

**RECORD OF PROCEEDINGS
REGULAR COUNCIL MEETING
MONDAY, APRIL 22, 2013 – 7:30 P.M.
MAYOR MATTHEW E. BRETT PRESIDING**

MEMBERS PRESENT: Porter, Dishong, Wolfe, Koons, Binder and Kostura

OFFICIALS PRESENT: Fiscal Officer Romanowski, Street Commissioner Johnson, Police Chief Rizzo, Solicitor Ondrey, and Engineer Haibach,

VISITORS: Lee Schiemann, Forest Drive; Robert Tropf, Sugarbush Ln.; Jay & Beth Schabel, Shadowwood; John Kacsala, Sperry Rd.

Mayor Brett called the Regular Council meeting to order and requested everyone take a moment of silence for the events that occurred in Boston and Texas. He led the Pledge of Allegiance to the Flag. Fiscal Officer Romanowski read the roll.

Lee Schiemann asked Mayor about the order of the meeting so attendees could be present for the portion of the meeting they want to attend. Mayor explained the order he would like to follow would be approving the minutes, Mayor's report, the Park's dog issue, the appeal hearing and then address Council would need to address a few items at the end of the meeting. Mayor asked if any of the appeal attendees would like to step out of the building for the Parks issue attendees since the building capacity is limited to 47.

Koons moved to approve the amended minutes of the March 18, 2013 council meeting, seconded by Dishong. Roll call – ayes, all. Motion carried. Mayor stated the only item for the visitors section was a resolution of appreciation for Mike Hogan but he had a conflict for attending so he will attend the next meeting. Mayor stated regarding the dog issue, each side would present for ten minutes. Following the presentations there would be a motion for a vote.

John Dishong presented the enhanced odd/even proposal. He stated that six years ago South Russell partnered with the Western Reserve Land Conservancy and were advised not to create a trail. The conservancy advised that the residents would show how they wanted to use the park and Dishong said they have. He said the park is a connector park that is used to transit to other points. Dishong said this connector capability was one of the keys that helped get a large grant to offset the purchase price of the park. He stated the odd/even proposal is meant to be a true compromise that addresses the concerns for both dog owning and non-dog owning residents alike. Dishong explained the key features of the proposal are; 1) A strong enforcement ordinance, defining what under control means with penalties for non-compliance, 2) creates a designated off leash walking path that follows a path around the entire perimeter of the park thereby creating some separation between other park users and on leash dog walkers, 3) provides an easy to understand and communicate schedule for park users, odd days for off-leash and even days for on-leash, 4) recommends strong dog waste enforcement rules with penalties for non-compliance, 5) recommends a six month pilot with simple, measurable success criteria to determine if it is manageable and enforceable, 6) addresses both on park and off park security with full-time leash zones around pavilion area and both parking areas. Dishong stated they attempted to define what under control is and isn't. He read the definition of under control to Council and said in terms of measuring the success of the proposal calls for collecting written and/or verbal complaints on a monthly basis and setting a baseline for occurrences in the park. Dishong reported Chief Rizzo reviewed the proposal and said he believed the proposal was enforceable. He said the proposal recommended periodic and targeted education and enforcement during the pilot and pre-pilot period. Dishong stated the proposal for the enhanced odd/even with definitions for under control and defining the penalties that go along with it, addresses the concerns

of dog owning, as well as non-dog owning residents, allows the Village to pilot the program cost effectively, and allows the Village to gather real data on the experience of actual people attending the park. Dishong stated this proposal also provides clarity for the residents, addresses the on park and off park safety residents have shared, and just needs to be given a chance to work. Marybeth Wolfe asked Dishong if he was aware of a dog that was attacked the previous evening. Dishong responded he was aware and felt horrible about it however there will be issues in every park. Bill Koons asked Dishong if he expected unleashed dogs to stay on a path, in which Dishong replied he did not, he expected the owners to read the signs. Mayor asked for clarification that a path would need to be mowed in, and that this would be the identified area for an off leash day for dogs, otherwise off the path a leash would be required and Dishong responded this was correct. Jack Binder commented that he does not believe that putting a path in will magically make disobedient dogs obedient and that under control language addresses things that happen, so an incident must occur for there to be a penalty or infraction and he is not comfortable with this and does not think it makes sense. Dishong responded if one incident occurs or happens and if it is enforced the dog will not be allowed to come to the park and that is preemptive.

Marybeth Wolfe stated she is a dog lover and likes to walk her dog. She said she has had to personally intervene with park visitors passionate disagreements regarding the inappropriate behavior of their dogs and both she and her dog have been jumped on, nipped on and frightened. Wolfe stated she fears the bad behavior of a few dog owners is what brought us here today. She reiterated she was a member of the safety committee and the mayor asked them to review the parks recommendation from a safety perspective for the Village. Wolfe stated the committee reviewed both on and off park safety, hygiene, and accessibility to the park for all residents of South Russell. She said Council met for a work session on 4/4/13 to try to come to a compromise solution for this \$2,000,000 asset the Village purchased. Wolfe stated she is presenting their compromise in ordinance form. She read the ordinance which said prohibiting dogs, cats or other household pets, or certain destructive animals from any Village park unless controlled at all times on a leash except for a designated leash zone. Wolfe read that Council has determined that some park users have been intimidated, harassed or otherwise felt threatened by the presence of unleashed dogs being exercised in the park by their owners and that some park users or the pets accompanying some park users have been bitten or nearly bitten by such unleashed dogs. She read from the ordinance that Council desires for all park users to feel and be safe in their enjoyment of the park and further desires to prevent the accidental injuries of all persons and other pets using the Village park and concluded an enactment of a leash requirement for dogs and certain other pets and animals. Wolfe also read that Council desires to establish a portion of the park where domesticated animals can be unleashed and has concluded that the establishment of such an unleashed area will protect the safety of park users while still allowing a portion of the park to be enjoyed by pets and their owners. She read that section 2 shall designate an area of approximately 17 acres where domesticated animals will be permitted under the supervision of their owner unleashed and this area will be demarcated through grass mowing and signage. Wolfe stated that the Safety Committee did discuss the connectivity of the park with other parks and recognized that the 17 acres on East Washington side needs to be accessible to all users as she described the area of the leash free zone. Jack Binder stated the Safety Committee, comprised of two council members and the police chief, has determined that the off leash activity of the dogs without any type of containment is a hazardous situation and it's not safe. He also said the only sitting council member on the Parks Committee concurs. Binder stated that he thinks if this is ignored it puts the Village in a precarious situation. He stated that if the unleashed activity is going to continue, then in some way, shape or form it needs to be contained, confined, or isolated from other park users, private property owners and the street. Binder stated that there are people that will not use the park and they have not been considered. Bill Koons stated that the families that contributed to the Eagle Scout projects will not use the South Russell Park because of the dogs. Mark Porter asked Binder if a fence would be used to separate the no leash and leash area and Binder responded it has been discussed. Mark Porter asked Koons if Ian Dunnegan would use the Oregon Trail if the ordinance is adopted because it seems to be in the no leash zone. Koons responded he would be able to go to the leashed area. Kostura asked if there would be language crafted to decide what is under control in the off leash or on leash zone. Wolfe responded that

the Safety Committee established the parameters of what they worked on as the most important and then this could be left to future meetings.

Mayor asked if anyone would like to make a motion. Mark Porter made a motion to adopt the enhanced odd/even proposal for the South Russell Village Park, and authorize the Mayor and the Solicitor to draft an ordinance, seconded by Dishong. Roll call – ayes, Dishong, Kostura, Porter. Nays, Wolfe, Binder, Koons. Vote resulted in a tie and Mayor said he would make the determining decision after he made a couple of quick comments. Mayor stated back in the fall when the discussion began they said they would look to make a decision in May of this year and they are right along with the timeline initially established. Mayor said this has been a very emotional, passionate topic and a decision needs to be made. He said after tonight this needs to be put behind us. He stated a week ago he would have voted in favor of the other proposal; however one specific path for unleashed dogs helped him decide. Mayor stated the specified distance for under control needs to be short, 30 feet or so. He said he does not believe a greater distance than that is under control. Mayor explained his vote was because it is a compromise. Mayor made the determining decision by vote in favor of the proposal. Motion carried.

Mayor stated the ordinance will need to be drafted rather quickly to determine what under control truly means, the actual path, how to identify areas for only leashed and what to do for signage for odd/even.

APPEALS HEARING: Mayor stated since he could be called for testimony he would turn the floor over to Bill Koons to run the appeals hearing. Solicitor Ondrey suggested a separation of witnesses for the hearing. Therefore he asked anyone staying to listen to testimony understand they could not appear as a witness later in the hearing.

Leffler: Made a motion to move to a larger forum or if that is not available to reschedule to a different forum due to limitations on size.

Solicitor: Responded that the statute provides that the hearing must take place at next regularly scheduled meeting however the parties agreed to the second meeting following the suspension. He stated they are not required to provide larger space than what already exists. Solicitor does not recommend to Council to postpone, however he left it to Council to decide whether they agree or decline the motion.

Council voted against the motion, therefore the hearing would proceed.

Leffler: Stated that according to case law the employer bears the burden of proving the allegations in this case so I would defer to the employer to go first.

Solicitor: Disagrees unless there is a citation to show. He stated it is their burden, their appeal and they have the burden of demonstrating that the decision regarding the suspension was not proper. This is not a termination case where often the employer might bear the burden of going first, this is a demotion appeal.

Leffler: Inquired if in a 737.119 action it is the Village's opinion if this was a termination the employer may bear the burden but because it is a demotion case it does not.

Solicitor: No, I'm saying there is case law particularly in labor law however there is no requirement in the statute that the employer goes first in a demotion proceeding.

Leffler: I do have that case file and I would have to obtain it.

Koons: Mr. Leffler how much time will you need?

Leffler: If I don't have it here it's in the car. If I could have five minutes.

Koons: Five minutes.

Leffler: Renewed motion that the employer bears the burden Tubbs vs Toledo 172 Ohio State 536 indicates appealed to Court of Common Pleas and Supreme Court held burden upon Village. He stated the appointing authority bears the burden.

Koons: Tubbs case was a dismissal not a suspension

Leffler: That is correct, again the statute we appealed under provide for removal, suspension or reduction in rank which all bears the same burden of proof under the statute.

Kostura: Do you have any case law later than 1961?

Leffler: I do, but I could provide that at a later time.

Kostura: But the hearing is now.

Leffler: I'm just raising the objection, so if we do an appeal on procedural error, I think it's an error in this Council's procedure.

Solicitor: I would point out that citing of a case in the Common Pleas Court may be the burden. The reason it would be such a disadvantage to us to proceed first is, they know well exactly what the charges have been, they have been spelled out for Officer Cardaman and they have all the information they needed to know about why the decisions were made by the Chief and the Mayor and we know nothing about what their defenses are to it. So to try to force us to put on witnesses first to try and counter arguments that we don't even know they are going to make yet puts us in an impossible position.

Koons: Mr. Leffler I am going to ask you to go first.

Leffler: Thank you for your time and being here. Sergeant Cardaman, I believe most people will tell you, is a good officer, is dedicated to the Village, and the residents, and has compassion towards everyone he comes in contact with. If you talk to people that are his supporters, all of them will tell you that he has always acted in the best interest of the Village in dealing with police matters. I am not going to read all of his letters of thank you that he has received from residents, just a few of them indicated that they wanted to thank him for making a very hard time a little bit bearable for a good friend, you arrested a person for OVI, she said you were so professional, caring and helpful, this was a hard experience for both of them but they learned a lot. The police chief from another jurisdiction has indicated that Mr. Cardaman is highly motivated...

Solicitor: Dr. Koons, if I could object. What Counsel is doing is attempting to get into the record, evidence, hearsay evidence that these witnesses are not here to offer, and so he is doing in the sense that what is supposed to be an opening statement, which is to explain to you what he thinks the evidence is going to show you tonight, instead he is attempting to introduce evidence that we will have no opportunity to cross examine who these individuals are. I object, I don't think he should be permitted to go down this line.

Leffler: I would say this is simply an opening statement giving you an indication of what Mr. Cardaman's position is with regard to this. I understand about the evidence, I am not offering it for evidence, I am offering it to establish his character, which he can testify to at a time as directed.

Koons: Will you focus your comments on the appeal.

Leffler: Sergeant Cardaman has received a number of evaluations through his time with the police department. With regards to those evaluations, which you will see at some point, we've included in documents to be submitted. These date back to 2006, Mr. Cardaman was appointed as a Sergeant in late 2005. The evaluations range from 2006-2009, in which the Chief, that was Chief Wetzel at that time...

Koons: Again, we need to deal with the appeal, Chief Wetzel is not here. Just on the appeal.

Leffler: These are the Village's own documents. I am not sure what your objection to the documents is.

Koons: We need to deal with the appeal please. And you're not dealing with the appeal I guess. Focus on the appeal, it is the reason we are here tonight.

Leffler: The reason we are here tonight is that Sergeant Cardaman has been issued discipline resulting in both three days suspension as well as a demotion. We will offer evidence that the first allegation that was issued against Sergeant Cardaman involved responding to two mutual aid incidents outside the Village of South Russell in which he had not been directly called to mutual aid. What Sergeant Cardaman will testify to is that prior to February 8, 2013 the procedure or the training of the officer at that time was that if they heard an officer that needed assistance, whether there was a direct call for mutual aid or not, that there was an understanding within the South Russell police department that they would offer assistance to that community. On the two occasions in question, Sergeant Cardaman will tell you he did in fact respond to Moreland Hills and he did respond to Russell. Neither one of those circumstances had there been a call for mutual aid, but based on his experience and training that had been procedure. In fact a number of South Russell police officers prior to February had done the exact same thing. Including, it's our understanding, that the current Chief has done that as well. The one incident occurred on December 20, 2012 when Chief Wetzel was here, the other one occurred on January 11, 2013, again when Chief Wetzel was here. Neither one of those were investigated by the Chief at that time or any recommendation that there was anything improper that had been done. Subsequent to that, on February 8, 2013, the new Chief Rizzo instituted a directive which indicated that officers are not to respond to any outside community without direct mutual aid and there were three other instances in there which he as an officer could do that. If there was an officer in distress, if there was an emergency going on, it also indicated if there was a traffic stop along the border, then you could drive by just to offer a courtesy. First of all those two incidents occurred prior to the new policy so to hold Sergeant Cardaman to a policy that had been implemented after the two incidents is not reasonable. We will indicate to you that even under the circumstances I believe his actions were consistent with the subsequent policy. The other allegation which stems from reports that Sergeant Cardaman was responsible for approving, and each police officer does an individual report that gets entered into the system. Sergeant Cardaman will then review those reports and either approve them or not approve them. According to the documents that we have, and again I'm going to respectfully disagree with your Counsel that you don't have the opportunity of reviewing this. We don't have the documents that Mayor relied on or the findings to substantiate the allegations. But, what's been listed in the initial charges on March 18, 2013 it just has a number of different reports that have either been not approved or they had an error in them. I believe Sergeant Cardaman will indicate that if a report is not accurate or needs to be redone by a police officer that it gets sent back to the police officer to go through the computer system. Those then are not approved until they are corrected. In reviewing the check boxes, when you go down and do the report check boxes, there are certain form fields that you need to fill out and he will do that with the assistance, sometimes, with the assistance of a patrol officer. You will see there are approximately 16 reports in January, 2 more on January 17, 2013 that had been approved by another officer. Once again that goes into the system; Sergeant Cardaman doesn't see them anymore. With regard to reports that had occurred in February, I'll think he'll indicate that there may have been some checkboxes that had not been completed. But, he will also indicate that out of approximately 120 different reports for the month of February, there were 6 cited in the Village's complaint. The third, and final from our perspective, allegation is regarding the monthly checks of FBI or BCI reports. At this point, the documents that we have, he was first assigned to do that January 2, 2013. This is was his first permanent assignment doing BCI or FBI reports. He had done, I believe about a year

prior, when the lieutenant was on vacation, but this was his first assignment for that. But yet according the documentation we have on January 4, 2013, which was just 2 days later after he was initially given the task, the Chief indicated that they were done incorrectly and then returned them. The next round of reports were due on February 22, 2013. I think Sergeant Cardaman will indicate that when reports were done in January it was his understanding that they were due by the end of the month; I think that the Chief's own document says that they are due by the end of the month. So he had that amount of time to get them done, they had not been done, he turned them in on March 1, 2013. The policy of the Village with regard to offenses, both of these are considered Group I offenses. We will take the position that this is a singular reprimand regarding a number of different circumstances which would result in his second offense of a Group I offense which under the policy does not equate to a 3-day suspension or a demotion.

