

## Summary of Discussion with AOS 3-12-21

The Village Fiscal Officer stated that the remaining operating expenses are mostly for Duke Energy and legal services, and are estimated at about \$30,000 per month. These will continue to decrease as village affairs wind up and Duke Energy street lighting accounts are transferred or terminated.

The Village Fiscal Officer stated that that all funds except for the cemetery, maintenance bond (subdivision streets in Amelia Park) and Kroger TIF funds have been unrestricted and transferred to the general fund. This includes the Police District fund since the employee lawsuit has been settled and paid. The Kroger TIF debt (\$230,000) will need to be defeased according to bond counsel, with an escrow account set up to continue future payments until the account is paid in full, since the bond is not callable. The open maintenance bonds associated with the subdivision road construction is being jointly resolved by Amelia legal counsel and the County Prosecutor's Office.

The current anticipated cash balance at conclusion of the dissolution is between \$1.8 and \$2.0 million.

The first quarter of 2021, the Village received approximately \$230,000 from the municipal income tax, local government fund, gas tax, and cable franchise fee payment.

There was discussion about future income tax payments due to delinquent payment of taxes and that RITA needs to determine how those will be handled. Can townships join RITA or could the village assign payments to townships?

The County Auditor will make a determination as to how 2021 inside millage will be distributed after the village is closed out. It will probably be distributed to the townships based on parcel numbers. Legal Counsel for the two townships will provide a joint legal opinion to the County Auditor regarding this.

There was discussion about the disposition of village records. The townships have taken possession of their respective zoning records. The townships would like the remaining records, including mayor's court records, to be kept and administered by the county records center. The county prosecutor has requested an opinion regarding mayor's court records from the OAG.

There will be an April council meeting. Date is yet to be determined.

Regarding the Amelia CIC parcel, Amelia legal counsel is trying to get mutual termination with Palliatech on the lease of the property. The Amelia CIC will meet to approve the transfer of the property to the townships once the lease is terminated. This meeting will likely be directly after an Amelia council meeting. Both Batavia and Pierce's legal counsel will assist if needed with the dissolution of the Amelia CIC and lease termination.

There was further discussion on the status of Duke Energy and the transferring of street lighting accounts. Loretta and Adele have made progress on the SR 125 streetlights with the new Government & Community Relations Manager at Duke. Adele offered to virtually introduce Bill Gilpin to him in order to progress the transferring of the ODOT traffic signals from the Amelia account. Adele, Loretta and Debbie Schwey also stated that they believed all the cemetery and park accounts had been transferred, but that they would follow-up again with Duke Energy to confirm.

The next update meeting was scheduled for April 30.

At the State Auditor meeting held on April 6, 2020, several items were discussed. This is a brief summary of what was discussed.

First, the State Auditor repeated their position that they are “Facilitators” for the process, the orderly dissolution of the Village of Amelia. This process should involve the Village and the two Townships. The Auditor’s office is also responsible for performing the final audit of the Village financial records and the dissolution will not be final until the final audit is completed.

Second, the Auditor admitted that their legal interpretation is somewhat different from the view of Batavia, Pierce and Amelia. However, they have been involved in all of the village dissolutions in Ohio. None of them have been as complex as Amelia, but they have seen many issues, and been in court on many occasions dealing with village dissolutions.

While the Auditor’s office states they are merely facilitators in the process, since they must sign off on the final audit, their legal interpretation is provided on most matters and the Townships are concerned that if they do not follow such guidance and interpretation, there is a risk of the dissolution process dragging on for many more months, plus the risk of having certain decisions not approved in the final audit of Amelia. In addition, this could jeopardize the audits of both Townships.

The Auditor believes that the Village Council of Amelia should be participating in the actions to carry out the dissolution. This includes: ending the income tax; using Village assets, including real estate, to pay off Village debts; and other items spelled out in the statute – ORC 703.21. That statute says, within its 14 paragraphs, that the Village has the power, during the dissolution process time, to “Settle claims, dispose of property, and levy and collect taxes to pay existing or accrued liabilities of the Village.” Thus, the Auditor has concluded that the Village should have been a party to the Agreement which the two Townships approved within the 60 day window as required by the same statute.

The Auditor believes, at this point, that the “Village” is represented by the old elected officials, not the newly elected ones. This is based on their experience with dealing with numerous dissolutions. In addition, they rely on an Ohio statute, which is often applied to boards appointed by one government official, and approved by another government body. The statute is RC 3.01, commonly called the “Holdover” statute. This statute says that an official leaving office will remain in office, even after his or her term is up, until the replacement officer is “elected...and qualified.” The Auditor further has concluded that the new Amelia officials cannot be “qualified” since the Village does not exist. The Auditor also concludes that the “Old” officials remain in their office until the final audit is complete and the dissolution is finished. There are many cases interpreting this statute as it comes up frequently with state boards and sometimes local council members. This statute, plus this case law, causes the Auditor to conclude that the old officials stay in office until the process is complete.

