MINUTES OF THE CHESHIRE TOWN COUNCIL SPECIAL MEETING HELD ON TUESDAY, MARCH 2, 2010, AT 7:30 P.M. IN ROOM 207, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410

Present
Timothy Slocum, Chairman; David Schrumm, Vice-Chairman; Justin Adinolfi, Michael Ecke, Andrew Falvey, Anne Giddings, Thomas Ruocco, James Sima, Timothy White.
Staff: Michael A. Milone, Town Manager; Louis Zullo, Personnel Director; Town Attorney Dwight Johnson
Guests: Dr. Paul O’Connell and Dr. Len Matarese, ICMA; Attorney Floyd Dugas.

1. ROLL CALL
The clerk called the roll and a quorum was determined to be present.

2. PLEDGE OF ALLEGIANCE
The group Pledged Allegiance to the Flag.

3. ICMA POLICE DEPARTMENT REPORT (Executive Session)
Chairman Slocum stated there was one agenda item for this special meeting, the ICMA report. The Town Council would be going into executive session to discuss the report which the Council received a week ago Friday. Mr. Slocum introduced Dr. O’Connell and Dr. Matarese from ICMA. He also said the meeting is for the Council to have an opportunity to have ICMA more fully amplify and explain the report. This will be done, necessarily, in executive session because the Council is essentially receiving the report, and Mr. Slocum advised that Attorney Johnson would explain the FOI and right of the Council to enter executive session.

Attorney Johnson stated that the general rule is that meetings of public agencies such as the Town Council and documents produced are available, and may be attended by members of the public. The Freedom of Information Act in Connecticut and most states creates certain exceptions reflecting philosophical conclusions reached by governing authorities. One exception is that the Council or any other agency may meet, privately, in executive session, to discuss personnel matters. Presumably, the feeling is that personnel matters are, generally, not something which can be handled publicly as well as they can be handled in private. There is a clear, long standing exception for discussion of personnel matters, which are defined to include evaluation of a performance or discussion of a performance of an official. Similarly, the FOIA contains an exception for discussion or reports or other documentations provided by the decision making body to assist it in its deliberation. The summary report prepared by ICMA would constitute such a document. Attorney Johnson stated this is why FOIA permits the use of executive sessions.
Attorney Johnson further stated that the Council knows that for executive session they may invite persons who are not members of the deliberating body to be present, if their presence is to permit them to provide information or testimony that the governing body deems to be useful to its decision making. FOIA does not permit the Council or other agencies to invite persons to their deliberations who are serving solely as observers. If observers were invited to participate in those sessions, that would jeopardize the ability of the Town Council to hold those sessions in executive session.

Chairman Slocum acknowledged that there were many police officers in the audience, and expressed the Council’s respect and appreciation for their attendance. He stated that the Council is doing its utmost to bring everything to the light of day as soon as possible for this matter of great importance to the Town and the Police Department.

MOTION by Mr. Schrumm; seconded by Mrs. Giddings.

MOVED that the Town Council enter Executive Session at 7:50 p.m. to discuss the ICMA Police Department Report, to include Town Manager Milone, Personnel Director Zullo, Attorney Johnson, Attorney Dugas, Dr. O’Connell and Dr. Matarese (ICMA).

Discussion

Mr. White commented on the Personnel Director attending the executive session and not the Police Chief.

In response, Town Manager Milone explained that the Personnel Director is in attendance because he has been involved in the matter and can add to some of the information to be presented. Mr. Milone advised that he indicated to the Police Chief that the Council would be going into executive session. Mr. Milone was advised by Attorney Johnson that so long as there is no specific discussion centering around the Chief where he should be here to defend himself, that there was no need for the Chief to be present. Mr. Milone also advised that Chief Cruess was comfortable with not attending the meeting.

Without discussion about the Police Chief, Mr. White asked why the Council needs to go into executive session. He said he would not support going into executive session on the agenda matter.

Attorney Johnson explained that there are two legal reasons for executive session. One, is for discussion of the performance of an individual, i.e. the Chief. The second is discussion of a preliminary report, as defined by the statute, even though the report may be the final report of the consultants. The law regards this report as preliminary to the decisions which the Town Council will make.
Mr. Adinolfi said he wished this could be done without the Council going into executive session, but he understands why it must be done. Mr. Adinolfi asked about issuing the report to the public, and when this would be done.

It was stated by Chairman Slocum that releasing of the report should be discussed in executive session. He further stated that he intends for all Councilors to be supportive of public release of this report, hopefully as soon as Friday of this week. There may be other conditions which may delay the release, and this will be discussed in executive session.

Mr. Sima asked the Town Attorney about this being a preliminary report, and when it is not longer a preliminary report.

In reply, Attorney Johnson said it will always be a preliminary report because the report which FOIA requires to be made public is the report of the Town Council. Because the ICMA report is provided to the Council to assist the Council it is still defined by FOIA terms as a preliminary report.

Mr. Ecke stated this report will, essentially, be about the Police Chief, and the Chief was told his performance would not be discussed at the meeting. Without the Chief here, he said the matter should be discussed in public.

It was stated by Mr. Falvey that this is not about the Chief, but about the Police Department…the Chief, his management team and the rank and file…and not just about the Chief. It is about the entire department. He said we do not know what the Council will talk about, and due to the potential sensitive nature of all of that, this matter should be discussed in executive session.

Mr. Ecke said the Council knows one thing it will not talk about and that is the Chief. He questioned if it is fair to have all the police officers present, since they are all, potentially, party to what will be discussed.

Mr. Schrumm stated that the Council has a report from ICMA about the Police Department…the Chief, police officers and rank and file, are all a part of it. What is on the written piece of paper is not the complete report, and Mr. Schrumm would not want to go into any decision making mode just based on this report. There were many hours of discussion held by experts, hired by the Council, to do some fact finding. Mr. Schrumm would not want to rely, solely, on the written report, and wants to hear more about the report from the consultants. After this meeting, the Council will have knowledge of what this is all about. Many things have to be talked about. According to Mr. Schrumm, the Council is second guessing itself talking about what the report is about, and he would like to move forward into executive session.

VOTE The motion passed 6-3.
   In favor – Slocum, Schrumm, Falvey, Ruocco, Sima, Giddings.
Opposed – Adinolfi, Ecke, White.

MOTION by Ms. Giddings; seconded by Mr. Schrumm.

MOVED to exit Executive Session at 10:10 p.m.

VOTE The motion passed unanimously by those present.

4. ADJOURNMENT

MOTION by Ms. Giddings; seconded by Mr. Schrumm.

MOVED to adjourn at 10:10 p.m.

VOTE The motion passed unanimously by those present.

Attest:

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Marilyn W. Milton, Clerk