

## **MEETING HELD DECEMBER 10, 2013**

A meeting of the Board of Trustees of the Village of Port Chester, New York, was held on Tuesday, December 10, 2013, in the Village Hall Conference Room, 222 Grace Church Street, Port Chester, New York, with Mayor Neil Pagano presiding.

Present in addition to Mayor Pagano, were Trustees Gregory Adams, Daniel Brakewood, Saverio Terenzi, Luis Marino, Joseph Kenner and Gene Ceccarelli.

It should be noted that Trustee Kenner was absent.

Also present were Village Manager, Christopher Steers; Village Clerk, Janusz R. Richards; Village Attorney, Anthony Cerreto; Village Treasurer, Leonie Douglas; Acting Police Chief, John R. Telesca, Ed Brancati and Labor Council Mr. Terry O'Neil.

On motion of Trustee Adams, seconded by Trustee Marino the meeting was declared opened at 6:32 p.m.

### **ROLL CALL**

**AYES:** Trustees Adams, Brakewood, Terenzi, Marino, Ceccarelli and Mayor Pagano

**NOES:** None.

**ABSENT:** Trustee Kenner.

**DATE:** December 10, 2013.

### **PROPOSED MOTION FOR EXECUTIVE SESSION**

#### **MOTION FOR EXECUTIVE SESSION**

At 6:33 p.m. on motion of Trustee Adams, seconded by Trustee Marino the Board adjourned into an executive session regarding particular person in the Police Department.

### **ROLL CALL**

**AYES:** Trustees Adams, Brakewood, Terenzi, Marino, Ceccarelli and Mayor Pagano

**NOES:** None.

**ABSENT:** Trustee Kenner.

**DATE:** December 10, 2013.

Present in addition to the Board of Trustees, were Village Manager, Christopher Steers; Village Clerk, Janusz R. Richards; Village Attorney, Anthony Cerreto; Village Treasurer, Leonie Douglas; Acting Police Chief, John R. Telesca, Ed Brancati and Labor Council Mr. Terry O'Neil.

No action was taken in executive session.

At 7:22 p.m., a motion to come out of executive session was made by Trustee Adams, seconded by Trustee Marino, the Board of Trustees closed the executive session.

**ROLL CALL**

**AYES:** Trustees Adams, Brakewood, Terenzi, Marino, Ceccarelli and Mayor Pagano

**NOES:** None.

**ABSENT:** Trustee Kenner.

**DATE:** December 10, 2013.

**RESOLUTIONS**

**Motion to Add-on a Resolution**

Following the Executive Session Mayor Pagano asked for a motion to consider an add-on resolution authorize the mayor to execute the Stipulation of agreement with the Chief of Police on behalf of the Village Board of Trustees.

There being no objections, on motion of Trustee Marino, seconded by Trustee Brakewood, the motion receive a unanimous vote of those present.

**ROLL CALL**

**AYES:** Trustees Adams, Brakewood, Terenzi, Marino, Ceccarelli and Mayor Pagano

**NOES:** None.

**ABSENT:** Trustee Kenner.

**DATE:** December 10, 2013.

**ADD-ON RESOLUTION**

**STIPULATION OF AGREEMENT WITH THE CHIEF OF POLICE**

On motion of TRUSTEE MARINO, seconded by TRUSTEE ADAMS, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, Joseph Krzeminski is employed by the Village of Port Chester as the Chief of Police in the Port Chester Police Department; and

WHEREAS, Chief Krzeminski has been on sick leave since on or about August 27, 2013; and

WHEREAS, the parties are desirous of resolving their issues regarding Chief Krzeminski without the time, expense and uncertainties of litigation. Now, therefore, be it

RESOLVED, that the Stipulation of Agreement (“the Stipulation”) between the Village of Port Chester (“the Village”) and Joseph Krzeminski, dated November 27, 2013, is hereby ratified and approved; and

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to execute the Stipulation on behalf of the Village Board of Trustees.

