

**RECORD OF PROCEEDINGS
REGULAR COUNCIL MEETING VIA ZOOM
MONDAY, JANUARY 25, 2021 – 7:30 P.M.
MAYOR WILLIAM G. KOONS PRESIDING**

MEMBERS PRESENT: Berger, Canton, Carroll, Galicki, Nairn, Porter

OFFICIALS PRESENT: Fiscal Officer Romanowski, Fiscal Auditor Lechman,
Solicitor Matheney

VISITORS: Bob Royer, Peter's iPad, Michael Sparger, mjbloc, Bruce Hendricks, Steve Latkovic, Jane Wellwig, Jim's iPhone, Greg Heilman, Chris Bell, Nina Lalich, Kelly Kimball, DH Sprungle, Chris Courtney, Judy Abelman, Barbara, Tamera Chess

The Mayor called the Regular Council meeting conducted via the teleconference service Zoom to order. Fiscal Officer read the roll. Regarding the minutes of the January 11, 2021 Regular Council meeting, Galicki questioned Council's approval of the Memorandum of Understanding (MOU) for the School Resource Officer (SRO) when the MOU had not been approved by the Chagrin Falls Board of Education. Porter advised that regardless of who agrees to it first, it would not be an effective agreement until Chagrin adopted it. Galicki said it was his understanding that the MOU had not been discussed by the School Board and wondered where the proposal came from in the first place. Porter stated that it came from Police Chief Rizzo and was discussed at the Safety committee meeting before the last Council meeting. Porter stated that the MOU was between Chagrin Falls Police and the Village because Chagrin Falls was providing the SRO. Porter would address the matter at the next Safety Committee meeting. The Mayor stated that the MOU came from the school Superintendent. Carroll made a motion to approve the minutes of the January 11, 2021 Regular Council meeting, seconded by Canton. Voice vote – ayes, all. Motion carried.

VISITORS: Steve Latkovic, Planning Commission (PC) Chairman, reported that the findings of the Solicitor's audit of Zoning and PC applications were provided to PC. He explained that the Solicitor issued a certain set of documents that had been under review. They were sent to PC via attorney client privilege for PC eyes only. PC went into a non-public session with the Solicitor and on leaving this session unanimously voted to release all the documents and wave privilege. Latkovic stated that the audit involved examining anything that over the last two years could or should have gone through PC for the zoning and application perspective. Exceptions were noted in some of the applications and documents. PC did not take any action but decided to take the time in between meetings to digest the information. At the next meeting, PC would discuss how to address the matter. In the interim, it would allow the Building Committee the opportunity to look at the findings and address a plan going forward.

He reiterated that he was appearing before Council to explain the process and status. Latkovic stated that to be clear, he was not prepared to address any substantive issues. He encouraged attendance of any interested parties to the next PC meeting. He addressed the funds allocated by

Council for the audit, and felt it was money well spent. Latkovic explained that there had been a lot of turnover in the Building Department. The whole aspect of how this was done in Villages throughout Ohio was a challenge. This was showing the challenges and how the Zoning Code and PC regulations can be implemented better. He hoped the Village would get to this point.

Carroll advised that he had reviewed the documents and saw that the vast majority of them had issues, whether it was that a process had not been followed, or PC was not provided the information. Some had permit fees that were collected, and some had permit fees that were not. A couple of things he found concerning included items that were not documented in the Building Department computer system, so it was not possible to tell if permit fees were collected or how much. Carroll acknowledged Latkovic's reference to the turnover in the Building Department but noted that the Building/Zoning Inspector had been the same person for the last 30 years. Carroll asked if the audit just involved the commercial, and Latkovic verified it was and added that PC did not look at residential. Carroll noted that it was then not known what level of inconsistencies existed with residential. He added that it brought up more concerns and questions for him and said it should be a consistent process. Carroll thought that the Solicitor's recommendations of utilizing a better form was good. He thought it would also be beneficial to make it electronic and have the forms on the website to make it as easy as possible for residents and business owners. Carroll said that even the Sleepy Rooster restaurant did not fit the requirements of its building location, but the Village allowed it. He thought it was problematic and felt a deeper investigation was necessary.

Latkovic agreed and said PC looked forward to having more information. He understood that the Building Committee would be meeting to discuss the audit results. Latkovic explained that if fees were supposed to be charged, they should be charged. Although Latkovic admitted that the audit had gone beyond what PC thought it would get into, it seemed to be a healthy process. He said the Village's resources should be used effectively, and his objective as Chairman of PC was to make sure it was looking at these matters in a way that benefitted the Village. His larger perspective was to make the process easier moving forward. The Village government should be doing the residents a service by having the right kind of review and the right kind of businesses that fit within regulations without signs all over, etc. At the same time, the Village should have a consistent, transparent, system that was easy to use. He liked the idea of online forms suggested by Carroll and added that flow charts would be beneficial as well. He admitted that it would be necessary to dig in, and he did not know where it would head.

