

Record of Proceedings

Special Council Meeting

December 4, 2014

Presiding Officer, Mayor Donald Kuchta called the December 4 special meeting to order at 6:30pm.

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

**Absent:**

**Prior to action relative to the following agenda items Mr. Engle moved, Ms. Hanneken seconded to adjourn into a finance committee meeting with the intent of reconvening to the special meeting immediately thereafter.**

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

**At 8:05pm Council reconvened to the special meeting.**

**ORD. NO. 111-2014**

AN ORDINANCE AUTHORIZING THE APPROPRIATION OF FUNDS FROM UNENCUMBERED FUND BALANCE TO PROVIDE FOR CURRENT EXPENSES OF THE CITY OF MACEDONIA, AND AUTHORIZING THE TRANSFERS OF TIF RECEIPTS TO THE FINANCIAL FUND was **offered** by Ms. Hanneken and moved Council waive the requirement that it be read by title on three different days, instructing the Clerk to read it by **title for its second and third readings**. Second by Ms. Darrow.

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

Ms. Hanneken moved, Mr. Molnar seconded to **amend ORD. NO. 111-2014, Section 3 as follows:**

From Account No.	To Account No	Amount
TIF RECEIPTS	250.250.5340 County Fees	<del>\$19,532.00</del> <b>\$14,064.48</b>
TIF RECEIPTS	250.250.5342	<del>\$748,204.00</del> <b>\$368,202.52</b>

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

Ms. Hanneken moved, Mr. Engle seconded to **adopt ORD. NO. 111-2014 as amended** and post same according to law.

Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley  
Nays: None.  
The motion passed. **ORD. NO. 111--2014 declared adopted as amended.**

Relative to ORD. NO. 111-2014, Councilor President Engle explained that money relative to the TIF is a pass through, that is, the City receives revenue from the County which the City forwards to Huntington Bank, the Trustee for the account who then disburses the TIF proceeds. The TIF agreement Mr. Engle added is between the City of Macedonia and Summit Point LLC, the parent company operating Summit Pointe senior complex.

Councilor Hanneken interjected the Summit County auditor confirmed that the dollar amounts of the amendments are correct.

**ORD. NO. 116 -2014**

AN ORDINANCE PROVIDING FOR THE 2015 ANNUAL APPROPRIATIONS was **offered** by Ms. Hanneken for its **second reading by title only**. Second not required.

Ms. Hanneken moved, Mr. Molnar seconded to **amend ORD. NO. 116-2014 by allocated \$260,000.00 to Line Item 401.401.5612 to be further identified as Storm Water Repairs - Our Lady of Guadalupe & Sioux engineering and \$30,000 of which shall be allocated to engineering of Sioux.**

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Account	Description	2015 Budget
401.401.5612	Storm Water Repairs <b>OLG &amp; Sioux</b>	<b>\$260,000.00 Sum inc. \$30K Sioux engineering</b>

[Prior to roll call on Ms. Hanneken's motion and because Ms. Tulley had questioned the similarities between two separate line items a brief discussion ensued regarding the descriptions of Line Items 401.401.5612 entitled Storm Water Repairs and 401.401.5629 entitled Stormwater Projects which already contained the amount of \$140,000. Service Director DeGaetano explained 401.401.5629 is an earmark for various other storm water projects unrelated to Our Lady of Guadalupe and Sioux].

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

**Mr. Molnar moved Ms. Tulley seconded to amend ORD. NO. 116-2014, by deleting \$12,000.00 from Line Item 101.101.5116 and adding the sum to Line Item 101.101.5115 as follows.**

Account	Description	2015 Budget
101.101.5115	PTE Salary Council-City Clerk	<del>\$66,000.00</del> <b>\$78,000.00</b>
101.101.5116	Part-time Asst, Clerk	<del>\$12,000.00</del>

Roll call: Ayes: Engle, Molnar and Tulley  
 Nays: Darrow, Hanneken.  
 The motion passed.

**ORD. NO. 117-2014**

AN ORDINANCE ESTABLISHING THE PAY RANGE SCHEDULE OF COMPENSATION FOR THE EMPLOYEES OF MACEDONIA EFFECTIVE JANUARY 1, 2015 was **offered** by Ms. Hanneken for **its second reading by title only**. Second not required.

