



POLICE COMMISSION

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REVISED MINUTES OF REGULAR MEETING
BETHEL POLICE COMMISSION
WEDNESDAY, AUG 20, 2008
BETHEL POLICE DEPARTMENT-CONFERENCE ROOM

ATTENDING: CHAIRMAN NICHOLAS ELLIS
COMMISSIONER CHRIS McCOLLAM
COMMISSIONER HUGO GRECO
COMMISSIONER BILL OCHS
COMMISSIONER ANDREW MATTURRO
CHIEF JEFFREY W. FINCH

RECEIVED

SEP 18 2008

TOWN OF BETHEL
TOWN CLERK

Chairman Nicholas Ellis opened the meeting at 5:03 p.m.

1. General Public Comments:
None
2. Review of Past Minutes July 16, 2008
Motion by Comm Maturro to accept the minutes of 7/16/08 Regular Meeting; seconded by Comm McCollam – unanimous.
3. Budget Report:
Chief Finch highlighted the fact that overtime is \$7K under last year. Because of the way payroll is handled, wide fluctuations in overtime expense can occur. Lt Dickinson, in attendance, noted that other accounts are also in the black. Motion by Comm Ochs to accept the budget report as presented; seconded by Comm Greco – unanimous.
4. Old Business:
 - a) Monthly Reports
Chief Finch stated that effort is being made to organize and reformat reports using the new software. Certain conflicts in accuracy are being ironed out as the learning process continues. Nature call data is now divided up by shift. A new officer activity report was presented detailing number and type of calls and enforcement activity. In response to Comm Ellis' question about how smooth the software is operating, Chief Finch replied that entering reports and NIBRS validation by officers is still on the learning curve. Certain required data, before the case can be forwarded to the next step, has always been best provided by the

officer who was at the scene. The Commission considered the reports as presented. Motion by Comm Greco to accept the Monthly Reports; seconded by Comm Ochs – unanimous.

b) Traffic Light – Rt6 & Old Hawleyville

The intersection is working well according to Lt. Dickinson's response. Late night flash is not recommended due to restricted sight lines.

c) Wolfpits & Rt302 Traffic Light, Taylor Rd Condition

Lt Dickinson's review of this intersection was in the hands of commissioners. The Town has begun work on Taylor Rd. The State has fixed the light and trimmed trees.

d) Grievance on Comp Time

Chief Finch stated a situation wherein Off Zor was denied taking comp time by Capt Cedergren because of a shift shortage of sergeants and officers able to perform acting sergeant duties. It was also July 3rd, a date when extra officers are often routinely needed. Activity on the night of July 3rd was high as predicted by Capt Cedergren. Officer Zor filed a grievance over being denied comp time. The Captain's decision was based both upon the Department's operational needs and the 4/14/04 negotiated agreement with the Union concerning comp time that if its use caused overtime it cannot be used.

George Bryce, Police Union President, presented the Union's argument that the settlement agreement of 4/14/04 was made to replace the language of section C of General Order 2003-05. Since in his argument, policy 2003-05 by Town Charter does not exist, the aforementioned agreement also does not exist. Three positions were taken in this argument. First, the settlement agreement concerning procedural language for General Order 2003-05 "Use of Sick Time & Other Benefit Time" had expired since at the last contract negotiations it was the Union's understanding that any outstanding memorandum of understanding or settlement agreements had to be codified into the negotiated contract otherwise they would be null and void. Since section 8.09 of the contract stayed the same without amendments, the Union's position is that this settlement agreement has expired. The second position is that based upon past meeting minutes, General Order 2003-05 was never brought before the Commission between 6/3/03 when it was enacted and 7/5/05 when it was revised. The language of the Town Charter states that under Section C3-16 (B) Police Commission "Said Commission shall be the sole authority to make policy for the Police Department" and Section C8-12 (A)(1) Police Department "Said Police Chief shall be responsible---for the implementation of the rules, regulations and policies of the Police

