

VILLAGE OF BOLIVAR COUNCIL MEETING Special Session May 19, 2014

The Bolivar Village Council met in a special session on **Monday, May 19, 2014**. Mayor Hubble called the meeting to order at 6:30 p.m. The Pledge of Allegiance was said. Lloyd opened the meeting with a moment of prayer. Cochran, Lang, Lloyd, Marburger, Slutz & Vincent all answered roll call.

Mayor Hubble stated we have called a special meeting and as was stated in the paper we will be going into an executive session. We are asking the attorney to stay in the executive session and everyone else will have to leave during the executive session. She advised when we come back there will more than likely be action taken.

Bill Huth asked if they will be allowed to speak. Mayor Hubble answered, "the general consensus was no, but she will let council make that decision when they come out of executive session." Michela Huth questioned "when you come out of executive is all you're doing is voting or actually going to have discussion with the public about the settlement?" After some back and forth dialogue between the Mayor, Michela, Bill and Attorney Daisher, the Mayor clarified there will be discussion after the executive session prior to council voting.

Bill Huth began challenging by asking, "So you won't be discussing this in executive session, you will be discussing it in the public forum?"

Attorney Daisher and Mayor Hubble simultaneously stated, "Both". Michela became argumentative and continued to ask questions even after she was told no more questions at this point.

Slutz made a motion to go into executive session but was interrupted by Michela stating, "we have a right to know whether or not the settlement ".... (Lloyd attempted to second the motion as Michela continued to over talk over council members)."is going to be in the public eye".

Before having the opportunity to take roll call on the motion, Bill spoke up again, "I would ask that whatever ordinance you might consider, or that any motion that is passed that you do it under the regular rules rather than an emergency." Attorney Daisher said "we have a motion, do we have a second?" Bill ignored Daisher by continuing to speak, "so that the people of this village have an opportunity to hear and discuss something I believe...that seems to be extremely important if not the most important issue currently".

Daisher confirmed, "Kraig you made the motion, correct"? Mayor Hubble said she had a second. The Clerk asked who seconded the motion. Lloyd stated he did. In a roll call vote, all members present voted yes to go into executive session at 6:34 p.m. Everyone was asked to leave except for the two attorneys. (Attorney Daisher and Attorney Hannon stayed in the executive session; Attorney Barger, representing Lake Region, left the room along with the general public)

MAYOR HUBBLE – At 7:23 p.m. the Mayor announced, "Ok, we have now come out of executive session and everyone is back in. We will have an opportunity for public speaks. Before we get started, I want to let you know, that there are a few rules to address. You get three (3) minutes in which to speak; no screaming, hollering or that type of thing. If I feel like it is getting out of hand, I will rack my gavel once. If I rack the gavel twice, you will be escorted out."

Bill Huth asked, "Can I make a comment? What is it we are supposed to be speaking about, because we don't know what you discussed nor what ordinance you may be considering?"

Mayor Hubble stated she will allow our attorney for the insurance to make a statement in regards to what we discussed. Attorney Tami Hannon asked, "As far as the general terms"? Mayor Hubble replied yes.

Attorney Hannon stated, "The proposition that is before Village Council for consideration is a potential settlement agreement to resolve the lawsuit that's filed by Lake Region. It is basically, they are willing to settle the lawsuit for a reinstatement of the conditional use permit. They have agreed that the terms of the conditional use permit would be binding on anybody else that may buy the property from them in the future. They will pay their own attorney's fees that would cover....there would be no money judgment involved.

Michela Huth interjected, "So what you are saying is that Bolivar is going to allow the sand and gravel? Not in legalese, but in lay person's terms, you guys are allowing the sand and gravel; is that what you are saying? I am just trying to interpret what you said....." Bill Huth added, "exactly, I didn't quite understand either what you were saying". Michela expressed, "unbelievable".

Attorney Hannon replied, "This is beyond what I was asked. No votes have been taken, but that is the proposition on the table. That is what is being considered".

Bill questioned, "The proposition is that?" Attorney Hannon replied, "that they would...that the sand and gravel would be permitted to operate on the terms

that were previously provided by the Village; the permit that was granted by the zoning appeal.”

