

Village of Gates Mills
MINUTES OF A REGULAR MEETING OF COUNCIL
December 11, 2012

A regular meeting of the Council of the Village of Gates Mills, Ohio was held on Tuesday, December 11, 2012 at 6:30 P.M. in the Village Hall.

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

Councilmembers absent: None.

Mayor Riley presided.

Mayor Riley presented a Proclamation conveying to Ann Missal on the occasion of her 99th birthday deep gratitude and appreciation for her being an outstanding resident of Gates Mills Village.

The minutes of the meeting of November 13, 2012 were presented by the Clerk. It was moved by Councilmember Bletcher, seconded by Councilmember Schneider, that the minutes be approved.

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

Pay Ordinance #1148 in the amount of \$338,099.44 was presented by the Clerk. It was moved by Councilmember Bletcher, seconded by Councilmember Sogg, that Pay Ordinance #1148 be approved.

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

The financial statement for the period ending November 30, 2012 was presented by Councilmember Barnes. He reported that the city income tax is \$200,000 over budget and slightly more than last year. Cash investments are slightly less than last year. Councilmember Reynolds asked if instead of the budgeted \$153,000 surplus, the actual surplus could be \$871,000. Councilmember Barnes said the department heads have done a good job, the municipal income tax is up \$200,000, and the winter was mild.

Mayor Riley congratulated the Cemetery Committee on the replanting in the North Cemetery. He said he is looking for volunteers to direct traffic in the spring. There is one volunteer so far. We need about 25. He reported year-end performance reviews were done with the department heads and they went very well. All but one councilmember provided some input. If there are any questions he would be happy to share some thoughts.

The Clerk had no report.

Councilmember Sogg reported the Legal Committee received 18 responses for the law director position. The committee is meeting Saturday to discuss them. They will present to the Mayor a reasonable number to interview.

Councilmember Sogg reported the Beautification Committee received a drawing of the entryways. The committee will meet in January to talk about it.

Councilmember Schneider reported the Positively Gates Mills Committee met. They are looking for input for updating the village's website. A meeting is scheduled for January. Mayor Riley said there was a young man who wants to help as his school project. Councilmember Schneider said the committee can use him once they have a little more direction.

Councilmember Turner reported that the Gates Mills School opened its new library. It is all computerized. It is absent of books. Some of the members of the Mayfield School Liaison Committee were there. She reminded everyone that the building can be used for community events.

Mayor Riley said the Jr. Strawhat program ended 2 years ago. A group wants to put on a theatre program. It would be operated out of the Community Building. The only requirement we have is that any interested resident must be allowed to participate. Councilmember Sogg said the school could also be used for that purpose. Councilmember Welsh asked who to contact if interested. Mayor Riley said there will be a mailing in January and information about the day camp and theatre group will be included.

Mayor Riley asked about the "meatballs for tennis balls" event. Councilmember Schneider said the Community Club wants to do it next fall because people are out of town in the winter.

Police Chief Szeredy presented a written report for the Police Department for the preceding period. There was a fraud report with no loss incurred. The resident received a call from the Philippines saying his grandson was in trouble and needed some money.

Service Director Biggert submitted a written report for his department for the preceding period. The reimbursement check from the County for the energy audit was received today.

Village Engineer Courtney reported on the grant application for Mayfield Road culvert project. The District 1 Committee met and is recommending the \$400,000 project to the small government subcommittee as the number one recommendation out of the District. He is going to revise the application because they use slightly different criteria. He will be attending the meeting in Columbus in January. He is cautiously optimistic.

Fire Chief Robinson presented a written report for the Fire Department for the preceding period. Mayor Riley said he received a very complimentary letter from a resident who had damage from the storm. The resident said the help was a display of very good customer service.

Mayor Riley announced the appointment of Mary Reynolds and Ed Welsh to the Volunteer Fire Fighters Dependents Fund Board. It was moved by Councilmember Schneider, seconded by Councilmember Sogg, that the Mayor's appointment be approved and confirmed.

