

Bellbrook-Sugarcreek Merger Commission Meeting Minutes
June 3, 2009

1. The meeting was called to order at 7:01 PM by Joan Gallagher Co-Chairperson of the Merger Commission.
2. Mrs. Gallagher called the roll with Commission Members Linda Hummel, Tom Frantz, Sam Staley, Mike Shank, Joan Gallagher, Donna Hellmann, Charlie Schwegman, Ron Folkerth, and Howard Ackerman present. Bill Berry was not present during roll call, but arrived later in the meeting.
3. Others present were Harold Rodgers, Barbara Burson, Jim Martin, Jeremy Kelly, Mark Schlagheck, Bill Schieman and Marvin Moeller.
4. Mrs. Gallagher welcomed new commission member Dr. Sam Staley who was appointed and accepted the appointment by the City of Bellbrook.
5. Minutes from April 1st meeting had been discussed at last meeting with Ms. Hummel questioning a line relative to what Dr. Staley said concerning volunteers in the Fire Department. Mrs. Gallagher went back and listened to tape. Ms. Hummel was correct. Mrs. Gallagher deleted the line that was questioned and sent everyone a corrected copy. Ms. Hummel moved that the minutes be approved and Mike Shank seconded the motion. The motion passed with Dr. Staley abstaining since he wasn't on the Commission at the time of the meeting. Donna Hellmann made a motion to approve minutes from the May 6th meeting. Ron Folkerth seconded. The motion passed with Tom Frantz and Sam Staley abstaining since they were not at the meeting.
6. Mr. Shank and Mr. Berry attended the City meeting. The two items they had on the agenda was the extension of time for the Merger Study Commission and the appointment of a replacement Merger Study Commissioner. The outcome was that the council unanimously passed the extension. There were a few reservations on the part of the Mayor and Deputy Mayor, but it passed. The appointment of Dr. Sam Staley also passed unanimously.
There was a discussion about the reservations of the Mayor and Deputy Mayor. Mr. Shank explained that they may not be in favor of the merger, but that as elected officials they were following the will of the people who voted for the Merger Study. Mr. Berry added that they were concerned about the cost of doing the study and budgeting for the cost.
Mrs. Gallagher attended a special Township meeting. She was able to speak in favor of the extension of the Merger Study and why it is needed. The Township Trustees were also concerned about the expense, however all three trustees voted for extending the Commission's time for the Merger Study. Mrs. Gallagher went on say that Jeremy Kelly summarized everything in an article in the Neighbors section of the Dayton Daily News in a very nice way that kept the public informed.
7. Mrs. Gallagher e-mailed everyone the Mercer agreement for the Merger Study report along with the legal review from Dan Brown, who ran for a City seat on the Merger Study Commission. Although Mr Brown did not get elected, he offered to volunteer for the Merger Study Commission as counsel. Mr Tiffany e-mailed Mr. Brown's suggestions to Mercer who concurred with them.
8. Mrs. Gallagher suggested having a discussion about the agreement so that it could be signed by the Co-Chairs and move ahead with collection of data for the study. Mr. Staley asked for clarification since he was not part of the deliberations. In talking about moving forward with Phase 1 of the proposal, he questioned the agreement referring to the attachment of appendixes

A, B, C, & D. Mr. Shank and Mrs. Gallagher both agreed that they are the studies to be done. Mr. Shank also mentioned that one was a letter of clarification.

Mr. Schwegman asked when day one of the contract becomes effective after the Co-Chairs sign. Mrs. Gallagher stated that the original date was May 25th, but asked Mr. Schlagheck what date should be used. He stated that it can be changed to any date that the Commission decides to start the work.

Mrs. Gallagher stated that the changes have been made from the legal review and asked if anyone has comments about the service agreement. Mr. Schieman stated that he read the service agreement and in section three-compensation-paragraph B, Mercer sends an invoice out and gets paid. He stated that this approach is good for consultants, but he recommended not doing business like this. Instead he suggested to agree to pay their expenses, not incrementally, but once the report has been accepted. He stated that that is what consultant work is. Bringing the work to the customer, having a dialog, and reaching the point where the report is accepted. He read section three-paragraph B that the report is being paid for as it goes. That could include intellectual hours the Mercer staff puts into the report.

