

A Regular Meeting of the Board of Trustees of the Village of Oxford was held at 7:00 pm on February 26, 2019 at the Village Hall - 20 LaFayette Park, Oxford, NY 13830.

**Present were:** Mayor Terry Stark (via Skype), Trustee Dale Leach, Trustee Dustin Hendricks, Trustee Richard Marks, Trustee Carly Hendricks, Police Chief Rich Nolan, SPW Rick Paden, WWTP Operator Kirk Noetzel, Zoning Officer/Dog Warden Roger Barrows and Clerk-Treasurer Shelly Marks. Also, in attendance were members of the New Visions Law and Government Class of Oxford Students-Brad Beckwith, Allison Beckwith, Hannah Hodge, Kelsey Drewniak as well as George and Barbara White and Richard Rice.

**Absent:** Fire Chief Ron Martin, EMS Captain Mark Forrest

The Village Trustees reviewed each of the invoices in the abstract for February 2019.

Mayor Stark called the Regular meeting to order at 7:27 p.m.

The Pledge of Allegiance to the American Flag was given.

**PUBLIC CONCERNS:**

George White of 12 Scott Street got up to speak. He and his wife have lived here for 12 years. He is 87 years old, a retired farmer from Guilford and a marine veteran of the Korean War. He said that the DPW hired a new snow plow driver last year and he took out three (3) mailboxes on Taylor Street and seven (7) on Scott Street. One person had their mailbox hit three times. He asked the post office the requirements for the mailbox and post. The driver was going very fast. SPW Paden discussed the mailbox issue with Mr. White. His mailbox was back up and a few days later, mailbox was hit again. They told him that the mailbox had to be 2' back from the curb. This is a long reach for a mailman to get mail in the box. He talked to driver and was told that he had to rub the curb with the plow in order to get the street clear of the snow. How does the snow need to be thrown clear past the sidewalk? Three mailboxes are gone this season. His is gone again this year. Mr. White called SPW Paden and left a message. This was 10:00 a.m. and, at 12:40 the same day, he received a phone call from DPW's phone number. Mayor Stark was sent a reply that Mr. White had written out. There should be no foul language and Mayor Stark apologizes for this issue. Relative to the mailbox, they try to keep streets clean and for that they must go a certain speed. 170-190 people have mail delivered via a mailbox at their house. If the DPW knocks down a mailbox, we will offer to send them some money toward the repair/replacement of this.

SPW Paden thanked Mr. White for coming before the Board. Situations arise that may be out of his control. He's worked for the village for 40 years and has been the superintendent for 30 years. He introduced the Board to Mr. & Mrs. White. Things don't always go smooth, unfortunately. SPW Paden told Mr. White that he will try harder to make sure this doesn't happen again. Mr. White told the Mayor that he isn't really worried about his mailbox but he doesn't see any reason why they must rub the curb so they could miss the mailbox. He's done construction so knows this can be done. Always have respect for private property. Even though his mailbox is on Village property, this is his personal property. The next day after the last storm, the plow came through at 4:30 a.m. Mr. White has a broken curb which was hit and it shook his house. The plow was going well over 30 MPH down the other side of the street. He feels that this driver should be disciplined and he assures us that the voice on the phone was not Mr. Paden. He was brought up that if you step out of line, you should be disciplined and if this DPW employee can't do this, he should be fired. Give him a shovel as that is about all he can handle. This is a black eye to the village. Trustee D. Hendricks asked if there is a target speed and SPW Paden explained to Mr. and Mrs. White that D. Hendricks works for Chenango County and 20-25 mph is what the plows should be driven at in the village. Something needs to be done with this young man. Move the plow away from the curb to save the property of village residents. Mr. White would like to have someone get back to him. If he doesn't hear back, he will attend the next meeting as well.

Rich Rice is asking if we have been approached about fixing the road where the new bus garage is going to be built. This road is not meant for buses. He is wondering if the Village has talked

to the school regarding this road. There are no plans at the time for other access to the garage except for the current road. Possibly take out the curve and we have gotten estimates but this is a couple years down the road. We are trying to work out a remedy for this.

Rich Rice also asked about plowing Grays Heights. The Village was helping the Town for a little while due to them not having equipment. Their equipment is back now.

**ABSTRACT:**

Trustee D. Hendricks seconded by Trustee Marks made a motion to approve Abstract #009 as presented.

General Fund	\$ 69,874.63
Water Fund	\$ 6,502.60
Sewer Fund	\$ 12,809.55
Water Project	<u>\$ 13,198.00</u>
	\$102,384.78

**APPROVAL OF MINUTES:**

Trustee C Hendricks moved and Trustee Leach seconded a motion to approve the January 29<sup>th</sup> Meeting Minutes.

