

Village of Windham, Ohio

Minutes of Special Council Meeting (Regular Council Meeting held at different than usual date)

Held May 25, 2011

At 7:07 PM, the Honorable Mayor Robert W. Donham II called the meeting to order and led in the pledge of allegiance to the Flag of our Nation..

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

Also present were Atty. Tom Reitz Solicitor, Police Chief Eugene Fixler, Village Administrator Mike Iwanyckyj, former Mayor C. James Moore, Josh and Alicia Herbert

The minutes of the April 27, 2011 Regular Council Meeting were reviewed and on a motion to approve by Mr. Snyder and second by Mr. Garrett and a vote of Council which unanimously affirmed the motion.

The minutes of the May 3, 2011 Special Council Meeting were reviewed and on a motion to approve by Mrs. Barrett and second by Mr. Garrett and a 6 – 0 vote of Council were approved.

The Fiscal Officer's Financial Reports were presented by Mr. Billman as follows:
The Income Tax total for April 2011 year to date is \$262,687.96 of which \$27,219.49 is due to declarations for estimated tax.

The expenditures for the month of April 2011 of \$366,964.01 in checks, charges, etc. Check numbers 25953 through 26132 were paid from the Primary Checking Account during April. Check number 25998 was voided during April 2011.

The all funds April 2011 Bank Reconciliation all funds reconciled balance was \$638,347.48.

Village Council President's Report by Mrs. Rininger – Mrs. Rininger said I have nothing at this time.

Dispatchers, Police, Fire and Rescue Squad (EMS) reports for April 2011 were given by Mrs. Meszaros. Mrs. Meszaros then made a motion to accept the report which was seconded by Mr. Garrett and carried unanimously by the vote of Council.

Mayor's Communication and Correspondence Mayor Donham invited our newest auxiliary policeman Josh Herbert to come forward whereupon he swore Officer Herbert in.

Prior requests of guests to speak. None.

Finance by Linda Rininger

Mrs. Rininger made a motion to approve the Fiscal Officers expenditures for the month of April 2011 of \$366,964.01 in checks, charges, etc with check numbers 25953 through 26132 being paid from the Primary Checking Account during April. Check number 25998 was voided

during April 2011. The motion was seconded by Mr. Garrett and carried by a 6 – 0 vote of Council.

Mrs. Rininger made a motion to approve the Fiscal Officers April 2011 Bank Reconciliation with an all funds reconciled balance of \$638,347.48 and the following monthly reports for the month ending April 30, 2011: Fund Summary, Appropriation Summary, Revenue Summary, Payment Register, Charge Register, Expenditure Summary, Cash Summary by Fund. Approval of the following Year to Date Reports through April 30, 2011: Cash Summary by Fund, Comparison of Budget versus Actual Receipts, Comparison of Disbursements and Encumbrances. The motion was seconded by Mrs. Barrett and carried by a 6 – 0 vote of Council.

Mrs. Rininger read Ordinance O-2011-18 **AN ORDINANCE ESTABLISHING THE RATE OF PAY FOR THE MAYOR OF THE VILLAGE OF WINDHAM** as a second reading.

Mrs. Rininger read Ordinance O-2011-19 **BEING AN ORDINANCE AUTHORIZING THE AMENDING AND/OR SUPPLEMENTING OF THE PERMANENT APPROPRIATIONS SET FORTH IN ORDINANCE O-2011-14 ON APRIL 27, 2011 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 Mr. Garrett and carried by a unanimous vote. Mrs. Barrett made a motion to adopt Ordinance O-2011-19 which was seconded by Mr. Snyder and carried by unanimous vote.

