

**VILLAGE OF SOUTH LEBANON
REGULAR MEETING MINUTES
DECEMBER 3, 2015
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 the public stating they have five minutes, unless council has questions.

Scott Doughman – 260 E. Forrest Ave. – said he would like to speak as a resident and last week there was a process related to potential expenditure that extended from a potential special project into public spending, therefore he would like to address that. He said any gates in South Lebanon would be paid for by South Lebanon would need to be indemnified. He said you are invoking boarder issues, when you talk about these things with respect to division. He said it is kind of un-American to have blockages in streets, everybody lives on streets, everybody has cars pass their house, seems natural to him, you can't have a block of the river, can't have a block of the roads.

David McKillen – 5286 Frederick Stand –stated he represents the HOA as president – he said he is familiar with the emergency service gate being discussed. He asked about the process, he understands we are going to contract, but would like to understand the council review process and how they get from draft to final execution. Mayor Lawhorn said he doesn't know if the contract is completely done. Bruce McGary said he drafted the initial draft and the contract was provided to council in that initial draft. He said the property owners were provided a copy and submitted a counter offer with some modifications to it and all of that has been given to the council members. Bruce said at last council meeting the council voted 5 to 0 for the administrator and himself to sit down and continue to start negotiations with the property owners and if it is council's pleasure, we will brief them on that tonight. He said they will have to take action at some future date, nothing on the agenda this evening. David said so the process was the council giving you some authority to draft and negotiate with property owners and then it will go to council for a vote. Bruce stated to back up and clarify one thing, he drafted the document at the direction of staff, the administrator and the mayor. Then it was presented to council and council voted to proceed with that process, but at some point we will brief council on the status and council will decide what it wants to do, may decide to drop it, and may decide

to move forward, that is up to council. David said between the steps does council hold open hearings, take resident requests and more than anything he would like to make sure that you can operationalize anything in a contract. He said it is easy enough to pull a contract together, it is often times harder to execute. He said he wants to know how council intends to put an operational plan to execute any agreements. Mayor Lawhorn stated he does not think there is any operation behind it yet until council agrees to do it. Mayor Lawhorn said everything will be done in the public, as far as discussion, we have, the last few meetings, heard from your neighborhood, Grants Settlement, Homestead, Vista Pointe and all have had their chance and have talked about it. He said that will continue and until the contract is passed there won't be anything as far as operational. David asked when the public will be able to see the contract, the mayor asked the solicitor if it is public record now. Bruce said there has been a public record request for it and he issued an opinion that it is a close enough call it should be released.

Adam McGee – 5214 Homestead Drive – he said his understanding is it is a private property thing and all we are trying to negotiate is does council pay for a gate or do we just put a type of permanent fixture to block that road. He said he knows it is getting into a lot of bickering and it is going to get closed whether we close it with a gate or with a bunch of rocks. He said he hopes we get this process closed and address the safety issues of the kids taken care of. He said we block roads all the time if there is a safety issue. He said the road is not built as a throughway but for a small community.

Matt VanSchoyck – 5222 Homestead – said he wants to rebuttal not being able to use public funds on private property. He said that the public has no legal right to our private property and they are gaining access to our property for emergency personnel so the public would benefit from this for the use of public funds, it is a very clear point that needs to be made.

The floor was closed to the public.

4. Mayor Lawhorn presented for a third reading a Resolution 2015-36 adopting the 2015 Hazard and Mitigation plan. A motion to adopt the resolution was made by Boerio, seconded by Smith, all yeas.
5. Mayor Lawhorn presented Resolution 2015-37 as an emergency allowing application for a CDBG Grant for 2016. Mayor Lawhorn said the reason it is an emergency is that the application has to be in by January 6, 2016 and we would not have time to do the three readings. A motion to suspend the reading rule was made by Boerio, seconded by Atkins, all yeas. A motion to adopt the resolution was made by Smith, seconded by Boerio, all yeas.