The Income Tax ending date has NOT been determined by the Auditor. Their opinion is that this has to be decided by the Village Council, that only the Village Council can terminate the income tax. We heard this theory for the first time last week, and it has not yet been analyzed by the legal counsel representing the Village or the Townships. When the Village Council convenes to meet, how will they know what date to pick to end the tax? State law indicates that the income tax should not end until all debts and other

obligations have been paid or provided for. Again, the Auditor is working on several options to end the tax, providing for funds to pay off all Village debts, but the Auditor's office has stated that Council must determine which option to undertake. Several claims were filed within the "window" established by both Townships (Before March 1) but at least one individual has filed a new claim, called a Taxpayers Claim, just two weeks ago. All current, pending and potential liabilities must be considered before the final audit can be completed. We are in need of written guidance from the Auditor so we can have confirmation of advice which we have all heard over this four month process.

The State Auditor has not yet confirmed that the two Townships can sell off the real estate which is not needed by either Township, and use the sale proceeds to pay off the Village debt. We have been operating on this assumption the entire four month period, but the Auditor has caused a halt to carrying out that plan since the Auditor feels that the Village should have been part of the "60 day" agreement which was agreed upon. If the real estate passes to the two Townships as if there were no agreement, then the property belongs to them outright. Can they sell the property and pay off Village debt? Again, the Auditor promised us an answer to this issue. No one ever thought this would be an issue.

How do the Townships split up the other property? The Auditor advises that it should be on a 65/35 basis, and the Auditor said it would be fine to split it up as we see fit, as long as the totals are approximately 65/35.

What if the "old" Village Council refuses to pass the several ordinances needed to conclude the dissolution? The Auditor offers no answer to this question. The Village is checking its charter to determine how many Council Members are needed for a quorum. A related issue is the safety factor of a public meeting. Many of the participants in the Auditor meetings believe that the public will want to be present at such meeting, or meetings. How they can be accommodated under the safety rules imposed due to COVID-19 in the State of Ohio?

What happens to the funds in the TIF accounts of the Village? The Kroger TIF funds are needed to pay down Village debt. There are currently no Premier TIF service payment revenues coming into the Village. Certain legal technicalities concerning the Premier TIF Ordinance and the ability to file the tax-exemption papers for the Premier TIF are being reviewed. There are many unanswered questions concerning Pierce's ability to create a Township TIF to replace the Amelia Premier TIF. It is clear that Pierce can NOT simply replace it exactly for its original purposes or to pay off the Amelia debt. It is probably not legal to create a new TIF to pay for improvements which are already constructed. Pierce can replace it with a new TIF which provides other public benefits, but that depends on when Pierce could create its own TIF. Can it do so during the dissolution process? This is not known. There is no statute on point here.

This is where things stand as of this date, April 8, 2020.

#### Summary of Discussion 4-20-20:

The AOS requested several documents from the Village of Amelia regarding Ordinances related to local taxes, as well as any contracts or agreements associated with the Premier project's public infrastructure improvements (road and utility work) and the infrastructure completion.

Amelia was asked if there were outstanding expenditures or obligations associated with the Kroger TIF.

The Village reviewed the status of any current or new claims and any agreements that may be related to these claims (i.e. community electronic sign). Also discussed were any anticipated changes in cash balances.

Batavia Township confirmed that they have acted to escrow funds to cover the debt for the maintenance facility at Burnham Woods.

The Village was directed to provide a financial plan to address any known debts and liabilities with estimates and a timeline for the termination of the income tax and other revenue sources. The current economic downturn will affect tax revenue collections. It was clearly stated that the "village council must approve the plan to pay down debts." This will provide the fiscal officer the documentation needed to proceed and comply with the final audit.

Additionally, it was reiterated during the meeting that the AOS has determined that the two Townships cannot use proceeds from the sale of real or personal property to pay down the debts of the Village.

The AOS is to verify whether certain street funds remain restricted for these purposes. A written list of funds determined to be unrestricted was also requested by the Village and Township representatives.

The Village attorney reported that the Village Council members were all contacted and are willing to convene. They are considering technology needed for a virtual meeting if a traditional meeting is not possible/practical in the near term.

The Townships are preparing estimated values of personal property and will collaborate to identify assets necessary to provide township services and those that may be deemed obsolete or no longer necessary. These may be sold or transferred to eligible governments or sold using an approved public auction site such as gov.deals. Each Township will pass Resolutions necessary to follow proper procedures and document the disposal of public property in accordance with the 65% /35% split. (This discussion did not include real estate.)

Both Townships were invited to provide input on the development of agenda items necessary for consideration and action by the Village of Amelia.

