

PENSION BOARD FOR THE BOROUGH OF DUNMORE

HELD:

Tuesday, June 11th, 2024

TIME:

6:00 P.M.

LOCATION:

DUNMORE COMMUNITY CENTER
1414 Monroe Avenue
Dunmore, Pennsylvania

P E N S I O N B O A R D S M E M B E R S :

JANET BRIER - absent

MAX CONWAY, MAYOR

WILLIAM BONAVOGLIA

GREG WOLFF

MARK BURTON

GREG KAMLA

LAWRENCE DURKIN, ESQ., SOLICITOR

MARIA McCOOL, RPR
OFFICIAL COURT REPORTER

1 ATTY. DURKIN: So we're here for the
2 June, 2024, Dunmore Pension Board meeting to
3 order. We'll start with a roll call.

4 MAYOR CONWAY: Max Conway, here.

5 MR. COLO: Ralph Colo.

6 MR. WOLFF: Greg Wolff.

7 MR. BONAVOGLIA: Bill Bonavoglia.

8 MR. BURTON: Mark Burton.

9 MR. KAMLA: Greg Kamla.

10 ATTY. DURKIN: And Larry Durkin.
11 First issue is the approval of the minutes from
12 the March meeting which I e-mailed to you,
13 Greg. And I've looked through them. Maria
14 transcribed them. They look accurate to me.
15 So I don't have a printout for you but if we
16 could have a motion to approve those minutes?

17 MR. WOLFF: I'll make a motion.

18 MR. BONAVOGLIA: I'll second.

19 ATTY. DURKIN: On the question? All
20 in favor?

21 ALL MEMBERS: Aye.

22 ATTY. DURKIN: Okay. Old Business,
23 I don't believe we have any. New Business, do
24 we have anything else, Greg?

25 MR. WOLFF: Just the --

1 ATTY. DURKIN: The request that we
2 had.

3 MR. WOLFF: Yeah.

4 ATTY. DURKIN: Yeah, I think we'll
5 do that under new. New Business, Ralph, do you
6 want to do the summary of investment?

7 MR. COLO: Yes. Sure. The year's
8 been off to a very good start for the plan
9 through the end of May. The return net of fees
10 is 4.47 percent. The last 12 months the plan
11 is up 13.06 percent, and real dollars a little
12 bit over 2 million dollars since last May.

13 We're doing this with about 50
14 percent of the assets in equities. So we've
15 really kind of dialed back the risk of the plan
16 currently. There's about 14 and a half percent
17 in cash. The reason there's so much in cash is
18 we're earning 5.35 percent on our cash at this
19 present time.

20 So we thought it would be prudent to
21 where we're able to get that type of interest
22 rate to take a little bit of risk off the
23 table. We still, of course, have our equity
24 exposure. And we're still within our
25 investment policy guidelines.

1 But we are a little fearful that the
2 market has gotten a little extended at this
3 present time. We do think that there will be a
4 pullback. And we would like to implement that
5 cash at some point in the near future. But
6 when we're earning again, over 5 percent on our
7 cash, we feel very comfortable where we're at.

8 You know, again, our thoughts, you
9 know, we do anticipate a 5 to 7 percent
10 pullback in this market between now and the
11 beginning of the fall. Hopefully that doesn't
12 happen but it very well may.

13 If it does, our allocation is more
14 than appropriate with the equity, fixed income
15 and alternative exposure that the plan
16 currently has. Is there any questions that
17 anybody has?

18 MR. WOLFF: Excellent job as usual.

19 MR. COLO: Thank you.

20 ATTY. DURKIN: Okay. So in terms
21 of -- we do have an application for pension.
22 I'll summarize it and maybe Greg can add to it.

23 MR. WOLFF: Would you like me to
24 read the letter?

25 ATTY. DURKIN: Yeah.

1 MR. WOLFF: Mr. Tom Cummings who was
2 in different roles within the Borough through
3 the years had called me a few months ago and
4 said -- requested his pension. I said first
5 step would be to give me a formal request. So
6 as -- June 7th I received a letter from Mr.
7 Cummings.

8 "Dear Mr. Wolff, last March we had a
9 brief telephone conversation regarding my
10 Dunmore Borough Non-Uniform Pension benefits.
11 I recall that the date of our conversation and
12 the March Pension Board meeting had a tight
13 overlap and did not afford the time for
14 delivery of formal request.

