

WESTFIELD TOWNSHIP BOARD OF TRUSTEES

JUNE 1, 2009

SPECIAL MEETING-Legal Counsel (Pros. Office) & General Business 9:30 A.M.

Chairperson Jim Likley called to order the special meeting of the Westfield Township Board of Trustees at 9:33 a.m. Trustee Sims, Likley and Kratzer were present as well Administrative Assistant Kim Ferencz. The following were also in attendance: Bill Thorne, and Tom Karris. The purpose of the special meeting was for updates from legal counsel and general business.

Non-Profit Organization and issuance of zoning permit

Trustee Sims stated that Betty Ollis from Christ the King Lutheran Church contacted the Township about needing a zoning permit. Christ the King was working with 52 homes in the area in coordination with Cloverleaf School and would be completing fix-it projects. Two of the homes are located in Westfield Township; 10042 Daniels Rd. and 6261 Seville Rd. The projects would consist of fixing a porch and putting in a wheelchair ramp. The organization has asked the Township to waive the zoning permit fees so that money could go towards materials for the projects. Trustee Sims added that Betty Ollis stated they have non-profit organization status and understood that Chatham Twp. has waived their zoning fees where these projects would be taking place in their Township. The organization has also requested this of Lafayette Twp. but she did not know the status of those permits. Trustee Sims continued that the projects were to begin before the next Trustees meeting so that was why it was being brought forth today for the Pros. Office to advise.

Mr. Thorne stated this organization is partnering with a national agency to have professionals confirm that the work is done properly. Cloverleaf Schools has also partnered with them and would provide lodging and food for the organization. Mr. Thorne stated his concern was once the Township started to waive fees for non-profit organizations, this may be a repeated scenario. He continued that the school has partnered with the organization so we do have a governmental entity. The zoning applications could have been applied for in the school's name and they would not have to pay any fees, but the application was completed in Betty Ollis name to have just one coordinator throughout the area for all the projects.

Trustee Sims stated she was in support of waiving the fees for this organization. **Trustee Sims made a motion to exempt the zoning fees for the public project hosted by the Cloverleaf School District for projects to be completed at 10042 Daniels Rd. and 6261 Seville Rd. It was seconded by Trustee Kratzer.**

ROLL CALL-Sims-yes, Kratzer-yes, Likley-yes. Motion carried.

Trustee Sims stated she would contact Ms. Ollis and ZI Harris and let them know what the Trustees have decided regarding the waiving of the zoning permit fees for these projects.

TA Liquor Permit

Mr. Thorne stated that he got in touch with the Sheriff's Dept., and they have no information that would help with the hearing as they had no incidents to report at TA. The school also had no issues with TA and there was no such information from the Fire Dept. There are no issues with the operation or operator of TA either. The only thing the Trustees could object to would be the location but if it is zoned commercial, there really wasn't anything the Trustees could do. Therefore there was no strong standing for the Trustees to object to the issuance of a liquor permit for TA. Mr. Thorne stated the Trustees could withdraw their objection and request for a hearing.

Trustee Sims asked if TA has had a sit down restaurant serve liquor at any of its other sites? Is this being promoted throughout the TA chain? Mr. Thorne stated he did not know but this site in Westfield is their number 1 station. It was questioned by Chair Likley if Pilot across the street would follow suit with the pursuit of a liquor permit for on premise consumption of alcohol? Mr. Thorne stated there were only so many liquor licenses available so it would probably be first come first served in terms of the permit.

Trustee Kratzer made a motion to withdraw the Trustees objection to the liquor permit for TA to allow alcohol to be served and consumed on site. A letter to be sent to the Ohio Dept. of Liquor control informing them of this action. It was seconded by Chair Likley.

ROLL CALL-Kratzer-yes, Likley-yes, Sims-yes. Motion carried.

Trustee Sims wanted it noted that there was no legal means to object to the pursuit of a liquor permit for TA per legal counsel.

Chair Likley asked Kim Ferencz to prepare and sent a letter regarding this action of the Trustees to the Ohio Dept. of Liquor control.

Request of formal opinion by Pros. Office on Stone and Mow Bid process

Mr. Thorne stated he received a letter from Fiscal Officer Evans regarding the Bid process but has not had a chance to review that information and issue a formal opinion at this time.

Time Warner Cable Resolution

Chair Likley stated Heather Sturdevant was working on this and was looking into Wadsworth as they have made the investment in the equipment and possibly the Township could coordinate with them regarding the broadcasting of Township meetings.

