

**MINUTES
ST. CLAIR SHORES CITY COUNCIL SPECIAL MEETING
JANUARY 26, 2010**

Special Meeting of the City Council, held in the Council Chambers, located at 27600 Jefferson Circle Dr., St. Clair Shores, Michigan.

Present: Mayor Hison, Council Members Frederick, McFadyen, Rubello, Rubino, Rusie and Walby

Also Present: City Manager Podolski, Assistant City Manager Smith, City Clerk Kotowski, Deputy City Clerk Irvine, Director Haney and City Attorney Ihrie

1. CALL TO ORDER, ROLL CALL AND PLEDGE OF ALLEGIANCE

Mayor Hison called the meeting to order at 7:00 p.m. Ms. Kotowski, City Clerk, called the roll with a quorum present. The Pledge of Allegiance was recited by those in attendance.

2. AUDIENCE PARTICIPATION ON AGENDA ITEMS (2 MINUTE TIME LIMIT) - NONE

3. REVIEW OF THE DEPARTMENT OF PUBLIC WORKS

Mr. Podolski introduced Mr. Smith who read a letter he drafted outlining the sequence of events which reads as follows:

City Council,

This letter is sent to apprise you of recent developments concerning the operation of the Department of Public Works (DPW). On Thursday January 21, 2010, I was advised that allegations had been made regarding the sale of scrap metal through the DPW in a manner that was not compliant with City policy. As a result of this allegation, I initiated an investigation.

The DPW has historically collected scrap metals on their premises. These metals are the result of city operations and items dropped off by our residents. Once a sufficient amount of materials have been collected they are taken to a scrap dealer who provides payment to the City of St. Clair Shores.

In November of 1999, then City Manager Mark Wollenweber established a policy for the handling of these monies. Included in this policy was the establishment of an account for "staff training/support that is approved by the superintendent" (at that point in time this was the title given to the head of the Water Department). From March of 2000 to July of 2007 approximately \$24,000 was deposited into this account. Of that amount, approximately \$6,000 was spent on items such as the reimbursement of broken eye glasses, food for crews plowing and salting streets after normal business hours, and annual Christmas parties. In September 2006, City Attorney Robert Ihrie issued an opinion that purchases of this type could not be paid for with public funds.

As a result of this opinion, the City Finance Director Timothy Haney notified DPW Director Curt Dumas that the account used for the deposit of monies generated by the sale of scrap metal and waste oil and expenditures for staff development would be closed at the end of that fiscal year. He went on to say that all future revenues should be deposited into the miscellaneous revenue account of the Utility Fund. As the term indicates this is a much larger account utilized for deposits from a wide variety of sources.

When advised of the allegations received on January 21, I requested a complete list of all deposits into the miscellaneous revenue account for the last two fiscal years from Mr. Dumas. I discovered that during that period there were a number of deposits from the sale of used oil, but that there were no deposits from the sale of scrap metals.

On the morning of Friday January 22nd, I along with City Attorney, Robert Ihrie requested Director Dumas to appear in my office. When Mr. Dumas arrived I asked him if the City was still collecting and selling scrap metals. He informed me that we were. I then asked Mr. Dumas why there was no record of any deposits into the miscellaneous revenue account. He informed me that this was because he had ordered DPW personnel to request payment in cash from the scrap vendor and that all cash received was to be brought to him. He went on to indicate that he would then take the monies and place it in an envelope he kept in his office. I then directed Mr. Dumas to have all monies and records regarding these monies brought to my office. This task was performed by the Deputy Director of DPW.

Upon receiving the money and documents that I had requested it became clear that proper procedures were not being followed and that a more in depth investigation would need to be conducted. Mr. Dumas was ordered to

3. REVIEW OF THE DEPARTMENT OF PUBLIC WORKS (Cont'd)

prepare a complete statement indicating what actions had been taken regarding the sale of scrap metals. Once Mr. Dumas had prepared his statement, he was advised that he was being placed on administrative leave pending the conclusion of an investigation.

Once Mr. Dumas had turned over all keys and left the building I continued with my investigation. This included the questioning of a number of employees. During this questioning I was given evidence that indicated that monies in excess of \$19,143.60 had been received over this two and one half year period and that no records of deposits or expenditures between July 1, 2007 and October 20, 2009 had been maintained.

