

**EAST PALESTINE VILLAGE COUNCIL-SPECIAL MEETING AUGUST 20, 2012 6:30p.m. MUNICIPAL BUILDING**

A special meeting was called to discuss oil and gas leases. Mayor Zuch called the meeting to order. Present were Ms. Beagle, Mr. Figley, Mr. Tyger, Mr. Rauch. Mrs. Wisser arrived at 6:45 and Mr. Elzer was absent. Atty Smith stated she wants some direction from council as she has some updated information and opportunity in reference to oil and gas leasing. She met with BP Friday and they platted out the maps and found some additional acreage within the city. Atty Smith stated she still believes the dollar amount associated with each company should stay confidential because if the companies know each other's numbers they are not going to be competitive and offer the highest and best value. She stated that there is a dollar amount associated with the acreage and with the royalties but there is a computation on how those work. If we would get charged for their production costs. Atty Smith said that as a whole the village has been of the mind set that we are doing non-surface leasing, but there is a potential for a higher rate with surface leasing and she is bring this information to council and wants council to tell her what to negotiate. Senate bill 351 recently went into effect providing statutory protections, which is good for the village when you look at surface vs. non-surface. She stated that on a surface lease they can actually put a drilling apparatus on the land, it has to be at least 300 to 500 ft from any structure. She stated that the bulk of the land is park and cemetery that council is looking for a non-surface lease. BP is the primary in discussions right now but there are other companies waiting to see their offer and respond. Mr. Figley stated that Atty Smith sent letters to council stating that she needed direction on oil and gas leasing and the Clark matters. Mr. Figley stated that he has been asking for a report from her for six months and this is the first he has gotten. Atty Smith disagreed stating she was giving the reports in executive session. Mr. Figley said that is why he doesn't like executive session; Atty Smith said she has disclosed offers with dollar amounts in those reports. Mr. Figley stated he has been in contact with Bob Rea at Buckeye Mineral Development and they have given a proposal, which Mr. Figley sent to all of council. Mr. Figley said that Mr. Rea verbally quoted him \$5850 per acre with 20% royalties however he did not put that in writing yet. In writing the offer is \$5000 per acre 18% royalties. Mr. Figley said that after we give them permission they would investigate they will give a proposal in writing with no obligation. Mr. Figley is in favor of giving Mr. Rea permission. Atty Smith said they had spoke with Mr. Rea in the beginning and at that point he wasn't interested. Mr. Figley said that Buckeye Mineral works with both BP and Chesapeake and that Chesapeake had backed off but they want back in now and are very interested. Mr. Rea told him time was of the essence. Mr. Figley stated he wants councils permission to hand this over to the Manager and let him handle it and if and when there is a lease agreement council can look it over and make a decision. Mayor Zuch asked if that was for non-surface leasing and Mr. Figley said yes. Mayor Zuch stated the Manager is the logical one to work on it. Mr. Figley said it's very important to get a basic agreement and get started on this. He said in the surrounding area that Lee Dyke has around 40 acres and Dilworth has leased acreage also and a lot of others that it is all going to end up with one oil company. Mr. Rea also told him that his fee is approximately 2 ½%. Atty Smith stated that if BP comes in with an agreement she wants someone to be able to go over it with as well. Mr. Tyger asked if the 2 ½ % is from the acreage or the royalties and Mr. Figley said it would be from the \$5850 per acre. Atty Smith stated the Buckeye is an intermediary that negotiates leases; She stated she is talking with Shell, BP and Chesapeake. She feels that all of the opportunities should be pursued. Mr. Rauch asked if there could be an agreement by the end of the week and Atty Smith said possibly. Mr. Rauch asked that if along with the motion to have the manager work on this issue if it would be prudent to put a time line with it. Mr. Figley said he's been trying to get something done for six months and now he has this and he is going to make a motion to give it to the Manager and let him run with it and if Mr. Rauch doesn't want to do it, fine. Mr. Rauch said his question was if there should be a timeline so it doesn't go on for months. Mayor Zuch said she believed it was coming to a point where the village wouldn't have to wait. Mr. Figley made a motion to have the Manager work on the oil and gas leases, giving him the agreement from Buckeye and to look over what Atty Smith has and have something for council in a few days. Seconded by Mrs. Wisser. All in favor, motion carried. Ms. Beagle asked what direction that motion gave Atty Smith. Atty Smith said that her understanding is she is going to keep doing what she has been and anything she receives she will bring thru the Manager and vice versa. Ms. Beagle said that should make things less clumsy. Atty Smith stated that in the table of organization in the Charter she goes directly to Council and the Manager is not in between. She stated that herself and the Manager are in the position of not knowing what they can share with others and it is causing uncertainty. Ms. Beagle asked in regards to the Clark situation, if council is or is not in settlement negotiations because she has been working under the notion that they were. Atty Smith stated yes and that is why she needs direction on the matter. She does feel that some aspects need to be in executive session. Ms. Beagle stated the confusion comes when people are talking about payments and what is owed and what council does or doesn't want to pay. She stated that is separate from a negotiation and that her decision-making would be different if they are talking settlement vs. a payment. Atty Smith stated it has all been lumped together and they could go into executive and break it down and then come back out. Ms. Beagle asked if everyone knew the difference between a payment and a settlement. A payment is what is owed to them and a settlement is a negotiation of an amount. Mr. Figley stated he called the meeting to discuss oil and gas leases and was told it would be a good time to discuss other things and in the meantime received a letter from Atty Smith stating she needed direction on the oil & gas issues and the Clark matter. Ms. Beagle said she needs clarification before they move on. She said Atty. Smith is saying we are in settlement negotiations but no one is acting like its settlement negotiations. Mr. Figley said they took a poll about how much to pay. He stated he wanted to pay the severance pay which is around \$ 81,000 and that's all and Ms. Beagle said that is not a settlement. Mr. Figley said the poll was 4 to 2 to pay the severance and nothing else. He said there are 3 issues. Unemployment, the severance, and the PERS pickup. At the next meeting in executive session Mr. Figley said that Atty Smith asked what she was to offer and Mr. Figley stated that he said" how many times do we have to tell you" and he said Atty Smith said "as many times as it takes". They took another poll with the same results. Atty Smith stated that she needed direction from council because she had new information that she wanted to share with council but felt it should be in executive session. Mr. Figley felt she had direction. Atty Smith stated she had new information and didn't know how to share it with them so they had the whole picture. Mr. Figley stated he wanted everyone to understand something and Atty Smith stated that if he waives privilege that she couldn't take it back. Atty Smith they are all working for the same goal and Mr. Figley said he didn't think they were. Ms. Beagle stated she didn't know how they could be because they still don't know what