6. Mayor Lawhorn presented Ordinance 2016-35 setting temporary appropriations for 2016. A motion to waive the reading rule was made by by Smith, seconded by Allen, all yeas. A motion to adopt the ordinance was made by Boerio, seconded by Smith, all yeas.
7. Administrator Haddix reviewed his memo and said Bruce and himself are working on the community center lease and should have ready by next meeting. Smith asked if it addresses the tenants in the building. Bruce said he thinks it is in the specs taking it subject to the tenant rights of the tenants already there. Jerry said Trane is getting the bids for the two story building. He said the Board of Elections is going to be moving all the village and township precincts back to the school gym. He said he has notified Midland Atlantic to get lights fixed on Corwin Nixon. Jerry said we have a quote for repair to the lift stations. Tony said we have a pump leaking oil and the repair will be \$20,705.00. He said a new one costs up to \$70,000. Tony said we have three pumps out. Discussed the issues with the pumps and what repairs are needed. A motion to approve the pump repairs was made by Smith, seconded by Allen, all yeas.
8. Solicitor McGary gave an update on the negotiations. He said last meeting they were instructed to meet with the property owners and we did that. He said they reviewed the proposed modifications with the property owners and we seem to be real close. He said one major issue requires a little bit of elaboration, one of the things they had requested, they both had legal counsel, their legal counsel requested that the 2005 ordinance adopted by council be recorded. Bruce said when he looked at the title to the properties he did not go behind the final record plat of Homestead at Rivers Bend. He said he accepted that the plat is valid and that plat has the vacation of the part of Cochran Road across lots 43 and 44. Bruce said the attorney raised the issue of seeing the ordinance adopted by the village to perfect the vacation recorded in the chain of title. He said that seemed like a reasonable request because if you read the statute, the ordinance is to be recorded. Bruce said after that meeting he did a little more research and found that the provision in the statute was not part of the law prior to January 30, 2014. He said the requirement for the ordinance to be recorded in the chain of title in the county recorders office was not the law. So at the time in 2005 when council approve the record plat, there was no requirement that the ordinance be recorded. He said he did not find an ordinance in the chain of title but found out it didn't need to be. He said we told the property owners we would have Jerry, with Sharon's assistance look back through our records and try to find the history of this was. Bruce said the minutes from June 16, 2005 council meeting were found and in those minutes council approved and authorized Jim Smith as mayor to sign off on this subdivision plat for Homestead at Rivers Bend. He said it was done by motion not by ordinance. He said there is no problem with that as far as approving the plat. Bruce said from those minutes he also

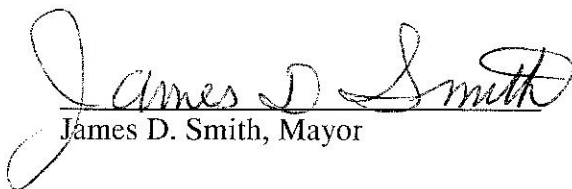
learned council authorized in the form of an ordinance, the vacation of certain property on Zoar Road, that is part of the curve and now entrance into Homestead at Rivers Bend. He said there was no plat attached but we found it and there was a vacation plat for just that area along Zoar Road where the entrance to the subdivision is located. He said it did not take in the portion of Cochran Road. He said the portion of Cochran Road was not done by an ordinance, it was done by a motion. Bruce said it is clear the intent because council by motion approved the subdivision plat, which had that on it, but the council failed to perfect the vacation of that section of Cochran Road because the ordinance was not adopted. He said under Ohio law there are three ways to perfect a vacation, one is a petition by the property owners to do it, and there has to be a notice in the newspaper and a hearing conducted. He said the second way is the council can do it on their own and don't have to have a petition, they can just do it. He said both of those statutes do say that the vacation has to be done by an ordinance. He said approving the plat by motion was fine, the fact that it had this vacation component adds an additional step requiring an ordinance. Bruce said council would now, if they so desire, need to pass an ordinance to perfect that. He said the third way is through a court proceeding and the property owners would have the right to go to court and petition the court to perfect the vacation. He said at this point, it was not perfected, so it has not been properly vacated until an ordinance is done. He said all he can do is speculate, but one of the interesting things about that vacation on the final record plat for Homestead at Rivers Bend, it actually says that it will be vacated on the satisfaction of the condition preceded. He said the condition was that there would be an approval for the plat of the final section of Buena Vista. That was satisfied and maybe someone told council that as soon as that happens we will do an ordinance and that just didn't happen. Smith said bankruptcy stopped all of that. He said Zoar Road was moved for the turn radius and the developer filed bankruptcy and at that point there were multiple folks involved, two banks, the developer and then another developer stepped in. He said when council made those decisions many years ago, there was nothing there but vacant land, pretty easy to make a decision then and council would not go forth with anything until projects were completed and a new road was part of the agreement with the banks and Fischer Homes so Wynstead wouldn't be isolated. He said council back then and some have passed, but that was their position as I remember it. They would not go forward until the projects were completed. Bruce said there are all kinds of things that could have happened and Smith said they did not vacate at that time. Bruce said the plat had the language on it but there was never an ordinance put in place and one would have to be put in place by council. Smith said it got carved up so it is not cut and dried like it used to be. Bruce said before council can take action on the easement there would be no reason to obtain an easement unless the vacation got perfected. He said in his view the vacation has not been perfected.