APPROVED AS TO FORM:

\_\_\_\_\_  
Anthony M. Cerreto, Village Attorney

**ROLL CALL**

**AYES:** Trustees Adams, Brakewood, Marino, Ceccarelli and Mayor Pagano.

**NOES:** Trustee Terenzi.

**ABSENT:** Trustee Kenner.

**DATE:** December 10, 2013

**(SEE STIPULATION OF AGREEMENT - NEXT PAGE)**

11/27/13

**STIPULATION OF AGREEMENT**

WHEREAS, Joseph Krzeminski ("Chief Krzeminski") is employed by the Village of Port Chester ("Village") as the Chief of Police in the Port Chester Police Department ("PCPD"); and

WHEREAS, Chief Krzeminski has been on sick leave since on or about August 30, 2013; and

WHEREAS, the parties are desirous of resolving their issues regarding Chief Krzeminski without the time, expense and uncertainties of litigation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED as follows:

1. In exchange for the consideration and promises in Paragraph 2 of this Agreement, Chief Krzeminski hereby agrees:
  - a. that this Agreement shall constitute his irrevocable resignation for the purposes of retirement from the Village effective January 2, 2014 and he shall submit all necessary paperwork on a timely basis to effectuate his retirement; and
  - b. that should he not retire pursuant to (a) above, this Agreement shall constitute an irrevocable resignation effective January 2, 2014; and
  - c. to be placed on paid administrative leave retroactive to his suspension without pay on October 29, 2013 through January 2, 2014; and
  - d. to make himself available by phone, or to meet if permitted to do so, through January 2, 2014 at the written direction of the Village Manager in

- the event that the Village Manager, or his/her designee, requires information from the Chief necessary for the operation of the PCPD; and
- e. to withdraw any of his Complaints of Harassment filed with the Village in writing by no later than two (2) days following his attorney's receipt of a fully executed and ratified Stipulation of Agreement; and
  - f. that he will not reveal any non-public information regarding the PCPD or any matters pending with the PCPD, except if required by law or if necessary to do so in his defense of criminal or disciplinary charges against him; and
  - g. to remain off all Village premises through January 2, 2014 unless he receives prior written approval from the Village Manager; and
  - h. that he shall surrender his PCPD badge and I.D. and any firearm(s) not previously surrendered; and
  - i. to stay away from, and refrain from communicating with, or having any other contact by mail, telephone, e-mail, voice-mail or other means with the following:
    - i. Village Manager Christopher Steers; and
    - ii. Acting Chief John Telesca; and
    - iii. the PCPD, except for the purpose of reporting a crime or the need for a police response to some other emergency situation; and
    - iv. on duty PCPD personnel, excluding Christopher Krzeminski and William Krzeminski; and

- v. Village property, except for the purpose of engaging in lawful Village business; and
  - vi. Village Attorney Anthony Cerreto; and
  - vii. the Village's labor counsel, Terry O'Neil and Emily Harper; and
  - viii. current members of the Village's Board of Trustees ("Board"); and
  - ix. the family and/or partners of all those listed in subsections (i) i through viii of this Paragraph.
- j. to refrain from assaulting, stalking, harassing, menacing, recklessly endangering, intimidating, threatening, or engaging in any criminal conduct against those covered by subsections (i) i through ix of this Paragraph.
- k. Sections (i) i and ii and vi through ix shall remain in effect until receipt of written permission from the individuals listed therein that Chief Krzeminski may resume such contact(s) with such individual(s). With regard to (i) iii, iv and v, such restrictions shall remain in effect until receipt of written permission from the Village Manager to resume such contacts.
- l. that if he violates any term(s) or condition(s) of this Agreement, and such violation is proven in a court of competent jurisdiction, including, but not limited to, a declaratory judgment brought by the Village with regard to an alleged violation of this Agreement in which both parties shall agree to a bench trial and shall waive discovery, he shall automatically forfeit:

- i. his entitlement to retiree health insurance benefits; and
- ii. his accrued time payouts not already paid at the time of the violation(s); and
- m. that he has the legal capacity to enter into this Agreement, as indicated by the signature at the end of this Stipulation and that he has the mental capacity to enter into this Agreement as indicated in the letter attached hereto.

2. The Village, in exchange for Chief Krzeminski's agreements in Paragraph 1 above, agrees:

- a. to accept Chief Krzeminski's retirement/resignation, effective January 2, 2014; and
- b. not to pursue any disciplinary action based on any events which occurred prior to the execution of this Agreement; and
- c. to allow Chief Krzeminski to be placed on paid administrative leave as described in 1(c)-(d) above through January 2, 2014 without deducting any time from his accrued balances and to pay the retroactive amounts due as a result of his suspension without pay being converted to paid administrative leave as soon as possible following the ratification of this Agreement by the Board of Trustees; and
- d. not to enforce Section 1101.09(a) of the Rules and Regulations of the PCPD with respect to Chief Krzeminski while he is on such leave as described in (c) above; and

e. that if Chief Krzeminski complies with all the terms and conditions of this Agreement, the Village will pay him 33 1/3% of his accrued time on or about the date of his retirement; will pay him 33 1/3% of his accrued time on or about six months following the date of his retirement; and will pay him the remaining 33 1/3% of his accrued time on or about one year following the date of his retirement. As of January 2, 2014, Chief Krzeminski shall be entitled to a total of \$107,545.48 for payments for vacation days, personal days, "days off due" and longevity as per the attached document.

