

# City of Bay Village

Council Minutes, Special Meeting  
Council Chambers 8:00 p.m.

March 9, 2015

Dwight Clark, Vice President of Council, Presiding

Present: Clark, Henderson, Lee, Tadych, Vincent, Mayor Sutherland

Also Present: Law Director Ebert, Finance Director Mahoney, Police Chief Spaetzel, Safety/Service Director Thomas, Recreation Director Enovitch, Director of Community Services Selig, Director of Operations Landers

Vice President of Council Clark called the meeting to order at 8:00 p.m. with a roll call and Pledge of Allegiance led by Councilman-at-large Steve Lee.

## ANNOUNCEMENTS

**Mayor Sutherland** announced that the City of Bay Village has again been designated as a Tree City USA. This may be the 15<sup>th</sup> consecutive year of this designation. It is a great credit to the two City Arborists and the folks who are devoted to the tree cover in Bay Village.

The Green Team received a \$5,000 grant from the Cuyahoga County Solid Waste District. They will be using that grant for containers and an additional mailing to residents.

At the previous meeting, Council President Koomar announced that a Town Hall Meeting will be held April 20, 2015. The Mayor stated that what they are looking at doing is having a town hall meeting that is focused on housing improvements, and the resources that may be available to finance those improvements. The Mayor must make sure she has outside people coming in to address those issues, and that has not been done yet due to waiting for people to get back to her, spring break, etc. The meeting for April 20 is not confirmed, and the Mayor would not like people scheduling it because she is unsure that will be the date of the Town Hall Meeting.

## AUDIENCE

The following individuals signed in this evening: Russell Thompson, Jerrie Barnett, Lydia DeGeorge, Conda Boyd, Dick Majewski, Pam Cottam.

Pam Cottam, 24414 East Oakland stated that it has been brought to her attention that some of our businesses in Bay Village do not recycle. Do we try to encourage those stores in Bay Village to recycle?

Mayor Sutherland stated that the City tries to encourage the businesses to recycle but cannot mandate that businesses or residents recycle. This is one of the reasons the Green Team works very hard trying to get the word out, but it is not something that can be mandated. If they want

recycling bins we will provide them. Mr. Clark added that one of the reasons is that the City has had such great success when we moved to automated collection for the residents; it just becomes an afterthought. We have been great participants, and many times the recycling bins are more crowded than the garbage cans. It is a tribute to what residents have done in change of behavior. Mr. Tadych noted that business rubbish and garbage is not picked up by our collection agency. They have to contract that out themselves.

## **MISCELLANEOUS**

**Mayor Sutherland** stated that Item No. 14 on this evening's agenda is a motion to convene to Executive Session regarding the Cleveland Water Agreement. The Mayor stated that since it has already been in the newspapers, and for transparency sake, we might as well just discuss it in public. Mr. Tadych thanked the Mayor. Mr. Clark stated that he believes that it is fair. There has been quite a bit of time spent on the topic. Mayor Sutherland stated that they have been working on this for almost five months.

**Mr. Clark** called for a reading of the minutes of the Regular Meeting of Council March 2, 2015. **Motion by Tadych** to dispense with the reading of the minutes and approve the minutes of the Regular Meeting of Council held March 2, 2015 as prepared and distributed.

**Motion passed 5-0.**

**Motion by Henderson** to acknowledge receipt of February 2015 Financial Reports from City of Bay Village Finance Director Renee Mahoney. The reports were reviewed by the Council Finance Committee this evening.

**Motion passed 5-0.**

**Mr. Henderson** introduced Ordinance No. 15-15 amending Ordinance No. 14-107 to make appropriation for the current and other expenditures of the City of Bay Village for the year 2015, and moved for adoption. Mr. Henderson noted the changes to the original 2015 appropriation ordinance, including a \$35,000 adjustment for the Walmar Road pavement and resurfacing project. There is also an appropriation for the City Hall Clock Tower repair project representing the donation of the Village Foundation for half of the money to repair the clock tower. The remainder of the cost will be donated at a later date.

