

EXECUTIVE SESSION

EXECUTIVE SESSION OF THE NORMAL TOWN COUNCIL

June 19, 2017

The Executive Session was held in Uptown Station, Executive Board Room, 11 Uptown Circle, Normal, McLean County, Illinois on June 19, 2017.

I. CALL TO ORDER

The Executive Session was called to order at 8:55 pm.

II. ROLL CALL

The following members were present: Mayor Koos, Council Members Fritzen, McCarthy, Preston, Lorenz, McBride, and Cummings. Also present were: Mark Peterson, City Manager, Pam Reece, Deputy City Manager, Brian Day, Corporation Counsel, Jessica Woods, Deputy Corporation Counsel, and Kathleen Elliot, Partner in the law firm of Robbins Schwartz.

III. MINUTES

There were no minutes submitted for review.

IV. MATTERS PERTAINING TO PROBABLE LITIGATION

A. Probable Metrozone Litigation

1. Findings of Basis for Probable Litigation:

- The Town and the City of Bloomington entered into the Metrozone Agreement in 1986. That agreement stated that the term was indefinite and continued until the agreement of the parties to terminate.
- Approximately 10 years later, the Illinois Supreme Court held that contracts with an indefinite term are voidable by either party at will.
- During the term of the Metrozone Agreement, the Town contributed 50% of the revenue for the tax rebate to induce Walmart to locate within the Metrozone in 2002 with the understanding that the Town would receive 50% of the revenue generated by the Walmart.
- Bloomington has informed the Town of its decision to unilaterally terminate the agreement and keep all of the revenues generated.
- The Town has hired the firm of Robbins Schwartz to investigate potential legal action against the City of Bloomington.
- Robbins Schwartz has identified a viable cause of action against the City of Bloomington and estimates a better than average chance of recovery against the City.
- Town staff is continuing to work with Robbins Schwartz in the preparation of filing the case.

2. Corporation Counsel, Brian Day and Kathleen Elliot from Robbins Schwartz gave the Council an overview of the equitable estoppel cause of action that Robbins Schwartz has identified as a cause of action against the City of Bloomington due to the City's unilateral termination of the Metrozone Agreement. The discussion included next steps in the process, statute of limitations and other timeframes for filing, chances of success, potential recovery, potential settlement strategies once litigation is underway, and possible litigation costs. Kathleen Elliot left the meeting upon the conclusion of the Metrozone litigation.

B. Probable Fire Engine Litigation

1. Findings of Basis for Probable Litigation:

- Over the past 20 years, the Town purchased various pieces of fire equipment from Pierce Manufacturing. This was done through the Northwest Municipal Conference Joint Purchasing Program.
- That equipment came with a 50-year warranty on the frame.
- Numerous pieces of equipment have significant corrosion issues with the frames.
- This is a common problem with many of Pierce's customers, including Peoria, Champaign, Decatur, Bloomington, Charleston, and other communities.
- Pierce has been denying all claims under warranty to correct the corrosion.
- Communities in central Illinois are in the process of forming a coalition to bring legal action against Pierce. The law firm of Ancel Glink will represent the coalition. Normal has been approached to join the coalition.
- If, as expected, Pierce denies the warranty claims, then the Town anticipates taking some legal action to require the repairs or recover costs.

2. Deputy Corporation Counsel, Jessica Woods gave the Council an overview of the litigation and the potential outcomes. The potential litigation includes joining the coalition, a model that has been successful for the Town in the past, or filing a suit separately.

C. Probable FMLA Litigation.

1. Findings of Basis for Probable Litigation:

- FMLA (Family Medical Leave Act) is a federal law that requires employers to grant time off for certain medical conditions of the employee or their family.
- To receive FMLA Leave, the Town requires certification from the health care provider of the serious medical condition.
- The Town has a consistently-applied policy requiring a return to work certification when returning from FMLA Leave.

- A Town employee submitted an FMLA certification for an in-patient treatment center for (what ultimately turned out to be an addiction problem).
 - The employee left the treatment center early, but did not return to work.
 - When the employee sought to return to work, he submitted a return to work certificate from a doctor for an entirely different medical condition than what he took the leave for.
 - Ultimately, the employment was terminated because the employee could not produce a return to work cert with respect to the addiction treatment.
 - The Town has received a letter from a local attorney threatening a lawsuit for an alleged FMLA violation.
2. Mr. Day gave an overview of the potential lawsuit that may be filed as well as defenses that the Town could raise. The suit would likely be covered under the MICA insurance policy and defended by attorneys in the MICA defense pool.

V. MATTERS PERTAINING TO PENDING LITIGATION

- A. Beaman v. Town – Mr. Day outlined the status of this case, which is a malicious prosecution claim filed in State court. The Town won a summary judgment at the trial court level, and the matter is on appeal in the 4th District Appellate Court. All of the briefs have been filed, and oral Arguments were on April 19, 2017. We expect a decision any time. The case is being handled by the firm of Ancel Glink through MICA coverage.
- B. Selective Insurance v. United National Insurance and the Town – This is an insurance dispute between insurance companies as to which company is required to provide coverage for the Beaman defense. Mr. Day presented the Council with a status of the case. A partial summary judgment hearing by Selective was heard on May 27, 2017. The judge took the matter under advisement. The Town is working with outside counsel on this matter.
- C. Flynn v. Town – Mr. Day updated the Council on the status of this case, which is a suit against the Town by an accident victim over the design of the Camelback bridge. The Town won a summary judgement in the trial court, and the matter is on appeal in the 4th District Appellate Court. The Plaintiff has taken multiple extensions on the time required to file his brief, which is now due on July 5, 2017; the Town's brief will be due 30 days later unless extensions are taken. The case is being handled by the firm of Ancel Glink through MICA coverage.
- D. Frisbie v. Town – Mr. Day briefed the Council on this case, which is a trip and fall case in which a pedestrian tripped in a hole in a parkway as she was going to jaywalk across College Avenue. It was determined that the hole was likely caused by an Ameren utility pole that was removed. The case was tendered to Ameren under the indemnification provision of the

Town's franchise agreement. Ameren has assumed the defense of this case. The case is currently in the discovery phase.

- E. Collier v. Town – Ms. Woods briefed the Council on this case, which is a federal civil rights case in which the Plaintiff alleges that unknown police officers broke into her bedroom and conducted an illegal search. The case is being handled by the firm of Ancel Glink through MICA coverage. The Police Department and the Legal Department have reviewed records and done an initial investigation into the facts and can find nothing that substantiates the Plaintiff's claims. The case is being handled by the firm of Ancel Glink through MICA coverage. The Town filed a motion to dismiss because the complaint was inadequate. The Plaintiff refiled the complaint. The Town is evaluating the next steps.

VI. ADJOURNMENT

A motion to adjourn the meeting was made by Council Member McBride at 9:45 pm. The motion was seconded by Council Member McCarthy. All Members voted aye. The meeting was then adjourned.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Peterson', written over a horizontal line.

Mark R. Peterson, City Manager