

**VILLAGE OF COMMERCIAL POINT
SPECIAL COUNCIL MEETING MINUTES
September 3, 2013**

Mayor Hammond called the meeting to order followed by the Pledge of Allegiance. Mayor Hammond then asked for a Moment of Silence to honor our Men and Women; Past and Present; for their Military Service to our Country. Mr. Shelton took roll call with the following members present: Mr. Thompson, Mr. Shelton, Mr. Cruz, Ms. Gooden-Kinney, and Ms. Evans. Solicitor Hess was also in attendance. Mr. Wissinger and Fiscal Officer Hastings were absent.

Ms. Gooden-Kinney made a motion, seconded by Mr. Thompson to suspend the procedural rules. All members were in favor. The motion passed.

At this time, Mayor Hammond turned the meeting over to Solicitor Hess. Solicitor Hess said that he had asked Mayor Hammond for a few minutes to speak to Council regarding some issues that were brought up in previous meetings regarding the 1 year legal fee coverage. He said he had an opportunity to speak with Mr. Brosius regarding what the Township is willing to do as well as our insurance coverage. He said there appears to be either a small deductible of approximately \$ 1,000 or under certain circumstances there may not be a deductible at all. He said the Township is willing to write into a contract the acknowledgement that they would cover the Village's deductible for any potential lawsuit and that would be for the life of the contract. Solicitor Hess said in speaking with our provider, he said they were helpful, but certainly like anyone else, they were going to give themselves some wiggle room if anything arises. They couldn't directly answer his questions. His basic questions were, if the Village would find themselves in any type of lawsuit based on the formation or legalities of the JEDD, would we have coverage? They indicated through emails that they couldn't specifically answer that because there were a lot of variables. He quoted from an email he received from the insurance company. "So while I can say the Village, if sued, would most likely have coverage, I cannot say so with 100% certainty until we review the suit." Solicitor Hess said that is where the insurance company is as of now. He said with as much clarity as they can, without seeing an actual lawsuit, that the Village most likely will be covered. Solicitor Hess offered to answer any questions Council may have regarding the coverage issue. Mr. Cruz said they said we would have coverage. Were they indicating we would have coverage for any punitive damage or would they cover our legal fees? Solicitor Hess said they could not clarify what the means of coverage would be. He said his main question was representation. Ms. Evans asked Solicitor Hess when he was referring to "they" was that the insurance company. He said yes. He continued and said that in speaking with the Counsel for the Township, they had reached out to their insurance provider who said they would have coverage and were willing to say so. He feels since both entities are government entities, the coverage would be pretty much the same. Mr. Cruz asked Mr. Struckman if their insurance coverage has provided coverage for the lawsuits that the Township has had in the past. Mr. Struckman said yes, sometimes the deductible would have to be paid and other times it wouldn't. Mr. Shelton asked why sometimes had to pay deductible and others not. Mr. Struckman said didn't have all details with him since it was over 7 or 8 years ago. Mr. Cruz asked if they paid the settlement and all legal fees. Mr. Struckman said yes. Ms. Evans asked if an agreement needed to be done between the Township and the Village for the Township to cover the Village's legal fees. Solicitor Hess said yes, that was correct. He said that the contract did leave some room for additions to the document via public comments at a public hearing, without having to start all over again from scratch. Ms. Evans just wanted to clarify that the JEDD contract as it stands now, does allow for an agreement to be made between the Township and Village, for coverage of deductibles and such. Solicitor Hess said that was correct.

