

VILLAGE OF MINSTER, OHIO  
COUNCIL MEETING MINUTES  
Monday, March 24, 2014

**Council Meeting:** Council convened at 5:30 p.m., in Council Chambers with six council members present: Tom Herkenhoff, Craig Oldiges, Steve Kitzmiller, Nicole Clune, Paul Enneking, and Rick Schwartz. Also present were Dennis Kitzmiller (Mayor), Don Harrod (Administrator), Jim Hearn (Village Solicitor), and John Stechschulte (Clerk/Fiscal Officer). Mayor Dennis Kitzmiller called the meeting to order with the Pledge of Allegiance.

**Attendance:** Janice Barniak (Evening Leader), Margie Wuebker (Daily Standard), Dean Eversole (Community Post), Kirby Cummins, Cindy Cummins, Jim Maxwell, John Settlege, Paula Martin, Lee DeLoye, Lynn Cummins, Jim Petrie, Susan Ingraham, and Randy Houseworth (Police Chief).

**APPROVAL OF MINUTES:** N. Clune and P. Enneking motioned to approve the minutes from March 4, 2014 regular meeting. Motion passed on five aye votes and one abstention by Craig Oldiges.

**VISITOR COMMENTS:** None.

**ORDINANCES & RESOLUTIONS:**

**State Issue I:** State Issue I bond issue is on the State May ballot. Auglaize County Engineer, Doug Reinhart has asked all municipalities in the county to consider passing a resolution in support of an additional 10 year bonding program. The Village has benefited from State Issue money and has received \$1,353,000.00 in grants since 1992. C. Oldiges and R. Schwartz motioned to pass and adopt **Resolution 14-03-01** endorsing the passage of State Issue I. Motion passed on six aye votes.

**Water Rates:** John Courtney of Courtney Associates shared the results of the cost of service study conducted on both the water and waste water rates. No increase is necessary for the waste water rates at this time, however the report showed the projected revenues based on current rates is not sufficient to meet the near term revenue of the water system. The proposed rate increase is a three phase approach. The first phase is a \$.50 cent increase to a customer charge of \$5.00 per month and \$.05 increase per 1,000 gallons per month to \$1.90 per 1000 gallons. The second and third phase would increase additional \$.05 cents per 1000 gallons or \$1.95 per 100 gallons in 2015 and \$2.00 per 1000 in 2016. T. Herkenhoff and S. Kitzmiller motioned for the 1<sup>st</sup> reading of **Ordinance 14-03-02** establishing new water rates. Motion passed on six aye votes.

**COMMITTEE REPORTS:**

**Safety Committee:** Nicole Clune reported the Committee met with the Minster Area Life Squad on May 13, 2104 to discuss issues. They will attend the April 15<sup>th</sup> meeting to brief full Council and will hold an open house on May 18<sup>th</sup> for recruitment of new members.

**OLD BUSINESS:** None.

**NEW BUSINESS:**

**Millcreek Top Dresser:** The Parks Department has budgeted for a top dresser. Ryan Geise is recommending a top dresser manufactured by Millcreek and has received a quote for a 3200 Turf Tiger Cub for \$9,000.00. The top dresser would be used in other departments as well. S. Kitzmiller and C. Oldiges motioned to allow the purchase and create a purchase order. Motion passed on six aye votes. Council also discussed the purchase of a utility vehicle. Don will attempt to receive additional quotes for a Bobcat 3650.

**Vermeer Vacuum Excavation Unit:** The Electric Department has budgeted for a vacuum excavation unit. The unit will trench and locate underground utilities in place of a backhoe or trencher. John Neuman has prices through state purchasing for a mid-sized unit with 500 gallon spoil tank, 2 – 125 gallon fresh water tanks, and a 49 HP Kubota diesel engine. The cost of the unit with a Tier 4i emission diesel engine is \$58,867.00. If the unit were a Tier IV engine the cost would jump to \$67,897.00. S. Kitzmiller and P. Enneking motioned to allow the purchase and create a purchase order for the Tier 4i unit. Motion passed on six aye votes.

**Retirement:** Randy Stein submitted a letter indicating he is retiring March 28<sup>th</sup>. Randy has worked in the Electric Department almost 18 years. T. Herkenhoff and R. Schwartz motioned to accept the letter of resignation. Motion passed on six aye votes. In addition, Don will advertise for the open position in the department.

