

**CITY OF WILLIAMSTON
CITY COUNCIL
FEBRUARY 9, 2009
REGULAR MEETING MINUTES**

1. Call To Order:

The meeting was called to order at 7:02 p.m. in the City Hall Council Chambers by Mayor Michelle Hyne and the Pledge of Allegiance was recited.

3. Roll Call:

Mayor Michelle Hyne, Mayor Pro-tem Michael Moody, Council members John Pratt, Traci Smith, Scott VanAllsburg, and Ken Zichi. Absent: Carmen Siciliano.

Also Present:

City Manager Lisa Hitchcock, Deputy Clerk Holly Thompson, City Attorney Bonnie Toskey, Police Chief Mark Hetfield, City Attorney John Gormley, JFM Productions, Enterprise Reporter Brad Ritter, citizens Jane Reagan, Sandy Whelton, Trudy Stevens, GERAL Jeffrey, Bonnie Brooks, Tom Mitchell, W Harrison Smith, Cliff Hart, Jacque Kuch, and other members of the public.

Motion by **Zichi**, second by **VanAllsburg**, to excuse Siciliano. **Motion passed by voice vote.**

4. Approval of Agenda:

Remove items 7. Proclamation, 8. Presentation- Ingham County Road Commission, 10a. Ingham County Road Commission Request, add item 10a. Signature of City Contracts and McKenna Contract, and move item 10c. Purchasing Ordinance to item 11c. and add Closed Session- R&R Fence Litigation after item 15.

Motion by **Moody**, second by **Pratt**, to approve the agenda as amended. **Motion passed by voice vote with Zichi voting no.**

5. Audience Participation:

Bonnie Brooks thanked the Council for accepting the McKenna proposal.

Jane Reagan, 646 McCauley, stated she would like to see the McKenna contract signed as quickly as possible to move the Zoning Ordinance rewrite forward.

Jacque Kuch commented that she would like to see the Council approve the Band Shell Policy.

Cliff Hart commented that he is the Vice President of the Chamber and is attending on the Chamber's behalf. He invited Council to the Chamber meetings.

6. Council Minutes of January 26, 2009:

Mayor Hyne stated that she wants Jane Reagan's comments reflected during the 1st audience participation portion of the meeting.

Motion by **Zichi**, second by **VanAllsburg**, to table the Council minutes of January 26, 2009 until the next meeting. **Motion passed by voice vote.**

7. Accounts Payable:

The accounts payable totaled \$135,040.60 with reference numbers 56145-56202.

Motion by **VanAllsburg**, second by **Smith**, to approve the accounts payable as presented, reference numbers 56145-56202. Yes: VanAllsburg, Zichi, Hyne, Moody, Pratt, Smith. No: None. **Motion passed.**

8. Action Items

8a. Signature of City Contracts and McKenna Contract:

Motion by **Moody**, second by **Zichi**, to authorize the Mayor and Clerk to sign revised contract from McKenna as corrected and approved by the City Attorney. Yes: Smith, VanAllsburg, Zichi, Moody. No: Hyne, Pratt. **Motion passed.**

Motion by **Moody**, second by **VanAllsburg**, to allow Jane Reagan to speak. **Motion passed by voice vote.**

Hyne: I've had discussions with the City Manager Hitchcock last Thursday, or well it would be the Thursday the 29th, following our meeting on Monday the 26th and also multiple conversations with our Attorney Stoker regarding the comment made that it was illegal, that there wasn't much we could do and I wasn't aware of that status and so I did want to ask after the meeting because I wanted to verify certain facts. So I did come into City Hall the Thursday following the meeting and was told by the City Manager and I asked for, what the proper policies and procedures were and I was responded to that she didn't know. And then I proceeded to ask in light of those answers if our legal counsel had reviewed, our legal counsel Mr. Stoker, and I was told no. I'm speaking from my own personal perception I was very concerned with that. I requested that he review the contract, whatever it was that was signed. I did contact him and he returned my phone call and he did state that contrary to what comments were made that and what people were lead to believe, the contract requires two signatures from the City to be legal. The City Manager who is also our Clerk, it would be her signature in the capacity as Clerk and it would take the Mayor's signature. So it actually takes two signatures. So that contract at that time the was not a legal contract. So I had of course been subsequently e-mailed to request that contract and documented some of those conversations and I did receive it from our legal counsel but I did not receive it from our City Manager and I did not receive a response to any of my inquiries regarding this. Subsequently the Planning Commission met and I was contacted by one of the Commissioners at that meeting and it was my understanding that on that agenda and based on our conversation that they were going to schedule a few dates for the rewrite work groups to meet and they were not able to do that because the Mayor has not signed the contract. And I'd like

