

Minutes
Fraser City Council Special Meeting
Monday, September 18th, 2017 @ 6:00pm

A Special meeting of the Fraser City Council was conducted on the above date at the City Municipal Building, located at 33000 Garfield Road, Fraser, County of Macomb, Michigan.

Present: Mayor Pro-tem Carnagie, Council Members Blanke, Foster, Lesich, Schornak and Hemelberg and Mayor Nichols

Absent:

Also Present: D. Wayne O'Neal, City Manager
Kelly Dolland, City Clerk
Judge Maceroni

1. Call Meeting to Order - Mayor Pro-tem Carnagie called the special meeting to order at 6:03pm.

2. Pledge of Allegiance

3. Roll Call

Member Blank, Schornak, Foster, Lesich, Hemelberg, Mayor Nichols & Member Carnagie present.

Member Carnagie presented Judge Maceroni, Chairman of the meeting. Judge Maceroni stated at the request of Council he was present to oversee the meeting, he stated this is not a formal court room but it is a formal hearing.

4. Approval of Agenda

Member LESICH moved, second by Member SCHORNAK, TO APPROVE THE AGENDA AS PRESENTED.

Motion carried 5-0

5. New Business

a. Hearing on Removal from Office of Mayor Joseph Nichols and/or Acting Mayor Matthew Hemelberg per the City of Fraser Charter, Section 5.2

Robert S. Huth Jr. Council for the Plaintiff present.

Angela Mannarino represented Mr. Nichols and Mr. Hemelberg present.

Mr. Huth stated witnesses will be called that are in the report provided by Mr. Fleury. After the testimony, Council will be asked to pass a motion to Receive and File or pass a motion to remove one or two of these gentleman. Mr. Huth asked Council if they agreed to hear the testimony before they make a decision. Member Lesich – yes, Member Foster - yes, Member Carnagie – yes, Member Schornak – yes and Member Blanke – yes. Ms. Mannarino questioned Member Lesich and Member Blanke, Member Carnagie & Member Schornak. Mr. Huth noted for the record Council agreed to hear the testimony before a decision would be made.

Mr. Huth's first witness was Mr. Fleury. Mr. Fleury stated Interim City Manager Wayne O'Neal contacted him to conduct an independent investigation. He stated Mr. O'Neal observed conduct by the Mayor that he believed represented harassment, sexual harassment in the work place. He stated Mr. O'Neal did not want to conduct an investigation because he could be in conflict because he reports to Council. Mr. Fleury completed a report with the advice of Mr. O'Neal was presented to Council at the same time. Mr. Fleury presented the report in a City Council Closed Session meeting. Mr. Fleury found the witnesses to be creditable, they had no ulterior motives. Mr. Huth continued to question Mr. Fleury findings of the report. Mr. Fleury stated the level of misconduct rose to the level of removal.

Ms. Mannarino questioned if there were written concerns of this issue? – No, the law states you do not have to write it down. Ms. Mannarino questions why Mr. O'Neal waited so long before he requested the investigation. Mr. O'Neal indicated he was new on the job and didn't know what the relationships were and was cautious how to proceed. Mr. Fleury also stated the witnesses did not have an ulterior motive. Mr. Fleury spoke of email correspondences with Mr. Nichols and Hemelberg.

Mr. Huth called Mr. Wayne O'Neal, City Manager as his second witness. Mr. O'Neal stated he had 40 years of municipal government experience. Mr. O'Neal stated he observed Mr. Hemelberg massage the shoulders of the Library Director at the January 2017 Council meeting. At the same meeting he witnessed the Mayor bear hug and kiss on the face the Finance Director.

Ms. Mannarino objected to Mr. O'Neal's statements regarding Ms. Jaganjac, she was not present at the time. Judge Macaronic stated under the rules of evidence, objection overruled.

