Belvidere Township Park District

Special Meeting – Baltic Mill

April 26, 2021

Minutes

The Belvidere Township Park District Board of Commissioners special meeting to revise existing time sensitive motion or approve new motion regarding potential discipline of executive staff for failure to meet reasonable demands of board of commissioners was called to order at 5:30 p.m. by Twyning. Roll call was taken. Those present were Mary Marquardt, Sam An, Paul McCaffery, Amy Grafton, Jean Twyning and Attorney Mike Scheurich. Other members of staff and public were present.

Prior to the meeting Grafton and Twyning were administered the oath of office.

Commissioner An asked why Muccianti was sitting with the public. Attorney Scheurich explained under park district code that board members retain their seat until a successor is elected and qualified. The election was between Marquardt and Muccianti. County Clerk Bliss certified that Marquardt had won the election. Marquardt has taken the oath of office and she has now assumed that seat.

McCaffery made a motion to appoint Grafton to President Pro Temp for this meeting. Seconded by Commissioner An. A voice vote was called, and motion carried.

McCaffery moved that Muccianti be allowed to speak and make comments in the discussion of executive staff issues. Seconded by Commissioner An. A roll call vote was taken with McCaffery, Commissioner An, Twyning and Grafton voting yes. Marquardt voted no. Motion carried.

Muccianti stated he was directed by the Park Board on 4/13/2021 to meet personally with Pentecost prior to the 4/27/2021 board meeting. Given the time frame, and the inability of the executive director who was on FMLA, Muccianti decided to call a special meeting, and posted it in the Boone County Journal. After which Pentecost texted a picture of the Boone County Journal’s *Public Notices* asking what was going on and insisted on the documents.

Muccianti emailed the documents to Pentecost Friday at 5:00 p.m. Pentecost indicated he would sign the proposal. Pentecost later contacted Muccianti to see if it was acceptable. Muccianti wanted to have counsel prior to the 4/27/2021 meeting. That paperwork has not been signed by Pentecost to the board and is pending from the 4/13/2021 meeting.

The presentation by Muccianti proceeded to discuss the recent salary adjustments to the Belvidere Park District full time staff. Muccianti said he consulted with Attorney’s Mike Scheurich and Jim Pirages regarding Pentecost giving himself a pay increase without board approval. Attorney Scheurich verified the contract would be the contract to be followed.

Muccianti related he was advised by Pentecost he would be giving himself a raise as per park district board policy. Muccianti questioned that and replied that he thought he needed board approval to get that increase, in which Pentecost replied he did not have to get board approval, it was within his authority. Muccianti said okay and contacted Attorney Scheurich for a copy of the contract and the board was required to give authority and Pentecost was not authorized to initiate his own increase.

Grafton asked if Pentecost was given a performance review by the board. Muccianti said Pentecost was given a performance review at the end of 2020. At that time, all raises at the Park District were being postponed due to uncertainty from a revenue standpoint. It was determined at that time raises to full time staff would be given at the start of second quarter. Grafton confirmed with Muccianti that Pentecost had a proper review and was aware all raises were put on hold at the time of his review.

McCaffery reiterated Pentecost only received 4 of the 5 performance reviews in writing. Commissioner An gave his performance review verbally. McCaffery stated Pentecost said he only used the 4 written performance ratings/reviews when figuring his score. McCaffery stated Pentecost gave himself a 4.8% raise.

McCaffery got a letter today from the States Attorney. McCaffery went to the police department with this also and they looked it up and it is a criminal offense. McCaffery stated that whether Pentecost pays this back or not the States Attorney has the right to prosecute if he pays back at a later date or not, because the crime has already been committed.

McCaffery read a letter to Kirkpatrick, Superintendent of HR, from Pentecost to enter the raise with the effective date of 3/23/2021 to be seen on the 4/9/2021 paycheck. Pentecost directed to please retro Debbie Kent to 12/27/2020 due to her retirement. Grafton asked if April 1st was the effective date for all the staff raises, except for the backdated one? McCaffery stated Pentecost backdated the one and put the others into effect 3/23/2021 when they should have been as of April 1st, he is not authorized to spend money like that. Grafton asked if Pentecost’s percentage of increase was discussed at any time with him before it was sent to Kirkpatrick? McCaffery stated, “Never.”

