

Record of Proceedings

Special Council Meeting

July 10, 2014

1 Presiding Officer, Mayor Donald Kuchta called the July 10 special meeting of Macedonia City Council to
2 order at 6:15pm.

3
4 **Present:** Council members' Rita Darrow, David Engle, Sylvia Hanneken, Nicholas Molnar and
5 Janet Tulley; Council Clerk Josephine Arceci and Law Director Joseph W. Diemert, Jr.

6
7 **Absent:** None

8
9 Comments by the Director of Law

10
11 Law Director Diemert thanked Council for gathering for the purpose of this special meeting to discuss
12 funding the law department. Mr. Diemert explained the original appropriations approved on March 30th
13 are insufficient taking into account that members of Council removed the law director's retainer
14 previously mandated by Ordinance No. 127-2013, providing instead for payment solely at an hourly rate
15 and thereby ignoring the retainer entirety. Mr. Diemert said law department has now been working for 70
16 days without adequate reimbursement from the City. The law department did receive \$5,900 at the end of
17 June for May billings which did not compensate for all the work that was done during that time period he
18 said. Mr. Diemert said during the last 70 days he has made six payrolls, paid rent, insurance, taxes,
19 employees' health care costs, library costs and every other business expenses necessary to perform the
20 services he provides to Macedonia's employees and its residents. This has been a burden on a small firm
21 Mr. Diemert stated. There are members of Council who were aware that this would be hoping it would
22 negatively impact Mr. Diemert's ability or capability of serving he stated. Mr. Diemert said he will
23 continue to serve because he took an oath of office to do so despite the attempt by these few members to
24 obstruct his duty to perform his job. During the last 70 days Mr. Diemert said his firm has recovered
25 \$3200 for the time clocks which were illegally purchased last year. The law department received written
26 confirmation that the City will be reimbursed a large portion of the premium that was paid for fleet of
27 vehicles Macedonia did not own in years 2011-2012. On behalf of the City, the law department continues
28 to negotiate with the Board of Tax Appeal and Nordonia Hills school district to bring closure to the
29 \$300,000 property tax claim. The law department is handling millions of dollars in claims against
30 Macedonia by individual(s) claiming the city should authorize permits an HOA will not approve.
31 Regarding this last issue there has been multiple dispositions over the last 70-days including the Mayor
32 and Mr. Diemert himself. On a daily basis the law department receives numerous calls from all the
33 departments for a variety of reasons; a simple procedural question to reviewing contractual agreements.
34 The law department successfully handled litigation relative to the NEORSO regarding its attempt to
35 impose storm water fees. The law department continues to review numerous documents relative to
36 general storm water issues, storm drainage issues and certain EPA related issues. The law department has
37 had to pursue payment for employee health care claims for nonpayment by the previous health care
38 provider. This pursuit has been relentless almost to the point of litigation Mr. Diemert stated. And
39 although the former provider has quarantined payment, Mr. Diemert will not rest easy he said until the
40 funds are received. There have been issues with the Bedford Anodizing for which the law department has
41 had to play a major role. The issue involving the Army Corp of Engineer (JEDD Conservancy) had to be
42 reviewed by the law department Mr. Diemert stated. There have been storm drainage issues which
43 required review. There has been and continues to be the safety of the Ledge Road Bridge. This bridge
44 presents a danger to resident and visitor traffic he said. Extensive legal work has been provided relative
45 to the relocation of the I271 onramp and the third phase widening of Route 82. There has been extensive
46 review of the SIB loan and engineering documents to ensure compliance of federal and state laws relative
47 to public funds. The law department provides support to all departments, all commissions, all committees
48 and boards he added. Mr. Diemert hopes Council reconsiders and adds appropriations in the amount
49 which will cover the retainer mandated by Ordinance 127-2013. Adding the retainer would remove some
50 of the items listed on the monthly bill he added. Mr. Diemert asked Council to pass tonight's amended
51 appropriations in order to, at the very least, pay for work that has already been done. Mr. Diemert said he
52 has implored Council to call him with questions about the billings but no one has. If anyone has asked for
53 anything he added that it has been provided. Mr. Diemert said he has worked for Macedonia for 24-years.
54 Mr. Diemert asked Council to work with him in unison, instead of placing a burden on him. Mr. Diemert
55 said has never had this type of issue or problem in any of the fourteen municipalities he has represented as
56 law director over the last 40-years.

