

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,
Sholette, Skamperle and Vaugh

ABSENT: Councillor Powers

Mayor Nelson explained the reason for tonight's meeting is the C-14 investigation review of documents from our City Attorney, Andrew Silver. Mayor Nelson said the documents were turned over and kept in the City Clerk's vault, and tonight's meeting is to take the next steps in reviewing this document. Mayor Nelson asked Council if they wished to seek the legal advice from the City Attorney as related to the C-14 investigation.

Councillor Morley stated that he wants an legal opinion on whether Council needs to go into Executive Session to set the purpose of this investigation to look into the procedures we used and the disposition of property at 819 Knox and 2 Grove Streets. Councillor Morley said he doesn't think that is executive session material and would like an interpretation. Councillor Morley gave Mr. Silver a copy of case law that states once Council discusses something in open session you can't go into executive session about it. City Attorney, Andy Silver stated he is familiar with that and at the end of the day it's Councils' decision whether or not they choose to seek the advice of their attorney, it's Councils' privilege to invoke . Mr. Silver said there is no exception in open meetings law for executive session to consult with your attorney or the right to consult with your attorney arises under a different body of law. Mr. Silver said that City Council, if it chooses can exercise it's right to invoke the attorney/client privilege and discuss an issue that it wants to seek the advice from counsel on, you're not obligated to do that and it's not for him to tell Council whether they go into executive session, it's up to this body to decide.

Mr. Silver stated he reported that the written report was delivered to the City Clerk yesterday, approximately fourteen pages and contains approximately forty exhibits.

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Mr. Silver stated that this document was delivered in one piece to the City Clerk so she could log it in. Mr. Silver stated that at this point Council needs to decide how that report is going to be reviewed by members of Council, what is the best way to review the report, and where that report is going to be reviewed by Council. Mr. Silver added that in the event that there are requests from the press or public, how those requests and what are the proper channels to send those requests through. Mr. Silver said this is up to Council, they can seek his advice if they choose to do that, the purpose of that private session is only to listen to his advice and the Council would come out and make whatever decision it deems appropriate.

Mayor Nelson asked Council if they had any questions of the City Attorney. Councillor Vaugh stated the rules for a special meeting in the Charter say we can only take up the business that was in the call for the meeting by the Mayor and means that we can't take action if we were to come up with a result from executive session. City Attorney Andy Silver stated that the purpose of the meeting while it says executive session, if the Council elects to consult with it's lawyer, technical readings is that it's not an executive session, it's an opportunity to talk to it's attorney and ask questions and get his advice. Mr. Silver added that he doesn't know what action Council would take coming out of that. Councillor Vaugh stated if he's reading the Charter correctly, it says we can't take any action. Mr. Silver said if that's what the Charter says, you must abide by the Charter. Mr. Silver added the Council makes the decisions. Councillor Vaugh stated he wants to discuss this in open session as this document needs to become a public document and individual Councillors should get a copy. Mayor Nelson stated it's up to Council, no one's looking to hide the issues associated with it. Mayor Nelson said he sees looking at the mechanics of this as there's just one copy. Mr. Silver said one important thing to know is when you review this document, you shouldn't just read the fourteen pages that are a summary of the exhibits. Mr. Silver added that the document should be reviewed in it's entirety so if Council directs that copies be made of this document, great care needs to be made to make sure that it's compiled exactly as it exists because when you review the document the statements made in that document refer to the exhibits and unless they are in the proper order of the narrative of the report, Council won't get the complete picture.

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Councillor Cilley stated it may be worth our time to go into executive session for ten to fifteen minutes to get Mr. Silver's legal opinion on how we should handle this and decide how we want to proceed from there.

