

**VILLAGE OF MARIEMONT
REGULAR COUNCIL MEETING HELD IN COUNCIL CHAMBERS
FEBRUARY 25, 2019**

Mayor Policastro called the meeting to order at 7:04 p.m. with the Pledge of Allegiance to the flag. The following Council members answered present to roll call: Mr. Bartlett, Mr. Brown, Mrs. Graves Ms. Palazzolo, Mrs. Rankin and Ms. Schwartz.

Mrs. Rankin moved, seconded by Mr. Bartlett to accept the minutes as written for the Council meeting February 11, 2019 and Committee of the Whole February 11, 2019. On roll call; six ayes, no nays.

Mayor Policastro read the following communications:

From Charter Communications: Letter Regarding Spectrum Mid-American LLC

From Police Chief Hines: Memo Regarding Permanent Improvement Requests. Mayor Policastro referred the matter to the Finance Committee.

From Assistant Fire Chief Kiefer: Memo Dated February 15, 2019 re: Fire Department Permanent Improvement Requests. Mayor Policastro referred the matter to the Finance Committee.

Mr. John Swisher, 6624 Wooster Pike, was granted permission to address Council. He was in attendance for the bid opening for the Outsourcing of Mowing meeting the other night. He submitted a bid from his company, Organically Inclined, for the upcoming year. There were three companies who were qualified as best candidates for the job and all were said to be equal with his company being one of them. His company had the lowest bid. It is his understanding that the Committee made the decision to go with a different company that did not have the lowest bid. He would hope that Council would want to work with a small business within the community with taxes coming back to the community along with goodwill, charity and volunteer hours given back to the community. The best bid was qualified as equal between the companies and they had the lowest bid.

Mr. Brown said it is true that Mr. Swisher's company had the lowest bid by .08 cents and the after cut price was \$1400, while Grasscor was \$1277.78 per additional cut. Mr. Swisher said the after cut is usually only done once. Mayor Policastro said Mr. Swisher has cut the grass for the Village in the past and has done a good job and has been a good citizen.

Mr. Dennis Wolter, 3804 East Street, was granted permission to address Council. He asked that the letter dated September 12, 2018 be put in the minutes in full.

September 12, 2018

Mariemont Village Council
6907 Wooster Pike
Cincinnati, OH 45227

Dear Mariemont Village Council Member,

In January, 2013, prior to moving into the Dale Park building, Cincinnati Waldorf School (CWS) and the Village of Mariemont signed a non-exclusive easement agreement, in which CWS has the legal right to use and enjoy all of Dale Park as a "school playground and park facility." On Monday, August 27, 2018, a sign was installed on the hillside between CWS and the Mariemont Chapel stating, "History and Native American Burial Site, Please Be Respectful." CWS had been informed earlier about the potential of this hill being a "Native American Burial Site" by Louise

Schomburg, Chairperson of the Village of Mariemont Parks Advisory Board. Since this was new information to CWS, we requested documentation. Ms. Schomburg promptly delivered a letter from Ken Tankersley of the University of Cincinnati's Department of Anthropology to Mayor Dan Policastro. In the letter, Dr. Tankersley asserts that this area is, "an archaeological site, which includes the remains of an Ancestral Algonquian village site and burial ground."

However, shortly after the sign went up, we received a letter from a CWS community member who is a Registered Professional Archaeologist, which raised some concern regarding the validity of this claim. The Ohio Historic Preservation Office, which contains site location information of all currently known archaeological sites, lists no sites on the hillside. In addition, the leaders that we have spoken with in the Native American/First Nation community are unaware of this site. At this time, insufficient evidence supports erecting a sign claiming that this area is a "Native American Burial Site." In fact, as a result of what we have learned in our investigation, we have concerns about violations of the Native American Graves Protection and Repatriation Act. We are happy to cooperate if the Village would like to conduct an archaeological investigation. We would also be interested in learning about the Village's preservation plan (the Ohio Historic Preservation Office recommends a transparent plan with documented purpose, intent and time frame, with input from the Native American community). Part of the hillside is CWS property and part of the hillside is not (although CWS has a legal easement to use it). This hillside is an integral part of our dismissal process, since our students sit on the hillside as their parents come through the carline to pick them up. Having the students on the hillside right near the parking lot makes the pick-up process go much more quickly, thus keeping the heavier traffic in the neighborhood during dismissal to a minimum. While we are happy to be respectful of this area (respecting and loving nature is a primary foundation of our educational philosophy), our intent is to continue to use this hillside for dismissal and gentle play. We want to be transparent about this intent and keep communication open with the Village.

