

Village of Gates Mills
MINUTES OF A SPECIAL MEETING OF COUNCIL
March 8, 2014

Pursuant to written notice, a Special Meeting of the Council of Gates Mills, Ohio was held on Saturday, March 8, 2014 at 9:00 a.m. in the Community Building.

Councilmembers present: Frankel, Schneider, Sogg, Turner.

Councilmembers participating by conference call: Barnes, Reynolds, Welsh.

It was moved by Councilmember Schneider, seconded by Councilmember Frankel, that Councilmembers Barnes, Reynolds and Welsh be excused from the meeting.

Roll call: Ayes: Frankel, Schneider, Sogg, Turner.
 Nays: None.
 Motion carried.

Mayor Riley presided.

Mayor Riley noted that Council members attending by telephone can participate in discussions but cannot vote.

Mayor Riley explained that this special meeting has been called as a working session to further address the following issues: (1) Utica/Point Pleasant Project; (2) Granny Cottages; and (3) administrative matters and the allocation of resources.

Agenda Item #1. The Utica/Point Pleasant Project

Discussion began with the Utica/Point Pleasant Project wherein Mayor Riley encouraged open discussion and welcomed questions and comments by Council members and members of the audience. He emphasized that the meeting's purpose is to provide explanation and discussion of the proposed project and to obtain Council's preliminary views – not to make any decisions.

Prior to the start of a Power Point presentation, Mayor Riley provided a brief overview by stating that the proposal is an approach by the Village to overcome the lack of control with regard to gas and oil well drilling. He shared his view that the proposal is neither pro- or anti-drilling. He accentuated that the Village is not attempting to take away anyone's property rights. Mayor Riley expressed his belief that it is a neutral, pro-property owner proposal wherein residents would be asked to consider to voluntarily transfer their drilling rights into a Trust – that would allow Trust participants to work together to control drilling if it happens in the Village. Mayor Riley shared his concern that deep well drilling is spreading and when it comes to the Gates Mills area, it will be difficult to convince property owners to ignore the substantial financial opportunity the same presents. He referred to a recent presentation by the Western

Reserve Land Conservancy which concluded that deep well drilling is moving in this direction and will be almost impossible to stop.

Mayor Riley presented the example of when dealing with the shallow or vertical wells, many residents were extremely frustrated and the Village had zero control over the location of those wells. If drilling comes to the area in 10-12 years, Mayor Riley shared concerns that (a) if the same is not addressed now, when it does occur, the Village and its residents will be in a reactionary position similar to the vertical wells, and (b) if technology accelerates, deep wells may be in the area as soon as 5 years from now.

Resident Jennifer McMaster questioned who said that deep wells in Gates Mills is actually going to happen.

Mayor Riley replied that the wells are moving North and Westward from Southern Ohio and Western Pennsylvania. He commented that the only limitation of drilling in Ohio is the lack of rigs. He added, however, it may not happen. If it doesn't we won't have to confront the issue.

Resident Jennifer McMaster raised the fact that some communities in Ohio have stopped it via a Citizens' Bill of Rights.

Mayor Riley addressed Ms. McMaster's comments by referencing the litigation of Monroe Falls wherein they created a Bill of Rights which declared in its charter that any new drilling for oil and gas wells within its community is prohibited. He stated that the residents of Gates Mills could decide to similarly do as Monroe Falls has done. Mayor Riley noted that the Monroe Falls' litigation regarding the same has lost twice in both the Trial and Appellate Court levels and is currently in front of the Ohio Supreme Court. Mayor Riley indicated that if it stands, that would be a recourse that the Villagers could vote on.

Resident Jerry Bohinc stated that communities have passed pledges and ordinances not to drill but they have no enforceability or any legal basis to stop drilling. The Village tried several things to stop the vertical wells. Nothing worked. No more vertical wells are being drilled because density is so great that more wells are not economical.

Resident Bonny Myers expressed her dissatisfaction of the drilling located on Gilmour Academy property.

Mayor Riley concurred with her opinion that wells should not be located near schools and restated that the Village has no control over location of wells.

Resident Bill McMaster suggested other options to stop the drilling could be explored including a Bill of Rights without a ban on drilling.

Resident Gene Altus proposed the possibility of taking steps to limit economic gain such as a punitive tax and requiring liability insurance. If there is no economic gain there will be no drilling.

