

Record of Proceedings

Special Council Meeting

March 29, 2014

1 Presiding Officer, Mayor Donald Kuchta called the March 29 special meeting of Macedonia City Council
2 to order at 7:36pm.

3
4 **Present:** Council members' Rita Darrow, David Engle, Sylvia Hanneken, Nicholas Molnar and
5 Janet Tulley; Council Clerk Josephine Arceci and Assistant Law Director Thomas M.
6 Hanculak

7 **Absent:** None
8

9 **Presidential Proclamation of the First Observance Viet Nam Veterans**
10 **On the Fortieth Anniversary of the Viet Nam War**

11
12 Prior to the business of the special meeting Councilor Tulley announced that today is Viet Nam Veterans
13 Day as proclaimed by President Obama. It is the first annual observance and commemoration of the
14 veterans of the Viet Nam War. Forty years ago the young men and women who returned from serving in
15 Viet Nam were ignored, they were spit upon, they were treated poorly Ms. Tulley stated. Not unlike the
16 veterans of the Korean, the veterans of the Viet Nam War had long been forgotten. Today however marks
17 the beginning of the long and overdue recognition of the duty, service and sacrifice made by so many in
18 the name of the United States. [Greg Tulley, Mr. Tulley's husband is a veteran of the Viet Nam War.]
19

20 **LEGISLATIVE ITEMS**

21
22 **ORD. NO. 26-2014**

23 AN ORDINANCE APPROVING THE 2014 ANNUAL APPROPRIATIONS- Line Item Exhibit "A"
24 dated March 27, 2014 and entitled "2014 Finance Committee Permanent Appropriations" was offered by
25 Ms. Hanneken for its **second reading by title only**. Second not required.
26

27 Councilor Tulley questioned Finance Director Svab if any changes have been made to Exhibit "A" since
28 being introduced on March 27 in light of the hard copy given to Council this evening to which Mr. Svab
29 answered no changes have been made, Ms. Hanneken had just requested that hard copies be provided to
30 every member of Council.
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32 Ms. Hanneken interjected that she wanted to ensure all the members had the same hard copy.
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34 Mayor Kuchta expressed disappointment that the administrative staff had not been given the opportunity
35 to provide input. The administrative staff created a workable budget which provided for needed road
36 projects and the replacement of equipment with still providing a \$2M carryover Mayor Kuchta stated.
37 Disappointing as well Mayor Kuchta stated is what has been done to the law department's budget.
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39 Council President Engle suggested a date by set for the next special meeting for the purpose of the third
40 reading of Ordinance No. 26-2014.
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42 Council Tulley suggested more dialogue is needed about some of the issues within the budget. Ms.
43 Tulley provided information she said that has never been discussed. And there was erroneous information
44 in an article in today's edition of the Beacon Journal in which it was stated that Macedonia had an in-
45 house attorney several years ago. That is not true. The several years ago Ms. Tulley added was over 42-
46 years. Ms. Tulley mentioned Ms. Hanneken told Ms. Tulley earlier in the year that she thought she could
47 work with Ms. Tulley. Ms. Tulley thought she had a good idea how to resolve the stalemate relative to
48 the law department and thought Ms. Hanneken would be receptive. Ms. Tulley had proposed keeping the
49 law director's retainer in tack but to cap the billable hours. When is Council going to discuss that option
50 she questioned? It is important to recognize Ms. Tulley stated that the appropriation is not just one
51 person's budget but a collaboration. Ms. Tulley feels Macedonia may be placed in a precarious situation
52 if Council does not pay attention to some of items that have been removed from 2014 budget.
53

54 Council President Engle informed Ms. Tulley that he has been more than happy to talk about the budget
55 at any time. He is in no way trying to squash discussion. Mr. Engle said he suggested setting another
56 special meeting for the third reading of Ordinance 26-2014 only because Mayor Kuchta moved onto the
57 next agenda item without calling for any discussion following the second reading of Ordinance No. 26-
58 2014.
59

60 Councilor Hanneken suggested that the third special meeting be held Sunday, March 30. The original
61 time suggested at 2:30pm did not comply with 24-hours notice.

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62 Law Director Hanculak suggested Council schedule a work session prior to the next special meeting to
63 which is was agreed that a work session would be held on March 30 at 7pm and thereafter a special
64 meeting would be held.

65
66 Councilor Molnar suggested further discussion about the budget be held in Chambers as he feels there has
67 been attempts to stifle open discussion.

68
69 Council President Engle interjected there have been no such attempts.