McCaffery read from the employment agreement for Pentecost, Section 4 Paragraph B, last sentence, “fully understands that he has been given no expectations from the language of this subsection that the board will grant him any annual merit increase or bonus during the term of this agreement and that such annual merit increase, or bonus is solely within the boards discretion.” McCaffery said Pentecost told Muccianti he (Pentecost) had the authority to give himself a raise. This contract was drafted by Pentecost and his attorney and approved by the park board.

Discussion was had to allow Pentecost to call in. McCaffery made a motion to not allow Pentecost to call in to speak to these actions. Seconded by Sam An. Motion was withdrawn by McCaffery. No more consideration by the board.

Attorney Scheurich stated Pentecost, according to the contract, would need to be given a reasonable time to seek legal counsel concerning the charges.

McCaffery made a motion to terminate Mark Pentecost as Executive Director for convenience, effective immediately. McCaffery stated the police department informed him that if later the board finds cause if we choose to do so, we can still go after the money. Pentecost is entitled to one month for every year he has worked, with a cap of 6 months plus any benefits, vacation, and accruals that still have to be paid. No second.

Grafton asked everyone to take a moment to review the contract on their Park Board tablet regarding termination for cause and termination for convenience.

Twyning said the Executive Director has not seen these charges. She asked for the evidence from McCaffery. McCaffery repeatedly said he gave it to Muccianti.

Motion on the table by McCaffery is to terminate Pentecost as Executive Director for convenience.

Seconded by Sam An. Roll call vote - McCaffery, Yes; Commissioner An, Yes; Mary Marquardt, No; Jean Twyning, No; Amy Grafton, Yes. Motion carried.

Marquardt asked what Grafton based her vote on. Grafton stated, “Based on the terms of his contract and not being in touch with any board members. There had to be a reason you all put him on corrective action, and I believe the conversation and the topic is being avoided.”

McCaffery added his reason as being Pentecost giving himself a raise in violation of his contract and back dating Debbie Kent’s pay. “It’s illegal, it’s illegal, how many times are we going to be here and let Pentecost run this park district at his own discretion. It took 2 years to follow up on the money at NASR, that was $60K. We don’t need him as a director anymore.”

Attorney Scheurich said the 4/26/2021 agenda calls for potential discipline on issues raised on 4/13/2021. He told the board we cannot discuss new charges of improper action. The board can discuss and act upon on failures to meet demands, made on 4/13/2021 and what discipline you decide to impose. Bringing up a new topics triggers Pentecost to a hearing and counsel. You can at any time terminate for cause or convenience, but at a special meeting, the board is limited to only what is on the agenda. At a regular meeting you cannot take final action unless it is properly on the agenda. At tonight’s 4/26/2021 meeting, the board cannot terminate for convenience since it was called for the potential discipline for failure to meet demands.

McCaffery made a motion to put on the 5/11/2021 agenda the discussion and possible action for termination of the Executive Director convenience.

Twyning made a motion to reconsider their earlier motion for termination for convenience since it was not on the agenda from the advice from Attorney Scheurich. McCaffery seconded. Sam An didn’t understand why they had to change this. Attorney Scheurich advised the Illinois Open Meeting Act limits action to what is on the agenda. A Special Meeting is further limited to the topics on the agenda. On the 4/26/2021 agenda is potential discipline. This then triggers Pentecost’s right to a hearing and defense.

Twyning made the motion to retract the previous motion for discussion and possible action for termination of the Executive Director for convenience on the advice of Attorney Scheurich regarding special sessions. Marquardt seconded the vote. Roll call vote - Twyning, Yes; Marquardt, Yes; Commissioner An, No; McCaffery, Abstain; Grafton, Yes. Motion Carried.

Grafton asked if there was any other unfinished business regarding Pentecost’s potential discipline or failure to meet demands.

Muccianti wanted advice regarding the 4/13/2021 motion for his presentation of the performance improvement plan to Pentecost. “After the performance improvement plan was drafted, it was against the contract, and did not include what should be in a performance improvement plan. Would the board consider revising the performance improvement plan? Or is there any need for me to carry out that function tomorrow?”

Muccianti said he has a text message from Pentecost agreeing to the performance improvement plan, but it does not include anything regarding the unauthorized pay increase.

Grafton reiterated Muccianti’s question asking for advice about Muccianti presenting the performance improvement plan.

