



**Minutes of the Special Meeting of the
Cedar Springs City Council**

Thursday, May 26, 2016

7:00 p.m.

**Cedar Springs City Hall
66 S. Main St.
Cedar Springs, Michigan**

1. The Meeting was Called to Order by Mayor **Gerald Hall** at 7:00 p.m. The Pledge of Allegiance was recited.

2. <u>ROLL CALL:</u>	Mr. Daniel Clark	Present
	Mr. Perry Hopkins	Present
	Mrs. Molly Nixon	Arrived 7:09 p.m.
	Mrs. Rose Ellen Powell	Present
	Mr. Robert Truesdale	Present
	Mrs. Pamela Conley, Mayor Pro Tem	Present
	Mayor Mr. Gerald Hall	Present

3. PUBLIC COMMENTS

Jason Rosenzweig, City Assessor, read a prepared statement (**Attached Item A**)

Kathy Bremmer, 205 E. Maple St., said there was no reason to continue with the meeting based on the statement that was just given.

4. **Motion by Conley, supported by Clark, to approve the agenda.**

VOTE: 7 – 0, Motion Carried.

5. ACTION ITEMS.

A, **Motion by Conley, supported by Clark, to approve Resolution No. 2016 – 12, a resolution to terminate the City’s employment relationship with the City Assessor.**

Nixon asked if the resolution had been drafted by the City’s Attorney.

Hall responded yes.

Hopkins asked if Policy 12 should be waived to allow the Council to act on the resolution that evening.

Motion by Hopkins, supported by Conley, to waive Policy No. 12 to allow the Council to act on the resolution at that meeting.

VOTE: 7 – 0, Motion Carried.

Vote on original motion to terminate employment:

VOTE: 7 – 0, Motion Carried.

- B. Consideration of replacement for City Assessor.
By consensus, Councilors, decided to waive the hiring of a replacement assessor and to have the interim City Manager handle the hiring.
- C. **Motion by Conley, supported by Nixon, to approve and authorize the Mayor to sign the proposed agreement presented that evening regarding the hiring of an Interim City Manager.**

Hall introduced **Barbara VanDuren** who was to become the Interim City Manager.

VOTE: 6 – 1 (Hopkins) Motion Carried.

6. COMMUNICATIONS.

City Clerk Linda **Christensen** turned in her letter of resignation effective July 1. She had been serving as the Interim City Manager and stated she felt very disrespected by the Council as she had not been told they were going to hire an Interim City Manager until she had been told to put it on the agenda.

7. COUNCIL COMMENTS.

Hall – it was with sadness he took the clerk's resignation; he wished we could keep her longer; the council wanted her to stay; it was an uncomfortable night having to terminate an employee; he had never had to do that before. He reminded Councilmembers there would be a special meeting June 6 during which they would retire to closed session to review potential city manager candidates.

Clark – it was his understanding the clerk was burdened with the extra responsibility; the clerk had his respect and he wished her well.

Powell - she had the utmost respect for the clerk; the council's only goal was to relieve her from two high pressure jobs.

Conley – thought hiring an interim city manager had been discussed at the last city council meeting; the council was trying to lighten the load.

Nixon – she always told people to come in to city hall and talk to the clerk; the first round of city manager interviews didn't work out or we wouldn't be in this situation; if the clerk felt she had been ambushed, she was truly sorry; but she was going to retire anyway.

Truesdale – the clerk had been good to him during his term of office; it was his thinking she was anxious to retire.

Hopkins – didn't have a problem with the clerk; she has done a lot for the city; if she didn't want to be replaced, it shouldn't happen.

8. The meeting adjourned at 7:35 p.m.

Linda Christensen, City Clerk

Gerald Hall, Mayor

ATTACHMENT A

Good Evening again,

As I have been made aware that this meeting of the city council is being held to discuss my termination from the position of Cedar Springs Assessor, I would like to make you aware that the council has no ^{authority} right to terminate my employment.

Section 3.6 of the City of Cedar Springs charter provides in part that..."There shall be, within the administrative service of the city, a Clerk, Treasurer, Assessor, Attorney, Health Officer, Chief of Police, Fire Chief, and such additional administrative officers as may be created by ordinance or resolution."

What this states is that as the Assessor, I am an Administrative Officer.

That section goes on to say that..."The Council may by ordinance or resolution create the office of City Manager and specify the duties, authorities, and responsibilities of such office."

The council created the office of city manager by Ordinance No.17 adopted January 9, 1969.

Section 3.6 continues..."In the event such office is created, the Council may provide that any administrative officer or department of the city except the Attorney shall be placed under the administrative direction of such Manager and in such event the Manager shall have the power to appoint, subject to confirmation by the Council, such administrative officers of the city as are placed under his administrative direction and shall have the power to discharge such administrative officers without confirmation of the Council.

As I stated prior, Ordinance No 17 adopted January 9, 1969 created the office of city manager. That ordinance under section 2.72 describes the functions and duties of the city manager. One of which is to employ or be responsible for the employment of all city employees.

Section 2.73 deals with Interference from the council. It states that "(a) Except for purposes of inquiry, the council and its members shall deal with the administrative service for which the city manager is responsible solely through the manager, and neither the council nor any member thereof shall have authority to or shall give orders to any subordinate employee of the city either publicly or privately.

