

Amanda Rowe
623 Lincoln

And yes, I am here to talk about the OMA complaint.

Ya know, I used to come to this podium and comment on things here and there, and after each meeting, I'd usually be thanked for my "voice of Reason" as Mr Zelenak once put it. One such instance was the Nudity Ordinances that were proposed by both Mr Murphy and Mr Zelenak. I gave my comments, I happened to agree with Mr Zelenak on the particular issue, and they appreciated those comments.

But now that I have called into question the handling of the ERI during closed session meetings, I am called all sorts of names in the paper. So I am here to talk about this OMA Complaint and shed some light on the issue.

These are the Facts and they are not disputed. ✓

Fact One: Members of Council all agreed in an November Council Meeting that the documents in question were CONFIDENTIAL AND NOT TO BE DISSEMINATED to the public. ✓

Fact Two: Mayor and Council voted to launch an investigation into the illegal release of the ERI documentation to the News Herald. ✓

Fact Three: City Attorney Ed Zelenak stated in two public council meetings that the ERI documentation was confidential and should not have been released to the public. ✓

Fact Four: The Wayne County Prosecutor obtained an opinion from a Wayne County retired judge who stated that only the "closed session minutes" were protected and any other documentation or discussions can be discussed or distributed to the public so long as it is not the "closed session minutes". ✓

Fact Five: We have found "several" court of appeals and state attorney general opinions that disagree with the Retired Judges Opinion. The most recent being a Court of Appeals case Kitchen vs Ferndale where one of the defendants, oddly enough, is our very own labor attny Shiffman, and the court ruled that contents of a closed session are construed to mean "minutes" of a closed session. ✓

Fact Six: Section 108.04 Of our City Charter makes it ILLEGAL to distribute confidential information to members outside of the closed session. ✓

So knowing all the facts, The confusion really begins when we evaluate what has happened since the Prosecutors told our Detective they would not issue warrants.

Our City Attorney Ed Zelenak states in the News Herald "This is a clear victory for residents and for the press, where it allows for information being discussed by the government to be given out. We have nothing to hide and shouldn't be criticized for proving that." ✓

City Manager Steve Duchane says: “This is the first instance that I know of where providing too much material to the public was criticized and subjected to potential criminal prosecution.”

The reason we filed the complaint is because you DIDN'T disclose this information to the public, you took it into a CLOSED SESSION TWICE!

Secondly, if the material happened to be OK to discuss in a closed session because it was somewhat related to ongoing negotiations, then WHY would you go and spill all the details of that strategy to the media the next morning?

I know my time is running short, so in closing I would just like to clarify for the people that I am not trying to keep information from the people that they are entitled too. I am interested in going to the legislature to tighten this law so that it can not be misused, either by mistakes due to ambiguity or from purposeful abuse. I have for each of you a packet that details the facts of this matter, along with documentation to back up everything I have stated and to show the people what is going on here. It may appear like a lot of information, but if you want to know and understand what is going on, I implore you to look it over.

I also really quickly want to comment about Duchane's comments that I am doing this for political reasons and that I am using this city as a playground. My Grandfather came here from Pennsylvania to work and has been here nearly all of his life. My Father was raised and went to school here. I was raised and went to school here. This is my hometown. I am not out to destroy it. The comments he made are absolutely assenine. If slandering concerned citizens is what gets this man out of bed every morning, then I want him to know, it is of no consequence to me. Whatever floats your boat Mr. I do things out of principle, and I understand that is something foreign to this man, so I hold nothing against him for his ignorance. But he really needs to be muzzled if that is how he responds to the press. I'm sure other residents aren't as tough skinned as I am.

Prosecutor tosses open meetings violation allegation

By Jason Alley
The News-Herald

LINCOLN PARK — Several key city officials have been cleared of wrongdoing after two residents complained that they had violated the state's Open Meetings Act.

Michigan State Police Detective Sgt. David Meyer investigated the matter for months and delivered the news Thursday afternoon.

"(He) advised me that the investigation was closed and the Wayne County prosecutor had denied warrants on the matter," City Manager Steve Duchane said.

"This was a time-consuming ... investigation driven by politics and individuals (who) have nothing better to do than manufacture imaginary problems using the city as their playpen."

Residents Amanda Rowe and Robin Lyson, who run a community Web site that's often critical of some city officials, alleged that Duchane, Mayor Steven Brown and members of the City Council had broken the law on several occasions.

They complained that city officials improperly talked to a reporter from The News-Herald Newspapers about an early retirement plan offered to many longtime municipal workers.

They also alleged that city officials unlawfully went into private meetings under the guise of discussing labor negotiations when, in fact, they met to discuss the early retirement plan.

Richard Hathaway, Wayne County's chief assistant prosecuting attorney, dismissed both claims.

"The closed meeting they had was absolutely legal," he said. "They did nothing wrong. And then people were upset when they came out of that meeting and talked about what had been discussed? I would think the people of Lincoln Park would be more upset if they didn't talk about it."

The Open Meetings Act primarily is used to get access to public documents. Using it to argue that information should be hidden from the public is new to

some city officials.

"(This) is the first instance that I know of where providing too much material ... to the public was criticized and subjected to potential criminal prosecution," Duchane said.

City Attorney Edward Zelenak said the ruling should please anyone interested in having an open and honest government.

"This is a clear victory for residents and for the press, where it allows for information being discussed by the government to be given out," he said. "We have nothing to hide and shouldn't be criticized for proving that."

Rowe said she still would like to see the law tightened, restricting even more documents from public disclosure.

"I felt there was some sort of impropriety to the way the information was divulged to the public," she said. "But I'm not mad. My intention was never to get the city, just to make them follow the law. And, I guess from what I'm told, they have been."

Click here to return to story:

http://www.thenewsherald.com/stories/030605/loc_20050306045.shtml

→ I did not state "more documents"
I stated the law should be applied as it was intended.

→ *

*: I stated that according to Judge Hathaway the city is in the clear, but I disagree with Judge Hathaway's opinion. That part of my statement was left out of this article.