Mr. Thompson asked about what they were voting on tonight. Solicitor Hess said they were voting on allowing the Mayor to sign the contract as it stands now with any changes that are not materially adverse to the interests of the Village. Mr. Thompson asked if the changes could not be done before tonight's meeting. Solicitor Hess said no. He said the changes have to be in result of statements or comments made in a public hearing. He said the Village would need to appear at the meeting in Grove City on September 16, 2013 and address those changes. Mr. Thompson asked why these changes were not addressed during the several public hearings and special meetings that have already been had over the last few months. Solicitor Hess said in speaking with the Counsel for the Township, these are some of the changes that are going to be addressed. Mr. Cruz asked if the changes were going to be to add that the Township was going to add the wording to cover the Village's deductible and take away the 1 year language that it states right now. Solicitor Hess said that was correct. Mr. Cruz doesn't want to fall into a place where the insurance company says they are not covering it and we have nothing in writing with the Township. We would not be covered at all. Mayor Hammond asked for clarification on the 1 year coverage that is written in the document now. Solicitor Hess said they would be removing that wording. He continued to say that in the research that was done by Mr. Brosius, the Township cannot indemnify the Village and the 1 year coverage wording has to be removed. The offer from the Counsel for the Township was they would cover the Village's deductible for the life of the contract. Mayor Hammond said if we were to decline their offer, we would revert back to the 1 year wording as the contract stands now, correct? Solicitor Hess said that is what Council would be voting on, however the Mayor has the say as to sign

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the contract or not. Solicitor Hess will be calling Mr. Brosius during the recess for clarification to make sure that if Council was to approve the contract as is, the 1 year wording would stay in place. Mr. Thompson says the 1 year coverage is still an issue because the Council wanted a longer term. Mayor Hammond said it is not as big of an issue as the coverage going away all together. Mr. Cruz said it might be a bigger issue if he is understanding what is being communicated from Mr. Brosius, which is despite their regional intent to indemnify the Village, that through his research that might not be possible. Solicitor Hess said that was correct that the Township could not indemnify the Village. Mayor Hammond said the contract that was being voted on tonight had been before a multitude of attorneys. Solicitor Hess said if it comes down to the Village cannot be indemnified by the Township and they are only going to offer to pay our deductible, the decision would be on Mayor Hammond as to sign the document or not. If the Township came back and said they were going to cover the deductible only for one year, if Mayor Hammond doesn't agree, he doesn't have to sign the contract. Solicitor Hess pointed out that the voting of this resolution tonight is not actually signing the contract. It is giving the Mayor the authority to sign the contract and if there are changes made that the Mayor feels are detrimental to this Village, he doesn't have to sign the contract.

At this time, a ten minute recess was taken. The meeting reconvened at 6:00 p.m. Let the record show that Mr. Wissinger arrived to the meeting.

Solicitor Hess said that he had time to speak with Mr. Brosius for clarification. The problem the Township is having is they would need to appropriate funds in their budget to indemnify the Village for a potential lawsuit. Because that is an unknown number, the Township cannot appropriate an unknown number to satisfy that clause. What they are requesting to do is cover the Village's deductible if there is any type of lawsuit. Again, the Township's insurance carrier has given a more definitive answer that they are covered. The Village's has not. They are saying it is likely the Village would be covered, but can't say for sure. The issues that could come up in a lawsuit would have to be presented to our insurance carrier. If they say they will cover it, then the Township would pay our deductible for the remaining of the contract. If there is a "stay" on the proceeds of the JEDD, then yes the Village would be responsible for the legal fees for the first year, however they would be reimbursed by the JEDD once monies were in the fund. Solicitor Hess said the first year is the most dangerous, if there was a "stay" and no proceeds, the Village would have to pay out of pocket. Solicitor Hess said that if the Council votes yes on the proposed resolution, they are giving the Mayor the authority to sign the contract with or without changes. Ms. Gooden-Kinney asked if there were major changes in the contract, how the Mayor could come back to Council for their approval. Solicitor Hess said you are authorizing the Mayor to have that control. Mayor Hammond asked if he could come back to Council to discuss the changes with them. Solicitor Hess said absolutely he could discuss these changes with Council. Even if Council would vote no on the changes, the Mayor still has the authority to sign the contract. Ms. Gooden-Kinney asked if there were things going on six months from now that Council did not approve of, how can Council opt out of the contract? Mr. Cruz said this was discussed during the last meeting. There were two options, 1) if the appointed board does not pass an income tax and 2) if the Court declares it null and void. Solicitor Hess said in section 11 of the contract, if Council feels there is a default in the contract, the Village is to give a 30 day written notice and action could be taken at that time. Mr. Cruz wanted to confirm it is a 50 year contract with the Village. Solicitor Hess said yes. Ms. Evans asked if other governing bodies would be looking at this document for approval. Solicitor Hess said if the Village approves it tonight and then Grove City approves the document, it would then go on to the Franklin and Pickaway County Commissioners for approval. Mr. Shelton asked if the Village voted yes tonight and Grove City voted no on September 16, 2013, this would be a null and void document. Solicitor Hess said that was correct and the discussion would be over. Mr. Thompson asked if this contract as it stands now is the one being voted on. Solicitor Hess said yes. If there were changes, they would have to be presented during public hearings. Once this contract is signed, no one can change it during the 50 year agreement.