Matt VanSchoyck stated he is hearing portions of this for the first time. He said Bruce did say that no ordinance needed to be recorded prior to 2014, change in the law. Bruce said the ordinance does not have to be recorded. Matt said you made a good point a subsequent event had not yet occurred so there is no way they could have filed an ordinance to vacate at that time. He said the village probably procedurally dropped the ball to finish the perfection and you can't selectively insert things when the prior council clearly had the intent, it was noted on the record plan, you can't argue that. He said people have relied upon this record plan filed with Warren County, so those agreements should be honored and if we have to pursue legal route to get this perfected, this is something we will do. Bruce said when he drafted the easement, he struggled with whether he needed to go back beyond the plat and he asked his title agent and asked should he look beyond the plat and they said no. He then asked if someone was buying that property today, would you insure it and not make an exception for Cochran Road across those lots and he said I might but would want to know if any others had issued title insurance. Bruce said maybe since they both have mortgages maybe they had to acquire a lenders policy or even purchased a loaner's policy. He said he contacted the property owners and they brought their settlement statements. He said Mr. Williams's paperwork showed there had been a lender's policy. They insured the title to their lot and from what I can tell did not make an exception for Cochran Road. So they insured that lot 43 had no encumbrance from Cochran Road.

9. Mayor Lawhorn presented for a second reading a resolution approving an amendment for the Warren County Sheriff's Department for 2016. Allen asked about the reference to covering unincorporated area of Union Township and was told that has been part of the contract for years as part of the county paying for a deputy.
10. Mayor Lawhorn presented for a second reading a resolution for property at 20 N. High from Kings Local to the Village of South Lebanon.
11. Mayor Lawhorn presented invoices for approval. A motion to approve the invoices for payment was made by Smith, seconded by Allen, all yeas.
12. An invoice was presented authorizing the liability insurance renewal. A motion to authorize the invoice and renewal was made by Smith, seconded by Allen, all yeas.
13. An invoice was presented for the Ohio Municipal League dues in the amount of \$770.00. A motion to pay the invoice was made by Smith, seconded by Riley, all yeas.

14. Atkins stated Ann is retiring the end of January and he thinks we should start the process to hire a replacement. A motion to advertise for applications was made by Atkins, seconded by Allen, all yeas.
15. Boerio said he has a question about the water contract and take or pay situation for 2015. He said he would like to know where we stand. Mayor Lawhorn said sometime after the first of the year, you will get a correspondence from Cincinnati Water Works stating if there is an increase and what the take or pay invoice is for that year. Mayor Lawhorn said we have never paid that yet. Jerry said he checked it mid-year and we were still on track and we were not going to have to pay anything again this year. Atkins asked if he had seen where we are taking the water we were required to take, he thought he saw that not long ago in a communication. Jerry said he will do an analysis before the next meeting.
16. Sgt. Boylan stated he has had some extra patrol before and after their shifts for traffic patrol. He said council may want to build some more hours in next year's budget for traffic. Johnson asked when we see the Highway Patrol here in town writing tickets, do we get anything from that and Sgt. Boylan stated they write those to Warren County Court.
17. Mayor Lawhorn said the Municipal League meeting and dinner is the 9th and he needs to know who will attend.
18. A motion to adjourn the meeting was made at 7:27 p.m. by Allen, seconded by Smith, all yeas.


Sharon Louallen, Fiscal Officer


James D. Smith, Mayor