November 1st Council Meeting Summary regarding investigation

Misc resolution introduced: #04-582

Moved by Vaslo

Supported by: Kandes

- Mayor: Introduces resolution
Discusses documentation being “leaked or given directly to the media within hours” (see note 1)
Stated ERI was on website within hours. (see note 2)
States majority of documents for closed session are not marked confidential.
When questioned by councilman Murphy is investigation is to include release of documents to newspaper mayor replies yes.
Mayor refers to ethics ordinance (208.04 (e) Admin Code
- Note 1:** see August 2nd meeting where Mayor discussed being upset that documentation was released to paper and investigation would follow if this ever happened again.
- Note 2:** discussion on website regarding ERI stemming from article in News Herald Aug 2. No actual copy of any ERI documents available on website at time of this resolution to investigate.
There are partial copies now on website dated 11-14-04. Nothing prior to that date .
- Vaslo: Stated he understood all documentation from closed sessions to be confidential material.
- Murphy: States neither document was stamped confidential.(see above statement by Mayor that most are not marked.)
Stated that he distributed a copy to a city employee weeks after information was made public.
- Kandes: States investigation is only looking for day or day after release of information.
Agreed to present amended resolution at 11/12/04 meeting if Mr. Zelenak did in fact have possession of said ERI document.
- Disanto: No Comments
- Higgins: Stated ongoing problem that people asking questions regarding closed meetings.
- Brady: Asks Zelenak if he did in fact have copy of ERI document.
Informed Mayor & Council that Mr. Duchane stated Zelenak asked for copy after closed session of 7/26/04 and Prior to regular council meeting of 7/26/04.
Asked to have Zelenak removed from investigation.

Zelenak:

Stated he did not have copy till following day.
Stated he did not have copy till days later.
Stated he will remove himself from investigation if he did in fact have copy of ERI. (see note 3)
Stated he did not have a copy until Mr. Duchane informed him that he was contacted by News Herald reporter Jason Alley. (see note 4)

Note 3: 11/12/04 no amended resolution by council but Zelenak does in fact remove himself from investigation regarding the ERI per letter dated 11-5-04.

Letter also states investigation for ERI is to determine City Council member released this information to a Department of Public Service Employee. Although resolution states CITY EMPLOYEE. Mr. Zelenak is a city employee and furthermore eligible for the ERI program offered to all city employees. If this was in fact a confidential document he would not have been entitled to a copy at the time it was given to him. Whether it was the night of 7/26/04 or during the week of as the letter from Mr. Zelenak dated 11/5/04 states.

*update:
mr. zelenak did accept the ERI
And is now the "Appointed" City attorney.

Note 4: Mr. Duchane informed 08/01/04 that Jason Alley contacted him the following morning 7/27/04.

City of Lincoln Park



EDWARD M. ZELENAK
CITY ATTORNEY

OFFICE OF THE
CITY ATTORNEY
2933 FORT STREET
LINCOLN PARK, MICHIGAN 48146-9987
(313) 386-6400 / FAX (313) 386-7778

November 5, 2004

Honorable Mayor and Council
City of Lincoln Park
Lincoln Park, Michigan 48146

RE: Ethics ordinance allegations

Dear Mayor Brown and Members of the Council:

As I had advised you last week if it became apparent at any time that I would be unable to investigate the allegations concerning the ERI booklet because I had received the booklet, I would forward this, as the ordinance requires, to the Assistant City Attorney. Earlier this week it became clear in my conversations with Mr. Duchane that he had given me a copy of the booklet on Wednesday or Thursday of the week that he presented it to you.

Accordingly, Andrew Kandreas, the duly appointed Assistant City Attorney will be investigating that part of the ethical allegations. I shall be investigating the allegation concerning the unauthorized release of a confidential legal opinion to a web site. Lt. Gentner and I have already met and discussed procedures for conducting this investigation.

Coincidentally, it is prudent to advise all of you that the allegation concerning the ERI booklet relates to a purported improper transmittal of the booklet by a member of City Council to an employee of the Department of Public Services immediately following the council meeting and closed meeting in which the booklet was distributed to members of the Council.

Thank you for your anticipated cooperation in this series of investigations.

Very truly yours,

EDWARD M. ZELENAK

EMZ:sh

Handwritten notes:
Please check the Resolution. Does NOT State Department of Public Service but rather simply "A City Employee!"
He to reader: please check the Resolution. Does NOT State Department of Public Service but rather simply "A City Employee!"

(c) As used in subsections (a) and (b) hereof, the words "based on an agreement that the vote or official action or decision of an officer, employee or candidate would be influenced thereby" do not include communication between an individual or organization and a candidate regarding the candidate's views, record or plans for future action relative to an issue or measure in an attempt to determine a candidate's viewpoints or how the candidate plans to act in the future, if such communication results in an endorsement of the candidate, a decision not to endorse the candidate, or a contribution or expenditure required to be recorded or reported under Public Act 388 of 1976, as amended.

(d) No officer or employee shall represent his or her personal opinion as that of the governmental body of which he or she is a member or employee. This subsection shall not apply to statements by elected officials made in the course of fulfilling the responsibilities of their office or in running for election to office, nor shall it apply to the professional opinions of City officers or employees rendered in the course of performing their duties, provided that such opinions are clearly identified as professional opinions.

(e) No officer or employee shall divulge to any unauthorized person confidential information acquired in the course of holding his or her position in advance of the time prescribed by the governmental body of which he or she is a member or employee for its authorized release to the public, except as otherwise required by law.

(f) No officer or employee shall make unauthorized use of his or her public position, or any confidential information received through holding such public position, to obtain financial gain for himself or herself, a member of his or her immediate family or a business with which such individual is associated. This provision shall not prevent the officer or employee from accepting his or her regular compensation as a public officer or employee.

(g) No officer or employee shall make unauthorized use of personnel, resources, property or funds under his or her official care and control to obtain financial gain for himself or herself, a member of his or her immediate family or a business with which he or she is associated.

(h) No officer or employee shall act as an attorney, agent or representative of a person other than himself or herself, before the governmental body of which such officer or employee is a member or employee. This provision shall not prevent an officer or employee from performing his or her responsibilities as an officer or employee, nor prevent such action as described herein where it is otherwise authorized by law.