Koons: Ok so we are basically for the suspension appeal here tonight.

Leffler: The appeal is only on the demotion.

Koons: The two mutual aid situations and the reporting you feel these are Group I offenses and did not warrant a demotion, correct?

Leffler: Correct.

Solicitor: Requests an opportunity for an opening statement.

Solicitor: I think what you're going to hear tonight is that this story really begins in June 2012 when Officer Cardaman received a letter from Chief Wetzel. It specified 7 different incidents that Officer Cardaman had already been disciplined for or criticized in some other fashion and Chief Wetzel decided at the conclusion of that letter to reprimand him and warn him if his conduct didn't start to be consistent with what is expected of a supervisory officer, if things didn't improve in other words, Chief Wetzel was going to suspend him and demote him. So Officer Cardaman knew that he was now walking on thin ice if you will, if he didn't continue to improve his behavior. In December, he did make a call to Russell Township when there was no request for South Russell to come to their assistance. It involved a pursuit that was already in progress, there was a suspected burglar going through Chagrin Falls, Hunting Valley police went in pursuit and the suspect apparently went East on Route 87 into Russell Township and there never is a request that South Russell assist. On his own, Officer Cardaman decides to join in that pursuit, goes to Russell Township and does in fact join in that pursuit where there are already other police cars involved. That was on December 20, 2012. On January 11, 2013 despite having no call from Moreland Hills, he goes to Moreland Hills at a presumably high rate of speed, and the situation there is that a neighbor suspects there may be an intruder in the house next door, she's not sure who it is. Turns out it is the homeowner, but the point is that without being requested to go, he goes and joins in on that incident also. You will learn, if you don't already know, South Russell does have a mutual aid agreement with many of the surrounding communities in the Valley and in Geauga County. For the mutual aid provision to apply there has to be a request that South Russell provide someone, neither one of which happened in this instance. When then still Sergeant, Rizzo was asked by Chief Wetzel to address these issues with then Sergeant Cardaman, which he did, and he gave him verbal consultations for both of those along with a meeting both of them had on January 16, 2013, just a few days after the second incident. The evidence is going to show that the police department has operated with a practice that a police officer can exercise a certain amount of discretion if there is in fact some kind of serious emergency situation where another officer is threatened or a hostage situation, you can imagine the other types of serious situations that might generate the need for assistance without even getting a specific request for South Russell. Other officers have, probably including Officer Cardaman, have exercised their judgment in that regard. In these two instances, Chief Rizzo, after he became Chief, determined that, while even as a sergeant, that there was not the seriousness involved in either one of these incidents which would justify the exercise of that discretion, that in fact Officer Cardaman simply used poor judgment. The policy has never been that an officer can go respond anytime he thinks there's a situation out there that can use his help. He gets talked

to by then Sergeant Rizzo and shortly after those events. You already heard Counsel say that because it was known that Sergeant Rizzo was going to take over the Police Chief, he was giving up his responsibilities to fill out these statistical reports to the BCI and to the FBI. So Officer Cardaman was instructed this was now his responsibility and he had to do it. What you will hear is that these are supposed to be monthly reports. On February 8, 2013 Chief Rizzo in a department meeting said these reports are now due, where are they? Nothing surfaces, now the 22nd of February and there is still no reports and when Chief Rizzo confronts Officer Cardaman with an explanation, it's basically you'll hear Chief Rizzo testify, that oh I forgot, I haven't got it done. Never did he come and ask for assistance, never did he say I'm confused or don't know how to do it, he simply didn't get them done. In the meantime, he was also doing these incident reports that Counsel mentioned. These are very important documents that are the type of things that are not only public records and need to be accurate, but they often can end up in courtroom situations as part of a prosecution in various criminal activities. So it's critical that they get done, and they get done right and Chief Rizzo is going to explain to you that as he reviewed it as January went on, and February went on, as he reviewed Officer Cardaman's attempt at it he realized not very much time was being spent on it, there were many errors and now this was yet another example of, in the Chief's opinion, that Officer Cardaman was not performing up to speed. So, Chief Rizzo sits down and looks at the totality of the situation, we've got the June 2012 list of 7 different instances of bad judgment, some downright mistakes that put the Village in jeopardy, especially in one of them. Then he adds up, now got these going to the neighboring communities in violation of what has been the practice in the Village, and now the reports aren't getting either submitted or they're not timely submitted. Incidentally, when one of those reports was finally submitted, it was not really finished properly. So now he's got a list of administrative tasks that are not being done also. To Chief Rizzo, he will tell you, this was enough was enough, he could no longer trust Officer Cardaman to perform his supervisory duties so he looked at not only the types of offenses listed in our progressive discipline policy, and concluded that these were some more Group I offenses, but in combination with all the offenses that had been listed before under Chief Wetzel, that suspension was justified and he concluded that demotion was justified because again, Officer Cardaman was not living up to the standards of a supervisory police officer here. There will be no testimony put to you that Officer Cardaman hasn't performed much of his job very well, that he's a popular officer, that he has done very many community minded functions, and has his allies. We're not here to smear his character or impugn his other attributes as a police officer. That is why Chief Rizzo decided a demotion was warranted rather than a termination. We're not going to argue to you or present any evidence that he is not fit to be a patrolman, what we're arguing is that the culmination of events lasting well over a year now, finally lead to the logical conclusion that he was not up to the proper task of continuing to serve as a Sergeant in the police department.

Officer Cardaman: Current position, patrolman. He has worked for South Russell Police Department since 1999. He became a Sergeant in 2005. He started out in Bentleyville Police Department in 1989 and in 1992 went to Moreland Hills Police Department until 1999. Councilman Kostura asked Dr. Koons if the witness needed to be under oath. Cardaman was sworn in. He also currently works for Auburn Fire Department since 1979 as Assistant Fire Chief. Cardaman said as Sergeant he handled EMS supplies and AED's, CPR recertification, Safety Town for two weeks in August, mileage statistical reports and whatever else he is asked to do. When asked if prior to 2013 if he had evaluations from his supervisor, he responded yes. He said he received evaluations twice a year. Leffler asked Cardaman if he recognized Exhibit 5 of the document and Cardaman responded he did. Cardaman said the date of the document was 01/09/06. Cardaman said the evaluation was from Detective Sergeant Ferrell and Lieutenant Jones, now retired. Cardaman said their notes at the end of the evaluation were as follows: Sergeant's Comments – Mike's first evaluation as a Sergeant shows good work ethic, supervises men well, positive. Lieutenant Comment's – Since Mike has become Sergeant he has shown that he has good supervisory skills, which has improved his efficiency. Chief's Comments – keep up the outstanding enforcement effort. Thanks for your help in car video research. The next evaluation was from April 2006. Cardaman said the score was above average and the area of best performance was attitude and flexibility. Sergeant's Comments – Sergeant Cardaman is progressing in his supervisory duties, leads the men well. Lieutenant's Comments – I feel that Sergeant Cardaman is continuing to improve his supervisory skills. His relationship with the

men is good. Chief's Comments – Sergeant Cardaman is growing into his new position nicely. He continues to be very flexible in his schedule. The next evaluation was July 2006. He said of his evaluation the area of best performance was attitude, goals and expectations for the next evaluation remain consistent at high levels. Sergeant's Comments – Mike is developing into a fine supervisor, does expect the men to do what he does. Lieutenant's Comments – Sergeant Cardaman leads by example, he is always ready to take on additional duties. Chief's Comments – Good job at Safety Town. Leffler stated they could skip to the 2009 evaluation and the rest could be read on their own. Cardaman said the 01/02/09 evaluation said the following: Lieutenant's Comments – Mike carries himself well in the department and the community. Chief's Comments – Mike is first line supervision of the department. He fits well and functions well in that position. The next evaluation is July 2009. Cardaman said the evaluation said the following: Lieutenant Comments – Mike does an outstanding job in the area of supervising patrol officers. Chief's Comments – Besides being patrol supervisor, Mike represents the department with Safety Town, first aid training and AED certification. Nice job Mike. The next evaluation appears to be from 2011 and Cardaman said he does recall this one. When asked who performed this evaluation, Cardaman responded the evaluators were Chief Wetzel, Lieutenant Ferrell and Sergeant Rizzo. Sergeant Comments – Mike is outgoing and friendly. He does a fair amount of traffic enforcement and is good with the public. At times Mike has other officer's doing his work for him such as incident reports, departmental correspondence and other tasks. Mike needs to do his own work and not rely on others to do it for him. Officers are being put into uncomfortable positions and are reluctant to come forward. Cardaman said then Sergeant Rizzo made these comments. When asked if this was the first indication he had of a negative evaluation, Cardaman responded yes. Lieutenant's Comments – I have spoken to Mike regarding what's expected of him, Mike needs to get on board with Chief Wetzel's agenda. Mike is always willing to work extra and is being given more responsibilities. Chief's Comments – Mike does a good job with Safety Town. Leffler asked Cardaman if it was his understanding that the Lieutenant and the Chief felt that you were doing a good job in your supervisory duties, his response was yes. Leffler asked if was there a point that he was made aware of the negative evaluation by then Sergeant Rizzo, Cardaman responded yes. He said he read it and then responded to it. Cardaman said he did not feel it was a fair evaluation, and he was not given good examples of what he had done wrong. He said he was given examples but they didn't make sense. He said he has always worked together with everybody, and we worked together until we get all our work done. We help each other, we do things for each other, and I'm not sure what that meant.

Solicitor stated that he appreciates that they are entitled to submit evidence demonstrating when he did good things; we are not here to argue about whether he agreed or disagreed with Rizzo's evaluation back in 2011.

Koons stated they needed to deal with the demotion.

Leffler asked Cardaman if he registered a complaint with the Chief about his evaluation, he replied he did. Cardaman said he talked about the negative comments with Rizzo and he requested an explanation to it because it did not make sense and at first he said Rizzo could not give him any examples, and then some examples came up. Cardaman said he is aware of the nature of the allegations against him. In regards to responding to surrounding communities and whether he was aware there was a policy prior to February 8, 2013. Cardaman said there was no policy addressing this, and his experience in training, when he went to his FTO program with Dave Viezer, it was common practice if you heard a call on the same radio band you responded to the area and assisted them and they reciprocated and did the same thing for South Russell. He said this was common practice and it still goes on now. Cardaman said prior to February, other officer's have done that as well. Cardaman said as a Sergeant he is in charge of his shift and himself, and he could make these determinations based on what he perceives to be in his experience based on the call from the other officer. When asked if there are circumstances as a police officer that he gets into where he does not know whether he needs mutual aid, Cardaman replied correct. Cardaman said many current events such as shootings in Solon and Middlefield, and you hear it unfolding on the radio, you go. He said they do it for us, and we do it for them, reciprocate. He said that is just how it works. When asked about December 2012 call, Cardaman said Chagrin Falls Police received a call regarding

aggravated burglary in progress with a homeowner waking up to a burglar in the house. The burglar fled, Cardaman said he may not be 100% accurate as he is not reading the report. Hunting Valley unit intercepted the burglar fleeing the scene, behind it, Cardaman hears and works with these officers and responds to the area to be a secondary unit. He said he was stationary and the car doubles back and he was sitting there, and followed the unit behind the car. Cardaman said as soon as the second Hunting Valley unit caught up to him, he pulled over and let him by. According to the policy, he said, he is allowed to be the secondary back up unit. He said he was probably speeding and couldn't say how fast he was going, but was not actively involved in that pursuit. He believes Russell put in their report that South Russell assisted at the scene, and he wasn't technically called on the radio but it was an active pursuit and they didn't have time. Cardaman said a lot of times it is only one officer that is typically stationed in South Russell or surrounding communities. Regarding the January 11, 2013 incident in Moreland Hills, Cardaman said it was a serious enough call because the guy had a violent felony past against police officers, in fact would follow police officers and confront them. Cardaman said they cleared the radio, for emergency traffic only. Cardaman said there were three people and he called and let dispatch know he was headed there. He asked Sergeant Fowler if he needed his assistance and he said yes and then the subject was successfully taken into custody. Cardaman said he did not have a conversation with Chief Wetzel and he did not indicate that he felt this was a violation of policy. Cardaman said Sergeant Rizzo talked to him and he did express that he didn't agree with it. Cardaman said a policy was then implemented restricting response to neighboring communities without an official request. When asked if under the new policy, did he believe his response would have been appropriate Cardaman said yes. Cardaman said it is his understanding that other officers in his department have responded under similar circumstances. Cardaman said he is not aware of any of them being disciplined in any way. Regarding the allegation that he failed to check the accuracy of his incident reports, Cardaman said he did not recall when he was first made aware by Chief Rizzo in November 2012. Cardaman said he never received a warning from the Lieutenant, he talked to him he believed but they weren't doing the reports through the computer at that point. Cardaman said they began doing it through the computer shortly after this, and everyone had a different idea about how it should be done. Cardaman said it was not a disciplinary action but a conversation with Lieutenant Ferrell and he documented that he made small errors in reports and would correct them. Cardaman said Spillman is the county-wide reporting system and he would do a search for reports for a certain time period and then do the approval. Cardaman said Spillman has tons of boxes. He said if a report was inaccurate, or needs corrected, if they are minor he would just do it such as minor spelling error, or a box checked incorrectly, or an individual and he would let the guys know in passing he corrected them and to maybe keep an eye on that or send them an email to let them know. Cardaman said if it's not a minor error, then he wouldn't approve it, and then leave a message for the officer to come back in and make the correction. Cardaman said he would try to be prompt, and did the approvals for everyone for a range of 100 to 120 per month statistically. Cardaman said the guys would be in their report and he would be working next to them, and he would pull it up and approve it while the officer was in there not knowing that upon exit it reverts back to the person who had been logged into the computer. Cardaman said even though he typed his name in there, it would go back to the person logged in. He said had he known, he could have gone back in to fix it. Cardaman said he has made some mistakes and missed some stuff on these reports. He said he is trying to get acclimated to the new way, and its taking him a little time. Cardaman said the Chief showed him how to do them and at one point he did correct all of them. He said Spillman takes a lot of time to get used to, and he didn't know the conversations with the Chief were all being documented and thought they were just talking and he was helping him out. Cardaman said each report is different, some are quick and some take longer. He said he took on the reports sometime in 2011 and 2012. In regards to the BCI and FBI reports, Cardaman said these reports contain a lot of sheets and can be different every month. He said his understanding was, from a conversation with the Chief, that he needed to get acclimated to his way and he needed a few months and he would give them to him first so they could go over them before he sent them in. Cardaman said he was surprised this was one of the charges, and he did make mistakes because they are confusing and the Chief briefly showed him how to do it. He said he forgot to sign a sheet and he didn't get them done on time. Cardaman said his understanding was that the reports were due at the end of the month, so he thought January could be done by the end of February. Cardaman said he took on this responsibility

while the lieutenant was gone to the FBI academy for a few months, then officially in January. He said he submitted them to the Chief in January, mistakes were found, he then corrected them and then the Chief submitted those. Cardaman stated there was confusion on his part the second month, but the Chief actually wanted him to submit them. When the Chief got on him, he had them submitted the next day. When asked if he was familiar with the disciplinary policy of the Village, Cardaman responded yes. When asked about Exhibit 10 disciplinary section, Part B, Cardaman read the following: Supervisors are to follow an established system of progressive discipline when correcting job behavior. Each offense should be documented and dealt with objectively. In regards to being previously reprimanded by Chief Wetzel in June 2012, Cardaman said subsequent to that he can't recall any other disciplinary actions, other than being called into the Lieutenant's office for something. When asked if the next official notification he had regarding discipline was March 18, 2013 charges from Chief Rizzo, Cardaman responded yes. Leffler asked if these would be Group 1 offenses, what would be the level of discipline for a second offense, Cardaman said written reprimand and for the third it would be written documentation and 1 to 3 days suspension without pay. When asked if prior to 2012 if the Chief had made false allegations against him in the past, Cardaman responded yes. Leffler asked Cardaman if he had seen Exhibit 3 document before and he replied he had not. Leffler asked if it was an official document of the Village and Cardaman said it is he would imagine, and he didn't know who could file it or for what purpose. Leffler asked Cardaman if it was his understanding he is being investigated for improper procedures in making arrests and stops and he replied yes. When asked if it was completed, Cardaman said he didn't know it was going on and he had heard about it. He believes his actions were reviewed by the prosecutor and his actions were considered to be approved by the prosecutor.