57
58 **Prior to councilmatic action relative to ORDINANCE NO. 68-2014 the following discussion ensued.**

59
60 Councilor Molnar questioned Finance Director Svab why a different amended appropriation ordinance
61 was circulated at 5:23pm this evening compared to the ordinance that was previously distributed to

Record of Proceedings

Special Council Meeting

July 10, 2014

62 Council. Mr. Molnar questioned the late version of the ordinance and the numerous, additional
63 amendments. Given its late distribution there is little time to review the newer document Mr. Molnar
64 opined.

65
66 Finance Director Svab apologized for the latest of the ordinance. Mr. Svab suggested Councilor Molnar
67 remove any item he is not comfortable with approving. Mr. Svab explained to Mr. Molnar that today
68 Building Commissioner Hlad had requested a neutral transfer of \$2500 from the line items of
69 architectural and noxious weeds to vehicle repairs, travel incidentals and overtime. Three thousand was
70 transferred from the human resources- part-time to contracted services in order to cover the cost of an
71 intern who is temporarily assisting that department. This transfer also has a neutral effect Mr. Svab
72 stated. The incidental workers compensation items would not have had to be presented to Council Mr.
73 Svab explained had Council not adopted a line-item budget. Now however no matter how small an
74 appropriation or transfer is it must be approved he added. Mr. Svab explained, regarding Airline,
75 Westwood, the 2014 full-depth road repair program and the storm water projects which were respectively
76 previously approved by Council by ordinances and motions that the auditor had suggested that the fund(s)
77 and/or the transfer of funds be identified by separate ordinance since the fund(s) were not previously..
78 The amount of the transfers relative to Airline, Westwood and the storm water projects is \$358,000 Mr.
79 Svab said. The 2014 full-depth program is \$85,000 unless Council chooses to reduce the amount he said.

80
81 Council President Engle questioned who is being paid relative to HR contracted services to which Mr.
82 Svab explained an intern who is being paid \$10 an hour and who is also floating between several
83 departments being used as needed. Since HR needed some temporary help HR funds are being
84 transferred from one line to another at no additional cost to that department Mr. Svab stated.

85
86 Councilor Tulley asked Mr. Hlad the reasons for building department transfers to which he provided a
87 brief explanation. These transfers as well are budget neutral.

88
89 Council Engle questioned Mr. Svab how the amount for the full-depth road repairs was derived.

90
91 Councilor Hanneken interjected that it was initially thought \$85,000 was needed to cover the list of
92 repairs but after speaking with Service Director DeGaetano \$65,000 is closer to the correct amount.

93
94 Councilor Molnar recalls that the amount more in the area \$100,000. How did it get reduced to \$85,000
95 and now even further to \$65,000 he asked?

96
97 Ms. Hanneken explained \$40,000 was previously appropriated in the 2014 budget for general road
98 repairs. Adding \$65,000 increases the actual appropriation to \$105,000. Ms. Hanneken reiterated Mr.
99 DeGaetano feels \$65,000 is more than adequate.

100
101 Councilor Molnar questioned how much of originally \$40,000 has already been spent to Mr. Svab
102 answered about \$6,000. Mr. Svab added that of the \$20,000 originally appropriated to storm water
103 projects, \$4,300 has been spent.

104
105 Councilor Hanneken reiterated she is comfortable with the sum of \$65,000. She is also now more
106 comfortable increasing certain line items given income tax revenue is coming in higher than originally
107 projected. A good trend that doesn't appear to be letting up she added.

108
109 Councilor Molnar is comfortable decreasing the sum \$65,000 he said as long as Mr. DeGaetano is.

110
111 Council President Engle questioned why the increases in dispatch capital equipment (\$1,100) and police
112 computer maintenance (\$2,400) were necessary to which he was advised the funds are needed to pay for
113 back-up equipment and the maintenance agreement for the video cams and computers in the police
114 cruisers. Mr. Engle is not concerned with the funds relative to HR and the building transfers as they are
115 budget neutral. The transfers relative to workers comp are mandatory and while not neutral less than
116 \$300. The major increase in the budget is attributable to the road and sewer projects (\$423,000) and
117 police and dispatch (\$3,500). Following the brief assessment of expenditures Mr. Engle said the only
118 area remaining to discuss pertains to the law department. Mr. Engle said he received Mr. Diemert's
119 detailed invoices. Mr. Diemert asked that the content of invoices remain confidential. Mr. Engle said he
120 was uncomfortable reviewing them only to the extent that he is the only member of Council who has seen
121 the invoices and there are other members who want to review them as well.

