

## SPECIAL MEETING OF THE COMMITTEE OF THE WHOLE

**Tuesday, August 10, 2021****6:30 p.m.**

The Committee of the Whole (COW) met for a special meeting on Tuesday, August 10, 2021, at Silver Lake Village Hall, 2961 Kent Road, Silver Lake, Ohio. The meeting was only in-person.

With Council President William Church presiding, the meeting was called to order at 6:31 p.m.

These members were present and responded to roll call: Mr. Dann Nivens, Mr. Tim Nichols, Mr. Matthew Plesich, Mr. William Church, Mrs. Betsy Meyer, and Mr. Christopher Scott.

Roll call of the Committee – 6 members present. Absent – 1, Mrs. Therese Dunphy was absent during the roll call, but arrived later during the meeting.

Also present: Esteemed community members Mr. Terry Steel, Chair of the Charter Review Commission (CRC) and Ms. Carol Steiner, CRC. Mayor Bernie Hovey, Solicitor Bob Heydorn, and Clerk-Treasurer Sean M. Housley were also present.

Mixed discussion occurred about Mrs. Dunphy's absence, and Mr. Housley called her cellphone. It was decided to hold the motion to excuse for 5 min. in case Mrs. Dunphy did come.

Mrs. Meyer: Before we start, I want to ask Mr. Heydorn what we should do if COVID gets worse and the governor doesn't allow teleconferencing? [Mr. Heydorn recommended wearing masks and clarified that changes to state law must come from the state legislature. Mixed discussion occurred regarding infections. The mayor offered to make masks mandatory for the August 16, 2021, Council Meeting, and it was decided masks should be strongly encouraged.]

Any corrections to the July 13, 2021, COW Meeting Minutes? [There being none, the minutes were approved as submitted.] Any corrections to the July 19<sup>th</sup> minutes? [There being none, the minutes were approved as submitted.] This is our third meeting. We've made progress. We've got 4 issues going on the ballot in November. Let's start with 33-2021.

Mr. Scott: I have a question. The changes are only Exhibit A, right? [Mr. Heydorn confirmed that the ballot language had not changed.] When I read this, it seems like that second "shall" was... it seems like it can go away. [Mrs. Meyer agreed.]

Mr. Heydorn: I see why this is disjointed. The first clause has the residency requirement *before* election, and the second is about remaining qualified *during* your term.

Mixed discussion occurred regarding the correct language to express Council's intent. Mr. Housley and Mr. Heydorn clarified the obligatory process for serving notice of charter changes.

Mr. Heydorn: Okay, so each councilmember shall be a qualified elector of the district in which he/she lives and end there. Is everyone satisfied with that? [Several Councilmembers voiced support, and there were no objections.] I'll have that for next time.

**SPECIAL MEETING OF THE COMMITTEE OF THE WHOLE****Tuesday, August 10, 2021****6:30 p.m.**

Mrs. Meyer: Alright, I wanted to discuss 32-2021, but I also want Mr. Housley to talk. Before that, mayor, what do you really want in regards to a clerk-treasurer? And what do you want future mayors to have? I mean, what do you want with the clerk-treasurer if we give it to you?

Mayor: The main thing that I want, since the mayor works with the treasurer daily, but our Charter allows him no voice in that selection, and I think that should be corrected. To me, the absolute most important thing is the mayor should be involved in the selection of the treasurer.

Mrs. Meyer: Mr. Heydorn, could you explain our existing form of government?

Mr. Heydorn: Looking at the Charter as it is now, it is most consistent with a moderate mayoral form, as opposed to a traditional village form, of government. Keeping the treasurer solely and only responsible to Council was seen as a good separation of powers. But that's not true. It's not a separation of powers, but a combination of powers into Council. If it was true separation, there would be separation between the branches involving the treasurer. The checks and balances system is based on the checks between branches of government, and most people don't understand that. The last selection of the kind of government we have was, arguably, decided on the personalities involved at the time. If you look at forms of government as a political scientist would, you have to classify us as a hybrid of moderate mayoral form at this time, at least concerning the treasurer. The clerk-treasurer right now takes it out of that form.

I've never wanted the strong mayoral form like you see in cities. They have a fiscal officer, who is normally appointed by the mayor and confirmed by Council, but the strong mayoral form allows the mayor to unilaterally fire the fiscal officer, just like the department heads. I've never advocated that because I believe checks and balances should be throughout. No one branch should be able to appoint or remove; it should be shared. I told the CRC the same, and they thought it was reasonable and that's why we produced what we produced. The difference with that form of government argument was that it utilized this concept of "supervision." I've never really liked that because the term "supervision" is really not a charter term. You never really see the word "supervision" in a charter because usually that's implied by how a person is appointed and confirmed and removed and confirmed. That gives that person the obvious thought pattern of "If I don't please the mayor, then the mayor will probably seek to remove me. But if I please Council, then they won't confirm the removal." I think that would be a reasonable compromise. In the record, you can see how Council voted before, and I read their arguments and it looks like the sticking point is this question of supervision and what is the true independence of the fiscal officer?

