Council Minutes
VILLAGE OF MADISON
Regular Council Meeting
September 2, 2014

RECORD OF PROCEEDINGS

Mayor Britton called the meeting to order at 7:30PM.

Mayor Britton invited all in attendance to join in the Pledge of Allegiance to the Flag. Mayor Britton requested that everyone observe a moment of silence. Council Members Mr. Frager, Mr. Hamercheck, Mr. Donaldson, Mr. Mabe, Mr. Cahill, Mr. Takacs and Mr. Vest were in attendance. Also in attendance were Acting Fiscal Officer Kristie Crockett, Police Chief Dawn Shannon and Law Director Mr. Szeman.

MINUTES

Mayor Britton announced minutes to be approved for the Council Meeting held on August 18, 2014.
Motion for approval made by Mr. Vest, seconded by Mr. Mabe.
Questions/Discussions – None
Roll call on approval, 7 yeas. Motion carried.

Mayor Britton announced minutes to be approved for the Public Hearing held on August 25, 2014.
Motion for approval made by Mr. Donaldson, seconded by Mr. Vest.
Questions/Discussions – None
Roll call on approval, 7 yeas. Motion carried.

PAY ORDINANCE

Mayor Britton presented Pay Ordinance No. 2305: $27,777.60 for payroll and $39,188.33 for current and upcoming expenses, for a total of $66,965.93.
Motion for approval made by Mr. Vest, seconded by Mr. Takacs.
Questions/Discussions – None
Roll call on approval, 7 yeas. Motion carried.

OLD BUSINESS

ORDINANCE 17-2013: – AN ORDINANCE ACCEPTING THE BID OF TRAX CONSTRUCTION COMPANY FOR WATER LINE INSTALLATION FOR THE STATE ROUTE 528 SOUTHERLY WATERLINE CONSTRUCTION PROJECT, PHASE 1, (PART A) AUTHORIZING THE MAYOR AND FISCAL OFFICER TO ENTER INTO A CONTRACT WITH SAME, AND DECLARING AN EMERGENCY (Tabled)

ORDINANCE 14-2014: – AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF MADISON VILLAGE, OHIO PART SEVEN-PLANNING AND ZONING, SECTION 8.7 (C), RELATED TO THE LOCATION OF SEXUALLY ORIENTED BUSINESSES. (Tabled)
Motion to remove from table made by Mr. Cahill, seconded by Mr. Vest.

Questions/Discussions – None
Roll call, 7 yeas. Ordinance removed from table.

Motion for approval made by Mr. Cahill, seconded by Mr. Hamercheck.
Questions/Discussions – None
Roll call on approval, 3 yeas, (Cahill, Frager, Hamercheck), 4 nays, (Takacs, Vest, Donaldson, Mabe). Motion failed.

RESOLUTION 15-2014: A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE MADISON JOINT FIRE DISTRICT FOR THE BUY-OUT OF ITS LEASEHOLD INTERESTS IN THE PROPERTY LOCATED AT 33 NORTH LAKE STREET, MADISON, OHIO. (Tabled)
Motion to remove from table made by Mr. Frager, seconded by Mr. Vest.
Questions/Discussions – None
Roll call, 7 yeas. Resolution removed from table.

Motion for approval made by Mr. Vest, seconded by Mr. Takacs.
Questions/Discussions – Mr. Cahill asked Mr. Szeman if it is his legal opinion that the Village does not owe this money to the fire district. Mr. Szeman stated that there are confidential council-attorney communications and privileges that he would need a motion waiving those for him to render his legal opinion. Mr. Vest asked Mr. Szeman if doing so would prejudice himself in the future. Mr. Szeman stated that he does not feel that it is a good idea.
Motion for Mr. Szeman to give legal opinion made by Mr. Cahill, no second. No legal opinion rendered by Mr. Szeman.