The following opinion is presented on-line for informational use only and does not replace the official version. (Michigan Attorney General Web Site - www.ag.state.mi.us)

STATE OF MICHIGAN

JENNIFER M. GRANHOLM, ATTORNEY GENERAL

OPEN MEETINGS ACT:

Disclosure of closed session meeting minutes

Under the Open Meetings Act, the clerk or designated secretary of a public body may furnish to a member of that body the minutes of a closed session of the body, either for inspection or copying. **A public official who disseminates closed session minutes to the public in violation of this act, however, risks criminal prosecution and civil penalties.**

* please refer to
Kitchen VS
FERNDALE

Opinion No. 7061

August 31, 2000

Mr. John L. Livesay
Branch County Prosecuting Attorney
Branch County Courthouse
31 Division Street
Coldwater, MI 49036

You have asked whether under the Open Meetings Act, the clerk or designated secretary of a public body may furnish to that body the minutes of a closed session of the body, either for inspection or copying.

The Open Meetings Act (OMA), 1976 PA 267, MCL 15.261 *et seq*; MSA 4.1800(11) *et seq*, generally requires a "public body to open its meetings to the public, subject to limited exceptions. OAG, 1981-1982, No 6053, p 616 (April 13, 1982). The Act authorizes a public body to meet in a session closed to members of the public only for certain enumerated purposes, including dismissing an employee. Sections 7 and 8. A 2/3 roll call vote of members serving on the public body is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i) and (j). The roll call vote and the minutes of the closed session must be entered into the minutes of the meeting at which the vote is taken. Section 7(1). OAG, 1980, No 5436, pp 31, 33 (February 1, 1979).

The OMA should be broadly construed to "promote openness in government," *Wexford County Prosecutor v Prange*, 197 Mich App 197, 204; 268 NW2d 344 (1978), and the closed-door meeting exceptions must be strictly construed so as "to limit situations in which meetings are not open to the public." *Detroit News, Inc. v Detroit*, 185 Mich App 296, 302; 460 N.W.2d 100 (1990). If a public body deliberates in closed session on a matter affecting public policy, it must wait to reach a decision on those deliberations until it meets in open session. Section 3(2). *People v Whitney*, 228 Mich App 230, 243; 578 NW2d 100 (1998). OAG, 1979-1980, No 5632, p 563 (January 24, 1980).

When a public body meets in closed session, the OMA requires that minutes be taken, retained, and remain generally available to the public. Section 7(2) provides that:

A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11 or 13. These minutes may be destroyed one year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

The minutes of a public body meeting in closed session include transcribed testimony of witnesses appearing before the body "as well as the dialogue between board members during the [closed] session [which] . . . were part of the meeting deliberations." *Titus v Shelby Charter Twp*, 226 Mich App 611, 615-616; 574 NW2d 391 (1997). Thus, the minutes of a public body meeting in closed session become the official record of the proceedings before that public body.

Against this background, we address your question whether the custodian of closed session meeting minutes may disclose them to a member of the public body that convened the meeting. No specific language in the statute resolves the question. But consideration of concrete examples helps illustrate the Legislature's intent. Should a member of a public body be unable to attend a closed session of that body convened to consider, for example, the disciplining of a public employee or a public school, and upon their request, the absent member could nevertheless vote on final action on that matter at a later public meeting of the body in order to make an informed decision, however, the member would need to review the minutes and transcripts of testimony of the closed session. See *Leonardi v Sta-Rite Reinforcing, Inc*, 120 Mich App 377, 381-382; 327 NW2d 486 (1982). The Legislature could not have intended to deny access to the minutes of a closed session of that body to that absent member or other member of the public body. If the members themselves could not review the minutes, there would be no discernible purpose in keeping minutes. Even members who were present at the closed session should have access to the minutes in order to refresh their recollection about their own deliberations before reaching a final decision at a later open meeting. Thus, the custodian of closed session minutes may make them available to members of the public body.

The conclusion that members of a public body have continuing access to the minutes of its closed sessions is consistent with OMA's distinction between a *member of a public body* and the *public*. In particular, section 2(c) of the OMA defines "closed session" as "a meeting or part of a meeting of a public body which is closed to the public." Similarly, section 3(3) requires that "all deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public, unless provided in this . . . [act]." In addition, the public body may, in its discretion, selectively include certain persons in closed sessions, such as legal advisors and other consultants, while excluding all others. See, for example, OAG, 1985-1986, No 635; OAG, 1986-1987, No 29, 1986), concluding that elected municipal officers, department heads, and other persons who are not members of the public body may be excluded from attending a closed session of the public body. By establishing this distinction between a member of a public body and the public, and in making minutes of a closed meeting unavailable to the public, the Legislature evinces an intent that those minutes would be available to members of the public body.

It should be emphasized, however, that the Legislature has imposed criminal and civil penalties upon a public official who intentionally violates the OMA. Sections 12 and 13 of the OMA. Thus, a member of a public body who discloses closed session minutes to the public in violation of section 7(2) risks both criminal prosecution and civil penalties under the OMA.

It is my opinion, therefore, that under the Open Meetings Act, the clerk or designated secretary of a public body may not disclose to a member of that body the minutes of a closed session of the body, either for inspection or copying. A public official who discloses closed session minutes to the public in violation of this act, however, risks criminal prosecution and civil penalties.

STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL KITCHEN, WILLIAM LEGAULT,
and LEE ANN O'CONNOR,

Plaintiffs-Appellees,

v

FERNDALE CITY COUNCIL, CHARLES
GOEDERT, JONATHAN WARSHAY,
GERALDINE KULICK, ROBERT J.
PACZKOWSKI, ROBERT G. PORTER,
DANIEL P. CHRIST, and HOWARD SHIFMAN,

Defendants-Appellants.

FOR PUBLICATION
September 20, 2002
9:10 a.m.

