

# RECORD OF PROCEEDINGS

Minutes of

CHAGRIN FALLS VILLAGE COUNCIL

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10149

Held

AUGUST 8,

2011

Street. He said he has not experienced any damage to his property. He said his neighbor, Erin Manly, is starting to experience damage to her property. Over time it is going to affect my property. He asked if the retaining wall that they are currently putting in is a permanent wall? Mr. Himes said there is no retaining wall per say yet. They put in a temporary retaining structure to build the foundations on sites one, two, and three. That structure will remain in place but it is primarily to hold fill dirt that was in the back yard of the adjacent property. It is not a slope retention system. They are currently working on testing, which the Village requires, so that they can have the scientific data they need to design a proper slope retention system.

Mr. White said once they cleared the land you are telling me there was never a slope retention system designed because they never had approval for that part of the project? Is that right? Mr. Himes said they had permits for demolition. They demolished, dug out basements, and then submitted their geotechnical report. The Village has numerous comments on their geotechnical report and did not accept it. The long delay has been getting to the point where they provided us with an acceptable geotechnical testing solution and report. This testing is part of the work that goes into the report that they will submit to the Village and we will review. If approved they will design retaining walls. The Village's engineer approves the plan for the testing and we will review the results and the design of the retaining wall. We won't issue permits until our engineers and geotechnical consultants have approved the plan for the design.

Mr. Lannon said they should have initial results in thirty days. Beyond that they need to have their instruments in place for close to two months, sixty days, and then with that data they will wrap up the report and finalize the designs.

Mr. White asked if there is a soil tube on the property yet? Mr. Lannon said yes, they started drilling last week. They had about four drill holes in place and they are working on additional drill holes and also placing instrumentation in those holes to monitor ground water, slope movement, and things like that. Mr. White asked, was there any consideration given to putting soil tubes on any of the West Cottage Street properties? Mr. Lannon said yes, and it appears likely now that they will be testing on Cottage as a result of the law suit. The insurance company has retained the same geotech as Silver Leaf Development so there is work going on with the development itself and then there is further work planned. We don't know all the details but the insurance company is planning additional tests. Mr. White asked, so only tubes will be placed on people involved in the law suit? Mr. Lannon said correct. Mr. Patton said the permits being issued are predicated on those test results, correct? Mr. Lannon said correct.

Mr. White asked, what are you suggesting Erin Manly does? Mr. Byron said to the extent she has property rights impact and she needs to talk to her own legal council. Mr. White asked what went wrong from the beginning? What happened that somebody had to move out of their house and they are going to have to tear down their house. What happened? Mayor Brick said we do no know and that is why we are trying to get enough geotechnical data so that we can determine the causes of what is going on. There are quite conflicting theories of people telling me that it is all done because trees were

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The meeting of the Council of the Village of Chagrin Falls was called to order at 8:00 p.m. by Mr. Patton.

Member present: Evans, Jacobs, Lutz, Milko, Patton, Williams  
 Members absent: Subel  
 Officials present: Mayor Brick, Bloom, Himes, Zagan, Brosius, Byron, Lannon

Moved by Mrs. Evans, seconded by Mr. Williams that the absence of Mr. Subel be excused. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None.

**REPORT OF THE MAYOR**

Mayor Brick said the developer's geotechnical testing on the West Orange site is currently underway. It started, I believe, last week and we are hoping that they will get data to enable them to construct a slope retention system that will benefit all of the area land owners. That is a serious issue and they are working on getting the data so that some solutions can be implemented. There were dozens of public meetings on the West Orange project and there is a lot of concern. I hear and I get a lot of phone calls and questions from people so we are taking steps to enable interested citizens to be able to readily access the minutes of any of those meetings on our Village website. We are going to try to get that organized so that even I could go there and get the information. Also, we are going to try and prepare a summary of historical events and key issues and provide the reasoning that led to the decisions that were made. We hope to have that on the website just to help. Some people have a very incorrect concept of what went on and I think we can help them understand what has been going on.

Mayor Brick said the organization Providence House has been providing care for babies and children in the northeast Ohio area for over thirty years. A representative from their organization will be at our September Council meeting to award the Village of Chagrin Falls Our Community Promise Award as one of the top ten supporting communities for this effort. Evidently, our residents have been very generous supporters of this program.

