

REGULAR MEETING OF COUNCIL OF THE VILLAGE OF SILVER LAKE

Monday, October 4, 2004

7:30 p.m.

The Village of Silver Lake Council met in a regular session on Monday, October 4, 2004, at Silver Lake Village Hall, 2961 Kent Road, Silver Lake, Ohio.

With President of Council, Mr. Duane Scott, presiding, the meeting was called to order at 7:30 p.m.

Mr. Scott led the Pledge of Allegiance.

The following members were present and responded to roll call: Mr. Jack Ingram, Mr. Robert Gray, Mr. Duane Scott, Mrs. Carol Steiner, Mr. Bernie Hovey, Mr. William Church, and Mrs. Karen Fuller.

Roll call of Council – 7 members present

Mr. Scott asked if there were any additions or corrections to the minutes of the September 20, 2004, Council meeting.

There being none, the minutes were approved as sent out.

Mr. Scott asked Mrs. Teresa Spohn, Clerk-Treasurer, for the reading of any pending legislation that is up for a first reading.

**RESOLUTION NO.: 87-2004 A RESOLUTION RATIFYING AND CONFIRMING THE AUTHORIZATION OF THE MAYOR TO ENTER INTO AN AGREEMENT WITH CTI ENVIRONMENTAL, INC. TO PROVIDE PROFESSIONAL ENGINEERING SERVICES FOR PERFORMING FLOW MONITORING SERVICES IN PORTIONS OF THE VILLAGE'S SANITARY SEWER COLLECTION SYSTEM, AND DECLARING AN EMERGENCY.**

Mr. Scott assigned Resolution No.: 87-2004 to the Public Improvements Committee.

**RESOLUTION NO.: 88-2004 A RESOLUTION AUTHORIZING THE PAYMENT OF CERTAIN CLAIMS, AND DECLARING AN EMERGENCY. \$172,478.93**

Mr. Scott assigned Resolution No.: 88-2004 to the Finance and Appropriations Committee.

**RESOLUTION NO.: 89-2004 A RESOLUTION RE-APPROPRIATING MONIES FROM CERTAIN DIVISIONS OF CERTAIN FUNDS TO OTHER DIVISIONS OF THE SAME FUND AND DECLARING AN EMERGENCY.**

Mr. Scott assigned Resolution No.: 89-2004 to the Finance and Appropriations Committee.

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**RESOLUTION NO.: 90-2004 A RESOLUTION TO MAKE ADDITIONAL APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE VILLAGE OF SILVER LAKE DURING THE FISCAL YEAR ENDING DECEMBER 31, 2004, AND DECLARING AN EMERGENCY.**

Mr. Scott assigned Resolution No.: 90-2004 to the Finance and Appropriations Committee.

*Second Reading:*

**RESOLUTION NO.: 84-2004 A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE SHELLY COMPANY FOR IMPROVEMENTS AT CRYSTAL LAKE DRIVE AND GRAHAM ROAD IN THE VILLAGE OF SILVER LAKE, OHIO, AND DECLARING AN EMERGENCY.**

Mr. Scott previously assigned Resolution No.: 84-2004 to the Public Improvements Committee.

Mr. Scott asked if there were any questions or comments from the audience regarding pending legislation.

Mr. Doug Nissel asked to present an ordinance to Council.

Mr. Scott indicated that if Mr. Nissel wanted an ordinance to be considered by Council it first has to be submitted to the Clerk-Treasurer.

Mr. Heydorn stated "The only way a person who is not a member of Council or the Administration can present an ordinance to Council, the only way it can be done and be part of the legal process, is to do an initiative petition with a specific number of signatures from the populace and then the ordinance would go to the populace by way of a general election or a special election and the ordinance is then voted on by the people."

Mr. Heydorn went on to say that anyone is entitled to suggest an ordinance and submit it to the Clerk-Treasurer. If any member of Council or the Administration wants to take the ordinance under consideration and introduce it to Council, he can do that. If Mr. Nissel has an ordinance he wishes Council to consider or sponsor and be introduced by Council, he can submit the ordinance to the Clerk-Treasurer and the Clerk-Treasurer can then present the ordinance to Council.

Mr. Nissel asked where this is spelled out in the Village's Charter.

Mr. Heydorn stated the right of initiative or referendum and the concept of who opposes legislation and how that is passed by Council is in the Charter under the section designated Council.

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Mr. Nissel stated he did not read anything in the Village's Charter that would indicate that.

Mr. Heydorn stated that the Charter indicates that legislation is introduced by Council.

Mr. Scott stated if Mr. Nissel has an ordinance that he would like for Council to consider, he can present the ordinance to the Clerk-Treasurer and she will pass it along to the Council members.

There being no further questions, Mr. Scott continued with the agenda.

