

CITY OF DELAFIELD COMMON COUNCIL MINUTES

CALL COMMON COUNCIL MEETING TO ORDER

Mayor Schuman called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL

Present

Absent

Mayor Phil Schuman
Jeff Krickhahn, Ald.
Beth Leonard, Ald.
Erv Sadowski, Ald.
Michele DeYoe, Ald.
Lynn Morrison, Ald.
Ron Miskelley, Ald.
Marilyn Czubkowski, City Administrator

Gerald Mac Dougall, Ald.

- 1. APPROVE MINUTES OF DECEMBER 3, 2007 COMMON COUNCIL MEETING

E. SADOWSKI MOTIONED TO APPROVE THE MINUTES OF THE DECEMBER 3, 2007 MEETING. M. DE YOE SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

- 2. CITIZEN'S COMMENTS FOR ITEMS NOT ON THE AGENDA

No citizens wished to comment.

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No citizens wished to comment.

R. MISKELLEY MOTIONED TO CLOSE CITIZEN'S COMMENTS. M. DE YOE SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

- 3. ADJOURN INTO CLOSED SESSION PER SECTION 19.85(1)(G), WIS. STATS., TO CONFER WITH LEGAL COUNSEL WHO IS RENDERING ORAL OR WRITTEN ADVICE CONCERNING STRATEGY TO BE ADOPTED BY THE BODY WITH REGARD TO LITIGATION IN WHICH IT IS OR IS LIKELY TO BECOME INVOLVED (CITY ADMINISTRATOR)

CITY OF DELAFIELD COMMON COUNCIL MINUTES

L. MORRISON MOTIONED TO ADJOURN INTO CLOSED SESSION PER SECTION 19.85(1)(G), WIS. STATS., TO CONFER WITH LEGAL COUNSEL WHO IS RENDERING ORAL OR WRITTEN ADVICE CONCERNING STRATEGY TO BE ADOPTED BY THE BODY WITH REGARD TO LITIGATION IN WHICH IT IS OR IS LIKELY TO BECOME INVOLVED (CITY ADMINISTRATOR). R. MISKELLEY SECONDED THE MOTION. J. KRICKHAHN STATED THAT HE DID NOT WANT TO MOVE INTO CLOSED SESSION AS HE DID NOT SEE ANYTHING TO DISCUSS AT THIS POINT. MAYOR SCHUMAN STATED THAT THIS WAS PLACED ON THE AGENDA PER THE RECOMMENDATION OF LEGAL COUNSEL. E. SADOWSKI DID NOT KNOW WHY THE COMMON COUNCIL WAS GOING INTO CLOSED SESSION AS HE HAD NOT SEEN ANY DOCUMENTATION ON THIS. MAYOR SCHUMAN EXPLAINED THAT THERE IS A PENDING LAWSUIT. J. KRICKHAHN WAS NOT COMFORTABLE GOING INTO CLOSED SESSION. A ROLL CALL VOTE WAS TAKEN: J. KRICKHAHN, NAY; B. LEONARD, NAY; E. SADOWSKI, NAY; M. DE YOE, NAY; L. MORRISON, AYE; R. MISKELLEY, NAY. CLOSED SESSION WAS NOT ENTERED INTO.

Attorney Vliet stated that he was prepared to discuss the terms of the payout to the City Administrator. He recommended that the terms of a settlement proposal received from M. Carlson's attorney be discussed in closed session. He asked for reconsideration of adjourning into closed session for this purpose. In his opinion, J. Krickhahn thought that the settlement agreement was a severance package and there would be nothing to discuss unless M. Carlson was going to agree for less money than the \$88,849. He felt that all actions were done within the legal right of the contract with M. Carlson and that he was terminated without cause. He was still not in favor of going into closed session.