to make it very clear that the Mayor can't sign the contract if I've never seen the contract. I've never been given the contract, I've never been asked to sign the contract whatsoever or even getting the policies and procedures. So I'm deeply troubled over what transpired and I'm concerned that number one, that this occurred, number two the light it put me in that was not accurate or fair. I have another concern with, Mr. Stoker actually sent me an e-mail and it stated that the Charter is extremely clear with 13.1 as to the procedures of signing contracts, my other concern is, and I did not want to do this publicly, but when you don't get a response your choices are made for you and he said that it is very clear and I just have a significant concern when our City Manager has been in this position for a number of years that this contract to this date has never been given to me and it is dated January 19th. So I'll just leave it at that. I'll reiterate I went to City Hall the 29th after our meeting on the 26th, I asked, I followed up with an e-mail, no response, and I just have a significant concern with that and now all of a sudden everything needed my signature when prior to that my signature wasn't needed. So anyway.

Moody: Now that you've mentioned your position, but my concern is that we need to look over the policy and make sure that, we need to make sure there is some kind of system in place that the Mayor signs the contracts on a timely basis.

Hyne: I'd like to ask if there are contracts that I haven't signed all year or last year?

Hitchcock: Not that I'm aware of, the only one I think, there might have been the engineering of the Middle Street parking lot for engineering.

Hyne: Our engineering contracts, he said there were multiples of those. Who signed those contracts?

Hitchcock: I did.

Hyne: And that is against our Charter. Our Charter specifically states...

Hitchcock: Well you need to read the Charter a little more. After Mr. Stoker talked to me last week he said oh you read the Charter further did you, I said yes I did. If you read the next section of the Charter it says unless, on, and Bonnie you have it right there, All contracts unless otherwise provided by Ordinance 13.1 "quote". 13.2 "quote" As of last week Mr. Stoker has said the Mayor needs to sign every contract whether it's a hundred dollars or whatever it is for. And then today after reading that section he realized no that section pertains to personal property so it's the purchase of something, it doesn't have to be but if it's for a service it does.

Hyne: If I recall ????.

Hitchcock: Right but last week he was saying even on anything under that

Hyne: He wasn't talking to me about that.

Hitchcock: He was me.

Hyne: I wasn't talking about the sale of personal property, I'm talking about a legal contract that we were entering into for this Zoning Ordinance rewrite this is not about selling property or buying property or engineering contracts we're not talking about buying or selling property this is specifically the Charter does specifically address this specific incident under 13.1. 13.2 does not pertain to this issue at all it's about personal property.

Hitchcock: If you read the ordinance that goes along with that it does mention that, the purchasing ordinance.

Hyne: The rewrite is not purchase of property.

Hitchcock: No it's not, that's what I'm saying is it infers it but it more or less contradicts it.

Hyne: Attorney Stoker anyway talked to me about that and he's concerned about that comment, I mean I share that and you did not correct them whatsoever there was a discussion about this that the contract was done there's nothing we could do about it. There was another reconsideration motion and my concern is that there have been contracts that have come before this that I was legally supposed to sign and I did not. And it is very clear to me by Attorney Stoker that you are the administrator of the City and I should be notified by you and he asked me about that and I mean I requested all of the contracts since I have been elected Mayor and he said he also has.

Hitchcock: He has never requested anything so I don't know where he's coming up with that one.

Hyne: I don't know I'm just going by what he told me and I have in e-mail and I have not received a response.

Hitchcock: I think you sent that last Wednesday and I was gone Wednesday and Thursday, I just got back to the office on Friday. It will take going back through the minutes to see what's been done.

Hyne: This is very serious and I would think this would be a priority. When you're signing contracts and you're not following the Charter, it's a problem.

Moody: I guess one other point, on top of this issue we've got to get this signature down because it's very fundamental to our operation, and second I

think per some of our discussions our contracts are not getting viewed by the attorney. That's concerning. We should be doing that because that will bind us in the future and there might not be the right terminology the right kind of provision to protect the City.

Hitchcock: Which that can be something that can be put right into the purchasing ordinance as well.

Moody: There are some concerns and if there are some concerns with the contract they should be reviewed by the Attorney.

Hitchcock: My discussion with Mr. Stoker today, he did make a recommendation to look at that in light of making some Charter amendments to amend that section of the Charter because in looking at it I felt that the intent was for the purchasing ordinance to cover those areas because it does mention contracts, it does mention services but then the heading of the Charter section is what doesn't say, it says personal property, it doesn't say contracts or in our discussion he said it's possible what they meant was personal property as opposed to real property without taking into account the services.

Hyne: You know I'm not going to get tangled up in this. 13.1 contracting authority is very clear and I'm not going to do a pillow chase on this. It's very clear and I'm going to be professional about this but I'll tell you what I'm not happy, I'm disappointed and I think the taxpayers of this community deserve better and I think you are the City Manager you are well qualified, and to not seek legal counsel, and you made that clear you did not seek legal counsel on this correct?

