

**PROCEEDINGS OF VILLAGE OF FRANKLIN
VILLAGE COUNCIL - REGULAR MEETING
MONDAY, April 12, 2004, 8:00 p.m.
FRANKLIN VILLAGE HALL - BROUGHTON HOUSE
32325 FRANKLIN ROAD, FRANKLIN, MICHIGAN**

I. CALL TO ORDER

The meeting was called to order by President Jahnke at 8:00 pm at the Franklin Village Hall, Franklin, Michigan.

II. ROLL CALL

Present: Randy McElroy, Ralph Sosin, Fred Gallasch, Mark Jahnke, Alan Harnisch, Brian Coyer, Bill Lamott

Also Present: Eileen Pulker, Village Clerk
John Staran, Village Attorney, Beier Howlett
Jon Stoppels, Village Administrator
Tony Averbuch, Fire Chief
Edward Glomb, Police Chief

III. ADOPTION OF AGENDA

Motion by Sosin, supported by Gallasch, to Approve the Agenda as Presented.

Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott

Nays: None

Motion carried.

IV. MINUTES

A. Regular Meeting of March 15, 2004

Motion by Harnisch, supported by Sosin, to Approve the Minutes for the Regular Meeting of February 9, 2004 as Presented.

Ayes: McElroy, Sosin, Harnisch, Coyer, Lamott

Nays: None

Abstain: Gallasch, Jahnke

Motion carried.

B. Organization Meeting of March 22, 2004

Sosin stated that at the bottom of page 4, the motion under item XI. A. should read "acknowledge those persons and reappoint as necessary", instead of "reappoint all of those persons".

Motion by Sosin, supported by Gallasch, to Approve the Minutes for the Organization Meeting of March 22, 2004 as Amended.

Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott
Nays: None
Motion carried.

V. REPORTS OF VILLAGE OFFICERS AND AGENTS

Chief Glomb reported one attempted burglary in Bingham Farms where the alarm went off and the burglar left, illustrating the usefulness of alarm systems. Chief Glomb gave an update on Homeland Security procedure, stating that the Police Department received five emergency kits for the police officers and the police department should be properly equipped for emergency situations within the next month.

Chief Averbuch added one item beyond his written report, stating that remodeling projects are causing false alarms, and homeowners must contact their alarm companies. Every false alarm costs the Fire Department money, and homeowners must do everything they can to keep these costs down.

Treasurer Schiano was unable to attend the meeting, and in his absence Administrator Stoppels presented the Treasurer's written report in which he had stated that the bills list before the Council is in keeping with the budget and also reported that the staff and he had begun a review of the 3rd Quarter of the current year budget with amendments to be presented at the next meeting. Schiano also reported that work on the new FY 2004-2005 Budget was progressing.

VI. SUBMISSION OF CURRENT BILLS

Stoppels asked to have bond refund #2407 for 27158 Appletree Lane removed from the bills list pending further research. Gallasch asked about bills for Huda School, Stoppels stated that the Village was processing the payments at this time and the bills would be repaid by the Huda School.

Motion by Coyer, supported by McElroy, to Approve the Current Bills List as Amended.

TOTALS

| | | |
|-------------------------------|-----------|------------------|
| General Administration | \$ | 10,355.38 |
| Building | \$ | 22,647.32 |
| General Debt | \$ | 65,864.61 |
| Insurance | \$ | 22,346.16 |
| Legal | \$ | 2,463.14 |
| Police | \$ | 10,913.69 |
| Roads | \$ | 1,408.18 |

| | | |
|-----------------------------------|-----------|-------------------|
| 2002 Local Road | \$ | 2,756.85 |
| Cell Tower | \$ | 938.00 |
| Rubbish | \$ | 13,213.27 |
| Trust & Agency | \$ | 20,700.00 |
| Village Hall & Grounds | \$ | 270.00 |
| Waste Water | \$ | 937.44 |
| ALL FUNDS | \$ | 174,814.04 |

Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott
Nays: None
Motion carried.

