

APPROVED 9/24/14

CITY OF BENTON HARBOR
RECEIVERSHIP TRANSITION ADVISORY BOARD MEETING
JULY 30, 2014

City of Benton Harbor Receivership Transition Advisory
Board Meeting held July 30, 2014 at Commission Chambers,
Benton Harbor City Hall, 200 East Wall Street, Benton
Harbor, Michigan at 11:00 a.m.

REPORTED BY: ALISON R. HUFFMAN - CSR-Q945
Certified Court Reporter

1

2

3

4 BOARD MEMBERS:

5 CARY J. VAUGHN (Chairman)

6 SHARON HUNT

7 BRET WITKOWSKI

8

9

10

11 TREASURY STAFF:

12 R. ERIC CLINE

13 ROBERT WIDIGAN

14

15

16

17 BENTON HARBOR STAFF:

18 DARWIN WATSON (City Manager)

19

20

21

22

23

24

25

1 Benton Harbor, Michigan

2 Wednesday, July 30, 2014 - 11:00 a.m.

3 MR. VAUGHN: It is 11:00. I'm calling the
4 Benton Harbor Receivership Transition Advisory Board
5 meeting to order.

6 I'd like to welcome Mr. Widigan as a
7 representative of the Treasury on my left.

8 Mr. Widigan, would you please call the roll?

9 MR. WIDIGAN: Yes.

10 Cary Vaughn.

11 MR. VAUGHN: Here.

12 MR. WIDIGAN: Bret Witkowski.

13 MR. WITKOWSKI: Here.

14 MR. WIDIGAN: Sharon Hunt.

15 MS. HUNT: Here.

16 MR. WIDIGAN: Marvin Raglon.

17 A quorum is present.

18 MR. VAUGHN: Let the record note that Mr. Raglon
19 is absent today.

20 For anyone in the public that wants to comment,
21 we require that you sign in on a sign-in sheet right up
22 front here or you will not be recognized. So if you will
23 do that now, that would be great.

24 The next item on the agenda is the approval of
25 the agenda. We all have a copy of the agenda.

1 Is there any discussion related to it?

2 I would entertain a motion to approve the agenda
3 as presented.

4 MS. HUNT: I make a motion to approve the agenda
5 as presented.

6 MR. WITKOWSKI: I'll support that.

7 MR. VAUGHN: All those in favor, say aye.

8 MR. WITKOWSKI: Aye.

9 MS. HUNT: Aye.

10 MR. VAUGHN: All those opposed, say no.

11 Motion passed.

12 The next item is the approval of the June 25th,
13 2014 RTAB meeting minutes.

14 Are there any corrections or modifications that
15 are needed to the minutes?

16 Seeing none, I would entertain a motion to
17 approve the draft minutes of the June 25, 2014 meeting.

18 MR. WITKOWSKI: I'll make that motion.

19 MR. VAUGHN: Is there a second?

20 MS. HUNT: I second.

21 MR. VAUGHN: All those in favor, say aye.

22 MS. HUNT: Aye.

23 MR. WITKOWSKI: Aye.

24 MR. VAUGHN: All those opposed, say no.

25 Motion passed.

1 The next item is old business.

2 We have a capital improvements plan. The
3 Treasury staff is currently reviewing this document.

4 Is there any discussion on this capital
5 improvements plan?

6 Seeing none, I would entertain a motion to
7 postpone consideration of this item.

8 MS. HUNT: I'll make a motion we postpone this
9 item.

10 MR. VAUGHN: Is there a second?

11 MR. WITKOWSKI: I'll second that.

12 MR. VAUGHN: All those in favor, say aye.

13 MR. WITKOWSKI: Aye.

14 MS. HUNT: Aye.

15 MR. VAUGHN: All those opposed, say no.

16 Motion passed.

17 The next item on the agenda is the five-year
18 budget. The Treasury staff is currently reviewing this
19 document as well.

20 Is there any discussion on this document?

21 MR. WITKOWSKI: Will be ready then next --

22 MR. WATSON: Yes.

23 MR. VAUGHN: I'll entertain a motion to postpone
24 consideration of this item.

25 MR. WITKOWSKI: I'll make that motion.

1 MS. HUNT: I second it.

2 MR. VAUGHN: All those in favor, say aye.

3 MR. WITKOWSKI: Aye.

4 MS. HUNT: Aye.

5 MR. VAUGHN: All those opposed, say no.

6 Motion passed.

7 New business. The first item on the new
8 business agenda is approval of resolutions and ordinances
9 for City Commission meetings. The first item is the
10 June 16, 2014 regular meeting. Items included minutes
11 from June 2nd, 2014, a resolution to submit the justice
12 assistance grant application, resolution to approve the
13 purchase of three snowplows.

14 Is there any discussion?

15 MR. WITKOWSKI: Snowplows are coming out of what
16 budget?

17 MR. WATSON: They're coming out of the public
18 works administration budget.

19 MR. WITKOWSKI: Is that major or local --

20 MR. WATSON: Part of the general.

21 MR. WITKOWSKI: Part of the general?

22 MR. WATSON: Yes, sir.

23 MR. WITKOWSKI: I'll make that motion.

24 MR. VAUGHN: So there's a motion to approve all
25 City Commission resolutions from the June 16, 2014 meeting

1 with the exception of Resolution Number 4 which is an
2 amendment to the fiscal year 2014 general fund and
3 ~~utilities~~ ^{utility} services fund budgets.

4 You so move?

5 MR. WITKOWSKI: Yes.

6 MR. VAUGHN: Is there a second?

7 MS. HUNT: I second.

8 MR. VAUGHN: All those in favor, say aye.

9 MR. WITKOWSKI: Aye.

10 MS. HUNT: Aye.

11 MR. VAUGHN: All those opposed, say no.

12 Motion passed.

13 The next item on the agenda is the resolution
14 for Number 4 budget amendment to general ^{the} fund and
15 ~~utilities~~ ^{utility} services fund. On this motion, we can only
16 deny or recommend passage of this to the state treasurer.

17 Is there any discussion on this item?

18 Mr. Watson can you give us a little bit of
19 information about this budget amendment?

20 MR. WATSON: There were a couple of issues that
21 we had that we had to address in the form of budget
22 amendments. For example, there were costs that came in
23 above what we had anticipated, unemployment expenses,
24 healthcare expenses and we had to make modifications in
25 the budget line item so we would not be over on that

1 particular line item.