**REPORTS OF COUNCIL STANDING COMMITTEES**

**Finance and Appropriations Committee – Mr. Jack Ingram, Chairman**

Mr. Ingram stated Resolution No.: 88-2004 was discussed in committee earlier this evening and is ready for adoption.

Mr. Ingram made a motion to suspend the rule that legislation be read at three meetings for Resolution No.: 88-2004, seconded by Mr. Gray.

Roll call on suspension:      Yes    7      No    0

Motion to adopt by Mr. Ingram, seconded by Mr. Hovey.

Roll call on adoption:      Yes    7      No    0

Mr. Ingram stated Resolution No.: 89-2004 was discussed in committee earlier this evening and is ready for adoption.

Mr. Ingram made a motion to suspend the rule that legislation be read at three meetings for Resolution No.: 89-2004, seconded by Mr. Church.

Roll call on suspension:      Yes    7      No    0

Motion to adopt by Mr. Ingram, seconded by Mrs. Steiner.

Roll call on adoption:      Yes    7      No    0

Mr. Ingram stated Resolution No.: 90-2004 was discussed in committee earlier this evening and is ready for adoption.

Mr. Ingram made a motion to suspend the rule that legislation be read at three meetings for Resolution No.: 90-2004, seconded by Mr. Church.

Roll call on suspension:      Yes    7      No    0

Motion to adopt by Mr. Ingram, seconded by Mr. Hovey.

Roll call on adoption:      Yes    7      No    0

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**Public Improvements Committee - Mr. William Church, Chairman**

Mr. Church stated Resolution No.: 87-2004 was discussed in committee earlier this evening and is ready for adoption.

Mr. Church made a motion to suspend the rule that legislation be read at three meetings for Resolution No.: 87-2004, seconded by Mr. Hovey.

Roll call on suspension:     Yes    7     No    0

Motion to adopt by Mr. Church, seconded by Mr. Gray.

Roll call on adoption:       Yes    7     No    0

Mr. Church stated that Resolution No.: 84-2004 was discussed in committee earlier this evening and this resolution is no longer needed.

Mr. Church made a motion to withdraw Resolution No.: 84-2004, seconded by Mr. Gray.

Roll call on withdrawal:     Yes    7     No    0

Mrs. Fuller stated the Park Board will be dedicating the tree on Circle Island in memory of Mrs. Bunny Martin. Anyone wishing to contribute a donation can do so through the Memorial Fund.

Mr. Church did not have a report from the Silver Lake Board of Trustees.

**MAYOR'S REPORT**

**Mayor Mendenhall** was not in attendance. The Mayor was on vacation.

**Mr. Heydorn** stated he is working on the train brief, which is due November 1, 2004. There has been no schedule as to when oral arguments are to begin.

**Chief DeMoss** reported the City of Cuyahoga Falls asked the Village for mutual aid for the presidential detail during President Bush's visit to the City of Cuyahoga Falls on Saturday, October 2, 2004. Two officers were sent from the Village to assist. The time involved for our officers was approximately 25 hours. The Village is not reimbursed for these hours. Everything went well and there were no incidents. All the neighboring communities were asked to assist.

**Mr. Fenwick** stated he has spoken to two engineers and a contractor reference the Silverview Drive project. The engineers will be shooting elevations of the area and drawing at least three scenarios of the project since the aesthetics of this area is very important.

The Fall Leaf and Limb program will begin on Monday, October 18, 2004.

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R. B. Thomas, the contractor for installing the emergency generator, has been working on the project, which should take six to eight weeks to complete.

Mr. Fenwick stated he has spoken to Mr. Dick D'Antonio from the City of Stow concerning the curbs and sidewalks on Englewood Drive.

A warning device will be installed on the sewer flow meter. This warning device will alert the Service Department as to when a sewer backup may be occurring.

The streets lights on Vincent Road have been installed and the street lights on Athens Road are in the process of being installed.

Mr. Fenwick stated he will be attending the Storm Water Conference in Columbus on Wednesday, October 6, and Thursday, October 7.

**Mrs. Spohn** reported the Ohio Ethics Law, which was revised in September 2004, has been distributed to members of Council as well as all Village employees.

The Village is now using PayChex as our payroll processing company due to numerous problems with the prior payroll processing company.

Baker's Towing will once again be doing the snowplowing for the Village's Senior Snowplowing Program. This is Baker's third year and they will be charging the same rate they have been charging for the past three years.

The Village has been approved to be the SWAT bookkeeper. The City of Munroe Falls no longer wants to do the bookkeeping for SWAT.

The Village's fair share for participating in SWAT has been \$1,000. This fee will be waived for the Village because we will be doing the bookkeeping. The bookkeeping required will not entail much time.