Ongoing dialogue took place between Attorney Hannon (insurance company attorney), Attorney Daisher (Village Solicitor), Bill Huth and Michela Huth.

PUBLIC SPEAKS:

Mayor Hubble proceeded with the meeting by initiating public speaks. “I have Bill Huth first because Juanita and Robert did not make an acknowledgment that they wanted to speak. Did you wish to speak because you are first on the list?”

Juanita Austin: “I don't know, but I will say that it is very frustrating. I think had I really known more, I may have wanted to....very frustrating. In fact, one of the most frustrating situations in my life time. I don't understand it because we voted and a majority didn't want it. So how do you do this when you're representing the people....I guess I have spoken”.

Bill Huth: “I would ditto that. We all probably have that question. I would ask that perhaps, maybe you as well as council people have that same question.”

Lloyd: “Yes”.

Bill Huth: “Yes? Did you get a satisfactory answer?”

Lloyd: “yes”.

Bill Huth: “Can you tell us how that might work?”

Lloyd: “Well I think one of the things after reviewing the lawsuit for 5 million bucks, that's the bottom line. Unfortunately we don't have the insurances to cover that. So not only would, if you tally up all the properties that the Village of Bolivar actually owns, it will hardly do it. So...”

Bill Huth interjected, “So you lost the lawsuit?”

Lloyd: “No, if we would continue on, we have this offered to us. I think we are being pretty realistic as far as we are not taking on any of their attorney fees and we are covering ours; and stuff that's covered under the insurances as far as our attorney here. I think one of the things we are looking at is, as we take this deeper, this of course can change. This is the offer on the table now. The next offer may not be as good; the next offer after that may get worse if we continue to, you know, fight it. And the other concern is we're going to run out of money to fight it. We have about, well as I understand, not as much money as we thought

we would have to be able to keep this up. So anyway, to make a long story short, if we dissolve Bolivar, this will fall down on the taxpayers. This bill is going to get paid if we lost at the worst, at the very worst. I don't desire to pay for that. When you have a thousand houses."

Bill Huth: "Yeah, Ok. Thank you for that, I really appreciate it. But, my, I guess I don't understand what it is that they are offering? Not to sue us?"

Council members simultaneously nods or audibly states, "Yes."

Bill Huth: "They are offering not to sue us?"

Council members audibly states (and/or nods), "yes"

Bill Huth: "So, Ok, that's all we get is that they are not going to sue us, right? Now I would ask, I would ask that again, you seriously consider, passing this ordinance as a regular ordinance, rather than suspending the rules and passing it as an emergency. First of all, I cannot see why this should be an emergency. Perhaps you can explain that, and you will do so."

Marburger: "I would be happy to do so."

Michela Huth: "He can take my time."

Daisher: "We don't allow that."

Marburger: "I can answer that question. The Court has imposed a thirty day time limit on our ability to make a decision on this settlement agreement, so if that thirty days lapses, this settlement agreement is null and void. And the plaintiff can then decide to revoke it entirely, proceed to trial. They could decide to issue a different settlement agreement, but that's just a chance that it may or may not happen. We have thirty days and we won't be able to have three readings, within thirty days."

Discussion ensued for several minutes between Council, Attorney Daisher and Bill Huth regarding the 30 day deadline from the date of mediation.

Hubble: "Ok, your time is up."

Bill Huth: "No wait a minute, wait a minute. My time, I have only had a minute and a half. I have spoken a minute and a half. I am sorry, you can't take all the time that I have asked a question, their responding as my time, can you?"

Hubble: Go ahead Bill.

Bill Huth: Thank you.

Hubble: Take the rest of your time.

Bill Huth: Thank you, thank you.

Hubble: Go ahead.

Bill Huth: Again, I see no reason why this should be an emergency, and I don't believe the Court can dictate to a legislative body how they must rule on a legislative issue. There is a separation of We have different divisions of government and they are clearly separate. And I don't see how you can say the Judge says you have to do this. What is, and I am done, the legal premise for overruling the ballot initiative that was passed recently on this issue? Was that explained to you folks? And can you explain it to us?

Vincent: Robert (Lloyd) made a lot of headway on explaining.

Lang: They are alleging a takings claim that basically the initiative took away Massillon Materials right for what they purchased the property for; that the government with the initiative took that right away. Therefore the government of Bolivar violated their rights.

