

Village of Windham, Ohio

Minutes of Council Meeting

Special Council Meeting (Regular Council Meeting held on other than normal date)

Held July 19, 2011

At 7:00 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 – absent,
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, Denise Bly, Josh Herbert, Bob Cline, Delores Brady.

Mayor Donham said he would like to excuse Scott Garrett who is out of town and Linda Rininger can handle Scott's portion of the agenda for the evening.

Mrs. Meszaros made a motion to amend the agenda to add a Discussion of payment terms on Water Meter change-out project, Resolution R-2011-46, motion and vote to approve Michelle Hostetler and Jeffrey Alan Harris as Civilian Auxiliary Officers, motion and vote to accept resignation of Deborah Dean, motion and vote to approve promotion of Joseph Summers, Jr., Resolution R-2011-43, Resolution R-2011-45. The motion was seconded by Mr. Snyder and carried unanimously.

The minutes of the June 28, 2011 Regular Council Meeting were reviewed and on a motion to approve by Mrs. Barrett and second by Mr. Snyder and a vote of Council which unanimously affirmed the motion.

The Fiscal Officer's Financial Reports were presented by Mr. Billman as follows:
The Income Tax total for June 30, 2011 year to date is \$317,112.92 of which \$52,894.95 is due to declarations for estimated tax.

The expenditures for the month of June 2011 of \$213,637.92 in checks, charges, etc. Check numbers 26287 through 26447 were paid from the Primary Checking Account during June. Check numbers 26307, 26342 and 26365 were voided during June 2011.

The all funds June 2011 Bank Reconciliation all funds reconciled balance was \$537,825.20.

Village Council President's Report by Mrs. Rininger – Mrs. Rininger said she wanted to thank all of those who came out Saturday to help with the cleanup in preparation for the Bicentennial Celebration. And a special thanks to Brian Miller for his help. Jena Miranda was also complemented for her job in organizing the cleanup.

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

Mayor's Communication and Correspondence Mayor Donham explained that he had learned today that the payment terms on the Water Meter change-out project were not as had been originally explained to him. He had spoken with Mark Zaslavsky who is President of Tax Exempt Leasing Corporation who said there are really only two choices on financing. The first is have the first monthly payment begin three months after the start of the project and the second would be to pay annually in arrears which would require a ten percent down payment. The Mayor explained that the third option would be to not do the project. He thought it prudent to opt for the monthly payments beginning on November 15th. Contact will be made with Mark tomorrow who will e-mail the closing documents. We will have a meeting to award the project and accept the financing.

The Mayor read Resolution R-2011-46 **A RESOLUTION WITH RESPECT TO 9947 BELDEN DRIVE IN WINDHAM, OHIO AND HOW THE SETBACKS CALLED OUT ON THE PLAT FOR THE WINDHAM ESTATES RECORD PLAT IIIB ARE VIEWED BY THE VILLAGE OF WINDHAM AND DECLARING AN EMERGENCY**

Atty. Reitz explained that this was the best option to providing the necessary documentation which would allow the Title Company to approve the property and Cortland Banks to loan money on the property. This Resolution says with respect to any setbacks that appear on the plat, they don't have their origin in Village Zoning Code and so the Village isn't going to enforce them. In fact the Village doesn't have standing to enforce them. That means the Village doesn't have the legal right to do so. If you want a variance, please apply for one, but every time I have spoken with the Title Agency they said it is the setback called out by the surveyor. So I called the surveyor and he said what I'm referring to are the setbacks on the plat. So if all that is true, this should fix the problem. Mayor Donham called upon Delores Brady who said she had a lot of concerns about this because I'm not sure it will do what we need it to do. She said Cortland Bank is the Bank who will be lending the money. She showed them the Title Policy which had exceptions noted which included any exceptions in boundary lines and any encroachments or overlapping. This relates to an accurate surveying of the land. The concerns are if Windham should decide to widen the streets they could ask these people to move the house. Atty. Reitz said this Resolution is an effort by the Village Council to say that they can't do that. We are not going to enforce the plat because we can't. Delores Brady said she would take the Resolution to the Title Company and if they would guarantee the Title, she is sure that Cortland Bank will accept that. Mrs. Rininger made a motion to suspend the rules which was seconded by Mrs. Meszaros and carried by unanimous vote. Mrs. Rininger then made a motion to adopt Resolution R-2011-46 which was seconded by Mr. Snyder and carried by unanimous vote.

