

**VILLAGE OF SOUTH LEBANON
MINUTES
WORKSHOP MEETING
FEBRUARY 6, 2014
7:06 P.M.**

1. Mayor Lawhorn called the meeting to order at 7:07 p.m.
2. Linda Allen - Present
Randall Atkins– Present
James Boerio – Present
Sue Johnson - Present
Steve Riley – Present
James Smith – Present
3. Gary Vidmar stated council has a copy of his reports that update what is going on in the community. He said if council has any questions he will be happy to entertain them. Gary said a lot of activity centers around Rivers Crossing and last night the planning commission met and approved with conditions, two new projects. He said one is a building between Kohl's and Target, about 35,000 square feet. Also another outparcel building next to White Castle that will contain three tenants. That construction is planned to begin in the spring. Gary said we continue to meet with ODOT for public improvement projects that will include the overlay coat of asphalt in front of Rivers Crossing, the extension of Corwin Nixon, going West of St. Rt. 48 and the extension of sanitary sewer line coming up from Mason Morrow Milgrove to that Corwin Nixon extension. He said that will service the West side of St. Rt. 48. He reported there is a Speedway planned to go in at the corner of the Corwin Nixon extension in 2014. Gary said they have been meeting with Mr. Oeder to coordinate that activity with his property. He said there is going to be some land swap between him and IRG and we will be giving him access to his property so he has the opportunity to develop that in the future. He said a lot of good activity for a project that has languished for quite a while. Smith asked if the multi-tenant developer is the same as did the other multi-tenant and Gary stated yes. Smith asked if they have said what three tenants will go in and Gary said they have said Starbucks is the anchor tenant. He said in the rear they are going to have a Dollar General Store, a Pet Smart and Famous Footwear. Mayor Lawhorn stated they don't have signed contracts yet.
4. Atkins asked Gary about the meeting and Alvin's property. Gary stated Woodknoll Phase II submitted a landscape plan and it was approved and Mr. Bishop requested planning commission to waive some conditions they placed on him when they released the final plat. He said there are some remaining public improvements, connection of the water line to the existing water line and installation of storm retention. Gary stated these were placed on Mr. Bishop to be complete before we would release any building or zoning permits. He said Mr. Bishop has not completed those yet and by his own admission, is running out of money. In order to be able to sell lots to Ryan

Homes and he has an agreement to do that, he is requesting the ability to waive the conditions of installing that infrastructure. Planning Commission granted that waiver but a condition on him that we won't release a certificate of occupancy on that home until the improvements are done. Will allow Ryan Homes to buy the lots, construct the model home but force Mr. Bishop to complete those improvements before they can occupy it. Mayor Lawhorn stated Ryan Homes said they only want one lot at this time. Gary said there is an outstanding bill for inspection fees he has to pay before we will release a zoning permit. He said the amount paid to Mr. Bishop for that one lot will be enough to pay us for those inspection fees. Gary said we are trying to cooperate to keep that project going because it is going to lead to twenty five new homes. He said we also have a performance bond but that is a complicated action to take if we have to call that bond.

5. Gary said he gave council a copy of the draft water agreement amendment. He said we were asked by Mr. Smith at the last meeting after a conversation, to draft our revisions to the amendment and we have done that in a red line version you have before you. Gary said he would like to hear back from council are these sufficient or are there other amendments you would like to see or are there any things you don't want us to propose. Gary said since drafting this agreement, we have done some research into other wholesale water agreements. He some with Cincinnati Water Works and some with other agencies. Gary stated in no other water agreement, and we have copies of Mason, Lebanon, and Troy Ohio. He said in none of those do we see minimum purchase requirements as we see in our agreement and it is that exhibit that is causing us to be forced to pay Cincinnati Water Works a huge amount of money over the lifetime of this agreement. Gary said if you compare the amended version to the original figures contract version, Water Works has reduced those take or pay penalties in the early years of the agreement and then they go up gradually over the lifetime of the agreement. He said they extend the agreement ten years and when he posed the question to Cincinnati about this their answer continues to be, they still have the desire to drive the same revenue stream they intended to when they signed the original agreement. He said they are willing to cooperate and spread those payments out in a way that could be more affordable to the community but at the end of the day they are in business to make money. Atkins said why should we buy a new car that we never drive? He said he does not agree with that use or pay and I think we need to work hard on that.

Solicitor McGary said there were not a lot of modifications and he would be happy to answer any questions. He said, we just simply with the first page changed, the automatic renewal to our election to renew. He stated we, based on the administrator's research discovered that one of the important issues in negotiating the original contract had to do with soft water, so on page two we added some standard for soft water that our staff participated in providing that measurement for us, or that range and not sure they will be inclined to

agree to that. He said on page three is a modification to the schedule of the take or pay and he added a provision that it would be revisited annually to see if it needs to be adjusted because under the original agreement there is no revisiting it at all, it stays in place for forty years. He stated that here we are a couple years out and we know the population projections were grossly overstated and apparently didn't factor in some things. He said second paragraph is clarification for them to acknowledge they have already received our annual installments up through 2014.

Atkins asked are wanting to revisit the take or pay?