There being no further discussion, Mr. Clark called for a vote on the motion to adopt Ordinance No. 15-15

Roll Call on Suspension of Charter Rules:

Yeas – Clark, Henderson, Lee, Tadych, Vincent

Nays – None

Roll Call on Suspension of Council Rules:

Yeas – Clerk, Henderson, Lee, Tadych, Vincent

Nays - None

Roll Call on Use of the Emergency Clause:

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Yeas- Clark, Henderson, Lee, Tadych, Vincent  
Nays -None  
Roll Call on Adoption:  
Yeas–Clark, Henderson, Lee, Tadych, Vincent  
Nays–None.

Mr. Clark announced adoption of Ordinance No. 15-15, an emergency measure, by a vote of 5-0.

**Mr. Henderson** introduced **Ordinance 15-16, amending by reading Lines 15 and 16 in both columns, to replace the starting wage of \$7.95 to \$8.10 per hr., and Line 29, in both columns, to indicate the salary for the Director of Public Safety to be \$5,000 per year rather than \$5,100 per year**, amending Section 1 of Ordinance No. 14-112 regarding rates of compensation for the officers and employees of the General Administration Department, and those employees of the City not covered by separate labor contract for the Calendar Year 2015 and thereafter, and declaring an emergency.

Ordinance No. 15-16, as amended, was placed on First Reading.

**Mr. Lee** noted that Item No. 8 on this evening’s agenda, **Ordinance 15-05** amending Codified Ordinance 1305.02 regarding Fees for Building Permits, is being pulled from tonight’s agenda at the request of Councilwoman Lieske. Ordinance No. 15-05 was placed on first reading on February 23, 2015, and second reading on March 2, 2015. It will remain on second reading. Mayor Sutherland stated that Law Director Ebert and the Mayor will be having a meeting with John Cheatham, Chief Building Official, and will return to Council with their recommendation.

**Mr. Lee** read, by title only, **Ordinance 15-06** amending Codified Ordinance 1307.02 regarding Fees for Inspection of Plans and Specifications Governed by the Residential Code of Ohio, and declaring an emergency, and moved for adoption. The ordinance was introduced for first reading on February 23, 2015, and second reading on March 2, 2015. This ordinance separates the HVAC and Plumbing category charges, which were incorrectly combined in the prior version of the ordinance. The HVAC fee is \$35.00, and the Plumbing fee is \$35.00.

There being no further discussion, Mr. Clark called for a vote on the motion to adopt Ordinance No. 15-06

Roll Call on Use of the Emergency Clause:  
Yeas- Henderson, Lee, Tadych, Vincent, Clark  
Nays -None  
Roll Call on Adoption:  
Yeas–Henderson, Lee, Tadych, Vincent, Clark  
Nays–None.

Mr. Clark announced adoption of Ordinance No. 15-06, an emergency measure, by a vote of 5-0.

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**Mrs. Lee** read **Resolution No. 05-07** approving, for record purposes, southern extension of Crestview Drive, and declaring an emergency, and moved for adoption. Resolution No. 15-07 was placed on first reading on February 23, 2015, and second reading on March 2, 2015. Mr. Lee noted that the resolution will be **amended by reading** to provide that this approval is contingent on the satisfaction of Section 1109.03 (d) (5) (C) (D), which are the two open items left on Section 1109.03 in regard to this approval.

There being no further discussion, Mr. Clark called for a vote on the motion to adopt Resolution 05-07, as amended.

Roll Call on Suspension of Charter Rules:

Yeas – Lee, Tadych, Vincent, Clark, Henderson

Nays – None

Roll Call on Suspension of Council Rules:

Yeas – Lee, Tadych, Vincent, Clark, Henderson

Nays - None

Roll Call on Use of the Emergency Clause:

Yeas- Lee, Tadych, Vincent, Clark, Henderson

Nays -None

Roll Call on Adoption:

Yeas– Lee, Tadych, Vincent, Clark, Henderson

Nays–None.

Mr. Clark announced adoption of Resolution No. 15-07, as amended, an emergency measure, by a vote of 5-0.

**Motion** by **Lee** to approve a temporary sign for St. Raphael School, 525 Dover Center Road, for a period of three months, expiring June 10, 2015.