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 June 2011 of \$213,637.92 in checks, charges, etc with check numbers 26287 through 26447 being paid from the Primary Checking Account during June. Check numbers 26307, 26342 and 26365 were voided during June 2011. The motion was seconded by Mrs. Barrett and carried by a 5 – 0 vote of Council.

Mrs. Rininger made a motion to approve the Fiscal Officers June 2011 Bank Reconciliation with an all funds reconciled balance of \$537,825.20 and the following monthly reports for the month ending June 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 June 30, 2011: Cash Summary by Fund, Comparison of Budget versus Actual Receipts, Comparison of Disbursements and Encumbrances. The motion was seconded by Mr. Snyder and carried by a 5 – 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** as a third reading. Mr. Donham said as we discussed in the Committee, I am recommending that we table this until the tap-in fees have been received. Unless there is disagreement, I believe it is prudent that we table it and consider it when it needs to be considered at the end of the year when we can make these payments. Mrs. Barrett made a motion to remove Resolution R-2011-28 from the agenda. Mrs. Miranda asked if that was different from tabling it. Atty. Reitz said yes it is. Tabling it sort of puts it in a holding pattern. Removing it from the Agenda is that it is no longer before you, but it is not turned down either. So it could be brought back some time later and added to the Agenda again as drafted or changed. Mrs. Miranda seconded the motion and upon the roll call vote all were in favor with the exception of Mrs. Meszaros.

Mrs. Rininger read Resolution R-2011-41 **A RESOLUTION AUTHORIZING THE VILLAGE FISCAL OFFICER OF THE VILLAGE OF WINDHAM TO CREATE A THEN AND NOW PURCHASE ORDER(S) TO PAY OHIO POLICE & FIRE PENSION FUND, COSE / MEDICAL MUTUAL OF OHIO, UNITED STATES DEPARTMENT OF AGRICULTURE, CHRISTLEY, HERINGTON & PIERCE AND DECLARING AN EMERGENCY** and made a motion to suspend the rules which was seconded by Mrs. Meszaros and carried by a 5 – 0 vote of Council. Mrs. Rininger then made a motion to adopt Resolution R-2011-41 which was seconded by Mrs. Meszaros and carried unanimously.

Mrs. Rininger read Ordinance O-2011-26 **BEING AN ORDINANCE AUTHROZING 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 Mrs. Barrett and carried by unanimous vote of Council. Mrs. Barrett then made a motion to adopt Ordinance O-2011-26 which was seconded by Mrs. Miranda and carried by unanimous vote of Council.

Safety / Personnel / Rules by Kelly Meszaros

Mrs. Meszaros read Ordinance O-2011-24 **AN ORDINANCE CONFIRMING THE APPOINTMENT OF EUGENE H. FIXLER AS THE CHIEF OF POLICE OF THE WINDHAM POLICE DEPARTMENT, ACKNOWLEDGING THAT HE HAS COMPLETED HIS SIX MONTH PROBATIONARY PERIOD AND WAIVING THE RESIDENCY REQUIREMENT SET FORTH IN THE OHIO REVISED CODE** as a second reading.

Mrs. Meszaros read Ordinance O-2011-28 **AN ORDINANCE TO REVISE AND AMEND THE NOTICE PROVISIONS CONTAINED IN CHAPTER 105 OF THE VILLAGE OF WINDHAM CODIFIED ORDINANCES AND ADD A DEFINITION OF THE PHRASE “PUBLIC BODY”** and made a motion to suspend the rules which was seconded by Mrs. Rininger and carried by unanimous vote. Mrs. Meszaros then made a motion to adopt Ordinance O-2011-28 which was seconded by Mrs. Rininger and carried unanimously.

Mrs. Meszaros read Ordinance O-2011-29 **AN ORDINANCE ADJUSTING THE AMOUNT OF RESERVE FOR THE SALE OF FORMER POLICE CAR NUMBER FOUR AND**

DECLARING AN EMERGENCY and made a motion to suspend the rules which was seconded by Mrs. Rininger and carried unanimously. Mrs. Meszaros made a motion to adopt Ordinance O-2011-29 which was seconded by Mrs. Rininger and carried unanimously.