The Solicitor suggested that it might be helpful to have a joint PC and Building Committee meeting regarding the audit, recommendations, or process. The Mayor said the Building Committee would be meeting February 4th but needed some time to discuss the matter with the Building Department employees. He suggested conducting a special PC meeting later in February. Latkovic stated that it was an interesting suggestion and felt that the process needed to play itself out a little bit with the Building Committee separately. He wanted to have as many answers as possible and be in the early stages of forming recommendations about a path forward at the next PC meeting. Latkovic agreed that having a joint planning session around how things work and how they can interact could be effective. He questioned the use of time, however, if it were just more discussion of the matter where nothing was getting done.

Carroll stressed the need to fix the process and said that the inconsistencies were concerning. He added that it appeared to be throwing a dart at the board to see who was charged a fee and who was not charged. Furthermore, it was the accounting of those fees that were concerning to him. Carroll said that when one piece of paperwork shows that the person has been charged, but there is no documentation within the Building Department's system, it befuddled him. Latkovic agreed but clarified that the Solicitor's investigation did not go beyond this. Whether something was actually charged, collected, refunded, etc., the Fiscal Officer's records were not a part of this. That might be another step where PC could do a full circle review of how fees work between departments. Latkovic stated it was just as problematic where fees were collected, and the application states they were not collected. It all concerned record keeping and good fiscal policy and administration. Carroll added that there was an issue with fees being collected and not deposited in a timely manner as set by law. This was going on for some time before it was fixed. Carroll felt there was deeper digging that had to be done to be sure everything is done properly. He thought a full audit of everything should be done, because it is the fiscal responsibility of Council to be sure it is done properly.

Berger reiterated that there would be a Building Committee meeting February 4th, and written document would be provided to PC for its meeting on February 11th. It would not be a finished product, but it would be a starting point for discussion. Berger offered to work collaboratively with PC.

Marc Bloc and Bruce Hendricks of Chagrin Lakes addressed Council. Hendricks advised that the Village had been petitioned for a loan to repair his neighborhood's dam. Recently, significant erosion had been observed to the dam as well as properties not associated with the dam. Although there had been problems in the past, the issue came up suddenly and was costly. They would be seeking a loan of possibly \$400,000. The goal would be to repair the dam as soon as possible. He added that it would benefit not only those who live on the lake, but people who live downstream. The plan would include lowering the level of their lake so that it could retain more water in heavy rain. Chris Courtney was the project Engineer. Bloc reiterated that a petition was circulated, and all residents involved signed it. He said it was not unusual in Ohio to have this kind of action take place. He added that Courtney and the Village Engineer had also indicated that their dam issue constituted an emergency. Courtney verified the project had some urgency associated with it due to erosion on the back side of the dam. He suggested the project be done over the summer to minimize future erosion.

Porter asked Hendricks if a contractor was identified to fix the dam. Hendricks said he had been in touch with Dave Rickelman who was involved in area projects, but a decision had not been made. Chris Courtney would design the dam, and from there they would decide on a contractor. Courtney said the estimated total project cost was \$400,000 with a lot of unknown information. Porter asked when the last time was the dam had been repaired or rebuilt, and Bloc stated 50 to 60 years ago.

Carroll stated that the Village did not know how this dovetailed into the greater stormwater plan. In his report, the Mayor stated that in 2004, CT Consultants identified the dam but also identified multiple additional projects. His concern was that if the Village were to spend \$400,000 to \$500,000 of taxpayer dollars, although it would be reimbursed in time, it was necessary to

address the matter with the Engineer to see how this project dovetailed into the greater stormwater mitigation issue. There are other dams to include Paw Paw Lake, Lake Louise, Bellwood, and Sugarbush which all flow into different tributaries and impact stormwater downstream in various capacities. Street Committee had been discussing addressing Bullfrog Pond in Kensington Green to soften its overflow which could then soften the impact on the lake in Chagrin Lakes. Carroll saw the resolution from the county, but then realized that the Village would be outlaying the initial \$400,000, not the county as indicated by the Mayor's report. Carroll thought more information was necessary, to include additional estimates to get the work done. Essentially, the Village would be spending Village dollars and while it will be reimbursed, it was still an exposure to the Village.

Carroll discussed the timeline with Courtney who stated that the latest the project could start would be late June. Carroll asked if there were funds allocated through the greater Chagrin Lakes Homeowners Association (HOA), or if it were a private project for the 11 homes around it. Bloc stated it was a private project and lake. Carroll acknowledged that Bloc was with the Walter Haverfield law firm, which had worked with the funding of similar projects. Bloc said there were specific statutory obligations that are set forth in the Ohio Revised Code that provide for dams and other such instrumentalities. They were following what had been done in other communities. Carroll wanted to get the Engineer's input about making the lake more of a retention pond, which could have significant benefit to the overall stormwater issue. Courtney said that the lake was on the teetering edge between being regulated by the Ohio Department of Natural Resources (ODNR) and not being a regulated dam. The distinction is based on what is done to modify it. The ODNR regulations apply when the dam is holding back a certain amount of water. The Chagrin Lakes dam is on the low end of those requirements. A shorter dam with less water would cause it to be not regulated. It is currently not on the list of regulated dams but is on the edge of potentially being regulated. It would then be a class three dam.

Porter asked Bloc for the Ohio Revised Code to which he referred, and the Mayor stated it was 715.47.