**TREASURER'S REPORT:**

Trustee Leach moved and Trustee D Hendricks seconded a motion to approve the September 2018 Treasurer's Report.

**JUSTICE REPORT:**

Trustee Marks moved and Trustee C. Hendricks seconded the motion to approve the January Justice Report from Judge Frye. All approved.

**OFD REPORT:**

Chief Martin was absent. He sent two new applicants that he is asking to have approval for. Trustee Marks moved and Trustee C. Hendricks seconded a motion to approve the applications for Hayden Hagenbuch and Branden McConnell. All approved, carried.

**WWTP:**

WWTP Operator Noetzel reported that he took in 24,750 gallons of septage and took 30.69 ton of sludge to the land fill. He is taking septage from Adsit now. He will be on vacation from March 21 – April 9. He mentioned this to SPW Paden and he will have Bill Kelsey available at that time. The annual conference is May 20-22 at Turning Stone. This conference should give him enough hours to renew his license which expires in September of this year.

**PUBLIC WORKS DEPARTMENT:**

SPW Paden discussed his monthly report. We also talked about the roads that need asphalt. He asked about getting a snow plow for the new truck. \$122,000 is the whole project or Suit Kote is in place at \$50,000 for cold cycle. The Board is leaning toward the hot process for \$122,000. The paved ditch is an additional \$3,200 plus 20 ton of material (70/ton)-22,000 square feet.

Mayor Stark will confirm with the DOT about doing LaFayette Park and the Post Office area as they are supposed to be doing this. There will be no line stripping this year if this will be done by DOT.

**POLICE DEPARTMENT:**

Chief Nolan went over his monthly report.

**NEW BUSINESS:**

The proposed salaries for the 2019-2020 fiscal year are 30% of the annual budget. Mayor Stark sent information to the Board. Salaries are about 50% of the budget. He will use the figures for

the tentative budget for now. This needs to be completed and voted on by April 15<sup>th</sup>. Board can have some special meetings to go over things line by line if it is requested.

Band Stand – Mayor Stark has been approached about making changes to the band stand at LaFayette Park. Jim Johnson and David Emerson have put time into these potential changes. Trustee Leach says this is a historical site and he has lived in the Village for a long time and doesn't want to see changes. Trustee Marks is concerned about cost and the band stand is functional as it is now. He says it is a big change for The Village. Mayor Stark just wants the Board to be aware if they hear this around the village. Trustee D. Hendricks isn't opposed to any change but feels the band stand is functional. Trustee C. Hendricks has been in Oxford for 40 years and agrees with the others, why make the changes.

Trustee Leach mentioned that people aren't maintaining their sidewalks after snow storms. He is wondering if there is something that we can do besides sending letters each season. Sidewalks are supposed to be cleared 24 hours following a storm by owner or their caregiver. Absentee owners are the biggest offenders. Roger Barrows, Zoning Officer should identify these individuals and contact them. If they don't take care of their sidewalks, we will hire someone to do it then bill the property owner.

Trustee Leach moved and Trustee D. Hendricks seconded a motion to go into Executive Session.

Trustee D. Hendricks moved and Trustee C. Hendricks seconded a motion to come out of Executive Session.

#### FEBRUARY 26<sup>TH</sup> BOARD MEETING MINUTES - EMPLOYEE REQUEST FOR CASH PAYMENT OF ACCUMULATED SICK LEAVE

The Mayor reviewed a summary submitted to the Board in response to an employee's request that the Village consider a payment for a portion of the more than 700 hours of accumulated sick leave to help offset a financial hardship. Employee indicated payment is justified as NY State Local Retirement System (NYSLRS) Plan indicated the village pension plan does not allow unused sick time to be added to pension service credit at retirement.

#### Discussion

Current village policy does not provide for payment of sick leave during employment nor at time of separation/retirement/termination. The current village policy (Employee Handbook section 503) is to allow unused sick time of up to a maximum of 165 days to be added to length of service for retirement benefits.

Mayor indicated that an Ad hoc payment for unused accumulated sick leave in response to an individual request is outside of the authority of the Mayor to grant. Consequently, it was necessary to contact the New York State Conference of Mayors (NYCOM) to seek guidance and (NYSLRS) to seek clarification about current plan that would help provide direction to the Board. This would help to address the issue, determine the proper course of action and allow a response to employee.