2 If there's any specific questions to it, I
3 would be more than willing to answer, but these are just
4 more -- the overall amendment netted to zero, so it's
5 just moving dollars from different line items to other
6 line items that are necessary to accommodate ~~over-ages~~ ^{overages}
7 in those specific line items.

8 MR. VAUGHN: Are you moving money from the
9 local street fund to the general fund then? Is that
10 right?

11 MR. WATSON: Yes.

12 MR. VAUGHN: And the equipment rental, the
13 local street fund was renting equipment from the general
14 fund?

15 MR. WATSON: Correct.

16 MR. VAUGHN: Okay. Can you tell me if these
17 expenses were incurred before the City Commission approved
18 the amendment to the budget?

19 MR. WATSON: I believe they were. I would
20 ask Jodi to also assist with this. These were normal
21 course-of-business items that came up. Like I said,
22 unemployment costs that we had dedicated 50,000 came
23 in at 55,000. So those were the movements of money that
24 were necessary to accommodate that.

25 MR. VAUGHN: Okay. Miss Lundquist, can you come

1 to the podium, please?

2 Were these expenditures incurred before the
3 budget amendment was passed?

4 MS. LUNDQUIST: Yes. For instance, as the city
5 manager had just indicated, we did have our unemployment
6 filled, which comes in quarterly and it's fully
7 reimbursing. So if our unemployment costs exceed what we
8 had already remitted, according to our regular billing
9 cycle, we have to then reimburse those additional costs.
10 So, for instance, several of the departments, we had not
11 been able to anticipate that individuals would still be
12 receiving unemployment benefits. Therefore, we were
13 charged back those reimbursements. So to that extent,
14 yes.

15 To speak to the equipment rental, those expenses
16 or the rental of that equipment is tracked for both major
17 and local streets and we were advised by our auditors that
18 if we're going to continue to charge major streets, that
19 budget could afford the rental, but local streets with the
20 winter we had could no longer afford rental of the
21 equipment, so both the equipment rental and the transfer
22 out to local streets went to zero.

23 MR. VAUGHN: So there's sufficient funding in
24 the local street fund for this then. Right?

25 MS. LUNDQUIST: There is sufficient funding by

1 virtue of the transfer out to local streets. So the
2 general fund, it's basically just accounting, so the
3 general fund is saying, okay, we'll recognize this as a
4 transfer into local streets so then local streets can
5 afford the transfer back to the general fund for
6 equipment.

7 MR. VAUGHN: Gotcha.

8 Is there any way to be more predictive in these
9 going forward or will we be approving budget amendments
10 after the fact in the future?

11 MS. LUNDQUIST: We will definitely, for
12 instance, with unemployment, be taking a look at those
13 departments that were impacted by these reimbursement
14 costs and project going forward. Also, the amendment,
15 you know, pre-receiving any future bills, might still be
16 receiving benefits.

17 MR. VAUGHN: Okay. Do you have any questions
18 for Miss Lundquist?

19 MR. WITKOWSKI: No.

20 MR. VAUGHN: Thank you, Miss Lundquist.

21 Any further discussion on this proposal?

22 We have two options.

23 I would entertain a motion.

24 MR. WITKOWSKI: Motion to approve.

25 MS. HUNT: I second.

1 MR. VAUGHN: There is a secondary motion to
2 recommend to the state treasurer the proposed amendment
3 to the fiscal year 2014 General Fund and Utility Fund
4 Services Budget Resolution Number 4 to the state
5 treasurer.

6 All those in favor, say aye.

7 MR. WITKOWSKI: Aye.

8 MS. HUNT: Aye.

9 MR. VAUGHN: All those opposed, say no.
10 Motion passed.

11 The next item on the agenda is the June 25, 2014
12 special meeting. This meeting includes a resolution to
13 establish the Best Practices Committee and to appoint
14 Commissioner Henry to the Best Practices Committee.

15 Is there any discussion?

16 MR. WITKOWSKI: No.

17 MR. VAUGHN: Seeing none, I would entertain a
18 motion to approve all City Commission resolutions from the
19 June 25, 2014 special meeting.

20 MR. WITKOWSKI: I'll make that motion.

21 MS. HUNT: And I second.

22 MR. VAUGHN: All those in favor, say aye.

23 MR. WITKOWSKI: Aye.

24 MS. HUNT: Aye.

25 MR. VAUGHN: All those opposed, say no.

1 Motion passed.

2 The next item on the agenda is the approval of
3 the July 7th, 2014 regular meeting. Those items include
4 the minutes from the June 16, 2014 meeting, the minutes
5 from the June 25th special meeting, a resolution to
6 purchase four 2014 Ford police interceptor vehicles.

7 Is there any discussion on this?

8 Seeing none, I would entertain a motion to
9 approve all City Commission resolutions from July 7th,
10 2014.

11 MS. HUNT: I make a motion to approve.

12 MR. WITKOWSKI: I'll support that.

13 MR. VAUGHN: All those in favor, say aye.

14 MR. WITKOWSKI: Aye.

15 MS. HUNT: Aye.

16 MR. VAUGHN: All those opposed, say no.

17 Motion passed.

18 The next item is the city manager items.

19 The first item is the amendment to the
20 EM Order 13-9.

21 Mr. Watson, would you please give us some
22 information on this?

23 MR. WATSON: What we're requesting is that
24 there's a notary fee that was omitted from that listing of
25 all the fees that the city charges for the notaries that

1 we have in the city to notarize stuff for the general
2 public. The \$10 fee, notary per page notarized is what
3 we're asking for.

4 MR. VAUGHN: Okay. Thank you, Mr. Watson.

5 Any further discussion?

6 I would entertain a motion to recommend to the
7 state treasurer an amendment to EM Order 13-9 per the
8 recommendation of the city manager.

9 MR. WITKOWSKI: I'll make that motion.

10 MS. HUNT: I second it.

11 MR. VAUGHN: All those in favor, say aye.

12 MR. WITKOWSKI: Aye.

13 MS. HUNT: Aye.

14 MR. VAUGHN: All those opposed, say no.

15 Motion passed.

16 Just one more reminder to the public. If you
17 want to have public comment at the end of this session,
18 you have to sign in at the table up front. If you do not,
19 you will not be recognized, and you can do that now if you
20 want.

