

INTRODUCTION:

I want to address some of the diverse opinions and allegations associated with the recent retirement of Chief of Police Mark Pacholec. Given its personal and sensitive nature, there has been more speculation, insinuation, and outright misrepresentation than accurate information circulating. In that the town board is responsible for the supervision and direction of town services and employees, we are answerable for this regrettable state. I will attempt, therefore, to provide some sought-after answers, acknowledging that not all questions can be responded to, and that not everyone will be completely satisfied with the explanations.

Aside from a brief Introduction and Conclusion, this statement will have two main parts. As far as legally permitted, Part I will address questions and concerns associated with the Town's separation Agreement with retired Chief of Police Mark Pacholec. Part II will address a false narrative that has been created relative to the persons and dynamics that have led to the separation Agreement and retirement. It will take a few moments, but my hope is that you will find at least some of it helpful.

PART I. THE AGREEMENT

The crux of community and media concerns, I suggest, can be boiled down into three main areas: [1] the severance payment of \$100k, [2] non-disclosure of the full terms of the Agreement, and [3] the actions and reason(s) underlying former Chief Pacholec's retirement.

[1] As to the first, the **severance payment** raises three concerns: [i] the absence of any reference to the \$100k severance payment in the April 17, 2019 resolution, [ii] the "why" and amount of it, and [iii] the financial means for its payment.

[i] The compensation package afforded to the position of chief of police was last established by resolution back in August 2013 – containing items such as salary, longevity, compensatory time, insurance, etc. Any change in that compensation package relative to this position requires another public resolution – hence, the April resolution. Because the \$100k was never a part of the chief of police's compensation package, the town's legal team did not include it in the new resolution. This is not the same as to say it should not have been – on principle – also disclosed. But once it was crafted into the confidential separation Agreement, the town board was prohibited from

disclosing it until we received the opinion from the NYS Committee on Open Government that it must be disclosed.

[ii] What was the town board's reasoning, the "why" behind the severance payment? Whereas negotiated severance packages are far from universal, it is also the case that they are not a rarity. In police work, overtime pay is a constant given the nature of the work. When you are in police management, however, although you work all kinds of overtime, you receive no additional pay. Hopefully some of that extra work is anticipated and built into the manager's compensation package. But in general, for most police managers, it does not equate to the amount of extra work they actually put in.

So did Chief Pacholec deserve a severance upon his retirement? After 22 years of serving our community, six as chief of police, during which time the department was moved forward professionally, in the opinion of the town board, yes he did. The question was, how much? As has been pointed out by Mrs. Pacholec's Facebook (FB) posting and Buffalo News (BN) comments, one significant consideration was that he had not been entertaining any thoughts of retiring in the near term. So recognizing that with one-third of 2019 over upon his May 03 retirement, the \$100k severance approximates his remaining salary for 2019. Further, as I have written elsewhere, whatever actions the town board takes and whatever decisions it makes are grounded in thorough deliberations and what is believed to be in the best interest of the community – operationally and financially – and not that of any one individual.

[iii] As first identified in our 2014 State of the Town Address, for quite some time it has been the desire of the town board to collaboratively develop strategic plans for our larger service departments, beginning with the largest and most expensive, our police department. Among other benefits, strategic planning proposes solutions to major issues and challenges, improves performance, and facilitates doing more with less. Under the leadership of Acting Chief Wehrfritz, in collaboration with the command staff, the planning process within the police department has already begun. Some savings have been identified and performance measures implemented. It's anticipated that the town will achieve enough savings within the police department budget to minimize, and potentially entirely offset, all costs associated with this Agreement, including the severance pay and attorney fees. It may take more than one year, but our current estimate is that an approximate 1.6% savings (public safety) will need to be achieved. At the end of the 2019 and 2020 fiscal years we will identify the savings achieved.

[2] With respect to **non-disclosure** of the Agreement and its terms, let's cut to the chase – *mea culpa*; we acknowledge and fully own our fault. Many places of employment are at pains to keep employee pay and benefits, as well as any severance packages, confidential. The negotiating attorneys took this approach and the town board agreed to it as a common practice, even though we did in fact question it and express our uncomfortableness with it. Once the Agreement was signed, however, we were prohibited from providing a copy or even disclosing its existence and terms unless legally compelled to do so. Turns out governments are; and it seems to us that on principle it should be so anyways.

