

The May 24, 2016 meeting of the Newtown Village Council was called to order at 7:00 p.m. by Mayor Mark Kobasuk, who led the Pledge of Allegiance to the Flag.

**Council Members:** Curt Tiettmeyer (Vice Mayor)                      Chuck Short                      Solicitor: Doug Miller  
Daryl Zornes    Cheryl McConnell  
Joe Harten    Terry Fairley

6840 School Street Property Update (Reported by Mayor Kobasuk)

Demolition is scheduled to begin Tuesday, May 31, 2016. Pinnacle did the environmental testing and no issues were found.

Memorial Day Parade (Reported by Mayor Kobasuk)

The Memorial Day Parade will take place on Memorial Day, Monday, May 30<sup>th</sup> at 10am. The annual parade is sponsored by the Newtown Veterans Association. A float will be provided for Village officials, past and present. All are welcome to participate in the parade – line-up begins at 9am at MVCA.

Board of County Commissioners (Reported by Mayor Kobasuk)

Mayor Kobasuk met with Hamilton County Commissioner Chris Monzel; he stands by their 2010 resolution opposing Martin Marietta mining under the county-owned Broadwell Road. Commissioner Portune also stands by the motion. Solicitor Miller will working on a letter from Council thanking the Hamilton County Commissioners for their prior opposition.

MVCA / Short Park “SPARC” Update (Reported by Mayor Kobasuk)

I recently met with members of the Board of Miami Valley Christian Academy (MVCA) and received an update on the Short Park Athletic Recreational Complex (SPARC). MVCA has already risen over \$1 million for this cooperative development with the Village of Newtown. Upon completion, Newtown residents will have access to a turf football/soccer/lacrosse field, track, baseball diamond, walking trail and other amenities. The complex will give children the opportunity to have fun, experience team sports, learn important life-lessons, and create memories for a lifetime. Groundbreaking is anticipated fall 2016. Mayor Kobasuk offered to write a letter to help with their efforts. The Village residents voted in favor of this project.

Engineering Update: (Reported by Bruce Brandstetter)

1) 2016 Paving Program

- J.K. Meurer submitted the lowest bid in the amount of \$92,768
- Consider paving Lake and Bend Streets (\$15,000) BCI will talk to J.K. Meurer about a compromised dry well and bring back an estimate to Council. This addition would be a change order.

**Mr. Fairley made a motion to accept the lowest bid of \$92,768 from J.K. Meurer for the 2016 paving Program. Solicitor Miller will prepare a resolution for the 6.14.2016 Council Meeting. Mr. Short seconded the motion. All Aye. Motion Carried.**

2) Storm Water Utility

- BCI will provide an updated summary to Council prior to the 6.14.2016 Council Meeting. The summary will include non-residential pervious/impervious calculations and average residential ERU calculation.

3) Miscellaneous

- BCI met with Burger Farm’s engineer concerning storm drainage discharge for future development. OEPA turned down their storm water recharge basin.
- BCI will work with the Street Committee to prepare a Five-year Paving Program
- Sinkhole over pipe at Ragland/Harriett (The sinkhole has been covered for safety by the Maintenance department. They will backfill the sinkhole if it affects the utilities nearby or if the sidewalk begins to sink.)
- Sinkhole at Moundview Park (safety fencing is currently covering the sinkhole) CMorgan will assess sinkhole.

Mayor Kobasuk said it would be best to have a Work Session with the entire Council regarding the Five-Year Paving Program. Council is getting away from the committee format.

Village Beautification Project (Reported by Cheryl McConnell)

This expenditure is in the budget – we just need to formally approve the amount.

**Mrs. McConnell made a motion to approve payment in the amount of \$3,732 to My Flower Service for the spring plantings in the Flower Pot-Beautification project. Mr. Harten seconded the motion. All Aye. Motion Carried.**

### Checklist

**Mr. Tiettmeyer made a motion to approve the 5.24.2016 Council Checklist for \$65,553.62. This amount included the amended amount to My Flower Service. Mr. Zornes seconded the motion. All Aye. Motion Carried.**

### 2017 Budget (Reported by Curt Tiettmeyer)

The First Reading will take place at the 6.14.2016 Council Meeting.

### Police Department Renovation Update (Reported by Curt Tiettmeyer)

The final punch list is in process. Gerry Stoker has been very helpful identifying and making certain issues are being completed in the right manner.

