

**VILLAGE OF JOHNSBURG**  
**JANUARY 17, 2013 REGULAR MEETING OF THE**  
**PRESIDENT AND BOARD OF TRUSTEES**  
**Draft Copy/Not Approved**

President Hettermann called the meeting to order at 7:30 p.m. in the Village Hall.

**Attendees**

Trustee John Huemann

Trustee Kevin McEvoy

Trustee Mary Lou Hutchinson (absent)

Trustee Janice Sisk

Trustee Ron Zanko

Trustee Rich Janusz

Village Attorney Michael Smoron

Police Chief Keith VonAllmen

**FROM THE FLOOR** – Maggie Haney of 1612 Bolling Avenue was in attendance to further request the board's consideration in passing a resolution to place a question on the upcoming ballot to determine if the Village Clerk's position should be elected. She explained that she received a letter from the Village stating that the Village Attorney has confirmed the only means by which one can place the question on the ballot is through the submission of a petition signed by electors equal to at least 10% of the highest number of votes cast for any candidate for Village office at the last preceding municipal election. She stated that Senate Bill 1586 became effective July 5, 2011 amending the Election Code and reads in part, "On a written petition signed by a number of voters equal to at least 8% of the total votes cast for candidates for governor in the preceding gubernatorial election by the registered voters of the municipality". Mrs. Haney stated that what the Village is relying upon in determining the number of signatures needed on a petition is not the current law.

Mrs. Haney explained that the letter she received maintained that the only way to place the question on the ballot was through a petition. She read in part from Article 7 of the State of Illinois Constitution as follows: "Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers in the case of municipalities, to provide by referendum for their officers, the manner of election and terms of office". Mrs. Haney stated that a petition is not the only means of placing the question on the ballot. She added that at the January 3, 2013 board meeting the Village Attorney stated that it was a monetary issue and a job description was needed. Mrs. Haney stated that the Village has already established pay and a job description for the position. Mrs. Haney stated that the last time the Village of Johnsburg elected a Village Clerk was in 1989. She offered that nothing substantiates the Village Attorney's position and if there is a statute in support of it she would like to know what it is.

President Hettermann closed the public input section of the meeting.

**OMNIBUS AGENDA** - Trustee Huemann moved to approve the Omnibus Agenda. Trustee Sisk seconded the motion. Trustee Zanko requested the removal of the disbursements. All Trustees present voted aye on the roll on the remaining agenda items. Motion carried.

Move to approve the minutes of the January 3, 2013 Regular Meeting of the President and Board of Trustees

Move to approve Disbursements in the amount of \$306,662.11 for the period ending January 17, 2013 (removed)

**DISBURSEMENTS** - Trustee Janusz moved to approve the disbursements. Trustee McEvoy seconded the motion. Trustee Zanko questioned the payment to Advanced Automation. He questioned if the payment is for the SCADA improvements for the lift stations and if the work is completed. Ms. Peters stated that the payment is for a portion of the work but that the work is not yet completed. Trustee McEvoy confirmed that work is expected to be wrapped up shortly on the first phase of the project. Trustee Zanko questioned the payment to Nordic Energy. Ms. Peters confirmed that the payment is for electric supply. Trustee Zanko questions if the board should have voted on the change in supplier. Ms. Peters explained that the change in suppliers was related to the contract pursued some time ago which provided for acceptance of the lowest bid. Trustee Zanko stated that he thought that the contractor was going to seek reimbursement of previous costs. Ms. Peters stated that the contractor was only able to obtain savings for energy supply costs moving forward. Trustee Zanko questioned when Mr. Roecker would be providing a status report to the Board. President Hettermann stated that he was going to be addressing the matter under the President's Report. All Trustees present voted aye on the roll. Motion carried.