15 I note that I meet or exceed the
16 eligibility provision of age and years of
17 service as a W2 employee of the General
18 Government Unit. Please accept this
19 correspondence as a formal request to activate
20 and commence receipt of my pension benefits
21 calculated from the last date of my employment
22 with the Borough of Dunmore. Thank you for
23 your attention in this matter, Sincerely yours,
24 Thomas P. Cummings, Jr."

25 ATTY. DURKIN: Okay. So we got the

1 letter dated June 7th, which I took and I think
2 Greg takes it as a request for it to be
3 considered by the Board, you know, at this
4 meeting. I've spoken to Greg about it. And
5 was Tom aware that we were going to proceed
6 tonight on his --

7 MR. WOLFF: That, I'm not sure.

8 ATTY. DURKIN: There are a couple
9 issues that I see with this. Starting with the
10 ordinance for the Non-Uniform Pension, the
11 ordinance is from -- the most recent one is
12 from 1995. It says eligibility for a
13 participation.

14 It says, "Each full-time permanent
15 non-uniform employee now or hereafter employed
16 by the Borough of Dunmore will be eligible to
17 participate and shall participate in the
18 Non-Uniform Pension Fund."

19 It goes onto identify the criteria
20 for a full pension at 15 years and 55 -- age
21 55. It goes on in the -- later in the
22 ordinance defined a full year as 1,000 hours of
23 work. In Section 4 it provides that,
24 "Participants will pay into the Non-Uniform
25 Pension Fund monthly in an amount equal to 3

1 percent of his or her gross monthly
2 compensation."

3 So there are a number of
4 requirements in the ordinance to be eligible
5 for a Non-Uniform Pension, starting with being
6 an employee. So we went to -- and I asked Greg
7 to pull what records we had on Tom's work with
8 the Borough where he was the Borough Solicitor.

9 The earliest document we have is
10 from March 11th of 2004 where he confirmed with
11 Joe Loftus, then the Borough Manager, he had
12 provided a written agreement for his legal
13 services and also a copy of the ordinance
14 regarding the Solicitor's role.

15 It says, you will note that I
16 reduced my regularly hourly rate by 33 percent
17 from regular legal service and that I have not
18 set forth additional rates that may be charged
19 in extreme or unusual circumstances.

20 He then included an agreement for
21 management of legal services, basically a fee
22 agreement. In Section 3 of that agreement it
23 says, "The contract entered between the parties
24 shall be for a period of two years. And based
25 on mutual agreement the same may be renewed for

1 successive two-year terms based on monthly
2 payment of \$3,000. Any additional billing in a
3 given month shall be at a rate of \$110 per
4 hour."

5 So that is what we could find in
6 terms of a baseline what is, you know, his
7 relationship with the Borough. In my opinion,
8 that is not an employment agreement. That is a
9 retainer agreement or a legal fee agreement,
10 which is, you know, typical for a lawyer.

11 We have a number of paychecks that
12 Tom received while he was working with the
13 Borough where he -- certain deductions were
14 taken, you know, from his monthly stipend. Of
15 note, that did not include pension
16 contributions so -- on any of them.

17 So that's significant because there
18 is a requirement of pension contributions in
19 order to be -- in addition to being an employee
20 and in addition to working at least a thousand
21 hours a year. You have to make contributions
22 in order to qualify for a pension.

23 So we went a little further and we
24 pulled the annual reports that were filed by
25 the Borough from 2014 to 2020 with the Auditor

1 General's Office which certified our state aid,
2 you know, the money we receive from
3 Pennsylvania for state aid which details out
4 all the people who are participating in the
5 plan.

6 And we have them from 2014, '15,
7 '16, '20 and '19. And Tom's not on any of
8 them. So there is no record of him being in
9 the pension plan at any time that I'm aware of
10 during his service as Solicitor for the
11 Borough. So that's what we could identify so
12 far.

13 He's asking for a Non-Uniform
14 Pension. I believe he last worked for the
15 Borough in 2020 -- in January of 2020. And
16 based on what I see, I don't see sufficient
17 evidence to meet the criteria for a Non-Uniform
18 Pension with the Borough.

19 So that's my summary of, you know,
20 the information that we could find. I think
21 that there is a couple ways you could proceed.
22 Frankly, I would have preferred if he were here
23 to ask him to provide -- you know, maybe I'm
24 missing something. So you could vote on it
25 since the request has been made.