Mrs. Meszaros made a motion to approve the appointment of Josh Herbert as Part-Time Police Officer effective July 29, 2011 which was seconded by Mr. Snyder. The roll call vote was taken with all voting in favor except Mrs. Barrett.

Mrs. Meszaros made a motion to approve Michelle Hostetler and Jeffrey Alan Harris as Civilian Auxiliar Officers which is a non-paid position with benefits. Mr. Snyder seconded the motion and carried unanimously.

Mrs. Meszaros made a motion to accept the resignation of Part-Time Dispatcher Deborah Dean effective July 18, 2011 which was seconded by Mrs. Miranda. The roll call vote was taken with all voting in favor except Mr. Snyder.

Mrs. Meszaros made a motion to approve the promotion of Joseph Summers, Jr. to the position of Water & Sewer Operator in Training effective August 21, 2011 which was seconded by Mrs. Barrett and carried unanimously.

Utilities by Scott Garrett – In the absence of Mr. Garrett, Mrs. Rininger read the items in this category.

Mrs. Rininger read Ordinance O-2011-27 **AN ORDINANCE REPEALING ORDINANCE O-2011-16** Mrs. Barrett made a motion to suspend the rules which was seconded by Mrs. Meszaros. Mayor Donham began the discussion and said that he believes this is an awful awful idea. Mrs. Rininger said let's have the vote for suspension of the rules first and then we can have discussion. Mr. Donham said we did. Mrs. Rininger said we didn't have the vote. Mr. Donham said Linda, you don't have the floor, I do. (considerable overtalking) Linda, quit disrupting. We are at the discussion portion. When it is your meeting, you'll run it, when it is my meeting I'll run it. Under the discussion portion of the suspension of the rules discussion period I'm going to repeat this is a bad idea. This damages our General Fund. It damages our Police Department which is our General Fund. It is over \$20,000 per year directly from our Police Department. Council has given no recommendation on where that replacement money is going to come from, and until they do, I'm going to say it again, you are acting irresponsible by repealing money out of the Police Department that will effect our Police Officers. I want you to know that and I want to be on the record of that, and I want to separate myself from this decision of Council if it does go through. He then called for any other discussion. Mrs. Rininger said to make the stretch that this impacts the Police Department. To even attach that to it just goes to prove that it is an indirect tax in the form of additional rates on the water and sewer side. Mr. Donham asked, is there a rate increase attached to this? Mrs. Rininger said, no but there will be. The only reason you don't have one this year is because of the tap-in fees. This will eventually become an indirect tax on the people of this Village. Mr. Donham said this Council has the sole authority to raise or lower rates. You and I both know this has no impact on next years rates. We have over \$900,000 coming to our fund. Mrs. Rininger said you didn't let me finish, please give me my chance. Mr. Donham said please continue. Mrs. Rininger said you know as a matter of fact that just two weeks ago we had \$350 in our Water Fund. That Department cannot afford that rate. They cannot afford to pay rent. That's the bottom line, our rates are not adjusted to do it. So in other words to do this, pay the rent that you have proposed in that Ordinance, we will have to raise our rates. You are waiting for the tap-in fee to come