With this information in had the question arose as to whether this was simply a violation of City policy or if a violation of the law had occurred. Legal counsel was consulted and it was determined we should involve law enforcement in the investigation of this matter. The City administration along with legal counsel discussed at length how we should proceed. Everyone involved in the discussion acknowledged the fact that the City has an outstanding police department that was more than capable of investigating this matter in an unbiased and professional manner. We also, however, considered how the public at large would view the results of an investigation of St. Clair Shores by St. Clair Shores.

In the end it was determined that this investigation should be conducted by an outside agency so that there could be no hint of impropriety. This decision should not be seen in any way shape or form as anyone lacking confidence in the St. Clair Shores Police Department. As of the writing of this letter I have contacted both the Michigan State Police and the Macomb County office of the FBI and requested that they assist us in this matter. At this point, neither organization has indicated if or at what level they will participate in the investigation. I will keep Council apprised.

On Monday January 25th I, along with the City Attorney, asked Mr. Dumas to come to City Hall for a meeting regarding this matter. At the conclusion of this meeting Mr. Dumas tendered his immediate resignation from the City of St. Clair Shores. In his letter of resignation, Mr. Dumas indicated that he would make restitution for money missing from the sale of scrap metal fund. He went on to say that he was deeply sorry for his poor judgment in this situation and for violating the order from his supervisors regarding the use of these funds.

At this time, the day-to-day operation of the DPW is being overseen by Deputy Director Sean Houtekier. I, along with City Manager Podolski, will be meeting with Mr. Houtekier and other DPW personnel over the next few weeks to determine the long term structure of that organization. We will report back to City Council as quickly as possible.

As this is an ongoing investigation, I would ask Council to understand that further statements regarding the scrap metal fund would not be appropriate at this time. I would also ask your understanding in our not being prepared to speak in greater detail as to the long term organization structure of the DPW.

I am available to answer any questions you would feel are appropriate at this time.

Respectfully,
Michael E. Smith
Human Resource Director / Assistant City Manager

Mayor Hison said this is disturbing to everyone. He appreciates the work already done to review this. It is sad that this happened. He asked Mr. Smith if he knew who would be conducting the investigation.

Mr. Smith stated that the Michigan State Police and Macomb County FBI said they both needed to take it to their departments that handle governmental issues. He expects to hear in the next couple days.

Mr. Ihrie said it is important to note that there was an identifiable non-compliance action with City policy. Any conclusion regarding illegal or criminal activity should be withheld until the conclusion of the police investigation. He will answer questions regarding the facts.

Mr. Rubino asked Mr. Ihrie when he gave his opinion regarding purchases with public funds. He also questioned how there could be an account with \$24,000 in funds with deposits made over a number of years and they stop, why there was no red flag after the opinion was given. Mr. Rubino feels it is disturbing that this was able to go on for two and a half years without anyone noticing the deposits had stopped. Mr. Ihrie said he gave opinions in July 2006 and July 2007.

Mr. Smith said the City had an account dedicated to the deposit of these funds until the policy changed, and then these deposits went into a revenue account which was much larger. No one was used to seeing the deposits made from scrap metal. It also wasn't seen in the original account because it was closed. The DPW was responsible for making the deposits. They would bring the funds to the cashier with a memo noting what the deposit was for.

3. REVIEW OF THE DEPARTMENT OF PUBLIC WORKS (Cont'd)

Mayor Hison noted that the City did we have an auditing firm look at the situation. Mr. Podolski asked an independent auditor to look at the records to determine if our auditors should have caught it. Mr. Podolski read the following memo from Alan C. Young, Managing Director of Alan C. Young & Associates, P.C.:

To: Tim Haney

From: Alan C. Young, MST, CPA
Managing Director
Alan C. Young, & Associates, P.C.

Date: January 26, 2010

Re: Scrap Metal Fraud Detection by CPA Firm

Dear Tim,

As I understand your question, your city incurred a theft of approximately \$19,000 from an illegal sale of scrap metal which was not recorded on the books. You further indicated that your general fund approximated \$50 to \$60 million including 10 million in the Street Fund and you wanted to know was this theft something your external auditors should have discovered. Based on these facts, my answer is no.