Relative to ORD. NO. 117-2014, Councilor Molnar asked if the HR administer developed the pay range schedule to which Ms. Hanneken responded that she did.

Mayor Kuchta interjected that Ms. McCafferty did not review the entire ordinance

Law Director Diemert interjected that Ms. McCafferty did not provide for the position of law director to which Mr. Diemert objects.

Councilor Hanneken explained that Ms. McCafferty provided only an amended pay range schedule which Ms. McCafferty sent to Ms. Hanneken yesterday ( December 3).

Councilor Tulley asked that Ms. McCafferty review the entire pay ordinance and validate the pay range schedule before the next council meeting.

**ORD. NO. 120--2014**

AN ORDINANCE AMENDING AND SUPPLEMENTING THE ANNUAL APPROPRIATIONS ORDINANCE NO. 26-2014 was **offered** by Ms. Hanneken and moved Council waive the requirement that it be read by title on three different days, instructing the Clerk to read it by **title for all three readings and waive the 48-hour rule**. Second by Mr. Molnar.

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

Ms. Hanneken moved, Ms. Darrow seconded to **amend ORD. NO. 120-2014, Exhibit A entitled December 2014 Additions to 2014 Annual Appropriations by making deletion and adjustments as follows:**

General Fund No.	Description	Amount
101.150.5430	Legal Fees	<del>\$75,000</del>
	<b>General Fund Total</b>	<del><b>\$227,558.40</b></del> <b>\$152,558.40</b>

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Roll call: Ayes: Darrow, Engle, Hanneken,  
Nays: Molnar, Tulley  
The motion carried

Ms. Hanneken moved, Mr. Engle seconded **to adopt ORD. NO. 120--2014 as amended** and and post same according to law.

Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and  
Nays: Tulley  
The motion passed. **ORD. NO. 120--2014 declared adopted as amended.**

Relative to ORD. NO. 120-2014, and prior to roll call on amendment and subsequent adoption Councilor Hanneken explained that the majority of the numerous appropriations are attributable to employee health care costs. These costs pertain to run-offs through BORMA. BORMA was Macedonia's previous medical provider. Ms. Hanneken explained that only about \$75,000 worth of claims were paid in the prior year budget, the remaining claims fell into this year. The amended appropriation also includes communication and utilities expenses and adjustments relative to the departments of service and park and recreation.

Councilor Darrow stated that she did not want to act upon Ordinance No. 120-2014 this evening because Council did not receive the ordinance until yesterday. In her opinion Council should have received it 48-hours prior to this evening's meeting since the Mayor called the special meeting last week.

Councilor Molnar stated the Mayor called this evening's meeting in order to act upon legislation so bills could be paid.

Councilor Engle said Council should know what the bills are paying.

Councilor Tulley stated in the November 26 email in which the Mayor announced the special meeting included the list of health related items that have to be paid, an explanation and the total dollars relative to each.

Councilor Hanneken stated there is a council meeting on December 11 in which to act on the legislation.

Mayor Kuchta told Ms. Hanneken the bills have to be paid. The City cannot wait until the 11<sup>th</sup>. Council was provided the information in ample time.

Councilor Engle, Darrow and Hanneken stated they did not receive the list of expenses in the Mayor's November 26<sup>th</sup> email as Ms. Tulley indicated that they had. The first time the three council members received the list of amended appropriations was in their ePackets which they received December 3rd. In light of this Councilor Engle suggested Ordinance No. 120-2014 be given only its first and second readings with final action on December 11th.

Councilor Molnar asked the impact by not acting on Ordinance No. 120-2014 to which the Mayor stated some bills are currently in arrears and others will soon be in arrears.

Councilor Tulley asked if late fees apply to which the Mayor said he was unaware of any.

Councilors Engle and Hanneken spoke privately and thereafter Ms. Hanneken announced Ordinance No. 120-2014 could be acted upon by removing the payment of legal fees.

