

**MINUTES OF THE COUNCIL
VILLAGE OF MARIEMONT, OHIO
REGULAR MEETING HELD IN COUNCIL CHAMBER
APRIL 11, 2011**

Mayor Policastro called the meeting to order at 7:30 p.m. with the Pledge of Allegiance to the flag. The following Council members answered present to roll call: Mr. Andrews, Mr. Black, Ms. McCarthy, Mr. Miller, Mr. Scheeser and Mr. Wolter.

Mr. Black moved, seconded by Mr. Miller to accept the minutes as written for March 28, 2011. On roll call; four ayes, no nays. (Mr. Miller and Mr. Wolter abstained)

The following communications were read by Mayor Policastro:

From Police Chief Hines: March 2011 Monthly Report

From Assistant Fire Chief Travers: March 2011 Monthly Report

From Superintendent Scherpenberg: March 2011 Monthly Report. Mr. Scheeser said we noodled with the price of the contract with GrassCor because of the change no longer requiring the lawn to be cut at the Municipal Building. The same situation exists underneath the temporary pavement that is being put down in Dale Park. He asked if Superintendent thought about how to make that right with the contract. There might be a way to save money or get more services for the same money. Superintendent Scherpenberg said usually there is not a change in the contract - similar to what happened at the tennis courts with the new fencing. One of the reasons for the price break was they were aware that this might happen when they renewed the contract. Mr. Scheeser asked if we can negotiate an additional mow. It is a large area and it could add up to a lot of savings. Mayor Policastro said he is sure GrassCor will work with us - Alex is an honorable guy. Superintendent Scherpenberg said he will follow-up with them. Last year GrassCor had two extra cuts at the end of the contract that they did not charge us for.

Mr. Andrews said to let him know if Superintendent Scherpenberg needs any help at the Tennis Courts with the windscreens. Superintendent Scherpenberg said one of the windscreens ripped last year so he will have to look and see what he has got. He has a fence company giving a bid on the poles that are bent. Two snapped off while they were working on them. He cleaned out a tree root in the drain so hopefully there will be no backup. He mentioned that the fence around the Tot Lot will go up this week weather permitting.

From Building Commissioner Malone: March 2011 Monthly Report

From Tax Administrator Judd: March 2011 Monthly Report. Mrs. Judd reported that they are doing well right now.

From Mayor Policastro: Proclamation for Childhood Cancer Awareness Week

From Engineer Ertel: Memo dated April 1, 2011 re: 2011 Street Rehabilitation Project

From Mayor Policastro: Hiawatha/Rembold Green Space Proposed Improvements. He said he and Chief Hines are working with Evans Landscaping to get a rock for the area. General Short is going to ask the Civic Association to get a bronze plaque made to put on the boulder. It should not cost the Village any money and it should go a long way to preserve the history of Mariemont. Mr. Scheeser said it sounds like a good idea.

From Superintendent Scherpenberg: Memo dated April 8, 2011 re: New vehicles. Mayor Policastro referred the matter to the Finance Committee. Clerk Borgerding said these costs were appropriated in the Permanent Improvement Fund.

Mr. Miller moved, seconded by Mr. Scheeser to pay the bills as approved by the Mayor, Finance Chairman and Clerk. Mr. Scheeser said he thought the plan was to go to stamps and eliminate the postage meter. Mrs. Van Pelt said the lease is up in October. Mr. Andrews asked if the postage scale update was required. Mrs. Van Pelt said yes in order to put the correct postage on mail. Mr. Andrews asked if we should keep the meter into next year in order to pay for the update. Mrs. Van Pelt said that would require us extending the lease which she believes is a multi year lease. Mayor Policastro said it should save approximately \$1200/yr. Mr. Andrews asked if the departments agreed that this would be a good move in regards to efficiency and time. Mayor Policastro said the Tax Department is going to keep their postage meter. Mr. Andrews asked if the firehouse mobile EMS module was part of the system already approved by the Finance Committee. It was confirmed that it was. Mr. Wolter asked about the direction signs to the Barn. Superintendent Scherpenberg said the event at the Barn was moved up a week so the signs are already erected. Ms. McDonald helped with the sign placement and she said everything went well. Mr. Andrews asked if it was necessary to run the legal ad notice in the paper. He asked if there are other options available such as online posting. Solicitor McTigue said it has to be a newspaper of general circulation and he does not believe the courts have decided that online advertising qualifies. In the future online advertising may be acceptable. Mayor Policastro said it is expensive but you want to get as many bids as possible. On roll call; six ayes, no nays.

