

SPECIAL CITY COUNCIL MEETING

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Mayor Nelson called the meeting to order and asked the Clerk to call the roll:

PRESENT: Mayor Nelson, Councillors Cilley, Morley, Powers, Skamperle and Vaugh

ABSENT: None

Mayor Nelson said the item for discussion tonight is the review of the C-14 report. Mayor Nelson stated he was just notified that someone who reviewed the report took photo static copies on their cell phone and released it to the Ogdensburg Journal. Mayor Nelson said there were only nine people who reviewed the report, and one of them took pictures of the summary pages and emailed them to the Ogdensburg Journal. Mayor Nelson stated that he wanted everyone to know this and thanked the Ogdensburg Journal for being forthright and honest with him and letting him know that this document was released to them by someone who reviewed it in the last seventy-two hours. Mayor Nelson said he hopes that person will stand up and identify themselves, but he doesn't think that's going to happen.

Mayor Nelson asked if all members of Council have reviewed Attorney Silver's report, and all members responded yes. Mayor Nelson asked the City Manager and City Comptroller if they have read the report and they responded yes. Mayor Nelson asked for the minutes to reflect that all six members of Council, the City Manager and City Comptroller reviewed the C-14 report.

Mayor Nelson said we've talked about this review being as transparent as possible and thinks the public deserves nothing less. Mayor Nelson said he would like to hear from City Attorney Andy Silver because the first fourteen pages of the report were released but the accompanying exhibits weren't.

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City Attorney Andy Silver stated that the agenda lists a presentation by the City Attorney with a review of the C-14 investigation report. Mr. Silver said the report has all the information and he's not going to elaborate on what's already written. Mr. Silver stated at the previous Council session he advised Council that he should not and will not be the attorney to make the determination regarding whether or not that report should be released to the public. Mr. Silver added that like everyone else in this room, he just found out that's already occurred. Mr. Silver said because he was the investigator of this report, it's not appropriate for him to make the determination of what gets discussed or what gets released as part of the FOIL requests that he knows have already come in. Mr. Silver said what is related to that issue is the resolution put before Council tonight. Mr. Silver said he was aware that this resolution was being prepared, but specifically said he didn't want to review the resolution nor be part of its drafting. Mr. Silver added the first time he saw the resolution was today when the City Clerk sent it to his email. Mr. Silver said because he was the investigator appointed by this Council he should not also be the attorney that's advising the City on issues related to that report and all they can bear on the attempted removal of any City official. Mr. Silver said he can't be the investigator and the prosecutor; those two positions have to be distinct, but he has some thoughts and advice for Council on how they should proceed with these issues. Mr. Silver said he's happy to offer that advice to Council in closed session if that's what they choose on those issues and how to proceed with that resolution. Mr. Silver said he will honor whatever Council requests but thinks there are a few issues that should be considered before taking any action or discussion regarding the resolution put forth tonight. Mr. Silver said this is not an attempt to delay the process, but is an attempt to make sure that the City Council and the City of Ogdensburg has obtained the advice that is necessary and appropriate before it proceeds. Mr. Silver said this is the appropriate time for Council to seek the advice of their attorney, if they so choose.

Councillor Morley asked if Mr. Silver felt that this was a confidential document, which he believes Mr. Silver stated it was at the last meeting. Mr. Silver responded that the front of that document stated Attorney/Client Confidential.

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Mr. Silver said he tendered that because it was not within his authority to release the document and that is a decision the City makes when faced with a FOIL request. Councillor Morley questioned if Council can discuss that document in open session. Mr. Silver said that he should not be giving Council advice on what to discuss or what not to discuss, that advice has two levels; the level on FOIL request where he sits with the City Clerk and evaluates what is in writing or to entertain a discussion in public. Mr. Silver said he doesn't know how you don't release its contents and that's the quandary the Council finds itself in. Mr. Silver said he tendered that document as an attorney/client privileged document but that doesn't necessarily protect the document from discussion from a proper FOIL request. Mr. Silver said the determination whether it gets divulged depends on what the document content is and whether content is discussed in open session or whether the content is revealed in writing to any member of the public or the press through the FOIL request. Mr. Silver advised Council to get advice from an outside counsel, someone who was not party in interviewing witnesses and drafting the report based on those witness interviews and the review of all documentation he submitted in that report. Mr. Silver said he went to great lengths at the last meeting to urge Council to review the report in its entirety and compare what is written to the attached exhibits, but unfortunately the version that's been released to the press does not contain those exhibits.

