

**TO:** Village of Salem Lakes Board of Trustees

**FROM:** Attolles Law, s.c.

**RE:** Review of Fire Department Operations

**DATE:** November 29, 2023

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### **EXECUTIVE SUMMARY**

The Village of Salems Lakes Board of Trustees (the “Village” or the “Board”) retained Attolles Law, s.c. to conduct a review of the operations of the Village’s Fire Department (the “Department”). Overall, following nearly two-dozen interviews and the review of hundreds of pages of communications and records, it could be determined significant deficiencies exist in the respective performances of the Fire Chief and Fire Marshal. However, as explained in more detail below, the respective resignations of the Fire Marshal on November 12 and the Chief on November 13 have largely made this report moot.

### **TIMELINE OF EVENTS**

For purposes of analyzing the operations of the Village of Salem Lake’s Fire Department, Counsel was provided with a series of documents and interviewed a number of key individuals. On August 8, 2023, Counsel interviewed Trustees Hopkins, Faber, Bucur, Gandt, and Barhyte. On August 21, 2023, Counsel interviewed Trustees Faber, Sweeting, and Gandt and interim Clerk Eileen Anderson and interim Administrator Bretl. On September 7, 2023, Counsel interviewed Trustees Hopkins, Barhyte, and Young and Highway Superintendent Paul Snellen (who requested the attendance of Trustees Bucur and Faber), former Building Inspector Ellis Border and two former members of the Department. On September 21, 2023, Counsel interviewed at least fourteen different current and former members of the Department at the Wilmot Fire Station. Trustee Barhyte was present for these interviews and assisted in facilitating the discussion. On September 27 and October 4, 2023, Counsel conducted additional telephonic interviews with former and current members of the Department.

During the investigation, on September 11, 2023, the Municipal Law & Litigation Group issued a letter to counsel for the businesses ATE and Stage Stop, J. Michael McTernan, identifying the currently outstanding issues and recommendations to resolve the issues. With respect to ATE, the letter noted “although 20-25 violations were initially observed, only the following three compliance issues seem to remain outstanding with respect to the interior of the building as of the last inspection by the Fire Department.” Subsequent to the issuance of the letter, two additional reports were generated by Fire Safety Consultants, Inc. on October 10, 2023.

Several key events occurred during the first two weeks of November. On November 9, Counsel virtually interviewed the Fire Marshal (beginning at 1:00PM) and Chief (beginning at 4:00PM), both of whom were represented by counsel during the interviews. Importantly, Counsel concluded

both interviews by requesting the Chief and Fire Marshal complete their respective interviews the following week to answer several remaining questions. The Chief and Fire Marshal both agreed to complete their interviews the following week.

The following day counsel for the Fire Marshal provided a letter to the Board President and counsels to the Village and Commission. The letter rejected the Stipulation related to dismissal of the complaints against the Chief and Fire Marshal pending before the Commission. The letter stated the Fire Marshal “believes that the Stipulation will put him in violation of his own oath and duties as have been described to him by the regulatory authority, DSPS.” Among other complaints, the letter noted the Fire Marshal did not believe anyone from the Village had the authority to temporarily defer annual inspections. The letter reiterated that the complaints “are frivolous and do not implicate violation of any rule or order within the meaning of Wis. Stat. § 62.13(5).” The letter provided a direct statement from the Fire Marshal: “I will raise questions as to the conduct of all parties involved in this dispute related to legality and ethics.” The letter concluded by noting “the very premise of dismissal without prejudice is that these business owners could raise the complaints again and again, even if frivolous.”