Mr. Hamercheck asked for a reason to be stated as to why council should vote for this. Mr. Takacs stated that extensive discussion has been had during the past three council meetings and added that the minutes reflect a wide range of opinions on this topic. Mr. Hamercheck read a prepared statement in regards to Resolution 15-2014. (This document is attached.) Mr. Cahill stated that he does not see any breach in attorney-client privilege by Mr. Szeman reporting as to his opinion in a public meeting as to the legality of the Village. He added that this is his job. Mr. Cahill stated referred to this as landlord-tenant law. Mr. Mabe stated that it is the Village's responsibility to compensate the fire district for displacing them as tenants of station one and take possession of the building. Mr. Cahill referred to the 90 day provision stated in the 1982 lease. He added that the fire district has already moved out of station one and we are not displacing them. He stated that the fire district does not have a need for the building. Mr. Mabe disputed that fact and stated that Chief Lutz has expressed a need to use station one but is choosing our need to use it as greater.

Motion to call the question made by Mr. Takacs, seconded by Mr. Vest.
Questions/Discussions – Mr. Hamercheck requested a call of privilege which he stated supersedes all. He asked if we are going to deny the public the tight to speak on this topic. Mr. Takacs stated that the public will have the opportunity to speak. He stated that the conversations between members of Council are the repetative with no new information. Mr. Takacs added that no one has gone to the fire board meetings nor has anyone asked Chief Lutz what his need is for station one. Mr. Takacs stated that he will withdraw his call to question and allow the public to

speak but at this time he is closing the discussion among council. Mr. Takacs suggested Mr. Hamercheck bring up legal issues regarding the bid process of the addition at station one with the fire board at their meeting. Mr. Takacs stated that Mr. Hamercheck is projecting the intent of the fire board and he added that he is at the fire board meetings and Mr. Hamercheck is not and he stated that Mr. Hamercheck does not know what he is talking about. Mr. Hamercheck referred to the chain of command as a reason for not approaching the fire chief directly. Mr. Takacs repeated his motion to call the question. Mr. Szeman stated that an approval of a call the question will terminate the debate. Per Robert's Rules that requires two-thirds majority. Mr. Szeman added that if Council chooses to hear comments from the public, that they can certainly do so and are limited to five minutes. He added that the comments from the public must take place prior to council vote.
Roll call, 5 yeas (Vest, Donaldson, Frager, Mabe, Takacs), 2 nays (Cahill, Hamercheck)

Craig Winkleman (444 Oak Hollow) asked if he, as a tax payer can ask Mr. Szeman for his legal opinion. Mr. Szeman stated that Mr. Winkleman can ask any questions that he chooses to but Mr. Szeman may or may not be able to answer them. Mr. Szeman explained that the matter will be voted on and he is going to allow the political process to unfold. He added that the fire board has not had a resolution on this issue and he added that there is no agreement until both bodies have consented.

Richard Jenko (178 East Main St.) stated that he agrees with Mr. Winkleman and does not feel that the Village should pay the fire district. Mr. Takacs suggested Mr. Jenko come to a fire board meeting and ask questions as to the fire district's need of station one. Mr. Jenko stated that he would prefer a new building be built for the Village and let the fire department have station one.

Kathy Lynn (209 West Main St.) Stated that she met with Chief Lutz on this topic. She stated that the fuel tanks that were used at station one were the property of Melzer Fuel Service and not the fire district. These tanks were removed once station three was opened.

Ron Leskovec (703 Coralberry Lane) Inquired as to the source of the funding for the $189,000.00. He stated that when he voted for the fire station levy that he was under the impression that there would still be emergency services ran out of station one. He stated that the new station being further away from his home could mean the difference between life and death and he would not have voted for the levy. He stated that he e-mailed all of Council and is disappointed that only Mr. Mabe, Mr. Donaldson and *Ken responded. (*No last name provided, unclear if Mr. Leskovec meant Mr. Takacs or Mr. Cahill).

Roll call on approval, 5 yeas, (Vest, Donaldson, Frager, Mabe, Takacs), 2 nays, (Cahill, Hamercheck). Motion carried.

<u>ORDINANCE 30-2014:</u> - AN ORDINANCE DETERMINING TO PROCEED WITH THE IMPROVEMENT OF ALL DULY DEDICATED STREETS WITHIN THE VILLAGE OF MADISON WITH ELECTRIC STREET LIGHTING AND APPURTENANCES THERETO, AND DECLARING AN EMERGENCY. (3rd Reading)

Motion for approval made by Mr. Vest, seconded by Mr. Cahill.
Questions/Discussions – None
Roll call on approval, 7 yeas. Motion carried.

