

STATE OF OHIO)
PORTAGE COUNTY) SS: IN THE COURT OF COMMON PLEAS

CASE NO. 07 CV 1774

VILLAGE OF WINDHAM, ET AL.)

Plaintiffs)

VS.)

WINDHAM TOWNSHIP, ET AL.)

Defendants)

DEPOSITION
OF
RACHEL W. BARRETT

DEPOSITION taken before me, Gina M. Allen, a Notary Public within and for the State of Ohio, on the 19th Day of November, 2008, pursuant to Agreement and at the time and place therein specified, to be used pursuant to the Rules of Civil Procedure or by agreement of counsel in the above cause of action, pending in the Court of Common Pleas, within and for the County of Portage, State of Ohio.

COPY 3

STIPULATIONS

1
2
3
4
5 It is stipulated and agreed by and between
6 counsel for the parties hereto that the deposition may be
7 taken at this time, 3:07 p.m., November 19, 2008, in the
8 offices of Atty. Mark S. Finamore, 258 Seneca Avenue N.E.,
9 Warren, Ohio.
10 It is further stipulated and agreed by and
11 between counsel that the deposition may be taken in
12 shorthand by Gina M. Allen, a Notary Public within and for
13 the State of Ohio, and may be by her transcribed with the
14 use of computer-assisted transcription; that the witness'
15 signature to the finished transcript of his\her deposition
16 may be and is hereby waived by agreement of the parties;
17 and that the deposition may be thereupon used on behalf of
18 the parties in the aforesaid cause of action as fully and
19 to the same extent as if written in the presence of the
20 witness and subscribed by the witness in the presence of
21 the Notary Public.
22
23
24

2

APPEARANCES

1
2
3 On Behalf of Plaintiffs:
4 David C. Comstock, Jr., Attorney at Law
5 Comstock, Springer & Wilson
6 100 Federal Plaza East
7 Suite 926
8 Youngstown, Ohio 44503
9 On Behalf of Defendant, Windham Township
10 Board of Trustees:
11 Mark S. Finamore, Attorney at Law
12 258 Seneca Avenue N.E.
13 Warren, Ohio 44481
14 On Behalf of Defendant, Janet Esposito:
15 Theresa Scahill, Attorney at Law
16 466 S. Chestnut Street
17 Ravenna, Ohio 44266
18 Also Present:
19 Mayor Robert Donham
20 Mr. Cecil James Moore
21 Mr. Dann Timmons
22 Mr. Brian Miller
23
24

4

INDEX

1
2
3
4 CROSS EXAMINATION BY MR. FINAMORE, JR. - PAGE 5
5
6
7 OBJECTIONS AND MOTIONS:
8 BY MR. COMSTOCK, JR.: PAGE(S) 18, 20
9
10
11 EXHIBITS INTRODUCED: NONE
12
13
14
15
16
17
18
19
20
21
22
23
24

COPY

1 WHEREUPON,
 2 RACHEL W. BARRETT,
 3 of lawful age, being by me first duly
 4 sworn to testify the truth, the whole
 5 truth, and nothing but the truth, as
 6 hereinafter certified, deposes and
 7 says as follows:

8 CROSS EXAMINATION:

9 BY MR. FINAMORE

10 Q Ms. Barrett, my name is Mark Finamore,
 11 and we've invited you here today to do a deposition. Have
 12 you ever been involved in any legal proceedings where a
 13 deposition has been taken?

14 A No.

15 Q Okay. Basically what a deposition is,
 16 it's just a statement under oath where I ask you some
 17 questions much like as if we were at trial. And the
 18 purpose of it is just to get information which may help
 19 either prove the allegations in the case or refute it.

20 I represent the defendants in this lawsuit, and we're
 21 going to be asking you some questions to help us
 22 understand how the city operated with regard to this fire
 23 district and providing for the fire department functions
 24 within the village.

1 started?

2 A No, I don't.

3 Q Okay. Just for some background
 4 information, would you please state your full name?

5 A Rachel W. Barrett.

6 Q Okay. And Ms. Barrett, what is your
 7 current resident address?

8 A 9852 Green Drive, Windham.

9 Q Okay. And you currently reside in
 10 Windham Village or the township?

11 A Village.

12 Q Okay. And how long have you lived
 13 there? Are you a life-long resident?

14 A No. I've been there probably about 45,
15 47 years, something like that.

16 Q Okay. And do you currently have an
 17 occupation?

18 A I am retired from the village, and I
19 work part-time.

20 Q Oh, okay. Where do you work part-time
 21 at?

22 A Target in Streetsboro.

23 Q Oh, okay. And I hope you're enjoying
 24 your retirement?

1 I'm going to ask you the questions. If I ask a
 2 question that you don't understand, please feel free to
 3 interrupt me, and I'll be more than happy to explain it or
 4 rephrase it, to clarify it for you so that you can go
 5 ahead and understand that. If you need time to think
 6 about the question, please take as much time as you want
 7 to. We always prefer that if you're really not sure about
 8 an answer, that instead of trying to give an educated
 9 guess, there's nothing wrong with simply saying I don't
 10 know or I don't remember.