My purpose always was to give the fiscal officer the same sort of independence I feel I have as Solicitor. I realize this is hearsay, but I remember when Mayor Mendenhall came to me after his election and said, "I think I'll keep you as Solicitor." I said, "Good luck, because if you don't, I'm still liked by Council. So, you're going to have to put up with me." He looked shocked that he couldn't do that. I avoided the issue I had in Norton, where the newly elected mayor came to me and tried to dictate my opinions, and I said no. In that situation, I could see that that would continue forever, even though I built this concept into the Norton Charter. It seemed to me that our personalities clashed so badly, so I left after 10 yrs. there. I won't let anybody control my opinions, whether it be the mayor or the Council, because my opinions have to do with both.

## SPECIAL MEETING OF THE COMMITTEE OF THE WHOLE

Tuesday, August 10, 2021

6:30 p.m.

Looking at the clerk-treasurer, he/she is a professional, who cannot do certain things because they're against the law. What's worse for the clerk-treasurer is that he/she is personally, fiscally liable for the outcome if he/she does those things. So, why wouldn't you strengthen that position to be independent to do the right thing? I'll give you an example: Mayor says, "Okay, we need this money right now, so you'll say on the Certificate of the Fiscal Officer that it's in the process of collection." The treasurer says, "No, I can't do that. It's not in the process of collection. I won't sign that affidavit because if I do, I'm personally liable for this contract." If the treasurer is independent, the mayor has to back off. But if the mayor can fire... The same thing happens with Council. Suppose Council wants the treasurer to move money around without proper authorization to avoid public notice. The treasurer can say no to Council. The whole thing has always been trying to create the independence of the Treasurer. The old form kind of did that, but "supervision" screwed it up, so I changed that in Sec. 3.04. This deal about joint approval was totally the concept that was worked out between the mayor and the clerk-treasurer. I thought the old way was fine, but if this allows a compromise between the clerk-treasurer and the mayor, and Council realizes that this is a better check on abuse of power than what we currently have, then I would certainly advocate the way this new change is written, as Solicitor.

Mr. Plesich: In a strong mayoral form, isn't there a separate clerk of Council? They're separate?

Mr. Heydorn: In a city, you won't find that division. There is a separate office of clerk of Council, and there is a finance officer, totally separate. The idea of the treasurer also being appointed clerk of Council, and being able to wear 2 hats, came from a hybrid form of village government. That's how our Charter is currently. If you change it so the same person *must* hold both positions, that would violate separation of powers. The clerk of Council is the only position where loyalty should be solely to Council, as servant of Council. It's not violating the separation of powers to *allow* the treasurer to also be the clerk of Council.

Mr. Church requested Council's permission to delay the Special Council Meeting. [Council agreed.]

Mrs. Meyer: I'd like to hear Mr. Housley speak. After that, we can move on.

Mr. Housley: I tried to put together a presentation of facts, to remove the personalities and emotions from my discussion with Council. I don't plan on offering my personal opinion unless specifically asked because it doesn't matter. It's really all on Council. As I proceed with this, I want you to know that I tried my best not to make this personal. For background, my current responsibilities and functions, not identified in the Charter, my job description, or my evaluations, include human resources administrator, benefits administrator for healthcare, part-time risk administrator for insurance, which I acknowledge as my role on our insurance application, income tax administrator, and until recently, managed technology (IT) administrator. In addition, I'm Village Clerk and Village Treasurer.

A few weeks ago, Mrs. Dunphy asked me which structure works best for me. That falls in line with the type of presentation I'd like to make, what structure works best for the treasurer. The best structure for me is skill and independence. I have a fiduciary duty to both the legislative

**SPECIAL MEETING OF THE COMMITTEE OF THE WHOLE****Tuesday, August 10, 2021****6:30 p.m.**

and executive branches of complete trust and good faith. Neither side should feel like they couldn't completely put their trust and faith in me. Undue influence to induce me to act against my own free will should be nullified. This is entirely on Council to protect.

In the current Charter, the clerk-treasurer's duties include, but are not limited to, preparation of the annual budget and financial reports, to be made available to both branches of government and the public, equally [5.02]. When I put together my year end reports, I have to publish notice making the public aware that those are available for viewing. Duties also include auditing of bills, invoices, payrolls, and any claims against the Village [5.02]. Both the legislative and executive branches have spending limitation authorizations, which is another reason for undue influence to be nullified, minimized.

