

**VILLAGE OF SOUTH LEBANON
SPECIAL MEETING MINUTES
AUGUST 26, 2014
5:30 P.M.**

1. Linda Allen - Present
Randall Atkins – Absent
Jim Boerio – Present
- Sue Johnson - Present
Steve Riley - Present
Jim Smith - Present
2. Mayor Lawhorn opened the meeting at 5:30 p.m. stating it is for the sole purpose of discussion and taking necessary action on the Hamilton Township Police Levy lawsuit. Meeting opened with the Pledge.
3. Mayor Lawhorn opened the floor to the public for anyone wishing to approach council with anything having to do with the Hamilton Township Policy Levy lawsuit. No one approached.
4. Mayor Lawhorn stated at the suggestion of our solicitor, he said we need to decide whether we are going to appeal this decision or not and notify Catherine Cunningham that we are not. He stated we got a letter from Catherine today, he said this is only, other than an email when the judges decision came out, that was the only correspondence he has received from her.

Smith asked about our solicitor and isn't he a liaison for us on behalf of this litigation? Mayor Lawhorn stated he cannot be, because he is not the attorney of record on this. Mayor Lawhorn said it was his suggestion that we do it to keep the town from being sued for not doing something and at least notifying the people if you decide not to appeal. Smith said this seems unusual, you have a law firm that has represented this village for a number of years and been very successful. He said that same law firm has taken cases to the Supreme Court on our behalf and won. Mayor Lawhorn said we have as a village spent \$84,000 on this case so far and at the time it was the decision to do the lawsuit, at least some of the council's intention was only to Common Pleas Court. Smith stated that never was his intention, he said he thinks we have an obligation to our citizens to fight as hard as we can with any issue. Smith said to get back on the solicitor, normally any litigation it would go through he or she's position. Smith said he knows the county represents the county and he believes maybe his law firm also represents that township. Mayor Lawhorn said he is not involved in this case in any way and Smith stated he is still our solicitor and should be a liaison between any litigation, wouldn't you agree to that? Mayor Lawhorn stated no.

Allen stated at the time when this went on, Madison made a statement in the minutes, that they had already hired Catherine Cunningham to do this. She

said when we had that town hall meeting he was the very one that stated, Smith interjected that we have hired many councils to represent the village in specialized fields of law but we also have a solicitor who coordinates with that individual to come back to the council and advise us. Smith said to be absent, we should have at least had some council, if he had to excuse himself, we should have had some legal counsel. Mayor Lawhorn said he said he was not council of record on this and he could not be involved in it period. Allen said she couldn't understand why Catherine, she thought she might be here tonight. Mayor Lawhorn said all she wants is an answer from council whether they are going to appeal it or not. Smith asked what her recommendation to the council is and Mayor Lawhorn said you know her recommendation, it is to go ahead and appeal it. Mayor Lawhorn said as mayor it is his recommendation not to and he didn't think we should be involved in it to start with. He said he didn't think we had any standing in it. He stated just like Bruce talks about doing things for certain individuals if you do one or two then you're not doing for the whole city. He said now you're paying court fees for fifty people when they are not paying yours or yours or yours. Smith said the village is broken up into many townships and we need to look at them as a whole, we can't say we aren't going to represent this group and not the other, I think we should do them all, be consistent. Mayor Lawhorn said we aren't representing anyone else and we have spent thousands of dollars on this lawsuit, which we did and it went to court. He said the judge on every example ruled against us. Smith stated his position is we should have counsel here to advise us, legal counsel, even if he was not of the record of this particular case, we should have him here to advise us for the best path for this village to go. Smith said absent of that he can't support this. Mayor Lawhorn said he thinks it is our decision, or at least council's decision to do it and as he said he recommends we do not appeal it. He said the judges ruled on it, it was the intention of the council that passed it to start with, that it only go to common pleas court. Mayor Lawhorn said it has done that and the judge ruled against everything and ruled everything for Hamilton Township. Allen said the reason why they did according to the case, that she gave us, in the Expedited Type II annexation we lost number one because of the Revised Code. She said the law stated this and that is why we lost. She said when you look at two, uniform rule, again, they applied the Revised Code and we lost again. Smith said this case is based on interpretation by the Attorney General, the Hamilton Township law director wrote a letter to the Attorney General for an opinion and he rendered an opinion that wasn't favorable, so this is based on an interpretation of that opinion. Allen said she agrees but. Mayor Lawhorn stated the law says that townships can continue to collect taxes on Type II annexations, that wasn't an Attorney General opinion that is what it says in the law. Allen said that is what the ORC says. Smith said that is a perfect example we should have legal counsel here, we are not attorneys.

Boerio stated that in ORC 709.023 says, the territory annexed shall not at any time be excluded from the township under ORC 503.07. He said the annexed area thus remains subject to the townships real property taxes. Boerio said considering that statement, he said that is the law and he is struggling to see what any justification would be for going forward with this. He said the other thing, he thinks Jim has a point that we have to represent the citizens but what about the citizens that are footing the bill? Boerio said they are footing the bill for something that seems pretty darn clear. He said unless somebody can give me a really good reason for us to believe that we might prevail, he can't see any justification for going ahead. Smith said we should have our counsel here advising us, that is his opinion.

Mayor Lawhorn stated he would entertain a motion and second to either appeal or not appeal.

5. A motion was made by Smith to appeal, motion died due to lack of second.
6. Mayor Lawhorn asked if there is a motion to not appeal. A motion to not appeal on the basis that it is the law, if anyone can show us a law stating that this cannot be done, then bring it to this council, Smith stated it is over with when you vote Linda, there is no, you are either going to vote or your not, it is over with if you vote it down, it is done. Allen said we are making a motion not to appeal because tax payers that spent \$90,000 on, and she said she realizes it is 250 residents, that are in that jurisdiction, that has that double tax. Mayor Lawhorn said it is not really a double tax, Allen said it is just a police tax. Mayor Lawhorn said it is a police tax, we don't have police levies. Allen said it is not really a double police tax, it is just the police tax and income tax. She said at the time they were also not receiving those services, but since then, someone came the other day and said they were. Smith said this is our jurisdiction, Allen said it is also their jurisdiction according to the law.

Mayor Lawhorn asked for a second and Boerio seconded it, all yea except Smith voted nay.

7. A motion to adjourn the meeting was made at 5:40 p.m. by Boerio, seconded by Allen, all yeas.

Sharon Louallen, Fiscal Officer

Lionel Lawhorn, Mayor