Mr. Thorne stated Liverpool Township has an access right as well as Brunswick Hills Twp. He added he thought the City of Wadsworth bought out the Time Warner Cable franchise. He added that most Townships have gone head and passed the franchise fee. Chair Likley stated he personally felt if the Township was going to charge a franchise fee

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to the cable subscribers in the Township, then the Township should provide a service i.e. broadcasting of Township meetings for that fee. Trustee Sims agreed. The initial set up of a fiber link and equipment was approximately \$60,000. He added the Township was hoping to find another entity that has already made those investments and try to arrange something with them to be able to broadcast Township meetings. Chair Likley stated he was hopeful Akron University in Lafayette Twp. possibly made that investment, but it appears they have not. Mr. Thorne stated the only community he was personally aware of that has made that investment is Liverpool but that was a while ago and did not know what, if anything, was being broadcast by Liverpool. Chair Likley stated would follow up with Heather Sturdevant to see if she had any additional information.

Zuber Lawsuit

Mr. Thorne stated he did not believe Mr. Zuber would be in compliance by the Court date. Trustee Sims stated that Mr. Zuber has a variance application before the BZA. Trustee Kratzer and Likley stated that it was in the paper that the public hearing was this evening for Mr. Zuber. Secretary Ferencz stated no, that it was scheduled for June 3 2009 but she would follow up with the Gazette accordingly.

IRS Penalties Update

Mr. Thorne stated that the Pros. Office was waiting for a packet of materials that the IRS was to send us to confirm the information the Pros. Office sent them previously on several occasions that they said they never got. He added unless the IRS gets that we will have to meet with Fiscal Officer Evans to go over it again and send it back the IRS. The new person who is handling the case cannot find the documentation so they want us to do this again.

Fire Chief Vacation

Trustee Sims stated that the Fire Chief's contract superseded the employee handbook regarding the amount of vacation former Fire Chief Snoddy is entitled to. She stated that originally Fiscal Officer Evans sent out an e-mail with the information from the employee handbook. Contractually, Jack Snoddy was entitled to more vacation than what was listed in the handbook. Trustee Sims stated the fire chief's contract references the employee handbook and the language appears ambiguous. Mr. Thorne stated the contract states that the Fire Chief is entitled to any other benefits given to a Township employee. The issue is a Township employee does not get carryover vacation. They either use their vacation or lose it. Therefore, Jack Snoddy would not be entitled to any vacation prior to 2009 if the Fire Chief is to be treated the same way. Mr. Thorne stated at the beginning of this year the Fire Chief would have 120 hours but he resigned. The contract does not say what happens in that scenario. Trustee Sims interjected that was where she thought the language was ambiguous. The language in the handbook stated in the event of termination which could be termination of employment by the Trustees or the Fire Chief employee will be paid for earned and not taken yet in the current year..." Mr. Thorne

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stated this deals with vacation earned in the year previously. It doesn't deal with the situation where the Fire Chief is entitled to 3 wks vacation this year and he quits January 2, 2009 and is entitled to that time. This is a policy decision of the Board of Trustees. Trustee Sims interjected that the handbook also states that "no accrued vacation will be given for service in the current year; no credit will be given for partial years of service." Mr. Thorne stated that was not the case for Jack Snoddy. January of every year he was entitled to 120 hrs. This year he did not take it. The contract does not say what you do if he resigns a couple months into the year. That would have to be a Board decision.

Chair Likley stated to him, the 120 hours Mr. Snoddy earned was for the completion of the year 2008. Mr. Thorne stated he did not interpret the language that way. He continued that the Chief did not have to work a year to be entitled to his vacation, he got the 3 wks. right up front and it did not carry over. Mr. Thorne stated the Board could apportion earned vacation... Trustee Sims interjected that it appeared Fiscal Officer Evans prorated Mr. Snoddy's vacation for 2009. Mr. Thorne stated for 2009, all Jack Snoddy would get paid for was 37.18 hours. It was going to be based on how the Trustees interpret what he is entitled to because under #7 of Jack's contract it read, The Chief shall receive three (3) weeks paid vacation each year and shall be entitled to any and all benefits normally offered to a full time Township Employee as set forth in the Township Employee Handbook.

