

## MINUTES OF SPECIAL MEETING OF OCTOBER 9, 2007

A special meeting of the Conemaugh Township Board of Supervisors was called to order at 3:00 p.m. on October 9, 2007 by Chairman Calvin Gindlesperger. Board members present were Calvin Gindlesperger, Chairman, Wayne Kauffman, Vice-Chairman, and David Hart, Secretary/Treasurer. Solicitor James Beener was present. Attorney Dan Rullo was present.

### FLOOR OPENED TO PUBLIC COMMENT:

**Joe Marisa, Jr.** of 369 Stone Hollow Road wanted to know what this special meeting was for. Solicitor Beener answered that it was for personnel matters. Mr. Marisa wanted it further clarified. Attorney Dan Rullo stated that the meeting was advertised for general purposes so that any business could be conducted, but it was a special meeting to discuss personnel issues pertaining to the police department. There would be an executive session.

### NEW BUSINESS:

**At this point, the Supervisors went into an executive session at 3:04 p.m. to discuss personnel matters. The meeting was re-opened at 3:19 p.m.**

Attorney Dan Rullo introduced himself as one of the Solicitors for the Township, and as being a law partner with Solicitor Beener. He stated they were requested to review issues dealing with the Pennsylvania Police Tenure Act as it pertained to any disciplinary actions that may pertain to Chief Howard Jackson.

#### **Attorney Rullo stated the following:**

“Under the Pennsylvania Police Tenure Act, no person employed as a regular full-time police officer in any police department in a Township of the Second Class, except for probationary officers for a period of one year or less, shall be suspended, removed or reduced in rank except for the following reasons: physical or mental disability affecting his ability to continue in service, and that person shall receive an honorary discharge from service; neglect or violation of any official duty; violating any law that such violation causes misdemeanor or felony; ineffectiveness, neglect, intemperance, disobedience of orders, or conduct unbecoming an officer; intoxication while on duty; a person so employed shall not be removed for any religious, racial or political reasons. A written statement of any charges made against any person so employed shall be furnished to such person within five days after the same are filed.”

“In addition, if there is a decision to proceed with these matters, a person sought to be suspended or removed shall be entitled to a public hearing. The demand shall be made to the appointing authority, which is the Supervisors. The appointing authority shall grant him a public hearing which shall be held within a period of ten days from the hearing which would be held relative to the filing of charges. Written answers thereto within five days shall be continued to the appointing authority or at the request of the accused. At such hearing, a person against whom the charges are made may be present in person and by counsel. The appointing authority may suspend any such person without pay pending the determination of the charges against him. But, in the event the appointing authority fails to uphold the charges, then the person sought to be suspended or removed shall be reinstated with full pay for the period during which he was suspended, and no charges will be officially recorded against his record.”

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“No order and suspension made by the appointing authority shall be a longer period of one year. A written record of all testimony taken at the hearing shall be with and preserved by the appointing authority, which records shall be sealed and not be available for public inspection in the event the charges are dismissed. Following the hearing, there is the right by a suspended or dismissed employee to appeal to the Court of Common Pleas, in this case, of Somerset County, relative to the charges that have been submitted.”

“As result of the determination that the Pennsylvania Police Tenure Act is applicable, we were asked to begin an investigation relative to submission of potential charges because of the fact that there is presently pending one grievance and a complaint with the Equal Employment Opportunity Commission relative to actions that were conducted by Chief Jackson. Dealing with those matters, we engaged in an investigation, and I prepared a statement of charges for your consideration and submission to Chief Jackson. These charges total about 51 particular items. All is on information received; I have no personal knowledge relative to the issues that are identified in the statement of charges. They are all based upon information received from others; and those individuals would be required to appear - if Chief Jackson requests a hearing – at a hearing and offer testimony under oath.”

“The way this would work is that the Supervisors serve as the appointing body to hear the testimony that is being offered. My firm cannot represent both the Supervisors and prosecute the claims against Chief Jackson, so in that regard, since it was our involvement relative to obtaining the statements, preparing the charges, we would recommend that we would continue to represent the Township in the sense of prosecuting the claims, and the Supervisors engage separate counsel to advise them relative to their rights and responsibilities. I have talked to Attorney Jeffrey Berkey who is an attorney who deals with the Zoning Hearing Board matters for the Township, and he has agreed to serve as the hearing advisor under the same rights in which he is engaged to do zoning matters.”

