

**PAW PAW LAKE SILT POND MEETING
MONDAY, JUNE 19, 2023 – 7:00 P.M.
MAYOR WILLIAM G. KOONS PRESIDING**

MEMBERS PRESENT: Bell, Canton, Porter

MEMBERS ABSENT: Berger, Galicki

OFFICIALS PRESENT: Administrative Assistant Galicki, Solicitor Matheney

VISITORS: Paw Paw Lake Board: Ruth Cavanagh, Rich Haber, Claire Roush, Robert O'Brien, Terry Mitchell, Joe Pianecky, and Tim Serazin

The Mayor called the Special Council meeting to order and advised it was a discussion with Paw Paw Lake (PPL) Homeowners' Association (HOA) Board regarding possible property acquisition. Before getting into the discussion, he referred to a map displayed in Council chambers and reviewed water flow into and through the Village. Almost all of it flows to PPL. The Sun Ridge development is one of the highest points in the Village. The water from Sun Ridge comes down and joins water coming from Lake in the Woods in Bainbridge and goes into Lake Louise. All the water in the southern part of Silver Creek flows into the PPL silt pond. The amount of water that can be seen flowing from Bell Rd. into the PPL silt pond when it rains comes from Silver Creek, Haskins Rd., Stafford Rd., Sun Ridge and Lake Louise and is the cause of the problem. If someone were pouring water and silt onto somebody else's private property, that would become an issue. However, no one theoretically owns Silver Creek, Haskins Rd., Stafford Rd., etc. The Mayor turned the meeting over to the Public Utilities Committee.

Porter explained that a couple of years ago, Public Utilities took ownership of storm water in the Village. He described the recent storm water projects of the Central Retention Basin south of Village Hall and the Manor Brook Stream Restoration Project. They were 'big buck' projects for a little Village like South Russell, but they addressed Village wide problems. This was the reason they were meeting to discuss PPL's silt pond and what might be done to maintain it. Porter asked how many people were on the PPL HOA board, and Rich Haber indicated seven and five were present. Porter asked if there was a majority to consider these matters. Haber replied that they can discuss the matters but do not have the authority to act on anything without a membership vote. Porter verified that the board is willing to take the matter to residents. Haber stated that the board is a very transparent board and will communicate the information after the meeting.

Porter asked if the dredging of the silt pond is complete. Haber said it was as much as possible. The contractor was thorough but could not access a part of the southern portion due to instability. He took it down as far as possible, and they are happy with it. Porter asked if all the silt is on the shoreline. Haber said it was and the contractor started to spread it, but it will still need to dry. It will also need to be graded and planted. Haber said the contractor suggested placing a silt fence in the meantime while they plant something that will hold the silt away from the silt pond. Porter asked how deep the silt pond currently was, and Haber said 8 to 11 feet deep. The contractor took it down to clay. Porter asked if this was the original depth. Haber did not know but was confident it was because it went down to the clay. Porter asked about the cost to the HOA, and Haber said it was \$50,000 and planting was part of the project. Haber surmised that in hindsight, the contractor would not have quoted \$50,000. Porter noted that the silt pond was dredged in 2015 and it is now 2023, which is an eight-year differential. Haber explained that the only reason for the 8 years was because it was originally quoted two years ago, but because of Lake Louise Bridge project, it was delayed in case there was more silt from the project. Porter asked what the

plan for dredging would be going forward. Haber explained that they are contemplating installing some type of barrier below the waterline that will catch silt farther south. This will then result in more frequent dredging but dredging that could be done in a day or two and would then be less expensive. They spoke to the contractor about doing this and will be getting a quote.