**Motion passed 5-0.**

**Mr. Henderson** introduced and read Resolution No. 15-17 authorizing the filing of a 2016 Transportation for Livable Communities Initiative Planning Grant Application, and declaring an emergency, and moved for adoption. Mayor Sutherland stated that Mr. Henderson is correct in his earlier statement that there is no in-kind match allowed for the 20% portion of the grant that is the City's responsibility. The City's portion would be \$7,000 to \$8,000. If the grant is awarded, the approval of Council will be required to accept the grant. The administration will have a plan in place at that point as to where the funds for the match would be taken.

There being no further discussion, Mr. Clark called for a vote on the motion to adopt Resolution No. 15-17.

Roll Call on Suspension of Charter Rules:

Yeas – Tadych, Vincent, Clark, Henderson, Lee.

Nays – None

Roll Call on Suspension of Council Rules:

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Yeas – Tadych, Vincent, Clark, Henderson, Lee.  
Nays - None

Roll Call on Use of the Emergency Clause:

Yeas- Tadych, Vincent, Clark, Henderson, Lee  
Nays -None

Roll Call on Adoption:

Yeas–Tadych, Vincent, Clark, Henderson, Lee  
Nays–None.

Mr. Clark announced adoption of Resolution No. 15-17, an emergency measure, by a vote of 5-0, and moved for adoption.

**Mr. Vincent** introduced and read Resolution No. 15-18 ratifying the sale of the 2007 Ford Sewer Inspection Walk-Thru Box Van There being no further discussion, Mr. Clark called for a vote on the motion to adopt Resolution No. 15-18

Roll Call on Suspension of Charter Rules:

Yeas – Vincent, Clark, Henderson, Lee, Tadych  
Nays – None

Roll Call on Suspension of Council Rules:

Yeas – Vincent, Clerk, Henderson, Lee, Tadych  
Nays - None

Roll Call on Use of the Emergency Clause:

Yeas- Vincent, Clark, Henderson, Lee, Tadych  
Nays -None

Roll Call on Adoption:

Yeas–Vincent, Clark, Henderson, Lee, Tadych  
Nays–None.

Mr. Clark announced adoption of Resolution No. 15-18, an emergency measure, by a vote of 5-0. Mr. Clark complimented Service Director Thomas on his efforts in selling this vehicle.

### **Cleveland Water Agreement**

Mr. Clark stated that the City Council has received copies of a revised side letter from the City of Cleveland Division of Water today.

Mayor Sutherland stated that the letter was received at 3 p.m., Friday, March 6, 2015. There are a few tweaks that need to be done, for example, they refer to the Ohio Environmental Protection Agency when Bay Village is actually under findings and orders by the U.S. Environmental Protection Agency (USEPA). The overall flavor of the agreement is regarding the \$1.2 million. Cleveland's Legal Department had a very difficult time in deviating from the Master Water Agreement as it was originally distributed, because, even though the City of Bay Village wanted more specific language their general language encompasses Bay Village specificity. Because of all the other communities that are involved in the Cleveland Water System, they are really trying not to do side agreements. Because of Bay Village's unusual situation with the USEPA, they felt

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that it was warranted regarding the Sunset Area. The Mayor stated that it is up to Council where they want to go with this. The Mayor would have still signed this 5 years ago. If we don't sign it, then we are going to continue to pay to basically supplement other communities capital improvements without bringing that benefit back to Bay Village.

Mr. Clark stated that the administration and Council have tried to work with the City of Cleveland. Several weeks ago, a meeting was attended with Mayor Jackson and some of the Cleveland City Officials to see if Bay Village could deviate from the standard Master Agreement to allow for a shorter term, which is a concern a lot of the Bay Village Council had. From that standpoint, it was very clear that the City maintains a firm stance of the challenges of going through 20 years with an extension of the agreement, with the caveat being retaining the \$1.2 million. The Mayor has made reference to the \$1,050,000 which we, as residents have been paying the City of Cleveland Water for a capital charge since 2007. This would be a repatriation of our money back to us as well.

Mr. Vincent asked what is different this week from last week.