The town board made what has subsequently proved to be a mistaken decision based upon the legal direction we were provided. There was no intention or effort to deceive our community, and certainly nothing illegal occurred. To repeat, it was the town board that initially voiced its objection to confidentiality, and it was the town board that promptly directed legal counsel to obtain clarification from Albany upon learning of a contrary opinion; a clarification which upon receiving we immediately complied with by releasing copies of the Agreement. As Paul Wolf, President of the Buffalo Niagara Coalition for Open Government, recently put it to me:

Other governmental boards have made this same mistake. Municipal attorneys often mistakenly believe that by inserting confidentiality language into an agreement that a document can be kept from the public. It works in the private sector but not in the public sector.

For the past 5+ years this board has focused on building in greater public access and transparency. But we failed in this circumstance, and we are indebted to the media and many citizens for holding our feet to the fire. Public service and employment is not the same as in the private sector. Openness is a *sine qua non*, that is, an indispensable condition for a healthy democracy. The town board and its members have been schooled, as we often are, in how to better serve.

However, even though copies of the Agreement were released, the Town still remains legally bound by the terms of the Agreement. So, in addition to the obligation of confidentiality, another requirement is that neither side disclose any information concerning the terms of this Agreement. Consequently, even though the terms are known by virtue of the release, both parties are prohibited from disclosing any additional information relative to those terms. To violate any obligations could lead to

legal action that would be very expensive, likely far exceeding the \$100k severance payment.

[3] It's certainly understandable that citizens want to know the "why" of former Chief Pacholec's **retirement**, and the course it took. I remember when I suddenly announced my retirement as the department's assistant chief. At that time, Chief McCune was bluntly questioned by one Town Board member, "Why? What did you do to him." That "why" question was put to me for years after my retirement. People wanted to know not only my motivation, but if anything had happened. In my case it was simply a matter of my deciding to retire after twenty-five years and work elsewhere.

As Mrs. Pacholec has indicated in her FB post and the BN article, retirement discussions were, in fact, initiated by the Town, eventually arriving at a negotiated Agreement in mid-April. But as with other personnel matters, an individual has the right to keep their reason(s) for retirement private. That right is reflected and sanctioned in the negotiated Agreement that obligates both parties – retired Chief Pacholec and the Town – to confidentiality. It will have to suffice to say, both sides had their reasons; and only if both parties formally agree to remove that requirement will disclosure become permissible. In that the retirement and right to privacy are those of retired Chief Pacholec, any discussions aimed at a public release of the reasons must be initiated by him.

PART II. HISTORICAL FICTION

Although reticent to do so, but also being concerned that continued silence will be interpreted by some as affirming the historical fiction that has recently been put forth – and thereby cause continued and unwarranted concern within the community – I begin where Mrs. Pacholec's FB post and BN comments suggest it all began, namely, 18 months ago with the settling of a new contract with the Orchard Park Police Benevolent Association (PBA).

Since first proposing a closer assessment of the salaries associated with the positions of chief of police and assistant chief of police back in December – assessments we have been doing with all employee positions within the town, including town board members – a mantra has been employed by two family members to the effect that our police officers and lieutenants are the highest paid in the county as a result of that contract, the ostensible point being that if the rank and file are the highest paid, so should our chief of police be. In the recent FB post and BN article that mantra has been

put to another use, namely, as allegedly being the ulterior motive behind my proposal that the town board more thoroughly assess the base salaries and total compensation packages of the two chiefs' positions.

More specifically, there appear to be four premises set forth in this latest edition of the allegedly detrimental PBA contract. I discovered only after the settlement that [1] our officers would be the highest paid, and [2] the contract placed an excessive financial burden on the community. In the light of these discoveries [3] I became "embarrassed" and proceeded to devise a cure for my ailment consisting of cutting the salary of the chief of police and restructuring the command staff so as to alleviate supervisory overtime. Finally [4], as a result of these machinations the chief of police was made a "scapegoat" that was lost to Orchard Park through his retirement. First of all, let me say that along with other factors, comparisons with and ranking among peers, as well as financial cost, are part and parcel to any fair market value (FMV) assessment, which was the primary approach we utilized during negotiations. They were not discovered AFTER the fact. Now, allow me to address each of these four premises in turn.

With respect to premise **one** [1], being the highest paid officers, I offer two observations. The town board made it known upon settlement, 18 months ago, that the new contract would move our officers from the rank of being one of the lowest paid departments – a status I referred to at the time as an embarrassment to our community – to that of being **one** of the highest paid among their peer departments, but **not** the highest. One need only compare an adjoining town's police and command officers' contracts with ours to discover this, being sure to include not only salary, but all financials that constitute a financial compensation package, that is, pay.