Ondrey: Counsel do you have a copy of the June 5, 2012 Chief Wetzel reprimand letter?

Leffler: Yes

Ondrey: Officer Cardaman you do recall that in June 2012, then Chief Wetzel the Chief of South Russell Police Department, issued you a letter of reprimand did he not

Cardaman: Yes

Ondrey: And in that letter I just gave to your counsel, if you need to look at it to refresh your memory of it.

Leffler: We'll stipulate that he received a letter of reprimand in June 2012

Ondrey: In it particularly at the end, Chief Wetzel indicated to you that the judgment you exercised during these incidents is not consistent with that of a competent supervisor of the South Russell Police Department

Ondrey: I am asking the witness if he remembers that statement being made to you by Chief Wetzel

Cardaman: I do

Ondrey: In that he also warned you in that letter did he not if poor judgment or judgment that is not consistent with a supervisor occurred again he'd suspend you and he would recommend to the Mayor that you be reduced from sergeant to patrolman

Cardaman: Yes

Ondrey: And the letter describes seven different incidents that he was critical of your judgment on each and every one of them, isn't that true also?

Cardaman: It is

Ondrey: Did you agree with his decision to reprimand you?

Cardaman: I did not

Ondrey: Did you do anything about it?

Cardaman: I submitted responses to the write up

Ondrey: Are you familiar with the Village's handbook?

Cardaman: Fairly

Ondrey: Are you familiar there is a grievance procedure set up in that handbook?

Cardaman: I'm aware of it, I don't know the exact wording

Ondrey: It provides that a grievance is available. This is on page 12 that a grievance is a complaint by an employee alleging that the rules regulations or policies of the Village were violated, misapplied or misinterpreted to the detriment of the employee. Is it your general understanding that is what it a grievance is all about?

Cardaman: Yes

Ondrey: So you disagree with a superior officer's discipline of you or criticism of you, you can file a grievance under the South Russell handbook can't you?

Cardaman: Yes

Ondrey: And that procedure would take it to your supervisor and then if you're not satisfied with the supervisor you could go to the Mayor with your complaint. Is that your understanding?

Cardaman: If that's what it says yes

Ondrey: Step three is that if you're still dissatisfied can go to Council and have Council consider your grievance

Cardaman: Yes Mr. Ondrey

Ondrey: Despite your disagreement with Chief Wetzel's decision you did not pursue any remedy under the grievance procedure whatsoever. Yes or no?

Cardaman: Well I need some explanation. No I did not.

Leffler: I'm going to object to that. (Inaudible)

Ondrey: If you're dissatisfied you'll have a chance to have him testify again

Ondrey: So you described how you went on December 20, 2012 to a situation going on in Russell Township and joined in that pursuit, correct?

Cardaman: Yes

Ondrey: And you concede that when you went originally initially to Russell Township there had been no specific request that South Russell send someone

Cardaman: Yes

Ondrey: It's not your position is it that the Police Department would allow police officers to go off to any adjacent community whenever they decided some other officer needed assistance, that was never the policy wasn't?

Cardaman: There was no policy

Ondrey: I'm asking you what was the practice?

Cardaman: The common practice during my FTO training

Ondrey: Not just during your FTO training, when you are a police officer going to Russell Township, was it not the practice within the Police Department well known to you that you could exercise your discretion to go to adjacent communities if there was a serious dangerous situation going on in the other community

Cardaman: I'll have to answer yes but I would like to explain

Ondrey: So in this situation what you know apparently is that there was a burglar being chased by other units already

Cardaman: Yes

Ondrey: You also know that you're not covered by the Villages mutual aid agreement unless there's actually been a request made to South Russell to send assistance

Cardaman: I'm not aware that

Ondrey: It's my understanding that at some point in your career you were the FTO, field training officer, and was it not one of the duties of the field training officer to instruct the officers in the training specifically about the mutual aid agreement for South Russell Village?

Cardaman: No not the mutual aid agreement

Ondrey: Is it your recollection the mutual aid agreement is not one of the topics that you are instructed to train them in?

Cardaman: No you're right Mr. Ondrey, it is

Ondrey: Was in fact instructing these other officers as they go through the training under you; was one of the items the mutual aid agreement?

Cardaman: Yes and no

Ondrey: What was the no part?

Cardaman: The no part is I don't have a copy of the mutual aid agreement and I never have had a copy of that. I just went by past practice and what I was trained to do. No I don't have a copy of the mutual aid agreement in front of me, but I have never gotten in trouble or disciplined for doing it before from my Chief or prior lieutenants.

Ondrey: So your testimony is that you knew you were supposed to train officers about the mutual aid agreement but you didn't use the actual agreement to do so, is that your testimony?

Cardaman: I guess technically, yes

Ondrey: What was actually going on was that we already had other units in pursuit, no shots had been fired, and there was no chatter on the radio that an officer's life was directly threatened?

Cardaman: There was just an aggravated burglary had just taken place and was fleeing the scene, that's the information I had

Ondrey: So my characterization is correct there was never any talk that an officer was threatened in any way

Cardaman: That is correct other than a person fleeing and putting an officer's life in jeopardy

Ondrey: Sure anytime there is a chase going on there is always a danger to anyone involved, isn't there?

Cardaman: Yes

Ondrey: And in fact police vehicles can sometimes cause safety issues all by themselves

Cardaman: They absolutely can

Ondrey: Did you have to go exceeding the speed limit in order to even get to Russell Township in order to respond to that

Cardaman: Mr. Ondrey to be honest with you I don't know what speed I went - I probably did exceed the speed limit to get down there

Ondrey: Do you recall that in the mutual aid agreement that the Village is a party to that there are protections from liability for the Village and the police officer himself including workers compensation coverage as long as it's in response to a request covered by mutual aid?

Cardaman: I have not seen the mutual aid agreement to this date so I'm not sure I can answer that sir

Ondrey: Are you aware that those similar kinds of protections extend whether or not they extend to the Village or to you, if in fact you leave our jurisdiction and go on a pursuit elsewhere?

Cardaman: I went mutual aid; I don't have an answer for that

Ondrey: Would you agree that response to Russell Township was not pursuant to mutual aid

Cardaman: Yes it was

Ondrey: Was there a request made to you

Cardaman: Not initially

Ondrey: When you went there, there was no request made to you, correct?

Cardaman: Correct

Ondrey: And if the mutual aid agreement that the Village is a party to says that in order to provide it there has to be a request to the Village then there was no mutual aid in the strict sense of that term

Cardaman: The department was violating it and they need to get copies and to this date I haven't been provided any

Ondrey: We can agree that you didn't feel you had unlimited discretion to go to other communities, correct?

Cardaman: Yes

Ondrey: We can agree that the practice had been you can go, you can exercise your discretion but it's got to be a serious very dire kind of emergency to justify it.

Cardaman: It's yes and no, I need to reiterate when were working by ourselves, even a residential alarm drop, Russell or Bainbridge or Chagrin Falls would come automatically and not have to call

Ondrey: Didn't you understand that within the South Russell Police Department you're not supposed to go out on calls to other communities unless you're requested or it's a very serious dangerous kind of situation some sort of imminent threat going on

Cardaman: Mr. Ondrey I'm not trying to argue with you but again when you're working by yourself even the minor calls you do go on and they come to ours

Ondrey: I'm not asking what they do, I'm asking what you're supposed to be doing

Cardaman: Yes we are supposed to be backing them up if we hear it on the radio

Ondrey: You're saying that's unlimited it doesn't matter what the situation is you're supposed to go

Cardaman: A barking dog call, I'm not going

Ondrey: So there was some limit

Cardaman: Yes

Ondrey: So a situation like Middlefield or Solon had, horrible situation, you'd go and Chief Wetzel would never criticize you for that in your opinion

Cardaman: Yes

Ondrey: And even under the new directive Chief Rizzo issued you'd be okay to go to those kinds of situations

Cardaman: Completely agree with you

Ondrey: On January 11 you go to Moreland Hills. You said it was a response to a situation where there was an individual in a home

Cardaman: Yes

Ondrey: At the time they weren't quite sure who it was, they didn't know when you went there

Cardaman: They did know who it was yes

Ondrey: Are you saying there was some sort of communication in the radio dispatch identifying the suspect

Cardaman: Yes

Ondrey: And you claim you knew who he was and somehow you knew his reputation as having some mental or emotional issue

Cardaman: Yes as a matter of fact Chief Rizzo put out a memo with the subjects name on it because he was confrontational with police prior to this

Ondrey: And that call for Moreland Hills, isn't it true that actually they called for Orange Village to send a unit

Cardaman: Yes

Ondrey: Once again they never asked South Russell to send anyone nor any other community other than Orange

Cardaman: No Chagrin Falls also

Ondrey: They sent someone; I'm asking you, have you reviewed the dispatch tapes

Cardaman: I haven't, no

Ondrey: If I was to say to you that Chief Rizzo's going to testify that he listened to them and the only call is for Orange to send a unit, you don't know the truth about that one way or the other

Cardaman: I couldn't tell you, I didn't listen to the tapes sorry

Ondrey: Now in that situation what was the dire emergency in your mind that justified you going 10 miles away from the Village to respond to that one?

Cardaman: The emergency was this person had a history of violent felonies against police officers, was in this house and had already gone crazy, threw everything out of the house and was barricaded in there. That was the emergency and again we had a memo at the department from Chief Rizzo that this guy will confront you if you're at a traffic stop or something, I remembered the name, I knew the address, I worked in Moreland Hills so my mind knew this was a very dangerous person. I offered our assistance, that's what I did

Ondrey: It's your testimony that that you knew on the way over who it was and it's not information that you found out subsequent to your arriving or even shortly after the incident happened

Cardaman: I had a good idea who it was at that address

Ondrey: So you didn't actually know who it was you're just now saying that you knew the address so you suspected this might be

Cardaman: No they were talking about it openly on the radio that this was the subject that confronts police. They actually cleared the radio channel so no other traffic could go on because of this. When you have a serious emergency dispatch will clear the radio channel for emergency traffic only. That means it's very serious

Ondrey: Did they or did they not, to your understanding, identify the specific individual that they thought might be in the home

Cardaman: Mr. Ondrey do you mean in the beginning, because after he was arrested yes

Ondrey: I'm talking about when you make the decision I'm going to Moreland Hills, do you know who was in that house

Cardaman: I didn't see him in the house but I had a darn good idea who it was. And I knew I didn't want the guys I work with confronting him without assistance

Ondrey: Do you know how many units responded to that one

Cardaman: It was a whole boatload, I didn't count them

Ondrey: So you weren't actually necessary, there were enough units on the site to handle the problem

Cardaman: According to the letter of commendation I received from the Sergeant, no I was needed

Ondrey: Now you referred to a letter that you received from the Sergeant, I showed you a letter from Ross Fowler from the Moreland Hills Police Department that is undated.

Cardaman: I do not see a date on it

Ondrey: It's not addressed to you; it's addressed to Chief Rizzo correct

Cardaman: Correct

Ondrey: He says on Friday, February 11 in fact that's incorrect it was actually January 11

Cardaman: You'd have to ask Sergeant Fowler I think you're right

Ondrey: In any event in there he says I have requested officers from around the Valley to help in supporting me and my officers on a call that involved in individual with a history of felony assaults, that's what he states in the letter correct

Cardaman: Yes

Ondrey: And in fact, I guess you've already testified you don't know if he did request officers from around the Valley do you

Cardaman: I can only go by what the radio traffic was and I don't remember the particulars on it. I didn't think it was going to become an issue so I didn't take notice

Ondrey: Is Sergeant Fowler an acquaintance or friend of yours

Cardaman: Not really

Ondrey: What does that mean, not really?