Sincerely,

Karen Crick, Administrative Chair
Connie Davis, College of Teachers Chair
Susan Gray, Board of Trustees Chair

CC: Alan Statman, Esq. Statman, Harris & Eyrich, LLC

Mr. Wolter said he got a copy of the letter a week ago and was concerned that Waldorf was granted an easement on the hill west of the school which was cleared he guesses in 2008 or 2009. The kids play in the area and it is used as a staging area for picking the kids up after school. In August 2018 a sign was put up there and he understands there was no communication to the school prior to that. The sign indicated that the area is now a designated American Indian sensitive area as determined by Dr. Tankersley. The school had their own anthropology archeologist expert who went to the State of Ohio and found no listing of this being designated as such. For a property to be designated there has to be a study through the State Historic Preservation Office and the Native American Antiquities office. That tells him that the Village gave the school an easement on the property that we were not sure about. He recalls reading an ordinance about making a piece of property with a special designation, be it historical or otherwise, it has to be done by Council. This was never put before Council. This has been a contention of his for many years that things are done outside of Council and they were not even aware of this in 2013. He thinks we should be communicating with the school. They are a valuable asset to the community both in employment and they solved the problem as to what was to be done with the building. It is important in the future these types of things go into Council committees. The government is Council. It is no other entity in the Village. He believes this is one of the reasons we were concerned with Solicitor McTigue but he did not have a good set of rules to operate by. He believes he does now and thinks we will see our way clear in the future to avoid these types of conflict.

Mayor Policastro said he has asked Dr. Tankersley to explain in letter form and hopes to have it for the next Council meeting. In the 18th century Dr. Metz proclaimed the area as historic. In 1977 it was proclaimed a Historic area. In or around 1989 it was also proclaimed a landmark.

Mr. Wolter said it is imperative if those declarations have been made that the State know that. Mayor Policastro said the State does know.

Solicitor McTigue said he spoke with Mayor regarding this matter and said at the very least what the Village should do is send a letter to Karen Crick at Waldorf saying the Village appreciates the concern and we also want to be good neighbors. He believes what the Mayor wants to do is wait until we have all of our information together before we meet with them although we should definitely call them or send them a letter saying we have received the correspondence and agree that we should get together. Mayor Policastro said he may try to call a Special Council meeting. He said he had a right to do what he did. Mr. Bartlett said no because it was a new designation. The Native American Burial Site is a new designation. Solicitor McTigue said it is a historic site but not necessarily a Native American Burial Site. Solicitor McTigue said we need to tweak it a little bit. The bottom line is we have a problem with Waldorf School and we may have given an easement a little bit bigger than we hold ourselves. It is why he thinks it is important to get together with Waldorf School and discuss it. This is not World War III. Mayor Policastro said they are destroying the area especially by the war memorial where the pioneers were buried. There is proof that it could be Indian burial ground. Solicitor McTigue said he agrees but Council's point and Mr. Wolter's point is we have to at least communicate what the Village is doing. Mayor Policastro said we will – we are putting facts together. Mr. Bartlett said he and Solicitor McTigue spoke after the last meeting and he thought if there was new historic designation there is actually a process in the code book Section 151.75. Solicitor McTigue said that is correct. Mayor Policastro said we do not know if it is a new designation. Mr. Bartlett said when the sign went up it said Native American Burial Site and that is a new designation. That is not in the Ohio Historic Preservation Office system anywhere. He gets concerned when we do not follow the process. Solicitor McTigue said Mr. Bartlett is right about that and what he said to Mr. Bartlett was if it would make him feel better if the Village designated a historic. We need to get the proper designation. If it is in fact a burial site as opposed to a historical site let Council decide what it is and we will notify Waldorf accordingly. Mr. Bartlett said we need to follow the process in our code book. He said it would actually go to ARB first and then go to Council when it goes through for a new historic designation. Mayor Policastro said let's see what they have in Columbus and Washington, get all the information and then bring everyone together. Mr. Bartlett said he also talked with the Solicitor after the last meeting about digging. Mayor Policastro said Council really should not be talking about it because it is not on the agenda. Mr. Bartlett said this is about following due process and there is a process if there is digging going onsite. Mayor Policastro said there is no digging going on. Mr. Bartlett said there were 8 people on the hillside according to an email from Waldorf School. Mayor Policastro said it was a classroom. Mr. Bartlett asked if they were picking anything up. Mayor Policastro said he can give permission to dig. Mr. Bartlett said there were 8 people. Mayor Policastro said they were not picking up – they were doing a classroom assignment. When the Eastern Corridor was coming through Council gave Dr. Tankersley permission to dig and discover. We wanted him to do that. Mr. Bartlett said in the South 80. Mayor Policastro said no – in the Village. Solicitor McTigue said it was for pretty much all the Village. Mayor Policastro said there was somewhere in the minutes where Mr. Stelzer said people were digging where they wanted to put the Eastern Corridor and he said to call the police that it is a misdemeanor if you find them digging except for the University of Cincinnati. Mr. Bartlett said if it is a group then it needs to be approved by Council. Mayor Policastro said Council did approve it. Solicitor McTigue said it was Mr. Bartlett said he would love to see it. Solicitor McTigue said that is important because it is an issue that Mr. Bartlett has been so concerned about for a while. He suggested putting it on the next agenda, get our ducks in a row with Dr. Tankersley and possibly hold a Special Meeting of Council. It is a sensitive issue for a lot of people. We may have gone a bridge too far in days gone by but right now we are trying to correct it. He stressed again that the Village should reach out to Waldorf School and let them know that we are working on it.

