

TOWN OF BROOKFIELD
SELECTMEN'S MEETING
TOWN HALL, SELECTMEN'S OFFICE

MINUTES OF JANUARY 25, 2005

EXECUTIVE SESSION

Members Present: Chairman Beverly A. Lund
Robert S. Phillips
Joseph J. Klimavich.

Guests: Attorney Michele Randazzo, of Kopelman & Paige

At about 7:10 p.m. Chairman Lund entertained a motion to enter Executive Session to discuss pending litigation; Mr. Phillips so moved, Mr. Klimavich seconded, Mr. Phillips voted aye; Mr. Klimavich voted aye and Ms. Lund voted aye. So voted.

NAME OF LITIGATION (POLICE):

Chairman Lund turned the meeting over to Attorney Randazzo to explain to the Board the ramifications of the negative appeal ruling against Brookfield by the Supreme Judicial Court (SJC) with regard to the suit brought by Plaintiffs (former Police Officers Peter Graupner, Jamie Griffin, and Kenneth Hayes).

Attorney Randazzo said that she did not receive the usual "heads-up" from the SJC that their decision was about to be announced and it surprised her. The decision came in about 5 weeks after the Town's argument when it usually takes about 5 months. She felt that, given the depth of the questioning, the SJC's decision should have contained a more detailed analysis.

Ms. Randazzo said, however, she didn't feel that the Town is in any different position now than it was in 2002. She expects to receive an Amended Order from the Labor Relations Commission and once that is received, the Town has 30 days to comply. Ms. Randazzo felt this should not be a problem as the Town had already complied before the Appeal was filed.

She declined to discuss the civil suit before the Town as that case is being handled by Attorney Nancy Frankel Pelletier, of Robinson Donovan Madden & Barry, P.C. and Ms. Randazzo was not familiar with all aspects of the case.

Mr. Klimavich asked how the civil suit should proceed and be settled, how could impact this case financially? Ms. Randazzo explained that the Plaintiffs cannot "double dip" and damages that may be awarded in the first case will be deducted from any damages that may be awarded in the civil suit.

Attorney Randazzo said it would be a good idea to look through the files to find the letter from the Town's insurance company (MIIA) that explained whether they would pay defense and/or liability. She explained that they don't usually cover both.

Mr. Phillips asked how could the Town terminate the interest accruing. Ms. Randazzo said that the clock for calculating interest charges probably stopped when the Town tendered the back wages.

Ms. Randazzo stated that the Town has two options:

- Do nothing and wait for the enforcement order and then show how we have complied, or
- In response to the enforcement order, go for further discovery and an assessment of damages proceeding (in conjunction with the Civil Rights case). An award in the Civil Rights case (probably by jury trial) would include back wages, lost benefits but would also include other punitive damages.

When Mr. Phillips reiterated that he was concerned because the interest clock may not be stopped, Ms. Randazzo stated that it was bothersome but it would probably not affect the bottom line that much.

Attorney Randazzo recommended the Town take no action until the enforcement order comes. She said that the (approximate) \$35,000 had been tendered but the checks were not cashed and the Town should still have the money. The Administrative Assistant will check on this with the Town Accountant. Ms. Randazzo said that, if the case came to settlement, the Town would offer up the same \$35,000.

Mr. Klimavich said that the current members of Board of Selectmen are managing the case against the Town but are not responsible for what happened originally. He was concerned that an action of the current Board (perhaps by appointing or not appointing the former Selectmen to a Town position) would give the appearance of condoning the actions of the former Board.

Ms. Randazzo said that there was no individual allegation against the three current members of the Board of Selectmen. The current Board is under no obligation to appoint any of these people. If is, however, unnecessary to state that any of these people caused the problems for the Town. It is best to say nothing publicly until after the civil suit is settled.

Ms. Lund asked should the former Board be advised to get their own attorney? Should the Police Chief? Should we advise these former Selectmen on what to say or not say to the press? Ms. Randazzo said that it would probably be a good idea for the individuals to look into their defense for their own benefit and that Ms. Pelletier would be best to advise them. She recommended that everyone continue to keep a low profile with the press and, if questioned, to respond with a comment similar to, "No comment as there is still a pending lawsuit".

The Selectmen agreed to ask Attorney Nancy Frankel Pelletier, of Robinson Donovan Madden & Barry, P.C. to attend a special meeting on Tuesday, February 8th and to also invite Police Chief Ross Ackerman and former Selectmen, Ronald Dackson and Michael Seery.

Ms. Randazzo said that she needed no decision of the Board at this time. The Board had no more questions and all thanked Attorney Randazzo for coming to the meeting.

STURBRIDGE v. BROOKFIELD et al:

Mr. Phillips reported that he had been in telephone and e-mail contact earlier this same day with Carole Lynch, the attorney that is representing Brookfield in the above matter. Mr. Phillips read Attorney Lynch's e-mail that stated that she felt the case against Brookfield was defensible. He had ask Ms. Lynch whether Brookfield should join with the Brimfield, Holland and Wales in filing a counter-suit against Sturbridge. Ms. Lynch responded that the effort to prosecute a counter-suit would be about the same as the effort of defending the suit but she allowed that the decision to file a counter-suit is really a political not a legal matter. .

Mr. Klimavich said that he had no interest in a counter-claim as it would put pressure on the school district and be counter-productive. He wondered what the other towns (Brimfield, Holland, Wales) hoped to accomplish.

Mr. Phillips said that he had asked Attorney Lynch if a counter-suit might be useful to get Sturbridge to the table to bargain and Ms. Lynch had replied that it could be. Chairman Lund said that the counter-suit could also work against us. The other members agreed.

Ms. Lund said that as a result of the information learned by Mr. Phillips, there is probably no need for Ms. Lynch to attend the meeting of the Selectmen next week as previously scheduled. Members agreed and the Administrative Assistant will contact Ms. Lynch and cancel the meeting.

Mr. Phillips reported that Ms. Lynch had told him that Brimfield's movement to Federal Court should "stick" because the other towns did not disagree.

Mr. Phillips moved to notify Holland Selectman Wetlaufer that Brookfield is not going to counter sue; Mr. Klimavich seconded. Ms. Lund voted aye, Mr. Phillips voted aye and Mr. Klimavich voted aye. So voted. Mr. Phillips will notify Mr. Wetlaufer.

Chairman Lund entertained a motion to return to regular session; Mr. Phillips so moved, Mr. Klimavich seconded; so voted.

Respectfully submitted,
Donna L. Neylon
Administrative Assistant

Date Approved by Board: _____

Released 10/30/12