

**MINUTES OF
SPECIAL MEETING
OF THE BOARD OF TRUSTEES
Tuesday, September 1, 2020**

A special meeting of the Board of Trustees was held on Tuesday, September 1, 2020 via telephone and on-line meeting software in accordance with Governor Cuomo's Executive Order 202.1 The public meeting was called to order at 5:33 pm by Mayor Herrington.

Present were:

Brian Herrington	Mayor
Randall Rosenbaum	Deputy Mayor
Frank Genese	Trustee
Jay Beber	Trustee
Gary Lewandowski	Trustee
Mary Jo Collins	Trustee
Kate Hirsch	Trustee
Jeff Blinkoff	Village Attorney
Ronnie Shatzkamer	Village Administrator
Rich Falcones	Public Works Superintendent
Steve Lawniczac	Village Engineer

There were no members of the public present.

The Board reviewed the three low bids for the 2020 Pavement & Drainage Project. The low bidder American Paving. The second low bid was from Gorilla Construction, and the third lowest bid was from Suffolk Paving.

Mr. Lawniczac reviewed the references received from all three bidders. It was agreed to award the bid to American Paving on condition that they comply with all Village requests for the manner of work, relations with the staff and public, and payment requirements so as to avoid the problems the Village encountered with them when they did the 2018 paving project. Mr. Lawniczac will set up a pre-meeting to go over all details of the job with them.

**Resolution No. 50 – July 2, 2018
RESOLUTION AUTHORIZING THE VILLAGE TO ENTER INTO A CONTRACT FOR 2020
PAVMENT & DRAINAGE IMPROVEMENTS**

The following resolution was offered by Mayor Herrington, seconded by Trustee Beber:

WHEREAS, the Board of Trustees has previously authorized and directed the Village Administrator to publicly advertise for bids in connection with the pavement and drainage improvements within the Village of Flower Hill to be known as the 2020 Pavement and Drainage Improvement contract; and

WHEREAS, nine bids were received in response to said invitation; and

WHEREAS, said bids were publicly opened and read aloud at the Village Hall on August 13, 2020 at 10:00 am; and

WHEREAS, the Village Engineer, Steven Lawniczak, has undertaken a review of said bids; and
BE IT RESOLVED that pursuant to State Environmental Quality Review ("SEQR"), the Board of Trustees declares that it shall act as "Lead Agency"; and

BE IT FURTHER RESOLVED, that the Board of Trustees finds and determines that said action constitutes an "Unlisted" action pursuant to SEQR, the enactment of which will not have a significant impact upon the environment; and

NOW, THEREFORE, BE IT RESOLVED, that upon the recommendation of the Village Engineer, an award of contract entitled “2020 Paving and Drainage Contract” be and hereby is made to American Paving & Masonry Corp., 8 Forest Avenue, Glen Cove, NY, in the amount of \$193,175.50; and

BE IT RESOLVED, that the Mayor or his designee be and hereby is authorized to execute, on behalf of the Village, a contract setting forth the terms and conditions of said award, as may be recommended by the Village Attorney and Village Engineer; and

BE IT FURTHER RESOLVED, that the provisions of this resolution shall take effect immediately. The Board of Trustees was polled as follows:

Trustee Collins	Aye
Trustee Lewandowski	Aye
Trustee Genese	Aye
Trustee Beber	Aye
Trustee Hirsch	Aye
Deputy Mayor Rosenbaum	Aye
Mayor Herrington	Aye

On motion of Trustee Beber, second by Trustee Genese, with approval by all Board Members except Trustee Hirsch who voted to abstain, the Board went into Executive Session to review outside counsel report on employee harassment complaints at 5:47pm.