Mr. Jerry Vianello, 6570 Wooster Pike, was granted permission to address Council. He politely reminded Council that three minutes is what is allowed to speak before Council. Nothing against Mr. Wolter but three minutes is three minutes. Ms. Schwartz said he was timed. Mr. Vianello said he will accept that. Answering from our perspective back to Council has been told to him was wrong and it cannot happen. But yet it happens. And then talking about things that are not on the agenda is not supposed to happen and Council lets it happen. It seems to him that Council wants to be sticklers for the rules when the rules apply to them. But for all the rules Council is not as tough on themselves. Council does what they want to do. Council works for us.

Mr. Brown moved, seconded by Ms. Palazzolo to pay the bills as approved by the Fiscal Officer, Mayor, and Chairman of the Finance Committee. On roll call: six ayes, no nays.

Ms. Palazzolo moved, seconded by Mrs. Rankin to accept the recommendation of the Finance Committee which met on Tuesday, February 20, 2019 at 6:00 pm in Council Chambers to discuss the Village Solicitor role. Present at the meeting were Finance Committee Chair Rob Bartlett, Finance Committee Members Bill Brown and Kelly Rankin, Patty Busam, John Scherpenberg, and several residents. After discussion, including comments from

the audience, the Committee voted to recommend re-appointing Ed McTigue as the Village Solicitor. In the October 8, 2018 Council meeting when the Village Solicitor RFP was assigned to the Finance Committee, it was also agreed that if Mr. McTigue was re-appointed, then the Finance Committee would also use this process to identify a backup Village Solicitor. As such, the Committee voted to recommend that Frost Brown Todd be the back-up attorney to Mr. McTigue. On roll call; six ayes, no nays.

Mrs. Rankin moved, seconded by Ms. Schwartz to accept the recommendation of the Finance Committee which met on Tuesday, February 20, 2019 at 6:00 pm in Council Chambers to discuss the Village Solicitor role. Present at the meeting were Finance Committee Chair Rob Bartlett, Finance Committee Members Bill Brown and Kelly Rankin, Patty Busam, John Scherpenberg, and several residents. As part of the RFP process for the Village Solicitor role, the committee reviewed the current language in ordinance 31.075 Legal Counsel. Council has agreed that when we come across language in Mariemont's code book that is outdated, inaccurate or confusing, we should opportunistically look to fix these. As such, the Finance Committee would like to propose the following change to section 31.075(D):

Current language in 31.075(D):

1. Consideration for additional compensation shall be given by the Village Finance Committee with approval of Village Council, for the following services on an individual basis: bond issuance or tax assessment proceedings; and services rendered in court action regarding village liability. Compensation for such work be at \$30 per hour.

Proposed language for 31.075(D):

2. Consideration for additional compensation shall be given by the Village Finance Committee with approval of Village Council, for the following services on an individual basis: bond issuance or tax assessment proceedings; and services rendered in court action regarding village liability.

On roll call; six ayes, no nays.