Hitchcock: Correct.

Hyne: And I mean that's just good management, that is just good business to have legal contracts reviewed by your legal counsel and not to discuss it at minimum with the governing body of the City to take it upon yourself to sign that without asking us or legal counsel or both of us to me is just wrong.

VanAllsburg: Yes I have a couple comments one is that I have a concern in general about our attorney fees as they're mounting up more than we have expected. The other thing too is if it's a standard contract I'm not convinced that Lisa cannot read the contract and understand it without legal counsel.

Hitchcock: We have standard contracts with our engineers. The one with McKenna, the one area the recommendation that Mr. Perrone came back with is it didn't have a cancellation clause but they are paid by the hour so if they're paid by the hour and you say okay we don't want you to do anything else you're not going to pay them anymore anyway.

Hyne: My question is though, and when Attorney Stoker spoke to me he did not ??????. And I asked him I said you know being that the Council approved the proposal does the Council have the authority to review that and put in certain criteria and he said absolutely yes. As far as staffing, as far as maintenance, different items, we have the authority to do that and I feel that the authority as an elected body was taken away from us. And I just don't agree with that and to me the City Charter is there for a reason okay and if people don't support the City Charter there is ways to go about that but we do have a City Charter and it's very clear.

Moody: Just one point Scott, I agree with you on the standard contracts, the non-standard contracts should be reviewed by the City Attorney, they should have cancellation policies to protect us. So you want to make sure you dot all your I's and you cross all your t's. But I'm good if we have a standard one and saying okay. But the McKenna one is not a standard one.

VanAllsburg: So I guess then the question is how do we move forward with this then?

Hyne: Okay, you know what can I just follow up with what you said about attorney fees? I agree I think that's something that you always need to be careful, but you have to admit in light of the changes that we've experienced as far as the Council as a body the membership there has been significant change and we've had to deal with issues that in the past have not been brought up before. We've had to seek counsel and direction and in the past Council members went to committee meetings and you know the agendas have always been the same and nothing's really changed but now with the new Council, the new body there have been issues that have been raised by Council members and a few committee members that have put us in a position to protect the integrity of the Council and the function and the proper manner to confirm those things and to answer those questions. We've had to seek legal counsel, we've had no choice. It is a unique situation and certainly you know if we have questions, we have questions. I'm not an attorney and I'm not going to pretend to be one and put the City in a bad position.

VanAllsburg: And you may be right, I guess my comfort level what I'm seeing is a comparison of where our bills are now compared to what they used to be. Similar in idea to the discomfort people have with McKenna right now as far as to what their charges are....

Hyne: You mean when we had a different Mayor and a different Council? Because the issues were totally different, we didn't have people coming in restricting the Council members from attending committee meeting and we didn't have issues with the agendas and we've had to make changes with policies and I've had conversations with the attorney. So those are issues that recently we've had to deal with and prior to that it was not dealt with so we have dealt with many more issues of a legal nature that have not been

dealt with as far as policy, procedure. Attorney Toskey would you like to comment on that?

Toskey: Yes, I would like to recommend to address this issue. A very common device that is frequently used by many municipal clients and that is at the time the Council acts to accept or approve or adopt a bid or proposal on a contract that during that same motion or resolution the Council direct the Mayor and the City Manager to execute or sign the contract once the contract has been drafted and incorporates the terms of the bid the protections for the City and has been reviewed and approved by Council. Now that doesn't mean that every single contract or purchase would need to be reviewed or approved but the Council could deliberately make the decision at that time depending on the complexity of the bid, the issue, the project in front of it, the amount at issue, \$25,000, 30, a hundred thousand, it could determine at that time as a part of it's motion do we need to refer this to Counsel to draft a contract civil counsel to incorporate the terms or are we comfortable in having the City Manager review a proposal received from an engineer and submit it back to Council. That should be in my opinion a deliberate decision made by the Council at that time it originally approves the proposed bid of the proposal or the contract proposal and then the terms of the Council's resolution would be very clear. To direct the City Mayor and Manager to execute the contract after that contract document has been reviewed and approved by Council or reviewed and approved by the civil counsel whatever is Council's determination best suites it's need at the time.

Hyne: Can I ask you though in follow up to Councilman VanAllsburg's comments would it be fair to say that within the last year and a half or so the current Council has dealt with issues such as procedures and policy that the previous Council's not dealt with. Would that be fair to say?

