

VILLAGE OF COMMERCIAL POINT
COMMITTEE OF THE WHOLE MINUTES

August 19, 2013

Ms. Good-Kinney called the meeting to order. Fiscal Officer Hastings took roll call with the following members present: Ms. Evans, Mr. Shelton, Mr. Wissinger, Ms. Gooden-Kinney, Mr. Cruz and Mr. Thompson. Mayor Hammond and Solicitor Hess were also present. Engineer Grosse was absent.

Mr. Wissinger made a motion seconded by Mr. Shelton to approve the July 15, 2013 COW Minutes. All members were in favor with the exception of Mr. Cruz who abstained. The motion passed.

Solicitor Hess had nothing to report at this time.

Mayor Hammond had nothing to report at this time.

Engineer Grosse was absent – no report.

At this time Mr. Shelton said that he has heard from residents requesting yellow center lines to be placed on W. Scioto St. from St. Rt. 762 to where it turns into Scioto-Darby Road. He said some folks have said there were never lines in this location and other people that he had talked to said there were lines there in the past. He said St. Rt. 762 and Scioto-Darby both have lines on them. Mr. Cruz said this piece of road has never had yellow lines and that it is a 25 mph zone. Mr. Cruz said there is a lot required to define the stripping of a road. He feels there needs to be research done to make sure this section of road would meet all of the standards to be stripped. He said if it is a safety issue, what is the goal that you want to accomplish? He asked if there are people not staying on their side of the street. Council would have to decide if they want to put the time and money into having the investigation done. Village Administrator Shelton said there were lines in this location before the latest paving project was completed. There was discussion amongst the Council and citizens as to whether or not there were lines there previously. Mr. Shelton feels the road doesn't look right without the stripping. Mr. Thompson said it doesn't look like a finished road. Ms. Gooden-Kinney said it was her understanding that Engineer Grosse would be presenting Council with a price quote for stripping, which would include this strip of road. Fiscal Officer Hastings said that piece of the road was not included in the project that Engineer Grosse was working on. Ms. Gooden-Kinney said she would ask Engineer Grosse to add it to the quote. Mr. Cruz said it was up to the Village to determine if that was a no passing zone or not. He feels we should have a resolution from previous administrations stating the regulations. Council decided these were questions for Engineer Grosse.

Ms. Gooden-Kinney said she had contacted Jim Kuzelka regarding getting a copy of the zoning book that he has. She is waiting to hear back from him. Mr. Thompson said he would make contact with Mr. Kuzelka. Ms. Gooden-Kinney said the committee could use the document she has, however she feels that Mr. Kuzelka has more information in his book. Fiscal Officer Hastings said she would make copies for Mr. Thompson and Mr. Shelton of the document that Ms. Gooden-Kinney has.

Ms. Evans touched on the safety of the Village when it comes to the Police Department. She said when the budget was done and decisions were made to bring on more officers, safety of our residents was the

