



**VILLAGE COUNCIL LITIGATION COMMITTEE
MINUTES FOR LITIGATION COMMITTEE MEETING OF JUNE 20, 2022
HELD VIA ZOOM
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA**

IMMEDIATELY FOLLOWING THE REGULAR MEETING

The Pinehurst Village Council Litigation Committee held a meeting at 1:06 p.m., Monday, June 20, 2022, via Zoom.

The following were in attendance:

Mr. John C. Strickland, Mayor
Mr. Patrick Pizzella, Mayor Pro Temp
Mr. Jeffrey Morgan, Councilmember
Ms. Jane Hogeman, Councilmember
Mr. Jeffrey M. Sanborn, Village Manager
Mr. Jeff Batton, Assistant Village Manager of Operations
Mr. Doug Willardson, Assistant Village Manager of Administration
Mr. Michael Newman, Village Counsel
Mr. Dan Hartzog, External Village Counsel

1. Call to Order.

Mayor John Strickland, called the Litigation Committee meeting to order at 1:06 pm.

2. Motion to Enter into Closed Session

Upon a motion by Councilmember Hogeman, seconded by Councilmember Pizzella, the Committee unanimously voted to enter closed session, by a vote of 4-0, at 1:08 pm.

3. Discuss Salient Points of Current Lawsuit.

Mayor John Strickland introduced the meeting and turned the time over to Dan Hartzog to present the case. Mr. Hartzog introduced himself as a civil defense litigation attorney in Raleigh at Hartzog Law Group. He specializes in municipal and employment law. He previously worked for the Village on another case.

Mr. Hartzog explained that the case was filed by Kevin Drum and the North Carolina Citizens for Transparent Government. The defendants in their official capacities are Mayor John Strickland, Councilmember Jane Hogeman, and the Village of Pinehurst. He stated that since other members of the Council may have a potential conflict the creation of the Litigation Committee was a good idea. Mr. Hartzog explained, the case involves two alleged violations of the open meeting law. The first alleged violation is the subject matter discussed at the September 20, 2021 closed session meeting. The second, involves emails between Council members, Village Manager Jeff Sanborn, and Village Counsel Mike Newman leading up to the Village Council meeting on October 12, 2021. Regarding the first item, Mr. Hartzog stated that the only members of the litigation committee in attendance at the September 20th meeting were Mayor Strickland and Councilmember Jane Hogeman. The topic of the meeting was to discuss the performance of Village Manager Jeff Sanborn. Councilmember Lydia Boesch had prepared an agenda for the meeting to address some of the concerns she had heard from external sources and from conversations with former and current employees. Mr. Hartzog explained that the discussion of Mr. Sanborn's performance as Village Manager was an appropriate topic for discussion in closed session. However, the plaintiffs claim that the meeting did not only discuss performance of Village Manager Jeff Sanborn but diverted to discussing the actions of Councilmember Lydia Boesch leading up to the meeting including information she received

from external sources and meeting with the Chief of Police. Council met in open session on October 12, 2021 and again on October 26, 2021. Mr. Hartzog stated that from recordings of those meetings, it is clear that Councilmember Boesch's activities were discussed at the September 20th meeting. The question is how much of the meeting was focused on Councilmember Boesch's actions. Mr. Hartzog explained that naturally how Councilmember Boesch obtained her information would come up in the meeting and that in and of itself is not a violation of the open meeting law.

On the second issue of the sending and receiving of emails, Mr. Hartzog explained that NCGL requires "simultaneous communication" to be considered a meeting and a violation of the open meeting law. Emails have not been found to be simultaneous communication. Village Counsel Mike Newman opined that it was very unlikely that a judge will make the jump that email communications can be considered a meeting when it pertains to the open meeting law. Mr. Hartzog stated that the Village is in a good position regarding the email question—the emails can be easily produced and read and since they are not simultaneous communication there should be no question. Mr. Hartzog explained that that leaves the question of what the mindset of the September 20th meeting was as the main thrust of the lawsuit.

Mayor Strickland asked what the next steps are. Mr. Hartzog responded that the answer to the complaint is due July 11, 2022 and discovery is due July 13, 2022. He continued that the Village's discovery will attempt to find out what is the motive of the North Carolina Citizens for Transparent Government. Additionally, discovery will include public records request made through Mr. Hartzog to Kevin Drum—including Mr. Drum's text messages, personal and village email. This will ensure that Mr. Hartzog has the same information as the plaintiffs. Mr. Hartzog has already received all the communications that were prepared and given to the plaintiff as part of their information requests. Mr. Hartzog stated, and Village Counsel Newman agreed that the case will likely go before Judge Webb and the Village may seek a motion for summary judgement. Mr. Hartzog stated that the plaintiff has not brought up mediation or an offer to settle; however, he noted that the court will require mediation at some point.