### Breakfast for Veterans (Reported by Joe Harten)

The Newtown Veterans Association and Newtown Business Association are considering sponsoring a breakfast for Veterans. The breakfast would be held at the Moundview House, Saturday, November 12<sup>th</sup>.

**Mr. Harten made a motion to allow the Veterans Association and Newtown Business Association to use the Moundview House with no rental fee for the Veterans Breakfast, Saturday, November 12<sup>th</sup>. Mr. Zornes seconded the motion. All Aye. Motion Carried.**

### Council Minutes

**Mr. Short made a motion to approve 5.10.2016 Council Minutes, seconded by Mr. Zornes. All Aye. Motion Carried.**

### Building/Zoning Commissioner and Property Maintenance Inspector (Reported by Cheryl McConnell)

Gerry Stoker has requested to add two half-days a month to his current schedule. Gerry has been on the job since January and feels an extra eight hours per month would benefit the Village in completing his work. Adding the additional eight hours will not exceed the budget – Gerry could go up to sixty hours at the \$45/hr rate, which would be \$2,700 for the rest of this year.

**Mrs. McConnell made a motion to approve adding two additional half days per month to Gerry Stoker's current schedule for the remaining of this year. This will not exceed \$2,700. Mr. Tiettmeyer seconded the motion.**

### Discussion

Mayor Kobasuk said we wanted to take it slow with this position when Gerry was hired. It has proven to be very valuable having Gerry in the office available to meet with the public during the day. Gerry is a great asset and has added so much value to the Village.

**All Aye. Motion Carried.**

### Zoning Code (Reported by Cheryl McConnell)

A proposal to review and update the Zoning Code will be brought back to Council for consideration. It is believed that the last update was done in the late 90's, which also involved a comprehensive plan. Ordinances that affect the zoning code will also be reviewed. The update will be a thorough analysis and is estimated to take 55-70 hours at \$45 per hour.

### Work Session Discussion: Lake Barber

An outline prepared by Mayor Kobasuk and Councilman Harten was discussed. The five items discussed were: 1) Renaming the Lake, 2) Access to the lake, 3) Charging fees to businesses to use the lake, 4) Establish a group such as "Friends of Newtown Lake" to raise donations for lake maintenance and improvements and 5) Consider offering the lake for sale as part of a comprehensive development of the area.

Discussion continued about the lake remaining private vs. making it public. Mayor Kobasuk feels opening the lake to the public would bring more problems. Chief Synan asked how it would differ from Moundview Park and Short Park being opened to the public. Mayor Kobasuk said it is not the same; Lake Barber is very isolated and there is not a large body of water at Moundview or Short Park. He asked who would police the lake if it would be open to the public. Mrs. McConnell said she believes the public would police itself to a large degree. She feels most people would behave having more people on site. Mrs. McConnell feels there are a host of good reasons for the lake to go public and feels it's an unfriendly way of doing business in Newtown. Mrs. McConnell feels a gated access would be a short-term fix and is not in favor of spending thousands of dollars on what we think is a fix. Police Chief Synan said he doesn't feel the gated access would fix the problems either. Mr. Harten would like to see the lake open to the public. He said let's trust the visitors to the park, but enforce with laws and rules. Mr. Harten said others will feel safer with more people utilizing the lake if the lake were open to the public.

Mr. Fairley asked if the lake was opened to the public, would Council still have the ability to prohibit businesses from utilizing the lake for their profit. Mayor Kobasuk said it would not change anything; the Village's policy covers recreational use and we want to keep that immunity. The Ohio Plan representative said they write the policy because they know they have that Ohio Recreational Use Immunity statute, which is a high legal hurdle to get over. The Village would lose the recreational immunity if we charge a fee. The Ohio Plan also said when a business uses the lake; it's on their insurance, as The Ohio Plan policy would not cover it. Solicitor Miller said Mayor Kobasuk is correct – The Ohio Plan will not insure the Village if a fee is charged. Mr. Harten thanked Solicitor Miller and Mayor Kobasuk for researching the Recreational Use Immunity. He was trying to figure out a way to somehow restrict lake access to businesses and their customers who are participants in the body-politic of the Village without fully going public. Mr. Harten said in his view, going fully public eliminates the need for No. 3 and we wouldn't lose recreational immunity. Mayor Kobasuk said it doesn't solve the problem of a business utilizing the lake. Solicitor Miller said Council can stipulate "no commercial" use of the lake, which is the current status at this point. Mayor Kobasuk said The Ohio Plan said if we had a business using the lake, the Village would have to be a named insured on their policy. And that was not even talking about fees. Solicitor Miller said if a fee was being charged, the Village would not have their own coverage. The coverage from a business would only cover the Village for their activities, not anyone else's activity. Mayor Kobasuk said it becomes problematic relying on a business to provide insurance coverage. As it stands now, the Village has two lines of defenses regarding the lake: 1) the recreational immunity statute because no fees are being charged to access the lake and 2) The Ohio Plan's policy that covers any recreational activity at the lake. Mayor Kobasuk said he would never give up the two lines of defenses. Mr. Tiettmeyer is not in favor of the card access at this time due to the expense, plus the management of the cards will require a lot of administrative time. Mayor Kobasuk and Solicitor Miller will discuss various questions with the insurance company and bring back an outline at the next Council meeting.