The Mayor stated that the Engineer was well aware of the situation and was the one who spoke of it being part of the Village's watershed. The Engineer is prepared to provide comments about the request at the meeting on February 8th.

The Mayor asked Courtney what classification the dam currently had, and Courtney reiterated it was at the low end of the dam classification. Carroll asked if this meant a higher-class dam had more priority for being maintained. Courtney said that with increased classifications, there are more standards that come to bear on it with construction standards, amount of water, and how everything needs to be situated on the downstream end of the dam. Higher classification means more requirements.

The Mayor invited the visitors to return for the next Council Zoom meeting on February 8th. He suggested that the matter should be on the Finance Committee agenda for Tuesday, February 2nd.

Carroll asked for contact information for the primary lead for the Chagrin Lakes dam project.

MAYOR'S REPORT: The Mayor stated that the first of three Zoom meetings was held relative to the Manor Brook Stream Enhancement project. It was a \$464,000 project on the northwest corner of the intersection of Manor Brook Dr. and Chillicothe Rd. designed to handle stormwater. The process started with a meeting in January 2019. There had been two Zoom meetings since. The Mayor said there was an issue with the land that the Village needed for the project. The Village was interested in 4.4 acres of land that belonged to Thomas and Thomas. Manor Brook, which would include Whitetail and Manor Brook Gardens, had paid taxes on the land titled to Thomas and Thomas, who originally developed Manor Brook. Through a legal process, the land was transferred in the summer of 2020 to the Whitetail HOA. The Village just found out two weeks ago during the first Zoom meeting that this was not the correct situation. It should have been transferred to Manor Brook Gardens Condominium Association (COA). The Village had been dealing with Whitetail and had an agreement written up and presented to them. The Village could possibly need two agreements for both Manor Brook Gardens and Whitetail to give the Village access to the 4.4 acres of land needed for the stream enhancement project. The project is from the Ohio Environmental Protection Agency (OEPA) and is being administered by Chagrin River Watershed Partners (CRWP) and Engineered by CT Consultants. The Village was getting ready to finalize its agreement with Manor Brook when the land ownership issue came up. The Village did not yet have anything in writing but would be receiving a request from the Manor Brook "owners of the land" for approximately \$18,000 for the use of their land and other assorted costs.

The Mayor stated that the grant was issued some time in 2020 and the Village has until the end of September 2022 to complete the grant. The Village wanted to get started before March 31st, because after this point, cutting down trees is prohibited for a length of time. The grant could be started in the fall, but it would be much more beneficial for everybody to get started earlier.

Carroll stated he had several questions. Before Berger was sworn into Council, he told Council that the land transfer was an issue between Whitetail and Thomas and Thomas and there would be no cost to the Village. Berger may have stated, 'why would the Village bear this cost?' Now, it appears there is a cost. Carroll stated he asked the Mayor in November if there would be any additional fees, and the Mayor stated no additional fees. At the last Council meeting, Carroll asked Berger whether there would be no fees, and Berger replied, "not for this resolution." He supposed that Berger left the door open for additional fees to suddenly potentially come up. At a Finance Committee meeting, the matter came up and it was stated that there would be no fees or additional costs. Carroll wanted an explanation as to how suddenly it appeared that at least the Mayor and Berger knew about potential fees, but it was not shared with Council.

Carroll referred to an email chain that was distributed to Council and described it as very problematic. While Carroll viewed it as a worthwhile project, he noted the problems with the land transfer issues and potential claim for legal fees against the Village by Whitetail and/or Manor Brook Gardens relative to the land transfer and wanted an explanation. The Mayor stated that if Carroll went back and looked at the minutes from previous Council meetings, the comment was made, 'we're not going to get 4.4 acres of land in South Russell for nothing.' It was discussed that there would be some cost. Carroll said the Village did not want 4.4 acres in South Russell, it wanted an easement. A reasonable easement was not \$18,000. The HOA had legal fees that they incurred and it was not anything the Village did. Carroll stated that Berger

made the comment that they had been paying taxes for 30 or 40 years and it was an error back then and it should be fixed. Carroll advised that he had asked both the Mayor and Berger on a few occasions whether there would be additional costs or hidden fees that might rear their ugly heads. He was told no multiple times. Now at the eleventh hour, there are charges of \$10,000 and \$8,000. Carroll understood an easement and would have no issues with this, but an \$18,000 easement was what the Mayor was saying.

Berger stated that there was no easement agreement between South Russell Village and either Manor Brook Gardens or Whitetail. It had not been negotiated. There was a proposal put on the table, but nothing had been signed. Nothing was brought before Council. Those were discussions. At the time, Berger was President of Whitetail Run Community Association, the Master Association. It was the belief of the Master Association that they did not have title but were going to get legal title to the properties. Everyone expected that based upon the fact that they had taken care of the property for the last 40 years. This no longer appeared to be the case. Manor Brook Gardens had an agreement from Thomas and Thomas. The property probably belonged to them and it had been titled for Whitetail erroneously. This was an issue that had to be resolved by the attorneys, Kaman and Cusimano. Until this was resolved, there was nobody for the Village to work with because it did not have a legal owner of the property. This was step one.