21 The next item is the approval of the lawsuit
22 settlement.

23 Mr. Watson, would you please give us some
24 information on this?

25 MR. WATSON: Yes, sir.

1 Under EM Joseph Harris, there was a -- where he
2 relieved the contract of the building official that we had
3 and, in doing so, there was a contention of payment due.
4 This has gone through the local courts and has also been
5 appealed by the City of Benton Harbor, and it was the
6 decision that the courts were upheld at the appellate
7 court as well.

8 What we're recommending is that we make payment
9 for the lawsuit involving Mr. Walter Martlew to basically
10 put that to bed, for lack of a better term. It's been
11 going on for a while and I know there's been some
12 discussion and inquiries by Mr. Martlew as to what
13 happened once the appellate court upheld the decision.
14 So we're asking for approval of that payment to
15 Mr. Martlew.

16 MR. WITKOWSKI: How much is that?

17 MR. WATSON: Right around \$75,000, 76,000,
18 \$76,000, give or take.

19 MR. WITKOWSKI: Where does it come out of?

20 MR. WATSON: It is coming out of the general
21 fund. We have allocated for lawsuits and settlements
22 \$110,000, and this is going to come out of that line
23 item.

24 MR. WITKOWSKI: What line item is it?

25 MR. WATSON: It's in the general fund under

1 settlements and lawsuits. I can't remember exactly the
2 exact line item. I think it's legal fees or --

3 MR. VAUGHN: Miss Lundquist?

4 MS. LUNDQUIST: It would be coming out of the
5 general admin budget. Within the General Administration
6 Department and general fund, we do have a line item for
7 claims and deductibles in the budget. For this year, it
8 was set at \$106,847.

9 MR. VAUGHN: Thank you.

10 Any further questions for Mr. Watson?

11 Thank you, Mr. Watson.

12 MR. WATSON: You're welcome.

13 MR. VAUGHN: I'd like to entertain a motion to
14 approve the settlement of the Walter Martlew settlement
15 or lawsuit according to the recommendation of the city
16 manager.

17 MS. HUNT: I'll make a motion to approve the
18 settlement of that lawsuit.

19 MR. WITKOWSKI: I'll support that.

20 MR. VAUGHN: All those in favor, say aye.

21 MR. WITKOWSKI: Aye.

22 MS. HUNT: Aye.

23 MR. VAUGHN: All those opposed, say no.

24 Motion is passed.

25 The next item on the agenda is the approval of

1 commission vacancy appointment.

2 Is there any discussion on this item?

3 Seeing none, I would entertain a motion to
4 approve the appointment of Mary Donald as city
5 commissioner to fill the existing vacancy.

6 Oh, sorry. Yes, commissioner.

7 MR. SEATS: Commissioner Duane Seats, City of
8 Benton Harbor.

9 I would ask of the chairman and this board,
10 being that we're in a transition and this is one of the
11 first things that our commission has been able to do.

12 The policy and procedure that was voted on by
13 the commission somehow was contaminated. The procedure
14 that we put in place was not followed to choose a
15 commissioner.

16 I would ask of the city manager that he would
17 forward the information to the TAB Board or have some
18 expert from the state look into this process because many
19 of the ballots or what have you were compromised. It was
20 a 1 to 10 process. Some Commissioners even refused to
21 sign. There was zeros put in place where there was no
22 zeros on the original ballot.

23 So I would just ask the TAB Board, if possible,
24 if we can reconvene this and if the policy is found not to
25 be compromised, we're more than willing to accept her in

1 that seat, but if it is found that the policy and
2 procedure that was in place was compromised, I would ask
3 of the TAB Board to have the City Commission go back to
4 the drawing board and do this process the right and
5 correct way, which was voted on by the City Commission in
6 a previous meeting.

7 MS. HUNT: I'd like to ask a question. How did
8 this happen? And how can we be assured that it won't
9 happen going forward?

10 MR. SEATS: Well, an assuerty (sic) to the TAB
11 Board, I would also request moving forward that another
12 governing body interview candidates as they did for the
13 Benton Harbor School Board, which was recommended by the
14 state, and then they recommend the appointees or we go
15 from the interview process outside of a commission
16 meeting, bring forth the best two or three candidates,
17 then vote.

18 But the way this was handled, there was no
19 set-in-stone way to make sure that this practice was
20 followed, and when the practice was compromised, there
21 was no stopping of the process.

22 Some commissioners even refused to turn in
23 their ballots until they got done; some were not signed;
24 some, again, added numbers that were not even on the
25 ballot itself, which I recommended of our city manager

1 to bring forth to the state and the TAB because there was
2 many different city residents, also commissioners who did
3 have a problem with the process.

4 And I would just ask that we could wait on this
5 issue, have the issue vetted by either the TAB or the
6 state to make sure that our process was followed correctly
7 and, if deemed necessary, to bring this process back and
8 start the process over.

9 MS. HUNT: Are you suggesting that that
10 additional body be outside of --

11 MR. SEATS: Well, even if we have to go -- thank
12 you, Committee Member Hunt. Even if we have to go to the
13 county and have them interview or Berrien Springs,
14 Buffalo, St. Joe, any other municipality, because now it's
15 proven that there's some things that we don't have the
16 ability or to have another process in which the process
17 is judged or graded, because this should not have
18 happened, we should not even be discussing this matter,
19 and if the process was done correctly, I would not take
20 time off work to come down here and vet the process, but
21 the process has definitely been contaminated.

22 I had to spend \$40 to FOIA for ballots and,
23 to see them, any person with any kind of governmental
24 knowledge would be appalled of what you would see. So I
25 would ask the city manager to forward this information to

1 the TAB and also the treasury board or the state and have
2 some expert from the state or someone to look at our
3 process and procedure.

4 MR. VAUGHN: Commissioner, are you saying that a
5 majority of the commissioners did not vote to approve the
6 appointment?

7 MR. SEATS: I am saying that a majority did not
8 follow the process correctly, yes, sir.

9 MR. CLINE: Mr. Chairman, if I may --

10 MR. VAUGHN: Mr. Cline.

11 MR. CLINE: May I make a suggestion? It was
12 actually my recommendation that this issue be placed on
13 the agenda because this would be outside of our normal
14 review process since this happened at a meeting outside
15 the city's normal submission deadline for items.

