

MINUTES OF THE
CIVIL SERVICE COMMISSION
Council Chamber
April 9, 2024

Present: John Polinko, Chairman
Richard Tayek, Vice Chairman
William Albrecht, Member
Valerie Rosmarin, Secretary

Also Present: Mayor Mark Spaetzel, Law Director Gary Ebert, and Public Works Laborer/Local 836 President George Spuckler.

The meeting was called to order at 4:30 p.m.

1. Approval of Minutes

Motion: Mr. Albrecht moved to approve the minutes of January 8 and March 13, 2024. Seconded by Vice Chairman Tayek. Motion passed 3-0.

2. Police Department

- Police Officer Exam

Secretary Rosmarin reported that the Commission will start collecting applications for the Police Officer exam on Wednesday, April 10, 2024, and conclude on Tuesday, May 7, 2024. The exam will be held on Saturday, May 11, at 9 a.m. at Avon Lake High School. An advertisement was placed in *West Life* for two weeks, and a notice was posted with Tri-C and LCCC Police Academies. The quote she received from Cleveland.com for a 30-day online post was \$585. This amount was higher than past posts (\$300 and \$425), and she asked for the Commission's direction about this fee and if the Commission wanted to advertise on Cleveland.com.

Mr. Albrecht, who works for the Lakewood Police Department and is familiar with advertising on Cleveland.com, stated that an advertisement on Cleveland.com will be reposted on Indeed and other employment sites.

Chairman Polinko requested that Secretary Rosmarin provide the Commission with an update¹ in two weeks on the number of applications filed, and a decision will be made if additional advertisements are needed.

In response to Chairman Polinko, Secretary Rosmarin stated that the Commission allocated \$750 for advertising, and *West Life* fees are \$228.

¹ After the meeting, Secretary Rosmarin negotiated the advertising cost with Cleveland.com down to \$425.

3. Public Works Department

- Engineering Technical Aide I & II Positions

The Administration asked that the Engineering Technical Aide I and II positions be placed on the agenda, and copies of the job descriptions were distributed to the Commission. Chairman Polinko reported that the job descriptions were approved in 2021, and Secretary Rosmarin noted that these positions were not part of the Gallagher Study because the prior Administration stated that the positions would not be filled, so there would be no reason for Gallagher's review.

Mayor Spaetzel explained that the Engineering Department was previously managed by former Public Works Director Joe Reitz, who was the in-house engineer but wasn't the City Engineer. When he resigned in 2022, the Department had one Tech I, two Tech IIs[sic]², and one Administrative Assistant. All three Techs resigned in May of 2023, and the Administrative Assistant, Coleen Spring, is now the only employee in the Department. The City hired Chagrin Valley Engineering (CVE) as the City Engineer when Mr. Reitz resigned, and CVE worked with the three Techs. CVE's contract ended in early 2023, and Bramhall Engineering & Surveying Company, Inc., (Bramhall) was hired as the City Engineer. Bramhall supplies the City with 12 hours of engineering services per week. Before Mr. Reitz's departure, the City had a full-time engineer (in house), or 32 hours of engineering services per day, and now the City engineering services have been reduced to one person for 12 hours per week plus 8 hours a day by the Administrative Assistant. The City is unable to keep up with engineering projects and has three options: 1) contract all engineering work; 2) set up a hybrid situation, i.e. in-house and contracted service; or 3) revert to in-house engineering services.

