

REGULAR MEETING OF THE COUNCIL OF THE VILLAGE OF SILVER LAKE

Tuesday, September 2, 2008

7:00 p.m.

The Village of Silver Lake Council met in a regular session on Tuesday, September 2, 2008, at Silver Lake Village Hall, 2961 Kent Road, Silver Lake, Ohio.

With President of Council, Mrs. Carol Steiner, presiding, the meeting was called to order at 7:00 p.m.

Mrs. Steiner led the Pledge of Allegiance.

The following members were present and responded to roll call: Mrs. Janie Geis, Mr. Christopher Scott, Mrs. Karen Fuller, Mrs. Carol Steiner, Mr. Richard Hite, and Mr. Donald Alexander.

Roll call of Council - 6 members present

Mrs. Fuller made a motion to excuse Mr. Gerald Jones from this evening's Council meeting, seconded by Mr. Hite and all of Council agreed.

Mayor Hovey stated Mr. Phil Keren from the Cuyahoga Falls News Press will no longer be the reporter for the Village. Ms. Lauren Krupar is in attendance this evening and she will now be reporting for the Village.

Mrs. Steiner asked if there were any additions or corrections to the minutes of the August 18, 2008, Council meeting.

There being none, the minutes were approved as sent.

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

RESOLUTION NO.: 77-2008 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, 2008, AND DECLARING AN EMERGENCY.

Mrs. Steiner assigned Resolution No.: 77-2008 to the Finance and Appropriations Committee.

RESOLUTION NO.: 78-2008 A RESOLUTION APPROVING THE EMERGENCY REPAIR OF THE VACTOR USED BY THE DEPARTMENT OF PUBLIC SERVICE BY JACK DOHENY SUPPLIES OHIO, INC., AND DECLARING AN EMERGENCY.

Mrs. Steiner assigned Resolution No.: 78-2008 to the Finance and Appropriations Committee.

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RESOLUTION NO.: 79-2008 A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH PAVEMENT TECHNOLOGY, INC. FOR THE APPLICATION OF RECLAMITE ASPHALT REJUVENATING AGENT TO VARIOUS STREETS IN THE VILLAGE OF SILVER LAKE, AND DECLARING AN EMERGENCY.

Mrs. Steiner assigned Resolution No.: 79-2008 to the Public Improvements Committee.

ORDINANCE NO.: 80-2008 AN ORDINANCE ESTABLISHING A SCHEDULE OF PAY GRADES AND RANGES FOR INTERMITTENT PART-TIME LAW ENFORCEMENT OFFICERS, AND DECLARING AN EMERGENCY.

Mrs. Steiner assigned Ordinance No.: 80-2008 to the Personnel and Public Affairs Committee.

RESOLUTION NO.: 81-2008 A RESOLUTION AUTHORIZING THE PAYMENT OF CERTAIN CLAIMS. \$ 212,510.71

Mrs. Steiner assigned Resolution No.: 81-2008 to the Finance and Appropriations Committee.

Mr. Scott stated Ordinance No.: 63-2008 would be tabled this evening.

Mr. Scott made a motion to table Ordinance No.: 63-2008, seconded by Mrs. Fuller.

Roll call on tabling: Yes 6 No 0

Mrs. Steiner asked if there were any comments from the audience.

Mr. Bill Myles, 2911 Riverview Boulevard, spoke to the Mayor and Mr. Heydorn regarding the Natural Gas Aggregation price. Mr. Myles would like the Mayor to explain the Village’s status and the Mayor’s decision making process that has caused the Village to be in a binding contract that is charging the residents 50 percent more than City of Cuyahoga Falls residents.

Mayor stated the price was struck in July after months of watching the market. There is nothing that supports the increase in natural gas prices. Month after month the prices continued to go up. The price was struck at \$15.128 per mcf. At that time, many of the offerings from other companies were in the \$16.00 - \$17.00 range. The thinking was, since they say nothing supports it but the price continues to go up every month, at least a stop gap order could be placed so the price didn’t go higher than \$15.128. That way, we knew the residents wouldn’t be paying more than \$15.128 so if the price would have gone up to \$20.00, we would have looked liked geniuses.

Now that prices have come down, the only main benefit to the community is that they are not under contract. Residents can make their own deals at any time and opt-out of the gas aggregation program with no fee.

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Vectren Source was ordered by the Village of Silver Lake, the City of Stow and the City of Munroe Falls to buy the gas at \$15.128 per mcf. Vectren bought the gas and cannot do anything else except provide it to Village residents at that price. If a number of residents opt-out, Vectren is still stuck with the gas at the higher price.