In addition, beginning November 9 and continuing throughout the weekend, the Fire Marshal engaged in several concerning email exchanges. First, interim Administrator Bretl emailed the Chief on November 9 regarding a “citizen request” seeking “a report concerning SLFD service calls for 2022 and 2023 YTD.” In response to the Chief asking that the Fire Marshal prepare a response to the request, the Fire Marshal responded at 9:41PM he could provide the raw data “through an appropriate open records request, otherwise no.” Roughly an hour later, the Fire Marshal (signing the email as an “Independent Journalist/Resident Village of Salem Lakes”) submitted a public records request to Bretl seeking a number of records, including, among others, “ethical guidelines that the board is governed by or has adopted ... [confirmation] that your consulting firm has aided and abetted [sic] in the village and village board members illegal activities ... [confirmation of the rumor] that a member of the fire commission or village board has been accused/charged/convicted of any criminal or civil charges.”

Finally, on November 9 the Chief emailed the Commission Chairman, asking him whether he should make recommendations to fill two vacant positions in the Department. Despite the Chairman responding in the affirmative, at 9:38PM that night the Fire Marshal emailed, asking for the current Commission hiring policies and threatening “[i]f you ignore this request i [sic] will send it via an attorney as open records.” When the Chairman responded by referring to the League of Wisconsin Municipalities handbook, the Fire Marshal stated in a November 11 response “[y]ou understand that the handbook is not a legally binding document correct?” and stated “the chief appoints subordinates not the fire commission.” The Chief then noted he would make recommendations to the Commission for hiring and hoped “this is a group process beginning at the fire department.” The Fire Marshal then stated “[y]our role is to appoint, not make recommendations. There are rules to this that should be followed.”

On November 12 the Fire Marshal emailed the Chief and resigned, offering no explanation. However, an “out of office” response from his email account noted “[d]ue to the Village Board and Fire Commission making my job impossible, i [sic] have bee[n] forced to resign ... Please contact the Village Board or Fire Commission and ask why they are prioritizing politics over public

safety.” On November 13 the Chief also resigned in a formal letter to the Commission. His letter stated “I am honored to have served in this capacity and I am extremely proud of where this department is at” and that “[w]hile the circumstances leading up to this decision have been difficult, they do not undermine the thirty-five years of service to the communities of Salem Lakes, Paddock Lack, Brighton as well as our mutual aid partners.”

## **I. Walworth County Sheriff’s Department Report.**

An initial part to this review was a February 2, 2023 Sheriff’s Incident Report which was a result of ATE’s owner requesting that the Kenosha County Sheriff conduct an investigation related to “possible illegal acts occurring within the Village of Salem Lakes government.”<sup>1</sup> While the report largely focused on alleged policy violations related to Murdock’s management of Village operations (including specifically the use of Village property by employees), the relationship between Administration and the Fire Department and the Department’s inspection activities were discussed. The supplement to the report noted the owners of ATE and Stage Stop believed Murdock was “unjustly trying to shut down local businesses” and specifically “using the Village board and the Village Fire Department to get them shut down through zoning, ordinance, and code violations.”

The report proceeded to issue findings with respect to twenty allegations, most of which related to the use of Village property. However, the fourth allegation addressed the creation of a “hit-list” of businesses the Village wanted to “get rid of.” Murdock denied such a list existed, instead claiming he compiled a list of 10-12 businesses and properties that “he was working on that were requiring a lot of his time.” The report concluded if such a list existed, “there are processes in place that would prevent the Village from summarily shutting down a business,” specifically referencing the fact any business that received a citation would have the matter heard in municipal court. The report concluded by opining “[w]hile Dunn and Cantwell’s accusations may have brought things to light that may need to be addressed by the Village Board, it does not appear any of the claims or accusations brought forward appear to be criminal in nature.”

## **II. Identification of Deficiencies.**

After interviewing numerous members of the Department, elected officials, and Village staff, in addition to reviewing relevant communications and records, several areas of deficiency were identified in the performance of the Fire Chief and Fire Marshal and in the overall operations of the Department. In interviews with the Chief and Marshal, they spoke to each of these subjects and their additional comments are set forth in the next section, but as noted earlier their resignations did not allow for further follow-up as was offered to them in the days leading up to their resignations.