11 Obviously a lot of these transactions took place over
 12 a long time. I understand you were a very long-serving
 13 village official, and so you're not going to recall every
 14 check or every warrant that you did, and I don't expect
 15 you to, so please be willing to say that if you don't
 16 remember; that's fine.

17 A Okay.

18 Q Nothing I'm here to say is to trick you.
 19 You're not even a party in the lawsuit. We just believe
 20 that you may again have some information which will either
 21 help us determine the truthfulness or the proof of these
 22 allegations or to be able to refute them; okay?

23 A Fine.

24 Q Do you have any questions before we get

1 A Very much.

2 Q How many years did you work as an
 3 official with the village?

4 A Twenty-two and a half, as fiscal
5 officer.

6 Q And you were elected to that position;
 7 is that correct?

8 A Correct.

9 Q Okay. Could you tell me just generally
 10 what some of your duties are as the fiscal officer?

11 A You handle the accounting books, the
 12 finances for the village, monies coming in, going out.
 13 You record the council proceedings, minutes for the
 14 council meetings, and sometimes you get in a position
 15 where you do things that nobody else wants to do.

16 Q And so they throw a lot of that on you
 17 from time to time, I would imagine?

18 A Yes.

19 Q Probably because you're probably a
 20 pretty giving person and always willing to accommodate
 21 people around you?

22 A I guess maybe I tried a little harder
23 than some others.

24 Q Well, that's what they tell me about

1 you. You have a very good reputation within the community
2 based upon the comments that people have given me, so I
3 appreciate the fact that -- what you've done.

4 A Thank you.

5 Q You did indicate that one of your major
6 functions is, of course, to keep records of the
7 proceedings; is that correct?

8 A Yes.

9 Q So when the village council meets and
10 they pass resolutions, or I guess it would be ordinances
11 for the village, you would keep a record of those and
12 transcribe them and have them available for inspection and
13 copying; is that correct?

14 A Correct.

15 Q And you were also responsible for the
16 issuance of warrants and checks; is that correct?

17 A Correct.

18 Q And you were involved in the budget
19 process of developing the budget for the village?

20 A Very little.

21 Q Okay. And then you also helped them
22 with appropriations?

23 A Sometimes.

24 Q Actually they made them, and you had to

1 beneficial to them, tax-wise, to be separate. And they
2 went ahead and then filed a petition, and then there
3 was -- there's a vote. It was separated on, and then the
4 county commissioners made, you know, the remaining
5 township and then the village went back to the village.
6 Okay. Now, one of the allegations in here was is
7 that that constituted a -- that the illegal effect of that
8 is that the village was no longer part of this fire
9 district anymore. One of the things I was interested in
10 is, do you recall, did the township ever pass any specific
11 resolutions stating that they were no longer part of the
12 fire district?

13 A Not to my knowledge.

14 Q Okay. And you were aware of the fact
15 that there was a tax levy that was levied on both the
16 village residents and the township residents to generate
17 funds for fire protection?

18 A Yes.

19 Q Okay. And that those funds were
20 collected and were disbursed by the auditor to the
21 township fire district?

22 A Correct.

23 Q Okay. And you are aware of the fact
24 that over those years there wasn't -- there was periodic

1 record them?

2 A Yes.

3 Q And, of course, your main duty was at
4 any time that a check was written you had to certify the
5 funds were available and properly appropriated for that
6 expenditure; correct?

7 A Correct.

8 Q Okay. I was going to ask you some
9 questions about one of the issues in this lawsuit, which
10 has somewhat been resolved, but I just want to confirm
11 them. There was an allegation in the lawsuit that in 1993
12 the village had removed themselves or they, by operation
13 of law, were removed when the city separated from the
14 township -- from the township. Do you recall when that
15 happened in 1993?

16 A Vaguely.

17 Q Okay. That was a process where at that
18 time the city and the village overlapped, and that meant
19 the village residents could still vote for township
20 trustees back in those days?

21 A Correct.

22 Q And then there came a time, and the
23 allegations were in here, that the prosecutor made both
24 the township and the village aware that it would be

1 and continuous operating agreements between the township
2 and the village with regard to the fire department?

3 A Yes.

4 Q Okay. And during that time period as a
5 fiscal officer, were you paying bills or making
6 disbursements from your funds to pay obligations of the
7 fire department, the village fire department?