Porter advised that the Village has floated the idea of purchasing the silt pond to become Village property for a nominal amount like \$10. He asked if there was interest by the board to pursue this. Haber said the devil was in the details, and there also had been no meeting with the community. The details included whether the Village would just be buying the silt pond because there would be significant hesitance to sell the land next to it. They would grant an easement. The reluctance to sell the property was because that is how they access the southern portion of the lake for dredging. He realized the Village had concerns with an easement in terms of where to put silt. That would need to be considered. Performance requirements would be needed. If they were to sell the silt pond, they would no longer have control over when it is dredged and taken care of. They would need confidence that it will be done. The current Council may be committed to getting it done, but this group may not be in office in 10 years. They would want an enforceable agreement. They cannot risk having their lake damaged as a result of a failure to act by South Russell down the road. Haber did not know what the rest of the community would feel about selling the silt pond for \$10. They might consider it. But he realized it meant separating out that portion from Paw Paw Lake's plat and it would take work. As a lawyer, he could manage the PPL side but would not manage it for the Village. Porter asked what their current performance criteria was in terms of taking measurements. Haber said they had done soundings for the current dredging and would continue to use soundings as the measurement of when it needed to be done. If PPL constructs the proposed wall, it would be more frequent and less expensive. He does not want to saddle the Village with \$50,000 every five years. He concluded that soundings should be done now and use the depth as the basis for the performance criteria. Porter asked if PPL would do this, and Haber said he would if the Village is willing to go forward, but probably will do it anyway. Porter said the committee discussed annual soundings for performance indicators in the silt pond to determine build up yearly and there will be a designated point when dredging would be done. The agreement would be in writing because none of them may be here in 15 to 20 years, and the people who follow will have something in writing to know how it is to be handled so that Paw Paw Lake is not bearing the expense of taking it back and then dredging it. This is the first time the Village has done a solely private project on private property that only affects the PPL neighborhood. There have been others that affected multiple neighborhoods, but this is new for the Village. It would relieve PPL of the current situation where they have to assess the residents the cost of doing the work.

Robert O'Brien asked what the differentiating factors were as to why Manor Brook and Kensington Green were given funds. Was there discussion of land being sold in those cases as well? Porter explained that Kensington Green was never given funds. O'Brien responded it was \$300,000 for the Central Retention Basin. The Mayor stated that the Central Retention Basin catches Kensington Green's water and protects Chagrin Lakes. O'Brien asked whose property it is, and the Mayor stated it belongs to South Russell. O'Brien clarified, however, that it was water from Kensington Green. Porter clarified that it is also water from points east. The Mayor added it is all the water from Sun Ridge west. Porter said that Kensington Green HOA did not get a dime. Regarding the Manor Brook Project, there was actually a much larger project but because Whitetail actually owns the land, they gave the Village an easement for \$100, which allowed the Village to build the project on their property. O'Brien said it was an easement and a similar scenario. Porter replied that there was no dredging involved. It was a storm water project and expanded the flood plain. It was not a lake.

Haber asked where there were other silt ponds in South Russell. He noted from the minutes that Council is worried about a slippery slope of having to dredge everybody's silt ponds. Porter said there is Lake Louise and 47 ponds of different types. The Mayor said that Lake Louise and Bellwood have silt ponds, and Bellwood was quoted \$75,000 to clean theirs. They have not done anything in years. It is half the size of the PPL silt pond. Haber referenced the Mayor's explanation of water flow throughout the Village, and said they have the silt pond because it is a catch basin for the eastern half of South Russell. Lake Louise does not have the same level of water flowing through as PPL. Apart from maintaining the silt pond, what can be done to mitigate silt flow through the Village into PPL? Porter replied that he did not know that the Village could do anything about it because it is all private property. The Mayor continued to address communities with silt ponds in South Russell. He concluded that the silt ponds of Bellwood and Lake Louise are about the size of Council chambers. Bell advised that Sugar Bush has a silt pond. The Mayor explained that it is small. When Bell Rd. was paved in 2014, there was a storm that broke through the silt fence. The Village paid half, \$7,000 - \$8,000, to dredge their silt pond. The Mayor acknowledged all silt and water flow to PPL.

Haber asked how much construction had occurred along the south branch of Silver Creek. The Mayor said there are two houses being built, but that is the extent of it. Haber offered that this could impact the flow of silt through Silver Creek.

The Mayor continued and said if the Village takes on PPL's private situation, will others line up out the door asking for help. The north end of Southwyck is about 4-inches deep. Haber asked what they have been doing to maintain it. PPL has been spending money. The Mayor offered that Lake Louise has been on top of their situation. Bellwood has not, and the Village paid for half of the Sugar Bush silt pond cleaning. Porter acknowledged that the PPL situation is far worse, and the silt pond is much bigger which is the reason they are having the discussion.