Councillor Morley stated the resolution on the table tonight is a personnel item and questioned if it should be discussed in executive session and then brought out for public release. Mr. Silver said his advice is that like any other personnel matter, the rationale or reasons, case or facts behind any personnel decision is a matter handled by the City Council and every other body in executive session. Mr. Silver explained that Council has the ability under Open Meetings Law to declare an executive session if you choose to resolve these matters, but you cannot vote in executive session. Mr. Silver said Council can come out and vote on that resolution if they choose.

Mayor Nelson said it's up to Council how we want to proceed as documents have been released to the public. Councillor Morley said we will do an investigation and will find out who released the documents.

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Mayor Nelson said he was giving the person the chance to admit publicly what they did. Councillor Powers said it is a shame that it's come to this. Councillor Cilley urged Council to take Mr. Silver's advice and go into executive session to consult with him. Councillor Cilley said if he has information for us we should pass it on; he understands Mr. Silver doesn't want to be involved. Mr. Silver said it's not that he doesn't want to be involved; the question for him is what's the appropriate thing to do. Mr. Silver stated his advice before we go into executive session is a specific personnel issue having to do with the potential removal of the City Manager, and in addition to that Council may want to take an opportunity to confer with its attorney under attorney/client privilege, which is not technically a reason to go into executive session, but it's a lawful reason to communicate with your counsel outside of the public purvey.

Councillor Morley said before we go into executive session he would like to ask City Manager Art Sciorra one more time to resign as he's trying to save a lot of trouble for him, us, the embarrassment for various members of his family and the general public and employees of the City, if you'd resign. Mr. Sciorra stated that Council has been advised by its attorney asking if they want to go into executive session. Mr. Sciorra said he had no answer for him.

Mayor Nelson said the summary sheets have all been released to the public and he sees no reason not to discuss it here as it will be in the paper tomorrow. Councillor Skamperle said he would like to make a motion that the entire report go public; there should be a copy available at City Hall and the Library and also to go along with these City Council minutes so everyone can see the report for themselves. Councillor Skamperle said he doesn't see anything in there confidential. City Attorney Andy Silver said he respects that opinion, but his advice is before any decisions are made on any publication of the C-14 investigation material connected with but not limited to his report and exhibits, that Council obtain the advice of outside counsel. Mr. Silver said his investigation has been completed, now there are two issues that confront the Council; one is the advice of outside consul on the further release and discussion of the C-14 investigation report, and the City obtaining outside representation with regard to any proceedings that are

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related to the release of the City Manager based on that report. Mr. Silver stated in his opinion you need an outside attorney for the reasons he stated. Mayor Nelson said he assumes that the summary pages released to the public without the exhibits will be publicized. City Attorney Andy Silver said he understands the concept that you can't un-ring the bell, but needs to make sure this Council considers all the issues regarding a re-publication of that report, if it were not deemed appropriate.

Councillor Powers said to maintain the integrity of this investigation, we need to break for executive session to seek any discussion or questions we have with Attorney Silver regarding his findings, and to look into what action we need to take. Councillor Powers said this whole thing disgusts him with the compromising of an attorney/client investigation document that we requested so we could move swiftly but now it's being held up even further. Councillor Powers said he didn't sign on for this, the lack of integrity at this table is disturbing. Councillor Powers said as the leaders of the City, he can't fathom how we can recover from this but knows we can, the city is resilient. Councillor Powers said this is disturbing to have all this work done by Attorney Silver with us pushing him to get his findings, and then to have it compromised and held up in litigation.

Mayor Nelson explained the reason we didn't make seven copies was because we've had issues with items being leaked previously by members of City Council. Mayor Nelson said it's unfortunate that one person choose not to honor that request for the City Council and citizens of Ogdensburg. Mayor Nelson said there's a request to adjourn to executive session and Councillor Morley seconded the motion.

Councillor Vaugh stated that Attorney Silver recommended we seek additional counsel and asked how we proceed if he's recommending that we have counsel review not only this report, but also take on these resolutions. Mr. Silver stated he's assuming that Council may want his opinion on what the logical next steps would be with regard to securing outside counsel. Mr. Silver said his rationale for doing that is Council and most of his clients would elect to receive that advice in closed session.

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Councillor Morley said he doesn't have to discuss the item on the agenda and he can live without the investigation because he has enough facts already. Councillor Morley said he doesn't need the C-14 investigation but if Council wants to discuss personnel in executive session he can live with that and then come out and give the results. Councillor Skamperle said the C-14 investigation was part of due process. Councillor Morley said from the start Council said we weren't going to let that piece of material be our sole tool for judgment, we already had a lot of stuff.

Councillor Skamperle said he thinks this is going nowhere. Councillor Skamperle said documents were forged and documents were altered. Councillor Morley questioned if he could prove that and Councillor Skamperle said absolutely. Councillor Morley said let's go into executive session and show me.