main concern. She asked Council if they feel the same way regarding the passing of the JEDD when it comes to money for the Fire Department and from the statements Chief Welch said in the meeting earlier tonight. Mr. Cruz said in his opinion, what Chief Welch said about safety is very important. He feels the Township needs to make adjustments in their current budget, just like the Village had to do with the additional police protection, to accommodate what they need within the Fire Department. Mr. Cruz said he was on Council because of the actions the previous Council members took on shoving through the 1% income tax. He said the majority of the members on Council now were afflicted by that decision and wanted to be able to voice their opinion on that subject. He said Mr. Brosius said Council would be hypocritical if they were against the JEDD, however Mr. Cruz feels Council would be hypocritical if they supported the JEDD because it is the same circumstance as the 1% income tax for the Village residents. Mr. Cruz said this was his own personnel opinion on this subject. He feels the safety of the Village is important and that we should do everything we can to help in getting the levies passed for the Township. Ms. Evans feels the beneficiary would be our residents that we are here to represent. She said safety is a main priority. Mr. Thompson said the speech that was given by Chief Welch was very good. He feels the vote for the JEDD is not actually putting money in for the fire department only. He said it is to give the Township more money. Mr. Thompson said Stacey Sark, Scioto Township Trustee just told him during the break that all of the money is not going to the Fire Department. He said it is not an issue on funding the Fire Department or not. The voting would be on a contract that does not protect the Village. He said these were changes that should have been made way back when this document was first brought to Council. There is no guarantee that all of the money is going to the fire department. Mr. Thompson said if the document stated that all of the funds received would go to fund the fire department, he would support it. Ms. Evans asked if the Township was ever asked to earmark the money. Mr. Thompson said several times. Mr. Wissinger used the example of giving money to a college. Once you give the money away, you have no say in what it gets spent on. Mr. Shelton said it would go directly into the General Fund. Ms. Evans feels Chief Welch would not have come to the meeting tonight and asked for the support of the Council, if the Fire Department wasn't going to get the money. Mr. Thompson said he feels that some of the money will go to the Fire Department, however there is nothing in writing on paper that states that. He pointed out this is a 50 year deal. Trustees will change, Council members change, Mayors change. He said the contract is in place for the protection of the Township. Ms. Evans said we are a part of that Township. Mr. Thompson said we are the Village of Commercial Point and responsible for our residents and their best interests. He feels their best interests are not to take on the liability of a lawsuit, if it comes to that, after that first year. Mr. Thompson said the representative from DRC is not denying a lawsuit forthcoming if this JEDD should pass. Ms. Evans asked Solicitor Hess how he felt about a forthcoming lawsuit. He said he spoke with Mr. Brosius during the intermission and if the Council is concerned with becoming a part of the JEDD due to liability, Council could choose to opt out of the contract and only allow the use of Village property. No monies would be received since we would no longer be a contracting party. If there was a lawsuit, we would not be involved. Solicitor Hess feels if there is going to be a lawsuit, he feels it will be done pretty quickly, if and when this JEDD passes. He said a trial date could be set at least one year out from when the suit gets filed. He said a main concern could be if the State would put a "stay" on the funds, meaning no money could be collected off of the JEDD property. If this should happen, each entity would be responsible for their legal fees. Solicitor Hess said he needs to contact our insurance company to see if they would cover this type of claim. Ms. Evans asked Solicitor Hess for his opinion on whether or not there are grounds for litigation. Solicitor Hess said there is not a lot of litigation with these types of

JEDDs. He said there are unanswered questions, however feels that we are on the correct side of this being a legal document. Ms. Evans asked if Solicitor Hess felt Council should opt out so that we are not involved in any litigation. Solicitor Hess said that was solely a Council decision.

Village Administrator Shelton asked if the Village's proceeds are 1% of the net, does that mean our legal liability is only 1% as well. Mr. Cruz said no. There are two different levels to look at. Our exposure to liability and the punitive damages, but also the cost of what it takes to prove us right. Mr. Cruz pointed out the case that Mr. Brosius referred to ended up at the Supreme Court level. Village Administrator Shelton said she remembered a conversation pertaining to her question, we receive 1% of the net that means we only pay 1% of the liability costs. Mr. Thompson and Mr. Cruz said that was one item they wanted changed in the proposed contract that never made it in writing. Mr. Cruz said he brought this up even back when Mr. Crites was the Solicitor for the Village. Mr. Cruz said when Mr. Brosius was asked about it, he said he didn't know why the contract was written the way it was. Mr. Cruz finds that insulting since Mr. Brosius is the one who wrote the contract and didn't enter the changes that Council had asked for. Ms. Evans asked why Council didn't bail out back then when the things Council asked for were not being added to the proposed contract. Mr. Cruz said he thought it was a thing of the past. He said the last time they had heard anything about the proposed contract was in August of 2012, until early this year, Mayor Hammond put it in front of Council and said they needed to move on it. Mr. Thompson said when Mr. Crites was with us, Council had given him the "go ahead" to look into becoming a part of this JEDD. He said at that point, that is all that was supposed to happen. Mr. Cruz said they had brought up their concerns, however they were never brought to the forefront and now none of the concerns have been addressed. Mr. Thompson said when the contract was proposed, Council was told it was a done deal and no changes could be made at that point. Mr. Cruz said Council never received a copy of the proposed contract until he contacted Wendy and asked for one to be emailed to him. He said that she didn't even have a final draft copy at that time.