Cardaman: Professionally we don't go to each other's houses; we don't talk to each other on the phone. We only cross paths professionally

Ondrey: And you didn't talk to him then about then Sergeant Rizzo had counseled you on January 16 about the incident in Moreland Hills

Cardaman: I did not talk to Sergeant Fowler that I recall. I don't think I did

Ondrey: Fair enough

Ondrey: So Mike you would agree with me then, the decision for you to go to Moreland Hills on that day, that was a judgment call that you made on the spot

Cardaman: Yes sir

Ondrey: And I think you testified in your own direct testimony that when then Sergeant Rizzo met with you, you disagree that that was a justifiable trip to Moreland Hills

Cardaman: That's correct yes sir

Ondrey: So he issues you a verbal consultation on both of these incidents one in Russell and one in Moreland Hills

Cardaman: Yes

Ondrey: In writing

Cardaman: Yes we talked about it. I actually asked for a copy of it which I did not receive

Ondrey: Once again, you didn't pursue a grievance over being disciplined for your decision to go to those two communities

Cardaman: No Mr. Ondrey I did not

Ondrey: On January 16 actually Sergeant Rizzo gave you two other verbal consultations for things having to do with the way you logged some hours and there was another administrative task at that time. You had four of them, correct

Cardaman: I'm not 100% sure; I'm not sure what you're going to say. The reports, BCI reports

Ondrey: No I'm not talking about those. I'm talking about on January 16 when you got counseled about going to these other communities the Sergeant also counseled you about some records regarding your compensation and comp time

Cardaman: Oh yes

Ondrey: And I gather that you had already been doing the incident reports starting sometime in 2012 you testified

Cardaman: That's pretty close yes

Ondrey: You would agree those are important records the Village maintains

Cardaman: Absolutely

Ondrey: And they may even be used sometimes in prosecution of criminal cases so their accuracy is very important

Cardaman: Agreed

Ondrey: And you would agree that you were struggling and you were making mistakes in January and February in properly completing those incident reports

Cardaman: I wouldn't say I was struggling, but I did make some mistakes I admit to

Ondrey: Did I hear you say that you thought that you should turn them in and then Sergeant Rizzo when he became Chief, it was his job then to fix the mistakes and everything would be okay

Cardaman: We had an unwritten agreement that we would spend a few months doing them together and that's why they would go to Chief Rizzo first to be corrected and then we could get acclimated to how he wants it done

Ondrey: Okay so you felt there was some sort of implied promise that you had some additional time before you really had to get them right

Cardaman: I guess you could say that. We were talking and I had no idea it was going to rise to this level, I thought we were trying to work together to get it done. I wasn't keeping score

Ondrey: Additionally, sometime around the beginning of January, you had been tasked with the responsibility to complete the statistical reports for both the BCI and FBI

Cardaman: Yes

Ondrey: Regardless of whatever deadline those agencies might have, you did understand there was a deadline for you to get those reports in for the purposes of the South Russell Police Department

Cardaman: Yes, I got a little confused on that at the beginning of the first month

Ondrey: In fact, you didn't get them done in January at all, correct

Cardaman: I think I did

Ondrey: But you don't recall

Cardaman: I don't recall

Ondrey: Is it true that by February 22, you had still not completed January's reports

Cardaman: I believe you're right

Ondrey: And the Chief had a couple conversations with you saying they're due by the end of the month, correct

Cardaman: That's where the confusion came in, the end of the month versus the beginning of the month and I admit to that

Ondrey: Are you admitting that you made a mistake or that you're confused

Cardaman: I'm not sure what the problem was. I thought we were working together the first few months to get all this worked out and ironed out. I thought the conversation was just helping me out I didn't know it was being kept track of this tight. In the past Lieutenant Ferrell would talk to me, we'd get it worked out it wasn't put on paper, it wasn't in writing

Ondrey: You knew Lt. Ferrell was gone, correct, by the time you did these reports and you knew that the individual you now have to satisfy on the condition of those reports was Sergeant Rizzo

Cardaman: Yes but again we agreed to go a few months so I could get acclimated which never happened. I even requested to be put on one day shift a week to work with the Chief so I could get more acclimated to it because I work nights and the Chief works days

Ondrey: And when you did finally submit, I guess it was early March, your report for the first time, in fact, that wasn't fully completed properly also. I think you mentioned in your direct testimony that there was still some blank information on it

Cardaman: Mr. Ondrey I think that was one of them I forgot to sign a sheet. I think everything else was done correctly. Again I thought when I went over it with the Chief it was so I could get used to it and he was helping me. I didn't know this was taking place and that I was being kept track of this tight.

Ondrey: You were then provided by Chief Rizzo a letter dated March 18. That was the letter he summarized the various events he was unhappy with you about and he also cited Chief Wetzel's letter and reprimand and warning. He concluded that the incidents described in them constituted Group I offenses of neglect of work because you hadn't finished reports in a timely fashion and he also concluded they constituted unsatisfactory work or failure to maintain the required standard of performance.

Cardaman: Yes

Ondrey: You would agree that under the personnel policy, first of all that it is only a guideline, it's not a rigid standard

Cardaman: That would be fair to say, yes sir

Ondrey: After verbal consultation and warnings and reprimands, if you're on a third offense you can be suspended under the policy

Cardaman: If that's what it says, I believe it does

Ondrey: Yes I believe it does to. So he indicated in this letter to you that he was intending to suspend you and demote you, but he pointed out to you under the personnel policy you could have a pre-suspension meeting with him, correct?

Cardaman: Yes

Ondrey: You asked for such pre-suspension meeting and it was held here on March 25 involving Mr. Leffler and you, me and Chief Rizzo

Cardaman: Yes

Ondrey: In your explanations that you offered that day you did not make any accusations that Chief Rizzo was retaliating against you

Cardaman: I don't remember if I did or I didn't

Ondrey: Have you accused superior officers in the past of retaliating against you

Cardaman: Yes I believe so

Ondrey: Have you ever claimed that as to other superior officers that you were warned by fellow officers to watch your back

Cardaman: Yes

Ondrey: You said that about Lt.. Ferrell once upon a time didn't you?

Cardaman: He made the comment to me yes Sir

Ondrey: You said it to him in an email didn't you

Cardaman: I probably have that email if I did

Ondrey: We'll see if we can provide that for you. And you made that comment about Chief Rizzo have you not?

Cardaman: Yes

Ondrey: It's your claim that other officers told you that in the past. What other officers have told you?

Cardaman: That he was retaliating against me

Ondrey: Yes

Leffler: I don't know if that's relevant for the purpose of this hearing

Ondrey: If there is no claim that there is retaliation, we can stipulate it

Cardaman: I believe it was put in that newspaper article. I don't remember anyone specifically stating that he was retaliating against me

Ondrey: Okay so you were quoted in the newspaper saying his motive is retaliation against you because once upon a time you had testified in a proceeding involving officer Zeefe

Cardaman: That's a yes and no. There were a couple things in that article, several things that weren't exactly...

Ondrey: Well okay I'm going to read you the exact quote. You were quoted as saying I was told by a couple of other officers to watch my back that Rizzo is out for blood. Was that an accurate quote on your part.

Cardaman: Yes

Ondrey: So who are the other officers that told you to watch your back Rizzo is out for blood?

Cardaman: Chief Wetzel and Lt.. Ferrell. Chief Wetzel did not say out for blood though. He just said I agree this is harassment; he has an axe to grind with you, watch your back.

Ondrey: How long ago did this occur?

Cardaman: If I could look at my notes real quick. Also officer Swaidner put that in writing to watch my back I believe to the Lieutenant.

Ondrey: Okay so that was in 2011, is that what you're referring to as one of the exhibits in your book, I believe exhibit seven

Cardaman: June 15, 2005 at 2043 hours I had a meeting with Chief Wetzel. I have everything written here but at the end Chief stated Rizzo had no proof and the complaint was unfounded. And that was about the complaints about me making traffic stops illegally which was a lie. Chief advised me to watch my back Rizzo has an axe to grind.

Ondrey: You're still reading from some notes, I would like to see what notes you have there. Do you have Chief Wetzel coming here to substantiate your testimony?

Cardaman: I do not, no Sir

Ondrey: Do you have Lt. Ferrell coming to substantiate your claim in that regard?

Cardaman: No

Ondrey: Go ahead and take them back, I think I'm going to ask for copies of those. So those are pretty serious charges to say about a fellow officer and your police Chief are they not?

Cardaman: Yes

Ondrey: I thought you said 2005 was when you first started to hear these kinds of rumors

Cardaman: That's when I started documenting

Ondrey: What other documentation do you have that there was any kind of retaliatory motive

Cardaman: I just have a timeline

Ondrey: In other words your own notes

Cardaman: I have several emails to the Chief and Lieutenant about it, about being harassed, the Chief even admitted and I believe I have in my notes that he believed it was harassment and so did Lt. Ferrell

Ondrey: Do you have something from the Chief in writing whereby he agrees with that assessment

Cardaman: No

Ondrey: It's just your own perception of what he said

Cardaman: However he did say he had an hour and a half meeting with the Mayor regarding that, so maybe the Mayor can shed some light on that

Ondrey: Maybe he will. In his letter of reprimand Chief Wetzel has in here, he notes that apparently you had provided him an email on June 1 trying to explain some of the events he was criticizing you for, correct

Cardaman: Yes sir

Ondrey: And he says in some respects your explanation of this incident to me in your email to me of June 1st is more disturbing yet, rather than accepting responsibility for your action and acknowledging a possible shortfall in your conduct, you instead seek to blame others who relay this information to it. That's Chief Wetzel telling you that right

Cardaman: I remember

Ondrey: The same individual that you are now telling us if he was here that somehow he would support your claim that you've been harassed by a fellow officer

Cardaman: I believe the Chief Wetzel would tell the truth

Ondrey: This is the opportunity - did you seek him to come here tonight?

Cardaman: I did not

Ondrey: And incidentally, you would agree that the same comment about watching your back occurred with Lt. Ferrell also

Cardaman: Similar, yes

Ondrey: How many people have told you to watch your back about different officers in this department?

Cardaman: Not too many

Ondrey: Okay but apparently the same were several times

Cardaman: From the same people, yes and again it's in the writing from officer Swaidner I believe to the Lieutenant.

Ondrey: We'll take a look at what you presented but I didn't see the word watch your back anywhere nor that Chief Rizzo had any sort of retaliatory motive against you, that's not in those letters are they

Cardaman: I don't believe that exact wording is

Ondrey: But you felt free to tell the public through a reporter that that's what you felt was going on in your suspension and demotion

Leffler: I'll object, the basis for the discipline that was being issued was what the reporter had knowledge of on March 28 what happened subsequent to that is irrelevant.

Ondrey: I think what is relevant is that Officer Cardaman has admitted in his direct quote that this disciplinary action was a result of some improper motive and I think it is relevant for Council to consider his claim and what light that puts him in, in evaluating his other credibility claims regarding these incidents that he didn't make mistakes or that he did, or that he was confused or whatever other excuses you have. In any event I will move on from that. So after we had our pre-suspension meeting Chief Rizzo actually suspended you and demoted you pending the Mayor's review.

Cardaman: Yes

Ondrey: The Mayor you would agree affirmed his decision

Cardaman: Yes

Ondrey: You filed this appeal to come before Council

Cardaman: Yes

Ondrey: Did you not have a conversation subsequent to filing your appeal with Chief Rizzo where you indicated you regretted filing an appeal and you intended to withdraw it

Cardaman: I never said I intend to withdraw it or regretted anything

Ondrey: So you deny it. Chief Rizzo has a different recollection. First of all, did you have a conversation with him post-suspension?

Cardaman: Yes

Ondrey: And did you two discuss your potentially withdrawing the appeal

Cardaman: Yes

Ondrey: And did you say what really upset you was the fact that you were losing your seniority?

Cardaman: Everything upset me, but I will tell you...

Ondrey: Did you say to him that if you had understood that the seniority only applied when you're on duty with other officers and there's no superior officer your seniority wasn't going to make you in charge of the other fellow officers

Leffler: I'll object again on relevancy. The discipline that was issued was based on the facts and information that was available on March 28 or April 4. I'm not sure how this is relevant to the discussion.

Ondrey: Let me finish my question. Did you during that conversation tell officer Rizzo that you had made mistakes and you were willing to take your demotion and you were going to see if you could get out of this appeal?

Cardaman: We discussed a lot of things. Mike told me and I told him this is a conversation between the two of us and I said I'm not taking notes. We did discuss a lot of this, yes we did. I did not want to come here and smear anything on anybody and he didn't want to do the same thing to me. We thought maybe we could come to an agreement behind closed doors to prevent this. That's with that conversation was all about. Yes there's a lot of technical stuff that was discussed, I'm not denying that. It was a conversation

between myself and the Chief to try to attempt to come to some resolution so it didn't have to come to this. And that's what this was all about, it was 2 ½ hours and I felt very good after talking to the Chief.

Ondrey: In fact you requested we prepare a letter for you to sign indicating that you were withdrawing the appeal.

Cardaman: No not the appeal

Ondrey: What did you think you were

Cardaman: To step down voluntarily as Sergeant

Ondrey: After that discussion, you were going to step down voluntarily. That meant you were going to drop your appeal, same thing

Cardaman: We did not discuss that at that meeting. It was prior to that at another meeting. No, that never came up.

Ondrey: But you did ask for a specific letter that you would sign saying I agree to be demoted

Cardaman: Technically yes but that was the suggestion on behalf of the Mayor and the Chief that I do that. And they said that Mr. Ondrey would draft that letter on my behalf.

Leffler: I'm going to object. I am not sure what the letter you are specifically talking about in later following the conversation between officer Cardaman and Chief Rizzo or are you talking about going back to the 13th.

Ondrey: The letter after the Chief and officer Cardaman met

Cardaman: No there's no letter. The only letter we talked about I believe was during the meeting with the Mayor or I mean the Chief and the attorneys.

Ondrey: I think I'm all finished. Dr. Koons if you could just give me a moment to make sure I'm not missing something I want to get in the record. I don't have anything further.

Leffler: You were asked about when you're responding to calls outside of the Village whether a pursuit is considered in your mind to be serious, do you recall?

Cardaman: Yes

Leffler: And you were asked whether there was any specific information about a life-threatening situation going on

Cardaman: Yes

Leffler: Without an officer specifically stating over the radio this is a life-threatening situation what is your interpretation of that event that was going on

Cardaman: My interpretation is an aggravated burglary. Aggravated means in an occupied house where people are home, stealing, you can use deadly force on that person. He flees the house and there's pursuit. That is as serious as you get.

Leffler: And that could be a threatening circumstance for the other officers that are involved

Cardaman: For everybody

Leffler: You were also asked about whether you filed a grievance in response to the Chief's reprimand on June 20

Cardaman: Yes

Leffler: You did not do that

Cardaman: Not technically by the wording of the Village

Leffler: Did you provide the chief with a rebuttal letter as to what you thought

Cardaman: I had several rebuttals. Especially to the prior seven instances I was written up because I was never talked to prior to getting written up to get my signing

Leffler: And the policy says that disciplinary measures should be documented in some type of way

Cardaman: Yes

Leffler: So other than the document that the chief gave you did he talk to you about each one of these incidents and document what kind of discipline was going to be used

Cardaman: Not at that point, no

Leffler: So then the next thing that you know is that he issues the write up. Between that occurrence and when you received the March 28 notice of charges, had you received any formal discipline or any documents that indicated there was discipline?

Cardaman: Not that I recall

Leffler: And when Mr. Ondrey asked you about a conversation you had with chief Rizzo on January 16 he indicated that you were disciplined, verbally disciplined for those two instances

Cardaman: Correct

Leffler: Were you disciplined or was that simply conversation?

Cardaman: I thought we were just talking officer to officer to get it resolved

Leffler: And he never indicated to you I'm giving you a verbal reprimand

Cardaman: He did tell me on the one meeting that it was going to be documented, and that's when I asked could I please have a copy which I did not get.

Leffler: So based on your conversation on January 16 you did not receive any formal documentation

Cardaman: No I did not

Leffler: So how do you know you are supposed to grieve that when you did not receive anything?

Cardaman: I wouldn't

Leffler: and Mr. Ondrey asked you whether you had a specific deadline with regard to the BCI and FBI reports, not related to the BCI and FBI, but with regard to the Department. Do you remember that question?

Cardaman: Yes

Leffler: And I thought your statement was you thought that you had until the end of the month to complete the prior month's reports.

Cardaman: I did

Leffler: Was that in the conversation that you had with Chief Rizzo or who you had a conversation with

Cardaman: I got to be honest with you there were a lot of conversations, yes I believe so. There were a lot of conversations going on; I didn't know it was going to rise to this level so I wasn't keeping track of them.

Leffler: So it was your understanding that based on the preliminary incident reports that the BCI and FBI reports would be due by the end of (inaudible)

Cardaman: Yes

Leffler: And Mr Ondrey asked you about whether you felt there was some retaliation with regard to 2002 Zeefe

Cardaman: Yes

Leffler: Did you give a statement in that investigation that ultimately affected then Officer Rizzo

Cardaman: Yes

Leffler: With regard to watch your back, I'll draw your attention to Exhibit 7. Mr. Ondrey asked you about whether you could recall anyone specifically using that phrase watch your back. This document in the 3rd paragraph down indicates that, could you read that 3rd paragraph

Cardaman: I then seen Sergeant Mike Cardaman about a week ago and advised him of how things were being perceived and to watch his back

Leffler: That is at least one documented instance of somebody specifically telling you

Dr. Koons: I have a question on that, that is your notes or that is what

Cardaman: Dr. Koons it is to Lieutenant Ferrell from Officer Swaidner

Leffler: And there was some confusion about this letter writing or that you asked the Village to write a letter, who had approached you prior to the charges in issue about a letter being written, do you recall? Prior to the formal charges of March 28, did Mr. Ondrey or the Mayor come to you and say hey we want you to sign this letter.