Mayor Spaetzel stated that he is seeking to re-establish an in-house Engineering Department, which involves hiring a full-time engineer and one Tech I and one Tech II. Mrs. Spring will remain in her role as the Administrative Assistant. Half a year's payroll was budgeted in 2024 for these positions. However, the City is very behind in engineering services, and an experienced Public Works employee has been conducting inspections. The Tech I position requires a bachelor's degree or an associate's degree plus experience. He noted that Secretary Rosmarin provided details of the last exam that was held in September of 2022. Eight candidates were tested; four passed, and the City hired two Tech I's (Joe Whitely and Ray Burner). The exam was written by Clancy & Associates. Prior to that exam, a Tech I exam was held in 2015; six candidates were tested, and one Tech I was hired (Kelly Marton). The exam was written by Bramhall. The Tech I position is like an "engineer in training", and the Tech II is geared toward someone with construction and inspection experience. The market has changed, and in speaking with City Engineer Chris Howard of Bramhall, these are difficult positions to fill in the private sector, which makes it equally harder to fill in the public sector compounded by the fact that they are civil service positions. Not everyone wants to take a civil service test. The City needs to hire staff as quickly as possible for one or two of these positions, and Mayor Spaetzel requested the Commission give him the ability to go into the market without civil service oversight. In Lorain County, the cities of Lorain, Elyria, and North Ridgeville have engineering departments with in-house engineering services. The Administration is running into the same situation with the laborer

² The City had three engineers with a title of Engineering Technical Aide I.

position and is trying to fill these positions promptly with quality individuals, and they question if civil service still fits that need.

Law Director Ebert stated that many cities are looking at qualifications for these positions versus testing. This is a specialized field, and a test doesn't support these types of qualifications for the position.

In response to Chairman Polinko, Mayor Spaetzel stated that the Techs would remain in Local 836, which drives the benefits and the pay. He wants to hire the best people, and he doesn't want limitations to a singular pool. Cleveland State has an excellent engineering program, and he would try to flood that market.

Chairman Polinko asked if a separate department is created with an engineer and tech aides, who will manage those individuals if the engineer is not hired initially? Mayor Spaetzel responded that the Engineering Department falls under the Public Works Department and will continue until an engineer is hired. In the meantime, the Techs would be supervised by Public Works Director Liskovec. Assistant Public Works Director Darwin Ward currently conducts inspections. This task is not in his job description, but the City doesn't have anyone else on staff to do the inspections. Jobs are backing up, and additional support is needed.

Law Director Ebert added that there isn't any issue with splitting Engineering into a standalone department, and Mr. Spuckler noted that the Engineering Department was previously a separate department.

Chairman Polinko confirmed that the Administration is requesting the Commission forgo any formal civil service testing because these Tech positions are unique.

Law Director Ebert reiterated that these positions are unique and specialized, and Mayor Spaetzel restated that a specific education is required for the Tech I position, and the Tech II position requires construction and inspection services experience. It would be hard to test the skills for both positions.

Vice Chairman Tayek asked if the request would be to remove the Techs from the classified service or to not test for the positions. Chairman Polinko responded that the position would be classified, but the unique exemption would be used to not test.

Secretary Rosmarin clarified that the exemption of peculiar and exceptional qualifications is used to determine if a position is unclassified. If the Commission supports this request, the job descriptions will have to be amended. She noted that the Commission held an exam for the position of Lateral Entry Police Officer last fall. Instead of giving a written test, a structured interview was conducted that met the Character of Examinations (Rule 7) for a classified position. This format could be conducted with the Tech positions and an eligibility list developed.

In response to Chairman Polinko, Mayor Spaetzel stated that he has been involved in structured interviews, and he used a similar format when interviewing candidates for the HR Director position. The same questions were asked of each candidate, but the key to finding a department

head is to take answers that a candidate provides and give them the opportunity to elaborate on them and allow the interviewer the ability to ask additional questions.

Secretary Rosmarin stated that an eligibility list was developed based on the scores from the lateral interviews, and the Police Chief and his Staff handled the next steps in the hiring process, i.e. second interviews, background checks, etc. She managed the advertising, collected and processed the applications, and scheduled the interviews. The Police Chief and his Staff developed the questions which were given to the Commission for their review and feedback. She checked in the candidates at the interview and observed the interviews to ensure the integrity of the testing process, as she does for other civil service tests.

Mr. Albrecht agreed that if the structured interview satisfies the purpose of having the list, then the initial interview would establish the list. He asked if Mayor Spaetzel was looking to hire an engineering department head along the way or if he had another plan.

Mayor Spaetzel responded that his original plan was to hire an engineer and let them pick their staff. But the City doesn't have the time or the money because revenues are down. He needs someone who can do inspections now. During the interim, the Public Works Director will serve as the supervisor to the Techs.

Mr. Albrecht asked Mayor Spaetzel if a structured interview would be cumbersome and affect what he was trying to accomplish. Mayor Spaetzel responded that he thought the advertising process and the first interview would be the same, just structured and more formalized but should not add a time constraint.

In response to Chairman Polinko, Mayor Spaetzel stated that Chris Howard of Bramhall would be the best person to assist with developing questions. He knows what these positions entail and will review these job descriptions to ensure that they include the tasks needed for the City. After the Commission decides on the classification and the job descriptions have been reviewed, they will be reviewed by the Human Resources Committee and then forwarded to Council for approval. In the meantime, advertising can begin and the questions for the structured interview developed.

Mr. Spuckler informed the Commission that these positions are within the Union, and any changes to the job descriptions would need to be discussed with the Union. The former Public Works Director, Joe Reitz, started as a laborer and worked his way up. The Tech I and II positions can be taught, although it is impossible at this time because there isn't anyone in the Department who can train staff. The former HR Director requested an increase in the skill set to require an Associate's Degree [sic]³. The Union agreed to increase the degree requirement because the Administration insisted that they needed to hire educated candidates. Previously, inspectors did not have an Associate's Degree [sic].

³ Tech I job description states, "shall possess a minimum of a Bachelor's Degree in a related field or an Associate's Degree in a related field with four (4) years' experience in construction and/or infrastructure (water, sewer, stormwater) related areas;" Tech II job description states, "shall possess a high school diploma (or GED), have two (2) years' experience in construction and/or infrastructure (water, sewer, stormwater) related areas;"

Law Director Ebert stated that changing the positions to unclassified based on the qualifications and a candidate's experience is more important than taking a test.

Chairman Polinko stated that it is no secret that for several years, the Administration has been looking to narrow down positions governed by the civil service process.

Mayor Spaetzel explained that he is trying to hire the best people, and if the City is looking for someone with specific skills, a test doesn't measure that. However, he can obtain the experiences of candidates from their applications, which is the advantage of an open application process.

Secretary Rosmarin stated that if the Administration doesn't want a written test, a structured interview is the option that will satisfy the civil service requirement.

Chairman Polinko stated that he is not prepared to rule on the classification of these positions today, and he understands the arguments that have been made before on different positions. He is, however, willing to review the job descriptions and have a special meeting to discuss this further in the next two weeks. Vice Chairman Tayek and Mr. Albrecht agreed to the special meeting.

Action: The Commission will have a special meeting on Tuesday, April 23rd at 4:30 p.m.⁴

4. Examination by Structured Interview

Chairman Polinko reported that an amendment to the Memorandum for the Record 2023-001 is necessary to conform the changes made to Civil Service Rule 8 regarding the structured interview.

Motion: Chairman Polinko moved to amend the Memorandum For the Record (MFR) 2023-001 by removing the term *Scored Panel Interview* and referencing it as an *Examination by Structured Interview* and redating the MFR to *April 9, 2024*. Seconded by Mr. Albrecht. Motion passed 3-0.

5. State Personnel Board of Review (SPBR)

- Annual Report

Secretary Rosmarin distributed the 2022 Annual Report to the Commission before this meeting as a reference and gave the Commission a copy of the 2023 Annual Report at the meeting. She stated that the summary for the 2023 Annual Report has not been finalized, and it will be available at the next meeting.

- Procedural Order/Supplemental Response (April 5, 2024)

Secretary Rosmarin reported that A Request For an Investigation was filed in early December by former Chairman Rob Baker, and Law Director Ebert filed a response to the investigation at the end of December. On March 19, 2024, SPBR issued a report and recommendation to Mr. Baker based on his failure to respond to Law Director Ebert's response. However, the letter from SPBR

⁴ Due to a family emergency of one of the Commissioners, the special meeting was cancelled. Discussion will resume at the next regular meeting on May 6, 2024.

requiring Mr. Baker's response was never received by him because it was addressed incorrectly. Therefore, a Procedural Order and Supplemental Response was granted to Mr. Baker on April 5, 2024, affording him the opportunity to respond by April 30, 2024.

Law Director Ebert stated that Mr. Baker filed A Request For an Investigation, and the City filed a response. The response shows an email to Mr. Baker and former Mayor Zilka. In April 2023, this Commission voted (2-0) to approve the nomination for the Planning & Zoning Manager's position, and Mr. Baker was not present. The report and recommendation from the SPBR (dated March 19, 2024) specifically states, "that the State Personnel Board of Review does investigative authority over municipal civil service commissions but not over the municipalities themselves." The City was looking to hire a Planning & Zoning Manager, and based on the structured interview procedure that was established, the Commission approved what had transpired with a vote of 2-0. The individual appointed to the position is still employed with the City. Mr. Baker's term concluded December 31, 2023, and he wasn't re-appointed. Law Director Ebert questioned whether he has standing to move forward to request a Supplemental Response. Law Director Ebert's response addressed two points: 1) the Commission was aware of the hiring process; and 2) nothing was hidden from the Commission.

Chairman Polinko stated that he and Vice Chairman Tayek never considered filing a response and deferred the argument on standing to Law Director Ebert.

Secretary Rosmarin stated that she learned that SPBR thought that the Law Director Ebert's response was the Commission's response since he represents the City and the Commission. Law Director Ebert responded that contradicts what is stated in the SPBR report. She informed the Commission that Mr. Baker was unable to attend today's meeting and sent her the following email:

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R Baker <rebaker13@gmail.com>
TO: Valerie Rosmarin <VRosmarin@avonlake.org>

****EXTERNAL EMAIL WARNING****

Hi Valerie,

As you will recall, the Commission approved appointing Dave Matty for the rules review and later as Special Counsel to represent it in other legal matters, including investigations. As such I've have a follow up request and a question regarding the SPBR matter.

1) In December, Commissioners Polinko and Tayek agreed to Special Counsel Matty representing me in the SPBR matter. We were to all meet virtually for a brief teleconference to discuss the matter with Attorney Matty and agreed that moving forward and it would be best for at least one (active) Commissioner to be involved in all future meetings that would be had on this matter.

Unfortunately, teleconference never occurred and while waiting for follow up from the Commission, the SPBR matter has moved forward. I am now in a position where I must respond to SPBR on the matter on or before April 30, 2024.

Would the Commission be able to get together with Attorney Matty in the next week so that I may work with him to discuss a response?

One thing in particular I'd like to discuss with Attorney Matty relates to what one of the Judges said to me during the first calls I received after filing. It mentioned (in a way that felt like a possible suggestion) that some issues can be resolved prior to SPBR needing to take action. If there is a way to resolve this issue prior to any further SPBR action being taken, I'd like to explore it.

2) City of Avon Lake Law Director Ebert has been providing response and opinion to SPBR. Given that the Commission has its own Special Counsel appointed, would it be safe to assume that Mr. Ebert is not responding and/or speaking on behalf of the Commission?

I also want to say that none of us signed up for what the Commission had to endure from external forces over the last three and a half years. While I'm so disappointed in some of our past and current City's leaders, I take some comfort in being proud to have worked with John and Rich.

Thanks,

Rob Baker
440-447-0006

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Law Director Ebert stated that Attorney Matty was hired to do the Rules Review and not as special counsel, and he was not hired to represent the Commission in any procedure.

Chairman Polinko responded to Mr. Baker's letter. He recollected that the Commission did have a conversation with Mr. Baker, as a Commission member. He had no objection to Mr. Baker talking to Attorney Matty but felt Attorney Matty would likely have an issue providing any type of advice on the issue.

Vice Chairman Tayek stated that he suspected there might be a conflict for Attorney Matty to represent Mr. Baker and the Commission, but it was agreed that if Mr. Baker wanted to have that conversation, at least one of the Commission members should be present.

Secretary Rosmarin stated that she spoke with Attorney Matty to get his perspective, and he said that Law Director Ebert represents the City and would be the one to determine if there is a conflict of interest. After that conversation, she emailed Chairman Polinko, and no further action was taken.

Chairman Polinko commented on Mr. Baker's letter that the word "agreed" wasn't the proper word choice. The Commission agreed that Mr. Baker could talk to Attorney Matty but did not agree to his representation in this matter.

Vice Chairman Tayek confirmed Chairman Polinko's comments and stated that the Commission (Polinko and Tayek) suspected a conflict of interest may exist.

Secretary Rosmarin stated that she takes issue with Law Director Ebert's response to SPBR (dated December 28, 2023) because of incorrect statements within the response regarding the Planning & Zoning Manager hiring process. The statement that the City welcomed the Civil Service Commission's involvement in the selection process is not true. The Administration did not want the Commission involved. They believed that the position was unclassified. Another inaccurate statement pertained to the Gallagher Study. Law Director Ebert stated that during the recent Study conducted of classified positions within the City, the Planning & Zoning Manager was not considered a classified position. Gallagher did not recommend any changes to the position's classification. It is a classified position. She attempted to be the intermediary between the Administration and the Commission because of the animosity between the parties, but the Administration chose not to involve her in the process like she had been with the Lateral Police Officer Structured Interviews.

Law Director Ebert stated that there was a lot of discussion with former HR Director Mary Siwierka and the Administration concerning how the interview process was conducted by the Community Development Director, and there was a lot of interplay at City Hall. He was not going to question what Secretary Rosmarin stated but did object to a couple of things. The Commission did vote to certify the appointment, and they oversee the Commission, not the municipality. Also, he agreed that Attorney Matty would have had a conflict, and the City never discussed having him represent the Commission in this investigation.

6. Public Comment

Mr. Spuckler addressed the comments that Public Works Director Jon Liskovec made at the last meeting of the Commission. At that meeting, Director Liskovec addressed the Commission on hiring better people without using the civil service process. His comments were made to the Commission after 13 days on the job, and Mr. Spuckler questioned his comments without him fully knowing the skill set of his staff. How does Director Liskovec know he will hire better people than he has already? The Public Works Department performed amazingly during the Total Solar Eclipse Event. One reason the City uses the civil service process is to avoid hiring employees based on "who you know" and not on skills or experience. When Mr. Spuckler was hired over 20 years ago, there were a few employees hired in that manner. Mayor Spaetzel and Director Liskovec may have the best intentions, but the next Mayor may want to hire his friends. It is harder to find people, but the Public Works Department has a good group of employees. The civil service process is used to hire Police and Fire, and that doesn't appear to be an issue for the Administration. The City wants the best people for those jobs, so why wouldn't they want the best people in the Public Works Department? Every community is having problems hiring people. If it's hard to hire someone, making the process easier isn't going to help the City find better people.

Chairman Polinko stated that he did not agree or disagree with Director Liskovec comments, but he wanted to present the issue and preview his request before the Commission.

Mr. Spuckler stated that Director Liskovec could have gone through the civil service process once before seeking its removal. He hasn't been through the process because his former employer did not have civil service positions within their Service Department. If he went through the process and had a valid concern, that would be understandable. But he jumped on the issue before seeing its outcome.

The meeting was adjourned at 5:33 p.m.

Respectfully submitted,

/s/ Valerie E. Rosmarin

Valerie E. Rosmarin, Secretary