70
71 Mayor Kuchta then interjected that every attempt at reasoning has been ignored. Being frugal in one
72 thing, placing Macedonia in jeopardy is another Mayor Kuchta stated. Not to have the expertise of the
73 current law director is a serious matter. Not recognizing the department head's requests is a serious matter
74 as well the Mayor stated. Mayor Kuchta mentioned that early on Mr. Svab prepared a budget on behalf of
75 the administration which he was told by Finance Chair Hanneken was workable and yet that budget was
76 never considered. Mayor Kuchta asked Mr. Svab for confirmation of that statement to which Mr. Svab
77 answered, "There have been different budgets. It is just matter of how much carryover this Council and
78 yourself decide to be the final carryover." Mr. Svab continued by saying that if the stalemate continues or
79 Ordinance No. 26-2014 is vetoed that Mr. Svab will be required to get a legal opinion whether from
80 Macedonia's law director or the auditor of state as to how to proceed with payroll for this week given the
81 time frame relative to veto procedures and subsequent action. Mr. Svab would like to see a compromise
82 in lieu of city shut-down.

83
84 Councilor Hanneken mentioned there have been three full finance meetings. Department heads have been
85 present. Comments have been received, there has been no attempt to shut anyone down Ms. Hanneken
86 stated. Not everyone is going to agree on everything Ms. Hanneken stated. Ms. Hanneken agreed with
87 the earlier suggestion that a work session be held prior to the special meeting on March 30.

88
89 Mayor Kuchta suggested a compromise. He suggested that since the new Exhibit "A" has had two
90 readings has original Exhibit "A" introduced on February 27th has and since the budget is work in
91 progress that the latter be approved this evening. The latter truly represents collaboration between the
92 administration and Council and as Ms. Hanneken stated during the last work sessions changes could
93 always be made to the budget to address the legal department.

94
95 Ms. Hanneken told Mayor Kuchta that the February 27th Exhibit "A" is not a compromise because it
96 contains items in dispute. The March 30's work session will include only what has been mentioned this
97 evening.

98
99 Mayor Kuchta told Ms. Hanneken's she is shutting the city down by her actions.

100
101 Ms. Hanneken's response: "No, you're the one saying that. I have told you constantly we can make
102 adjustments. But you are the one who is threatening that and if you did that it would be you're
103 responsibility. You are taking at the disadvantage of all the departments and the residents, the dispute
104 about the method by which we are going to bill the law department and the accountability of the law
105 department for the types of services that they are giving us. That is all that is about. There is absolutely
106 nothing that is being offered as a compromise here. You are offering to do exactly what you want and
107 then make adjustments you can veto. What I am saying is this, we can discuss this tomorrow. Ms. Tulley
108 says she has some suggestions. I am perfectly willing to hear those suggestions. I would like to work
109 through it also. But we are not going back to the original budget which does not resolve the issue that is
110 at hand."

111
112 Mayor Kuchta questioned, "And that issue is the law department?"

113
114 Ms. Hanneken continued, "The issue is the method of billing. That's strictly it. It is not financing.
115 Everybody is getting funded"

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117 Mayor Kuchta interjected, "They were never conferenced with, you supposedly conferenced with every
118 department but not the law department."

119
120 Ms. Hanneken said, "They were invited to our second meeting. They did not show up."

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122 Mayor Kuchta responded, "No department heads were invited."

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123 Ms. Hanneken answered, "They were invited to the first meeting, the second meeting. They were all
124 there. You are right; the law department was not there when we were discussing the law department. But
125 they have had every opportunity to talk with you and to Scott about the issues. I would be happy to meet
126 with them. I never said I wouldn't. What I am saying is this; we are where we are purely on the basis of
127 the accountability for this law department, nothing else. All these other issues are totally resolvable and
128 were really resolved the other night. So, this is all we are talking about, accountability and the way we
129 are billing at this point. That is all we are talking about. I would like to have a meeting tomorrow to talk
130 about Ms. Tulley's recommendation. We will listen to what she is saying and if there are things there that
131 we can all agree on than we will proceed. You do not have to veto any budget based on that. We can
132 even have discussions next week and the following week to resolve this matter. There is no basis for
133 inconveniencing the residents or making employees go through anything when in fact that is the only
134 issue. They are being funded and they will be paid for advice just as they always have been."

135
136 Mayor Kuchta said, "According to what I have, Exhibit "A" attached to this ordinance does not properly
137 reflect and provide for legal obligations that the City must perform pursuant to the Charter. So I will not
138 allow that to go through."