Mr. Thorne stated the literal interpretation is that Jack Snoddy would be entitled to 3 wks. paid vacation as of January 1st. Therefore it should not be prorated. The language in the handbook states that "In the event of termination, the employee will be paid for vacation earned and not yet taken in the current year, no accrued vacation will be given for service in the current year; no create will be given for partial years of service. No vacation pay will be granted to terminating employees with less than a full year of service. No pay is granted under any circumstances to any employee (active or terminating) for any vacation not taken in previous years." Mr. Thorne felt that was a legitimate interpretation of the contract language.

Trustee Kratzer stated at the last Trustees meeting, 157.18 hours were approved to be paid to Jack Snoddy for his vacation. Therefore it was a moot point. Trustee Sims stated "well you just got told by the Pros. Office that was wrong." Chair Likley stated the Board paid Jack Snoddy for 120 hours earned in 2008 and 37.18 hours prorated from January thru April 2009. Trustee Sims asked if there was a check signed at the last meeting for this? Trustee Kratzer stated yes. He added the check to be signed today was for OPNF that did not need to be taken out of Jack Snoddy's check.

Chair Likley stated that Fiscal Officer Evans sent Mr. Snoddy's unemployment claim to him with a letter attached that his claim would be better suited to be filled out by Chair Likley as she has not been privy to any employment contract and/or discussion. Trustee

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Sims asked what did Fiscal Officer Evans mean that she was not privy to contracts? She added that Fiscal Officer Evans has always handled unemployment claims. Why was this one different? Trustee Sims interjected that Trustee Kratzer had a conversation with Jack Snoddy regarding the reasons why he quit.

Mr. Thorne then went through the list of questions on the unemployment claim and stated that the answer to #1 is No and the rest –Not Applicable. Trustee Sims stated the only one who has a personal relationship and knows why Jack Snoddy quit is Trustee Kratzer. She added that if Fiscal Officer Evans could not answer these questions maybe Trustee Kratzer could. Mr. Thorne stated the questions did not ask what individually you know. Did the claimant discuss the condition that caused him/her to quit to the Board? Jack Snoddy did not. Did the claimant try to resolve with the company the problems that caused him or her to quit? Again Mr. Thorne stated no, Jack Snoddy never came forward. Did the claimant file any available grievance procedure or lay to reason why he/she quit? Mr. Thorne stated not to his knowledge.

Chair Likley asked Mr. Thorne who should be the contact person for this claim? Mr. Thorne stated it could be anyone, and added because Chair Likley was on the Fire Committee maybe he should be the contact person. Trustee Sims stated Fiscal Officer Evans typically handles any unemployment claim that comes to the Township. It is a standard form and Fiscal Officer Evans has filed such form for other Township Board members that have had to file for unemployment. Mr. Thorne stated typically the Fiscal Officer does fill out the forms but it does not have to be. It is up to the Trustees who they want the contact person to be. Trustee Sims stated it was her opinion to give the form to Fiscal Officer Evans to complete. Trustee Kratzer and Chair Likley agreed.

Trustee Sims asked if someone quits their employment are they entitled to unemployment benefits? Mr. Thorne stated no, but Jack quit based on the working conditions and hours of employment. That will not make it. However regarding hostile work condition where Mr. Snoddy alleges that he was forced out could. Unemployment can find that it was not a voluntary termination. Mr. Thorne continued at this point we don't know why Jack quit.

Trustee Sims asked Trustee Kratzer to share with the Board and Mr. Thorne what Jack told him? Trustee Kratzer responded Jack did not tell him why he quit and he told that to Trustee Sims previously. Trustee Kratzer stated he spoke with Jack to see how he was doing and he was very nervous and upset and taking some anxiety medication but he did not tell him why he quit. Jack's ex-father in law was very ill and eventually passed away but added he did not know if that had any bearing on why Jack quit.

Mr. Thorne interjected that the resignation letter Jack submitted did not say anything and apparently he has not discussed anything with the Board. Mr. Thorne added he would have thought the extension of Jack's contract by the Trustees would have calmed his concerns. The Board agreed to extend the contract and Jack agreed to all the terms that

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were going to be added to the contract so he did not know where the problem came in. Mr. Thorne stated he was very surprised to learn of what happened with Jack Snoddy and his resignation as Fire Chief. He added he thought the development plan that the Fire Committee drafted was a good plan for any Fire Chief to have to follow.

