

City of Ecorse

Receivership Transition Advisory Board Meeting Minutes

Tuesday, April 12, 2016

Ecorse City Hall

Council Chambers

Albert B. Buday Civic Center

3869 West Jefferson

Ecorse, Michigan 48229

RTAB MEMBERS PRESENT:

ROBERT BOVITZ

JOAN BROPHY

EDWARD KORYZNO

ALSO PRESENT:

WAYNE O'NEAL

City Administrator

PATRICK DOSTINE

Michigan Department of Treasury

Reported by:

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Called to order at 9:02 a.m.

MR. KORYZNO: I'll call the City of Ecorse Receivership Transition Advisory Board meeting to order for Tuesday, April 12th, 2016. Mr. Dostine, would you please call roll?

MR. DOSTINE: Joan Brophy.

MS. BROPHY: Here.

MR. DOSTINE: Robert Bovitz.

MR. BOVITZ: Here.

MR. DOSTINE: Ed Koryzno.

MR. KORYZNO: Here.

MR. DOSTINE: You have quorum, Mr. Chair.

MR. KORYZNO: Thank you. Next item is approval of the agenda. I'll entertain a motion to --

MS. BROPHY: I'll move to approve the agenda.

MR. BOVITZ: Support.

MR. KORYZNO: Moved by Brophy, support by Bovitz. Any discussion? Seeing none, all in favor of the motion say aye. Aye.

MR. BOVITZ: Aye.

MS. BROPHY: Aye.

MR. KORYZNO: Opposed, same sign.

(No response)

MR. KORYZNO: The agenda is approved as printed. A reminder to the audience, that if you intend to speak

1 during the public comment portion of the meeting, it will
2 be necessary for you to sign the sheet located on the
3 podium.

4 Item C, approval of the RTAB minutes of the
5 March 8th, 2016, meeting.

6 MS. BROPHY: So moved.

7 MR. BOVITZ: Approval of all three, together?

8 MR. KORYZNO: Well, no, these are our minutes.

9 MR. BOVITZ: Oh, okay. So moved. I mean,
10 support.

11 MR. KORYZNO: Okay, thank you. Moved by Brophy,
12 support by Bovitz to approve the minutes for the March
13 8th, 2016, RTAB meeting.

14 Any discussion?

15 (No response)

16 MR. KORYZNO: Seeing none, all in favor of the
17 motion say aye. Aye.

18 MS. BROPHY: Aye.

19 MR. BOVITZ: Aye.

20 MR. KORYZNO: Opposed, same sign.

21 (No response)

22 MR. KORYZNO: The minutes are approved as
23 printed. There is no old business, so we'll move on to
24 new business. Approval of resolutions and ordinances for
25 city council meetings. We have three city council meeting

1 minutes to approve, and unless either of the board members
2 have objections, we could entertain a motion to approve
3 all three meetings in one motion.

4 MR. BOVITZ: So moved.

5 MS. BROPHY: Support.

6 MR. KORYZNO: Moved by Bovitz, support by
7 Brophy, to approve the regular city council meeting
8 minutes for February 16th, 2016, March 1st, 2016, and
9 March 15th, 2016.

10 Any discussion?

11 (No response)

12 MR. KORYZNO: Seeing none, all in favor of the
13 motion say aye. Aye.

14 MS. BROPHY: Aye.

15 MR. BOVITZ: Aye.

16 MR. KORYZNO: Opposed, same sign.

17 (No response)

18 MR. KORYZNO: The motion is approved. Next item
19 is claims and accounts from regular city council meeting
20 draft minutes of March 29th, 2016. I'll entertain a
21 motion.

22 MR. BOVITZ: So moved.

23 MS. BROPHY: Support.

24 MR. KORYZNO: Moved by Bovitz, support by
25 Brophy. Any discussion regarding the claims and accounts?

1 (No response)

2 MR. KORYZNO: Seeing none, all in favor of the
3 motion say aye. Aye.

4 MS. BROPHY: Aye.

5 MR. BOVITZ: Aye.

6 MR. KORYZNO: Opposed, same sign.

7 (No response)

8 MR. KORYZNO: The motion is approved.

9 Item B, city administrator items. One, city
10 council minutes were addressed in new business. Two,
11 budget to actual report for February. Entertain a motion
12 to approve the February budget to actual report.

