

## REGULAR MEETING OF THE COUNCIL OF THE VILLAGE OF SILVER LAKE

Tuesday, February 22, 2022

7:00 p.m.

The Silver Lake Village Council met in regular session on Tuesday, February 22, 2022, at Silver Lake Village Hall, 2961 Kent Road, Silver Lake, Ohio. The meeting was only in-person.

With Council President William M. Church presiding, the meeting was called to order at 7:00 p.m. Mr. Church led the Pledge of Allegiance.

These members were present and responded to roll call: Mr. Dann Nivens, Mr. Phil Kaplan, Mr. Matthew Plesich, Mr. William Church, Mrs. Therese Dunphy, Mrs. Betsy Meyer and Mr. Christopher Scott. Members of Council present were 7; members absent were 0.

Mr. Church asked for additions or corrections to the February 7<sup>th</sup> minutes. [There being none, the minutes were approved as submitted.] He called for the readings.

**First Reading:**

**RESOLUTION NO.: 18-2022 A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR, ACCEPT, AND ENTER INTO A COOPERATIVE AGREEMENT FOR CONSTRUCTION OF 2022 ENGLEWOOD DRIVE IMPROVEMENT PROJECT BETWEEN THE VILLAGE OF SILVER LAKE AND THE OHIO WATER DEVELOPMENT AUTHORITY AND DECLARING AN EMERGENCY. (Finance & Appropriations)**

**Second Reading:**

**ORDINANCE NO.: 13-2022 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$3,000,000 TO PAY THE PROPERTY OWNERS' PORTION, IN ANTICIPATION OF THE LEVY AND COLLECTION OF SPECIAL ASSESSMENTS, AND THE CITY'S PORTION OF THE COSTS OF IMPROVING ENGLEWOOD DRIVE BETWEEN THE TERMINI OF GRAHAM ROAD AND LAKE ROAD BY PAVING, GRADING, CONSTRUCTING AND RECONSTRUCTING CURBS, CONCRETE SIDEWALKS, DRIVEWAY APPROACHES, STORM SEWERS AND WATER MAINS, ALL TOGETHER WITH THE NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY. (Finance & Appropriations)**

**Third Reading: None.**

**Comments from the audience (3 minutes each):**

**Mrs. Carole and Mr. Larry Rice, residents:** Hello. We've been residents here for 5 yrs. and we love the community here. We had a surprise on Dec. 6 and 7: raw sewage in our basement. We called a cleanup service on Dec. 6<sup>th</sup>, and they cleaned it up very quickly. The next morning, we found more raw sewage, over 3 in., covering our entire basement. We called Mr. Lipan; he responded very quickly and brought a truck to fix the problem. He ran the line up about 170 ft. and found a blockage; after it was removed, our basement looked like someone had pulled the plug out of a bathtub. We filed a claim with State Farm and maxed out. It's good we were able to catch it and alert Mr. Lipan of the issue before other homes were affected. We're just trying to get our house back to normal. Thank you. [The Rices filed a moral claim with the Village for approximately \$13,000, which Council would discuss during miscellaneous business.]

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FINANCE AND APPROPRIATIONS COMMITTEE - Mrs. Dunphy

RESOLUTION NO.: 18-2022

Mrs. Dunphy read the legislation, drew Council’s attention to the sample loan amortization schedules provided, and invited Mr. Housley to explain. Mr. Housley stated the legislation was boilerplate, created by the Ohio Water Development Authority [OWDA], to allow the Village to apply and to allow the mayor to sign the agreement with OWDA if the application is accepted. Of the amortization schedules before Council, Mr. Housley liked the 30-yr. plan at an interest rate of 1.78%. The other option was a 20-yr. plan at 1.6%. Given the expected rate increases, Mr. Housley thought it would be better to go with the 30-yr. plan rather than put more cash into Englewood. The \$1,372,802 on the application was from an estimate from EnviroScience [Village’s engineer and oversight firm] that covered the water, sewer, and stormwater portion of the cost; the \$1,372,802 did not cover the governmental costs, like street-widening, curbs, sidewalks, etc. Mr. Housley found the Village could easily put \$1,000,000 down on the project, in addition to the \$300,000 expected from ARPA [American Rescue Plan Act; federal law that allocates money to many different areas, including municipalities]. The Village could put down enough cash to cover the governmental costs of the project, or issue debt if Council wished to. Mr. Housley requested Council hold Ord. 13-2022 for another reading, in case the note and bond route was chosen. If Council passed 18-2022, Mr. Housley would submit the OWDA application.