Toskey: Well that's a fair statement but at the same time I have worked with the City of Williamston long enough to recall many complex issues that have come up over the years, very interesting challenges to Council legally that just reoccur or arise from time to time. The issues confronting City Council are very complex and very demanding the law evolves in the area of municipal law, the open meetings act has evolved to become a much more complex and challenging act than what was originally interpreted and applied . The court interpretations have become much more complex the challenges have been much much broader. Yes, you are facing many very very challenging tasks that have come before you and you need all the support and assistance you can understanding there are limits to your budget and decisions in priorities you need to make. And as you become comfortable in this area with contracts and contract reviews, I'm am very confident you'll be able to develop a level of comfort where there are some form contracts that because you have seen them, you have reviewed them, your City Manager has reviewed them, you will feel comfortable internally reviewing and others you will feel the need to send out for civil counsel

review. So that is what the basis of my recommendation is, that you make the decision, each motion each issue on it's merits, but clearly to answer your question Mayor; yes the issues before you are very challenging before this City and frequently need expert opinion.

VanAllsburg: I'm going to not make any more comments on this issue because Carmen is not here and part of my response based on some comments that Carmen made to me in reviewing the payables.

Hyne: I'd like to ask you now, the contract that was signed it was not a legal document correct?

Toskey: No, the contract that was signed by the City Manager is not a valid binding contract and does not speak for the City Council. So no it's of no legal significance. It's a proposal.

Moody: I would move to adopt the Attorney's recommendation for the McKenna contract and have the purchasing ordinance discussed later, this motion is pretty complex. For now how about the motion just be to adopt the attorney's recommendation for the McKenna contract and authorize the City Clerk and Mayor to sign it.

Hyne: Support?

VanAllsburg: I'm not sure what it implies?

Hyne: Well we need a second and then we'll have discussion.

Zichi: Second.

Hyne: Thank you.

VanAllsburg: Yeah, can you explain this?

Toskey: My points are two part; one is what the issue is in your discussion as I understand it are incorporating the terms of a bid or a proposal into a contract document the two are not one in the same. You have before you a bid, you solicited bids, and you received a bid, and you approved the bid but that does not automatically translate to a contract. There are many provisions that should be incorporated into a contract to protect your interests, the City's interests that go far beyond anything mentioned in the bid submitted to you that you acted on. My recommendation is that when you approve and accept a bid as part of that same motion that's step number one, we approve this bid from ABC company, that they submitted to us, number two we are directing City Counsel, Legal counsel to incorporate the terms of that bid into a contract document. That contract document come back before us for approval and as a third step in that resolution at that time once the contract is reviewed and approved by Council following

Civil Counsel's review, City Counsel, then we direct the City Mayor and the City Manager to execute the contract, to sign it. So it's a simple resolution to this issue because at the time depending on the complexity of the bid, the issue, the amount of money at issue, you may decide a very simple contract or purchase order used in the past would suffice. You would be comfortable with that and you would have no need to have counsel review it and incorporate it. In other cases you would not be so comfortable and you would direct civil counsel to review and incorporate the terms of the bid and bring it back to you.

VanAllsburg: Okay so is this contract going to be written by our attorneys or would it be written by McKenna's Attorney's in terms of this specific incident?

Toskey: We recommend and have already written to your City Manager that certain modifications should be made including non-discrimination provision needed to be revised extensively, that there be an insurance provision to protect the City, that it make clear that all employees of the contract are of independent contract employees, that there be an indemnification of protection of the City by the consultant or contractor and that there be a termination notice provision. So we have already set that out in correspondence dated February 6th to the Mayor, City Council members and a copy to the City Manager. It is my understanding that if that contract is being revised as we speak.

VanAllsburg: So you're talking about the specific McKenna contract. So the initial thing that you started came from McKenna?

Toskey: Exactly.

Moody: That's the standard too for the State we do all of our own contracts.

VanAllsburg: I'm a little cynical about this attorney thing you know it's costing money, nevertheless I want to make sure, we're voting to move forward in the future, to move forward on the process for the future.

Moody: Yeah, and I have some concerns about what occurred.

VanAllsburg: Right, so there's two separate issues there's the McKenna thing that we have to do something about and there's the future.

Hyne: Well let's be clear too, yes we are trying to move forward the Charter is very clear, today it's very clear okay and that contract was not signed under the provisions of that Charter according to my conversations with the legal counsel and according you know, I'm just going by that. Yes?

Zichi: I guess I'm more than a little confused here this is an item we added on our agenda today, this Council was very specific in saying that they want

to make sure the agendas are provided to everybody ahead of time with the back up documentation. You're catching me flat footed here. I haven't had a chance to review the provisions of the Charter it's been awhile since I've looked at that specific provision of the Charter. I haven't had an opportunity to see this February 6th letter which apparently other people on the Council have.

Hyne: Who has?

Hitchcock: I received it by e-mail this morning.

Hyne: Did you e-mail it out to Council?

Hitchcock: No I didn't it was addressed to the Council so I assumed the original was coming to Council.