13 MS. BROPHY: So moved.

14 MR. BOVITZ: Support.

15 MR. KORYZNO: Moved by Brophy, support by
16 Bovitz.

17 Any discussion?

18 (No response)

19 MR. KORYZNO: Seeing none, all in favor of the
20 motion say aye. Aye.

21 MS. BROPHY: Aye.

22 MR. BOVITZ: Aye.

23 MR. KORYZNO: Opposed, same sign.

24 (No response)

25 MR. KORYZNO: The motion is approved.

1 Item three, approval to hire part time employee,
2 addressed -- that was also addressed in new business.

3 Item four, approval of Alta Equipment Company
4 contract, that was addressed in new business.

5 Item five, approval of use of Senior Park for
6 fishing tournament beer tent, that was addressed in new
7 business.

8 Item six, approval of payment to BUWA for
9 professional services, that was also addressed in new
10 business.

11 Item seven, approval of 109.16, case 12-004423-
12 CZ, litigation settlement. While this action on this item
13 occurred in a city council -- during a city council
14 meeting outside the normal review period for today's board
15 meeting, the city has requested to bring this item before
16 the board for early review. And I believe that request is
17 merited.

18 Therefore, Mr. Wycoff, could you provide
19 background on this item, please?

20 MR. WYCOFF: Yes. Charles Wycoff, on behalf of
21 the city. This is an unusual situation, and I appreciate
22 very greatly the board seeing fit to advance this on your
23 agenda. The matter involves a suicide that took place in
24 the lockup here at city hall.

25 We were sued by the wife of the deceased, and

1 the matter has been pending in the -- well, it started out
2 in Wayne County Circuit Court; it's been transferred to
3 federal district court. Judge Bernard Friedman is
4 handling the case.

5 The case has been being litigated for a little
6 over two years; there have been several attempts at
7 settling the case over that period of time. And frankly,
8 the negotiations for a settlement were very negligible, to
9 say the very least. The difference was that our
10 assessment of the case and the assessment provided by the
11 attorney handling the case to the insurance company, was
12 that the settlement value was somewhere in the
13 neighborhood of \$300,000.

14 The plaintiff's attorney continued to demand \$6
15 million, and as a result of the final pretrial conference,
16 Judge Friedman determined that settlement was not
17 possible, and scheduled the matter for trial. At that
18 point in time, the excess insurance carrier for the city
19 became involved. They assigned their private counsel;
20 their private counsel began direct negotiations with the
21 plaintiff's attorney, and as a result of that, was able to
22 reach an accord.

23 Initially, we believed the number was going to
24 be somewhere in the neighborhood of \$1.2 million; it
25 turned out to be \$1.125 million. The insurance coverage

1 that the city has covers everything but \$150,000. We have
2 spent a goodly portion of that, 93,000 to be exact, in
3 attorney fees, handling that single case. And there is
4 57,000 of the retention still remaining, which will be the
5 cost to the city. The insurance will cover the remainder
6 of the case.

7 There are several reasons why that case should
8 be settled, and for the sum that is being demanded. Not
9 the least of which is a deposition which was given by one
10 of our own police officers during the course of that case,
11 which has a significantly negative impact on the merits.
12 Unfortunately, the police officer was a relative of the
13 deceased, and I think, enough said.

14 But it is the recommendation of my office that
15 we settle for this amount of money; it is also the
16 recommendation of the attorney handling the case. We
17 believe it's in the best interest of the city from the
18 standpoint that in a jury proceeding, that amount could be
19 substantially greater. So that is our recommendation.