Mayor Nelson said he doesn't have a problem discussing what has already been released in public session. Mayor Nelson said if Council wants to seek the attorney's advice we will and can come out to discuss it.

Councillor Cilley said it's foolish not to listen to our attorney's advice but agrees once we're done to come back to public session.

The vote to adjourn to executive session was:

CARRIED, AYES ALL

Upon returning from executive session, all members were still present.

Mayor Nelson said in light of someone voluntarily releasing these documents to the media and under the advice of our attorney to seek outside counsel regarding this matter, there will be no action tonight. Mayor Nelson said Andy Silver is recusing himself from the FOIL requests and other information associated with this due to someone taking the documents and sending them to the press when we agreed to secure and keep these documents in City Hall.

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Mayor Nelson said Council will take further action regarding this and find out how they were released and who released them. Mayor Nelson said our attorney's advice is to seek outside counsel to carry on with the next steps of the review of the C-14 investigation. Mayor Nelson added that because of the leaked documents, the public will only see 50% of the documents and won't be able to understand the full information associated with summary sheets. Mayor Nelson stated there was a consensus of Council to seek outside counsel to represent us with this case as Andy Silver has recused himself and doesn't feel he should be representing us as City Attorney in the matters associated with this document.

Mayor Nelson stated that Council was prepared to act on the accompanying resolutions tonight, but due to seeking outside counsel who will be advising us on handling this information, we will not be acting on these two resolutions. Mayor Nelson said it's important that the public understand the steps and process for removal of the City Manager, which everyone knows he is in support of doing. Mayor Nelson said he wanted the public to know the steps outlined in the City Charter. Mayor Nelson read Section C-20 of the City Charter as follows:

§ C-20. Removal from office.

The Council may remove the City Manager from office in accordance with the following procedures:

A. The City Council shall adopt by affirmative vote of a majority of all its members a preliminary resolution which must state the reasons for removal and may suspend the City Manager from duty for a period not to exceed 45 days. A copy of the resolution shall be delivered promptly to the City Manager.

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B. Within five days after a copy of the resolution is delivered to the City Manager, he or she may file a written request for a public hearing with the City Council. This hearing shall be held at a City Council meeting not earlier than 15 days nor later than 30 days after the request is filed. The City Manager may file with the City Council a written reply not later than five days before the hearing.

C. The City Council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority of all its members at any time after five days from the date when a copy of the preliminary resolution was delivered to the City Manager, if he/she has not requested a public hearing, or at any time after the public hearing if he/she has requested one.

D. The City Manager shall continue to receive compensation until the effective date of a final resolution of removal. The action of the City Council in suspending or removing the City Manager shall not be subject to review by any court or agency.

Mayor Nelson explained the process to remove the City Manager and stated that since our attorney is recusing himself we need to seek outside counsel regarding this action. Mayor Nelson explained that Council wants to get someone in here to represent us within fifteen to thirty days. Mayor Nelson said those are the issues associated with the removal of the City Manager, but unfortunately documents were released to the public without Council approval by one of the nine people who reviewed them and it puts a new spin on this whole matter. Mayor Nelson added that we will seek to discover who voluntarily released the documents to the public. Mayor Nelson said it's a very sad day for Ogdensburg when the people you trust to look at documents and take swift action, break that trust and allegiance they made to you, the citizens of the City of Ogdensburg and it's unfortunate that we have to work amongst those people. Mayor Nelson said the Council agrees to obtain outside legal counsel before moving forward with the City Attorney's C-14 investigation report. Mayor Nelson requested an official vote on this. There was a consensus of Council to vote.

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The vote was:

CARRIED, AYES ALL

Mayor Nelson said there's no reason to bring the other action items on the agenda up tonight. Mayor Nelson stated that Council agreed to move this swiftly and as soon as possible but unfortunately it's not going to happen tonight. Mayor Nelson said residents can be assured that a majority of Council wants this to happen as soon as possible to resolve the 819 Knox Street issues and the performance issues associated with the resolutions that are before us.

PERSONAL APPEARANCE

1. Gary Edwards, 919 New York Avenue, stated that he is ashamed of the actions of the City Manager because he has been lax on his duties. Mr. Edwards added that he is shocked by Councillor Vaugh's actions. Mr. Edwards said Mr. Sciorra tainted the City and asked him to resign.

2. Sandra Gooshaw, 310 Seymour Street, questioned if the Adams Avenue property was being fixed up in the same way as 819 Knox Street and 2 Grove Street. Mr. Sciorra said yes. Mrs. Gooshaw questioned why it was handled the way it was handled and asked if it was put up on the tax sale and if it wasn't, why not. Councillor Cilley explained it was placed on the NSP when the taxes weren't paid and no one bid on it in the tax sale.

