

GRAND JUNCTION CITY COUNCIL
SPECIAL SESSION MINUTES

JULY 6, 2015

The City Council of the City of Grand Junction, Colorado met in Special Session on Monday, July 6, 2015 at 3:00 p.m. in the City Hall Auditorium, 250 N. 5th Street. Those present were Councilmembers Marty Chazen, Chris Kennedy, Duncan McArthur, Rick Taggart, and Council President Phyllis Norris. Councilmembers Bennett Boeschstein and Barbara Traylor Smith were absent. Also present were Interim City Manager Tim Moore, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Norris called the meeting to order. The audience stood for the Pledge of Allegiance led by Councilmember Kennedy.

Discussion of the Amendment of City Manager Rich Englehart's Employment Contract and Confirmation of Acceptance of the Resignation

Council President Norris explained the purpose of the meeting. She said on July 1st the City Council scheduled this Special Meeting, not to recreate the Executive Session (ES) of June 20, 2015, but to explain why each City Councilmember elected to accept Mr. Englehart's resignation. She asked each Councilmember if they understood and agreed to the purpose of the meeting. Each Councilmember said yes to both questions.

Council President Norris stated the ES was held on June 20, 2015 and City Council accepted City Manager Englehart's resignation on June 24, 2015. During the ES, City Council was presented with four options: 1) amend the employment contract and accept the resignation terms as requested, 2) decline to amend the contract as requested and offer other terms and offer to accept the resignation on those terms, 3) decline to amend the contract and decline to accept the resignation, or 4) exercise remedies provided in paragraphs 9 and 10 of the contract. She reviewed the two items that pertained to Mr. Englehart's resignation; the termination clause and the severance provision. She then clarified that under the existing agreement, 12 months' salary and benefits would be paid to Mr. Englehart if he had been terminated during the six months after a newly seated Council and one of the provisions Mr. Englehart asked to amend was the thirty day notice for a voluntary resignation.

She then asked each member to state their reasons for accepting Mr. Englehart's resignation.

Councilmember Boeschstein, who was not in attendance, had submitted his comments in writing. Council President Norris asked City Attorney Shaver to read his statement.

“Memo

Date: July 3, 2015

From: Bennett Boeschstein

Grand Junction City Council member, District C

To: Grand Junction City Council; Tim Moore, Acting City Manager; John Shaver, City Attorney; Claudia Hazelhurst, Human Resource Director

Subject: Recap of statements made by me, Councilmember Boeschstein, during an Executive Session conference call with the remaining 6 city council members on June 20 to discuss personnel matters.

(I was in Boston, Mass. at the time to attend a memorial service for my mother-in-law. In my 30 years of experience in local government, personnel matters are confidential)

First, I think it is important to recognize the many accomplishments of Rich Englehart as City Manager and Assistant City Manager while I have been on City Council from 2011-2015.

Accomplishments

Any accomplishments are the result of city councils (present and past), city managers and city staff working together, not just one individual acting alone. However, since the city manager is the chief executive of the city, much of the credit for these accomplishments is due to him.

City Councils, City Managers (Rich Englehart, Laurie Kadrich, and Tim Moore) and staff worked together to accomplish many goals during this period such as:

- Balanced budget and staff salary stabilization during the recovery from the Great Recession and the oil, gas, and coal slow down
- On the road to the city’s economic recovery: reduced unemployment, slow growth, population increases
- Lincoln Park improvements: new Stadium/GJ Rockies
- New Police/Fire buildings on time and under budget (Certificates of Participation)
- Avalon theater remodel and expansion
- Street improvements/overlays
- North 7th Street gas explosion emergency management
- New Orchard Mesa fire station
- City funding of CMU expansion seven years in a row
- Participation in Horizon Drive Association and North Avenue Association; plans, grant applications and improvements
- Participation in the adopted Greater Downtown plan
- Purchase of White Hall and making it available to DDA for redevelopment
- Offer to airport to help with completion of new building
- Economic development and branding plans
- “Jump start” grant and participation
- Foreign Trade Zone (hired consultants and implementation)
- Bio gas pipeline construction and completion

- Funding and construction of “safe routes to school” projects
- Homeless/vagrancy task force
- Whitman Park plans
- Grand Valley Transit transfer stations & expansion
- New Mobility West Study and Plan of the Business I-70 corridor
- Events Center Plan and feasibility study and downtown parking study
- Awarded Bicycle Friendly City
- Managed city and valley-wide bicycle and running events and special events such as Juco Baseball tournament

Resignation

I reluctantly am willing to accept Rich’s resignation.