16 And we did this primarily as a way to avoid any
17 debate that if the city wished to, after making this
18 selection, wanted to swear the commissioner in to allow
19 them to begin to fulfill their duties, we wanted to avoid
20 any possible question that this had to wait for the RTAB
21 because I'm sure the city would be anxious to move
22 forward, so it was recommended that we bring this issue
23 forward.

24 If the city has questions or concerns about the
25 process that the city used, I think the first place that

1 we should begin would be to see what the city attorney has
2 to say about that. I'm not entirely certain where the
3 city's right to make this appointment in our jurisdiction
4 on that begins, whether to approve or deny, because I
5 think that was an issue not necessarily envisioned when
6 the RTAB process was created. So I'm certain that the
7 city manager will be giving us any information on this and
8 we can certainly take a look at it.

9 If the RTAB Board wishes to postpone
10 consideration today, I think then this discussion will
11 just come up next month as part of the resolution that was
12 voted on at that meeting, but I do not know nor would I
13 wish to speculate whether or not this prevents the city
14 from swearing in the selection that they made because I
15 think it's a matter for the city attorney to determine
16 if the vote that was taken was in any way invalid. I
17 wouldn't even want to speculate on that because I think
18 that's more a matter for the City Commission, the city
19 manager and the city attorney to review and look at, so --

20 MR. VAUGHN: Mr. Cline, could the city attorney
21 look at that information after the TAB has passed on it
22 or denied it? What is your recommendation?

23 MR. CLINE: I don't know. I think if there's
24 some question or some hesitation -- we were just simply
25 moving this forward in the process out of a potential --

1 we were moving it forward from our normal review process
2 to sort of prevent any question of what our role in this
3 process would be, but it appears now that there may or may
4 not be some concerns. I don't actually know if the new
5 commissioner has been sworn into office yet.

6 MR. SEATS: No, no, sir.

7 MR. CLINE: So I would think that if the city is
8 still reviewing this internally, then perhaps it would be
9 best we just postpone it until the next meeting and then
10 we'll address it. By then hopefully the city will have
11 more clarity for us because I think it would be
12 difficult -- it puts the RTAB Board in a difficult
13 situation to make a decision one way or the other when
14 there apparently are some questions on this, even among
15 the city itself. So I think we should just maybe pass on
16 it and see how this unfolds.

17 MR. SEATS: Mr. Chairman, I would ask of the
18 city manager if he would speak to also outside of the
19 commission having, if possible -- I know meetings don't
20 last that long, but if possible he can speak to it and
21 see if there's any issues that he also might have found
22 himself because I do believe this information had been
23 forwarded to the state. I don't know which avenues it was
24 forwarded to, but there was definitely some questions and
25 concerns that have been raised about that.

1 I do appreciate the TAB Board taking time to
2 address this issue, and I would just hope for the sanctity
3 of our city and where we're going and where we've come
4 from that we would take under consideration postponing it
5 until the next meeting.

6 Thank you, honorable chair.

7 MR. VAUGHN: Thank you, commissioner.

8 MS. ADAMS: May I speak on this?

9 Commissioner Mary Alice Adams.

10 We hadn't got to the point because of this very
11 important matter that's important to Commissioner Seats.

12 I would ask this board to approve this
13 appointment by the consensus that was given by the Benton
14 Harbor City Commission, even outside of the votes.

15 This process started on the basis of what is
16 in the City Charter or within the ordinance that the
17 commission chooses to replace a seat. I mean I'm sorry
18 that it didn't go the way that Commissioner Seats would
19 hope and still probably hopes that you all would handpick
20 someone, but I would ask that you would respect the
21 consensus that this elected body appointed.

22 MR. VAUGHN: So, commissioner, you're saying
23 that a majority of the commission did vote --

24 MS. ADAMS: Exactly.

25 MR. VAUGHN: -- in the affirmative?

1 MS. ADAMS: Exactly.

2 MR. WITKOWSKI: What was the vote of the
3 commission?

4 MR. WATSON: The vote for the affirmation was
5 six to two.

6 MS. HUNT: Commissioner, I do have a question.
7 Are you saying the process was followed?

8 MS. ADAMS: Yes, it was, and it was a process
9 that we among ourselves put in place, and Commissioner
10 Seats, during the process of the vote --

11 MR. WITKOWSKI: Can we just stick to the
12 process?

13 MS. ADAMS: -- he left the chamber. How he came
14 into the knowledge of knowing a bunch of the information
15 that he has shared with you all, the rest of us are
16 clueless about.

17 MR. VAUGHN: Okay. Thank you, commissioner.

18 MS. ADAMS: Thank you.

19 MR. VAUGHN: There will be no more discussion
20 from the public at this time.

21 MR. WITKOWSKI: My feeling on this issue is the
22 city is supposed to take care of itself from an
23 administration standpoint. Now, if something has been
24 done wrong and it can be proved, then I think that
25 opportunity is removed, and sounds like there's discussion

1 on both sides, but we also know that appointments are
2 political. That's a reality of your job as commissioners.
3 That's just a reality of the world we live in.

4 My feeling is if it was passed six to two, the
5 person should be seated regardless of what we say, and
6 then I would ask that it be looked into, the process,
7 because the process needs to be followed I think from
8 start to finish, and if there's a problem with the
9 process, then that needs to be addressed because then it's
10 going to spring off into other things that we'll have to
11 deal with that will have effects on the budgets and, at
12 the end of the day, our main function is to make sure
13 financially we are watching the books and making sure the
14 city is moving forward.

15 As to appointments to the Planning Commission,
16 City Commission, I respect everybody having how they
17 believe and you know everybody can come to my office and
18 talk to me. I don't want us to be getting into looking
19 over every little, minute detail.

20 To me, the process was approved by the state.
21 The state told the city how to appoint somebody. Right?

22 MR. CLINE: For the appointment of a city
23 commissioner, that isn't necessarily specifically
24 addressed.

25 MR. WITKOWSKI: I thought the EM's order was

1 for the commission to develop a process to appoint
2 somebody.

3 MR. CLINE: The final EM order discusses the
4 RTAB review and approval of appointments to boards and
5 commissions, and it requires the city to move forward on
6 those in a timely manner. The specific wording regarding
7 a vacancy in the City Commission is a little less clear on
8 that.

