

Village of Gates Mills
MINUTES OF A REGULAR MEETING OF COUNCIL
August 12, 2014

A regular meeting of the Council of the Village of Gates Mills, Ohio was held on Tuesday, August 12, 2014 at 6:30 p.m. in the Village Hall.

Councilmembers present: Barnes, Frankel, Reynolds, Schneider, Sogg, Turner, Welsh.

Mayor Riley presided.

The minutes of the July 8, 2014 Council meeting were presented by the Clerk. Councilmember Turner noted that, on page 2, a pound sign needed to be replaced with a dollar sign. It was moved by Councilmember Reynolds, seconded by Councilmember Schneider, that the minutes, as amended, be approved.

Roll call: Ayes: Barnes, Frankel, Reynolds, Schneider, Sogg, Turner, Welsh.
 Nays: None.
 Motion carried.

Pay Ordinance #1168 in the amount of \$665,971.60 was presented by the Clerk. In response to Councilmember Frankel's question, Finance Administrator Lechman explained the check originally issued to Fat Summer City Sausage Band was voided and a new check was issued made payable to James Hoyt.

It was moved by Councilmember Welsh, seconded by Councilmember Sogg, that Pay Ordinance #1168 be approved.

Roll call: Ayes: Barnes, Frankel, Reynolds, Schneider, Sogg, Turner, Welsh.
 Nays: None.
 Motion carried.

The financial statement for the period ending July 31, 2014 was presented by the Clerk. Councilmember Barnes reviewed certain YTD results, highlighting as follows:

- In July, \$555,000 in Real Estate Tax Revenue was received which puts the total for the year at almost \$1.9M compared to \$1.66M last year.
- Income taxes are approximately \$90,000 below last year.
- Operating Expenses are in line with last year's numbers.
- Operating Surplus is \$745,000 vs. \$700,000 last year.
- Cash and Investments is \$5.8M.
- Unfunded Debt is just under \$600,000.

Mayor Riley received confirmation that the ribbon cutting ceremony for the reopening of the tennis courts went forward. Mayor Riley extended his gratitude to the numerous volunteers, Council members who supported the project, Service Director Biggert who supervised the work and Resident Clark Langmack. He then reported with regard to the fundraising efforts for the rebuilding of the tennis courts that Clark Langmack's group received a commitment from the Improvement Society to match the group's total donation. Currently, the group has raised approximately \$9,000 and expects to raise a total of \$10,000. Councilmember Schneider shared that the Community Club is planning a fundraising event as well. Resident Jane Mitchell advised that the event will be held on October 19th. Mayor Riley then provided a reminder for Fieldstone Farms' annual Chefs Unbridled event taking place at the polo field on September 13th. Councilmember Reynolds inquired whether Old Mill Road would be open by that time and expressed concern if it is still closed. Mayor Riley announced that Police Chief Whitmer is retiring in December. He advised that the Safety Committee considered his replacement and recommended that Executive Lieutenant Gregg Minichello be appointed the new Police Chief. Mayor Riley accepted that recommendation and Gregg Minichello will be sworn in at the November Council meeting. Service Director Biggert responded to Councilmember Reynolds' question by stating that the total cost for the rebuilding of the tennis courts is not known but anticipates having that figure by the next Council meeting.

Clerk DeCapite had nothing to report.

Police Chief Whitmer provided a written report.

A written report was provided by Service Director Biggert. Mayor Riley asked how the culvert replacement work was going. Service Director Biggert advised that problems encountered were mainly due to storms. He added that they have a good handle on it and made some adjustments. Councilmember Schneider inquired about deflecting debris from reaching the culverts. Village Engineer Courtney responded that they have come up with structural solutions and are looking at trash racks as well. Councilmember Turner inquired about Chagrin River Road. Service Director Biggert advised that work will begin on Friday and completion is expected by the end of the month. Councilmember Turner extended her thanks for the work done on Sherman Road. Service Director Biggert expressed that it is helpful when people notify the department of issues.

As Fire Chief Robinson was on vacation, Service Director Biggert provided a brief summary of the recent successful rescue of individuals from the Chagrin River at Mayfield bridge.