Mr. Tadych stated that we were looking for the \$1.2 million to increase. Mayor Sutherland stated that she tried to get that to increase but there isn't anything left in the coffers. Some attention has come onto our program and there are other communities asking for funds. Because of the unique circumstance with the EPA, they are able to justify deviation from the Master Agreement.

Mr. Vincent asked if we have to use these funds on the Sunset project now. Is that different than last time? Mrs. Mahoney stated that it does say Sunset, or other projects. The Mayor stated that the rating was received back on the water lines in the Sunset area, and there is actually one on Lakeview that is marginal for replacement, not as bad as the other ones. We may not need to replace all of them so some of that funding could be used when we get into the Bruce/Russell/Douglas area, and Lake Road. We have an upcoming deadline, and it is necessary to know where Council wants to go. It has been discussed for nearly five months.

Mr. Henderson stated appreciation to the Mayor for all the work she has done on this. He added that his opening thought is that he acknowledges that Cleveland Water possesses certain engineering and planning resources that the City of Bay Village does not. That is a valuable thing we might be able to tap into by securing this contract. They may also have purchasing power for some of the actual capital assets that we may not be able to obtain on our own. However, Mr. Henderson stated, he has a concern about transferring what he perceives to be control of our water lines from ourselves to the City of Cleveland, Today, the City of Bay Village controls the destiny of when we replace all these pipes and how much we want to spend on them and what pace we would need to do that. If we enter into this agreement, we would be transferring that control we have today away from us. Mr. Henderson stated that he often drives on City of Cleveland streets and they are not as good, on average, as the streets in Bay Village. He is concerned that that same might happen with the water pipes we would transfer with this agreement.

Mayor Sutherland stated that the administration and the City's consulting engineer are

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recommending that we sign the agreement. We look at those water lines not as assets, but as liabilities. We have not been replacing water lines on any of these projects up to this point. What we are seeing now is that those water lines are rapidly aging, we are going to have a lot of them that are going to reach their useful life at the same time, and we do not have the resources in order to replace those. There are other improvements in the City that need to be done, like the Walmar project or the bridge over Queenswood, and other roads and sewers. To take this off our plate, to us, would be a benefit. You cannot equate our roads with Cleveland. That is a whole different department than Cleveland Water. They get the heaviest traffic in the region; we get relatively light traffic except for Lake Road, and in front of the high school. This is a good deal for the City of Bay Village in the long term, and, if not, we are going to have to come up with a plan for replacing water lines, and perhaps delay or minimize other projects.

Mr. Clark stated that it was represented to Council that perhaps North Olmsted, Parma Heights, and others were looking at signing the agreement. Do we have an update on where those stand? Mayor Sutherland stated that Parma Heights was one of the first communities to sign. In North Olmsted, Council is ready to go forward but the Mayor hasn't presented it to them. Parma Heights signed up and they got six projects done in their community. Fairview Park has signed, Rocky River signed and they are very happy with the program. It has helped them out when they have done their big infrastructure projects.

Mr. Tadych asked if those cities owned their own lines like we do. Mayor Sutherland stated that all the cities own their own lines, except the ones over 24 inches. Mr. Tadych asked Mr. Thomas if there are lines hanging on the bottom of the Queenswood Bridge. Mr. Thomas stated that there are not.

Mr. Clark stated that one of the challenges is going out a full twenty years. If we look at five or seven years there is a fairly strong chance we would still be with Cleveland Water. Not knowing the outcome of the litigation with Westlake causes some pause. The other thought is, do we know the entirety of the cost of the Sunset project to do water, sewer, and all the work that the people are expecting.

Mr. Thomas stated that the final engineering and design will give us a very close cost. What we did before was approximate. The cost can actually go up from what we talked about before, and I venture to say it will be based on the inclusion of water, sanitary sewers, storm sewers, and road replacement. Within six months we will have that cost.

Mr. Henderson stated that last week there were a number of residents who thought that if we accepted this \$1.2 million deal the individual costs that they would bear would decrease. Mayor Sutherland stated it could decrease due to economies of scale.

Mr. Henderson asked if the inclusion of this water project in addition to the sewer project change the assessments those residents are going to receive. Mayor Sutherland stated that it could if we are using the outside funding. It could soften the blow.