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<sup>1</sup> The Walworth County Sheriff’s Office was asked by the Kenosha County Sheriff’s Office to conduct the investigation because of conflict of interest concerns.

#### **a. Interference with Investigation.**

Numerous interviewees and witness statements established that the Chief directed Department employees to direct all communications regarding the investigation to him, the implication being that employees should not independently cooperate with Counsel's invitations to meet. Multiple employees confirmed both the Chief and Fire Marshal directed the employees not to cooperate with the investigation. One witness statement noted a crew was approached by the Department's Administrative Assistant, Diane Beattie, on July 14, 2023, and was told "she had received an email from the village president in regards to the fire department" and that the email would be placed on the bulletin board located in the kitchen so the crews could read it. The statement then claims the Fire Marshal approached the crew and stated "[i]f anyone approaches you guys and asks about the fire department, Chief told me to let you know to not say anything and send them to Chief."

#### **b. Abusive Management Practices.**

In addition to specific examples of reactions from the Chief and/or Fire Marshal that could be construed as representing abusive management practices, numerous interviewees generally described a work environment where members are not supported and aggressive techniques have been utilized by the Chief and Fire Marshal. While some interviewees indicated nothing would rise to the level of formal harassment from any members of the Department and none of the activity could be described as criminal, others referenced the number of former employees that they believed would return to the Department if the Chief and Fire Marshal were no longer in leadership. Former and current members of the Department described numerous examples of either lack of support or outright hostility.

One member referenced several incidents that "have indicated a hostile work environment at the fire department including but not limited to: 1. Verbal abuse and derogatory language: There have been several instances of the Chief using inappropriate language towards his subordinates, creating an uncomfortable environment, and encouraging toxic behavior. 2. Intimidation and bullying: Multiple times there [have] been incidents where both administrative parties have ganged up on individuals to make their point clear, resulting in fear and distress among the staff. 3. Retaliation against whistleblowers: Several individuals who have attempted to report issues regarding daily amenities, equipment, building maintenance and overall improvement to every day/night operations have either gone on deaf ears or face retaliation, including verbal and written reprimands." Another member noted "the work environment is so toxic people keep leaving" and "[i]f the toxic leadership ever changes I would love to come back and stay fulltime."

#### **c. Management of Staff.**

Generally, concerns were raised regarding the management of the Department, including possible FLSA violations, confusion regarding the finality of suspensions and/or terminations, a lack of training, and an apparent lack of communication with the Commission. Overall, it is believed by many that the Chief simply follows the Fire Marshal's lead and he is the one "running the Department." Some believe the Chief doesn't want help from anyone that can "outshine" him. Others claim that in one incident after a member encouraged the Fire Marshal to calm down, the Fire Marshal responded he wants to yell because "that's the type of department he is going to run."

A significant theme emerged regarding the Department's inability to retain members of the Department. While some argued any departures were simply due to a lack of pay, others believe turnover is "crazy." The departures or overall lack of staffing obviously has an impact on current staff. One member explained there must be two paramedics and four fire fighters for each shift which can result in some working 36 straight hours and ultimately burn out among members. With respect to availability, members noted an incident where the Fire Marshal demanded that full time members have to be available 24 hours a day and that he "didn't give a shit if you're in the Dells." The limited number of paramedics can impact mutual aid. While the Department previously had nine paramedics, with only three (including the Fire Marshal), the Department risks mutual aid because any aid that doesn't include a paramedic is only BLS (basic life support). Mutual aid responses must be at the ALS (advanced life support) level, i.e. include a paramedic. Other members also referenced a recent termination, noting members were forced to respond to calls without a qualified officer, which made them feel "very unsafe." Other members noted the impact on part time staff, some of whom are approaching 2,000 annual hours worked (raising questions as to WRS and other benefit eligibility).