ORDINANCE 31-2014: - AN ORDINANCE LEVYING ASSESSMENTS FOR THE IMPROVEMENT OF STREETS IN THE VILLAGE OF MADISON, OHIO, BY SUPPLYING SAME WITH ELECTRICAL STREET LIGHTING AND APPURTENANCES THERETO, AND DECLARING AN EMERGENCY. (3rd Reading)
Motion for approval made by Mr. Mabe, seconded by Mr. Cahill.
Questions/Discussions – None
Roll call on approval, 7 yeas. Motion carried.

RESOLUTION 16-2014: - A RESOLUTION ESTABLISHING A SPECIAL FUND FOR POLICE LEVY REVENUE. (3rd Reading)
Motion for approval made by Mr. Vest, seconded by Mr. Donaldson.
Questions/Discussions – None
Roll call on approval, 7 yeas. Motion carried.

RESOLUTION 19-2014: - A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE LAKE COUNTY SOIL AND WATER CONSERVATION DISTRICT FOR PROFESSIONAL SERVICES RELATED TO THE GROWING GREEN ON MAIN STREET PROJECT. (2nd Reading)

RESOLUTION 20-2014: - A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE LAKE COUNTY BOARD OF COMMISSIONERS TO PARTICIPATE IN THE URBAN ENTITLEMENT COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM AND FOR THE UTILIZATION OF FUNDS MADE AVAILABLE BY THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, AND DECLARING AN EMERGENCY. (2nd Reading)

NEW BUSINESS - None

GENERAL REQUESTS - None

VISITORS COMMENT – Craig Winkleman (444 Oak Hollow) Asked for clarification of who is responsible if it is determined that paying the fire district for station one is not legal. Mr. Szeman stated that the fire board has not adopted the agreement yet and stated that the only money that has changed hands is the $10,000.00 in earnest money. Once the fire district adopts the agreement, then it would go into effect. There may or may not be a legal challenge to it. Mr. Winkleman asked what is going to be 'cut' to pay for the fire station.

STAFF REPORTS

Police Chief – Chief Shannon stated that she attended a meeting with Huntington Woods residents on Saturday. Two vehicles were entered in that area and items were stolen. The cars were not locked. Mr. Takacs thanked Chief Shannon for attending.

Administration Report: - Mr. Bailey stated that he had an initial meeting with the property owner of the land off of Hyder Drive for the potential retention pond to assist the flooding of the Hyder Drive area. He stated that the meeting went very well and we are looking at design options and funding sources.

Amy Drive is scheduled for paving in mid September. Mr. Bailey is in the process of obtaining quotes for the concrete section of Hyder Drive.

Motion for to terminate WWTP contract with Geneva on the Lake made by Mr. Hamercheck, seconded by Mr. Vest.
Questions/Discussions – Mr. Bailey stated that we no longer have a WWTP operator and we are looking to move forward with a part time operator versus sharing a full time employee with Geneva on the Lake. Mr. Vest asked if we have given Geneva on the Lake ample notice. Mr. Szeman stated that there were multiple ways to terminate that agreement and he stated that Mr. Bailey has been in touch with Geneva on the Lake already.
Roll call on approval, 7 yeas. Motion carried.

Misc. Reports/Comments: - Mr. Frager asked for an update as to the status of URS as the Village Engineer. Mr. Bailey stated that representatives from URS are in the process of tying up loose ends that Mr. Gerson had prior to his leaving their company. Mr. Bailey stated that we are in the process of looking at our options as far as hiring an engineer.

Mayor's Report: - Mayor Britton stated that Mr. Szeman sent Council a memo via e-mail with an update on the ComDoc issue. He received no replies.

Mr. Takacs stated that our e-mail system is limited to receiving files that are up to ten megabytes in size. He attempted to send an e-mail to all of Council over the weekend that got kicked back to him due to that file being too large. The e-mail was resent this morning to external e-mail addresses.

September 16th from 1:00pm – 3:00pm there will be an open house at the Madison Senior Center. Council should have received an invitation by e-mail.

