

TOWN OF ULSTER TOWN BOARD SPECIAL MEETING (26)

October 24, 2017

CALLED TO ORDER BY SUPERVISOR QUIGLEY, CHAIRMAN at 7:00 PM

SALUTE TO THE FLAG

ROLL CALL BY CLERK, Suzanne Reavy:

TOWN COUNCILMAN JOEL B. BRINK - *Excused*

TOWN COUNCILMAN ERIC KITCHEN

TOWN COUNCILMAN JOHN MORROW

TOWN COUNCILMAN ROCCO SECRETO

SUPERVISOR JAMES E. QUIGLEY 3rd

ALSO IN ATTENDANCE

1. Jason Kovacs, Town Attorney
2. Kyle Berardi, Police Chief

ADDITIONS OR CHANGES TO THE AGENDA - None

NEW BUSINESS:

Any other matters that may come before the Town Board

OLD BUSINESS

Discussion on FOIL Issue

Supervisor: This meeting is a continuance of the October 19th Town Board meeting regarding materials requested by FOIL. At said meeting, Christopher Ragucci of Mainetti, Mainetti, & O'Connor presented the Town Board a letter that the Town Board and Town Attorney needed time to review. Now that the letter has been reviewed, Town Attorney Jason Kovacs will respond.

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Jason Kovacs: Give Town Board background on situation. Incident in question took place on 5/24/17; Town received FOIL request on 7/14/17 from the Kingston Times looking for copy of the video of the traffic stop of that incident. After reviewing the law, Kovacs issued a denial letter to the FOIL request on behalf of Suzanne Reavy, Town Records Access Officer. FOIL denied due to Civil Rights Law 50 (a) prevents the disclosure of the video. At that time it was possible that the video could be placed in the officer's personnel file or officer could face disciplinary charges. Since that time, confirmed with Chief Berardi that the officer not facing disciplinary charges and video will not be placed in his personnel file. Kingston Times contacted Robert Freeman in the Committee on Open Government in Albany, leading authority in NYS on the FOIL law. Freeman issued an advisory opinion – 10/11/17 – disagrees with the Town's denial of the video. Civil Rights Law 50 (a) does not apply. Two potential issues the Town should consider before releasing the video: 1. Will the release of the video affect defendant's right to a fair trial? Person was not arrested. This was not a crime. Video shows what happened at traffic stop, nothing to do with whether or not person was speeding. As Town prosecutor, this video will not be entered as evidence. 2. Does the release of the video have an effect on the person's personal privacy? Per Freeman, this does not come into play in this traffic stop. Based on this information and Freeman's review of the law, suggests the Town Board recommend to the Records Access Officer to release the video. Open to any questions.

Town Board: No questions.

Joseph O'Connor, Esq: Represents defendant. Originally Town police and Town attorney denied the FOIL request. Requested specific opinion on a specific case and Public Officers Law section 87 that exempts release of tapes from judicial proceedings that are still pending, including traffic tickets. Specifically states that it can compromise any judicial proceeding including traffic infractions. Fact finder in this case is a judge that can see the video through social media, youtube, newspaper article, which could affect client's ability for a fair trial. In the history of the police department, to his knowledge, has never released a video of this nature. Number of reasons including cost – traffic tickets in this Town probably exceed 1000 per year and dash cam videos will have to be archived and produced. Committee on Open Government opinion cites the "Time Warner" case, which O'Connor provided in his report. Under Criminal Procedure Law, his client is entitled to rights. If this case is dismissed, client's entire case will be sealed. Has no objection to release if client is given fair trial and released afterward. Releasing video before trial seems political since client is up for reelection this November.

Councilman Secreto: Political part we can throw out. Secreto is a democrat in a republican board. I am not making a decision on that basis. I can say don't release it and I look like I'm holding her back and same with the Town Board.