Mrs. Rininger read Resolution R-2011-27 **A RESOLUTION AUTHORIZING THE VILLAGE FISCAL OFFICER OF THE VILLAGE OF WINDHAM TO CREATE A THEN AND NOW PURCHASE ORDER(S) TO PAY STATE OF OHIO, NEIGHBORHOOD DEVELOPMENT SERVICES, INC, FALLS HOME REMODELING, COSE / MEDICAL MUTUAL OF OHIO, MEDICAL MUTUAL, RURAL WATER STORAGE, LLC AND DECLARING AN EMERGENCY** and made a motion to suspend the rules which was seconded by Mrs. Meszaros and carried by a 6 – 0 vote of Council. Mrs. Barrett then made a motion to adopt Resolution R-2011-27 which was seconded by Mr. Snyder and carried by a 6 – 0 vote of Council.

Mrs. Rininger read Resolution R-2011-28 **A RESOLUTION AUTHORIZING THE VILLAGE FISCAL OFFICER OF THE VILLAGE OF WINDHAM TO MAKE THE FOLLOWING TRANSFERS BETWEEN THE WATER AND SEWER OPERATING FUNDS TO THE GENERAL FUND DURING 2011 IN ACCORDANCE WITH ORDINANCE O-2011-16 AND DECLARING AN EMERGENCY.** Mr. Garrett made a motion to suspend the rules which was seconded by Mr. Snyder. The roll call vote was taken as follows: Mrs. Rininger no, Mrs. Barrett no, Mrs. Miranda no, Mr. Garrett yes, Mrs. Meszaros no, Mr. Snyder yes. The motion was defeated. Mayor Donham asked may I now ask since we have something defeated. Mrs. Meszaros said how can we pay that much out of the water fund when it is in such dire straits? Mayor Donham said this is just the mechanism approving what we have already done as far as the rent payments instead of doing how we did before. We passed our last legislation authorizing that rent. Mrs. Rininger said Mrs. Meszaros wasn't here for last months Council meeting. Mayor Donham said I don't recall Mrs. Meszaros not being here but we talked about this in both Finance and Utilities Committee meetings. We have gone back and forth with the audit on how do you transfer money out of Water and Sewer to General Fund to pay for basically overhead services. The cost of shared employees and the cost of the utilities for the office, Terri's portion, all of the stuff that we don't share across funds. The most desirable option that we had was this rent calculation where the Ohio Supreme Court had ruled for Newton Falls that you can charge the utilities rent on land that they had purchased. In other words the Village purchased property at some point and then didn't sell it to the Water and Sewer Departments when we build plants so it is owned by the General Fund not by the Utilities themselves. So this is