First, the opinion the external auditors provides is "*fairly presented*" and not absolute which would require a review every transaction which we all understand would be cost prohibitive. The "fairly presented" standard looks to materiality as a major factor as to what is audited. \$19,000 on a \$50 million budget is not close to being material.

Second – If not booked, how would the auditors know? That is why the audit firms now issue the SAS 99 questionnaire to get persons affiliated with the engagement to come forward on smaller sensitive issues which the CPA firm would then look into.

Although I would love to say they should have caught it and maybe you should look at our firm, the professional truth is that we would never have know nor tested that area either based on the dollars involved.

I think your CPA firm's approach and findings are consistent with what any CPA firm would have discovered in the exact same situation. I believe their approach and findings are in line with the profession.

If you need any further information, please feel free to give me a call.

Mr. Walby noted that we just got this information this evening at our Council seats and he felt that forensic audits are needed even though they are expensive. He feels we do need a third party firm to evaluate Finance and the DPW and we need to reevaluate our policies and procedures. He is not confident they are where they should be. He suggested forming a sub-committee to bring in firms with a proposal to Council without staff involvement.

Mayor Hison said that with the short time involved, the first step is to get an immediate response to understand if our own firm is evaluating our finances correctly. He agreed there is a need for a sub-committee and suggested using the same committee in place for the Manager search. He noted that prior to this incident; there have been no inappropriate actions.

Mr. Podolski spoke with Mr. Wollenweber, City Manager for Grosse Pointe Woods, as they went through a similar situation. He was given the names of three companies that would do the forensic evaluation. Mr. Smith is willing to assist with the investigation and will take lead from Council direction.

Mr. Smith said that they met with staff on Monday, reiterating the policies and procedures and informing administration that this conduct cannot continue. No employee in the City wants to feel they can't be trusted. He said that Plante Moran will take another look at the books.

Ms. McFadyen questioned how long a forensic audit will take in order to be complete and thorough and the cost. Mr. Smith couldn't answer because it would be based on the scope of the accounts. We would also need to decide if we were to be selective on specific departments or the organization as a whole. As far as costs, resources are limited and he doesn't know the cost for this type of audit. This item would be presented to Council for approval.

Ms. Rusie asked if January 21, 2010 was when the first allegations were made. Mr. Smith stated that January 21, 2010 was when this first came to his attention. He then started looking into it and found out the dollar amount which then became a more serious violation. No one ever brought this to his attention previously; and as issues come up we put new policies in place.

3. REVIEW OF THE DEPARTMENT OF PUBLIC WORKS (Cont'd)

Ms. Rusie asked if the staff training/support account was the sole account from March 2007 to July 2007. She questioned how over 7 years there was \$24,000 collected and now over two and a half years there was \$19,000. Is there any concern money hasn't been deposited from the 7 year period?

Mr. Smith noted that the staff training/support account was the sole account. He addressed the difference in dollars being due to scrap metal sales going up in 2008 and the DPW was making drops in excess of \$6,000. Scrap metal sales are much lower now.

Ms. Rusie asked Mr. Ihrie to explain the role of the FBI in the investigation. He said that the FBI has two investigative agencies. They would have jurisdiction if they wanted because we receive federal funding in excess of \$10,000, although he doesn't know if they would be interested in this case.

Mr. Smith explained that he contacted the Macomb County office of the FBI. They indicated that because a public official may have been involved, the FBI could look into it. He doesn't know if their bosses are interested in the case. Mr. Ihrie stated that he spoke with their bosses and they will get involved if we request them to, otherwise they will not.

Mr. Rubello questioned why the City deals with scrap metal. He also asked what precautions are in place to ensure this does not happen again and in finding out what went wrong.

Mr. Smith explained when DPW has long Monday hours, residents drop off household items instead of them being taken by Waste Management. More scrap metal comes from street sign disposal. Historically it makes sense that we sell the scrap metal instead of having Waste Management take it and sell it. At this time, there is no scrap metal leaving the yard, we are insuring our staff knows the policy and our drivers are not taking the payments for the scrap.

Mr. Haney explained that the payments are sent directly to Finance in check form made payable to St. Clair Shores. We do have cash businesses such as Parks and Recreation and the Golf Course. Wherever possible we are trying to exclude cash transactions where we can. We want to provide the service to residents so there is no undue hardship to them.