1 You could do that by motion.

2 Alternative, we could write to him and
3 indicate -- I could indicate if the Board wants
4 me to some of the issues that I brought up with
5 you here and give him a chance to, you know,
6 add to the record which I would frankly -- I
7 think I would take that course, you know, since
8 he's not here rather than voting on it because
9 voting on it -- let's just say hypothetically
10 you were to deny it, what would then happen is
11 that would be an adjudication.

12 You would have made a decision. He
13 would then have a right to appeal that decision
14 to Lackawanna County Court. And it goes
15 through a process. You know, there's a process
16 under Pennsylvania law to deal with those
17 things. I would prefer to give him the
18 opportunity to address these issues before
19 voting on it because I think that that would
20 be --

21 MR. WOLFF: And with that, he would
22 have the opportunity to put forth -- I don't
23 know if evidence would be the right word, but
24 any documentation he may have to --

25 ATTY. DURKIN: Tell me what I'm

1 missing, like, tell me if I'm missing
2 something. Tell me what I'm missing. You know
3 I am certainly fine giving him everything that
4 I just explained to you. You know, I think
5 that would be the better course and then you
6 could do one of two things.

7 You could either call a special
8 meeting or you could wait until September.
9 It's not hard to get a meeting together.
10 Ralph, you wouldn't have to be here for that
11 one. But that's the course that I would
12 recommend is, you know, if you're going to do
13 anything, authorize me to send him a letter to
14 address these issues. And if there is any
15 other concerns you have, I would be happy to
16 address it.

17 MR. WOLFF: Would there be a
18 timeframe for him to respond?

19 ATTY. DURKIN: Well, before the
20 September meeting. If you want action taken
21 sooner, we could do a special meeting. But
22 it's not meant to -- there would be time -- if
23 you vote, there would be a time -- there's a
24 time issue.

25 MR. WOLFF: In the letter, would

1 there --

2 ATTY. DURKIN: I'd ask him in the
3 next 30 days or so just to tell me if there is
4 any additional information he has that we're
5 missing.

6 MAYOR CONWAY: Was his only role as
7 Solicitor?

8 ATTY. DURKIN: I don't know the
9 answer to that because I think there were times
10 where he --

11 MR. WOLFF: He was -- I don't know
12 if he was ever appointed --

13 MR. BONAVOGLIA: Borough Manager,
14 right?

15 MR. WOLFF: Correct, different
16 versions he was the Borough Manager if it was
17 just in an acting position while he was filling
18 a vacancy, that I'm not sure about. But at
19 some point he did act as the Borough Manager.
20 But if that was appointed or --

21 MR. BONAVOGLIA: It's a short term.

22 MR. WOLFF: Just as acting, that I'm
23 not sure of what exactly that role was.

24 MAYOR CONWAY: But it wasn't full
25 time, permanent which is what the ordinance

1 says, pretty black and white.

2 ATTY. DURKIN: Yeah, and full time
3 is defined as 1,000 hours per year, which is
4 about 26 pay periods times 40 -- is that how
5 many pay -- 26 pay periods.

6 MR. WOLFF: Yeah, and there is
7 roughly 2,040 hour work week. I think it's
8 2080. So that's about half.

9 ATTY. DURKIN: So my recommendation
10 would be to do a motion to table it and have
11 him, you know, table the request and authorize
12 me to write to him and request additional
13 information.

14 MR. WOLFF: I'll make that motion to
15 table Tom Cummings' request to authorize our
16 Solicitor, Larry Durkin to send Mr. Cummings a
17 letter to verify -- to address the issues.

18 ATTY. DURKIN: Okay.

19 MAYOR CONWAY: Second.

20 MR. BONAVOGLIA: I'll second it.

21 ATTY. DURKIN: Any question on it,
22 concern on it? All in favor.

23 ALL MEMBERS: Aye.

24 ATTY. DURKIN: All right. That's
25 all I got.

1 MR. WOLFF: That's it.

2 ATTY. DURKIN: Motion to adjourn.

3 MR. BURTON: Motion.

4 MR. KAMLA: Second.

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me of the above-cause and that this copy is a correct transcript of the same to the best of my ability.

A handwritten signature in cursive script that reads "Maria McCool".

Maria McCool, RPR
Official Court Reporter

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