**PRESIDENT'S REPORT** – President Hettermann informed the board that Mr. Viney and Mr. Roecker are expected to attend the February 21, 2013 meeting. He then asked the Village Attorney to share his findings regarding questions raised at the last meeting related to the election of the Village Clerk. Attorney Smoron explained that in follow up to statements made at the previous meeting, he followed up with McHenry County Clerk Katherine Schultz who made it clear that she is not advising or opining as to whether or not the matter can be placed on the ballot through a petition or referendum. He further explained that in response to a similar matter in Lakemoor which was brought to the board's attention by Trustee Janusz, he reviewed the article included in the Northwest Herald which concluded in saying that the question could be pursued by a voter initiated referendum or a resolution by the Board. In follow up to the article, Mr. Smoron stated that he contacted Lakemoor's Village Attorney, Jeremy Shaw who stated that it was not his opinion that it could be pursued through an ordinance or resolution by the board. Mr. Shaw maintained that it must be pursued through a voter initiated petition. He explained that the Village of Lakemoor offered assistance in establishing the form of the petition or help in calculating the number of voters from the last local election. Additionally, Mr. Smoron stated that he contacted the legal counsel for the Illinois Municipal League given their experience with both statutes and municipalities. The attorney stated that the statute is very specific and provides that the only means is by filing a petition with the village clerk signed by electors equal to at least 10% of the highest number of votes cast for any candidate for village office at the last preceding municipal election. Furthermore, Mr. Smoron asked the League if they are aware of other municipalities that have pursued it through an ordinance or resolution despite what the statute provides. Their attorney responded no and explained that the trend is that municipalities which currently have elected clerks are seeking ways to have them become appointed. He explained that if you proceed outside of the statute in this matter, the validity of the village clerk's status could be called into question. Amongst other things, this could threaten the legality of certified ordinances used in prosecutions. Attorney Smoron pointed out that the Village relied greatly upon certification by the Village Clerk in the recent BCP litigation. The League opined that it would not be a good idea to do something that would place the validity of the clerk's status in question.

Attorney Smoron stated for example the case of Electric Aggregation, for which the statute provide the opportunity of placing the question on the ballot by board action. He explained that if it was the Illinois legislature's intent to do that in the case of the village clerk, it could easily articulate that in the statute. Attorney Smoron reiterated that the statute is very specific and states that it can only be pursued through a voter initiated petition. He pointed out that there is no case law that supports that it can be done by ordinance or resolution. Attorney Smoron concluded that regardless of the information presented at the meeting by Mrs. Haney, he maintains that the only manner in which the question can be placed on the ballot is through a voter initiated petition.

Trustee Zanko questioned if the Election Code trumps the Constitution of the United States. Mr. Smoron clarified that he is citing from the Illinois Municipal Code, 65 ILCS 5/3.1-25-90 not the Election Code. He further explained that the Municipal Code is the enabling legislation which the Village must rely upon. Trustee Zanko read from Article 7, Section 11 of the Constitution of the State of Illinois as follows: "Proposals for actions which are authorized by this Article or by law which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law". He remarked that the Constitution provides the Village the option to pursue the matter. Mr. Smoron disagreed and reiterated that the Illinois Municipal Code is our enabling legislation. He further explained that as a non-home rule entity, the Village must rely upon "Dillon's Rule" which provides that if you seek authority to do something, you need specific enabling legislation, which in this case is the Illinois Municipal Code. Trustee Zanko disagreed with Mr. Smoron stating that the language in the Constitution is also directed at non-home rule entities in terms of what can and cannot be done regarding initiatives and referendums. Mr. Smoron explained we do not have that flexibility as we must adhere to the Illinois Municipal Code. Trustee Zanko questioned if the Village is bound by the Illinois Constitution. Mr. Smoron explained that the Village cannot violate the Constitution but we also cannot violate the Illinois Municipal Code. Trustee Zanko questioned if we are enabled by the Constitution. Attorney Smoron stated we are not and explained that we are enabled by the Illinois Municipal Code. Trustee Zanko stated that he wants another opinion. Trustee Sisk questioned if the Illinois Municipal Code trumps the Constitution. Mr. Smoron explained that the Village has to adhere to specific enabling legislation which in this case is the Illinois Municipal Code. He added that while the Village cannot violate the Constitution it must still look to specific authority provided through the Illinois Municipal Code. Trustee Sisk read from Article 7 Section 7 of the Constitution. She questioned if Attorney Smoron is saying that we must abide by the Constitution but the Illinois Municipal Code is more specific on how things are handled. Mr. Smoron explained that we cannot solely rely on the language in the Constitution as the Illinois Municipal Code places additional restrictions upon us.

