

TOWN OF PALM BEACH

MINUTES OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE MEETING HELD ON MONDAY, NOVEMBER 6, 2017, WEDNESDAY, NOVEMBER 8, 2017 AND THURSDAY, NOVEMBER 9, 2017

I. CALL TO ORDER AND ROLL CALL

The Administrative and Personnel Committee meeting was called to order on Monday, November 6, 2017, at 9:40 a.m., in the Town Council Chambers. On roll call, Committee Chair Richard M. Kleid and Committee Member Julie Araskog were found to be present.

II. APPROVAL OF AGENDA

Motion was made by Council Member Araskog, and was seconded by Chairman Kleid to approve the Agenda, as printed. On roll call, the motion carried unanimously.

III. OPENING STATEMENTS

Administrative and Personnel Committee (APC) Counsel Brett Schneider, requested that all parties in attendance announce their attendance for the record and provided an overview of the procedural rules and requirements of the Committee for the hearing.

Attorney Isidro Garcia, Esq. represented the Appellant, Mr. Allen Powery; Attorney Brett Schneider represented the Administrative and Personnel Committee; and Attorney Margaret Cooper represented the Town of Palm Beach.

Attorney Cooper provided her opening statements and introduced her exhibits. Ms. Cooper requested that all parties involved declare their Ex Parte communication. There was no Ex Parte Communications declared.

Attorney Garcia provided his opening statement. In addition, he requested that the Town reverse the three-day suspension that was given to his client, Allen Powery.

IV. PRESENTATION OF TOWN'S CASE

[H. PAUL BRAZIL, DIRECTOR OF PUBLIC WORKS]

All witnesses were sequestered during the meeting and ordered not to discuss the case or any matters relating to the case while outside of the hearing.

Town Clerk Kathleen Dominguez administered the oath to those providing testimony. The following witnesses were called and cross-examined:

- H. Paul Brazil, P.E., Director of Public Works
- Patricia Strayer, Town Engineer

The Administrative and Personnel Committee members asked Mr. Brazil about the procedure regarding suspensions and reprimands, the Town Vehicle policy, if there were any past written reprimands given to Mr. Powery, the lunch break policy, if a clear scope of work for handling easement agreements was given to Mr. Powery, and what the time parameters are for suspensions.

The Administrative and Personnel Committee requested that Mr. Brazil return to the next meeting with the notes from the interviews between the Project Engineers and Mr. Powery and the annotated GPS notes.

The Administrative and Personnel Committee recessed the meeting at 5:17 p.m. on November 6, 2017, until 8:30 a.m. on Wednesday, November 8, 2017.

CALL TO ORDER AND ROLL CALL

The meeting of the Administrative and Personnel Committee was reconvened and called to order at 8:30 a.m. on November 8, 2017, in the Town Council Chambers. On roll call, Committee Chair Richard M. Kleid and Committee Member Julie Araskog were present.

A motion was made by Committee Member Araskog, and was seconded by Chairman Kleid, to approve the Agenda, as printed. On roll call, the motion passed unanimously.

V. PRESENTATION OF ALLEN POWERY'S CASE **[ALLEN POWERY]**

All witnesses were sequestered during the meeting and ordered not to discuss the case or any matters relating to the case while outside of the hearing.

Attorney Garcia motioned to introduce Appellant Exhibits #5-15.

Attorney Cooper expressed concerns with the late submission of the exhibits by the appellant the night before the hearing without good cause.

Discussion ensued regarding the rules for submitting timely exhibits and the reason for the submission of the late exhibits.

It was the consensus of the Administrative and Personnel Committee to admit the Appellant's Grievance Supplemental List of Exhibits 5-15 into the record on the basis that the Committee wants to give Mr. Powery every opportunity to present his case with the exception that the exhibits presented are not an exhaustive list.

