

CITY OF WARREN  
FOIA APPEALS COMMITTEE MEETING  
January 16, 2014

A meeting of the Warren FOIA Appeals Committee was called for Thursday, January 16, 2014 at 4:00 p.m. in the Warren Community Center, Conference Room B, 5460 Arden, Warren, Michigan 48092.

**Members of the Committee present:**

Patrick Green, Council Vice President  
Robert Boccomino, Councilman

**Members of the Committee Absent:**

Scott Stevens, Council Secretary, Mayor Pro Tem

**Also present:**

Jacqueline Gartin, Assistant City Attorney

**1. CALL TO ORDER**

Chairman Green called the meeting to order at 4:06 p.m.

**2. ROLL CALL**

Mr. Boccomino made a motion to excuse Mr. Stevens and Mr. Green supported the motion. A voice vote was taken. The motion carried (2-0).

**3. ADOPTION OF THE AGENDA**

**Motion:**

Mr. Boccomino made a motion to adopt the agenda, supported by Mr. Green. A voice vote was taken. The motion carried (2-0).

**4. APPROVAL OF THE MINUTES – November 14, 2013**

**Motion:**

Mr. Boccomino made a motion to approve the minutes, supported by Mr. Green. A voice vote was taken. The motion carried (2-0).

**5. Mr. Joseph Hunt – Freedom of Information Act Appeals of November 18, 2013.**

Mr. Joseph Hunt asked to reiterate the idea the appeal was one which it was denied using Attorney Client Privilege and there was nothing there that actually indicates to him that it was marked Attorney client Privilege at the time it was present to the Brownfield Authority on October 11, 2013. He was at the meeting and he was within eyesight of the document that Mr. Pasquae was looking through. Ms. Spranger was there and the thing

here was that the request was denied because of Attorney Client Privilege, then why did everyone in the room get a copy of the document with the exception of the audience? He does not buy that it was actually marked Attorney Client Privilege at the time and more so this was a settlement that took place after the fact. The Brownfield Redevelopment was an Authority through state law and when he put in his original request for appeal it specifically stated since the city has a Brownfield Redevelopment Authority, there was a state law that specifically says (inaudible)...should be accountable for every disbursement through the remediation fund. When he went to the Paslin Industries on October 11, 2013 the main things was that the Brownfield Redevelopment Authority really had no clue as to why they were there except that they were being sued. The audience members knew this for a long time but they were basically forced into accepting that agreement because it was something that took place between the legal department and the (inaudible). All he was looking for was basically access to the settlement document. If all of a sudden there were an agreement of the settlement document and that document was not marked Attorney Client Privilege at the time, who was the Attorney and who was the client? He has been trying to figure that out since October through the Treasurer of Brownfield Redevelopment Authority and there has to be something in the documentation. The whole entire thing that everything that comes out of the legal department basically was a work product turned into a settlement of tax payer dollars. In the Council list of bills the monthly expenditures from September 30<sup>th</sup> clearly shows that DKM and Universal are the only two that were disbursed checks out the remediation fund. If it was already reported as disbursed what was the need then for a settlement of funds that DKM was looking for and allegedly had to settle, what was the settlement part that would have been above and beyond getting their yearly check from the remediation fund. He does not buy the Attorney client Privilege that has been used egregiously and the idea was the council should have access to the settlement amount to determine if it was clearly marked Attorney Client Privilege. This denial should be reversed because this was tax payer dollars and the settlement went to everyone in the room except for audience.

Mr. Green asked for the City Attorney to respond although she had responded in her letter and he had not heard anything new.

Jacqueline Gartin City Attorney stated that was correct. She relies upon her written response to the Board and contrary to Mr. Hunt's opinion there was an ongoing there was an ongoing process and the City Attorney's Office does represent the Brownfield Redevelopment Authority and the meeting he was referring to and the reason the paperwork was not marked was because it was ongoing negotiation and anything that was ongoing like a police report or anything are closed because it was a

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settlement and it was part of negotiating. When there was no final settlement and in negotiating anything it was considered work product and Attorney Client Privilege.

Mr. Green asked if the settlement had been finalized or not.

Jacqueline Gartin stated at the time the request was made and the time of her written response no, but she was not sure as of the time of this meeting.

Mr. Boccomino asked if the marking Attorney Client Privilege on forms was that a courtesy for people that receive it or was it a requirement at the time.

Jacqueline Gartin stated absolutely not.

Mr. Boccomino stated it would still fall under Attorney Client Protection even if it were not marked.

Jacqueline Gartin stated that was correct.

Mr. Green stated he believed the markings were more for the Council or different Board Members so that it did not get passed out.

Jacqueline Gartin stated it was more of a notice for the non Attorney's to say that a particular document was not allowed to be disseminated.

**Motion:**

Mr. Boccomino made a motion to affirm the denial of the FOIA Coordinator based on the fact that the information does not exist. Mr. Green supported the motion.

**Roll Call:**

A roll call was taken on the motion to affirm the denial. The motion carried (2-0).

**6. Ms. Karen Spranger - Freedom of Information Act Appeal of December 27, 2013 request.**

Karen Spranger asked that this item be postponed due to a member of the Board being absent. She believed the quorum would not be accurate to vote fairly on her appeal. There were only two members here.

Mr. Green stated that would represent a quorum with 2 out of 3 members present. A simple majority.