139
140 Councilor Tulley suggested discussion be had this evening because if it holds true, what will be said
141 tomorrow will be like what she heard at the previous finance meetings and that is, "Nope, this is what I
142 am doing." To dispel what Ms. Tulley described as a high school rumor mill she stated that she is not
143 owned by anyone. Her vote is never based on one person's recommendation. Ms. Tulley's decisions are
144 based on facts because she said facts are our friends. Mr. Engle had informed Council that only
145 municipalities use retainers and there is a move away from retainers when in fact Ms. Tulley learned that
146 retainers continue to be used and they are used in the private sector as well. Ms. Tulley appreciates and
147 supports cost savings measures but appreciates and supports good legal representation too. She feels both
148 can be achieved by keeping the retainer as it is but capped the billable hours. After reviewing the law
149 department bills she learned that had the hours attributable to the retainer of \$74,600 been billable hours
150 the cost would have actually been \$107,000. In her mind payment strictly through billable hours is not
151 cost effective. It makes Ms. Tulley nervous she said that certain obligatory duties of the law department
152 mandated by county, state and federal laws may be at issue because they cannot be ignored. Ms. Tulley
153 also reviewed in-house legal representative versus contractual legal firms. Information pertaining to the
154 same was given to Council. Macedonia's costs are in the middle of the range she said. Macedonia
155 doesn't pay the highest retainer nor does it pay the lowest. In Mrs. Tulley opinion if Macedonia is
156 receiving \$30,000 more work out of the retainer, than the City is ahead. Ms. Hanneken had informed
157 Council that the city of Twinsburg pays was \$128,000 when the Akron Beacon reported \$150,000.
158 Macedonia paid \$135,000 in 2013. The 2014 budget originally proposed for law was \$129,000. Billable
159 hours are sometimes difficult to compare. Evaluation is not apples to apples. Every city is different, their
160 needs and issues are different. The amount of time allocated to litigation, contract negotiation and
161 property acquisition varies among communities. Macedonia is in the middle of the range regarding
162 billable hours. It is not the highest nor is it the lowest. The billable hours in 2013 were \$60,600, a
163 neighboring community paid over six digits Ms. Tulley added. Caution should be exercised with regards
164 to the law department Ms. Tulley suggested because the pay ordinance adopted on December 19, 2013
165 provided a retainer and hourly rate of compensation. Ms. Tulley mentioned that Mr. Engle had amended
166 the pay ordinance that evening which Ms. Darrow had seconded to keep the employees pay range as it
167 had existed in the previous pay ordinance and as well to keep the retainer and hourly rate relative to the
168 law department and prosecutor and the hourly rate of the magistrate at the level of the previous pay
169 ordinance. The pay ordinance adopted December 19, 2013 became effective January 1, 2014 and is for
170 years 2014 and 2015. Ms. Tulley mentioned that Mr. Engle had told Ms. Darrow that the pay ordinance
171 is considered a contract.

172
173 Council President Engle interjected that he didn't think he said that to which Ms. Tulley responded that
174 he did during the last work session. Mr. Engle responded he did not.

175
176 Ms. Tulley continued that in her opinion not adhering to the 2013 pay ordinance for year 2014 is a breach
177 of contract. A breach of contract can result in litigation, which is neither her recommendation nor
178 suggestion she added. The two items Ms. Tulley continually hears she said is cost and control. To avoid
179 litigation Ms. Tulley suggested that the 2014 budget honor the pay ordinance by putting the retainer back.
180 Ms. Tulley asked Ms. Hanneken to hear Ms. Tulley out, unlike other times when Ms. Hanneken has
181 turned away. Ms. Tulley suggested Ms. Hanneken honor the current pay ordinance and negotiates with
182 the law department for year 2015 thus avoiding litigation. Regarding the billable hours Ms. Tulley
183 suggested capping the amount at \$25,000 and then develop of process addressing hours exceeding that

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184 amount. This will address accountability and affordability Ms. Tulley stated. There will be a savings
185 under this plan a savings, litigation will be avoided and the door has been opened to do fund the law
186 department differently in year 2015. Ms. Tulley applauds Ms. Hanneken's desire to bill differently. But
187 the manner in which Ms. Hanneken has handled the matter with no discussion with the law director is not
188 to be applauded. Ms. Tulley hopes Ms. Hanneken seriously considers Ms. Tulley's proposal for the 2014
189 budget by including the current law department retainer with capped billable hours for a total
190 appropriation of \$ 99,000, \$30,000 less than the budget the Mayor proposed. Ms. Tulley's added that her
191 proposal provides for cost savings, accountability and control and also opens the door for negotiations for
192 the future.

