

VILLAGE OF BROOKLYN HEIGHTS

MINUTES OF A MEETING

March 14, 2017

.....

A special meeting of the Council of the Village of Brooklyn Heights, Ohio was held on March 14, 2017 at 7:30 P.M. with Mayor Michael Procuk presiding.

The Pledge of Allegiance was recited at this time.

Present at roll call:	Councilmen:	Black, Foote, Lahiff, Lasky, Walsh
	Mayor:	Procuk
	Clerk/Treasurer:	Clymer
	Law Director:	Dowling
	Engineer:	Henry
	Police Chief:	Algeri
	Fire Chief:	Stefanko
	Service Director:	Hatgas
	Bldg. Commissioner:	Monaco
	Comm. Service Dir:	Guilfoyle
	Recreation Dir:	Frank

Mayor Procuk said this special meeting was called according to the agenda to discuss the special prosecutors report regarding the conduct of Councilman Lahiff at a council meeting. We can pass business at this meeting and we have a report from our Building Committee Chairman regarding the phone system.

BUILDING COMMITTEE MEETING

Councilman Lasky stated that Cox Communication adjusted the original phone quote and he is in support of this. There will be a savings of \$2,000 per year to the village and we will have all new lines and equipment.

MOTION: Mr. Lasky moved to authorize Mayor Procuk to sign the revised purchase agreement with Cox Communications. Second by Mr. Black Motion carried 5-0

Note: Councilman Foote is Council President Pro Tem

Mr. Dowling asked for a copy of the Prosecutors report. Chief Algeri asked Atty. Patrick DiChiro to address council. Mr. DiChiro was asked by BH Prosecutor Blair Melling to look into the report which was given to him by Chief Algeri.

Mr. DiChiro said there was a brief altercation at a recent meeting. There was some swearing and shoving which could constitute an assault. With that being said there could be charges of an assault under O.R.C. 2903.13 which is a first degree misdemeanor. There could also be charges of disorderly conduct which would be a misdemeanor in the fourth degree. Both charges carry jail sentences and both carry fines. However, there is an O.R.C. that says that council could govern itself with regards to punishment of its own members. This might be the approach council might want to take rather than taking it to Parma Court. The benefit is that we control what happens....in court you have no control. In Parma Court crimes of violence are not eligible for diversion programs. Mr. DiChiro wanted to give council options to remedy this case.

O.R.C. 731.45: The legislative authority of a municipal corporation shall determine its own rules and keep a journal of its proceedings. It may punish or expel any member for disorderly conduct or violation of its rules, and declare his seat vacant for absence without valid excuse, where such absence has continued for two months. No expulsion shall take place without the concurrence of two thirds of all the members elected, and until the delinquent member has been notified of the charge against him and has had an opportunity to be heard.

VILLAGE OF BROOKLYN HEIGHTS

MINUTES OF A MEETING

March 14, 2017

.....

Mr. DiChiro suggests punishment by a public admission and apology along with an anger management program in lieu of prosecution.

Mr. Foote asked if there is anything mandated or if we handle this internally do we have a free hand.

Mr. DiChiro said they would run the punishment by him so he could gauge the fact of not prosecuting and he would ask Mr. Walsh to sign a waiver.

Mr. Foote said they are trapped in that room for long hours making decisions that affect their friends, relatives and neighbors and Mr. Lahiff lost his cool and has apologized....at least to all of them. He continued that Mr. Lahiff is repentant about the whole thing and wishes he could do it over and realizes he made a mistake.

Mr. DiChiro said he is sensitive to all of this, but if he were to walk up to Mr. Foote and push him to the ground Mr. Foote could have Chief Algeri arrest him on the spot.

Mr. Foote said no one was shoved to the ground and Mr. DiChiro said that as he understands it, Mr. Black restrained him (Mr. Lahiff) from doing any further...

Mr. Lahiff asked for the definition of "assault" and Mr. DiChiro responded "cause or attempt to cause physical harm or serious physical harm to anyone". Mr. Lahiff asked how they could do an investigation without talking to him and Mr. DiChiro responded that he doesn't have to talk to him because he (Mr. Lahiff) has the right to remain silent. He said he could get him on disorderly conduct which carries a fine of \$250 and 30 days and it is easier to prosecute than assault.

Mr. Foote said we do have the option of this not going to Parma Court and Mr. DiChiro responded they do. It would be a public apology and some sort of assessment that will cover you and that it won't happen again because if it does then there is a liability on our behalf for letting it happen again.

Mr. Lasky asked how this escalated to this point if Mr. Walsh, in his statement, said he did not want to pursue charges against Mr. Lahiff. Mr. DiChiro said he was asked to be the special prosecutor which is not uncommon in domestic violence calls where the victim says they do not want to press charges. Once the police are called and a report is filed, the state or in this case the city, can pick up the charges. He said there was an admission of a shoving and Mr. Lahiff stated that there was no shoving.

Mr. Dowling asked Chief Algeri how this would be handled if it were employees. Chief Algeri said it would fall under the Workplace Violence section of our employee manual which is why he had the prosecutor take a look at it. He said that section 7.08 of the personnel policies deals with workplace violence and section 8.03 deals with possible penalties for workplace violence. What concerned Chief Algeri is that if this had happened in the Service Department and he was charged by his supervisor and was given a suspension of more than three days and it worked its way up, he could appeal that suspension to council and they would rule on that. He wanted to make sure it was handled properly to avoid any liability or any finger-pointing if a regular employee has any problems that are similar.

Mr. DiChiro said there was a statement of admission of contact from Mr. Lahiff. Mr. Lahiff asked if "contact" is "assault" and Mr. DiChiro said yes – you don't have the right to put your hands on anyone. Mr. Lahiff asked if Councilman Black would be charged for restraining him and Mr. DiChiro said no, it wasn't done with the intent to cause him physical harm.

Mr. Foote said he would like to see this handled internally without going to Parma Court. Mr. DiChiro said a public apology and an anger management session could be done. He said they may say it was an isolated incident and it would be done. He will get the diversion program from Parma Court.

VILLAGE OF BROOKLYN HEIGHTS

MINUTES OF A MEETING

March 14, 2017

.....

Mr. Lasky said to answer Mr. Foote's question of us handling this on our own the answer is no, we have to go through Mr. DiChiro. If council decides to go with Mr. DiChiro's recommendations then he would have Mr. Walsh sign a waiver that he does not want to prosecute. His job is to protect the village and council and to say that we do not condone this behavior.

Mr. Dowling told council there are a couple of things here:

1. This is not person vs. person. This is the State of Ohio vs. someone. The victim does not get to decide whether to prosecute or not. The State of Ohio decides and Mr. DiChiro is giving council a reasonable alternative to criminal prosecution.
2. He is concerned about the handling of other employees versus a council member.

Mr. Lasky interpreted Chief Algeri as saying that the Department Head could suspend an employee for up to three days and the employee could appeal to council. Chief Algeri clarified saying the employee could be terminated for discipline of three days or greater and there is an appeal process with the last step being an appeal to council and council would hold a hearing which they have done in the past.

Mr. Foote asked if it were two employees, would criminal charges be filed and Chief Algeri said possibly. Chief Algeri said the Personnel Policies defines workplace violence and there are group 1, 2 & 3 offenses with group 3 being the highest.

Mr. Lasky asked Mr. DiChiro how he happens to be involved in this situation and Mr. DiChiro responded that our prosecutor, Blair Melling, asked him to take a look at the case as a special prosecutor. He said he would do the same thing if this happened in Seven Hills because he is friends with all their councilmen and he deals with them on a daily basis. When you feel there is a conflict of interest as Mr. Melling did, you go outside and pick another prosecutor who has taken the oath to enforce the constitution.

Mayor ProcuK reminded council (those who were around at the time) of the hearing of Rich Kovacs and that as President of Council, he had to preside over the hearing because Mayor Tonne said he had a conflict of interest. Also, there was an assault in the Service Department and the employee was sent for anger management.

He said that he was in the room at the time of this incident and that Mr. Lahiff came to speak with him the next morning and was told that at the very least there should be a report made and that he was turning it all over to Mr. Dowling. He stated that he has remained out of it since then. He was asked for a statement and said he would give a statement if he was called as a witness.

Mr. Dowling said that Chief Algeri investigated this as he would any other case and it was given to the prosecutor. To avoid the appearance of a conflict of interest it was sent to Mr. DiChiro to handle. Mayor ProcuK asked if this should go into executive session to decide what to do and Mr. Dowling stated because it is an elected official it is done on open floor. .

Mr. Lahiff said that he wanted to go on record saying that whatever council decides is fine with him. He will do whatever they want him to do.

Mr. Foote feels that Mr. DiChiro has given them a reasonable alternative, if Mr. Walsh is comfortable signing a waiver of prosecution and Mr. Lahiff agrees to attend an anger management session then the case would be closed and they could move on.