20 MR. KORYZNO: Thank you, Mr. Wycoff.

21 Any questions from the board, for Mr. Wycoff?

22 MR. WYCOFF: Thank you.

23 MR. KORYZNO: I'll entertain a motion.

24 MR. BOVITZ: Move that we approve the settlement
25 as stated.

1 MS. BROPHY: Support.

2 MR. KORYZNO: Moved by Bovitz, support by
3 Brophy, to approve Resolution 109.16.

4 Any further discussion?

5 (No response)

6 MR. KORYZNO: Seeing none, all in favor of the
7 motion say aye. Aye.

8 MS. BROPHY: Aye.

9 MR. BOVITZ: Aye.

10 MR. KORYZNO: Opposed, same sign.

11 (No response)

12 MR. KORYZNO: The motion is approved.

13 Item eight, approval of Resolution 110.16, cases
14 12-006777-NZ, and 12-009832-NZ, and 12-003364-NZ. This is
15 Lincoln Park flood litigation. The same circumstances
16 apply to these cases as the prior one. We -- the board
17 has considered moving this forward, and so Mr. Wycoff,
18 again, could you please approach the podium and provide a
19 brief background?

20 MR. WYCOFF: Thank you once again. Charles
21 Wycoff, appearing on behalf of the city. This is a
22 request to authorize \$6,000 to file an application for
23 leave to appeal through Michigan Supreme Court.

24 This case arises out of flooding in the city of
25 Lincoln Park, allegedly caused by either action or

1 inaction on the part of the city of Ecorse.

2 In particular, there is an allegation that there
3 are what are known as flex gates, which are supposed to
4 close, to prevent backwater into other communities, and
5 there is an allegation that those were removed by the city
6 of Ecorse. That has not been verified, nor has, from our
7 point of view, any determination of precisely what is --
8 what was the cause of this flooding been determined.

9 However, initially, when this case was filed,
10 the attorney handling the case filed a motion for summary
11 disposition, before the Honorable Jane Stempien. Judge
12 Stempien ruled in favor of the city that, number one, we
13 were protected by the doctrine of governmental immunity,
14 number one, and number two, in the trespass nuisance
15 exception to governmental immunity, there is a notice
16 requirement. And that notice requirement was not met in
17 any instance.

18 Consequently, we felt that we were in pretty
19 good shape. Unfortunately, before the order was entered
20 for summary disposition, Judge Stempien removed herself
21 from the bench. She was replaced by Judge Gibson, and
22 Judge Gibson refused to sign an order on behalf of Judge
23 Stempien. Since she was no longer on the bench, she could
24 no longer sign the order, and that resulted in a rehearing
25 before Judge Gibson.

1 Judge Gibson determined that Judge Stempien's
2 ruling was wrong, and she ruled in the opposite direction.
3 As a result of that, an appeal was taken to the court of
4 appeals, an interim appeal, and the court of appeals
5 affirmed Judge Gibson's decision. And that was -- that
6 resulted in a request for rehearing.

7 The court of appeals affirmed a second time, and
8 now we are faced with a situation of either appealing to
9 the Supreme Court, or allowing this matter to go to trial.
10 The cost of trial of this case is going to be substantial.
11 We're talking about three separate lawsuits, with over 100
12 plaintiffs, plus the city of Lincoln Park.

13 Lincoln Park advises us they have already
14 expended \$1 million in settlements, and anticipate it
15 could go as high as a million and a half. All on the
16 basis that nobody is absolutely certain at this point what
17 caused the flooding. So there is a great deal of work to
18 be done if we have to go to trial, but we believe the
19 notice requirement and governmental immunity are
20 sufficient, and that we should be able to prevail on those
21 issues.

22 The attorney handling the case, Anthony
23 Randazzo, has recommended that we file the application for
24 leave to appeal. I have reviewed the file, I have
25 reviewed the circumstances of the case, including the --

1 saw a great deal of evidence that has been gathered, and I
2 believe that it merits the \$6,000 expenditure. And I have
3 recommended it to city council; they approved, and I am
4 recommending it to you as well.

5 MR. KORYZNO: Any questions from the board?

6 MS. BROPHY: No.

7 MR. KORYZNO: All right. I'll entertain a
8 motion.

9 MR. BOVITZ: Move that we accept resolution to
10 continue the case.

11 MS. BROPHY: Support.

12 MR. KORYZNO: Moved by Bovitz, support by
13 Brophy. Further discussion?

14 (No response)

15 MR. KORYZNO: Seeing none, all in favor of the
16 motion say aye. Aye.

17 MS. BROPHY: Aye.

18 MR. BOVITZ: Aye.

19 MR. KORYZNO: Opposed, same sign.

20 (No response)

21 MR. KORYZNO: The motion is approved. Item
22 nine, checks released, is informational only. That brings
23 us to the city administrator report.