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

Ordinance #2012-42 entitled “An Ordinance Authorizing A Contract With Aetna Health Care To Furnish And Provide Hospitalization, Health Care And Dental Insurance Coverage For Village Employees And Declaring An Emergency,” was introduced by Councilmember Barnes and read by the Clerk. Councilmember Barnes explained the agent got several quotes for the Village. At the Committee meeting last Saturday it was decided that a different Aetna plan should be accepted. Our 2012 plan cost \$25,000 a month. Renewal of the same plan costs \$33,000. An alternate plan cost is \$28,000. It is the least expensive of the plans that were offered. It was moved by Councilmember Barnes, seconded by Councilmember Schneider, that the rules requiring ordinances to be read on three different days be suspended and that Ordinance #2012-42 be placed upon its final passage.

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

It was then moved by Councilmember Barnes, seconded by Councilmember Schneider, that Ordinance #2012-42 be approved.

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

Ordinance #2012-43 entitled “An Ordinance Declaring The Village’s Intention To Enter Into A Tax-Qualified Medical Reimbursement Plan For 2013,” was introduced by Councilmember Barnes and read by the Clerk. This reimbursement of 50% of the employee’s out-of-pocket expenses started in 2010. The cost savings are high when the out-of-pocket charges are high. Reimbursing the employees 50% is an economical approach. Last year the out-of-pocket was \$4,000 for single coverage and \$8,000 for employee/spouse, employee/child, and family coverage. This year under the alternate plan chosen it will be \$6,000 for single coverage and \$12,000 for multiple coverage. To date in 2012 a little more than \$7,000 has been reimbursed to employees. He feels history tells that there is not a lot of money involved in this benefit but it helps the employees, and the alternate health plan saves \$50,000. Councilmember Bletcher asked if other percentages of reimbursement were considered, like 66% which would keep the employee’s potential share the same as last year. Councilmember Barnes said they were not. Councilmember Reynolds asked if the 50/50 share was typical in other communities. Finance Administrator said she thought maybe Orange Village shares the cost. It was moved by Councilmember Barnes, seconded by Councilmember Sogg, that the rules requiring ordinances to be read on three different days be suspended and that Ordinance #2012-43 be placed upon its final passage.

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

It was then moved by Councilmember Barnes, seconded by Councilmember Sogg, that Ordinance #2012-43 be approved.

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

Ordinance #2012-44 entitled "An Ordinance To Increase The Compensation Of Certain Village Employees," was introduced by Councilmember Barnes and read by the Clerk. The Wage and Benefit Committee decided that 1% was an appropriate amount of increase. That is also what was given for 2011 and 2012. Councilmember Bletcher asked if all employees were covered by the Ordinance. He asked if a decision had been made about the Village Engineer yet. Mayor Riley said this Ordinance should be tabled until after the Ordinance to create the position of Engineer is discussed.

Ordinance #2012-45 entitled "An Ordinance Enacting Chapter 165 Of The Administrative Code Creating The Position Of Village Engineer," was introduced by Councilmember Barnes and read by the Clerk. Law Director Riehl explained that a separate Ordinance was prepared to separate what the engineer was to provide versus what is contracted out to C.W. Courtney. This Ordinance will go into the Codified Ordinance Book and will set the duties for whoever holds the engineer position. It also establishes that the engineer is under the control of the Mayor. Whether the engineer is an employee or not depends upon the nature of the issue. For Workers Compensation he will be covered by the Village if injured while working for the Village. For purpose of sovereign immunity the Village would owe the engineer. PERS is negotiable. Bottom line, he would be an employee for most functions.

Councilmember Bletcher asked if we could have him as an employee and not offer him PERS. Law Director Riehl said if that is what is negotiated. Engineer Courtney has structured his rate by lowering it to cover the pension expense. Councilmember Bletcher asked if we could make him not an employee. Law Director Riehl said if he gets injured while working for the Village he is not sure the Village could exempt him from Workers Compensation. The way the Ordinances are now set up for everything beyond his retainer services this is defined as an independent contractor with his own malpractice insurance. Councilmember Bletcher asked if we contract with people like excavators, are they covered under the Village's Workers Compensation. Law Director responded they are not employees. Councilmember Bletcher asked why then is the engineer considered an employee. Mayor Riley said Law Director Riehl is an employee and the Village contracts with his firm for other services.