“At this hearing, once the statement of charges is submitted, and if he requests a hearing, you essentially have three options: 1) to discharge; 2) to suspend for a period not to exceed one year; 3) a demotion in rank from Chief to patrolman. And then there, of course, is a fourth option which would be the dismissal of charges against him, finding there was no culpability or no liability, but that would be a determination based upon the facts to be presented in this hearing and you would have the opportunity to listen to witnesses, even ask questions, during the course of the cross examination and direct examination.”

“So what is necessary today if you wish to proceed is I would submit the statement of charges, you would authorize that statement of charges to be filed and submitted to Chief Jackson so that he would be able to respond, request a public hearing if necessary. In the meantime, you would have to make a determination as to what, if anything, you wish to have taken place with his status while these hearings are pending. One of the things you can do is to do nothing, suspend with pay, or suspend without pay, pending the resolution of these proceedings. If you suspend, you should consider appointing someone in the interim as Officer in Charge.”

“That, in a nutshell, is the base of it, and I have these statements of charges that will be submitted, if in fact you are inclined to proceed. First, is whether you are interested in receiving the statement of charges that we have been engaged to investigate. The statement of charges was prepared in accordance with the Pennsylvania Police Tenure Act as I had indicated. I have signed them on information received from others, and if you are inclined to so accept those, there

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should be a motion to accept the statement of charges, and authorize the submission of these charges to Chief Jackson.”

There was a motion by Mr. Gindlesperger, seconded by Mr. Kauffman, to accept the statement of charges as presented by Attorney Dan Rullo, and to authorize submission of these charges to Chief Howard Jackson. Roll call vote, Mr. Gindlesperger – yes, Mr. Kauffman – yes, and Mr. Hart – yes. Motion carried unanimously.

### **Attorney Dan Rullo continued:**

“You need to discuss first of all what the status will be of Chief Jackson during the penances of these proceedings. The options were previously indicated: 1) do nothing – allow him to continue his role as Chief of Police until the resolution of these charges; 2) some type of suspension of his duties – either with or without pay.”

There was a motion by Mr. Gindlesperger, seconded by Mr. Kauffman, to suspend Chief Howard Jackson with pay and benefits pending the outcome of the hearing. Roll call vote, Mr. Gindlesperger – yes, Mr. Kauffman – yes; and Mr. Hart – yes. Motion carried unanimously.

### **Attorney Dan Rullo continued:**

“Since he is suspended pending a potential hearing, you need to have someone appointed to serve in the role of Officer in Charge while these matters are proceeding.”

There was a motion by Mr. Kauffman, seconded by Mr. Gindlesperger, to appoint Louis “Pete” Barclay as Officer in Charge pending the outcome of the hearing. Roll call vote, Mr. Kauffman – yes, Mr. Gindlesperger – yes, and Mr. Hart – no. Motion carried, two yes, one no.

### **Attorney Dan Rullo continued:**

“The last issue is - I do not know what role they do want to take once these charges are submitted, but if they do request a public hearing, as I indicated, because there cannot be a blurring between the advice that is given to counsel and the prosecutorial role that we would undertake, you need to engage special counsel relative to that, and I would recommend that you engage Attorney Jeffrey Berkey, who is a lawyer in Somerset, and who is also doing work for the Township relative to zoning hearing matters. He would do it under the same basis as he is currently doing for that.”

There was a motion by Mr. Gindlesperger, seconded by Mr. Hart, to appoint Attorney Jeffrey Berkey as hearing adviser. Roll call vote, Mr. Gindlesperger – yes, Mr. Hart – yes, and Mr. Kauffman – yes. Motion carried unanimously.

At this point, for the record, Attorney Dan Rullo submitted the official charges to the Supervisors.

### **ADJOURNMENT:**

There was a motion by Mr. Kauffman, seconded by Mr. Hart, to adjourn the meeting at 3:28 p.m. Submitted by,

David A. Hart, Secretary/Treasurer