

**PROCEEDINGS OF VILLAGE OF FRANKLIN
VILLAGE COUNCIL SPECIAL MEETING
MONDAY, OCTOBER 24, 2006, 7:00 P.M.
FRANKLIN VILLAGE HALL - BROUGHTON HOUSE
32325 FRANKLIN ROAD, FRANKLIN, MICHIGAN 48025**

The meeting was called to order by President Jahnke at 7:03 p.m. at the Franklin Village Hall, Franklin, Michigan.

Present: Mark Jahnke, Brian Coyer, Fred Gallasch, Alan Harnisch, Bill Lamott, Randy McElroy, Dominick Schiano (arrived 7:09 p.m.)

Also Present: Eileen Pulker, Clerk
Jon E. Stoppels, Administrator
John Staran, Hafeli Staran Hallahan Christ & Dudek, P.C., Village Attorney

I. Considerations of Providing for Village Public Works Services.

Jahnke stated that while there had been no dissatisfaction with the work performed by CityWorks, and the Village holds the company in good regard, a notice of levy from the Internal Revenue Service (IRS) had been received by the Village in mid September, indicating that any payments due to CityWorks were to be paid to the IRS instead. Jahnke explained that a letter had been sent to Mr. Jordan at CityWorks on October 12th, 2006, asking for an explanation as to how CityWorks would be able to provide services, to which no response had been received.

Jahnke stated that there was no executed contract in place currently between the Village and CityWorks, and a thorough study had been conducted by both the Village Attorney and Village Auditor to determine if Jordan Service Corporation, as stated in the IRS Levy, was connected to CityWorks. Jahnke noted that there had been no disruption of service, but there is an anticipatory breach of contract, due to the IRS levy notification and the Village's immediate concerns include winter snow plowing and the full range of DPW tasks. Staran stated that while there was no contract there certainly was a business relationship on an ongoing basis, which is a contract of sorts. Jahnke noted that without the written contract, which would specify what to do under these circumstances, it now falls upon the Council to determine how best to proceed with the best advise available. Coyer commented that, looking at this from the other side, there is a contract, and a property interest in that contract and the Council is required to provide due process before depriving them of the property interest. Jahnke noted that the IRS levy does not allow any leeway, and leaves the Village with no alternate course but to pay them directly for what is owed.

Specific tasks performed were discussed, included what had been completed, and what items still needed to be done as well as the amount of time that the Village has employed CityWorks (since 2000). The discussion continued noting the changes in the contract over time, which in recent years has included a stated amount to be paid per month, and that Jordan had been sent a copy of the agenda for this meeting to afford him an opportunity to address the Council's concerns.

Staran stated that there were three (3) primary components that need to be understood, two of which require deliberation and direction, and one does not. The first is the IRS notice, which comes from the Federal Government; once it has been determined that the notice has been served and applies to this taxpayer, there is nothing discretionary about it. Staran added that he and the Village Auditor had conducted research to determine that the

levy would apply to CityWorks, and the consequences of that are what need to be focused on. Staran added that whether or not it is determined that this is an anticipatory breach, in as much as the contractor will not be paid by the Village until such time as the levy is satisfied, which is a significant number, the contractor may be unwilling or unable to continue to provide services. Staran stated that we did have information from other communities that have similarly terminated services and at least one has locked up equipment that was present at the municipality, based on the levy information. Staran continued stating that while the Village needs to recognize the business, arrangement with CityWorks, Jordan would need to establish, to the Village's satisfaction, that they have the willingness and wherewithal to continue to provide services. Staran stated that there had been a letter sent to Mr. Jordan that allowed a specific amount of time to respond by establishing that ability to provide service, to which no response was received, and while notice of this meeting was sent to Mr. Jordan he did not appear before the Council this evening, although others were present which indicates that word of the meeting was out and notice was posted. Staran opined that what also needs to be determined is where does the Council go from here.