Mayor Riley thinks by Charter we have to have a Law Director. Councilmember Bletcher asked if the Charter says the Law Director must be an employee. Law Director Riehl believes it does. The amount of retainer is negotiable and whether the village pays his PERS is negotiable. Councilmember Schneider asked if it is better that he be an employee than to sue us. Councilmember Bletcher said he would then be covered by his own workers' comp and we wouldn't have that extra expense. Law Director Riehl said he didn't know if that could be split out. Mayor Riley said the Law Director and the engineer can be an employee of an independent contractor. A cost analysis and a decision needed to be made. The Committee looked at the issue and agreed to hire the engineer as an employee and to pay him an amount. If we hire him as an independent contractor he will come back with a higher rate. Councilmember Bletcher said he thought it was negotiable. Law Director Riehl said PERS was negotiable. Mayor Riley said this has been negotiated by a committee who is saying this is their recommendation.

Councilmember Bletcher asked about the two ordinances. One is to create the position of engineer and the other is to set up the compensation. Law Director Riehl said it also incorporates the salary. The one that is on third reading (Ord. 2012-38) establishes the rate if work is contracted out to an engineer. It is not mandatory to hire C.W. Courtney. We could use another firm. Councilmember Bletcher said that Section 1 of Ordinance 2012-38 sets what the engineer does for his retainer. Shouldn't that be in the other Ordinance? Councilmember Schneider said she thinks we need both. The one is for Chris' retainer. If we hire another engineer he must follow the same duties so they are included in Ordinance 2012-38.

Councilmember Bletcher said Section 1 doesn't deal with hiring another engineer. It says "the Village Engineer shall have the following duties and responsibilities". He asked why that is not in the other Ordinance that defines what the Village Engineer's duties are. Councilmember Reynolds said the first ordinance creates the position which we did not have before. The second ordinance lists the responsibilities, duties, and salary. Councilmember Turner said Ordinance #2012-38 combines what he does under the retainer and what his company will do if he provides design and other contract services. She thought the two were going to be separated. Law Director Riehl said in Section 5 of Ordinance #2012-38 there are defined terms. The Village Engineer is Christopher Courtney and C.W. Courtney is an independent contractor. Councilmember Bletcher said there is language in both ordinances that sets the duties of the Village Engineer and the language is different in each. Mayor Riley said the introductory paragraph of the first ordinance creating Chapter 165 says among the other duties he shall perform the following... This tells what the engineer must do. Councilmember Bletcher said that was part of his question. 165.01 (c) says the "Village Engineer shall, as authorized by Village Council, supervise and direct all construction inspectors..." In Section 1 of Ordinance #2012-38 it doesn't define that. Mayor Riley said there is an all-encompassing Section (g). Engineer Courtney said the ordinance that establishes the position speaks to the global responsibilities of the position. Section 1 of Ordinance #2012-38 is talking about only part of the responsibilities for which the engineer is compensated under the retainer. If the second ordinance said what the first ordinance says there would be gaps in what the position does. Councilmember Bletcher said he didn't think there should be a gap. The position responsibilities should be either in one or the other. They should be in the "Chapter 165" ordinance. Law Director Riehl said the "Chapter 165" ordinance will become a part of the Village's Code. A salary is not put in a code. Councilmember Bletcher said Section 2 of Ordinance #2101-38 sets the compensation. He is not suggesting that be in the Codified Ordinance. Section 1 of both ordinances set forth the responsibilities and they are different. Councilmember Barnes said all the duties are in one of the Section 1's. Engineer Courtney said Ordinance \$2012-38 lists only what he is to do for the retainer, not all his responsibilities. Councilmember Bletcher asked if we said that if we have a project that needs specific expertise we could hire a different engineer firm.

