

**MINUTES OF THE TOWNSHIP COUNCIL
TOWNSHIP OF BERKELEY HEIGHTS
EXECUTIVE SESSION HELD ON FEBRUARY 13, 2013
BUDGET MEETING**

CALL TO ORDER

Mayor Bruno called the Executive Session to order at 7:07 p.m.

ROLL CALL

Present - Mr. Delia, Mr. Pastore, Mr. Pirone, Mr. Woodruff, Mrs. Kingsley, Mr. Hall and Mayor Bruno were present.

Absent – None

Also Present –Township Attorney Joseph Sordillo, and Acting Clerk Ana Minkoff.

EXECUTIVE SESSION – 1. Personnel – Amey Upchurch

Also present Barbara Russo

Mr. Woodruff stated that he has questions for Barbara Russo about the job and policy, and he has previously spoken to her. He asked for Mrs. Russo to explain the town policy as it is practiced.

Mrs. Russo stated that at the end of the year she looks at the attendance records, the policy is that you can buy back sick days, if an employee took less than (5) in a year. She sends a form or email to employees that are eligible and ask them if they want to buy back sick days, and she gives Virginia a copy. She does the entire town except for the Police Department. Most employees are not eligible.

Mr. Woodruff asked if she sent Amey Upchurch anything.

Mrs. Russo stated that Mrs. Upchurch was not eligible.

Mr. Woodruff asked if she remembered Amey asking about sick days.

Mrs. Russo stated no.

Mrs. Russo stated that Ana Minkoff received an inquiry from Mr. Pastore and she asked about the sick time buy back.

Mr. Woodruff asked if Mrs. Upchurch had her office door open.

Mrs. Russo replied yes.

Mrs. Russo said that she was not sure what Mr. Pastore was looking for. He asked about the sick time used by employees in 2012 and the carried over to 2013. She explained to him that you do not get paid for accrued sick time. She explained that only a few employees are eligible, only (2) non-union employees. Mr., Pastore indicated that I was wrong and that Amey Upchurch has been paid. She told him that he was incorrect and she did not get paid. She told him that she would double check with the CFO. She stated that she went to Ana's office and checked the budget book and saw the figure, she than called Mike Marceau into the office and he stated that he thought it was sick time buyback. Mike than provided me with a copy of the email from Amey Upchurch to Virginia Nesbitt, and it was sick time buy back. This happened around 3:50 p.m.

Mr. Woodruff asked where Mrs. Upchurch was at that point.

Mrs. Russo stated that she was in her office; she made a comment that "it is too quiet out there". I went home and called Ana and told her that Craig was correct. We both discussed it, we were not sure if we should call the Mayor. We decided that we would speak to Amey in the morning. When I arrived the next morning, the door to Amey's office was closed, I then saw Mike Marceau and Virginia Nesbitt come out. I told her I needed to speak with her, and she said that she knew that she had looked at her W2 form, and that she had paid back the money. I told her that she should call the Mayor. The Mayor called me in to his office and we discussed a disciplinary action, and he advised me that if any Council member had any questions that I should refer them to him.

A discussion continued as to why Amey did not check the sick time with Barbara Russo.
Mrs. Russo left the room at 7:45 p.m.

Virginia Nesbitt

Mr. Woodruff stated that he would try to make this quick and that we would assume some facts. He asked Mrs. Nesbitt how she knows which employees are eligible for sick time buy back.

Mrs. Nesbitt stated that Barbara Russo sends her an email.

Mr. Woodruff stated that she received an email from Amey Upchurch regarding sick day buy back and a check was processed.

Mr. Nesbitt stated that at the next payroll a check was issued.

Mr. Woodruff asked if she thought of checking with Barbara Russo.

Mrs. Nesbitt replied no, since she is her boss.

Mr. Woodruff asked when she learned that there was an issue.

