

The June 8, 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.

Councilmembers: Brian Burns Mark Kobasuk
Doug Evans (absent) Curt Tiettmeyer
Joe Harten Daryl Zornes

Mayor: Curt Cosby

Solicitor: Doug Miller

Fiscal Officer: Keri Everett (absent)

Police Chief: Tom Synan

Citizen Input

Resident Chuck Short thanked Mayor Cosby and Council for allowing the Newtown Veterans Association to sponsor the second annual Memorial Day Parade. He also thanked the police department and commented on their new dress uniforms. Mayor Cosby thanked Mr. Short and the Veterans for their efforts in the success of the Memorial Day Parade. Mr. Short is also a member of the Veterans Association. Due to a family commitment, Mayor Cosby was unable to attend this year but looks forward to next year. Burger Farm provided a float for Village Officials; past mayors Paul Frede, John Russell and councilmen Curt Tiettmeyer and Joe Harten were able to participate this year.

Forest Hills School District Update

Randy Smith, 7493 Pinehurst Drive, Newtown Ohio, spoke to Council on three issues going on in the school district. Mr. Smith also serves as a Board Member on the Forest Hills Board of Education. Mr. Smith said there are 614 school districts in the state of Ohio; Forest Hills is the 30th largest in the state. And out of the top thirty, Forest Hills is one of a handful rated Excellent with Distinction.

1. New Superintendent: Dr. Dallas Jackson, Miamisburg City Schools Superintendent was hired two weeks ago by Forest Hills School District. Miamisburg is also an Excellent with Distinction rated school district.
2. Facilities Committee: The Board has set up a Facilities Committee to review the nine buildings; Wilson Elementary is the oldest and in the worst shape. A long-term plan is being implemented for these facilities. The Committee has put forth three options to the public with two opportunities for public input. Qualitative data has been obtained; the next step is to obtain quantitative data (phone survey) to get some real impact of how the community feels. One option, an unpopular one, was to close Turpin High School and making a mega high school out of Anderson. Mr. Smith said this is significant; a facilities change would require a bond levy. The public will get a chance to approve whatever the School Board decides is the right thing to do.
3. Potential Tax Levy: When dealing with school funding in the state of Ohio it is never potential, it is just when is the next levy, stated Mr. Smith. The Board of Education will be discussing an Operating Levy either for November 2010 or May 2011. The state has advised the school district they will be facing a major cut in state funding in the next biennium (two year budget). Currently, Forest Hills receives one-third of their funding from the state; unfortunately, with governor Ted Strickland's new funding model, the district will probably receive even less going forward. The district has been flat-funded for the past five years. The model is basically designed to take from the rich and give to the poor, said Mr. Smith. July 1, 2009, a new funding model was put into law, which is not favorable to Forest Hills; the state has labeled Forest Hills a "rich" school district. Mr. Smith has spent a lot of time in Columbus working against unfunded mandates from our state legislature. Mr. Smith said he appreciate the help received from Senator Shannon Jones and State Representative Peter Stautberg; they have been very sympathetic to some of the issues the School Board has to deal with when the legislature passes a law with unfunded mandates. Basically, that is a tax increase on property owners.

Mr. Smith has been working very hard over the past few years to establish a private foundation to support public education in the Forest Hills School District. He is happy to report the foundation is now a reality; recently, they held their first event, the Forest Hills 5K Run, which included over 2,000 people. The purpose of the foundation is to provide funding to support some of the extras to keep Forest Hills an excellent school district, not to replace tax levies by any means. To have a successful foundation, there must be an Alumni Association. For their kick-off event, the Alumni Association had an alumni basketball game a few months ago.

As far as funding schools, Mayor Cosby asked if there was any movement at the state level to relieve the burden of property owners. Mr. Smith said he thinks, unfortunately, the way the legislature looks at it is they did what they were going to do. They are done for a while!