3. In exchange for the agreements and other promises made by the Village in Paragraph 2 of this Agreement, and in full and complete settlement of all claims that Chief Krzeminski has or may have had whatsoever, asserted or unasserted, suspected or unsuspected with respect to his employment with the Village or any other interactions of any kind with the Village, Chief Krzeminski hereby freely relinquishes, releases, and waives all possible claims and causes of action against the Village, its successors, assigns, agents, employees, Board members, and attorneys (hereinafter "Village") that may have arisen from the time of his first contacts with the Village to the date of his signature on this Agreement. This includes, but is not limited to, any claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and Older Workers Benefit Protection Act, the Civil Rights Acts of 1866, 1871, and/or 1991, the Rehabilitation Act of 1973, the New York Human Rights Law, and all other federal, state, county and local laws, ordinances, regulations or orders. Among other things, these laws prohibit discrimination in



employment on the basis of sex, race, color, religion, creed, age, national origin, marital status, and disability. This release and waiver of claims shall also include any claims for constitutional violations, wrongful or abusive discharge, breach of contract, infliction of emotional distress, libel, slander, or any other tort, common law or contract claim. This waiver and release includes all claims now known to Chief Krzeminski as well as all possible claims that are not now known to him. The only exception to this waiver is that Chief Krzeminski may seek to enforce the specific terms of this Agreement and file for disability retirement and/or file for workers' compensation benefits.

4. Chief Krzeminski acknowledges and agrees that the Village's promises set forth in Paragraph 2 above are sufficient and valuable consideration for his waiver of claims in Paragraphs 3 of this Agreement.

5. Chief Krzeminski affirms and represents that, except as provided in paragraph 1 above, no charge of discrimination has been filed by Chief Krzeminski or any representative of Chief Krzeminski on his behalf against the Village or is currently pending with the United States Equal Employment Opportunity Commission ("EEOC"), the New York State Division of Human Rights, or the Westchester County Human Rights Commission, relating to Chief Krzeminski's employment with the Village.

6. Except as otherwise permitted by law, Chief Krzeminski acknowledges and agrees that no claim, action, lawsuit, charge or proceeding with any federal, state or local court or agency will be brought or filed by Chief Krzeminski, or any representative of Chief Krzeminski on his behalf, against the Village arising from Chief Krzeminski's employment with the Village or any other act or omission of the Village that has occurred at any time up to and through the date of his execution of this Agreement.

7. In the event Chief Krzeminski or a representative on his behalf files a charge permissible by law, or in the event of any enforcement or investigatory action undertaken by any administrative agencies, Chief Krzeminski is not prevented or precluded by this Agreement from fully cooperating with the administrative agency or participating fully in the administrative agency's process. Chief Krzeminski expressly agrees, however, that by signing this Agreement, he is irrevocably waiving and forfeiting any right to recover any monetary or other individual (i.e., equitable) relief as the result of any such proceeding, or any subsequent legal action brought by any administrative agencies.

8. Chief Krzeminski specifically acknowledges and agrees that the Village has not made any representations, guarantees or commitments regarding the treatment that the New York State Retirement System may provide with regard to any service credit or payments or other benefits set forth in this Agreement.

9. Chief Krzeminski agrees that he shall not be eligible for reemployment by the Village in any capacity, and shall not apply to the Village for any available openings at any point subsequent to the date of his retirement/resignation. It is further agreed that should Chief Krzeminski apply to the Village in the future, this Agreement shall be sufficient and appropriate legal grounds for denying his employment.

10. This Agreement is entered into in the State of New York and shall be construed and interpreted in accordance with the laws of the State of New York, without regard to any state's choice of law or conflicts of law provisions.

11. Any dispute over an alleged breach of this Agreement shall be resolved by an action for breach of this Agreement. The Parties agree to the jurisdiction of the

Courts of the State of New York to decide such an action and venue shall be in the Supreme Court of the State of New York, Westchester County. Each of the parties waives any right to a jury trial in such action and agrees that an action for breach of this Agreement will be decided by the court.