No. 224374
Oakland Circuit Court
LC No. 99-014228-CZ

MICHAEL KITCHEN, WILLIAM LEGAULT,
and LEE ANN O'CONNOR,

Plaintiffs-Appellants,

v

FERNDALE CITY COUNCIL, CHARLES
GOEDERT, JONATHAN WARSHAY,
GERALDINE KULICK, ROBERT J.
PACZKOWSKI, ROBERT G. PORTER,
DANIEL P. CHRIST, and HOWARD SHIFMAN,

Defendants-Appellees.

No. 226378
Oakland Circuit Court
LC No. 99-014228-CZ

Updated Copy
December 6, 2002

Before: Talbot, P.J., and Smolenski and Wilder, JJ.

WILDER, J.

In these consolidated appeals arising from claims under the Open Meetings Act (OMA), MCL 15.261 *et seq.*, defendants appeal as of right from the trial court's order granting partial summary disposition for plaintiffs, and plaintiffs appeal by leave granted the trial court's order

denying plaintiffs' request for attorney fees and costs. We affirm the order granting summary disposition for plaintiffs, reverse the order denying attorney fees and costs, and remand.

I. Facts and Proceedings

This case involves a dispute between various appointed and elected officials of the city of Ferndale. Plaintiff Michael Kitchen is the police chief. Plaintiff William Legault is the fire chief. Plaintiff Lee Ann O'Connor is the city clerk. Defendant Charles Goedert is the mayor. Defendants Jonathan Warshay, Robert J. Paczkowski, Robert G. Porter, and Geraldine Kulick are councilpersons. Defendant Daniel P. Christ is the city attorney. Defendant Howard Shifman is the city's labor attorney.

The dispute arose following a closed session of the Ferndale City Council, which was held to conduct periodic personnel evaluations of city council appointees including all three plaintiffs. Plaintiffs requested a closed hearing pursuant to MCL 15.268(a). During the afternoon before the closed hearing, defendant Goedert told the city manager's secretary that he would be taping the closed session and asked her to have equipment and tapes ready. That evening, a regular open session of the city council was held. Karen Pedro, the deputy city clerk, was present for the open meeting and was directed by defendant Goedert not to attend the closed session. She returned when the open session reconvened. Defendant Goedert, who, according to defendants, "taped the meeting for his own purposes, not as an official record," gave possession and control of the tapes to defendant Christ.

Three days later, the Ferndale City Council conducted an open meeting in which defendant Christ stated that he received the tapes of the closed session and was sending a copy to defendant Shifman in order to obtain advice about any outstanding labor issues. Subsequently, the Ferndale City Council moved to schedule the completion of personnel evaluations of appointees including plaintiffs. Shortly thereafter, defendant Goedert filed with plaintiff O'Connor a sealed set of what Goedert described as the minutes of the closed session meeting.

Plaintiffs filed a complaint alleging that defendants violated the OMA after defendant Goedert took possession of four tapes of the closed session, did not give the tapes to the city clerk or deputy clerk, and, instead, gave them to defendants Christ and Shifman. Plaintiffs asked the trial court to order that the tapes be turned over to plaintiff O'Connor, to enjoin defendants from further noncompliance with the OMA, to award plaintiffs costs and attorney fees, and to assess exemplary damages of \$500 against defendants Goedert and Christ for their intentional violations of the OMA.

Defendants filed a motion for summary disposition, pursuant to MCR 2.116(C)(8) and (C)(10), arguing that (1) defendants had complied with the requirements of the OMA that provide that separate minutes of a closed session be retained by the city clerk, (2) the OMA does not require that defendant Goedert's tapes of the closed session be preserved or maintained by the city clerk, and (3) sending copies of the tapes to Ferndale's attorneys is not a disclosure of the minutes to the public, but rather is a protected disclosure consistent with attorney-client privileged communications and is permissible under the OMA.

Plaintiffs filed a response to defendants' motion for summary disposition and filed their own motion for summary disposition pursuant to MCR 2.116(C)(9) and (10). Plaintiffs first

argued that defendant Goedert violated the OMA by tape-recording a closed session of the Ferndale City Council without formally being designated as secretary. The Ferndale Code provides that the city clerk shall keep and sign the record of the council's proceedings. However, plaintiff O'Connor could not record the minutes of her own personnel evaluation, and rather than have the deputy clerk assume plaintiff O'Connor's duties, defendant Goedert tape-recorded the session himself. Plaintiffs argued that this was a violation of the OMA provision requiring the minutes of a closed session to be taken by the clerk or the designated secretary of the public body.

Plaintiffs also argued that defendant Goedert violated the OMA provision that minutes be retained by the clerk and not be made available to the public when he took the tapes home with him rather than depositing them with the proper city official. In addition, plaintiffs argued that defendants Goedert, Christ, and Shifman violated the OMA by publishing and disclosing the minutes of a closed session of the Ferndale City Council, contrary to the OMA provision that permits minutes of closed session meetings to be disclosed only if required by a trial court's order in a civil action.

Defendants filed a response opposing plaintiffs' motion for summary disposition, arguing that because the OMA requires that closed session minutes need only reflect the date, time, place, attendance, and purpose of the meeting and does not specify a time limit or a procedure for designating a secretary if the city clerk is not present, defendant Goedert's delivery of sealed minutes of the session in question was in full compliance with the OMA.

Defendants further argued that they did not publish the minutes of a closed session in violation of the OMA for three reasons: (1) the tapes were not minutes, (2) the city attorney and labor counsel are not "the public," and (3) the OMA does not abrogate the attorney-client privilege.

The trial court granted summary disposition in favor of defendants on plaintiffs' claim that defendant Goedert violated the OMA by designating himself to take the minutes. The trial court also granted summary disposition in favor of defendants on plaintiffs' claim that defendants violated the OMA by publishing and disclosing the minutes of a closed session. The trial court found that the council appropriately voted in an open session to send the tapes to defendant Shifman, the city's labor attorney, who is obligated by the attorney-client privilege to maintain the confidentiality of the information contained on the tapes. The trial court granted summary disposition in favor of plaintiff's on their claim that defendant Goedert violated the OMA by taping the closed session and taking the tapes home with him. The trial court held that the tapes of the session were part of the minutes that must be deposited with the city clerk. Finally, the trial court also denied plaintiffs' request for injunctive relief finding that the relief was unnecessary because the council made a good-faith effort to comply with the OMA. The court asked for supplemental briefs on the issue of costs and fees.