Cardaman: Yes they gave me that option; in lieu of, I believe, the suspension

Leffler: Was there another conversation you had with Chief Rizzo about also getting another letter

Cardaman: You would have to jog my memory; I don't think so, no

Leffler: So that is the only letter you talked about

Cardaman: Yes

Leffler: And in your conversation with Chief Rizzo , you had talked about trying to reach a mutual resolution

Cardaman: Yes

Leffler: But there was no formal action that had been taken on that as far as you know

Cardaman Correct

Leffler: Nothing further

Koons: Do you have anything else

Ondrey: Just one quick follow-up. Officer Cardaman I am going to show you what appears to be an email from you to Lieutenant Ferrell dated June 5, 2012. I'm going to read you, you stated to him – I was point blank with you, I asked you if you were retaliating against me. So, you were concerned another superior officer was retaliating against you correct?

Cardaman Yes

Ondrey: and you later in that same email claim I was contacted that was present during your conversation and he informed me to "watch my back", because you were openly commenting etc. So you used that phrase previously about another superior officer also?

Cardaman I did. There is a whole lot more to that in there

Ondrey: Well, I'm going to make this an exhibit and I'm just curious why you keep hearing from people that you have to watch your back all the time

Koons: Do you have additional witnesses?

Leffler: We do not at this time, subject to rebuttal

Ondrey: If you give me a moment Dr. Koons, we're going to ask the Chief to testify

Chief Rizzo was sworn in

Ondrey: Chief would you please identify yourself

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Rizzo: Michael Rizzo

Ondrey: You are currently the police chief of South Russell Village, correct

Rizzo: Correct

Ondrey: And when did you become the police chief

Rizzo: January 28, 2013

Ondrey: and prior to that you were a sergeant

Rizzo: Correct

Ondrey: And how long have you been with the department

Rizzo: 16 years

Ondrey: Describe generally the beginning of the events that ultimately lead to the suspension and demotion of Officer Cardaman

Rizzo: As far as the previous warnings from the Chief

Ondrey: Wherever you think the story begins as far as your decision to suspend

Rizzo: Probably things began deteriorating in 2010, 2011 where there had been a series of events involving poor judgment, untruthfulness, violation of orders. From that point there was that notice by Chief Wetzel, there was a written reprimand and the official written notice.

Ondrey: Let's stop for a second here. Were you aware of Chief Wetzel's reprimand and warning of possible suspension and demotion when you became chief?

Rizzo: Yes

Ondrey: Were you aware of it even prior to when you became chief?

Rizzo: Yes

Ondrey: How is it you became aware of it

Rizzo: Chief Wetzel made me aware of it

Ondrey: We've had discussion that you had a meeting in January 2013, why is it you were having this meeting?

Rizzo: Because of the two events involving the mutual aid

Ondrey: Well we'll get to that in a second, I guess my question is why you instead of Chief Wetzel who was still chief.

Rizzo: Chief Wetzel had indicated he was going to be resigning, he was two weeks from resigning at that point and he asked me to dig into that

Ondrey: So what led you then to meet with him on January 16 and have a discussion about for example the trip to Moreland Hills and the trip to Russell

Rizzo: I spoke with him about those two incidents in reference to the calls and leaving the jurisdiction, and that they were liability risks and I wanted to talk to him about that. We discussed the previous practice and what we do on mutual aid type calls and I explained to him that I thought those were unwarranted.

Ondrey: What was the practice of the department as far as leaving the jurisdiction?

Rizzo: The practice was that we would leave the jurisdiction on more serious events that would require immediate and instantaneous response otherwise we would wait for a formal request.

Ondrey: Ok and how long had this been the practice in the department?

Rizzo: Since day one, since the beginning

Ondrey: How would you describe what lead for it to be ok to leave the jurisdiction without a request?

Rizzo: A call of a serious nature

Ondrey: What do you mean by serious?

Rizzo: Any call where an officer would be in need of assistance, for example a shooting or school incident, school type shooting, things like that

Ondrey: So you reviewed, let's first talk about the Russell Township situation, that occurred in December?

Rizzo: Yes it did

Ondrey: And you reviewed it with Officer Cardaman

Rizzo: I did

Ondrey: Did you find his explanation as to why he went acceptable?

Rizzo: No

Ondrey: And why not?

Rizzo: I just didn't think his reason for the trip out there was justifiable

Ondrey: Did he tell you that he had been requested to go

Rizzo: No

Ondrey: Why wasn't that serious enough to justify a trip out in your opinion

Rizzo: I just felt that it was a liability risk; I felt that in an effort to manage risk we needed to be aware of that situation and to reiterate what our current practice was

Ondrey: Ok and you counseled him not to do it anymore

Rizzo: Yes

Ondrey: What about the Moreland Hills incident?

Rizzo: Same thing, Moreland Hills, again no official call for service and the fact that that incident did not warrant us to leave our jurisdiction and drive 10 miles to another jurisdiction.

Ondrey: Why in your opinion did it not justify this?

Rizzo: There was really no sense of urgency on the part of the requesting agency; they only requested one officer from another agency.

Ondrey: How do you know that?

Rizzo: I reviewed the audio tape of dispatch

Ondrey: And what did the audio tape say

Rizzo: The officer from Orange Village requested specifically to please send him an Orange unit for mutual aid

Ondrey: So the Moreland Hills said please to Orange to send a unit

Rizzo: Yes, well they asked dispatch

Ondrey: Officer Cardaman has testified that he knew who the individual was, did you find any evidence in the dispatch recording you listened to that there was any kind of announcement of who the individual was?

Rizzo: No there was not

Ondrey: So did you likewise give him a verbal consultation on it?

Rizzo: I did

Ondrey: Do you consider those to be types of discipline

Rizzo: Yes

Ondrey: And you told him orally that that's what you were doing

Rizzo: Yes

Ondrey: Were there a couple of other incidents that you counseled him about in that January 16th meeting?

Rizzo: Yes there was a comp time issue and the incidents regarding incomplete reports

Ondrey: Now those latter two things, you didn't make those as factors in the decision to suspend and demote him?

Rizzo: Everything compiled together was a factor

Ondrey: So you did consider them

Ondrey: What else occurred in January and February that led to your decision to demote?

Rizzo: Some of the tasks I assigned him, after becoming chief I had to assign some tasks that I currently had. In January I went over with him what needed to be done with the statistical reports and he turned them in to me and he claimed that he knew what he needed to do with them, he had done them in the past and he turned them in incorrectly

Ondrey: Your talking about the FBI and BCI reports?

Rizzo: Statistical reports, yeah

Ondrey: Had you established the deadline for when he had to have these things done?

Rizzo: Yes

Ondrey: What did you tell him?

Rizzo: The first week of the following month

Ondrey: And you told him that in January

Rizzo: I did

Ondrey: What happened the first week of the following month?

Rizzo: He turned those in on time however we had to correct mistakes, so I went through with him correcting mistakes and that we were set for the following month, February were due the first week of that month. January's reports were due the first week of February

Ondrey: And those reports I'm asking, did those reports come in timely?

Rizzo: No

Ondrey: What instead happened?

Rizzo: I had a departmental meeting in the first week of the month in February and I reminded officers that its statistical reports time that had statistical reports due that they were due the first week of the month and they were due at that time. I didn't hear anything from him after that, some time went by. I got the occasion to meet with him on February 22 and at that point I brought him into the office and asked him where those reports were

Ondrey: And what was his response?

Rizzo: He claimed he thought he had until the end of the month

Ondrey: Did he say anything about forgetting?

Rizzo: Yes after that when I told him I reminded him at the departmental meeting that they were due, he claimed that he had forgotten

Ondrey: So did they finally come in shortly thereafter?

Rizzo: Yes

Ondrey: And were they completely done?

Rizzo: No they had to be corrected

Ondrey: What about the incident reports, what is the history of that?

Rizzo: The history of that is that since probably mid 2011 Mike's been doing the corrections and checking of incident reports and there's been trouble with the accuracy of those reports. In the past Lieutenant Ferrell had come to me to approach Mike. I had a better knowledge of the report system and that I was to educate Mike on how to properly get these reports checked.

Ondrey: So did he turn reports into you in early 2013 incident reports

Rizzo: Yes

Ondrey: And were they correctly done

Rizzo: There was a history of problems with those again and I talked with him in November regarding that as well. We spoke about it, I explained to him the importance of the reports and the fact that they needed to be correct

Ondrey: What else did you do in reviewing his incident reports, well in your letter that you issued to him on March 18, telling him you were contemplating suspending him, did you review errors on incident reports.

Rizzo: Yes, there were errors in January and February as well

Ondrey: And did you feel that they were more numerous than you would normally expect for someone with his experience

Rizzo: Yes

Ondrey: What did you do now after you've had these various problems?

Rizzo: I took a look at our progressive disciplinary or general practices actually, and determined what course of action to take

Ondrey: What classification did you think those problems fit within?

Rizzo: Originally Group 2, but then I took a look at the Group 1 offenses

Ondrey: Ok when you say originally Group 2 do you remember specifically what you thought might fit

Rizzo: I could take a look, I'm not sure right now, I don't have those in front of me. I may have documented that.

Ondrey: In any event, ultimately you decided that Group 1 and did you feel that these incidents were first time offenses for him

Rizzo: No, these have been ongoing

Ondrey: And did you consider at that time Chief Wetzel's concerns expressed in the June letter?

Rizzo: Yes

Ondrey: And what influence did that have in your decision that you were going to demote Sergeant Cardaman?

Rizzo: Due to the history and the warning from Chief Wetzel I felt that was grounds to start the process
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Ondrey: How did these items affect your opinion of his supervisory skills?

Rizzo: It's a relatively minor task, it's pretty routine and I felt he had no other routine jobs to do. That's the only thing he was responsible for, for the most part. And I felt that he had enough time, and I had thought that he had time to complete these without problems, without issues

Ondrey: Did you feel the pursuits into the other communities reflected on his judgment?

Rizzo: I did, I did

Ondrey: And what did you think?

Rizzo: I just felt that those decisions were again poor decisions and I felt it didn't reflect a competent supervisor

Ondrey: Did you consider terminating him at all?

Rizzo: I did

Ondrey: And why did you decide to demote instead of terminate?

Rizzo: I felt that most of his problems are related to tasks of a supervisor, checking reports and decision making. I felt that with a demotion and just having the responsibilities of a patrolman that he would better succeed as a patrolman.

Ondrey: You've heard Officer Cardaman and I discuss the fact that he requested and you held a pre-suspension meeting with him

Rizzo: Yes

Ondrey: What sorts of explanations did he provide you at that meeting that you can recall?

Rizzo: At the pre-suspension meeting he may have claimed that he was called to the call in Moreland Hills

Ondrey: You're saying that he told you at that stage in the game that in fact he was responding to some kind of call

Rizzo: Yes

Ondrey: And by the way, you have received that letter from Sergeant Fowler

Rizzo: I have

Ondrey: That we talked about earlier. Is that what caused you then to review the tapes to determine what type of call came in?

Rizzo: I did

Ondrey: So when he told you that he had been called, I gather you'd know if it was truthful?

Rizzo: I did. I did not feel it was truthful

Ondrey: Did he ever accuse in that session that all this conduct was some sort of retaliation for any prior grievances between the two of you?

Rizzo: No

Ondrey: After the pre-suspension meeting what did you do?

Rizzo: I determined to move forward with the charges

Ondrey: By the way, did you recall anything else from the pre-suspension meeting you would like to discuss?

Rizzo: The Moreland Hills incident, the Russell incident, on both occasions he made a statement that he was called or that there was a call for service. He also mentioned that he jumped the gun on the call to Russell for the pursuit.

Ondrey: Why is it important to the department to limit the calls outside the jurisdiction to either request or serious threatening emergencies?

Rizzo: I think it's in an effort to manage risk to the Village. I mean liability is a huge risk these days, and that's what I'm here to do, manage risk to the Village.

Ondrey: How would Officer Cardaman have known that he wasn't supposed to go on trips like this?

Rizzo: Just our past practice, FTO training

Ondrey: What happens in the FTO Training?

Rizzo: Officers are trained regarding mutual aid, our protocol

Ondrey: Was there an incident where Officer Cardaman went to the Patio Lounge because there was a fight at the Lounge?

Rizzo: Yes

Leffler: Objection, this is not part of the discipline that was issued in this case

Ondrey: I agree, but if you will let me finish I think part of the conduct of what happened there may be relevant to this issue of whether he knew there was a practice or not

Leffler: Well Chief Rizzo's already testified that practice was from day one officers could leave without any call for mutual aid

Ondrey: Correct, but if you let me finish the question. When he went to the Patio Lounge ultimately that became one of the items that Chief Wetzel cited him about, is it not

Rizzo: Yes

Ondrey: He cited him for excessive speed did he not

Rizzo: Yes

Ondrey: You examined the records about that incident

Leffler: Objection, it's not relevant for the purpose of this discipline. That decision was made by Chief Wetzel in June 2012 and (inaudible). I guess there's no ruling on my objection but you can do whatever you want

Ondrey: First of all it is relevant, because it's one of the factors I think legitimately that Chief could take into consideration if he decides to demote somebody, but more importantly, if allowed to answer the file on that matter would indicate, that prior to going to the Patio Lounge Officer Cardaman contacted the Sheriff's Department to make sure that they were requesting aid to the Patio Lounge

Leffler: Objection. He's just stating the facts as if that's been testified

Ondrey: Well it's about to be testified to if you would allow him to finish

Leffler: I won't because Mr. Ondrey said himself that that's a factor in considering the discipline. Chief Wetzel already considered that issue, he made his ruling. That's part of that issue, whatever occurred after that is what the employer alleging in this case.

Ondrey: I'm not bringing it up to demonstrate that this was another shortcoming in his performance, I'm bringing it up to show that Officer Cardaman recognized in that situation that he couldn't just go to the Patio Lounge he needed to first contact the Sheriff's Department to make sure they wanted additional help there. So he knew there were situations that you either get request or it's very serious.

Koons: You want to establish that he knew that you just don't go on mutual aid you get permission or request

Ondrey: Correct, even in that serious of situation

Leffler: That's not the testimony. Chief Rizzo has testified just now, you can read back the record that from day one they were granted to leave the jurisdiction based on their own discretion.

Ondrey: I'll withdraw

Koons: At this time it is 11:00 – how is everyone feeling?

Leffler: How many witnesses do you have?

Ondrey: It will just be the Mayor after the Chief

Koons: Alright, we'll keep going

Ondrey: So you decided to suspend and demote

Rizzo: Correct

Ondrey: And were written charges delivered to him

Rizzo: Yes

Ondrey: And did you certify those same charges to the Mayor for his review personally to ORC 737.19

Rizzo: I did

Ondrey: And the Mayor affirmed your decision

Rizzo: Yes

Ondrey: Subsequent to Officer Cardaman filing an appeal on this decision did you and he have a discussion regarding his appeal?