Haber asked what Council wanted them to take back to their community. Porter said the first thing they want to see is an expression by the board members and some kind of vote that they are interested in pursuing the sale of the silt pond for a nominal sum with performance requirements and giving PPL an easement on the south side of the silt pond in the event they need to access that part to dredge the lake. If the board votes in favor of doing that, they would let the Village know and then depending on their by-laws, have a vote of the membership relative to the sale of property. Haber said he needed to know exactly what will be purchased. Porter stated it would be the silt pond and area around it. Haber clarified he is referring to the whole field where they put the dirt. Porter said yes. Haber asked why. Porter said that the Village may have to dredge it down the road and may need to put some portion of the dredging spoils there. Haber said PPL could grant an easement for this. Porter said the Village is not inclined to do an easement. But with an exchange of property, he thought the Village would. Haber asked why having that property mattered? Haber noted that Porter said he was not interested in dredging their silt pond without that, and asked what the benefit would be to the Village to have that property? Porter replied that 41 or 42 homeowners will not have to deal with it anymore. The Village will take it on as a Village operation and it will be systematic dredging. Haber clarified that he was talking about the land as opposed to the silt pond. The board would be willing to recommend selling the silt pond and granting easements so that South Russell Village can access the silt pond whenever necessary to dredge. And, conceivably, PPL would grant an easement for the purpose of leaving the silt on that field the same way they have done in the past. He acknowledged that there may come a point in time when there is just too much silt, and a different solution will have to be found. What he was trying to understand was why South Russell was insisting on owning the land and giving PPL an easement to access their lake as

opposed to PPL owning the land and giving the Village an easement to access whatever it needed. Porter replied that for ease of maintenance and ensuring that the monitoring was done properly, if the Village owned both sides of the silt pond, it would be a lot easier for the Village to do that. Haber said there was nothing that prevented it. O'Brien offered that PPL could grant this with the performance agreement. Porter said the Village would much rather own it. Haber said this was what he was trying to understand. Why does the Village need to own the surrounding land? An easement would grant the Village all the rights it would need to do the silt pond. He was looking for a proposal that would be suitable to the community and thought there would be push-back at selling land next to the silt pond. He did not think there would be as much push back with selling the silt pond and granting an easement. An easement has the same legal effect for the Village for purposes of dredging the silt pond as having the land. Porter responded that ownership is way better than easements always. Haber argued that the Village has no use for it from an ownership perspective. Porter said it did. Haber said this was his concern and asked Porter what it was. Porter said the Village would want to monitor it and may want to do it monthly for all they know. Haber said his concern about ownership was that the Village could do whatever it wanted on their land. It could park equipment on it. Haber did not want this, and the community would not want it. They have an interest in the proposal, but he did not think they would want to give up ownership of the land. They would prefer to give the Village an easement. Haber further stated that Porter's idea that ownership is better than an easement raises concerns over what the Village would want to do with that land once it owns it. Haber clarified when he said 'you' it did not necessarily mean the current Council, but they would not be on Council forever.

Canton asked if there were 47 or 41 ponds in the Village. Canton recalled hearing a lot of discussions about the use of taxpayers' money on private property. Cleveland and Pittsburgh professional football and baseball teams are privately owned, but taxpayer money built the stadiums. This was done through the development of a Stadium Authority and then the voters voted for the stadiums. He was uncertain whether this could be done, but there are over 40 ponds Village wide. If the Village were to evaluate the conditions of the ponds and determine costs involved in maintaining them, then a Special Improvement District (SID) could be created for the entire Village. This could be taken to the voters. The Solicitor did not know if this would qualify as an Erosion SID (ESID). Canton speculated it would be an ongoing cost depending on the conditions of the individual ponds. It would be a tougher sell to spend taxpayer money to take care of one particular pond like PPL's. However, if there were a program that would meet the needs of all the ponds throughout the Village, it would be an easier sell. It was just an idea. The Solicitor said it could work as a SID. Canton believed that as soon as the Village helped PPL with its issue, everyone else would approach the Village. With a SID, the voters could consider the proposal knowing that they may have to face issues with their ponds in the future. Haber had no comment about this suggestion as it was not his role, but Council's.

Bell said he was intrigued with what Haber said about the easement. He had a hard time agreeing with Porter's assessment, but admitted he did not fully understand Porter's thought process. Porter said it could be done with the Village being granted an easement, but in reality, the Village would be buying PPL's problem and nothing else. Haber said this is what the Village would be doing anyway. He appreciated this, but then Porter said the Village wanted some land with it. Porter agreed. Haber explained that this would not be popular with the residents. He felt Porter was throwing this in just because. Porter disagreed. Haber argued that Porter said there was no legal need for the Village to own the land. But there are big problems for PPL if they do not own it. Haber further explained that once it is South Russell Village property, the Village can do whatever it wants. If the Village wanted to make a park there for everybody to come and hang out by their lake, they could do that. Right now, the Village

cannot because it is private property. The Village could park heavy equipment there all year round if it so desired because it would be Village property and PPL would have no say in the matter. He concluded that the Village did not need the land to do what it needed to do. The Village could sell the property, and PPL could not stop the Village. Restrictions could be put on the agreement, but at the end of the day, Porter is saying the Village wants it, but legally the Village does not need it. Why does South Russell Village all of a sudden want to own the extra land that it legally does not need?