Councilmember Turner said that Councilmember Schneider had said that one of the ordinances had to do with the responsibilities under the retainer and the other for any projects. She agrees but doesn't see it. Engineer Courtney explained Section 1 is responsibilities, Section 2 is compensation, and Section 3 is for additional projects. Councilmember Turner said that it is all together. Councilmember Barnes said this is exactly the structure we have been operating under for the last several years. Councilmember Turner asked then why do we need "Chapter 165" Ordinance. Councilmember Schneider said because it was requested last month. Law Director Riehl said last month there was some discussion about the position being in the Charter. It is not. Therefore, he recommends that we create a specific ordinance that describes how to appoint the position, the qualifications, and global duties the engineer would perform. Councilmember Reynolds confirmed that "Chapter 165" becomes a part of the Codified Ordinance so there is a value to the Ordinance.

Councilmember Bletcher questioned Section (f) of the "Chapter 165" Ordinance asking about the approval process. Service Director Biggert said when we have a project we first get an estimate of how long it would take to prepare the drawing and specs. Mayor Riley asked if Service Director Biggert cared how the engineer staffed the project as long as he stays within the estimate. Service Director Biggert agreed. Councilmember Bletcher asked if the estimate is documented.

It was moved by Councilmember Barnes, seconded by Councilmember Schneider, that the rules requiring ordinances to be read on three different days be suspended and that Ordinance #2012-45 be placed upon its final passage.

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

It was then moved by Councilmember Barnes, seconded by Councilmember Sogg, that Ordinance #2012-45 be approved.

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

It was moved by Councilmember Reynolds, seconded by Councilmember Welsh that Ordinance #2012-44 be amended to include the compensation for the Village Engineer for \$25,825 per year.

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

It was moved by Councilmember Barnes, seconded by Councilmember Welsh, that the rules requiring ordinances to be read on three different days be suspended and that Ordinance #2012-44 as amended be placed upon its final passage.

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

It was then moved by Councilmember Barnes, seconded by Councilmember Welsh, that Ordinance #2012-44 as amended be approved.

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

Ordinance #2012-38 entitled "An Emergency Ordinance Setting Forth The Rate Of Compensation For Engineering Services For The Village," was introduced by Councilmember Turner and given its third reading by the Clerk. It was moved by Councilmember Turner, seconded by Councilmember Sogg that Ordinance #2012-38 be approved.

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

Resolution #2012-46 entitled "A Resolution Authorizing The Mayor And The Clerk To Enter Into An Agreement With The City Of Mayfield Heights For The Furnishing Of Mutual Fire Protection For Both Municipalities For The Year 2013 And Authorizing A Rate Of Payment For Rescue

Squad/Ambulance Services From The City Of Mayfield Heights And Declaring An Emergency,” was introduced by Councilmember Bletcher and read by the Clerk. Councilmember Bletcher explained we have a mutual aid agreement with Mayfield Heights to provide fire protection upon request if there is an overload. We also have an agreement by which Mayfield Heights could provide EMS if our first supplier, Mayfield Village, is tied up. This Resolution allows that to happen. He asked Law Director Riehl if in the fourth “Whereas” the words “rescue/fire” should be changed to “EMS” since the fire mutual aid is at no charge. Law Director Riehl said it could be amended. It was moved by Councilmember Bletcher, seconded by Councilmember Reynolds, the resolution be amended.

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

It was moved by Councilmember Bletcher, seconded by Councilmember Reynolds, that the rules requiring ordinances to be read on three different days be suspended and that Ordinance #2012-46 as amended be placed upon its final passage.

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

It was then moved by Councilmember Bletcher, seconded by Councilmember Reynolds, that Ordinance #2012-46 as amended be approved.