Berger stated that he made it clear when he joined Council that he was President of Whitetail and as such he was part of privileged conversations that he could not share with Council. Berger said it's just the way it is. Berger said that as of December 30, 2020, he resigned his Board position and was no longer part of Whitetail Run Community Association. The privilege that he had as part of their board went with the board. He could not discuss those matters.

Carroll asked Berger if he understood conflict of interest in the Ohio Revised Code. Berger stated yes and presented his proposition on this. He stated he would recuse himself from this issue entirely and would not discuss it with "you" and will not vote on it. Berger stated he was outside the process. What Council did with Whitetail or Manor Brook on this project was up to them. They could decide and let it happen.

Carroll stated that Berger said that nobody from Council made any kind of arrangements or anything else. An email dated January 19th stated:

"Please see attached for a tentative agreement for the stream enhancement project agreement and easement from South Russell Village. Please read and review. Peter would like to state the agreed upon compensation that Chris previously communicated to be put into the agreement so that Whitetail is legally protected and given greater assurance of reimbursement/payment. Chris told the Board that the Village agreed to reimburse all legal expenses associated with transferring the titles of the four parcels not in Whitetail's name (\$8,000) along with a \$10,000 disbursement for the use of Whitetail's land: \$18,000 in total."

Carroll asked Berger if he was the "Chris" to whom they referred, and Berger stated he was the Chris. Carroll said Berger stated that there was nothing agreed upon, and no one from the Village had communication, but here he was functioning as a Council member, perhaps not on

the Whitetail Board, making an agreement that should obviously come before Council. Berger stated it was not an agreement, and he took issue with the way the document was stated. Berger reiterated it was not an agreement but a proposal. Berger stated he did not write that document. Carroll stated that the issue he had was that Berger told the Board that the Village agreed to reimburse all legal expenses without authority. Berger stated that he took issue with that statement. Carroll pointed out that it was in the email, and Berger stated he did not write the email and could not tell Carroll what other people write. Carroll advised that this was a major issue. There was another 319 grant that was bamboozled because of things done inappropriately. Carroll said he sees the Mayor meeting in private with Councilman Canton and someone else concerning this project. He did not understand why this always gets bugged up and why the Village can't be transparent; why Council cannot be invited to the Manor Brook meetings, etc., in an effort to preclude having to Sunshine the meetings. Carroll stressed that it was a matter of Village taxpayer dollars, and about a project that could benefit Manor Brook and the Village as a whole. But just like Kensington, which got bugged up too, now this was bugged up. Carroll was frustrated and believed there were ethics issues, to be blunt, and he indicated to the Mayor that the whole project was in jeopardy.

Mark stated that someone said the transfer of these parcels to Whitetail was in error. Berger stated that he said this and that they were transferred to Whitetail's ownership from Thomas and Thomas and they should not have been. Rather they should have been transferred to Manor Brook Gardens, or at least some of the parcels. Porter asked if Whitetail was going to quit claim the parcels to Manor Brook. The Solicitor interjected that Berger should probably abstain from either side. She explained that if he was talking about privileged conversations he may have had with Whitetail, she would recommend keeping those privileged and not disclosed. The deliberation and discussion regarding this on either side was over at this point. Berger thanked the Solicitor.

Porter asked if this would then be a question for Kaman and Cusimano who evidently represented both sides with Manor Brook and Whitetail. Berger said that they do or did as of December 30th. He did not know their current status. Porter asked the Solicitor if she knew the status, and she replied that she believed they represented both sides but did not know all the details. However, she said South Russell was not the one saying that they must transfer these to Whitetail's name. She explained that there are four parcels that are affected. One of the parcels was always in the name of Whitetail Run Community Association, Inc. The other three were still in Thomas and Thomas' name, and the Village only brought it to the forefront. It was transferred/quit claimed and the County Auditor transferred and conveyed the properties. They are titled in Whitetail's name per the county records. Whether or not there was an issue of Manor Brook being the rightful titled owner was definitely an issue between Whitetail and Manor Brook Gardens and perhaps their legal counsel. The Solicitor explained that the Village has a proposed landowner contract that the Village has sent to Whitetail Run Community Association for their review and consideration. It includes a proposed drainage easement. A response had not yet been received, but this was where the matter came to a head. Her understanding was that Manor Brook Gardens Condominium Association was claiming that they were the titles owners. This was an internal dispute.

Porter clarified that the Village should be dealing with the titled owner on record for those four parcels, which was Whitetail for the 319 grant. The Solicitor stated this was correct and added that there was verbiage in the contract that would allow Whitetail to quit claim it to Manor Brook, and the agreement would continue and would not die. The Solicitor stated that for the Village's purposes, it was dealing with the titled owner. Porter verified that the parcels in question were the same ones that Thomas and Thomas would have sold to the Village for \$2,000. The Solicitor did not think this was ever the offer or whether it would have been to deed the parcels to the Village. She did not recall this. Porter reiterated that the Village currently had a proposed agreement between the Village and Whitetail for those four parcels and an easement over them. The Solicitor stated this was correct. Porter asked if there were a cost to the Village for the easement. The Solicitor stated that typically there is usually a cost for private property and access and maintenance. Porter asked if it was like \$100 for the easement. The Solicitor did not know if it were this nominal, or if it would be something substantial, but it was discussed typically. Porter asked if the agreement had been forwarded to Council because he did not recall it. The Solicitor said she did not think so and said she would forward it. It was drafted by CRWP. She explained that it then turned into the Village needing a drainage easement. At one point it was discussed as something more comprehensive than a drainage easement. This was another road it took. It was an effort to see if the Village could at least get the agreement because once the Village had the agreement with Whitetail, then the Village could go out for the Request for Proposal (RFP), because any potential bidder would want to see and walk the land. This cannot be done currently because it is private property.

