

**VILLAGE OF SOUTH LEBANON
REGULAR MEETING MINUTES
SEPTEMBER 4, 2014
6:30 P.M.**

1. Mayor Lawhorn opened the meeting at 6:30 p.m. with the Pledge.

2. Linda Allen - Present Sue Johnson - Present
Randall Atkins – Present Steve Riley – Present
Jim Boerio – Present James Smith – Present

3. Mayor Lawhorn opened the floor to Scott Doughman:

Dr. Scott Doughman – Forrest Ave. - stated he has loved this town since he was a boy and as a concerned citizen he presents public records he requested from the attorney of the City of Loveland, concerning Gary Vidmars working under contract for both our Village of South Lebanon and the City of Loveland at the same time. Scott said after reviewing the volume of records, from invoices, contracts, schedules and emails, he has come to the conclusion that Mr. Vidmar is working 25% of his time in and for the City of Loveland. He asked how this is possible. He said evidence since February of 2013 shows Mr. Vidmar directly interfaced with a dedicated computer in Loveland, in their store room, for work there while on our village computers and on his personal electronic devices. Scott said in 2013 it was on our computers and in 2014 it was on his personal devices, but on our time and in our building. He said his virtual private connection into Loveland, links contracted work and meetings for Loveland to South Lebanon for work performed there, from an office in South Lebanon, all available when needed. Scott said evidence example #2 is of 300 to 500 hours of pay for over \$26,000 from Loveland within the twenty months pattern of time stamped and location proven by documentation. He said the packets of documentation given here, two, one for the mayor and one for the solicitor, gives many examples of how this was used. He stated all of this while on the backs of the South Lebanon tax payer footing the bill for Loveland Station development. Scott asked is that another hidden tax to another jurisdiction. Scott said to notice that Mr. Vidmar's Ipad emails to Loveland become public record. He said example #3 gives further evidence of misuse of village computers for personal gain, misuse of village office building for personal gain and breach of all contracts with the Village of South Lebanon, even the mayor's own memorandum related to this issue. Scott asked, Mayor Lawhorn, if he is allowing this conduct to continue? Scott handed packets to Bruce McGary and Mayor Lawhorn. Scott stated this is a sample of a larger body of evidence that is now a case in Loveland.

Smith asked Mr. Doughman what the memorandum is and Scott said the memorandum was on February 20th this year for Mr. Vidmar to conduct consulting services for Loveland with certain constraints. He stated those constraints, under clear evidence, have not been obeyed. Smith asked Mayor Lawhorn was the memorandum brought before the village council? Mayor Lawhorn stated when Gary Vidmar was hired, the village council allowed him to do that. He stated that was before Smith was on council.

Doughman stated the packet includes a contract signed on March 1, 2013, one month prior to the contract of his signing as administrator for the Village of South Lebanon. He asked if they had a prior disclosure of that contract? Atkins stated he thinks he was working on a project and he was allowed to finish, correct? Mayor Lawhorn stated to finish and he wasn't finished. Doughman said his last invoice for the City of Loveland for \$1200 was last month. Doughman stated there is \$26,000 in invoices and most of which can be directly accounted for on our time. Smith asked if he is sure there is not a memorandum from February 2014? Mayor Lawhorn stated he signed one to allow him to continue that project that council allowed him to do when he was hired. Smith asked if he brought it before council and Mayor Lawhorn stated no. Smith asked if it is in the records anywhere in the village and Mayor Lawhorn said Scott has a copy of it. Doughman stated it was not before council in Loveland and not before council in South Lebanon.

Smith stated these are pretty strong accusations, 25% of the time, which is a substantial amount of time being spent from South Lebanon's time to the City of Loveland. He said we have economic development and if you are going to spend that kind of time for economic development for Loveland, they are getting the benefit and it is on our dime. Doughman stated the computer's interface for Loveland was set up prior to signing his agreement with Loveland or South Lebanon for any services. He said he set up the ability to do this prior to these contracts being signed, with LANRM the internet service provider. Scott said both South Lebanon and Loveland coordinated by Mr. Vidmar. Mayor Lawhorn stated Scott's time is up.