Councilman Kobasuk said he was very disturbed hearing of the proposal to close Turpin High School and asked Mr. Smith his thoughts. Mr. Smith said he cannot speak for other board members; in his personal opinion, he thinks it is highly unlikely. He did say that he receives 5-7 emails per day on some of the key issues and has not received one email that was supportive of the mega high school concept. Mr. Smith said he can't speak for the other board members. A bond issue would have to be passed to fund the building changes to consolidate schools. Mr. Smith said there are a small number of people who had a vision of a mega high school. Mayor Cosby said for the record, he personally would not support one mega high school.

Holiday Lighting for WinterFest Update

Mayor Cosby contacted Lighting Concepts; they stated they do not believe the C-9 LED lights will achieve the desired amount of lighting for the streets. He is waiting on a sample strand of the C-9 lighting. Mayor Cosby is also looking at flood-type lighting to be used on individual poles during the WinterFest event.

One Shot Zone Change

The Newtown Planning Commission held a Public Hearing June 7th at 7:00pm for a Zone Change for One Shot. Village Council will hold a Public Hearing Tuesday, July 13th at 7:00pm; a First Reading of the Ordinance Adopting the Zone Change will take place at this meeting. A special meeting will be held Monday, July 19th at 6:30pm for a Second Reading of the Ordinance Adopting the Zone Change. The Third and Final Reading of the Ordinance Adopting the Zone Change will take place at the Tuesday, July 27th Council Meeting at 7:00pm.

Solicitor Miller said it is not necessary to have three readings; it should not be done by emergency without a legitimate reason. The second and third readings can be waived if there are enough votes. It was explained that passing the ordinance by emergency is different than having three readings; the emergency does away with the referendum period. Solicitor Miller suggested keeping the third hearing for now in case there are not enough votes or someone is absent.

Planning Commission

Mr. Harten, Chairperson of the Planning Commission spoke to the Public Hearing held June 7th for a Zone Change for One Shot. Mr. Harten stated that the Planning Commission unanimously approved the zone change and is very much in favor of the process to assist One Shot in moving forward.

Mayor Cosby said holding the second public hearing is redundant we are trying to do away with when the new Zoning Code is adopted. Solicitor Miller suggested keeping the Monday, July 19th special meeting in case there are not enough people at the July 13th Public Hearing.

Public Hearing – One Shot Zone Change

The Village of Newtown Council will conduct a Public Hearing on a Proposed Zone Change, Tuesday, July 13, 2010 at 7:00pm.

Amendment to Zoning Code

Mr. Harten stated that Planning Commission unanimously approved the Amendment to the Zoning Code and forwarded it to Council for its consideration.

Planning Commission discussed doing away with the requirement of having two public hearings in the amended zoning code. Mayor Cosby said Planning approved the concept of deleting the fact of holding two public hearings. Planning Commission would like to see the language deleted to where they would simply make a recommendation to Council; Council would then hold one public hearing. And that would be the process.

Solicitor Miller said once Planning Commission makes a recommendation, three-fourths vote of Council is required to overrule Planning Commission if something is going to be changed. He explained that it is the notification process. Planning held a public hearing, which is open for public comment. Council is also required to do that. It's the matter if the notification is there. In the One Shot case, property owners were notified because only one parcel or less than ten parcels were being rezoned. There is no written notice required redoing the zoning code; it does have to be published in the paper. The proposed changed needs to be on file in the Fiscal Officer's office for thirty days prior to the public hearing. Mayor Cosby said Planning wants to get out of having to set a public hearing only for it to go to Council to set another public hearing; eliminate that one step.

Resolution, Sale of Easement in Short Park

Mr. Harten made a motion to suspend the rules, seconded by Mr. Burns. All Aye. (Mr. Evans-Absent) Motion Carried.