Shortly after the January Council meeting, Ms. Jaganjac stated to Mr. O'Neal that the Mayor makes her feel uncomfortable, Mr. O'Neal stated, he was 'put on notice'. Mr. O'Neal spoke of Ms. McDowell and Mr. Hemelberg.

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Ms. Mannarino made a standing objection to the hearsay.

Mr. O'Neal then called Mr. Fleury after the conversations with Ms. Jaganjac and Ms. McDowell. Mr. O'Neal stated he would not do the investigation himself because he worked for the City Council, a new employee and did not want to give any appearance of a rush to judgement or improprieties on his side. He received advise to get an independent investigation independent of the city.

Ms. Mannarino cross examine Mr. O'Neal. Ms. Mannarino questioned Mr. O'Neal when before the meeting, he said hello and put his hand on her shoulder and questioned if it was wanted or not. Ms. Mannarino also questioned why he waited till May to contact Mr. Fleury and if the delay was due to the appointment of City Manager. Mr. O'Neal responded no. Ms. Mannarino questioned Mr. O'Neal communication with Ms. Jaganjac. Mr. O'Neal stated he did wait and should have reacted sooner to conduct an investigation. Ms. Mannarino asked if he spoke to Leah Brown, yes. Michele Kwiatkowski volunteered information and did not make a formal complaint in writing. Mr. O'Neal never had a conversation with Kelly Dolland and did not provide her name for the purpose of an investigation. Mr. O'Neal stated he did approach Robin Oman in regard to conversation she may have had with the Mayor which led him to have a conversation with Debra Kopp in regard to the Mayor. Mr. O'Neal approached Ms. McDowell in regard to what he had observed at the January 2017 Council meeting. Mr. O'Neal stated none of the above mentioned women had approach him before Mr. Fleury's report.

Mr. Huth called Ms. Brown as his third witness. Ms. Brown stated she has been employed by the city of Fraser for three years and had received a Bachelor's of Psychology from Central Michigan University. Ms. Brown identified the location of her desk/work area in the Building Department. Ms. Brown stated there is no reason she would have contact with the Mayor or Mr. Hemelberg, they would have contact with Randy Warunek, her supervisor. Ms. Brown spoke of a conversation with Mayor Nichols regarding leggings she wore. The Mayor had said 'not everyone could wear leggings, but she could'. He continued to share his story of two women, wearing leggings that approached him at a current event and their 'camel toe' was in his face. Ms. Brown stated the conversation was unwanted, she stated she never gave any indication this was appropriate behavior in the work place. Ms. Brown spoke of Mr. Hemelberg comment to her supervisor, that he said 'nice view from over here'. The comment would be considered unwanted. Ms. Brown spoke of an occasion when she and her supervisor worked after hours, Mayor Nichols and Member Hemelberg spoke of the weekend activities which included women who were half dressed in photos with the two of them. They shared the photos and she looked away. Yvette Foster was present at the time.

Ms. Mannarino standing objection to leading questions - noted by Judge Maceroni.

Cross exam by Ms. Mannarino.

Ms. Brown stated her supervisor was present at the previously mentioned incident. When asked if she spoke to her Supervisor about the incidents, she did not and Union representative was aware of the situation. She objected to the unwanted behavior. Ms. Brown stated, she never said to stop it, she believed they should know better, she felt frozen, hot all over, she said she was uncomfortable and nervous and applauded at their behavior. She stated they are in a position of power, she was intimidated. Ms. Mannarino asked Ms. Brown if the Mayor was her supervisor, does council perform evaluations and do they have the power to terminate, Ms. Brown answered no to all.

Recess, meeting resumed 7:30pm

Mr. Huth called Michele Kwiatkowski as a witness. Ms. Kwiatkowski stated she has worked for the city of Fraser for 24 years. Currently she is the Systems Administrator. Ms. Kwiatkowski stated she spoke freely with Mr. Fleury and does not have an axe to grind.

