

UNION TOWNSHIP – WARREN COUNTY

BOARD OF TRUSTEES – Regular Meeting – May 15, 2023

CALLING THE MEETING TO ORDER: The regular meeting of the Union Township Board of Trustees was called to order by President of the Board, Chris Koch on Monday, 5/15/23 at 6:00 p.m. at the Union Township Municipal Building. All Trustees were in attendance: Fred Vonderhaar, Chris Koch, & Tony Ledford. The prayer was led by Mr. Ledford. Mr. Vonderhaar led everyone in The Pledge of Allegiance.

CITIZENS IN ATTENDANCE (IF KNOWN): Attorney Kathryn Horvath, David Pittman, Art Perong, Sharon Lawhorn, Nathan Smith, Shane Brandenburg, & Jim Bowman were in attendance.

Mr. Pittman asked if the investigation concerning Chief Napier had been completed. Mr. Koch stated it was complete and no disciplinary charges were brought against Chief Napier (see attached report). Attorney Horvath explained the civil charges that are listed in the Ohio Revised Code and the investigation procedure that was followed by Union Township in this case. Mrs. Lawhorn asked about the investigation cost and Mr. Vonderhaar said it was \$5,670.00.

Mr. Pittman asked about any new information concerning the zoning issue on Dry Run Road. Mr. Koch explained it is in the hands of the Warren County Prosecutor's Office and they will present their findings to Union Township when completed.

POLICE SUMMARY: Deputy Pangallo had nothing to report.

ROAD SUPERINTENDENT'S REPORT: Mr. Sandlin said the new skid steer had been received. He will provide a quote at a future meeting for 200' of guard rail for consideration to be installed in the Aberlin Springs area. Mr. Sandlin stated he will be getting the backhoe ready to sell. Mr. Sandlin reported the Bone Road repair is supposed to take place in the next few weeks or early June. The guard rail on Dry Run has been completed per Mr. Sandlin. Mr. Sandlin will have vehicles ready for the Memorial Day Parade.

CHIEF'S REPORT: Chief Napier presented a quote for three new Panasonic vehicle computers/accessories in the amount of \$11,175.00. Mr. Vonderhaar made a motion to accept this quote, seconded by Mr. Ledford. The motion was carried by all "yeas". Mr. Koch asked Chief Napier for a copy of the Memorial Day Program when completed.

FISCAL OFFICER'S REPORT: The Fiscal Officer was absent but left the bills to pay, fund status, cemetery deeds, etc. thru May 15, 2023. All were signed and approved by Mr. Vonderhaar, Mr. Koch, & Mr. Ledford.

NEW BUSINESS: Mr. Vonderhaar stated he had requests for Mr. Sandlin to look at potholes on Bone Road & Trovillo Road. Mr. Vonderhaar made a motion to pay the bills, seconded by Mr. Ledford. The motion was carried by all "yeas". Mr. Vonderhaar wanted to extend his thanks to Chief Napier for all the work he does for Union Township.

Mr. Ledford made a motion to accept the minutes from the meeting held on 5/1/23, seconded by Mr. Vonderhaar. The motion was carried by all "yeas".

Mr. Koch said Derek Faulkner from the Warren County Prosecutor's Office stated in an email that Union Township has the authority to install a 25 MPH speed limit sign in Manistique Lakes if needed.

Mr. Koch stated he received an email from Attorney Bruce McGary concerning the "No Parking" request in Riverwalk Subdivision. The Trustees would like more time to consider the new information from Mr. McGary.

All Trustees agreed they want to continue their participation with the Community Development Block Grant Program.

ADJOURNMENT: There being no further business, Mr. Koch made a motion, seconded by Mr. Ledford to adjourn the meeting at 6:23 p.m. The motion was carried by all "yeas". The next regular meeting will be held on Monday, June 5, 2023, at 6:00 p.m.

