

Village of Wapella
Executive Session
November 19, 2013
Village Hall

Approved
5-20-14 (eu)

Present were Trustees Vernon Meadows, Brad Karr and Logan Redman. Absent were Trustees Rusty Karr, Shay Burke and Suzanna Holland. Also present were President Richard Karr, Clerk Elizabeth Weikle and Attorney Heather Kimmons.

The Clerk said the only thing we have are minutes. There are four sets. The first two sets were from May 21, 2013 and May 17, 2011. It was when we discussed hiring Dan and then interviewed him.

The Board agreed to approve them for content and release them in open session.

The Clerk said the second sets are from May 3 and 17, 2011. They both contain Billboard Litigation.

The agreed they should remain unreleased.

Attorney Kimmons then discussed litigation. She asked if the Board was aware of Jane's amended complaint.

President Karr said he thought so, he had given a copy to the Clerk.

Attorney Kimmons said Jane had amended her complaint to include some new causes of action on wrongful termination and secondly of the whistleblower act. My firm, at this point, is responding to all of the claims. Rich has turned it into your insurance because there is a chance that the newest claims may be covered under your policy. It is not a civil rights claim which is excluded under your policy. Until it is determined that they will take cover, we are working on it. Tomorrow a motion to dismiss will be filed. A motion to dismiss the new counts. There are various legal theories, but a motion to dismiss just says you don't even have sufficient facts to allege a cause of action. It is kind of the first step. Basically, she doesn't have a cause of action because wrongful termination applies to employees. She was an appointed official. The whistleblower act is not applicable because she doesn't qualify as a whistleblower under the act. There are three or four other basis. I personally don't get involved in this that much other than to fill in on facts. Our Chicago office which specializes in litigation has been handling all this. They will continue to work on this diligently until the insurance takes over. Our litigation teams feels very confident that they can get all the claims dismissed.

President Karr said if you want to read the amended thing, Elizabeth has a copy of it. I am pretty up on it, so if there is any questions that you have, I'd be glad to tell you, how it happened, why it happened and why her claims are false.

Attorney Kimmons said it wasn't unexpected. We knew she would end up doing this.

President Karr said her claims are based on the Village Code and the problem with that is the Village Code is super ceded by the state code. So, all the action that I took, I can show you right in the state code why I did what I did. It is all spelled out. So, if you want to have a discussion about it call me anytime. It is more of Jane's rhetoric.

Attorney Kimmons said it my thought that there will be a hearing set on the motion to dismiss. This is in federal court. They do tend to move a little quicker than in state courts. We are filing a motion to dismiss, they will have a couple of weeks to respond to it. Then in all likelihood the court will set a hearing. Probably not until January or February at the earliest but at that point the court will determine if there is any basis for the lawsuit to continue. Hopefully, the answer will be no but that is what will see. As far as the billboard litigation, that continues to just be continued.

Brad Karr asked why does it continue to be that way?

Attorney Kimmons said it is the judge. The judge apparently has health problems.

Brad Karr asked is that Gary Bryan?

The Clerk said yes.

Brad Karr said is there no way that we could file to get a different judge, so we can get rid of this?

President Karr said we are actually not in the lawsuit. We're just monitoring it.

Attorney Kimmons said we are kind of the passive party. We are just going along. There is also a motion to dismiss filed on that. That is what needs to come to hearing. I am most confident that the new hearing will happen since the Clerk called and indicated it would happen. So, it has a three hour setting on January 17. I'll be there to monitor and see what happens. It would be wonderful if it did get dismissed. I think it is a 50/50 shot.

President Karr said so Jane's civil suit is past the statute of limitations.

Attorney Kimmons said her position is she got it in just under the wire before the statute of limitations ran out. Our position is under no set of arguments she is putting forth could she have made the statute of limitations. The further we've looked into that, the more convinced we are that that lawsuit is going nowhere.

President Karr said will the amendment drag the other one along or can they dismiss part of it?

Attorney Kimmons said they can dismiss parts of it. So, we are asking that every part be dismissed. They may dismiss two out of three counts. Ideally, they dismiss them all. Courts are pretty careful, if there is any question about fact what so ever, they will litigate past that. Then we look at a summary judgment. So there are several steps that this will go through but we are hoping we can knock it out at its very first level. Our litigation department is excellent. They do this over and over and they said this is frivolous litigation. You probably should try to go after her for attorneys fees. We can talk about that at a later point. We'll see what happens. I will get you a copy of the motion to dismiss, once it is filed, if any one wants to look at it.

The Board took a consensus to leave Executive Session.