8 A Yes.

9 Q Okay. Can you tell me what type of
10 expenditures were you making?

11 A All repairs on the equipment, the
12 monthly utility bills --

13 Q Okay.

14 A -- for phone, and --

15 Q Supplies?

16 A -- electric bills. And supplies.

17 Q Okay. Were -- at that time, were you
18 paying the employment costs and employment taxes for the
19 firemen that were working there at that time in terms of
20 their payroll with W-2s?

21 A Yes, I was.

22 Q And of course that would mean you'd be
23 paying into the appropriate Social Security or OPERS funds
24 for contributions --

1 A Correct.

2 Q -- on employment?

3 A Yes.

4 Q Firemen's dependence fund?

5 A Yes.

6 Q Okay. Did there come a time when you

7 ceased doing that and those obligations were then

8 transferred to the clerk of the township to make those

9 expenditures for you?

10 A It came about, yes. Not all at one

11 time, but it came about gradually.

12 Q Yeah. From the best of your knowledge,

13 can you give me a little background as to how that came

14 about, you know, what precipitated that and how that

15 transfer occurred?

16 A Well, at one point, I don't know, maybe

17 2001, the fire chief approached me one day in the office,

18 came into the office.

19 Q Who was that?

20 A Fire chief would have been Don Miller.

21 Q His name comes up a lot.

22 A Okay. Came in and let me know -- he

23 told me that the township clerk, Jamie Neikirk, would be

24 more than willing to do the -- take over the firemen's

1 the words he said when I asked him the same question? He

2 said that he told you that he wouldn't have any problem

3 with it?

4 A I would hope.

5 Q All right. Well, that's what he --

6 that's what he did say, that you wouldn't have any problem

7 with that to be able to do that. And so after that time

8 that happened, were there any expenditures that you

9 continued to make for the fire department once that

10 agreement was made, or did Jamie take over all of that?

11 A No, she did not take -- she only took

12 over the payroll.

13 Q Okay. You still paid the utilities and

14 supplies and those kind of things; is that correct?

15 A Yes.

16 Q Okay. How many years -- how long ago

17 did that happen, do you recall? You said 2003?

18 A I think it was 2001.

19 Q 2001 that that happened, since that

20 time. When did you leave office?

21 A I turned in a resignation to be

22 effective March the 30th of 2003, but I had enough sick

23 time accumulated which allowed me to actually leave the

24 office around maybe the 15th of September of 2002.

1 payroll --

2 Q Uh-huh.

3 A -- to help out.

4 Q Uh-huh.

5 A Because of the fact that I was short of

6 help in the office.

7 Q Okay. And you went ahead and agreed to

8 that; is that correct?

9 A I agreed to it, but I said, you know, I

10 said, I don't have a problem with it, but I do not have

11 the authority to turn that over to you without checking

12 with the mayor.

13 Q And who did you check with?

14 A I checked with the mayor at the time,

15 who was Mr. Moore.

16 Q Okay. And do you recall what the

17 conversation was between the two of you when you asked him

18 about his willingness to allow this to happen?

19 A He just answered basically along the

20 lines that, well, he had no problem with it, you know, as

21 long as I didn't, and if that would help out --

22 Q So --

23 A -- if I would agree --

24 Q -- would it surprise you that's exactly

1 Q Okay. During your tenure as the fiscal

2 officer of the village, did the township have a specific

3 fire levy which generated fire levy funds to the village,

4 do you know?

5 A To the village?

6 Q Yeah.

7 A The village did not receive any fire

8 levy funds.

9 Q That's what I meant. They didn't --

10 A No.

11 Q -- they didn't have a separate levy?

12 A No.

13 Q It was only the levy to the district

14 that was the -- and the auditor disbursed that to the

15 township --

16 A Township funds, yes.

17 Q Okay. And do you recall the city

18 council making appointments of firefighters to serve in

19 the fire department?

20 A Yes.

21 Q And did they do that by resolution where

22 they would appoint Bill Smith to be a firefighter paid or

23 volunteer or anything?

24 A They would make -- I wouldn't say it was

1 a resolution. They made a motion to accept any fireman --
 2 Q Recommended?
 3 A -- for the roster, you know, names for
 4 the roster --
 5 Q Okay.
 6 A -- that was submitted by the --
 7 Q Chief?
 8 A -- fire chief.
 9 Q Okay. And that would appear in the
 10 records of the proceedings if we were to go back and look
 11 through time; is that correct?
 12 A It should yes.
 13 Q Okay. And would that be the same as the
 14 appointment of the fire chief when there were changes in
 15 the fire chief; would that have been recorded in those
 16 minutes of your meetings, too?
 17 A Yes.
 18 MR. FINAMORE: Okay. If I could just
 19 have one minute; Dann and Brian, real quick.
 20 (A recess was taken)
 21 Q Ms. Barrett, just one qualification. My
 22 clients have indicated to me they believe that I asked you
 23 a question where I substituted the wrong party, and I
 24 wanted just to clarify.