122

Record of Proceedings

Special Council Meeting

July 10, 2014

123 Councilor Hanneken interjected that Mayor Kuchta provided an opportunity for her to inspect law
124 department invoices in the Mayor's office. The invoices however were not detailed. Ms. Hanneken said
125 she has numerous questions regarding several of the invoices which are part of the May 7th and June 5th
126 billings for the reason of fees in excess of \$9,000.

127
128 Councilor Tulley asked Mr. Diemert to estimate how much of his work listed on the invoices would have
129 been covered under the retainer approved by the previous Council to which Mr. Diemert responded a
130 considerable amount.

131
132 Mr. Diemert continued by saying knowing Mr. Engle to be a responsible person Mr. Diemert only
133 provided Mr. Engle with the invoices leaving it at Mr. Engle's discretion whether to share the details with
134 the other council members. Mr. Diemert cautioned that some of information was sensitive or confidential.
135 The case relative to BORMA contains the names of individual employees. Circulating the invoices
136 relative to the Pla case may expose litigation tactics. This would not be fair to Macedonia taxpayers or
137 fair to the employees who are being sued personally in this case he added. Mr. Diemert again offered his
138 availability to answer any questions Ms. Hanneken or any other member of Council may have regarding
139 his invoices. While Mr. Diemert continued to talk, Councilors Engle, Darrow and Hanneken engaged in a
140 private conversation appearing to be examining a document.

141
142 Councilor Tulley asked Councilors Engle, Darrow and Hanneken to share with every member on the dais
143 what the three were discussing privately and to share whatever it was they were reviewing as this is
144 supposed to be transparent Council she added.

145
146 Councilor Engle told Ms. Tulley that is why he did not want to take responsibility for singularly
147 reviewing Mr. Diemert's invoices. Mr. Engle did not want to accept them on the appearance that by
148 doing so he was going behind the back of any member of Council.

149
150 Councilor Tulley told Mr. Engle what he was just doing was just that. Ms. Tulley told Mr. Engle to say
151 what he wants openly while on the dais so everyone can hear.

152
153 Councilor Engle said what he was proposing is a compromise by appropriating \$30,000 to the law
154 department instead of \$60,000 because of the issues Ms. Hanneken still has with some of the invoices
155 which Mr. Engle feels can be dealt with at a later time. This compromise would also provide the
156 opportunity to redact confidential information contained in the invoices.

157
158 Councilor Hanneken asked Mr. Svab the amount of the outstanding legal bills to which he answered
159 approximately \$14,000. Mr. Svab explained that the June invoice was partially paid; \$5903.69 of
160 \$19,973.60. Mr. Svab said he did not have a chance to review the invoices which just arrived. Regarding
161 providing services for 70-days without compensation Mr. Svab does not feel it has been that long since
162 the Mayor had just signed the invoices.

163
164 Councilor Hanneken told Mr. Engle she personally has problems with some of Mr. Diemert's bills and
165 she does not agree appropriating \$30,000 as Mr. Engle has suggested.

166
167 Mr. Diemert interjected the June bills were sent July 7 and are in the possession of the City. They have
168 been approved by the Mayor. Council does not need to see or approve them in advance Mr. Diemert
169 stated. Mr. Diemert reiterated that the law department has provided services for 70-days without full
170 compensation. The only check received was in the amount of \$5903.69.

171
172 Mayor Kuchta interjected the purpose of this evening's meeting was to appropriate a sum of money so the
173 law department would not have to continue requesting payment each and every month. The Mayor said
174 \$60,000 was added to ensure that all expenses would be covered through the end of the year.

175
176 Mr. Svab interjected that \$60,000 may not actually be enough given current legal issues.