9 Now, my office did provide some advice and we
10 had some discussions with the city manager regarding the
11 internal process that the City Commission ultimately ended
12 up using. It's similar to a process that I know has been
13 used in other communities and that type of thing.

14 I think really at the heart of the matter is,
15 at least from the city's standpoint -- this is just my
16 opinion, but as I see it, in my experience, the heart of
17 the matter is whether the vote the City Commission took
18 was a valid vote or not and --

19 MR. WITKOWSKI: Well, there's two discussions.
20 One is the process which has been brought to us and then
21 one is the vote. The vote was six to two. The process
22 to me is a different issue.

23 MR. CLINE: Yes, I agree. They put a process
24 in place, and there's been some indication or at least
25 some concerns raised over whether or not that process was

1 followed perfectly as written. But then does that in and
2 of itself invalidate the vote that was taken? And I think
3 that's a matter for the city attorney to weigh in on.

4 And, as I said, part of the recommendation to
5 put that particular item on this agenda was to avoid any
6 discussion that we, in our meeting -- that we, the RTAB
7 in our meeting scheduling was unnecessarily holding up a
8 review of that because it falls on a meeting that was
9 outside of our review date for this particular RTAB
10 meeting.

11 So really the question becomes: Do we let the
12 city work this out and bring forth at the next meeting a
13 final, definitive what their intentions are or do we just
14 postpone our decision and let it fall back into our normal
15 review process or do we just move forward on the basis
16 that it appears a valid vote was taken by the City
17 Commission and, you know, you vote on that basis today.

18 MR. VAUGHN: Thank you, Mr. Cline.

19 Any further discussion?

20 MR. WITKOWSKI: Well, again, I think we've got
21 to move forward with the vote until we have otherwise
22 information that says, you know, that the city and the
23 state can come forward and say the process is -- I guess
24 the bigger question is: Do we even have a say in the
25 process? Do we? I don't know if we even have a say in

1 the process. Do we?

2 MR. CLINE: As part of our charge, we routinely
3 look at resolutions adopted by the City Council at a
4 regular meeting and, as was done already in this meeting,
5 you vote to approve or deny those or whatever action
6 you're going to take.

7 This vote was taken and passed as a regular
8 routine vote of the City Commission meeting, which would
9 be on a review normally based on our own schedule, not
10 by any requirement, but just for the convenience of
11 scheduling or organizing the RTAB meetings. That will
12 happen at the August meeting.

13 MR. WITKOWSKI: Why was it brought to us today?

14 MR. CLINE: Because there was some concern about
15 whether or not if the RTAB needed to specifically approve
16 this appointment, whether or not there would be some
17 concerns raised over the extra delay of the month until
18 the end of August when our August meeting occurs and,
19 you know, it's been done on other RTABs, it's been done
20 with this RTAB, you know, bringing that issue forward to
21 eliminate that time lag and, once that recommendation was
22 made, it's been subsequent to that that some of these
23 other concerns have been raised, but the issue was still
24 left on the agenda.

25 So my own opinion is that it is unclear

1 specifically if we have to make any type of determination
2 on this particular appointment. I think what we were --

3 MR. WITKOWSKI: I guess then the question I go
4 back to, you brought up, who seats the new commissioner,
5 whether it's Mary Donald -- is that the name?

6 MR. VAUGHN: Correct.

7 MR. WITKOWSKI: Mary Donald. Who makes that
8 choice? My understanding is RTABs aren't in that
9 business.

10 MR. CLINE: Well, the RTAB --

11 MR. WITKOWSKI: That's a city function and
12 that's the whole purpose of --

13 MR. CLINE: If you eliminate the RTAB from the
14 equation, it would be the business of the City Commission
15 and still is the business of the City Commission, but we
16 have this RTAB layer that's been placed on that. In the
17 final EM order, plus some other -- you know, when you look
18 at the law, the order that the governor issued, the final
19 EM order gives us some authority over reviewing decisions
20 made by the City Council and approving those, and this is
21 the process that, you know, that we're following.

22 I think it becomes a little unclear because
23 I don't think that was -- you know, that may have been
24 envisioned for appointments to boards and commissions.
25 I don't necessarily think that it was thought of what

1 would happen in the event of a City Commission
2 appointment. So I think we're -- for lack of a better
3 term, I think we're in a little bit of a grey area.

4 MR. VAUGHN: Thank you, Mr. Cline.

5 The RTAB scope is a little broader than just the
6 financial. We do a little bit more than just financial.

7 MR. CLINE: We are to look at operations as
8 well, yes.

9 MR. WITKOWSKI: Well, I just get concerned --
10 obviously there's concern the process is flawed. I get
11 concerned about: Are we looking into something that we
12 have no business looking into? Because if we do it for
13 this, we're going to be asked to do it for everything
14 else, and that's where the concern -- you know, I don't
15 want us to be the jury and trial, you know, judge of
16 issues that I believe our City Commission should -- now,
17 if the process has been flawed and there's evidence of it
18 and the state and city attorney say that that has been
19 jeopardized, then I think we'd have to get involved.

20 I'm really having a hard time -- I don't want to
21 overreach our power and do something that we really don't
22 have the authority for, number one, and, number two, we
23 could set a precedence that we're going to be involved
24 with every --

25 MR. CLINE: I don't believe that it would

1 necessarily set a precedence. In terms of -- currently,
2 there's three RTABs in the state and, as far as the scope
3 of what they review and how they go about it, I would
4 place this one firmly in the middle, that the scope of
5 what the RTAB reviews is not as expansive here in Benton
6 Harbor as it is in other locations.

7 So I think really, you know, this occurs to me
8 because procedurally even if you did move forward with
9 affirmation, you know, let's say some -- and this is just
10 a hypothetical for the sake of argument. Let's say some
11 issue did come to light, that affirmation can always be
12 reconsidered at a subsequent meeting, but if you do
13 nothing today, when you review the resolutions adopted
14 at -- I don't recall what meeting this was; coming
15 forward, what the specific date was, but that will just
16 fall into the mix of all, be under resolutions adopted
17 that night by the City Commission anyway. So whether
18 directly or indirectly, there will be some sort of vote
19 that encompasses this resolution, either today or next
20 month.

21 MR. VAUGHN: Our options are to approve, deny or
22 table this item.

23 MR. CLINE: I would not -- Mr. Chairman, I would
24 not -- while denial is certainly an option, I wouldn't
25 necessarily recommend that.