Mayor Riley reiterated Mr. Altus' suggestion and posed for consideration what if the same failed?

Resident Jerry Bohinc suggested considering the Trust as environmental. He stated if residents were to syndicate as a private legal entity – what cannot be done by legislative ordinance, could be done by contract. He expressed his opinion the that Trust proposal is a brilliant, terrific solution.

Councilmember Frankel stated that are two issues: (1) whether or not drilling should occur, and (2) should the Village have the right to determine whether or not drilling occurs. Councilmember Frankel recommended listening to what unitization is about and discuss ways to approach fracking and drilling in the Village, whether we want it or not, and how to prevent it.

Referring to the Power Point presentation, Mayor Riley explained the proposal includes the voluntary transfer of mineral rights to the Trust and then within the Trust decide if they would allow drilling on or underneath their property and if the decision is to allow drilling, then to decide the requirements such as standards, requiring the shut down of shallow wells or dealing with site access.

Councilmember Frankel asked what would happen to the shallow well owner's rights. Mayor Riley responded the vertical well drillers do not have the equipment to drill deep so will probably give up their rights.

Resident Judith Scheman suggested that the rhetoric change and stated her concern with regard to what happens if she were to transfer her rights to the Village.

Mayor Riley responded that the Trust is not a Village entity. The governance of the Trust would be with the property owners participating in the Trust.

Resident Bonny Myers questioned (1) who the organizations are in the reference made with regard to selection process, and (2) if prior to selection, will Trustee candidates be required to provide full disclosure regarding any interest he/she may have in the oil and gas industry.

In response to Resident Myers' questions, Mayor Riley affirmed that full disclosure would be required and that he has asked both the Gates Mills Land Conservancy and the Western Reserve Land Conservancy to participate. Those are the only two organization who have been asked; they have significant amount of land.

Resident Bonny Myers queried how the Trust would be chosen – by democratic vote of people? By Council?

Mayor Riley indicated such decision has not been considered or decided upon.

Resident Jerry Bohinc explained that in areas in Pennsylvania, where horizontal wells are located underneath shallow wells that the shallow wells were shut down. Although there is no

guarantee, it may be possible that some of the shallow wells in Gates Mills could be shut down. It could be made part of the Trust the requirement to shut down the shallow wells.

Resident Bonny Myers expressed concerns with regard to aesthetics of deep well drilling and possible damage and deterioration to Village roads and bridges from large trucks and equipment. She mentioned other concerns such as waste water, holdings tanks and questioned who would be responsible for paying for repairs to the Village's roads and bridges from the possible damage.

Mayor Riley said if the property is in the Trust the group can negotiate with the drillers, specifying which roads can be used, or the group cannot allow drilling at all.

Councilmember Turner shared her opinion that she is against gas wells and that she has been actively involved against the same since 2004 including testifying in front of state legislature, attending multiple hearings. She expressed that nothing has been effective in preventing the spread of gas wells. She explained the State restricts what a municipality can do such as not allowing over taxing and added the Village can control the use of roads. Councilmember Turner continued by stating that liability coverage falls under State requirements but most of the particulars are between landowners and the drilling companies. Often the landowners are without sufficient knowledge of all of the factors, threats and dangers that should be considered. Councilmember Turner stated that the concept of unitization is about constructing a much larger area to offer greater control. She stressed today's discussion is preliminary and the concept would likely take years to affect. Councilmember Turner highlighted the need of residents' ideas and feedback and opined that it is better to have these discussions now.

Resident Jennifer Decker voiced her concerns regarding mandatory pooling and questioned how the Trust could legally get control and trump state law.

Mayor Riley explained that participants in the Trust contractually obligate themselves to each other. They would form a large enough piece of property and only negotiate as a group and could decide not to drill. Conversely, he explained, the group may accept drilling but only in certain locations and with certain requirements.

Discussion ensued among Council members and meeting attendees including whether land can be taken by unitization, guarantees of the Trust's principles, needing to know the purpose of the Trust as well as liability issues and how long the Trust is good.

Mayor Riley suggested that early in the process, before residents decide to join, that the principles of the Trust be decided upon.

Resident Sally Burke requested that Mayor Riley continue with the Power Point presentation.

Resident Bill McMaster suggested the Trust identify if it is pro- or anti-drilling.