1 You're not aware of any resolutions by the
 2 village --
 3 MR. TIMMONS: You had asked if she was
 4 aware of any resolutions by the township --
 5 Q I'm sorry. Are you aware of any
 6 resolutions by the village where they specifically stated
 7 in a resolution that they wanted to remove themselves from
 8 the district?
 9 A Not that I recall.
 10 Q Okay. That clarifies that. Okay. And
 11 the only other question I have was that you are currently
 12 a member of council; is that correct?
 13 A That's correct.
 14 Q And can you just tell me kind of in your
 15 own words why the council initiated this lawsuit, why did
 16 they decide to sue the township over this?
 17 MR. COMSTOCK, JR.: I'll object. Go
 18 ahead and answer. Go ahead.
 19 Q Let me ask you this question. Did the
 20 township -- did the -- did the village pass a resolution
 21 to initiate this, to authorize this lawsuit being filed?
 22 A I don't know.
 23 Q Okay.
 24 A I was not in office at that time.

1 Q Okay. Are you -- what -- when did
 2 you -- when did you take office for the council?
 3 A Council? November of 2006.
 4 Q Okay. Were you a member of council on
 5 December 18, 2007?
 6 A Yes.
 7 Q Okay. Well, that's when this lawsuit
 8 was initiated.
 9 A Okay.
 10 Q Do you recall discussions at the council
 11 meetings about retaining Mr. Comstock and filing this
 12 lawsuit?
 13 MR. COMSTOCK, JR.: Let me -- let me
 14 interfere at this point.
 15 MR. FINAMORE: Sure.
 16 MR. COMSTOCK, JR.: There were
 17 discussions. They took place in executive session with
 18 respect to threatened pending litigation. I don't know
 19 that she's in a position to comment on anything that may
 20 have taken place in executive session with counsel present
 21 at that time.
 22 MR. FINAMORE: All right.
 23 Q And not asking you to divulge that, but
 24 let me ask you this. Was a motion or ordinance ever

1 passed by the village authorizing that lawsuit that you're
 2 aware of?
 3 MR. COMSTOCK, JR.: If you know.
 4 Q If you know, yeah.
 5 A I'm not sure.
 6 Q I can go back. There's either going to
 7 be a resolution or not to be able to do that. Okay. Can
 8 I ask --
 9 A I would have to say yes, but I'm not 100
 10 percent positive.
 11 Q Can I ask you as member of council
 12 representing the citizens of the village how do you feel
 13 about this lawsuit?
 14 MR. COMSTOCK, JR.: Object. You can
 15 answer that.
 16 MR. FINAMORE: Yeah.
 17 A I'd rather not comment on that.
 18 Q That's no problem. I just was curious.
 19 MR. FINAMORE: Okay. I have no further
 20 questions. I'm sorry that you had to come down here for
 21 such a short visit, and again, I do apologize for the late
 22 notice, and I thank you for helping us out.
 23 THE WITNESS: Not a problem.
 24 MR. FINAMORE: Okay. Thank you very

21
1 much.
2 MR. COMSTOCK, JR.: I've discussed
3 signature with this witness, and, given the brevity of
4 this deposition, she's going waive.
5 SIGNATURE WAIVED
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

23
1 STATE OF OHIO)
2 TRUMBULL COUNTY) SS: NOTARY CERTIFICATE
3
4 I, Gina M. Allen, Notary Public
5 within the State and County aforesaid, duly commissioned
6 and qualified, do hereby certify that the within-named
7 deponent was by me first duly sworn to testify the truth,
8 the whole truth, and nothing but the truth, and that the
9 foregoing testimony was written by me in stenotype in the
10 presence of the witness; that by agreement of counsel,
11 signature was waived.
12
13 I do further certify that I am not of
14 counsel, attorney or relative to either party, or
15 otherwise interested in the event of this action or
16 proceeding.
17
18 IN WITNESS WHEREOF, I have hereunto set
19 my hand and seal of office at Youngstown, Ohio, this 29th
20 day of December, 2008.
21
22
23 Gina M. Allen, Notary Public
24 My Commission Expires 08/01/11

22
1
2
3
4
5 REPORTER'S CERTIFICATE
6
7 I HEREBY CERTIFY that the above and foregoing is a
8 true and correct transcript of all the testimony
9 introduced and proceedings had in the taking of the
10 testimony in the above-entitled matter, as shown by my
11 stenotype notes taken by me at the time said testimony was
12 taken.
13
14 Gina M. Allen
15 Registered Professional Reporter
16
17
18
19
20
21
22
23
24

(Empty)