Councillor Vaugh said we should know what we're going to discuss in the executive session. Councillor Vaugh added that he understands how we are going to maintain the document as far as each Councillor will have one, but how will it be prepared. Councillor Vaugh said he thinks those are the issues we can discuss in open session. Mayor Nelson said we can discuss anything, he has no problem. Mayor Nelson questioned if Council needs to seek legal advice to the mechanics of those issues associated with this as Council doesn't know what's in the document, but Mr. Silver prepared it and he's seen it. Councillor Cilley asked Mr. Silver if this would be considered privileged inter-department correspondence or a legal matter, and how is this going to be effected by the Freedom of Information Laws. Mr. Silver responded that he's certain there will be FOIL requests for this document. Mr. Silver stated that his advice to City Council is that since he's the author of the report, that when those FOIL requests come in, the FOIL Officer seek the advice of outside counsel to make a determination of what portion or none of that report gets released. Mr. Silver said that's the prudent way to proceed and to make copies of this report, Council would want a mechanism in place to secure that document. Mr. Silver added if a proper request is made under FOIL, then that request should follow the proper channels as every other request does and that request be evaluated and a determination be made whether that document is turned over and is to that evaluation to the effect that our City Clerk wants to seek advice on that issue. Mr. Silver said his advice to Council is just run it by outside Counsel, have another attorney take a look since he drafted that report based on the documents that the City Clerk compiled. Mr. Silver added that another lawyer should decide whether it's released. Councillor Morley asked if there's any information in the report that should be kept confidential. Mr. Silver said yes, but his caveat to that is if there is a request from an outside party, that request should come in writing as a FOIL and it should go to the FOIL Officer and through the normal channels. Mr. Silver stated a lawyer looking at this report could make that determination.

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Councillor Morley questioned if Council could talk about non-confidential things at this meeting or another meeting. City Attorney Andy Silver stated that he understood the purpose of this meeting is not to discuss the report that no one has read yet. Mr. Silver stated the purpose of this meeting is for Council to consider how this report is to be physically handled now that one copy of the report has been delivered to the City Clerk. Mr. Silver questioned how does Council want to proceed to make sure you've had appropriate opportunity to review it along with it's exhibits and make a decision when Council's coming back at a future session to decide what to do about it. Councillor Morley stated if this discussion in open session hampers the outcome he expects to happen, he in no way wants to disclose confidential information. Councillor Morley said Council can look at this, see what we can talk about and come back and discuss what we can as he doesn't want to hamper what he believes the result should be. Mr. Silver said Council should review the document and review it in it's entirety before you make any decisions on how you want to proceed. Mr. Silver said you don't want to talk about something you haven't read and that's the prudent way to proceed.

Mayor Nelson said it's up to this body if we want to seek the advice of our attorney and go from there. Councillor Cilley said the first thing we need to do is decide how we're going to review it, whether we're going to go into the Clerk's Office or to make copies, and when we schedule time to discuss this. Councillor Cilley stated that our attorney should be present at that meeting to consult if we have a concern.

Councillor Skamperle said he wants each Councillor to have a copy to go through it and make decisions. Mayor Nelson questioned if Council wants to talk to Mr. Silver about this, the mechanics and the issues. Councillor Morley doesn't want to discuss anything that can't be released and jeopardize this. Councillor Vaugh stated that we're not going to discuss the details at this point and agrees with Councillor Skamperle that individual Councillors should have their own copy and review it. Councillor Vaugh said his other question is do we have an attorney review the report and if there's stuff that has to be redacted, we have to consider if it's information that shouldn't be made public.

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Councillor Vaugh said he thinks the report should be made a public document and the people have a right to it. Councillor Vaugh said he can't do his homework if he doesn't have a complete report in his hands to spend appropriate time to review it.

City Attorney Andy Silver stated that the question is not whether the report should be made public or not, that has to be determined when and if there's a FOIL request. Mr. Silver said as he understands it Council is contemplating making copies of the report so they can review the report and ascertain what it says. Mr. Silver said you gentlemen are the ones who directed the report be made so the review has to begin with you, the report is based on the six issues that were put in the resolution and passed in the September 11th resolution. Mr. Silver said the next issue Council should be deciding is whether the City Manager and City Comptroller should be reviewing the report as it does involve City programs and seems appropriate that they review it, consistent with what Councillor Vaugh wants. Mr. Silver said Council needs to read it, that's the decision he sees Council making tonight. Mr. Silver added that whatever comes of that report will be based on what you read. Councillor Morley said six Councillors should review it without the City Manager or Assistant City Manager present telling us we're wrong on our interpretation, they can argue that at a future date. Councillor Vaugh stated that he wants to review the document on his own at home and added that at some point we might need more answers or background from the City Attorney, but we can decide that. Councillor Skamperle said he thinks we should make copies for everyone and give ample time to read and process it. Councillor Skamperle said this report should be given to Council and also the City Manager and Assistant City Manager, as they're listed in the report. Councillor Morley stated that he wants the City Attorney to review it with him and wants his opinion on everything tonight. Councillor Vaugh said he's given his opinion in the report. Mayor Nelson said it's important that we find this out as there's legal issues and personnel issues that we need to have Mr. Silver clarify those components of the report for us. City Attorney Andy Silver said Council should read the report and however you decide this is going to be reviewed, you need to sit down and read it for yourselves, word by word and look at the exhibits and take the time to consider what's been put before you.