I originally was in favor of a 6 month severance agreement with Rich, but am willing to accept the majority wish to give him a full year severance.

Temporary City Manager

I made it clear that we need to have a temporary City Manager named on the day Rich leaves his position and suggested Tim Moore, the Assistant City Manager or Greg Lanning, the Public Works Director.

I suggest that we hire a temporary city manager from the pool of circuit rider city managers in Colorado (if one still exists).

I also suggest that the Community Development/Planning Department play a larger role in the on-going economic development planning process and on - going management of contracts with North Star and others. I suggest that Kathy Portner and/or Greg Moberg from our Community Development/Planning Department be named as lead staff members for economic development.

Bennett Boeschenstein

1255 Ouray Ave.

Grand Junction, CO 81501”

Councilmember Chazen thanked Council President Norris and read his statement:

“Our purpose here today is to openly discuss the reasons for accepting the conditional resignation of Rich Englehart, our former City Manager and amending his contract to pay over \$127,000 in severance.

A little background is a good place to start.

Anyone who closely follows City affairs should know that Rich Englehart and I frequently disagreed on policy, operational and financial issues.

Sometimes the disagreements were discussed in private, as is appropriate between a member of Council and the City Manager, but I was not bashful about bringing issues into the public arena when appropriate.

The list is long, but here are a few examples:

- Not having written partnership agreements in place before embarking on major projects.

- Significant cost overruns or bad cost estimates on capital and maintenance expenditures.
- Not knowing that a major system at the Persigo plant was offline for 15 months.
- Paying more for vehicles because we failed to take advantage of State pricing.
- Not realizing that a simple redesign of new park restrooms would yield significant savings.
- Manipulating the budget process to avoid discussing operational efficiencies.
- Not immediately disclosing an arena feasibility study completed in 2003 that would have exposed the financial flaws of the project.
- Failing to deal with chronic losses at Two Rivers.
- Refusing to discuss outsourcing of services to private sector providers.
- Failing to provide complete and accurate financial projections for projects.
- Slashing funds for street overlay and deferring needed repairs.
- Looking to reserves as the go-to source of financing.

There is more.

And although we'll hear about some of Rich's achievements, the above items demonstrate to me that he was not as connected to operational issues as I would expect nor did he fully understand the financial consequences of his policies.

This is not to say Rich didn't have his talents, but based on his performance it was clear to me he lacked the full measure of skill and judgement the citizens of Grand Junction pay for and deserve.

With this background, it was not surprising to me that his management style eventually manifested itself in this current incident; what was surprising is that it didn't happen sooner.

In the June 20 executive session, the Council discussed, as is appropriate for this type of meeting, Rich's leadership skills and ability to effectively marshal City resources.

In my view, based on the discussions, his management style led to staff confusion and bickering on tasks related to important City initiatives; creating conflicts that Rich failed to resolve.

In my opinion, the executive session exposed the shortcomings of his management style and reinforced my belief that Rich lacked the management skill and judgement expected of a Chief Executive Officer that manages a \$145 million organization.

And the question became "is the City better off with or without Rich Englehart."

In the days between the executive session and the open meeting, I had the opportunity to reflect the best course of action; it was clear that Rich and the City needed to part ways in a cost-effective manner.

In the end, my decision was based on the cold calculus that the Council needed to remove an individual from a position of authority, quickly, to minimize the financial and operational impact on the organization.

With regard to the June 20 executive session, there was discussion about financial options and how they related to the employment contract between Rich Englehart and the City.

Understanding the terms of the contract is key:

If termination occurs within the first six months of seating one or more Council members, the City Manager is entitled to 12 months of salary and benefits.

If termination occurs after six months but before 12 months, the City Manager is entitled to 9 months of salary and benefits.

If termination occurs after 12 months, the City Manager is entitled to 6 months salary and benefits.

Let's think about that for a moment and consider that if a new council member is seated for any reason, the clock is reset.

Also, please recall the Council had five new and returning members seated in May 2015.