Mr. Myles stated it would be in the best interest of the residents for as many to opt-out as possible.

Mayor stated that is a decision that each resident has to make on their own.

Mr. Heydorn stated the concept of a gas aggregation program is only around to try to give the residents a competitive advantage. It may work and it may not work. The idea of coming together is supposed to result in a cost savings. There is nothing that binds the resident to this contract. There is no disadvantage to the resident because there is no penalty.

Mr. Myles stated it would be in the best interest of the residents if the Village contacted the City of Cuyahoga Falls and explored the idea of making the aggregation group larger. Mr. Myles asked why the Village has to consider ourselves such a small entity.

Mayor replied the Village is not in the aggregation program by ourselves, we are in it with the City of Munroe Falls and the City of Stow. This is a relatively large group.

Mrs. Steiner stated the Falls got such a good price because they took a chance and waited. It was all in the timing.

Mayor stated if the Village would have waited, it would've worked out to our advantage also.

Mr. Myles stated Falls is faced with the same decisions, but it happened that they did wait. And it happened that their residents are now paying fifty percent less than our residents. They were willing to take the risk.

Mrs. Steiner stated the Village could have also taken the risk and natural gas could have also been \$20.00 per Mcf. It's just a gamble.

Mr. Heydorn stated the Village also has an expert on contracting that helps us with the whole process.

Mayor stated the expert does not get paid on the percentage of the price, but a percentage on how many Mcf's are sold.

Mr. Myles stated the Village should look into talking to the expert from Cuyahoga Falls.

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Mrs. Lila Nissel, 2810 Outlook Drive, stated that she has found over the years, the best way to get a good rate for natural gas is to call the different companies and find out what they can offer. If your current supplier is not giving a good rate, they may lower it if you find another supplier that is offering a lower rate and you tell them.

There being no further questions, Mrs. Steiner called upon Mr. Christopher Scott, Chairman of the Finance and Appropriations Committee, to lead discussion on items on the agenda that are pertinent to his committee.

FINANCE AND APPROPRIATIONS COMMITTEE

Mr. Scott stated Resolution No: 77-2008 is for additional appropriations.

Mr. Scott asked if the amount is rounded up.

Mrs. Spohn stated yes it is rounded up.

Mr. Scott indicated the Committee will recommend the adoption of Resolution No.: 77-2008 this evening.

Mr. Scott stated Resolution No.: 78-2008 is approving emergency repairs for the Vactor.

There were no questions or comments. Mr. Scott indicated the committee will recommend the adoption of Resolution No.: 78-2008 this evening.

Mr. Scott asked for questions on Resolution No.: 81-2008, payment of claims. The amount is \$212,510.71.

Mrs. Fuller stated the amount seemed to be high.

Mrs. Spohn stated there were four months of bills for the Department of Environmental Services. There were also payments for the Ohio Police & Fire Pension Fund quarterly billing, and to the City of Cuyahoga Falls for Fire and EMS services.

There being no further questions or comments, Mr. Scott indicated the Committee will recommend the adoption of Resolution No.: 81-2008 this evening.

Mr. Scott stated resolution No.: 63-2008 is repealing the political sign ordinance.

Mr. Heydorn commented Mr. Stoiber had some good points (at the Public Hearing this evening). The only point that Mr. Heydorn would have some issue with deals with the section that now reads, "No sign shall be permitted unless specifically permitted."

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It is only saying that a sign is prohibited unless it is expressly permitted. Obviously you have to accept political signs from that if the non-mentioned political signs would ultimately lead to its prohibition.

Mr. Stoiber was addressing the problem that size requirements are difficult to enforce; charging a fee is difficult to enforce, and a time certain for putting up and taking down the signs are difficult to enforce. He did believe that the setback of 25 feet was necessary.

In place of the before and after time limits, Mr. Stoiber suggested building in a maintenance standard.

Mr. Heydorn stated it is difficult to say whether 25, 10, or 5 feet is sustainable in terms of being a threat to safety.

The difficulty with this whole area is the fact that in order to prove anything in court, we have to show a compelling state interest, not just show a rational basis for having that particular regulation because it deals with free speech.

The Arshinkoff case in Hudson came down the way it did because the City of Hudson didn't have enough evidence that the size requirements on the signs really did depreciate property values or create a health safety welfare problem.

Mrs. Steiner asked if the Police Chief could find evidence and put something in a statement.