Mrs. Dunphy inquired about a possible pre-construction meeting, and Mr. Housley replied he didn’t think that was necessary since the Village was already in the process of seeking funding. Mr. Scott asked why Mr. Housley preferred the 30-yr. plan. Mr. Housley responded it was a \$60,000/yr. principal and interest payment, as opposed to \$80,000/yr. The Village could afford \$80,000/yr., but Mr. Lipan had other upcoming projects. The 30-yr. plan would also lock in the 1.78% rate. Mr. Scott pointed out the 30-yr. plan cost \$168,673.25 more in interest. It was determined that payments would come entirely from the enterprise funds, nothing from the general fund. The stormwater fund currently had enough to cover its share of 50-70%; it’s paid down some advances it received, but could always receive another advance. Mr. Church mentioned future projects, and stated the 30-yr. plan might be more desirable. Mr. Scott said the 30-yr. plan was fine, but the 20-yr. had the better interest rate and got rid of the debt faster. Council had the final say over which amortization plan the Village chose. Mr. Housley normally wouldn’t recommend a 30-yr. loan, but the low interest rate and upcoming projects made this an exception. Various Councilmembers voiced support for the 30-yr. plan.

It was determined the Village would pay for the governmental costs out of the capital improvement fund which would then receive the assessments. Mr. Housley suggested financing the sidewalk program internally at the going market rate. It was added that debt could be put in the general fund. It was clarified the application wasn’t competitive, and the Village would get a discounted rate because the Village had worked with OWDA before.

Roll call to suspend the rules	Yes	7	No	0
Roll call to adopt	Yes	7	No	0

FINANCE AND APPROPRIATIONS COMMITTEE - Mrs. Dunphy

ORDINANCE NO.: 13-2022

Mrs. Dunphy read the legislation and asked Mr. Housley to further explain. Mr. Housley wanted to compare OWDA’s updated rates to Sudsina’s [Village’s municipal advisor]. The Village would

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probably not issue notes and bonds, but Mr. Housley would like to leave it as an option for a bit longer. It was determined the Outlook waterline project would also be eligible for the same rate.

It was decided to hold Ord. 13-2022 for another reading.

The payment of claims dated Feb. 7, 2022, was accepted as distributed.

The statement of cash position dated Jan. 31, 2022, was accepted as distributed.

**REPORTS OF VILLAGE OFFICIALS**

**Mayor Hovey:** As Council knows, we've been planning a veterans memorial out front. We've changed it to a veterans tribute garden because we want to honor veterans both deceased and alive, and their families. The committee has met several times, and a schematic has been created. The committee will be going to bid to local landscapers; after that, we should know how much it will cost. We have about \$3,000 left over from the Village's centennial fund, and I ask that money be moved to the veterans garden fund as seed money. That's all.

**Mr. Robert Heydorn, Village Solicitor:** No report.

**Chief Jamie Norris, Chief of Police:** Our annual report is complete and on the website. Printed copies are available upon request. We lost a full-time officer, as expected. We have 2 candidates, one part-time and one full-time. I hope to have someone sworn-in soon. We've also going to put an officer on the Metro SWAT team; we're going to put on a negotiator, which suits us better and doesn't require high equipment costs. All training involved is similar to the crash team: once a month, during normal hours. The only overtime would be if there was a call. That's all.

**Mr. Mark Lipan, Service Director:** Yesterday evening, we had a watermain break on North Oakhill Rd. and in the process of fixing it, we found 4 bad valves. We're replacing the worst tomorrow, and putting the rest on our replacement schedule. Also, we're pumping out Chatauqua.