Smith asked what LANRM is? Gary Vidmar asked to say something. He said in 2013 he had the mayor's position as well as council's permission, to continue working and sharing time with the City of Loveland on the Loveland Station project. Gary said he had council's permission and they had the knowledge I was doing that. He said that was the agreement he had and the contingency he had when he came on board here. Smith asked was that agreement on village time? Gary said at that time there was no stipulation as to whether it was village, he was agreed to work a minimum of forty hours or more for the village, no less than forty hours a week for the village and share time above and beyond forty hours a week with the City of Loveland. Smith asked why we did a new memorandum in 2014. Gary

stated to let him continue. Gary said subsequent to that, the mayor signed an agreement with him in 2014 to allow me permission to continue working with Loveland during 2014. Smith asked again on the village's time and Mayor Lawhorn said it stipulated it could not be on village time, it was done by the solicitor. Smith said he thinks the mayor needs to check this out, if he has documents where he did a public records request from the City of Loveland, it is pretty clear that it either is or isn't. Mayor Lawhorn said there is now an accusation and he will check it out. Gary said to conclude his conversation, there has never been a time I have spent less than forty hours a week working for the Village of South Lebanon, whether he be sharing his time with the City of Loveland or not. Gary said he has always worked far in excess of forty hours a week for the Village of South Lebanon.

Smith said he has one comment, the administrator's position has always been an important position to push economic development for the village. He said historically we have had someone dedicated 100% of their time to put forth business growth for this community. Smith said he has issues where your time is being used and not 100% for us. He said if you put your efforts toward the community growth, he thinks we would be better off. He stated you cannot serve two masters. Smith said part time administrators don't help the community growth. He said he has no issues if you want to advance yourself, but it can't be at the expense of this community. Gary said once again, he had council's permission to do that. He said he is proud of the amount of economic growth going on in this community right now, there are two large projects going on concurrently at Rivers Crossing that we are getting ready to start Speedway, he said several public improvements projects and he could go on and on. Gary said he will not take a back seat to anyone with respect to criticizing any economic development that has been done in village since he has been here. Smith said based on the 25% we could increase that at least 25% fold. Mayor Lawhorn said there is an accusation, we don't know that it is true yet and he thinks we ought to wait until we find out whether it is true or not before we start jumping to conclusions. Smith said the facts are pretty clear it looks like, so we will go forward. Mayor Lawhorn said Smith could quit playing politics. Allen said she has not seen the facts yet, I do see a packet laid in front, and with due respect we need to see both sides of that stack. Smith said he agrees it needs to be investigated. Atkins stated what he remembers, he was going to work for Loveland but not on South Lebanon time.

4. Mayor Lawhorn opened the floor to Bill Madison:

Bill Madison – 185 E. McKinley – stated he is here to clarify something and make a couple editorial comments. Bill stated as far as clarifying, he thinks an emergency meeting was called for the lawsuit that was active over double taxation with Hamilton Township. He said his name was brought up at that meeting as to the fact, or trying to give a census to what past

council's vote was and regarding the lawsuit and how far or what our intentions were in authorizing Catherine Cunningham to represent us in that lawsuit. Bill said the comment was it was short term, only the county level was our expectations that were set. Bill stated that is false, when Jim was mayor and I was a councilman, we voted on that and it was voted on to go to all means necessary to represent not only the citizens of this village but also the village's interest as well. He said he thinks it would be a mistake to categorize our actions based on just representing 250 village homes that were impacted by this, it was based on an opinion from the attorney general. He said he is amazed that this village does not want to represent the interest of its village residents and also this village. Bill said not only does this impact our police power, it goes further, there is more impacted than just that. He said it has a huge impact on this village as it grows and so again to clarify in the past when we had community meetings as well as the votes I have cast in council, was in fact to continue this lawsuit to its resolution. He said using my name or any past council's name, and that the votes we cast were just for a county level attempt at this lawsuit is false, absolutely false, and he made that very clear several times. Bill said he would hope this village would continue representing its village citizens as well as the village as a whole.