Zichi: Well the bottom line is here is we keep adding things to the agenda and the reason I'm voting no when we're approving the agenda is because we keep adding things that we don't have information on. I thought this Council had made a very clear statement that we weren't going to take action without providing information ahead of time so that we could study and contact people and make sure we have correct and complete information before we sat down at this table and it's very frustrating to me to look at this because this is not a simple matter. We've got to analyze this and having had it thrown at me at a quarter after seven doesn't give me enough time to understand what everybody's concerns are or how to address those concerns.

Hyne: You know what? I'll share that with you. I do and I support your statements. You know what? I emailed the City Manager regarding this. I requested a legal opinion about proper policies and procedures. Attorney Stoker, Attorney Toskey were aware of this, the City Manager was aware of this. The City Manager did not respond to this issue. Also the contract let's go back was called by a special meeting December 22nd also very quickly which we had a lot of illness and some of our Council members could not attend. But I'm not going to say that's not your legal right, and it's proper procedure, you can do that. Same thing with adding an agenda item; I agree that in a perfect world it's great to have that information. I made every attempt to make sure that would happen within my own capabilities, okay. I did what I could, I did not get a response, I did not want, nor did I think it was prudent to wait another two weeks on this contract, I thought it needed to be addressed tonight and hopefully we would be able to work through it and move forward and give direction to our legal counsel and to our City Manager to get this thing moving so we could move forward.

Zichi: I'm not ~~discriminating~~ disagreeing with any of that but you indicated previously that you were in here January 29th there are two e-mails in the packet from you that ask to add specific items to the agenda. Why wasn't

there a third e-mail or something added into that. If this was something that was a concern since the 29th of January it's not something that has come up today.

Hyne: Because I did not get the answers I was waiting to hear. I was waiting to hear from the City Attorney I heard some of those answers, and I made a request to the City Manager for a legal opinion and I did not hear anything. So I did what I could do and I was waiting on that hoping the information would come to me so then I could make a decision and I did not receive one.

Moody: My only concern was there was a contract out there that was waiting to be signed and I heard from, well I think it was today, that we need to get that signed properly. I don't mind tabling this McKenna issue so we have more time to think about it. We just need to get this McKenna issue resolved so the Planning Commission can move forward.

Hyne: I thought it was important that the entire Council be in on this conversation in an open forum with the public present and I just do not think as Councilmember Moody stated that this contract was not performed under the Charter or that there were issues regarding this to be addressed sooner than later. Unfortunately like I said, I requested certain information, it was not provided so I did the best that I could under the circumstances and I certainly thought it was important that everyone be brought up to speed on this and it was certainly not my position to do what ??????. I thought I could get some of these questions answered and apparently they weren't. So you know it's really very important to move forward and follow our open meetings act and to have it done and have it be transparent. What do you think that's funny?

Hitchcock: No, I'm agreeing with you.

Zichi: And again I guess the other thing that I'm just completely befuddled by is the fact that the current provision, the City ordinances that talk about purchases, contracts, and sale of property, doesn't comply with the Charter and yet the current City Counsel reviewed both of those things and made sure that when they codified our ordinances they did comply with each other. I guess I really need to see this all in context. You can't take one sentence out of the Charter and say that well it clearly applies. You have to read the whole thing, you can't read three words and say I understand. You have to read it in context.

Hyne: If I may, it's not three words.

Zichi: Well I understand it's two sentences.

Hyne: No, two sections.

Zichi: Well the contracts are dealt with in section 12 of our Charter not section 10,

Hyne: I'm going by what our legal counsel...

Zichi: I appreciate that but that's why I'm saying we have to look at this in context. We can't take one small piece of it and that would have been possible if we had done this on Thursday when the agenda was set instead of putting it on the table tonight.

Hyne: It was near impossible when you don't get a response to your e-mails okay.

Zichi: I was not privy to any of that so I can't make an opinion one way or another.

Hyne: Anyways, and I will say this is why we pay legal counsel Councilman VanAllsburg. I'm not an attorney and I'm not required to be an attorney to be on this board. So that is why we go by the advice of our legal counsel and they advise us on our contracts and they advise us as to the legalities of our Charter. That is significant and that is why we have legal counsel and that is why we pay for that, to advise the City and to protect the City and to protect it's taxpayers. Yes?

Hitchcock: Attorney Toskey I spoke with her and she said it would be appropriate to, because they've already reviewed the contract and it is being changed, for the Council to authorize the Mayor and Clerk to sign that contract with McKenna with the signature that the attorney reviewed it.

VanAllsburg: Has McKenna approved it?

Hitchcock: I sent that, you might have the original there Bonnie.

Hyne: I have a question, did anyone receive that e-mail?

Pratt: I haven't seen it.

Hyne: Did anyone get it because I don't recall getting it.