Mrs. Haney stated that the information she received regarding the Illinois Constitution came directly from an attorney from the Illinois State Board of Elections. She stated that she questioned the attorney as to whether or not municipalities only have the option of pursuing the matter by petition and he directed her to the Constitution and stated that the Constitution is the law authorizing the board. She further explained that when she spoke with McHenry County Clerk Katherine Schultz, she stated that she could not provide her any legal information but there were two dates, one for a petition on January 7<sup>th</sup> and the other for board referendum on January 22<sup>nd</sup> which has to be certified by January 31<sup>st</sup>. Mrs. Haney stated that the attorney at the State Board of Elections stated that the Illinois Constitution is the law which governs the powers of municipalities.

Trustee Zanko further questioned the Village Attorney's interpretation regarding the Illinois Municipal Code and the Constitution. Attorney Smoron explained that the Constitution is law but we are subject to additional restrictions provided in the Illinois Municipal Code which is the enabling legislation. Mr. Smoron stated that if someone has a different analysis or opinion, he would be happy to look at it. Trustee Zanko asked where information can be obtained that supports Mr. Smoron's position that we are required to follow the Illinois Municipal Code. Attorney Smoron stated that Dillon's Rule addresses the matter and he could provide the board that information. Trustee Sisk stated that the Board did receive some information from Mr. Smoron's firm regarding Dillon's Rule earlier that day.

Trustee Zanko stated that he believes the Illinois Municipal Code violates the Constitution in this matter as it takes away a right through another legislative act. Mr. Smoron stated that he can provide some additional case law regarding the matter however there is not a great deal of case law available as there has not been a lot of controversy surrounding this matter because there is a procedure provided for within the statute. If someone wishes to pursue the matter they can circulate a petition to have the matter placed

on the ballot. Mr. Smoron explained that if the matter is placed on the ballot by a voter initiated petition and the voters support the change to make the position elected, there is no further action required by the Board, the election results are final. Trustee Zanko stated that although there may not have been any controversy in the past he believes there is an issue. Trustees Sisk and Janusz agreed.

Trustee McEvoy stated that even if the board could pursue it legally, he feels there are a lot of unanswered questions and there is not enough information available at this time to vote on the matter. Trustee Zanko stated that if we were to approve a resolution it would only place the question on the ballot. He added that the position would not be on the ballot until another election cycle therefore the Village would have until this fall to discuss the matter further regarding the salary and responsibilities associated with the position. Trustee Zanko stated that a petition could not be submitted at this time therefore if the board does not approve a resolution it would delay the matter for another election cycle.

Trustee Huemann stated that he has served on the Village Board for nearly 20 years and has gone through nine election cycles and has seen many contentious issues come before the Village but not once has anyone brought up the need for an elected clerk. He added that he finds it very unusual that 18 days before the deadline a candidate running for village office is bringing this the matter to the forefront. He explained that he is not comfortable making a rushed decision on this matter and questioned if it were to be placed on the ballot, what guidelines would be followed regarding pay scale, hours, duties and insurance. He added he is skeptical that this is being brought up now for political purposes and he does not believe it is being driven by our residents. Trustee Huemann stated that he would welcome a petition submitted by the voters and if pursued in that manner, he would support it. He explained that he does not believe the matter has been well thought out.

Trustee McEvoy reiterated that the Village needs to look into the financial impact. Trustee Zanko questioned if there is anyone who did not feel the details could be addressed after placing it on the ballot. Trustee Huemann asked for clarification on procedures. Mr. Smoron explained that the referendum question and the position cannot be on the same ballot. He added that if the voters decide to elect a clerk, the position would not be voted on until the next local election. Trustee Huemann questioned when the question would go before the voters if a voter initiated petition came in after the required deadline and the board accepted it. Mr. Smoron explained that the board does not take action on the petition. If a petition is submitted, it would simply be certified to the county clerk and placed on the ballot during the next election.