#### **PENSION SERVICE CREDIT ISSUE**

**NYSLRS has confirmed that the Village member requesting the sick pay payment is not currently included in Subdivision (j) of section 341.** This is the section that allows a participating employer to provide additional service credit toward retirement for its employees who are entitled to accumulate sick leave. The Village is eligible to include the member as the village has previously established a written policy (Employee handbook Section 503). However, due to administrative error dating back more than a decade, this section was not included for Police and Fire Retirement members (PFRS) eligible under the state plan. The annual cost to include this section in village annual pension contribution is currently \$370.00. (See attached letter from NYSLRS dated January 25, 2019.

Following discussion, Trustee D. Hendricks moved and Trustee Leach seconded the following resolution:

Be it resolved that the Village Board of Trustees of the Village of Oxford, New York does hereby elect to provide to eligible police officers of the Village of Oxford the pension benefit of Section 341-(j) of the Retirement and Social Security Law, as presently or hereafter amended. Be it further resolved that the effective date of such shall be the date this resolution is filed with the Comptroller.

All five Board members present voted Aye. Resolution was approved.

Village Clerk/Treasure to submit all required documents to State Comptroller no later than March 1st, 2019. Mayor to notify affected employees.

### **PAYMENT - ACCUMULATED UNUSED SICK TIME ISSUE**

**New York State Conference of Mayors provided information confirming the Village could enact a local law authorizing a policy to provide cash payment for unused accumulated sick leave. However, it would have to apply to all employees and can only apply to prospective sick leave and not already accumulated sick leave.**

#### New York State Comptroller Opinion 1981

Pursuant to the authorization in Municipal Home Rule Law, § 10(l)(ii)(a)(l) to adopt local laws not inconsistent with the Constitution or any general law relating to the compensation and welfare of municipal employees, a municipality may adopt a local law providing for cash payment for unused accumulated sick leave (Opn No. 76-1265, supra). Similarly, pursuant to local law, a municipality may provide for a cash incentive to employees who have no absences from work over a specified period of time. It would not be inconsistent with Article VIII, § 1 of the State Constitution or any other constitutional provision. Article VIII, § 1 prohibits gifts or loans of municipal moneys or property to or in aid of private individuals. The cash incentive would be in nature of a fringe benefit incidental to employment and may be considered as part of an employee's overall compensation. As an inducement to continued and faithful municipal service, and as a deterrent to unnecessary absenteeism and use of sick leave, would not view the incentive payment as a "gift". In Opns St Comp, 1976, No. 76-1127, unreported, we expressed some reservations about providing by local law for a bonus or incentive award to county employees who have "outstanding" employment records since "a very strong argument could be made that the incentive award is a bonus for past services and, hence, a gift". However, it is our current view that an attendance incentive award paid pursuant to previously established, identifiable guidelines, of which employees are made aware and with which they are presumably striving to comply, is not payment for past services. The employees would be simply fulfilling a necessary condition prior to receiving payment. The criteria which must be met in order to receive the payment would be fixed prior to the performance of the services. Moreover, as alluded to above, the payment is also, to some extent, an incentive for continued faithful service in the future. We believe this type of arrangement is distinguishable from a retroactive salary increase or outright bonus which may truly be payment for past services rendered.

Note: Neither a local law, nor a collective bargaining agreement provision could authorize cash payment for prior accumulations of sick leave (OpnsSt Comp, 1980, Nos.80-524 and 80-462, both as yet unreported; Dow v Bd. of Trustees, Farmingdale Public Library, 75 AD2d 632, 427 NYS2d 298). Opns St Comp, 1981 No. 81-107 (N.Y.St.Cptr.), 1981WL16680

Following discussion Trustee Leach moved and Trustee C Hendricks seconded a motion to **not** enact a Village policy that would allow the payment of a portion of accumulated unused sick leave:

All five Board members were present and all voted Aye. Motion was approved

Mayor Stark to notify employee that request for payment is not approved. This is due to:

1. An ad hoc individual payment would be considered arbitrary and capricious
2. A Village policy would create a significant accrued financial burden to the Village

3. If a new policy were to be enacted, it would not satisfy the current goal of the individual as a new policy can only authorize sick leave payments prospectively. It cannot authorize payment for unused sick leave accumulated prior to policy being enacted

**TRUSTEE COMMENTS:**

None

**ADJOURNMENT:**

Mayor Stark made a motion to Adjourn at 9:30 p.m.

Next regular meeting will be Tuesday, March 26, 2019 at 7:30.

Respectfully Submitted,

Shelly W. Marks  
Clerk-Treasurer