Plaintiffs filed a supplemental brief in support of their request for costs and attorney fees pursuant to MCL 12.271(4), claiming that they were entitled to fees and costs because the trial court granted summary disposition of part of plaintiffs' claim under the OMA. Plaintiffs asked for \$9,483.75 in attorney fees and \$466.75 in costs. Defendants filed a brief in opposition to plaintiffs' motion for costs and attorney fees, arguing that the court should deny plaintiffs' motion for attorney fees because (1) the OMA does not specify a time frame for tapes to be submitted to

the clerk to be retained along with the minutes, (2) there is no precedent for requiring public bodies to retain tapes of meetings along with the minutes of a meeting, and (3) the OMA's policy for retaining minutes and tapes was followed and, thus, there was substantial compliance in the safekeeping and retention of the tapes.

Before the trial court ruled on the pending motion for costs and attorney fees, defendants filed a motion for reconsideration of the trial court's ruling that the tapes of the closed session constituted minutes under the OMA. Defendants argued that the trial court incorrectly relied on and misquoted *Titus v Shelby Charter Twp*, 226 Mich App 611; 574 NW2d 391 (1997), which held that a transcript of a closed session is part of the official record of the session and thus part of the minutes of the session. Defendants also argued that the OMA does not impose a time limit on providing minutes to the city clerk and that requiring tapes to be filed with the city clerk would be an undue burden on public bodies that was not envisioned by the Legislature. The trial court denied defendants' motion, stating that "it is undisputed that Mayor Goedert decided to take the minutes. The fact that he chose to transcribe by way of recordation does not affect this Courts [sic] result where, as here, that recordation was intended to serve as the minutes or official record of the proceeding."

The trial court also denied plaintiffs' motion for costs and attorney fees, clarifying that although it ordered that the tapes be filed with the city clerk, it did not find that defendants had violated the OMA. The court pointed out that the OMA does not address audio recordings for closed sessions, that case law on the issue "is likewise sparse," and that, accordingly, the award of costs and fees was not warranted under MCL 15.271(4).

II. Standard of Review

We review de novo questions of statutory interpretation. *In re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999).

III. Violation of the Open Meetings Act

Defendants argue that the trial court erred in granting partial summary disposition to plaintiffs. We disagree.

The relevant portions of the OMA provide:

(1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. .

(2) Minutes shall be public records open to public inspection and shall be available at the address designated on posted public notices pursuant to section 4. Copies of the minutes shall be available to the public at the reasonable estimated cost for printing and copying. [MCL 15.269.]

A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action[.] [MCL 15.267(2).]

Our primary goal in interpreting a statute is to ascertain and give effect to the Legislature's intent in drafting the statute. When the statutory language involved appears clear and unambiguous on its face, we must presume that the Legislature intended the meaning it plainly expressed; judicial construction is neither permitted nor required, and we must enforce the statute as written. *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002); *In re MCI*, *supra* at 411. "[C]ourts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature." *Pohutski, supra* at 683. Courts must accord the words of a statute their plain and ordinary meanings and should look beyond the statutory language itself to ascertain legislative intent only when the statutory language appears ambiguous. *Id.*; *In re MCI, supra*.

The question before us is whether an audiotape of a closed session meeting of a public body is part of the minutes of the session meeting and thus is required to be filed with the clerk of the public body for retention as specified by MCL 15.267(2). Applying principles of statutory interpretation, we conclude that the audiotape at issue is part of the minutes of the closed session and therefore must be filed with the clerk.

ERI Document ← Defendants argue that because audiotapes are not specifically referenced in the OMA, they cannot constitute part of the minutes within the meaning of the act. The fact that audiotapes are not mentioned in the OMA is not dispositive. We note that the terms "minutes" and "public record" are not defined in the OMA. As we found in *Titus, supra* at 615, "[t]he plain and ordinary meaning of 'minutes' of a meeting refers to the official record of the proceedings at a group's meeting. *Random House Webster's College Dictionary* (2d ed, 1995), p 837." "Public" means "open to all persons." *Random House Webster's College Dictionary* (2d rev ed, 2001), p 1070. "Record" means "an account in writing *or the like* preserving the memory or knowledge of facts or events," and "information or knowledge preserved in writing *or the like*." *Id.* at 1104. (emphasis added) Because the plain meaning of the term "record" encompasses more than simply writings, and because the extent of this broader meaning is not clear, we conclude that the term "minutes" is ambiguous and that judicial construction of the term is required.

Where statutory language is ambiguous, our first duty is to discern the legislative intent underlying the ambiguous words. *Crowe v Detroit*, 465 Mich 1, 13; 631 NW2d 293 (2001). We ascertain the legislative intent of ambiguous statutory language through reasonable inference from the words expressed in the statute. *State Farm Fire & Casualty Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). In addition, statutes having a common purpose should be read to harmonize with each other in furtherance of that purpose. *Manning v East Tawas*, 234 Mich App 244, 249; 593 NW2d 649 (1999).

The Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, mandates a policy of full public disclosure of information regarding the formal acts of public officials and employees, *Booth v Univ of Michigan Bd of Regents*, 444 Mich 211, 231; 507 NW2d 422 (1993). Similarly, the purpose of the OMA is to promote governmental accountability by facilitating public access to official decision making and to provide a means through which the general public may better

understand issues and decisions of public concern. *Id.* Because it is clear and indisputable that the OMA and the FOIA have a common purpose, manifesting this state's public policy favoring public access to government information, *id.*, MCL 15.231 *et seq.*, MCL 15.261 *et seq.*, we therefore look first to the FOIA for guidance in interpreting the term "minutes."