The next meeting was scheduled for Monday, May 11<sup>th</sup> at 8:30am.

## Summary of Discussion 5-11-20

Representatives from the State Auditor's Office, State Attorney General's Office, Village of Amelia, Batavia Township and Pierce Township participated in the conference call.

After introductions, the State Auditor asked for an update on convening Village Council. Village law Director Kathy Ryan chose not to proceed with convening council after discussions with Renee Gerber's attorney, and it was determined after those discussions that the Village would file a declaratory judgement suit asking the Common Pleas Court to determine two items:

- 1) Confirm that the village income tax is valid; and
- 2) Composition of the village council and the mayor (former members and mayor, or November 2019 elected members and mayor)

Due to the declaratory judgement lawsuit planned to be filed, no council meeting will be scheduled at this time.

Kathy Ryan will request of the court to expedite the lawsuit and will try to stipulate the facts to avoid discovery and a trial.

Mary DeGenaro, State Auditor's Office, stated that only the court can make a final determination on who is seated on council and who is the mayor. She reiterated that the State Auditor's Office's role is only to facilitate and follow Ohio law. The State Auditor's Office's interpretation is that council is the body who must vote off the income tax levy. Individuals who are seated on council is not their call.

It was then stated that without any court intervention that the outstanding issues related to the village income tax and payment of outstanding debts would most likely be wrapped up in a couple of months, but any court action will definitely lengthen that. Ms. Ryan stated she would reach out to Ms. Gerber's attorney one more time to discuss the planned declaratory judgement lawsuit.

Bill Gilpin, Village Fiscal Officer, indicated that he paid the quarterly interest payment on May 6 for the 2018 Road Bonds associated with the Premier development. Additionally, on April 24 he paid the Kroger TIF interest.

There have been no new claims submitted per today's meeting date. The only two outstanding claims being considered in financial scenarios to date are the employee lawsuit and the workers' comp claim.

It has been determined that since the council needs to reconvene that the townships can not resolve the employee lawsuit and can not effectively negotiate any settlement, due to the needed approval of the village council.

The village fiscal officer, or any fiscal officer for that matter, can not pre-pay debt without the authority of council in writing. Mr. Gilpin can not issue payment for the outstanding debt until the State gives him permission or the village council, due to the risk of a finding being made in the final audit.

There was some brief discussion about the ESID and that at this point the payments are just a pass through until the transition is complete and then the County Auditor will be responsible for taking over making the payments.

Mr. Gilpin stated that he talked to a representative of the bond holder for the 2018 Road Bonds to confirm the interest payment address and during that discussion the representative stated they were willing to accept pre-payment for the debt even though the bonds are not callable. This information is in agreement with previous conversations Brenda Wehmer has had with the bond holder representatives.

Discussion took place regarding the status of the townships dividing real and personal property. It was reiterated that the real property has already been transferred to either township for those properties still maintaining a public purpose and the other properties have been transferred in joint ownership between the townships per the 65/35 division. Those jointly owned properties are expected to be sold. Fee simple appraisals will be needed to determine market value and it is likely that the vacant properties will be sold first. All the structures still contain numerous personal property items that need to be inventoried and divided or disposed of. In addition to the personal property items in the buildings, the townships are finalizing the list of vehicles and larger pieces of equipment to determine values for dividing between the townships and/or disposal on Gov.deals.

Mr. Gilpin stated that Todd Hart was reimbursed \$100 for re-issued vehicle titles that were needed in order to transfer the vehicles to the townships. Todd Hart's credit card was cancelled in 2019 after the certification. Loretta Rokey, Pierce Township Administrator, stated that there were still 2 outstanding vehicle titles that needed to be submitted to the townships.

Mr. Gilpin also stated that the Hylant Group was able to secure continuing bond and public officials liability insurance for Mr. Hart and Mr. Gilpin through April 30, 2021. The premium cost was \$11,000, which is about \$6,000 less than last year's premium.

Kathy Ryan brought up the Palliatech lease on the Amelia CIC owned property and that the company has gone silent in their communications with her. Per the CIC bylaws, the CIC board has to authorize the transfer of the property to the townships, however the CIC board is made up of 3 members, two of which are members not re-elected in 2019, the mayor and a council member. Because the composition of the CIC board is determined, in part, by who sits in the council and Mayor's seats, no further action can be taken to resolve the CIC matters until there is a determination made regarding the composition of those CIC board seats.

Dave Frey, Batavia Township Law Director, spoke about his and Adele Evans, Batavia Township Administrator, attempts at finding Palliatech's license on-line through the Department of Commerce in order to determine its expiration date and how that relates to the validity of the lease on the property. Bob Hinkle, State Auditor's Office, stated they will assist in providing a good contact at the Department of Commerce to obtain a copy of the license in question.

