

November 14, 2016

**The Regular Meeting of the Nunda Village Board of Trustees was held on November 14, 2016
with the following present:**

Mayor: Robert Cox
Deputy Mayor: Fritz Amrhein
Trustees: Darren Snyder
 Jack Morgan
 Mell Allen

Chief Water Operator - Department of Public Works Superintendent: Troy Bennett
Waste Water Treatment Plant Superintendent: Markus Hugi – arrived at 7:08 PM
Laborer: Brian Emke
Clerk-Treasurer: LeRoy Wood

Citizens: Ron Adam Deb Hendershot Laura Green
 Ron Duttwieller

Mayor Cox - called the meeting to order at 7:00 P.M.

Roll Call: All present

Pledge of Allegiance - led by Trustee Allen

Visitor's Form - None

Approval of Minutes

A. October 17, 2016

MOTION was made by Deputy Mayor Amrhein to approve the meeting minutes with the addition of Bev Clark added to the section of Citizen attendees, seconded by Trustee Snyder, carried 5-0.

Approval of Invoices

The Nunda Village Board of Trustees has reviewed and approve invoices for payment on Abstract no. 2 as follows:

A. Abstract no. 2

GENERAL -	\$ 9,078.54
WATER -	\$ 1,634.09
SEWER -	\$ 5,781.67
YOUTH-	\$ <u>0.00</u>
TOTAL –	\$ 16,494.30

MOTION was made by Deputy Mayor Amrhein, seconded by Trustee Morgan. Carried 5-0.

Reports

A. *Police*

1. Monthly Report – October 2016
2. Town of Nunda Budget Report – Not provided
3. Payroll Reports – October 2016

B. *Code Enforcement/Zoning*

1. Monthly Report – October 2016
Discussion on Zombie Houses was mentioned as this new State Law takes effect in December 2016.

C. *Sewer*

1. RG&E replaced meter at WWTP.
2. Land spreading to begin this month.

D. *DPW*

1. October 2016 Calendar provided

2. Leaf pick-up beginning

E. *Water*

1. Department of Health inspection was held on October 17, 2016 with results being provided to Board.
2. Daniel Strobel received his Class II-A Water Operator License. Chief Water Operator Bennett requested Daniel Strobel's pay be retroactive to date on recently received license. The Board agreed in keeping with the language in the Employee Policy that once license has been received the employee will receive \$1.00 pay increase.

F. *Justice*

1. Monthly Reports – October 2016

G. *Treasurer's Reports*

1. Monthly Reports – October 2016 presented
2. Monthly bank statement review was requested by Clerk-Treasurer Wood, Trustee Morgan stated he would provide this monthly review

H. *ZBA/Planning Board*

I. *Youth Recreation*

MOTION that the Nunda Village Board of Trustees accepts the reports as presented. The motion was made by Trustee Morgan, seconded by Trustee Snyder. Carried 5-0.

New Business

A. *2017 Youth Recreation Budget Presentation*

Clerk-Treasurer Wood presented 2017 Youth Recreation Budget to the Village Board of Trustees. Discussion on the 11.2% increase to the budget was the summation of required State minimum wage increases and a small pay raise increase for these part time employees. Also indicated in the Program increase was the costs associated with Water Safety Officials (i.e. Lifeguard mandatory qualifications, Water Safety Officer qualifications, CPR training requirements) and the reimbursement of those costs back to the employee.

MOTION was made that the Nunda Village Board of Trustees to approve the 2017 Youth Recreation. The motion was made by Deputy Mayor Amhrein, seconded by Trustee Snyder. Carried 5-0.

B. *Computer Use Policy* – current policy was reviewed and discussed by the Board. The Mayor stated that the computers should be used for what they are intended, not intended to be used for personal or social use.

C. *Vehicle Use Policy* – Mayor Cox requested a Vehicle Policy be created for the Village to give guidance for the proper use of local government owned vehicles. The policy presented will be discussed further at next month's Board Meeting.

D. *Access to Waste Water Treatment Plant and Water Plant* – Mayor Cox requested additional information as to the responsibilities and requirements of the Village in reference to authorized access points to the Village Plants. Clerk-Treasurer Wood stated that additional research would need to be conducted to ascertain Federal and/or State laws that may pertain to Villages needs and responsibilities.

E. *Village of Nunda Public Water Supply Sanitary Survey 2016* – Survey results received with the Board discussing these results with Chief Water Operator Bennett. Items discussed were as were presented by the New York State Department of Health – Observations, Requirements, Recommendations, and Comments. The determination of this survey was, "*The condition and operation of the water system are in good working order. Mr. Bennett and the other water operators do a fine job operating the system and preparing the required reports.*"

Old Business

A. *Park*- Mayor Cox asked if the Trinity Church has received their copy of the revised Agreement to Lease the Park. Clerk-Treasurer Wood stated he did provide a copy of the lease to Trustee Morgan. Trustee Morgan received a copy of the Agreement to Lease and was told by Clerk-Treasurer Wood that the Lease would need to be reviewed by the Board prior to delivery to the Trinity Church. The answer to Mayor Cox's question was no the Trinity Church did not receive an official copy of the current Agreement to Lease the Park.