177
178 Mayor Kuchta asked Mr. Svab who suggested \$60,000 be appropriated to which Mr. Svab answered that
179 he originally suggested \$50,000 but Mayor Kuchta suggested \$60,000. [There was momentary
180 disruption by members of council to which Mayor Kuchta gavelled and asked for decorum]. Mr. Svab
181 continued. Mr. Svab stated it is difficult to project just how much should be appropriated and questioned
182 attempting to place a cap on legal services given variable hours spent on variable issues, adding, not
183 unlike fees and costs associated with engineering.

Record of Proceedings

Special Council Meeting

July 10, 2014

184 Mayor Kuchta asked Mr. Svab if it's his personal recommendation that law department appropriations be
185 lower than \$50,000 to which Mr. Svab answered that it is not. In Mr. Svab's opinion the services which
186 were rendered should be paid, that the financial obligation to Mr. Diemert should be met.

187
188 Councilor Hanneken interjected that her objective is to understand what Mr. Diemert's bills are for. Mr.
189 Diemert has said he is willing to provide details invoices although Ms. Hanneken has not seen them
190 personally. Ms. Hanneken asked Mr. Svab if she was correct in assuming there is only one outstanding
191 bill of \$14,000 and that about \$30,000 in bills have been paid.

192
193 Mr. Diemert interjected that is not correct.

194
195 Councilor Hanneken responded back to Mr. Diemert that her question was to Mr. Svab.

196
197 Mr. Diemert questioned Ms. Hanneken why she wouldn't ask Mr. Diemert as he is the person sending the
198 invoices and waiting for payment. Mr. Diemert told Ms. Hanneken she has never called or questioned
199 him personally about any of his invoices, that she only asks the finance director about Mr. Diemert's bills.
200 Mr. Diemert reminded Ms. Hanneken that \$14,000 remains outstanding from the May invoice, about
201 \$19,000 from the June invoice and there are few other, smaller outstanding bills for a total of about
202 \$36,000.

203
204 Councilor Darrow asked Mr. Svab to explain Mr. Diemert's billing cycle to which Mr. Svab answered the
205 invoice for work performed in May was received June 9th. The Mayor signed the May invoice June 10th.
206 Mr. Svab said Mr. Diemert is correct in that he is still owed \$14,000 from the May invoice.

207
208 Councilor Hanneken stated Mr. Diemert's bills are being paid and will continue to be paid. For that
209 reason she was stunned to see that \$60,000 on the amended appropriation since he is only owed \$14,000.

210
211 Councilor Tulley told Ms. Hanneken the \$14,000 is from May. Mr. Diemert is still owed for the month
212 of June and now it is already the end of July.

213
214 Mr. Diemert interjected that payment is more than two months overdue. Mr. Diemert feels the proposed
215 appropriations of \$60,000 would cover past due invoices as well as some expenses moving forward. In
216 the meantime Mr. Diemert said he would answer any questions council members have about his invoices,
217 adding however he is not comfortable betraying attorney-client privilege. Mr. Diemert mentioned that
218 invoices which would have pertained to a general retainer would have identified the call received, the
219 caller, their department, their issues, their complaints. Sometimes the issues or complaints are just not
220 about functions related to the City or its resident but from within the working environment he added.

221
222 Councilor Molnar questioned as he has in the past the motive behind Ms. Hanneken's scrutiny of Mr.
223 Diemert's invoices. Is there something of suspension nature or a question of impropriety he asked? Mr.
224 Molnar said he is trying to understand he said what is causing this snafu in paying Mr. Diemert. Council
225 is not securitizing fees and costs related to building, engineer or parks and recreation so why securitizing
226 the law department he said?

227
228 Councilor Hanneken told Mr. Molnar she is interested in seeing what normally appears on billings for
229 attorneys; a detailed level and the hour estimate. Ms. Hanneken asked Mr. Engle if the bills he reviewed
230 from Mr. Diemert include hour estimates to which Mr. Engle answered Mr. Diemert's bills showed a total
231 time, not an itemization of time. Ms. Hanneken asked Mr. Engle what the normal billing practice is for
232 attorneys.

233
234 Mr. Diemert interjected he would like to speak to that question given he has dealt with municipal lawyers
235 for over forty years and he is uncertain how many Mr. Engle has. Invoices from bond or insurance
236 counsel Mr. Diemert stated include one paragraph descriptions of services rendered.