O'Connor: What is problem with releasing it after her fair trial? If either Judge sees the video, it would affect client's fair trial. Adjourn this matter until after the trial, and after a conviction or acquittal, there is no problem – puts this out to the Town Board.

Councilman Morrow: My understanding from the Town attorney that this video will never be seen by either Judge because it is not going to be introduced as evidence and will have no relevance in a trial. Nothing on it that would indicate her guilt or innocence.

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O'Connor: Any admissions or denials & client's demeanor can be introduced as evidence by the officer. Judge should not hear mention of it or see it.

Other issue – 1000 tickets issued in the Town, property damage and personal injury cases. If the decision to release the video is made today, Town must consider the cost and time involved in archiving and producing every video of traffic stops. Town would have to provide video on all traffic and criminal stop.

Councilman Morrow: There is a cost associated with releasing those videos. The Town is not going to lose money.

O'Connor: Public Officer Law 87 states that the Town states that a policy exists. Has not seen it, but cannot say that a policy does not exist. Not aware of any Town of Ulster policy.

Supervisor: Town of Ulster FOIL Policy published on the Town Website in 2015; ratified by the Town Board in January, 2017

Chief Berardi: Currently over 2,000 tickets issued this year in the Town of Ulster.

O'Connor: Now consider, in addition to supporting deposition, defendant can request a video. Open the Town to other liabilities that might not have been considered.

Councilman Secreto: Many tickets are reduced.

Councilman Morrow: The intent of the Freedom of Information Law is to have this information available to the public.

O'Connor: No other police agency has not made it [video] public prior to trial (specifically in Ulster County). There is a law that advises municipalities to wait to release video until the judicial proceedings have ended, to protect person's right to a fair trial.

Supervisor: Since becoming Supervisor, has run a "transparent" Town – Website has numerous documents. Measured against other Towns in this County, Town of Ulster practices the most disclosure. We have been given a FOIL initially denied. We have been given an opinion from Bob Freeman; heard our Town attorney speak; heard Mr. O'Connor's position.

O'Connor: Two matters where Town opposed turning over any personnel files: Saunders v Town of Ulster and McGinnis v Town of Ulster (index numbers given). Those two cases were resolved a few months ago and motions were filed in 2014. In defense, there are 2 clear cases the Town denied any personnel files of an officer.

Supervisor: There was no communications from this body to your office indicating a denial. Our files were turned over to our insurance company. For our defense, are you stating now that those files were never turned over?

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O'Connor: Videos showing an accident were turned over. A Town of Ulster attorney (not Kovacs at the time) made multiple motions to deny releasing any files relating to a personnel issue relating to a traffic infraction involving his O'Connor's client and a Town of Ulster police officer.

Supervisor: The video did end up in the personnel file. The Town would have been correct to withhold the video due to Civil Rights Law 50 (a). My understanding is that the tapes were eventually turned over.

O'Connor: Thank you for your time.

Supervisor: At this time, we have heard numerous statements. Would like to call for a motion to recommend to the FOIL officer that she release the tapes under the FOILs that have been received by the Town police.

MOTION to allow FOIL Officer to release video

MOTION: Councilman Kitchen

SECOND: Councilman Morrow

ROLL CALL VOTE:

Town Councilman Brink	<i>-Excused</i>
Town Councilman Kitchen	-Yes
Town Councilman Morrow	-Yes
Town Councilman Secreto	-Yes
Supervisor Quigley	-Yes

CARRIED

Supervisor: Opens floor of meeting to audience.

~~ NO COMMENTS ~~

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MOTION to adjourn at 7:20 PM:

MOTION: Councilman Kitchen

SECOND: Councilman Morrow

Town Councilman Brink	<i>-Excused</i>
Town Councilman Kitchen	-Aye
Town Councilman Morrow	-Aye
Town Councilman Secreto	-Aye
Supervisor Quigley	-Aye

CARRIED

Respectfully Submitted by Suzanne Reavy
Ulster Town Clerk