The following resolution was passed by the Board:

RESOLUTION No. 51 - SEPTEMBER 1, 2020

RESOLUTION OF THE BOARD OF TRUSTEES OF THE INCORPORATED VILLAGE OF FLOWER HILL – ADMINISTRATION OF TRUSTEE KATE HIRSCH

WHEREAS, on February 26, 2020 the Village of Flower Hill (“Village” or “Flower Hill”) received an official complaint filed by an employee (“employee one”) alleging, among other things that on that date Trustee Kate Hirsch engaged in conduct which harassed, demeaned and embarrassed the employee in the presence of other Village employees; created a hostile work environment by speaking to and about the employee in a derogatory manner; discriminated against the employee on the basis of a physical disability; made public allegations that the employee was engaged in illegal acts; and, threatened retaliation against the employee including potential loss of employment, and

WHEREAS, on March 3, 2020, the Village received a further complaint filed by another Village employee (“employee two”) relating to the events of February 26, 2020 which alleged that on that date Trustee Kate Hirsch was rude, dismissive and unprofessional in her interactions with the certain Village employees; created a hostile work environment; and, made discriminatory and insulting remarks about a religious faith, its beliefs and practices in the presence of several employees, and

WHEREAS, on May 20, 2020, “employee one” filed a second complaint alleging that on that date Trustee Kate Hirsch created a hostile work environment by again demeaning the employee, and

WHEREAS, in order to ensure that Flower Hill is at all times acting in a manner consistent with Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000E) and the Human Rights Law of the State of New York (Executive Law §296), the Village retained independent counsel to investigate these allegations by resolution approved during an Executive Session held during a duly convened meeting of the Board of Trustees on March 9, 2020, and

WHEREAS, in the course of this investigation, counsel interviewed each of the complainants, other individuals present at the time of the alleged incidents, and all relevant documents and available evidence relating to the complaints including a partial recording, and

WHEREAS, Trustee Kate Hirsch was afforded the opportunity to be interviewed in connection with the investigation but declined to participate both verbally and in writing, and

WHEREAS, Counsel has produced to the Village its report of this investigation (Report) which has been reviewed and considered by the Board of Trustees without the participation of Trustee Hirsch, and

WHEREAS, the evidence established the following facts:

- On February 26, 2020 at approximately 10:00 a.m. Trustee Hirsch entered the Village office seeking to file documents with a particular Village official.
- At this time Trustee Hirsch demanded to speak with the particular Village official and referred to the official utilizing a term which was intended to ridicule and demean the employee, with all of these communications taking place in a central area within the Village Office in the presence of staff members.
- The term used to describe the employee was heard and described by each of the employees of the Village present in the office during this time. Further, a recording made of the events of that day confirm Trustee Hirsch's use of the term when referring to the employee.
- Trustee Hirsch questioned the employee's competence and knowledge of the Village Code.
- Trustee ridiculed the employee's use of a calculator to perform certain mathematical calculations.
- The employee confirmed that neither prior nor after February 26, 2020 had Trustee Hirsch ever discriminated against the employee based upon this disability.
- While Trustee Hirsch has never specifically made any direct statement regarding her intentions if elected as mayor, her actions and comments placed the employee in fear that his/her future employment would be terminated.
- In May of this year after being advised that this same Village employee did not have any notes relating to a meeting with officials of a local hospital, Trustee Hirsch was condescending towards the employee and proceeded to laugh at him/her until the employee hung up the phone.

- On the same date of February 26, 2020, in the presence of a number of employees, upon observing ashes on the forehead of a Village employee, Trustee Hirsch made a comment in a manner insulting and demeaning of religious faith, beliefs and practices.

WHEREAS, although the behaviors of Trustee Hirsch were not found by the investigators to be sufficiently severe or pervasive to create actionable claims under Title VII or the New York State Human Rights Law the behaviors were nonetheless found to be inappropriate and unacceptable in the workplace, and

WHEREAS, the Board of Trustees has, upon complete review of the submitted Report and consideration of its obligations reached a determination that disciplinary actions are required as to Trustee Hirsch, and

WHEREAS, the Village is committed to ensuring that each and every employee is treated with respect and dignity and afforded a workplace free of the type of conduct which was found to have been exhibited,

NOW, THEREFORE IT IS HEREBY, RESOLVED AND FOUND, that the actions of Trustee Hirsch were highly inappropriate, unacceptable and cannot be tolerated in the workplace and the Board condemns, in the strongest terms the actions of Trustee Hirsch directed towards the employees in question, and it is further,

RESOLVED, that Trustee Hirsch is to be admonished for her unacceptable actions towards employees of the Village and is to be both reminded and directed that all Village employees and officials are to be treated with respect, consideration, understanding and the highest degree of professionalism, and it is further,

