

**EXECUTIVE SESSION MINUTES**  
**Grafton Township Board**  
**February 15, 2016**

The Executive Session of the Grafton Township Board was called to order by Supervisor Kearns at 7:41 P.M.

Present: Supervisor Kearns, Trustees Holtorf, Wagner, Ziller, Zirk; Clerk Hurley. Also present by invitation of the board was Attorney Gottemoller.  
Absent: None.

**PURPOSE**

To discuss pending litigation and personnel issues involving the Township pursuant to 5ILCS 120/2(c)(11

**DISCUSSION**

Attorney Gottemoller gave trustees the letter from Loizzo & Loizzo in response to our settlement offer of \$8,000. (Exhibit I) He explained that he communicated with the attorney after he received their letter and got an agreement to settle for a flat \$14,000 to include fines and attorney's fees. He said that the trustees would have to approve for payment at this meeting, payable to the office of Loizzo & Loizzo and that it would settle all claims.

**ADJOURNEMENT**

Motion was made by Trustee Wagner, seconded by Trustee Holtorf to adjourn the Executive Session at 7:49 P.M.

AYES: Supervisor Kearns, Trustees Ziller, Wagner, Holtorf, Zirk

NAYS: None

Motion Passed.

Submitted,

Kathryn Hurley  
Grafton Township Clerk



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**COPY**  
Thomas F. Loizzo  
Dane J. Loizzo  
Attorneys at Law

January 26, 2016

Mr. Joseph Gottemoller, Esq.  
One North Virginia Street  
Crystal Lake, IL 60014

Re: McKnight vs. Grafton Township, 15 MR 465

Dear Mr. Gottemoller:

I am in receipt of your correspondence dated January 19, 2016. I have had the opportunity to speak to my client in regard to your proposal, and accordingly tender this letter as a further attempt to conclude this litigation in an expeditious matter. As such, this letter should be used for settlement purposes only.

While I appreciate that your billing rate for the Township is \$140.00, I am unaware of any law that requires parity between respective counsel's hourly fees. I represent a private citizen rather than a governmental body, and I certainly don't believe that \$300.00 per hour for an attorney in McHenry County is excessive. In my experience, that is about right in the middle of the typical hourly rates charged by attorneys in the area.

In regard to what Judge Meyer may find excessive, I would note the recent FOIA case between Mr. Gonigam at First Electric Newspaper and the McHenry County Sheriff's Department. In that case this past July, Judge Meyer found \$250.00 per hour to be reasonable, and awarded counsel for the Plaintiff \$79,237.50 in attorney's fees. He also awarded Plaintiff the maximum civil penalty of \$5,000.00. Given the judge's recent ruling in that similar case, I am willing to compromise my hourly rate to the same \$250.00. I suppose I could have offered \$275.00 per hour, only to have you counter, but I am not particularly interested in a months-long back-and-forth on the matter. As such, since Judge Meyer has already found \$250.00 per hour to be reasonable in a FOIA litigation, I am willing to abide by that precedent.

In regard to the hours spent on your first Motion to Dismiss, I am a bit dismayed that the Board would balk at this. Mr. McKnight's decisions at that time were designed to cut down on time and attorney's fees. To recap, your Motion to Dismiss was premised upon an alleged lack of specificity in the original Complaint. As I noted at the time, I felt



this was more the province of a demand for a bill of particulars rather than a 2-615 Motion to Dismiss. I believed then, as I do now, that the original Complaint sufficiently set forth a cause of action. At the time, there were two options. First, we could have responded to the Motion to Dismiss, done additional research supporting our response, then read your reply. We would then have had a hearing on the Motion to Dismiss, which we both would have had to prepare for. Had the Motion to Dismiss been granted, we would have been given leave to amend the Complaint, and filed the same. Had the Motion been denied, we would have spent the time and expense to end up back where we started. In order to avoid this, I spoke with Bryan and he agreed to simply cut to the chase and file an Amended Complaint. In reviewing the billing for this entire phase of litigation (i.e., reviewing your Motion, researching the issues raised, and speaking with my client), there was a total of 3.75 hours. I believe this is significantly less than what would have resulted in a full-blown hearing and response had we chosen to go that route. As I see it, our decision not to contest the Motion to Dismiss conservatively cut 4-8 hours of billing from the final tally. Given the foregoing, I do not believe the hours as detailed were unnecessary, unreasonable, or excessive.