3. John Oakes, 718 Canton Street, stated that he still backs the Mayor and Deputy Mayor for Mr. Sciorra's resignation for lying to Councillor Morley.

Mayor Nelson said for Mrs. Gooshaw and the public's sake, Mr. Cosmo has said that this property did go to public sale, but we will confirm that so everyone will know the tax sale public auction process. Mayor Nelson explained that there was also a bankruptcy proceeding involved in the mist of the property tax sale but we'll get the information out. Mayor Nelson read a section of an email from Justin Woods regarding the bankruptcy.

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Mayor Nelson said we will get the facts and information out to the public. Councillor Skamperle said you just read one of the documents under review to the public and questioned how we can release it. Mayor Nelson said it came from Justin Woods in a memo and he had already released it to the public. Councillor Skamperle said there is nothing wrong with releasing this information to the public. Mayor Nelson said it's not an issue of releasing it to the public, we all want to be transparent and open, but it's the fact that someone choose to release it without discussing it with the rest of Council, and he thinks that important. Mayor Nelson said the entire document needs to be discussed but someone went against Council and our attorney's instructions and released this part of the document by taking pictures with their cell phone. Mayor Nelson said it shows why the trust of Council and City staff is diminished. Mayor Nelson stated that we will get to the bottom of who released that information and we will deal with this accordingly.

Mayor Nelson said it's unfortunate that we have to be involved in another investigation because someone chooses to stymie the whole process and knowingly releases documents that would cause legal issues with our attorney and other issues associated with this investigation and review. Mayor Nelson said no one wants this closed more than him. Mayor Nelson said this is a mess that Council had nothing to do with and was caused by a number of issues associated through City staff. Mayor Nelson said Council didn't want this mess, if City staff had handled it according to policies established in 2008 when we became aware that we had possession of this property, the people should have been evicted. Mayor Nelson said that didn't happen and City staff allowed it to continue and now we're in this mess. Mayor Nelson said we were made aware of the 819 Knox Street issue and cover-up on July 20, 2011 through a memo and through information obtained by a member of the community. Mayor Nelson said this information was kept from Council for whatever reason and he assured the audience that Council's not going to sweep anything under the rug. Mayor Nelson said the majority of Council is ready to take action for the removal of the City Manager. Mayor Nelson said we will continue this action and seek outside counsel to move forward with these actions as quickly as we can and in accordance with the Charter. Mayor Nelson said our City Attorney had to recuse himself for those specific reasons.

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Mayor Nelson explained the process for hiring an outside attorney will be Council interviewing attorneys and discussing the situation with them. Mayor Nelson stated this body will do the hiring and neither Andy Silver nor the City Manager will be involved. Mayor Nelson said we'll get an accounting of what the costs for Andy Silver's time have been to date. Mayor Nelson said this Council as a body chose our City Attorney to conduct this investigation, and until we received all the information associated with it, that was our choice.

City Attorney Andy Silver stated this perception that he represents any one individual is absurd and is not true. Mr. Silver said his obligation is to the City of Ogdensburg and it's Council, that's who his boss is and who he answers to. Mr. Silver said the majority of the work assigned to him comes from the City Manager's office, but his obligation is to the City Council of the City of Ogdensburg. Mr. Silver said for the people to suggest otherwise is offensive and wrong. Mr. Silver said the Council hired him to examine documents that were compiled by the City Clerk and he reported what he read nothing more. Mr. Silver said he didn't give his opinion or his judgment; he reported the facts as they were contained on paper in front of him and based on witness statements that were given to him. Mr. Silver stated that's the reality, anything else is blind speculation and is not true.

At this point in the meeting, a member of the audience questioned why the City Attorney no longer attends all Council Meetings and does not sit at the Council table. Councillor Morley explained that four years ago Council decided not to have a City Attorney present at every Council Meeting to save money and preserve jobs. Councillor Powers said Council chose to maintain services and save jobs. Mayor Nelson stated sometimes it wasn't fair to ask for a legal opinion of the attorney sitting at the Council table because they had no time to prepare. Mayor Nelson said Andy Silver has responded to us quickly and thoroughly when we've needed his opinion.

At this point in the meeting Council allowed Jennifer Stevenson to address Council at the microphone.

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Jennifer Stevenson, 525 Greene Street, asked if the documents had not been released, would we still need an outside counsel at this point for Mr. Silver's suggestion or recommendation to continue this investigation, to continue what we need to do with the investigation and if so was that explained to City Council when you decided to go that avenue.

Mayor Nelson said yes, the attorney advised us to seek outside counsel regarding the next steps on this as he drew up documents and issues associated with the outcome.

On a motion duly made and seconded, the meeting was adjourned.