Commission". Because the policy in question has not gone through the necessary procedures as specified by Town Charter, neither it nor the agreement exists. Instead Det Bryce sees it merely as serving the function of a memo. Det Bryce passed out high-lighted copies of Police Commission minutes. 8/18/04 Police Commission minutes sec 4(b) Chairman (First Selectman) Alice Hutchinson asked for time to consult Town Charter to see if "abdication of policy making authority" to the Chief is consistent with that charter. In the following meeting 9/15/04 sec 4(b) Chairman Hutchinson stated her belief that such delegation is not allowed but she would have to consult with Town Council. In the 10/20/04 meeting the Chairman reported Town Council's view that although the Chief can author policies, "policy making authority rests with the Police Commission". Det Bryce went on to argue that State statute shows that policy making authority rests with the Commission and neither the Town Charter nor State Law "abdicates that authority". The third Union position is that courts have ruled that "undue disruption" does not solely apply to the financial impact of paying overtime. Copies of a Circuit Court of Appeals were handed out. This court case Beck vs City of Cleveland concerning denial of comp time also supports this view. When overtime is incurred to permit an employee to take comp time "such a situation in and of itself, would not be sufficient for the employer to claim that it is unduly disruptive". In this decision "'unduly disruptive" limitation was intended to apply to actual governmental operations, not the fiscal impact of compensatory leave". It is not the Union's fault according to Det Bryce if comp time gets out of control nor is it right to deny officers' right to take comp time when they want. In a Supreme Court decision (Barrentine vs Arkansas-Best Freight Systems Inc) the Supreme Court ruled that "FLSA rights cannot be abridged by contract or otherwise waived. Rights under the law become the deciding factor when contract agreements previously reached become an issue. Contract language repeatedly includes the term "Consistent with State and Federal Laws". This is what Det Bryce stated the Union is asking for. Settlement agreements that do not "trump" member rights. The request is that the Commission reverse its decision and accept the Union's grievance and allow comp time usage to be consistent with contract language and the law.

Chief Finch produced the binder of all the policies, general orders and procedures which are in place. None according to the Chief have been objected to until now and most have not been approved by the Commission. Many have multiple revisions. The Chief repeated the events of 2004 when he tried to control overtime resulting in a Union Grievance which went to the Labor Board. The Union accepted the findings at the time. While agreeing with much of what Det Bryce drew from the court decisions, the Chief does not

believe the context and application to this particular case "is quite appropriate". In consultation with the Town Attorney the need arose to explore the question as to which policies the Commission is required to approve and what should be delegated to department managers. Policies should be "broad conceptual statements about how we operate". Procedural matters should rest with department heads. There is no logic in saying that the policies under which the Department has been operating for 50 years are null and void. In reply to Chairman Ellis' question George Bryce repeated that Town Charter does not use the words "should", "may" or "could" but rather "shall" be the sole authority to make policy". Certain policies, such as the comp time issue under consideration, are more important than others and should come before the Commission. The Commission must decide which are the significant policies. Unlike private business town government is held to the due process laid out in the Town Charter. The wording is specific and not subject to interpretation. In response to Chairman Ellis' question as to why the Union accepted this agreement in the first place, Det Bryce noted poor advice from the labor attorney and the lack of research by the then Union president into underlying labor law. The Union, according to Det Bryce is being asked to honor an agreement which contradicts rights under labor law. A discussion of policy vs procedure vs State law and Town Charter followed. Chief Finch produced figures from 1/07 through 8/08 of comp time earned and used showing no one is having trouble using comp time. The agreement to limit the use of comp time has been in place and working without challenge until now since 2004. Full comp days off are significant according to Det Bryce. Not total hours. Also labor law and Supreme Court rulings are the true test where operational rather than merely the need to hire for overtime must be demonstrated. With the feeling that case law is in their favor the Police Union is prepared to take this issue to State and U.S. Supreme Court if necessary. Chairman Ellis stated that a special meeting will be held next week on this matter to give Commission members time to "digest this".

The meeting recessed at 6:15pm. The meeting resumed at 6:25pm.

5. New Business:

Motion by Comm McCollam to add Rt302 and Griswold to New Business as item 5d; 47 Stony Hill Rd as item 5e; 5 Old Shelter Rock Rd as item 5f; seconded by Comm Greco - unanimous.

a) Site Plan – 153 Grassy Plain St

In his letter Capt Cedergren described this new building construction in front of the old Rt53 Plaza. The driveway will remain unchanged but parking will be increased. The concern is over decreased sight lines by the building itself for exiting vehicles. Since it is on a State road, the captain recommends the Commission approving the plan with the stipulation that State DOT engineers determine driveway sight lines. Motion by Comm Maturro that the Commission accept Capt Cedergren's recommendation for 153 Grassy Plain St and pass it onto the Planning and Zoning Commission; seconded by Comm McCollam – unanimous.