Some additional background, I've read all the minutes related to the 1999 CRC. It was around 80 pages. In my opinion, some of the arguments from both sides seemed based on emotion and lack of knowledge. I couldn't agree 100% with either side. The intent of the 1999 CRC was to move away from a standard village charter. The major change? The mayor was removed from Council, from a more unified system to one that exists based on separation of power between legislative and executive. Mr. Heydorn has stated this several times, and I agree. In 1999, Ord. 79-1999 separated the mayor from Council. Ord. 80-1999 allowed Council to appoint the treasurer's deputies and assistants. The Ohio Constitution provides guidance for amending charters, and it doesn't require a CRC. Ord. 82-1999 mandated the creation of a CRC every 8 yrs. The CRC is an advisory and recommending body only, and should be nonpolitical. There's no current requirement for the mayor to hold office hours. Any subsequent mayor may become an absentee mayor; there's no way to stop that.

Mr. Housley sought Council's permission to continue his presentation with the information requested by Council during the July 13, 2021, COW Meeting. Council gave permission.

Mr. Housley: During the July 13, 2021, Committee of the Whole Meeting, I was asked to reach out to all clerk-treasurers in adjoining counties, and ask them 3 questions. According to ohio.gov, there are 23 clerk-treasurers in Summit County and its adjoining counties. We removed 3 because 2 villages had become unincorporated and the third was us. We were unable to obtain any answers from 6 for various reasons. Some of these communities are so small that they're never in their office, they don't have a website, and I couldn't find a working phone number that they would answer. I tried. Of the remaining 14, 5 (36%) had a charter and 9 said no, they were statutory; 7 were elected, which should be at least 9, but we couldn't obtain all answers from the remaining 14; 7 said the Clerk-Treasurer answered to the voters, one said the mayor and Council president, one said Council, 2 said the mayor, and 3 unknowns.

In addition, I had some legal questions for Mr. Heydorn. I currently have all the oaths for the members of the CRC and none of them are signed. What does that mean, and what should we do? [Mr. Heydorn responded that there was no legal requirement for oaths.] In prior CRCs, oaths were signed by the members, and some of them were notarized. [Mr. Heydorn replied that since the CRC is not exercising sovereignty in the Village, an oath is not legally required. The CRC is totally a recommending body and has no sovereignty.] In the audios of the 2021 CRC, there was discussion of email communication outside of meetings. Those are Village records, and I am the custodian of the records, so I'd like the CRC members to forward them to me. [Mr. Heydorn

## SPECIAL MEETING OF THE COMMITTEE OF THE WHOLE

Tuesday, August 10, 2021

6:30 p.m.

agreed they were public records and agreed to send them to Mr. Housley.] Thank you, Mr. Heydorn.

Mr. Steel: If I could... The CRC knows our report is only a recommendation, and Council can do whatever you want.

Mrs. Meyer: I notice Mr. Heydorn gave us another change to 36-2021. We can discuss it at our next COW meeting on August 31<sup>st</sup> at 6:30 p.m.

Mr. Heydorn: If you do that, unless you call a special meeting, it won't get approved until your next regular meeting. That will give Mr. Housley very little time to get it to the Board of Elections (BOE). Let's say he runs down and gives it to them the day after you pass it, but if there are changes, he won't be able to make the deadline.

Mrs. Meyer: Can we delay it until next year? We've done that before. There's no rush. [Mr. Nivens agreed.]

Mr. Housley suggested including the handout with Mr. Heydorn's latest changes in the Council Packet for Aug. 16<sup>th</sup>. It was determined that the BOE deadline was Sept. 3. Mr. Housley said the BOE had called twice and wanted the necessary materials as soon as possible. Mr. Scott repeated that Council had divided amendments across multiple years before, and Mrs. Meyer concurred. Mr. Heydorn told Council that his latest change is the correct solution, and if Council waits, the interested parties may not be in agreement again.

Mr. Nivens: Council is an interested party, too. It doesn't make any difference what the current compromise is; the voters already said no twice. We all have to be involved in this. I agree that the mayor should have input on the clerk-treasurer, but the clerk-treasurer needs to be separate, not under the supervision of the mayor. Over the years, all the clerk-treasurers we've had were department heads like the police chief and the service director. Mr. Housley is a strong, operative clerk-treasurer. He's been involved in everything. He's at the meetings; he knows. I have a problem with allowing the mayor to supervise everyone.

Mr. Church: I suggest that we all read Mr. Heydorn's latest change, and at our next meeting, we can decide if this is a good change. We need to act on this thing; we can't put it off. We want to make the deadline for all of these, if possible.

There being no further questions or comments, the Committee adjourned at 7:30 p.m., until the next Committee of the Whole Meeting on Tuesday, August 31, 2021, at 6:30 p.m.

APPROVED:



William M. Church, President of Council

SPECIAL MEETING OF THE COMMITTEE OF THE WHOLE

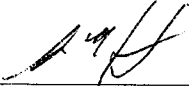
Tuesday, August 10, 2021

6:30 p.m.

APPROVED:

  
\_\_\_\_\_  
Betsy Meyer, Personnel & Public Affairs Chair

ATTEST:

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