Porter stated that on July 20th, the property was transferred from Thomas and Thomas to Whitetail. The Solicitor concurred and said it was for three of the four parcels. Porter asked what would stop the Village from dealing with Whitetail and allowing Whitetail and Manor Brook Gardens to fight it out down the road. The Solicitor stated this had been the plan, but now there was a proposal for the Village to compensate for the use and access and maintenance of the land. Porter asked the Mayor if he would have any objections with the Solicitor sending the proposed agreement regarding the Whitetail property to Council. The Mayor said this was done awhile ago and was probably the same agreement the Village had been dealing with since November. If it had not been provided to Council, it would be sent out.

Nairn asked who would be paying the \$18,000. The Mayor stated that the Village had not had a formal request for the money. The only thing was an email that was distributed that probably should not have been distributed. He said his mistake was getting involved in that. The Mayor explained that there would be a request. He heard it last Thursday that there would be a request for about \$18,000. Nothing had been in writing yet, but it was their request for a signature on the agreement for the use of their land. Nairn felt that this was an ambush. She lives in this neighborhood and remembers hearing that this was going to cost nothing. It rose from costing nothing to \$18,000. This was in January of 2019 that there was a meeting in Village Hall, and she noted that Bob Royer was present and made some interesting comments. It was a fabulous meeting, and the residents were onboard. She had had concerns about the flooding and stormwater issues in the Village for years and had her property severely damaged in 2015. She was completely supportive of the project. Nairn advised there was so much confusion and the matter was so muddled. But as a resident of the Whitetail community, she felt slammed by going from zero cost to \$18,000. She added that it could end up being more than that and felt it

was out of control. Nairn thought the Village should go back to square one and not have all the non-transparency and ambiguity. This was a major important project, and she was very disappointed because she thought the project was a super idea. Now there were too many unknowns.

Galicki shared that earlier in the day, he reached out to Leah McComb, the director of property management for the Coral Company, in light of the correspondence sent from the Solicitor at the request of the Mayor concerning the Manor Brook project. Galicki said he asked McComb if she could provide some ancillary information or clarification, specifically if she could identify who the "Chris" was that was engaged in the negotiations. At the time, she was very taken aback and indicated to Galicki that he had not been a party of the negotiations that had been going on for the past 14 months, which would take it back to December 2019 when the comment was made that it would not cost the Village anything, and the Village really did not have a dog in the fight. It was between the company and the HOAs. When he asked McComb who the "Chris" was, she would not provide him with the answer, but did recommend he ask the Mayor. She explained that the Mayor knew who "Chris" was. Galicki left it at that with McComb. Galicki thanked the Mayor for having the Solicitor forward the piece of correspondence because had it not been forwarded, Council would not be potentially aware of some potential unethical breeches nor would Council be aware of the fact that there might have potentially been a member of Council negotiating in an unauthorized manner on behalf of the Village for these prices. He appreciated the Mayor sharing the information because otherwise the matter would have been something swept under the bridge.

Carroll asked the Solicitor for clarification. Since Berger was out due to his past involvement as HOA President, what about the status of Council members Nairn and Canton? If they held positions on any of the Boards, were they able to participate or should they also recuse themselves from the discussions. The Solicitor thought this research had been done previously. Any property owner in that subdivision unless they were actually receiving a direct special benefit that was different than the other residents with respect to the project, were okay to vote. She advised there were a couple of Ohio Ethics Commission opinions regarding this. There would be a conflict of interest with respect to being a Board member and a Council member. That conflict was on either side, Board and Village. As a Council member, there should be no deliberating, discussing, or voting on the issue and same if the Council member were on the Board. Similarly, if someone were intimately involved and somehow knew some inside information on either side, she would recommend that they consider recusing themselves from the issue. The Solicitor reiterated that with Board membership, it was a conflict of interest and the law required recusal on both sides.