**Purchases over \$3,000 Dollars:** Council reviewed a list of invoices which were over \$3,000. Council has authorized the Administrator to purchase items under \$25,000, however, per the State Auditor; the purchases over \$3,000 and under \$25,000 require Council approval. C. Oldiges and N. Clune motioned to approve the invoices over \$3,000.00. Motion passed on six aye votes.

**Income Tax:** Council reviewed the February 2014 monthly income tax report of \$280,732.04 as distributed by the City of St. Marys Income Tax Department. The Village of Minster contracts with the City of St. Marys to administer the income tax collection for the Village. R. Schwartz and S. Kitzmiller motioned to approve the monthly income tax report. Motion passed on six aye votes.

**Continuation of Hearing of Appeal for Sergeant Cummins Termination:** At 6:00 p.m., Rick Schwartz asked Registered Professional Reporter, Susan Ingraham to go back on record for the Cummins Appeal. Rick Schwartz moved for the Council to enter into an executive session to consider the dismissal of a public employee and to consider the discipline of a public employee. Nicole Clune seconded the motion. A vote on Mr. Schwartz's motion was taken: T. Herkenhoff – Yes; C. Oldiges – Yes; S. Kitzmiller – Yes; N. Clune – Yes; P. Enneking – Yes; R. Schwartz – Yes. Motion passed. Council entered into executive session and was off the record at 6:02 p.m. Tom Herkenhoff moved to end the executive session and to return to regular session at 8:47 p.m. Paul Enneking seconded the motion. A vote on Mr. Enneking's motion was taken: T. Herkenhoff – Yes; C. Oldiges – Yes; S. Kitzmiller – Yes; N. Clune – Yes; P. Enneking – Yes; R. Schwartz – Yes. Motion passed. President of Council Schwartz moved to approve the following as findings of fact regarding Mr. Cummins' Appeal:

1. Kirby Cummins was employed as a sergeant with the Village of Minster Police Department from approximately June 2008 to January 10, 2014. Mr. Cummins had supervisory authority over the patrolmen in the Police Department and could recommend that they be disciplined.
2. Since at least 2010 to the present, the Village of Minster had an Anti-Harassment Policy and Corrective Action Policy, true and accurate copies of which were admitted into evidence in this

hearing as Exhibit K. The Anti-Harassment Policy prohibits, among other things, using verbal kidding based on race and unwelcome physical contact such as pinching. The Corrective Action Policy prohibits certain unacceptable conduct and behavior.

3. At least in 2010, Mr. Cummins received a copy of the Anti-Harassment and Corrective Action Policies, familiarized himself with these policies and agreed to abide by these policies.

4. In or around January 2013, while on duty, in uniform and using the Village's police cruiser, Mr. Cummins visited Linda Dahlinghaus' personal residence to further a personal relationship completely unrelated to his duties as a police officer. There were multiple such visits lasting between at least 20 – 30 minutes.

5. In or around February 2013, while on duty, in uniform and using the Village's police cruiser for a portion of one of his 8 hour shifts, Mr. Cummins met with Linda Dahlinghaus and his wife, Cindy Cummins, in various meetings to discuss his personal relationship with Ms. Dahlinghaus, a matter completely unrelated to his duties as a police officer.

6. At multiple times during his personal relationship with Ms. Dahlinghaus in late 2012 and early 2013, Mr. Cummins drove Ms. Dahlinghaus in the Village's police cruiser while on duty, without obtaining a waiver, and without a purpose related in any way to his duties as a police officer.

7. Village of Minster Chief of Police Randy Houseworth issued a directive forbidding smoking in the Village's police cruisers ("Directive") in December 2012, or earlier. Mr. Cummins was aware of the Directive.

8. At various times in 2013, Mr. Cummins smoked in the Village's police cruiser while on duty in violation of the Directive and in violation of the Corrective Action Policy.

9. On multiple occasions, Mr. Cummins smoked with Ms. Dahlinghaus in the Village's police cruiser in violation of the Directive and in violation of the Corrective Action Policy.

10. During the Village's 2013 Christmas Party, Mr. Cummins pinched Rachel Ranly's buttocks which action was not welcomed by Ms. Ranly and which violated the Village's Anti-Harassment Policy.