Another theme related to a lack of training or direct support. One member went so far as to raise concerns that because of the lack of support and training he'd be found liable for some of the situations he was put in and with a seven year statute of limitations could face significant liability. Another member explained that groups of new hires were given less than a week notice for a start date, some were unable to attend the full orientation, there was no real plan for assigning tasks, and when new hires were "waiting around," leadership became angry that they weren't "doing what they were supposed to be doing."

Even with respect to suspensions and terminations, numerous members expressed confusion as to how such decisions were formalized and who should be involved. During the course of one conversation the Chief indicated he "superseded the Commission" and could "make the suspension go away." Eight months later the member was not clear as to his status. Another member stated despite being on maternity leave her requests for PTO had been denied.

#### **d. Difficult Community Relations.**

It is clear one of the primary factors contributing to the dysfunction between the Board and the Department has been the Department's inspections of local businesses. The Village's previous Building Inspector provided significant insight. Among other observations, he noted the Chief would occasionally call him for a fire call and he would respond that he didn't need him. In other communities he worked he never had interactions with a fire department similar to the way he did in the Village. He believes the Fire Marshal knows the fire code but "doesn't apply it appropriately." He made reference to a disagreement involving egress from a new grandstand at the Kenosha County Fairgrounds where a nearby school could have clearly served as a tornado shelter. The State agreed with the Building Inspector's interpretation but wouldn't put it in writing because it didn't have jurisdiction. As noted above, prior to the resignations, efforts were made to resolve the controversies involving ATE and Stage Stop, inclusive of the pending Commission charges brought by those businesses, against the Chief and Fire Marshal. However, despite the



Chief being involved in those resolution efforts, neither the Chief nor Fire Marshal ever endorsed the Stipulation for dismissal of the Commission matter.

#### **e. Specific Operational Concerns.**

In addition to management concerns, some interviewees raised specific operational concerns involving communication, training and management of personnel and resources. For example, it was noted the water tower is run by the highway department and any water usage by the Fire Department must be communicated. When the Department uses the water towers but doesn't properly communicate with the Highway Department alarms will go off. In one particular situation 188,000 gallons of water were used and pumps ran for ten hours when they should only be running for two hours. Because some of the water was not treated appropriately a DNR reporting requirement was triggered. In another incident the Department used a four inch line, which creates a funnel effect in the water tower and sets off alarms that the Highway Department must respond to.

Some Village employees have observed tankers "flying" down county highways with 3,200 gallons of water in the tank, causing significant wear on the tires of Department vehicles. Some even questioned why the Department runs a car, ambulance and fire truck for a "lift and assist" call. This also includes questions as to why fire trucks are needed at fire inspections. Finally, at least one interviewee observed that the training facility was built for roughly \$1 million with the expectation that other Departments in the area would be allowed to use the facility but would pay for the use. It is believed other Departments have used the facility without paying any rental fee.

### **III. Fire Chief and Fire Marshal Interviews.**

Both the Fire Chief and Fire Marshal were interviewed November 9, 2023, for purposes of this investigation and provided responses to various claims. In addition, they were given the opportunity for further follow-up but it did not occur due to their resignations.

Fire Marshal Interview. Among other statements, the Fire Marshal admitted he was aware of the Guidelines but believed they were "outdated and don't reflect the current conditions of the Department." He believed Murdoch inserted himself into the Stage Stop and ATE situations. However, he did recognize that everyone involved was "searching for solutions [to solve the situations] but these attempts ended up causing problems down the road." He emphasized the Chief is the "authority having jurisdiction" and to the extent individuals or entities involved in enforcement actions disagree with the Department's application and/or interpretation of the fire code, appeal options are available.

The Fire Marshal addressed the debate surrounding the ATE fire inspections. He explained he "didn't understand why things have gotten this far with them." When he first inspected ATE, he "had no idea what he was walking into" and recalled "it looked like a bomb went off." He claims he "had never before seen anything like that during a fire inspection." Following the first inspection they were managing at least 20 different violations but reduced the list to three or four items after six months, with the owner making "substantial improvements." The Fire Marshal

believes ATE may have been placed in a difficult position by the previous building and fire inspectors.