Mr. Harten made a motion to approve RESOLUTION NO. 23-2010 A RESOLUTION ACCEPTING A PROPOSAL FOR THE SALE OF AN EASEMENT IN SHORT PARK TO THE HAMILTON COUNTY PARK DISTRICT, DISPENSING WITH THE SECOND AND THIRD READINGS AND DECLARING AN EMERGENCY. Mr. Kobasuk seconded the motion. Mr. Tiettmeyer-Yes, Mr. Zornes-Yes, Mr. Evans-Absent, Mr. Kobasuk-Yes, Mr. Burns-Yes, Mr. Harten-Yes. Motion Carried.

Bike Staging Area, E-check Site

Mr. Kobasuk asked if Planning had considered the bike staging area. Mayor Cosby said it has not been considered.

Allen Freeman said as discussed with LMFD Fire Board, in coordination with the fire department, the idea would be to utilize a piece of the property to create an area for the people using the bike trails giving them a place to park, upload their bike and access bike trails. The area would provide 15-20 spaces. The map will be distributed electronically to Council for review. Mr. Freeman said the goal is to try and secure the funds from OKI Regional Council of Governments to help purchase the property and lay the remaining sidewalk on SR32 that doesn't exist today. Loveland utilized the bike trail for economic development. Mr. Kobasuk explained that it was discussed at the May Fire Board meeting that Newtown would seek the grant with the assumption of buying a piece of the E-check site from the LMFD. Mr. Kobasuk asked Mr. Freeman what Village Council needs to do to move this along, if Council is inclined to do that. Mr. Freeman suggested Council begin working with the fire department and they will begin the paperwork necessary to file with OKI. The Mayor and/or a Councilman would be appointed as a spokesperson for the project. Mr. Freeman said he would arrange a meeting with the fire department, the Village of Newtown and Mayor Shannon, President of the LMFD Fire Board. Mr. Freeman will attend the Monday, June 28th Planning Commission meeting at 7:00pm to work on concepts for the application process. Mr. Freeman reminded Council of the \$300,000 for a Native Artifact Museum that needs to be revived. These funds have gone dormant since there was not a local match. Mr. Freeman said these dollars need to be pulled back out into reality making them accessible to the Village of Newtown. This could possibly be intertwined with the bike staging area. Mr. Kobasuk asked if the funds had expired; Mr. Freeman said they have not expired that he has put them in a place where they are safe but not for much longer. Mr.

Freeman said the state would like to get these dollars off of their books. Mr. Kobasuk asked Mr. Freeman to make sure we act quickly or in a timely manner so the funds don't expire. Mr. Freeman will speak to Council at the June 22nd meeting regarding the process for making the \$300,000 accessible to the Village.

Park Committee

Mr. Burns set a Parks meeting for Monday, July 14th at 6:30pm.

LMFD

Mr. Kobasuk has been working with Alan Abes, Counsel for LMFD Fire Board, on the below issues discussed at the 5-25-10 Council meeting.

- 1) Fire Hydrant Care – Beneath Ground: The current contract states that LMFD to maintain the fire hydrants above the ground. Chief Driggers said whatever they decide to do with the Village of Newtown; they also have to do with the Village of Fairfax. When the LMFD agreed to take the above ground repair and replacement issue, understand that all fire hydrants and associated piping are owned by the municipality. He said the fire district was doing a favor to Fairfax and Newtown trying to provide some financial assistance in just taking care of what is above ground.
- 2) Limitation on Liability: This was raised by Solicitor Miller; Mr. Kobasuk is working with Mr. Abes on this issue.
- 3) Consent Removing Station: Mr. Kobasuk would like to have the similar language of the current consent clause in the contract for future Council. Mr. Kobasuk said Mr. Abes suggested "consultation," which is not quite the same as "consent."

Chief Driggers said the Fire Board is its own governing body and operates that way; it is its own taxing authority. Chief Driggers said to give Newtown Council the absolute on a fire district issue sets a dangerous precedent.

