

**VILLAGE OF CARPENTERSVILLE
BOARD OF TRUSTEES
SPECIAL BOARD MEETING
January 20, 2018**

The special meeting of the Village Board of Trustees was called to order at 1:30 p.m. Those present for roll call were Trustees Burroway, Humpfer, Lawrence, O’Sullivan, Rehberg, and Frost, and President Skillman. Also present were Police Chief Kilbourne, Police Deputy Chief Shaver, Attorney Passman, and Clerk Mastera.

The Pledge of Allegiance was led by President Skillman.

CLOSED SESSION –

Trustee Rehberg motioned to adjourn to Closed Session, seconded by O’Sullivan, to discuss Section 2(c)(1) of Open Meetings Act - The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity.

Vote on Motion:

- 2 – ayes (O’Sullivan and Rehberg)
- 4 – nay (Burroway, Frost, Humpfer, and Lawrence)
- 0 – absent

Motion failed.

The open meeting continued.

NEW BUSINESS

A. Possible Action by Board on the Removal of a Specific Employee or Execution of a Separation Agreement

Trustee Lawrence spoke about what has been going on at Village Hall. She explained that she wanted to see the following:

- Current HR Director’s pay, experience, and any degrees, along with any job posting for that position
- Documentation in regards to certificates or degrees of Department Heads or Village Administrators in Village Hall with the date of when it was obtained
- How many women were terminated (2009 to present)
- How many men that replaced those women who were terminated (2009 to present)
- How many that were replaced that received a severance and what it was (2009 to present)
- Official or unofficial proposals that were submitted by the Village to the firefighters union in regards to current contract negotiations

- From the last 60 days, records of Mr. Rooney's timesheets or reporting, such as when he came into work, left work, hours at lunch or working out. If he had time out of the office, if he utilized vacation or sick time. Anything to do with overall work avoidance.
- Any village employees that are aware of document shredding to contact Village President John Skillman, and an understanding that they will not be retaliated against.
- How many Department Heads were advised to waive bidding, on what items, and out of those, when was Morgan Harbour used?
- Contact our credit card company and have all statements sent from January 2009 to January 2018 for review.
- Halt all seminars and classes unless they receive Village Board approval.
- Halt all lunches and business lunches unless they receive Village Board approval.
- A forensic audit to be done from 2009 to present
- Work to provide a more transparent budget
- Village Board to work together on a closed session ordinance.

Motion to withdraw any separation agreement offers to Mark Rooney and to terminate his employment and his appointment as Village Manager, all effective immediately, by Trustee Lawrence. Trustee Frost seconded the motion.

President Skillman said he would like to entertain a short discussion, with the participation of Village Attorney Passman. Attorney Passman said that last Tuesday the Board had approved a separation agreement with Mark Rooney, with room for the attorneys to work out the details. He said they have worked out most of it, but there was one provision that Mr. Rooney did not accept the Village's effort to compromise on that provision, so at this point they do not have an agreement done.

Per additional questions from Trustee Humpfer, Attorney Passman said the provision had to do with the remedies for breach of the agreement. Attorney Passman said both the Village and Mr. Rooney had agreed to the clause that would prohibit both from disparaging one another, and that the question was regarding what the remedy was for that provision. Attorney Passman said the draft that Village had arrived at stated that if either side was found by a court to have breached the non-disparagement clause, then in the case if Mr. Rooney was found to be liable he would pay back the separation benefits and be responsible for attorneys' fees. He said that likewise if the Village were found by the court to be in breach the Village would pay damages and attorneys' fees. Attorney Passman said they were not accepting of that, and have had no official proposal in lieu of that.

Trustee Humpfer asked Attorney Passman for more details on the history of using a clause such as the one that was being discussed, and how common it was in separation agreements. Trustee Humpfer said he had looked at some separation agreements from the past and had not found that clause in them. He wondered what Holland and Knight's standard practice was. Attorney Passman said he couldn't speak to past separation agreements, as while his firm has been Village Attorney for almost five years, and there have been a few separation agreements during that time, those have been negotiated by the labor employment firm. He said he cannot agree or disagree with Trustee Humpfer at this time on a factual basis. He said Holland and Knight believes it to be a fair protection and also something that can be negotiated.

He also said he was not aware of a lawsuit or outcome that was done over a provision such as this. Trustee Humpfer also discussed how much time Attorney Passman has spent on this separation agreement, to which Attorney Passman said confirmed a lot. Trustee Humpfer said he was surprised that if the Village has spent this much money working toward the separation agreement that they are going to walk away with it and choose termination which will cost even more.

President Skillman and Trustee Humpfer spoke about what Mr. Rooney's goal was, if he wanted his full pay from a termination or to agree to a separation agreement, and they both believe he wants the agreement. Trust Frost stated that he believes the Village has gone over and above to try to get this agreement done. There was debate among the Board about which option would cost the taxpayer more money. President Skillman pointed out that Mr. Rooney is being represented by a consultant, David Limardi.

Attorney Passman reiterated that the Village has not received an official proposal or counterproposal. He said they were able to isolate that the only issue in question is if there is a breach of the non-disparagement covenant, will the Village agree today to the Village and Mr. Rooney what the damages will be, or will it be left to a court in the event of a finding of liability. Additionally, Attorney Passman said likewise will they agree today that attorneys' fees will be due by the guilty party or will that be left to the court. He said that the provision in question provides that it be set today, but that there still is space between the two options.