There are 43 homes in the Sunset area. Mr. Tadych stated that Consulting Engineer Greytak, at the beginning of going through the idea of the project, commented that he had never been as

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close with numbers initially when he came forward with numbers for possible assessments than he had been with this project. He stated that these numbers are pretty close to what he expects them to come out. That is when the assessments were predicted at very, very high, and now we have almost cut those in half, and we expect them to go even further down.

Finance Director Mahoney stated that from a fiscally responsible perspective she would encourage Council to pass this. It frees up money that we can use for other things. Of any community that has signed the agreement, I have not heard of any community that said they wish they would not have signed. I have heard only positive things from all cities that have signed.

Mr. Clark stated that he wants to be sure President of Council Koomar and Councilwoman Lieske are included in this discussion. We need to have a final answer on this next week. Mayor Sutherland commented that next week is March 16, there may be an issue with that.

Mr. Tadych noted that he has said all along that is an arbitrary date that they have put on the contract. Mrs. Mahoney stated it is not an arbitrary date. They are going to announce their grant awards.

Mr. Vincent asked if the issue of making the City of Bay Village whole is going to be in the restatement or side agreement. Mayor Sutherland stated it is in the restatement, Section 9.02.

Mr. Lee asked if that is something new that Council has not seen yet? Does the Law Director believe we are covered in that regard? Mr. Ebert stated that we were incorporating the letter of November 17, 2014 as part of the side agreement. When this letter came it changed the format of what we thought they were going to present. The side agreement we prepared and submitted to the Cleveland Water Department did not get a response until the Mayor received this document late Friday afternoon.

Mr. Lee asked if there is anything coming to address the cost to cure. Mayor Sutherland said there is nothing coming because Cleveland thinks it is already in the master agreement. Under Section 9.02 it says "When, in the opinion of the Commission additional trunk mains or extensions of trunk mains shall be installed to supply municipality or any territory beyond the municipality's corporate limits, such mains or extensions thereof shall be installed, repaired, maintained, cleaned, and relined by the purveyor at its expense."

Mr. Clark stated that given the enormity of the issue, one would think we would want to have at least a carve-out in something that would be in there that would be recognized in writing.

Mr. Vincent noted that it says at their expense, but it doesn't say who pays them back. We are presuming that means it is spread out among everybody. The Mayor read from the master agreement: "Purveyor is hereby authorized to install new trunk mains within the corporate limits of the municipality after due notice. Municipality shall not charge the purveyor for any permits or inspection fees, purveyor shall pay for the restoration of areas in which construction is carried on and shall to the extent allowed by law save the municipality harmless from all damages and claims." The Mayor referred to the letter dated November 17, 2014 from Cleveland Water, reading in part: "Regarding the cost of cure issues that have been discussed regarding the City of

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Westlake be assured that Cleveland Water will not allow Bay Village to suffer from a deficient distribution system should Westlake sever itself from the Cleveland Water system. Before any separation is complete, Cleveland Water will install new mains that will make Bay Village (and the other impacted neighbors of Westlake) whole from such a separation. Cleveland believes that Westlake is liable for all separation costs. We will continue to pursue that position. If Cleveland is unsuccessful in recovering these costs from Westlake, the costs would then be borne across the entire rate base of the Cleveland Water System. Bay Village would bear no special portion of those costs. Cleveland's commitment to cure any and all harms caused by Westlake leaving is not contingent on Bay Village or any other impacted community signing a new service water agreement.

Mr. Lee asked if Cleveland Water is willing to make that letter a binding part of the contract. Mayor Sutherland stated that it will be an add on to the contract.

Mr. Vincent noted that the letter received on Friday afternoon, March 6, 2015 says that it is the only letter and doesn't make mention of the November 17, 2014 letter.

Mr. Ebert stated that the November 17, 2014 letter should be incorporated as reference as part of the agreement. It originally was, but the new side letter they sent March 6 did not. There hasn't been a chance to respond that yet.

Mr. Henderson asked if we should expect a revised version of the March 6, 2015 letter. The Mayor stated that there will be some minor tweaking, cleaning up the EPA wording.