24 Mr. O'Neal?

25 MR. O'NEAL: Thank you Mr. Koryzno, members of

1 the TAB board. Several items, the first of which, is, and
2 you'll recall, Mr. Koryzno, at the last TAB board meeting
3 I had requested information relative to a two or three
4 line question I had, relative to the existing orders,
5 number three and ninety four. And asked the Treasury
6 Department for a response to that.

7 And you had indicated at the time to ask the
8 city attorney, and I did that. And I got an opinion from
9 the city attorney, which I've turned in to Treasury. I've
10 talked to Treasury about that, and they've indicated the
11 only changes to the orders, was to order number 94,
12 relative to the hiring of personnel; nothing else has
13 changed, in respect to Ms. Parker's orders. And I do
14 think there's some 97 orders that she left in place, and
15 that those orders were there, and that the city attorney's
16 entitled to his opinion, but it doesn't carry any weight,
17 and it's business as usual. And I appreciate that from
18 Treasury.

19 To digress a little bit, when I got here the
20 first time, almost two years ago, it's my understanding
21 the orders were in place and that Ms. Parker changed the
22 form of government that they had in here, from a strong
23 uniform government, or a mere council form of government,
24 to a city administrator form of government.

25 And that the orders that were left in place were

1 those to govern how the legislation was supposed to be
2 enacted, and how the administrative functioning of the
3 city was supposed to go forward. And of course, I applied
4 that both the first time I was here, and the second time I
5 was here, that I'm here now. And I'm continuing on with
6 that, knowing full well that those orders are in place,
7 and that's how we're supposed to judge that.

8 I've placed in front of you, is a flow chart,
9 for information, and those of you that have worked in
10 municipal government before knows -- know that it's
11 important that any flow of information go by and through
12 the city administrator, city manager, whoever might be on
13 board, so that that information, when it is disseminated,
14 is disseminated properly to the proper officials, to the
15 proper people, and that the proper people have looked at
16 it, and gave the proper weight and what have you, to that.

17 That's something I'm going to be presenting to
18 my city council tonight, so that we can have control over
19 information, who's requesting for information.

20 We're not saying that the city council can't ask
21 for information, but we have to have some control over it,
22 because if you've got any number of people requesting
23 opinions or requesting information for -- from consultants
24 or whatever, the bills go up. And a lot, often times, a
25 lot of these questions can be answered straightaway. If

1 they're asked through the proper channels.

2 So what you see there is something that I'm
3 sure, Mr. Koryzno, you will recall, you've had those
4 problems throughout your career just like the rest of us
5 have. And we try to keep a handle on that, and that's
6 what I'm wanting to do. I'm not going to tell -- I've
7 never told my city council that they can't talk to
8 employees. Never done that, never will.

9 But information dissemination -- one of the
10 things that Ms. Parker was very, very careful, to have in
11 her orders, if you take a look at order number 94, if you
12 take a look at the duties and powers of the city council,
13 the duties and powers of the city administrator. They're
14 complete about how that information is supposed to go, and
15 further, that no department heads or elected officials are
16 supposed to do anything that undercuts the authority of
17 the city administrator, for obvious reasons.

18 Because Ms. Parker has been a city administrator
19 on and off for many, many years, she knows the problems
20 associated with that. We've all read the things that
21 happened in Inkster and in different places, and you can
22 look back on my career, at some of the things that have
23 taken place, relative to information.

24 And council people, certain council people,
25 getting information other people don't get, and that's a

1 recipe for disaster. So, that being said, all I'm trying
2 to do, with my administrative staff, is to make sure that
3 we have got a proper handle on the information, that
4 everybody gets the same information; Mr. Elem, Ms. Parker,
5 Ms. Banks. Everybody gets the same information, okay.

6 And we all also know they go into elections.
7 Everybody tries to one up each other. Of course that
8 would never happen in Ecorse. So my job is to make sure
9 that nobody's one-upped, and that everybody gets the same
10 stuff, and that's very, very important about information
11 dissemination. I mean, that's just common sense.