Ordinance #2014-17 "An Ordinance Accepting The Donation Of A Parcel Of Property" was introduced by Councilmember Frankel and read by the Clerk. Councilmember Frankel suggested postponing the consideration of this proposed Ordinance until the next Council meeting. Finance Administrator Lechman provided an overview of the Ordinance, explaining that, years ago, the Mayfield School system was going to sell a piece of property along SOM Center Road. Some residents with land adjacent to such property bought portions of it. Recently, one of those residents sold their property with a house on it, but did not sell the adjacent land portion. Now would like to donate such property to the Village. It was confirmed

in response to Councilmember Reynolds query, that the owner/donor would receive a small tax deduction with regard to the donated land. Law Director Cannon explained the Village cannot accept the donation without Council action. Councilmember Frankel said he still wanted to postpone the Ordinance.

It was moved by Councilmember Barnes, seconded by Councilmember Reynolds, that an advertisement be placed for bids for salt.

Roll call: Ayes: Barnes, Frankel, Reynolds, Schneider, Sogg, Turner, Welsh.
Nays: None.
Motion carried.

It was moved by Councilmember Barnes, seconded by Councilmember Schneider, that an advertisement be placed for the sale of a Service Department truck.

Roll call: Ayes: Barnes, Frankel, Reynolds, Schneider, Sogg, Turner, Welsh.
Nays: None.
Motion carried.

Councilmember Barnes explained the existing trash hauling contract expires at the end of the year and would like to immediately advertise for bids. Councilmember Turner asked about services and prices. Mayor Riley said there is a committee that will review the bids and process. It was moved by Councilmember Barnes, seconded by Councilmember Welsh, that an advertisement be placed for trash contract bids.

Roll call: Ayes: Barnes, Frankel, Reynolds, Schneider, Sogg, Turner, Welsh.
Nays: None.
Motion carried.

Mayor Riley requested Law Director Cannon address an issue regarding the Charter Amendment Petition (the "Petition") brought by the Citizens for the Preservation of Gates Mills (the "Group" or "Circulators"). Law Director Cannon said her opinion was that the Petition did not have a sufficient number of valid signatures. She referenced the Charter for the Village wherein language outlines that the number of required signatures is 10% of the total registered electors. She shared that the Circulators' counsel sent a letter advising that it is his opinion that the correct number of required signatures is not 10% of the total number of electors (which would be approximately 200) but rather 10% of the total number of persons who voted in the last general election (which would be approximately 61). Law Director Cannon emphasized the sizable difference in opinions for the number of required signatures. She shared that Mr. Andreano (the Group's spokesperson) stated that the Board of Elections certified that the Petition contains a sufficient number of valid signatures. Law Director Cannon explained whether there were or were not the correct number of signatures, she highlighted the importance of understanding that the responsibility of Council is to determine whether the Petition is sufficient as to form and not content. If so, Council has a mandatory duty to certify the Petition to the Board of Elections. She expressed her position that the proposed Charter Amendment is illegal in Ohio; in contradiction to State Law which gives the State exclusive regulation of gas and oil

wells. She stated the issue is currently pending in the Ohio Supreme Court. Under current State Law, Law Director Cannon said what the Group is seeking to accomplish, in her opinion, cannot be accomplished. She commented that Council is faced with potential litigation initially about the sufficiency of the signatures and then, if the matter is put on the ballot and passed, the Village will likely face potential litigation regarding the merits of the Charter Amendment itself. Gates Mills' Charter refers to Article XVIII Section 9 which requires 10% of the registered electors sign a petition. If that requirement doesn't rule the Village does not have "Home Rule". No Charter provision is valid unless it is less stringent than Article 14. Law Director explained that Council has three choices: (1) if the position remains that the number of signatures is insufficient, no legislative action by Council is required; (2) because there is a significant difference of opinion as to which standard applies, Council could determine to proceed to certify this matter to the Board of Elections; and (3) even if there were no debate about the signatures, Council has authority to certify a proposed Charter Amendment to the Board of Elections. Additionally, Council could defer an ultimate decision to a special meeting prior to the deadline to get it to the Board of Elections. The deadline is sixty (60) days prior to the election which would be September 6th. Law Director Cannon advised that she has prepared legislation which is available should Council wish to certify the matter to the Board of Elections. If Council wants to amend the Agenda to consider the legislation this evening, legislation is available to pass out. Councilmember Turner questioned if deferring to another meeting would allow the Group to resubmit the Petition. Law Director Cannon stated petitions which are insufficient cannot be supplemented; however, the process could be started all over again. Councilmember Frankel requested Law Director Cannon comment on the 2002 Westlake case wherein the discrepancies are similar. She provided a brief summary and pointed out that the Ohio Supreme Court essentially ruled that Westlake misinterpreted its own charter.