Mr. Brown moved, seconded by Mrs. Rankin to accept the recommendation of the Finance Committee which met on Tuesday, February 20, 2019 at 6:00 pm in Council Chambers to discuss the Village Solicitor role. Present at the meeting were Finance Committee Chair Rob Bartlett, Finance Committee Members Bill Brown and Kelly Rankin, Patty Busam, John Scherpenberg, and several residents. As part of the Village Solicitor RFP process, and in an effort to have a more positive working relationship with the Village Solicitor going forward, the committee has put together (with the help of Lisa Wharton) a list of expectations that council has of the Village Solicitor. Ed McTigue, the current Village Solicitor, has reviewed this document and said he would be comfortable working under these expectations. Attached is the expectations document, which has been reviewed and approved by all of the Finance Committee. The Finance Committee would propose this document be signed by the Village Solicitor, when he/she signs the contract with the Village, and that the document also be revisited by Council at a minimum every time the Village Solicitor's contract comes up for review. Solicitor McTigue said the Village can incorporate this into the contract with the formal vote. Mr. Brown asked by the Solicitor signing this is he legally binding himself to it. Solicitor McTigue said yes he is and he is comfortable with it. He said to be careful what Council wishes for. A lot of what is on the list he has been doing for the last 20 years at no charge to the Village. Now that it is part and parcel of his contract he will be billing for the time he spends making sure he is up to date on the new codes that come out. He reads the OML Bulletin every single week and reviews case law that comes out at no charge to the Village. But now with this being a requirement of his contract he has a right to bill for it. On roll call; six ayes, no nays.

Mrs. Rankin moved, seconded by Mrs. Graves to accept the recommendation of the Finance Committee which met on Wednesday, February 13, 2019 at 1:15 pm in Council Chambers to discuss the upcoming retirements in the Tax Office and the plan to fill the vacancies. Present at the meeting were Finance Committee Chair Rob Bartlett, Finance Committee Members Bill Brown and Kelly Rankin, Patty Busam, Eli Wendler, and Mayor Dan Policastro. With the pending retirements of Debbie Combs on March 8, 2018 and Patty Busam on December 31, 2019, the committee recommends creating a new role, Assistant Tax Administrator, with a salary range of \$35,000 to \$48,000. The plan is for the person filling this role to eventually take over as Tax Administrator. The role needs to be added to the salary ordinance. In order to get the role filled in time for the upcoming tax season, the committee is recommending to pass this change to the salary ordinance on an emergency. Ms. Palazzolo said the new hire would have essentially work March to December to learn the role of Patty's job before taking over. Mr. Bartlett said it would depend on

performance. The Mayor will decide if she is meeting the needs and requirements of the job. On roll call; six ayes, no nays.

Ms. Palazzolo moved, seconded by Mr. Bartlett to accept the recommendation of the Planning, Zoning and Economic Development Committee which met on Tuesday, January 15th at 630pm in Council Chambers. Present at the meeting were Chairman Mary Ann Schwartz, Vice-Chair Avia Graves and member Maggie Palazzolo. Also present were Mayor Policastro and Building Commissioner Don Keyes. Mary Ann Schwartz opened the meeting by going over the information in Section 7 and 9 of Resolution NO R-19-07 which lays out the details of the creation of the Councils. Section 7. A "Community Reinvestment Area Housing Council" shall be created consisting of two (2) members appointed by the Mayor of the Village of Mariemont, Two (2) members appointed by the Council of the Village of Mariemont and one member appointed by the Planning Commission of the Village of Mariemont. The majority of the forgoing representatives shall then appoint two (2) additional representatives who shall be residents of the Village of Mariemont. Terms of the representatives of the council shall be three (3) years. Section 9. A tax Incentive Review Council (TIRC) shall be established pursuant to O.R.C. Section 3709.85 and shall consist of three (3) representatives appointed by the Hamilton County Commissioners; two (2) representative of the Village of Mariemont, appointed by the CEO with Council concurrence; the County Auditor or his designee and an individual appointed by the Board of Education of each city and vocational school district to which the Community Reinvestment Area applies. At least two (2) representatives of the Council shall be residents of the Village of Mariemont. It is recommended by the Committee that these two councils be created. The Mayor will take care of getting this on the Planning Commission agenda and will contract the Hamilton County Commissioners and the Hamilton County Auditor. It is also recommended by the Committee that we get these openings out to Mariemont residents. We are recommending that information regarding these openings be placed in the Mayor's Bulletin, on Next-door Mariemont and also be announced in a Council Meeting. A simple resume is requested to be sent to Sue at the Village office by March 15th. The Committee also recommends that Sue create a listing on Next-door Mariemont with the name being the Village of Mariemont with our official seal to be used for this listing and all village business going forward. On roll call; six ayes, no nays.