they are working toward. He stated he was told the unemployment issue would influence other things, which he didn't agree with. The severance, which he has been advised that it has to be paid. The next issue is the PERS pickup. Mr. Figley said that going back over the history of that issue from the beginning, in 2001 when Gary started, and in 2004 he asked for it to be picked up and it was for a few months, in 2007 he wrote a letter to stop it and then withdrew his voluntary suspension and asked for it again. The law director at the time, Brad Allison said there was no problem with giving it to him but it had to be by ordinance and that was never done. And then on May 25 of this year he wrote a letter stating he wanted his PERS pickup. Mr. Figley stated he was going to make a motion to pay the severance and then let him take the next step. Mr. Figley stated that the village has no right to hold the severance from Mr. Clark that is his money. Atty Smith wants to discuss this in executive session, she feels it falls under pending litigation and then they could come back out after and discuss it more. Mr. Figley doesn't want executive session, he stated he wants to pay the severance and be done with it. Atty Smith stated she wants them to have all of the information and even if executive session is only a few minutes for her to explain what information she has and then they come back out she will take whatever direction council gives her. Ms. Beagle stated there has to be separation in terminology as far as settlement and severance. Atty Smith said it was lumped together from the beginning and there was no authority given to the finance director to release that money. Ms. Beagle stated that if it is settlement negotiation then it has to start at \$0, if its severance he gets what he is owed. Mayor Zuch stated that in the beginning she remembered that council didn't want to pay anything. Atty Smith said that by not wanting to pay anything, that is how it got lumped together. Atty Smith stated that by discussing this they were comprising her ability to make it an effective situation, but she said that initially it was \$0 and then Mr. Figley said offer him \$50,000 and she did and that's why the Finance Director had no authorization to release the severance and that is why it is lumped together now. Ms. Beagle asked Atty Smith that if the severance were paid, how would it go on the books. Atty Smith stated that you can pay wages or accumulated time as part of a settlement and it would be characterized to reflect those numbers. Mr. Figley said he believed Atty Smith was wrong. Atty Smith stated that if it were under the global settlement it would reflect that it was attributed to severance and that matter would be resolved. Ms. Beagle stated that if Mr. Figley makes his motion to pay the severance only and everyone agrees then that should be done and then if the Clarks come back for more then that is a new situation. Atty Smith agreed, but stated she would like 3 minutes of executive session to give her new information that she feels obligated to share with council and then if council chooses to go beyond that it is their decision. Atty Smith stated that with this information, council may be able to "get all their eggs in one basket" and get a better deal and be completely done. Mr. Figley stated that if council pays anything over the settlement that they are going to have to deal with the village employees. Atty Smith stated that Gary was not a union employee. Mrs. Wisser asked if it is still global or separate now. Atty Smith said it has been global from day 1. Mr. Figley stated that if it has been global, its wrong and if you pay anything over the severance he wanted to know what it would be for. Ms. Beagle stated it would be settlement, and Atty Smith said you might get something in return for that. Ms. Beagle stated it would be him going away. Atty Smith stated the unemployment is charged to the Village dollar for dollar. Mr. Figley asked if she was bringing unemployment into this and Atty Smith said it has been made a part of this. Mr. Figley stated that unemployment is part of this when they are now both retired and getting severance pay. Mayor Zuch wanted the Finance Director to clarify the exact dollar amount before a motion is made. Mr. Wisser asked if they could go into executive session for 3 minutes and then come back out. Mr. Figley said he was not doing that. Traci Thompson stated the amount for severance is \$81,012.05. Ms. Beagle stated that if they are paying the severance she wanted to make sure that settlement negotiations are abandoned. Mr. Figley stated that Atty Smith is interfering and trying to run the meeting and Atty Smith stated all she was trying to do is give a legal opinion. Mr. Figley made a motion to pay Gary Clark is severance in the amount of \$81,012.05 and cease any settlement negotiations until council elects to do so, seconded by Ms. Beagle. All in favor, motion carried. Mr. Rauch made a motion to adjourn, seconded by Mr. Tyger. Meeting adjourned.

**VISITORS:** Dan Scott, Shirley Glavan, Terry Keresty, Brock Jurjavic, Denny Griffith, Laura Beight, Teri Rauch, Brent Wilson, Shirley & Bill Wilson, Katie Schwendemmen, Rich Bolon, Park Grim, Israel & Heather Loyd, Graci Fitzsimmons, Pam Figley, Ben & Abel Figley, Roberta Brittain, John Jurjavic, Rube Ginder and Traci Thompson.

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Mayor Margo Zuch

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Misti J. Martin Clerk