Upcoming dates:

Mon.	Sept. 8th	6:30pm BZA Hearing - Fike
Mon.	Sept. 8th	7:00pm Planning and Zoning Meeting
Mon.	Sept. 15th	6:00pm Committee of the Whole Meeting
Mon.	Sept. 15th	7:30pm Council Meeting
Mon.	Oct. 6th	7:30pm Council Meeting
Mon.	Oct. 13th	7:00pm Planning & Zoning Meeting
Mon.	Oct. 20th	6:00pm Committee of the Whole Meeting
Mon.	Oct. 20th	7:30pm Council Meeting

Motion to adjourn at 8:27pm made by Mr. Vest, seconded by Mr. Mabe. Roll call on adjournment, 7 yeas. Meeting adjourned.

Sam Britton Jr., Mayor | **Kenneth D. Takacs, Council President** | 9-15-2014 **DATE**

Attested:

Kristie M Crockett
Kristie M. Crockett, Acting Fiscal Officer

9-15-2014
DATE

Resolution 15-2014 Discussion

In all ways the process behind Resolution 15-2014 has gotten ahead of due diligence. The due diligence issue has tainted Resolution 15-2014 by failing to address even the most basic facts, let alone dealing with the immediate legal consequences.

It can be said that, when dealing with the people's money, the legal avenue is narrow whereby Resolution 15-2014 would be enforceable.

The reason for the debate is not purely a policy debate, rather, it is a debate of valuable consideration (something of value) to justify the application of the people's money.

Much weight has been placed on the term "leasehold". Leasehold is nothing more than a term of art and in and of itself is without material value. The value of a leasehold is the lease, in this case, the 1982 lease. The performance of a legal duty owed which is neither doubtful nor subject to honest dispute is not valuable consideration. Basic contract law states consideration is an essential element of any contract without which there is no contract.

The debate over what exactly the Village is getting for $189,000.00 of the people's money is most relevant. If the Village is merely receiving from the Fire District that which it already has an existing right to receive, then that is not, by definition, valuable consideration. If this Administration fails to exercise the terms of the lease just because it does not want to, that does not constitute valuable consideration. We do not have the authority to self-inflict a hardship by action or inaction that results in the misapplication of the people's money.

The argument that the 1982 lease did not contemplate the extent of improvements and addition to the real property that have occurred, is utterly wiped away by the 2009 Memorandum of Understanding that provides abundant evidence of the Fire District's intent and understanding that when it constructed the addition, it would be the Village's property. The 2009 Memorandum of Understanding was notably silent with respect to any expectation of compensation from the Village for the addition or other improvements.

The 1982 lease was comprehensive and did in fact provide language that the Village would not unreasonably withhold consent for improvements and additions; furthermore, the 1982 lease made no provision for compensation from the Village to the Fire District for any improvements and additions.

The correspondence that we received from Gary Pasqualone, who is the Madison Twp. legal counsel and who has been retained as special counsel for the Madison Fire District, has failed to provide a viable unique theory that would make Resolution 15-2014 enforceable.

Mr. Pasqualone's assertion that it is the position of the Fire District "on the basis of the legal argument of unjust enrichment, compensation is in order." The only way I can personally explain how Mr. Pasqualone has arrived at this theory, especially after the debate has already been in progress, is that clearly Mr. Pasqualone has not been informed of everything relevant to this issue by the Fire District.

Even the most liberal interpretation of unjust enrichment cannot be applied to this discussion because there is a comprehensive lease that is in place and a Memorandum of Understanding that reaffirmed the comprehensive lease.

Mr. Paqualone's assertion that "at the time of the execution of the lease, it was not anticipated, nor provided for, that there would ever be new construction and upgrades in excess of $340,000.00 to be compensated." Mr. Pasqualone is in error, not only because of the 2009 Memorandum of Understanding that provides abundant evidence of the Fire District's intent and understanding, error exists because Mr. Pasqualone did not take into account the historical inflation rate based on the Consumer Price Index for the United States whereby one dollar in 1982 has the purchasing power as $2.56543 ($2.57). So even with Mr. Pasqualone's inflated claim of $340,000.00 when looked at in perspective from 1982, becomes the equivalent of $132,531.39 in 1982 terms (Note: The average rate of inflation from 1982 to 2014 is 2.98791%).