Mayor Brick said I hope you're all enjoying our summer as I am and that you have the opportunity to attend the Little Theater. We still have some music in the park on Thursdays and there is even Yoga in the park on Saturdays.

**REPORT OF THE FINANCE DIRECTOR**

No report.

**MEMBERS OF THE PUBLIC TO SPEAK TO AGENDA ITEMS (NOT TO EXCEED TWO (2) MINUTES PER PERSON)**

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Henry Bruner, Chairman of the Charter Review Commission, said he and Mrs. Champlin have the report and the recommendations.

## REPORT OF THE LAW DIRECTOR

### BANKS DESIGNATED AS A DEPOSITORY FOR ACTIVE FUNDS

Mr. Patton introduced Resolution No. 2011-47 entitled:

A RESOLUTION DESIGNATING HUNTINGTON NATIONAL BANK, PNC BANK, KEY BANK, FIFTH THIRD BANK, FIRST FEDERAL OF LAKEWOOD, AND FIRST MERIT BANK AS A DEPOSITORY FOR ACTIVE FUNDS OF THE VILLAGE OF CHAGRIN FALLS, OHIO FOR A PERIOD OF FIVE YEARS BEGINNING AUGUST 24, 2011.

Moved by Mr. Patton, seconded by Mr. Williams that the resolution be adopted. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Mr. Patton said this is a routine action in which we renew our bank depository agreements. He said we don't necessarily use all of these banks but we do try to use as many of these banks as possible, which all have branches in Chagrin Falls.

### BANKS DESIGNATED AS A DEPOSITORY FOR INTERIM DEPOSITS

Mr. Patton introduced Resolution No. 2011-48 entitled:

A RESOLUTION DESIGNATING HUNTINGTON NATIONAL BANK, PNC BANK, KEY BANK, FIFTH THIRD BANK, FIRST FEDERAL OF LAKEWOOD, AND FIRST MERIT BANK AS A DEPOSITORY FOR INTERIM DEPOSITS OF THE VILLAGE OF CHAGRIN FALLS, OHIO FOR A PERIOD OF FIVE YEARS BEGINNING AUGUST 24, 2011.

Moved by Mr. Patton, seconded by Mrs. Evans that the resolution be adopted. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Mr. Patton said this is a companion resolution to Resolution No. 2011-47. It addresses interim deposits as opposed to active funds.

### CODIFIED ORDINANCES REVISED

Mr. Patton introduced Ordinance No. 2011-49 entitled:

AN ORDINANCE TO REVISE THE CODIFIED ORDINANCES OF THE VILLAGE OF CHAGRIN FALLS BY ADOPTING CURRENT REPLACEMENT PAGES AND DECLARING AN EMERGENCY.

Moved by Mr. Patton, seconded by Mr. Williams that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays:

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None. Moved by Mr. Patton, seconded by Mrs. Evans that the ordinance be adopted. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Mr. Patton said we intermittently need to update our codified ordinances to include ordinances which we have passed as a political body as well as updating our ordinances to comply with current state law.

**PLANNING AND ZONING COMMISSION'S UPDATE TO THE COMPREHENSIVE PLAN ADOPTED**

Mr. Jacobs introduced Ordinance No. 2011-50 entitled:

AN ORDINANCE ADOPTING THE PLANNING AND ZONING COMMISSION'S 2011 UPDATE TO THE COMPREHENSIVE PLAN OF THE VILLAGE OF CHAGRIN FALLS.

Mr. Jacobs and Mayor Brick explained the amendments. This will be referred to the Planning and Zoning Commission for their review.

**AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH THE CITY OF SOLON**

Mrs. Lutz introduced Ordinance No. 2011-51 entitled:

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE CITY OF SOLON FOR PRISONER HOUSING SERVICES, AND DECLARING AN EMERGENCY.

Moved by Mrs. Lutz, seconded by Mrs. Evans that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Moved by Mrs. Lutz, seconded by Mr. Williams that the ordinance be adopted. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Mrs. Lutz said up until now we have housed prisoners at Bedford and in an effort to support our local communities, with whom we have engaged in regional support, we would like to have this contract to house prisoners in Solon. If Solon is full we will go to Bedford. If Bedford is full we can go back to Solon. The cost is essentially the same. Mr. Byron said one thing that would need to be done, I see we had sent it over in blank for the initial certification of funds and there is still a blank that is on the ordinance. We need to fill that in before passage. It relates to the appropriation figure for prisoner services. Mr. Bloom suggested putting in \$3,000.

**AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH THE CHAGRIN/SOUTHEAST COUNCIL OF GOVERNMENTS**

Mr. Lutz introduced Ordinance No. 2011-52 entitled:

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A FIRST AMENDED AND RESTATED AGREEMENT FOR

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ESTABLISHMENT OF THE CHAGRIN/SOUTHEAST COUNCIL OF GOVERNMENTS; APPOINTING THE MAYOR AS THE VILLAGE'S REPRESENTATIVE TO THE COUNCIL; AND DECLARING AN EMERGENCY.

Moved by Mrs. Lutz, seconded by Mr. Williams that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Moved by Mrs. Lutz, seconded by Mrs. Evans that the ordinance be adopted. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Mrs. Lutz said Chagrin Falls has been a member of this COG HAZMAT Group. The changes are adding members and a change of the name. It is another example of regionalizing our efforts to cut down costs and provide better services.

### PROPOSED CHARTER AMENDMENT

Mr. Patton introduced Ordinance No. 2011-53 entitled:

AN ORDINANCE PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF THE VILLAGE OF CHAGRIN FALLS A PROPOSED AMENDMENT TO THE VILLAGE CHARTER TO REMOVE EMPLOYEES OF THE BOARD OF CEMETERY TRUSTEES FROM THE CATEGORY OF VILLAGE OFFICIALS AND EMPLOYEES NOT SUBJECT TO THE MAYOR'S EMPLOYMENT POWERS, AND DECLARING AN EMERGENCY.

Moved by Mr. Patton, seconded by Mr. Williams that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Moved by Mr. Patton, seconded by Mrs. Evans that the ordinance be adopted. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Mr. Patton said the Charter Review Commission has recently met on numerous occasions to review our Charter and has determined that our Charter is a good document with no significant need of alteration or modification. Council would like to thank the Commission for their comprehensive and diligent work in their review. However, there are several slight proposals that were made to clear up potential contradictory language. This legislation addresses one of those proposals and grants the Mayor to have authority over employees of the Board of Cemetery Trustees. In actuality there are no employees but this does bring under the Mayor's authority all of the employees of the Village of Chagrin Falls.

### PROPOSED CHARTER AMENDMENT

Mr. Patton introduced Ordinance No. 2011-54 entitled:

AN ORDINANCE PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF THE VILLAGE OF CHAGRIN FALLS A PROPOSED

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## AMENDMENT TO THE VILLAGE CHARTER TO CLARIFY THAT MEMBERS OF COUNCIL SERVE UNTIL THEIR SUCCESSOR IS CHOSEN AND QUALIFIED, AND DECLARING AN EMERGENCY.

Moved by Mr. Patton, seconded by Mr. Williams that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Moved by Mr. Patton, seconded by Mr. Williams that the ordinance be adopted. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Mr. Patton said is a companion ordinance to Ordinance No. 2011-53. This is the second proposed modification that was made by the Charter Review Commission again to clear up any contradictory language in the Charter. As noted, this would state that members of Council serve until their successor is chosen and qualified. It is my understanding this was for a situation where someone couldn't make the organizational meeting and we needed to have a full Council, or at least an adequate number of people on Council at that point in time to make any decisions. Mr. Bruner said the same language applies to the Mayor.

### VARIANCE REQUEST - 291 BELL STREET

Mr. Williams introduced Administrative Order No. 2011-55 entitled:

#### FINAL ORDER OF COUNCIL AND CONCLUSION OF FACT REGARDING A VARIANCE REQUEST OF STEVEN KING FOR PROPERTY LOCATED AT 291 BELL STREET.

Moved by Mr. Williams, seconded by Mrs. Evans that the administrative order be adopted. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None. Mr. Williams explained the specifics of the variance requests. He said the BZA voted unanimously in favor of the variance requests and its recommendation to Council.

### STREETS AND SIDEWALKS COMMITTEE

Mrs. Evans introduced Kathleen Visconsi from Your Home Town Chagrin who made a presentation about First Thursdays Chagrin Falls - Stroll, Dine, & Shop to stimulate business in the Village. For more information, people can go to [www.yourhometownchagrinfalls.com](http://www.yourhometownchagrinfalls.com).