Mr. Henderson asked if the November 17, 2014 letter becomes a binding document with the same force as this new letter. Mr. Ebert stated that he does not think they will have a problem referencing that November 17, 2014 letter as an exhibit. The Mayor stated it will be an exhibit.

Mr. Henderson stated that the Mayor had mentioned earlier the capital charges that we are currently paying into the Water Department (Mr. Clark used the term repatriation). If we don't sign this agreement do we have any ability to not pay those charges? The Mayor stated that it is not delineated, it would be the same as sending out our sewer bill, getting that revenue into our enterprise fund, and allocating it based on our needs. That is what Cleveland is doing. There is nothing on your bill that says a certain portion goes to the capital fund. They are in charge of allocating.

Mr. Henderson asked where the \$1,050,000 number comes from then. The Mayor stated that Bay Village is responsible for a certain percentage of their revenue. That is what that is based on.

Mr. Clark stated that it equates to about \$150,000 a year, in total, paid by the residents. We have paid in about \$1,050,000 so far. Mrs. Mahoney stated that if you figure our percentage of the whole and how much they have spent on capital on the whole, that is how that is calculated. It is about \$2.00 per resident over the period of seven years. The Mayor stated that it is based on volume and what water usage we have. Mr. Clark noted that there is a high correlation between what they are offering us and what we have paid in so far. The Mayor agreed, and stated that we

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would like to bring that money back. As these lines age, it is going to pick up momentum as we go into the next 10 to 20 years. We are going to need to address this. We didn't really need to think about this 20 years ago because the lines weren't old enough.

Mr. Henderson stated that he definitely acknowledges the extent of the challenge.

The Mayor stated that it is not a perfect solution but it is the best one we have in front of us and the administration firmly believes we should go forward.

Mr. Vincent asked Mr. Ebert if he ever followed up on the discussion on the Cleveland record where they passed that they would do this and they made reference to a section. Did we ever follow up and find out the actual section? Mr. Ebert will try to see what he can find out. Mr. Vincent stated that the section was referenced, like Section 1045. The \$1,050,000, is that growing every quarter, or is it growing every year? Is it still growing? Was it \$1,050,000 five months ago and still growing?

Mr. Lee said it should go up every quarter. Mr. Vincent asked if we could get a revalidation on that figure.

Mrs. Mahoney stated that it was calculated based on their capital costs and what percentage Bay is of their whole system. The Mayor stated that as of the end of 2014, it is \$1,050,000. Mr. Tadych stated that then they are willing to add another \$150,000 to that figure. Mr. Clark stated that this is what it would be at the end of 2015. Mrs. Mahoney stated that how they came up with that figure is technically left-over capital money from other cities' projects. Mr. Tadych stated that as he understands it is 2014 money and they pulled it out of their pocketbook and said we will give you this much of our pocketbook. Mr. Tadych's commented if it were his pocketbook he sure wouldn't empty his pocketbook to give it to Bay Village. I would leave a little in there. That is why I kept saying let's dig down deeper at \$1.2 million cause I am sure that pocketbook isn't empty. The Mayor said she tried and it was not a function of what they are going to do. Mrs. Mahoney added that they started at a \$1 million and the Mayor got to \$1.2 million. Mr. Tadych stated that when they were working at \$1.2 million he said to dig deeper, and that is what he is talking about.

Mr. Clark stated that we have heard both sides. We must be sensitive to the deadline to provide the City Council answer to the administration. Mrs. Mahoney asked if it is sufficient to have the ordinance on first reading Monday, March 16, or does it have to be passed by Monday, March 16. The Mayor stated that she will have to clarify because she is unclear now as to what the deadline is. If it has to be done by March 15, 2015, we will have to have a special council meeting this week.

Mr. Clark stated that before we go to a first or any kind of final reading we have to do a query of each of the Council members. He does not want to bring this to first reading if there is no intention of passing on it as a Council.

The Mayor stated that the query should be done in a public venue. Mayor Sutherland will check on the date and send an email to clarify.

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There being no further business to discuss, the meeting adjourned at 8:51 p.m.

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Dwight Clark, Vice President of Council

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Joan Kemper, Clerk of Council