Ms. Evans asked what does Council need to do. She said there is a benefit to the residents, however she feels there is a risk as well. She said the question is whether the benefits outweigh the risks. Mr. Thompson said the liability issues are and will be his biggest concerns. He said he spoke with Mr. Struckman and Mayor Hammond after the last meeting and told them both that the liability was his concern. He said this has been brought up by several of the Council members in public meetings as well as Council meetings. He doesn't feel this portion of the contract will change since it hasn't already. Mr. Cruz said for 1%, he doesn't feel it is worth the chance. Ms. Evans said it sounds like the contract is non-negotiable as it stands now. Mr. Cruz said that was correct and that Council would be voting on the contract as it stands now. Nothing can be changed.

Solicitor Hess feels there is a way some things can be changed. He asked Council, if the Township would agree to change the legal liability coverage to a stronger set of terms, would Council support the contract then? He said in the resolution that authorizes the Mayor to sign a contract to be a part of the JEDD, there is language that allows for additions to be made based on comments or statements made at a public hearing. He said Grove City has not had their public hearing yet. He said if he himself, or someone from Commercial Point would attend that meeting and say they were not in support of section 15 and that additional language or stronger language should be added, at that point, if the Township wanted to strengthen the legal liability, they could. Mr. Shelton asked if this would strengthen the possibility of litigation due to changing the original contract. Solicitor Hess said in his opinion, he didn't

think it would. He said he would discuss this with Mr. Brosius to make sure, but only if Council wants him to move forward with it.

Ms. Evans asked about the "earmarking" of funds for the fire department. Solicitor Hess said he doesn't think funds can be "earmarked". Ms. Evans asked if you could express intent in the contract. Ms. Evans is looking for some type of assurance that the safety issues that were raised, as well as a staffed fire department, were going to be funded by the proceeds of the JEDD. Mr. Thompson said he does not have an issue with how the money is going to be spent. Since Commercial Point is inside the Township, our residents will benefit from whatever they spend the money on. He said his issues with the JEDD were based on the legal aspect and the moral aspects. He said he cannot vote on something that is going to tax people that do not have a say in the decision.

Mayor Hammond said he had attended all meeting pertaining to the JEDD. He said in the beginning, Mr. Crites was asked to become involved in this process. He said Mr. Cruz had asked about the legal issues from the beginning. Mayor Hammond said the original draft that the township had done, going way back, has had no changes done to it concerning the Village except for the 1 year liability coverage. He said no other changes had been requested. Mr. Cruz said there was a long list of items that Council wanted to see changed given to Solicitor Crites and nothing was done. He also said the 1 change in liability coverage came in April of this year. Mayor Hammond said the only two issues he heard from Council were the change in liability and the 1% coming back to the Village. Mayor Hammond said the number one issue for this Village is the safety of our residents. He asked what Council was willing to risk to ensure the safety of Commercial Point. Mr. Thompson said he doesn't understand why the focus is on the fire department. He said there is no guarantee that is where this money will be spent. He said Council is voting on entering a contract for the JEDD. He would like to see Council move on with the vote so that the Township can move forward with whatever they need to do. He is tired of dragging this on.

Mayor Hammond said we were asked to be a part of this JEDD by the Township. He said they really don't need the Village to move forward. The Township wants to be partners with the Village and build a relationship and close the bridge between the two entities. He feels if the Township didn't invite the Village, the feeling would have been that the Township doesn't care about the residents of the Village. Mayor Hammond said this JEDD could have already been done and the Township could have already be receiving funds. Mayor Hammond said he doesn't see anything wrong with the contract. The only concern he has is if no money ever comes into the JEDD, how the Village would be reimbursed for legal expenses should they arise. He reminded Council that if they so choose, they can drop out of the JEDD whenever they want to. He wanted to point out that from day one, this has been about safety for our residents. He does not want to have only 3 firefighter/paramedics on a shift at a time and if there is a way to make sure that doesn't happen, he is all for it.

