

Minutes of the special meeting of the Village of Williamsville Board of Trustees held in Village Hall, 5565 Main Street, Williamsville, New York, on Wednesday, August 8, 2007 at 6:00 p.m.

The meeting was opened at 6:00 p.m. with the Pledge of Allegiance led by Mayor Lowther.

Present: Mary E. Lowther, Mayor
Brian J. Geary, Trustee
Jeffrey L. Kingsley, Trustee
Brian J. Kulpa, Trustee
Basil J. Piazza, Trustee

Also Present: Sally A. Kuzon, Administrator/Clerk-Treasurer
James Coniglio, Village Attorney
Thomas Jones, Town of Amherst Attorney
Frank Billiotti, Town of Amherst Comptroller
Richard Maddigan, Williamsville Fire Chief
Richard Andrews, Williamsville firefighter
Tony Schueckler, Williamsville firefighter

Guest: Ed Holohan, Penflex, Inc.

Mayor Lowther discussed the Fire Service Award lawsuit that has recently been settled in the Town of Clarence and acknowledged that Ed Holohan from Penflex, Inc. was here to discuss this issue with the Village Board, Village Attorney, Williamsville firefighters and the Town of Amherst Attorney and Comptroller.

Ed Holohan gave the following history of the Fire Service Award Program:

- In the early 1990's, a mandatory referendum was required by the General Municipal Law seeking Village residents' approval to establish a Fire Service Award Program for the Williamsville Fire Department.
- Active firefighters achieving the correct number of points annually receive a multi-payment life annuity of \$20.00 per year of service.
- The original program allowed firefighters to receive this benefit at age 60; this was lowered to age 55 by Public Referendum around 1994.

Senior firefighters around the State pursued a legal action to receive service credit and payment for active service after the entitlement age, which in Williamsville's case is age 55. Ed testified in State Supreme Court for a lawsuit filed by the Clarence Fire Department in which they were successful and retroactive service credit and payments must be paid to the firefighters who were active and achieved the necessary points. The decision was appealed in Rochester, NY, however the original decision was upheld in December of 2006.

Most of the early programs put in place like Williamsville are making this change to their program because of the possibility of an age discrimination lawsuit against the municipality with the Equal Employment Opportunity Commission (EEOC). The EEOC administers the Federal Age Discrimination Employment Act (ADEA).

Ed referenced the March 23rd letter from Penflex, Inc, which calculated the estimated cost of allowing post-entitlement age service accruals retroactive to January 1992, the effective date of the program. The calculations were prepared on assets and data provided through 12/31/06, as well as retroactive service

Minutes of the special meeting of the Village of Williamsville Board of Trustees held in Village Hall, 5565 Main Street, Williamsville, New York, on Wednesday, August 8, 2007 at 6:00 p.m.

credit history provided by Rick Andrews. Ed discussed the cost to credit the retroactive pay for post-entitlement service is \$96,000 and the increase to the program liability is \$105,000. The total unfunded liability to the program as of January 1, 2008 is \$201,000. He also explained this can be amortized over

10 years at an approximate cost of \$25,800 per year. In addition, there is an increase to the program cost for future post-entitlement age credit which is approximately \$32,000 per year based on the current roster of firefighters. This cost can be phased in over a 5 year period which is an annual increase of \$6,400 per year beginning with 2008.

Mayor Lowther asked Ed Holohan if the Village is required by court order to retroactively comply with the post entitlement age service credit. He replied that only the Clarence Fire Dept. is required by court order at this time.

Trustee Kingsley explained that from reading the discussion he believes it is a modification of the program which allows firefighters the ability to accrue points after the entitlement age and if that is the case, based on EEOC determination, you will have to retroactively accommodate that from the beginning of the program. Jim Coniglio indicated that once the appellate division rules, that becomes the law with the Village legal obligation to comply and there is no need for a specific court order to tell the Village to do this. Trustee Kingsley asked how many firefighters are receiving a benefit. Ed Holohan referred to the report submitted by Penflex with the yearly statistics.

Ed Holohan told the Board the FSA fund is valued at approximately 1.6 million dollars and the program fund ratio is 101.4%. Rick Andrews explained that the WFD has a cap of 65 for active firefighters under their membership rules.

Ed Holohan recommended funding the retroactive contribution by amortizing it over 10 years. Mayor Lowther was concerned with doubling the cost of the program over 10 years.

Mayor Lowther indicated that the Village contribution doubles due to the retroactive requirement and wondered if the benefit going forward could be adjusted to fund this increase in contribution. Ed Holohan indicated that the 2008 liability is \$201,000. If the Board decided not to make a contribution during that year then the program funding ratio would drop to 92%. Ed Holohan indicated the goal is to always be 100% funded. If the fund drops down to 90% in 2008, by not making a contribution, then the annual goal for the retroactive pay back would be to increase the Village contribution enough to increase the funded amount by 1% each year for the next 10 years.

Ed Holohan also informed the Board that starting next year the Village will be required to have this program audited. They will be looking specifically at the funded ratio. If it is less than 100% the auditor will be looking at what steps the Village is taking to fund it at 100%. They will also look at investment returns. Trustee Piazza asked if these estimates are based on the most current numbers supplied by the Fire Department. Ed Holohan confirmed the projections made were based on the numbers received from the WFD.