Mrs. Spohn reported that she and Mayor Mendenhall met with Mr. John Earle from the City of Stow to discuss the Fire and EMS contract the Village has with the City of Stow. Mr. Earle stated the City of Stow is proposing a 3 ½ percent increase over each of the next five (5) years.

Mrs. Spohn stated that Mayor Mendenhall asked Mr. Earle to see if the City of Stow could do better.

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Mrs. Spohn stated she needs a motion from Council for the RITA Regional Council of Governments for a delegate and an alternate. The delegate has voting rights and the alternate has voting rights when the delegate cannot attend the meeting.

Mr. Church made a motion to designate Mrs. Spohn as the delegate for the RITA Regional Council of Governments and Mayor Mendenhall as the alternate, seconded by Mr. Hovey.

Roll call:        Yes    7        No    0

Mrs. Spohn addressed Mr. Nissel and stated that Mr. Nissel could always contact a Council member to introduce legislation. It would then be up to the Council member if they want to take the legislation to the other members of Council.

Mr. Scott excused Mr. Gray from the Council meeting at 7:50 p.m.

Mr. Scott stated there are several residents in the audience who wish to speak.

Mr. Scott called on Mrs. Kim Goldsboro.

Mrs. Goldsboro declined to speak.

Mr. Scott called on Mr. John Wenrick.

Mr. Wenrick declined to speak.

Mr. Scott called on Mr. Fred Fryberger.

Mr. Fryberger asked if he is correct in understanding that no matter how the vote goes on November 2, Council makes the final decision.

Mr. Scott stated that is correct, Council has to vote on the legislation.

Mr. Fryberger asked why the citizens are even going to vote on the issue if Council makes the final decision.

Mr. Scott stated the advisory election will give Council an idea as to how the public feels about the rezoning issue.

Mr. Fryberger stated the Resident's Review indicates that the rezoning will be for seniors.

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Mr. Fryberger asked where are all the seniors who are for the rezoning. Mr. Fryberger hasn't seen any seniors at the meetings and the only people at these meetings are the people who do not want the rezoning.

Mr. Fryberger asked what is the sense of voting.

Mr. Scott stated Council wants to know how the public feels about this issue.

Mr. Fryberger said Council doesn't care how the public feels.

Mr. Scott stated yes Council does care how the public feels.

Mr. Heydorn stated that there is no provision in the law that allows a vote of the people prior to Council's approval of an ordinance. The election statute only permits an advisory ballot issue from Council to go before the people before a piece of legislation is voted on. Voting on legislation belongs solely to Council as their constitutional duty.

The law would allow an advisory election so that Council could test public opinion and Council always has the right to use its own judgment in legislation. On the other hand, part of Council's duty is to assess what the public will is about a piece of legislation, and this is the only device that Council has to see what the public will would be. The vote would be advisory to Council.

Mr. Heydorn stated if there is overwhelming support for one side or the other then obviously Council has to consider the public will.

Mr. Heydorn went on to say that Council does not have the right to submit this issue to a binding vote to the public prior to the time that Council actually votes on the issue. That is because the law says that after the vote, the public then has an opportunity to vote on the issue if Council passes the legislation.

The public would have to take out petitions, get a referendum, it would go on the next election, and at that point in time the citizenry could vote on the issue again and that vote would be binding.

That's because the law allows the people the right of initiative to propose an ordinance by petition and the right to have a referendum and that is guaranteed by the Ohio Constitution and is also guaranteed by our Village charter.

There is no law that allows the public to vote on an issue prior to the time Council passes a piece of legislation. Council went as far as the law would allow them to go, which is an advisory election. Council decided to take this issue to an advisory election to see what the public wanted

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rather than some haphazard polling by a pollster.

Council went further than they had to. As far as the law is concerned, it is the only thing that Council is allowed to do.

Mr. Heydorn stated he couldn't be any clearer in his explanation than that. If anyone does not understand what was discussed, the minutes could be obtained and reviewed for clarification.

Mr. Fryberger said he didn't understand what Mr. Heydorn just said and he asked if someone could tell him what Mr. Heydorn just said.

Mr. Heydorn stated that might just be the problem. "Mr. Fryberger just doesn't want to understand what I (Mr. Heydorn) just said."

Mr. Church stated that the Council members are very sensitive to the residents' views on the proposed rezoning issue. The best way Council knew to get an idea as to what the public wanted was to see if there was support or not for rezoning.

Mr. Church went on to say that Council felt an advisory election would give them their answer as to what the public wanted.

Mr. Church stated that if there is overwhelming support not to rezone then Council needs to take that into strong consideration.

Mr. Church stated that Council has always reserved the right to vote however they wanted to.

The law allows Council an advisory election to test the public will. Council is going that far to find out what the people of the Village really want.

Mr. Church went on to say that many other Councils in other communities might not be this sensitive to their constituents.