Based on my interpretation of the contract, reinforced by legal counsel, it was apparent I was dealing with a very one-sided agreement that favored the City Manager, where a termination would have resulted in a year of severance and benefits and delay his departure and offer possible legal exposure.

However, if Rich opted for a conditional resignation, the amount would have to be high enough to get him out the door.

In other words, it was obvious than anything less than nine months meant he could wait it out until next May.

In the executive meeting I was faced with no good alternatives.

Furthermore, I found myself in the awkward position of dealing with, in my opinion, a distraught employee that was vacillating between "Maybe I should resign" and "I'm going to fight for my job".

I left the executive meeting with few options, not knowing the financial details and not knowing what to expect; but I was hoping for a cash-only deal that would, at least, free the City from paying an expensive benefits package.

It was not until the open meeting on June 24, when I saw that the resignation letter Mayor Norris was reading was, in fact, a signed offer, that I realized I was in position to make a definitive decision.

After hearing the letter, reflecting on terms, and weighing the options, I felt this was as good as it was going to get and voted for the motion to accept the resignation and contract modifications.

Those who regularly watch our council meetings know that on the tough issues, I have a very good record of asking probing questions and explaining my position.

In retrospect, I probably should have said something at the June 24 meeting but then, as now, I have concerns that my comments will fuel speculation and disrupt an internal investigation. I hope that is not the case.

Throwing rocks at someone going out the door might make for interesting reading, but it won't change outcome nor make it any easier to find a new City Manager.

I am also cognizant of the impact this has had on the many, many dedicated, knowledgeable, hardworking City employees that deserve our support and respect.

I am truly sorry that this situation got as far as it did.

Those employees and the Citizens of Grand Junction deserve better than this.

It is important to know that there was no joy for me in making this decision, it was strictly business.

And I am fully aware that this settlement is viewed as squandering \$127,000 of hardearned taxpayer money and I understand the public ire that goes along with it.

Bottom line, this is upsetting on many levels and the City is left with a mess to clean up.

Thank you for hearing me out, I welcome any and all inquiries on this matter."

Councilmember Kennedy said he appreciated everyone at the meeting and their willingness to hear the Council's comments regarding the ES and why they accepted Mr. Englehart's resignation. He stated he disagreed with the decision not to accept public comments at this meeting and felt it was short sighted and should be revisited. He then said the first time he learned of these concerns was at the first ES where they discussed an open records request from The Daily Sentinel (DS) about organizational issues. At the second ES on June 20th it was clear those issues were varied and deep and as a result Mr. Englehart was no longer fit to lead the organization. The question became what would be the most expedient and cost effective way to effect a leadership change while moving the City forward. Mr. Englehart expressed his thoughts on the

situation, his abilities, and some personal issues. Councilmember Kennedy came to the conclusion that Mr. Englehart would no longer be effective as City Manager (CM), but saw Mr. Englehart wanted to fight for his job. Many options were discussed which left Council with a lot of information to consider over the ensuing 72 hours; Council hoped a formal resignation letter would be offered at the June 24th meeting, but had no details. For him it was a simple decision to accept the conditional resignation since it allowed for Mr. Englehart to leave immediately and only be paid nine months' severance; this was a better option in lieu of the termination provisions. Although Council voted quickly at the June 24th meeting, they had been thinking about the options since the ES. He then said he made a mistake not making a comment before he voted, but at the time he just wanted to start the process of replacing the CM and move the City forward. There are things that need to be fixed and that is what should be focused on now. He welcomed any questions.

Councilmember McArthur read his statement.

"This meeting has been called as a result of the failure to record the meeting of the City Council in Executive Session on June 20th and the need to establish a public record of what has transpired.

When the meeting of June 20th was called, I only knew that it was concerning an ongoing personnel matter but I did not know the specific subject matter that was to be discussed. That was not disclosed until just prior to the meeting being started.

The council had previously met over a personnel issue involving the city manager and a city employee that reported to him and the local newspaper's attempts to gain access to their personal communications. As a result of the previous meeting and subsequent discussion, I was of the mind that it was going to be very difficult for Mr. Engelhart to continue in his position as city manager because his ability to provide leadership to the organization had been seriously compromised.

At the June 20th meeting, Mr. Engelhart opened the discussion by reporting there had been further personnel developments; that the local newspaper was demanding access to his personal text messages; that he was opposing their demands and that he felt it was in the best interest of the organization if he offered to resign his position. His offer was contingent on council agreeing to pay severance in an amount equal to nine months' salary plus benefits. He also offered to stay on a few additional weeks to help with ongoing projects.