Ms. Hummel questioned why this is being brought up now and that unless this is a huge issue among other Commissioners, there is a need to move forward. Mr. Schieman said that since the service agreement is a legal document, this is the first time the public has seen the clauses regarding compensation. He recommended that the invoice be payable in 45 days of receipt instead of the 30 days stated in the agreement, especially since the meetings are only every month. The other issue is in section 17- Mercer reserves the right to cancel the agreement with 10 days written notice. Mr. Schieman stated that he doesn't think this should be in the agreement. He also mentioned some definitions that need "tightening up" such as reimbursable expenses. He suggested it be limited to travel related cost and eliminate language for things like supplies under related costs. He also stated that with no deadline for the completion of the report and service agreement there is no specific deadline. He suggested adding one. He clarified that he is not pushing for a more complicated agreement; he just wanted to give a general comment with "fresh eyes" based on his experience doing considerable contract work.

Mrs. Gallagher asked if the people who worked on the committee would speak to Mr. Schieman's suggestions/questions. Ms. Hummel stated that there had been no issues at subcommittee meetings where the city and township typically enters these kinds of agreements. Her assumption was that Mr. Tiffany, Mr. Schlagheck, and Mr. Brown approved the agreement. Mrs. Gallagher stated that Mr. Brown was looking at the legal aspects and not the business aspect.

9. Mr. Schwegman raised the question of how the document was modified to say that Mercer has the right to terminate when the original document stated that the Commission had the right to terminate. He questioned who changed it? Mr. Shank stated that Dan Brown is the one who made the changes. Mrs. Gallagher replied that he is the lawyer who did the legal review. Mr. Schwegman stated that Mercer could get to the very end, get paid, and decide to quit. He says that if the Commission terminates, they have to be paid, but if Mercer quits, they can just walk away. He suggested returning it to the original format. Ms. Hummel stated that she is in agreement with that. Mrs. Gallagher interjected that initially there was an enormous amount of work proposed for the study, but it became apparent that it would be very expensive, so the subcommittee decided to put it into phases. After Phase 1, there would be enough data to see if things would proceed. She stated that possibly some of the things that are included by Mercer are because they are not doing the complete study, but just starting with Phase 1. She questioned if Mercer is leery of dealing with the Commission because they are not doing the complete study

but are starting with a partial study. Mr. Shank states he doesn't think they are leery, because the change that was made was suggested by Mr. Brown in his draft.

Mr. Schwegman asked where document originated. Mrs. Gallagher stated that it originated by Mercer. Mr. Frantz also voiced concern that Mercer can cancel at anytime and asked to clarify that it was Mr. Brown who "tweaked it" from a legal stand point. He stated he didn't understand the legal part where it was changed to say that Mercer had the right to terminate.

There was discussion about removing the statement. Mrs. Hellmann asked what the original document stated. Mr. Frantz read from document that "Mercer may terminate this agreement upon 10 days written notice to the commission", so Mercer was added to that part.

10. Mr. Staley asked what exit clause is preferred for the Commission. Mr. Schwegman stated that it was talked about previously and there is an interim report after two months, so if they haven't produced anything, they will have only been paid for one month, so an exit could be made at that point. Mr. Staley stated that looking at the project schedule there are quite a few products and deliverables and, so it should be easy to monitor.

11. Mr. Staley asked about a payment schedule and how approval of invoices and payment can be made. It is agreed that an approval process needs to be adopted. Mrs. Hellmann asked where invoices are sent. Mrs. Gallagher explained that one is sent to the city and one to the township. Mr. Frantz stated that since the contract is with the Commission, it should be verified that the work was accomplished by the Commission, then sent to the City and Township for payment. He voiced concern that if meetings are at the beginning of the month and the invoice doesn't arrive until the second week it's going to be close to the 30 day penalty clause. It is decided that the invoice should be sent to the Township, being addressed to Mrs. Gallagher. She will keep a copy of it.

Mr. Shank stated that he would like to see wording changed to 30 days after Commission approval. Mrs. Hellmann noted that the Township meets the 1st & 3rd week of the month. They could approve payment at this time. Mr. Folkerth suggested changing to 45 days and Mr. Staley agreed.

Mr. Shank stated that he didn't think any of the things that have been discussed should be a problem to get changed. Mrs. Gallagher asked to entertain a motion to make changes and have Co-chairs sign the contract. Items needed to be changed are: 45 days for invoicing, termination, address, and date to be signed. Mr. Staley mentioned that since phase 1 is only 4 months is there really a need for a termination clause.

Ms. Hummel asked about making a motion to approve changes and Mr. Shank stated that a motion is not needed; it just needs to be agreed by Commission and rewritten.

