

**VILLAGE OF SOUTH LEBANON
MINUTES
WORKSHOP MEETING
JANUARY 6, 2011
6:30 P.M.**

1. Mayor Smith called the meeting to order at 6:30 p.m. with the Pledge

2. Randall Atkins - Present
Sherri Carbo– Present
Dean Evans – Present
Glenn Holloway - Present
Bill Madison – Present
Jeff Sturtevant – Present

3. Mayor Smith announced that the hearing for the school annexation will be January 11th at 10:00 a.m. He said some retired teachers are going to attend and testify on our behalf. He said South Lebanon had a school for 200 years and we were our own district until 1960's when we merged with Kings to form the Deerfield School District, which was later named Kings Local. This annexation brings back to our corporation our school. He said this is a great moment for our community.

4. Administrator Craig said our engineers are working on the proposal for the Lebanon Road bridge.

Bob said the solicitor has been given a request for a bond release in Rivers Crossing.

He stated that the guys have completed OSHA training.

Bob reported that repairs were done to the sewer pumps at trailer park and Zoar Road.

5. Mayor Smith opened the floor to Solicitor Nixon. Keith stated that he did more research and has a written opinion on the gate issue. He said in his opinion the construction gate with key card access is the least restrictive way and conforms to the agreement. He said the issue of chaining the gate when it is broken he finds per the Ohio revised Code to go against that all public streets require that the village keep them free and open and also there is the fundamental right to travel a public street. Keith said the permanent gate was meant to be closed at all times when the construction gate was open per the contract. He stated that his advice if the gate is broken that the chain lock not be permitted because of the liability issue. He said in his opinion the gate should just stay open until it can be fixed. He said the agreement is clear that the permanent gate “shall” be closed when the temporary gate is open. Keith said we do have police power should there be a water main break but the police power is very limited and certainly

councils have the right to vacate but from a public road perspective and the village is liable for to maintain and keep free. Keith said his opinion is that allowing the gate to be chained if broken puts us at risk. Once gate is on private property our liability goes away. Keith said in his opinion if the gate is broken then the permanent gate needs to be shut and the construction gate should remain open and someone running up and chaining it puts the village at risk for allowing that to be done to a public street. Madison said he is hearing two things, one being we are not going to gate a public street and then I'm hearing when it is broke the other gate should be closed. Keith stated that we have a temporary gate with a clicker access and a permanent gate on private property. Bill asked if this would hold up in court and Keith said probably not but it is the least restrictive way. Keith said there has been a recommendation if the gate breaks to simply chain it closed and my opinion is not to allow the chaining of that gate but leave it open until it is fixed because it puts the village in a poor position. Keith said per the agreement the permanent gate was to be up and operational by September 30, 2005 with key card access and that is what the developers agreed upon. Madison asked if Keith is saying that the gate with key card access is acceptable by the Ohio Revised Code and Keith stated he does not know but it is the least restrictive. Sturtevant asked if the new owners are bound by the agreement and Keith said yes. Carbo stated that if you look at past minutes from a few years back it was brought to council's attention the concern that the permanent gate was never completed. Madison asked if the thirty days that was given to have the gate repaired was up and Keith stated it was. Madison said then there is no legislation for council to act on at this time and Mayor Smith said the current situation is the gate should be fixed in a week and the building is still going forward and the 80% is still a trigger and the issue is if the gate is broken that Keith's opinion is that in the meantime there be no lock or barrier until it is fixed. Keith said the village is fixing it now and apparently when snow plowing the gate may have been harmed and Mayor Smith stated that it is believed the gate pushed snow when being activated and caused problems and we have changed our plowing procedure to make sure we do not harm it in any way and are stepping up to fix it this time. Madison said he wanted to go on record that the gate in it's current condition with clicker access he does not know he agrees with because it is still restricting a public road that should have public access that not all our citizens can use and he understands the people that live there and Sturtevant said he does not think he does understand because they did not buy in a development with a public street, he said he did not because it was not open at that time. Madison said it is a public road now and Sturtevant stated yes it is. Madison said had it not been made a public road it would be a different argument. Carbo asked when the road was made public was the agreement in place and Keith stated that particular stretch is public and ultimately when the gate would go to Zoar Road that will be on private property and the reason for that is to release the village from liability.

