

VILLAGE OF JOHNSBURG
JANUARY 3, 2013 REGULAR MEETING OF THE
PRESIDENT AND BOARD OF TRUSTEES
Draft Copy/Not Approved

President Hettermann called the meeting to order at 7:36 p.m. in the Village Hall.

Attendees

Trustee John Huemann
Trustee Kevin McEvoy
Trustee Mary Lou Hutchinson (later in the meeting)
Trustee Janice Sisk
Trustee Ron Zanko
Trustee Rich Janusz
Village Attorney Michael Smoron
Village Engineer Tim Hartnett
Police Chief Keith VonAllmen
Special Projects Coordinator Rick Quinn

OATH OF OFFICE - President Hettermann administered the Oaths of Office for Police Officers Vincenzo LaMontagna and Kevin DelRe.

FROM THE FLOOR – Maggie Haney of 1612 Bolling Avenue was in attendance to request that the board consider a resolution to place a question on the upcoming ballot to determine if the Village Clerk's position should be elected. She explained that in 1991 the Village Board established the Village Clerk's position as an appointed position by ordinance. She stated that the statute provides for the option to establish the Clerk's position as an appointed position in towns with a population of less than 5,000. Mrs. Haney further stated that the Village's population exceeded 5,000 according to the 2000 census. She opined that the Village Clerk's position should have become elected at that time as the Village did not approve a Special Act Ordinance allowing the Village to continue appointing its Village Clerk. Trustee Hutchinson attended at this time. Mrs. Haney stated that she believes the Village is ignoring its own ordinance as well as State statute by continuing to appoint its Village Clerk. She asked to take a straw poll of the board to determine their position on the matter and to provide adequate time to consider a resolution before the January 22nd deadline. She stated that she believes the voters should have the opportunity to determine if the position should be elected.

Attorney Smoron concurred that the statute does provide for the opportunity to appoint a clerk in towns with a population of under 5000 and the means by which that position can become elected thereafter which is only through the submission of a petition for referendum signed by 10% of the voters from the last local election. Mrs. Haney stated that the McHenry County Clerk said that there are two options for placing the question on the ballot either through a petition or the Village Board has an opportunity to do a referendum. She asked the board to consider whether or not they would do a resolution to put the question to the voters. President Hettermann stated that if the board feels we should do so, we can further consider the matter but confirmed with the Village Attorney that the manner in which the position is currently handled is not a legal issue. Attorney Smoron explained that this was the subject of several discussions in 2006 with Mrs. Haney's attorney, John Roth, who also maintained that the Village Clerk could not be a nonresident. Mr. Roth was provided a copy of the statute showing that the position was being handled in accordance with State law and the matter was put to rest. Mrs. Haney stated that John Roth has nothing to do with the matter and that her research is predicated upon the Village's ordinance from 1991. Attorney Smoron explained that the matter is not controlled by the Village's ordinance

explaining that the question is whether or not the Village Board would want to encourage an election with regards to the Village Clerk which is controlled by State statute. He further explained that the statute does not provide for a resolution with regards to the election of the Village Clerk. Attorney Smoron added that in the interest of efficiency, the Village combined the position with that of the Village Administrator and explained that there has not been a great deal of interest in the past in the Village Clerk's position which requires attendance at many night meetings without pay. Mr. Smoron stated that if the matter were to be placed on the ballot for consideration, the board should also consider the matter of compensation. Additionally, if someone would want the matter to be placed on the ballot it can be done by circulating a petition.

Trustee Zanko questioned if the Village Attorney could affirm his understanding in an expeditious manner to determine if there is an alternative to the submission of a petition. Attorney Smoron stated that he could follow up with McHenry County Clerk Katherine Schultz with regards to what she had advised Mrs. Haney.

Trustee Janusz questioned the subject of a recent article in the Northwest Herald regarding the Clerk's position in Lakemoor. Northwest Herald reporter Emily Coleman was in attendance and stated that she did the article and that it is her understanding that you can place the matter on the ballot by passing a resolution. She explained that Lakemoor's attorney backtracked from his original opinion stating that he initially thought that upon reaching the population of 5000, the appointed Clerk's position automatically becomes elected. He later corrected his determination and clarified that it does not automatically occur but must be raised as a question on the ballot and voted on by the electors. She again stated that the question can be placed on the ballot by resolution or through a petition according to Lakemoor's attorney.