VII. PUBLIC COMMENTS

Connie Ettinger, 25600 River Drive, directed comments at President Jahnke regarding his comments made about the Cell Tower Study Committee during the recent election campaign. Ms. Ettinger cited examples from the Open Meetings Act, citing that the CTSC is not a public body as defined as “any state or local legislative or governing body, including a board, commission committee...which is empowered by state constitution, statute, charter, ordinance, resolution or rule to exercise governmental or proprietary function...”. Ms. Ettinger continued, stating that the CTSC does not fall within the definition of “public body” as it has no authority to exercise or perform any governmental or proprietary function. It is merely a study committee that was formed, in part, at your behest, to further study the issue of cellular service to the Village. Ms. Ettinger stated that the OMA defines “meeting” as “the convening of a public body...for the purpose of deliberating toward or rendering a decision on public policy.” Again, since the CTSC has no authority to render a decision nor deliberate toward one, it is exempt from the coverage of the Open Meetings Act. Ms. Ettinger continued, citing Attorney General Opinion 5183, which she felt definitively addressed the issue of whether committees such as the CTSC are included within the OMA. The Attorney General found that “the Act does not apply to committees and subcommittees of public bodies which are merely advisory or only capable of making ‘recommendations concerning the exercise of governmental authority.’ These bodies are not legally capable of rendering a ‘final decision’”, which is precisely what the CTSC does. She felt that President Jahnke’s statements during the election were disconcerting because those comments asserted that the CTSC and its members were violating the law, and as an attorney, Ms. Ettinger values her reputation.

President Jahnke thanked Ms. Ettinger for making her intention to appear before the Council known prior to the meeting so he could prepare comments of his own, which he proceeded to read in to the record. "As previously stated, Villagers should be very thankful that a cell tower committee was created to study this issue. We should all be grateful for their contribution and volunteer spirit. There is no question that individual committee members believe they are serving the

public good by serving on this committee. The committee did not make the initial decision to meet in closed session. I believe that committee members are satisfied with the position that they may meet in closed session, pursuant to a 1977 Michigan Attorney General opinion. In other words, I am not troubled by the motivation, just the reality of closed sessions. I would add that I have not mentioned any committee members by name or questioned any personal motivations, and I had no intent to harm any committee members.

Ms. Ettinger's concern about earlier comments made during the election campaign is appreciated. Further, all efforts of this committee are appreciated by this council and other villagers. However, the Cell tower Study Committee (CTSC) should meet in public, in accordance with the OMA. What is to be gained by requiring a committee of this type meet in closed session after all the public interest that has been exhibited? Previous public comments were intended to amplify that initially the committee was improperly formed by appointment by the Village Council President only. The full Village Council corrected this and ratified the appointment at the February meeting. Other previous comments amplified the fact that the committee was asked to meet in closed session. The decision to hold the meetings in closed session was not discussed in public at the formation of the committee.

Research then and now supports that this committee should meet in public session in accordance with the Open Meetings Act (OMA). The OMA is a law passed by our Michigan legislature in 1976, largely in response to the Watergate mess and a general lack of public confidence in government in the 1970's. The OMA itself is a relatively short document, six to nine pages long, and should be required reading for all public officials.

The first line of the OMA description of ACT 267 says "*An ACT to require certain meetings to certain public bodies to be open to the public...*" The ACT then defines a Public Body as "*...any State or local legislative or governing body, including a board, commission, committee, subcommittee, authority or council, that is empowered by state constitution, statute, charter, ordinance resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function;...*". The CTSC was empowered by our village council under our village charter. The CTSC certainly performs a governmental function, the committee includes 6 members of the government, the committee meetings are attended by the Village Attorney, the Village Planner, the Village Clerk and the Village Administrator, all of whom are employed or contracted by the Village. So, my reading of the OMA definitions indicates that our CTSC falls under the OMA. Further, the OMA provides 10 exceptions or exemptions to the Act, advisory committees are NOT listed as exempts!