237
238 Ms. Hanneken referred back to Mr. Engle with the same questioned she asked him prior to Mr. Diemert's
239 comment. Were there estimates of time relative to each line item on Mr. Diemert's bill to which Mr.
240 Engle answered no. Ms. Hanneken explained what she is looking for is nothing more than validating that
241 Mr. Diemert's bills are appropriate for appropriate activities. Council is in charge of the appropriations
242 and therefore has that right to review Mr. Diemert's invoices because of the large expenses. Some of Mr.
243 Diemert's bills Ms. Hanneken stated relate to current litigation estimated by Mr. Diemert in February via

Record of Proceedings

Special Council Meeting

July 10, 2014

244 email to cost only about \$1,000 per month, perhaps even less. The actual billings are much greater,
245 \$10,000 for the months of May and June she added.

246

247 Mr. Diemert reminded Ms. Hanneken that the February email was a guesstimate. That guesstimate Mr.
248 Diemert continued was before the plaintiffs took a new tactic, amending their complaint to include the
249 law department individually and personally in the litigation. That action increased the requirements for
250 the defense. The amended complaint caused the law department to require additional attorneys in the law
251 department in order to represent those in the law department who have been named in addition to the
252 attorney for insurance company Mr. Diemert stated.

253

254 Councilor Engle asked why the insurance attorney is involved to which Mr. Diemert answered to defend
255 everyone named in the City and to cover compensatory damages if necessary. Mr. Diemert added the
256 insurance company is not defending the equitable portions of the case however, just damages.

257

258 Councilor Engle asked Mr. Diemert what equitable action the insurance company is defending relative to
259 Mr. Diemert to which Mr. Diemert answered none. Mr. Diemert explained the plaintiff is asking for a
260 mandamus ordering Macedonia to issue a permit. Is that not the same defense for the City Mr. Engle
261 asked Mr. Diemert to which he answered no because the plaintiff is charging that the law department is
262 responsible for the department heads or the HOA. The equitable portion Mr. Diemert further explained is
263 to force him to force the department heads and the HOA to cause the action requested by the plaintiff.
264 Mr. Diemert mentioned he was personally deposed. Mr. Diemert told Mr. Engle since he is an attorney
265 Mr. Diemert is willing to review the case with Mr. Engle if he wishes.

266

267 Councilor Tulley questioned why the Pla case was even being discussed. Shouldn't this subject be a
268 matter for executive session she asked?

269

270 Mr. Diemert reiterated it was for this reason he was uncomfortable providing detailed invoices to every
271 council member and the reason he left it to Mr. Engle's discretion. Mr. Diemert would concede however
272 if the council members who want to view the invoices take an oath to Mr. Engle that they will not divulge
273 what they view, betray the trial tactics of the insurance company or the defense of the law department, the
274 Mayor or the building officials.

275

276 Mayor Kuchta expressed astonishment that tonight's discussion focuses on the Pla case. Why is Jorge Pla
277 attending finance meetings, to learn what is being done to the law department he asked?

278

279 Councilor Darrow interjected that Ms. Hanneken is reviewing other items too.

280

281 Councilor Hanneken stated she questions whether Macedonia's attorney who is a party in the lawsuit can
282 act as the City representative and be paid for that representation. Ms. Hanneken is perfectly willing she
283 added to refer this question to the Ohio Ethics Commission for an advisory opinion or the Board of
284 Commissioners on Grievances and Discipline. The latter also gives advisory opinions is appointed by the
285 Ohio Supreme Court.

286

287 Mr. Diemert told Ms. Hanneken pursue those legal remedies but in the meantime pay your lawful bills.
288 Mr. Diemert told Ms. Hanneken she continues to threat but has yet to question him personally or request
289 his legal opinion. Two or three months ago Mr. Diemert stated Ms. Hanneken threatened going to the
290 Ohio Ethics Commission. Instead he stated Ms. Hanneken just stopped appropriating money to the law
291 department. Mr. Diemert questioned why if Ms. Hanneken is so concerned about following the law that
292 she is not following Ordinance No. 127-2013, mandating the law director be paid an annual retainer.

293

294 Councilor Tulley interjected that prior to the approval of the 2014 budget she encouraged Ms. Hanneken
295 to meet with the law director to review his operations and his billing practices but she refused.

296

297 Councilor Hanneken reminded Ms. Tulley that Ms. Hanneken had created a detailed billing format she
298 wanted the law department to follow. Ms. Hanneken sent the billing format to each councilmember and
299 the Mayor for their review.