1 I would recommend approval and we move on and
2 if other issues come up, then those can always be
3 reconsidered or you just postpone it and it goes back
4 into the mix for the next meeting and then if anything
5 comes to light between now and then, we'll review it and,
6 if not, then it will be just be part of the regular
7 meeting agenda.

8 MR. VAUGHN: Thank you, Mr. Cline.

9 Those are the three options available.

10 MS. HUNT: I guess with me for the approval,
11 are we saying we're approving that Mrs. Mary Donald is
12 seated with a six to two vote and we look at the process?
13 What does the approval mean?

14 MR. CLINE: I would just simply recommend that
15 we're affirming that they took this vote and that was the
16 outcome of the vote, and then our role -- see, the whole
17 basis for our recommendation was to not raise questions as
18 to what our role in the process was or when our timing was
19 going to -- we were trying to, out of deference to the
20 city, make this as seamless for them as possible and just
21 sort of eliminate the question of, does the RTAB have to
22 approve this by just saying, you know, by just moving --
23 recommending it and moving forward, you know, on the basis
24 that there's no questions about the vote that they took or
25 the outcome.

1 So, you know, were I to make the motion, I would
2 just say, you know, something along the lines that, you
3 know, you're recommending to approve the vote taken at the
4 City Commission that appoints Mary Donald as a city
5 commissioner to fill the existing vacancy and leave it at
6 that.

7 MR. VAUGHN: Thank you, Mr. Cline.

8 Our approval will eliminate the question of
9 whether the RTAB has approved or denied it, so I think it
10 kind of takes us out of the way and then the city can
11 concentrate on what they need to do, if we so choose to
12 approve.

13 MR. WITKOWSKI: And then it would be up to the
14 city to look at the process?

15 MR. CLINE: Right. In my opinion, the city then
16 would be able to review this internally and if there's no
17 issue, then there's no issue, and if there is an issue,
18 then, you know, say the city attorney makes some sort of
19 recommendation, it would be up to the city to act on that
20 recommendation and then we would respond accordingly.

21 Because until we get some sort of action coming
22 from the city to this board, we can't sort of take
23 preemptive action. So really anything moving beyond this
24 point is really up to the city before we can even get
25 involved as an RTAB Board.

1 MR. VAUGHN: Thank you, Mr. Cline.

2 MR. SEATS: But she has a vote then.

3 MR. VAUGHN: No, no, no. We're not taking
4 any --

5 MR. SEATS: Oh, I'm sorry.

6 MR. VAUGHN: The question before the TAB is
7 whether we're going to approve, deny or table this motion.

8 MR. WITKOWSKI: Well, let's go back before I
9 make a motion.

10 I think we have to remember that the existence
11 of this board is a reactive board. That is the key for
12 the most part. It's not a proactive board, which some
13 people like on some issues and some people don't like on
14 some issues. I think reactive is basically a six to two
15 vote. Now, my feeling is if there's evidence otherwise,
16 that would go through the city attorney and then brought
17 to the TAB Board; then the board can react.

18 Does that make sense?

19 The board can't preempt -- stop me if I'm wrong.
20 We can't stop the city from doing a process. Everything
21 has to be reactive. We can only react to the decisions
22 that you make. Right now, the decision is six-two. The
23 process is part of what led you to the decision. If there
24 was a flaw in the process, then I think the city attorney
25 has to bring it to you as the manager, to the board to

1 say, "I don't think our City Commission followed the
2 process."

3 I'm not saying you're wrong, but I think we have
4 to set up procedures here to protect the city and protect
5 this board from getting into areas that I think are
6 definitely a grey area, as was described. We're squarely
7 in the middle, and so I think from that, I want us maybe
8 to go back to what our charge is as being reactive, you
9 know, no different than when the commission decided not to
10 vote on the four cars. Some people said, "Well, push the
11 board to vote." No. That's up to the board to decide.

12 That's just me personally. I am only speaking
13 for me, not the board, and it doesn't change how you feel.
14 I'm not trying to change that. I'm trying to explain what
15 I think the role of this board is, which is different than
16 having EM, which is very proactive.

17 Does that make sense? No?

18 MR. VAUGHN: Our charge is to pass a motion on
19 this.

20 Do I hear a motion on this item?

21 MR. WITKOWSKI: I'll make a motion to approve
22 it.

23 MR. VAUGHN: Is there a second?

24 MS. HUNT: I second it.

25 MR. VAUGHN: There's a motion to approve the

1 appointment of Mary Donald to the city commission to
2 fill the existing commission vacancy.

3 All those in favor, say aye.

4 MR. WITKOWSKI: Aye.

5 MS. HUNT: Aye.

6 MR. VAUGHN: All those opposed, say no.

7 Motion passed.

8 MR. WITKOWSKI: And I guess so we don't get put
9 in the middle, Eric, is that something that the state
10 could look at, do we get involved in processes?

11 MR. CLINE: Well, I believe we do have a role in
12 that involvement. I think --

13 MR. WITKOWSKI: What level do we make the choice
14 if the process was flawed or not?

15 MR. CLINE: Well, I think that's actually an
16 internal determination --

17 MR. WITKOWSKI: Okay.

18 MR. CLINE: -- based on -- I mean that internal
19 determination, it first has to be made by the city because
20 really, again, what I believe it goes back to is: Did
21 following -- and I know this is going to sound like I'm
22 splitting hairs, but they adopted a process to screen
23 these candidates. There are questions as to whether that
24 process was followed perfectly or not. But then did that
25 in any way invalidate the vote that was taken to make that

1 appointment? And I think that's really what the --

2 MR. WITKOWSKI: I agree.

3 MR. CLINE: -- what it hinges on is: Is the
4 vote itself made by the commission, regardless of how many
5 yeas or nays were there, is the vote itself invalid for
6 some reason?

7 MR. WITKOWSKI: That makes sense.

8 MR. CLINE: And, again, what we were attempting
9 to do here at this level was to remove ourselves, given
10 the timing of when that selection was made and when our
11 next meeting would be was to eliminate that as a potential
12 issue and avoid the necessity of perhaps requiring a
13 special meeting of the RTAB just for that one issue.