Mayor Hammond asked Solicitor Hess during his research what he found of these JEDD's being litigated. Solicitor Hess said that he has seen litigation on JEDD's, however in the research that he has done, most of them have been in favor of the JEDD.

Resolution 12-2013 – A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A JOINT ECONOMIC DEVELOPMENT DISTRICT CONTRACT BY AND BETWEEN THE TOWNSHIP OF SCIOTO, THE CITY OF GROVE CITY AND THE VILLAGE OF COMMERCIAL POINT. At this time, Mr. Cruz asked that Mayor Hammond read the Resolution in its entirety and not just title only. Mayor Hammond read Resolution 12-2013 in its entirety. Hard copy available upon request. At this time, Mr. Shelton made a motion, seconded by Mr. Wissinger to adopt Resolution 12-2013. Mayor Hammond asked if there was any discussion. Mr. Cruz pointed out per the ORC, that emergency language needed to be included in the Resolution. He noted there is no emergency language as

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presented. Mr. Cruz made a motion, seconded by Mr. Wissinger, to change the language in Section 6 to read "This Resolution shall take effect in accordance with the law". All members were in favor of this motion. Motion passed. Ms. Gooden-Kinney made a motion, seconded by Ms. Evans to withdraw the original motion made by Mr. Shelton. All members were in favor. The motion passed. Mr. Shelton made a motion, seconded by Mr. Wissinger to approve Resolution 12-2013 as amended. A roll call vote was taken: Mr. Shelton - Yes ; Ms. Evans – Yes; Ms. Gooden-Kinney – Yes, Mr. Wissinger – Yes, Mr. Cruz – No, Mr. Thompson – No. The motion passed.

Resolution 13-2013 – A RESOLUTION CONSENTING TO THE INCLUSION OF PROPERTY WITHIN THE SCIOTO TOWNSHIP JOINT ECONOMIC DEVELOPMENT DISTRICT AND AUTHORIZING THE MAYOR TO SIGN A PETITION FOR THE APPROVAL AND CREATION OF SAID DISTRICT. Ms. Evans made a motion, seconded by Ms. Gooden-Kinney to adopt Resolution 13-2013. Mr. Cruz pointed out the language in Section 4 needed to be changed. Ms. Gooden-Kinney made a motion, seconded by Ms. Evans to withdraw the original motion made by Ms. Evans. All member were in favor. The motion passed. Mr. Cruz made a motion, seconded by Mr. Shelton to amend the Resolution Section 4 to read "This Resolution shall take effect in accordance with the law." All members were in favor. The motion passed. Ms. Evans made a motion, seconded by Ms. Gooden-Kinney to approve Resolution 13-2013 as amended. A roll call vote was taken: Mr. Shelton - Yes ; Ms. Evans – Yes; Ms. Gooden-Kinney – Yes, Mr. Wissinger – Yes, Mr. Cruz – No, Mr. Thompson – No. The motion passed.

Ms. Gooden-Kinney made a motion, seconded by Mr. Shelton to adjourn the meeting. All members were in favor. The meeting adjourned.

Joe Hammond, Mayor

Wendy Hastings, Fiscal Officer