Michela: We are asking what you guys believe.

(Inaudible – Bill and Michela talking over each other)

Bill Huth: That has not been proven in court, and you can say, yes you are right and then do what you are going to do, based on the premise that they contend that their rights were taken away, although it has not been proven in court.

Lang: There has never been a case like this that I know of that has ever went to trial and won it, Right?

Daisher: Is your question, let me see if this will help, I think the question is getting confusing. Is your question, do we have the legal authority to pass something which overrides the initiative?

Bill Huth: I am asking, what is the legal authority to do so?

Daisher: There doesn't even need to be a lawsuit. If Council wanted to pass a law that overrode the other one, then yes that is legal.

Michela: Pass a law that overrides the voters?

Daisher: Correct...I don't have the case law in front of me.

Bill: Thank you.

Harvey: Council, there is a proposition before you that you can do. You can just take a little bit of time here. You can check with your attorney and see if you guys have missed anything dealing with your agreement with Massillon Material. This council, the council prior to you hit every point. They did everything needed

to be done to make this happen and Mary (Vincent) you know that's true. Everything he asked for, you guys did. You guys didn't do one thing that you were not asked to do. In fact you went above and beyond; you even campaigned for him in the vote. So everything that was done here was done according to contract. You guys didn't break one item in that contract. Not one item did you break in that contract. If you went to court, they would have to prove that this council, that this council, violated a contract you have with them. This council did not do that. This body, this body of authority here did not break one agreement with Massillon Material. In fact, you went above and beyond what you need to do.

Harvey: Us citizens made the decision that we wanted to see this stay agricultural. We didn't want to take your land. They are making money off that land right now. They are planting crops out there right now, they are making money. They aren't losing a cent on the property that they have. They aren't losing any money...they are doing what any farmer would do. They're not losing any money, so it's not like they are losing money. They bought property so they aren't losing money. The idea here, they have valuable property. They have farm land, farm land is needed. We need farm land, so this council has not done one thing. I would go to court; I would talk to my attorney first; but I would go to court and say hey we honored our end of this deal. We didn't break any of the commitments. I wouldn't vote tonight. I would sit and talk to counsel...say, counsel can you tell us we are in violation of this contract. And I'll tell you what, they can't do it. You guys honored your contract with Wenger, and with Massillon Materials. You did it! You didn't break it, you did it. So I say, just back off; take a little time to consider it. You don't have to vote tonight. You don't have to vote tonight. Take a little time to think about this; pray about it, think about it and talk about it. You don't have to vote tonight.

Daisher: Actually we do, and let me clarify that why. An ordinance that is passed by regular rules is effective thirty days from the date of passage. This needs to be finalized 30 days from the date of mediation. We cannot pass it with three readings because it will not be passed thirty days from the date of mediation.

Discussion on this issue between Harvey and Daisher is overtaken by arguments from Bill and Michela Huth, talking over others in raised angry voices.

Mayor Hubble raps her gavel.

Bill Huth: The deck has always been stacked because you always have to do ..

Hubble: Listen, that's enough.

Bill Huth: It isn't best for the community, it isn't best for the little guy

Hubble: I don't want to hit this again.

Bill Huth: Well go ahead and do it.

Hubble: Why do you want me to hit it again for?

Bill Huth: Don't make me hurt you. You don't have to do that to me, you don't have to do that to me.

(The heads of attorney's present and council members snaps up and/or turns in disbelief upon hearing what Bill just stated)

Daisher: ok, whoa, whoa...

Hubble: I'm not doing anything. I am just saying that we are getting out of hand, all I hear is a bunch of people talking right now and I am trying to understand.....

Daisher: I just heard a threat; I have a problem with that. I'm sorry.

Bill Huth: You have a problem with what?

Michela: What?

Daisher: You just said don't make me hurt you.

Bill Huth: No, I am saying, that is what she said.

Michela: He didn't say that... (inaudible due to people over talking again)

Michela: No, he did not say that.

Meeting continued to become disruptive and individual comments could not be clearly identified.

Bill Huth: I am saying what she did. I am going to put this down, don't make me hurt you.

Michela: He is saying that is what she said.