193

194 Councilor Hanneken informed Ms. Tulley there has been input from the law department via emails. Ms.
195 Hanneken is willing to speak with the law department, she never said she wouldn't. Ms. Hanneken said
196 this is not about just herself; it's about the majority of Council. Ms. Hanneken told Ms. Tulley that she
197 would be willing to review Ms. Tulley's proposal and discuss it because it is the first time a suggestion
198 has been made that is material to this issue. Ms. Hanneken suggested Ms. Tulley's proposal be reviewed
199 during tomorrow's work session prior to the special meeting.

200

201 Councilor Tulley reminded Ms. Hanneken Ordinance No. 26-2014 should be amended to avoid a breach
202 of contract and possible litigation.

203

204 Councilor Hanneken's told Ms. Tulley that was her opinion. Ms. Hanneken reiterated she will review
205 Ms. Tulley's proposal which will be discussed during work session.

206

207 Councilor Tulley interjected that the community comparables relative to law department fees reflects that
208 Macedonia's expenses are average to which Ms. Hanneken responded that it is important to keep in mind
209 Macedonia's size. The requirement of each community is different and often that is based on size. A
210 city of 11,000 does not have the same requirements as a city of 40,000 and therefore should not have the
211 same expense Ms. Hanneken stated.

212

213 Councilor Molnar told Ms. Hanneken that when she made notice of the three finance meetings she
214 indicted "we" have scheduled meetings when in fact he was not asked his availability before she issued
215 the notice. Department heads were also not asked their availability and therefore many could make the
216 dates Ms. Hanneken scheduled. In Mr. Molnar's opinion Ms. Hanneken's actions have been detrimental
217 to this year's budgeting process. Mr. Molnar asked Ms. Hanneken to exercise caution when she says
218 "we" and when she says "I". As to the "we" Mr. Molnar said he has not been included and as to "I",
219 Council is not made up of one member. Council is meant to work together whether there is agreement or
220 not he said. Council is a team even if there are disputes. This budget was not prepared by the
221 administration Mr. Molnar told Ms. Hanneken, "It was prepared by you and Scott." Mr. Molnar told Ms.
222 Hanneken she continues to refer to the accountability of the law department. In Mr. Molnar's mind this
223 suggests a problem although Ms. Hanneken has made no attempt to meet with the law department. Mayor
224 Kuchta does not have accountability issues with the law department and yet Ms. Hanneken removed the
225 law department's retainer without first discussing it with all the members of Council. In Mr. Molnar
226 opinion emotions are overriding facts. The personal opinions some members of Council have of the law
227 director have affected the budgeting process. Mr. Molnar told Ms. Hanneken, "You've had your hands
228 slapped by them a few times you've been told to seize and desist and I think that is what comes into play,
229 why you want to get rid of these guys". Mr. Molnar admitted to having issues with the law director in the
230 early part of Mr. Molnar's term. Mr. Molnar realized however that his emotions clouded his opinions and
231 that his opinions were not based on facts. The law director has provided all his accounting, all of his bills.
232 The manner in which Ms. Hanneken has handled law director's compensation scares Mr. Molnar. Ms.
233 Hanneken has made no attempt to meet and collaborate with the law director. In Mr. Molnar opinion
234 what has happened places everyone in a libelous situation. Macedonia is in court relative to a serious
235 matter. Macedonia must continue to have good legal representation to win this issue but feels there is
236 another purpose at hand.

237

238 Councilor Hanneken rebutted some of Mr. Molnar's statement by saying he attended both of the finance
239 meetings she originally scheduled. The one meeting concentrated on the mainline departments and the
240 other the support departments, including law. The March 10 meeting Mr. Molnar did not attend is the
241 finance meeting all the member of Council had agreed upon. Continuing, Ms. Hanneken said that
242 accountability is not based on suspension. Accountability is an improved way of ensuring that
243 Macedonia is getting the best bang for the buck for the residents. There should be no reason that any
244 member of Council, including herself Ms. Hanneken said who would have animus thus requiring better

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245 accountability. Ms. Hanneken said she believes in accountability in all matters, not because of suspension
246 but because that is the regular order of business. Ms. Hanneken told Mr. Molnar his constant drumbeat
247 that her actions are emotionally based makes it difficult to have conversations. Even though there is
248 disagreement, Ms. Hanneken believes this budget should be adopted because she fully intends to provide
249 opportunity to discuss and make changes later. Regarding compensation to other law departments,
250 Macedonia size has to be factored. The city of Twinsburg has an in-house law department who costs less.
251 There are numerous communities Ms. Hanneken extrapolated from the Ohio Municipal League data base
252 of similar size to Macedonia whose law departments also cost less she said. Ms. Hanneken is worried
253 about Macedonia's legal expenses, particularly in light to the ongoing lawsuit.