Trustee Morgan stated that there are now two approved Leases by the Village Attorney. Two concerns as mentioned by Trustee Morgan, with the most current Lease are Section #5 Indemnification and Section # 10 Alterations. Ronald Duttweiler mentioned the current Section #5 of the Lease would not be beneficial to either the Trinity Church or the Village. Mr. Duttweiler recommended keeping the old version of Section #5 in the Agreement to Lease.

Trustee Morgan stated in reference to Section #10. Alterations, that there is no clarity of counsel act before church would give approval prior to action being taken. Meaning, it should be stated in the Agreement to Lease Section #10 Alterations approval by the Governing Board prior to any Alteration in the Park as to the Village's intent on allowing any Alteration to become part of the premises or not.

Mayor Cox stated we can send back this current Agreement to Lease back to the Village Attorney for review of the concerns of the Trinity Church.

Trustee Morgan then read aloud the old version Agreement to Lease Section #5 Indemnification.

Mayor Cox also stated that we are at an impasse with Trinity Church and the Village as to the language of the Agreement to Lease.

Mayor Cox also stated that at no point was there any intention of refusal to sign the Agreement to Lease the Park. At the time when the Agreement to Lease was reviewed by the Board, it was the Board that disapproved the Lease and wanted additional information discussed with the Village Attorney.

Trustee Morgan and Trustee Allen both stated they want what is best for the Village.

Trustee Morgan asked if both attorneys could get together to discuss and help facilitate a resolution that both parties can agree to. The Village Board agreed to these terms. Trustee Allen stated he would make an appointment with the Village Attorney to discuss concerns of both parties and come up with a final solution and recommendation.

Trustee Morgan stated that because the Village is the Lead Agency with the Youth Recreation Program is there some way to get the Town involved with the Village Park.

Resolution No. 2016-140

BE IT RESOLVED that the Village Board of Trustees not name private organizations in minutes of a joint meeting unless they are willing to keep minutes of the meeting and open them up for public inspection as the Village of Nunda is required by law to follow.

The motion was made by Trustee Allen, seconded by Deputy Mayor Amrhein. Carried 5-0

B. *Water Law* – Deputy Mayor Amrhein stated the committee has been working on updates to the definition section, in particular the explanation of what exactly is a Living Unit. Further discussion on this Law will take place at future Board Meetings.

C. *Annexation* – Surveyor Carestio has requested an Abstract for the property directly north of the Village Well Site, this abstract has been procured and distributed to Mr. Carestio for his review and assistance in determining property boundaries.

D. *Trash Collection* – Trustee Allen contacted several municipalities within Livingston County and Wyoming County for assistance. Two companies were mentioned as to trash pick-up services available to the Village. Trustee Allen mentioned discussion with Village Attorney for further guidance and possibly placing a bid request to see costs to the taxpayer.

E. *Christmas in Nunda* – Laura Green requested to speak on behalf of the Christmas in Nunda Committee. Mayor Cox agreed. Laura brought to light that there was a balance remaining from last year and that she had been told that this balance was unavailable and now a part of the Village of Nunda's Fund Balance. Laura stated that there was \$ 800.00 raised in good faith and that it was unfair that this money was not available to the Christmas in Nunda Program. Clerk-Treasurer Wood asked to read a prepared statement, Mayor Cox agreed;

Last year when I took over the position of Clerk-Treasurer I did voice my concern for the whole Christmas in Nunda Program. Part of the concern was the amount of work the program placed on the

Clerk-Treasurer's Office and the other part dealing with the emphasis on revenue and expenditure processing. I believed this process was something we probably should not be doing. I had come into the Clerk-Treasurer's Office with this program already started last year.

I also did say at that time I would put additional research into what the Village's responsibilities are in relation with the Christmas in Nunda Program.

Over the course of this calendar year, I have had a few visits from Christmas in Nunda representatives and one visit and two telephone calls from a trustee inquiring about numbers associated with this program.

The main question asked by the Christmas in Nunda representative was, how much money do we have left in our account? This question came to me after the end of the fiscal year closeout.

My answer was that there are no monies left or available from last year to this year in this program. Any remaining balance, if there were any, became part of the Fund Balance for the Village.

Another question to me was that in the past we (Christmas in Nunda) had monies left over available, how come not this year?

My answer again was that there are no monies left or available from last year to this year in this program. Any remaining balance, if there were any, became part of the Fund Balance for the Village.

I was informed by the trustee that it was done in the past to provide any funds remaining last year to this year.