Rizzo: Yes

Ondrey: And did he indicate to you in any way that he agreed that he failed to perform to your expectations

Rizzo: He did

Ondrey: How did he do that?

Rizzo: He stated he had made some mistakes and that he was willing to take his lumps

Ondrey: Lastly, you've heard allegations here tonight that you only did this disciplinary action out of retaliatory motive against him

Rizzo: I've heard that

Ondrey: Ok what is your response to that

Rizzo: I believe that's untrue and it's quite a stretch

Ondrey: I don't have any further questions

Leffler: Chief I have some questions for you. If you don't understand my questions you can ask me to rephrase it

Rizzo: Ok sir

Leffler: I'll assume if you can answer the question you can understand it and answer it appropriately

Rizzo: Ok

Leffler: You were appointed the Chief on January 28, 2013

Rizzo: Yes

Leffler: And you indicated that Chief Wetzel was still the chief at that time

Rizzo: Yes

Leffler You indicated that Chief Wetzel had asked you to look into a January 16th incident

Rizzo: There was no incident on January 16th

Leffler The two incidents in which Sergeant Cardaman left

Rizzo: Yes

Leffler Did he inquire about those circumstances of Sergeant Cardaman

Rizzo: Did he inquire about them?

Leffler Do you know whether Chief Wetzel asked Sergeant Cardaman about those

Rizzo: No he did not

Leffler You indicated at that time there was a verbal counseling about it.

Rizzo: Yes

Leffler That occurred on January 16th

Rizzo: Yes

Leffler And it was your opinion that Sergeant Cardaman's actions didn't live up to a serious situation

Rizzo: Yes

Leffler It was also your testimony that at least from day one it was your understanding that the practice was that the employees could leave the jurisdiction if not called directly for mutual aid

Rizzo: On a serious event, yes

Leffler Have you ever left the Village without being called for mutual aid

Rizzo: Yes

Leffler Were you disciplined in those matters

Rizzo: No

Leffler And following the consultation on January 16th, you issued the directive that no officers were to leave the Village without being called for mutual aid

Rizzo: Correct

Leffler And that was issued on February 8th

Rizzo: Yes

Leffler After both of these incidents occurred and after your verbal consultation

Rizzo: Yes

Leffler So this directive was not in place at the time of January 16th

Rizzo: This directive was to solidify past practice

Leffler And that directive permits employees to leave for officers in distress or serious circumstances. And can you determine when an officer is in distress just by listening to the radio.

Rizzo: Yes

Leffler You can. Would you say the officer in Middlefield was under distress at the time he got shot?

Rizzo: Yes

Leffler And he did not call for mutual aid prior to that so you don't know when an officer is going to be in distress

Rizzo: No

Leffler Have you responded to a Middlefield call without being called for mutual aid

Rizzo: Yes

Leffler So that was after your memo you felt that was permitted for you to respond in that circumstance

Rizzo: I was at my house when the call came over and I went from my house. I live in Middlefield, I wasn't working here.

Leffler Did you take a Village vehicle

Rizzo: No

Leffler After your consultation on January 16 are you aware of whether Sergeant Cardaman has ever violated that policy

Rizzo: Which policy

Leffler: The February 8

Rizzo: No

Leffler He's not violated that

Rizzo: No

Leffler So after your consultation you issued the directive and he hasn't violated that

Rizzo: No

Leffler But you considered that in issuing your charges on March 28th

Rizzo: Yes

Leffler And what is your definition of what constitutes a serious situation

Rizzo: As I stated before, a serious situation where an officer is need of assistance, school shooting that type of thing. Serious incidents, obviously when you can hear the officers on the radio you can hear what's going on the call

Leffler So your testimony was that when an officer needs assistance

Rizzo: Yes is in distress or needs assistance

Leffler So if one officer in Russell responds to a domestic violence call is that officer in distress

Rizzo: I'm sorry

Leffler Is that a serious situation for that officer

Rizzo: If there's a domestic violence and that officer is by himself, yeah we will get called, mutual aid will go to that call

Leffler What if the officer doesn't know whether he's going to need help

Rizzo: The dispatch will call us mutual aid. They know that officer is on the road by himself. Their dispatcher will call us.

Leffler And if they don't then the South Russell

Rizzo: We may not be monitoring, we may not know at all

Leffler But under those circumstances, a South Russell police officer would not be permitted to assist that officer without being directly called for mutual aid

Rizzo: We would be permitted to, absolutely

Leffler What about a pursuit of a fleeing vehicle? Is that a serious situation?

Rizzo: Could be

Leffler Are you aware of the duties of the Village Marshall under Revised Code?

Rizzo: Yes

Leffler How are you aware of that

Rizzo: We reviewed them recently when it came to these specific charges

Leffler And those are contained in Revised Code 737.19

Rizzo: I believe, not sure

Leffler In subsection C of that section that defines the duties of the Village Marshall

Rizzo: Yes

Leffler: And it goes on after the first sentence, it says the Marshall shall arrest all disorderly persons within the Village and pursue and arrest any person fleeing from justice in any part of the state

Leffler: So you have an obligation to pursue a fleeing suspect. And that's what Sergeant Cardaman was doing when he was pursuing the person in Russell

Rizzo: He wasn't pursuing the person

Leffler: So now he's not pursuing I thought your allegation was that he was

Rizzo: He went out of the jurisdiction to respond to that call; he was not pursuing that fleeing person

Leffler: You indicated that you received a letter or a memo from Sergeant Fowler praising Sergeant Cardaman for offering assistance

Rizzo: Yes

Leffler: Did you also, I think your testimony was that only one Village was called for assistance, one Officer from one Village

Rizzo: Yes

Leffler: Did you review the incident report from that call?

Rizzo: Yes

Leffler: Not marking this as an exhibit but just for your reference. Do you recognize that document?

Rizzo: Yes

Leffler: I think it's on the last page of that document, second full paragraph, it says that he requested mutual aid from Orange PD and Chagrin Falls PD

Rizzo: Yes

Leffler: So that's was more than a request for just for one Officer?

Rizzo: The report is incorrect

Leffler: So you're saying that the Moreland Hills police report is not accurate

Rizzo: He did not call for Chagrin Falls, Chagrin Falls sent Officers on their own

Leffler: Are you going to allege that Sergeant Fowler falsified his document?

Rizzo: A portion of that, it's just incorrect, it could be an oversight. In the report it says he requested Orange units and Chagrin Falls. He only requested an Orange unit. Chagrin falls later came.

Leffler: In your letter of March 28 you indicated that Sergeant Cardaman had received a warning in January 2012 from Lieutenant Ferrell with regard to the checking of documentation

Rizzo: Yes

Leffler: Do you have any documentation to support that?

Rizzo: That was directly given to me by Lieutenant Ferrell, I have the documents if you would like to see them. It would be the beginning pages.

Leffler: I don't see any formal documentation

Rizzo: What you're looking at there is a list that Lieutenant Ferrell gave me to follow up with Sergeant Cardaman, he had a talk with Sergeant Cardaman about the incorrect reports. I had to guide Sergeant Cardaman through the report checking process which I did.

Leffler: Again my question is there's no formal documentation of either a written reprimand

Rizzo: No there isn't, there is not

Leffler: And is it your understanding that if they report needs to be corrected by the Officer, that gets sent back to that Officer?

Rizzo: Yes

Leffler: How long does that Officer have to make any corrections or modify the report?

Rizzo: I'm not sure

Leffler: So there's no policy on that Officer getting back to you within a day or two with a corrected report

Rizzo: I don't know what the Sergeant offered as far as how much time needs to be taken on a correction of a report

Leffler: So it could take that Officer several days or week to get back

Rizzo: Well the problem is the reports have already been corrected and they were approved incorrectly

Leffler: You stated that a number of reports in January were not approved

Rizzo: Some were

Leffler: My question is in the letter you said there were reports that were not approved

Rizzo: They were skipped over, there was a group of them skipped over so it wasn't one, a random report here and there, it was a group of reports

Leffler: Well according to your March 26 allegation, it indicates that on 1/7/13 report number 34 was not approved.

Rizzo: Yes

Leffler: Then your next allegation was on 1/16/13 report number 86 was not approved

Rizzo: Yes sir that was my mistake. That was the previous group of reports I was referring to I apologize

Leffler: So that was a mistake in your drafting of these charges

Rizzo: No, a mistake in my testimony

Leffler: So your testimony here today was a mistake

Rizzo: Right now the reports that you referred to are the two reports that are accurate on this report, the group of reports I referred to are not.

Leffler: So these are the two that you actually did not approve?

Rizzo: Yes those two

Leffler: So if an Officer was verifying that there need be corrected and sent back and forth it wouldn't show up as being approved

Rizzo: No it would show up as it was returned that Officer. It wasn't returned to that Officer it was showing that it was open, so that Officer was never made aware that the report was incorrect if that was the case. The reports status was blank.

Leffler: Have you ever been responsible for approving reports in the past?

Rizzo: Yes I have

Leffler: Have you made mistakes on approving those reports?

Rizzo: I have

Leffler: Were you demoted or suspended after those circumstances?

Rizzo: No sir

Leffler: Is there a requirement that the Sergeant check or approve these reports in any particular time frame?

Rizzo: No

Leffler: And with regard to your testimony about the FBI and BCI reports, I think even your testimony here today was that you advised Sergeant Cardaman that the reports were due in the first week of the following month, that's a yes or no

Rizzo: Yes

Leffler: When you forwarded your recommendation of charges to the Mayor, did you speak with the Mayor about this?

Rizzo: Yes

Leffler: When did you talk to him about it

Rizzo: I'm not sure what time frame you're referring to

Leffler: I believe you issued the charges on March 28th

Rizzo: Yes

Leffler: And then forwarded those over to the Mayor for approval

Rizzo: I did

Leffler: Did you talk to the Mayor between March 28th and April 2nd?

Rizzo: The Mayor was on vacation I had to send him an email

Leffler: So when you issued the charges on March 28th you sent them by email

Rizzo: Yes I sent the documents to the Mayor via email

Leffler: So you email them to the Mayor, did you have a conversation with the Mayor between March 28th and April 2nd?

Rizzo: No

Leffler: Have you talked to the Mayor prior to March 28th about the allegations

Rizzo: Yes

Leffler: And did you talk to them about your desire to demote Sergeant Cardaman prior to March 28th

Rizzo: Yes

Leffler: And what was the extent of your conversation with the Mayor at that time

Rizzo: I advised him of the current situation and that I was instructed to take the appropriate action

Leffler: And how long did that conversation last

Rizzo: I couldn't recall

Leffler: Was it 10 seconds or 10 minutes

Rizzo: Maybe a couple minutes

Leffler: Was that the only conversation that you had with the Mayor about the plan to demote Sergeant Cardaman?

Rizzo: Suspension as well

Leffler: So regarding all of these allegations you had maybe a two minute conversation with the Mayor about what your intentions were

Rizzo: Yes

Leffler: And you became a Sergeant in February 2011.

Rizzo: Yes

Leffler: And prior to that you were a patrol Officer

Rizzo: Yes

Leffler: And Sergeant Cardaman was your supervisor

Rizzo: Yes

Leffler: Has Sergeant Cardaman ever disciplined you or were taken another job action against you

Rizzo: No

Leffler: How would you describe your relationship with Sergeant Cardaman prior to becoming Chief?

Rizzo: We've had our disagreements but we get along for the most part

Leffler: And you are aware that Sergeant Cardaman had given testimony or a statement in an EEOC investigation?

Rizzo: Yes

Leffler: And during that investigation you had forged or altered a document basically from the city of New York

Rizzo: Yes

Koons: Excuse me, on the forged document, what document number is on this

Leffler: It is page 1 or it's Exhibit 1 of our book

Leffler: And this is a document that you created that indicates it was from

Ondrey: Objection, the Zeefe matter was thoroughly explored and resolved over 10 years ago and I think that it's inappropriate to rehash what anybody's conduct might have been and we're not here to relitigate it

Leffler: I'm simply just trying to establish there may be some bias or ill will by the Chief towards Sergeant Cardaman

Unknown: And you're doing this based on something that happened over 10 years ago

Leffler: That as well as supplemental incidents, yes

Koons: That's kind of a stretch, (inaudible).

Leffler: Not according to the EEOC

Ondrey: I'll object to that comment. First of all, I don't think you can speak for the EEOC and I have no idea what it means here but I would reiterate that I don't think this hearing is a referendum on what

Michael Rizzo may have done 10 or 11 years ago. That has been thoroughly done, they have already established that it is Officer Cardaman's belief that somehow that there was a tie in into the motivation for this disciplinary action. And I don't think exploring what Officer Rizzo did in those days furthers this discussion at all. I would ask that you just stop Counsel from making further inquiry along these lines.

Koons: There was a situation 10 years ago; there's been no action since

Leffler: Well there were additional allegations made by (inaudible) Officer and sergeant since then, subsequently

Koons: This 10 year old situation, that's done and over with

Leffler: There was a settlement agreement that was reached between the Village and Officer Zeefe

Koons: We object to you bringing up something from 10 years ago, my thought is that's a long time, there wasn't a continual pattern

Leffler: So if I can establish more than just one occurrence, would that be a pattern

Koons: I guess if you could establish more than one occurrence it would be a pattern, yes. I guess we're trying to figure out where you're headed with all of this

Leffler: Then Officer Cardaman during the Zeefe investigation gave a statement that implicated then Officer Rizzo, as a result of that there have been a couple of occurrences since that time in which Officer Rizzo had made similar allegations against Officer Cardaman which turned out to be unsubstantiated and false

Koons: Let's move on to them then okay

Leffler: Chief I'll draw your attention to Exhibit 3 in the book.

Rizzo: Yes

Leffler: Do you recognize page 2 of that document?

Rizzo: Yes

Leffler: And did you create that document?

Rizzo: Yes

Leffler: What was the purpose of creating that document?

Rizzo: I was attempting to show a pattern of OVI enforcement

Leffler: Again Sergeant Cardaman

Rizzo: And our entire department

Leffler: was there an investigation by Chief Wetzel based on your complaint again Sergeant Cardaman?

Rizzo: Not that I'm aware of

Leffler: You are not aware of that

Rizzo: I don't recall

Leffler: Were you made aware that the Chief had cleared Sergeant Cardaman's actions with the prosecutor

Rizzo: I was not aware of that

Leffler: Well I'll draw your attention to page 4 of that document, do you recognize that. It should be dated August 3rd, it's a letter dated August 3rd from Chief Wetzel to yourself

Rizzo: Yes

Leffler: Do you recognize that?

Rizzo: Yes

Ondrey: Dr. Koons once again I'm going to object. This is a letter, first of all we're just seeing it for the first time, but it's from 2005 a warning to Officer Rizzo from Chief Wetzel regarding some behavior of his. He is not on trial here today.

Koons: We need to stay on the demotion. I would sustain that objection.

Leffler: Did you have a conversation with Lieutenant Ferrell in September of 2012 which discussed trying to get either as much information as you can on Cardaman or disciplined him in some type of way?

Rizzo: No

Leffler: Your aware that there is an audio recording from one of the patrol cars that has Lieutenant Ferrell talking to somebody about getting stuff on Cardaman

Rizzo: Yes

Leffler: You're saying that was not you that made that?

Rizzo: No

Leffler: You are not on the other end of that?

Rizzo: Not on that call

Leffler: And you were appointed Chief on January 28 is that correct?

Rizzo: Correct

Leffler: And you initiated charges against Sergeant Cardaman on March 18, correct?