Bonnie: The correspondence was e-mailed February 6th, Friday night at 5:00.

Hitchcock: Right the e-mail was but the original...

Bonnie: They must have put it in the mail then.

Hyne: The only way I got the copy of what was signed actually was the McKenna contract that you signed and it had no provisions as Attorney Toskey said any provisions for the City. It was my understanding after

speaking with Attorney Stoker. So now let's make it clear that the contract that has now been drafted is the one recommended by our legal counsel because the one that you signed was not recommended by legal counsel?

Hitchcock: They have recommended additions to it.

Moody: I would be willing to make my motion to have the contract signed when it is approved by the legal counsel and have the Mayor and Clerk sign that.

Zichi: I'd second that.

Pratt: Who's seen the changes?

Moody: I haven't seen the changes but...

Pratt: She just said they were here. We're going to vote on it, for a new contract tonight, again on the same contract?

Smith: Upon recommendation from counsel.

Toskey: The distinction Madam Mayor is beginning to get confusing. The distinction is that this Council did not vote and approve a contract, they voted and approved or accepted a bid or proposal which included certain specifications or terms. So when it voted, it voted to accept and approve a bid. The next step then is to incorporate the terms of that bid into a comprehensive contract with additional terms which protect the Council's interest, or the City's interest in the event of a dispute or a challenge or a breach in contract. So although the contractor did submit his own proposed contract it would be appropriate for this Council to respond by saying thank you but we have incorporated the terms of your bid which we have approved into a comprehensive contract and this is our proposal.

VanAllsburg: And that's been done right?

Hyne: It's being done. The signed contract did not contain...

VanAllsburg: I understand.

Hyne: And that's why we pay legal counsel, that's why we pay the bills...

VanAllsburg: I appreciate your comments but I remain cynical okay. With good reason.

Hyne: Anyways, also I'd like to make it very clear to the Commissioners that met that under no circumstances because I refused to sign the contract that you couldn't move forward with your dates okay. I requested it and it was never given.

Moody, Motion to recognize...

Hyne: Is there support?

VanAllsburg: Second.

Hyne: All those in favor.

All: I.

Reagan: Thank you at no time during the Planning Commission meeting last Thursday was there any implication that you madam mayor that there was a contract and you refused to sign it. That did not happen. Nobody said it, nobody implied it, and nobody thought it. We were told that the contract had been signed by the City Manager and she learned last week that it needed your signature. She told me about it so that I could tell the Commissioners at our Thursday meeting. It was just a statement of facts. We could not move forward until both people signed it. That's all that happened.

Hyne: There was a statement to me that a Commissioner was concerned that I didn't sign it and there was an issue with me signing it. Is that correct?

Reagan: It probably was. We were trying to figure out, what do we do and how much longer do we have till we can set our meetings and that kind of thing because we did not know how long it was going to take.

Hyne: I just wanted to make it very clear that it has absolutely nothing to do with my performance. Thank you. Anyone else?

Moody: Your concern is that we haven't seen the contract.

Pratt: You're right.

Moody: My point is, I'm comfortable with having our counsel look at it but I can understand if you want to see the contract. I guess if we can postpone the contract signing until the next meeting that wouldn't affect the Planning Commission because it would be before their next meeting.

Hyne: We need to make sure we deal with this.

VanAllsburg: So we'd have this taken care of before the next meeting right?

Moody: We'd take care of that before our next meeting.

Zichi: Is that going to cause a problem for the Planning Commission?

Reagan: We have a meeting scheduled for Monday February 16th Presidents' Day when we learned that the City would be open that day then we scheduled our first meeting and so that would have to be cancelled.

VanAllsburg: You know that the contract is going to be signed so why can't you move forward and do your dates anyways?

Reagan: If I was the firm I wouldn't meet with us without a contract in place.

VanAllsburg: Well you're not actually meeting, you're setting dates to meet, I thought.

Reagan: No we have set some tentative dates. The first one with the firm, with McKenna people is on Monday, February 16th. So if the contract isn't signed by then, we'd have to cancel that and then we're going to our March regular Planning Commission meeting. Just so you know there's a meeting that has been scheduled with the firm thinking that it would be signed by today.

Hyne: And I can appreciate that but like I stated before, never been given it, sent an e-mail, never seen it, never been asked, you know unfortunately we have to proceed in a responsible manner you know on behalf of the citizens here and sometimes it takes a delay of one meeting and it ensures that we're doing things properly, we need to do that. This all came to light, brought to my attention, I wanted to bring it to the Council's attention the contract that was originally was thought to be signed and legal is not, so we need to make sure we're proceeding, protecting the City doing things according to the legal advice of our counsel and our Charter. Councilman Pratt?