something that the Legal Counsel for the Auditor was comfortable with. It was something that Tom (Atty Reitz) was comfortable with. It was something that Council was comfortable with, with the exception of Linda. And what we had talked about was that we had tap-in fees coming at the end of the year in October for Water and Sewer \$900,000 between the two funds and this is an annual payment. We paid twenty-four thousand to them already this year for last year's lack of us having legislation, so this is roughly the same amount that we paid to them is being paid back out. Mrs. Meszaros questioned why don't we just wait until we have the tap-in fees. Mr. Donham explained that this is a monthly transfer we would pass this and wait thirty days and start in July. The Fiscal Officer explained that the legislation said it would start right away. Mrs. Rininger said she has not hidden the fact that she doesn't like it. It is almost a back door tax. We are literally telling people that they have to pay rent on property that they own and it will impact the Water and Sewer rates eventually. So to me it is a back door tax and is only a way of shoring up the General Fund. I don't think that this is a good thing to do with a fund that is in that kind of trouble. If our rates were adjusted to the point where that fund could handle it, then fine but that fund can't. And with the big expenses we have coming for that fund. Mr. Donham said our suggestion at the previous Finance Meeting was to shift \$1.50 from Sewer to Water. Mrs. Rininger said that was your idea, I wanted a little more. Mr. Donham said yeh you wanted \$200,000 a year. I went down to \$60,000 a year. Mrs. Rininger said \$60,000 a year still isn't enough to meet the expenditures. Mr. Donham said we will have that argument in Finance. Mrs. Rininger asked why adjust it for an inadequate amount. Mr. Donham said \$60,000 isn't inadequate, it is exactly what is needed; you are putting the Sewer Department in worse shape than the Water Department is now but that seems to be of no concern to you on Council. Mrs. Meszaros asked if we could put this off until next meeting. She said she would certainly like more time to study it. Mr. Donham said we can certainly put it on first read but we already have legislation to do it, the only thing it is going to do is getting us in audit trouble because we don't have legislation authorizing or instructing Lloyd how to do it so we are going to be doing it. Mrs. Meszaros said we are still going to be moving that money. Mr. Donham said at some point before the end of the year because this is an annual thing. Mrs. Meszaros said it won't kill anything to let it ride. Mr. Donham said no I don't have an issue putting it on first read and discussing it at the next meeting but the idea that we aren't going to do anything to the Water Department ever, the Water Department always has money transferring in and never money transferring out is getting old. All the funds are going to have to carry their own Water, no pun intended. Mrs. Rininger said save it for Finance. All of our funds are going to have to do this including the General Fund. Everyone is ignoring the big elephant in the room where the General Fund is losing the equivalent of a Police Officer's salary and we have an opportunity to equitably charge our utility rates for what they use, stuff we have never charged before. I mean Terri uses lights, she uses water, she uses electricity. Mike uses the office. There is all kinds of overhead rate which is permissible to charge for, and if you have the opportunity to charge for it without increasing rates, we have no suggestion of raising rates under this proposal. We paid those two funds, which are doing fine Water is tight but they are not bankrupt. We have paid those two funds \$25,000 already this year out of General Fund. We are also paying another \$15,000 out of Revolving Loan Fund. So we have subsidized them \$40,000 this year, when they are supposed to be revenue based. When you have a revenue it is supposed to keep up with the expenditures. I don't know why it is ok for the Police Department to subsidize the Water Department but there is some big issue to the reverse. Linda, if you want to comment to that you have the floor. Mrs. Rininger said I hate to tell you but adjusting that rate will not break the Sewer Fund. The Sewer Fund has about \$140,000 in it right now. The Water Fund has about \$5,300. Something is just not clicking here. We have \$58,000 that we will have to match for the grant and the backwash pump. We're putting this additional expense on it. This fund (Water Fund) has been in trouble all year and we are all just standing here and letting it get itself into a deeper hole than it already is. There has been one expensive repair after another down there trying to hold this thing off till October when the upgrades start. You want ten percent additional capital in the Sewer Fund but you don't seem to think that there is a problem not having additional monies in the Water Fund. Mr. Donham said that is what the \$60,000 does is it equalizes it to ten percent. Your proposal was to take \$170,000

out of Sewer putting them \$110,000 in the hole. Yeh, they have \$140,000 this year so they will be ok this year but guess what, next year we are going to have to raise Sewer rates \$4.00. Mrs. Rininger said it didn't seem to bother you to do that to the Water Fund. We have consistently done that to the Water Fund. We put them in dire straights every year. We know that the rates are not covering the expenses. Mrs. Meszaros said we aren't going to do anything with this tonight and we might as well put it off until the Finance Meeting. Mr. Donham said I think that this is getting attack which is an important piece of legislation because of the rate structure. I hope it doesn't get held hostage until the end of the year and we get an Audit citation. Who had it, we will put it on first read.

Mrs. Rininger then read Resolution R-2011-29 **A RESOLUTION AUTHORIZING THE VILLAGE FISCAL OFFICER OF THE VILLAGE OF WINDHAM TO ADVANCE \$12,000 FROM THE REVOLVING LOAN FUND TO WATER OPERATING FUND AND DECLARING AN EMERGENCY** and made a motion to suspend the rules which was seconded by Mr. Garrett. The vote was taken as follows: Mrs. Rininger yes, Mrs. Barrett yes, Mrs. Miranda no, Mr. Garrett yes, Mrs. Meszaros yes, Mr. Snyder yes and the motion passed.