The final issue raised in your correspondence regards the civil penalty. We can certainly disagree as to what Judge Meyer may ultimately order, but we can all agree that the statutory range is \$2,500 to \$5,000. I believe Mr. Zielinski's actions, as well as his sworn deposition testimony, make clear that the maximum civil penalty is more than appropriate in this case. To be clear, I nor Mr. McKnight, have any quarrel with the Board or the way they have conducted themselves during this litigation. However, Mr. Zielinski's actions and conduct are another matter entirely.

Mr. Zielinski's deposition revealed that he knew at the time of the FOIA request that PIN's were not private information subject to redaction under the Act. However, he made a decision to implement his own "office policy" to "make it harder" for people (in this case Mr. McKnight) to be able to ascertain address-specific characteristics. Mr. Zielinski's proffered excuse for knowingly disobeying FOIA amounts to his having volunteered at a women's shelter 30-plus years ago. He admitted that he had no reason to believe Mr. McKnight was requesting the information for nefarious purposes, or that Mr. McKnight was requesting it to stalk a township resident. This alone may have been sufficient to be penalized the maximum statutory amount. But Mr. Zielinski did not stop there.

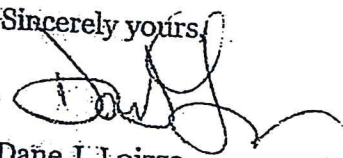
After being ordered by Judge Meyer to produce the unredacted information, Mr. Zielinski took it upon himself to post an e-mail to the McHenry County Blog. After claiming that PIN's were private information akin to Social Security Numbers, what did Mr. Zielinski do? He posts, on a public forum, Mr. McKnight's name, his wife's name, their address, what they paid for their house, what he believes it is worth, and why his assessment is correct. The context here is also important. This public targeting of Mr. McKnight and his wife wasn't included in some reasoned debate about property taxes. Rather, this was included in the midst of Mr. Zielinski's rant about alleged criminal acts committed by Bob Ross, veiled references to people bowing to "political pressure," and admonishments to his audience to appeal their taxes because it was a slam-dunk win. Given the heated issue of property taxes and assessments, I find it incomprehensible

that Mr. Zielinski, acting as a public official, would attempt to whip up a frenzy by telling the citizenry that they have gotten a raw deal. And who should they blame for these corrupt antics and sweetheart deals? Apparently, Mr. McKnight and his wife, along with Bob Ross. This was irresponsible, potentially dangerous, and certainly willful. Given Mr. Zielinski's conduct, I am confident the Court would not hesitate in awarding the maximum penalty allowed by law.

As I had indicated previously, I am willing to reduce my hourly rate to \$250.00 per hour in order to bring this litigation to a close. The statement I had previously sent was current through January 14, 2016, and showed 41.90 hours expended. Even though we have another court date coming up, I am willing to suspend my billing at that 41.90. At \$250.00 per hour, that is \$10,475.00, resulting in more than \$2,000.00 of compromised fees. As I have explained in detail above, I believe the \$5,000 civil penalty is appropriate here. There is no good reason why Mr. McKnight should have had to go through what he did to simply get compliance with his very basic FOIA request. As such, attorney's fees, costs, and the civil penalty would amount to \$15,926.00.

I appreciate that the board is loathe to pay this when they did nothing wrong. Unfortunately, the law does not allow me to pursue the Grafton Township Assessor's Office, so this is what we are left with. I am hopeful we are able to conclude this matter in short order. Please let me know if there is anything else you need. I will look forward to hearing from you.

Sincerely yours,



Dane J. Loizzo