RESOLVED, that in order to ensure that conduct of this nature never again occurs, Trustee Hirsch is directed to review and comply with the Village's Non-Discrimination/Anti-Harassment Policy, and is to confirm in writing, within five (5) days of being provided with a copy of this policy, that she has done so, and it is further,

RESOLVED, that Trustee Hirsch is to be instructed that demeaning comments regarding religious faith, practices or beliefs are inappropriate in the workplace, that in the future if Trustee Hirsch has issues with an employee and his or her job performance, she should address these issues with the employee in private, and that employees should never be demeaned or criticized in front of other Village employees, and it is further,

RESOLVED, that Trustee Hirsch is required to participate and satisfactorily complete a anti-discrimination/ anti-harassment training course as designated by the Board, and it is further,

RESOLVED, that a letter confirming the within and the directions commensurate with the same is to be provided to Trustee Hirsch with the direction that she sign and deliver a copy of the letter to the Village acknowledging receipt, and it is further,

RESOLVED, that a copy of the letter described above shall be attached as an Exhibit to the within Resolution, and shall be deemed a part of the same.

Dated: September 1, 2020

The Vote on the foregoing was as follows:

Trustee Genese	Aye
Trustee Beber	Aye
Trustee Lewandowski	Aye
Trustee Collins	Aye
Trustee Hirsch	Nay
Deputy Mayor Rosenbaum	Aye
Mayor Herrington	Aye



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September 1, 2020

Trustee Kate Hirsch
Village of Flower Hill
1 Bonnie Heights Road
Manhasset, New York 11030

Re: Employee Complaints

Dear Trustee Hirsch:

On February 26, 2020 the Village of Flower Hill (“Village” or “Flower Hill”) received an official complaint filed by an employee alleging, *inter alia*, that on that date you engaged in conduct which harassed, demeaned and embarrassed the employee in the presence of other Village employees; created a hostile work environment by speaking to and about the employee in a derogatory manner; discriminated against the employee on the basis of a physical disability; made public allegations that the employee was engaged in illegal acts; and, threatened retaliation against the employee including potential loss of employment. On May 20, 2020, this same employee filed a second complaint alleging that on that date you created a hostile work environment by again demeaning the employee.

On March 3, 2020, the Village received a further complaint filed by another Village employee relating to the events of February 26, 2020. This complaint alleged that on that date you were rude, dismissive and unprofessional in your interactions with the complainant and another Village employee; created a hostile work environment; and, made discriminatory and insulting remarks regarding religious faith, beliefs and practices also in the presence of other employees.

In order to ensure that Flower Hill is at all times acting in a manner consistent with Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000E) and the Human Rights Law of the State of New York (Executive Law §296), upon receiving these complaints, the Village retained independent counsel to

investigate these allegations. In the course of this investigation, counsel interviewed each of the complainants, other individuals present at the time of the alleged incidents, all relevant documents and a recording made of the events of February 26, 2020. Through communications with an attorney initially retained to represent you in connection with this matter and subsequently in conversations and written communication, you were afforded the opportunity to be interviewed in connection with this investigation. On separate occasions you advised the investigating attorneys, both verbally and in writing, that you would not participate in any interview relating to the investigation.

Counsel has now produced to the Village its report of this investigation which has been reviewed and considered by the Board of Trustees without your participation. The evidence established the following facts:

- On February 26, 2020 at approximately 10:00 a.m. you entered the Village office seeking to file documents with a particular Village official.
- At this time, you demanded to speak with the particular Village official and referred to the official utilizing a term which was intended to ridicule and demean the employee.
- The term used to describe the employee was heard and described by each of the employees of the Village present in the office during this time. Further, a recording made of the events of that day confirm your use of the term when referring to the employee.¹
- You questioned the employee's competence and knowledge of the Village Code.
- You ridiculed the employee's use of a calculator to perform certain mathematical calculations.
- Significantly, the employee confirmed that neither prior nor after February 26, 2020 had you ever discriminated against the employee based upon this disability.
- While you have never specifically made any direct statement regarding your intentions if elected as mayor, your actions and comments placed the employee in fear that his/her future employment would be terminated.

