

Special Meeting of the Crystal Lake Township Board

1651 Frankfort Highway, Frankfort MI 49635

March 8, 2024

Meeting was called to order by Supervisor Amy Ferris at 1:02 p.m.

Pledge of Allegiance was recited.

Roll Call: Ferris, Northway, Popp, and VanMeter were present, constituting a quorum. Nielsen absent.

Guests: Sue Sullivan, Susan Rastelli, Eric VanDussen, Braden Olsen, Zoning Administrator Tom Kucera, Al Popp, Attorney Brad Wierda, Attorney Michael Homier (via zoom)

Adoption of, or amendment to, Agenda

Ferris moved to accept the agenda as presented. Popp supported. All ayes. Motion approved.

Conflicts of Interest

There were no Conflict-of-Interest declarations.

Public Comment

Sue Sullivan encouraged the Board to determine whether there was a conflict of interest in having one attorney represent the interests of both the Township and Supervisor Ferris specifically. Since there were different points of view regarding the events, she believed they could jeopardize the interests of both defendants, since several members of the Board didn't perceive her actions, as described in the complaint, appropriate. It would be difficult to then defend her actions at the same time. She thought it was a serious issue that warranted the consideration of different attorneys for the two defendants.

Eric VanDussen was present at the criminal trial of Mr. McCall, which was the basis of the lawsuit filed against the Township and Supervisor Ferris. He encouraged the Board to read the transcript of the trial, noting it was the shortest deliberation he'd ever seen. VanDussen believed the testimony of Supervisor Ferris to be untruthful because other testimony was contradictory. He referenced #16 of the Answer to the Complaint, and asked the Board if they agreed to the attorney's statements.

Tom Kucera, having known Supervisor Ferris for 12 to 14 years, never had the occasion to question her truthfulness in statements she'd made.

Movement to Closed Session

Popp asked if some aspects of the lawsuit such as representation, timeline, etc. could be discussed in open session for public transparency. Attorney Wierda noted nothing prevented the Board, when returning to open session, from placing information on the record such as the timeline, etc.

Ferris moved the Board go into closed session to discuss litigation and/or settlement strategy with the attorney in the pending case of McCall v. Crystal Lake Township, Case No. 1:24-cv-00086 because discussion in an open session would have a detrimental financial effect.

Northway supported. Roll Call: Popp, no; Ferris, yes; Northway, yes; VanMeter, yes. Nielsen, absent. Motion failed for lack of 2/3 majority vote.

Ferris asked Attorney Wierda how best to proceed. Wierda stated procedural questions such as possible timeline could be discussed in open session. Following the discussion, another motion could be made to enter into closed session with the possibility of passage.

Wierda offered some introductory comments, noting he had been retained by the Township insurance provider to represent both the Township and Ferris. Regarding the possible conflict of interest in representation of both the Township and Ferris, he stated it wasn't an issue. The question was whether he could adequately represent both defendants to his best extent, trying to get the best possible result for the defense in the case.

Wierda referenced the case itself, noting the lawsuit was filed against Benzie County, Sheriff Deputy Joshua Rubin, Crystal Lake Township, and Supervisor Ferris. There were five causes of action in the complaint with three of the five causes directed to the County and two specifically against the Township and Ferris. The cause directed at Ferris alleged a First Amendment constitutional violation for Mr. McCall. The count against the Township alleged general constitutional violations.

Wierda noted, often times, an employer was responsible for the conduct of an employee. In this case, under Section 1983 litigation, an employer or a body cannot be held liable just because that person was their employee or agent. The plaintiff's attorney will have to actually show the Township was at fault in some way and support it with case law. Typically, the plaintiff's attorney will try to show some Township policy, custom, or practice caused the alleged violation of Mr. McCall's constitutional rights. It was noted that discussion of the alleged count against Ferris in open session could have a detrimental financial effect.

Wierda said, in terms of a general timeline for the case, the court would first set up a Rule 16 Scheduling Conference. He thought it was scheduled for April 10, 2024. The attorneys will meet in advance of the Rule 16 Scheduling Conference to prepare a joint status report. The court will set dates at the Rule 16 Scheduling Conference such as those for disclosure of expert witnesses, deadline dates for completion of discovery, etc. Will have a better idea of the timeline after the Rule 16 Scheduling Conference and receipt of a case management order from the judge. Wierda stated an estimated timeline for the case would be in the nine-to-twelve-month range.

Popp asked for clarification regarding insurance company coverage. She stated Wierda was assigned to answer the complaint, but asked if the insurance company was still investigating and reviewing the case before making the determination of claim coverage. Wierda noted he was hired to represent the Township and Ferris. Any questions regarding claim coverage should be asked directly to the insurance company or through the Township attorney. He said Molly Leslie of Tokio Marine HCC was the claims attorney and would be the person to communicate with in terms of whether there is any reservation of rights issues.

Northway asked for clarification regarding the alleged constitutional protection privilege and the First Amendment claim. Wierda said the complaint alleged Mr. McCall called out a warning to his uncle and suggested somehow that was constitutionally protected speech. The allegation in the

complaint was that he believed Ms. Ferris retaliated against him for calling out to his uncle. During the deposition process, more details will be revealed regarding what Mr. McCall is actually alleging.

Returning to the topic of possible conflict of interest, Popp asked if Wierda could provide a written assessment including his perception, possibilities, etc. Wierda commented on the longterm dysfunction of the Board, noting dysfunction does not create a conflict of interest. Popp explained the concern was a possible conflict for Wierda. She gave an example of a future, hypothetical conflict in which the Township requested settlement of the case and Ferris chose to continue, putting Wierda in an awkward position. Wierda suggested the Board review its insurance policy because the insurance company was the ultimate decision maker.

There were no other questions, so Wierda asked if the Board would be interested in going into a closed session to explore the issues at greater depth. Ferris placed the motion to proceed into a closed session on the floor again.

Ferris moved the Board go into closed session to discuss litigation and/or settlement strategy with the attorney in the pending case of McCall v. Crystal Lake Township, Case No. 1:24-cv-00086 because discussion in an open session would have a detrimental financial effect. Northway supported. Roll Call: Ferris, yes; Popp, yes; VanMeter, yes; Northway, yes. Nielsen, absent. Motion approved with 2/3 majority vote.

Closed Session

The Board entered closed session at 1:30 p.m. Those present included Attorney Wierda, Attorney Homier (via zoom), Ferris, Northway, VanMeter, and Popp.

Return to Open Session

At 2:00 p.m., the closed session was ended, and the meeting continued in open session.

Ferris made the motion to end the closed session and officially return to an open-session meeting. Popp supported. Roll call: Popp, yes; Northway, yes; Ferris, yes; VanMeter, yes. Nielsen absent. Motion approved.

Public Comment

Regarding the case, Al Popp hoped the Board would do what they could to ease as much financial burden on the residents of the Township.

Board Comment

There were no Board comments.

Meeting adjourned at 2:04 p.m.

Judy VanMeter, Clerk, reporting.

Amy Ferris, Supervisor _____
Date

Judy VanMeter, Clerk _____
Date