11. During 2013, Mr. Cummins used the phrase "nigger in a wood pile" on multiple occasions while on duty in reference to at least one other member of the Village police department in violation of the Anti-Harassment Policy and the Corrective Action Policy.

12. Mr. Cummins urinated in the sink of the police department garage while on duty on many occasions in violation of the Corrective Action Policy.

13. On December 9, 2013, four Village Police Department employees submitted a signed letter to Village Police Chief Houseworth expressing their concern that Mr. Cummins was engaged in conduct that was damaging the Village Police Department, as well as the Village. That same day, Ms. Rachel Ranly also complained to Police Chief Houseworth that Mr. Cummins pinched her buttock during the Department Christmas Party.

14. Village Police Chief Houseworth investigated the allegations against Mr. Cummins.
15. Village Police Chief Houseworth interviewed Patrolmen Brian Drexler, Floyd Gregg, and Eric Morris, as well as Rachel Ranly and Linda Dahlinghaus. Patrolmen Drexler, Gregg, and Morris, and Rachel Ranly submitted written statements containing allegations against Mr. Cummins.
16. Village Police Chief Houseworth met with Mr. Cummins on December 23, 2013, and January 6, 2014, to inquire about the allegations made against Mr. Cummins. Mr. Cummins was represented by his counsel, Dwight Brannon, during the January 6, 2014, meeting.
17. Following his investigation, Chief Houseworth suspended Mr. Cummins effective January 8, 2014, for the following reasons: (1) gross neglect of duty; (2) failure to obey a directive of Village Police Chief Houseworth; and (3) violations of the Village of Minster policies.
18. On January 7, 2014, Village Police Chief Houseworth certified the suspension in writing, together with the cause for suspension, to Dennis Kitzmiller, Mayor of the Village of Minster and recommended Mr. Cummins' removal from the Department. On January 7, 2014, Village Police Chief Houseworth hand delivered a copy of the certification to Mr. Cummins and faxed a copy to Mr. Cummins' attorney.
19. Mayor Dennis Kitzmiller inquired into the cause of the suspension. Mayor Kitzmiller reviewed the witness statements and discussed the allegations with Chief Houseworth. Mayor Kitzmiller met with Mr. Cummins and his wife, Cindy Cummins, on January 10, 2014. Mr. Cummins was given the option of having his attorney present for the January 10, 2014 meeting but Mr. Cummins declined to have his attorney present.
20. On January 10, 2014, Mayor Kitzmiller rendered a judgment sustaining the charges against Mr. Cummins and removing Mr. Cummins from the Village of Minster Police Department for the following reasons: (1) gross neglect of duty; (2) failure to obey a directive of Chief Houseworth; and (3) violations of the Village of Minster policies. On January, 10, 2014, a copy of Mayor Kitzmiller's judgment was hand delivered to Mr. Cummins and faxed to his attorney.
21. Mr. Cummins appealed Mayor Kitzmiller's judgment and the evidentiary portion of the appeal was heard before the Village Council on February 4 - 5, 2014. During the evidentiary portion of the appeal, Mr. Cummins appeared in person and was represented by counsel and opposed Mayor Kitzmiller's decision to remove him from the Department and was able to: (1) present his position, arguments, and contentions; (2) offer and examine witnesses and present evidence in support; (3) cross-examine witnesses purporting to refute his position, arguments, and contentions; (4) offer evidence to refute evidence and testimony offered in opposition to his position, arguments, and contentions; and (5) proffer any evidence into the record if the admission of that evidence was denied by this Council.
22. The parties agreed to and did submit written closing statements to the Village Council for consideration prior to today's March 24, 2014 special meeting.

The motion was seconded by Tom Herkenhoff. Nicole Clune moved to amend Mr. Schwartz's motion by striking #10 listed above from the findings of fact. Ms. Clune's motion failed for lack of

a second. A vote on Mr. Schwartz's motion was taken: T. Herkenhoff – Yes; C. Oldiges – Yes; S. Kitzmiller – Yes; N. Clune – No; P. Enneking – Abstain due to not attending the original hearing; R. Schwartz – Yes. Motion passed.

Council President Schwartz motioned to uphold the mayor's termination of Kirby Cummins for the reasons stated in Mayor Kitzmiller's termination notice. Motion seconded by C. Oldiges . A vote on Council President Schwartz's motion was taken: T. Herkenhoff – Yes; C. Oldiges – Yes; S. Kitzmiller – Yyes; N. Clune – No; P. Enneking – Abstain due to not attending the original hearing; R. Schwartz – Yes. Motion to uphold the termination of Kirby Cummins passed.