Hubble: Alright, that's it...Sorry, time to leave, everyone.

Michela: Oh, everyone has to leave?

Hubble: It is time to go. I mean I don't know what you are wanting.

Michela: The public has to leave...?

Hubble: You had time to speak.

Argument ensues over who has to leave and who can stay. Michela Huth is the most vocal and is now yelling over everyone and tell all the members of the public to leave, trying to prevent a vote.

(The meeting was chaotic...arguing continued; hard to hear everyone's comments)

Hubble: (Stands up in an attempt to gain control of the meeting) The ones out of...only the ones out of order have to leave.

Kay Huth stands up to leave.

Daisher: Kay (Huth) you don't have to leave.

Kay Huth: You are not giving good advice; you are not giving good advice."

Daisher: Kay [Huth] you don't have to leave, none of you have to leave, and the only people that have to leave is Bill, because that was a threat....

Kay Huth: No it wasn't.....he was responding (inaudible)

Bill Huth: (shouting) I beg your pardon that was not a threat! She threatened me with a gavel, don't make me do this.

(Too many shouting at once; inaudible)

Kay Huth: What are you saying?

Bill Huth: What are you trying to do?

Kay Huth: He was saying, when you pound the gavel, you say don't make me hurt you, don't....

Daisher: But that's not what he said, Kay.

Hubble: But that's not what I am saying.

Bryon Holbrook: But that is the way he took it. Just as you took it as a threat.

Kay Huth: Mayor Hubble that's the way we feel.

Bill Huth: You had it up here and said 'don't make me do this.

Kay: That's what we feel! That's what we're feeling!

(Shouting continues; can't identify all sources)

Michela: (From the back of the room while standing in the doorway, Michela is pointing at Daisher and shouts) "You are causing problems is what you're doing". (Others still shouting...difficult to hear) "You're not even a village council member and you're saying everyone should leave"....inaudible

Hubble says to Harvey: "If you still want to talk you do have, you have a minute and a half left you may speak. But I do ask that the ones that were disorderly, that they leave."

Bill Huth: Would you name who it is that you want to leave?

Hubble: Bill and Michela.

Kay Huth: (turns and asks Bill) "Should we leave?"

Hubble: Kay, you were not being disorderly.

Harvey: (stands up and points to the police officer) "He said he's taking us out."

(Meeting becomes more chaotic amongst guests as they sort out amongst themselves who should leave)

Daisher: No, no...She's saying Bill and Michela, is what she just said.

Michela: You said everyone, she just said everyone and now it is just us? So now it's just us but it was everyone before, so who is it?

Cochran: No...Everyone that was loud (abruptly cut off by Michela)

Michela: No we're not talking to you; we're talking to the Mayor.

Michela: She says everyone should leave. Even the police officer is confused.

Hubble: I'll tell you right now, to make it clear; so we're all clear..... (Interrupted by Michela)

Michela: I know that I'm leaving; I know that already, so that's not an issue.

Hubble: Michele's leaving and Bill is leaving.

Michela: What did Bill do wrong?

Cochran: Kay (Huth) you are welcome to stay.

Michela: (repeats) What did Bill do wrong?

Kay: No, I'm not staying without Bill...no

Kay Huth: Bill did not in any way [inaudible]

(Multiple people talking at once; inaudible)

Bill: (turns to Kay) You don't have to leave, you don't have to leave.

Kay Huth: Jillian, I am insulted that you would say such a thing.

Daisher: I'm sorry you feel insulted.

Michela: You are not sorry. You are not sorry.

Kay Huth: Just for the record, I think you are giving very bad advice to these people

Daisher: That's your opinion Kay.

Kay Huth: Very bad advice. And it's probably because you don't own a home here and don't drink the water.

Daisher: Neither do you.

Michela: You act like a council member, you are not.

Kay Huth: Oh yes I do own a home here, thank you.

Daisher: Where?

Kay Huth: You don't need to know, you can at least trust me. Surely you could trust me. You think I am lying? I know, we have been accused of lying so much.

Harvey: Question, my understanding is the magistrate or the judge whoever talked to you, said you need to talk to opposing council to come up with something . It was just a suggestion by her, not a mandate but a suggestion. Is that right?