MCL 15.232(e) of the FOIA provides that "[p]ublic record' means a writing prepared . . . in the performance of an official function, from the time it is created." MCL 15.232(h) provides that "[w]riting' means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes . . . sounds, or symbols, or combinations thereof, and . . . magnetic or paper tapes, . . . or other means of recording or retaining meaningful content." It is apparent that the audiotape at issue would be considered a public record within the meaning of the FOIA. Because minutes are public records within the meaning of the OMA, and because the term "public records" as used in the OMA should be interpreted so as to be in harmony with the common purpose of the OMA and the FOIA, we conclude, consistent with the legislative intent expressed in both the OMA and the FOIA, that the audiotape at issue in this case is part of the minutes of the closed session meeting.

We disagree with defendants' assertion that our conclusion that audiotapes of meetings are minutes places an undue storage burden on the clerk of the public body responsible for maintaining the minutes. Defendants claim, without any support in the record, that the clerks of most public bodies maintain audiotapes of public meetings only until written minutes are prepared. To the extent defendants' claim in this regard is correct, nothing in our opinion would interfere with such a practice because while MCL 15.269 of the OMA requires a public body to keep minutes, it does not require that multiple sets of the minutes of public meetings be kept and maintained for any specific length of time. Thus, once the written minutes of public meetings are officially adopted by the public body, nothing in the OMA would require the public body to continue to maintain the audiotapes of the public meetings.

With respect to minutes of closed session meetings, however, MCL 15.267 expressly provides that any minutes generated be retained by the clerk for at least one year and one day after approval of the minutes of the meeting at which the closed session was approved, after which the minutes may be destroyed. We find nothing onerous in requiring that public bodies retain the written and audio accounts of those rare occasions in which the public body meets in closed session, as required by law.

Therefore, the trial court did not err in ordering defendants to file the audiotapes of the closed session with the city clerk.

IV. Attorney Fees and Costs

Plaintiffs argue that the trial court erred in denying their motion for attorney fees and costs. We agree. MCL 15.271(4) provides:

If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

Costs and fees are mandatory under the OMA when the plaintiff obtains relief in an action brought under the act. *Id.*; *Manning, supra* at 253-254. Here, plaintiffs claimed, inter alia, that defendants violated the OMA by failing to file the audiotapes of the closed session with the city clerk. While the trial court ordered defendants to file the tapes with the clerk, it found in a subsequent written opinion that defendants had not violated the OMA. This ruling was erroneous. The fact that the trial court granted plaintiffs the relief they sought necessarily includes a finding of a violation of the OMA. *Id.* Further, the plain language of the statute simply states that plaintiffs need only "succeed[] in obtaining relief in the action" in order to recover court costs and attorney fees. MCL 15.271(4). Because plaintiffs clearly succeeded in obtaining relief in the action, the trial court clearly erred in denying their request for attorney fees and costs.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ Michael J. Talbot

/s/ Michael R. Smolenski

Date August 11, 2004

Kym Worthy, Wayne County Prosecutor
1200 Frank Murphy Hall of Justice
1441 St. Antoine Detroit, MI 48226

Subject: Open Meetings Act Complaint against City of Lincoln Park Michigan

Mayor Steven Brown, City Council Members: Council President Mark Kandes, Tom Murphy, Valerie Brady, Mario DiSanto, Mike Higgins, and Frank Vasio, and City Manager Steve Duchane.

We believe that the City of Lincoln Park Mayor, City Council and City Manager have violated the Michigan Open Meetings Act Sections 15.268 as they participated in two consecutive closed meetings for "labor negotiation" discussions that did not involve open collective bargaining contracts nor pending litigation.

We are extremely concerned as residents, taxpayers, and business owners of this community as many believe that we are being shielded from deliberations and decisions made in these closed sessions that will have a serious impact on our quality of life and our two most important investments, which are our families and our homes. It is for that reason that our interests in these city departments restructuring also known as "the plan" be discussed in accordance with the Open Meetings Act.

We believe that the basic intent of the Open Meetings Act which is to strengthen the right of all Michigan Citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meeting was violated.

We have attempted to resolve our concerns with our City Leaders that was unsuccessful.

We believe that the closed meetings held on July 26th and August 2nd, 2004 violated the Open Meetings Act as written and in the spirit of the law for the following reasons:

- Mayor & Council stated that the closed sessions were for "labor negotiations".

Per Chapter 15.268 Section 8 Sub Section (c) of the Michigan Open Meetings Act Closed Sessions – Permissible purposes states:

- For strategy and negotiation sessions ^{*} connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.
 - This section also states that the purpose for which the closed meeting is being called has to be stated and we believe the stated words of "labor negotiations" is vague, misleading, and does not represent the spirit for which the law intended. There are several Attorney General Opinions that support that specific reasons for Closed Sessions must be stated and general reasons are not what the OMA intends.
- Instead City Leaders discussed specific details about offering Early Retirement Incentives, potential layoffs of specific employees, and city department reorganization. It should be noted that the majority of the employees and departments discussed are currently operating under lawfully signed operating contracts.

* - in order to be connected with "the negotiation of a collective bargaining agreement" Doesn't that imply An open Bargaining Negotiation must be ongoing?

Please note that the contents of these articles are based on the copy of the 50+-page document in which Mayor Brown and City Manager Steve Duchane have confirmed in said articles. We also have an email from this reporter that also confirms this information.

- c Please refer to **Exhibit 1** – Published August 1st, 2004 by the News Herald --- *Buyout will Save City \$2M yearly.*

This article details some of the specific changes that are to occur within Lincoln Park City Departments which include employees operating under a signed, lawful, operating contract as well as departments that are currently in Collective Bargaining negotiations and/or with a Mediator.

In this same article, City Manager Steve Duchane speaking as to his participation in the closed session on August 2nd, 2004 states, "the proposed buyout plan is one part of a major overhaul". Steve Duchane goes on to state which departments would be affected by this proposal which includes those employees currently operating under a lawful, signed contract and their Unions had either not yet agreed to go into collective bargaining discussion or were totally unaware of our City Leaders intentions as it relates to these employees.

In addition, Steve Duchane discussed publicly details surrounding two ongoing collective bargaining negotiations with the Command Officers (Police Department) and the Administrative Department Heads. These are two issues that should have been discussed in closed session, yet they were made public.