Pat Pizzella asked what the remedy is the plaintiff is seeking. Mr. Hartzog responded that they are looking for injunctive relief that the Village will not violate the open meeting law and declaratory relief which, if awarded, would provide for attorney's fees. Mayor Strickland pointed out that it was suggested in the media that the Village had rejected mediation, but that was not true. Village Manager Jeff Sanborn made it clear that plaintiff's attorney never offered mediation. The only offer of mediation came from Councilmember Boesch's attorney. Village Counsel Mike Newman explained that Councilmember Boesch didn't send suit. After the Village had moved on, Councilmember Boesch's attorney offered to meet and mediate. Per Mr. Newman, at that point, the Village felt there was no reason to meet.

Mr. Hartzog said that the whole issue could be resolved now with a settlement. The settlement could consist of the Village promising not to discuss council members in closed session and some dollar amount. Jane Hogeman asked if there an offensive position for us. Hartzog responded that he hasn't be asked to counter suit. He did offer that the Village can and will bring up estoppel and an unclean hands defense including that Mr. Drum is the one that asked for the discussion to be in closed session. Mike Newman added that Mr. Drum sent 33 emails that were of the same nature that Mr. Drum claims violate the open meeting law. Mr. Sanborn added that Drum also didn't object to the September 20, 2021 meeting in which he was a willing participant. Consensus of the Council was not to mediate or enter settlement discussions at this point.

Mr. Hartzog stated that a judgement on the proceedings is a possibility, but not likely. Summary judgement will require discovery and is approximately four months out. There is also the potential for appeal for either outcome; the Court of Appeals is approximately an 18-month process. Mr. Hartzog also stated that the plaintiff's attorney is a known lobbyist for even more transparency in the open meeting law. She has filed amicus briefs on other open meeting law cases. She can be considered a consumer advocate for open meetings/public transparency.

Mr. Strickland brought up future meeting dates. Mr. Hartzog suggested the Litigation Committee meet again in August.

Mr. Sanborn suggested that regardless of their being an actual open meeting law violation at the September 20th meeting, the resolution or remedy would be to discuss the actions of Councilmember Boesch at an open meeting. Mr. Sanborn pointed out that is exactly what happened in the next two Council meetings.

Councilmember Hogeman said that the code of ethics was not brought up at the September 20th closed meeting. The topic of a code of ethics violation came up later when she asked if there was a definitive measure of what a Councilmember should or should not do. Mr. Hartzog reiterated that Councilmember Boesch's conduct was and could be brought up appropriately in closed session if it was in context of Village Manager Jeff Sanborn's performance. Mr. Sanborn stated that the Council was likely upset with how Councilmember Boesch went about her inquiries into his job performance, but the root of the discussion was still about his performance.

Councilmember Pizzella raised the issue that he heard that the plaintiff had claimed that Kelly Chance, the Village Clerk, lied. Mr.

Newman said there was nothing in the suit regarding this and it was likely a comment from the Plaintiff that he believed there were other communications beyond what was delivered in response to the information request.

Mr. Hartzog asked if the Council wanted to amend the minutes of the September 20th meeting to add more detail to what happened at the meeting and the extent of the conversations.

Councilmember Hogeman asked if Mr. Hartzog had heard the radio broadcast of Councilmember Boesch. Mr. Hartzog indicated that he had not. Mr. Hartzog asked about an agenda that was used at the September 20th meeting. He specifically asked if Councilmember Boesch handed it out. Councilmember Hogeman answered in the affirmative. Mr. Hartzog stated that the agenda makes it clear that the discussion was regarding the job performance of Mr. Sanborn.

Mayor Strickland asked if there are any other questions and proceeded to wrap up the meeting.

4. Motion to adjourn the Closed Session and Re-enter the Work Session.

Upon a motion by Councilmember Hogeman, seconded by Councilmember Pizzella, the Committee unanimously voted to adjourn the closed session and re-enter the work session, by a vote of 4-0.

5. Motion to Adjourn.

Upon a motion by Councilmember Hogeman, seconded by Councilmember Pizzella, the Committee unanimously approved to adjourn the meeting, by a vote 4-0, at 2:21 p.m.

Respectfully Submitted,



Doug Willardson,
Assistant Village Manager of Administration

Vision: The Village of Pinehurst is a charming, vibrant community which reflects our rich history and traditions.

Mission: Promote, enhance, and sustain the quality of life for residents, businesses, and visitors.

Values: Service, Initiative, Teamwork, and Improvement