Trustee Sisk stated that the board would only be voting to place the question on the ballot at this time and the actual election to fill the position would take place at a later election. President Hettermann pointed out that the Village attorney has stated that to act on the matter and place the question on the ballot would not be legal. Mr. Smoron agreed explaining that it would violate the statute. He stated the statute is very specific and a referendum can be pursued through a voter initiated petition only. Mr. Smoron added that there hasn't been an issue with the statute in the past because people avoid the controversy by pursuing a voter petition. He further explained that other municipalities are looking for ways to appoint their clerks in the interest of efficiency rather than seeking an elected clerk. Mr. Smoron questioned why someone would want to pursue the matter in a manner inconsistent with the statute which could jeopardize key documents because someone challenges the validity of the clerk.

Mrs. Haney stated that she has not pursued the petition because she is not clear on how many signatures are required. She stated that Mr. Smoron stated that the number is 10% of the voters from the last municipal election and a Public Act states the required number of signatures is 8% of the voters from the previous gubernatorial election. She stated that when she talked with the County Clerk, she learned that not only could a petition be submitted by January 7<sup>th</sup> but a resolution could also be submitted by January 22<sup>nd</sup>. Mrs. Haney said she began looking into the matter at the end of December because she wanted to

know learn more about the process. Trustee Huemann questioned the article in the paper which indicated that Mrs. Haney was seeking to raise the matter as a campaign issue. Mrs. Haney disagreed and stated that the article indicates that she disagrees with the Village attorney's interpretation. She said she believes the clerk's position is monumental. Trustee Huemann agreed that the position is important but questioned the matter being raised by a political candidate at such a late date. He added that Mrs. Haney is familiar with the law which has been evidenced by the volume of paper she has submitted to the Village on other matters in the past and therefore he is surprised that she is just now questioning the matter of the number of signatures required. Frank Haney spoke from the floor stating that Mr. Smoron represented that the number of signatures required is 10%. Attorney Smoron read from the minutes of the January 3, 2013 meeting which reflects that the number of signatures required is 10%. Trustee Huemann again questioned the timing of the matter being raised days before a deadline. Mrs. Haney stated that she found out about the matter in December when she was filing her petition as a presidential candidate. Trustee Huemann asked how long she felt the clerk's position should be elected. Mrs. Haney stated that the matter is not a new issue for her as she began looking into it two years ago through FOIA requests related to whether or not the Village approved a Special Act Ordinance. She stated that the only thing new was when she filed her petition to run for president it came to her attention that petitions could be filed and since the December 20<sup>th</sup> meeting was canceled she raised the matter at the January 3<sup>rd</sup> board meeting. She stated that she was prepared to pursue the petition that weekend and was aware of a discrepancy at that time and asked the Village Attorney about the number of signatures at the January 3<sup>rd</sup> meeting. President Hettermann asked how many signatures are needed. Attorney Smoron reiterated that the number of signatures required is 10% as has been consistently stated. Trustee Sisk clarified that it is 10% of the voters from the last municipal election, not gubernatorial election. Attorney Smoron concurred pointing out that there would not be enough registered voters in Johnsborg to make up 10% of the voters in the gubernatorial election. Mrs. Haney question if the Public Act does not apply to the Village. Attorney Smoron stated that the Village has consistently maintained that the number of signatures required is 10% and he does not believe the Public Act applies here.

President Hettermann stated that there are a couple of matters to consider. He explained that he has no objection if someone wishes to pursue an elected clerk. He questioned if everyone on the board feels a separate position needs to be created and emphasized that if so, it should be pursued properly so that it is not challenged. President Hettermann encouraged further discussion on the matter taking into consideration financial impacts as well. Trustee Zanko stated that he feels an argument could be made that there is a necessity though not necessarily urgent. He explained that some people feel Ms. Peters wears too many hats and believes there should be some additional checks and balances. Trustee Zanko stated that whether or not the budget can sustain the salary is not for the board to decide, as they would only be asking for the electors to decide if they want the clerk's position to be elected. He asked that the Board put the matter to a vote to go on record to show how the board feels at this time. Trustee Zanko stated that Attorney Smoron has made his points. He further stated that he is not an attorney however he feels the constitution gives the board the authority.