Ms. Mannarino objected to questions regarding complaints of retaliation. Mr. Huth stated he laid the foundation for retaliation. Ms. Kwiatkowski spoke of a Department of Public Works work order to provide Hot Patch to a business on 13 Mile Rd in Roseville MI. Two DPW employees, were assigned to the job, one was her husband. While on the job, a complaint was made that Fraser DPW work was completed at a Roseville MI address. As a result of the complaint, the City Attorney suggested they were to be written up. Mr. Kwiatkowski, a retire police officer knew this was not acceptable and wrote a letter to Council. Mr. Huth clarified, that Mr. Kwiatkowski was essentially written up because he took hot patch at the expense of the tax payers and put it in Roseville. Mr. Kwiatkowski did not receive any repercussions from the incident, but repercussion started immediately for Ms. Kwiatkowski. Ms. Kwiatkowski provide a timeline of documented events, which indicated a total of three correspondence prior the hot patch incident to over 200 after.

Ms. Mannarino objected to the line of questioning, stated it was not of sexual harassment.

Mr. Huth stated in Mr. Fleury's Report his conclusion was that the behavior of Mayor Nichols and Member Hemelberg created a 'hostile environment', the questioning of the witnesses regarding the hostile environment is relevant.

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Judge Maceroni sustained her objection.

Ms. Kwiatkowski stated Ms. Brown would text her and ask her to leave the area or keep her company when they were in the office. She stated she noticed the behavior the beginning of the year, Leah was also in tears. She also witnessed the Mayor's behavior change with the former Finance Director. When Ms. Jaganjac confronted the Mayor about his behavior, his demeanor changed dramatically.

Cross exam by Ms. Mannarino.

Ms. Kwiatkowski stated Ms. Brown brought the complaint to her and she had already talked to her supervisor. Ms. Brown wouldn't complain to her supervisor because he was friends with them. When asked if she approached the City Manager, the City Manager at the time, response was that the Mayor is a bully and you should hire your own attorney.

Mr. Huth stated in Mr. Fleury's report Ms. Kwiatkowski stated there was no sexual harassment but harassment in the workplace.

Mr. Huth called Kelly Dolland as a witness. Ms. Dolland stated she is the City Clerk, previously Building & Code Department and Library Clerk, equaling 20 years with the city. Ms. Dolland witnessed vulgar sexual terms, like 'I'd like to bag that one' by Mayor Nichols. She also witnessed conversations making reference to lewd female body parts. Ms. Dolland agreed that the Fleury Report was an accurate reflection of what was said.

Cross exam

Ms. Dolland stated she had not received sexual harassment and no retaliation from Fleury's Report. When asked if she had had conversations regarding city residents she responded yes. She also stated she did not have inappropriate conversations with Mr. O'Neal.

Lorena McDowell was not present.

Ms. Mannarino called Member Foster as a witness. Member Foster stated she did not witness the events Ms. Brown stated. She stated she recalled a conversation with Randy Warunek and Jennifer Mellar. She believed that was the only time she was present with Mayor Nichols and Member Hemelberg. She did not recall any comments from the Mayor of a sexual nature and she did not recall any comment from Member Hemelberg of a sexual nature. Member Foster did not recall the incident of inappropriate pictures on the phone involving Ms. Brown.

Mr. Huth stated he prepared motions for city council to consider, asked council to deliberate in an open and transparent form. Asked Council to consider a motion to remove Mayor Nichols and remove Member Hemelberg or take all information received and not remove them and receive and file.