Mr. Hovey stated Council would not have placed this issue on the ballot if it had just intended to approve the rezoning all along.

Mr. Hovey stated he wanted to know what the entire public thinks.

Mr. Hovey stated that he honestly does not know how to vote yet and after he sees the election results that will probably make up his mind.

Mrs. Fuller stated that Council has not made a decision on this issue. It is Council's job to vote on this issue.

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Mr. Fryberger again stated he still does not understand why the public is going to vote on this issue when Council can do what they want.

Mr. Heydorn stated “One of the problems that Council has is that there is a component that says people do not want to understand.”

Mr. Heydorn said the bottom line of what he said is simply this, what Council is doing is the only thing that the law will authorize them to do. The law will not authorize Council to have an election prior to the passage of an ordinance which is binding.

Mr. Scott called on Mr. Doug Nissel.

Mr. Nissel said he was extremely upset with the section in the Residents’ Review entitled “Taking on the Myth, Correcting the Rumors and Stating the Facts.” To read this, this Administration would have everyone believe the people opposed to this rezoning are telling out-and-out falsehoods, which isn’t true.

Mr. Nissel stated the Administration has been able to put out five pages, which is over half of the newsletter, presenting their case on it, at the public’s expense.

Mr. Nissel asked if the Mayor would be reimbursing the Village to pay for this political statement and opinion.

Mr. Nissel stated these are not the facts, these are what the Mayor sees as facts.

Mr. Nissel addressed Mr. Heydorn and stated he understands that Mr. Heydorn takes great pride in being able to talk in circles and say nothing.

Mr. Scott struck the gavel and told Mr. Nissel that “was enough” (of verbal abuse).

Mr. Nissel went on to say he “was extremely insulted by the way Mr. Heydorn treats us.”

Mr. Scott struck the gavel again and stated that Mr. Nissel was out of order.

Mr. Heydorn responded by saying that it is an insult to his professionalism to say that he talks in circles.

Mr. Heydorn stated if Mr. Nissel has the right to make that statement, then he has a right as well to say that the only reason Mr. Nissel thinks he is talking in circles is because Mr. Nissel does not want to understand what he is trying to say.

Mr. Scott called on Mr. Robert Nissel.

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Mr. Nissel declined to speak.

Mr. Scott asked if there were any further questions from the audience.

Mr. Paul Moskowitz asked to speak. He stated he came in after Council started but he did sign in .

Mr. Scott asked Mr. Moskowitz to continue.

Mr. Moskowitz said he couldn't understand why the Mayor was pushing so hard on this issue.

Mr. Moskowitz asked Council if they were coming to terms with the large number of people that are opposed to this issue.

Mr. Church responded that when Council started to consider the rezoning issue there were indicators that rezoning was a good thing.

Mr. Church stated that Council are the elected officials and are interested in doing what the citizenry in general wants done. Council has seen and heard from the opposition and what Mr. Church saw at the July meeting was that the people opposed to the rezoning issue were quite intimidating to those who were for the rezoning issue.

Mr. Church stated that Council has seen that there is a significant opposition which is what led Council to place the issue on the ballot.

Mr. Church stated the vote of the people will influence Council's decision.

Mr. Scott stated there were approximately 300 people at the July meeting and only 52 people spoke.

Mr. Scott stated that he knows there were people at the July meeting who wanted to speak but were afraid to speak. The atmosphere at the July public meeting was intimidating for the people who supported the rezoning issue.

Mr. Scott went on to say that Council is going in the right direction to address this issue and we will see what the outcome is after the election.

Mr. Moskowitz asked if this rezoning project could legally be called housing for seniors.

Mr. Scott stated it can be legally designated for seniors.

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Mr. Heydorn stated that under the Fair Housing Law if the project is designated 55 years or older and at least one occupant in each dwelling is 55 years or older the housing can be designated for seniors.

Mr. Heydorn stated there are practical difficulties involved when the property is designated for seniors.

Mr. Heydorn stated that the Planning Commission and those that put this together felt the safer position was one that designs homes that would be attractive to seniors. The designs would include wider doors to accommodate wheelchairs, handrails throughout, and bathroom accommodations.

Mr. Moskowitz stated he, along with many other people, are very much opposed to rezoning and changing the look and feel of this Village. Multi-family housing is not needed. Seniors in this community have many ways to stay in their homes and those seniors who could not stay in their homes would not be able to stay in a condo.

Mr. Moskowitz stated that he hopes when Council sees how the residents feel after the election, that Council will keep Silver Lake unique and as wonderful as it is.

Mr. Scott asked if there were any further questions from the audience.

There being no further questions from the audience, Council adjourned at 8:20 p.m.

APPROVED:

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Duane Scott, President of Council

ATTEST:

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Teresa M. Spohn, Clerk-Treasurer

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