Secondly, I and the town board continue to fully own and are proud of the contract negotiated with the members of the PBA. Collectively our police department is one of the most capable, dedicated, and productive in WNY as measured by a number of standards that were considered. For example, our police department handles more calls per officer than any of their peer departments. The fair exchange principle and practice of FMV constituted their new Contract a matter of both value and justice. The same principle and practice have been applied to the recently settled contract with one of our CSEA unions (Highway and Water/Sewer) and with the soon to be settled contract with the Orchard Park Police Command Officers Association.

With regards to premise **two** [2], the Contract being an excessive financial burden upon our community, it should be noted that every fall, during public forums related to the ensuing year's budget, the town board discloses and then posts on our

web page the financial information related to our most costly departments - police, highway, and recreation - comparing their respective costs to Orchard Park taxpayers with peer departments and their respective communities. All three continue to fall into the range of average (police) to less than their peers (highway and recreation). Our promise to the taxpayer continues to be that we will *provide the best value for your tax dollars*, and the FMV and financial data comparisons bear that out.

With premise **three** [3], atoning for the misguided and financially burdensome contract, I've been cast as a kind of anti-Robinhood who would take from the deserving to benefit the underserving – namely, as one seeking to take from the chief of police and the command structure to benefit the town board. As you heard several minutes ago, in consultation with command officers, one of whom will shortly become chief of police, we've adjusted the compensation package for the position of chief of police – which did in fact include the highest base salary among peer departments – reducing it by about \$9k a year and bringing it more in line with FMV.

Further, within an almost \$38m town budget (operations & capital), out of which approximately \$8m is devoted to public safety in general, \$3.3m is allocated to officer salaries. It follows that a \$9k reduction – which represents 1/4 of 1% of the aggregate police officer salaries, and 1/100th of 1% required for public safety – doesn't amount to even a proverbial drop in the bucket. Further, the enhancing of the command structure, not its alleged diminishment, was worked out with the command staff, including former Chief Pacholec; and it's a break-even proposal at best, not a savings. In the light of actual facts, Mrs. Pacholec's entire scapegoat narrative is nonsensical.

Finally, with premise **four** [4] I'm somewhat at a loss. I fail to see how, in Mrs. Pacholec's narrative, the leap was made from my apparently soundly defeated efforts to cut the chief's salary and restructure the command staff to the resulting retirement of the chief of police.

Because it so greatly cuts against the grain, I want to again emphasize that unless it is something that we deem in the best interests of the community at large, this town board and its members are generally loathe to respond to every accusation made against us, whether individually or collectively. It is, however, our duty to address matters that we anticipate may have an adverse impact upon the community or otherwise are in the best interest of the community to be informed of. I must, consequently, respond to two particular allegations, namely, that multiple phone calls by the media were made to the Pacholec's while they were vacationing in December, and that subsequent to a fruitless effort to "dig up dirt" on Chief Pacholec, the NYS police were used in an "attempt to intimidate" the Pacholec family. WOW!

As to the first charge, inquiry of the media as to whether or not such calls had been made and examination of Town cell phone records indicates that no December calls were placed. As to the second charge, we sadly, but absolutely, must set the record straight. Independent of the town board, and pursuant to their duty and standard procedure, engagement of the NYS police was initiated by the Orchard Park Police Department over concern for the well-being of town board members, as well as Mrs. Pacholec herself, given the nature of certain FB postings made by her. A failure of our police department to take this action – and let me emphasize the point – a failure to act would have constituted a dereliction of their duty.

CONCLUSION:

Allow me to recap:

1. Although a difficult one to make, the town board decided to provide a \$100k severance pay to the retiring chief of police and anticipates recovering most or all of the Agreement costs over the course of the next eighteen months.
2. Grounded in principle and legal precedent, the town board should not have approved an Agreement that included a non-disclosure clause. Lesson learned.
3. There is absolutely no connection whatsoever between an assessment and adjusting of the FMV compensation package for the position of chief of police with that of the May 03 retirement of Chief Pacholec. The two are, quite simply, unrelated.

Again, I understand that my remarks will not completely satisfy everyone. But it's the best I can do, personally and legally, at present. As mentioned, planning and cost savings are already occurring. Within the near term a new chief of police will be appointed, and changes within the command structure will follow thereafter. These changes, long, long, overdo, will achieve enhanced performance within the police department and, consequently, within the community. Greater value for your tax dollars will be realized.

Mike Sherry, Council member
Town of Orchard Park