Mayor Smith said as it stands now council would have to take action to change it and we have the opinion of our legal council that as long as the gate remains functional and with everyone having access as agreed to by the developers that is between them. Discussion of the fact that the permanent gate “shall” be closed when the temporary gate is open.

6. Mayor Smith opened the floor to the public:

Laura Hinegartner – Vista Pointe attorney – said it is correct that the permanent gate is to be up and functional and we are addressing that with the bank. This does not take away the issue with the construction gate. In fact even with the permanent gate by resolution of council there was not supposed to be any additional tie ins through these developments. She stated that by council allowing these additional subdivisions that cut through Cochran that has been essentially an approval of additional connections.

Mayor Smith stated that is not correct. Keith said with due respect he would disagree with that as well. Mayor Smith said she is making statements that are not factual. He said that Cochran Road has always been there for two hundred years and the Wynstead connecting has nothing to do with the fact that Cochran Road was always there. He said when Rogerson sold the development he sold to Rivers Bend, he sold to Wynstead and Stonebrook. He pieced off the Ritchey farm and that is not the issue and you are making it sound like council took action to make a tie in and they did not. They are following the letter of the agreement and the issue is when the development was done they would vacate Cochran and have a cross through from Cochran to Zoar, which would be Emerald. When it is finished Wynstead will have a traffic pattern for themselves. He said if everything would have been perfect the development would have been finished and the connector done and the permanent gate would be functioning.

Laura said we have a factual disagreement about the impact those developments have made but you are correct that if everything has gone as planned that would not be an issue. Mayor Smith said the agreement was not to tie into a road in the development and that is what council passed and they have not done that. Laura said why she is here is about the temporary gate. She said last time she was here council voted to allow the lock on the gate until it was fixed. She said that Vista Pointe and the bank, which are the two parties to the agreement, agree that when the gate is broken the solution is to put the lock on, notify emergency personnel and for the lock to remain in place until the gate is fixed. Laura stated in her opinion the agreement is between two parties and they agree to put a lock on the gate if it is broken and personnel within the village disagree with that so it becomes what do we do. My proposal is that council does not need to use its police powers as long as you allow us to enforce our agreement. If you won't allow us to do that council can vote to allow us to use the lock if and when the gate

is broken and could put a limit on it much like you did before. She said council has the power to vacate and that strip of land where the gate is could be given back to the bank and then would make the bank responsible. Then when we get to where the permanent gate is operational that strip of land could be given back to the village. Carbo asked if she meant a temporary vacate and Laura said yes. Bob Craig brought up that the bank does not own the property on both sides and under Ohio law the land would go to the adjoining property owners which would include a home owner. Laura said the bank owns the all around the gate and Bob said that is not correct because there is a property owner that would get to the center of the road should it be vacated.

Mayor Smith stated that talking about vacating that road, you have property owners here that have lived in Homestead for five years and when the lock was put on these people did not get keys and they have weathered this the whole time with no keys. That is a direct violation of your agreement. Laura continued to argue her point about the lock. Mayor Smith stated that the point is if the gate is broken and in between the time it is fixed our legal council has given us his opinion and now it has become a legal matter and the issue is going to stop here tonight. Once he gave his opinion we are not going to discuss it, from this point on you will have to discuss it with him. That gate if it gets broken it will be investigated to find out who broke it and have to fix it and we are making sure this village does not get near it to break it and Mayor Smith stated once he gave his opinion they will use that opinion against us in court. He even states that this gate is risky legally as it is. I don't think council is going to move to go against this yet allow it to stand as it already is. You are getting what you wanted, you keep wanting more and more on top of the agreement. This is putting this whole community at harm. Mayor Smith said it will not be discussed any further. Laura said she wanted to make a few additional comments. Mayor Smith said she could make the comments and that is it. Laura said she legally disagrees with Keith and thinks that council needs to look at this a safety issue and by allowing the gate to be open when broken you are encouraging people to vandalize it. You are not providing consistency for your residents because they will not know when it is open or closed. She said every time the gate is open there is an increased chance for someone to get hit. Keith said we are facing that risk with it locked because that is a public road. Laura said you are facing suit to decide if what you did was right or not verses human life. Mayor Smith said if that is the case we might as well shut down Mason Montgomery Road down. Laura said her opinion is that it is no different to lock the gate for repair than shutting down any road for repairs.