- o Please refer to **Exhibit 2** - Published August 8th, 2004 by the News Herald --- *Buyouts Could Mean Big Changes.*

This article goes into more details. Specific quotes by City Manager Steve Duchane included providing the names of those employees that will be affected (who are under lawfully, signed operating contracts) and specifically named Administrative Department Heads wherein current labor negotiations are still ongoing.

Duchane goes on to discuss the Lincoln Park Police Chief job responsibilities as well as the job responsibilities of the remaining commanders. Again, the Commanding Officers Unit (Police Dept) contract is currently being negotiated and with a mediator for the last two years.

According to this news article (and subsequent exhibits), the City Leaders do appear to have been working diligently on a solid restructure plan, which is evidenced by the fact that the City of Lincoln Park's Labor Attorney was reviewing the plan as well as our supporting exhibits. To our knowledge, neither the Union Leaders nor their Attorneys were aware of this at the time these meetings took place.

- o Please refer to **Exhibit 3** – Published August 11th, 2004 by the News Herald --- *City Expands Plans for Early Retirement Offerings.*

City Manager Steve Duchane states that as of August 10th, 2004 and two weeks AFTER the initial closed session occurred, City Leaders began outlining the details of the plan for the City of Lincoln Park employee Unions. In addition, Duchane's states that if the Unions agree, they can begin retirement in weeks. If they don't agree – layoffs will likely begin in January 2005.

- o Please refer to **Exhibit 5** – *Written response from Councilwoman Valerie Brady in response to the New Herald Articles (see above Exhibits).*

In this response she acknowledged the closed sessions and affirms that Mayor and Council must complete their vote before Duchane has the authority to present these plans to the union in hopes that the Unions will agree to re-open negotiations of their existing contracts.

In addition, please note that Councilwoman Brady states that Mayor and Council a) have no idea on what positions will or will not be refilled or streamlined, b) they have never had a meeting regarding layoffs and c) Mayor and Council affirms that this plan does consist of restructuring and streamline of jobs and services which we believe is not permissible for a closed session.

However, the information provided to the News Herald Report (refer to articles) and **CONFIRMED** by City Manager Steve Duchane, who was present at both closed sessions, states the opposite.

- o There are several Attorney General Opinions that support the validity of this complaint.

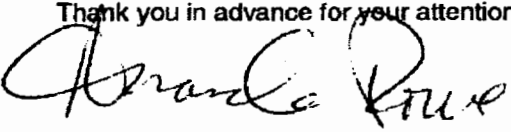
In closing, we believe that our Mayor, City Council and City Manager either intentionally or otherwise used the OMA as a shield to prohibit the public from their ability to speak about this proposed plan and it's impact on our community by stating that the closed session was exclusively labor negotiations.

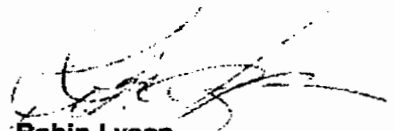
We believe that we have demonstrated that the scope of these closed session meetings violated the OMA permissible reasons for closed sessions under Article 15.268 Sec. 8 sub section (c) by discussing and deliberating on topics that fall outside the area of "negotiation sessions connected with the negotiation of a collective bargaining agreement" as only two of the affected departments discussed in detail are in ongoing negotiations.

Also, we believe that City Manager Steve Duchane and Mayor Brown violated OMA Section 15.268 Sec. 8 on two separate occasions (refer to Exhibit 2 and Exhibit 5) by discussing currently ongoing labor negotiations for the Command Officers (Police Dept.) and the Administrative Department Heads in a public venue.

We are requesting that your office conduct an investigation into this matter and to apply the remedies as allowed by law. We further request that upon completion of your findings, that you advise us of same.

Thank you in advance for your attention to this matter.


Amanda Rowe
313.477.3948


Robin Lyson
313.389.0977

Encl: Exhibits 1 thru 5

Buyout will save city \$2M yearly

71 workers qualify for early retirement

By Jason Alley
The News-Herald

LINCOLN PARK — In an unprecedented move to save more than \$2 million a year, city officials plan to offer incentives to some of the most experienced — and highest paid — employees to quit their jobs.

An early retirement plan is expected to be offered within days to anyone who has worked for the city for at least 17 years and 10 months.

City Manager Steve Duchane said 71 people qualify, including nearly every department head and many top cops. Some of the positions will be replaced, but at least three-fourths will not, he said.

"One of the ways to address our ongoing budget crisis is to severely make a change in staffing because that's where all your money is," Duchane said. "Employee costs far outweigh any other costs the city incurs."

To balance next year's \$23.9 million budget, Duchane had to take \$1.8 million out of the city's rainy day fund — a practice he said is dangerous. If the city continues to use money in its reserves, he said, there will be none left by 2006.

He promised in May that there would be drastic changes ahead in the way the city operates. The proposed buyout plan "is just one part of a major overhaul," he said.

Even though there will be fewer employees doing the work, Duchane said, residents won't see a decrease in services.

"In fact, I think they will see an improved quality of services," Duchane said. "We will regenerate job descriptions and get people aligned with new responsibilities. A certain freshness will come along with that, resulting in better services for everyone."

City Council members met with Duchane last week in a 90-minute closed-door session to discuss the early out plan. Some members weren't totally sold on the idea, so another closed meeting is scheduled for 7:30 p.m. tomorrow.

Once Duchane gets the go-ahead from the council, he will approach the unions with the plan's specifics.

EXHIBIT 1
L1914/E

If they accept it, eligible employees can begin planning for retirement.

If the unions vote down the idea, Duchane said, layoffs would start at the beginning of the year.

"We've got a \$2 million problem we need to fix somehow," he said. "And that can best be done by having a stronger, leaner workforce. I know what excellence is ... and what we have right now in Lincoln Park isn't it."

While it's unknown how many employees will accept the offer, Duchane has a restructuring plan he'd like to make in various city departments.

