

July 16, 2014
Executive Session

Minutes of **Executive Session** of a Regular meeting of the Board of Commissioners of the Town of West New York, in the County of Hudson, State of New Jersey, held in the Court Chambers, Municipal Building, West New York, on Wednesday, July 16, 2014.

Present: Commissioners Frias, Rodriguez, Vargas, Wiley and Mayor Roque
Absent: None
Also Present: Corporation Counsel Donald Scarinci, Town Clerk Carmela Riccio, and David Corrigan, Esq.

Note: Closed Session commenced at 1:21 p.m.

Corporation Counsel Donald Scarinci advised that there are several items to consider as follows:

1. Fire Specialists Perez and Melendez lawsuits:
David Corrigan, Esq. advised that there is pending litigation against the Town by two (2) Fire Specialists Perez and Melendez. He further advised that he had not been involved in these matters for some time and that last year Comm. Vargas consolidated their part time positions into one (1) full time position. He further advised that technically, Civil Service Commission has to approve the consolidation and it was approved by it and as a result these individuals challenged the consolidation. The case was handled on behalf of the Town by Gil Garcia Esq., who didn't appear at the hearing. The both men had been laid off and their duties were assumed by the Fire Official. He further advised that Town Administrator DeMarco discussed the matter with both Mr. Perez and Mr. Melendez, legal advice was given by Mr. DeMarco, and Mr. DeMarco recommended to resolve the matters by paying \$14,500 to each person and to reinstate both men. Mayor Roque commented that it didn't make sense that Mr. Garcia didn't appear for the hearing and questioned why Mr. DeMarco rendered a legal opinion and now Town has to pay. He further commented that Comm. Vargas wants the consolidation. Mr. Corrigan explained that there had been allegations of "bad faith and retaliation" in that Silvio Acosta was involved somehow, but that he (Mr. Corrigan) did not know the details. Mr. Corrigan stated that he has the "highest regard for the present law department" and that he is presenting negotiating a proposal to settle. Mayor Roque stated that if Mr. Scarinci recommends settlement, then he will agree but didn't feel comfortable with entire situation. He referred to a similar issue in his private practice. He reiterated that if Comm. Vargas wants one (1) full time person, he should be allowed to do so. Comm. Wiley responded "It is what it is." He further commented that the first year of this Administration was "very rough" and that improper actions were taken by Silvio in the past. He further commented that these two individuals had been fired three (3) times over the past three yrs., lost money and that they should never have been let go. He also commented "This could be worse if it goes to court". Mayor Roque commented that if this had pertained to Comm. Wiley's department and he (Comm. Wiley) decided to make this decision for the betterment of his department; he should be permitted to do so. Mayor inquired as to whether it is worth defending these cases and how much is involved. Comm. Frias inquired as to amount of legal fees involved for both matters. Mr. Corrigan advised that he could not speak for anyone else but that in 2013 he is entitled to \$4,500 for preliminary appeal and that in 2014 it is about \$5,000-6,000 but that he never received a contract from the town for 2014 services. He further advised that if cases are not settled, it could cost \$20,000 each case. He further advised that there is a Civil Service decision that Silvio Acosta "overstepped his bounds" and that he is a "sinister person" etc. Mayor replied "let's do it". Comm. Rodriguez commented "We weren't part of these problems but must be part of the solution for less money in the future. If Civil Service says we are wrong, we have to accept it." Mr. Corrigan explained that this is not a

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Superior Court matter and is concerned with precedent. He further advised that Mr. DeMarco made this recommendation to settle and that Gil Garcia had advised him not to worry about not having a contract for his services. Comm. Frias inquired as to whether these individuals would remain part time employees if matters are settled to which Mr. Corrigan responded "Yes, as it was. It is not unique to West New York. They will answer to Fire Marshal and Comm. Vargas' power will be deluded." Mayor replied "Enough said. I agree. You will have to sit with the new Administrator." Comm. Rodriguez commented "Isn't this the practice all over? No other towns have full time fire inspectors." Mr. Corrigan agreed and commented that firemen's "work schedules, familiarity and knowledge" make them candidates for these positions. He added that the Fire Official will "be on their side" when it comes to their past work performance, etc. Mr. Scarinci agreed with Mr. Corrigan's advice and congratulated him for doing an "outstanding job under difficult circumstances" in light of what has gone on in the past. Mr. Scarinci stated "In light of zero percent increase in budget, this and other cases create an unknown of what could happen. This is a risk analysis and cost effective on monies spent so far and what we can spend in the future. The reality is....it is more cost effective to settle these older cases. We are not in a good position." Mr. Scarinci apologized to Mr. Corrigan on behalf of the Town and commented that he (Mr. Corrigan) is a good sport for working on behalf of the Town without getting paid for so long. Mayor Roque concurred and commented that he admires and respects Mr. Corrigan. Mr. Corrigan recited the settlement terms i.e. that he is authorized to settle for \$14,500 per person and to reinstate them by August 1st. He advised that he will "wrap it up" within the next couple of days subject to ratification at the next meeting. Comm. Frias inquired as to whether we have to reverse the Civil Service matters to which Mr. Corrigan replied "Yes, we have to submit to O.A.L. and Civil Service for approval." Mr. Scarinci advised that this matter will be on the August 20th agenda.

2. O'Malley and Geneux cases:

Mr. Scarinci advised that at the last meeting, Mr. Levy discussed parameters and that he is now ready to recommend settlement. He explained that it will spread payments over 4 yrs. and that this year's payment of \$140,000 will be included in the budget. He advised that the Town will have significant problems with the former insurance carrier which provided coverage up to 12/31/13 as the new carrier commenced on 1/1/14. He further advised that the former insurance carrier created a lot of difficulty in refusing to meet and pay the claims, etc. and that they are denying paying his bill. He also advised that the Town's next step is to prepare to bids for next year's insurance carrier. In addition, he explained that the Town is "under the gun to settle this case" and that the insurance carrier only approved payment of \$300,000 total which means Town will have to pay \$140,000 this year. He further explained that next year there will be 4 equal payments of \$25,000 to each person starting 7/1/15 until 7/1/18 and that plaintiffs' legal fees of \$180,000 must be paid within 30 days and the remainder of \$66,000 in 2 installments, one in 2015 and the other in 2016. He further explained that it was agreed as part of settlement that if these individuals are subject to disciplinary proceedings during this Administration that they would be suspended "with pay" until May 12, 2015 as we cannot bind the next governing body with management decisions; the only exemption would be if they are convicted of or commit a crime, they will be suspended "without pay". In addition, he explained that with reference to vacation and sick time, under current rules they would have been required to use them but as part of this settlement, they will not be required to do so and it will not establish a precedent. The both individuals will be restored to the positions they held as if never terminated. Comm. Frias inquired about this year's vacation/sick time to which they would be entitled and how they should be used. Mr. Scarinci advised that they would have to use them just like everyone else but the year's they were not working here would be restored.

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Motion was made by Mayor Roque, seconded by Comm. Rodriguez, to **close executive session at 1:55 p.m.**, was carried by the following vote:

YEAS - Commissioners Frias, Rodriguez, Vargas, Wiley and Mayor Roque
NAYS - None
ABSENT - None

Commissioner FiorD' Aliza Frias

Commissioner Caridad Rodriguez

Commissioner Ruben Vargas

Commissioner Count J. Wiley

Mayor Felix E. Roque
Board of Commissioners

Attest: _____
Carmela Riccie, RMC
Town Clerk