Madison said his editorial comments are, he was past council, he voted no for Gary Vidmar, just because of the amount of money we were paying him and also did not like the language where he could work for two municipalities. He said he felt they were lead to believe that he had transitioned out of a job, no fault to him, the tax levy had failed and he was looking for a position here at South Lebanon, and the vote was cast on the fact that he could finish or sweep up what he had left at the City of Loveland and then his full attention would be turned to this village, not that council was blatantly allowing him to work at both places at one time, that expectation was never set. Bill said he appreciates the chance to address council.

5. Mayor Lawhorn opened the floor to the public:

Mike Jesse – 426 Old Willow – said he sat in the back during this entire process as the council went back and forth as well as our community. He said he doesn't know all of council by name or face but knows a handful of them. He said Mrs. Allen and Mr. Atkins, were on council and Mr. Smith was on in the beginning. He said the conversation got heated and he has a fairly good memory that Mr. Madison was very strong willed as to how the original vote was cast and though some of you disagreed immediately, by the end agreed that you would stand by the original vote to support it all the way through. He said he spent a lot of time reading through all the case law and opinions on this and there seems to be opportunity and he would hope that council would stick by the original words of those that looked at our community as a whole, and what was best for our community and those 250 houses impacted. He does not know the

long term implications but does know what is best for them and the trust our citizens have in you is to stick by the words you vote upon and agree to whether it be a council from two years ago, last year or from today, I would hope you would support your past elected officials and the decisions that they made. Smith said to bring up to date, a special meeting was called a few days ago and on the agenda was strictly the litigation based on this case. He said he had one day notice, and Randall had a business trip, so he is going to get a briefing also. Smith said council chose to bring this issue to the table to vote whether or not to go forward with the case. He said they really had no documents, no legal representation here to actually digest this. He said he now has a copy of the letter from the attorney that handled the case, was not presented to us at that meeting, we really had very little dialogue, except for the questions I asked. He said you are correct, it was a heated debate, they voted to go forward with it, he said he was at that meeting. Smith said council can't give opinions on litigations, we have attorneys and in this particular case, taking care of our citizens, we have an opinion from Catherine Cunningham, she is a well versed attorney, she has a great win rate for the Village of South Lebanon, we have used her on annexations, other litigations and in fact, in looking at her recommendation, I think I asked what her position was and was told you know she wants, to appeal it. Smith said that was pretty much the dialogue of it, it is more than that. Catherine in her opinion, said we should go forward with this and he said he believes we should go forward with this. Smith said the council gave a commitment to do this, to short change our citizens every opportunity, he said is like playing football, we are at the half time, down a couple of points, doesn't mean we are out of the game. He said we need to continue on with this, especially with the track record, in fact he said he thinks Bruce has worked well Mrs. Cunningham. Smith said he has never seen it done like this with no debate, something that involved this many residents, to simply have a special meeting, one day notice to try and ramrod this thing to not pay going forward. Smith said we have now put ourselves in the litigation he believes, where we gave a commitment and to not go forward. He said this is time sensitive and if we don't have a decision by the 8th, we have to act, if council doesn't act to change their motion to allow this to be appealed then the case is lost. Smith said it doesn't just affect this community, but it affects the State of Ohio, there are more villages in the state than just us. Smith said the primary reason would be to give our citizens the ability to have their day in court and we should defend them, if we have to lobby for them, we should lobby on their behalf for every single citizen in this community. He said this is a perfect example, they pay taxes to this community and we need to go forward and help them.