Daisher: When you tell a court you have a settlement offer, the court will tell you that it needs to be acted upon on within 30 days. That is standard for any lawsuit. It doesn't matter that it involves the village, ok? So once we have this, the court says you need to act on this within 30 days from the day it was mediation.

Harvey: Jilliann, my understanding, acting on an offer does not mean you have to agree upon it, you need to act upon it.

Daisher: Doesn't mean they have to agree, they can vote no, but they have to vote yes or no today. They have to vote yes or no today.

Harvey: That magistrate made a decision you had to make a decision in that 30 day period or disagree

Daisher: That's true of any lawsuit. That's not just this one.

Harvey: Is that on record that I can see that later? That decision by the magistrate....can I see that?

Daisher: It's probably on the docket. If you look online, the docket, it should say.

Discussion continued between Dick Harvey, Kay Huth, Brian Holbrook, legal counsel and council. Harvey wanted clarity on the settlement process. Kay was inquiring of the same by asking if they (council) have to take action today. Attorney Tami Hannon explained the settlement process with procedural steps.

Hannon also explained to Harvey the vote that went to the people of the village verses council's actions and how it ties together in the settlement. Hannon

proceeded to discuss case law for similar zoning issues. Harvey asked which statute she was referring to and she said it is case law and she did not have the specific case law in front of her tonight.

Mayor Hubble began to continue with meeting. Before doing so, the Mayor asked Brian Holbrook if he wished to speak. She apologized a couple times for skipping over him. With all the excitement of the meeting she overlooked him on the sign in sheet.

Brian stated he would like to speak. He stated he has lived in the area for the past 15-16 years. He announced that he has worked in the environmental health and safety field for years. He went on to review his opinion on potential environmental impacts of sand and gravel mining, to include silicosis. Holbrook gave an analysis on what can be expected with this type of operation. He went on to compare Northstar's operations including emissions and truck traffic. He said we are looking at several hundred trucks per day. Daisher asked, what is Northstar? He said it's an asphalt plant that Wenger owns in North Canton.

Holbrook was very respectful when asking council to take these things into consideration when making their decision.

Before moving forward with meeting, Mrs. Austin raised her hand to speak again. Mayor Hubble allowed Mrs. Austin to speak.

Mrs. Austin stated it's really rather frustrating to her. She expressed a concern over the potential of seeing the sand and gravel from inside her home. She doesn't think council seems to understand. She expressed a concern over not wanting to die from silica.

Mayor Hubble announced that we have heard the public speak, and it's now... the decision to be made about the settlement of this agreement. Council was given an opportunity to further discuss and/or ask questions.

Council did not have any further questions. The Mayor asked what the pleasure of council is in regards to the settlement agreement and how would they like to proceed.

Slutz made a motion to suspend the rules to pass this tonight as an emergency. (Harvey interjected, "way to go Kraig...way to go",

Mary Vincent seconded the motion to suspend the rules. (While shaking her head, Kay said, "Mary....Mary")

Mayor Hubble called for roll call. Harvey states, "that's not right Kraig" The Clerk continues with roll call; all members present voted yes.

Kay stands up and blurts out, "I cry for our country". Harvey said, "For this town". Kay repeated, "For this town...I cry".

As Slutz began to speak, "I make a motion to pass it tonight", Kay walked over to Attorney Brian Barger, slaps him on the back repeatedly 8-10 times before exiting the room and says to him, "congratulations with all your money you did it...well done!" Lang proceeded to second the motion on the floor to pass the **Ordinance 94-2014, An Ordinance providing accepting the settlement offer in the case of Lake Region Development Co., Ltd, Et Al. V. Village of Bolivar Et Al, Northern District of Ohio Eastern Division Case No. 5:14-CV-00133 establishing an emergency.** In a roll call vote, Cochran, Lang, Lloyd, Slutz and Vincent voted yes; Marburger voted no.

Harvey thanked Marburger.

With there being no further business before council, which is all that could be discussed per the paper, I need a motion to adjourn. Cochran motioned, seconded by Lang to adjourn until June 2, 2014. In a roll call vote, all members present voted yes.

Mayor Rebecca S. Hubble

ATTEST:

Maria A. App, Clerk Treasurer

Approved: June 2, 2014