Terry Mitchell stated that to that point, while PPL is trying to keep expenses down for the Village, why would acquiring this land be desirable to the Village? It would entail cutting the grass and taking care of the trees, which costs thousands of dollars. Currently, PPL also has the liability if someone should walk into the property and go into the lake. Why would the Village want to take on these negative things that have expense and legalities attached to them? How would this benefit the Village?

Joe Pianecky said it is clear to him that the Village needs the property because it wants it for some reason. It may not be the current Council that chooses not to do anything with it, but who knows 50 years down the road? The Village could build a maintenance building. They want to keep it natural. If the Village attaches the sale of the land, it will not pass the community. There is no good reason that the Village needs it, and this process would have been for nothing.

The Mayor said this is a stressful situation and he did not want to divide the neighborhood. He asked them to remember that the Village was able to justify \$300,000 for the Central Retention Basin because water was going over a State highway. The Village was also able to justify the Manor Brook project because of water flowing into houses. With PPL, there are no flooding problems with homes or roads, so it cannot be addressed as storm water. But the Village will still try. O'Brien stated that PPL just paid \$50,000 to dredge the silt pond and if they had not, there would be a much larger problem in another year. Haber felt that functionally, the problem being experienced with the silt pond was storm water. Every time there is a storm, water flows and brings silt to the silt pond. It is getting worse year after year. Something is causing it downstream with the excessive flow of water bringing debris. The Mayor said the Village would keep digging. On Wednesday, July 12th at 2:00 p.m. there will be a Zoom meeting with Chagrin River Watershed Partners (CRWP). They can find a way and find money for the Village. The Engineer has said it cannot be justified as a stormwater situation because it is not a highway. The Village will still look for somebody else to pay for whatever the solution is. He acknowledged the waterflow to the silt pond and felt something could be done. It may be necessary to get involved with Bainbridge and consider a SID. There is no guarantee that the Village will find the money, but it is good at spending other people's money before spending the residents' money. He will provide the information about the meeting. Haber was in favor of finding other people and their money to help solve this problem.

Porter said this option would be great because it would help PPL and would not put anything on the Village long term. PPL began to approach the Village with this problem several years ago and it has been every year. The Village did not come to PPL to say it wanted to take the silt pond. Haber said the Village rarely comes to PPL first to help them. Porter pointed out that it is a private summertime 1920's community where nobody lives part-time anymore. It was there before the Village was a Village. O'Brien said this was also true of Chagrin Falls, which was a vacation community. Haber said they would be happy with the help to find money to solve the problem and happy to consider the Village's proposal that does not involve land because he believed strongly the community would not be in favor of granting ownership of the land but would strongly consider an easement of the land to do what is needed. Porter said that the Village has made a proposal and the board has a counter proposal which he suggested they get backed up by a vote of the homeowners. This would be another step and then it would be up to

the Village as to whether it was acceptable or not. O'Brien asked if Porter was confident Council would pass a vote if they came to terms. Porter said no because he would not speak for the whole Council. Porter said that buying PPL's problem without the land around it may not go over well but if they have a counter, perhaps he is wrong. Haber noted it would not go over well with Porter but was not sure of the rest of Council. Porter explained that there were members of Council who decided that the Central Retention Basin and Manor Brook projects needed to be done. It was part of the 2004 Storm water study. 15 years later the realization came that it had to be dealt with and there was an effort led by some Council members to make it happen. It did not occur prior to 2019. PPL has been to Council many times asking for help, and they are there talking about giving them help. If they do not want the Village's help, ok. If they have a counter to what has been proposed so far, let's hear it. The Mayor may be right in saying that long term an ESID or SID is the way to go. But this means that every homeowner gets assessed on their taxes for it. Parkland and Country Estates are currently doing it to deal with erosion. This means it is being divided and being paid over 20 years. Haber said that they are being even more direct by assessing the members and writing checks. It is being taken care of year after year instead of over 20 years. Porter offered that they should picture the day where they have to dredge their lake.