Mike stated he concurs. He discussed the police services and he stated he likes the guys from South Lebanon, and believes a good decision was made many years ago to use the support of the Warren County Sheriff's Department. He said he moved to South Lebanon he didn't move into

Hamilton Township and by you guys not supporting this, it feels like I moved into South Lebanon/Hamilton Township. He said he lived in Hamilton Township and I moved out of the township to move into South Lebanon, not the other way around. Mike said he is very proud to live in South Lebanon and thinks this is something that should be supported and is now looking a different way and for me as a resident, this is disappointing.

Smith stated Stone Brook was the first major development in South Lebanon since the 1950's and turned out to be a huge success, for Drees it became the fastest seller in their entire system. He said they have added sections because it went so well and we owe it to you, that simple. Mike said many of you have been there through the entire process and I hope and pray words mean something and hope you stand by the words you promised years ago. He said there are not all of them here but the passion is still there.

Allen stated in researching some of this in the past two years, she said she saw when they put this police levy on they excluded Loveland and she stated personally she thought that was unethical and if you do it for one you should do it for South Lebanon. Allen said if she went forward with this she would not use Catherine Cunningham, she said in the middle of this litigation she moved to Columbus, and not one time did she face a judge. She said this is all done with briefs and she personally thinks for that kind of money, \$100,000 almost, she could have come down here and litigated for us personally. She said she would not have used Catherine Cunningham if she had of moved forward. Smith stated the law firm has always been in Columbus. He said they won a case for us in the Supreme Court. Mike said you can argue who to use but can we agree to move forward. Smith said you cannot change at this stage of the game. Mike said if you take the time to read the letter from Hamilton Township to the attorney general, there are discrepancies or clearly chosen words as to what they provide for the people they were asking to tax and not a fair representation of the services provided and also, they base their decision on documents given by the township, but it wasn't the most accurate representation of the situation.

Riley asked is there anywhere in Ohio where people are double taxed?

Mayor Lawhorn said when they changed that law, it was the townships and municipal leagues who got together and got that law passed, so they could get the annexations done without any problem with the Type II and the townships could keep their taxes.

Smith said we have an opinion from council that handled this case, there are flaws and yes we can appeal it and he said he thinks we should appeal this case and give everyone a fair shake. He said this has an adverse

effect on the whole community and the state. Smith said to defend this law firm, this village has used this law firm for many years, she has a perfect win rate for us and one case three judges voted against us and the Supreme Court overturned 7-0. Smith said as to how they communicate, all evidence is already there and this short of time, changing an attorney would be impossible. He said we simply cut the agreement, appeal it and move on.

6. David Lapp – McKinley – said he has a question about the status of the FEMA grant to raze this village building, what is the status and when you get word whether they accept or reject the application, will the public be notified and will there be a hearing. Gary said they have not awarded the grant. He said there is some activity that W.C. Emergency Services has to accomplish, they have to put a plan in place for the entire county. He said until that plan is in place, they cannot make an award. Gary said they don't anticipate having those stipulations met until at least the end of 2014 and maybe beyond. Gary said there is no definitive action that assures the village it will even be awarded this grant. Gary said no award as of yet and most certainly we will notify the public as soon as we know something. He said we assured the public and council that we would have more discussion before we accept that award. David asked if there will be a public hearing and Gary said he doesn't know if it will be a public hearing that is council's decision.
7. Vidmar stated there have been a lot of conversations about Woodknoll and that there has been a lot of activity with actions being taken by the bank against the developer to get this project accomplished. Gary said Mr. Ron Fisher, First National Bank, is here to speak directly to council about what is being done by the bank. Atkins said he did see someone there this evening and Gary said the bank has stepped in to hire the contractors to complete the project.

Ron Fisher – Chief Credit Officer – First National Bank – 1160 E. Main Lebanon – he stated they have replaced Mr. Bishop with another developer. He said this developer is an experienced developer and he is bringing in additional sub-contractors to go ahead and complete the project. Ron stated the bank is eager to get our money back, plain and simple. He said they have a lot invested in this project. He said they are trying to get this project completed and lots sold so they can get some of their money back. Discussed what is happening in the project now. Ron said Mr. Bishop has no more money for this project and we are doing our best to see that it gets completed. Mr. Fisher said they have nine presold and there are twenty four in this phase.