1 **The Administrative and Personnel Committee requested that Human Resources**
2 **Director Danielle Olson provide the page 5 which was missing from Ms. Strayer's**
3 **performance review of Mr. Powery.**

4
5 Mr. Brazil reported that he was not able to find the written notes from the interviews with
6 the Project Engineers and explained that the annotated GPS records were written after the
7 3 day suspension and therefore do not apply.

8
9 Attorney Brett Schneider administered the oath to those providing testimony. The
10 following witnesses were called and cross-examined:

- 11
12
 - Patricia Strayer, Town Engineer
 - Chester Purves, Services Division Manager
 - Mike Roach, Project Engineer
 - Jeff Sanon, Project Engineer
 - Allen Powery, Appellant
 - Charles Langley
 - Mansour Hejazi, Public Works Systems Specialist
 - Debby Moody, Office Manager
 - Debbie Payne

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22 *The Administrative and Personnel Committee recessed the meeting at 5:42 p.m. on*
23 *Wednesday, November 6, 2017, until 3:00 p.m. on Thursday, November 9, 2017.*

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25 **VI. REBUTTAL BY TOWN**

26 [H. PAUL BRAZIL, DIRECTOR OF PUBLIC WORKS]

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28 Attorney Cooper provided the Town's rebuttal.

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30 **REBUTTAL BY OF ALLEN POWERY'S CASE**

31 [ALLEN POWERY]

32
33 Attorney Garcia provided the Appellant's rebuttal.

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35 **VII. CLOSING STATEMENTS**

36 **CALL TO ORDER AND ROLL CALL**

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39 The meeting of the Administrative and Personnel Committee was reconvened and called
40 to order at 3:00 p.m. on Thursday, November 9, 2017, in the Town Council Chambers.
41 On roll call, Committee Chair Richard M. Kleid and Committee Member Julie Araskog
42 were present.

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44 **A motion was made by Committee Member Araskog, and was seconded by Chairman**
45 **Kleid, to approve the Agenda, as printed. On roll call, the motion passed unanimously.**
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1 Attorney Cooper provided her closing statements.

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3 Attorney Garcia provided his closing statements.

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5 Attorney Schneider reviewed the Town code pertaining the role of the Administrative and
6 Personnel Committee for deliberating in a public meeting and provided an overview of
7 the allegations to be deliberated. The allegations are as follows: *1) Alleged misuse of*
8 *town equipment 2) failure to follow direction 3) insubordination 4) failure to handle*
9 *installation and maintenance agreement*

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11 **VIII. DELIBERATION AND DECISION BY THE ADMINISTRATIVE AND**
12 **PERSONNEL COMMITTEE**
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14 Having met and considered the evidence presented at the hearing, as well as the
15 arguments of Counsel, the Committee made the following recommendations:
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17 Committee Member Araskog read aloud her findings and determined that the allegations
18 brought forth at the hearing do not support the disciplinary actions that were given to the
19 Employee and recommended to sustain the appeal in its entirety.
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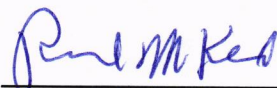
21 Chairman Kleid read aloud his findings and determined that the allegations brought forth
22 at the hearing support the disciplinary actions that were given to the Employee and
23 recommended to sustain the suspension.
24

25 Attorney Schneider verified that he will prepare and provide a written order of findings
26 and recommendations pertaining to the grievance for Chairman Kleid's signature that
27 will be brought forth to the Town Council for a final determination at their next regularly
28 scheduled meeting on December 12, 2017.
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30 **VIII. ADJOURNMENT**
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32 There being no further business, the Administrative and Personnel Committee Meeting of
33 November 6, 2017, with continuances on November 8, 2017, and November 9, 2017, was
34 concluded at 5:00 p.m., on November 9, 2017.
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37 APPROVED:

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40 Richard M. Kleid
41 Chair
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1 ATTEST:
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4 Kathleen Dominguez
5 Kathleen Dominguez
6 Town Clerk

7 12/12/17
8
9 Date
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**ADMINISTRATIVE AND PERSONNEL COMMITTEE
TOWN OF PALM BEACH, FLORIDA**