Attorney Smoron explained that he concurs with part of that analysis in that upon reaching a population of 5000 the position can become elected by placing a question on the ballot upon receiving a valid petition however the statute does not provide for a resolution by the Village Board therefore he would need to verify what Katherine Schultz is relying upon in her determination. Mrs. Haney corrected her previous statement and asked that the record reflect that Katherine Schultz did not give her advice she only provided her dates. Ms. Charlene Bliss Beyer was also in attendance and stated that the matter is a referendum public question and can be placed on the ballot by the voters or the board takes an action and places it on the ballot. Attorney Smoron encouraged her to provide the authority that provides for the resolution. He explained that typically a resolution for public question is advisory such as whether or not a Village should purchase land in a given area. Ms. Bliss Beyer stated that the statute for the Clerk clearly states that once a population exceeds 5000 the position can go by referendum. She added that the voters will vote and then the board has an option to acknowledge how many people voted to support it or it fails. She explained that it is a non-binding referendum. Attorney Smoron stated that he does not believe the board takes further action after an election. If the voters vote to put in place that the Clerk shall be elected, the board does nothing further to implement that position. Attorney Smoron stated that as a practical matter, the Board may wish to determine what they wish to allocate for compensation for the position. He added that unless someone is able to show some authority otherwise, he believes a voter petition is required to place the matter on the ballot.

President Hettermann stated that he is not against considering it but the board should have a discussion regarding what is practical and what works best for the Village. He suggested that the matter be placed on a board agenda to discuss the pros and cons and obtain more information to consider it further. Trustee Zanko questioned whether or not it could be addressed for this election cycle. Attorney Smoron stated that based upon the timeline stated by Mrs. Haney, it is possible but it would be helpful to know under what authority they are relying upon in stating that it can be done by Board resolution.

Trustee Hutchinson stressed the Village needs to be thorough and understand all the implications especially if it will impact the Village's budget before rushing into a decision. Trustee McEvoy concurred. Mrs. Haney stated that the Village is already paying for a Village Clerk. Attorney Smoron pointed out that the Village is not depriving the voters of their rights as they can place the matter on the ballot through a petition without any action by the board. Trustee Huemann questioned if someone submits a petition how would compensation be addressed. Attorney Smoron explained that it isn't. He added that the board would have to make that determination and establish the duties for the position. Trustee Huemann stated that he would expect that the voters would want to know the cost impact before voting on the matter. Trustee Zanko questioned what Mrs. Haney is relying upon regarding the salary being paid to the Clerk. Mrs. Haney provided Trustee Zanko a document she obtained through a FOIA request. Trustee Zanko clarified that the document reflects a cumulative salary for the multiple tasks performed by Ms. Peters.

President Hettermann stated that the Board can consider the matter further and can place the matter on the next agenda however they do not have sufficient information to make a determination at this time. Trustee Hutchinson reinforced that a decision is not required of the Board as anyone can circulate a petition and place the matter on the ballot. Trustee Zanko stated that would be assuming that there is no other option and therefore clarification is needed as to whether or not it can be done through a resolution. Attorney Smoron agreed to follow up on the matter further.

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

- Move to approve the minutes of the December 6, 2012 Regular Meeting of the President and Board of Trustees
- Move to approve payment in the amount of \$6,186.80 to HR Green for Construction related services for the Fairview Avenue Sewer Extension Project.
- Move to approve payment in the amount of \$1,195.00 to Midland Standard Engineering and Testing, Inc. for materials testing related to the Fairview Avenue Sewer Extension Project.
- Move to approve the purchase of a 2013 Dodge Charger in the amount of \$22,670 from Sunnyside Dodge. (removed)
- DISBURSEMENTS (removed)
- General Fund \$272,404.17
- Debt Service \$ 1,350.69
- Land and Building \$
- Waterworks/Sewerage Fund \$ 17,956.01
- TOTAL OF ALL FUNDS \$291,710.87

2013 DODGE CHARGER - Trustee Huemann moved to approve the purchase of a 2013 Dodge Charger in the amount of \$22,670 from Sunnyside Dodge. Trustee McEvoy seconded the motion. Trustee Zanko stated that it appears that the Village is pursuing the purchase of a new vehicle every year and Trustee Janusz has information from other municipalities regarding their replacement cycle. Trustee Janusz stated that he obtained information by performing a Google search and found that the city of Evansville Indiana has 302 squad cars. He acknowledged that they do have a larger population however they average an 8-10 year lifespan on their vehicles and the rest of the population is averaging about 6 years. Trustee Huemann questioned how many miles they are placing on their vehicles annually. Trustee Janusz stated that he did not have an opportunity to obtain that information. Chief VonAllmen stated that

the Village of Spring Grove is similar in population and averages a 6 year lifespan with ten squad cars. He explained that the Village of Johnsburg currently has three marked squad cars used for patrol averaging 30,000 miles per year per vehicle. Trustee Janusz questioned when a vehicle is taken out of service, how many miles are on the vehicles? Chief VonAllmen stated that the vehicle he drives was taken out of patrol rotation with 158,000 miles on it and the Impala was taken out with 135,000 miles. Trustee Huemann pointed out that the mileage does not take into consideration the hours on the vehicles which should be considered. Trustee Janusz stated that vehicles are made to handle higher mileage than in the past and should not need to be turned over with slightly more than 100,000 miles. Chief VonAllmen pointed out that the department is down a vehicle and that two vehicles were purchased last year because one of the vehicles was totaled after being hit by someone and insurance dollars were received to help offset the cost of replacing the vehicle.