12 The other part of that is, is to manage your
13 consultants. Because when you start asking questions of
14 your engineers, or your attorneys, or your planners or
15 whatever, they're not going to say no, I'm not going to
16 answer that question. They'll answer the question because
17 they get paid to do that.

18 That's why it's very, very important for the
19 city administrator to have a handle on that, so that you
20 can manage your consultants, and oftentimes a lot of these
21 questions can be answered right off the top of the head.
22 No consultants can be self-directed. I mean, you just
23 can't have that. If you have a consultant that's self-
24 directed, well then you might as just open the checkbook.

25 So that's important. I know in the past we've

1 had problems where the consultants and the contracts that
2 we've had, we haven't been as diligent as we should have
3 been on the work that they're doing or whatever they're
4 doing. One of the things that we have been doing, since
5 I've been here both first time and the second time, we are
6 reviewing both current consultants and past consultants
7 both.

8 And without going into detail, there are ongoing
9 investigations at several different levels of authority.
10 On some of the discrepancies that may appear in these
11 bills. I'm continuing to do that, and do my due
12 diligence, and vetting those out, and no consultant is
13 getting a pass. No consultant's getting a pass on that.

14 To date, I haven't found a consultant that has
15 got discrepancies in their bills. And it's my job, as a
16 city administrator, when, before these claims and accounts
17 come to you before this TAB board, I believe it's my job
18 to make sure that before those claims and accounts are
19 paid, that those bills are thoroughly vetted. And that
20 the work has been done. Am I right so far, on this? I'm
21 just --

22 MR. KORYZNO: I take it that your job as city
23 administrator, you have a fiduciary responsibility to
24 insure that payment is received for work performed.

25 MR. O'NEAL: Right. So I -- my point of this

1 is, I'm not going to allow any bill to get onto the list
2 of bills until such time as I'm satisfied that we have
3 received the work for the payment that they're asking for.
4 Whether it's bolts at the hardware store, or underground
5 work, or whatever. And that's what I'm doing on that.

6 I've also got concerns about the amount of some
7 of the bills, and I'm going to be looking at that. Now,
8 one of the things that you approved today was the part
9 time employees back in the DPW, and Mr. Koryzno, I'd ask
10 you, I think it was last August or September, I asked the
11 board if it would be okay to hire some part time,
12 temporary, part time people.

13 Right now, we're working in our Department of
14 Public Services with all part time people. And we're
15 trying to keep them under the 28, 38 -- 30 hour threshold,
16 so that they don't -- we don't have to afford them
17 benefits. We're having a difficult time, because of the
18 fact that we had to terminate some employees.

19 And we're working with, like, two people, three
20 people; we need six or seven, and so these employees are
21 working more than those hours, and we are affording them
22 the benefits under the Affordable Care Act, which we have
23 to, and we are. We're doing those things.

24 What I would ask of you, the -- and you'll see,
25 the part time people have been approved. What I would ask

1 of you is, I understand your perspective on fulltime
2 employees and the termination of fulltime employees,
3 paying part time employees, and having the expectancy that
4 they are treated properly, and those terminations are just
5 and proper, which they will be.

6 But as far as the hiring of part time people for
7 my DPW, I would ask for some discretion on that, that we
8 would go through the hiring process, to make sure that
9 they've got to have the valid driver's license, the
10 background check, all those things. And bring them to you
11 as an informational item, if I need somebody in my DPW.
12 I'm going to be hiring one, maybe two, temporary part time
13 people for the summer time, of which, I hope that that
14 still stands, that I could do that.

15 But as far as the more permanent part time
16 people, it's almost like a 45 day lead time, because we do
17 have the advertisements and what have you. It would make
18 it a lot easier on us, and a lot of -- and make it easier
19 to provide the services for the residents. We've got
20 grass cutting coming up, we've got to get our water bills
21 out. We're a little bit behind on some of our water bills
22 because we don't have the staff to do that.

23 When you've got three people, it's hard to do
24 all this, things that we need to do. So what I'm asking
25 is, if it'd be all right, in the future, if I'm going to

1 hire a more permanent part time person, as you see in the
2 DPW, that I can make sure you have that informational
3 item, to show you that we've done the proper due diligence
4 of vetting them out and what have you.