We had the bid opening today for Outlook; you can see the unofficial results in front of you. It was competitive and the winning bid was \$292,911; the engineer estimated between \$367,000-428,000. We had the preconstruction meeting for Englewood today; they're starting on Monday. We're going to put as much information as possible on the website, maps, detours, etc. The first step is clearing all the vegetation in the right-of-way, and we're going to send letters to homeowners about that.

The gas company is still working; they're running laterals from the main line to the houses. They're a good company, and they'll handle any damages.

Mr. Nivens inquired about digging up the hole in front of 3020 Kent Rd. and putting concrete in it. Mr. Lipan said current conditions were too wet; they had been putting cold patch in it every other day. It's a sore subject. When the curb there was redone, concrete slurry, a concrete mix that does not harden up and breaks down when wet, was put in, which caused the reoccurring issue.

**Mr. Sean Housley, Clerk-Treasurer:** We have our final sewage treatment numbers for 2021. In 2021, we spent \$330,000 treating sewage; in 2020, it was \$305,000. That's an increase of just 8%, which is impressive given Akron's increase of 34%. However, December is usually one of

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our lightest months, usually less than \$20,000 on average, but in 2021, it was \$37,000. It does seem large, but it's not out of reason. We had more than 3 in. of rain, so that could be why.

Regarding the Outlook project, we've got some options for financing. In the past, I applied through OWDA for an interest-subsidized loan, but our median household income was too high. I can start an application to get 2% for the \$292,911, or Council could wait 6 months or more so I can complete some applications. They're all competitive; every application I've seen is competitive. I've already applied for all non-competitive funds. Waiting could mean higher interest. I plan to complete an OWDA application for Outlook if that's acceptable to Council. [Various Councilmembers voiced support for submitting the application now.] I may be able to have the application ready before the end of this month if Council wouldn't mind a special meeting to approve it. That would lock in our interest rates sooner. I'll check the application process and ask Mr. Church for further direction.

**Miscellaneous Business:**

Mr. Church read a thank you note from the Garden Club to the Council and Park Board. The Garden Club expressed its appreciation for having its part of the flower budget covered.

Mr. Church opened the floor for discussion regarding the Rices' moral claim. Mrs. Dunphy asked Mr. Lipan where the backup occurred. Mr. Lipan informed Council that when called for a backup, the usual protocol involved running a line both upstream and downstream. In this case, the blockage was about 170 ft. upstream. When the blockage was jetted out, it was found to be disposable wipes. To Mr. Lipan's knowledge, only the Rices were affected. It was clarified the Rices were asking the Village for about \$13,000 [the difference between their insurance payout and their total costs]. Mr. Church said the question was one of responsibility and invited input.

Mr. Heydorn stated similar issues have been handled before. This might not be a moral claim because a moral claim usually involved some degree of immunity. This claim involved a maintenance issue, rather than design or construction. Claims over maintenance issues were usually basic and could involve some liability. To justify using taxpayer money, the Village must accept some degree of fault. Mr. Lipan informed Council there were 8-9 sections of sewer known to be troublesome, so the Service Dept. jetted them at least once a year. The section in question had been receiving annual jetting since 2014; it was also camera-ed, which found some offset joints. The section in question was cleaned out May 2021 and Sept. 2021.

Mr. Kaplan asked whether the Village's insurance would cover this. Mr. Heydorn answered the Village's insurer would look at the claim if immunity wasn't involved and only if the Village was more than 50% liable. The Village has never tried to take a claim to its insurer because claims have usually involved immunity. Mr. Heydorn thought the Rices' claim raised a maintenance issue. Mr. Kaplan expressed sympathy for the Rices' situation. He asked whether making a payment could open the Village to the Rices' insurer also asking for payment. It was clarified the Rices' insurer paid out the maximum limit given on their flood insurance. Mr. Heydorn said subrogation [substitution of a person/group by another in respect of a debt or claim, accompanied by the transfer of any associated rights and duties] is mostly used in the case of car accidents, and he's never seen it in a case like this. Mr. Kaplan mentioned his experience in the insurance industry, and explained that while most insurance companies didn't go after municipalities, there's always a chance and he didn't want to open the Village up to that. Mr. Kaplan then asked the Rices about invoices included from Jan. 2022. Mr. Rice explained their

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basement needed several cleanouts, including drywall removal. Their house was built in 1966 and the basement electrical work hadn't been inspected since, so they wanted to be extra sure everything was alright. Mr. Heydorn said the Village usually compromised claims and made no admission of liability, similar to settling a personal injury case.