Mrs. Nesbitt replied that the night before, Mike Marceau asked about it, and she provided him with the documentation. The next morning, Amey called her in to her office, and told me that she spoke to Barbara and she was not entitled to the buy back.

Mr. Pastore said that Amey had stated that she found the error.

Mr. Hall stated that she said that she found it by looking at her w-2 form.

Mayor Bruno asked if Barbara Russo was in the office when Mrs. Upchurch spoke to her.

Mrs. Nesbitt answered "no".
Mrs. Nesbitt left at 7:55 p.m.

Mike Marceau

Mr. Woodruff asked Mr. Marceau when he became aware that there was an issue.

Mr. Marceau stated that Mr. Pastore called and had questions about it from the budget document.

The following day I met with Amey and she told me that she reviewed her W2 form and that she was uncomfortable with it.

Mr. Woodruff asked if she had a check filled out.

Mr. Marceau answered "yes".

Mr. Woodruff asked how she knew.

Mr. Marceau said that he did not know.

A discussion continued among the Council members.

Mr. Marceau left at 8:05 p.m.

Mr. Woodruff asked for comments from the council.

Mr. Pirone stated that it is very difficult to know what is going through someone's mind. I do not know if she heard the conversation, it is hard to say.

Mr. Pastore stated that he thinks that she knew that she would be asked about it, she was aware that I was looking into it. He feels that she knew that she had the money; she did not go through the proper channels. H stated that the Council cannot allow things like this to continue to happen, this is not the only incident, and this is a fire able offense.

Mrs. Kingsley stated that she thinks this is awfully convenient, as an administrator you need to lead from the top; I have zero confidence in her. I am troubled keeping her around, what she did was unethical, I believe that she paid it back because she got caught, the stories just do not jive. How can we allow her to stay in charge?

Mr. Hall stated that she unilaterally determined that she was owed the money and unilaterally on her own decided to pay it back, I find it peculiar working on the budget and not knowing. She should have been aware of the policy, she should be held to a higher standard. This is not the thing to let slide, there is now a lack of confidence, and I feel really bad.

Mr. Delia stated that he concurred with all that was said, everything said tonight seemed honest, what was said last time did not add up. She should be held to a higher standard, she should know procedure better than anyone else, and I do not believe it was an honest mistake.

Mr. Woodruff stated that we do not need this, this is tragic and he does not like it. How is this different from Tracy Tedesco? I do not believe the explanation; I do not believe that she is telling the truth. There is now a question of confidence.

Mrs. Kingsley stated that how do you hold anyone else accountable. You need zero tolerance.

Mr. Sordillo explained that the Council can fire without a cause, may be removed by 2/3 of council and pay (3) month salary, or if you remove with cause you do not need to pay the (3) month salary.

Mr. Pirone said it should be without cause (3) month salary.

Mr. Pastore asked if the Mayor fires her do we still have to pay?

Mr. Sordillo was not sure.

Mrs. Kingsley asked if there is anyone comfortable with keeping her. She stated that she cannot live with what she did and that she was sorry for her.

Mr. Pirone stated that the Mayor has 1 ³/₄ year left on his term. He is concerned of who would be willing to take the job for that period of time.

Mr. Woodruff stated that he does not think that is a reason to not do something.

Mr. Hall stated that we have made huge advances and in order to get to where we want to be, we need the administrator. He thinks that it s critical to have someone that can be trusted.

Mr. Pirone stated that Council will have to pick up the ball.

Mr. Sordillo stated that an affirmative 2/3 vote and a public resolution would be required. It can be done tonight and them memorialize or vote on it at the next meeting.

Mr. Hall stated that he did not want it done tonight. He asked that the Mayor have a serious discussion with Mrs. Upchurch and she should be advised that the Council has no confidence.

Mayor Bruno asked if he could negotiate with her.

Mr. Sordillo suggested letting her resign naturally.

Mr. Woodruff stated that he did not want to embarrass her.

It was determined by all that it would be a "resignation in lieu of termination".

Adjourned 8:45 p.m.