5 And just to move forward on that, leave
6 everything the same, the fulltime people, you know, we're
7 advertising on the, right now, for a couple of consultants
8 and things like that. We'll do the same process as
9 you've, we've had, there. I'm just asking for some
10 discretion on the part timers in the DPW.

11 MR. KORYZNO: I think the proper procedure would
12 be to submit to the board your plan in writing, so that we
13 can have that to review, rather than just respond here in
14 conversation.

15 MR. O'NEAL: Okay. Okay.

16 MR. KORYZNO: I think an important part, a facet
17 of that process, too, would be ensuring that there is
18 sufficient funds budgeted for these people.

19 MR. O'NEAL: Right.

20 MR. KORYZNO: It seems to be an opportune time,
21 with the budget approval process forthcoming. The board
22 have any other comment?

23 MR. O'NEAL: That's fine. I just wanted to make
24 you aware of some of this -- those items. Thank you very
25 much.

1 MR. KORYZNO: You're welcome. Thank you.

2 Next item is public comment; Mr. Dostine will
3 call your name as it appears on the list. I think Mr.
4 Wycoff inadvertently picked it up. Mr. Dostine will call
5 your name --

6 MR. DOSTINE: There are no requests.

7 MR. KORYZNO: Oh, there are no requests? All
8 right.

9 MS. FETTUE: Can I sign that real quick?

10 MR. KORYZNO: Certainly.

11 MR. DOSTINE: Mr. Chairman, one request, from
12 Ms. Tiffany Fettue.

13 MR. KORYZNO: All right. Good morning. Per the
14 board rules, you'll have two minutes to address the board
15 and Mr. Dostine will act as timekeeper.

16 MS. FETTUE: Okay, great. My only thing is that
17 as far as -- I've seen a lot of employees come and go over
18 the last year, and I think that instead of it being, I
19 understand Michigan is an at will state, but I feel,
20 seeing how many, how much the turnover rate is and how
21 many people have been fired in the last six months, that a
22 disciplinary action should be set instead of just, they do
23 one thing wrong and somebody gets mad about it, and they
24 get fired for it.

25 I feel like there should be a disciplinary

1 action set in place for the employees, because I've gone
2 to the council meetings, and the employee handbook was one
3 of the things they were talking about, and that's not even
4 finished yet. And the council hasn't even agreed on it,
5 so I think that that's one of the things that was the
6 discretionary, or they were arguing about, is that they're
7 at will employees.

8 But I feel that, just being fair, people should
9 have the chance to have a disciplinary action set in place
10 instead of just getting fired for doing one thing wrong.

11 MR. KORYZNO: Thank you.

12 MR. DOSTINE: Mr. Chairman, that concludes
13 public comments.

14 MR. KORYZNO: All right, thank you, Mr. Dostine.
15 Next item is board comment; any comments from the board?

16 MR. BOVITZ: I was just a little disappointed
17 that the council turned down the reality show, but -- I
18 was looking forward to watching that.

19 UNIDENTIFIED FEMALE: So were we.

20 MR. KORYZNO: I have nothing, therefore I'll
21 entertain a motion to adjourn.

22 MR. BOVITZ: So moved.

23 MS. BROPHY: Support.

24 MR. KORYZNO: Moved by Bovitz, support by
25 Brophy, all in favor of the motion say aye. Aye.

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MS. BROPHY: Aye.

MR. BOVITZ: Aye.

+MR. KORYZNO: Opposed same sign, the motion is approved unanimously and the meeting is concluded at 9:27 a.m. Thank you for attending.

(Proceedings adjourned at 9:27 a.m.)

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STATE OF MICHIGAN
COUNTY OF WASHTENAW) .ss

I certify that this transcript is a complete, true, and correct transcript to the best of my ability of the RTAB meeting held on April 12, 2016, City of Ecorse. I also certify that I am not a relative or employee of the parties involved and have no financial interest in this case.

RESPECTFULLY SUBMITTED: April 14, 2016

s/ Amy Shankleton-Novess

Amy Shankleton-Novess (CER 0838)
Certified Electronic Reporter