14 So, again, this process I think, trying to
15 address all these issues ahead of time as best we can,
16 but there are still some things that get a little
17 cumbersome.

18 MR. VAUGHN: Thank you, Mr. Cline.

19 That item is closed.

20 We are moving on to the nonaction items. The
21 monthly financial report for June 2014. I just want to
22 note that the budget to actual is dated June 2013. I
23 believe it should be dated June 2014 on that report,
24 June 30, 2014.

25 The next item is the city manager update.

1 Mr. Watson.

2 MR. WATSON: Just a couple quick things.

3 I know that the -- I've had conversations with
4 the state revolving around the conservancy, and just to
5 let the board know and those that are here, yesterday,
6 the conservancy took a bus tour of all the parks because
7 when we started the conservancy, there was a lot of
8 energy, a lot of enthusiasm; that kind of waned, and then
9 we had the resignation of the then-seated chairman.
10 There's been a newly-elected chairman and she wanted to
11 make sure everybody knew what we were talking about when
12 we talk about the parks and just actually see them for
13 themselves.

14 As it relates to the discussion that just
15 preceded, once that conversation started about that there
16 was issues here, I started a conversation with the city
17 attorney. So that's in process and we're discussing it.
18 He hasn't issued any statement, any recommendation one way
19 or the other because he's looking at all the information.

20 MR. WITKOWSKI: Okay.

21 MR. WATSON: So at any time when that
22 recommendation does come forth, whatever it is, it will be
23 conveyed to the City Commission, thus to the RTAB and then
24 also I will give updates to the state as necessary on that
25 process.

1 So those are the couple of things I have right
2 now.

3 MR. VAUGHN: Okay. Thank you, Mr. Watson.
4 The next item on the agenda is public comment.
5 I will call your name on the list.

6 (Brief pause.)

7 MR. CLINE: Mr. Chairman, there's an individual
8 here that just walked into the meeting that wasn't
9 aware --

10 MR. VAUGHN: I'll make an exception.

11 (Brief pause.)

12 MR. VAUGHN: David Singh, please step to the
13 podium. You have two minutes on the clock.

14 MR. SINGH: My name is David Singh and I have a
15 store on Broadway and Pipestone and last week I read in
16 the newspaper there's another ~~story~~ ^{store} open on another
17 corner, Pipestone and Jefferson, and there's no difference
18 between two stores, very near and the City of Benton
19 Harbor, I think no need to open another store, liquor
20 store, very small city and they have too many stores
21 already along here. If you walk just a couple of steps,
22 you see another store, every corner, beer sale, cigarette
23 sale, and I think this city needs (indiscernible) schools
24 and I request the city please stop ~~open~~ ^{opening} stores because
25 that hurts us, too.

1 My family runs the store and we pay tax for
2 last 10, 15 years to Benton Harbor every year two times,
3 summer tax and a winter tax we pay, and we just obey all
4 for the long time we live here, and I would request if
5 you open a new store, that's really, really bad for our
6 community. I think me myself (indiscernible) my
7 neighborhood people, nobody ^{wants} ~~want~~ the store open.

8 If the store is (indiscernible) far from a
9 couple blocks, that's okay, but this all (indiscernible)
10 just walk a couple of steps. If you walk a couple steps
11 from my store on Pipestone, you'll see there's too many
12 stores in the city, with city having no jobs, no job
13 opportunities and already (indiscernible) and
14 (indiscernible) taxes (indiscernible) insurance.

15 That's it. That's what I wanted for my request.
16 So please don't open liquor stores, beer stores no more.
17 We don't need them. Thank you.

18 MR. VAUGHN: Thank you.

19 Miss Huddleston, please.

20 MS. HUDDLESTON: Hi. I'm Peggy Huddleston.

21 I've been gone for a while, but I wanted to come and see
22 what your jobs were over the commissioners because I've
23 never seen it before.

24 And I also have a complaint about the streets
25 and then the storm. When I came back, there were limbs

1 everywhere. So I came and asked Mr. -- the manager, the
2 city manager. He said the meeting was going to be in
3 August. So I found out it was going today, so I came
4 running down here so I could find out about when there's
5 a storm and limbs laying all over Benton Harbor, who
6 is -- if this board is responsible for it, seems like
7 they would set up something for someone to go around and
8 get them because they were everywhere.

9 MR. WITKOWSKI: That would be up to the City
10 Commission. That's not our board.

11 MS. HUDDLESTON: Okay. Then Monday they was
12 laying asphalt. Next door to me -- I live on 1068 Colfax.
13 The house across the street was torn down where the city
14 went and dug up to turn the water off, and I asked the
15 guys could they fill that hole in right there with asphalt
16 because the cars and the mailman, when he runs down, he's
17 bringing all the dirt down the street and it gets in front
18 of the house. They said, well, next year they're going to
19 tear the street up and put a new street down. Well, I
20 need it done now. There's too much dirt in front of my
21 house. I don't like that dirt.

22 MR. WITKOWSKI: You have to talk to the
23 commission.

24 MS. HUDDLESTON: Okay.

25 MR. WITKOWSKI: Sorry.

1 MS. HUDDLESTON: I didn't know who to talk to.

2 MR. WITKOWSKI: She's right there.

3 MS. HUDDLESTON: Yeah, okay. I didn't know
4 because there's two boards.

5 MR. VAUGHN: We'll address your comments during
6 the board comment.

7 MS. HUDDLESTON: Okay. But anyway, I was really
8 concerned about the storm because it -- I put a limb in
9 front of the yard and they never came and got it, and I
10 wanted to know who was responsible for picking them up,
11 so he said the people that pick the trash up come back and
12 get the limbs. Well, I know you supposed to tie them up
13 and put them there, but this is just one limb, so I took
14 it and cut it down and put it in a bag, but --

15 MR. VAUGHN: Thank you, Miss Huddleston.

16 MS. HUDDLESTON: Okay.

17 MR. VAUGHN: Willie Dortch.

18 MR. DORTCH: Willie Dortch. I won't be very
19 long. I've been dealing with the City of Benton Harbor
20 for the last 10 years, motorcycle club. The only reason
21 I'm here is because Willie Locke told me to come down here
22 and talk to you all, and the problem is I went through all
23 the process I was supposed to go through, I went through
24 public safety and I'm having hours of operation out of the
25 chief of police and Darwin Watson.