Mayor Riley advised Council that he recently met with the Group that is sponsoring this legislation. During the course of that meeting, he outlined some of his concerns he has about the Charter Amendment. During that discussion, he made a proposal to the Group that he would be prepared to put the trust proposal on hold and would ask the Group to also put the Charter Amendment on hold until the Supreme Court issues its ruling on whether a municipality can regulate drilling. If the Court ruled in favor, then everyone would move forwarding working together. In the alternative, if the Court ruled municipalities have no authority, the trust proposal would be reopened with the Group being invited to help in the structuring of the same. Mayor Riley stated that no response to this proposal was received. Instead, he reported that within 48 hours of that meeting, an e-mail blast was sent by the Group which laid out reasons to support the Charter Amendment and oppose the trust proposal. Mayor Riley opined he assumed that was an indication of denial by the Group to his proposal.

Mayor Riley shared that Resident Bob Andreano asked to be the spokesperson for the Group. Mr. Andreano distributed a written statement as well as a letter from the Group's counsel and requested both be incorporated into the Minutes. Mr. Andreano then read the Group's statement. (See attached.)

Law Director Cannon asked Mr. Andreano who at the Board of Elections told the Group that the lesser number of signatures was sufficient. Mr. Andreano replied that he could get that information but was told prior to gathering signatures what the quantity was that would be

needed. Various members from the audience requested an opportunity to speak. Mayor Riley advised that the issue currently before Council is the presentation by the Law Director and then the meeting would open up to Business from the Audience. Law Director Cannon clarified that Council's meeting being held in public does not have to allow any participation from the audience unless they have a rule that they will entertain such discussion. She further commented that there is a specific place on the Agenda for comments from the audience. She opined that, in her experience, this Council allows more public discussion and comment compared to others. She advised that there is no constitutional right for individuals to stand up and speak. She clarified the issue before Council is whether they wish to amend the Agenda to consider legislation to certify the issue to the Board of Elections. Mayor Riley commented that the alternative is also to consider holding a special meeting before the end of the month.

Councilmember Turner shared her view that it is unfortunate that it has come to such a point over such an important issue and believes it is not an "us vs. them" mentality. She shared that there is a lot of agreement across the board but it has come down to disagreements on how to proceed. Additionally, Councilmember Turner voiced that whether or not she personally agrees with the content of the ballot, she feels that given the fact there are 134 signatures and it would probably be easy to get 200 or more, she believes it is an issue that should go before the voters and to be able to have an opportunity to educate the community. She expressed concern about amending the Agenda as it could be voted up or down. Councilmember Schneider stated she would like to schedule another meeting. She expressed that she would like to reassess and review the petition further. Councilmember Frankel stated that he looked at the Board of Elections' website and can see how the Group was lead to believe they only needed 10% of the total number of persons that voted in the last general election. Councilmember Turner stated she is uncomfortable going against the Law Director's advice. Councilmember Schneider added that she would like to go over it and have more knowledge about what Council would be voting on to put on the ballot. Law Director Cannon explained that Council could by 2/3rds vote, without regard to signatures, put a proposed Charter Amendment on the ballot on any issue. Councilmember Schneider highlighted her sensitivity as well to the Village incurring legal fees. Councilmember Turner questioned if Council put it on the ballot, against the Law Director's advice that it doesn't meet the required number of signatures, what precedent would that set. Law Director Cannon stated if the Village agrees it is the lesser number, next time the issue is raised, Council cannot then go back to the higher number. Law Director Cannon added that such issue does not happen very often in the Village. Councilmember Reynolds expressed her view to appreciate the seriousness of monkeying around with the Charter and encouraged everyone take it seriously. She conveyed her disappointment stating she believes no one wants to see anything bad happen to Gates Mills, including fracking, and that such subject has become such an adversarial atmosphere. She opined that everyone is seriously worried about fracking. Councilmember Reynolds continued by stating the only way to successfully navigate a potential amendment to the Charter, deal with the State of Ohio, and deal with drillers is for a more cohesive body to work together. Law Director Cannon shared that she would be happy if the Group's position was correct – that we could regulate – as that would mean the Supreme Court would have restored some real home rule. Councilmember Turner proposed that Council hold a special meeting on an upcoming Tuesday in August. Councilmember Reynolds highlighted the issue of form and the issue of content are equally important. Law Director Cannon clarified the petition before Council has 134 signatures and that is the Petition being considered. Mayor Riley