Doug Hall made a suggestion to Mayor Kobasuk to form a charitable group that would raise donations to offset expenses at the lake. A segregated fund would be established in the Village where contributions to the fund would be tax deductible because we are a governmental entity. Solicitor Miller said contributions would be made to the Village so there wouldn't be an issue if the lake was made private or public.

**Mr. Harten made a motion to establish a tax deductible segregated account to create a restricted fund for Friends of Lake Newtown and encourage interested parties to contribute to such a fund. Mr. Zornes seconded the motion. All Aye. Motion Carried.**

While Mr. Harten is not a proponent of selling the lake at this time, he said Council should consider the possibility of offering the lake for sale given the potential redevelopment in the area. Mayor Kobasuk is not interested in selling the lake. Mr. Tiettmeyer agrees with Mr. Harten and thinks the idea should be kept in our back pocket. He is not giving up on the lake or advocating selling it at this time. Mr. Tiettmeyer said if this doesn't work, Council is still making decisions of value for the residents from a profit on the lake. Mayor Kobasuk thinks the lake would be a key part of developing the corridor along SR32. The lake is such an asset for the Village and I would never consider selling it during his time on Council, stated Mayor Kobasuk. He thinks the lake should be preserved for future Council's to develop Newtown.

#### Lake Barber – Revolution Fitness

Mr. Short said after considering whether Council should allow Revolution Fitness to use the lake, he made the following motion:

**Mr. Short made a motion to *not* approve lake access for Revolution Fitness. Mr. Zornes seconded the motion.**

#### Discussion

Mr. Harten said he feels the motion is a bit early after spending a lengthy amount of time discussing this issue through and have open issues on the table. He will vote NO if asked to vote on the motion. Mr. Tiettmeyer feels no action should be taken since the ordinance that has been adopted says Revolution Fitness is not allowed to use the lake. Whatever Council decides includes all other businesses as well. Mayor Kobasuk said he has a problem having one business gain access to a Newtown asset and being able to utilize the lake as a for profit entity. Mr. Fairley asked what Council is voting on since the ordinance presently states Revolution Fitness is not allowed use of the lake. Solicitor Miller said it is reaffirming that Council doesn't want the lake used for commercial use. Mr. Harten said it is troubling that Council seems to be focusing in on one particular business. Council hopes to come to a conclusion in the next thirty days after clarifying outstanding questions regarding insurance. After more discussion, the following vote was taken:

**Roll Call: Mr. Tiettmeyer-No, Mr. Zornes-Yes, Mr. Short-Yes, Mr. Fairley-Yes, Mrs. McConnell-No, Mr. Harten-No, Mayor Kobasuk-Yes. Motion Carried.**

Solicitor Miller will send another letter to Revolution Fitness to cease and desist and revise the ordinance restricting access.

**Mr. Harten made a motion to prohibit all Village businesses from using Lake Barber for any commercial venture whatsoever. Mrs. McConnell seconded the motion.**

Discussion

Mayor Kobasuk said a business can use the lake if they are paying the tax since it's opened to businesses and residents. Mr. Harten said the motion prohibits commercial use. Solicitor Miller said both motions are already in the ordinance. Mr. Tiettmeyer said he feels it's appropriate to take the action to make it clear Council has not made a decision on who is going to use the lake at all. Mrs. McConnell added that it's appropriate to take action to show Council has not singled out one particular business.

**Roll Call: Mr. Harten-Yes, Mrs. McConnell-Yes, Mr. Fairley-Yes, Mr. Short-Yes, Mr. Zornes-Yes, Mr. Tiettmeyer-Yes. Motion Carried.**

Mr. Short made a motion to adjourn at 8:40pm. Mr. Fairley seconded the motion. Motion Carried.

Transcribed by Becky Fairley