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

Ordinance #2012-47 entitled “An Ordinance Authorizing A Contract With Wichert Insurance Services, Inc. To Furnish And Provide Liability And Property Insurance Coverages For The Village Of Gates Mills, Its Officials And Employees And Declaring An Emergency,” was introduced by Councilmember Schneider and read by the Clerk. The past few years our cost for property and liability insurance has gone down. This year it is going up 7%. Part of the increase was our agent recommended increasing crime coverage from \$250,000 to \$1,000,000, wage coverage was added, the hammer clause and front/back wages were added. She explained that an example of the front/back wages would be if an employee was terminated and he sued for missed wages and for the possibility of getting lower wages in the future since his reputation was injured. Finance Administrator Lechman said the Hammer Clause was if we did not want to settle a case and went to court and settled for more, the insurance would pay 70% of the increased settlement. Previously the insurance company wouldn’t have paid. Councilmember Reynolds asked Councilmember Barnes how the Budget Committee was going to handle the increased premium. He said it was a lot less than the increase in the Health Insurance premium. It was moved by Councilmember Schneider, seconded by Councilmember Turner, that the rules requiring ordinances to be read on three different days be suspended and that Ordinance #2011-47 be placed upon its final passage.

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

It was then moved by Councilmember Schneider, seconded by Councilmember Welsh, that Ordinance #2012-47 be approved.

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

Ordinance #2012-48 entitled “An Ordinance To Amend The Annual Appropriation Ordinance No. 2012-05 To Increase Or Decrease Certain Appropriations And Other Expenditures Of The Village Of Gates Mills, Ohio For The Fiscal Year Ending December 31, 2012,” was introduced by Councilmember Barnes and read by the Clerk. He explained this is to bring the funds closer to reality. It was moved by Councilmember Barnes, seconded by Councilmember Welsh, that the rules requiring ordinances to be read on three different days be suspended and that Ordinance #2011-48 be placed upon its final passage.

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

It was then moved by Councilmember Barnes, seconded by Councilmember Welsh, that Ordinance #2012-48 be approved.

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

Ordinance #2012-49 entitled “An Ordinance Adopting The 2013 Edition Of The Residential Building Code And Declaring An Emergency,” was introduced by Councilmember Schneider and read by Clerk. Councilmember Schneider explained that building codes were forwarded to us by the State of Ohio to get our codes in order. Service Director Biggert explained one of the major changes is for all permits regardless of what it is for, he must inspect for a carbon monoxide detector. Another change is that for the first floor if light weight framing construction is used you have to dry wall the underside of the ceiling. This change helps if there is a fire. It was moved by Councilmember Schneider, seconded by Councilmember Turner, that the rules requiring ordinances to be read on three different days be suspended and that Ordinance #2012-49 be placed upon its final passage.

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

It was then moved by Councilmember Schneider, seconded by Councilmember Sogg, that Ordinance #2012-49 be approved.

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

Ordinance #2012-41 entitled “An Ordinance Establishing A Sanitary Sewer Surcharge Reduction And Elimination Policy And Declaring An Emergency,” was introduced by Councilmember Turner

and given its second reading by Clerk. Councilmember Turner explained the ordinance sets up funding by the Cuyahoga County Department of Public Works to reimburse a property owner up to \$1500 for repairs needed because of sewer backup. Engineer Courtney said Council sets up an annual budget. The County would agree to that amount of money. The money comes from the Sewer District Fund. If any residents in an area where there is sanitary sewers and a history of backups puts in devices in their basement or separate plumbing in an effort to minimize sanitary back up in the basement it provides for a maximum of \$1500 reimbursement. The resident must apply in advance to get a permit. Law Director Riehl said this program was enacted in Richmond Heights. Their lawyer told him this does not obligate the Village to make any payment. It is discretionary to the Village. The resident is making a moral claim. It was moved by Councilmember Turner, seconded by Councilmember Schneider, that the rules requiring ordinances to be read on three different days be suspended and that Ordinance #2012-41 be placed upon its final passage.

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

It was then moved by Councilmember Turner, seconded by Councilmember Schneider, that Ordinance #2012-41 be approved.

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

Business from the audience:

Katherine Malmquist from the Gates Mills Library reported that the Library had a success fall. Librarian Pat Moses is retiring after 25 years. There will be an open house on Friday, December 21, 2012 from 9:00 to 5:30. The Friends of the Library will be making a presentation to her at 4:00.

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

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

Respectfully submitted,

Beth DeCapite, Clerk

Approved:

Shawn M. Riley, Mayor