Mrs. Visconsi requested permission to have a band play (Chapter 11) in Triangle Park from 7:00 p.m. to 9:00 p.m.

Moved by Mrs. Evans, seconded by Mrs. Lutz that we, on September 1<sup>st</sup>, allow a band in Triangle Park from 7:00 p.m. to 9:00 p.m. Carried. Ayes: Evans, Jacobs, Lutz, Milko, Patton, Williams. Nays: None.

### FACILITIES AND SERVICES COMMITTEE

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**PLANNING AND ZONING COMMISSION**

Mr. Jacobs announced a meeting for Monday, August 15, 2011 at 7:30 p.m.

**SAFETY COMMITTEE**

No report.

**UTILITIES COMMITTEE**

No report.

**BOARD OF ZONING APPEALS**

No report.

**ADMINISTRATION AND COMPENSATION COMMITTEE**

No report.

**FINANCE COMMITTEE**

Mr. Patton acknowledged that Council did receive the monthly expenditure reports as well as the monthly statement of cash receipts and disbursements for July, 2011.

**PARKS COMMISSION**

No report.

**SHADE TREE COMMISSION**

No report.

**ARTS COMMISSION**

No report.

**PARKING COMMISSION**

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No report.

## **REPORT OF THE CHIEF ADMINISTRATIVE OFFICER**

Mr. Himes reported that during the recent heavy rains we had reports of about ten or so basement floodings. The utility crews are investigating those and we would like to get to the bottom of it. They continue to trickle in so if you talk to residents, encourage them if they ever have any basement flooding to call the utilities department. We want to get out there, see what's happening, and see if we can diagnose what is wrong and try and fix it.

Mrs. Evans asked, how is the lift station coming on North Main? They seem to be there almost every day. Mr. Himes said yes, the contractor is back on site so they should be up and running soon. Mr. Lannon said they are working on the control panel right now. Mr. Himes said that will help eventually when there are power failures; there is no backup right now. Mrs. Evans said I had water in my basement.

## **REPORT OF THE ENGINEER**

Mr. Lannon reported that paving work should wrap up on South Main Street and Ridgewood this week and then there will be some miscellaneous work around town over two weeks. Regarding North Street, I have been pretty successful in obtaining funds for the roadway and also grant funds for the water main. It is sort of a long term and technically not available until 2014 but there is potential to move that up.

## **REPORT OF THE POLICE CHIEF**

No report.

## **REPORT OF THE FIRE CHIEF**

No report.

## **MEMBERS OF THE PUBLIC TO SPEAK TO ANY MATTER (NOT TO EXCEED FIVE (5) MINUTES)**

Jack Bennett asked if the Village has a plan in case there is a terrorist attack? Mayor Brick said yes, we have a documented emergency operation plan, that is approved and it is in compliance with county and federal requirements. We have had practice sessions and we plan to continue practice sessions. Mayor Brick said they can put it on the website.

George White, 77 West Cottage Street, talked about the project below him on West Orange



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chopped down, other people tell me that that hill has been shifting for as long as there has been a hill. So that is why we are trying to get the data so we know not only what went wrong but what can we require the builder to do to correct it. But right now we do not know. Mr. White said when they initially cleared the land and they were given permits to demolish and clear the land, did it ever come up that if we clear this land and do not put in a retaining wall or a slope retention system that we may have a problem? Did that occur anywhere in any of the discussion? Mr. Himes said not that I recall.

Mr. Bennett said you don't have to have vision to understand what every mouth in Chagrin Falls is saying, what happened, how was this allowed, why was it passed, and also the fact that there were limitations that were exceeded, which is unlawful. What the heck is going on here? It is so confusing and so frustrating. I keep hearing the words "snake in the grass". And you say you don't know anything, or you didn't pass it, or you didn't talk about it. How confusing can this be to citizens of Chagrin Falls? We are very, very upset.

Mr. Patton said there were a variety of review processes for this project. It went through a variety of committees. This Council was involved in reviewing some of those decisions and the ultimate project was approved. There were plenty of meetings for people to come to, listen to, and give us their input. It is unfortunate where we are today but we are doing everything we can. Mr. Bennett asked, are you as sick about this as everybody else is? Mr. Patton said I am not happy about it. I don't think anybody on this Council is happy about it. We are very concerned about it. Mr. Bennett said, but you allowed it to go through. Mr. Patton said we went through all the appropriate channels to make the necessary approvals. It is obviously unfortunate that we are having issues with this project and yet to be determined is the specific cause.