Mr. Heydorn stated a traffic safety engineer would be able to do something like that.

Mrs. Spohn asked if it could be left open and it might say "not in the Village's right of way" and "must maintain line of sight" if determined it's in the line of sight for safety reasons. Then it could be on a case to case basis.

Mr. Heydorn stated you can do that as long as the criteria that is chosen is sufficiently specific so that there is specific criteria to go by.

Mr. Scott stated in the code, the real estate and garage sale signs cannot be closer than 10 feet to the street. Maybe it should be changed to all signs should be set back 10 feet.

Mr. Heydorn stated that would improve the Village's position.

Mrs. Fuller stated that ACLU mentioned three things: the fee for a sign, the size requirement and the number of signs. We are getting rid of all three of those things. Why don't we just hit those points and not expand it?

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Mrs. Fuller stated the election takes place on a certain day in November. That is an event. Those signs should be taken down within two days of the event.

Mrs. Geis asked what would happen if the ACLU writes another letter.

Mr. Hite stated the Village has already told the ACLU that we are going to review the ordinance.

Mrs. Geis asked if we can keep a time frame.

Mr. Heydorn stated there is no question that we can't keep any time frame as far as a political issue is concerned. There are the cases all over the place that have dealt with choosing time frames. Many times the courts have struck down a time frame because the municipality couldn't prove the rational basis of why they chose the certain amount of days. Once it's kicked out, there is nothing to replace it.

Some legislation has been struck down because they were too general.

Some have suggested that the question of the length of time the sign can be up and taken down should be more related to the question of the maintenance of temporary signs and how long these signs physically last before they become an aesthetic problem. Otherwise there is no justification for telling a person how long before hand they can put it up or how long after he needs to take it down.

Mrs. Spohn stated it says, "unless otherwise noted, temporary signs shall be removed or replaced within 30 days."

Mr. Heydorn stated at one point in time, there was a more specific time and date set for putting up and taking down signs. This was taken out in 2001 because of a Supreme Court decision.

Mrs. Fuller stated we have a setback of ten feet set for garage sales and real estate, but only one sign is allowed for these types of signs. A political sign is unlimited and this definitely causes obstruction of the street.

Mr. Scott stated the items that need to be researched before the legislation can be passed are the time frame and the setback.

Mr. Heydorn will figure out some wording to address these issues.

Mrs. Steiner called upon Mr. Don Alexander, Chairman of the Public Improvements Committee, to lead discussion on items on the agenda pertinent to his committee.

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PUBLIC IMPROVEMENTS COMMITTEE

Mr. Alexander stated Resolution No.: 79-2008 is about entering into a contract with Pavement Technology for the application of reclamite asphalt rejuvenating agent.

Mr. Fenwick reported the Village has been doing this every year since 1989. When asphalt is laid down, it starts to deteriorate. This puts chemicals back into the asphalt to make it last longer. We get approximately 3 to 5 years extra out of our streets. \$12,000 was budgeted for this project, but it will only cost approximately \$9,000.

Mr. Alexander indicated the Committee will recommend the adoption of Resolution No.: 79-2008 this evening.

Mrs. Steiner called upon Mr. Karen Fuller, Chairman of the Personnel and Public Affairs Committee, to lead discussion on items on the agenda pertinent to her committee.

PERSONNEL AND PUBLIC AFFAIRS COMMITTEE

Mrs. Fuller stated Ordinance No.: 80-2008 establishes a schedule of pay grades for part-time police officers.

Chief DeMoss stated currently part-time police officers all make the same hourly rate no matter how long they have been employed by the Village. The new legislation makes it so that once a part-time police officer works 2,080 hours, they can be reviewed for a pay upgrade.

Mrs. Fuller asked how many part-time officers have been with the Village for a long period of time.

Chief DeMoss stated Tracey Harper and Bob Simone have been with the Village for quite some time.

Mrs. Fuller indicated the committee will recommend the adoption of Ordinance No.: 80-2008 this evening.

Mrs. Fuller stated Ordinance No.: 5-2008 established additional holiday time provisions for the Police Department.

Mrs. Spohn stated it needs to be amended before it can be voted on.

Mrs. Fuller indicated the Committee will vote on the adoption of Ordinance No.: 5-2008 after it is amended.

Mrs. Steiner continued with the agenda.

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Finance and Appropriations Committee - Mr. Christopher Scott, Chairman

Mr. Scott stated Resolution No.: 77-2008 was discussed in committee earlier this evening and is ready for adoption.