Jahnke stated that the notice of levy was dated September 14, 2006 and received by the Village on September 18, 2006 with a copy to Jordan Service Corporation, to which no response has been received from Mr. Jordan, and that the bill yet to be paid is for September 2006 service, which has been administratively determined to need to be paid to the IRS, having already been approved by the Council on the September bills list.

Coyer stated that the contract needs to be terminated by the Council, per the Village Charter, which Charter does not provide that the President can unilaterally terminate contracts.

#2006-73 Motion by Coyer supported by McElroy to Resolve that the Village Council notify City Works, Mr. Stanley Jordan, that any contract with the Village of Franklin for public works services be terminated and direct staff to pay for work performed in September 2006 directly to the Internal Revenue Service per the Notice of Levy of September 14, 2006 received.

Harnisch asked if there was money owed for October, which would also need to be sent to the IRS, to which Staran replied, that a bill received for October would be presented at the November 2006 Council meeting, if one were to be received by the Village. The Village's obligation was discussed, and it was determined that a prorated bill for October from CityWorks may or may not be received.

Jahnke stated that the Council's obligation is to the Village, not to the contractor or service provider, and that what was done was acted on based on the information received and the extensive consultation with Village Attorney and Village Administrator, which was necessary, and Council can either ratify what was done or reinstate CityWorks. Jahnke noted that what was more important was where does the Council go from here.

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

Nays: None

Motion carried.

Stoppels stated that he was looking for direction from Council how best to pursue the two remaining contractors who had responded to the bid request from last May, adding that

his immediate concern was to provide service for the impending snow fall and winter weather. Stoppels noted that this would be an opportunity to evaluate the services being provided for public works, adding that a short term, two or three months, contract would be difficult to gauge, being the most labor intensive time of the year with snow removal. Stoppels stated that a shorter time frame will result in a higher cost than the original two year contract, which allowed for a smoothing of costs over the entire time period.

Stoppels outlined his proposals:

- 1) Arrange a short term contract with just winter services, and allow for an hourly rate for the remaining work orders to be completed during that time that he would monitor.
- 2) Use the basis of the contract in hand for a six to nine month period, and use that time to evaluate the work to be performed as designed and make improvements based on that time's experience.
- 3) Consider authorization of staff, or combination of staff plus Council members, to negotiate with the two remaining bidders to come up with a 10 to 12 month plan to be ratified by the Council at the November 2006 Regular Council meeting.

Stoppels added that he has the immediate needs met for the Village should there be snow or tree removals necessary.

Discussion ensued regarding the time to be implemented in a short contract, with possible bidding to take place in June for a new two year contract to be negotiated, noting that beyond Police protection this service is one of the most important and public services offered to Villagers. The scope of the new bidding specifications to take place in the spring were discussed, the procedures to be followed to satisfy the Council's requirements, as well as the length of the new contract and timing of negotiations. Budgetary concerns were discussed and any changes made in the scope of tasks that may be changed, it would seem to be appropriate to do so would only when the entire bidding procedure could be followed. When asked, Staran opined that it would be alright, due to flexibility in the Charter and Ordinances, to consider those two remaining bidders that had responded in May and June of 2006, due to the exigent circumstances, upon confirmation from those vendors that they stand by their bids.

The two contractors present were asked to speak. Jim Kochensparger of Greenscapes and Kevin Church of Johnson Landscaping

Kochensparger stated that he would be able to stand by his previously submitted bid and take the work over immediately. Kochensparger added that if there was any additional work not covered under that bid, and budget money was available, he would be willing to negotiate to complete any other outstanding items. Kochensparger added that he would want to submit his hours to show what he was doing, so that he would not get backwards and swamped by the Village. When asked, Kochensparger responded that while his quote was based on a full year time frame, a 8, 10, or 12 month period would ordinarily require a different amount, but that would mean re-bidding the project, a renegotiation which is not going to happen now. Kochensparger added that this was an extremely busy time, during fall cleanup, while readying equipment for winter.

Church stated that it is difficult to bid a shorter term, say 10 months, over figuring out costs over a full year. Church noted that a shorter term would require an adjustment to their price.