Since the law was passed in 1976 there are two basic sources of information related to this law. **First**, is the vast body of opinions and policies and "right to know" literature. This includes the Michigan Attorney General's 1977 opinion on

the application of this law to “advisory committees”. But, as John Staran pointed out, there have been many years and several court decisions, these court decisions constitute the **second** and certainly most significant and recent information on the OMA.

Before commenting on recent Michigan Appellate Court decisions, here is a quote from the State of Michigan website Michigan.gov “*Do committee meetings need to follow the requirements of the Open Meetings Act? ... Board committees, ... are usually charged with a specific duty and delegated the authority to carry out that duty. Deliberations and decisions are made in the committee meetings which will lead toward the final decision-making by the full board. Recent Michigan Supreme Court decisions indicated that it is probably wise to make sure that all such committee meetings are open to the public.*”

The OMA was passed in 1976. There have been numerous court decisions, here are excerpts from two Michigan Appellate Court decisions. From the Michigan Appellate digest, released February 24, 1998, *Schmiedicke v Clare School Board*:"

“Under the Open Meetings Act, generally a decision of a public body effectuating public policy must be made at an open meeting. The purpose of the OMA is to facilitate public access to governmental decision-making, and the act should be broadly construed and its exemptions strictly construed. A public body has the burden of proving that an exemption applies.”

“Under the OMA, a decision is a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy. The purpose of the OMA is to insure that public bodies conduct their decision-making activities in open meetings and do not merely automatically confirm decisions previously made in private...”

From the State of Michigan Court of Appeals decision, *Morrison v City of East Lansing*, dated February 28, 2003:

“...the city council by resolution appointed the Hannah Building Committee (HBC)...”;

“The HBC’s implicit duties were to advise the council after conducting research and interviews and obtaining public input...”;

“the HBC held at least 19 meetings.”;

“...approximately one hundred people attended each noticed meeting, but no one from the public attended the meetings that were not noticed.”

“We concluded that the situation here is more akin to Booth, because the city council, not the city manager, by resolution created the HBC and appointed HBC members. The city council effectively authorized the HBC to perform a governmental function. Further, the HBC engaged in more than just plan development and architect and construction manager selection. In fact, it held public meetings and solicited public input, which is more akin to a governmental body than staff. Although, a close call we agree with the trial court that the HBC was a public body subject to the OMA...”

"The above decisions support the notion that our CTSC is a governmental body subject to the OMA. In the spirit of the OMA is that we should present our governmental decision making in public. And, let me say that the process would be a heck of a lot simpler, too!"

Ms. Ettinger responded by stating that the CTSC has no power to make decisions, and can only gather information to try to find a viable solution to the problem of cellular communication in the Village of Franklin. She also stated that accusations toward the committee as a whole make direct accusations towards the individual members of the committee.

Coyer stated that President Jahnke's reading of the law was simply wrong, the essence of situation was that the committee does not fall under the OMA. The Village Council and the committee members themselves did rely on legal counsel to reach the decision of how to conduct the meetings. The Cell Tower Study Committee has met publicly and offered invitations to the public.

McElroy stated that he realizes making allegations come with the territory of politics, but to make comments and allegations about volunteers is not helpful, and it will cause people to be dissuaded from volunteering.

Harnisch stated that his opinion is that the CTSC is not in violation of the OMA, and that the members of the committee are committing a tremendous service to the community, as do all of the other committees serving in the Village.

Jahnke responded by reading another written statement into the record. "The Cell Tower Study Committee was formed and we all agree that this is in the best interest of this Village. That it was initially formed without being on the Council agenda and without formal Council approval was unfortunate. That it did not include a 9th member from the petition circulators is unfortunate. That the committee was required by its chairman to hold all of its meetings to date (except one) in closed session is unfortunate.