Mr. Frederick said there is a need for checks and balances. We have to sit down and figure out all of the places cash is used and put policies in place so there isn't an opportunity for this to happen again. He is also in favor of a third party audit.

Mr. Smith said it has only been five days and they have talked to the Directors where cash is in place. We are working on tightening this as best we can. No director or employee wants to be subject to these allegations. Right now they know how much was spent because an employee wasn't comfortable handling cash and kept every receipt he made the director sign.

Mr. Podolski spoke for the benefit of the residents to let them know we do spot checks by auditing cash drawers which we are required to do. This is a case where procedures were not followed. We will find out what transpired. Over 5 days we have administratively acted appropriately. Although we don't have all the answers today, we have taken drastic steps and take this very seriously. He encouraged employees and citizens to make his office aware of anything they find going on to be inappropriate. He believes this to be an isolated incident.

Mr. Rubino was under the impression there was a long standing policy that an employee should only report to their immediate supervisor. He feels we may have created an environment where employees feel there may be retribution so they won't go to the Manager without any concerns of being singled out. He feels we have fostered an environment where people don't feel comfortable going to the Manager's Office. He said he had heard rumors, throughout the election, that this had been going on for awhile but no one came forward with this information due to retribution. He questioned if the Manager had any idea this was going on. He was trying to grasp how a flow of money stopped and was not caught.

Mr. Podolski explained that depending on the circumstance an employee should try to address the situation with their immediate supervisor; otherwise they should come to the Manager. It is upsetting that employee feels they can't come to the Manager's Office. We are bound by law and all employees are covered by the Whistle Blowers Act. If there is any inappropriate action, please come forward as we want transparency. As far as the Manager's Office knowing if the petty cash spending continued, there was no knowledge spending had continued after the policy was in place. It was found through the investigation that some of the money was used to refurbish an office and to buy a desk.

Mayor Hison doesn't know how or why this surfaced, but last week was the first time they heard the allegations. If the rumor had been heard by administration and Council, we would have started an investigation. He said it may be difficult to bring issues forward but we need to know in order to make corrections.

3. REVIEW OF THE DEPARTMENT OF PUBLIC WORKS (Cont'd)

Mr. Ihrie stressed that when registering a complaint about a superior, there is ample opportunity for an employee or non-employee to anonymously report the wrong doing and it would be investigated.

Mr. Smith addressed the flow of money being stopped. The accounts were closed when they found that money going in and out for staff development could not be done. Because the account was closed at the beginning of the fiscal year there was no money going in or out. The revenue coming from the DPW now is from waste oil and recycling bins. The yearly auction is handled by a hired company and is facilitated through the DPW. If we are aware of fraudulent activity or anything to be investigated, we tell the auditors.

Ms. Rusie questioned if all that was going into the account from July 2007 to October 2009 was proceeds from waste oil and recycling bins as far as cash. Also, did the City know we were selling scrap metal and getting cash? Mr. Smith said he was not aware of scrap metal proceeds being paid in cash. There were receipts for incoming money and a number of receipts for expenditures. There are no records of revenues or expenditures after July 2007.

Mr. Rubello questioned the largest deposit that was missing and Mr. Smith said it would be over 2008 approximately \$10,000 in cash. Mr. Rubello stated that the DPW is still up and functioning and the Deputy Director is heading the department. We are doing the best we can to find ways to keep the operation running smoothly. Mr. Smith will get it back on track and will update Council on the developments.

Mayor Hison commended Administration on the swiftness of action to rectify this situation.

4. AUDIENCE PARTICIPATION (5 MINUTE TIME LIMIT)

Rick Swanquist - 21815 Bon Brae stated there is a disturbing trend in politics. There need to be true checks and balances in the system. The more politics exists, the weaker the system becomes. He feels that the "good old boys" and their networks have been seated and people don't know what is going on. He urged residents to get involved in their government.

5. ADJOURNMENT

Motion by McFadyen, seconded by Walby to adjourn at 8:05 p.m.

Ayes: All – 7

ROBERT A HISON, MAYOR

MARY A. KOTOWSKI, CITY CLERK