Pratt: I just, like Chair Reagan said, as McKenna does not have a signed contract, why would they show up? They do not have a contract as of right now and it doesn't look to me as if they'll have one before the next meeting. So I mean I agree, why would they send people out if they don't have a contract?

Zichi: I guess I'm comfortable, I mean we have a proposal, we have approved the proposal, the proposal terms need to be put into the form of a contract. And when that's done and reviewed by our legal counsel I don't need it to come back to us. As long as the terms comply with the proposal, and I'm sure our legal counsel will make sure that it does, I don't necessarily need to fly spec the terms of that contract. And I'm comfortable going forward with that procedure. And I think that will definitely speed things up.

VanAllsburg: That's okay with me, will that make it so that the 16th is still okay?

Zichi: It should be able to. I would assume they could get that done.

Moody: Mayor, I'm comfortable with that process.

Pratt: I'm only one of seven.

Hyne: I agree with you John.

Zichi: If I understand your motion correctly that's exactly what we should be able to do in this case.

Moody: You mean my motion is to have counsel look at it and approve the contract. And I understand there's concerns with Council having not read it but I'm comfortable with it. I can understand John's concerns and I'm willing to table it till the next meeting.

Hyne: You want to bring it before the Council?

Zichi: I'm comfortable with your original motion, that's why I seconded it.

Moody: Well I'll remove my motion.

Zichi: We both have to remove the motion and the second in order for it to disappear.

Hyne: Attorney Toskey can he?

Moody: Can I remove my motion? Amend it to table it?

Hyne: We have to go through with it. Okay, let's do roll call.

Smith: No, I want to hear what I'm about to vote on please.

Thompson: Motion by Moody, second by Zichi, to authorize the Mayor and Clerk to sign the revised contract from McKenna as corrected and approved by the City Attorney.

Moody: I guess the concern is there is some people that haven't seen it.

Hyne: I'm going to comment on that if I may. If he feels that he, I mean I can support that. I want to give people...

Pratt: Like I said I'm only one of seven.

Hyne: Okay, anyway, anybody else have any comments?

VanAllsburg: I guess my only comment is we have a meeting on February 16th, it doesn't really matter rather you're in support of John, in my opinion it's rather a matter of whether you trust our attorney's to do their job so they can move forward to the 16th.

Hyne: You know Scott, you're asking me a question, yeah I trust our attorney, our counsel, however I think we're elected officials given the charge to review and represent the community and you know we have a specific responsibility that the City Manager doesn't have, legal counsel doesn't have, the Planning Commission doesn't have, the audience doesn't have, and I take it very seriously. We all have these responsibilities, and it's not really whether you trust somebody or not it's whether you want to perform what you believe is your responsibility to the community. Does that make sense?

Toskey: Madame Mayor for what it's worth, the specific terms that my firm has recommended to be changed and to be incorporated in a contract were set out in the correspondence of February 6, 2009 to the Mayor, Council and City Manager so exactly what that final contract would look like is set out in this document.

Pratt: But nobody has seen it.

Hyne: And that's the one that we did not receive. I will acknowledge publicly that you were proactive on that and you had good intentions of making us aware of those changes but we did not receive that communication. We did not receive it but I guess we could review that in e-mail and then we could move forward. Okay, anyone have any other comments? Okay let's do a roll call vote.

Smith: It was something that you said that prompts me to comment. Although we all have our own responsibilities as elected officials I don't know that voting to look at a contract or voting not to look at a contract after counsel has reviewed it means that I am shirking my responsibility and that's kind of what I feel about that. So I just don't think that's necessarily the case. Some people might feel the need and feel as though they could catch something the attorney didn't...

Hyne: I agree but I agree with Councilmember Pratt. If he feels he needs a night to look at it.

Pratt: We're relying on something that was issued February 6th and I trust the attorneys. We have to. That's why they make the big bucks, I mean we have to. I'm just one of seven.

Hyne: Okay, is everyone all set? Let's do a roll call please.

8b. Stockwell Request for Fee Waiver and Letter on Uses:

No action was taken per the City Attorney's recommendation.

8c. Council Rules Amendment to Staffing of Committee Meetings:

Motion by **Pratt**, second by **VanAllsburg**, to table the Council rules amendment to staffing of committee meetings until further notice. **Motion passed by voice vote.**

8d. Budget Schedule:

More work sessions will be set at the February 10 budget work session.

8e. Bandshell Event Policy:

Motion by **Pratt**, second by **VanAllsburg**, to adopt the Bandshell Event policy as presented. Yes: Smith, VanAllsburg, Zichi, Hyne, Moody, Pratt. No: None.
Motion passed.