Section 2.73 continues...(b) No member of the council shall direct or request the following: (1.) The appointment of any person to or the removal of any person from any employment or office for which the city manager is responsible.

Yesterday, the City Mayor visited me during my office hours and broke the law when he asked for my resignation. Furthermore, the purpose of this meeting violates the Charter as the city council does not have the authority to fire an employee as that responsibility rests solely with the city Manager.

Furthermore, it is my understanding that my replacement has already been secured. That is another violation of your law in that either the council as a whole or the mayor has requested the appointment of a person for which the city manager is responsible.

You may feel that I am not an employee and that I am instead a contractor. This is not true. I was hired by the previous city manager with confirmation of this council. My employment agreement states that the city intends to employ me. I have never been considered an independent contractor. Some of the reasons that I cannot be considered as an independent contractor are that I am a public official. Because I sign and certify the assessment roll, I am considered a public official. Public officials by law must be employees. Secondly, I have never been paid as an independent contractor, I have received employee paychecks whereas the employer pays their portion of employer taxes and holds the employee portion of the payroll taxes in escrow. I have received a W-2 which only employees receive and have never received a 1099 as would be designated for an independent contractor. Third, my employment agreement specifies that I will hold office hours. By law, once I am required to hold office hours, I cannot be considered an Independent Contractor.

As you can see I am an employee and not a Contractor, therefore, the council has no authority to give me orders, or remove me from office. In doing so, would be a violation of the law.

While I do not have a contract, I do have an employment agreement. As stated before, the agreement does spell out terms of my termination. However, as I have previously stated, that termination may only come from the city manager, and only under terms that are spelled out in the agreement. Those terms are as follows:

(a) This Agreement may be terminated by either party upon 30 days prior written notice to the other party.

I have not received 30 days written notice from the city manager, and therefore I cannot be terminated unless I receive such notice. However such notice can only come from the city manager and may not be influenced by this council.

(b) If either party shall give written notice to the other that the other party has substantially defaulted in the performance of any obligation under this Agreement and such default shall not have been cured within 15 days following the giving of such notice, this Agreement shall terminate on any future date specified in such notice.

I have not received notice nor have I ever defaulted in performance. Therefore I cannot be dismissed by the city manager under this provision.

(c) If Mr. Rosenzweig fails to maintain his qualifications as provided in this Agreement, the Agreement shall automatically terminate immediately.

I have not failed to maintain my qualifications.

(d) The City may terminate this Agreement at any time, if, for any reason, the City becomes dissatisfied with the work of Mr. Rosenzweig, since Mr. Rosenzweig is an at will employee of the City.

Provision D is in conflict with provision A of the Agreement. Any later provision that is in conflict with prior provisions revert back to the first provision. If the city manager chooses to utilize this provision in conflict with provision A, then I will have the right of wrongful termination and the ability to sue for lost wages.

It is also my understanding that a new interim city manager will be appointed tonight. That means only this new manager may terminate my employment with 30 days written notice, and no influence from this council. It would be my opinion that this new city manager would have to work with me for a while to determine if he felt that I should be dismissed.

Should this council vote tonight to terminate my employment, it will be in direct violation of your city charter and ordinances. Section 8.13 of the charter sites penalties for such violations..."Any officer of the city found guilty by a court of competent jurisdiction of any act declared by this Charter to constitute misconduct in office may be punished by a fine of not to exceed \$500 or imprisonment for not to exceed 90 days or both in the discretion of the court. The punishment provided in this section shall be in addition to that of having the office declared as vacant.

Therefore any council member who votes to have me terminated can likely be removed from your position should I intend to litigate.

As I understand it, the purpose of my termination will be because I have properly followed my employee agreement which states that I will follow all aspects of the General Property Tax Act and all guidelines of the State Tax Commission. As I stated in a previous council meeting, and as the City Attorney has opined in her memo. I am following the law by putting the City owned property on the assessment roll. The State Tax Commission is responsible for my licensing and education. It was the State Tax Commission who told me to look closer at the statute to make sure that your property was being used for a public use. Your own City Attorney has provided you with an opinion that I have assessed City property correctly. You should also know that the State Tax Commission knows exactly what is transpiring here. They will be monitoring future assessment rolls and have the ability to seize the whole roll if they find that proper laws are not followed. They also have the ability to discipline any assessor who knowing violates the law.

These properties were not put on the roll because I have any issue with the city or to hurt the city, or for any other reason than the law prescribes that they should be on the roll, and I am following the law.

I think the majority of you are logical people. I would like you to look inward and ask yourself if you really want to terminate someone for following the law.

In summary, I believe this meeting to be a violation of your city charter and ordinances as the council has no right to terminate me. Only the City manager may terminate an employee. If that city manager so chooses, my employment agreement states that I must have 30 days written notice. Since a new city manager will be appointed tonight, there must be some time for the city manager to work with me to make his own independent decision on my employment.

Having said all this, I am willing to tender my resignation under the following conditions.

1. A separation agreement is drawn up by my counsel.
2. My salary is paid to me for the remainder of the year which comes to roughly \$11,500.

Thank you.