Mr. Garrett made a motion to adopt Resolution R-2011-29 which was seconded by Mrs. Meszaros. Before the vote was taken, Mrs. Barrett said I would like to see the dollar amounts adjusted to be more equal. (The repayment schedule is not equal each month.) Mr. Donham asked what she was talking about. Mrs. Barrett said I'm talking about \$1700 each month versus \$500, \$800, \$1100. Fiscal Officer Billman explained that this was his brainchild to make it scale up starting low and going up because we will have tap-in fees sometime around October timeframe at which time we can afford to pay \$2000, November \$2600 and December \$3500. Right now in May we are paying out of Water \$5735 through transfers and advance money. In June it is going to be \$6235, July \$6535, August \$6835, September \$7235, October \$7735, November \$8335 and December \$9235. Without the additional rent money, and I just figured that starting at \$5700 rather than something significantly higher when we only have \$6852 unencumbered right now (in the Water Fund). To say go ahead and transfer \$7000 doesn't hardly make sense because we don't have it right now. I mean you can adjust legislation however you want but if you don't have the funds there. This is printed off as of today \$6852, so that was my brainchild if you want it different that is certainly up to Council. Mrs. Miranda said so we are already scheduled to pay \$7000 this month and this is additional. Mr. Billman explained that we are going to repay \$12,000 altogether; we are already paying \$5235 in May, in June we will be paying \$6235. Mr. Donham inquired what the encumbered amount consisted of. Mr. Billman said chemicals, etc. Mr. Donham said it has to be paid back in full by the end of the year. Mrs. Rininger said to Mr. and Mrs. Herbert this is some pretty dry stuff, if you don't want to stay we will understand. Mr. Donham said she speaks for all of us. He said he doesn't have any objection to any amount, it has to be paid back by the end of the year. It is really Council's decision. Lloyd came up with this, but if somebody wants to change it, it doesn't really matter. Mrs. Miranda said this is an additional \$12,000. Mrs. Rininger said yes, this is for the Water Tower inspections. Mrs. Barrett said I will withdraw my request there, if the Fiscal Officer doesn't know what is best on it then we are all in trouble. Mrs. Rininger said so we will trust you Lloyd. Mr. Donham said that's a first. Mrs. Rininger said no it's not, we trust Lloyd all the time. Mr. Donham said we have a first and a second, any other discussion? Take the vote. The roll call vote was taken and Council passed it unanimously.

Mrs. Rininger read Resolution R-2011-30 **A RESOLUTION APPROVING THE 2012 PROPOSED BUDGET AND AUTHORIZING THE FISCAL OFFICER TO SUBMIT THE BUDGET TO THE PORTAGE COUNTY AUDITOR AND DECLARING AN EMERGENCY** as a first reading.

Safety / Personnel / Rules by Kelly Meszaros

Mrs. Meszaros read Ordinance O-2011-13 **AN ORDINANCE AUTHORIZING THE MAYOR AND THE VILLAGE FISCAL OFFICER TO ENTER INTO AN AGREEMENT WITH**

THOMAS REITZ AUTHORIZING HIM TO SERVE AS SOLICITOR FOR THE VILLAGE OF WINDHAM COMMENCING ON JUNE 1, 2011, SETTING THE TERMS OF HIS COMPENSATION AND DECLARING AN EMERGENCY as a third reading and made a motion to adopt the Ordinance which was seconded by Mr. Garrett and carried by a unanimous vote of Council.

Mrs. Meszaros made a motion to approve the addition of Josh Herbert as Auxiliary Police Officer effective June 1, 2011 which was seconded by Mr. Snyder and passed unanimously by vote of Council.

Mrs. Meszaros made a motion to specify eligibility for Floating Holidays for full-time employees to be coincident with eligibility for vacation (i.e., after one year). The motion was seconded by Mrs. Rininger and carried by a 6 – 0 vote of Council.

