned, she felt that it was a violation of our rights. Mr. Garrett said the intention is to go with the timeline of the Governor and the State of Ohio. Mrs. Taylor said she did not agree with the State either and the end of the Declaration of Emergency it says “shall take effect immediately and remain in full force and effect until the Council of the Village of Windham acts to either ratify or override this Declaration, or until such time as I have determined an emergency no longer exists” and she did not like the sound of that. Mr. Garrett said it basically says that the Council can repeal this Declaration at any time and this is meant to be a temporary action to make sure our residents are safe because there have been some break ins and guns being fired in the New Homes. Mrs. Taylor asked if Council was supposed to go along with this as long as the Governor says to. Mr. Garrett said no, if Council decides this is no longer necessary then they can rescind the Declaration. Mr. Garrett said if Council would like to rescind this in the future, he would discuss it with the Police Chief to make sure everything was under control. Mr. Reitz said that as the Chief Executive Officer of the Village, Mr. Garrett has the authority to declare an Emergency and to rescind it, but as a practical matter he is not going to do something that the Council does not agree with. Mr. Reitz explained that this is a very drastic measure and it does limit some of the citizens Constitutional rights, but in the Resolution all the recommendations of the elected officials of the State of Ohio have taken in response to the COVID-19 pandemic are listed, as are the confirmed case totals and deaths due to COVID-19, this is a serious matter, in the sections after **“NOW, THEREFORE, BE IT RESOLVED”** in the Resolution, this is what the Council is saying they want to accomplish by this Declaration. Mr. Reitz then explained each section of this Resolution to the Council. Mr. Reitz then addressed Sheila Moore’s email, “and please ask them not to make things up and not embellish or repeat things that they’ve been told”, the first two admonitions are well taken, don’t make things up or embellish, but repeating things you’ve been told depends on the source, when you look at the page and a half of whereas’ the justification of those limitations of liberties, these are people that are elected officials, these are people that have a level of education dealing with viruses, and they are the people that are in the position of authority to make these decisions, and so Mr. Reitz encourages Council to repeat what these people say. Mr. Reitz encouraged Council to pass this legislation because he feels it is necessary in order to protect the Village residents. Shella Moore said she feels that the curfew is overkill, because residents’ safety is a part of law enforcements job anyways regardless if there is a pandemic or not and telling resident’s that they cannot be out walking or out of their houses, unless there is an emergency after 10:00 p.m. is not right. Mrs. Altieri made a motion to adopt Resolution R-2020-5, which was seconded by Mr. Cunningham and carried by a 5 – 1 vote, with Mrs. Taylor being the dissenting vote.

Utilities by Cheryl Taylor

Mrs. Taylor read Ordinance O-2020-6 **AN ORDINANCE TO REVISE AND AMEND SECTION 927.04 OF THE VILLAGE OF WINDHAM UTILITY CODE TO REQUIRE LANDOWNERS OF RENTAL PROPERTIES TO BE RESPONSIBLE FOR PAYMENT OF WATER AND SEWER CHARGES INCURRED BY TENANTS.** This was a third read. Mike Mikulski said he sent an email out to Council and the Mayor with a list of questions about this Ordinance. Mr. Reitz said he would answer Mike Mikulski’s questions. Mr. Reitz said that Mike Mikulski has indicated that he has filed a complaint with Public Utilities Commission of Ohio (PUCO). Mr. Reitz said he does not believe that PUCO has jurisdiction over the Village of Windham, because public utility is defined in the Ohio Revised Code (Section 4905.02) as a public utility includes every corporation, company, partnership, personal association and it goes on and ends with except the following, paragraph number 3 states, a public utility that is owned and operated by any municipal corporation. Mr. Reitz said the Village of Windham is a municipal corporation, and although he hasn’t seen the complaint filed by Mike Mikulski, he believes it will be dismissed because PUCO does not have jurisdiction over the Village of Windham. Mr. Reitz said Landlords being responsible for water and sewer charges incurred by tenants is an old issue and referred to the Ohio Supreme Court ruling in 1943 (Pfau vs. Cincinnati) and Mr. Reitz quoted “ a municipality may adopt an Ordinance making an owner of real estate liable for all charges for service and water supplied by such municipality through connections, installed and maintained in the premises by the owner.” Mr. Reitz said that this legislation is clearly authorized by the Ohio Supreme Court. Mike Mikulski said he never question the landlord ultimately being responsible for the water/sewer bill. Mr. Reitz then made several statements addressing the questions from Mike Mikulski’s email. Mr. Reitz said the proposed legislation does not make a distinction for single family homes, it simply says the

