

*Muskegon County
Board of Commissioners
Hall of Justice, 990 Terrace, 4th Floor
Muskegon, MI 49442*

*Terry J. Sabo, Chairman
Marvin Engle
Susie Hughes
Jeff Lohman
Kenneth Mahoney*

*Benjamin E. Cross, Vice Chair
Charles Nash
Robert Scolnik
Rillastine R. Wilkins*

Board Minutes may be found on the web at <http://co.muskegon.mi.us/clerk>

Special Full Board Meeting

Tuesday, August 24, 2016
1:00 p.m.

Chairman Sabo, Presiding

The Special Full Board of Commissioners was called to order by Chairman Sabo.

Roll Call

Present: Benjamin E. Cross, Marvin Engle, Susie Hughes, Jeff Lohman
Kenneth Mahoney, Charles Nash, Robert Scolnik, Rillastine R. Wilkins,
Terry J. Sabo

Also Present: Mark Eisenbarth, County Administrator;
Nancy A. Waters, County Clerk;
Jeanne Pezet, Administrative Secretary;
Douglas Hughes, Corporate Counsel;
Susan Franklin, Corporate Counsel

PERSONNEL HEARING BOARD RE: JOHN WARNER

Corporate Counsel Douglas Hughes opened explaining that this is one step in the appeal process.

John Warner was present, represented by Counsel Kevin B. Even of Smith Haughey Rice & Roegge

The County was assisted by special Corporate Counsel John Schrier of Parmenter O'Toole

Transcription by Lori J. Cope of Kane & Trap Court Reporting, Inc.

The following format was agreed to before starting: Opening statements were to be presented by each counsel at 10 minutes each. The County's witnesses were called for direct examination by Counsel Schrier, then cross examination by Counsel Even. After all County witnesses have testified, Mr. Warner witnesses will be called for Direct examination by Counsel Even, then cross examination by Counsel Schrier.

It was noted that no decision on this matter has to be decided today. A record will be created from today's meeting and depositions from those who are not available to be questioned today will be scheduled.

Chairman Sabo noted Commissioner Lohman will have to leave by 3:30 p.m.

All County Commissioners will have an opportunity to review the record. Pages 1-336 and a tape of the solid waste planning meeting may be presented as exhibits. Counsel Even will present exhibits as part of the record as needed.

A break will be taken following Mr. Schrier's witnesses.

Counsel Schrier presented opening remarks with County Exhibit #4 dated 5/25/2016, Notice of Suspension listed 3 reasons although items A & C go together and item B is separate. (See attached.)

1:13 p.m. Counsel Even presented his opening remarks asking Commissioners to keep an open mind and not just "have Administrator's back". Counsel Even stated information was requested by him but not produced. He further stated that Mr. Warner was never told what behavior or actions caused his suspension.

The following witnesses were called by Attorney Schrier, representing the County:

Sara Damm, Muskegon County Sustainability Coordinator

3:25 Commissioner Lohman has left the meeting.

Connie Maxim-Sparrow, Muskegon County Grants Coordinator

Jim Fisher, Chair of the Solid Waste Planning Committee

Lee Burley, Grounds Maintenance, Muskegon County Facilities Management

4:50 p.m. Vice Chair Cross left for a prior commitment.

Mark Eisenbarth, Muskegon County Administrator

6:01 p.m. Discussion regarding witnesses who must leave. It was agreed that they would be deposed at a date as soon as possible and their deposition be made part of the record. Chris Hall and Corporate Counsel Susan Franklin left at this time.

Witnesses called by Attorney Even representing Mr. Warner:

Carly Hines, Muskegon County Administrative Analyst with the Department of Public Works

Tina Nash, Muskegon County Departmental Clerk with the Department of Public Works

Kim Arter, Supervisor, Laketon Township and member of the Solid Waste Planning Committee

At 7:45 p.m. the last witness was excused.

Discussion ensued regarding a 30-day time limit for the Muskegon County Board of Commissioners which will not begin until all testimony is taken. All County Commissioners will be required to read and sign the depositions that will be taken before conclusion.

PUBLIC COMMENT

There was no public comment.