Karen Spranger stated that was ok then. She wrote a letter and had documents that went along with it. She provided copies so that Board members could follow along. Basically she was giving a copy of the notice of special assessment hearing act of (inaudible)...152 during audience participation if she could not read she would make reference to it. She believes that there should be a hearing officers and the information was critical in order to do the special assessments on the nuisance abatement properties. The other requirements were the nuisance abatement procedure list and checklist. This was information that she obtained when she inquired without doing a FOIA. Some of it came with her FOIA packet. The application for employment with the City of Leslie Johnson and nowhere did she find substantial evidence that he was in fact the hearing officer. Unless there was more information that was being withheld in her appeal on this application but the contract was not really available either. His long history as an inspector and his employment shows credibility, however, she believes there would be a conflict of interest if he did both for the city at the same time. In reviewing this carefully down at the bottom if there was a hearing officer officially by appointment or was it by the Council, maybe they would be so kind as to address her questions.

Mr. Green stated Ms. Spranger's FOIA Appeal was for the name of the public hearing officer, a copy of his contract, history of employment, not other items. So she received the name, which document was it she was appealing again?

Karen Spranger stated the document that was missing was the contract and the official paper that says he was the hearing officer. Whether that would be a letter from the Mayor or that was something from City Council or legal, it does not make sense for him to be an inspector and when did he become the hearing officer and who was signing those notices?

Mr. Green referred the matter to the City Attorney.

Jacqueline Gartin stated the information was provided that the City of Warren has. The part-time employee that was handling the matter was Les Johnson. He was a part-time employee for the City so therefore there was no contract. The employment history was provided to Ms. Spranger, his salary and everything she requested was provided to her. The fact that the information that she wants was not available was because it does not exist. Because Ms. Spranger thinks it should exist does not mean that it does and again everything was provided to her that the City had in its possession and again he was a part-time employee, there is no contract and no appointment for her to review. The city provided Mr. Johnson

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hourly rate and more of the argument has nothing to do with appeal as it is her opinion and request for information. She asks that the body again deny the appeal.

Mr. Boccomino stated that information that he read in his packet has been provided.

Jacqueline Gartin stated that was correct and again she was requesting information she thinks should be provided, like a contract, she was asking for a copy of a contract. Well there is no contract.

Mr. Boccomino stated when the name was provided it was explained that there was no contract.

Jacqueline Gartin stated that was correct.

Mr. Boccomino stated since there is no contract he would be paid on an hourly basis.

Jacqueline Gartin stated that was correct.

**Motion:**

Mr. Boccomino made a motion to affirm the denial of the FOIA Coordinator based on the fact that the information does not exist. Mr. Green supported the motion.

**Roll Call:**

A roll call was taken on the motion to affirm the denial. The motion carried (2-0).

**7. AUDIENCE**

Joseph Hunt stated he did not agree with the attorney client privilege on the settlement document as it was specifically a misuse of the attorney client privilege and he did not believe that it was still a work product because DKM dropped the legal filing in the court and it was a done deal. DKM picked up the check and all monies were accounted for except for the monies that were required under the public act 125.26557. There has to be a detailed accounting of these funds. This may be an ongoing settlement but it was not an ongoing work product. It should be a done deal at this point. With regards to Ms. Spranger's appeal and the absence of a contract with Les Johnson it clearly indicates that the City of Warren was skirting the special assessment hearing law that says a hearing officer shall not be an employee of the City. When she was looking for a contract it basically said that she was looking to see if he was an external

employee and that basically in some matter Les Johnson who could not be an employee of the City has some kind of agreement that says he gets to come into the City and hear the special assessments of the nuisance abatements and gets paid to attend these hearings in order to nuisance abate the homes. So, if a contract does not exist and it was clear that he was an employee of the City then he was in violation of the State law and Council should look into that. It clearly states under the special assessment hearing act that the hearing officer cannot be an employee of the City. Yet, the documentation that Ms. Spranger received shows that he is an employee of the City and that was a clear conflict of interest but he does not agree that the contract does not exist because in some means, manner or mode he was being compensated from those special assessment fixed fees. This was the grey area issue, especially when it comes down to fair housing and urban development. There are rules and regulations and if Les Johnson was the hearing officer then he cannot be an employee of the City because it would be a violation of state law. In accountability there was actually accounting but he did not believe in going back to his own item, that he would have to appeal this to the Circuit court because the attorney client privilege was not on the document and if the board was given anything marked attorney client privilege then it had been marked after the fact. He does believe the reason for the denial and the settlement was a done deal.

Karen Spranger stated she could see that the board was not objective and she believed the law was very clear. If there was no contract, she would have to do further investigation or maybe go to district court and put the feelers out to the Court and asked them to explain the law so that the language was understood and challenge the fact that there should be a contract in her opinion, not just the application that shows he was an inspector because she believes that was a conflict of interest and she does not believe that he could do two jobs. The hearing officer has to be independent but knowledgeable about the law and the rights of both parties. Working for the city would give him an interest of the Cities interest and she felt in her heart that there was more paperwork but it could not be done because the city has an old way of doing things and there was should be a date for when he started being the hearing officer and not just the inspector. It was not clear on the documents provided and she asked that the board members review the information provided and make the decision based on looking over the information but not looking at it thoroughly it see what was there and what it said. She would see what the Circuit Court says about it.

## **8. ADJOURNMENT**

### **Motion:**

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Mr. Boccomino made a motion to adjourn. Mr. Green supported the motion.

**Roll Call:**

A roll call was taken on the motion to adjourn, all voted in favor. The motion carried (2-0).

The meeting adjourned at 6:17 p.m.