1 Darwin Watson was not in the last public safety
2 meeting I was in, and the public safety approved for me to
3 go ahead and operate my place as long as I keep them
4 abreast of what's going on and so we started operating.
5 (Indiscernible) I didn't have no problem operating during
6 the hours. After he left, then everybody put a stop to
7 it.

8 So I didn't know -- I looked in the paper and
9 it said the board was about financial. Then it came out
10 again that you had to approve everything they do. So
11 that's why I never came here.

12 So I went to the City Commission, at least the
13 public safety and the public safety (indiscernible)
14 approval. By me not being a bar, a club, a nightclub, we
15 don't sell alcohol, we don't allow anyone to sell alcohol,
16 we don't allow anyone to give it away and we do not
17 violate any curfews and so they approved for me to go on
18 and operate.

19 But after that, I got stopped again. I got
20 stopped again back in I guess October I guess, November,
21 something like that, but it took me all this time to
22 figure out what was going on and who I talk to.

23 I thought that if public safety approved
24 something, it was all right unless you all had a problem
25 with it. We do a lot of stuff for the City of Benton

1 Harbor. Salvation Army called me and all this stuff we
2 do for them. We're not operating like we should, you
3 know --

4 MR. VAUGHN: Thank you, Mr. Dortch.

5 Miss Hull, please.

6 MS. HULL: My name is Emma Hull. I live at
7 617 Pipestone Street.

8 Based upon what Miss Huddleston was talking
9 about and you said, Mr. Witkowski, that it goes through
10 the commissioner and the city manager, but I need to know
11 what is the turnaround time when you make a complaint,
12 when you call; if we need more people to work because
13 every time we call about services that we need in the
14 city, then they say we only have one worker, two workers.

15 Who is in charge of okaying -- you say you're
16 reactive and not proactive. Who is in charge if they need
17 workers to give us better service so that these things
18 can't happen, trees, limbs, streets, holes in the streets?
19 And where do we go? And what is the turnaround time when
20 we do make a complaint? And when they send it to you, can
21 we get an answer, yes, no or maybe or do we have to wait.

22 Because we need to have some answers about the
23 process of how this works with the state, because we call
24 the city manager, maybe there's a time we get no answers;
25 if we talk to the commission, they say if there's a

1 finance to it, then the state has to do it, but you say
2 you're reactive.

3 So we need to know -- I think you explained some
4 of it, Mr. Witkowski, but we need to know as citizens just
5 how this works, what service we can get and what's the
6 turnaround time to get some answers about questions that
7 we need for the services that we need to be expecting as
8 citizens that live in the City of Benton Harbor.

9 Thank you.

10 MR. VAUGHN: Thank you, Miss Hull.

11 Commissioner Adams, would you like to speak?

12 MS. ADAMS: Yes. Again, my name is Commissioner
13 Mary Alice Adams, City of Benton Harbor.

14 I'd like to just address the financial portion
15 of the conservancy. I don't know if it has or will come
16 back across you all desk, but the reason that the City of
17 Benton Harbor went into this partnership with a
18 conservancy was solely for the form of saving Benton
19 Harbor city (indiscernible) money that we could no longer
20 afford to pay the insurance and, to date, I think that we
21 still are, and it needs to stop.

22 Thank you.

23 MR. VAUGHN: Thank you, commissioner.

24 The next item on the list is board comment, and
25 I will be giving the board comment.

1 I'll try to explain what the RTAB does and does
2 not do.

3 The RTAB, as many of you have referred to today,
4 is a reactionary board.

5 If you need any services from your city, whether
6 that be limbs or trees or paving or whether liquor stores
7 or grocery stores are going in, whatever you have with the
8 city has to originate with the city. All of the
9 complaints, all of the requests, all of your activity
10 should originate with the City Commission.

11 Once they act on something, then it comes to us
12 for our approval or denial. If they don't act on it, then
13 it never gets to us. We cannot and will not proactively
14 go out and initiate an activity outside the scope of
15 whether the City Commission has already acted. So if they
16 do not act, we will not act. So you must start with the
17 City Commission.

18 It's just exactly like before the EM came and
19 the RTAB came; you went to the City Commission. It's
20 still like that. You still must go to the City
21 Commission. The only difference is there's another layer
22 after that. After they initiate something, then we
23 respond to it. So we cannot and we will not help you if
24 the City Commission hasn't taken an action. It's outside
25 our scope of authority.

1 Are there any other board comments?

2 MR. WITKOWSKI: Just on the financial side,
3 things are looking good still? That's encouraging.
4 E-mail maybe to Jodi or Darwin if we can get some more
5 reports, maybe expound, you know, expansion, but ends up
6 good, I mean it's a very good fiscal year for the City of
7 Benton Harbor --

8 MR. WATSON: Yes, sir.

9 MR. WITKOWSKI: -- looks like on all accounts,
10 which has been a long time coming.

11 Do you have any fund balance in the major or
12 local streets at all?

13 MR. WATSON: Low.

14 MR. WITKOWSKI: Very low, yeah. Local streets
15 I'd be amazed if --

16 MR. WATSON: Yeah, yeah.

17 MR. WITKOWSKI: Okay. Looks good.

18 MR. VAUGHN: Miss Hunt?

19 MS. HUNT: No. I'm good.

20 MR. VAUGHN: I'd entertain a motion to adjourn
21 the meeting.

22 MR. WITKOWSKI: I'll make that motion.

23 MS. HUNT: I second it.

24 MR. VAUGHN: All those in favor, say aye.

25 MS. HUNT: Aye.

1 MR. WITKOWSKI: Aye.

2 MR. VAUGHN: All those opposed, say no.

3 Meeting is adjourned.

4 (At 12:01 p.m. meeting adjourned.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

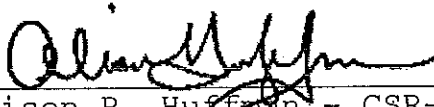
24

25

1 CERTIFICATE

2
3
4
5
6 State of Michigan
7 County of Van Buren
8
9
10

11 I certify that this transcript, consisting of 48 pages,
12 is a complete, true and correct record of the Meeting
13 held 7/30/14.
14

15
16
17
18
19 
20 Alison R. Huffman - CSR-0945
21 Certified Court Reporter
22 Notary Public in and for
23 Van Buren County, Michigan
24 Commission Expires: 8/19/2019
25