Since I was already of the mind that he could not continue and be effective, in my mind, I did not hesitate to believe that we should accept his resignation. To me,

the question then became “How can we get out of this for the least amount of money possible?”

I had not previously read Mr. Engelhart’s employment contract since it had been approved and signed by a previous council. As I reviewed the copy given to me at the meeting, I read the termination provisions. It was there I read if there are more than one new council member and the contract is terminated within six months of the new council member(s) taking office, then the severance shall include an amount equal to twelve months salary and benefits.

There was a comment at the meeting about accepting his resignation and not paying severance but, since his offer was conditioned, it wasn’t hard to see that if we rejected the conditional resignation, he would rescind his offer and leave us with the option of terminating his employment.

It was also apparent that if we didn’t accept the resignation and agree to some severance, we would most likely be in the position of having to terminate the contract and pay twelve months salary plus benefits. After some discussion, it was proposed that the city pay nine months’ severance but there would not be a continuation of benefits and that the separation would be immediate.

While there was some discussion of the possible alternatives, no vote was taken at the meeting. I did not know that the vote was finally decided or that the vote would be unanimous to proceed in this manner until the June 24th meeting especially since one council member had verbally indicated that they did not want to accept the resignation but felt the situation could be corrected and he could continue in office.

In regards to the recording the June 20th meeting, I was seated with the recording machine directly behind me. I recall the recorder being turned on as the meeting was about to start but I did not witness anyone touching the recorder prior to the meeting being adjourned.

When the meeting was adjourned, I noticed that John Shaver, who was seated on the other side of the room, was engaged in a conversation so I turned around and turned the recorder off. The instructions are taped to the top of the recorder which state “To stop recording, hold the black button down and press the ‘Stop Recording’ button”. That is exactly what I did and took no further action including making no attempt to remove the recording disk. I wouldn’t even know where to find it.

It has not been definitively determined why the meeting was not recorded but if anything I did in stopping the recording of the meeting caused the disk to be damaged or erased, I sincerely apologize to everyone involved. I had no reason

to not record the meeting and I know of no reason anyone else would not want the meeting recorded. I also apologize if any of my actions with the recorder resulted in the unfounded accusations questioning the character and integrity of the other members of council and staff that were printed in the paper.

Again, we do not know what happened to the recording but I did not witness anyone intentionally stopping the recording of the meeting prior to the meeting being adjourned nor do I know of anyone that would have a reason to do so. While the instructions on the recorder seem simple enough, in the future, I will avoid trying to be helpful and will leave the operation of the equipment to staff.

In regards to the June 24th meeting, much has been made that the council voted unanimously to amend the city manager's contract agreeing to severance and waiving the thirty day notice provision without comment. I do not know why the other council members did not comment. My concern was saying something that could potentially hurt the city in the future.

Besides being concerned about encroaching on the privacy of individuals involved, this is all about a personnel issue and the resignation of the city manager was only one step in this process. There are still other people involved and resolution of all the issues is still in progress. While I am not aware of any legal action having actually been filed, I did not want to say something that somebody's attorney could take and use to help with some demand or claim being made against the city. I do not believe you can be too careful given the litigious nature of our society today.

My priority from the day I took office was to protect the interests of the city and its citizens as best I could while working to their benefit. When given the choice of protecting the city's and its citizens' interest versus helping some reporter write some gossipy privacy invading article under the guise of "the public's right to know", I'll choose protecting the city's and its citizens' interest every time. And that is what I meant I would not change about the June 24th meeting.

It is natural for most people to think the worse before they think the best about an issue where they do not have all the facts. This is true for almost everyone associated with these issues from a number of city personnel who may think someone got something more than they did to the reporters who are looking at all this through a key hole to members of the community that are reacting to a misconception they have been given by the newspaper. I recommend that everyone take a step back and reflect on whether they are being fair and the community certainly deserves better than the erroneous picture that has been painted for them."