Mayor Smith said that as far as vandalism, our cameras showed that the gate malfunctioned and beat itself to death. It is an inferior gate in the first place this time we believe the snow and the dragging of the gate through may have damaged it. Mayor Smith stated we are challenged to listen to our solicitor. You may give your opinion and we thank you for that but we have to go with

what our legal counsel tells us. Carbo said she would like Keith's opinion on the comment that the village can close a road for repair. Keith stated that it is not that cart blanch, there is a limit. It has been five years and when it comes to a chain how long will that be a month or two months. When you look at the specific purpose of the construction gate and look at the agreement, the purpose is to prevent construction traffic. The intent was for construction but at the end of day if you chain a public street and someone and from her legal argument we may be liable but if that gate is chained and someone can't get through on a public street and we get sued you will lose that argument. Period end of story.

7. Mayor Smith opened the floor to the public:

Jeff Reich – Vista Pointe – asked for clarification that Cochran Road has always connected to Zoar Road. Mayor Smith said yes is a half lane that meandered through the Ritchey farm and connected to Zoar. That is why planning forced that a new collector road, which improves the traffic flow. The intent is to vacate at the Ritchey drive allowing the Ritchey's access both ways but put the flow of traffic through Emerald Drive. Jeff asked if Cochran becomes Emerald Drive and the mayor said from the Ritchey's to Mason Montgomery will stay Cochran. The new connector will be Emerald. Mayor Smith stated that Wynstead is half done and the other twenty five acres is valuable and they may seek to develop that and we would push that the connector be done earlier than later. Jeff said it appears Keith is comfortable based on the agreement with the permanent gate being closed at Zoar because it is on private property when the other gate is open and Keith said that is correct. He asked if there is a provision in the agreement that those have to be operational or can those be chained closed while they are being fixed. Keith said under the agreement the permanent gate should have been operational September 30th 2005 with key card access and states that when that gate is open the Zoar Road gate shall be closed. Jeff said the other question Laura brings up of temporary removable barrier and what is your thought on that. Keith stated it says in the agreement until the developer completes the construction gate they shall put a removal barrier such that it can be removed without any equipment. He said he is not sure what that means and sounds to me some sort of collapsible thing and Mayor Smith said most barriers are things you just pick up. Keith said it talks about what to do until you have that gate but not after. He said he thinks the permanent gate was the solution for when the construction gate was open. Mayor Smith said we have stepped up patrol in that area. Jeff asked about the camera mentioned and did the village install that and Mayor Smith explained it was put in by the Sheriff's Department to investigate vandalism. Discussed a permanent camera.

Robert Boja – 5120 Meadowview – questioned Keith on the law and what Keith was sighting and Keith said he is talking about the street law 723.01

that talks about keeping all public streets free and open. He said there is the Constitutional Law that refers to the fundamental right to travel. Keith reviewed the truck route case and that we lost due to the fundamental right to travel. Mayor Smith said the township fought the truck route as well and we both lost. Keith said we lost up to the 12th District and the Supreme Court would not hear it. Mayor Smith said the case cited for our denial was from a Cincinnati case. Sturtevant stated that is why this agreement is not with the village. Mayor Smith said we have residential streets everywhere and some have as many as 10,000 vehicles a day and right in front of us is one of them. Mr. Boja said there has to be a solution somehow. He said there needs to be some restrictive access. Mr. Boja asked the protocol on the key card and clickers and Keith said that is internal through the HOA. Mr. Boja asked when Keith says least restrictive if that is part of the revised code and Keith said it is the least restrictive restriction for movement on a public street and that is factual. Jeff Reich asked Keith if this agreement was meant to stop construction traffic and Keith said yes. Jeff asked if that gives the village and sheriff department the right to enforce this agreement because the construction traffic is continuous. Mayor Smith stated he thought Bob had contacted Ryan Homes and addressed that. Mayor Smith said we do have a say and we can request since we issue the permits to send them a specific route.

8. A motion to adjourn the meeting was made at 7:25 p.m. by Madison, seconded by Holloway, all yeas.

Sharon Louallen, Fiscal Officer

James D. Smith, Mayor