300

301 Councilor Tulley told Ms. Hanneken Ms. Tulley's reference was during the budgeting process not after
302 the budget was approved. While Ms. Tulley was still speaking Councilors Engle, Darrow and Hanneken
303 engaged in another separate, private discussion and it again appeared as if they we're reviewing a
304 document.

Record of Proceedings

Special Council Meeting

July 10, 2014

305 Mr. Molnar told Councilors Engle, Darrow and Hanneken to take their time.

306

307 Councilor Engle explained that he was merely trying to negotiate a compromise in order to pass the
308 amended appropriations this evening while still providing an opportunity for members of Council who
309 want to review Mr. Diemert's bills may do so.

310

311 Mayor Kuchta asked Mr. Engle is the same type of review is going to happen with engineering. Who or
312 what is going to be the next target the Mayor asked? Mayor Kuchta reminded Mr. Engle the lag in paying
313 bills doesn't happen when there is a retainer is in place.

314

315 Councilor Engle reiterated he is just trying to move towards a sensible resolution this evening.

316

317 Mayor Kuchta questioned what Mr. Engle meant by sensible resolution when the City is not paying its
318 bills for services rendered.

319

320 Councilor Engle interjected that the services rendered do not amount to \$60,000 and for that reason is
321 suggesting a lower amount be appropriated. And since there are bills in the amount \$30,000 Ms.
322 Hanneken has questioned the appropriations shouldn't be more. Mr. Engle added that Ms. Hanneken as
323 well as every other member of Council has the right to question cost of the law department.

324

325 Councilor Tulley reminded Mr. Engle the questions and tonight's discussion wouldn't have been
326 necessary had Mr. Diemert's legally authorized retainer been included in the budget. Council broke the
327 law by ignoring the pay ordinance she said. Mr. Diemert is owed over \$30,000; \$14,000 from May and
328 \$19,000 from June plus some additional items. Ms. Tulley asked Mr. Diemert if the City is responsible
329 for interest on unpaid bills to which he answered no.

330

331 Mr. Diemert told Mr. Engle his compromise is appreciated but the question of payment will be raised
332 again in August.

333

334 Councilor Engle promised Mr. Diemert that Mr. Engle would provide the law departments detailed bills
335 (redacted) before the issue of payment comes up again. Mr. Engle said his only goal this evening to work
336 towards a compromise relative to the current issue.

337

338 Councilor Tulley interjected that it is clear to her that this evening, on this dais this is a three-two issue.
339 She suggested a determination be made as to how to get through this process so that is its fair to everyone.
340 Ms. Tulley does not want this process to go on month after month simply because someone doesn't agree
341 with Mr. Diemert's bills, didn't get the details they wanted or understand the details. Ms. Tulley
342 reminded fellow council members that administrative bills are under the authority the Mayor. This
343 stranglehold on the administration is unfair and it is unlawful.

344

345 Councilor Hanneken interjected that she is simply asking for reasonably detailed bills for the purpose of
346 knowing that there is no duplication, that there has been appropriate action on legitimate items and the
347 hours associated with the individual activities. Ms. Hanneken said her problem is not whether a bill is
348 approved or not approved. Ms. Hanneken's concern is that there is no process being followed so there is
349 accountability with regards to the attorney's billing. "That is all that this has been about. We have never
350 said, let me repeat, we have never said we would not pay legitimate bills from the legal department." Ms.
351 Hanneken stated.

352

353 Mr. Diemert interjected that in 1972 he took an oath of office to the Ohio Supreme Court to which Ms.
354 Hanneken responded " You are interrupting me. It is not fair to interrupt me. I want to finish."

355

356 Mr. Diemert told Ms. Hanneken, "It is not fair to let you ramble on when you're saying things that are
357 untrue."

358 Councilor Hanneken answered, "I am not rambling, sir. I am trying to explain...."

359

360 Mr. Diemert continued, "There has never been a duplication of bills."

361

362 Council President Engle interjected saying Ms. Hanneken did not say there was a duplication of bills to
363 which Mr. Diemert answered that is what Ms. Hanneken said, that there has been redundant billing and
364 that he may be doing something that is inappropriate. Mr. Diemert stated he could lose his license if he
365 did what Ms. Hanneken has said.