Mr. White said when the project started if you didn't give any thought to once they cleared the land, we don't need a slope retention system according to whomever. Is that same engineer still the same guy making the decisions for Chagrin today? Obviously if you are clearing a hill how are you going to retain that slope and you are saying that nobody even thought about it? I find that hard to believe. Mr. Himes said there is a presumption in that statement that the houses and the trees are what were holding up the hill. I am not a geotechnical engineer but I don't believe that was the case. Mr. White said shame on us for never coming to a meeting, but it wasn't even a part of anyone's discussion that wait a second, if we clear the land, clear the trees, what have you, what is going to happen? Mr. Byron said within the variance of ordinance which related to the height of the building, it didn't relate to the placement. There was a requirement put in that slope stability would be taken care of. Council was focusing on that issue thru the BZA hearing and then the conclusions of fact; Council directed that that be done. There may have been activity done on the property between the time Council acted and a permit for construction was issued. That may or may not be the proximate cause of what's going on. That is something that needs to be determined by the science of what is causing the slope to move. According to the Village's consulting engineer it is only a science that has been

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around since 1965.

Mr. Bennett said I have information that even the limit to height of buildings just for one item were exceeded, which is wrong. You had to have known that. Mr. Patton said the variance was for height. Mr. Byron said and in conjunction with granting the variance for the height, that's where the slope stability issue was addressed. What the relationship is between a height of a building and slope stability I think the Village was addressing it in trying to address that issue.

Mr. White asked, why is it taking so long to get this accomplished? How many more months until they complete the report? Every day that goes by is another crack that is forming somewhere. Mr. Himes said a large part of the delay is the Village's demands on the developer for the proper science, the proper tests and more recently we had great difficulty finding a geotechnical firm that would take on the project because of the law suit and I guess associated liability. They have ultimately found a geotechnical firm out of Pittsburgh that took on the project. The testing is now underway. Mr. White asked, the original firm that did the study, where are they at in this process? Mr. Himes said the original study, that firm basically bailed out on the developer.

Mike Chess, 51 West Summit Street, said gathering the data, I think, is a critical piece. What happens in the meantime? What happens if testing goes on for six months, a year, or two years? If there is conflicting data, is there a plan to do any temporary fixes or try to help people out? Mr. Patton said I suppose that the developer would be anxious to get the permits issued so he can move forward with the project. So, I don't see any reason why the developer would be dragging his feet in regard to these tests that we require. Mr. Chess said what I am hearing and I agree with giving the developer some pretty direct and saying this is what we need but that is kind of an unlimited time frame thinking that what happens if the developer walks away and two years go by? What happens to the property then? Mayor Brick said he will be very liable, I guess. Mr. Lannon said as part of structure we have asked that the geotechnical engineer on site make short-term recommendations just based on their observations of being on site.

Mr. Bennett said I know I speak for a multitude of Chagrinites when they say something fishy is going on here. I've heard that over and over again. Mr. Patton said there is nothing fishy going on here! All the information from the various committees is available to you and it is a thick compilation of information.

Mr. White said, just so I understand again, as far as the study and a possible permanent solution, go through it again where are we and when is a possible permanent solution going to take place? Mr. Lannon said the geotechnical study will analyze some surface soil conditions and that information will be used by a structural engineer to design a retaining wall including the rear wall of the buildings, which will also act as a retaining wall to stabilize the slope. The geotechnical study looks at the geometry of the entire slope including Cottage Street down to Orange Street. The structural engineer takes those recommendations and develops a retaining

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wall plan. As far as the time line, we don't know. The structural engineer and the developer have to work out their own schedule and that needs to be turned into a building plan submitted to the Village for review. It is an involved process.

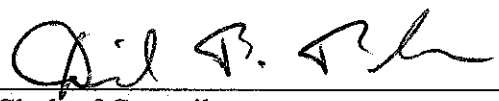
**MISCELLANEOUS**

None.

**ADJOURNMENT**

Mr. Patton adjourned the meeting at 8:53 p.m.

  
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President of Council

  
\_\_\_\_\_  
Clerk of Council