In response, Mayor Riley shared his view that the same could affect people's willingness to participate if one-sided.

Councilmember Reynolds stated for the shallow or vertical wells, there is a 20 acre minimum and asked Councilmember Turner to confirm if the minimum for deep wells is 200 acres. Councilmember Turner confirmed the requirement is less than 200 acres and that how far the well goes horizontally is a factor. She feels the more owners and land mass involved, the more voices involved in making decisions. Councilmember Turner shared that a group of 600 landowners in Belmont County educated themselves and made decisions where wells would be located which allowed the protection of land as well as provided an additional source of income. She suggested that it may be beneficial to interview certain members of that group.

Mayor Riley continued with the Power Point presentation which included the following points: the Trust may have to be a Limited Liability Company; suggested governance with a board size of 7 or 9 members with the idea that landowners would ultimately serve on the board of the Trust; and the Village has some conservation funds available to initially fund if going forward. Mayor Riley also presented a timeline which included public meetings scheduled in May and June and commented that Council would then likely have to start making decisions about going forward and the decision whether to include the Village's properties, noting the Village owns approximately 300 acres. Mayor Riley strongly requested continued feedback from residents.

Resident Debbie Moss Batt offered her suggestion that any determination be deferred until after the Ohio Supreme Court decision with regard to the Monroe Falls litigation.

Mayor Riley agreed with Ms. Batt's suggestion and stated the Village should revisit the Bill of Rights or similar issue in the Fall.

Resident Debbie Moss Batt asked if there would be an economic benefit such as revenue to the Village.

Mayor Riley explained that if the Village participated in the Trust with the land it owns, the Village would receive economic benefit from such participation.

Resident Jennifer McMaster questioned if the Village would be liable?

Mayor Riley responded that the Village's liability would be no different than it is today.

Resident Bob Bruml asked if the Village retained an independent geologist to evaluate the timing and potential economic benefit?

Mayor Riley replied no and confirmed that no expenses have been incurred by the Village with regard to this proposal.

Resident Jerry Bohinc stated that there is definitely gas beneath the Village but whether it is enough to make it economically viable is unknown. Mr. Bohinc indicated that the same may

depend on the cost of natural gas in the future. Mr. Bohinc shared his concern of not wanting a repeat of 10 years ago and recommended determining the best strategy and putting the most rigorous standards into place for the best protections.

Resident Gene Altus expressed the need to understand the purpose of the Trust, including whether there would be no drilling or smart drilling, to optimize the entity to get enough people to vote for it and that not having the Trust would likely offer worse results.

Resident Bob Reitman stated that there is not enough information and believes more information is needed to have a better understanding. He confirmed that the Village does tax wells. He explained, however, that you cannot have a confiscatory tax that accomplishes what cannot be done through legislation. He further stated it is important to understand more fundamental elements of the Trust. Mr. Reitman presented the following questions: Will there be a majority rule of participants or by a board elected by participants? The rights of landowners to withdraw? How to deal with issues of gas located on property not participating in Trust?

Resident Bonny Myers shared that she is concerned about the Village and her property. She also asked what if someone did not want to share their mineral rights and did not want to unitize.

Discussion among Council members and audience members briefly took place regarding Ms. Myers questions.

Councilmember Turner confirmed as far as the State is concerned, if a group of property owners made an application and the group is 65%, then mandatory pooling takes place. She said that is not what this proposal is and urged not to confuse the same with the State's mandatory pooling.

Resident Gene Altus stated the need to know what the purpose of the Trust is.

Resident Bill McMaster asked if the goal is to bring the whole Village into the Trust?

Mayor Riley responded affirmatively and added the goal includes surrounding communities as well and advised that he has been approached by a couple of communities with interest in joining.

Bill McMaster queried if property owners would be forced to join the Trust.

In response, Mayor Riley stated no but that does not answer the State's law. He provided the example that the Trust principals could decide on a requirement of 90% over the State's 65% and that it would be a decision for the Trustees to decide.

Jerry Bohinc commented that this is a complex situation. He recommended going through a learning process, put together a presentation, and then put it up for vote as to do or not do a Trust. Then individuals may to decide whether to join or not.