Councilmember Taggart commented he would probably repeat some things. He said the previous weekend was tough, both professionally and personally. Over the weekend he met with several friends and community leaders and primarily listened; one scolded him late into the evening. Regarding the June 20th meeting, he said Council did not know what the topic would be prior to its start, but they learned very quickly that Mr. Englehart might extend his resignation. He said he was very new to the ES process and therefore did not challenge holding an ES and hoped to be extremely fair to Mr. Englehart; he understood this would be a difficult resignation. In retrospect, he would probably have said the options should be discussed at a public meeting as the community should know what options Council was given to review. He did not want to be accused of doing something in secret; he has a reputation of being as transparent as possible. He reviewed the options Council was given and explained Sections 9 and 10, specifically how the different time frames would affect the amount of a termination pay out. He stressed that if Council had terminated Mr. Englehart within six months of a new Councilmember being seated, he would have been entitled to over a quarter of a million dollars in severance and benefits compared to the \$127,000 offer they accepted. A termination clause was added to Mr. Englehart's contract in 2011 which stated no severance would be due if the CM had been convicted or charged with a felony or Class 1 misdemeanor action; this was the only "for cause" exception in the contract. He agreed with Councilmember Chazen that in the future a "cause" provision should be included in the CM employment contract. He said at the beginning of the ES, Mr. Englehart stated he was not capable of leading this organization any further. Councilmember Taggart asked what the cost of ineffective leadership would be and noted that having someone in the role of CM that is not capable of leading is not a good option. Councilmember Taggart had the opportunity of listening to people who had worked with Mr. Englehart; there were a lot of positives regarding his accomplishments. In the three intervening days, he weighed all the options along with many derivatives; after hearing the resignation offer on June 24th, he knew it was the best option in a bad situation so he voted in favor of accepting it. He made no comment because the issue had been on his mind for three days and he didn't have anything to add.

Councilmember Traylor Smith, who was not in attendance, had also submitted comments in writing. Council President Norris asked City Attorney Shaver to read her statement into the record.

"Special Meeting – July 6, 2015

Barbara Traylor Smith, Grand Junction City Council, District B

Recollection of conversation during the June 20 Executive Session:

The purpose of the meeting was to discuss a personnel matter. When we arrived we were notified that the City Manager would like to discuss the possibility of his

resignation. He offered some explanation as to why and a request of severance. After we discussed this information with him he left the room and we began a discussion about the options.

- 1) Did we want to accept his resignation? Were there other options based on current circumstances? Sabbatical until investigation was complete?
- 2) If he had not resigned would we have continued his employment based on current staff issues?
- 3) If we accepted the resignation, would his past efforts and successes be recognized? If so, what form would that take (severance, letters of recommendation, etc)

Rich Englehart has been a very good City Manager. Like all of us he has areas of strengths and areas he can improve. His administration skills have led this City to noteworthy accomplishments many of which have been identified specifically today. His appointment as Interim then permanent City Manager was a difficult transition considering the dramatically different management style of the previous manager. In my opinion this contributed to the current staff issue which I believe could have been solved with time, training and mentorship. It seems to me that the practice of terminating and replacing executive level employees when there is one bump in the road is wasteful and counterproductive. This practice is expensive and undermines future executives and creates a cycle that repeats itself. The alternative road is neither easy nor conventional however I believe necessary to establish continuity in these high level positions. However, Rich felt he was no longer effective and therefore offered his resignation.

After considering the discussion and options at the June 20th meeting, I voted with great reluctance to accept the resignation and agreed to reward his accomplishments with severance pay at the Special Meeting on June 24, 2015.”

Council President Norris read her comments.

“Over the last month I have seen the performance of Mr. Englehart decline. I felt he was no longer effective as a leader of the organization and I did not believe he would have been able to continue to move the city forward or develop a team that we need to achieve the goals of the city.

Mr. Englehart offered his resignation on the day of the special council meeting, June 24th

He ask council to allow him to resign without a 30 day notice and pay him 9 month severance plus his earned paid time off.

As stated earlier, I believed he was no longer an effective city manager and would not be able to continue to represent this Council and the organization. For the city to continue to move forward we would need to terminate Mr. Englehart. This would cost the city a full year pay for severance, plus benefits

Over the last 7 years, we have seen many good things happen in this city under Mr. Englehart's leadership. He should be recognized for these things. It is unfortunate that over the last few weeks results of his leadership have not been positive and I didn't see the possibility of this changing.

For these reasons I chose to accept Mr. Englehart's resignation without a 30 day notice and pay him a 9 month pay as severance with earned paid time off.