Trustee McEvoy pointed out that Trustee Zanko acknowledges that he is not an attorney yet he is taking an interpretation from something he read in the last hour and based upon that information is prepared to pursue a referendum against the advice of our legal counsel. Trustee Zanko stated that he feels the board is the liable party and he has a different interpretation than the Village attorney and is not required to agree with his position. Trustee McEvoy questioned the sense of urgency on the matter and stated that without having more information other than what has been brought before them, he is not comfortable going against the advice of our legal counsel. Trustee Janusz stated that he agrees with Mr. Zanko and added that he believes the matter is black and white. Trustee Sisk added that Mrs. Haney said she spoke with someone at the State Board of Election regarding the matter. Trustee Huemann questioned why Trustee Zanko did not raise the matter before if it was such a concern. Trustee Zanko said that his first term in office has been a learning experience and he has learned much about how the system works. He

further stated that he believes that the mechanisms are there to elect more than one individual to perform all of the tasks required for the Village to undertake. Trustee Huemann questioned after spending 3 ½ years on the board he is just now raising the issue in connection with someone running for political office two weeks before a deadline.

Trustee McEvoy questioned the sense of urgency. Trustee Zanko asked for a straw vote. President Hettermann stated that a vote cannot be taken as it is not on the agenda. He further explained that the Village would have to hold a special meeting. Attorney Smoron pointed out that since Monday is a holiday, the special meeting would have to be held on Sunday as a special meeting cannot be scheduled on a holiday. The board agreed to have a special meeting on Sunday.

## **NEW BUSINESS**

**FIRST READ ORDINANCE 12-13-22** - An Ordinance Granting a Special Use Permit for Warehouse, Mini-Storage as a Conditional Use and Outside Storage with Screening for the property commonly known as 1370 Horizon Drive. Roger Broders and Randy Broders were in attendance to address questions regarding their request. Trustee McEvoy asked for an overview of what is being proposed. President Hettermann explained that they are pursuing the expansion of their current business in Heritage Commerce Center onto the adjacent property. Randy Broders pointed out the location of existing buildings and where the new buildings are proposed. He explained that the proposed building situated east to west is a climate controlled building. He further identified the area that will be utilized for outside storage. Trustee Zanko questioned the timeframe for outside storage. Randy Broders explained that it would depend upon how long it will take to fill the units being built which he anticipates will take approximately 3- 5 years. Trustee Zanko questioned what is located on Lot 3 adjacent to the property. Randy Broders explained that it is vacant but a sign indicates that a business is planning to locate there soon. Trustee Zanko expressed concern that the planned six foot fence will not completely screen larger items such as some campers. Randy Broders pointed out that the climate controlled building will basically screen the outside storage area from the road. Trustee Huemann pointed out that they maintain a high quality operation. Trustee Huemann questioned if the owner of Lot 3 was at the hearing. Randy Broders stated that they were not in attendance. He added that only a couple of residents residing across Johnsbury Road were in attendance and their primary concerns were not related to their operations. The Board questioned what would be stored on the property. Randy Broders explained that primarily recreational vehicles, drivable cars and occasionally construction equipment will be stored on the property. Trustee Huemann questioned if the proposal requires a review of storm water runoff as it relates to impervious surfaces. Ms. Peters stated that the Village Engineer will review the plans for storm water impacts. No further questions or concerns were raised. The matter will be included on the next meeting agenda for consideration.

**RECESS FOR CLOSED SESSION** – Trustee McEvoy moved to go into Closed Session to discuss litigation affecting the Village. Trustee Janusz seconded the motion. All Trustees present voted aye on the roll. Motion carried at 8:57 p.m.

**RETURN TO REGULAR SESSION** - Trustee Sisk moved to return to Regular Session. Trustee Huemann seconded the motion. All Trustees present voted aye on the roll. Motion carried at 9:22 p.m.

**ADJOURNMENT** - Trustee Huemann moved to adjourn the meeting. Trustee Janusz seconded the motion. All Trustees present voted aye. Motion carried at 9:22 p.m.

Respectfully Submitted

*Claudett E. Peters*  
*Village Administrator*