owner of the property will ultimately be responsible for the water/sewer bill. Mr. Reitz said he checked with the Village Administrator and it is possible to also send the tenant, along with the landlord a copy of the water/sewer bill. Mr. Reitz said in the event of a foreclosure, an executor has an obligation to pay the bills of the estate and the water should remain on. Mr. Reitz said this legislation does not prevent the tenant from paying the bill directly. Mr. Reitz said the Village does not have a view on private contracts between the landlord and tenant (leases or land contracts), these are not the Village's business and landlords are free and at liberty to whatever you would like to do, so if as a landlord you want to write in your lease that the tenant pays the water bill, you can still do that. Mike Mikulski said his only concern about this was with the billing. Mike Mikulski said his understanding was that he would have to pay the bill and then collect it from his tenant. Debbie Blewitt said ultimately the landlord is responsible for the bill, but however the landlord wants to deal with the tenant is their choice and Mr. Reitz agreed with this. Sheila Moore said she thought the Village Administrator sent letters to the home owners requesting copies of the leases or contracts to justify who was paying and how does this mesh with what is being said. Mr. Reitz said this legislation first came before Council in February and since then has been amended because Patty Moore questioned the fact of existing leases and contracts and hold that would be handled and so Council decided to phase in this legislation by having the landlord provide the Village with an existing contract and giving them up to a year to establish a new contract and if the landlord does not want to provide the Village with a contract that is fine, but the landlord is ultimately responsible for the water/sewer bill. Mr. Reitz said it is no longer a requirement to provide the Village with a copy of the lease. Mrs. Cale asked if the landlord is responsible, is that on a monthly basis or are we waiting a year to collect. Mr. Reitz said a monthly basis. Mr. Reitz said because of the pandemic the Village cannot shut off water service until after December 1, 2020. Mr. Reitz said the Village Administrator intends to include with the water bill a statement saying that we cannot shut the water off right now but come December the Village expects to be paid for the water that they provided. Debbie Blewitt said Elizabeth Derthick provided a payment plan that was put in Council's mailboxes, but no action has taken place on that. Mr. Cunningham said that he thinks Council should move on a payment plan because it would probably benefit the landlord as to not have a huge water bill come December. Mrs. Pennington said she agrees, because she is a landlord and does not want to get stuck with a big bill. Bill Chacko asked if this would roll over to the landlord on a yearly basis. Mr. Reitz said not on a yearly basis, it would only be 2 months before the property would be subject to shut-off and that notice would go to the landlord. Mr. Reitz explained that this legislation says if the bill is not paid then the Village will solely go after the landlord for payment. Bill Chacko asked if it is a multi-unit building is it possible to just have one meter since the landlord will be responsible for payment. Debbie Blewitt said we can install one meter but the landlord would have to pay for the meter. Bill Chacko asked when this legislation would go into effect and Mr. Reitz said it would go into effect 30 days from now. Mike Mikulski asked if the bill can still remain in the tenants name and Mr. Reitz said no, only if there is an existing lease and the Village is provided with that lease and up until the point when that lease expires. Bill Chacko asked what the process would be to change the bill from the tenant to the owner and if there is a form to fill out. Debbie Blewitt told Bill Chacko to call Marie Evitts tomorrow and she would be able to answer that question. Cheree Taylor said the bill going into the landlord's name does not have to be done until the existing lease is expired and the Village has copies of all those leases because that is currently the requirement. Mrs. Taylor made a motion to adopt Ordinance O-2020-6, which was seconded by Mrs. Altieri and carried by a 6 – 0 vote.

Mrs. Taylor read Resolution R-2020-6 **A RESOLUTION TO APPROVE AN AGREEMENT WITH BILL PENNINGTON TO BE THE CERTIFIED PUBLIC WATER SUPPLY OPERATOR FOR THE VILLAGE OF WINDHAM WATER SYSTEM AND DECLARING AN EMERGENCY** and made a motion to suspend the rules, which was seconded by Mrs. Cale and carried by a 5 – 0 vote, with Mrs. Pennington abstaining. Mrs. Taylor made a motion to adopt Resolution R-2020-6, which was seconded by Mrs. Cale and carried by a 5 – 0 vote, with Mrs. Pennington abstaining. Mr. Reitz said to create a record, stating that Sherri Pennington is married to Bill Pennington and that is the reason why she abstained from the voting and any discussion on this legislation.

Mrs. Taylor read Ordinance O-2020-11 **AN ORDINANCE CORRECTING THE ABATEMENT OF RENTS ESTABLISHED IN ORDINANCE 2020-2 AND DECLARING AN EMERGENCY** and made a motion to suspend the rules, which was seconded by Mrs. Altieri and carried by a 6 – 0 vote. Mr. Reitz explained that the amounts for the water department and sewer department in Ordinance O-2020-2 were reversed after it was already passed and this legislation corrects that. Mrs. Taylor made a motion to adopt Ordinance O-2020-11, which was seconded by Mrs. Cale and carried by a 6 – 0 vote.

Service Committee by Cheryl Belknap – Mrs. Belknap had nothing at the time.

Economic Development by Lawrence Cunningham – Mr. Cunningham said that someone was interested in a lot in the New Homes and wanted to put a modular home on it and wanted to know if that was possible. Sheila Moore said to ask Tom Brett. Mr. Reitz said that either he or Tom Brett would get back to him on this.

Parks and Recreation by Sherri Pennington – Mrs. Pennington said she is continuing to work on the grant for a new basketball court and it's due June 1st.

Planning Commission by Scott Garrett – Mr. Garrett had nothing at the time.

Solicitor's Report by Tom Reitz – Tom Reitz said currently all court cases have been continued due to the pandemic.

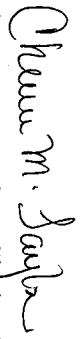
Guest Recognition – None

Last Chance of Council to Speak on Any Subject – Mr. Cunningham mentioned getting dedication benches on North Main Street. Mrs. Pennington and Mr. Garrett agreed that would be a good idea. Debbie Blewitt said the American Legion is going to put up banners commemorating the fallen heroes of the Vietnam War and encouraged Council to help raise money for that. Mr. Garrett said we should also look into the other wars and get banners for those fallen heroes also. Mrs. Altieri said we could get with the American Legion to collaborate on this project and to obtain names of the fallen soldiers.

Council looked at the calendar for May 2020. The Committee meetings (Parks & Recreation and Committee of the Whole) will be Tuesday, May 12, 2020 at 6:00 p.m. The Council Meeting will be Tuesday, May 26, 2020 at 7:00 p.m.

Mrs. Cale 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,


Cheree M. Taylor, Clerk of Council

Attest,

Scott Garrett, Mayor

**** NOTE: THESE MINUTES ARE SUMMARY BY DIRECTION OF COUNCIL ****
All Council & Committee Meetings will be held in Windham Council Chambers, unless otherwise noted.