The Citizens of this community deserve to know how their city is being run and that the council is spending their money wisely. As Mayor and a council member, I recognize this and apologize for not giving you these thoughts earlier about the reasons for my accepting Mr. Englehart's resignation. However, I also have a responsibility of maintaining confidentiality of personnel issues. It is a fine line and I do my best to honor both.

I can only tell you I did not make a decision to accept Mr. Englehart's resignation until I read a signed copy on June 24th before the council meeting.

Council is permitted to have executive sessions to discuss personnel issues. However, a recording is too be made of these sessions and that did not happen in this case. As a council member I will do my best to make sure this doesn't happen again.

I believe we need to examine the structure of the city and have specific expectations for the new City Manager.

As a Council we will continue to move forward with the goals of the city and do a diligent search for our new City Manager. We will be discussing the process at our workshop later today."

Council President Norris asked if there were any other Council comments.

Councilmember McArthur clarified that personnel matters involve personal issues and as such, privacy issues are involved which is why this circumstance qualified for an ES. Out of respect for the individuals, holding an ES would be appropriate; it would not be appropriate to discuss these types of issues in a public forum. Also, it was not for a lack of transparency that it was decided not to have a public comment period at this meeting; the reason for this meeting was to explain the facts that led to the decision that was already made. He hoped the information given at this meeting would help foster an

understanding of the options Council had available. He appreciated everyone's interest and said he would be available to speak after the meeting.

Councilmember Chazen asked City Attorney Shaver to speak on the City's history of paying severance to previous CMs. He asked if their contracts had a severance clause when they separated from the City. City Attorney Shaver said generally speaking, these contracts have been negotiated agreements between Council and the CM; often times the contracts have been based on an industry standard template from ICMA (International City/County Management Association). In the past, the City has adopted a lot of those terms. In regard to the specific question, Mr. Englehart's contract implemented a new concept that added specific provisions for severance so there would not be an opportunity for a new Council to run on a political platform of replacing the CM without there being a cost. He noted CMs are often subject to political influence and during the course of a campaign it could be an issue. During the negotiation of Mr. Englehart's contract, the termination incentive was thought to be a good idea and included. The previous CM, Laurie Kadrach, had a separation provision stating she would receive severance for either her termination or resignation. He commented CM positions are relatively short lived and typically in short supply, so there is an expectation that these types of provisions be included in the employment package. The same type of provision was reflected in the contracts for David Varley and Kelly Arnold, however, City Attorney Shaver was not involved in Mr. Arnold's contract negotiations.

Councilmember Kennedy reiterated Councilmember Taggart's comments regarding personal integrity; nothing cuts him to the core more than having his personal integrity questioned, either directly or indirectly. If the DS had not submitted an open records request this meeting would not have been held; it has given Council an opportunity to review the City's processes. He noted he and Councilmember Taggart are new to Council, but he disagreed with Councilmember Taggart regarding the necessity of the ES since it dealt with personnel issues. He finished by saying his work ethic centered on integrity, accessibility, and accountability and this process has personally hurt him because it has called the Council's integrity into question. He felt they dealt with this situation to the best of their ability with the information they had and in the time frame in which they had to work. He again said he would welcome public comments, either at the meeting or after.

Councilmember Taggart followed up on his previous comment regarding the ES; he clarified that he would not want to expose personnel issues. However, the discussion at the ES was about the CM's employment contract, Mr. Englehart's possible resignation, and the options to solve the situation. He suggested in the future, when Council is at the stage to discuss potential options, the meeting should be made public.

Council President Norris said she has not always agreed with Councilmember Chazen regarding the performance of Mr. Englehart; they have agreed to disagree. She felt Mr.

Englehart did many good things and did a pretty good job throughout his tenure. She then thanked Councilmember McArthur for accepting responsibility for turning off the recording machine, but said it remained unclear as to why the disc was blank. Council President Norris said she agreed with Councilmember McArthur's comments regarding having an open meeting; the decision has already been made and public comments are used in the decision making process. However, since Councilmember Kennedy said he would like to allow public comments, she asked each Councilmember if they would like to have an open comment period.

Councilmember McArthur said no.

Councilmember Chazen said if time allows and any members of the audience have something to say that is pertinent to this situation, he would like to hear them.

Councilmember Kennedy said he would like to hear what the public has to say on this topic.