8f. Set Public Hearing for TIFA 2B Plan Amendment- March 9, 2009:

Motion by **Smith**, second by **Moody**, to set a public hearing for the TIFA 2B Plan Amendment on Monday, March 9, 2009 at 7:05 p.m. **Motion passed by voice vote.**

8g. LED Street Lighting:

Motion by **VanAllsburg**, second by **Moody**, to have the City Manager look into LED lighting technology by the second budget meeting. **Motion passed by voice vote.**

8h. Transparency for Budget Disbursements:

Motion by **Moody**, second by **Pratt**, to allow Scott Hagerstrom to speak. **Motion passed by voice vote.**

Motion by **Moody**, second by **Pratt**, to have staff put the check registry online and follow what Brighton Township is doing on their website. Yes: Zichi, Hyne, Moody, Pratt, Smith, VanAllsburg. No: None. **Motion passed.**

8i. MERS Revised Uniform Defined Contribution Program Resolution:

Motion by **VanAllsburg**, second by **Zichi**, to approve the resolution as presented for the MERS revised defined contribution program resolution. Yes: Hyne, Moody, Pratt, Smith, VanAllsburg, Zichi. No: None. **Motion passed.**

8j. Investment Policy:

Motion by **Moody**, second by **VanAllsburg**, to approve the investment policy as amended. Yes: Moody, Pratt, Smith, VanAllsburg, Zichi, Hyne. No: None.
Motion passed.

9. Discussion Items

9a. Sale/Purchase of Old Fire Station:

Councilman Pratt commented that at the Fire Board meeting they will be discussing the purchase of the old fire station by a person. Pratt believes it would be good for the City to purchase the building and pointed out there are two vacant lots across the street.

Councilman Moody would like the City Manager to look into the costs and savings with purchasing the building.

Councilman VanAllsburg commented that the Council needs to have a broader discussion regarding the Community Center and have a discussion about all the City buildings.

Manager will put meeting dates out for an EDC/TIFA/Council joint board meeting.

9b. City Policy on Time Compensation:

Councilman Pratt commented that he requested the item to be on the agenda and asked if employees in the audience are paid or compensated to be in attendance. He stated that he does not believe in comp time.

Attorney Toskey read aloud the portion of the policy relating to compensatory time.

9c. Purchasing Ordinance:

Manager Hitchcock reported that she has provided the Council with the current policy and an example of a simplified policy and a more detailed policy for their review.

Attorney Toskey stated that the policy should meet the municipality's needs.

This will be on the next agenda as an action item.

11. Staff Reports

11a. City Manager:

Manager Hitchcock submitted a written report for Council review. The DTE Grant check will be sent soon. The furnaces have had to be replaced in the Public Services facility. Manager Hitchcock will start with goals at the first budget worksession rather than numbers. She will also give the Council a report of where the City is at as well as what projects will be completed by the end of the fiscal year.

11b. City Attorney:

No report.

11c. Treasurer:

A financial printout was supplied to Council for their review.

11d. Building Department:

A written report was submitted for Council review.

12. Audience Participation:

Mayor Hyne called for public comment at this time and there was none.

13. Council Member Comments:

Councilman Moody commented that there are good things done today with the budget transparency. He expressed his condolences to Member Siciliano and his family.

Councilman Pratt asked for an update on the lighting situation and added that the Northeast corner of the bridge railing is pulled away. Manager Hitchcock will meet him there to look at it.

Councilman VanAllsburg encouraged everyone to see the new show at the Theatre.

Mayor Hyne thanked Mr. Hagerstrom for attending the meeting. She commented that it has been a journey dealing with CBS, but they may run the story Tuesday evening on the "bright spot" segment. She recognized the Chamber for their work with the ice sculptures. She added that the holiday lighting will now be removed since the ice sculpture event is over.

14. Closed Session- R&R Fence Litigation:

Motion by **Smith**, second by **Pratt**, to go into closed session to discuss the R&R Fence litigation. Yes: VanAllsburg, Zichi, Hyne, Moody, Pratt, Smith. No: None. **Motion passed.**

*Closed Session started at 9:30 p.m.

Motion by **Smith**, second by **Pratt**, to return to open session. **Motion passed by voice vote.**

*Closed Session ended at 10:06 p.m.

Action on Closed Session:

Motion by **Smith**, second by **Pratt**, to approve and execute the settlement agreement dated 2-6-09 as presented by John Gormley with the changes of all occurrences of 'order' being changed to 'settlement agreement' and further authorize the Mayor and Clerk to execute and sign the agreement on behalf of the City and have staff make payments as specified in the agreement. Yes: Smith, VanAllsburg, Zichi, Hyne, Moody, Pratt. No: None. **Motion passed.**

17. Adjournment:

Motion by **Pratt**, second by **Smith**, to adjourn. **Motion passed by voice vote.**

***Meeting Adjourned at 10:14 p.m.**

Respectfully Submitted by: _____
Holly M. Thompson, Deputy Clerk

Michelle A. Hynes, Mayor

Date Approved: _____