Ms. Gooden-Kinney asked Solicitor Hess if Council would agree to move forward with this contract and there was litigation, could the Village opt out at that point. Solicitor Hess said if the court would determine it was an invalid case, then yes the Village could opt out.

Mr. Shelton asked Solicitor Hess about a few statements that were made earlier. He asked Solicitor Hess if he would be able to have an answer back by the September 9, 2013 meeting regarding if we would be covered under our insurance and/or if the language could be modified in the contract. Solicitor Hess said he could have the answer regarding the insurance coverage by that date, however the modification

of the language would have to be brought up at the public hearing being held in Grove City which is also being held on September 9, 2013.

Mr. Struckman said he was concerned about the money being earmarked for the fire department as well being that he wasn't going to be a Trustee for the next 50 years. He asked Mr. Brosius about it and was told it wasn't legal to earmark. He then asked Solicitor Hess if there was a lawsuit, it would probably come in the first year, right? Solicitor Hess said that was correct. Mr. Struckman said after that first year, there would be funds coming in from the JEDD that would be able to reimburse all entities for their legal fees they may have paid during the first year. Solicitor Hess said that would be correct unless a "stay" was issued on the funds. Mr. Struckman said that would have to be a part of the lawsuit in order for it to happen. Mr. Struckman asked if the lawsuit happened in the first year, the Township would be responsible for carrying on with the liability for all entities until it was resolved. Solicitor Hess said no, the Township is only responsible for the first year. However, if there are funds coming in after the 1 year, the JEDD would reimburse all entities for legal fees. The way the reimbursement would be determined would be based on the decisions of the JEDD board.

Mr. Cruz said the Township has said before that they can do this without the Village. In his opinion, the Village needs to vote and move forward with this. There is no reason to keep debating and debating and dragging the Township on. He asked Mr. Struckman if that would be the best option. Mr. Struckman said in his opinion, they should have dropped the Village a year ago and they would have money coming in already. However he feels the Village is part of the Township and wants the two to work together. He said the Village will benefit whether it's from the 1% or from the percentage that goes to the Township. He said Scioto Township is the biggest township in Pickaway County. He said there are 12,000 people here and only having 3 people on staff for the fire department is clearly not enough. People have been spoiled with the services that have been offered and now no one wants to pay for them. Mr. Struckman wants the best safety options for the residents of Scioto Township.

There was discussion about Solicitor Hess not being in attendance for the September 9, 2013 Regular Council meeting. Mayor Hammond said he would inform Council if there was going to be a Special Meeting called.

Village Administrator Shelton asked if the option still was available for the Village to opt out and only give permission to use our property. Solicitor Hess said he just spoke briefly with Mr. Brosius about that and would have to double check. Ms. Evans asked what the benefit to the Village would be if that was the option chosen. Solicitor Hess said the Village would have no legal fees should a lawsuit arise. Mr. Shelton said if we only put the property in the district, we would not collect any money, no legal fees, however the JEDD could still move forward. Village Administrator Shelton asked if the other entities would have to start over again. Solicitor Hess didn't think so. Council would skip the resolution that had to do with entering into a contract. Mr. Struckman asked what Council is looking for to be changed with the legal fees. Solicitor Hess said coverage for the entire 50 years.

Mr. Wissinger asked if the Council decided to opt out and only allow the use of their property, would a new JEDD contract need to be created. Solicitor Hess said he wasn't sure. That would have to be part of the conversation he has with Mr. Brosius. Mr. Wissinger asked if an answer would be available by September 23, 2013. Solicitor Hess said yes.

Mr. Thompson made a motion, seconded by Mr. Cruz to adjourn the meeting. All members were in favor. The meeting adjourned.

Kimberly Gooden-Kinney, President of Council

Wendy Hastings, Fiscal Officer