Canton stated he was no longer on that Board. It was just too much of a conflict of interest and he thought it was best to step down from the Board, so he did. He stated he was no longer on that Board. The Solicitor asked Canton when he stepped down. Canton replied, "today." The Solicitor asked him how long he was on the Board before he stepped down today. Canton stated he had spent at least three years. The Solicitor asked Canton to recall that with respect to Manor Brook there were a couple of things for which it was necessary to waive readings, and five of six affirmative votes were needed to waive. At that time as President of the Board, Berger was conflicted out. The Solicitor recalled specifically asking Canton if he in fact were a Board

member, and thought he said he was no longer. Perhaps she misheard him. Canton stated he was a member and there were votes he did not vote because of it. The Solicitor stated that he cast some votes with respect to the Village and the Manor Brook project in the last year. Canton stated if this was the case, why was he not stopped? Why did it not come up? The Solicitor explained she had asked Canton if he was a Board member, and thought he told her he was not. Carroll recalled this conversation and suggested finding the minutes. He recalled Canton being asked if he were on the Board. Canton explained that he was on the Board of his Condo Community and said there were a number of Boards. He was on the Master Board and just resigned. He was also the President and Board member before this of his condo community, not the Master Association. The Solicitor asked if Canton was referring to Whitetail with the term "Master." Canton stated yes and clarified this was the Board on which Berger was President. The Solicitor clarified that Canton stated he was on the board of Whitetail. Canton replied it was the condo community where he and his wife live, and not the "Master." The Solicitor asked if the condo community was Manor Brook Gardens. Canton stated no, and said it is entitled Whitetail Condominiums. Nairn explained there are four HOAs, and sometimes there are three Boards and sometimes four. Canton stated it was very confusing. Nairn concurred.

The Solicitor asked why Canton was included in the conversations with respect to the management association as far as the Manor Brook project. Specifically, why was his name included if it said "Board". She was trying to determine what Canton's membership or role would be. Canton asked if she meant the one from which he just resigned, and the Solicitor stated no that she was referring to the email sent out Friday. Canton stated he was just a member of the HOA Master. The Solicitor clarified that a member and not a member of the Board, that he was just part of the association. Canton clarified that he was a member of the Board. The Solicitor verified that he is no longer serving on the Board today. The Solicitor stated she still thought he would have to recuse himself from any deliberation, discussion, or voting with respect to this project since he served on the Board previously, he was conflicted out. Canton stated that if this was the case, that was fine. The Solicitor thanked him for clarifying.

Carroll asked when the Village would find out about the fee. The Mayor stated he would do a summary on the whole cost. He stated this issue started in 2018-2019 when it was discovered that Thomas and Thomas were titled to the land. We met with the law firm and with the Thomas brothers individually. It went down from \$15,000 to get a signature to transfer the land to \$2,000. We informed the Coral Group that Thomas and Thomas were willing to negotiate and they negotiated. The transfer occurred in July. The transfer was not done correctly. Last Thursday, we heard that there is going to be a request for \$18,000. On Friday, an email was sent out and we kind of dropped the ball there. It should not have been forwarded on, and he should not have been forwarding it also. But we did it. The Mayor expected something maybe in writing that may be simply an email requesting \$18,000 to come to the Village as a formal request which would probably go as a line on the agreement that we are trying to work with Whitetail, which would also probably require an agreement with Manor Brook Gardens. We have been working on this agreement. He explained that when he said "we" it had been the Engineer, the Fiscal Officer, the Solicitor, the Mayor, three members from CT Consultants, and CRWP that had been working on this every two weeks for a while. There was another meeting maybe Friday and there was going to be a meeting Monday night at 7:00 p.m. It would be the third and hopefully the last Zoom meeting with people from Manor Brook. Knowing there was a

request coming for the \$18,000 would also be on the agenda for the Finance Committee next Tuesday morning. The Mayor stated to look for a response from the Engineer about the project and a response about the request for the funds.

Carroll reminded the Mayor that with the Finance Committee, Berger cannot participate. He asked the Solicitor how to handle this. The Solicitor stated they could do an ad hoc committee or appoint someone for the interim. It would be Council's decision.

The Mayor stated there was a Finance Committee meeting coming up and suggested the matter be figured out ahead of time.

Galicki addressed the Solicitor and stated that if he heard the Mayor correctly, the Village would be asked by a party that does not currently own the property to pay them \$18,000. The Solicitor stated that this will come from either Whitetail Run Community Association, Inc. as the management association or from one of the sub-associations. Galicki referred to the discussion between Porter and the Solicitor and said he understood that Whitetail is currently the valid owner of the property and the people with whom the Village needs to negotiate. Yet, the Village is being asked to entertain a proposal from another HOA that currently does not hold any title to the property. Until this is settled, perhaps Council should not address an issue of compensating anybody.

Porter suggested that the Finance Committee meet and consider the proposed agreement as part of its meeting, and that the chair of that committee is okay. He volunteered to attend the meeting in Berger's place unless another Council member would want to do so.

The Solicitor stated that the proposed agreement does not include any compensation. It is an agreement to use the land and to have access to maintain the drainage easement to do certain things. There are certain requirements that might be required by the Army Corps of Engineers, by the permit, etc. There is no consideration of money in the agreement yet. Porter said he would feel better if the Finance and Street Committees would consider this going forward because there could be a provision in there that the Village pay cost of some kind which would not surprise him, or that the HOA pays costs, which would surprise him. If the agreement is sent out to Council, it would be helpful to have it before the Finance meeting because this sort of deal does not fall under any particular committee other than Properties. Finance seemed like the obvious place for it. The Solicitor forwarded the proposed agreement and proposed drainage easement to all of Council, Mayor, and Fiscal Officer. Porter said he would leave it to Carroll as to whom he wanted on the ad hoc committee. Galicki added that Properties would be happy to be involved, too.