through and to cover this for this year. But somewhere down the line, that is going to have to happen and that by definition is an indirect tax on the people of this Village. And you know that is how I have felt all along. Mr. Donham said absolutely, you said it is an indirect tax. I have recommended no increase. I want to make that very clear. I have recommended zero increase in water, zero increase in sewer. This is an Ordinance that is on the books that is a charge of rent for the Water and Sewer Departments both respectively to the General Fund. The General Fund as you know is the Police Department. It is \$25,000 a year. Mrs. Miranda said to cover administrative costs, and that is what the whole O-2011-16 is about, right? Mr. Donham said no, this has nothing to do with our administrative costs. This has to do with rent for the Water and Sewer Plants because they do not own their property. They did not buy their property with Water and Sewer revenues which they should have, but they didn't. So we are leasing that. This is money that goes to the General Fund. It goes to the Police Department. It is not there for rates. Everybody on this Council has sat here for the last six months as we have gone through water and sewer rates and talked about how great a shape our Water and Sewer Departments are in because we have paid off debt. Because we are putting in new water meters that will lower costs, because we have paid off the Sewer debt. That is why we lowered the Sewer rates last month so we could shift some of that money to Water. We have increased Water \$80,000 this year. Next year's budget does not correlate to this year's budget. Next year's budget is very solvent and every time we try to make a decision on this Council between a Sewer Department, a Water Department or a Police Department, the Water Department wins on every piece of legislation. The Water Department should pay no bills, the Water Department should have no expenses and Water Department's meter should be paid at a third as Linda suggested at the last meeting and Sewer should cover two-thirds. It is ridiculous and Water seems to be the only department that matters when we start discuss finances and I said it in our Committee Meeting and I'm going to say it again, our Police Department, our public safety is our number one priority period. All other priorities fall somewhere behind that and when you talk about taking \$25,000 out of the Police Department, I'm opposed to it. That was my point. That's all I wanted to say. We can debate it, and I'm sure we will debate it further down the road. Mrs. Rininger said, well seeing that you are going to pull out things like the creative financing suggestion I had that was just a joke in a Committee Meeting Mr. Mayor, let's remind you that you admitted in a Committee Meeting that you under estimated and under budgeted on this Water Department. We had to hold off purchasing salt just to make our payroll because the rates are not adjusted correctly. And now you want to hit that fund with this as well. The reason is that the Water is as it is, is because it always under funded. And you know that, you admitted in a Committee Meeting. So to sit thee and stretch that our mismanagement and under funding of that fund is going to take Police Officers off the street is a ridiculous argument. Mr. Donham said it's the truth. Mrs. Rininger said it was our irresponsible of under funding it to begin with. Mr. Donham said you are right it is your responsibility and that is why I brow beat this Council for three months to pass the Ordinance that we passed last month. Mrs. Rininger said and we didn't pass it for enough. I wanted four dollars and we settled on two to get some kind of relief to that fund because you wouldn't do the reasonable thing which should have been three. So now we can't make our payroll, we can't pay for our salt and that is a ridiculous situation. Mr Donham said because we didn't make the decision earlier. Mrs. Rininger said because we didn't budget accordingly. Mr. Donham said because this Council didn't make the decision earlier to do it. Mrs. Rininger said and that had nothing to do with our General Fund. I will not break the Water Fund to pay this rent. Mr. Donham said you won't do anything to the Water Fund period, just like you wanted to take \$200,000 out of Sewer. Mrs. Rininger said that is not true. Mr. Donham said that's exactly what you said. Mrs. Rininger said you know that was a joke and that's just being moronic to even do that. Mr. Donham said

the four dollars was a joke? Mrs. Rininger said the four dollars, no I thought you were talking about the creative financing. Mr. Donham said your suggestion of raising the Water rates four dollars? Mrs. Rininger said that was necessary in order to make that solvent by the time the tap-in fees came in. We are in trouble now with that fund. Mr. Donham said the reason we ended up with the lower... Mrs. Rininger said I always shoot for high and hope for the middle which would have been three dollars. You know that's how I work. Mr. Donham said our residents couldn't afford \$4, I fought for a lower number and that's what we ended up with. Mrs. Rininger said no, we compromised to get this settled. But to do this when there is no money in that fund is irresponsible, Rob. And to say we are going to take Police Officers off the street because of this, it's an indirect tax. Mr. Donham said Council has given zero recommendation on what you are going to do with it. If you have another option where that \$25,000 is going to come from, I'd love to hear it, but when I submit my budget if the revenue side is down you can't appropriate it, we are not the federal government. Mrs. Rininger said well you know you need to learn that with your General Fund then, Rob. Mr. Donham said, exactly that's what I'm trying to do. Mrs. Rininger said last year the reason this is even an issue is last year you took a third from Sewer, a third from Water and a third from General for expenditures that should not have been broke down that way and you had to pay it back. Let's admit that we were spreading out the cost of General Fund expenses to the Water and Sewer plant in error. So now we have to correct. So your solution to put that money back into the General Fund that never should have come out to begin with out of the Water and Sewer is to do this to charge this rent. Mr. Donham said well we are going to vote here in a second on it, but my salary is still split one-third, one-third, one-third. Mrs. Rininger said that's fine. Mr. Donham said it is your decision not to bill it to Water because Water is the golden calf that nobody can bill anything to. Mrs. Rininger said no we billed twenty-five percent. Mr. Donham said I'm getting sick and tired of it. Mrs. Rininger said because we are breaking the fund, Rob. Mr. Donham said we are not breaking the fund. That's B.S. and you know it. Mrs. Rininger said it's not B.S. when we only have \$350 left to make payroll that is not B.S. we are breaking the fund. Mr. Donham said you are in a temporary lull. That departments budget for next year will be fifteen percent surplus. But you for some unknown reason will not make the Water Department pay it's own bills. You won't make them pay any of their own bills. Take the vote. The Roll Call Vote was taken as follows: Mrs. Rininger yes, Mrs. Meszaros yes, Mrs. Barrett yes, Mrs. Miranda yes, Mr. Snyder no. The motion was thus defeated and the Ordinance was considered as a first reading.