Chief Interview. The Chief discussed ATE and Stage Stop. With respect to the former, he explained the initial violations related to housekeeping and storage distances. He believes it only appeared they were heavy-handed because the previous administrations were lenient. He explained the terms of the CUP were not being met and that there was actually little involvement from the Department with the exception of the site plan review. He believes the Department worked diligently with the occupant's architect but there was a "continuously moving target" for the purpose of circumventing compliance. He explained "do gooders" like the former Administrator and Trustees were having separate conversations with the ATE owner at the property. With respect to Stage Stop, he explained nobody would certify the system because they were "literally operating a charcoal grill inside." He noted the non-compliance reports came from a third party. He believes the owners "couldn't get anybody to come and make it compliant" and were afraid "if they did any work on the hood the business would be forced to make other improvements." He believes the integrity of the Fire Marshal was challenged "simply for doing his job correctly."

The Chief also addressed the overall concerns related to staffing, which he believes is "in peril." He explained the Department is viewed as an interim or "steppingstone" department where members simply "cut their teeth" and then move on to bigger departments like Kenosha. He has made attempts to increase pay but departments like the Fontana Department also increase their wages. This has sacrificed "command and control." He noted volunteer paid on call is a "dying breed" so the Department is attempting to move to fulltime. He also explained that the "changing atmosphere" gives him anxiety and he is concerned the pay scale contributes to excuses for lack of work ethic/fortitude. He explained he asks Department members to ask themselves "what are you here for and what is your legacy."

Overall, he believes he inherited a bad situation and is simply trying to make it better. He does believe members are always professional responding to calls and "probably doesn't tell them that enough." He stated the Village President's investigation notice was posted on the bulletin board and he just advised members to be "cautious as to who you talk to" but gave no direction not to speak to counsel.

#### **IV. Summary**

Multiple interviewees stated a clear message was given that Department members should communicate with the Chief before communicating with legal counsel. The Fire Chief and Fire Marshal have denied discouraging participation in the investigation.

Multiple interviewees recounted interactions where the Chief and Fire Marshal were yelling at members. While the Fire Chief and Fire Marshal both admitted participation in several of the key interactions, they framed them more as situations requiring strong management of staff that were not following directives.

Additionally, some evidence exists to suggest the Fire Chief and/or Fire Marshal were inefficient in their duties as evidenced by the Department's significant turnover, the lack of formal training to members, and the confusion surrounding payment and terms of suspension. Multiple interviewees provided details regarding the significant number of members that have left the Department, at times even for lower paying jobs, the lack of training for members, both new as well as veteran, and significant confusion as to whether members were eligible for payment and whether and for how long suspensions or extensions of probationary periods were implemented.

Further, multiple interviewees provided detailed accounts regarding the often negative interactions and aggressive inspection techniques. The Fire Chief and Fire Marshal testified that they were simply applying the fire code as it should have been applied after years of lack of enforcement.

As summarized above, it would appear the Fire Chief and Fire Marshal would both be in a position to provide substantive responses to many of the allegations and/or claims made by Department members and would even be able to provide alternate versions of events such that allegations would not be substantiated. In other words, while this report contains information suggesting the members of the Department presented concerns about the functioning or operation of the Fire Department, a hearing would also provide the Fire Chief and Fire Marshal with the opportunity to refute allegations. Ultimately, following the presentation of evidence, the Commission would be tasked with determining whether sufficient evidence exists to support a removal "for cause."

### **CONCLUSION**

Overall, following nearly two-dozen interviews and the review of numerous communications and records, it could be determined deficiencies exist in the respective performances of the Fire Chief and Fire Marshal.

If you have any questions surrounding this memorandum, please do not hesitate to contact us. We appreciate the opportunity to be of service to the Village of Salem Lakes.