Mrs. Schwartz moved, seconded by Mr. Brown to accept the recommendation of the Public Works and Service Committee which met on February 21, 2019 at 5:30 PM to evaluate the mowing contract bids and recommend award. In attendance were the Committee Chairperson Kelly Rankin, Committee Members Bill Brown and Avia Graves, Maintenance supervisor John Scherpenberg and representatives from the 4 bidders. Bid amounts:

Supreme Scapes \$46,000.00 plus \$1000 per additional cut
Grasscor \$46,000.08 plus \$1277.78 per additional cut
Organically Inclined, LLC \$46,000.00 plus \$1400 per additional cut
Lawnsapers \$47,175.00 plus \$2700 per additional cut

The bids were opened at the meeting, reviewed and discussed. Decision to recommend was based on lowest and best bid. The Committee recommends to award the 2019 Mowing contract to Grasscor. Mr. Brown said it was a difficult decision to make and the bids were incredibly close. A decision had to be made and this was the decision that was made. All good companies and all good people. On roll call; six ayes, no nays.

Mayor Policastro read the following miscellaneous announcements:

The applications for Outstanding Citizen of the Year are to be turned in to Mrs. Van Pelt by Thursday March 13, 2019.

Village Offices will be closed Friday April 19, 2019 in Observation of Good Friday

Resolutions:

"To Appoint Peter Wren as a Member of the Architectural Review Board for the Calendar Years 2019 and 2020" had a third reading. Mrs. Rankin moved, seconded by Ms. Schwartz to adopt the Resolution. On roll call; six ayes, no nays. Resolution No. R-2-19 was adopted.

Mr. Brown moved, seconded by Mrs. Rankin to take the Resolution reappointing Solicitor McTigue off the table to have the second reading. On roll call; six ayes, no nays.

“To Confirm the Reappointment of Edward J. McTigue as Solicitor for the Village of Mariemont for the Calendar Years of 2019 and 2020” had a second reading.

Mr. Brown moved, seconded by Mrs. Rankin that Council also confirms to include new section to appoint Frost, Brown, Todd as the backup to Solicitor McTigue in the event the need arises. On roll call; six ayes, no nays.

Ordinances:

“To Amend Ordinance O-20-18 of the Mariemont Code of Ordinances To Increase Payment for Employees; and To Declare Emergency” had a first reading. Ms. Schwartz moved, seconded by Mr. Bartlett 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. Mrs. Rankin moved, seconded by Ms. Palazzolo to adopt the Ordinance. On roll call; six ayes, no nays. Mr. Bartlett moved, seconded by Mr. Brown to invoke the emergency clause. On roll call; six ayes, no nays. Ordinance No. O-3-19 was adopted.

Mr. Bartlett said there was an email from Rick Greiwe dated January 22, 2019 and asked for an update. Mayor Policastro said he is going to refer the matter to the Health and Recreation Committee the planting of 8 trees in the Plainville/Murray Island. He said he has been trying to get the money from Duke Energy. He met the Duke representative along with Superintendent Scherpenberg and was told the trees we had planned for the area will not work. We can only put in trees that will not grow taller than 15 feet. We cannot do the Winter King. We passed that a year ago through the Committee of the Whole. Mr. Greiwe wanted to do \$10,000 worth of trees and the Village said they did not have the money. Council approved \$2,000 to put in Winter King Trees with the Parks Board to figure placement of the trees.

Solicitor McTigue said he got a letter from the Hamilton County Prosecutor’s Office about the high school for the new construction. The high school wants to use some of the land where the public library is for a staging area for materials the construction. The Village has what is called a Reverter Clause in our deed when we conveyed it to the public library. Technically the Village has an interest in the property. He has asked that it be put on the agenda for the next Council meeting. He does not think it should go to a Council Committee because it would take too long. He advised Council that it really is not a big deal. Mr. Brown said he wants to make sure wording is in the paperwork that they have to restore the property. Solicitor McTigue said absolutely.

The meeting adjourned at 7:45 p.m.

Dan Policastro, Mayor

Anthony Borgerding, Fiscal Officer