Steve Kitzmiller motioned to close the Cummins Appeal hearing. Motion seconded by Council President Rick Schwartz. A vote on MR. Kitzmiller's motion was taken: T. Herkenhoff – Yes; C. Oldiges – Yes; S. Kitzmiller – yes; N. Clune – Yes; P. Enneking – Yes; R. Schwartz – Yes. Motion passed.

### **ADMINISTRATOR REPORT:**

- We have been having some issues with Well Number 5 at the Four Seasons Park (well by the practice football field). For the past several months, the water department has noticed that production from the well has been going down. Last noted was that the well was producing less than half of what it has produced in the past. We have contacted Layne about coming in and cleaning the well and they are making arrangements to do so over the next couple of weeks. The pumps will need to be pulled, the well purged, cleaned and disinfected and then put back into service. A few years ago, we had to do this with well #6 and the result was the production returned to regular levels and we expect the same results in this case.
- As weather permits, the parks department has been working to prepare the baseball diamonds for use this year. Fields are being rolled, lips cut back and dirt added to bring the diamonds back into shape. High School girls' softball has been practicing at the Four Seasons Park for the past couple of weeks and regular practices for little league will begin the first of April. Opening day for the summer series is scheduled for May 3<sup>rd</sup>.
- The Ohio EPA will be in setting up testing equipment at the Waste Water Treatment Plant on March 24<sup>th</sup> and March 25<sup>th</sup> and the again on May 4<sup>th</sup> and 5<sup>th</sup>. They will be testing the same parameters that the plant normally tests for. This check from the EPA is to verify that our normal testing and reporting procedures are accurate and correct.
- The electric department continues to work on the south side of Centennial Park. Crews are currently placing conduit in the ground in anticipation of hooking up the new street lights and new electrical services on that side of the park. Once the entire conduit is in place the department will begin pulling in wire.
- Tree Masters of Darke County, who is the contractor that has been hired by the Village to remove diseased ash trees as part of the Ash Tree Removal Grant, have indicated that they will be in the village to start removing trees around the first week of April. It is expected that this work will take several weeks to complete. According to the grant application all work will need to be finalized by May 15<sup>th</sup>.
- Crews from the Public Works Department are currently going around and locating water curb stops throughout the village, marking their location and raising them to ground level if necessary.
- Electrical crews have received the final foundation drawings for the concrete pad for the new transformer at the Golf Course Substation. Next week, crews will begin excavation of the area in preparation of pouring concrete for the foundations.

- The water department continues to replace water meters as part of the new meter reading system being implemented by the Village. Residents who have not had their meter replaced yet, can contact the village offices to set up a convenient time for crews from the water department to change out the meter. On average it takes about 30 minutes to do the work.
- Last week, Dennis and I met with another group that may be interested in installing a solar array at the Luedeke Farm. As you know we have still not received any contract documents from or an indication that Solar Planet is moving forward with the project that we discussed last year. In order to keep our options open, on Wednesday we listen to a solar field developer who is backed by some investors that are firmly entrenched in the power industry about the possibility of this group constructing a solar array on the village's system. We advised the developer that the village would be interested in listening to another proposal and asked that he put something together that both the village and our consultant Courtney and Associates can review. As soon as we receive something back, we will review it and present it to council for possible consideration.
- We have been in contact with Vectren about the possibility of running natural gas out to the business park located to the west of town off of Fourth Street. Vectren is reviewing their maps to determine where the best feed would be and are developing an estimate of the costs.

**Receipts:** Council reviewed the monthly cash receipt ledger of \$1,202,650.05. T. Herkenhoff and N. Clune motioned to approve the report. Motion passed on six aye votes.

**Invoices:** T. Herkenhoff and C. Oldiges motioned to approve the invoices totaling \$1,589,455.23. Motion passed on six aye votes.

**COMMENTS & CORRESPONDENCE:**

S. Kitzmiller and R. Schwartz motioned to adjourn at 6:51 p.m. Motion passed on six aye votes.

---

Dennis Kitzmiller, Mayor

---

John Stechschulte, Clerk

Recorded & typed by John Stechschulte