Mrs. Meszaros read Ordinance O-2011-20 **AN ORDINANCE APPROVING THE RECODIFICATION, EDITING AND INCLUSION OF CERTAIN ORDINANCES AS PARTS OF THE VARIOUS COMPONENT CODES OF THE CODIFIED ORDINANCES OF WINDHAM, OHIO** and Mr. Snyder made a motion to suspend the rules which was seconded by Mrs. Miranda and carried by a unanimous vote of Council. Mrs. Meszaros made a motion to adopt Ordinance O-2011-20 which was seconded by Mr. Snyder and passed by a unanimous vote of Council.

Mrs. Meszaros read Resolution R-2011-32 **A RESOLUTION APPROVING MEMBERSHIP IN THE PORTAGE COUNTY DRUG TASK FORCE AND AUTHORIZING THE CHIEF OF POLICE TO EXECUTE, ADOPT AND APPROVE THE RULES, REGULATIONS, POLICIES AND PROCEDURES OF THE PORTAGE COUNTY DRUG TASK FORCE AND DECLARING AN EMERGENCY** and made a motion to suspend the rules which was seconded by Mr. Garrett and carried by a 6 – 0 vote of Council. Mrs. Meszaros made a motion to adopt Resolution R-2011-32 which was seconded by Mrs. Miranda. Atty. Reitz said he had reviewed the entire contract and feels that it is fine and clarified the procedure should Council decide to withdraw. Portage County Prosecutor said the way to withdraw was simply to ask. The roll call vote of Council resulted in a 6 – 0 vote in favor of the Resolution..

Mrs. Meszaros read Resolution R-2011-33 **A RESOLUTION APPROVING A MEDIATION SETTLEMENT AGREEMENT BETWEEN ROBERT CAETTA AND THE VILLAGE OF WINDHAM AND DECLARING AN EMERGENCY** and made a motion to suspend the rules which was seconded by Mrs. Rininger. The roll call vote was taken as follows: Mrs. Meszaros yes, Mr. Garrett yes, Mrs. Rininger yes, Mrs. Barrett yes, Mrs. Miranda yes, Mr. Snyder no. It was decided that not all of Council had been informed of discussions held during the SPR Meeting. Mrs. Meszaros made a motion to table the Resolution which was seconded by Mrs. Rininger and carried by unanimous vote of Council. Mrs. Meszaros then made a motion to enter executive session to discuss personnel issues which was seconded by Mrs. Rininger and carried by unanimous vote of Council at 7:50 P.M. Mrs. Meszaros made a motion to return to regular session which was seconded by Mrs. Rininger and carried by a 6 – 0 vote of Council at 8:02 P.M.. Mrs. Meszaros then made a motion to return the legislation to the table which was seconded by Mrs. Miranda and carried by unanimous vote. Mrs. Meszaros made a motion to adopt Resolution R-2011-33 which was seconded by Mrs. Rininger and carried by unanimous vote.

Mrs. Meszaros read Resolution R-2011-34 **A RESOLUTION AUTHORIZING THE INTERNET SALE OF UNNEEDED, OR UNFIT, OR OBSOLETE PERSONAL PROPERTY, INCLUDING MOTOR VEHICLES AND EQUIPMENT OWNED BY THE VILLAGE OF WINDHAM AND DECLARING AN EMERGENCY** and made a motion to suspend the rules which was seconded by

Mr. Garrett and carried by unanimous vote. Mrs. Meszaros then made a motion to adopt Resolution R-2011-34 which was seconded by Mr. Garrett and carried by unanimous consent of Council. Atty Reitz explained that a Resolution such as this must be approved each year in which Internet Sales is to occur.