12. Chief Krzeminski agrees that by executing this Agreement, the Agreement and all of its parts are binding upon him subject only to execution of the Agreement by the Village.

13. Chief Krzeminski represents and certifies by execution of this Agreement that he has had a full and fair opportunity to consult with his chosen attorney before signing this Agreement, and that he has read it carefully and fully understands its contents. He also represents and certifies that the signing of this Agreement is voluntary and has not been forced or coerced in any way, and that he is aware that it sets forth the entire agreement among the parties and that it has final and binding effect on him. He also represents and certifies that neither the Village nor any of its agents, employees, representatives or attorneys made any representations concerning the terms and conditions of this Agreement other than those contained herein. Chief Krzeminski further declares that he has been satisfactorily represented by his chosen attorney.

14. This Agreement represents the entire Agreement between the parties and supersedes any prior written or oral statements, agreements, memoranda, correspondence, conversations, discussions and/or negotiations held or which have taken place between the parties and/or their agents or representatives with respect to matters covered by this Agreement.

15. This Agreement, including this paragraph, may not be altered, amended or modified in any way except by a writing executed by the parties to be bound by such alteration, amendment or modification, which writing shall expressly reference the fact that the writing is intended to alter, amend or modify this Agreement.

16. The language of all parts of this Agreement must be construed as a whole, according to its fair meaning, and not strictly for or against any party, regardless of who drafted the language. The terms and language of this Agreement are the result of negotiations between the parties to it and there shall be no presumption that any ambiguities in this Agreement should be resolved against any of the parties. Any controversy concerning the construction of this Agreement shall be decided neutrally, in light of conciliatory purposes and without regard to authorship.

17. This Agreement shall not be binding or effective on the Village until ratified by the Village's Board of Trustees by duly enacted resolution, a copy of which is attached hereto.

18. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, but all of which shall constitute the same instrument.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have executed the foregoing Agreement.

VILLAGE OF PORT CHESTER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Neil Pagano  
Mayor, on behalf of the Board of Trustees

STATE OF NEW YORK        )  
  ) ss.:



12/10/13

BE IT RESOLVED that the Stipulation of Agreement (“the Stipulation”) between the Village of Port Chester (“the Village”) and Joseph Krzeminski is hereby ratified and approved; and

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to execute the Stipulation on behalf of the Village Board of Trustees.

106806.1 12/10/2013



Arun Singh, D.O.  
Psychiatrist

600 Mamaroneck Avenue  
Suite 400  
Harrison, NY 10528  
Phone: (914) 817-0021  
Fax: (877) 800-6021

December 9, 2013

Kim Berg, Esq.  
Gould & Berg, LLP  
222 Bloomingdale Road  
White Plains, NY 10605  
Phone: 914-397-1050  
Fax: 914-397-1051

Re: Joseph Krzeminski

Dear Ms. Berg,

This letter is written at the request of Joseph Krzeminski (DOB 6/20/51) to communicate my medical opinion regarding his mental capacity ("capacity") to enter the Stipulation of Agreement ("Agreement") with the Village of Port Chester ("Village") of 11/27/13.

It is my medical opinion that Mr. Krzeminski has mental capacity to enter the Agreement as of the time of this writing.

My medical opinion is based on findings from an assessment of Mr. Krzeminski's capacity to enter the Agreement, performed on 12/6/13, during an office visit. We reviewed the Agreement in detail prior to the assessment.

The assessment itself consisted of Mr. Krzeminski's ability to demonstrate: an understanding of the nature and purpose of the Agreement; an appreciation of the Agreement's relevance; an understanding that the Agreement is binding.

Further information may be provided with Mr. Krzeminski's explicit consent.

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Arun Singh, D.O.  
Psychiatrist

600 Mamaroneck Avenue  
Suite 400  
Harrison, NY 10528  
Phone: (914) 517-0021  
Fax: (877) 800-6023

Sincerely,

Arun Singh, D.O.  
Diplomate, American Board of Psychiatry & Neurology  
600 Mamaroneck Avenue  
Suite 400  
Harrison, NY 10528  
Phone: 914-517-0021  
Fax: 877-800-6023



At 7:26 p.m., on motion of Trustee Ceccarelli, seconded by Trustee Adams, the meeting was closed.

**Roll Call**

**AYES:** Trustees Adams, Brakewood, Terenzi, Marino, Ceccarelli and Mayor Pagano

**NOES:** None.

**ABSENT:** Trustee Kenner.

**DATE:** December 10, 2013

Respectfully submitted,

Janusz R. Richards  
Village Clerk