IN RE:

APPEAL OF THREE-DAY SUSPENSION BY ALLEN POWERY

ORDER

This matter came before the Town of Palm Beach Administrative and Personnel Committee (the "Committee") on November 6, 8 and 9, 2017 pursuant to Article III. – RESOLUTION OF EMPLOYEE GRIEVANCES of the Town Code (Sections 82-206 through 82-210). The Employee, Allen Powery, appeared and was represented by his attorney, Isidro M. Garcia, Esq. The Town was represented by special counsel Margaret L. Cooper, Esq. Director of Public Works Paul Brazil acted as the Town's representative during the hearing.

Each party had a full opportunity to present, examine and cross-examine witnesses and to introduce pertinent documentary evidence. All witnesses were sworn and the proceedings were recorded. The Committee considered evidence offered by both sides, questioned witnesses based on their testimony and considered opening and closing arguments made by both sides. The Committee, having heard the testimony of witnesses and having considered the documentary evidence submitted by the parties at the hearing, hereby finds as follows:

FINDINGS OF FACT AND RECOMMENDATIONS

1. The Employee, Allen Powery, timely appealed his three-day suspension from the position of Right of Way Inspector II.
2. On or about July 14, 2017, the Town issued the Employee a Notice of Suspension for three days without pay. As set forth in the July 14, 2017 Notice of Suspension, the bases for the

Employee's suspension were the Employee's alleged: (i) failure to drive the entire island once per day to visually inspect right of way usage as directed by his supervisor; (ii) improper use of a Town vehicle to make personal trips to Publix while on duty; (iii) refusal to follow his supervisor's directives to check on the status of an opening in the road and to manage "Easement Abandonment Agreements;" and (iv) failure to timely handle an Installation and Maintenance Agreement in early 2017.

3. With regard to the allegation that the Employee failed to drive the entire island once per day to visually inspect right of way usage as directed by his supervisor:
 - a. Committee Member Ms. Araskog determined that the facts elicited at the hearing do not support the determination that the Employee failed to follow this directive.
 - b. The undersigned Committee Chair Mr. Kleid determined that the facts elicited at the hearing support the determination that the Employee failed to follow this directive.
4. With regard to the allegation that the Employee improperly used a Town vehicle to make personal trips to Publix while on duty:
 - a. Committee Member Ms. Araskog determined that the facts elicited at the hearing do not support the determination that the Employee engaged in improper use of a Town vehicle.
 - b. The undersigned Committee Chair Mr. Kleid determined that the facts elicited at the hearing support the determination that the Employee engaged in improper use of a Town vehicle.

5. With regard to the allegation that the Employee refused to follow his supervisor's directives to check on the status of an opening in the road and to manage "Easement Abandonment Agreements:"
 - a. Committee Member Ms. Araskog determined that the facts elicited at the hearing do not support the determination that the Employee failed to follow these directives.
 - b. The undersigned Committee Chair Mr. Kleid determined that the facts elicited at the hearing support the determination that the Employee failed to follow these directives.
6. With regard to the allegation that the Employee failure to timely handle an Installation and Maintenance Agreement in early 2017, both Committee Member Ms. Araskog and the undersigned Committee Chair Mr. Kleid determined that this allegation should not have been included as a basis for the suspension at issue and, as such, is outside of the scope of this appeal.
7. As to the Committee's decision concerning the appropriateness of the three-day suspension:
 - a. Committee Member Ms. Araskog determined that the Town failed to establish that the Employee engaged in conduct violating any of the policies at issue and, therefore, concluded that the three-day suspension should be overturned.
 - b. The undersigned Committee Chair Mr. Kleid determined that the Town established that the Employee engaged in conduct violating each of the policies at issue and, therefore, concluded that the three-day suspension should be sustained.

Done and ordered on December 4, 2017.

A handwritten signature in blue ink, appearing to read "Richard M. Kleid", is written over a horizontal line.

Richard M. Kleid
Chair, Administrative and Personnel Committee