Mr. Black moved, seconded by Mr. Wolter to accept the recommendation of the Safety Committee which recommends that the Village install stop signs for the southeast bound and northwest bound lanes at the intersections of Rembold at Petoskey and Hiawatha at Petoskey. The Committee also recommends the installation of a stop sign to control eastbound traffic on Fieldhouse Way at the intersection of West Street. The Committee additionally recommends painting the common curbs between Fieldhouse Way and West Street to stop people from parking near or in the intersection during high traffic events at the elementary school. See Attached. Mr. Wolter said two of these are part of the traffic calming program. The Committee feels the two intersections, Hiawatha and Rembold, will require cars to stop in the middle of the intersection which will make it safer for pedestrians. He got a call from resident Jim Foreman regarding his concern over several near misses at Fieldhouse and West Street. It is unguarded by stop signs in all three directions. Two weeks after their meeting there was a car accident with severe damage to the cars. Another problem is during events at the Elementary School people are actually parking in the intersection. It is hard for cars to get around the curb. Now that we are facing the examination of fire codes and fire lanes this may have to be revisited even more. Mr. Black said he thought there was talk about a stop sign at the west end of Fieldhouse. Mr. Wolter said he did not remember that but the report could be amended to add it. He said we are going to end up having to look at every intersection in the Village. Mr. Black moved, seconded by Mr. Wolter to include in the report the Safety Committee's recommendation to put a stop sign at the west end of Fieldhouse Way. On roll call; six ayes, no nays to accept the amendment. On roll call; six ayes, no nays to accept the amended report.

Mr. Andrews moved, seconded by Mr. Miller to accept the recommendation of the Public Works and Service Committee which met Thursday April 7, 2011 to review bids for the 2011 Plainville Road Rehabilitation Project. Committee members Denise McCarthy, Jeff Andrews and Cortney Scheeser were present. Mayor Dan Policastro, Councilman Dennis Wolter and Village Engineer Christopher Ertel also attended. After discussion, the committee recommends that the **bid of \$73,404.00 from Queen City Blacktop, Inc.** be accepted. Mayor Policastro said the Village will pay \$14,000 and the rest will be funded by grant money. The work will be done this summer while the kids are out of school. On roll call; six ayes, no nays.

Mr. Wolter moved, seconded by Ms. McCarthy to accept the recommendation of the Public Works and Service Committee which met Thursday April 7, 2011 to review bids for the 2011 Street Rehabilitation Project. Committee members Denise McCarthy, Jeff Andrews and Cortney Scheeser were present. Mayor Dan Policastro, Councilman Dennis Wolter and Village Engineer Christopher Ertel also attended. After discussion, the Committee recommends that the **bid of \$108,277.40 from Schumacher Dugan Construction, LLC** be accepted immediately **and with emergency**. Mayor Policastro said he is going to contact Schumacher Dugan and request that they start with the front steps of the Municipal Building as soon as possible.