Rizzo: Inaudible

Leffler: Nothing further at this time thanks

Ondrey: I don't have any questions, if I could get a stipulation from Council that we didn't specifically go through a formal process of identification of the March 18th letter from the Chief to Sergeant Cardaman and the June 2012 letter to Sergeant Cardaman coming from Wetzel to him, and the employee handbook that contains the disciplinary procedure policy that we passed out I would like to have all these be entered as exhibits as well as the email that Officer Cardaman acknowledged that he sent to Lieutenant Ferrell in June of 2012 that we discussed.

Koons: I need to see those documents again Mr. Leffler

Leffler: I have no objection to the charges, and the employee policy handbook, I'm not quite sure what the email is though. This is dating back to February 2, 2012?

Ondrey: No, June 2012 I think is the date of his email

Leffler: I'll object to the document just based on relevancy, it's not relevant to what the allegations are

Ondrey: I believe it is relevant, counsel is attempting to get in all kinds of evidence about a retaliatory motive here and this addresses the issue that Officer Cardaman has made that almost identical accusation against other superior Officers so I think it is relevant. And he did identify and you did say yes I did send this email. So okay also on the June 5, 2012 letter from Chief Wetzel to Officer Cardaman.

Unidentified: I'm going to overrule the objection and admit it into evidence

Koons: So this would be the email

Ondrey: Yes and I will provide copies for everyone

Koons: That's what we'll do

Ondrey: The only other witness was going to be the Mayor

Kostura: Dr. Koons before we proceed would you mind if you indulge me for just a couple of questions of the Chief

Koons: Okay

Kostura: Chief I did have some questions about the Hunting Valley pursuit. We spent a lot of time on that today and Officer Cardaman brought forth the idea that he generally works the night shift, is that correct

Rizzo: Correct

Kostura: What time of the day did this event happen

Rizzo: Pursuit

Kostura: The pursuit

Rizzo: I believe it was around 12 or 12:30

Kostura: At night?

Rizzo: Yes

Kostura: How many Officers are on duty in South Russell Village at that time?

Rizzo: Usually two at that point

Kostura: And was he the ranking Officer at that time

Rizzo: Yes

Kostura: So when he left the Village, do we know how far out of the Village he went

Rizzo: Yes

Kostura: How far did he go

Rizzo: Into Newbury

Kostura: Off of 87

Rizzo: Yes

Kostura: Did that impact our ability or could of that have impacted our ability to respond to any events that happened here in South Russell

Rizzo: Certainly

Kostura: What happened to our second cruiser, where is our second Officer at

Rizzo: The second Officer, Sergeant Cardaman gave him direction to come up there with him to block another intersection

Kostura: Come up to where

Rizzo: Russell Township

Kostura: So now we didn't have any Officers in South Russell

Rizzo: No sir, no

Kostura: So at the time, at 12 o'clock at night, on December 20 we didn't have any Officers in South Russell Village to respond to any calls in the event that something happened

Rizzo: No sir

Kostura: And Sergeant Cardaman was the commanding Officer. There was one other officer on that shift at the time and he gave direction to a junior Officer to leave his post

Rizzo: Correct

Kostura: Is this the kind of behavior you would expect from a senior Officer in South Russell

Rizzo: No I would not

Kostura: Did this calculate into your idea as to why you went forward with the recommendation for a demotion

Rizzo: Yes the judgment issues

Kostura: Was there a subsequent discussion with Officer Cardaman following that event

Rizzo: Yes

Kostura: By who?

Rizzo: Myself and Sergeant Cardaman at the time

Kostura: And then there was a subsequent event that happened in Moreland Hills

Rizzo: Yes

Kostura: And again what time of day was that?

Leffler: Objection, that's not his testimony, there was one conversation on January 16th regarding both of these incidents

Kostura: Alright

Rizzo: Yes that's correct

Kostura: Okay so there wasn't a subsequent discussion on the 20th

Rizzo: No

Kostura: But at that time on the 20th though there was nobody in South Russell at the time?

Rizzo: No there was not

Kostura: I don't have anything else

Leffler: I have some questions for re-cross (inaudible)

Leffler: Chief, are there always two Officers assigned to South Russell

Rizzo: No

Leffler: Sometimes there's one

Rizzo: Yes

Leffler: Does that Officer ever transport prisoners to Geauga County

Rizzo: Could occasionally

Leffler: And where's that located at

Rizzo: Route 44

Leffler: In Munson?

Rizzo: In Munson

Leffler: And when that Officer is transporting somebody to Geauga County there is nobody left in the Village

Rizzo: Correct

Koons: Inaudible – 5 minute break

Koons: Are you ready, Dave are you ready

Ondrey: Yes

Mayor Brett was sworn in

Mayor Brett: Matt Brett Mayor

Ondrey: How long have you served as mayor

Mayor Brett: I think I am in my 10th year

Ondrey: Are you personally familiar with Officer Cardaman

Mayor Brett: I am

Ondrey: Have you from time to time consulted with Chief Rizzo about his concerns and thoughts of disciplines for Officer Cardaman

Mayor Brett: I have

Ondrey: Alright I'll ask you more detail about that in a moment - first let me clean up a couple things. Is this an accurate copy of the March 29, 2013 letter that Chief Rizzo sent to you indicating he was suspending and demoted Officer Cardaman

Mayor Brett: I believe it is

Ondrey: And is this a copy of your email response to him, and could you give us a date on that

Mayor Brett: It is an email from me and it is dated Tuesday, April 2, 2003 at 9:46 AM

Dishong: 2003?

Mayor Brett: 2013

Ondrey: And in that email you affirmed the decision of the Chief

Mayor Brett: Yes I did

Ondrey: You listened to all the testimony this evening

Mayor Brett: I have

Ondrey: Are Chief Rizzo's comments regarding his rationale for exercising discipline, had the two of you reviewed that?

Mayor Brett: Yes we had

Ondrey: And in fact you probably discussed it even prior to the decision-making, you knew that he was contemplating this

Mayor Brett: Yes, I was aware of the concerns that had been raised. Chief Rizzo and I had talked a number of times in regard to the pursuit and the call to Moreland Hills along with some of the other issues that were (inaudible)

Ondrey: Why did you affirm his decision?

Mayor Brett: I affirmed his decision because I believe it is the right thing based on a number of things, based on a track record unfortunately that I experienced, based on concerns in regard to Officer Cardaman's judgment that has occurred over a period of time. I believe that Officer Cardaman, and my hope and desire is that he is a good Officer for the Village of South Russell, but I believe that in the role of supervisor over a period of years that we've seen issues and when we have addressed those issues, that the behavior has continued.

Ondrey: When Chief Wetzel issued his reprimand and his warning of sorts in June 2012, did you have discussions with Chief Wetzel about those specific incidents that were mentioned in the letter

Mayor Brett: Yes

Ondrey: Have you had any occasion to have direct conversations with Officer Cardaman over the last couple years about his performance issues in the department?

Mayor Brett: I have. We've had probably a half-dozen meetings or so, some of which were initiated by Officer Cardaman, some of which I or the Chief would have asked for

Ondrey: Did you draw any conclusions from those discussions, about his attitude, judgment, things of that nature?

Mayor Brett: Yes

Leffler: Again it's not, whatever occurred five years ago, four years ago or three years ago it's not relevant to making a determination in this case. My understanding is those all occurred prior to Chief Wetzel's discipline

Koons: I guess I would see it, over the years we've seen a trend

Leffler: The point is that any conversation and I don't think he's had any conversation with the Mayor since Chief Wetzel's written reprimand. So whatever those conversations were or those events there wrapped up and taken care of in Chief Wetzel's discipline

Koons: So there has been no conversation between the Mayor and the Officer since

Leffler: Since June 2012

Mayor Brett: I'm not sure that that's accurate. There were meetings over the last several years and I believe that we did meet since June 2012.

Ondrey: So when you reviewed the specific charges that Chief Rizzo was laying out in the March 29 correspondence, did you take into consideration the knowledge and background you had personally with the Officer as well as the charges themselves?

Mayor Brett: I did. Officer Cardaman and I have worked together for a number of years so of course I would take that into account and my experience with Officer Cardaman and the rest of the department certainly would get factored into the decisions that I made in regard to Chief Rizzo's actions.

Ondrey: Officer Cardaman reviewed some performance evaluations, they have them in the binder there in the book, and I think it may be marked under number seven. In any event, I note there are performance evaluations from 2011 and 2012 that we did not speak about. Are you familiar with them?

Mayor Brett: I am

Ondrey: Was Officer Cardaman's judgment being criticized in those more recent performance evaluations by his superiors. Specifically I think there's a paragraph that marks what areas needs improvement and in all three of them they're indicated its judgment

Mayor Brett: I believe that that's accurate. It's accurate with the July 2012 performance appraisal which listed areas that needed improvement as judgment and acceptance of supervision.

Leffler: I'm going to object again, I believe that Mr. Ondrey objected to whatever Chief Wetzel or whoever other's comments are unless you are calling them to testify here. I have no opportunity to cross examine them or what they meant by their comments.

Ondrey: These are our public records they submitted a number of them without having any witness testify as to them. They simply are the records and they speak for themselves and that's all I'm pointing out. I think they are totally admissible and relevant to this kind of a situation. They're the same performance evaluations they've already testified about, they just left out the ones where judgment is called into question.

Koons: I think I would agree with him, these are public records

Kostura: Aren't these your exhibits, these are your exhibits correct, you submitted them correct

Leffler: I think they are our exhibits

Koons: Then I guess I would agree, I'm overruling the objection

Ondrey: First of all did you have an understanding of what was the acceptable practice within the department for when they could go to other jurisdictions other than when they were requested under mutual aid

Mayor Brett: Well I would have concurred with Chief Rizzo's explanation. Clearly, when we are called out by dispatch, or clearly when we are called by another Officer or there is a significant event, I would know this in one way due to looking at our stats. One of the things we have looked at is the percentage of incidents where we had provided mutual aid versus where we've received it. Over the years, the proportion is well slanted to a much higher percentage where we give mutual aid than what we receive.

Ondrey: Okay the statistics you are talking about, are those limited to when there's been a request or when an Officer just exercise their own judgment that they're going to go, or do you not know?

Mayor Brett: I don't know that I know that, I believe that it is whenever mutual aid, so I believe that those are in either circumstance

Ondrey: Was there anything else then after listening to testimony that you wanted to add to help Council understand why you think the right decision has been made on demotion

Mayor Brett: Yes. Once again, it is my belief that in the role of a patrolman I think that Officer Cardaman can do well. That is our expectation that is our desire. I do have concerns about the performance that he has had as a supervisor, as a Sergeant, as I have shared with you. Officer Cardaman and I had a series of meetings over the years and in those meetings when Officer Cardaman would ask to get together and talk about those things some of the topics that would come up were that he felt that some of the disciplinary actions that he was given or that he was a target or he was being retaliated. We take that very seriously, I certainly took that very seriously and asked a series of questions about the details behind that and never got anything we could substantiate. As I asked for greater information about it, there wasn't anything there to back up any of those allegations, which is concerning to me. It's concerning to me because it is a trend that we have seen that when Officer Cardaman, when things are pointed out either in a consultation, a verbal medium or in any written documentation that there is a series of sometimes it's an admission, sometimes it's a point at other people to blame, sometimes it's this allegation that there are other people that are out to get him, and we sometimes go full circle from yes I had a lapse in judgment, yes I didn't do the right things and back to recognizing the issue at hand.

Ondrey: Did he ever mention the claim that was being picked upon by Rizzo whether he was a fellow Sergeant or in any other role as a result of testimony in the Zeefe matter?

Mayor Brett: I don't recall if he ever cited Rizzo. I do know that there were others that were cited. He may have (inaudible) but I don't know.

Ondrey: Are you aware whether the statements that the Officers gave in the Zeefe investigation, they were not publicly shared, am I accurate?

Mayor Brett: I believe that's true however not sure

Ondrey: So whatever Officer Cardaman may have stated in that was not made known to any of the other Officers, is that correct?

Mayor Brett: I believe that's accurate

Ondrey: And the entire Department was interviewed in that process, correct?

Mayor Brett: I believe that is accurate

Ondrey: I don't have any further questions

Leffler: Mayor I have a few questions for you, if you don't understand my questions you can ask me to rephrase

Mayor Brett: Okay

Leffler: You received the formal charges from Chief Rizzo on March 29?

Mayor Brett: Yes

Leffler: And after receiving the formal charges, Chief Rizzo has indicated that you did not have a conversation with him you just got an email

Mayor Brett: I believe that is accurate

Leffler: And then you responded to the email on April 2nd to confirm the allegations

Mayor Brett: Yes

Leffler: And you were on vacation at the time?

Mayor Brett: I was

Leffler: So I'm assuming you did not do an interview of Sergeant Cardaman between when the charges were issued and the decision

Mayor Brett: Not between those two events. That was accurate. I had met with Officer Cardaman prior to that

Leffler: When was your last meeting with then Sergeant Cardaman, if you recall?

Mayor Brett: I would say that it was probably in February

Leffler: Of 2013

Mayor Brett: Yes

Leffler: And what was the nature of your conversation?

Mayor Brett: The nature of the conversation was Chief Rizzo and I talked about his intentions to move forward with the suspension. I wanted to get together with...(inaudible).

Leffler: This is in February 2013

Mayor Brett: Yes. I believe its February. This might have been in early March

Leffler: The charges weren't even issued until March 18th

Mayor: So this was prior to the charges officially being presented

Mayor Brett: Yes

Leffler: So you had a meeting between yourself, Chief Rizzo and Sergeant Cardaman at the time

Mayor Brett: Yes

Leffler: And you think this was in roughly February or March

Mayor Brett: I would say that this was probably early March. In fact I can tell you when it was, it was March 13th and I know that because it was the day after my birthday, which is the 12th by the way

Leffler: Did you review any documents that the Chief had relied on in issuing the charges?

Mayor Brett: With then Sergeant Cardaman?

Leffler: No with just Chief Rizzo or anyone prior to the charges being issued

Mayor Brett: Had I reviewed any of the documents prior to that meeting?

Leffler: Yes

Mayor Brett: I had reviewed documents; they weren't the documents of the official suspension and the demotion

Leffler: Okay so the Chief issues then Sergeant Cardaman the charges on March 18th, prior to that were you aware or had you reviewed any documents that was serving as the basis for the charges

Mayor Brett: Yes

Leffler: What documents did you review?

Mayor Brett: I had reviewed the letter from Chief Wetzel from June 2012 (inaudible)

Leffler: June 2012 okay, any other documents

Mayor Brett: I don't recall

Leffler: So at least the one document that you looked at was Chief Wetzel's recommended (inaudible) of June 2012

Mayor Brett: I'm sorry say that again

Leffler: But you don't recall looking at any other documents

Mayor Brett: I don't recall if I did

Leffler: After Chief Rizzo issued his charges on March 18th, did you have a conversation with Chief Rizzo

Mayor Brett: I'm sure that we did

Leffler: And I believe that he's testified that that was approximately a two minute conversation

Mayor Brett: I would have said it was much longer than that, maybe 20 minutes

Leffler: And you have a knowledge that looking through the statistical crime reports prior to 2013 that officers had responded out of the Village without being called for mutual aid

Mayor Brett: I had shared testimony that I have looked at our mutual aid stats

Leffler: I think your testimony was those stats included both when being called for mutual aid and when not called for mutual aid

Mayor Brett: I believe that they did

Leffler: So the Village would have been aware that prior to 2013 Officers were leaving the Village without being called for mutual aid

Mayor Brett: For significant issues

Leffler: So the testimony is now a significant issue it's not a serious safety or a serious Officer in distress

Mayor Brett: I would classify those as the same

Leffler: Were there any instances where an Officer left the Village to assist on a traffic stop without being called for mutual aid?

Mayor Brett: I don't know that I'd know that

Leffler: But it's true at least in reviewing the statistics that Officers have left the Village without being called for mutual aid. That's fair to say?

Mayor Brett: I'm making an assumption that the stats that we have are for when we are called out by dispatch we will call the officers or when there is a significant issue

Leffler: That's when an Officer leaves without being called specifically for mutual aid

Mayor Brett: Yes

Leffler: And you testified that Sergeant Cardaman prior to the most recent discipline had talked to you on a number of occasions about potential retaliation within the department

Mayor Brett: Yes

Leffler: And you had asked for more information about it was your testimony

Mayor Brett: Yes

Leffler: Did you ever instruct the Chief to begin an investigation over retaliation

Mayor Brett: I had talked to Chief Wetzel about those claims but there was nothing to investigate, there were no details on any of the events that were referenced

Leffler: And you obtain that information from then Chief Wetzel after beginning the investigation

Mayor Brett: No I obtained that from my discussion with then Sergeant Cardaman

Leffler: And just so I'm clear of here, the one document that you reviewed between March 29th and April 2nd was the letter from the Chief basically, the March 29th letter

Mayor Brett: Yes

Leffler: Nothing further thanks

Ondrey: I don't have any further questions for Matt. So we don't have any further, I move that our exhibits become part of the record which simply means I'm asking Council to consider the documents that at least we presented from our side

Koons: Okay

Leffler: And I would move that Sergeant Cardaman's documents are in there as well

Koons: Okay

Ondrey: And I would object to some of those documents. I don't think there was testimony regarding, if you're asking Dan that your entire booklet be admitted, if you're just talking about the ones that were identified and discussed I don't have an objection, but I don't think the whole book should go in without any foundation for it

Leffler: Just the ones we identified

Unknown: I have exhibits 5,6,7 and 10 as having testimony, being testified about
Discussion about page numbers and exhibits

Leffler: I would include 1 and 3, I think the Chief testified about 1 and 3.

Koons: You say 5,6,7 and 10 and you feel, give you a couple minutes to look

Leffler: No I just think 1 and 3 in addition to those, the Chief testimony of the first page of the document number 1 was created by him as well as exhibit number 3

Kostura: But there was an objection to that and it was sustained

Koons: We already ruled on one, so we're talking then about 3 is the other 1

Leffler: Correct

Koons: Pages 2 and 4 of 3

Ondrey: Dr. Koons I have to step in here as Solicitor and kind of give you all a little bit of guidance. It's your decision, it doesn't necessarily have to happen tonight, it is not crystal clear in the law whether you could adjourn into executive session to deliberate because you are acting in a quasi-judicial capacity. I think there are interpretations that would allow you to do so; I think there's also interpretations that would challenge that so I'm not recommending that you go into executive session but you are allowed to deliberate amongst yourselves here in this open forum. And I would also recommend that prior to making a decision, there ought to be in my mind, some discussion of findings of fact. This matter could get appeal to the court of common pleas if the decision is not acceptable to Officer Cardaman. Findings of fact can assist the court in knowing how you may have weighed some of the evidence and decided on certain matters. If you so choose, I've got some finding of fact to propose to you in this thing but it may be that you want to have your discussion and we can see how it shakes up.

Koons: Where do we stand right now? Were you also prepared to do a closing statement?

Ondrey: I would probably do one if Dan intends to do one, I think we also recognize the lateness of the hour and you all may be fed up to here with listening to it but certainly it's his decision to make

Leffler: I don't intend to do one, I think the evidence has been presented in I'm not sure what additionally I (inaudible)

Koons: Okay if he's not going to do a closing statement, you are not either

Ondrey: I guess I would look to you Dr. Koons, would you like my attempt at a summary, or what I think we're at or no

Koons: No

Ondrey: Sometimes judges look at lawyers and say look I don't need your closing arguments from you

Koons: We do not need a summary. Basically we will deliberate and we will be seeking a simple motion from Council to uphold, modify, or vacate the demotion of officer Cardaman and a finding of fact.

Unknown: Do you want to deliberate here or out there

Koons: David's opinion was we should do it here, we should not break into executive session

Dishong: Can you help us with finding fact

Ondrey: Yes as soon as I find it. Their lengthy, I think listening to the evidence you could conclude as a finding of fact that no specific request was made to South Russell Village by any governmental entity to provide police assistance to the pursuit occurring in Russell Township on December 20, 2012

Leffler: Are you acting as a representative to Council

Ondrey: I'm acting as Solicitor for the Village, it's part of my job is to advise all sitting bodies. I think finding of fact could be that Officer Cardaman chose such police pursuit in Russell Township voluntarily. I think you could find as fact the practice of the South Russell Police Department was to only respond to incidents occurring outside the Village boundaries if a) they were requested per the mutual aid agreement or b) the circumstances reasonably indicated the incident involved a serious threat to public safety or to other police personnel. I think a finding of fact at the time of the December 20th incident in Russell Township there was insufficient threat to justify Officer Cardaman to join in such pursuit. No specific request was made to South Russell Village by any governmental entity to provide police assistance to an incident occurring in Moreland Hills on January 11, 2013. Finding of fact Officer Cardaman chose to proceed to such incident in Moreland Hills voluntarily. At the time of the January 11, 2013 incident in Moreland Hills there was insufficient threat or other serious circumstances to justify Officer Cardaman to leave the Village of South Russell. Officer Cardaman failed to properly the departments incident reports in January and February 2013 as requested by Chief Rizzo. After Chief Rizzo informed officer Cardaman that he should not have engaged in these pursuits outside of the Village, and gave Cardaman a verbal consultation for each, officer Cardaman did not file a grievance over either incident. Accurate and complete incident reports are important to the Village because they are public records and may be used as evidence in subsequent criminal prosecutions. Officer Cardaman failed to timely completely submit certain statistical reports due to the FBI and BCI in February 2013 after being specifically requested to do so by Chief Rizzo. Officer Cardaman received a written reprimand by former chief Jim Wetzel in June 2012 for committing seven different types of improper police behavior as described in such reprimand. In Chief Wetzel's written reprimand of June 2012 to officer Cardaman, the latter was clearly informed me needed to improve his performance and act consistent with the behavior expected of a supervisory police officer. He was further informed that if he failed to do so the Chief would recommend he be demoted. South Russell Village has a handbook which establishes three types of offenses which discipline may be imposed. Included in the Group 1 list of offenses are neglect of work and unsatisfactory work or failure to maintain required standards of performance. Chief Rizzo cited these two types of offenses when he suspended and demoted officer Cardaman on March 29, 2013 and provided him with a detailed list of the incidents including those set forth in the reprimand letter of June 5, 2012 as the charges leading to the

decision. Chief Rizzo has testified that these incidents involving Cardaman demonstrate he does not currently possess the judgment and leadership skills expected of a supervisory police officer including a Sergeant. Chief Rizzo has testified that he demoted officer Cardaman because he does not possess such requisite skills to continue as a Sergeant. Officer Cardaman has claimed that the Chief in imposing such discipline has retaliated against Cardaman for the latter allegedly testifying in support of another officer Zeefe, who had lodged complaints of discriminatory conduct against officer Rizzo in 2001. In support of such claim Cardaman has alleged other officers told him to watch his back because Rizzo was out for blood against Cardaman. Finding of fact officer Cardaman has previously alleged a different superior officer Lt. Ferrell was also retaliating against Cardaman in imposing discipline and similarly claimed other officers told Cardaman to watch his back. Cardaman has demonstrated a history of feeling persecuted by superior officers, being harassed by other officers in believing he is the victim of schemes to ruin his career.

Leffler: I have to object as to finding of fact

Ondrey: You certainly can argue that you don't think they were but I'm telling them what I think are legitimate findings of fact

Koons: You'll get your time to answer questions

Ondrey: Officer Cardaman has never filed or pursued a grievance concerning Rizzo nor made charges against Rizzo for offenses set forth in the handbook. Chief Rizzo has testified that is disciplinary decisions regarding Cardaman which are the subject of this appeal were not based on any retaliatory motives. I suggest as finding of fact chief Rizzo has testified credibly and no such retaliatory motives are found to have influenced this discipline.

Koons: Would you like a couple of minutes. Do you have any other comments?

Leffler: Not at this time

Ondrey:No

Koons: Here's what we'll do, seeking a simple motion from Council to uphold, modify, or vacate the demotion of Officer Cardaman – (inaudible) that motion

Ondrey: You have the ability to impose no discipline, less discipline, more discipline. It's your call or as explained to you, you can affirm the decision.

Binder: So are you looking for a motion on one of those

Koons: We need one, yes

Kostura: I make a motion to uphold the current demotion

Discussion about the hearing being about just the demotion

Ondrey: Just so you know a suspension can only be appealed to Council if it's more than three days, so there is no appeal on the suspension before you it is strictly on the demotion

Koons: I will second that motion

Kostura: Here are my reasons for this: I think it's clear to I think everyone in this room that he seems to be a very good officer. Everybody here is probably here to support him for that reason. But being a police officer and being a leader are two separate and distinct things in my mind. I think you can be a good leader and be a good police officer but I think you also have a job as a Sergeant to do something more than just be a good patrolman. It seems to me from the documents that your own counsel put in, that for a period of time you walked on water. But it appears from 2011 on that, that just didn't seem to happen anymore. The documents that you even submitted say areas of judgment, areas that need improvement, Chief's comments more thought needs to be made in the decision-making process, your Lieutenant said you have supervision issues. 2012 areas of improvement, judgment and acceptance of supervision. The June 5, 2012 reprimand concerns me. To me this just seems to be a track record starting in 2011, 2012 and now we're into 2013. Improper records and reports, honestly at the end of the day I don't think that

that's a huge deal okay. Everybody can make a mistake, you said that, I think the Chief said he's made mistakes on records, I've certainly made my share of mistakes on records. But it's part of good order and discipline. If you cannot be expected to live up to a certain standard, how can your patrolman that look up to you as Sergeant expect to live up to that same standard. What troubled me about that whole line of questioning that came from your counsel to you was that you testified that I didn't know my discussions were being documented, will that really is the true tenement of a leader, is that you do what is right even when people aren't looking. That's what bothered me about that comment about that line of questioning. Finally we want to go into the issue of mutual aid. Again this goes back to the issue of poor judgment. Your counsel brought forth that, hey sometimes there is no officer in South Russell and that's just the way it works. You know if you've got a take someone out to Route 44 to the jail, I understand that. But what troubles me about that, it wasn't that situation this time. The situation was you decided to go out on a mutual aid call that is questionable and arguable whether it was really mutual aid and whether it was necessary. And you pulled along one of your junior officers with you. So now the Village is without an officer, now when there are instances where you only have one officer on duty and they have to go out that's a necessity you have to do that. But you made a judgment call, and to me that troubles me because you are put in an area of responsibility for a reason. You've done this for a long time and everyone here could probably testify to the fact that you are a good person that generally makes good decisions. But it appears to me that there's been a track record of poor decision-making. I would like to see you stay on the force, I would like to see you come back from this but in my mind at this point in time you don't deserve to wear the stripes. You deserve to be a patrolman and shows again what that means because for a long time you did a great job and I'd like to see that person again. Those are the reasons, my rationale, as why we uphold the demotion.

Koons: This has been tough on all of us, I know this has been tough on you and your family. Wish it didn't happen but it did and we have to take this action so unless we have more discussion we are ready to vote.

Porter: Brian mentioned the performance evaluations, and I was just going based on what you submitted. Back in 2006 you were rated 63, 62, 64 and by July 2012 you're down to 47. That to me means since 2009 you've been on a declining pattern for the last three years and you're a Sergeant. I am familiar with the military too, sergeants are expected to do things and be examples, and to make sure that the people that are learning from them learn the right way. In the 2012 reprimand Chief Wetzel issued to you references a May 13, 2012 incident where you reported in as you weren't fit for duty for South Russell but you were directing traffic or something like that. And in 2013 Chief Rizzo's reprimand there's something about leaving a shift two hours early but only reporting one hour of comp time. By my reading of your Exhibit 10, those are two Group 3 offenses which this Council tonight could impose discharge because one would be one offense, than the second one. So I don't think that's warranted but I agree with Brian that the demotion should be upheld.

Koons: Danielle will you call roll please

Roll call – ayes, Binder, Dishong, Kostura, Koons, Porter and Wolfe. Motion carried to uphold the demotion of Mike Cardaman.

Koons: These proceedings are closed

MAYOR'S REPORT: Mayor stated that Council still had to conduct other business. A resident asked if he could comment and the Mayor granted him a couple of minutes. Christopher Manacci said that he was concerned with the track record of Chief Rizzo, and that was not brought up and he was concerned that that discussion was not had. He felt it was unjust, unfair and one-sided. Manacci stated he was wondering how it would be recommended to have that discussion in a public forum. Mayor suggested he bring it up with their counsel, and that this hearing was about Officer Cardaman's behavior.

Mayor reported the Village was approached by Chagrin Falls Schools regarding a fuel purchasing program. He stated four parties Chagrin Falls Village, South Russell Village, Chagrin Falls Suburban Fire department and the Village of Bentleyville will split the cost and the Village share would be \$3,750 for a savings of \$6,500 to \$7,000. Dishong made a motion to allow the Mayor and Fiscal Officer to enter into

an agreement with Chagrin Falls School system for the purchase of bulk fuel, seconded by Kostura. Roll calls, ayes – all. Motion carried.

Mayor reported significant progress has been made for the Regional Chagrin Valley Dispatch Group. He said they met again late last week and they finalized a restated agreement along with revised bylaws. Mayor said he would like to introduce it in the first meeting in May, and look to move on it in June.

Mayor reported the rental property estimated costs for \$20,000 to \$25,000 and Council had approved \$20,000. After looking closer, they found items that needed to be added on that were not previously identified, and Mayor stated the costs are higher in the ball park of \$33,000 and he asked Council to amend or add an additional \$15,000.

Mayor reported that Dr. Koons and he met with First Energy regarding the utility corridor and they have removed some trees and brush. He said they said no mass application has or will occur before the Village receives MSDS sheets, labels for the products and a plan for how they will proceed. Mayor reported they may delay this until late summer.

ORDINANCES/RESOLUTIONS:

Porter made a motion to approve an additional \$15,000 for the rental house renovation and declared an emergency and moved to waive further readings, seconded by Koons. Roll call, ayes – Dishong, Koons, Kostura, Porter. Roll call, nays – Binder, Wolfe. Motion did not pass. Will move to a second reading on May 7th.

FISCAL AUDITOR: Fiscal Auditor reported he distributed his reports and there was nothing significant to discuss.

SOLICITOR: Advised Council Mr. Cardaman's counsel filed an appeal of his suspension to the Common Pleas Court and if they appeal tonight's decision the two will undoubtedly be consolidated together so all the issues could be reviewed at one time.

BILLS LIST: Wolfe made a motion to ratify the bills list dated 4/15/13 in the amount of \$47,235.31, seconded by Koons. Roll call – ayes, all. Motion carried.

ADJOURNMENT: Being that there was no further business before Council, Wolfe made a motion to adjourn the meeting at 12:56am, seconded by Binder. Roll call – ayes, all. Motion carried.

Matthew E. Brett, Mayor

Danielle Romanowski, Fiscal Officer

Prepared by: Sheryl Hatridge