MOTION: Mr. Foote moves that following the recommendation of Special Prosecutor Patrick DiChiro, we proceed with this matter by allowing Councilman Lahiff to write a letter of apology and pending the signed waiver from Councilman Walsh and subsequent attendance at an anger management session to bring this to a close.

VILLAGE OF BROOKLYN HEIGHTS

MINUTES OF A MEETING

March 14, 2017

.....

Second by Mr. Black Motion carried 4-0 with 1 abstention (Lahiff)

Mr. DiChiro will get a potential program to Mr. Dowling and he will prepare a waiver of prosecution for Mr. Walsh and get that to Mr. Dowling also.

There being no further business to come before the council, it was moved by Mr. Lahiff, seconded by Mr. Walsh that the meeting be adjourned.

Yeas: All

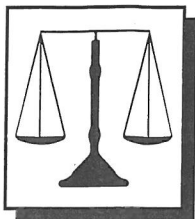
Meeting adjourned.



Mayor



Clerk/Treasurer



PATRICK DiCHIRO

Attorney At Law

4141 Rockside Road
Suite 230
Seven Hills, Ohio 44131
216.642.0424
Fax: 216.642.5355

TO: BLAIR MELLING, PROSECUTOR OF BROOKLYN HEIGHTS
FROM: PATRICK DICHIRO, SPECIAL PROSECUTOR
DATE: 03-01-2017
RE: INCIDENT #2170100036

Dear Prosecutor Melling:

Thank you for referring the above report to my attention. At your request, I have reviewed the above mentioned incident report, the supplemental report, and written statements of the involved parties.

Based upon my review of the above, I have concluded that an assault was committed by Thomas Lahiff against the victim, Matthew Walsh. Both men are Councilmen for the Village of Brooklyn Heights, and the incident occurred at a Council meeting. Mr. Lahiff's actions were so profound that Councilman John Black came from the other side of the conference table and restrained Mr. Lahiff in order to prevent further assault on Mr. Walsh.

Mr. Walsh has clearly indicated in his statement that he does not want to pursue charges against Mr. Lahiff, a fellow member of the Village Council. The victim's signature on the complaint is not mandatory. The investigating officer (Chief Algeri) can execute the complaint. Further, no witnesses have voluntarily submitted written statements regarding this incident, although each could be compelled to testify, through issuance of a subpoena, if this matter is charged and were to proceed to trial. In that event, I am of the opinion that sufficient evidence would exist to convict Mr. Lahiff of assault, a violation of O.R.C. 2903.13, a misdemeanor of the first degree.

The reluctance of the victim to proceed to prosecution, and/or the reluctance of other witnesses to go "on-record" with written statements is something to be considered.

Mr. Lahiff, by his own admission, acted inappropriately in violation of the law. However, the witnesses and victim may believe that pursuing a criminal prosecution would not be in the best interest of the Village.

Council may instead choose to police themselves, and invoke sanctions against and/or censure Mr. Lahiff under their Council Rules, Village Charter, administrative rules or the Ohio Revised Code (see ORC #731.45, providing for the punishment or expulsion of any Council Member for disorderly conduct). Perhaps a public admission and apology along with an anger management program would suffice in lieu of prosecution.

In either event, this inappropriate conduct cannot and should not go unchecked. To do nothing would open the door for future inappropriate outburst or physically intimidating behavior. All people, and especially an elected member of Council, must be compelled to express their views without physical altercation or the threat of violence. Mr. Lahiff must be made to understand that despite his colleagues reluctance to offer testimony against one of their own, his behavior was inappropriate and in violation of the law.

I am of the opinion that sufficient evidence exists to charge, try and convict Thomas Lahiff for misdemeanor assault.

Alternatively, Council could proceed to seek sanctions against Thomas Lahiff and/or subject to him to censure for his "loss of his control" while performing his public duty. I strongly would urge that Mr. Lahiff be required to complete an anger management program and perhaps also sensitivity training, both of which would be beneficial to Mr. Lahiff, before being permitted to be fully restored to Council-at-Large status. If this course is taken, Mr. Walsh should waive prosecution in writing.

If you have any questions, please feel free to contact me. Furthermore, please advise me if I am to Act as special Prosecutor in the event charges are filed.

Very truly yours,



Patrick DiChiro
ASSISTANT DIRECTOR OF LAW/PROSECUTOR
PD/mx