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Mr. Silver said he's not so sure trying to accomplish that goal tonight is a possibility. Mr. Silver added that Councillors need to sit down on their own to review the document and you need to decide how to best do that. Mr. Silver said this is not something for him to walk you through, this report doesn't reflect his conclusions or his advice. Mr. Silver said it's very specific with a timeline on the facts we obtained from the documents we reviewed, that's what you have. Mr. Silver said you need time to review that, and come to your own conclusions or raise other questions. Mr. Silver said he's not so sure you can do the report justice trying to squeeze that all in this evening. Mayor Nelson said the decision is that we want copies of the report made for each Councillor and there was a consensus of Council to give each Councillor a copy. Councillor Skamperle stated the City Manager and City Comptroller should also get a copy. Councillor Vaugh stated they are not subject of the investigation, the programs and policies are. Councillor Cilley said they are City employees and are bound by the same confidentially rules as we are. Councillor Cilley added that nothing should go to the press except through the FOIL process and thinks they are capable of that. Councillor Cilley added that he hopes all of our board members are professional enough to keep the report within the confines until it is released appropriately.

Mayor Nelson stated that six copies will be made for Council and two for the City Manager and the Assistant City Manager. Mayor Nelson questioned do we seek any legal opinions associated with the report from Andy as our attorney tonight. Councillor Vaugh said that would be premature. Councillor Cilley said we should set a date for another special meeting and make sure Andy's there to answer questions. Councillor Skamperle said it is premature to set the date until Council reads the document. Councillor Morley said he's open to scheduling the special meeting on Saturday or Sunday. Councillor Cilley said we need to take a couple days to read and digest it. Councillor Vaugh asked the City Clerk how soon copies can be made. City Clerk, Kathleen Bouchard, said tomorrow. Mayor Nelson said he will start review it tonight in the City Clerk's Office.

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City Attorney Andy Silver said he's not going to tell anyone what's in the report, he wants to encourage Councillors' to read that document with their own eyes. Mr. Silver said they need to spend time on the report with their own eyes and his advise is to do that under circumstances that are controlled and where the integrity of the document can be protected, that's the best way. Mr. Silver added that Council needs to decide if the document can be appropriately protected at this point by having a number of copies made. Mr. Silver said that is your decision but it's important to protect it, it's important to review it in it's entirety, then if in the future a FOIL request is made that will have to run through the proper channels. Mr. Silver said when Council is attempting to decide what to do with the document that it hasn't read, they need to sit down in a controlled, quiet environment and read the document that they know represents the only version. Mr. Silver stated that he submitted one version of the document to the City Clerk so it could be taken care of by the City Clerk, who handles all the documents on behalf of the City so that the document could be protected and preserved. Mr. Silver said that his personal preference is that Council have one document and that document stay here at City Hall be reviewed to whatever Council's schedule permits, but thinks that's the best way to handle that document right now.

Mayor Nelson said he agrees to keep the document here because it's protected. Mayor Nelson said we know things get copied and sent out, and part of a page goes and the other part doesn't. Mayor Nelson said as our attorney said, we need to look at the summary as well as attachments to marry the two together. Mayor Nelson said if the summary goes out and the attachment doesn't, you draw a conclusion and you draw a conclusion from the summary that's missing the backup information. Mayor Nelson said to preserve the integrity of this investigation and the integrity of documents, he agrees with the attorney, keep the document with the City Clerk who's the keeper of all City records. Mayor Nelson added that we take our time, go in there and spend time reviewing it in the quietness of the room next door to her office. Mayor Nelson said Council can review it thoroughly and maintain the security and integrity of the documents because it would be awful if something were brought out that should have been maintained a confidential issue.