And, here is the crux of the matter, in Staran's e-mail, he correctly points out to President Pikulas and trustee Coyer... *"that the scope of the committee's authority must be very narrow." That the report or study of the committee must not be a 'fait accompli.' It may make a recommendation but allow final, informed decision making authority to reside with the Council."*

At last month's meeting, Trustee Coyer, as chair of the committee passed along the committee's recommendation to hire a certain consultant. Only one consultant's name was mentioned in the resolution or during the meeting. Trustee Coyer indicated that this selection was the unanimous selection of the committee. However, none of the other consultants were presented or discussed by the Village Council. This appears to be contrary to the advice of legal counsel. Do I believe this to be intentional? No, I do not. Do I believe that we have to be inordinately careful, upon allowing a committee meeting in closed session? Yes, I do!"

Ron Reame, 32692 Ravine Drive asked whether or not Council considered a water district for south of Thirteen Mile Road. Stoppels stated that that has been discussed, but not since the vote for public water. Sosin stated that the Council would most likely wait until the residents in the aforementioned districts bring a proposal to the Council. Staran stated that an approval for a water district would require a vote of the entire Village. Staran stated that the normal course of events would be that a petition drive to show a majority of support among the residents included in that district, should be conducted and presented to Council.

VIII. SPECIAL REPORTS

A. Cell Tower Advisory Committee

Coyer made a brief oral report, stating that Kreines & Kreines Inc. will hold an open forum for questions and answers on the Cell Tower issue which the residents of the Village are invited to. Connie Ettinger reported on Deployed Antenna Systems which, instead of one giant pole, uses multiple smaller boxes that could be incorporated with multiple different wireless systems, creating a hotspot for wireless connection. Ms. Ettinger stated that the Committee was still considering this alternative as well as the single cell tower. Coyer stated that the DAS uses fiber optics and would be hidden from view, but may present some regulatory issues and the Village legal counsel is looking into those issues. The workshop, to be held on April 22, from 7:30 – 9:00pm, with Kreines and Kreines, would create an opportunity for the entire Village to ask questions. The Committee feels that the Village needs to provide reliable wireless communications. Coyer stated that a single cell tower would provide revenue for the Village, and the DAS system would not create revenue. McElroy pointed out that the revenue created by a Cell tower would help the Village. Gallasch requested that a video record be kept of the town meeting that could be made available at the Village Offices. Coyer stated that detailed minutes of the CTSC meetings were available at the

Village offices and on the Village website at www.franklin.mi.us, when approved, for anyone to view.

B. Liquor License Application Status

Stoppels gave an update on the status of the application for the liquor license at the Franklin Grill, citing some closing statements from the liquor commission and that the commission has agreed to uphold the contingencies set by the Village. Stoppels stated that the owners of the Franklin Grill were making progress toward the goals set by the Village, and he was proposing three possible alternatives to speed up the process: 1) complete the work and bring the building and parking lot up to code; 2) post a bond for the value of the work left; 3) or a combination of the two. Stoppels stated that once a license is received, the owner must train the staff and then the license is in working order. Stoppels also stated that the work required to bring the structure up to code was minimal and that none of the final details would require Council action.

C. Budget FY 2004/2005 Update

Stoppels stated there was an increase in revenue from property tax, but a decrease in millage due to Headley. Headley is costing the Village money, enough money, for example, to pay for two police officers, a vehicle and training for the officers. Headley has affected the Police and Fire Departments significantly. Stoppels stated that he would like to increase the retirement fund. Gallasch stated that the Village needed to create a plan to find new revenues for the Police and Fire Department, utilizing a finance committee. Coyer pointed out that the Fire Department is phenomenal and it is rated against professional departments, even though it is a volunteer department. McElroy stated that the approach of sending funds to the police department for code enforcement is a good idea, because it gets more eyes and ears out that could help to make sure developers and private citizens do not break ordinances and cut down older trees. This would, in turn, save the residents of the Village money from fines.