Mayor Lawhorn stated we have a resolution to reduce the letter of credit for Woodknoll. He asked Gary to explain what is left on the project.

Gary said there were a number of options we considered with the bank. He said one would have been to take action against the bond, the second for the bank to foreclose on the lots, third would be to work together as a team to get the work done. He said everyone agreed this last one was the best option and move forward. He said it is normal to reduce a letter of credit over the course of a project as work gets completed. He said it is to the benefit of the developer usually, and in this case it is to the benefit of First National.

Mayor Lawhorn presented Resolution 2014-20 which reduces the letter of credit for Woodknoll Subdivision. A motion to waive the reading rule was made by Smith, seconded by Atkins, all yeas. A motion to adopt Resolution 2014-20 was made by Smith, seconded by Atkins, all yeas.

8. Gary stated in May a resolution was adopted that approved a LPA with ODOT for the intersection project. He said when the signed documents were returned to the Columbus office of ODOT, they noticed a figure in the contract that was misstated. He said that is the safety fund grant the village is to receive, it listed \$539,051 and it should have been \$450,000. Gary said the village was aware of the \$450,000 and all calculations were centered on \$450,000, it was simply a typo. Before council is simply a motion for the change order to correct that number and it has no affect on any village funds or commitments. A motion to allow that change was made by Smith, seconded by Boerio, all yeas.
9. Administrator Vidmar informed council there is a change order by the contractor installing the new water line. He said on August 20th we experienced a water line break near where the contractor was working and the break was unrelated to what the contractor was doing. Gary said since they were located and working close by, Tony and I agreed that it made sense for the contractor to perform the repair work. He said they accomplished that in a timely fashion to minimize the down time of our residents. He said this is the change order for that repair. Smith asked what kind of line it was and was told it was transite. Tony said it was a 4" line but anytime you dig around it you have a break. Gary said we actually improved the condition, that pipe was running under a storm pipe and catch basin. A motion to allow the change order was made by Smith, seconded by Riley, all yeas.
10. Vidmar informed council this memorandum was added to your package at the table this evening. He said it came a few days ago after the packet went out. He said there is an ordinance 2001-13, that regulates telecommunication towers in the village, both new towers and modifications to existing towers. He said there was an application made last year for a dish added to a tower and this is similar, they are adding an emergency

generator. He said the ordinance stipulates that council has the governing authority to issue and review drawings for special use permits on towers. He said last year council authorized me to issue that permit and the ordinance gives council that authority to grant. He said he is asking for himself to have the authority to grant the permit as long as all regulations are met. Smith asked if it goes on the existing tower and was told it goes at the base. A motion to allow Gary to review and authorize the permit was made by Allen, seconded by Boerio, all yeas.

11. Vidmar reported on Shepherds Crossing and the status of the development. He said the solicitor and himself have been communicating with the attorney. Gary said there is a bond in place but the bond is insufficient. He said a default notice was sent to the developer, giving him fourteen days to cure. Vidmar stated the next step is a seven day notice to actually take action against the bond, so this is the next action. Atkins asked if the family is willing to work with us and Gary said the family owns a number of lots free and clear in the subdivision.

Bruce asked when the fourteen days to cure expire and Gary said August 30th. Bruce stated as he recalls, there are approximately five lots titled to Wash and Mary Pennington in a trust. He said the representation has been made to us they are free and clear, however, he thinks there are some contracts on some of them by Drees, which is a good thing. Bruce said we may be looking, when we determine what the deficiency is, then we would look for some collateral to assure the village would be made whole. He said some suggestions he has come up with include taking a mortgage against the lots that are free and clear so that they couldn't be sold to Drees without a partial release coming from the village and village capturing some or all of the funds. Bruce said the lots are valued at \$22,800 per lot by the county auditor. He said there is some equity there. He said if we can get ourselves in a position to where we secure our interests, then we are a lot better off than being an unsecured creditor. Smith stated once the punch list goes down, and we have talked about the sidewalks being the builder's responsibility. Mayor Lawhorn said there is a lot of full depth repairs needed on the road and the bond won't cover it. Bruce stated the complication is that we don't know how much money the bonding surety is going to pay. He said we know what is left on the bond, but it is a surety bond held by Lexon Insurance and they are notorious for fighting governmental entities that have bonds and he has had to sue them in the last couple of years. He said they will try to negotiate with you and drag this thing out for a very long period of time. Mayor Lawhorn asked Bruce and Gary what their recommendation to council would be and both answered to go ahead with the seven day notice. Bruce explained the process of the seven day notice or filing a suit. A motion to allow the seven day notice to be issued was made by Smith, seconded by Riley, all yeas.