Mr. Andrews said several weeks ago we had discussion on the installation of no parking signs on West Street and whether the Mayor's role and responsibility has the authority to make those kinds of safety decisions. At the last meeting the same question was asked related to East Center Street parking. At the first meeting there was a question of whether the no parking on West Street would hold up in court. The Solicitor looked something up in the Code of Ordinance and said yes. He asked if the Solicitor could reference what he referred to so he can understand so we are clear on where the Mayor's authority starts and ends. Mayor Policastro said Council can stop the no parking on West Street if they want to. Solicitor McTigue said what he told the Mayor was if it is an emergency situation and could potentially subject the Village to additional liability if we do not take action. But he believes the action should be ratified by Council at a later date. In an abundance of caution the Mayor has the authority to order the signage. Mr. Andrews said the Code of Ordinances very clearly sets out the Executive Authority. He cannot find where the authority is granted to the Mayor. He wants to be clear on when that authority can and cannot be used. He questioned why the executive authority was not used on the stop signs on Rembold and Hiawatha. Solicitor McTigue said no one considered those to be an emergency. He said municipalities have sovereign immunity with lawsuits but it is a gray area if you are aware of a hazardous condition that exists in the Village and immediate protective action is not taken to correct the hazard. If Council does not like the decision then put it into a Committee to discuss. If Council would decide not to ratify the Mayor's decision then be advised if someone sues us we could be culpable and go outside our sovereign immunity. Mayor Policastro said there is no sovereign immunity defense for damage awards. Solicitor McTigue said if the Village's conduct would rise to the level of willful and wanton negligence then perhaps a complainant could get through to us for damages. Mayor Policastro said pain and suffering is not sovereign immunity. Mr. Andrews said he would hope Council would want to understand where the authority starts and ends. The code clearly says "... Whenever in his or her judgment the Mayor determines that an emergency exists as a result of any natural disaster or human-made calamity, or clear and present danger thereof, or riot, or insurrection, mob action, or other civil disturbance causing danger of injury to or damages to persons or property, the Mayor shall have power..." to make certain provisions or restrictions etc. It clearly states that those are only enforced for 72 hours. If the code so clearly states these out why does it not clearly state the other things and why are we just assuming. Mayor Policastro said the code the fire department pointed out has the right to do this. Mr. Andrews said he read it and it relates to road access and certain emergencies for fire and police. What he does not understand is the parking signs. Solicitor McTigue said the Mayor presumed the parking issues required immediate action - and maybe he was wrong - but as soon as he made his decision and did what he had to do he brought it to Council's attention. Mr. Andrews said he again wants to know where in the code it allows for that authority. Solicitor McTigue said many times you are not going to find the answers to legal issues in the four corners of the code of ordinances. Sometimes you have to use a little bit of common sense when you make decisions as to what may or may not be good for the Village. Our Mayor is very proactive and safety is his number one concern in the Village. Apparently the fire department ran some tests and determined that the parking on East Center Street was against our administrative code. The Mayor felt that he needed to do something right away. In a perfect world perhaps he should have convened Council after 72 hours but it was

eventually discussed. He is not sure what Mr. Andrews question is. If the Village wants to pay him to do a bunch of research and look into case law he would be glad to do so. Mr. Scheeser said at the March 14, 2011 meeting Solicitor McTigue opened up a document and referenced a bit of the code of ordinances that helped him feel comfortable that the Mayor was well within his rights. Solicitor McTigue said he would suspect he referred to the section that Mr. Andrews just read. He does not have a lot of advance warning on any given meeting of what legal issues are going to be presented. When he is shooting from the hip, which is what he is doing 90% of the time in the Council meetings, he tries to use common sense. The Village has an advantage that the Mayor spent his career in insurance defense work. He knows the consequences that can often times happen if you do not act quickly. Mr. Andrews said that is not the question. The question is not whether this particular Mayor is skilled or experienced in a certain area. It is about the Mayor's position and responsibilities and Council's position and responsibilities. There are a lot of questions about whether these matters should have been put into committee and discussed. The parking between the school and the Strand is another sort of area like this that has been worked without Committee input. Mayor Policastro said to wait one minute that it has not been worked. He said it will go into Committee and it has nothing to do with what happened on South West Street. Solicitor McTigue said the issue with the school and Mr. Spinnenweber should go into committee once a general concept plan is in place. Mr. Andrews said it has been stated that the Mayor is in charge of safety but he does not understand where that authority starts and ends. Mayor Policastro said to let it be known if he sees a safety problem he is going to do something to stop anyone from being hurt as soon as possible. Mr. Miller said he applauds the Mayor's effort to get it done quickly but unless it is irreversible he suggested that it should be assigned to a committee. Mayor Policastro said we are going to check all the streets now that this has come up. Mr. Andrews said he is not questioning any one issue but questioning the scope of authority for safety or any other issue. Mr. Wolter said Council can put together a motion to include wording in our Ordinance that define what specific safety enhancement tools can be applied by the Mayor without having to go to Committee. If Council feels there is a strong negative side that was overlooked it can then be looked at by a Committee of Council. It is undefined but he thinks Council can define it and function efficiently without having to be in Committee meetings every night solving the small problems that do not have a lot of collateral issues. As long as we are willing to adjust something if we see it is wrong and there is a process in place - we are done. Solicitor McTigue said he will take a look at the Administrative Code pertaining to the fire code and will cross reference with our NCO and the ORC. He will prepare an opinion letter. Mr. Andrews said clarity on the issue would be good and helpful.