D. Election Law Update

Staran stated that the idea was to try to eliminate multiple elections at all levels of government and to consolidate the entire election process. Annual March elections are eliminated in favor of an every other year format, which will be held in November of even years or can be by council resolution held in September of odd years. Staran stated that this directly affects the length of Council member terms, and will cause Council members to remain on Council longer. The Village Clerk no longer has election responsibilities; all elections for the Village will be run by the Southfield Township Clerk. Staran stated that there was a clean up bill in the works, however it does not sound like the clean up bill would clean up the every other year election issue or fix the staggering of terms. Staran also stated that the only way the Council could maintain staggering terms was to create a

charter amendment to stagger term lengths, some would get two year terms, some four year terms. The Council cannot do anything under Michigan Law to shorten terms; Council can only extend terms. Staran stated that the only item that could help the Village in the clean up bill was that if the Village would opt for September of odd year elections, then Village Clerk may get control of elections again. Coyer observed that the Village can hold elections up till September of 2004, when would the Village have special elections, or would that be permitted. Staran stated that the Village could possibly still have special elections until the end of the year. Coyer wondered how much time was needed to make a decision to amend the Charter and set the election date. Staran stated that it would require five to six months. Pulker stated that there was a minimum of forty-five days required to print the ballots for the election. Sosin stated that the Council must decide whether or not to hold elections in odd or even years, so Council needs to weigh the options quickly. Gallasch stated that he believes that local government is the best government, and finds that a fix for the school district elections has come to affect all smaller governments in the area and that the Village was swept under the umbrella. If Council was forced to elect all new people at once, it could be a disaster. McElroy wished to know if the Village can challenge the state law in court? Staran stated that he could include that information for next months meeting. Staran concluded stating that Senator Hammerstrom is the Senator associated with the election law, if anyone wants to write the State Congress about the legislation.

E. Franklin Welcome Signs

Stoppels stated that eight signs were proposed, and six have been installed to date and that the two that had not been installed are causing dissatisfaction. Stoppels continued stating that the signs missing at southern borders are causing a perception issue, where residents feel like they are being left out of Franklin. One sign in Bloomfield Township, on the north side of Fourteen Mile Road and is not in the Village. Additional signs will go in at the southern most boundaries of the Village. The Franklin Community Association will move the sign at 13 Mile Road and Inkster across the street and the metal Franklin Village sign would be removed. Stoppels stated that adding an additional sign board at the bottom of the sign at 13 Mile Road and Franklin saying "Welcome to the Historic District" and some pointed signage would help to indicate that the sign is used more for the Historic District than as a border. McElroy stated that no matter what you do the sign at 13 Mile Road and Franklin, it would continue to cause problems even if the Historic District was mentioned, because the Historic District does not start there. Stoppels proposed two alternatives for the extra sign: as a spare in case one is damaged, or place it at Rosemond Drive, which is another border that is not highlighted yet.

Michael Jacob, 30490 Stonegate wrote a letter to Council and was glad that Council was considering alternatives for the 13 Mile and Franklin Road sign. Mr. Jacob further stated that he felt that the sign is going to be a scab, and is not at a

borderline and should not be there. Mr. Jacobs went on to state that he feels there are many other ways to decorate the corner of the street than to put a sign up. He finished by stating that he does think the signs are wonderful and does believe the FCA intended well, but the sign at 13 Mile Road and Franklin should come out.

Gallasch stated that he felt the 13 Mile and Franklin sign needed to be removed. Lamott stated that the sign at 13 Mile Road and Franklin needs to be removed, and the Franklin Community Association needed to landscape the hill area. Lamott also stated that the sign at 13 Mile Road and Inkster should replace the current green Franklin Village signs and the new sign should be placed perpendicular to the road. Sosin stated that he agreed with earlier statements and that everything should be changed in conjunction with the FCA, and that the 13 Mile and Franklin sign needs to be removed. Coyer referenced the old saying "embarrassment of riches" and feels the Council should have been aware of questions coming up from the public. Coyer further stated that he feels that public comments should give the Council the direction they need. Jahnke wondered whether the FCA should come back Council with exact placements for the signs. Stoppels stated that he feels that the Council comments and public comments have established a plan, and that he will use the consensus to negotiate with FCA and resolve the issues, before the May meeting. McElroy wondered whether it is legal for the Village to help with costs, since the Village will own the signs when they are finished.