12. Smith stated the issue as far as the litigation pending for the Hamilton Township levy, he stated he believes that many residents, they pay a substantial amount of revenue to this community that has made great improvements. He stated he thinks we owe it to them to finish this case out, therefore I make a motion to allow the appeal to go forward, rescind council's motion at the special meeting, he believes the previous council was clear and in his opinion it could leave us with some kind of litigation, liability, for the council stopping midway when they agreed to go forward, so therefore his motion is on the table. The motion was seconded by Atkins, Roll Call as follows: Allen – nay, Atkins – yea, Boerio – nay, Johnson – nay, Riley – nay, Smith – yea.

Smith stated he thinks we have made a terrible mistake.

13. Atkins asked about Ray Napier asking to have a tent revival at the ball fields and Gary said we will be issuing a permit for that. Atkins said they were not clear on what they had to do and Gary said he communicated with them today.
14. Boerio asked Gary if the construction project on the bridge is completely wrapped up now and Gary stated he does not think it is 100% wrapped up, the bridge is open and probably some signal adjustments and punch list things going on. Tony stated they are sand blasting and painting underneath now but the top structure is done. Tony said they have some signs to take down but other than that it is open. Mayor Lawhorn said they reduced the temporary light poles yesterday so it is clear on top. Boerio said there are still signs that say road work and Gary said those signs will probably be moved soon.

Boerio said there is still a pot hole on the corner of Sunnyslane and Lebanon Road and Gary stated that is township. Boerio stated Gary said he was going to interface with the township. Gary stated he is interfacing, doesn't mean it is going to get done.

15. Mayor Lawhorn asked Gary to have the microphone looked at that keeps buzzing and he said he would get that looked at.
16. Atkins asked about the waterline project and if they could blacktop as they go and Gary stated they are trying to wait until the project is done because if they patch it that is what it will look like when they are done?
17. Mayor Lawhorn stated the Community Festival has a flyer and it says Saturday, September 14th and it should be Saturday the 15th.

18. Sgt. Boylan said there was another crash on Zoar Road and this is the second in a month. Atkins asked if Sgt. Boylan felt this is because of the road condition and Sgt. Boylan said it is mainly going too fast or being drunk but when you get off the side of the road the guardrail is so far below. Gary said since we are on that topic, as a result of the second accident we had our engineer go out there and we photographed and put together another application for emergency funding. He said we are reasonably comfortable that since these two accidents we are going to be granted emergency funding. He said the application was submitted to Columbus last week. He said in the mean time we added signage and reduced the speed limit and put traffic barrels and lights up as well. Gary said with emergency funding we don't have to go through the bidding process and can award the project immediately. He said he has gotten proposals already and prepared to award that contract.

Sgt. Boylan discussed the street sweeping issues and that they are issuing warnings the first time and citations for the second time. He wanted to know if council is on board with that and all council agreed. Atkins stated that sometimes they are sweeping both sides of the streets the same day. Gary said if the opportunity is there they do go ahead and do both sides. Discussed the procedures.

19. A motion to adjourn the meeting was made at 7:36 p.m. by Atkins, seconded by Allen, all yeas.

Sharon Louallen, Fiscal Officer

Lionel Lawhorn, Mayor