Attorney Vliet summarized that a discussion was held with M. Carlson's attorney. M. Carlson's attorney made a settlement proposal in return for a severance agreement that M. Carlson would be willing to execute where any and all claims would be settled against the City in return for a payment larger than the amount of the severance proposal currently before the Common Council. The offer was posed in the alternative. The first option was payment of \$150,000 to fall on or after January 2, 2008 due to tax consequences. If that proposal is not acceptable, the alternative proposal was to pay the six months of severance on January 2, 2008, add in four weeks of vacation, and add in additional sick leave, plus payment of his attorney's fees of approximately \$4,000. This would increase the severance payment by about \$14,000 for a total of just under \$100,000. The other cost to that is the delay to 2008 would be that the City would be required to pay additional FICA in the amount of about \$5,300. The rest of the component would be that M. Carlson would remain available to the City as a consultant on as needed basis being paid on a per hour basis. If M. Carlson had not found other employment by July 1, 2008, the City would pay his salary and health insurance on a month-to-month basis through December, 2008. The payment would end when he found another job or on December 2008 whichever occurred first. In either alternative, the

CITY OF DELAFIELD COMMON COUNCIL MINUTES

\$150,000 cash payment or the more elaborate one, M. Carlson would sign a settlement agreement waiving any claims he has against the City.

R. Miskelley questioned whether this was based off of Section Two "Renewal" of the contract. Attorney Vliet did not know if it tied directly to that. M. Carlson has taken the position that because his contract rolls on an ongoing basis that he is entitled to more severance than is provided in Section 8b of the agreement.

E. Sadowski stated that both the opinions of the City Attorney, Mark Sewell, and Attorney Vliet are that what the City was doing on December 27th was the exact severance package that the Common Council has. In Attorney Vliet's opinion, the severance package before the Common Council tonight complied with the terms of the contract. R. Miskelley referenced the Council minutes of December 3, 2007 and felt that the process was being rushed. M. De Yoe stated that it was M. Carlson's decision to spring this on the Common Council at the last minute. She asked what the City could be sued for. Attorney Vliet felt that M. Carlson's attorney took a different position than the City. Potentially the City may be looking at a breach of contract claim. There are also a number of other potential basis's for lawsuits. This would ultimately get sorted out in court. J. Krickhahn was tired of being threatened by lawsuits. R. Miskelley felt that the last thing to do would be expose the City to a legal trial. Attorney Vliet cautioned the Common Council members that generally his advice is not to discuss personnel matters in public session unnecessarily. Payouts and benefits have been referred by Mayor Schuman to Attorney Vliet.

E. Sadowski summed it up that if the City pays money, there would not be a lawsuit. L. Morrison discussed the reasoning behind her vote to go into closed session. B. Leonard felt that the important point was that Attorney Vliet felt that the City's termination complied with the terms of the contract and the current termination payout. Attorney Vliet's opinion was that the severance payment that is before the Common Council now does comply with the terms of the contract. B. Leonard clarified that the termination payout (the revised 12/21/07) would be the one acted upon tonight in the amount of \$87,374.42.

4. RECONVENE INTO OPEN SESSION

Not applicable as closed session was not entered into.

5. ACTION ON ITEMS DISCUSSED IN CLOSED SESSION.

Not applicable as closed session was not entered into.

6. OLD BUSINESS

- a. DISCUSSION AND POSSIBLE ACTION TO APPROVE PAYOUT TO THE CITY ADMINISTRATOR PURSUANT TO HIS EMPLOYMENT CONTRACT WITH THE CITY (AGREED UPON PROCEDURES ATTACHED)

CITY OF DELAFIELD COMMON COUNCIL MINUTES

K. Krynski from Johnson & Block was present. Changes include additional vacation taken; payments for the dental insurance, life insurance, income continuation insurance made by the City via check; in terms of the revised calculations, no other calculations had changed. The cost associated to the City would be additional FICA of \$5,339 which would be incurred if paid in 2008. Responsibilities were explained: Attorney Vliet interpreted the contract and K. Krynski determined the financial calculations. Determination of sick pay was discussed.

E. SADOWSKI MOTIONED TO APPROVE THE SEVERANCE PACKAGE AS DATED 12/21/07 TO BE PAYABLE IN THE YEAR 2007 IN THE AMOUNT OF \$87,374.42. J. KRICKHAHN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

7. CORRESPONDENCE

- a. Engagement letter from Johnson Block & Co., Inc. regarding City Administrator
- b. Representation letter to Johnson & Block regarding City Administrator

8. ADJOURNMENT

B. LEONARD MOTIONED TO ADJOURN FROM THE MEETING. M. DE YOE SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED. THE MEETING ADJOURNED AT 7:24 P.M.

Minutes Prepared By:

Accurate Business Communications, Inc.