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Mayor Nelson said we all want the answers and want to know who was involved, but he thinks the attorney's suggestion was good to maintain the integrity of one document. Councillor Vaugh said he didn't just say one document, he also stated if you preserve the integrity and each Councillor gets a copy you have to spend time as this is not a quick process. Councillor Vaugh added that you have to read the complete document including the appendix and attached documents, and spend whatever amount of time a Councillor needs, which should be up to each individual Councillor. Councillor Vaugh said we should be able to read the complete document on our own with the report in our hands.

Mayor Nelson said the concern he has is that we've had confidential documents leaked to the press and public in the past. Mayor Nelson said this is an important document regarding this investigation and he will start looking at it tonight or tomorrow. Mayor Nelson said he is sure Kathy will work out a schedule around us.

Councillor Vaugh said the majority of the documents are already public, in the beginning they were emailed out to a laundry list of individuals across the County and City.

Councillor Cilley said he just heard a recommendation from our counsel to keep one copy in the office so we can go in and review it, if that's the recommendation from our legal counsel that's what he's going to vote to do. Mr. Silver said that's his recommendation and again, Council decides, it's his recommendation to have only one copy, take as long as you want to review it, you set the time table but protect the document itself. Mr. Silver said the extent to which the documents to this report have been released to the public, he can't answer that question and he's read the report, not sure everything that's out there. Mr. Silver added that he knows some of the stuff that's out there but doesn't think all the contents of this report were released to the public, so before you know what the report says and before you've made up your minds as to how you're going to proceed in regard to the issues raised in that report, protect it, come in and review it.

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Mr. Silver said if you're pressed for time and only have half an hour, give it a half an hour and come back another day. Mr. Silver said now's not the time to go fast, now's the time to give it the consideration that you want to give it so if it takes two, three or four days, fine. Mr. Silver said his advice is to protect the document.

Mayor Nelson said we've received the advice of our City Attorney to maintain the integrity and protect this document, so what's the Council's desire. Mayor Nelson said he supports keeping one copy in the City Clerk's Office and going down to take a look at it, review it, maintain the integrity of the information so we don't have pieces of it copied, mailed and handed out. Mayor Nelson added as Andy said we have the summary but you need to read the attachments as well and marry them together. Councillor Skamperle said he has a busy schedule and would like his own copy as he does most of his reading in the middle of the night. Mayor Nelson asked the City Clerk if she would work out a flexible schedule for Council to come in and read this document, as she knows the importance of this review. Councillor Skamperle questioned if there's a timetable set on this. Mayor Nelson said this has been hanging out there for awhile. Councillor Morley said it needs to be taken care of as soon as possible because the first call for this investigation was August 20th. Mayor Nelson said the formal vote for the investigation was September 12th.

Mayor Nelson asked City Attorney Andy Silver, if Council would be able to take any formal action on the mechanics of the document and can we take a formal vote to say what we're going to do to maintain the integrity of the document. Mr. Silver said Council should make a decision because you ordered the investigation, it's important to make a decision on how Council wants to proceed. Mr. Silver added that it is your document at this point so you should reach a consensus on how you want to proceed.

Mayor Nelson said he wants to make sure that we agree on that consensus and it isn't something that we're challenging or breaking in the Charter. Mayor Nelson said this is our meeting and we're talking about the mechanics of an important document, we need to come to an agreement.

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Mr. Silver said you need to make a decision and he doesn't know how you can walk away from this meeting and decide not to do anything. Mayor Nelson said referring to the Charter, the agenda is set. Councillor Vaugh said that's what the Charter states. Mr. Silver said then reconvene next week, don't make any decisions tonight. Mayor Nelson said he would call for a special meeting tomorrow morning or afternoon. Councillor Vaugh said a special meeting requires twenty-four hours notice. Mayor Nelson said tomorrow evening. Mayor Nelson said we're not going to make a decision on the mechanics if we say we're going to keep the one copy of the document in the City Clerk's Office. Councillor Morley questioned why we can't make that decision tonight. Mayor Nelson said I think we can. Councillor Vaugh said that's not what the Charter states, have our attorney interpret it. Councillor Morley said that's what he called for a while ago, to go in the other room and listen to the attorney's review of the document. Councillor Cilley said if executive session lists a reason for the meeting to confer with the attorney, it seems foolish we can't make a resolution or vote in regards to the discussion with him.

Councillor Vaugh said action items have to be attached to the meeting.