Councilmember Taggart said after listening to leaders and Councilmembers Kennedy and Chazen, he felt public comments should be allowed with a couple of caveats; since the decision has been made, discussion about that should be moot and second, to understand that Mr. Englehart is a human being.

Councilmember McArthur asked City Attorney Shaver if the Councilmembers written statements should be submitted.

City Attorney Shaver said the recording of the meeting is sufficient for the record, but they may be submitted to the City Clerk.

City Clerk Tuin said it would be appreciated if the statements were submitted.

Council President Norris said public comments would be allowed and asked that comments be limited to two minutes after stating their names and addresses. She also asked the speakers to keep in mind what Councilmember Taggart said.

Vara Kusal, Manager of HDABID (Horizon Drive Association Business Improvement District), said she works for a public body and has worked with elected officials and City employees; she too has experienced recording equipment failures that were only discovered after a meeting concluded. She said it is ridiculous to think there was collusion regarding this series of events; she felt Council made the best decision under the circumstances. She hoped everyone would be able to move forward and make the City better.

Bob Ross, 633 27 ½ Road, appreciated that Council allowed public comments; it eased his mind and he felt Council would prefer to hear comments at the meeting rather than in the DS. He noted there were innuendos of sexual harassment or of an inappropriate

relationship at issue. He asked if there was a clause in the employment contract that specifically forbade this type of behavior and if not, is that why severance was paid? He also asked if the employment contract was open ended, or was a time frame included to allow for renegotiation. He said most contracts included a time frame so that, at the end of the specified time period, a new contract may or may not be renewed; this way severance would not have to be paid. He felt Council had learned from this experience.

Council President Norris said those were good points.

City Attorney Shaver addressed two points Mr. Ross brought up; the time of the contract and performance expectation. He said employment contracts are renewed annually, typically at the end of the calendar year; six months were left on Mr. Englehart's contract. Regarding the performance expectation, the contract does say that the CM must be willing and able to perform, but there were no specific details as to what determined ability or inability. He noted these points can be negotiated in future contracts.

Council President Norris said those were good points and are worth looking at.

Bob Erbisch, 928 19 ½ Road, affirmed Council's decision to hold an ES; if the matters to be discussed are only allegations, they shouldn't be spread all over the DS. He applauded Council's decision, but feels a "for cause" clause should be included in contracts to provide Council with some discretion.

Dennis Simpson, 2306 E. Piazza Way, complimented Councilmembers Kennedy and Taggart for recognizing the need to have public comment; he also appreciated how Councilmember Taggart explained things and hoped everyone viewed this situation in the same way, in that it was not done correctly. He hoped if anything like this were to happen again, after personal matters were discussed in an ES, a public meeting would be held to discuss available options. He didn't think this process would have been discussed if the ES had been recorded, so in that respect, he felt it was good that it did not get recorded. He then noted that four women reported to Mr. Englehart; three were not involved and are innocent. He had a copy of a letter from the City Attorney to the DS that disclosed the woman involved as Elizabeth Tice; he said this information should have been kept confidential not disclosed to the DS. However, he felt it is very unfair to attack the DS for doing its job. He was disappointed with Councilmembers Boeschstein and Traylor Smith's comments and felt there was a lack of understanding on their part as to how terrible of a situation this was. He agreed with Councilmember Chazen regarding his strong arguments as to why Mr. Englehart was not doing a good job.

City Attorney Shaver said Mr. Simpson is entitled to his comments, but advised there be no future discussion on the underlying personnel issues.

Council President Norris reiterated that Mr. Englehart turned in his resignation because he was not doing his job managing the City and she accepted it for the same reason.

Lynn Lickers, 378 ½ Soapweed Court, said she is rarely in the position of defending the DS anymore, but if it wasn't for their coverage, this meeting would not have been held. She appreciated the DS's coverage of this issue and Council for allowing public comment. She felt this meeting helped extinguish a lot of inaccuracies, gossip, and speculation. She then asked if it was normal to have the Chief of Police and two police officers at City Council meetings.

Council President Norris said all department heads were asked to attend the meeting; the Chief of Police is a department head. Also, on duty police officers are scheduled to attend all City Council meetings.

There were no other public comments or business to discuss.

Adjournment

The meeting was adjourned at 4:15 p.m.

Stephanie Tuin, MMC
City Clerk