O'Brien asked how many Council members own homes in Manor Brook or Kensington Green. Porter said three Council members live in Kensington Green and the Mayor. The Mayor said that five of the six live in Kensington Green and Manor Brook. O'Brien asked if Council understood their perspective of how that looks a little odd and the Mayor added that it looks like they are taking care of themselves first. O'Brien said he was not saying that (unintelligible). Bell interjected that if O'Brien was questioning their ethics, he found that offensive and asked him to stop. O'Brien said he was not questioning their ethics. Bell said O'Brien was questioning his integrity. O'Brien was looking at the two projects costing \$180,000 and \$300,000. Bell said he was not even on Council when that was voted on and felt O'Brien was still questioning his integrity and he did not appreciate it.

Pianecki said PPL was here before the Village. Development after development was built from which the Village benefits through property taxes. The developments caused all the silt and runoff from storm water to flow into the PPL silt pond and lake. It seems like the Village is getting all the property tax money and none of this was considered as the developments were allowed to be built. No one did a study to determine the impact of people downstream. No one thought about that. Now they are left holding the bag and they were here first. He reiterated that there were no studies to determine impact, or anything put in place to figure out how to handle the storm water. Now there is a problem and PPL is absorbing it. 42 homeowners are not going to pay for all the stormwater runoff from the Village when the Village is collecting all the property tax money that probably caused a lot of the storm water to run off into the silt pond in the first place. It will ruin property values. Collectively, a solution needs to be created that takes some of the burden off of 42 homeowners. The property values are going to go down because word will get out around the community about the problems that exist at PPL. At his age, he will not pay for future generations because he cannot, and he suspected many residents in PPL will feel the same way.

Haber told Bell that no one is questioning his ethics and he acknowledged that he and Porter sometimes disagree. They all appreciate that the meeting was for the purpose of trying to solve a problem. It does not mean that they agree with the proposal, but they will communicate the proposal to the community via a special meeting. He anticipated receiving a counteroffer to convey to Council and they would go from there. The Mayor advised there is a Council meeting on Monday, July 10th.

Pianecki asked about the meeting with Congressman Joyce. The Mayor said he had lunch with his representative who said to come back with a multiple community proposal not just with South Russell needing some help. The meeting on July 12th is the follow up.

Bell asked Haber to elaborate on the silt fence or wall Haber had discussed. Haber explained a silt fence would be placed on the edge of the silt pond to prevent the silt they just pulled out from going back into the pond. Bell asked specifically about the wall to the south that Haber had described. Haber explained that within the silt pond, the water flows in from the south side. The contractor proposed dropping a few concrete road construction barriers below water level to create a fence. Haber had also discussed putting in what amounts to a small gravel road a couple of feet off of the base. It catches the silt, but it also provides a platform for the earthmoving equipment to go in when the silt pond is lowered. The equipment can drive on it, scoop out the silt, and be done. He saw this done in Shaker Lakes. These solutions will depend on the stability of the base in the area they are considering. There may be a spring feeding into it that makes it unstable. Porter said that the Village was offering to take over the silt pond and then it would be the Village's problem and possibly the solution. Haber advised they were willing to consider it and that their dispute is over something else. Porter said that the Village has made a proposal and PPL had never gotten one from the Village before. O'Brien thanked the Village for this. If there are negotiations about conditions, the Village is willing to listen. Haber said he would get back to Porter on that.

The Solicitor asked if it would be helpful to have a proposed picture of the area to which the Village is referring. Haber said this would be helpful. The Solicitor would email it to Haber. Porter offered to speak to the PPL HOA.

The Mayor commented that the Solicitor had asked to get a drafted proposal ready, and he slowed it down because he wanted to make sure they went slowly in this process. Haber agreed and suggested the Solicitor send the picture before drafting a proposal. The Mayor offered that Council members are all available to email and their emails are like RuthCavanagh@southrussell.com. The Solicitor said no that there would be no texting or email. She wished to put the following on the record. There was no quorum of Council this evening with only three members. The meeting is not technically a meeting of Council, pursuant to Ohio Revised Code 121.22, but minutes are being kept, there will be notes, and it is recorded. The Solicitor also explained that Cavanagh is a Council member but was not at the meeting in this capacity and was not counted towards quorum. Instead, she is present as a member of the audience.

Being that there was no further business before Council, Porter made a motion to adjourn at 8:00 p.m., seconded by Canton. Voice vote – ayes, all. Motion carried.

Prepared by Leslie Galicki