KIDD & URLING, LLC

Thomas W. Kidd, Jr. | 513.733.3080 | tkidd@kiddurlinglaw.com

May 3, 2023

To: Union Township Board of Trustees

Re: Investigation of Chief Robert Napier

Scope of Investigation:

- Review of audio recording and minutes from the trustee meeting of February 6, 2023
- In-person interviews with Trustees Chris Koch, Fred Vonderhaar, and Tony Ledford
- In-person interview with Chief Robert Napier
- In-person interview with Road Supervisor Josh Sandlin
- In-person interview with Clerk Shelley Lamb
- In-person interviews with meeting attendee Wheeler Renfro
- Telephone interviews with meeting attendees Art Perong, Barb Amerlin, Arthur McFarland
- Telephone interview with Rick Frazier of Performance Graphics
- Review additional minutes and audio recording (parts) from several trustee meetings including December 5, 2022, December 19, 2022, and January 17, 2023

CINCINNATI
9435 Waterstone Boulevard, Suite 140
Cincinnati, Ohio 45249
Main: (513)733-3080
Fax: (513)731-7230

SPRINGFIELD
1301 North Limestone Street, Suite 8
Springfield, Ohio 45503
Main: (937)530-4144
Fax: (513)731-7230

- Follow-up conversations with Trustees Koch and Vonderhaar, and Chief Napier
- Review of records related to the purchase and servicing of the 2021 Ford Expedition provided by Chief Robert Napier

Analysis:

In determining whether a fire chief should be disciplined, the State legislature has enacted Revised Code § 505.38 which states “appointees shall continue in office until removed from office as provided by sections 733.35 to 733.39 of the Revised Code. To initiate removal proceedings, and for that purpose, the board shall designate the fire chief or a private citizen to investigate the conduct and prepare the necessary charges in conformity with those sections.”

Revised Code § 733.35 provides additional specificity maintaining “[w]hen the [legislative authority] has reason to believe that the head of a department or such officer has been guilty, in the performance of his official duty, of bribery, misfeasance, malfeasance, nonfeasance, misconduct in office, gross neglect of duty, gross immorality, or habitual drunkenness, he shall immediately file with the legislative authority, except when the removal of such head of department or officer is otherwise provided for, written charges against such person, setting forth in detail a statement of such alleged guilt, and, at the same time, or as soon thereafter as possible, serve a true copy of such charges upon the person against whom they are made.”

In performing this investigation, substantial evidence has not arisen to justify the bringing of charges against Chief Robert Napier.

One focus of the investigation dealt with the conduct of Chief Napier at the Trustee

Meeting of February 6, 2023. Trustees Koch and Ledford expressed concern regarding the manner in which Chief Napier delivered the keys to the 2021 Ford Expedition to Trustee Koch. However, through interviewing all witnesses to that interaction, there is not sufficient evidence to indicate that Chief Napier “threw” the keys in an aggressive or assaultive manner. From a description of those present at the meeting, it appears that the keys landed on the table in front of the Trustees before Trustee Koch took control of the keys. Similarly, sufficient evidence does not exist that the interaction in the office adjacent to the meeting room between Trustee Koch and Chief Napier violated Revised Code § 733.35.

A second focus of the investigation concerned the lettering of the 2021 Expedition. In analyzing this issue, the issue is whether Chief Napier committed nonfeasance when he did not have the vehicle lettered by the meeting of February 6, 2023. Black's Law Dictionary (7 Ed. 2000) defines "nonfeasance" as "the failure to act when a duty existed."

Chief Napier confirmed that he knew this was a duty that was expected of him and which he had performed with prior vehicles. However, there does not appear to be a statutory duty or a related timeframe to perform such a duty in the Revised Code. So, the question becomes whether Chief Napier failed to act upon a duty imposed on him by the Board.

In this case, the vehicle was delivered on September 14, 2021. Nearly 17 months later, the vehicle still had not been lettered. During that period, the vehicle needed some service work which may have necessitated some delay, as did the need to wait for some equipment. Chief Napier said that it was his understanding that Rick Frazier of Performance Graphics preferred having all equipment installed before lettering emergency vehicles. In an interview with Mr. Frazier, he stated, while not a necessity, it

was his preference to have all equipment installed prior to performing his services.

However, even with that preference, if the Board had collectively provided a deadline to Chief Napier to have the vehicle lettered by a certain date and if he had failed to do so, that would constitute nonfeasance. However, in reviewing prior minutes and audios of meetings where this issue was discussed, no collective action of the Board was ever undertaken to set a deadline to have the vehicle lettered. Requests have been made to all interested parties to provide evidence of that action, but none has been provided. Based on this failure to take collective action by the Board to set a deadline, Chief Napier did not fail to perform a duty that would constitute nonfeasance.

Conclusion:

Having found no grounds for removal or lesser discipline under Revised Code §§ 505.38 or 733.35, there is a recommendation that no charges be brought against Chief Robert Napier. There is the further recommendation that this investigation be closed.

Regards,

Thomas W. Kidd, Jr.
Thomas W. Kidd, Jr., Esq.