Mr. Nivens asked Mr. Lipan when he spoke with the Rices. Mr. Lipan answered he talked to them on Dec. 7<sup>th</sup>, the day the Vactor went and cleared the backup. Mrs. Dunphy reiterated the question of liability. Those lines had been camera-ed and the Village was doing the suggested annual maintenance; she questioned whether there was anything else the Village should have been doing. The Village couldn't control what its residents put into the sewers. Mr. Heydorn said Council must determine standard of care since a uniform standard across municipalities probably didn't exist. He said the question was whether the Village's policy of regular jetting for troublesome areas was a reasonable standard. Mr. Church asked whether the lateral to the Rices' home had roots growing into it or some other sort of blockage. It was clarified the issue was most likely [Mr. Lipan couldn't confirm 100% without someone going down there] caused by the blockage in the Village mainline. The Service Dept. didn't touch the Rices' line, but the Vactor would have been able to clear a blockage from a lateral.

Mr. Plesich summarized: the issue happened on Village property, in a known troublesome area, immunity didn't apply here, and there was potential for liability. The Rices' situation was compared to a past claim in the Heights, which received a compromised payment on the rationale that the claimants did the Village a favor by drawing attention the problem before it became widespread. The Heights claim also involved a substantial insurance payout, and the Village was never approached by that insurer for repayment. During Mr. Heydorn's tenure, the Village had never been approached for repayment by an insurer in such a case. It was determined the Village had very few sewer blockages per year, and the majority were nowhere near this level. It was determined the Village might face legal action for refusing to pay the moral claim, but paying the claim might allow the Rices' insurer to ask the Village for repayment. Mr. Kaplan stated if the issue was redirected to the Village's insurer, the Village's insurer would pay the Rices' insurer if necessary; the money wouldn't come directly from the Village's pocket.

It was determined the Village couldn't pay to improve the Rices' home, but just to fix the damage. It was determined charges from Jan., totaling around \$905, would not be considered. Mr. Church asked whether Council wanted to deny the claim, compromise the claim or pay the claim in its entirety. Council decided to pay a compromised amount. After the appropriate procedure, the Village would pay the Rices \$6,095. Village residents were asked not to put disposable wipes into the sewers. Mr. Church expressed sympathy for the Rices' situation.

Mrs. Dunphy informed Council the stormwater study proposal was ready. EnviroScience decided new locations would be necessary, taking into account the time gap and environmental changes since the 2015 report, and would aid the formulation of suggestions for immediate action. EnviroScience agreed to give quarterly reports. Council was amenable to having the proposal brought at the next meeting.

Mr. Nivens stated he received a call from a resident. Kimble didn't pick up the trash. When the resident called Kimble, they said they're unable to access the resident's home. Mr. Nivens directed the resident to the mayor. The mayor couldn't recall this, but he may have directed the resident to Mrs. Lipan [Village Administrative Assistant]. The mayor praised Kimble.

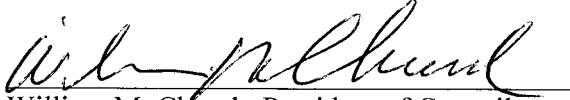
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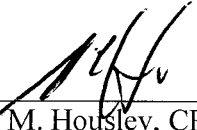
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There being no further questions or comments, Council unanimously voted to go into executive session at 8:20 p.m. The next regular Council Meeting will be on Monday, March 7, 2022, at 7:00 p.m.

APPROVED:

  
William M. Church, President of Council

ATTEST:

  
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Sean M. Housley, CPA  
Clerk-Treasurer  
prepared by: Kathryn Kleinhans, Assistant to the Clerk-Treasurer