Councilmember Schneider shared that she, along with Councilmembers Turner and Reynolds went to a presentation by the Western Reserve Land Conservancy on fracking. She stated the presentation was extremely informative about the fracking industry. Councilmember Schneider shared her opinion that if this proposal offers a way to have control, it is good. Additionally, her view that landowners have the right to what is under their property was provided. Also, she expressed her worry about the possibility of wells coming under Gates Mills from surrounding areas and how to prevent that.

Mayor Riley asked Council if this proposal was something that should be continued to be studied.

Councilmember Schneider responded affirmatively.

Councilmember Turner agreed.

Councilmember Frankel said there are lots of issues and that he has been studying fracking for years and believes efforts at the State level are warranted. He stated he is interested in the results of the Monroe Falls litigation and added that he does not understand unitization and would like to know more including studying whether unitization would be helpful or not.

Mayor Riley addressed members of the audience asking how they would like to be involved and of their interest in participating in the study.

Resident Jean Kalberer asked Councilmember Schneider if there was a link available for the Western Reserve Land Conservancy presentation.

Mayor Riley stated he would request Western Reserve Land Conservancy provide a presentation for the community.

Jerry Bohinc said the National Academy of Science and Engineering had a 2-day conference on fracking. He feels we can get a copy for a meeting or for the Village's website.

Agenda Item #2. Granny Cottages.

Councilmember Schneider discussed future requests to turn existing accessory buildings into Granny Cottages (or residences) for family members. On behalf of the Planning and Zoning Committee, she would like to get a sense of how people feel. Currently, the Village has existing cottages that were there when the 5 acre zoning went into effect so they are grandfathered in. Recently, the Planning and Zoning Committee received a request for a piece of property of approximately 2.5 acres to convert a garage into a Granny Cottage. Planning and Zoning denied the request. It was confirmed that this discussion relates to a second home on a smaller property. Councilmember Schneider expressed her view that the decision to go to the 5 acres zoning requirement was to control Village services and safety forces and opined that allowing more houses on less than 5 acre lots would create water issues, result in tap in fees and present septic/sewer concerns. Changing the requirement would move the Village backwards.

Councilmember Welsh commented he was neutral on the issue.

Resident Jean Kalberer presented two issues: (1) The extra building had specific restrictions never to have people living in it. The fact that the owners were unaware of those restrictions shows the difficulty to enforce. Whatever is decided needs to be easy for the next buyer to be aware of what the restrictions are. Additionally, Ms. Kalberer opined it should be an attachment to a house as it would be too hard to monitor a separate outside structure. (2) Years ago people who wanted to stay in Gates Mills requested multiple dwellings for older residents. Multiple dwellings lead to multiple requests for multiple purposes. She hopes these will not be considered.

Resident Evelyn Newell expressed that she has no strong opinion, however, requests that Council reaffirm the rules for the benefit of the Planning and Zoning Committee.

Mayor Riley polled members of Council as to the interest in pursuing a change in the code or to allow the Planning & Zoning Committee to enforce the code as is. Comments shared favored not making a change in the code.

It was moved by Councilmember Turner, seconded by Councilmember Frankel, to reaffirm existing zoning.

Roll call: Ayes: Frankel, Schneider, Sogg, Turner.
Nays: None.
Motion carried.

Agenda Item #3. Obtaining Council Support for any Concept or Idea Before Incurring any Fees or Staff Time to Access or Explore.

Councilmember Turner noted an increase of legal fees and her concern related to the same. She suggested getting a sense from Council before incurring staff time or legal fees.

Councilmember Schneider stated that the current work being done on redoing the zoning codes requires the advice of lawyers. Also, she advised that the Planning and Zoning Committee has had some very complicated issues presented to it lately that required legal counsel.

Mayor Riley suggested everyone being sensitive when asking Village advisors and staff for requests.

Councilmember Frankel suggested making motions with estimate of costs at Council meetings in advance of any requests.

Councilmember Sogg stated that the Village's legal counsel and prosecutor are on retainer. She does not feel there is a concern with regard to legal fees at this time.

There being no further business, it was moved by Councilmember Sogg, seconded by Councilmember Frankel, and unanimously carried, that the council meeting be adjourned.

Roll call: Ayes: Frankel, Schneider, Sogg, Turner.
Nays: None.
Motion carried.

Respectfully submitted,

Beth DeCapite, Clerk

Approved:

Shawn M. Riley, Mayor