Regarding the care of the fire hydrants, Chief Driggers said the Fire Board has budgeted so many dollars a year for fire hydrant repair and replacement based on past history, but to get into things that would affect their operating budget would not be something he would recommend to the board, over and beyond what they already do, which is over and above what is required by law. Mr. Kobasuk said it is not in the current contract; it is a new issue. Chief Driggers said that is why they brought it up when they did. Newtown asked if the district could assist in the hydrant issue and the district said yes they would take care of the above ground repairs and costs to show willingness to cooperate, but can't do everything, said Chief Driggers. Mayor Cosby said he would still like to see the issue come before the Fire Board. Chief Driggers suggested Mr. Kobasuk addressing the above issues with the Fire Board next Wednesday.

Regarding the acquisition of the E-check site, Chief Driggers said confidential negotiations are currently in process. Mr. Kobasuk said he would like to be able to pass the contract with LMFD at the 6-22-10 Council Meeting; under the arrangement, the Village would receive a fourth firefighter July 1st.

Lake Barber

Council previously authorized a survey and environmental testing for Lake Barber. Mr. Kobasuk asked Solicitor Miller for an update. Solicitor Miller said Mr. Brandstetter is working on the survey, which should be completed by 6-22-10. Solicitor Miller has contacted the insurance company; he is waiting to hear back from them to see what requirements they want.

Martin Marietta

Mr. Kobasuk said if council is supportive he would like authorize Solicitor Miller to research legal options to oppose this mining project. Mr. Kobasuk said he was frankly outraged that Anderson's BZA would vote in favor of the application when so many people filled the auditorium and opposed it. He said he was stunned and outraged that representatives would act like that. Although the representatives are not elected officials, Mr. Kobasuk said he thought it was a travesty when neighbors poured out in opposition and the BZA still voted in favor it. Solicitor Miller said any party withstanding has 30 days to file an administrative appeal under ORC 2506, which sends the case to the Hamilton County Common Pleas Court for them to review. Solicitor Miller explained, typically, the court assigns the appeal to a magistrate. The process with the magistrate would be where appellate would brief it; the appellee would then submit a brief in opposition and then usually the appellate has time just to respond to that brief in a shorter format. And then they would set it for oral argument and argue why you think the BZA was wrong. If it is front of the magistrate, Solicitor Miller said he has never seen an Administrative Appeal in Hamilton County that wasn't, but this is not the typical case so it could be that the trial court would just take it. When the magistrate renders their decision then either side has 14 days to appeal that to the judge. Then you would start over with the briefing again, which would pretty much be the same issues to the judge and then it could go to the Court of Appeals. Solicitor Miller said while the appeal is going on, if the court doesn't stay the order, then they would be able to start the mining at that point, at their own risk. CABOOM has indicated that they will file an appeal. Solicitor Miller said the unsuccessful party in the appeal has to pay the court costs; part of the court cost is preparing the transcript to submit to the court. And nobody knows whether the cost of the transcript would be included in that. The transcript of all of the Anderson Township proceedings have already been transcribed, so they would not be preparing them for purposes of the appeal, said Solicitor Miller. He guessed Anderson has spent \$20,000 to \$30,000 having it transcribed. Solicitor Miller said the total cost on an appeal could be around \$100,000. Mr. Kobasuk asked Solicitor Miller to come back to discuss the costs involved in an appeal. Solicitor Miller said it would be helpful to have direction from Council tonight so he can give an indication on Friday to the others if Newtown is in or out of the appeal process. Mr. Kobasuk said he would like to make a motion that Newtown assist in the appellate process. Solicitor Miller said we could control our own streets and it is damaging something the Village is responsible paying for. He said it might be a matter of approving how it is being damaged because of this, there is already trucks on the road. But if you can do that, weight limits would be the way to go, said Solicitor Miller. Scales would need to be purchased along with training to run the scales. Solicitor Miller said a vote authorizing him to file or join in an appeal would be helpful.

Mr. Kobasuk made a motion to authorize Solicitor Miller to file or join in an appeal opposing the Martin Marietta Mining Project, as approved by Anderson BZA. Mr. Harten seconded the motion. All Aye. (Mr. Evans-Absent) Motion Carried.