Going back the unemployment claim, Mr. Thorne stated the answer to the first question is no and all the others not applicable. The contact person would be Fiscal Officer Evans. Trustee Sims asked Kim Ferencz to relay this information to Fiscal Officer Evans.

Collection of previous Clerk's bond and OTARMA Claim

Mr. Karris stated all the information regarding the bond was submitted in April. Apparently Westfield Insurance sent a response back that they needed additional information but that was never received by Fiscal Officer Evans or the Pros. Office. Mr. Karris stated at the end of May, the Pros. Office finally did receive that letter that was dated April 21, 2009 requesting additional information. Fiscal Officer Evans did respond to Westfield Insurance and their questions as follows: 1. An audit has not been performed stating the loss that the Township has sustained. The loss was discovered in 2007. We are due to be audited for the years 2007 and 2008 but that has not occurred yet. 2. A copy of Ms. Gregoire's resignation was read into the minutes but I was appointed fiscal officer that evening and I did not get a copy of the resignation itself. 3. There has not been any written communication from Ms. Gregoire since the letter of resignation.

Mr. Thorne stated the Pros Office could support the loss with the IRS as there are documents as to what the Township has paid in IRS penalties which was more than \$10,000. Mr. Karris stated the penalties were assessed in 2007. Trustee Kratzer stated the audit for 2007 and 2008 has not yet been done but an audit was completed for 2005 and 2006. Mr. Thorne state the penalty information from the IRS can be submitted. Fiscal Officer Evans or Trina Devanney from the Pros. Office should have that information. Mr. Karris stated he would follow up with them.

Regarding Ms. Gregoire's resignation, Trustee Sims stated Marlene Oiler had the written resignation letter the evening Ms. Gregoire's resignation took place. Mr. Thorne stated that regarding Ms. Gregoire's duties, they are as described in the ORC for the Fiscal Officer. The duties are statutory. He continued that Fiscal Officer Evans should have the documentation as to how she arrived at the penalties and interest that were paid to the IRS. Trustee Sims interjected that was correct, as the Board cut a check for each quarter owed to the IRS. She added that there was also the State audit that was performed by the contractor that showed payments were not made during those years. Mr. Thorne responded that report would show a loss that was not paid so that would support the claim as well.

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Trustee Sims continued that a result of that audit, the Board had to adjust the balances because all the Trustees had been overpaid because they were paid per the budget which was not correct and that should be in the audit report as well. Trustee Sims stated Ms. Gregoire's salary as Fiscal Officer was based on the budget as well but did not remember if she repaid the overpayment of her salary.

Mr. Karris stated he agreed that the claim should be for \$10,000 and not \$5,000 as Westfield Insurance has alluded to. He added they have not gotten back to the Pros. Office with the final determination. Mr. Thorne stated if Westfield Insurance comes back and says there is only 1 bond for \$5,000 or does not respond within a reasonable amount of time, does the Board want to Pros. Office to proceed? Mr. Thorne stated for some reason this process is just dragging on and on. Trustee Sims stated if Westfield Insurance is conceding to only one (1) \$5,000 bond they should pay that and work on the rest as a separate issue. Mr. Karris stated we would accept the \$5,000 bond on the condition that negotiations would take place regarding the other \$5,000. Mr. Thorne asked what if Westfield Insurance rejects the claim; do you want the Pros. Office to proceed legally? Trustee Sims stated she did not know on what grounds they could object on? Mr. Thorne stated Westfield Insurance is taking the position there is one (1) \$5,000 bond. That's it. They are saying it was simply renewed. Mr. Thorne stated that he and Mr. Karris don't believe that is what the statute required. Mr. Thorne again asked if Westfield Insurance maintains that position, does the Board want the Pros. Office to bring legal action against Westfield Insurance?

Trustee Sims stated Westfield Companies was the hub of the community. She added she hoped between attorneys this could be negotiated successfully. Mr. Thorne stated there has been no local contact on this at all. All representatives are outside the area. Trustee Sims stated she was getting tired of having friendly lawsuits. Mr. Thorne stated this would not be friendly. Trustee Sims stated in her opinion she would pursue negotiation and discussion by the Pros. Office with a local contact, before legal proceedings would begin. She suggested for the Pros. Office to pursue the one (1) \$5,000 bond and negotiate on the one or two terms in a letter and not a lawsuit.