Mr. Pasqualone's claim "the Village has never followed the terms of the lease entered into in 1982, i.e. "the expense of removal of said snow and ice and associated activities therewith including labor, materials and equipment, shall be borne solely by the Lessor"." Is in error because the practice of snow removal ended approximately circa 2006 and was most recently discussed and waived by the Fire Board not taking the issue up again on or about March 19, 2014; furthermore, an example of good faith on the part of the Village when it was discovered that the Fire District was not compensating the Village for property insurance, the Village merely held the Fire District to the terms of the lease and did not seek recovery for the people's money that was expensed from the Village treasury for Fire Station 1.

It has been said from the beginning and on this one issue we have all agreed, that the Village has no legal obligation to pay the Fire District anything regarding Station 1. Said another way, we have no legal authority to pay the Fire District anything regarding Station 1.

In order to pay out the people's money, we would require either express or implied statutory authority, which is not found; nor has our independent study revealed any statutory authority. In the absent such authority we must conclude Resolution 15-2014 is not legal.

There is no authority that comes from the broad powers of local self-government conferred by Article XVIII of the Ohio Constitution that a municipal council may expend funds indiscriminately and for any purpose it may desire. Furthermore, it must be conceded that there is no provision of the Charter of the Village of Madison relative to

the expenditure of funds from the Village treasury for the purpose of good will, the morally right thing to do, relationship building, and the like. The proposed expenditure of $189,000.00 to the Madison Fire District from the Village of Madison amounts to a gift of $189,000.00 of the people's money. The proposed gift, albeit in the form of a Resolution from council, does not have legal standing and amounts to a misapplication or misuse of public funds.

If Resolution 15-2014 passes, we must acknowledge that the Revised Code allows for an application for injunction to be brought by the Village Law Director to prevent the misapplication of public funds; furthermore, the Revised Code allows for a taxpayer to have standing to do the same.

There has been much discussion about mistruths, misrepresentations, and errors of fact. This begs the question how is it possible when someone is quoting official documentation that they are deemed to be somehow grandstanding or shall I simply say lying?

There has been much effort put into analyzing the numbers to assign some superior value to the proposed expenditure of $189,000.00 of the people's money. Now I appreciate the application of generally accept accounting practices whereby the data provided must be assumed to be reliable when making calculations and deriving conclusions. I also have a background that includes accounting. My career has taken me more into the area of auditing, and as a state licensed contractor, this affords me insights into the construction and improvement elements that have been discussed. Auditing is a simple matter of looking at a picture and seeing what does not fit or what is inconsistent. Based on the information provided to this Council, we have seen numbers such as, but not limited to $55,000.00, $240,000.00, $250,000.00, $243,939.04, $230,301.67, $340,000.00, and even $358,000.00.

One does not need to be a certified public accountant to realize something is not right when the cost of a project can soar 500 to 650 %.

We must consider and stop ignoring the 800 pound gorilla in the room. The Madison Fire District spent upwards of $358,000.00 in direct defiance of State Statute for Competitive Bidding. Enormous amounts of funds were spent beyond the original $55,000.00 project estimate. Monies were spent in defiance of the law.

No one can legitimately claim that this is just an extreme example of scope creep, where the project just grows out of wants or necessity. When the Fire District spent $22,559.84 on engineering and architectural services, they should have known this project should have followed the law and been bid.

Did the Fire District tell the truth to the Lake County Building Department when they indicated in 2009 the project cost was $55,000.00 or are they telling the truth today when they are telling the taxpayers that the project cost is upwards of $358,000.00.

How many $900.00 toilet seats are the taxpayers being asked to pay for again? This is not just a silly question considering, using the Fire District's own records, there was a $2,309.00 podium assigned to the new building cost report.
We, as members of Council, have a fiduciary responsibility to insure that the people's money is being spent properly. This cannot be done when the rule of law is not being followed. Our feelings and emotions are subject to manipulation when our moral convictions are manipulated to be in opposition to the matters of law.

No financial analysis, regardless of how exhaustive it may well be, can have any validity in an environment where laws are broken, documented facts are misrepresented and disregarded.

In order to quantify valuable consideration which is an essential element to make Resolution 15-2014 enforceable, even under the most liberal of interpretations, this cannot be achieved because the Fire District did not follow the rule of law when they spent the people's money without any assurance of value for those expenditures.

This is how debates such as this over Resolution 15-2014 break down when the process is flawed from the beginning by people not following the law.