254
255 Mayor Kuchta interjected, suggesting what Ms. Hanneken had stated wasn't entirely true. Mayor Kuchta
256 reminded Ms. Hanneken that during last week's work session she made reference to the city of Bedford's
257 law department in the same sentence with Macedonia's. If her statement wasn't libelous the Mayor said
258 he doesn't know what is. Mayor Kuchta continued saying Ms. Hanneken talks as if Macedonia finances
259 have run amuck. Macedonia's budget came in 9% lower last year than projected he stated. Macedonia
260 has been under budget for the last nine years he added. Lower than expected revenue is not the
261 administrations fault Mayor Kuchta stated. Macedonia residents do not deserve less service because of
262 this he added.

263
264 Councilor Molnar added that accountability as defined in ethics in governance has answerability, blame
265 worthiness, liability and the expectation of account giving. It is the aspect of governance related to
266 problems in the public sector whether non-profit and for profit. This definition Mr. Molnar told Ms.
267 Hanneken trumps what she said earlier about the law department.

268
269 Councilor Hanneken interjected that in her experience in government there are standard methods of
270 business which ensure good value for dollars expended. This is about a vendor who has a lot of
271 variability in his contract providing a detailed accounting of the work that has been preformed.

272
273 Councilor Molnar reminded Ms. Hanneken that Macedonia receives a full accounting of the law
274 departments' work.

275
276 Councilor Tulley said every member received has received detailed reports ad nauseam concerning the law
277 department's fees including what was attributed to the retainer and billable hours.

278
279 Ms. Hanneken said she has seen them to which Ms. Tulley questioned then how can you say the law
280 department isn't providing an accounting. Ms. Tulley feels her proposal is a good compromise. She
281 doesn't understand why it will not be considered. Ms. Hanneken is changing an entire process without
282 regard. While Ms. Hanneken doesn't agree, the retainer and billable hours is cost effective and would be
283 more so under Ms. Tulley's proposal. Ms. Tulley believes this year should be used to evaluate and
284 determine the best method of payment going forward. Ms. Tulley said Ms. Hanneken's has the ability to
285 effectuate change starting in 2015 due to her past experience and leadership. Ms. Tulley expressed
286 gratitude to Ms. Hanneken and sincere hope that Ms. Hanneken would take Ms. Tulley's proposal under
287 advisement.

288
289 Mayor Kuchta reminded Ms. Hanneken of the numerous projects undertaken by this law department like
290 relative to the railroad overpass, the railroad bridge widening and the other major road projects that may
291 not have come to fruition had it not been for this firm.

292
293 Councilor Hanneken reiterated that the only difference regarding funding this law firm is the method of
294 payment. Nothing else is at issue and in her mind no reason the city should be shut down as the Mayor
295 has indicated would happen. Ms. Hanneken assured Ms. Tulley her proposal would be reviewed and
296 discussed further tomorrow.

297
298 **ORD. NO. 32-2014**

299 AN EMERGENCY ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER
300 INTO A CONTRACT WITH THE OHIO DEPARTMENT OF TRANSPORTATION ENABLING THE
301 CITY OF MACEODNIA TO PARTICIPATE IN ODOT'S CONTRACT FOR THE PURCHASE OF
302 ROAD SALT FOR THE 2014-2015 WINTER SEASON was **offered** by Mr. Molnar and moved Council
303 waive the requirement that it be read by title on three different days, instructing the Clerk to read it by
304 **title only for its second and third readings.** Second by Ms. Tulley.

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Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley
Nays: None.
The motion carried.

Mr. Molnar moved, Ms. Tulley seconded, to **adopt ORD. NO. 32-2014** and post same according to law.

Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley
Nays: None.
The motion carried, **ORD. NO. 32-2014 declared adopted.**

There being no further business, the special meeting was adjourned at 4:40pm

SPECIAL MEETING, Sunday, March 30, 2014 immediately following 7pm work session

ORD. NO. 26-2014:
AN ORDINANCE APPROVING THE 2014 ANNUAL APPROPRIATIONS
Exhibit "A" 2014 Finance Committee Permanent Appropriations
First Rdg: 03-27-2014
Second Rdg 03-29-2014
Third Rdg: