

SPECIAL MEETING OF THE TOWN OF PLEVNA—Thursday, December 10, 2020, 7 p.m.
Plevna Community Center

Mayor Benner called the meeting to order at 7:00 p.m.

Councilmen present were Jordan Hoffman, Kyle Vennes, Alba Higgins, and Gary Thielen.

Also present: Krista Nemitz, Clerk/Treasurer
Corrine Sander, Wastewater Operator

Julie Straub, Human Resources

Members of the public present: Shawn Sander

Mayor Benner announced that this is to be a personnel meeting pertaining to the Wastewater Operator. He then asked the operator if she would like the meeting to be open or closed. The Wastewater Operator replied, "The meeting can remain open."

Mayor Benner stated that the Town of Plevna has an interlocal agreement with Fallon County for the use of their Human Resources Department. He then turned the meeting over to Julie Straub, Fallon County Human Resources.

Corrine Sander announced that she would be recording the meeting.

Julie introduced herself and stated that she will be assisting the Town of Plevna with their Human Resources Department through the interlocal agreement between Fallon County and the Town of Plevna. Julie offered to provide her credentials and background; Corrine declined needing the information.

Open—Personnel Meeting Discussion:

The Fallon County Human Resources Manager, Julie Straub, will be referred to herein as "Julie".
The Town of Plevna Wastewater Operator, Corrine Sander, will be referred to herein as "Corrine".

Julie, "My goal for tonight is to formulate a plan of how we can move forward. I think that we have come to a serious crossroads as to the state of your employment. My goal is to find a way to have a working relationship so that you can continue your employment and meet the needs of the Town of Plevna."

Corrine, "OK."

Julie, "I have a number of things that I would like to cover. We do have two disciplinary documents that have been completed; there was a verbal warning on January 13th, 2020, and a written warning on February 27th, 2020. With the written warning there was a mowing deadline that was extended to July 3rd, 2020. We will come back to discuss your written response to the written warning because I would like to talk to you about that."

"On May 11th, 2020, you were again directed to complete the mowing. You were advised that there was a brush hog available to rent from Griffith Rental and that Jason Griffith would provide training to you. You did not complete that training. There is some question as to whether or not you intentionally or unintentionally mislead Mr. Griffith as to what the brush hog was to be used for. Anytime that you are going to complete your work and any equipment is required, I want to make sure that you are trained and capable of using it. I am not going to put an employee in a spot where they are doing unsafe work or are not comfortable doing it. We will also address this later, but we have to be able to work together as adults to do it."

"In July, at the time of the deadline to complete mowing, you presented a physician's note. Your physician's note is dated March 19th, 2020. It was July 6, 2020, when you presented this note to your employer. The note states that you may not lift over 20 pounds with work. The comments state that the patient had extensive surgery in February of 2019."

Julie, "First of all, I am sorry that you had to have extensive surgery. My first question is, why did you not present this in February of 2019?"

Corrine, "There hadn't been a circumstance to come up that would have required either straining or the lifting that is mentioned in the letter."

Julie, "OK, so you had extensive surgery; has it resulted in a disability?"

Corrine, "Not a formal disability, no."

Julie, "OK, so this letter says no lifting over 20 pounds. When was that restriction lifted?"

Corrine, "It hasn't been lifted; it is a condition of post procedure."

Julie, "I am sorry you had to experience that however, you are saying that you permanently cannot lift anything over 20 pounds."

Corrine, "Well isn't that what the letter says."

Julie, "I am asking you; is that what you are telling us."

Corrine, "Well, let me look at the letter just to be sure."

Corrine reviewed the letter sent by her physician, then stated, "Yes, I agree with the letter. That is what the letter says."

Julie, "OK, so you cannot lift anything over 20 pounds permanently?"

Corrine, "Yes, that is what the letter says."

Julie, "So that restriction then, follows you throughout your life and into your other employment?"

Corrine, "I am assuming so."

Julie, "So at your other employment, you are not lifting more than 20 pounds?"

Corrine, "No."

Julie, "So then, we have a situation that presents where you are saying: 'This is something that I cannot do.' Correct?"

Corrine, "Uh huh."

Julie, "OK. So then, I would like to engage in an interactive process with you. Via the Americans with Disabilities Act, along with the two amendments to that act: the ADA and the ADAA, we will engage in this interactive process. The first thing that I am going to need is updated and current documentation from your physician. I have a form that I send, the physician will be familiar with it and will complete it. From that we will be able to determine the extent together what that disability is and what we as your employer can reasonably accommodate without causing an undue hardship."

"Would you please provide your physicians name for me."

The signature line on the physician's note is not legible.

Corrine, "Honestly, I would have to go back and look because I cannot remember her name."

After pointing out the physician names listed at the bottom of the letter, Corrine stated, "I think it is Papez."

Julie, "Are you still under Dr. Papez's care?"

Corrine, "Yes, although I have not seen her since the surgery."

Julie stated that she will get the form sent off to Dr. Papez the next day and let Corrine know when it has been returned. Julie took down Corrine's contact information and noted when the appropriate times to contact her would be. Julie reiterated that she would contact Corrine's physician, send the form, and explain her role along with a copy of the physician's note. Once Julie has received the form back, we will move forward.

Julie, "Do you have questions for me yet?"

Corrine, "No."

Moving forward, Julie asked, "You have not been willing to sign the job description. Is that correct?"

Corrine, "Yes, that's correct."

Julie, "You don't have to, employees can refuse, it does not change anything. You sent back a modified version in which you also identified doing the lagoon mowing. So, tell me about how you anticipate being able to do the mowing in your version of the job description but not in the description the council and I wrote."

Corrine asked for a moment to look for something.

Julie, "I do have one more question about the physician note before we move forward. May I go back?"

Corrine, "Sure."

Julie, "Can you tell me why you did not contact the council prior to the deadline of July 3rd, 2020, to notify them that you had a physician's note that may prohibit you from carrying out and meeting the deadline of mowing? Or when the directive was given multiple times?"

Due to Shawn Sander leaning in and whispering to Corrine, Julie stated, "Neither Weingarten nor Garrity apply. I am not speaking with you. I am speaking with Corrine."

Shawn Sander, "That's good, then maybe I will have an input to her."

Julie, "You are not the employee. So again, neither Weingarten nor Garrity apply."

Corrine, "Now what was the question again?"

Julie, "You presented a physician's note on July 6th. My question is: Why had you not brought that to the attention of the council any time prior to the deadline of July 3rd?"

Corrine, "My understanding is that if an employee has something that comes along that is a physical change for them and affects their job in any kind of fashion; it's up to me to meet their needs. It's not up to them to have to alter whatever they need done to make me happy. It is up to me and that's what my thinking was."

Julie, "You knew you had this restriction; you believe it's permanent; you understand that it is up to the employer to determine, via the ADA, if reasonable accommodation can be made for an employee that is presenting with a permanent disability. You are saying that you understand all of this and that you would

do it for your staff, which is federal and state law. So, why did you not present this to your employer in a timely manner?"

Corrine, "The first time they wanted the mowing done it was in the wintertime. Which I felt presented a safety issue."

Julie, "Did you know you had this restriction then?"

Corrine, "Well yes."

Julie, "So you knew you had this restriction, but failed to present it to your employer?"

Corrine, "Just give me a second; I need to find something."

Julie, "Sure."

Corrine, "I have an email from July 1st, 2020, 8:22 p.m.; I tried to see if Rick could help but he wasn't available. Alba had mentioned possibly having Bobby help, I contacted them; they could not help. So, then I got ahold of Riegers and they came and took a look. They said they could do it and they would have met the deadline. I let Krista know about that. The council said that it was too much of an expenditure. But, prior to that if I am remembering correctly, I had gone down and visited with Jason Griffith about the brush hog. He told me at that time that he personally did not feel that that unit was suitable and should be used in that application. He told me that if we tried to use that brush hog on a slope it will pull itself down and off the slope. That's what he said."

Julie, "I am going to go back to my original question. You knew about your lifting restriction and you failed to inform your employer prior to July 6th."

Corrine, "And I told you the reason why is because up to that point I did not feel that I had a situation where I would be straining or having to lift over 20 pounds."

Julie, "So when you were given, for example, the last time the directive was extended, May 11th, 2020. You were directed to complete the mowing again then. You knew about this permanent restriction on lifting. You get this directive; why did you not say: 'I have a physical restriction. I am not able to do that.'"

Corrine, "Well, I am not sure except that what I said before is that my thinking was that if I had this issue that was such that would be that I couldn't meet that parameter and not only that, but I wasn't sure if I would have to tell these guys what I went through to get to this point. And that I did not want to have to do that. I don't mind them knowing the information that is on the sheet."

Julie, "Why did you decide that July 6th was the date you would share this information after the deadline had passed?"

Corrine, "Honestly, I can't remember. Except that maybe I forgot that I had the letter in my file. There has been a lot of water under the bridge from 2019 to here."

Julie, "Had you forgot about the lifting restriction?"

Corrine, "Well, it wasn't forefront in my mind, honestly it wasn't. But then I was going back through all my paperwork and I thought well I better turn this in and if I have to get to the degree of explaining explicitly what happened then I guess I will."

Julie, "May I ask you another question? Did you turn this in on July 6th, after the deadline, as a last-ditch effort to save your employment? Because nothing else had worked?"

Corrine, "No."

Julie, "So, we were talking about job descriptions and how the version that you submitted has not been accepted by the council, nor will I endorse it; you plagiarized some of my work without permission. In your version, mowing is also identified. When you identified mowing as a job task, and you know about your restriction; how does that work together?"

Corrine, "Well, mowing is part of a possible duty."

Julie, "It is identified as an essential duty in both of them. Prior to all of this, Corrine, have you ever mowed out there? Or after the first deadline have you ever mowed out there?"

Corrine, "Well the first overall mowing that was done was a couple of years prior. That was done with a rented mower and I did not operate the mower, Shawn did. And that was done with a rented mower from Griffith Rental and it was done as part of the recommendation from the last lagoon inspection. That is the first time, that I know of, that it was mowed."

Julie, "Did you mow earlier this year?"

Corrine, "When they wanted mowing done over there, I tried to do some push mowing, but the vegetation was too thick for a push mower. So, I tried mowing along the edge, but it just didn't work with a push mower."

Julie presented a photograph of the mowed area and Corrine identified that yes, that was the area she had used the push mower on earlier this year.

Julie, "And when you did that mowing and rented that mower did you have permission from the council to expend those funds?"

Corrine, "No, I didn't have permission to expend those funds. But I didn't know that it was going to be an issue because of the fact that it was part of the last inspection. It was a request that was on the last lagoon inspection."

Julie, "Does the state provide funds to the town of Plevna for Equipment to do things like mowing the lagoon?"

Corrine, "Well, it all flows down through the taxpayers."

Julie, "Does the state, specifically DEQ, provide funding to the town of Plevna for rental equipment?"

Corrine, "They do not have to."

Julie, "OK, and they do not. There is no special funding that is provided from the DEQ."

Corrine, "No, there is not. They come and visit; they do their inspections and make their recommendations for if they want fence work done or mowing done or whatever it is they want done. They are the monitoring agency for the system."

Julie, "Yes, absolutely, they are the regulating agency."

Julie, "So, you tried with a push mower earlier this year, but the vegetation was too much. Is that correct?"

Corrine, "Yes."

Julie, "Did you come to the council and say, 'I tried to use a push mower, but it wouldn't work?' Did you engage in that conversation with the council?"

Corrine, "Well I didn't have to because Willie was over there and saw it."

Julie, "My question was, did you speak to the council and say: 'I need an additional resource.'?"

Corrine, "Well no, I did not because Willie was there and saw that I had tried it and I told him that."

Julie, "You have been receiving wages for your employment. You have been receiving wages since February 2019. Is that correct?"

Corrine, "Well, yes."

Julie, "So, since February 2019, you have been receiving compensation without being able to perform the work."

Corrine, "No, I do not agree with that."

Julie, "Just so that you know, if you have been receiving compensation since February 2019 without being able to perform your work, that is fraud."

Julie, "Are you saying that since February of 2019, you have been able to perform your duties? Even with the restriction?"

Corrine, "A large percentage of it yes, except for this restriction; whatever is indicated by the sheet."

Julie, "So, that restriction has prevented you from performing your duties?"

Corrine, "No, not all of it."

Julie, "OK, has it prevented you from performing some of your duties?"

Corrine, "Maybe a small percentage."

Julie, "Like mowing for example, or clearing vegetation; things like that?"

Corrine, "But the thing is, each entity has a certified operator for water and sewer. As the certified operator there are parts of the job that you can request be performed by a contractor."

Julie, "As long as the funding is available?"

Corrine, "For example, say I was the Water Operator. Say there was a leak somewhere; then, as the Water Operator, I can hire a contractor to fix the water leak. It doesn't matter how much it costs, it has to be done."

Julie, "Does the town of Plevna need to be able to pay for it?"

Corrine, "The town of Plevna has to pay for it."

Julie, "So you are saying, that you are authorized to expend funds outside of the Town of Plevna's budget and without prior approval?"

Corrine, "What I am saying is that if there is something that needs to be done such as mowing or dirt work or something like that, the operator can request that the work be done."

Julie, "Can request to whom?"

Corrine, "To the council. For instance, when the deadline was set for getting the mowing done and I got ahold of a contractor and at that time we were also going to work on another part of the inspection. That was all part of the package from the Riegers. They were going to not only mow, but they had the equipment to meet the deadline and do the work in addition to doing fence work. I put that request into the council for completion. The council chose to deny the work."

Julie, "Are you aware of the procedure that a public entity has to do when you are accepting bids for contracts?"

Corrine, "Well, the council has not instructed me to do a formal contract type of situation for work that we needed to get done. They have never asked me to do that."

Julie, "So, if I am telling you now, that there is a procedure that public entities must go through before contracts are done for bids that have been submitted, do you understand that?"

Corrine, "Well except that..."

Julie, "That it is not your decision, it is the decision of the council and they have to follow the laws of a public entity on requesting bids. If only one person bids, the council can decide whether or not to accept it or put it back out for bid. If 14 people put in bids, they will decide what to do."

Corrine, "Well except that there would have been no way to get two or three bids for that job with the deadline that was put on getting the work done. Do you see what I'm saying?"

Julie, "I do see what you are saying. Do you understand what I am saying, that there is a process to go through and that if you are willing to engage in that process and work with the council, I think we can solve a lot of these problems. OK?"

Corrine, "Except that I have seen the council in emergency situations spend more than the minimum \$50 for approval. But if you have a deadline or an emergency that's not going to work."

Shawn Sander leaned in to discuss with Corinne.

Julie, "I am not speaking to you Mr. Sander."

Shawn Sander, "I don't care."

Julie, "If you want this meeting to proceed, and for your wife's employment to continue you will be quiet."

Shawn Sander, "I think what you should do is..."

Julie, "Now Corrine, there is a process that a government entity has to go through when putting out for bids, so the council needs to follow that as do you as the employee. So, if for example, the council says we're going to put out for bid the contract for the mowing. There is a process that it goes through. They decide who does that not you as an employee."

Corrine, "So then, what you need to tell them then is to be cognizant of the deadline if a request comes in for work. It is hard when you are not given very many days to get the work done."

Julie, "The last time the deadline was extended was May 11th; it had been extended several times before that. There does need to be appropriate time to complete things, I agree. But there also needs to be communication and a willingness to talk about concerns, questions, and things that you cannot or are not able to do."

Julie, "So, you stated this is a permanent condition, and you are requesting an accommodation. That is why we are going to go through the interactive process, and I will send documentation to your physician."

Corrine, "OK."

Julie, "So, let's say that we get to the point where we have documentation and have gone through the process and you do have a permanent disability, under the law. Then the council will say, let's do X, Y, and Z to accommodate that. So, let's say we get to that point and you agree that yes I can do that now. Will you do the work?"

Corrine, "What work? Are you talking about the mowing?"

Julie, "I am talking about the work. So, let's say we have done an accommodation for the mowing, will you then do the work?"

Corrine, "Well, I would want to see what their accommodation would be."

Julie, "Of course. I am saying that we would be at the point where we would have agreed upon that. My question is, will you now do the work in a cooperative manner with the council?"

Corrine, "I would do the work as long as there is a sit-down discussion prior to the task so that I would know exactly what it was that they would want me to do. And that it would be crystal clear. And again. I would say that there are tasks listed on the inspection report that I may not have the talent to do. I am not going to say that I am a fencer, I am not going to say that I can fix a dike, I am not going to say that I can do all of the things that might come up. I cannot commit to doing everything."