Record of Proceedings

Special Council Meeting

July 10, 2014

366 Ms. Hanneken told Mr. Diemert that she is not accusing him of anything. Ms. Hanneken continued, “The
367 validation process, which is a normal process when billed by anyone is to look at the details and make
368 sure they are adequate and accurate, that’s all. And, it’s not a personal matter.”

369
370 Mr. Diemert asked, “Then why just my department?”

371
372 Ms. Hanneken responded, “It’s not a personal matter unless on your part it is. It is simply accountability
373 to us and we are the representatives of the residents of this City. I am not saying anything other than that.
374 I have said over and over, we will pay legitimate bills that have been reviewed. If you produce bills in the
375 format that I have requested there is no problem. I will be over at your office at your convenience to look
376 at them and we will have a discussion. I am always happy to have one. I am saying from my standpoint,
377 we need to be looking at these things. I do have a problem, the only problem I have is that the things
378 labeled retainer, the detail is not there. On the litigation things I do have a problem with, I don’t, I do
379 believe we should refer that to the Ohio Ethics Commission or to the other board. And if we do that I
380 think I would be satisfied with what their opinion is, whatever it is. And if they say those are appropriate
381 I’m going to say fine and if they don’t, if they say they are inappropriate than you’ll return the funds to
382 us, I’m assuming. As far as I’m concerned the compromise Mr. Engle has suggested I can support. But
383 going forward, we’ve got to have some kind of detailed billing that I asked for and which so far as not
384 been provided. That is all I am going to say about it.”

385
386 Councilor Molnar told Ms. Hanneken, “You talk about accountability and Joe this is directed to you, we
387 passed that ordinance in 2013, what does it take to enact that, to enforce that it be in play right now.”

388
389 Mr. Diemert responded, “I would have to go to court to get a mandamus to force the three council persons
390 to follow the law.”

391
392 Councilor Molnar suggested Mr. Diemert do that because, “Tonight proved a lot of things for the public
393 to see. There is a lot of whispering that has been going on and it is being done in the public’s eye. This is
394 ludicrous. I cannot believe some of the things that have happened tonight. I’m offended by it. That fact
395 that, hold on Dave before you start, that fact that you need to whisper on the floor in front of everyone,
396 that’s a problem, that’s a big problem. That tells me there is impropriety at that end of the table.”

397
398 Councilor Engle asked Mr. Molnar, “Are you done?”

399
400 Mr. Molar responded, “I’m not actually. This little circus you have going on over here where you plan
401 things out in violation of the sunshine law, which has been on T.V. and which many people have brought
402 up to me is a problem and you continue to do it. And I am going to point it out every time.”

403
404 Councilor Engle told Mr. Molnar, “I wish you would. I have not violated the sunshine law. I sit by a
405 councilperson and at the end of the meeting we talk. Someone says that is a violation of the sunshine law.
406 It is not. If it is, Mr. Diemert will address it. I will explain the facts and if he wants he can give a legal
407 opinion. I have been a council member for 14-years. For 14-years people have reached over to me,
408 usually it is the guy next to you because it is pretty difficult to walk over and say ‘what do you think,
409 what do you want to do?’ It has never been a violation of the sunshine law. You talk to people close to
410 you during a meeting and to suggest that there is something with that is ridiculous. Now, to me that is
411 called building consensus. What I was trying to tell Sylvia is let’s work for a compromise. I always
412 thought, but apparently I am wrong in your opinion that a councilperson should work for a consensus, not
413 just crap at each other. So, that is what I was trying to do. And for a circus, this is not a circus. You can
414 call me anytime you want. In fact we are going to meet after tonight’s meeting, I think, maybe not,
415 because we try to build a consensus. So don’t call me a circus. I’ll still meet with you and I’ll be calm
416 when I do and I’ll work for consensus but don’t crap on me.”

417 Mr. Diemert interjected, “That is all I ask, that the law department not be crapped on either. If Sylvia is
418 not out there inspecting the salt deliveries and looking at the weight slips and weighing it, than that would
419 be the same thing that she is trying to do to my department. You are going into such detail that you are
420 not doing with any other department and that means you do not trust the head of that department. You
421 don’t trust the service director you are out there checking on salt weighing or how much gets delivered.”

