

**VILLAGE OF MARIEMONT  
REGULAR COUNCIL MEETING HELD IN COUNCIL CHAMBERS  
NOVEMBER 27, 2017**

Mayor Policastro called the meeting to order at 7:00 p.m. with the Pledge of Allegiance to the flag. The following Council members answered present to roll call: Mr. Brown, Mr. Hlad, Mr. Marsland, Ms. Palazzolo, Ms. Schwartz and Mr. Wolter.

Mr. Marsland moved, seconded by Ms. Schwartz to approve the minutes as written for November 13, 2017. On roll call; six ayes, no nays.

Mayor Policastro read the following communications:

From Engineer Ertel: Memo Dated November 15, 2017 re: Steam Plant Development. Engineer Ertel said he has been working with Mr. Heines and his site design engineer on a possible grant application for storm water improvements. The application is not due until February 1, 2018 and the Ordinance had the first reading at the last Council meeting. Mayor Policastro said Mr. Heines wants to give the Village the hillside and he believes it is something that Council should discuss. With what is happening on Mariemont Avenue we need to look at this closely. He referred the matter to the Committee of the Whole. Mr. Wolter agreed that it should be heard by the whole Council.

From Jim Howe: Thank you Police Department

From Erin Stricker: E-mail dated November 21, 2017 re: Street Lighting Cambridge Avenue. Mayor Policastro referred the matter to the Public Works and Service Committee. He said he is hopeful that it can be incorporated with our Safe Ways to School Grant.

From Jerry Vianello, 6570 Wooster Pike, was granted permission to address Council. Over the last couple of months and prior to this year's election, a number of comments have been made throughout the community regarding the gabion wall near Whiskey Creek, behind Clem Luken's home on Mariemont Avenue and the Mayor's involvement (by forcing this issue through Council vs. going to a Committee of Council for discussion and review). His intent in bringing up this topic is not to point fingers at Council or any individual but to attempt to set the record straight. For citizens and elected official who are interested in the facts as to how this gabion wall was approved, they should reference the Council meeting minutes from April 25, 2016. From those minutes, one can conclude there were multiple phases to the overall project. On the gabion wall phase, the Mayor did not participate in the approval process for the wall. In fact, Mayor Policastro was out of the country. The ICRC video shows that the gabion wall was very briefly discussed, not put in to a Committee of Council for proper vetting and examination but was brought forward at that time for a vote. The vote was five ayes and no nays.

Mayor Policastro said he was visiting our Sister City, Hampstead Gardens, in England.

Mr. Wolter said prior to the Mayor's departure Council was told that the Mayor had Engineer Ertel look at it and that there was a grant to pay for it and he had a good company to do the work. The work needed to be done ASAP. Council trusted that the information was accurate and that is why Council voted how we did. Council has learned a lesson as a group to say from now on all issues are going to be vetted through a Committee of Council. It is the way our statute is written and it is the way we are going to do things.

Mayor Policastro said he and Mr. Wolter received a letter from Mr. Luken and the Mayor indicated that Council will look into it and will see if we can get a grant. Some of the things he wanted to do, such as talk with Mr. Galenstein, to see how he saved the Promenade, he could not do that because the vote was already done when he returned from out of the country. He said Mr. Wolter called him multiple times saying we have to do something for Mr. Luken. He agreed and wanted to help him any way we could.

Mr. Wolter said that was correct because the hill was moving and it needed to be dealt with.

Ms. Schwartz said it does not matter what information the Mayor gave to Mr. Wolter prior to the meeting – it did not have to be voted on that night. By the time the vote got to her it was already passed. She did vote yes. It was brought to a vote instead of putting it in a Committee of Council. The buck stops there. She does not care what the Mayor gave to Council ahead of time. The problem is the finger is being pointed at the Mayor.

Mr. Wolter said that is easy to say but at that time that was not how Council was doing business. Council was doing business in a very casual and trusting way. We made a mistake. He has certainly learned a lesson and other members of Council have expressed the same. We are going to put matters into a Committee of Council period. He said the Mayor had made the comment if we put it in a Committee of Council it will just roll around in circles forever and nothing will get done.

Mayor Policastro said wait a minute. Mr. Wolter said the Mayor made that comment at an ARB meeting. Ms. Schwartz and Mayor Policastro said no they do not remember that being said.

Solicitor McTigue said he does not know if the comments were made or not but the point he made initially is true that we have all learned a lesson. Mr. Wolter agreed and said we do not need to go further. Solicitor McTigue said we do not to point fingers at anyone. From this day forward we will have to be sure that matters go before a Committee of Council. Mr. Luken's situation is a major issue for the Village but it does not deserve to argue on who said what and when they said it.

Mr. Wolter said he feels his integrity is being impugned and he feels he can say that on behalf of other members of Council. We did not do our job and he agrees with that but we were operating under a different method and it was not a good method. We did not do our jobs according to the ordinances of this Village.

Ms. Schwartz said not for a topic like that. If it was something small, yes, because we voted certain things through. But not something like this. It should have gone into a Committee of Council. She viewed the area with Mr. Wolter and two other members of Council. The entire time we were viewing all she heard was pointing fingers at the Mayor. She is so happy this came out. She tried to talk with Mr. Wolter and get the facts about this. All she heard was how the Mayor did this and that wrong. The Mayor was not here the night the vote was taken. Mr. Wolter was the Vice-Mayor and as the acting Mayor he needed to take responsibility.

Mr. Wolter said he takes responsibility for making the mistake. He said he is not the only one who voted on the matter. Ms. Schwartz said she was there and voted but her vote really did not count. She takes responsibility too. Mr. Wolter said every vote counted.

Solicitor McTigue said he believes a mistake was made. He is not sure that this was the Village's responsibility in the first place. Mr. Wolter agreed. It is something that should have been vetted. But now that we are there we have taken it upon ourselves to fix the problem. We have the obligation to fix it properly and not negligently. Whatever the Village started it has to finish. He knows there was some discussion that the work the Village did may have exacerbated the hill failure. If that is true it certainly imposes more liability to the Village to get it fixed. It does no good to point fingers at each other – we all have some fault.

Mayor Policastro said he still believes his thought to talk with Mr. Galenstein who is a Civil Engineer to see if he could come up with some solution is a good idea. Solicitor McTigue said we have to be proactive. The hill was in trouble and it needed to be fixed and probably relatively quickly. He presumes that Council was under the assumption that it was the Village's responsibility and our responsibility only. Council did what they thought was right and maybe they convinced other Council members to do what they thought was right. There is nothing necessarily wrong in doing that but it should have followed a better process.

Mr. Brown asked where we are in the process. Mayor Policastro said we were waiting on the Solicitor's opinion and now that we have that we can go forward and hold a Committee of the Whole meeting.

Solicitor McTigue asked if Mr. Luken has turned this into his insurance company to see if there is coverage for the hill failure of this nature. Our liability insurance would typically exclude an "Act of God".

Mr. Clem Luken, 6610 Mariemont Avenue, was granted permission to address Council. It is the Village land that is moving. So far his land has not moved so he would not have a claim to turn into his insurance company. The issue is if something more happens and you have a million dollar piece of property the numbers can get a whole heck of a lot higher than just fixing where it is right now. The original grant request was \$225,000 which touched on the storm water run-off in that part of Mariemont. The estimate the Village received to fix it is actually less than the original estimate to fix the problem. He said some of the problem may stem from the drain/storm pipes which may not drain properly. He believes the metal portion may have corroded away. In 2013 there was a bad storm that brought down a tree which created a sink hole. The sink hole eventually got bigger and bigger. You could see the line of erosion going down the hill.

Mayor Policastro said it appears the damage to some of our infrastructure could have caused some of the problems. Mr. Luken said it is possible. Engineer Ertel said there were two grants – the pipe work was \$25,000 and the gabion wall was \$40,000. Mayor Policastro said the work we did was well needed. Mr. Luken gave some background on the history of when the gabion wall was installed. He has made the suggestion to go back to Hamilton County for additional funding to do the rest of the piping and repairs. The County is amenable to that type of request for additional funding if you find a circumstance that was unexpected. Mayor Policastro asked if we could apply for more grant money. Engineer Ertel said we cannot apply for more grant money but we can apply for additional compensation under the same grant that we already received. The grant amount for the pipe work was \$40,000 and we spent \$25,000 to fix it. He explained that there was an 80/20 cost split. He can prepare the necessary paperwork and send an invoice to Hamilton County to see if the Village is eligible for any additional funding.

Ms. Schwartz asked Solicitor McTigue to clarify that there is case law that if the Village had not done the gabion wall and had not touched the hillside at all the Village would not be responsible for what is happening now. Solicitor McTigue said the general proposition of the law the Village probably would not have been responsible as it was originally presented to him. Now that he has had some clarification he thinks it is something that Mr. Luken's insurance would not cover because his property was not being effected. Most people would look at this and see that at some point in time his property will be effected. If we let it go, as owners of the property, we have been put on notice that we have a problem. He believes the Village is doing the right thing to fix the problem.

Mr. Wolter said what concerns him is going in the future we have the potential for a lot of slippage. Is the Village going to have to pay for all of this? It's an Act of God as long as the Village has not messed with the creek or hillside. How do we handle something like that? Solicitor McTigue said it is a good question and wished he had an answer. Mayor Policastro said the area by Mr. Luken's house is the most volatile hillside. He has been up and down the area since his knee has been repaired. There are also some problems along Miami Bluff. Norfolk Southern owns the bottom of the hill. He and Mr. Wolter planted approximately 50 trees. It's what the GeoTech Engineer told them to do 10-12 years ago and he believes it is working. He does not know what we will do if it starts to cave in because the railroad owns the Miami Bluff hillside.

Mr. Luken said when he walked around with Dr. Tankersley there are so places where the slopes are amazingly steep. Some sections can hold really well. A key component is not to touch it. Mr. Wolter said there has been discussion to have the Army Corps of Engineers to take Council on a fact finding and give us guidance on what we can do. There are still trees laying in the creek, refuge from the cement they dumped into the creek which changes the flow of the water. We should make a long term punch list of what we need to do down there.

Ms. Schwartz asked if the Committee of the Whole decides to go ahead and start work on this do we have to wait for the grant money. Mayor Policastro said no. Engineer Ertel will start to look for additional funding or any possible grants. Mr.

Luken reminded Council that Mr. Anderson from GSI indicated that this was an urgent type project. Mayor Policastro said now that we have the Solicitor's opinion the Vice-Mayor should hold a Committee of the Whole meeting soon.

Mr. Hlad moved, seconded by Mr. Brown to pay the bills as approved by the Fiscal Officer, Mayor and Chairman of the Finance Committee. Ms. Palazzolo asked since we hired the fifth man on our Service Department what the difference is on what we spend on temporary extra labor. Mayor Policastro said that Service Superintendent Scherpenberg would be the one to keep those statistics. Ms. Palazzolo asked if the payment to JK Meurer was the first payment. Engineer Ertel said it is the second payment of three. Ms. Palazzolo asked if JK Meurer addressed all the issues and concerns that we talked about. Engineer Ertel said yes. Ms. Palazzolo asked if the curbing was put in along Murray. Ms. Schwartz said yes there is a curb. Mayor Policastro said the area is still somewhat of a mess because we are waiting for Duke to install the new poles. On roll call; six ayes, no nays.