Julie, "I appreciate that. I will give you an example: I cannot Weld anything, so if someone told me today to weld something at work; I would say, no I cannot. I would not be effective at that task. The key is that you have to be able to communicate about it and talk like adults and be professional about it. You need to be able to say this is my concern and why I am not able to do that. So, I am saying if we reach the point where a reasonable accommodation can be done and is done, will you do the work?"

Corrine, "If it is something that I can do in a safe manner and that I feel safe doing it and I don't feel that it poses a threat to my health or my safety or my wellbeing, I will look at it."

Julie, "So, I am not hearing a commitment, and that is OK."

Corrine, "Well I am not going to commit to doing something that I don't know what it is that they're going to want me to do."

Julie, "The job description is done so you are aware of what the work is."

Corrine, "Well, there are different ways to interpret the job description and the meaning of some of the wording in the job description. I asked Gary specifically about having a sit down to go over the job

description. Remember Gary, when I said I would like to go over it line by line and word by word. Do you remember that? I said that to you. And has that happened?"

Gary, "When was that?"

Julie, "Do you recall my request to work with me in creating the job description? I have a phone record if that helps. I called you and left a message. You called me back on June 17th, 2019, at my office and that is why I have a phone record of it. We talked then; you told me you were not willing to do it now, but maybe after things were resolved you would be, and you gave me a list of things. So, I have no problem with discussing the job description with you but that should have been done in 2019. I still have no problem meeting with you and going over the job description to make sure that you are clear on the intent and the meaning of the words so that we are in agreement on what the work is."

Corrine, "So, then how does that information get communicated to the council then?"

Julie, "The council has read it, signed off on it, and approved it."

Julie, "Corrine, in your written response to your written warning you alleged that you have been discriminated against and harassed but you have not provided any examples. If you are going to stand by that, then part of my next step is that I will conduct an investigation. In that investigation I will meet with you and get specifics and examples, dates, all the information I can to determine if what has happened violates the law. I am not going to ask you to provide that information here in front of the council. That is not fair to you and that is not how I do things. OK? Are you standing by your allegations?"

Corrine, "Uh huh."

Julie, "OK, then I will conduct an investigation. Your failure to cooperate leaves me with nothing to substantiate or not substantiate. OK?"

Corrine, "Uh huh."

Julie, "OK, so I anticipate that I will try to meet with you before Christmas."

Julie, "Another concern is that you have expended unauthorized monies and/or asserted in your email dated July 1st, that you will continue to do so. I want to be clear that the council has told me that only they can authorize the expenditures of money. Unless it is under \$50. Are you clear on that? Do you understand that?"

Corrine, "What have I spent money on except for the mowing? We did the mowing over there. Are they saying that there has been something else?"

Julie, "I know that there was the bill for the mowing. That was approximately \$500. when I read your email of July 1st, I interpret it that you are going to do what is stated in the email and expend moneys. I just want you to be clear, so that you are not doing something that would be against the rules."

Corrine, "Yes, I understand that. I get it."

Julie, "So these are the steps we will take: I will send the form to your physician, Dr. Papez, given the Holidays, I will request that she return the completed form to me by the middle of January. Typically, if she will not be able to meet the requested deadline, her office will contact me and request an extension. I will let you know of this as well as the council. I will contact you and set up a time to do an investigation. I am going to request that you come to my office in Baker. It is private and much easier to conduct a meeting there."

Julie, "Council, do you have any questions?"

There were no comments or questions from the council.

Julie, "Corrine, do you have any questions for me?"

Corrine, "Nope."

Julie, "OK, then that is all I have. Thank you, Corrine, I appreciate you talking with me."

Julie and Corrine made tentative plans to set a meeting time in Julie's office. Julie will also meet with each member of the council, including the Mayor and Clerk. Once all interviews have been conducted, Julie will write a report, giving copies to each person involved and the County Attorney with her findings.

Mayor & Council Comments: No comments or questions from the Mayor or Council.

Having nothing more to discuss Mayor Benner adjourned the meeting at 7:49 PM.



Krista Nemitz
Town clerk, Krista Nemitz

William E. Benner
Mayor, William E. Benner