Kochensparger reiterated that he would be willing to take over the contract for his quoted price for the same service if not better.

Stoppels noted that in previous conversations with both contractors, each had indicated they would stay with their bid price as long as the contract was for the remainder of the two years. Stoppels added that it sounded like he might need to negotiate to arrive at a price that will work for a shorter time period.

Jahnke stated that with the immediate needs met, Stoppels should obtain a 10 month price and a 20 month price and report back to the Council at the November 13, 2006 regular meeting.

Stoppels stated that whom ever were to get this shorter term contract, would be in a better position, would know more about the work, when the time came to submit a proposal when the entire re-bidding takes place. Stoppels added that the way this short term contract is negotiated could benefit the contractor in the future, as it will the Village.

Stoppels discussed the level of right-of-way cleanups as necessary and how that changes from time to time and is also different in different areas of the Village.

#2006-74 Motion by Schiano supported by Coyer, to authorize the Village Administrator to contract for the same services that had been provided by CityWorks in the past, for a time not longer than the end of the fiscal year, at the best price that he can negotiate, and begin planning for the bid process by consulting with Staran and Council members as to any expanded or new services that might be desired in a long term contract to be put out for bid in time for the new contract to continue for an appropriate period time of two years.

Staran asked for clarification, noting that he understood the motion as saying that there would be no coming back to Council in November or through the rest of the fiscal year.

Schiano added that he would ask that the Administrator report back to Council as to his decision, for the short term, by the November meeting.

Staran asked, for clarification, whether the idea was to report what had been done or to bring back a recommendation and a proposed contract for approval.

Jahnke stated that, as had been discussed earlier in the meeting, contracts are to be approved by Council and as such should be brought back before the Council in November with recommendations.

Schiano stated that he was fine with that, but wanted to delegate authority for the short term, emergency situation for the Village, appropriately allowing for emergency authority so that arrangements are made for snow plowing.

Jahnke added that a contract, when completed, should be approved by the Council which contains many details beyond the monthly amount and services to be provided, would also include a number of other details.

Discussion ensued regarding the budgeted amounts for service and what would happen should that be exceeded, and the experience that Administrator Stoppels brings to this DPW work. The demands on the contractors were discussed in terms of snow removal for the Village versus their own private customers, to which Stoppels noted that adequate staffing and equipment would provide the service necessary.

Stoppels, when asked, stated that he would not require Council member's assistance and would provide a budget impact report within the next two weeks.

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

Nays: None

Motion carried.

Lamott stated that he hoped that as the Council goes forward, that the communications be better than they had been in past. Lamott noted that he felt personally that he had been left out of the decisions that had been made on the contract decisions for public works. Lamott opined that it would be simple; e-mails and phone calls to provide information to him, which did not happen, and he requested that communication be better as the Council moves forward.

Jahnke responded that categorically he had received zero e-mails and zero phone calls from Lamott. Jahnke opined that Lamott's comments were "ridiculous" and added that communications had been made and that he felt it was false to say that there had been none.

II. Status of Audit

A. Draft meeting with Village President and Finance Committee.

Jahnke reported that he had spoken to Village Auditor, John Foster of Janz & Knight, on October 10, 2006 and had been told that at some point there would be a draft audit meeting and requested that he be in attendance for that meeting. Jahnke noted that the Finance committee consisted of three (3) Council members and suggested that that meeting could be a workshop meeting with the entire Council or to hold two separate committee meetings. McElroy volunteered to miss the meeting to allow Jahnke to attend, unless Gallasch or Schiano were otherwise unavailable for that meeting and would be missing it anyway, asking to be thoroughly advised of what had been presented and discussed at the meeting. Jahnke stated that the meeting date had not yet been set, as the audit is not yet complete, however, he did already receive a detailed engagement letter that he will not be signing until he is able to meet with the auditors.

Stoppels stated that typically the auditors arrange for two meetings; one with staff and one with the finance committee, and it would be possible that one committee member could attend the staff meeting.

Clerk Pulker was asked to arrange that when notified by the auditors that they were prepared to present a draft of the audit.