b) Site Plan – 234 Greenwood Av

In his letter, Capt Cedergren described this as the conversion of a residential dwelling into a doctor's office. Previously it had been a medical office before conversion into a residence. Eight additional parking spaces are planned to be added. Driveway sight lines are impeded by two on-street parking spaces left and right of the driveway onto Greenwood. Approval is recommended with the stipulation that State DOT engineers look at driveway sight lines with a view to eliminating the two offending parking spaces. Motion by Chairman Ellis that the Commission accept Capt Cedergren's recommendation for 234 Greenwood Av and pass it onto the Planning and Zoning Commission; seconded by Comm McCollam – unanimous.

c) Citizen Complaint Survey

To comply with CALEA requirements, an annual summary of internal affairs investigations was prepared. The summary was given to Commission members by Chief Finch and is to be made public by being read into the meeting minutes as follows: (revision to 8/20 minutes) For the time period covering 5/1/07 through 7/1/08 there were a total of 18 investigations completed with 2 resulting in suspension time off, 7 resulting in a verbal warning and 1 resulting in counseling.

d) Rt302 and Griswold St

In this plan for the renovation of a six unit commercial building. Capt Cedergren recognized that the parking lot exit is too close to the stop sign located on a curve. Renovations to the intersection need to be made at the expense of the developer. Motion by Chairman Ellis to accept Capt Cedergren's report on the Rt302 and Griswold St site plan and forward it onto the Planning and Zoning Commission; seconded by Comm McCollam.

e) 47 Stony Hill Rd

In his letter Capt Cedergren described this construction of a dining patio at Armando's restaurant. No police operation or traffic issues are seen with this project. The recommendation is for approval. Motion by Comm Greco that the Commission accept Capt Cedergren's recommendation for construction of a patio at 47 Stony Hill Rd and pass it onto the Planning and Zoning Commission; seconded by Comm McCollam – unanimous.

f) 5 Old Shelter Rock Rd

In his letter Capt Cedergren described this as an excavation project behind a private residence. The concern is over a steep driveway which may make it difficult to stop a loaded dump truck at the bottom, risking a collision with traffic. The recommendation is that the Commission should stipulate some traffic control by the developer at the bottom of the driveway. Adequate sight lines at the bottom of the driveway should be created to satisfy this project and afterwards. Comm Matturo suggested signs on either side "Trucks Entering Roadway" and revisit this in 30 days. Motion by Comm Matturo to have property owner or construction people post temporary "Trucks Entering Roadway" signs on both sides of the driveway when working; seconded by Comm McCollam – (revision to 8/20 minutes) passed by 3 with 1 abstention.

6. Correspondence:

a) Knoll Edwards

The owner of two adjoining businesses 226 and 230 Greenwood Av requests a one hour time limit for each of the two spaces in front of each building. Employees of Escape Salon and Spa at 232 Greenwood park in those spaces for most of the day. Tenants at 226 and 230 Greenwood Av complain. There is parking at the rear of the salon. Mr Edwards has been put off when trying to talk to the owners of the salon. The Commission discussed what time limit is necessary for a hair job. Motion by Comm McCollam to have Lt Dickinson look at realistic signage for this location; seconded by Chairman Ellis – unanimous.

7. Chief's Report

a) Selective Enforcement

Selective enforcement activity has been ongoing at Redwood Dr, Benedict Rd, Rt53 and Church Campground, Mansfield St, Codfish Hill Rd, Apollo Rd, Wolfpit Rd, Rockwell Rd, and Winesap.

8. Commissioner Comments:

Comm McCollam reported the speed trailer on Mansfield St is not working as of this date. Chief Finch will look into this. Comm Matturo feels an officer should be stationed near the trailer occasionally.

9. Executive Session:

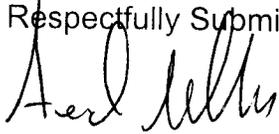
At 6:55 Motion by Chairman Ellis to go into executive session to discuss sergeant promotion and invite Chief Finch to attend; seconded by Comm McCollam.

At 8:50 the Commission came out of executive session.

At 8:50, motion by Chairman Ellis to promote Robert Durkin to patrol sergeant effective 9/1/08 and management reserves the right to assign him to whatever shift is necessary; seconded by Comm Maturro – unanimous

8:51 Motion by Comm Maturro to adjourn; seconded by Comm McCollam

Respectfully Submitted



Ferdinand Miller Jr.

Secretary