Berger stated he would be happy to have any and all Council members who would like to attend the Finance Committee meeting February 2, 2021 at 8:00 a.m. He offered to leave the meeting as appropriate. Porter clarified that he was talking about appointing someone to take Berger's place for the purpose of membership on that committee for this limited issue. Carroll asked if it was necessary to formally appoint Porter or whether it just be discussed and then Carroll would make a recommendation from a Finance Committee. The Solicitor was unsure, and Carroll said he thought that the Mayor or Council could form any ad hoc committee of members of Council.

From a procedural standpoint, if members of Council want to show up at the Finance Committee meeting, Berger will recuse himself and Carroll will discuss the matters with those present. He would then take into consideration their input in his decision of his recommendation.

The Mayor stated that on this issue, the Village expects the request for \$18,000 and are preparing for the request.

Bob Royer, a member of the Whitetail Master Board, said it was their desire that this project go forward. There seemed to be time issues, and he wanted everyone to know from a Whitetail Master Board Association, this is a project that should go forward. If there are issues that need to be worked out, then they need to be worked out. Royer added that they are thinking about the overall people in South Russell and wanted it to work. Carroll thanked Royer. Galicki told Royer that he thought he would find that all Council believes that it is a project that should go forward, too. He thought there may be questions about the negotiation of funds, the last-minute questions about ownership of the property which need to be rectified. Frankly, Galicki did not think Royer would find any members of Council that would disagree with the project going forward.

The Mayor reiterated that there is a Manor Brook Zoom open meeting on Monday, February 1, 2021 at 7:00 p.m. It would be the third and hopefully final meeting dealing with Manor Brook.

Galicki noted that Jim Heinrich, Northeast Ohio Public Energy Council (NOPEC), did not appear at the meeting and asked if he was being rescheduled. The Mayor stated he keeps putting him off until there is a meeting with not a lot on the agenda.

FISCAL OFFICER'S REPORT: The Fiscal Officer updated Council on the MOU for the Service Department employees, which the Village had approved at the last meeting. She contacted Russell Township and Bainbridge Township, and those Trustees had not decided. They would let the Village know when a decision was made.

The Fiscal Officer advised she had received notification from Ohio Department of Jobs and Family Services for an employee who is no longer with the Village. She addressed the issue with the Solicitor and filed the necessary paperwork. Subsequently she was notified by another employee who was notified by ODJFS that they filed a claim, which they had not. There have been 19 cases in the Village of residents being notified that they were signed up for unemployment benefits but did not apply for them. There have been similar cases in neighboring communities. They are working with a detective in the Police Department trying to get it resolved.

FISCAL AUDITOR: The Fiscal Auditor distributed his report for the month ending December 31, 2020. The fund balances for the month ending December 31, 2020 totaled \$3.265 million. There was a deficit for December of \$624,000. For the year, there was a surplus of \$226,000, and the Village ended the year in the black, which was unexpected. A substantial deficit had been budgeted for the year.

The Fiscal Auditor reported that the fund balances reflected in his report matched those arrived at independently by the Fiscal Officer to the penny. Quarterly installments for Ambulance and Cable Franchise fees were received in December. The budget amount for both were exceeded. Income Tax was also over the budget amount as well. The areas where the Village fell short of what was budgeted were interest income and gas tax at 83%, which were in part due to the pandemic and both were expected. The Fiscal Auditor explained that while it looked like the Village finished \$600,000 ahead, after taking out grants and Permissive Tax which are generally accompanied by expenses, it was closer to 103% of the budget and \$90,000. Expenses were held relatively in check. Overall, it was a nice result to be in the black in a year where many were concerned about what was in store for the Village. Next year there may be a delayed impact with Income Tax, but the Village is in good shape.

Carroll asked the Fiscal Officer how much of the CARES Act funds went towards Safety salaries, and she stated it was about \$87,000. She explained that it would still be necessary to watch Income Tax since many people were out of work in 2020. The Fiscal Officer added that with Lake Louise and other Village projects, there were some big projects happening this year. Porter asked the Fiscal Officer whether the Village would potentially be receiving CARES Act funds in 2021, and the Fiscal Officer had not heard anything conclusive about this. She reiterated that there was grant money associated with many of the projects, but with these revenues come expense.

FINANCE COMMITTEE: Berger made a motion to approve the fund balances as presented by the Fiscal Auditor as of December 31, 2020, seconded by Carroll. Voice vote – ayes, all. Motion carried.

Berger stated the Finance Committee will meet Tuesday, February 2, 2021 at 8:00 a.m.

SOLICITOR: Regarding the discussion at the previous Council meeting of the December 31, 2020 expiration of the Families First Coronavirus Response Act (FFRCA), the Solicitor reported that there is a plan that President Biden has discussed called the American Rescue Plan. The plan had not been passed yet but would include the emergency leave plan and would apply to all employers. Employers would also be required to provide over 14 weeks of paid, sick and family medical leave. The leave would be available to healthcare workers and first responders. Tax credits would be available for private employers with fewer than 500 employees. The Solicitor reiterated that the legislation had not passed, but that she wanted Council to be aware.