III. Personnel Committee meeting with Village President.

Jahnke stated that he understood that the Personnel Committee would be meeting on budgetary issues and issues that may be related to the audit, and again this is a three (3) person committee and asked that arrangements be made so that he can attend. Gallasch offered that upon scheduling the meeting with the members, should a conflict with one of the three exist, then Jahnke could attend in their absence. Gallasch also offered that if such were not the case, one of the members would step aside.

IV. Master Plan Update

A. Tie-in to 5 year budget.

Jahnke stated that a number of good plans were being developed in the revised Master Plan as worked on by the Planning Commission and also being developed by others in the community. Jahnke noted that when the Village gets to priorities and implementation, it will cost money, more than what is currently budgeted, which need to be discussed prior to the finalization of the recommendations. Jahnke suggested, as a result of conversations with residents, that a public Master Plan millage be proposed (1/2 to 3/4 of a mill), for a term of 3, 5, or 10 years, but would need to be specific listing the many things that need to be done, some of which are not in the Master Plan, including plans for the Kreger House and public restrooms, which at the least will require public policy decisions. Jahnke added that Bloomfield Township was successful in requesting their residents to grant 1/2 mill for sidewalks, but Beverly Hills was not. Jahnke stated that the Planning Commission will provide the Council with their priorities and implementation plans, after which the Council will be in a position to help choose those and then determine where the funding will come from, just like when the Police Station was built, and the Village Administrator position was developed.

Harnisch stated that while he will be open minded toward those suggestions, he was dubious about any millage or tax increase and would need to be convinced of the worthiness of any specific project as will Village residents, adding that the Council had done an excellent job of keeping taxes limited and would like to continue to do so.

Schiano stated that just to add to Harnisch's statement, he was also open minded whether projects should be done or not, however just to generically say an amount of money was necessary to do the Master Plan, rather what particular projects need to be finished and which are to be completed in the future. Schiano noted that he has a high standard of determining whether the Village really needs or wants a project, and good for everyone before any money were to be allocated.

Gallasch stated that Stoppels has been very good in not using of all the tax revenues possible which would enable the Council to use those funds already available. Gallasch added that priorities need to be set, and some sense of what things are likely to cost, and then look at alternatives to obtain the money necessary.

McElroy stated that outside of the Council and Planning Commission, few Villagers know what the Master Plan is, based on attendance at the last public meeting. McElroy added that he believed any Master Plan project costs would be a hard sell for that reason, and has never been requested in this manner before, but he would remain open minded on projects that may be proposed.

Gallasch stated that should the Village be successful in getting into the Oakland County Main Street program, while many of the costs would be the responsibility of the businesses in town, the Village will bear some of the responsibility, which will require that the Village budget for that when the time comes.

Jahnke stated that obviously we wouldn't do it without being specific and he agreed with that, but noted that the two (2) pathways already being looked at to connect down 14 Mile Road were estimated at about \$50,000 each, for which we do not have the money lying around.

McElroy stated that the Charter may be prohibitive of the installation of pathways in the Village.

Jahnke stated that the priorities that we think we can go after will be based on what we are capable of, and what the public is willing to get behind.

Coyer stated that the Master Plan will provide priorities, are we going to fund them through our general revenues; the Village is building up equity at this point, the Council may spend some of that reserve to do what the Council thinks needs to be done. Coyer added that there may be a groundswell for something to happen, like water a few years ago, which may be a factor.

Stoppels stated that he would put a price tag on some of the recommendations listed in the revised Master Plan and provide that to the Council, based on what they would cost after finding out from other communities.

Lamott stated that he would not want to get ahead of the Planning Commission, but rather allow them to provide the priorities to be pursued.

V. Adjournment

Motion by Coyer supported by Lamott to adjourn the meeting.

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

Nays: None

Motion carried.

There being no further business, the meeting adjourned at 8:48 p.m.

Respectfully Submitted,

Eileen H. Pulker, Clerk

Mark W. Jahnke, President