Councilor Molnar asked Mr. Diemert the last time he was paid to which Mr. Diemert answered October for a part of September. Invoices for the remaining part of September and all of October and November are outstanding Mr. Diemert stated. Commenting further, Mr. Diemert said the finance chair continues to say the law department is being overpaid. Macedonia has a budget of \$21 million dollars. A corporation with a budget of this size has legal fees far in excess of Macedonia's he stated. Mr. Diemert said his law firm has been fair and reasonable and has provided the best possible service at the lowest possible rate. The hourly rate of \$128 has been the same for many years. Mr. Diemert stated since October 1 when the majority of Council stopped authorizing supplemental payments to the law department the BORMA case involving unpaid employee benefits has been settled at a payment of over \$100,000. Through the coordinated efforts an all departments the law department led an attack against Norfolk Southern railroad

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relative to the Ledge Road Bridge and potential catastrophe and life-threatening injuries. Norfolk Southern is a \$34.5 billion dollar corporation with an annual payroll budget of \$11 million dollars Mr. Diemert stated. It was Macedonia's law department provided resolution by filing a lawsuit forcing Norfolk Southern to finally come to the table by and offer a major renovation, a commitment to replace the bridge with their support and to reimburse the Macedonia for some of the costs related to the preventive signage that was necessary and to provide weekly inspections to insure that the bridge remains safe. The law department collected outstanding water bills from the Wind Mill Golf Center because the finance department did not know to invoice this vendor. The oversight was not the golf center; the oversight was the finance department for never creating the invoice. The law department provided review of all the administrative health agreements, compliance with COBRA laws. The law department collected various amounts of money from insurance on behalf of the finance department because the department was not receiving cooperation from bonding company. The law department coordinated and led the acquisition relative to the third phase widening of Route 82 as well as the relocation of the onramp and sixth lane of Route 82 at I271. This last project is a mega million dollar endeavor which has relied on the law department in all areas of the expansion. And, yet the law department is not being paid for any of this work Mr. Diemert stated. There are six court appearances coming up relative to this project and two have taken place Mr. Diemert but no payments have been made in three months. The law department has prepared 120 pieces of legislation this year and the law department has reviewed or drafted all contracts of the City. The law department receives daily calls from every department within the City and sometimes these calls are after hours or on the week-ends he added. The Ohio Constitution requires that the municipality provide a legal defender for the indigent; the Constitution also requires that the municipality provide prosecution and a department of law. Addressing Councilors Darrow and Hanneken because they were talking Mr. Diemert said he listened when they were talking and he would appreciate now that they would listen to what he had to say.

Councilor Hanneken told Mr. Diemert, "I'm listening and would you summarize sir because this is going nowhere."

Mr. Diemert responded, "I'm sorry but you are not in charge of the meeting. Mayor may I have the floor?" Continuing, Mr. Diemert stated the new rubbish agreement required advertising, bidding and draft of final contract all of which the law department handled. The law department has had to handle various issues with the different homeowners' associations throughout the community. The law department was instrumental receiving a reimbursed from the Cleveland Water for damage to Highland Road that was a result from a water main break. Mr. Diemert stated a recent article in the local news paper reported the law department bills are not being paid because Council has not seen detailed billing. Mr. Diemert said he sent detailed bills to Sylvia Hanneken in August but she has yet to respond to those bills by call or email. Not one member of Council has asked Mr. Diemert one question about his bills he stated. More recently Mr. Diemert said he additional detailed bills to Council President Engle. As law director Mr. Diemert said he has done a good job protecting Macedonia's residents and business owners. Mr. Diemert had asked those members of Council who vote against supporting the law department to do their duty so the law department can continue to do its duty.

Councilor Darrow told Mr. Diemert that he said he was going to provide detailed billing. She however has not seen them.

Mr. Diemert informed Ms. Darrow that the detailed bills were sent to Council President Engle who asked Mr. Diemert if Mr. Engle could forward the bill to the other members of Council to which Mr. Diemert answered that he could.

Councilor Darrow replied she thought Mr. Diemert did not want to provide detailed billing to certain council members because the he thought these council members were in cahoots with the Pla brothers.

Mr. Diemert answered that was true to which Ms. Darrow responded that is not true. Ms. Darrow said she is continually accused of association with the Pla's. The Pla's are residents of the community and Ms. Darrow, as council member listens to their concerns and will continue to listen as she does with the other residents of Macedonia.

Mr. Diemert told Ms. Darrow she keeps repeating an issue that is not longer true. The detailed bills were been given to Council President Engle. But prior to Ms. Darrow's disposition relative the Pla ligation Mr. Diemert held back detailed bills over concern that the information contained trial strategy. Mr. Diemert reiterated that since August he has provided Council President Engle the detailed bills. Ms.