Ms. Mannarino stated the report Mr. Fleury prepared was based on his investigation, he spoke to the women, stated council was robbed of the opportunity to hear the testimony of two of the witnesses. Any ability to make a credibility determination has been eliminated because two witnesses did not testify. Ms. Mannarino stated you must make your decision based on Mr. Fleury interpretation of what someone said, someone said. Ms. Mannarino stated to make your decision based on the information of what you have heard, and stated what you have heard is not sexual harassment, but retaliation. She stated Ms. Brown claimed some comments were made and never went to her supervisor or union, she never complained to council and never asked to stop the alleged actions. Ms. Mannarino stated Mr. O'Neal took it upon himself to solicit comments, the investigation was orchestrated by him. The investigation was initiated by someone who against my wishes put his hands on me. Lastly, Ms. Mannarino asked council to question the credibility of Mr. O'Neal and not remove Mayor Nichols and Member Hemelberg.

b. Discussion and/or action to Remove from Elective City Office Mayor Joseph Nichols and/or Acting Mayor Matthew Hemelberg per the City of Fraser Charter, Section 5.2

Mr. Huth provided council three motions to consider. He spoke of Judge Caretti recent judgment regarding the continuation of the Tribunal.

Judge Maceroni removed himself from the Special meeting.

Member Blanke spoke of the three sheets, three motions received by Mr. Huth.

Member Carnegie stated clear evidence had been presented.

Mr. Huth suggested to consider a motion to receive and file or motion to remove each of them from the reasons stated in the motion.

Member FOSTER moved, TO RECEIVE AND FILE MATERIALS REGARDING CITY COUNCIL REMOVAL HEARING.

Member Foster stated things were handled wrong, a simple complaint could have been handled differently. She

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stated she does not want people to work anywhere where they feel threatened or uncomfortable. However, she stated she does know Council and City hall. Member Foster addressed those witnesses present at the special meeting. She stated we do not have sufficient evidence.

No second to motion.
Motion fails.

Member Schornak spoke on topic.

Member Foster spoke of sufficient evidence. She stated she spoke to the previous Finance Director as to why she left the city and it had nothing to do with this. Member Foster stated she felt harassed because of her last name, she is treated differently because of her last name.

Member BLANKE moved, second by Member LESICH, TO REMOVE COUNCIL MEMBER MATTHEW HEMELBERG FOR OFFICIAL MISCONDUCT, PURSUANT TO SECTION 5.2 OF THE CITY CHARTER, FOUND THERE WAS SUFFICIENT EVIDENCE PRESENTED DURING THE PUBLIC REMOVAL HEARING TO SUPPORT A FINDING THAT COUNCILMEMBER MATTHEW HEMELBERG COMMITTED OFFICIAL MISCONDUCT.

Roll Call Vote:

Blanke	Yes
Schornak	No
Lesich	Yes
Foster	No
Carnegie	Yes

Motion carries 4 - 3

Member Lesich stated Council had reviewed the report in a closed session meeting June 8th, 2017. Member Lesich stated after the meeting he made a statement that they should resign. He stated he found Ms. Brown to be creditable.

Member LESICH moved, second by Member CARNAGIE, TO REMOVE MAYOR JOSEPH NICHOLS FOR OFFICAL MISCONDUCT PURSUANT TO SECTION 5.2 OF THE CITY CHARTER, THE CITY COUNCIL CONDUCTED A PUBLIC REMOVAL HEARING REGARDING THE POSSIBLE REMOVAL OF MAYOR NICHOLS AND COUNCILMEMBER MATTHEW HEMELBERG FOR OFFICAL MISCONDUCT.

Roll Call Vote:

Blanke	Yes
Schornak	Yes
Lesich	Yes
Foster	No
Carnegie	Yes

Motion carries 4-1.

Member Carnegie thanked Mr. Huth, Mr. Fleury, Mr. O'Neal and the witnesses.

6. Citizen Participation:

Frank Cusumano spoke on topic
Resident Marie Cilluffo spoke on topic
Resident Deanna Reiner spoke on topic

7. Adjournment

Member LESICH moved, seconded by Member FOSTER, TO ADJOURN THE SPECIAL COUNCIL MEETING OF SEPTEMBER 18TH, 2017 @ 8:36PM.

The motion carried unanimously,

Respectfully submitted,

Kelly Dolland, City Clerk

Michael Carnegie, Mayor