Mrs. Meszaros read Resolution R-2011-36 **A RESOLUTION AWARDDING A CONTRACT TO INSTALL AN ADA COMPLIANT BATHROOM IN THE VILLAGE OF WINDHAM POLICE DEPARTMENT AND DECLARING AN EMERGENCY** which was seconded by Mr. Garrett and carried by unanimous vote. Mrs. Meszaros then made a motion to adopt Resolution R-2011-36 which was seconded by Mr. Garrett and carried by unanimous vote.

Utilities by Scott Garrett

Mr. Garrett read Resolution R-2011-31 **A RESOLUTION AUTHORIZING AN AMENDMENT TO THE DESIGN PROFESSIONAL SERVICES AGREEMENT WITH BURGESS & NIPLE AND DECLARING AN EMERGENCY** and made a motion to suspend the rules which was seconded by Mr. Snyder and carried by a 6 –0 vote of Council. Mr. Garrett then made a motion to adopt Resolution R-2011-31 which was seconded by Mrs. Meszaros. Mrs. Barrett asked if there was anything in writing from Burgess & Niple and Mr. Donham said it was handed out in Finance. The vote was taken and carried by 6 – 0.

Mr. Garrett read Resolution R-2011-35 **A RESOLUTION AUTHORIZING THE FISCAL OFFICER TO APPLY FOR CREDIT WITH TAX EXEMPT LEASING CORPORATION FOR THE REPLACEMENT OF WATER METERS THROUGHOUT THE WHOLE OF THE VILLAGE AND DECLARING AN EMERGENCY** and made a motion to suspend the rules which was seconded by Mr. Snyder and carried unanimously. Mr. Garrett then made a motion to adopt Resolution R-2011-35 which was seconded by Mrs. Meszaros and carried unanimously.

Streets and Sidewalks by Rachel Barrett

Mrs. Barrett made a motion to recommend and authorize NDS to file for a Beautification Grant for Maple Grove area on behalf of the Village. The motion was seconded by Mr. Snyder and carried by a unanimous vote of Council.

Housing Rental License Code by Rachel Barrett

No report.

Village Buildings and Properties by Jena Miranda

No report.

Parks and Recreation by Phil Snyder

Mr. Snyder made a motion to provide paint for the Hot Stove Association to paint the dugouts at the Village Park. The Hot Stove will do the painting. The motion was seconded by Mrs. Miranda, and carried by unanimous vote of Council.

Mrs. Rininger made a motion to approve the Windham – Garrettsville Soccer Association to grade and level the Soccer fields on Community Drive. Grading will fill in ditch and provide proper drainage to the field. The motion was seconded by Mr. Garrett and carried by unanimous vote of Council.

Tax Incentive Review Committee by Mrs. Rininger Mrs. Rininger made a motion to accept the recommendations of the Tax Incentive Review Committee on the March 21, 2011 meeting with respect to RHI America Refractories. The motion was seconded by Mrs. Miranda and carried by unanimous vote of Council.

Planning and Zoning by Phil Snyder
Mr. Snyder read Ordinance O-2011-17 **AN ORDINANCE AMENDING THE VILLAGE ORDINANCE 1317.05 NUMBER SYSTEM** as a second reading. Mrs. Miranda said there was a change in the Committee name within the legislation which needed to be made and the Clerk of Council said he would make the change.

Solicitor’s Report by Atty. Tom Reitz No report.

Guest Recognition None.

Mrs. Rininger inquired if anyone had any problem with changing the Council meeting time from 7:30 P.M. to 7:00 P.M. and no-one had any problem.

Mrs. Rininger made a motion to adjourn the meeting which was seconded by Mr. Snyder and carried by unanimous vote and the meeting was closed at 8:15 PM. (Clerks’ note – The Council meeting was somewhat hurried after Council had returned from executive session as there was word that a Tornado had been cited and was thought to be heading in the direction of the Village).

Respectfully submitted,

Attest

Lloyd C. Billman, Clerk of Council

Robert W. Donham II, Mayor