#2004-39 Motion by Sosin, supported by McElroy, to Authorize the Village Administrator to Meet with the FCA to Agree to the Following Actions to Resolve the Issues with the New Franklin Welcome Signs: Remove the 13 Mile Road and Franklin Sign, Place a sign at the southern boundary of the Village at Franklin Road and at the Southern boundary of Inkster Road, Move the sign at 14 Mile Road and Telegraph Sign to Franklin Village Property and to Have the Sign at 13 Mile Road and Inkster Moved to the East side of the Street. If there is not an agreement on these issues with the FCA, the matter is to be brought back in front of the Council at the next Council Meeting.

**Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott
Nays: None
Motion carried.**

IX. NEW BUSINESS

A. Consider Scheduling Hazardous Waste Day for June 5, 2004

Stoppels stated that this would be the 4th annual event, and the event will run from 9 am – 1 pm. Gallasch stated that if the residents of the Village wanted to be environmentally friendly, this is a great opportunity to do it. Stoppels stated that

the surplus in the rubbish millage was used to offer the service of the Hazardous Waste Day.

#2004-40 Motion by Harnisch, supported by McElroy, to Approve the Scheduling of Hazardous Waste Day for June 5, 2004.

Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott
Nays: None
Motion carried.

B. Consider Proposed Appointments to Historic District Commission

#2004-41 Motion by Lamott, supported by Gallasch, to Appoint Marc C. Marcelli to the Historic District Commission to complete the term of William Lamott until July 2004.

Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott
Nays: None
Motion carried.

#2004-42 Motion by Lamott, supported by Gallasch, to Appoint Charles H. Whitelaw III to the Historic District Commission to complete the term of Evelyn Plotnick until July of 2006.

Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott
Nays: None
Motion carried.

C. Consider Appointments to Personnel Committee

#2004-43 Motion by Sosin, supported by McElroy, to Approve the Appointments of Fred Gallasch, Mark Jahnke and Randy McElroy to the Personnel Committee until the next Council Election.

Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott
Nays: None
Motion carried.

D. Consider Scheduling Arbor Day on April 30, 2004

#2004-44 Motion by Sosin, supported by Harnisch, to Approve the Scheduling of Arbor Day on April 30, 2004.

Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott
Nays: None
Motion carried.

E. Consider Application for Special Event for Music on the Green for July 7, 14, 21, 28 of 2004

Amy Parker, representative from the Franklin Arts Council, requested permission to hold the Music on the Green events and also asked about how to close Carol Street. Coyer stated that he loves the Music on the Green, but also stated that he has a concern about the use of police services, is the Village incurring costs such as overtime. Glomb stated that the Village would incur a small amount of overtime, and that he mainly uses the reserve members of the Police Department. Gallasch stated that the cost is worthwhile public relations promoting police support of the community.

#2004-45 Motion by Gallasch, supported by McElroy, to Approve the Application for Special Event for Music on the Green for July 7, 14, 21, 28 of 2004, contingent upon the Franklin Arts Council obtaining insurance for the events.

Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott
Nays: None
Motion carried.

X. ADJOURNMENT

Motion by McElroy, supported by Sosin, to Adjourn the Meeting.

Ayes: McElroy, Sosin, Gallasch, Jahnke, Harnisch, Coyer, Lamott
Nays: None
Motion carried.

There being no further business the meeting adjourned at 10:12 p.m.

Respectfully submitted,

John C. Pulker
Recording Secretary

Eileen Pulker
Village Clerk

Mark Jahnke
Village Council President