STREET COMMITTEE: Porter and Carroll established the committee's meeting schedule as the last Friday of each month at 7:30 a.m. in Village Hall. Carroll advised at the meeting scheduled for January 29, 2021, the committee would discuss the five-year plan, the 2021 Road Program, and other issues.

The Mayor addressed a report by Northeast Ohio Areawide Coordinating Agency (NOACA) pertaining to the condition of the roads. Bell Rd. from Chillicothe Rd. to Newbury was listed as fair to poor. The Mayor stated he wanted to be on NOACA's radar because NOACA has the money.

BUILDING COMMITTEE: Berger distributed the minutes of the January 7, 2021 Building Committee meeting. Thursday, February 4, 2021 at 8:00 a.m. will be the committee's next monthly meeting.

SAFETY COMMITTEE: Porter verified that the committee would continue to meet the first Thursday of the month at 7:00 a.m. at the Police Department.

The Mayor stated that the Reclamite webinar would take place Tuesday, February 2, 2021 at 10:00.

HUMAN RESOURCES COMMITTEE: Nairn stated that the HR Committee met on Friday, January 15th. The new mechanic position that the Village was considering was discussed at length. The Street Commissioner joined the meeting and expressed a desire for the Village to have a tiered salary system, which was also discussed. The Street Commissioner provided the committee with a template from Orange Village to utilize toward a tiered salary system with a self-evaluation and supervisor evaluation form to be used. The minutes of this meeting were distributed.

Nairn added that there would be a joint HR and Finance Committee meeting to be held Friday, February 19th at 7:30 a.m. in Village Hall for the purpose of establishing a pay range for the new mechanic job description and for exploring the salary tier system for all Village employees.

Carroll asked Nairn if she would be taking into consideration the ranges that was put together by Clemans Nelson a couple of years ago. Nairn explained that Clemans Nelson offered several ways the Village could implement a tiered salary situation and provided methods to evaluate the employees. She would review the materials provided by Clemans Nelson.

PROPERTIES COMMITTEE: Galicki had nothing to report.

PUBLIC UTILITIES COMMITTEE: Nairn advised that the Village had been granted \$10,000 by NOPEC and that Council should consider energy savings projects that would better the Village.

The Mayor stated that the Street Commissioner would have Dean Hayne, First Energy, attend the meeting on February 22nd to discuss streetlights. Discussion will also include power outages and storms.

Porter clarified that the street light replacement program would be discussed and explained that the Street Committee had discussed whether the Village wanted to pay money to have First Energy replace all the bulbs at once, do some of the bulbs over time, or pay nothing and replace them one by one as they fail.

PARK COMMITTEE: Galicki reported that there had been some indication that more citizens had expressed interest in donating park benches and trees. In a future meeting of the Park Committee, those issues would be discussed as well as reviewing previous plans containing the placement of these to determine if capacity was being reached and whether alternate locations in the park should be explored.

ORDINANCES/RESOLUTIONS:

Porter provided a third reading on an Ordinance amending the Grievance Procedure subsection of the Progressive Discipline Policy section in the Village's Employee Handbook. Porter made a motion to adopt, seconded by Nairn. Roll call – ayes, all. Motion carried. **ORD 2021-07.**

BILLS LIST: Berger made a motion to ratify the bills list of 12/31/2020 in the amount of \$32,929.69 and the 01/15/2021 in the amount of \$116,476.47, seconded by Carroll. Voice vote – ayes, all. Motion carried.

NEW/OTHER: Canton, Galicki, Porter, and Berger had no new business.

Carroll asked for the status of the pay issue with the Street Department employee who was in quarantine. The Fiscal Officer stated that the employee would be returning to work the following day. Per discussion at the previous Council meeting, the time would come out of his sick time bank, but the employee would be asked to write a statement verifying he was quarantining because of exposure due to COVID. Carroll asked if the employee was ordered by the Health Department to quarantine, and the Fiscal Officer said she had not spoken to the employee but that the Mayor had. The Mayor said the employee was. Carroll reiterated that the employee received a document from the Health Department stating that he was ordered to quarantine. The Mayor said he believed so and said the employee had back-to-back orders and had been gone for a month. Porter asked if the employee would be bringing them in, and the Fiscal Officer asked this of the Street Commissioner. She let the Street Commissioner know to tell the employee that the employee should make sure the person in his household who exposed him the second time should be sure to let the county Health Department know so that the employee would get that letter. However, she had not heard anything yet.


Carroll explained that the employee should have the documentation. Porter agreed and said since Council waived the doctor's note criteria for being gone more than three days, there was an understanding that documentation would ultimately be provided. Carroll agreed.

Nairn reminded Council that real estate taxes are due February 10th and fines will be issued for late payments despite problems with the Postal Service.

The Mayor stated that there was emotion today and he advised Council that in and out of the meetings, a lot of people look at Council as representatives of the Village. Things have gone on that have come to complaints about things that are said and things that have been implied as a position of power in the Village. He told Council to be careful.

ADJOURNMENT: Being that there was no further business before Council, Carroll made a motion to adjourn at 9:17 p.m., seconded by Nairn. Voice vote – ayes, all. Motion carried.


William G. Koons, Mayor


Danielle Romanowski, Fiscal Officer

Prepared by Leslie Galicki