Mr. Karris stated a lawsuit gives the Pros. Office leverage when they have negotiations with Westfield Companies that the Board has given authority for the Pros. to file a lawsuit. Trustee Sims asked what Westfield Companies was using to support their position? Mr. Karris there has not been a formal determination. That will not happen until they receive all the information they have requested from the Township. Chair Likley stated the documents previously discussed should give Westfield Insurance the numbers (penalties and interest paid) that cross over from one term of the previous clerk to the next term.

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Mr. Karris stated in his original letter to Westfield Insurance he explained that the damages occurred over two terms of the previous clerk, therefore Westfield Township was entitled to \$10,000. He added they have not responded in writing but verbally Westfield Insurance stated they see it as one policy. Trustee Sims asked who was Mr. Karris dealing with? Mr. Karris stated the bond claims specialist. Trustee Sims asked out of where? Mr. Karris responded he did not know. Their stationary just lists the address as 1 Park Circle, Westfield OH.

Trustee Kratzer stated he did not feel this should be pursued as the Board was told previously by the Pros. Office that this could prove to be a legal can of worms. Chair Likley stated he felt the Trustees had a responsibility to pursue the bonds. Mr. Thorne stated that if the Board gives the authority to pursue the issue legally, it would at least move it from the bond dept. to Westfield Insurance legal dept. Trustee Sims stated the residents of Westfield Township paid to have a bond and the reason for the bond is for errors and omissions. The errors and omissions of the previous Clerk cost the Township \$40,000. She added she felt the Board had an obligation to pursue the bond. Trustee Sims stated at one time the Board was asked if they wanted to pursue the full amount against Ms. Gregoire personally which she was not in favor of doing. Trustee Sims stated she was in favor of pursuing a lawsuit if that was the recommendation of the Pros. Office but would like all avenues taken and in writing before any such legal action is filed.

**Trustee Sims made a motion to pursue litigation against Westfield Insurance regarding the collection of the bond of the previous clerk, per the Pros. Office recommendation. It was seconded by Chair Likley.
ROLL CALL-Sims-yes, Likley-yes, Kratzer-no. Motion carried.**

Mr. Karris stated originally the claim was filed with OTARMA in September. OTARMA keeps coming back saying they don't have the documentation. Mr. Karris stated the Pros. Office submitted the claim again in early April which was at the same time they submitted the claim to Westfield Insurance. Mr. Karris stated OTARMA responded with has coverage Mr. Karris stated he brought up the errors and omission that is in the Township's policy. OTARMA is stating that errors and omissions is only if the Board miscalculates the value of property that is being insured. Mr. Karris added he told them that was absolute nonsense. The gentleman he spoke with said he did not have final say on this and the Board of OTARMA would send the Pros. Office a coverage letter. Mr. Karris stated that conversation took place in the fall and they still have not sent the letter. Mr. Karris stated the Pros. Office would like authority to proceed with litigation against OTARMA as the Pros. Office feels there is coverage under the errors and omissions in the policy which means errors and Omissions of the Board and/or an officer(s) of the Township which causes a loss.

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Mr. Thorne stated the initial action would be to force OTARMA to make a determination and then the Pros. Office would have to go from there. If OTARMA rules in the Township's favor then they have to honor the claim. Mr. Karris stated if we receive the \$10,000 from Westfield Insurance and OTARMA honors the claim, then the Township would have to return the \$10,000 to Westfield Insurance. Mr. Karris stated when he spoke with Westfield Insurance they asked if the Township has tried to collect under the errors and omissions. He told Westfield Insurance that a claim had been filed with OTARMA and OTARMA has to this point denied the claim. Mr. Thorne stated more than likely one of those two entities would get their money back.

Trustee Sims stated she did not want the Township to loss the benefit of OTARMA's coverage as it was a cost savings to the Township. Mr. Karris stated OTARMA could not retaliate in that manner. Trustee Kratzer stated if the Township had the chance to receive all the money back then it should be pursued aggressively. Trustee Sims stated these were two separate issues as the bond is the bond...Chair Likley stated he agreed to pursue OTARMA for the claim to the fullest extent and would authorize the Pros. Office moving forward. Mr. Karris stated he felt a suit needed to be pursued as OTARMA has not shown good faith in moving forward.

Trustee Kratzer made a motion to pursue litigation against OTARMA per legal counsel's advice for the errors and omissions for the amount of penalties and interest to date. Trustee Sims seconded.
ROLL CALL-Kratzer-yes, Sims-yes, Likley-yes. Motion carried.

MISC.