Mr. Wolter said Mr. Vianello brought to his attention a problem with the crosswalk on the south side of the square. The problem is with the light timing. They are looking at two solutions: (1) Make the crosswalk more visible. It can be done by getting a cross walk sign that is powered by solar LED lights which flash along the perimeter. The cost is \$4300 and it is placed in the ground. (2) A crosswalk with lighting embedded in the blacktop. The system is \$10,000 with the site work being another \$10,000. The other area they are going to look at is changing the light timing. The Village Engineer is going to meet with the electric company that does this kind of work. They are going to see if the timing can be changed three or four seconds to give more time to get across the intersection. He thinks it looks like we will definitely do the enhanced flashing sign for \$4300 and work with the light timing.

Mr. Wolter said tonight the police caught some kids in the Steam Plant again. He thinks it is a major priority to get the owner to block up the lower windows and doors. He has on his own gone down to try to secure the area only to come back a few days later and find it has been broken into again. Solicitor McTigue said there is a capias out for him right now. Mayor Policastro said he has been working on this matter. The property is in foreclosure. He has been in contact with the owner of the land contract and it appears the owner is going to re-buy the Steam Plant next week at a tax foreclosure sale. The owner offered to sell it to the Village for a good price. Solicitor McTigue said after the proper notices have gone out the Village could tear down the Steam Plant and add the cost to the tax bill. Mayor Policastro said he went to a Brownfield Seminar with the Building Commissioner. Because there is asbestos in the building we could apply for a Brownfield grant to tear it down if the Village bought it. He estimates it will cost \$100,000 to take the building down. He believes we could buy it at a reasonable price out of the Permanent Improvement Fund. We could eventually sell the three acres to a developer. Treasurer Kulesza recommended getting environmental samples of the soil. Mr. Scheeser asked how much of the property is in the flood plain. Mayor Policastro said half of it. Mr. Scheeser said that may affect the fair market price if we choose to re-sell it. Mr. Wolter asked if the Village could go block the Steam Plant up. Solicitor McTigue said yes after appropriate notice was given. Mr. Miller said the existing developer may want to buy the property to put more homes on. Mr. Andrews said the Steam Plant and Dale Park would be a good topic for the Economic Development and Zoning Committee. Mayor Policastro said once we get more facts it will be referred to the Economic Development and Zoning Committee.

Resolutions:

“Resolution Declaring the Necessity of Levying a Tax in Excess of the 10 Mill Limitation for Permanent Improvements and Requesting the County Auditor to Certify Matters in Connection Therewith” had a third reading. Mr. Black moved, seconded by Mr. Scheeser to adopt the Resolution. On roll call; six ayes, no nays. Resolution No. R-7-11 was adopted. Mr. Andrews said there was some discussion to have a meeting to discuss upcoming levies and review the renewal rates. Clerk Borgerding said that would be part of the whole budgeting process. The public hearing for the 2012 budget will take place in June or July.

“In Recognition of William Ebelhar” had a first reading.

Ordinances:

“To Accept Bid of Schumacher Dugan Construction, LLC. for the 2011 Street Rehabilitation Project; to Authorize Contract; and To Declare Emergency” had a first reading. Mr. Scheeser moved, seconded by Mr. Wolter 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. Black moved, seconded by Mr. Andrews to adopt the Ordinance. On roll call; six ayes, no nays. Mr. Wolter moved, seconded by Ms. McCarthy to invoke the emergency clause. On roll call; six ayes, no nays. Ordinance No. O-9-11 was adopted.

The meeting adjourned at 8:36 p.m.

Dan Policastro, Mayor

Anthony J. Borgerding, Clerk