Mr. Brown moved, seconded by Mr. Wolter to accept the recommendation of the Health and Recreation Committee which met on Tuesday, November 14, 2017, to discuss the bids for the 2018 trash collection contract. Present at the meeting were Committee Chairperson Mary Ann Schwartz, and Committee Members Dennis Wolter and Maggie Palazzolo. Also present were Mayor Dan Policastro, Council Members Eric Marsland and Bill Brown, and several residents of Mariemont. The Village had asked contractors to bid on three different levels of service, which were:

- ▶ OPTION #1 (Current Level of Service): Behind-the-house collection of trash, curbside collection of recycling with contractor providing recycling cart, curbside collection of yard waste, and curbside collection of large items.
- ▶ OPTION #2: Curbside collection of trash with RESIDENTS providing trash can, curbside collection of recycling with contractor providing recycling cart, curbside collection of yard waste, and curbside collection of large items.
- ▶ OPTION #3: Curbside collection of trash with CONTRACTOR providing trash can, curbside collection of recycling with contractor providing recycling cart, curbside collection of yard waste, and curbside collection of large items.

The only bids received were from Rumpke. After considerable resident input and much discussion, the consensus was that Option #1 was the preferred option and level of service. Therefore, the Committee recommends that Council accept Rumpke's bid for Option #1 in the amount of \$302,670.00. The Committee further recommends that the necessary legislation be passed as an emergency so that the new contract will be in effect by the expiration date of the current contract. Fiscal Officer Borgerding said it was not much of an increase. Mayor Policastro said he thought it was two percent. On roll call; six ayes, no nays.

Mr. Hlad moved, seconded by Mr. Wolter to accept the recommendation of the Finance Committee which met on Monday November 13, 2017 at 6:15 p.m. in Council Chambers located at 6907 Wooster Pike, Cincinnati, Ohio to discuss bonuses for the full-time employees. Present at the meeting were Finance Chairman Eric Marsland, Committee Members Mary Ann Schwartz and Bill Brown. Also in attendance were Mayor Dan Policastro, Administrative Assistant Joanee Van Pelt, Police Chief Rick Hines, Assistant Fire Chief Jason Kiefer and Service Superintendent John Scherpenberg. After a brief discussion it was unanimously agreed that the Committee recommend a \$225.00 bonus to all full-time employees. On roll call; six ayes, no nays.

Mayor Policastro read the following miscellaneous announcements:

Last day of leave pick up will be December 22, 2017. Mayor Policastro said after December 22, 2017 leaves will need to be bagged in brown paper bags for Rumpke to pick up at the curb on said trash day.

The Council meeting for December will be Monday December 18, 2017 at 7:00 p.m. The Civic Association Raffle winner will be pulled after the meeting.

Village Offices will be closed Monday December 25, 2017 in observation of Christmas.

Village Offices will be closed Monday January 1, 2018 in observation of New Year's Day.

#### Resolutions:

#### Ordinances:

"An Ordinance Authorizing Application and Contracting with the Ohio Public Works Commission" (Second Reading) (Clean Ohio grant for Steam Plan Development Project)

"To Add to Section 151.26 Signs Within residential Districts, A provision to Require Address Numbers of Properties with Rear Access Alleys" had a first reading.

"To Accept Bid of Rumpke Waste; To Authorize Contract: Pay for Services; and To Declare Emergency" had a first reading. Mr. Marsland moved, seconded by Ms. Schwartz to suspend the rules to allow for the second and third readings. On roll call; six ayes, no nays. The Ordinance had a second and third reading. Mr. Brown moved, seconded by Mr. Wolter to adopt the Ordinance. On roll call; six ayes, no nays. Mr. Hlad moved, seconded by Mr. Marsland to invoke the emergency clause. On roll call; six ayes, no nays. Ordinance No. O-25-17 was adopted.

The meeting adjourned at 7:40 p.m.

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Dan Policastro, Mayor

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Anthony Borgerding, Fiscal Officer