President Skillman said that Mr. Rooney and his team are not communicating with the Village. He also said that Mr. Rooney cleaned out his office over three weeks ago on his own. He said perhaps they should take a short break and see if there is a way to change the one sentence or find agreement. Trustee Lawrence said there already has been a motion made for termination and the Board should go with that. Trustee Rehberg said he prefers the lower cost option, even if it is at the eleventh and a half hour.

Attorney Passman explained to President Skillman that there is a motion on the floor and that motion is to terminate Manager Rooney. He said if that motion passes, then it is what it is, and if it fails, it doesn't preclude a similar motion at a later time. He also confirmed that the motion has been seconded.

Trustee Frost said he knew the severance agreement as part of Mr. Rooney's contract was signed by a previous Board, and wanted to know if anyone on the Board had read through and understood it. Both Trustee Humpfer and Trustee Rehberg spoke of their involvement and what the intent had been at the time and where they had stood. Trustee Rehberg said there had been a movement to clawback some of the provisions. There was discussion by the Board over what was considered to be a common compensation amount for managers in a severance agreement deal. Trustee Frost said the nine month deal that Mr. Rooney had was a Sweetheart Deal.

Trustee Lawrence asked Attorney Passman if they can sue Mr. Rooney if they can find him of wrongdoing as Village Manager, even if they have terminated him. Attorney Passman said if they were speaking in hypotheticals, he can't foreclose that possibility. Trustee Rehberg said that he believes the goal of when any employee leaves the Village is to come to a mutual agreement.

He discussed with Trustee Frost that he believes this was the intention of the previous Board when they were negotiating the severance agreement part of Mr. Rooney's contract, that there would be a number of different options available. Trustee Lawrence said however that there were many unexpected things she found from the Village Manager. The Board then discussed what the role of the Village Manager is in regards to hiring and firing and contract negotiation, as well as what the Board's role is. Trustee Lawrence said she believes there is a written document for a new firefighter contract with the fire union that the Board has not seen or voted on yet. She said she wanted a vote on the motion on the floor. President Skillman told Trustee Humpfer he had not known that the clause under discussion was not used in previous separation agreements, referring back to Trustee Humpfer's comments earlier in the meeting. He conferred with Attorney Passman.

Trustee Rehberg motioned to table the pending motion to terminate.

Attorney Passman said that he understands that Trustee Rehberg made a motion to table the subsequent motion regarding Manager Rooney. He said that under Robert's Rules of Order and Village Code, there has to be a second for Trustee Rehberg's motion, and if there is a second, there needs to be an immediate vote. He said if the motion passes, then there will be no consideration of the motion to terminate until such a time the motion is brought back from the table.

Trustee O'Sullivan seconded the motion to table the pending motion to terminate.

Vote on Motion:

4 – ayes (Rehberg, O'Sullivan, Humpfer, and Burroway)

2 – nay (Frost and Lawrence)

0 – absent

Motion passed.

Attorney Passman clarified that per parliamentary procedure, the motion to terminate is now on the table and cannot be considered by the body until it is taken from the table. He told the Board they remain convened and are able to discuss the New Business Item.

At 1:58 p.m. President Skillman requested they take a short recess.

At 2:43 p.m. President Skillman reconvened the meeting.

Attorney Passman stated that during the break he was on the phone with the manager's representatives and they have worked out a revised agreement. He said he put copies before the Board members on the dais. He said that the manager's representatives indicated that the manager would accept this agreement. Attorney Passman said several things had been changed relative to the Board's previous discussion. He told President Skillman that at this time if the Board desires, it is possible to entertain a motion to approve the amended agreement.

Motion by Trustee Rehberg to approve the amended agreement as presented to the Board, seconded by Trustee Humpfer.

Trustees Frost and Lawrence requested discussion and explanation of the amended agreement. Attorney Passman said the manager indicated that he would sign an agreement that did not have fixed damages or an automatic attorney fee shift in the provision if there was a breach of non-disparagement. Attorney Passman said he had spoken with President Skillman and clarified to the Board that there still is a covenant regarding non-disparagement which lasts forever, and should there ever be a fight over it, any fees or damages would have to be decided in court and not automatically agreed to by the parties.

Attorney Passman explained again about the motion to terminate which was tabled how it cannot be acted upon until it is brought back from the table. Trustee Lawrence and President Skillman discussed termination versus the separation agreement. President Skillman said he believes the separation agreement is the less expensive route.

Vote on Motion:

4 – ayes (Rehberg, O’Sullivan, Humpfer, and Burroway)

2 – nay (Frost and Lawrence)

0 – absent

Motion passed.

Trustee O’Sullivan wanted clarification that Trustee Lawrence’s motion to terminate is still on the table so that remedy is still available to the Board if Manager Rooney’s signature is not secured on the tentative current agreement. Trustee Lawrence and Trustee Frost said they wanted Manager Rooney to sign it as soon as possible. Trustee O’Sullivan said he believes this should be the last tentative agreement, and if it’s not signed, then they need to act on the motion to terminate. President Skillman said Attorney Passman will work on getting this signed immediately. Trustee Rehberg said the silver lining is that this situation has proven even when there is disagreement on core concepts, the Board can work together. He said he hopes this isn’t played out in the media as something more acrimonious among the Board members than it actually is. He believes it will be an opportunity for the Board to come together on a way to move forward. President Skillman agreed.

ADJOURNMENT

As there was no further business, Trustee Rehberg moved to adjourn the meeting, seconded by Trustee O’Sullivan. Voice vote was unanimous, motion passed.

The meeting adjourned at 2:52 p.m.

Respectfully submitted,

Kelly Mastera

Kelly Mastera, Village Clerk