My answer was - that is not how it is done and any remaining revenue becomes part of the Village's Fund Balance.

I was told I should contact the previous Clerk-Treasurer, as it was always done this way in the past. I informed the trustee that we did not do this last year and will not do it this year.

Words used in my presence were accusations, theft, ramifications, litigation, suing and directed at me, personally, in the Clerk-Treasurer's Office in relation to the funds for Christmas in Nunda.

I did voice to the trustee inquiring about these funds that I would contact the NY State Comptroller's Office to gain additional information, he agreed I should do that.

The Comptroller's Rochester Office was contacted with this program being discussed thoroughly. The Comptroller wanted to know why we were doing this in the first place. I explained that this is something that was in place when I arrived last year and that I was uncomfortable with this program. The Comptroller's Office recommended we contact our Village Attorney. While in discussion with the Comptroller's Office they reminded me that the Village is not a bank to deposit funds into from organizations.

Clerk-Treasurer Wood then stated, I did contact the Village Attorney for assistance and guidance in this matter.

Once this statement was read, the Clerk-Treasurer in turn read a letter from the Village Attorney. The letter from the Village Attorney is verbatim as written below;

You have asked me if it appropriate and proper for you as Village Treasurer to receive and pay out money that comes from a group of people who are sponsoring a Christmas event in the Village. I understand that the people constitute a committee which is not part of Village government and which sponsors a "Winter in the Village" put on each December. It is my understanding that as a courtesy, the

Village has been receiving money that was raised from event and paying out bills arising because of the event.

For the reasons set forth below, it is my opinion that it is not proper or appropriate for the Village to engage in this practice.

Section 4-408 of the New York State Village Law provides that the Village Treasurer shall have custody of all money belonging to the Village. The Treasurer is obligated to pay out monies in the Village Treasury only as authorized by sections 5-524 and 5-526 of the Village Law.

Section 5-524 of the Village Law in subdivision 2 provides that the Board of Trustees shall audit all claims against the Village and further provides in subdivision 4 that no claim shall be ordered paid unless such claim is in writing and itemized and approved by an officer or employee who actually gave rise or origin to the claim. Section 5-526 deals with petty cash accounts to be used by an administrative unit or officer of the Village.

The Money that you are asked to handle is not money belonging to the Village. The bills that you are being asked to pay are not claims against the Village. No Village officer or employee acting in his/her capacity engaged in any action giving rise or origin to the claim.

It is therefore my opinion that you as Village Treasurer or any subsequent Treasurer should not engage in this practice. It is my recommendation that the Village Board pass a resolution that this practice will no longer be followed beginning in 2017.

If you, the Mayor, or any the Board members have any questions or concerns, please do not hesitate to contact me.

I have enclosed photocopies of the pertinent statutes.

With kindest regards,

Very truly yours,
John W. Vogel
Attorney at Law

Trustee Morgan did identify himself as the Trustee mentioned in Clerk-Treasurer Wood's statement.

Trustee Morgan stated that there was no intent on words mentioned of any personal attacks against Clerk-Treasurer Wood. Trustee Morgan stated his intention was the perception of the Village in the community in regards to the monies collected by the Christmas in Nunda Committee and turned over to the Village. The monies collected do rightfully belong to this committee and that the Village should not hold them in custody.

Once the Village Attorney's correspondence was read, Trustee Morgan made the following motions;

MOTION was made by the Village Board of Trustees that effective January 1, 2017 the Village will not act as a banking house for non-Village organizations and that the current non-Village organization, Christmas in Nunda, will be made whole once all revenue and expenditures have been addressed. The motion was made by Trustee Morgan, seconded by Trustee Allen. Carried 5-0.

MOTION was made by the Village Board of Trustees that provides any positive monetary balances remaining in the Christmas in Nunda Program be transferred to this organization, once formerly established, by May 31, 2017.

The motion was made by Trustee Morgan, seconded by Trustee Snyder. Carried 5-0.

MOTION was made by the Village Board of Trustees to create a sub-committee to oversee all revenue and expenditures created by the Christmas in Nunda Program.

The motion was made by Trustee Morgan, seconded by Deputy Mayor Amrhein. Carried 5-0.

Other Business

Chief Water Operator Bennett has asked for assistance at the Waste Water Treatment Plant. WWTP Superintendent Hugi will be having surgery and information and a refresher on mandatory monthly testing and reporting procedures are needed to help keep the WWTP running smoothly. Superintendent Hugi's assistant Brian Emke will maintain the WWTP along with Chief Water Operator Bennett while WWTP Superintendent Hugi recovers from surgery.

Communications/Information Items

A. Calendar – November & December 2016

Adjournment

With no further business to be discussed, the motion to adjourn was made by Deputy Mayor Amrhein, seconded by Trustee Morgan at 9:17 PM. Carried 5-0.

Respectfully submitted,

LeRoy J. Wood
Clerk-Treasurer