Mr. Thorne asked about any pending litigation regarding Westfield Landing Rd. Chair Likley stated they withdrew their variance application. Trustee Sims stated what she has heard is there may be a buyer for the entire parcel. She added the existing surface of Westfield Landing would be paved shortly by the Township. The Township filed non-maintained status for the curve going down to the Lake so it came off the Township's road mileage. Trustee Sims told Mr. Thorne and Karris about the eagles nest there at Kennard and Westfield Landing Rd. and the traffic issues with people parking. She added the County improved Kennard Rd. ditch and expanded the shoulder. The Township put up a soft shoulder sign at that area.

Chair Likley stated on May 1, 2009 he and Trustee Sims went into executive session with Attorney Al Schrader and the tape was paused during that time but was not turned back on correctly when we came out of executive session. Mr. Thorne stated if nobody took notes during the meeting, the meeting would have to be reconstructed by those Trustees in attendance to the best of your availability in regards to any motions and actions taken. Trustee Sims stated she would contact Mr. Schrader about the meeting. Trustee Kratzer

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asked why Trustee Sims would have to contact Mr. Schrader? He added yes, he was there but the actions taken were by Trustee Sims and Likley.

Trustee Sims continued that the same thing occurred at the Board's October 10, 2008 regarding the tape not being turned after executive session, and she believed that was the meeting regarding Lee Evans insubordination and letter. Mr. Thorne stated the tape is not the official minutes of the Board, so again the Trustees that were present will need to reconstruct what occurred and what motions were made and actions taken.

Chair Likley made a motion to enter into Executive Session at 10:55 a.m. for the purpose of potential litigation. It was seconded by Trustee Sims. Mr. Thorne stated there really would be no discussion he was just going to tell Trustee Sims and Likley some things regarding the annexation and Trustee Kratzer would need to excuse himself from this executive session.

ROLL CALL-Likley-yes, Sims-yes, Kratzer-Due to the nature of the Executive Session and per the recommendation of the Pros. Office, I will excuse myself from this session. Motion carried.

Trustee Sims made a motion to come out of Executive Session at 11:30 a.m. It was seconded by Chair Likley.

ROLL CALL-Sims-yes, Likley-yes. Motion carried.

Trustee Sims stated she wanted to present for the record two letters from Mr. Schrader. One is on Westfield Twp. vs. the County Commissioners. Mr. Brian Richter from the Medina County Pros. Office will be representing the Medina County Commissioners. Mr. Richter contacted Mr. Schrader to see if the Board of Trustees has any conflict regarding Mr. Richter's presentation of the County Commissioners. Trustee Sims stated she saw no conflict as Mr. Richter has not been assigned to do any work for Westfield Township.

Chair Likley made a motion that Westfield Township Trustees has no objections to Mr. Brian Richter from the Pros. representing the County Commissioners and waives any conflict of interest issues. It was seconded by Trustee Sims.

ROLL CALL-Sims-yes, Likley-yes, Kratzer-abstain. Motion carried.

Trustee Sims commented that if Mr. Thorne could represent the Board of Trustees we could have saved taxpayer money.

Trustee Sims stated there would be a second court date on June 3, 2009 at 9:00 a.m. to understand the Stay Order in order to stop the clock on Seville regarding the annexation on the merits of the petition while being reviewed by the court.

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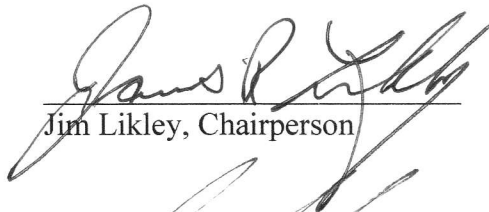
Having no further business before the Board, Trustee Sims made a motion to adjourn. It was seconded by Trustee Kratzer.

ROLL CALL-Sims-yes, Kratzer-yes, Likley-yes. Motion carried.

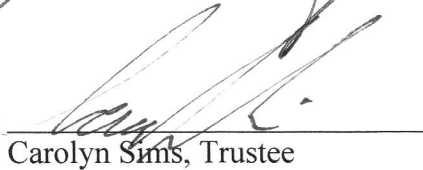
The meeting was officially adjourned at 11:35 p.m.

Respectfully Submitted,

Kim Ferencz, Westfield Township Administrative Assistant



Jim Likley, Chairperson



Carolyn Sims, Trustee



Tim Kratzer, Trustee