

Village of Arcanum Special Council Meeting
Thursday, August 17, 2017
6:00 PM

Mayor Judith Foureman opened the meeting by asking everyone to join her in the Pledge to the Flag, with the Mayor concluding "In God We Trust".

Council members Jerry Boolman, Bonnie Millard, Vanessa Delk, Greg Baumle, and Eric Van Hoose answered roll call. Mayor Foureman asked for a motion to excuse Clark. Delk made a motion to excuse Monte Clark. Boolman seconded. All present voted yea. Motion passed. Also present were Fiscal Officer Darcy Woodall, Village Administrator Bill Kessler, and Attorney Phil Garbig on behalf of Don Roberts and Kathleen Smith.

Discussion of Temporary Easement for WWTP:

- Mayor Foureman gave a synopsis of the purpose of tonight's meeting – she explained that she and the Village Administrator had previously met with Mr. Roberts and Ms. Smith (the owners of the property the Village needs access through) concerning the Village needing access off Albright Road to bring in construction equipment, etc. during the building of the new plant - Mr. Roberts and Ms. Smith stated at that time, they would need to meet with their attorney to draft a proposal/agreement concerning said access – Phil Garbig was present on behalf of Mr. Roberts and Ms. Smith to answer any questions Council may have about the proposed agreement – Mayor Foureman proceeded to read through each condition of the proposed agreement
- Mayor Foureman asked that Council discuss the proposal and to please do so one at a time
- The consensus among Council was that there needed to be a written agreement between the Village and the contractor stating the contractor is responsible for payment of any fines assessed due to violation of parking on the railroad bed if it is the contractor's equipment – if it is a Village vehicle or equipment, the Village is responsible for payment of the violation
- There is also a stipulation of a \$100/day fee for everyday the project goes past December 31, 2019 – Council would like to see that fee passed to the contractor, but again, the contract has already been awarded and this stipulation is not part of that already signed contract – Bill did advise that the contractor anticipates completion of the project by Spring 2019 at the earliest and Fall 2019 at the latest – the deadline in the proposed easement agreement should not be an issue
- It was discussed that construction traffic could come in East South Street onto Albright Street to access the new plant – however, it was determined this would not be the best option because of wear and tear to the streets, additional traffic (with heavy equipment) coming through town, and knowing the streets would need to be repaired/resurfaced upon completion of the project – this is why the access from Albright Road was seen to be the better option and why the easement agreement from Mr. Roberts and Ms. Smith is necessary
- Bill also informed Council that he, the Fiscal Officer, and Mike and Susan from Mote & Associates had met with the Solicitor on Monday to go through the proposed agreement – Bill asked Nicole to go back to the landowners with some possible changes/additions to the agreement
- Phil Garbig reported back to Council on behalf of his clients – Phil gave a lengthy explanation and background of the history between the Village and Mr. Roberts and Ms. Smith, specifically in reference to the land in question – it was revealed that Mr. Roberts and Ms. Smith had some ill will toward the Village because of some past incidents that go back many years – in general, they did not want to consider any type of agreement with the Village for use/access so the agreement that they had Mr. Garbig put together was drafted to get that point across – Phil reported that his clients were not willing to change or add anything to the proposed agreement – if the Village wanted access, the Village would have to go with the agreement as presented – Phil also wanted to make it clear that his clients were in no way trying to take advantage of the Village or the situation – his clients just want to make sure that their farmers will always have a clear path for spraying/farming, and if they don't, their needs to be a penalty or consequence to the Village
- Phil then addressed the concern that because the Village Solicitor, Nicole, works at Phil's law firm, there is a potential conflict of interest in this situation – Phil acknowledged that when two attorneys who work for the same law firm are representing opposite sides of the table on an issue, there is definitely a conflict of interest – however, Phil did advise Mr. Roberts when he first came to him about the easement that Nicole represents the Village in this matter, so if Mr. Roberts wasn't comfortable with that, he would need to get a different attorney –

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Mr. Roberts did not choose to go to another firm – Phil also pointed out that during an initial meeting with Bill, Keir, Nicole, and Susan from Mote & Associates, it was clear that Phil represented the opposite side because the meeting was held at Phil's office – no one from the Village indicated this was an issue at that time – Phil went on to say that the potential for conflicts is high in a community of our size, especially since Phil has been an attorney here for so long – he said going forward if the Village feels there is a conflict, that needs to be made known up front because he's not going anywhere – if the Village feels they need different representation in such matters where there is a perceived conflict, the Village will have to find outside counsel for those matters – Millard asked Bill about that initial meeting, and Bill confirmed that at that time, he did not see this as an issue nor did he feel it was a problem to have Nicole to continue to represent the Village in this matter

- Back on the subject of vehicles/equipment parking on the railroad bed, Council directed Bill to order signage indicating that parking is not permitted in certain areas – it was also suggested that the Police Chief could possibly patrol that area a few times a day
- Bill provided Council with a map of the current facility and surrounding area, highlighting the current permanent easement as well as another easement that is on record (Mr. Roberts had thought this easement was never filed) and the proposed easement access

New Business:

Ordinance No. 2017-45 – Mayor Foureman read by title only an Ordinance providing for an amendment to the 2017 appropriations of the Village of Arcanum, Darke County, Ohio and declaring an emergency. (Sewer Fund) A motion was made by Boolman to waive the three reading rule on Ordinance No. 2017-45. Delk seconded. All present voted yea. Motion passed. Boolman made a motion to adopt Ordinance No. 2017-45. Delk seconded. All present voted yea. Motion passed. Boolman made a motion to declare an emergency on Ordinance No. 2017-45. Delk seconded. All present voted yea. Legislation passed.

Resolution No. 2017-33 – Mayor Foureman read by title only a Resolution authorizing the Village Administrator to enter into an agreement concerning temporary easement and declaring an emergency. A motion was made by Delk to waive the three reading rule on Resolution No. 2017-33. Van Hoose seconded. All present voted yea. Motion passed. Delk made a motion to adopt Resolution No. 2017-33. Van Hoose seconded. All present voted yea. Motion passed. Delk made a motion to declare an emergency on Resolution No. 2017-33. Van Hoose seconded. All present voted yea. Legislation passed.

Adjournment: A motion was made by Boolman to adjourn. Delk seconded. Meeting ended at 6:44 PM.

Fiscal Officer, Darcy Woodall

*Transcribed by Darcy Woodall (clerk to Council)

Mayor Judith F. Foureman