McGary said yes in schedule B, which has projections factored into it, based on population or growth projections, that has been modified already but we are asking in our amendment that we can revisit that annually because we could have another catastrophic event like occurred in 2006 through 2010 so we want to be in a position we could even reduce those numbers if need be. He said at Gary's suggestion we put a variable in there that there has to be a 10% deviation for that to happen, which is pretty minimal. McGary said he does not know what their position on these things are going to be and we have not returned it to them to try to negotiate because we wanted council's input before we did that. Atkins asked what he expected this to do to our take or pay? Bruce said the amendment will certainly reduce that and one of the other provisions I added is for them to waive the take or pay provision the village is obligated to pay at this present. McGary said in 2012 it was thirty seven and change, in 2013 we didn't have a number there, so I have added the provision where they are waiving that for us to extend this thing for ten years so we aren't having to pay that money out for what has happened already and that certainly would some incentive for us to enter into this amendment and extend it ten years if we can get those penalties waived. As far as future penalties, we are going to revisit the projections annually, such that we hope, whatever take or pay penalty there may be would be very minimal if the council even wants it to be done that way. He said if it is council's preference to go back and say we want that deleted, we can do that but the likely hood they are willing to do that since they have this contract that binds us and we are stuck with that, unless they amend it. Atkins asked about the annual payments of \$33,000 was it for the line that we put in, not for the take or pay fee and was told no that is different. McGary said they are adding additional annual payments for the extension, they are spreading them out but never the less, you would continue to pay through 2018. Discussed four more payments left of the annual fee. Atkins stated he does not like the use or pay and I didn't like that from the beginning.

Boerio said a couple of things bother him about this and one is the take or pay and the other one is he has the feeling we are paying twice. He said we are buying water from them, so they must be making money selling us water. Then they make more money through the take or pay thing so we seem to be paying twice. He said he is concerned about the section that deals with

renewing this, you revised this about the automatic renew. He said he brought up the last time he was here, is since the terms of this contract vary with time what is it that is being renewed? McGary said he changed it that it is the village's election to renew so only if the village elects to renew it and was previously worded that it automatically renewed. He said so if you got to the end of the term and said you wanted out of this thing, well it ends unless we elect eighteen months in advance to renew it. Boerio said he is still worried about the take or pay, six million dollars is still six million dollars.

Smith stated your forty years, you are talking forty years down the road, that is not even close to being some kind of number. Boerio stated he agreed. Smith said he thinks we should go forward with the negotiations instead of beating it to death, it looks pretty decent, some of the changes in there. He said also if worse comes to worse, the take or pay if you purchase the water we own it. He said we have the ability to use it. Smith said what happened too, the tightening of the system at that time the amount of water being used was horrendous and then there was a major push to tighten the system, which needs more tightening, but it reduced the amount of water substantially we are using, which is good, you aren't paying for water going down the drain. He said before any development was ever in the community, one million to 100,000 gallons a day because there was no metering on the houses and that tells you a huge amount of water can be used. He said at that time only New York and South Lebanon didn't have water meters. So when they put them in because of sewer lines going in during 1986 and 1987 the first bill was a wake-up call that you need to fix your leaks and within two months it went from a million to 300,000 gallons. Mayor Lawhorn said he can remember the waste and remembers when the bills were five dollars a month. He said he saw people run hoses out their windows that so big a leak that those hoses were running full stream and they weren't paying any more. He said that compounded it that the folks at that time made based on the water and then they tightened the system so well and now we aren't using the amount of water.

Gary said the question has arose many times, what do you think Cincinnati is going to do and we don't know. He said he agrees with Mr. Smith, we just need to sit down with them and present our case and see where this goes. He stated you can trust we are going to negotiate as hard as we can but until we get across the table from them it is hard to say what their reaction is going to be. He said he got a phone message yesterday from the gentleman we have been working with that reminded me his agreement was to waive 2013 penalty through February. He said with the agreement we would have legislation in place to amend this agreement. He said we need to move forward with these negotiations because he can't guarantee their willingness to waive that 2013 penalty. Smith said he would take the position, if we have to purchase water and if we purchase something we own

it and theoretically we would be using our water and at some point we could demand that amount of water but each year would change. Atkins said he would like to see us work on that, the language for the use or pay. Mayor Lawhorn asked if there was anything that needs to be added or deleted to this to negotiate. Smith said he thinks it looks good to take to the table and Atkins said he appreciates the work being done on this. Atkins said over forty fifty years that is a lot of money. Allen said taking this away from council and putting this on the consumer index pricing is a big one too. Gary said Cincinnati has agreed to that. Smith said you could make the argument that two other municipalities that have it that the based on the CPI for the last two years, you made a random choice to increase this rate substantially higher than what it would have been here, so at least use that as a tool.

Mayor Lawhorn asked if the solicitor needed to draft a resolution and Gary said no this is a draft so we negotiate it as a draft. McGary said we have enough to start with and that Lebanon does not have a take or pay provision and originally Mason didn't have one and Mason turned all theirs over to Cincinnati. Gary said they had a wholesale agreement up to 2002. McGary said he lives in Mason and his water bill used to be maximum \$30 a month and now we pay about \$130 or \$140 a month for water.

6. A motion was made to go into executive session at 7:30 p.m. by Smith for the purpose of personnel based on charges you have on your invoice that you said involve personnel then that is motion I make to discuss that billing. Solicitor McGary asked that the record reflect that it relates to discipline number 121.22 G1 and specifically discipline. The motion was seconded by Allen, Allen – yea, Atkins – yea, Boerio – yea, Johnson – yea, Riley – yea, Smith – yea.
7. A motion to return from executive session was made at 7:45 p.m. by Allen, seconded by Johnson, Allen – yea, Atkins – yea, Boerio – yea, Johnson – yea, Riley – yea, Smith – yea. Mayor Lawhorn stated there was no action.
8. A motion to adjourn the meeting was made at 7:46 p.m. by Allen, seconded by Smith, all yeas.

Sharon Louallen, Fiscal Officer

Lionel Lawhorn, Mayor