Mr. Scott moved to suspend the rule that legislation be read at three meetings for Resolution No.: 77-2008, seconded by Mr. Hite.

Roll call on suspension: Yes 6 No 0

Motion to adopt by Mr. Scott, seconded by Mr. Hite.

Roll call on adoption: Yes 6 No 0

Mr. Scott stated Resolution No.: 78-2008 was discussed in committee earlier this evening and is ready for adoption.

Mr. Scott moved to suspend the rule that legislation be read at three meetings for Resolution No.: 78-2008, seconded by Mrs. Fuller.

Roll call on suspension: Yes 6 No 0

Motion to adopt by Mr. Scott, seconded by Mr. Hite.

Roll call on adoption: Yes 6 No 0

Mr. Scott stated Resolution No.: 81-2008 was discussed in committee earlier this evening and is ready for adoption.

Motion to adopt by Mr. Scott, seconded by Mr. Hite.

Roll call on adoption: Yes 6 No 0

Mr. Scott moved to adopt the Statement of Cash Position, seconded by Mrs. Geis and all of Council agreed.

Mr. Scott stated Ordinance No.: 63-2008 will be tabled this evening.

Mr. Scott scheduled a budget meeting before the next Council meeting on September 15, 2008, at 5:30 p.m.

Public Improvements Committee - Mr. Donald Alexander, Chairman

Mr. Alexander stated Resolution No.: 79-2008 was discussed in committee earlier this evening and is ready for adoption.

Mr. Alexander moved to suspend the rule that legislation be read at three meetings for Resolution No.: 79-2008, seconded by Mr. Scott.

Roll call on suspension: Yes 6 No 0

Motion to adopt by Mr. Alexander, seconded by Mr. Hite.

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Roll call on adoption: Yes 6 No 0

Personnel and Public Affairs Committee - Mrs. Karen Fuller, Chairman

Mrs. Fuller stated Ordinance No.: 80-2008 was discussed in committee earlier this evening and is ready for adoption.

Mrs. Fuller moved to suspend the rule that legislation be read at three meetings for Ordinance No.: 80-2008, seconded by Mr. Scott.

Roll call on suspension: Yes 6 No 0

Motion to adopt by Mrs. Fuller, seconded by Mr. Alexander.

Mayor Hovey asked if the intent of this legislation is to review all the current part-time police officers to see if they qualify for a pay upgrade.

Mrs. Spohn stated the language says the current intermittent part-time police officers shall be reviewed by the Chief of Police.

Roll call on adoption: Yes 6 No 0

Mrs. Fuller stated Ordinance No.: 5-2008 needs to be amended.

Mrs. Fuller moved to amend Ordinance No.: 5-2008 to take out Section 1(A), seconded by Mr. Scott.

Roll call on amendments: Yes 6 No 0

Mrs. Fuller stated Ordinance No.: 5-2008 is now ready for adoption.

Motion to adopt by Mrs. Fuller, seconded by Mr. Hite.

Roll call on adoption as amended: Yes 5 No 1

Mrs. Fuller voted no.

REPORTS OF VILLAGE OFFICIALS

Mayor Hovey reported the price for natural gas for September is \$9.88/mcf and October is \$9.52/mcf.

Residents should also keep in mind that the \$15.128/mcf winter rate is only a 6-month rate. Other contracts may be a year or 2 years. This should be considered if residents are thinking about opting out.

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Mayor has received a few phone calls from residents regarding property owners taking down mature trees. Mayor has been asked to look into the possibility of a mature tree ordinance.

Mrs. Steiner stated it appears it is already covered under Codified Ordinance 1153.03 Sections A and B.

Mr. Heydorn stated that section only applies to the situations where building is going on. It makes no attempt to regulate someone deciding after the home is built to take down a tree.

Mayor stated the problem is with lots that currently have houses that are being purchased and torn down.

Mr. Heydorn said the question then is does that apply to development related to a building permit versus someone who has not applied for a building permit and has just torn the place down.

Mrs. Steiner stated yes, that is the question. However, when someone does apply for a building permit, who follows up to make sure the tree has not been cut down.

Mr. Heydorn stated it is the Planning Commission with a reviewed site plan.

Mrs. Spohn asked what you are going to do when they cut down the tree.

Mr. Heydorn stated they are supposed to show the trees on a site plan. If, in fact, they take a tree down that shows on the site plan as remaining, it is a zoning violation.

Mrs. Steiner asked what would be the process.

Mr. Heydorn replied the zoning inspector would go out and inspect and at his discretion could issue a citation. If the tree has been taken down, then they have violated what they were approved to do.

