

Hearing on Written Charges of Appointed Officer
Public Works Director Dennis Miranowski
Wahpeton City Council
December 13, 2021, 5:00 P.M.
City Hall, 1900 4th Street North, Wahpeton, ND 58075

Present: Council Members Lambrecht, Carlson, Goltz, Wateland, Bohn, Woods, Fobb and McNary

Absent: Dale

Staff Present: Huwe, Thorsteinson, Anderson, Johnson and O'Meara.

Also Present: City Attorney Brittany Hatting, Assistant City Attorney John Bullis, Assistant City Attorney Will Budke, Assistant City Attorney Steve Lies, Attorney Leo Wilking, Dennis Miranowski, Carol Miranowski, Pam Osmundson, Frank Stanko of the Wahpeton Daily News and members of the public.

Council President Wateland called the Hearing to order at 5:00 p.m.

Preliminary Matters – Wateland explained this is a hearing on the conduct of Public Works Director Dennis Miranowski, as it relates to these specific charges only. No item other than the specific conduct of Mr. Miranowski will be considered or tolerated at this hearing. Wateland stated this hearing will be conducted with dignity and respect for all parties. Members of the public may not make comments at this hearing. Wateland explained the city must show that it is more likely than not that Mr. Miranowski committed the violations contained in the written charges. Wateland reviewed the sequence of events for tonight's hearing. Witnesses Miranowski, Osmundson, Hatting and Huwe were sworn in.

City Opening Statement – Attorney John Bullis presented his opening remarks to the City Council explaining the primary elements of the written charges against Mr. Miranowski include policy violations relating to dishonest acts involving public documents, failure to timely report an alleged violation of the Leadership Code of Conduct by an elected official, and interference and obstruction with the investigation process by the City Attorney as prescribed in the Leadership Code of Conduct.

Employee Opening Statement – Attorney Leo Wilking presented his opening remarks to the City Council stating there is no substance to the stated charges and the alleged dishonest acts were not misleading or dishonest. Further stating that the matter of substance is the mayor's behavior and charges against Mr. Miranowski are "shooting the messenger." Bullis objected to the statement; Wateland reminded Wilking only Mr. Miranowski's actions are relevant to this hearing.

City Case in Chief – Attorney John Bullis presented written charges against Mr. Miranowski, referenced the Order of Suspension and Memorandum 1 & 2. City Attorney Hatting was called as a witness, and she explained the internal investigation and findings. City Auditor/Finance Director Huwe was called as a witness to confirm metadata and information received from the City's technology services provider regarding DATTO backups. Hatting emphasized the importance of an honest, accurate report of contemporaneous events in Mr. Miranowski's account of the mayor's conduct at the Nov. 9th water main break. Hatting stated Mr. Miranowski consistently told her the document Memorandum 1 was created Nov. 10th in its entirety. Hatting also explained Mr. Miranowski stated he felt the mayor should resign citing health reasons. During Mr. Miranowski's employee evaluation follow-up on Dec. 6th the council president again asked Mr. Miranowski if the information in the memorandum was accurate and created on Nov. 10, 2021, to which Miranowski responded "yes". Council president Wateland requested his resignation. Mr. Miranowski did not resign, and demanded written charges and a public hearing.

Employee Case in Chief – Attorney Leo Wilking presented his case. Wilking questioned Hatting about the truthfulness of Mr. Miranowski's account of the Nov. 9th events. Wilking emphasized the memorandum to file dated Nov. 10th, 2021, content was created from handwritten notes, asserting the metadata indicating the document was actually created Nov. 28th is not relevant. Mr. Miranowski had no intention of lying to City Attorney Hatting. Further stating there is no dishonesty here. Wilking reviewed the policy violations and specifically implied the Leadership Code applies only to elected officials. Wilking referenced multiple public meeting minutes stating they are dated one date yet prepared on another, therefore they must all be fraudulent documents (sic). Wilking said there is no dark secret motive to get the Mayor, Mr. Miranowski was preparing for an employment review. Wilking stated council members Goltz and Woods told

Miranowski he would have an opportunity to express concerns at his review. Wilking said there is no fraud, no dishonesty. Wilking stated the council would have fired Miranowski for a cover up if he had not reported the mayor's behavior at the Nov. 9th water main break. Wilking continued, "Shoot the messenger," move the spotlight from the mayor to Dennis Miranowski." "Dennis Miranowski has done nothing but good for the city for eight years. The charges should be dismissed." Wilking questioned Miranowski about the memo, he responded he took thorough handwritten notes on Nov. 9th after a phone call from Don Wald. Miranowski also admitted to telling Hatting the mayor should be censured or alternatively, resign citing health reasons. Wilking asked if he had reason or motive to lie to Hatting to which he responded "no." Wilking asked if he knew his employee review would be scheduled for some time in November or December on Nov. 9th which he responded "yes". Wilking asked if Miranowski told Huwe he intended to share the information in his review – he responded "yes." Wilking asked if Huwe told him the mayor should be held accountable? Miranowski responded "yes."

Bullis asked Miranowski about when he reported the mayor's conduct to council president Wateland. Miranowski responded, "at the performance review." Bullis asked if he had brought it up to any council members prior to that, Miranowski responded "no." Bullis asked if he talked about the incident with anyone else, Miranowski responded, "yes with everyone who was at the water main break that night and at shop during a break. Bullis asked when did you ask for their statements? Miranowski responded he told Don Wald he wanted their documentation of what happened at the site. Bullis asked if Wald told them what to write? Miranowski said no, but he was not there. Bullis asked if he was familiar with the Leadership Code and the fact that it applies to all elected and appointed officials including Miranowski. Miranowski responded, "yes he is familiar with it and understands it applies to all elected and appointed officials." Bullis stated Miranowski knew that concerns with the mayor were to be reported to the council president. Bullis asked if the events at the water main break were note-worthy why were they not reported? Bullis questioned Miranowski why he waited until Nov. 30th to contact any council member about the events at the water main break. Miranowski admitted he felt the events at the water main break were important enough for him to gather information and prepare hand-written notes, but he did not report the alleged behavior of the mayor in accordance with the Leadership Code of Conduct. Miranowski admitted he gathered the information rather than reporting it to Hatting or Wateland as stated in the policy. Bullis asked what happened to the hand-written notes, Miranowski said he threw them away. Bullis asked if he typed the entire document (Nov. 10th memo) in one sitting? Miranowski responded, "no," the bottom stuff was for Brittany's convenience added later because the emails did not come in until Nov. 26th. Bullis asked again when you typed that (the Memo of Nov. 10th) did you type it all at once? Miranowski responded yes.

Bullis questioned Hatting how she asked Miranowski about when the memo was created. Hatting explained each time he was asked if the entire memo was created on Nov. 10th he responded "yes". Miranowski told Hatting the statement including the reference to emails of Nov. 26th was created in its entirety on Nov. 10th. Hatting noted the reference to the preparation of public meeting minutes is not relevant to whether Mr. Miranowski is telling the truth. Wilking asked Miranowski if the memo referenced emails before they were written? Miranowski said no, he added that for reference and corrected a spelling error on the 29th.

Bullis called Pam Osmundson as a rebuttal witness to confirm Hatting asked Miranowski numerous times during the interview if the Memo dated Nov. 10th was created in its entirety on Nov. 10th to which he replied "yes" each time without reference to hand-written notes.

Questions by the Elected – Lambrecht stated a memorandum can be a hand-written note, the IT provider statement that the memo was most likely created on Nov. 29th is not enough surety to convict someone of murder. Lambrecht said there were probably many more violations of the Leadership Code of Conduct as to when documents are dated and actually created in example a police report may not be created on the day of the event. Wateland repeatedly asked Lambrecht if he had a question. Hatting explained she believes Mr. Miranowski intentionally claimed to have created the memo on a date he did not. Lambrecht said he cannot crucify someone for a mistake on a date.

Bohn asked Miranowski if he believed the mayor's actions at the water main break were egregious enough to file an investigation? Miranowski said he thought they were bad enough to bring up at his employee review. Bohn asked why he postponed the reporting of what he considered such a serious event? Miranowski said he has spoken to all of the elected and the City Attorney's Office for years about the mayor's behavior and he felt he had to bring his concerns forward on behalf of his staff this time. Bohn asked when he became aware of the investigation process? Miranowski responded, "this week." Bohn asked if he knew this policy existed to which he responded yes.

Goltz asked Miranowski why he waited three weeks to bring any of these issues up and why had he not brought up any of these issues previously. Miranowski said in the past nothing has ever happened, he thought bringing it up in his review it would be a safe place and more than one person would hear him and have to follow through. Goltz clarified he never advised Miranowski to violate city policy, Miranowski confirmed Goltz did not recommend he violate policy.

McNary asked about Miranowski's rapport with his employees. Miranowski responded, he has a great rapport with them. McNary asked if that would improve even more without micromanaging, which Miranowski responded "absolutely, I could create a lot more efficiencies."

Carlson asked if Miranowski had ever been written up for anything during his eight years with the city. Miranowski responded, "No I have not."

Wateland stated Miranowski as an eight-year appointed official with the City he should know the policy manual and Code of Conduct inside and out. Wateland asked Miranowski if he had ever brought forward and or filed a complaint about the mayor with him (Wateland)? Miranowski responded, "no" not other than at his review. Wateland said your evaluation was not scheduled until after the water main break event, what would you have done if your evaluation was not scheduled until Jan. 10th? Miranowski said if he had not had his evaluation, he would have had to bring this forward, he would be obligated to. Wateland asked, "Were you not obligated to bring it forward once you found out about the incident?" Miranowski responded "yes."

Lambrecht asked how long it took Miranowski to gather the information? Miranowski responded he had asked Don (Wald) many times for the documentation of the guys at the incident, he didn't get it until the 26th.

Wateland then asked Miranowski the night he was suspended, he turned in his phone and keys and was instructed not to have any contact with any of the elected or city employees; did he have contact with any elected officials or employees after receiving those instructions? Miranowski responded, "No, I couldn't because I didn't have my phone anymore." Wateland asked the same question again if Miranowski had contact with any city elected official or city employee after he was instructed not to? Miranowski responded Brett had contacted his wife because he was concerned how she was doing and how Dennis was doing. Wateland asked the same question a third time regarding prohibited contact to which Miranowski responded, "yes – Brett." Wateland stated "you violated your order of suspension?" Miranowski responded, "No, I didn't contact him." Brett said, "I contacted his wife, Dennis never spoke to me."

Closing by the City – Attorney Bullis explained Mr. Miranowski is an appointed official that initiated his own investigation into what he perceived as the mayor's violation of the Code of Conduct. Mr. Miranowski chose not to report the incident and chose not to follow the procedure prescribed in the policy corrupting any chance of the City Attorney's Office to conduct interviews and a legitimate investigation. Mr. Miranowski intentionally misled City Attorney Hatting regarding the memorandum documenting the events in question at the water main break. Is it more likely than not that he misled Hatting? Miranowski admitted tonight the memo was not created Nov. 10th in its entirety as he repeatedly stated. Mr. Miranowski gathered information about the mayor, who he does not get along with, on his own without initiating a formal investigation with the Council President or advising the City Attorney.

Closing by the Employee – Attorney Wilking presented his closing statements stating Mr. Miranowski explained why he waited 19 days to report the incident because neither the council nor the City Attorney's Office will do anything about the mayor. This incident is about the mayor not Dennis. Maybe something will happen finally. The delay in the reporting was attributed to the email evidence of the mayor's gross abuse of his office, it is not like he waited three months or a year. He waited until he knew he had plenty of evidence to prove the mayor had gone off the rails. He did not lie to Ms. Hatting. What is the big deal? There is nothing here. I think a motion to dismiss the charges is appropriate.

Rebuttal by City Attorney – Attorney Bullis presented his rebuttal stating if a police officer had done what Mr. Miranowski did, he would be terminated. It was not his job to investigate the incident, it was Ms. Hatting's job – no one appointed the public works director to investigate an elected official. Mr. Miranowski corrupted the entire process by stepping outside his bounds. Bullis stated there certainly is a preponderance of evidence that he was dishonest and misleading.

Motion by Lambrecht, second by Fobb, to dismiss the charges against Mr. Miranowski. This motion failed due to a lack of majority with four voting Aye (Fobb, McNary, Lambrecht, Carlson) and four voting Nay (Bohn, Woods, Goltz, Wateland)

Motion by Goltz, second by Bohn, to have the charges stand and terminate Mr. Miranowski’s employment with the city immediately. During discussion Bohn referenced the Leadership Code of Conduct for Elected and Appointed Officials referencing the Checklist for Monitoring Conduct; “Will my decision/statement/action violate the trust, rights or good will of others?” Bohn said this should not be taken lightly, if the policy cannot be followed – what other policies have not been followed? The written charges have standing and must be acted on. McNary said there is only so much words can say about leadership. Lambrecht said we all make mistakes. Goltz explained Mr. Miranowski admitted tonight he was not aware of multiple policies he has violated; he has been in a leadership position with the city for eight years; it is not acceptable to say that he was not aware of the policies. This motion failed with three voting Aye (Bohn, Goltz, Wateland) and five voting Nay (Woods, Fobb, McNary, Lambrecht, Carlson)

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Motion by Goltz, second by Fobb, to close the meeting and go into Executive Session pursuant to NDCC 44-04-19.1 for the purpose of Attorney Consultation to discuss instructions, strategy, and results of the hearing. Motion carried. The meeting was closed at 6:43 pm. The members of the public were asked to leave the room.

Closed Session

[Written minutes contained in file 12-13-21 CLOSED Hearing Minutes.doc file]

Motion by Bohn, second by Woods, to re-open the meeting. Motion carried. The meeting minutes will show that the executive session was adjourned at 6:49 pm. The room was reopened to the public.

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Discussion held with further questions to Mr. Miranowski, next steps and process explanations from the attorneys.

Bohn asked Miranowski if he was aware of any issues or complaints against him in his 2019 evaluation. Miranowski responded no. Bohn asked Huwe if there were any complaints filed against Miranowski prior to his 2019 evaluation, she responded yes, a harassment claim.

Motion by Lambrecht, second by Woods, to have a letter of corrective action placed into Mr. Miranowski’s file. Discussion. The motion carried with all voting Aye.

Motion by Wateland, second by Goltz, to suspend Mr. Miranowski for 30 days without pay retroactively from December 7th, 2021. Discussion. There may be no contact to any city employees/elected officials during the suspension. The motion carried with all voting Aye. Mr. Miranowski will return to work Jan. 6th, 2022.

Woods expressed his disappointment with this situation. Woods said we need to go through our policies and procedures to be a city of growth. Woods said there are too many factions in our city. Let the change start now. We are going to be a city of growth that does not live in the past. Do better.

Wateland stated the hearing tonight was solely about Mr. Miranowski. There are additional investigations that will be completed by January 3rd, 2022.

Motion by Bohn, second by Woods to adjourn the hearing at 7:14 p.m.

Respectively Submitted by O’Meara