Final discussion revolved around two financial scenarios provided by the State Auditor's Office on when the income tax could end as enough funds would be collected through all sources of revenue streams and still allow enough funds for ongoing operating expenses. These scenarios assume that most of the revenue and levy funds become unrestricted and would be transferred to the general fund for payment of debts. The first scenario date presented was May 31, 2020 and the second date was June 30, 2020. These scenarios would need to be reviewed by Village Council and then action on the termination of the income tax would need to be taken.

It was determined that the next working group meeting would be June 8.

Summary of Discussion with AOS 7-13-20:

The Village solicitor reported that there was nothing to report regarding actions to be taken by council toward repayment of debt or any other official matters. All action is pending response to the Declaratory Judgement.

Mediation does not have the same effect as a Declaratory Judgement which provides an interpretation of the law.

Current financials indicate that balances may be sufficient to cover all known obligations, however there are outstanding legal issues that represent unknown liabilities.

The Fiscal Officer wants to avoid any findings for recovery until granted proper authorization to make any advance payments, other than what was already in place. Until this is resolved, Amelia will continue to collect revenues and only pay current obligations.

It was confirmed that the respective Township levy rates should be applied to real estate assessed in 2020 and collected in 2021. Only the inside millage may continue to be collected by the Village to satisfy general obligations if needed. The Village is not eligible to receive Police or Fire or EMS levy revenues since they are no longer providing these services and have no purpose for these funds.

Billing for certain utilities, streetlights and traffic signals are being sorted out between the townships and ODOT.

License fee revenues appear to be going to the Townships as new registrations are recorded in either location.

The status of the Premier facility and ESID were briefly discussed.

The Townships reported that an appraisal has been initiated for the vacant properties and Resolutions were passed last week, agreeing to the retention of certain vehicles and equipment for use in each Township and identifying personal property not needed by either Township which will be prepared for internet auction. These Resolutions will be sent to the AOS. There are many more items to be sorted through and disposed of.

The next meetings were scheduled for Monday, September 14<sup>th</sup> at and Friday, October 9<sup>th</sup>, following the October 6<sup>th</sup> pre-trial conference regarding the Declaratory Judgement.

LER 7-14-20

## Summary of Discussion with AOS 9-14-20:

The Village Fiscal Officer confirmed the 2<sup>nd</sup> half of real estate property taxes (TY 2019 payable in 2020) were received. The Fiscal Officer and AOS staff prepared a Summary of Cash Activity by Fund with a fund balance as of August 31, 2020. There currently appears to be sufficient cash on hand to resolve all known debts and liabilities and the final step needed to resolve the Village's debts and liabilities is formal approval from Village council to authorize payment by the fiscal officer.

AOS staff confirmed that the audit for 2018 and 2019 is complete, however staff has not begun the 2020 audit.

AOS discussed the basic steps remaining to conclude the dissolution of the Village. These steps include: 1) the village conducting one or two council meetings to address the following: approval of payment of known debts and liabilities, approve the termination of the Village income tax, approval of the resolution of the employee lawsuit (which could include negotiation authority and any settlement terms; 2) AOS completing the final audit of the Village per ORC 703.21; and 3) any remaining cash to be divided between the two townships per ORC 703.21.

AOS also presented several options the Village has to move forward with concluding the dissolution before the next court date for the DEC lawsuit to determine the composition of council and the mayor in October. Regardless of who occupies the Office of Mayor and the Village Council seats, the village has to approve the payment of the outstanding debts and liabilities. There is no other option in order for the dissolution to be concluded. Three options were presented.

- 1) Per the Amelia Village Charter, approve all needed actions in one or two meetings, where the four uncontested members cast their votes and the contested members (2 seats) abstain from participating;
- 2) Per the procedures outlined in the Amelia Village Charter, the holdover mayor and contested village council members could resign their positions and allow the election winners to takeover those roles. Then Village Council could proceed with a vote to approve all needed actions; or
- 3) Utilize the court's mediation/settlement mechanisms to resolve the mayor and village council dispute amicably between the contesting parties with the knowledge that there are no discretionary decisions left to be made about the dissolution, regardless of who occupies what office/role in the village.

Discussion ensued about different possibilities with the three options presented and other possible ramifications from those actions based on discussions between all the attorneys involved. It is impossible to name all future possible parties regarding the issue before the court, the only way to prevent future possible parties from relitigating the same issues is by having the court make a determination via declaratory judgment action. The mediation/settlement approach lacks the same preclusive effect and would not bring the finality

The status of the Premier facility and ESID were briefly discussed.

It was confirmed to keep our next previously scheduled meeting of Friday, October 9<sup>th</sup>, which will be after the October 6<sup>th</sup> pre-trial conference regarding the Declaratory Judgement.