Mrs. Steiner asked what the citation is.

Mr. Heydorn stated it is a complaint and you go to Municipal Court. It is a misdemeanor.

Mrs. Fuller asked if someone purchases a home and takes it down, do they have to get a building permit prior to taking the house down.

Mr. Heydorn stated not if they aren't doing any building.

Mrs. Fuller stated so they can take down anything they want.

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Mr. Heydorn stated this issue was discussed several years ago when he was on Council. At that time there were regulations that if a tree was over a certain diameter, a permit had to be issued before it could be taken down. You couldn't just take a tree down because you own the property and didn't like the tree. That was debated at the time and then taken out.

Mrs. Steiner stated if a property is purchased and then leveled, they still need a demolition permit. That could be the time in which to handle this.

Mr. Heydorn stated as long as there is an ordinance that requires it. Something could be built into the demolition permit saying existing trees over a certain diameter shall not be removed when the house is demolished until there is a building permit passed and approval for taking the tree down on a site plan is obtained.

Mrs. Steiner stated something should be put into the ordinance.

Mr. Scott stated his only concern is private property rights. A resident could always take down a tree before any permit is obtained without the Village knowing.

Mr. Heydorn stated the same goes if they do obtain a permit. They could wait three months after all the work is completed and inspected and then take the tree down.

Mrs. Steiner said now that's not someone who is living in the spirit of the law. She is just trying to address the law and hopefully residents will abide by it. There are concerns from residents. The Village has given the Park Board more money for trees, but at the same time residents are taking down trees on their property.

Mr. Heydorn stated in reality the flaws in all of this are relatively clear to anybody who wants to expose them. Anybody could figure out how to get around it. The most that you could possibly achieve is to say the Village would like to do what it can to try to convince the owner that the tree should stay.

You can make a conditional permit that existing trees shall be preserved in the demolition process unless the removal is approved by the Planning Commission under the criteria that it's necessary for the demolition process.

Mayor asked if that had to be an ordinance.

Mr. Heydorn stated yes the permit requirements have to be based on an ordinance.

Mayor Hovey reported he received a letter from a resident asking about the Village's webpage. They said it's not really modern and not up to date. Mayor would like to make the website more user-friendly and appealing. Mayor will explore the costs of having a good interactive webpage.

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Mayor has a packet of all the issues that will be on the November ballot if anyone is interested in reading them.

Mayor again welcomed Ms. Lauren Krupar from the Falls News Press and went on record to say that Mr. Phil Keren did an excellent job. He is honest, upright, and he does not slant the news. Mayor feels Mr. Keren is very fair and is an outstanding journalist.

Mr. Robert Heydorn, Solicitor, reported he is working on another contract for completion of the Silver Lake Heights Sanitary Sewer project. The delay that existed was the adjuster was on vacation and there was thought about going to another potential contractor to finish the project, but the bonding company rejected the idea and United Survey will be completing it.

Chief Gary DeMoss reported the Police Department annual report is completed.

The Cuyahoga Falls band will be in the Village the next couple of weeks selling discount cards.

There will be siren signs placed at both locations of the sirens.

The Ford Expedition had some engine emergency repairs that cost approximately \$1,000.

Mr. Richard Fenwick, Service Director, stated the situation with Mr. Powell on Kent Road is taken care of.

The sewer project should be complete in a couple months.

All of the water problems have been resolved. The tank should be finished by the end of this week.

Mrs. Teresa Spohn, Clerk-Treasurer, stated she has a proposal for the Smoke Detector Program. (A copy is attached to the original minutes). An additional appropriation can be made in the general fund to purchase the initial smoke detectors and get the program started. The program can be advertised in the December Newsletter, Cable Channel 15 and the Village website.

Mrs. Geis asked if Council has considered what is going to happen when one fails and a fire is not detected. The Village will have a lawsuit for product liability because they purchased them from us. Does Cuyahoga Falls have anything with First Alert for this type of situation?

Mr. Heydorn will look into it.

Mrs. Spohn scheduled a Personnel Placement Committee meeting for Tuesday, September 9, 2008, at 3:30 p.m.

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Mrs. Steiner asked if there was any miscellaneous business.

There being no further business, Council adjourned at 8:52 p.m. until the next regularly scheduled Council meeting on Monday, September 15, 2008, at 7:00 p.m.

APPROVED:

Carol Steiner, President of Council

ATTEST:

Teresa M. Spohn, Clerk-Treasurer

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prepared by: heather reiheld