City Attorney Andy Silver said if that's what the Charter says I suggest you follow the Charter, let's not get into anymore procedural disputes. Mr. Silver said he thought the conversation needed to occur tonight and the topics needed to get raised so Council was aware of the issues. Mr. Silver said the topics are how will the report be reviewed and the necessity to have the report remain in the City Clerks Office where individual Councillors will review it. Mr. Silver stated if that's your decision and the Charter is limiting, then pick another day to come back and put it to a formal vote. Councillor Vaugh said we have to put it to a formal vote. Mayor Nelson asked if there is a consensus of Council to say what we're going to do. Councillor Morley said he would like to set up a special meeting Tuesday night which will give us four days to review the document. Councillor Morley stated if you can't get in to review this between now and Tuesday there's something wrong with your schedule, give up a couple hours and read it, that's what he's going to do.

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Councillor Morley said Council needs to take their job seriously, it's our job to review it as quickly as possible in the next four days.

Mayor Nelson questioned the consensus of Council as far as reviewing the document. Mayor Nelson said he suggests that we keep one document in the City Clerk's Office and we take time to schedule the document review over the next three or four days and set a meeting to discuss it's contents at a future meeting. Councillor Morley agreed. Councillor Vaugh said to allow Council, the City Manager and the Assistant City Manager to review the document. Mayor Nelson asked if there was a consensus of Council. There was a consensus of Council to allow City Council, the City Manager and Assistant City Manager to review the document in the City Clerk's Office. Councillor Morley proposed holding a special meeting on Tuesday, 11/1/11 at 7:00pm to go over the document and make a decision about what we're going to do with it. Councillor Skamperle said he's not going to agree to a date until he reads the document. Councillor Morley said if you're not capable of reading it in the next four days, you might as well walk out and not bother. Councillor Skamperle said our attorney just told us we may have a lot more questions. Councillor Skamperle said Mr. Silver said to take our time and read it first as we're going to have questions and he's not going to set a date right now.

Mayor Nelson said first lets agree there's a consensus of Council to allow members of City Council to read one document in the City Clerk's Office. There was a consensus of Council (four of the five agreed; **Councillor Skamperle did not agree**) to allow the City Council to read one document in the City Clerk's Office.

City Attorney Andy Silver stated that the report is intended to comment on what occurred between programs within the City of Ogdensburg in regard to the sale of two properties. Mr. Silver said six very specific questions were asked, that's what the report asks. Mr. Silver said there's been a lot of discussion on what that report will mean and whether or not that will result in the discharge of certain employees. Mr. Silver added that's not the issue of the report, it doesn't talk about who should be fired or disciplined, that's not the purpose of this document.

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Mr. Silver explained the purpose is to analyze the sale of two properties and the last time he checked the City Manager and the City Comptroller are employees of this institution, and they played a role either in overseeing or dealing with other issues in these properties. Mr. Silver added that any other report that gets generated they would be privy to it and considering the fact that they can't change anything that's been written in the report, he doesn't see any harm but that's your issue too.

There was a consensus of Council to allow the City Manager and City Comptroller to also review the document in the City Clerk's Office.

Councillor Cilley said he agrees with Councillor Morley that we need to set a special meeting date. Councillor Cilley stated that he'd hate to see the Mayor call a special meeting with twenty-four hours notice and have two or three Councillors not able to attend. Councillor Morley suggested Tuesday, November 1, 2011, as Councillor Powers will be available. Mayor Nelson questioned if we want to schedule a special meeting on Tuesday, November 1, 2011. Councillor Skamperle stated he needs to check his schedule.

Councillor Vaugh questioned the City Clerk's schedule, if she would be available between now and Tuesday, including the weekend. City Clerk, Kathleen Bouchard said she would be available. Mayor Nelson stated that would give us five days to review the document and Councillor Powers is available. Mayor Nelson added that he has no problem calling for a special meeting on Tuesday, November 1, 2011 at 7:00pm and we'll create the agenda. Councillor Skamperle stated that he doesn't agree with it, but that's fine. Councillor Morley said fine with him. Councillor Cilley said this was ok for him. Councillor Vaugh stated that he doesn't agree with setting a date. Mayor Nelson stated that he will call for a special meeting on Tuesday, November 1, 2011 at 7:00pm, here in the City Council Chambers.

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