Mrs. Rininger read Resolution R-2011-42 **A RESOLUTION ESTABLISHING THE RATE AND METHOD OF CHARGING FOR WATER AND SEWER UTILITY SERVICES FOR A TEMPORARY PERIOD OF TIME DURING THE INSTALLATION OF NEW WATER METERS AND DECLARING AN EMERGENCY** and Mr. Snyder made a motion to suspend the rules which was seconded by Mrs. Miranda. During the discussion it was determined that the letter submitted by the Village Administrator mentioned a three month average rather than six month average. Mrs. Rininger made a motion to amend the Resolution to conform with the Village Administrator's recommendation. The motion was seconded by Mrs. Meszaros and carried unanimously. Mrs. Meszaros made a motion to adopt Resolution R-2011-42 as amended which was seconded by Mr. Snyder and passed unanimously.

Mrs. Rininger read Resolution R-2011-43 **A RESOLUTION AUTHORIZING AN ADDENDUM TO THE SPECIFICATIONS OF THE 2011 WATER METER CHANGE OUT PROJECT WITHIN THE VILLAGE OF WINDHAM, PORTAGE COUNTY, OHIO AND DECLARING AN EMERGENCY** Mrs. Meszaros made a motion to suspend the rules which was seconded by Mrs. Miranda and carried by

unanimous vote of Council. Mrs. Barrett made a motion to adopt Resolution R-2011-43 which was seconded by Mrs. Miranda and carried unanimously.

Streets and Sidewalks by Rachel Barrett Mrs. Barrett said she had nothing at this time.

Housing Rental License Code by Rachel Barrett

Mrs. Barrett read Resolution R-2011-44 **A RESOLUTION BY THE COUNCIL OF THE VILLAGE OF WINDHAM “DECLARING A SLUM AND BLIGHT IN THE AREA OF MAPLE GROVE OF THE VILLAGE OF WINDHAM DUE TO VACANT AND DILAPIDATED STRUCTURES” IN ORDER TO HAVE UP TO 13 STRUCTURES RAXED AND DECLARING AN EMERGENCY** and made a motion to suspend the rules which was seconded by Mr. Snyder and carried unanimously. Mrs. Barrett made a motion to adopt Resolution R-2011-44 which was seconded by Mr. Snyder and carried unanimously. Mrs. Barrett asked Mayor Donham if the Village would incur any cost because of this. Mayor Donham replied no they wouldn't.

Village Buildings and Properties by Jena Miranda

Mrs. Miranda read Resolution R-2011-45 **A RESOLUTION AUTHORIZING SATISFACTION OF A MORTGAGE IN FAVOR OF THE VILLAGE OF WINDHAM AND AGAINST THE PROPERTY OWNED BY CARL LIND AND DECLARING AN EMERGENCY** and made a motion to suspend the rules which was seconded by Mr. Snyder and carried unanimously. Mrs. Miranda made a motion to adopt Resolution R-2011-45 which was seconded by Mr. Snyder and carried unanimously.

Parks and Recreation by Phil Snyder

Mr. Snyder said the park is coming along really well and commended Mrs. Miranda on the work she has done.

Planning and Zoning by Phil Snyder Mr. Snyder said he had no report

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

Guest Recognition

Denise Bly asked for clarification on the Resolution R-2011-28 and Ordinance O-2011-27 voting.

Robert Cline said a concern had been brought to him about trash burning by two different families. This is not permitted. They told him they had contacted the Police Department with no results. Mayor Donham said he would check into it.

Mr. Snyder made a motion to adjourn the meeting which was seconded by Mrs. Meszaros and carried by unanimous vote and the meeting was closed at 8:02 PM.

Respectfully submitted,

Attest

Lloyd C. Billman, Clerk of Council

Robert W. Donham II, Mayor