

**Council of the Village of Yellow Springs
Special Meeting Minutes**

Virtual Meeting @7:00pm

Monday, August 3, 2020

CALL TO ORDER

President of Council Brian Housh called the meeting to order at 7:00 pm.

ROLL CALL

Present via Zoom were President Housh, Vice President Marianne MacQueen and Council members Kevin Stokes and Laura Curliss. Also present were Village Manager Josue Salmeron, and Village Solicitor Breanne Parcels.

PETITIONS AND COMMUNICATIONS

The Clerk will receive and file the following:

Chris Zerbuchan re: Do Not Spend Taxpayer Dollars to Litigate

EXECUTIVE SESSION

At 7:01, MacQueen MOVED to ENTER INTO EXECUTIVE SESSION FOR THE PURPOSE OF conferring with the Village Solicitor concerning a matter involving the public body that is subject to imminent litigation, pursuant to RC 121.22(G)(3). Stokes SECONDED, and the MOTION PASSED 4-0 on a ROLL CALL VOTE. The Solicitor and Clerk were present in the session.

At 7:30, Curliss MOVED and Stokes SECONDED a MOTION TO EXIT EXECUTIVE SESSION. The MOTION PASSED 4-0 ON A ROLL CALL VOTE.

DISCUSSION

Implementation of Charter Amendment re: Non-US Citizen Resident Voting Rights.

Housh read a statement condemning Secretary of State Frank LaRose's actions to prevent villagers from exercising their rights as citizens of a charter municipality and condemned the attack on Home Rule power. Housh also called out LaRose for fear mongering and spreading mis-information regarding the charter amendment, which was passed by village voters in March.

Solicitor Parcels referenced the letter in question, which was sent to the Greene County Board of Elections by LaRose on July 30th, and which instructs the BOE to:

- Prohibit any non-citizen residents in the Village of Yellow Springs from registering to vote with the Greene County Board of Elections;
- By August 3rd, cancel the voter registrations of any non-citizen residents of the Village of Yellow Springs who may have already registered to vote with the Greene County Board of Elections;
- Prohibit any non-citizen residents in the Village from voting on Yellow Springs ballot issues or for Yellow Springs candidates in any election in the Village which the Greene County Board of Elections is administering; and
- Not include in the tabulations, canvasses, or certifications of votes of any election administered by the Greene County Board of Elections the votes of any non-citizen residents in Yellow Springs, even if the election is held solely in the Village and the issues or candidates are limited solely to Village issues or elected offices.

Parcels stated that to date, the BOE has not taken action on the letter. There are a number of options available to the Village as follows:

- The Village could file an Administrative Appeal if the BOE either acts or fails to act.
- The Village could litigate via a Mandamus Action in several different Courts in the State of Ohio
- The Village could litigate the matter in Federal Court
- The Village could sponsor a grassroots action to amend the Ohio Constitution to remove the currently restrictive language

Parcels noted that the Secretary of State has known of the Village Charter Amendment for some time, and voter registration templates for non-US citizen residents had been turned in to the BOE to facilitate this action. Parcels speculated that the BOE and LaRose had knowledge of the Village's intention to permit non-US citizen residents to vote on local matters per the charter amendment for

some time, and wondered why the Village was only contacted regarding the intent to quash the charter amendment five days ago if indeed LaRose fully believed the matter was unconstitutional.

Parcels stated that the opinion regarding constitutionality has to be taken to a court of law to make the declaration regarding constitutionality.

Parcels provided a brief history of voter's rights in the State of Ohio, noting that prior to World War One, non-US citizens were permitted to vote in Ohio. She noted that that section of the Ohio constitution (Article V Section I) has been amended several times.

Parcels commented that Council will need to know what actions the BOE intends to take and be fully informed as to this and as to citizen opinion regarding litigation before making a decision regarding litigation.

Parcels read from Article V of the constitution regarding "who may vote" noting that that article still contains a section (Section 6) stating that "no idiot, or insane persons, shall be entitled to the privileges of an elector." The section has never been amended, and if LaRose is adamant about enforcing this Article of the Constitution, why does he not also vigorously enforce that section.

Stokes commented that there appears to be no restriction in the Village's ability to enact the charter amendment, from a legal perspective. The question as to whether or not there is an appetite to do so remains, said Stokes.

Curliss stated that LaRose is ignoring the fact that Article V does not address municipalities, and does not encompass all potential voters. Curliss pointed out that legal non-citizen residents of the US have been permitted to serve in the military for years, and there are 35,000 current active members of the military who are non-citizens. She stated that the case should be presented to the BOE by the Village, but that litigation should not go forward unless a donation line to cover the cost is established.

MacQueen opined that it seemed an undue expense to litigate unless funded through donation.

Stokes asked whether PEP could take on the case, and was informed that PEP only engages in defense.

Megan Bachman, YS News asked for a timeline of communications between the Village and the BOE and the Secretary of State.

Housh stated that prior to the November 2019 elections in which the amendment was brought as a "bundled" issue, the Village was made aware that there was some concern from the SOS's office. At that time, Housh reached out to determine the nature of the concerns, and was not informed of these. After that, the matter was passed from the SOS to the BOE for a decision.

Salmeron stated that he and Solicitor Conard had attended the BOE meeting when the BOE voted upon whether or not the charter amendment could be brought to village voters. The Prosecutor for the BOE directed the BOE that their vote was only regarding whether the municipality could bring the amendment to the voters, not whether or not the amendment was constitutional. Salmeron commented that the BOE's attorney advised them that the Village did have the right to bring the amendment to the voters.

Salmeron commented that there was discussion regarding who would undertake a registration process if the amendment were to pass, and how that might be decided. The BOE indicated that it would work with the Clerk on this process if the charter amendment were to pass.

Several weeks ago, the BOE contacted the Clerk to follow up on the registration matter, and a template was provided to the BOE for review at their July 21 Board meeting.

Bachman asked what actions the BOE may be taking, and whether they have a choice in those actions.

Parcels commented that the BOE gets guidance from the SOS, but is a voting body that can take independent action.

Parcels referenced a 2015 Attorney General decision in a case from Ironton, Ohio in which he ruled that the Charter of the municipality trumped the Ohio constitution.

Housh read several comments from the chat.

Housh responded to these, noting that he recognized the need for citizen input on the matter and that he is mindful of the need to conserve taxpayer dollars.

Housh suggested that any resident interested in commenting contact the Council Clerk or an individual Council member. He suggested that non-US citizen residents who may be impacted by the charter amendment reach out.

The Clerk cautioned that any written communication to any Council member is subject to Sunshine Law, as are Facebook comments on occasion, depending upon how many Council members may respond.

Housh promised ongoing communication regarding this matter as the situation progresses.

ADJOURNMENT

At 8:07pm, Stokes MOVED and Curliss SECONDED a MOTION TO ADJOURN. The MOTION PASSED 4-0 ON A VOICE VOTE.

Please note: These notes are not verbatim. Video of the meeting is available for viewing on YouTube, accessible from the Village website at: www.yso.com. Minutes are available upon request from the Clerk of Council or, once approved, from the Village website.

Brian Housh, Council President

Attest:

Judy Kintner, Council Clerk