Rick Andrews explained to the Board that the contribution is based on the worst case cost scenario assuming that all members make their points, no one passes away and no one leaves the Department. This usually is not the case, which lowers the liability and contribution amount. Ed explained that increased contribution made by the Village due to investment returns along with reduction in firefighters making points or deaths would be applied to paying down the additional liability.

Rick Andrews asked if the Mayor had given the Town and Village a breakdown of shared expenses and the percentage that each municipality contributes. The Mayor explained that 54% of the cost of the WFD is funded by the Town of Amherst. Ed Holohan informed the group that the highest line of duty

Minutes of the special meeting of the Village of Williamsville Board of Trustees held in Village Hall, 5565 Main Street, Williamsville, New York, on Wednesday, August 8, 2007 at 6:00 p.m.

death and disability benefit of \$100,000 was put in place when the program was started. Since that time, a federally funded death and disability benefit has been put in place at no cost to the Village which provides a \$300,000 benefit. Currently the program provides a \$400,000 death and disability benefit to each firefighter.

The Village is no longer able to secure an insurance policy to cover the original \$100,000 benefit which is currently self - funded by the program. The Board recommended the \$100,000 death and disability benefit be dropped since the federally funded policy is in place. Rick Andrews indicated the Fire Department agrees with this position and is willing to drop the \$100,000 Death & Disability policy in the original FSA program.

Jim Coniglio indicated a public referendum is required to make this change to the program. Trustee Kingsley requested an Attorney General's opinion letter as to whether or not a public referendum was required. Jim Coniglio contacted them a while ago and asked if a referendum or special election is required if the change resulted in a decreased cost to the municipality. They felt there would be no harm in having the election since the original plan was voted on. Trustee Kingsley inquired as to the cost of a special election. It was estimated to cost approximately \$3,000.00. Ed Holohan offered to meet with the Fire Department and explain the death and disability benefit that is being removed from the plan and to answer any questions they may have. There was general consensus that the transparency of the issue would be clouded if it was put on the general election ballot in November.

The Village Board agreed to have a special election to consider a referendum to eliminate the \$100,000 death and disability benefit which is an amendment to the program. Penflex will prepare a resolution for Village Board approval indicating this is a technical correction in the administration of the plan to comply with the law.

Ed Holohan discussed the changes made to the original point system. In order for a firefighter to earn points in the call category based on the original plan, they had to attend a minimum percentage of calls. The calls were sub-divided into 2 call categories: emergency rescue (ambulance calls) and all other calls. The law was amended in 1994 and increased the points from 15 to 25 points. The Village no longer has an ambulance, so now all the points up to 25 points can be earned by answering any call.

Jim Coniglio would like to make sure that the points are not mandated by statute and can be determined by the program. It was agreed that the point system should be reviewed and necessary changes will be made after the statute is reviewed.

Chief Maddigan indicated the WFD has a software program that would need to be updated if the point system plan changed.

The Mayor indicated the past Chief felt cost could be controlled by giving more points to interior firemen and less to exterior firemen. The Fire Dept. said this was never endorsed by them. Trustee Geary said there was also discussion in the past of ways to retain interior firefighters since they are the backbone of the company.

Ed Holohan indicated Senator Schumer has been looking into federal income tax credits as a way to retain firefighters along with property tax credits on the State level. The Village currently has a \$500 property tax exemption for all Village firemen whether or not they are active or exempt. Ed Holohan said the State law would have to be amended to give interior firefighters additional service points. Trustee Kingsley asked how many members were currently interior firefighters and Chief Maddigan indicated approximately 50% of the current membership qualified.

Minutes of the special meeting of the Village of Williamsville Board of Trustees held in Village Hall, 5565 Main Street, Williamsville, New York, on Wednesday, August 8, 2007 at 6:00 p.m.

The Fire Dept. said the Explorers group has been helpful in recruiting volunteers. Ed Holohan reported there is legislation introduced both in the House and the Senate to have all benefits paid to volunteers free of federal income tax, including LOSAP payments and could possibly be effective January 1, 2008. Ed Holohan felt the current point system for WFD was alright with the exception of the ambulance.

Ed Holohan indicated it would be a good idea to have the Village Board spot audit the WFD point system occasionally and this info can be given to the auditor.

It was also mentioned that Comerica (the third party company dispensing LOSAP checks) has an endorsement on the back of the check warning against unauthorized use. Rick Andrews said the red alert computer system has been helpful in documenting the point system.

Sally Kuzon asked about the 3 items the auditor will look at. Ed Holohan indicated the State will audit the following:

1. Actuarial assumption - funded ratio
2. Investments
3. Accounting audit

Rick Andrews added that anyone in a State Pension System who answers a fire call while working their regular job (County, State, Town or Village) is not eligible to receive fire service points.

ON MOTION by Mayor Lowther, seconded by Trustee Geary, it was moved to adjourn the meeting at 7:25 p.m..

Unanimously carried.

Sally A. Kuzon
Administrator/Clerk-Treasurer

Minutes of the Regular Meeting of the Village of Williamsville Board of Trustees held in Williamsville Village Hall, 5565 Main Street, Williamsville, New York on Monday, November 13, 2006 at 7:30 p.m.