stated if Council holds a special meeting, the possibilities would include: considering a new Petition submitted by the Group with approximately 200 signatures; considering the existing Petition; or, considering something Council proposes. Law Director Cannon stated that if the Group elected to circulate a new Petition, it goes on the ballot regardless of Council's views. Mayor Riley added that deferring until Supreme Court issues its ruling is also another option. Mr. Andreano confirmed the Group declines such proposal. Council agreed to have a special meeting on August 26th at 6:30 p.m. and the foregoing would be the only thing on the Agenda. Councilmember Turner inquired if that would be sufficient time to certify to the Board of Election as well as to allow the Group to gather more signatures. Law Director Cannon confirmed.

Business from the audience:

Mr. Andreano addressing the comment about working together, told Council that if they go back 2-3 Council meetings ago, it would find the Group asked for that and were told by Council it could not do that. He advised that the Group discussed forming a committee and the same was turned down. He noted it was the Group's intention to work together. He stated that as a resident of Gates Mills who votes for members of Council, he does not vote to be mimicked. He commented that members of Council took an oath to support the people of the Village and should have respect. Mayor Riley, referring to other members in the audience, responded the same is a two way street.

Resident Susan Stevens, referencing the Group's recent meeting with Mayor Riley, said it was stated during the meeting that Hawken was a logical site for fracking. She said that she has spoken with Hawken trustees and no one there was aware of the trust proposal or fracking on its land. Mayor Riley replied that the reference to Hawken was a hypothetical. Responding to Mayor Riley's earlier statement that he had asked the Group to drop the Citizens Bill of Rights and, if the Supreme Court rules negatively, he would have the Group participate in the formation of the trust, Dr. Stevens stated that the Mayor did not offer the Group a seat at the table and did not offer for the Group to participate at all. Mayor Riley expressed his belief that she is mistaken. Dr. Stevens reminded Council that the Group is not their adversaries but rather Council represents them. She said they feel strongly that the best way to control fracking in the Village is to prevent it entirely.

Resident Ron Holmon stated that he assisted in collecting signatures. He expressed that he felt the citizens of Gates Mills are opposed to the land trust idea and are very much opposed to fracking. He shared that it did not take much for residents he spoke with to come to the conclusion that the land trust proposal and fracking is bad. Mr. Holmon encouraged Council to listen to the people and citizens who reside in Gates Mills. Mr. Holman stated that he believes the Law Director's legal opinion is wrong. He stated that the Ohio Secretary of State is the top elections person in the State of Ohio and referenced language from the Secretary of State's question/answer handbook which is a guide for the Board of Elections, taxing authorities and political subdivisions. He cited language outlining amending municipal charters. Mr. Holman encouraged Council to listen to the group and all of the Village's residents.

Resident Jenni McMaster stated that she is, not just against fracking, but for civil rights, for the right to clean air, water, property values and feels it is a way to show what we are “for.” She continued by stating they are not inventing the wheel and feels this is a civil rights issue. She announced that she wants to vote for something for the protection of her children, land, water and air. She said it is not that she is against and feels that big oil is bad but that she is for civil rights. She expressed hope that Council is also for civil rights.

There being no further business, it was moved by Councilmember Reynolds, seconded by Councilmember Sogg, and unanimously carried, that the council meeting be adjourned.

Roll call: Ayes: Barnes, Frankel, Reynolds, Schneider, Sogg, Turner, Welsh.
 Nays: None.
 Motion carried.

Respectfully submitted,

Beth DeCapite, Clerk

Approved:

Shawn M. Riley, Mayor