Mrs. Gallagher asks Mrs. Hellmann to make changes to her copy. Section 2B is changed to read "the term of this agreement shall commence on June 15, 2009 and shall continue for one year thereafter unless sooner terminated". Section 3 part B "Undisputed amount shall be due within 45 days after Commissions receipt of invoice". Mr. Shanks voiced his concern of not having "Commissions approval" in contract. Mrs. Hellmann questions the 45 days covering those instances. Mr. Berry suggests that "undisputed" covers that. Mr. Shank stated that he feels that as a Commission everything should be approved regardless if the City or Township is paying. Mrs. Hellmann went on to # 17 section Q "the Commission shall have the right to terminate this agreement with or without cause upon providing Mercer with 10 days written notice. In the event of early termination, Mercer shall be paid for services actually completed to the satisfaction of the Commission prior to such termination and the compensation for services shall be calculated using the rate set forth in the modified proposal."

Section 18-is name and address of the Township building with attention Joan Gallagher on it. Mr. Schwegman presented a motion for co-chairs to sign service agreement with the agreed to changes specified in the official copy and send to Mercer.

Mrs. Gallagher discussed that after Mr. Brown completed the legal review, she sent it to everyone by e-mail. Mr Tiffany then sent it to Mercer with Mrs. Gallagher's approval. Mr. Mercer concurred.

Mr. Schwegman suggests putting a cover letter to identify changes. Mrs. Gallagher takes roll and everyone voted yes except Mr. Shank who voted no.

12. Mrs. Gallagher listed the next meetings as July 8, August 5, and September 2. All are at 7:00 PM.

13. Web page reminder-Denny Bennett has added a link for questions for the Commissioners. Ms. Hummel explained that the public can ask questions and Commission members can review the questions. Mr. Shank suggested that the questions be discussed at meetings and be an open forum for the public. By discussing the questions at meetings, they may be answered in a group, so to avoid several of the same questions. Thus, the public could get an answer. FAQ's will also be a feature to the website at some point, along with a possible advertisement on channel 5.

14 Concluding Remarks from Commissioners:

Mr. Shank noted that the next meeting will be July 8 (second Wednesday) instead of the first Wednesday due to the holiday.

Mrs. Gallagher stated that people in the community have started telling her how they feel about a merger instead of asking questions lately.

Mr. Schwegman recommended establishing a procedure for all invoices, perhaps having the Commission approve all invoices and then passing on to the City/Township. Mrs. Gallagher stated that the invoices have been going through her as "keeper of the records". Mr. Staley suggested adding a procedure to pay invoices to the next agenda and Mr. Shank asked anyone who has ideas to e-mail him as to how the procedure could be done so he has a summary of ideas for the next meeting.

Mr. Ackerman stated that he assumes once the agreement is signed there will be a meeting with Mercer to talk about dates for data collection. Mr. Shank stated the reason they went with Mercer was because of their resources, expertise, and professionalism, and didn't feel there will be issues with when they will begin. The Co-chairs are their point of contact.

Mr. Ackerman mentioned the subject of potential annexed property for the Township. When will a process be initiated to look at this in parallel with Phase 1? Mr. Tiffany was to look into these detailed analyses. Mrs. Gallagher suggested discussing it at the July meeting so numbers can be seen before doing anything. It is agreed that Mr. Tiffany can give a plan at the next meeting. Mrs. Gallagher was concerned about getting diverted at this point. Mr. Ackerman stated that annexation is not a diversion, but one of the issues and the reason that a Merger Study is being done. Mrs. Gallagher will put this on the July 8th agenda.

16. Public Comments:

Mr. Martin made the statement that if people in the community want to know what is going on they should come to the meetings because not everyone has a computer. He also made the comment that he appreciated the fact that at a previous meeting Mr. Staley stood up and stated that he favors mergers. He disagreed however with Mr. Staley's statement that he thought Bellbrook and Sugar creek were a "good fit." He listed a few reasons why he disagreed, including tax bases, the rural land in the township, and salary schedules that are much different.

Mr. Moeller asked who Mercer is going to interview. Mr. Shank said at this point it will be personnel from the two jurisdictions, Police and Fire Chief, also administrative staff, to determine what's involved in doing their jobs. Later there will be a survey of the populace.

17. Mr. Shank moved to adjourn the meeting Mr. Schwegman seconded the motion. The motion was passed unanimously at 8:40 PM.