422
423 Councilor Engle stated, “I understand what you saying. I have not had dinner and I am going to meet
424 with Mr. Molnar and we are going to work it out. Let’s move on ”

425
426

Record of Proceedings

Special Council Meeting

July 10, 2014

427 **LEGISLATIVE ITEM(S)**

428

429 **ORD. NO. 68-2014**

430 AN ORDINANCE AMENDING AND SUPPLEMENTING THE 2014 ANNUAL APPROPRIATIONS
431 ORDINANCE NO. 26-2014 RELATIVE TO LAW, DISPATCH, POLICE, BUILDING, SERVICE AND
432 VARIOUS OTHER FUNDS was **offered** by Ms. Hanneken and moved Council waive the requirement
433 that it be read by title on three different days, instructing the Clerk to read it by **title only for all three**
434 **readings**. Second by Mr. Molnar.

435

436 Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley

437 Nays: None

438 The motion carried

439

440 **First Motion To Amend Ordinance No. 68-2014**

441

442 **Ms. Hanneken moved, Mr. Molnar seconded to amend Ordinance No. 68-2014, Section 2 as follows:**

443

Fund 401.401.5605 Road Materials- Full Depth Repairs	\$85,000
Fund 401.401.5605 Road Materials- Full Depth Repairs	\$65,000
Fund 101.321.5371 General Fund Transfer 401 Funds (Full-Depth	\$85,000
Fund 101.321.5371 General Fund Transfer 401 Funds (Full-Depth	\$65,000

444

445 Roll call: Ayes: Darrow, Engle, Hanneken Molnar and Tulley

446 Nays: None

447 The motion passed.

448

449 **Second Motion To Amend Ordinance No. 68-2014**

450

451 **Mr. Engle moved, Ms. Darrow seconded to amend Ordinance No. 68-2014, Section 2 as follows:**

452

Fund 101.150.5340 LEGAL FEES	\$60,000
Fund 101.150.5340 LEGAL FEES	\$36,000

453

454 Roll call: Ayes: Darrow, Engle, Hanneken Molnar and Tulley

455 Nays: None

456 The motion passed.

457

458 Ms. Hanneken moved, Mr. Molnar seconded, to **adopt ORD. NO. 68-2014, as amended** and post same
459 according to law.

460

461 Roll call: Ayes: Darrow, Engle, Hanneken Molnar and Tulley

462 Nays: None

463 The motion passed, **ORD. NO. 68-2014 declared adopted as amended**

464

465 Prior to adjournment Council President Engle mentioned that Councilor Darrow has requested private
466 legal counsel because she is being disposed relative in the Pla case and did not think Ms. Darrow request
467 unreasonable. Mr. Engle first suggested, by way of motion for which there was no second of
468 appropriating \$2,000 towards Ms. Darrow's request but decreased the amount to \$1,000.

469

470 Councilor Darrow stated she has a dilemma in that Mr. Diemert cannot represent her because he is also
471 named in the lawsuit.

472

473 Councilor Tulley asked Ms. Darrow how her subpoena read, was it titled as a councilperson or as a
474 private individual to which Ms. Darrow said it read councilperson. Mr. Tulley said either way she would
475 not support paying Ms. Darrow's personal legal expenses.

476

477 Mr. Diemert told Council that the Mayor and Messrs. Hlad, Fini and Saxe do not have their own
478 attorneys. The City's insurance lawyer, Charles Curley is representing the elected officials and employees
479 named in the suit.

480

Record of Proceedings

Special Council Meeting

July 10, 2014

481 Councilor Tulley questioned Ms. Darrow why, based on what Mr. Diemert statement would she seek her
482 own attorney.

483
484 Councilor Engle asked Ms. Darrow if Mr. Curley told her he wouldn't represent her to which she said she
485 did not ask him.

486
487 Councilor Tulley told Ms. Darrow if she was named in the subpoena as a member of Macedonia City
488 Council than she should already represented by the City's insurance company. If Ms. Darrow was named
489 personally, Ms. Tulley will not approve allocation of public funds for a private attorney.

490
491 Councilor Darrow responded it is not personal matter because she did not request to be deposed.

492
493 Mr. Diemert reiterated that Mr. Curley represents all the elected officials and city employees named in the
494 suit.

495
496 There being no further business, the special meeting was adjourned at 7:36pm