2016-320 **MOVED BY COMMISSIONER NASH, SECONDED BY COMMISSIONER
MAHONEY TO ADJOURN**

Voice vote

Motion Carried

Meeting adjourned at 7:48 p.m.

Nancy A. Waters, County Clerk

NAW/jmp

Preliminary Minutes
To be approved at the Full Board Meeting on September 13, 2016

WILLIAMS | HUGHES PLLC ATTORNEYS

THEO
DOU
JOHN
SUSA
ENRIKA L.F. MCGAHAN
ZANETA I. ADAMS
SARAH R. MILLER



May 25, 2016

Mr. John K. Warner
3878 Nestrom Rd.
Whitehall, MI 49461

Of Counsel:
FRED C. CULVER, JR
MICHAEL I. KLEAVELAND
MARK J. ANDERSON*
L. JAMES LEMMEN, MD*
DAVID B. MERWIN
**Also Admitted in CO*

Re: Your Employment with Muskegon County

Dear John:

The Muskegon County Administrator, Mr. Mark Eisenbarth, has the authority to discipline a director of a County Department, such as yourself, by suspension with a recommendation for discharge. There is no progressive discipline procedure for a director. At this time, Mr. Eisenbarth is prepared to suspend you from your position as Director of Muskegon County's Department of Public Works, with a recommendation of discharge.

Separation Agreement

You have the opportunity to determine how you would like your career with the County of Muskegon to end. As part of that opportunity, I have prepared a proposed Separation Agreement, Release and Covenant Not to Sue. Should you agree to it, your departure from County employment would be termed a resignation, and not a termination. I recommend you read it carefully, and that you may want to consult with an attorney about its contents.

Particularly, you should be aware that you have 21 days from today's date to consider and sign the Agreement, or until June 16, 2016. You would also have seven days following your signature to revoke your acceptance of the Agreement.

If you sign the Separation Agreement, the County will pay you your unused vacation time in the amount of 65.20 hours (\$25,991.85) and your unused sick time in the amount of 720 hours (\$33,110.64). Should you not sign the Separation Agreement by June 16, 2016, and are instead terminated, you would forfeit any right to a payout for unused sick time.

Suspension with Recommendation of Discharge

Should you not be willing to sign the Separation Agreement, Mr. Eisenbarth is prepared to move forward with your suspension with recommendation of discharge.



Mr. John K. Warner
May 26, 2016
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Notice of Reasons

This letter shall serve as your written notice of suspension with a recommendation of discharge. The reasons for this action are as follows:

- A. Your unprofessional conduct at the last meeting of the Solid Waste Planning Committee.
- B. Your conduct creating what could be termed a hostile work environment for other members of County staff.
- C. Your actions contrary to the statutory authority and bylaws of the Solid Waste Planning Committee.

The County Administrator has determined that these actions demonstrate that you are unable to execute properly the duties of your office.

Pre-termination Hearing

Pursuant to Muskegon County Board Rule XV, you have the right to a pre-termination hearing before the Chairperson of the County Board of Commissioners, Terry J. Sabo, or his designee. Should you wish to request such a hearing, you must do so within five (5) working days of today's date. Should you request such a hearing, it would not be held until after the expiration of the twenty-one day period of consideration of the Separation Agreement.

At such an informal pre-termination hearing, you may be represented by counsel and shall have the opportunity to present reasons why discharge is inappropriate. The Chair or designee may then affirm the discharge, impose a lesser discipline, or take no action and refer the matter to the Full Board. Should the Chair discharge you, you may appeal that action to the Board of Commissioners, who shall hear the matter as soon as practicable, pursuant to the Muskegon County Board Rules.

At this time, I will collect your County-issued items such as any keys, keycards, cell phone or laptop computers. Should any of these items remain in your possession after this meeting, I would ask that you return them to my office as soon as possible.

Sincerely,



Douglas M. Hughes for
Williams Hughes, PLLC
Muskegon County Corporate Counsel
Direct Dial: (231) 727-2119
E-Mail: doughughes@williamshugheslaw.com

cc: Mr. Mark Eisenbarth