Attorney Scheurich said if the direction is to present Pentecost with a performance improvement plan that has already been approved, it is like a personal letter. The park board cannot delegate the ability to negotiable employment or discipline. It has to be a board action.

McCaffery asked if it would be wise to appoint someone to be with Muccianti when Muccianti delivers before the meeting tomorrow?

Commission An said he would like to give the performance improvement plan to Pentecost. Commissioner An said it wasn’t’ fair that Pentecost isn’t even here to defend himself. Commissioner An said it is pure shenanigans.

McCaffery said can you add these other two things on, giving himself a pay raise and back dating Debbie Kent’s pay raise to last year, which was a different pay period. The police department thinks that is stacking, that is a criminal offense.

Twyning said it wasn’t even in that legal letter that went out originally.

Attorney Scheurich said you cannot add the statements back. The board should not act until he (Pentecost) has a chance to explain why he did that. Scheurich advised Pentecost the contract control has language, that in the event of conflict of contract control, the board has to approve raises. But that doesn’t mean that somebody couldn’t have in good faith, have thought that board policy that applies to all employees, applied to him also. There is another provision in the contract that says he be treated like all other employees. As far as pensions spiking, pensions are determined by the year. I don’t believe pensions can spike over 3 months.

McCaffery asked, “Should we put that in the performance and how do we get the money back from Kent that was not authorized. Can we get that back?”

Grafton said all staff salary raises were specially stated to not start until 4/1. So that money was given clearly after the board stated it was to start on 4/1/2021.

Attorney Scheurich said he does not know why it was given and Pentecost isn’t here to explain why. The executive director is the one charged with the lower staff and living within the budget. Pentecost’s decision to give Kent retro pay was within his authority and if the board feels otherwise that would be something to take up with the executive director and not Kent. Repayment of Kent’s retro pay is not an option.

Twyning asked Paul McCaffery how this was discovered and McCaffery said he was told by Muccianti. Muccianti said Pentecost called him, as a courtesy, to say he was going to give himself a raise. Muccianti said he would need more approval for that. Pentecost told him he did not. Muccianti contacted Attorney Scheurich for the contract and noticed that Pentecost was not authorized to give himself a raise. Muccianti later discussed this with the employment attorney, McCaffery and Twyning.

Grafton asked who has given Pentecost his raise over the past 4 years. Twyning said this was done by the board. Grafton said then he should not be authorized to give himself a raise since he was given the raise by the board the past 4 years.

Commissioner An, Jean Twyning and former Commissioner Muccianti agreed to meet with Pentecost to deliver the performance improvement plan.

Muccianti asked Marquardt when she was sworn in. She answered, today 4/26/2021 at 1:43pm at the courthouse. Muccianti asked about the agenda as official approved for the 4/27/2021 meeting. Debbie Kent sent a rough draft on Friday 4/23/2021 but was unavailable to make changes prior to publication.

Attorney Scheurich said he is not aware of anything in the open meetings act that an agenda needs to be approved by the board president. It is assumed agendas will be non-controversial and at the beginning of the meeting you can change the order of the agenda. But you cannot take effective action. You can talk about bond issues, land issues, you can do anything you want but you can’t take legally effective action, board action, or termination action unless it is on the agenda.

McCaffery made a motion to have it put on the agenda at the May 11, 2021 board meeting for discussion and possible action for termination of the Executive Director for convenience. Seconded by Sam An. Roll call vote - McCaffery, Yes; Commissioner An, Yes; Marquardt, No; Twyning, No; Grafton, Yes. Motion Carried.

Grafton will be out of town for business for the May 11, 2021 meeting and would like to Zoom in for the meeting. Attorney Scheurich said a remote viewing is permitted.

Twyning asked Muccianti about having the discussion prior to the meeting. Twyning said are you suggesting we start the meeting late? “Yes,” Muccianti replied but he will try to be there by 5pm.

Twyning also asked Muccianti if Pentecost committed to signing and dating the sheet. Muccianti said he was waiting for this meeting. Muccianti had one questions for Attorney Scheurich regarding the performance improvement plan. It still has, Mark Muccianti – President, so should that be changed? Attorney Scheurich said if the date of the document is consistent with the date you were still President, then it does not need to be changed.

There being no further business, the meeting adjourned at 7:06 p.m.

 Submitted by

 Susan Cadie