

**VILLAGE OF COMMERCIAL POINT
SPECIAL COUNCIL MEETING MINUTES
December 17, 2012**

Mayor Hammond called the meeting to order followed by the Pledge of Allegiance. Mayor Hammond asked for a Moment of Silence to honor our Men and Women; Past and Present; for their Military Service to our Country and for the people of Sandy Hook Connecticut, in there time of tragedy.

Ms. Gooden-Kinney took roll call with the following members present: Mr. Shelton, Ms. Evans, Mr. Wissinger, Mr. Thompson and Ms. Gooden-Kinney. Solicitor Hess and Engineer Grosse were also in attendance. Mr. Cruz and Fiscal Officer Hastings were absent.

Mr. Shelton made a motion, seconded by Ms. Evans to suspend the Procedure Rules. All members were in favor. The motion passed.

Legislation: Third Reading

Resolution 11-2012 – A Resolution to waive all water and sewage usage fees for November 2012 and billed December 2012 for all Village Residents and declare an emergency. Motion required At this time, Mayor Hammond asked Solicitor Hess to inform Council of his findings. Solicitor Hess said he was asked by Mayor Hammond to do a little more research on the proposed resolution. Solicitor Hess said it is very clear in the Ohio Revised Code that Council has the authority to set the water/sewer rates. He said his main goal was to figure out if there were any restraints on the Village if Council was to move forward with this resolution. He reported there were a number of court cases where residents have argued that villages are indirectly taxing the residents by way of higher water rates. Many Councils have been challenged on wanting to give away free water to charities, schools, hospitals etc. Residents felt their rates were higher to help recover the cost the villages were losing in offering free water to such establishments. Solicitor Hess said there was no court case found where the vote went to the residents. Another question he had researched was; would the Village be exposed to litigation if the rate changes were only going to be offered to the residents of Commercial Point. Solicitor Hess said he knew of an amendment that was going to change the wording to affect all residential customers. Therefore he didn't feel litigation would be an issue. Finally, he researched whether the Village would be violating any contracts they currently have in place. Solicitor Hess said there were two OWDA loans with a total of \$ 2,000,000.00 outstanding. He said the Village entered a co-op agreement offering rates to continue to cover the maintenance costs at the Utility Plant and pledged revenues to cover their debt to OWDA. Solicitor Hess spoke with Sue Farmer, Chief Loan Officer for OWDA and she confirmed what Solicitor Hess found on the co-op agreement. We have pledged our rates to sufficiently maintain our Utility plant. Her opinion is if Council was to change the rates for one month and not collect a sufficient amount of money, we would be violating our agreement. She also said in reality, OWDA is not going to come in and challenge or audit the Village unless we were unable to make our bi-annual payments. She indicated it was not best practice and she advised Solicitor Hess that it was not a good idea. Solicitor Hess said if Council had to ask for additional funding from OWDA for plant expansion, this reduction in rates would be a factor in determining whether or not the Village would be approved. This could have a negative effect long term with OWDA. Mr. Shelton asked if Sue Farmer thought this would be a violation to our co-op agreement. Her answer was yes. At this time, Mayor Hammond did a third reading of Resolution 11-2012. The Resolution died for lack of a motion. There was some discussion about removing the tabled item from the November meeting. This will be done at the January 7, 2013 meeting. Mr. Thompson said he did not make the motion because he felt blind-sided by the information Solicitor Hess brought tonight. He was unaware of the discussion results with OWDA prior to this meeting.

At this time, Solicitor Hess said he was asked to investigate how many members of Council were considered a quorum when it came to voting for the Village Administrator position. At the last meeting, Mayor Hammond presented Debby Shelton for Village Administrator. A motion was made and seconded and a vote was taken. The motion failed due to a 3 yes to 1 no vote. Solicitor Hess was under the impression the vote needed to have 4 yes votes out of the possible 6 member Council to be considered a majority. Solicitor Hess informed Council that he found in his research for this particular situation, Mr. Shelton's seat was considered a vacancy due to a conflict. Therefore, the quorum for this would be based on a total of 5 votes. Solicitor Hess's legal opinion is being that the votes were 3 to 1 in favor, the motion passed and Debby Shelton is the new Village Administrator.

Mr. Wissinger made a motion, seconded by Ms. Evans to adjourn the meeting. All members were in favor. The motion passed.

Kimberly Gooden-Kinney, President of Council

Wendy Hastings, Fiscal Officer