Trustee Sisk questioned if we can expect to replace a vehicle every year. Chief VonAllmen explained that by placing 30,000 miles per year on a vehicle, the Village needs to monitor when it makes sense to take a vehicle out of service before being impacted by costly repairs. Trustee Hutchinson explained that the Chief conducted a detailed analysis regarding the replacement of vehicles. She reiterated that the department is trying to catch up on vehicle replacement after not replacing vehicles for a couple of years. Chief VonAllmen stated that the goal is to have four vehicles in the department's patrol fleet. President Hettermann pointed out that we should review the analysis previously done by the Chief and also consider the hours placed on a vehicle, not just mileage. Trustee Hutchinson reinforced the importance of further discussing the analysis during budget review. Trustee Zanko questioned if there is a cost benefit to pursuing two vehicles now rather than one now and another next year. Chief VonAllmen stated that orders are taken twice per year and the Village could still potentially order another vehicle for the same pricing if done so in the next few months. Trustee Zanko questioned if obtaining an end of the year model at a reduced price is an option. Chief VonAllmen stated that the vehicles are made to order but he could look into whether or not there is a vehicle for which a community did not take delivery. President Hettermann concurred that it should be looked into. Motion carried with Trustees Hutchinson, Huemann, Sisk, and McEvoy voting aye, Trustee Janusz voting no, and Trustee Zanko abstaining.

DISBURSEMENTS - Trustee Huemann moved to approve the disbursements. Trustee Zanko seconded the motion. Trustee Zanko questioned the payment to Critical Reach Inc. for annual service fees. Chief VonAllmen explained that it is for a public safety broadcast service similar to Nixel but exclusively for internal use and other emergency service entities. Trustee Zanko questioned the payment to McHenry County for the December meeting. President Hettermann confirmed it was for the December Council of Government meeting. All Trustees voted aye on the roll. Motion carried.

PRESIDENT'S REPORT – President Hettermann stated that we are coordinating the attendance of Mr. Viney and Mr. Roecker at an upcoming meeting.

NEW BUSINESS

JONES VARIANCE REQUEST – Trustee Janusz moved to approve Ordinance 12-13-21 granting a variance to property commonly known as the Jones Property. Trustee Huemann seconded the motion. Mr. Jones questioned if the Village received another letter from Mr. Anderson. Ms. Peters stated no additional letters were received other than the letter submitted for the zoning hearing. Mr. Jones expressed that he was under the impression that a subsequent letter was going to be submitted expressing support for his petition. Mr. Nystrom was in attendance to clarify his position regarding the variance request. He explained that he was never presented with the details of what Mr. Jones was pursuing before signing the letter submitted to the Planning and Zoning Commission. He further explained that he was impressed with what has been presented however he would be concerned with others pursuing a similar structure elsewhere as it may not be appropriate.

Mr. Jones reviewed an exhibit he submitted that reflects the support he has received from residents in his subdivision. He explained that he has support from 88% of his neighbors. President Hettermann questioned legal precedence related to the matter. He pointed out that the property is situated in a unique area with a slew located along the rear lot line therefore he is not visually impacting the property behind him. Mr. Jones pointed that he has a uniquely large parcel on which he is maintaining significant yard setbacks which could not be maintained on other parcels in his neighborhood. He further stated that he is able to provide the required compensatory storage because of structures he removed from the parcel which could not be done on other parcels in the neighborhood. Attorney Smoron explained that if someone else made a similar request they would likely cite this matter. The question is whether or not there is likelihood that someone else would make a similar request. President Hettermann stated that no other properties in the neighborhood are sufficient in size to accommodate this type of request. Attorney Smoron stated that a judge would not go through the detailed analysis being performed by the Village, they would focus on whether or not the use has been permitted elsewhere. Trustee Huemann reiterated the size of the parcel and the yards being maintained. He questioned whether or not a larger house could have been placed on the property having a greater impact on the property and the neighborhood.

Trustee Zanko stated that he is concerned about future owners of the property abusing the intended use of the structure. Despite the ordinance restricting the use, it does not prevent someone from trying to run a business out of the structure in the future. He further pointed out that a standard three car garage would be approximately 768 square feet. The first floor of the proposed structure provides more than twice that space plus another 740 square feet on the second floor which he believes is an excessive amount of storage and is more consistent with a commercial use rather than a residential application. Trustee Zanko stated that the Village does have the ability to enforce its ordinances should someone attempt to operate a business out of the structure in the future however there is a cost to do so therefore we should attempt to limit the likelihood of that happening. Motion carried with Trustees Sisk, Huemann and Janusz voting aye. Trustees Zanko and Hutchinson voting no and Trustee McEvoy abstaining.

ADJOURNMENT - Trustee Huemann moved to adjourn the meeting. Trustee Janusz seconded the motion. All Trustees present voted aye. Motion carried at 8:55 p.m.

Respectfully Submitted

Claudett E. Peters
Village Administrator