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Darrow however continues to tell the media that she has not seen the detailed bills and needs to before approving the legal fees.

Councilor Molnar questioned which council members were disposed to which Mr. Diemert answered Councilors Darrow and Hanneken and former Councilors Martin and Miller. Mr. Molnar asked if their dispositions public records to which Mr. Diemert answered that they are?

Councilor Engle interjected that Clerk Arceci has on file the case related to the Pla litigation. Mr. Engle explained following the November 13 council meeting Attorney George Pla handed Mr. Engle the file asking Mr. Engle to read it. Mr. Engle advised Mr. Diemert of the transaction and informed Mr. Diemert that Mr. Engle had no intent in reading the file nor did Mr. Engle want to be accused of purposely engaging in a conversation with Mr. Pla. Mr. Engle explained that Mr. Diemert advised that the case file should remain in the office of clerk and that members of Council wishing to review the case should be advised the same and that the documents and the CD's included in the file can be sign-out like in a library system.

Clerk Arceci interjected that Ms. Hanneken is the only member of Council at this point who has sign-out the CD's.

Councilor Tulley questioned Mr. Diemert what the total was of his outstanding bills and if the \$75,000 allocation is meant to cover them and the remainder of the year to which Mr. Diemert answered yes. Ms. Tulley asked Mr. Diemert if the law department is entitled to charge late fees or take the City to court for nonpayment of services rendered. Ms. Tulley questioned Ms. Hanneken why she wouldn't pay Mr. Diemert's bills but was willing to pay the others.

Mr. Diemert, responding to Ms. Tulley said the law department does not charge late fees and of course the law department is entitled to be paid for services rendered. Every attorney understands that if services are rendered payment is due.

Councilor Tulley questioned again, what was Ms. Hanneken's philosophy was holding payment for legal services. Council said the legal bills would be paid as they came in. Ordinance No. 120-2014 contains numerous items for that reason. Why is there a difference Ms. Tulley asked that the law department bills are being denied but the others are being paid?

Councilor Engle interjected the philosophy is trying to find a compromise for now, to move the process along this evening. Mr. Diemert would not be offended by waiting another week for payment. To that Mr. Engle said he and Mr. Diemert are meeting December 5 to discuss the issue.

Councilor Tulley reiterated she does not understand compromising over unpaid bills. Does the law department stop providing services because of nonpayment for rendered services she asked? Should the law department sue the City for nonpayment she added? Council is picking and choosing the bills it is willing to pay. Ms. Tulley asked Mr. Engle, "Do you pick and choose the bills you want to pay or do you pay them?"

Councilor Engle told Ms. Tulley it is illogical to ask Council to appropriate a quarter million dollars tonight with less than 20-hours notice.

Mr. Diemert interjected the current discussion pertains to Ms. Hanneken's amendment regarding the law department. There is no reason action should not be taken to pay all the other bills on the list.

Councilor Molnar told Mr. Engle the Mayor advised Council on November that he called a special meeting and provided an attachment with the reasons why the meeting was needed.

Councilor Engle responded he did not receive an attachment from the Mayor. The only attachment he received was yesterday from Clerk Arceci.

Councilor Darrow said she did not receive an attachment from the Mayor either.

Councilor Molnar interjected this matter is just personal towards Mr. Diemert.

Councilor Hanneken responded it is not personal.

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Mr. Diemert interjected it has been personal since Ms. Hanneken was elected.

Councilor Tulley reiterated Council continues not to pay for services rendered. Ms. Tulley added she believes in paying all the bills.

Councilor Hanneken responded Messer's Diemert and Engle are going to discuss the law department fees tomorrow (December 5). Ms. Hanneken told Ms. Tulley she is belaboring the issue to which Ms. Tulley answered she is not because the City owes Mr. Diemert money. Ms. Hanneken's responded Mr. Diemert's office has been paid \$197,000 to which Ms. Tulley added the City of Twinsburg paid over \$400,000-\$500,000 in legal fees last year and the City of Aurora over \$400,000. Ms. Tulley told Ms. Hanneken she continues to compare Macedonia to communities like Orville which are not comparable.

There being no further business, the meeting adjourned at 8:45pm.