

The March 23, 2010 meeting of the Newtown Village Council was called to order at 7:00 p.m. by Mayor Curt Cosby, who led the Pledge of Allegiance to the Flag.

<b>Councilmember's:</b>	Brian Burns	Mark Kobasuk
	Doug Evans	Curt Tiettmeyer
	Joe Harten	Daryl Zornes

**Mayor:** Curt Cosby  
**Solicitor:** Doug Miller  
**Fiscal Officer:** Keri Everett  
**Police Chief:** Tom Synan

Mayor Cosby welcomed everyone and made a few announcements.

Lake Barber (handout)

Will Sparks, Resident and Property Owner, spoke to Council regarding his opposition to the Village owning Lake Barber. He said he does not believe Newtown has the wherewithal and finances to support such a project. Mr. Sparks said there are safety and legal ramifications that will be involved. Mr. Sparks submitted a petition to Council from the property owners along the lake.

Energy Alliances Inc. (handout)

Mark Bishop and Bill Grafe thanked Mayor Cosby and Council for inviting them to speak on Natural Gas Deregulation and Electric Deregulation and Aggregate. Mr. Bishop, Office/Marketing Director, Energy Alliances, Inc. also introduced Integrys Energy Services, Inc. and Duke Energy Retail Sales. Government Aggregation is when communities form a buying group on behalf of their citizens to purchase their natural gas and/or power requirements in bulk. The purpose is to provide another choice for their energy requirements – the goal(s) would be to provide potential savings, stable pricing and/or price protection. Residents would have to request to be in the program; they would continue to receive one single bill from Duke Energy. Municipalities contract with a certified gas supplier to furnish gas supply to their residents. This program would be a ballot issue; there is time to put this issue on the November 2010 ballot. Energy Alliances, Inc. would develop, fund and implement a consumer education initiative.

Curt Tiettmeyer, Finance Committee Chairman will contact Mr. Bishop and Mr. Grafe to discuss options. Mr. Tiettmeyer will report back to Council.

Project Status Engineering Services (handout)

Bruce Brandstetter, Brandstetter Carroll Inc. presented Council with a project status update.

1) Gallenstein, Reserves of Ivy Hills

- Streets have not been accepted by the Village due to a unresolved punchlist
- Fire hydrant and ADA ramp are major issues
- Email from Jim Sallee, Gallenstein is attached. Mr. Brandstetter said the email basically stated Gallenstein is done. Mr. Brandstetter said the Village needs to decide where to go from here regarding these unresolved issues.

Mayor Cosby asked if the unresolved issues are something that will end up between Gallenstein and the homeowners. Solicitor Miller said that is what it should be. He said the Village doesn't own anything there and will not accept the streets until the unresolved issues are resolved. Solicitor Miller said Gallenstein's contractual obligations to get the streets accepted are with the Homeowners' Association, not with the Village of Newtown. Mr. Evans said he believes Council would all see it fixed and done right. Solicitor Miller said there has never been an instance when anyone on Council didn't want to see the problems there cleared up and willing to do whatever. The Village will send a letter to the Homeowners' Association stating where the Village stands.

Fire Chief Tom Driggers said yesterday he had a discussion with GCWW, Russ Weber, engineer and there was been some movement with the contractor to remove one of the two hydrants that are behind the homes at the Reserves of Ivy Hills. The water main is a dead-end main. The requirements of the GCWW's system, requires the hydrant to be at the end of every dead-end main. Chief Driggers said the one in the middle is apparently going to be removed. GCWW is preparing the paperwork, etc for the removal of that hydrant.

Vincent Cappiello, resides at 7229 Baltic Court, Ivy Hills Reserve. Mr. Cappiello has been in contact with the Village concerning this issue for the past couple of years. He said the homeowners would like to see this issue resolved. They have been dealing with unpaved roads, paying for snow and ice removal, etc. Mr. Cappiello said he and the HOA understand that Gallenstein posted a performance bond, which somehow expired before the work was completed. He said he is disappointed to hear that the Village Council does not feel any responsibility here. Solicitor Miller said it is a matter of not having any right to do anything about it. Solicitor Miller said the bond is supposed to be there after everything is completed and for one year to fix any problems that may arise after the Village accepts the streets. Solicitor Miller said the Village may insist that another bond be posted before the Village accepts the streets. The Village doesn't own the streets; they have never been accepted because they haven't been constructed to Village specifications or there are still problems. Solicitor Miller said it is not a matter of Council not wanting to do something; it's a private matter at this point. Mr. Cappiello said he doesn't understand. Solicitor Miller asked how the Village has an interest in the issue. Mr. Cappiello said he assumed the Village approved the project in the first place. He asked who the bond was posted to, not the homeowners. Solicitor Miller said he doesn't know and has never seen it. Solicitor Miller said the Village may approve a plan and have oversight as to how something is

built, but the Village cannot make someone build something. Mr. Cappiello said they are just trying to get the issue resolved and the homeowners have no way to pay for this. Solicitor Miller said Mr. Brandstetter has been successful in getting some things accomplished. Mayor Cosby said the bottom line is Gallenstein, the developer, has not fulfilled his obligation. And that is why the Village has not accepted the streets. Mr. Cappiello said to simply dump it on the HOA doesn't seem to be a reasonable approach. Solicitor Miller said, unfortunately, that is the answer. He told Mr. Cappiello they are the ones who contracted with Gallenstein to put in the streets. The Village has no contract with him. Mr. Cappiello said he bought his home from the builder, not Gallenstein. He asked where the builder come in. Solicitor Miller said that might be something to pursue with the builder. Solicitor Miller suggested Mr. Cappiello check again to see if there is some novel theory they can come up with to go after Gallenstein. He said it is happening a lot these days with developers going under and subdivisions are not being finished. Mayor Cosby said he trusts Council to exercise the option to go after Gallenstein if the Village has an angle to go after him. Mayor Cosby assured Mr. Cappiello that he has been in contact with Bruce Brandstetter on many occasions discussing ways to get Gallenstein to finish the project.

Brandstetter Carroll Inc. has been involved with the Village of Newtown since 1982-83. Most of the projects have been grant-funded. It started with Riverhills Drive in 1983. Two to three projects are possibly being considered for next year:

2) OPWC / Issue II Grants

- Drake Street Bridge is being considered for Small Governments funding, typically awarded in spring. (applied for the past two years) The Village should know by May 2010 if the project will be funded.
- Possible 2010 projects are the re-submittal of Ragland Road and Edith/Jefferson/Pine Street Reconstruction. Edith/Jefferson/Pine Project Summary and Cost Estimates are attached to handout.
- GCWW would replace their water main as part of the Edith/Jefferson/Pine project. Estimated cost for water main replacement is \$250,000, which could be used as part of the Village's local match. The more local match on a grant application yields more points, which increases the chance of having the project funded. The water main was installed in 1928 on Edith Street, 1935 on Pine Street and 1935 on Jefferson.
- Improvements for Edith/Jefferson/Pine would include lowering the streets; add curb and gutter, new drainage and new sidewalks on both sides. This would allow the properties to drain.
- Geotechnical report on pavement is recommended (\$5,000) and traffic counts for grant application.
- Applications due September 2010

July 2011 is the earliest the Village would receive the actual grant agreement.

**Cost Summary** (Edith/Jefferson/Pine)

Roadway Construction	\$ 795,000.00
Water Main Replacement	<u>250,000.00</u>
Sub Total	\$ 1,045,000.00
Owner's Cost – Roadway	<u>80,000.00</u>
Total	\$ 1,125,000.00

Possible Funding – Construction	
GCWW (24%)	\$ 250,000.00
OPWC (60%)	627,000.00
Village (16%)	<u>168,000.00</u>
Total	\$ 1,045,000.00

Mr. Kobasuk asked what about the probability of receiving the grant for Edith/Jefferson/Pine. Mr. Brandstetter said Edith/Jefferson/Pine has a much better chance than Ragland Road because the pavement is in much worse condition. GCWW paved Ragland about 4 years ago after that project. The photographs taken by resident Mark McConnell show the seriousness of the problem on Edith/Jefferson/Pine. Mr. Brandstetter said the Village needs to be persistent in applying for the grant for Edith/Jefferson/Pine; it sometimes takes a while. The Church Street projects took a couple of years each.

Mr. Kobasuk asked Mr. Brandstetter what the next step would be that he would take for Edith/Jefferson/Pine project. Mr. Brandstetter said Brandstetter Carroll Inc. would need Council's authorization to pursue the geotechnical report. He said he would obtain several quotes and report to Mayor Cosby. Mr. Brandstetter said they will review the study's findings regarding the condition of the study and come back to Council in May or June. At that point, we will know what is going on with Drake St. Bridge and then decide how to move forward.

Mr. Harten asked Mr. Brandstetter if GCWW would hold off and wait until the Village is ready to go on the project if we are not awarded the grant for a year or two. Mr. Brandstetter said GCWW would hold off and explained that GCWW spends about 25million dollars per year replacing water mains. They spend another 8-10 million per year on roadway projects. GCWW will try to get in with a project they know is going to be done or ahead of the project.

Project Status Engineering Services (continued)

3. Church Street/Newtown Road Paving

- Village/BCI contacting Hamilton County Engineer concerning paving of 200 feet of road at the north corporation line. (towards the rectory by St. John Fisher Church)
- Draft letter asking the county to roll this project into one of their other paving programs is attached. The letter also states the Village does not have a paving program planned for 2010. The letter also asks if MRF funds would be available for this project.

Maintenance Department Update

Ron Dickerson, Maintenance Supervisor spoke to council regarding the following:

- 1) Village Signs: Quotes for 6 signs were submitted from Worldwide Graphics & Sign Co. Ron is meeting with another company tomorrow. Mr. Evans suggested bringing samples to the 4-13-10 Council meeting.
- 2) Asphalt Quotes: Doug will handle, per Ron.
- 3) Mulching: It's that time of year; maintenance has been busy weeding and mulching.
- 4) Trees: Two trees that were a liability were taken down today in the parks. One more tree will be taken down next week. Residents are welcome to the Fire wood. Call 271.2009 if interested.
- 5) Recycle Bins: Call 271.2009 if you need a recycle bin; the maintenance department will deliver.
- 6) Fountain: Parts for the lights have been ordered. Ron will repair the lights and fountain once the parts are received. Mr. Pulskamp has offered to meet with Ron to open the fountain for the season. The fountain should be up and running the first week of April.

Easter Egg Hunt

The annual Easter Egg Hunt, sponsored by the Newtown Civic League and Gerrard Lodge will be Saturday, March 27<sup>th</sup> at 11:00am. The vacant lot on Debolt, which is owned by the Village can be used for overflow parking if it is too wet, per Mayor Cosby.

Checklist

**Mr. Tiettmeyer made a motion to approve Checklist dated 3/23/2010 for \$74,857.29. Mr. Kobasuk seconded the motion. All Aye. Motion Carried.**

2010 Village Appropriations, Third Reading

**Mr. Tiettmeyer made a motion to adopt ORDINANCE NO. 06-2010 AN ORDINANCE ADOPTING THE VILLAGE APPROPRIATIONS FOR 2010. Mr. Zornes seconded the motion.**

Discussion

Solicitor Miller said Section 2 can be deleted, since this is the third reading.

**Roll Call: Mr. Tiettmeyer-Yes, Mr. Zornes-Yes, Mr. Evans-Yes, Mr. Kobasuk-Yes, Mr. Burns-Yes, Mr. Harten-Yes. Motion Carried.**

Business Recovery Plan Update

Mr. Tiettmeyer, Mr. Burns and Chief Synan had a conference call with Agility on 3-18-10. Agility's proposal was discussed. Mr. Tiettmeyer, Mr. Burns and Chief Synan believe this is of interest to the Village. Mr. Tiettmeyer will bring recommendations to Council after more discussion.

Resolution, Approving Advance/Reconciling Budget

Purpose of resolution is to transfer \$1,918.58 from General Fund to Recycling Incentive Fund for Moundview playground equipment purchase. This money will be replaced once the grant is received.

**Mr. Tiettmeyer made a motion to suspend the rules, seconded by Mr. Kobasuk. All Aye. Motion Carried.**

**Mr. Tiettmeyer made a motion to adopt RESOLUTION NO. 14-2010 A RESOLUTION APPROVING AN ADVANCE AND RECONCILING THE BUDGET AND AMENDING APPROPRIATIONS FOR CALENDAR YEAR 2010, DISPENSING WITH THE SECOND AND THIRD READING AND DECLARING AN EMERGENCY. Mr. Zornes seconded the motion.**

**Roll Call: Mr. Tiettmeyer-Yes, Mr. Zornes-Yes, Mr. Evans-Yes, Mr. Kobasuk-Yes, Mr. Burns-Yes, Mr. Harten-Yes. Motion Carried.**

3-09-10 Council Minutes

**Mr. Zornes made a motion to approve 3-09-2010 Council Minutes, seconded by Mr. Burns. All Aye. Motion Carried.**

Resolution, USI Midwest

**Mr. Zornes made a motion to suspend the rules, seconded by Mr. Burns. All Aye. Motion Carried.**

**Mr. Zornes made a motion to adopt RESOLUTION NO. 15-2010 A RESOLUTION APPROVING A CONTRACT TO ADDRESS HEALTH INFORMATION PRIVACY, DISPENSING WITH THE SECOND AND THIRD READINGS AND DECLARING AN EMERGENCY. Mr. Kobasuk seconded the motion. Roll Call: Mr. Tiettmeyer-Yes, Mr. Zornes-Yes, Mr. Evans-Yes, Mr. Kobasuk-Yes, Mr. Burns-Yes, Mr. Harten-Yes. Motion Carried.**

#### Website Committee

The Website Committee met on 3-18-2010; other options/vendors are being considered, said Mr. Zornes.

#### Street Repairs

Mr. Evans said he will meet with Ron Dickerson and Bruce Brandstetter to assess repairs for Little Dry Run. In an effort to obtain better pricing, Mr. Evans said they are looking at combing a couple of projects. The asphalt plants will open around the second week of April.

#### Tools for Maintenance Department

Ron Dickerson submitted several quotes to Mr. Evans, chairperson of Public Service (Streets) for a couple of small tools, \$1,799.72.

**Mr. Evans made a motion to approve \$1,799.72 to purchase small tools for the Maintenance Department. Mr. Burns seconded the motion.**

#### Discussion

Mayor Cosby asked what types of tools are being replaced/purchased. Mr. Evans answered, a hedge trimmer, regular blower, another trimmer, hand-held blower, steel chain saw and another trimmer.

**All Aye. Motion Carried.**

#### Safety Committee

The Safety Committee will meet Wednesday, March 31<sup>st</sup> at 7:30pm. Committee members are: Mark Kobasuk(c), Brian Burns and Doug Evans. Chief Synan asked the committee to meet to discuss various issues.

#### LMFD Fire Board Meeting Update

Mr. Kobasuk attended the 3-17-2010 Fire Board meeting and gave the following report to Council. The Fire Board discussed sites for the Fairfax fire station. The cost is expected to be 4.9 to 5.1 million dollars for a fire station in Fairfax. The fire district has a budget of 8 million dollars for two stations. Mr. Kobasuk told the Fire Board members that some in Newtown prefer a new fire station. The Board was receptive to building two identical sister stations: one in Fairfax and one in Newtown. There would be cost savings having two stations built simultaneously. Mr. Kobasuk said if Newtown remains in the district, the Fire Board is willing to talk to Newtown about having a new fire station built on SR32. The new fire station would take half of the money. For the 40% contributed by the property owners of the Village, to the LMFD, the Village would get a new station and 50% of the resources if Newtown remains in the Little Miami Fire District.

Mr. Kobasuk did ask the Fire Board for a thirty-day extension to explore Fire options. The Fire Board did agree to give the Village of Newtown a fifteen-day extension. The Village of Newtown has until April 15<sup>th</sup> to report back to the Board our decision if we will remain in the LMFD. Mr. Kobasuk said he would like to expedite our decision making and try to get as close to April 1<sup>st</sup>, which would be appreciated by the Fire Board. He recognized it may run a little past April 1, allowing time for the residents to look at the Fire Study. The Safety Committee will meet with Mr. Kramer Monday, March 29<sup>th</sup> at 6:30pm.

#### Resolution, Lake Barber

Mr. Kobasuk said he thinks it is the intent of Council at this time to exercise its preemptive rights so we can look at our options. Mr. Kobasuk said Council may not necessarily open the lake to the public. Council will take into account the homeowner's concerns and the concerns of the local businesses. Mr. Zicka has been very patient; he raised this preemptive right with the Village over a year ago. Mr. Kobasuk said as a Village, it is our obligation to at least say yay or nay. Mr. Kobasuk said he thinks the majority of Council would want to at least purchase the lake and explore what we can do with it. He said, taking into account everyone's rights. Mr. Kobasuk said that is not the intent; nobody wants to disadvantage it. It is to do what is best for the Village. Mr. Kobasuk said, the Council years ago gave the current Council the right today when they put in that preemptive right, which was very smart. He said Council may want to do something like that for future Councils. Mr. Kobasuk said he is not sure what we will do with the lake yet, but we should explore our options. We have to act on Citadel's request, said Mr. Kobasuk.

Dan Utt, attorney for Doug Evans and his companies, asked Mr. Evans to remove himself from the Council table and take a seat in the audience. Mr. Utt said Mr. Evans is a private citizen with rights that are affected by this decision. For the record, Mr. Utt stated that Mr. Evans will not participate in the deliberations or the vote. Mr. Utt said they have been working with Solicitor Miller to make sure they look at the whole picture as to how this will play out. He said they are not necessarily opposed to the Village acquiring Lake Barber. Mr. Utt said that could be a good thing if done the right way. He said, everyone needs to be mindful that there are four parties that have an interest here: the Village of Newtown, Citadel, Mr. Evans and Mr. Hall. (Mr. Hall's attorney, Tim Riker is also present) Mr. Utt said they have been talking about how to come up

with a public partnership to facilitate the joint use of Lake Barber, if the Village decides that it wants to pursue a public use of the lake and can facilitate the funding for that. Mr. Utt explained that there are some existing agreements in place when Council approved this back in 1994, where did reserve the right of first refusal. He said they also allowed easements for recreational use. There are two parties that have those easements. Mr. Utt suggested that he and Solicitor Miller continue those discussions along with Mr. Hall's attorney, Mr. Riker to see if they can facilitate: 1) an agreement on the joint use of the lake and 2) to make sure that the conveyance of the property, if that is the way the Village ultimately decides to go, is done in a manner that protects the rights of all parties involved. Mr. Utt said he wanted to reflect for the record that Mr. Evans is not going to participate in the deliberations.

Mr. Kobasuk said passing this resolution does not preclude Mr. Utt from having those discussions. Mr. Utt said he just wanted to formally come here today. Solicitor Miller said just so everyone understands the resolution says he is supposed to negotiate with Citadel, but pretty much everybody in the deal to get it so it works for everybody. Mr. Utt said they look forward to having those discussions. Solicitor Miller said this is to show Mr. Zicka that the Village is serious about moving forward to arriving at an agreement. Mr. Utt thanked Council for their time hearing him tonight; he will continue to work with Solicitor Miller.

**Mr. Kobasuk made a motion to suspend the rules. Mr. Harten seconded the motion. Roll Call: Mr. Tiettmeyer-Yes, Mr. Zornes-Yes, Mr. Evans-Abstain (not present at table), Mr. Kobasuk-Yes, Mr. Burns-Yes, Mr. Harten-Yes. Motion Carried.**

**Mr. Kobasuk made a motion to adopt RESOLUTION NO. 16-2010 A RESOLUTION DETERMINING TO PROCEED WITH THE PURCHASE OF LAKE BARBER FROM CITADEL INVESTMENT CORPORATION, DISPENSING WITH THE SECOND AND THIRD READINGS AND DECLARING AN EMERGENCY. Mr. Tiettmeyer seconded the motion. Roll Call: Mr. Tiettmeyer-Yes, Mr. Zornes-Yes, Mr. Evans-Abstain (not present at table), Mr. Kobasuk-Yes, Mr. Burns-Yes, Mr. Harten-Yes. Motion Carried.**

**Mr. Kobasuk made a motion for Council to authorize and empower Mayor Curt Cosby and Solicitor Doug Miller to negotiate a purchase contract for Lake Barber taking all relevant considerations into account.**

#### Discussion

Mayor Cosby asked about the core samples. Mr. Kobasuk said the authorization is in the resolution. Section 3. of the resolution reads: The Mayor and Fiscal Officer are further authorized to spend an amount not to exceed \$5,000 in survey, inspection and closing fees in order to close the transaction.

**Roll Call: Mr. Tiettmeyer-Yes, Mr. Zornes-Yes, Mr. Evans-Abstain (not present at table), Mr. Kobasuk-Yes, Mr. Burns-Yes, Mr. Harten-Yes. Motion Carried.**

#### Park Fees

Mr. Burns asked to table the ordinance establishing fees for Village parks. The Park Committee will meet Wednesday, March 31<sup>st</sup> at 6:30pm. Mr. Burns will discuss the ordinance at the 4-13-10 Council meeting. Cemetery fees and park rules will also be discussed at the Park Committee meeting.

#### Executive Session

**Mr. Burns made a motion to convene at 8:20pm to enter into Executive Session to discuss pending litigation. Mr. Zornes seconded the motion. Roll Call: Mr. Tiettmeyer-Yes, Mr. Zornes-Yes, Mr. Evans-Yes, Mr. Kobasuk-Yes, Mr. Burns-Yes, Mr. Harten-Yes. Motion Carried.**

Mayor Cosby called the meeting back to order at 8:32pm. Action will be taken as a result of Executive Session.

**Mr. Kobasuk made a motion for property acquisition, not to exceed \$65,000. Solicitor Miller will have a standing authorization. Mr. Burns seconded the motion. All Aye. Motion Carried.**

**Mr. Zornes made a motion to adjourn at 8:30pm., seconded by Mr. Kobasuk. All Aye. Motion Carried.**