Mayor Cosby encouraged Council and Solicitor Miller to think about what we as a Village can do to protect ourselves from the operation, should it succeed. Mr. Kobasuk told Solicitor Miller that this is the biggest detriment he sees facing Newtown in the near future.

Ordinance, Accepting Streets in Ivy Hills Reserves

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

Mr. Burns made a motion to adopt ORDINANCE NO. 09-2010 AN ORDINANCE ACCEPTING THE STREETS IN THE IVY HILLS RESERVES SUBDIVISION, DISPENSING WITH THE SECOND AND THIRD READINGS AND DECLARING AN EMERGENCY. Mr. Zornes seconded the motion. Mr. Tiettmeyer-Yes, Mr. Zornes-Yes, Mr. Evans-Absent, Mr. Kobasuk-Yes, Mr. Burns-Yes, Mr. Harten-Yes. Motion Carried.

5-25-2010 Council Minutes

Mr. Zornes made a motion to approve the 5-25-2010 Council Minutes, seconded by Mr. Tiettmeyer. All Aye. (Mr. Evans-Absent) Motion Carried.

HR Committee

Mr. Zornes announced that there will be a Human Resource Committee meeting June 29th at 6:00pm; employee insurance benefits will be discussed.

Website

Mr. Zornes made a motion to explore a contract with Sund and Company for website services. Mr. Harten seconded the motion. All Aye. (Mr. Evans-Absent) Motion Carried.

Resolution Adopting 2011 Village Budget

Mr. Tiettmeyer made a motion to have a First Reading of a RESOLUTION ADOPTING THE 2011 TAX BUDGET FOR THE VILLAGE OF NEWTOWN. Mr. Kobasuk seconded the motion.

Discussion

Mr. Tiettmeyer explained that this First Reading, which is a requirement to have a 2011 Budget submitted to the County Auditor by July 20, 2010.

Mr. Tiettmeyer made a motion to have the Second Reading of a RESOLUTION ADOPTING THE 2011 TAX BUDGET FOR THE VILLAGE OF NEWTOWN at the 6-22-2010 Council Meeting. Mr. Burns seconded the motion. All Aye. (Mr. Evans-Absent) Motion Carried.

Public Hearing for 2011 Village Budget

Mr. Tiettmeyer announced that Council will hold a Public Hearing Tuesday, July 13th at 7:00pm for the 2011 Village Budget.

Public Hearing Held by Planning Commission, Amendment to Zoning Code

Solicitor Miller explained that Planning Commission needs to hold a hearing, give notice, publish in the paper 30 days prior to the hearing.

Mr. Harten announced that the Planning Commission will hold a Public Hearing for the Amendment to the Zoning Code, at the regularly-scheduled monthly Planning Commission meeting, Monday, July 26, 2010 at 7:00pm.

Village Business in Emails

Solicitor Miller reminded everyone to be aware that discussion between "gang" emails can evolve into business being conducted through the email, which then would not be done so in the form of a public meeting. He said to wait and bring discussion to the table. Mr. Kobasuk asked if it was okay to send out a summary a meeting; Solicitor Miller said it is okay to send information out to everybody, just don't get involved in a conversation after that. Mr. Tiettmeyer asked if it would be different if he responded to the person that sent out the information or responded to "all?" Solicitor Miller said it would not be a problem if you respond to the one that sent out the information. If you respond to everybody and everyone starts conversing back and forth, then it becomes public.

Officer Orso asked Solicitor Miller to speak to personal emails being subpoenaed. Solicitor Miller said anything that has to do with any Village business would not only be subject to a subpoena but a public records request. If someone sends village business to someone's personal email address, that would be public record. Just saying hello someone to and from a village email account would not be a public record. Not everything in an email is a public record, but it is if it has anything to do with the village. There is a process for disposing of public records; the Records Commission is supposed to meet to determine what can be destroyed.

Mr. Burns made a motion to adjourn at 8:15pm, seconded by Mr. Kobasuk. All Aye.

Transcribed by Becky Fairley