¹ We have considered whether the recording of this incident, which was made by another employee of the Village, violated any laws. In this respect, we note that New York State Penal Law §250.05 makes it unlawful for an individual to mechanically overhear a conversation. As defined by the Penal Law, "Mechanical overhearing of a conversation" means the intentional overhearing of recording of a conversation or discussion without the consent of at least one party thereto, *by a person not present thereat*, by means of any instrument, device or equipment." [Emphasis supplied]. Because the person who recorded the conversation was actually present, we have concluded that the recording of this conversation was lawful. See, *People v. Kirsh*, 176 A.D.2d 652, 575 N.Y.S.2d 306 (2d Dep't. 1991).

- In May of this year after being advised that this same Village employee did not have any notes relating to a meeting with officials of a local hospital, you were condescending towards the employee and proceeded to laugh at him/her until the employee hung up the phone.
- On the same date of February 26, 2020, in the presence of a number of employees, upon observing ashes on the forehead of a Village employee, you made a comment in a manner insulting and demeaning of religious faith, beliefs and practices. ²

While the investigation determined the facts as set forth above, and which are determined to demonstrate behavior on your part toward employees that is inappropriate and unacceptable in the workplace, it nevertheless concluded that your actions did not rise to the level of a violation of either Title VII or the New York State Human Rights Law. This is because your conduct, while unacceptable, was not sufficiently severe or pervasive to create a hostile or abusive workplace environment as defined under the provisions mentioned above. In this regard, it is noted that your conduct on February 26, 2020 while constituting negative statements and harsh tones, was not of sufficiently serious nature to rise to a hostile work environment. Further, it does not appear that you were aware of any particular disability of the employee at the time you belittled him/her inability to perform mathematical calculations. Similarly, your comments regarding the second employee's religious practices appear to have been a one-time event and therefore do not rise to the level of severe or pervasive conduct.

Nor does it appear that you ever directly threatened the employee's continued employment with the Village. While your negative interaction with the employee clearly caused him/her to be concerned, there is no evidence of a clear and unequivocal threat of retaliation.

For similar reasons your conduct was determined not to constitute an actionable claim under New York Executive Law §296. This law provides that if the employee is treated "less well" than other employees in a protected class the conduct complained of will state a claim. Religious practices and beliefs are within the category of protected classes. However, because your comments were described as a singular event, the investigation concluded it was not actionable.

The Board of Trustees in a duly convened executive session has concluded that your conduct was unacceptable. The Board condemns, in the strongest terms your actions directed towards the employees in question. The Village is committed to ensuring that each and every employee is treated with respect and dignity and afforded a workplace free of the type of conduct which you exhibited. While your conduct may not have met the legal standard sufficient to establish a violation of either Federal or State law, it was highly inappropriate, unacceptable and will not be tolerated. You are hereby admonished for your unacceptable actions towards employees of the Village.

As an elected official we remind you and indeed insist that you are to treat all Village employees and officials with respect, consideration, understanding the highest degree of

² February 26, 2020 was the Christian holiday of Ash Wednesday during which observant Christians acknowledge their mortality by the placement of ashes upon the forehead.

professionalism. Your actions as established by the investigation failed to meet this standard and will not be tolerated.

In order to ensure that conduct of this nature never again occurs, we insist that you review and comply with the Village's Non-Discrimination/Anti-Harassment Policy, a copy of which is being provided to you together with this letter. We expect you to confirm in writing, within five (5) days hereof, that you have reviewed this policy.

You are further instructed that comments regarding anyone's religious faith, practices or beliefs are inappropriate in the workplace. If, in the future you have issues with an employee and his or her job performance, you should address these issues with the employee in private. Employees should never be demeaned or criticized in front of other Village employees.

Additionally, you are required to participate and satisfactorily complete an anti-discrimination/anti-harassment training course as designated by the Board.

In conclusion, we believe it important to state that we expect you will at all times conduct yourself in a professional manner and conduct of the nature revealed by this investigation will never be repeated.

Please sign and deliver to the Village a copy of this letter acknowledging receipt.

Yours,

Mayor Brian Herrington

Deputy Mayor Randall Rosenbaum

Trustee Jay Beber

Trustee Gary Lewandowski

Trustee Frank Genese

Trustee Mary Jo Collins

Read and Acknowledged

Kate Hirsch, Trustee

The Board ended the executive session and closed the meeting at approximately 7:00 pm

Respectfully submitted,

Ronnie Shatzkamer
Village Administrator