Among the key changes are:

ICompletely overhauling the Department of Public Services, cutting the workforce from 50 employees to 33. An in-house engineer would be hired to offset many costs currently being paid to a contracted firm.

IEliminating 12 jobs at the Police Department, including all of the lieutenants, four sergeants, two police officers and one ordinance officer.

ICutting five positions at the Fire Department, including the deputy chief, two captains, one lieutenant and one inspector.

IDissolving the Personnel and Purchasing Department and rolling those responsibilities into the city manager's job. Two positions would not be filled.

IAxing the Parks and Recreation assistant director's job.

IChanging the city attorney from a full-time position to a contracted employecc.

Click here to return to story:

http://thecnews herald.com/stories/080104/loc_20040730002.shtml

Exhibit 1

The News-Herald

A Heritage Newspaper

Buyouts could mean big changes

By Jason Alley
The News-Herald

LINCOLN PARK -- Drastic changes are in the works for some top departments as many longtime city employees are expected to accept early retirement.

The Department of Public Services will see the largest overhaul, as will the management of the Police Department.

"Change is shaky for some people, but there's no doubt that change is needed," City Manager Steve Duchane said.

In a reorganization plan given to the mayor and City Council last month, Duchane outlined ways to make several departments "more efficient."

Currently, there's a DPS superintendent who oversees the department and a contracted company that does much of the city's engineering work.

Under Duchane's proposal, there would be a DPS director who has an engineering degree, allowing the city to save money that's now being paid to the outside company. That person would be responsible for routine consulting and civil engineering, as well as overseeing the entire operation.

Working under the director would be two superintendents -- one to oversee street repairs and buildings and grounds and the other for utilities and services.

Because the current department head, Robert Torck, doesn't have an engineering degree, it is not expected that he will stay to lead the department.

He is one of 71 employees eligible for the early retirement plan, which is being offered to anyone who has worked for the city for at least 17 years and 10 months.

A nationwide search will be done to fill Torck's position, Duchane said.

While the early retirement plan is designed to save money, Duchane said, it's likely that a new leader at the DPS would earn a higher salary than what's being paid now.

"We will have to pay more for some positions for their expertise, but in the

EXHIBIT 2

long term, it will end up saving money," Duchane said.

There are 50 employees at the DPS now. Under the restructuring plan, there would be 33.

"Right now, we have a lot of men who know how to do one thing really well," Duchane said. "Unfortunately, that won't work. We need fewer men who are multitasked and can do a variety of tasks.

"It all goes back to being able to serve the people best by having a stronger, leaner workforce."

At the Police Department, a new rank of commander would be created, with two people serving under the chief.

They would fill many of the responsibilities generally associated with a deputy chief, a position the department doesn't have.

"The commanders would hold a high rank and be multitasked to do different administrative duties," Duchane said. "The chief of police -- whether the one we have now or a new one -- would divide up their duties."

Police Chief Robert Kish also is eligible for the early retirement plan, but it is not known whether he plans to take it.

And unlike other department heads that the mayor and council appoint, a separate five-member Public Safety Commission hires police and fire officials. Duchane said commission members support his idea of a nationwide search for a new chief if Kish retires.

Staffing changes also are planned in the Fire Department, where five positions are to be cut, and in the Parks and Recreation Department, where one job will be eliminated.

The Personnel and Purchasing Department will be dissolved, with those job duties going to the city manager.

The city's labor attorney is finishing up his review of the early retirement plan. The various employee unions should get a copy of it to discuss with members later this week, Duchane said.

If the unions accept the offer, eligible employees can begin planning their retirements immediately. If they don't, Duchane said, layoffs could begin as early as January, as the city struggles to deal with many financial issues, including massive cuts in state revenue-sharing dollars.

It's not expected that all 71 employees will be interested in retiring early. If about 40 of them do -- which is his target number -- the city could save more than \$2 million a year, Duchane said.

Exhibit 2

Contact Staff Writer Jason Alley at jalley@heritage.com or at 1-734-246-0867.

Click here to return to story:

http://thenewsherald.com/stories/080804/loc_20040808011.shtml

Exhibit 2

The News-Herald *A Heritage Newspaper*

City expands plans for early retirement offerings

LINCOLN PARK — The early retirement plan being offered to some city employees has been expanded to include a few more people.

Anyone who is 55 years or older and has worked for the city for at least 14 years and 10 months is now eligible. The plan previously included only employees with at least 17 years' and 10 months' experience.

The change only affects about four workers, which would bring the total number of eligible employees to the 75 range, according to City Manager Steve Duchane.

Details of the plan were starting to be outlined yesterday morning to the various city employee unions. If the unions agree to the terms, the eligible employees could begin their retirement within weeks.

If the unions reject the measure, Duchane said, layoffs are likely to begin in January.

The buyout plan is estimated to save the city more than \$2 million a year, which is needed to offset some of the city's financial woes, including massive cuts in state shared revenue, Duchane said.

— Jason Alley

Click here to return to story:

http://thenewsherald.com/stories/081104/loc_20040811013.shtml

Exhibit 3

The News-Herald *A Heritage Newspaper*

News Briefs

Local churches will walk for CROP on Sept. 26

ALLEN PARK -- The 26th annual area CROP Walk is planned for Sept. 26.

The event raises money for the hungry.

Of the money that is raised, 25 percent will go to local charities: New Hope Food Pantry in Melvindale, the Salvation Army in Wyandotte, hot meals and canned goods for Cass Community Church in Detroit, food boxes for Detroit Rescue Mission and hot meals for St. Peter in Detroit.

The rest of the profits will be sent to the World Relief fund.

Participants can choose to walk one, two or six miles. Along the route, walkers will pass by churches that belong to the Allen Park Area Council of Churches.

Sponsor and recruitment material can be picked up at a rally from 5:30 to 7 p.m. Aug. 16 at St. Luke Episcopal Church, 15603 Wick.

-- Lena Khzouz

Turn off TV and go play outside at city parks

ALLEN PARK -- It's only the beginning of August. There's still a lot of time to enjoy parks in the city before the warm season is over.

Basketball and tennis courts, walking tracks and in-line hockey rinks are only some ideas for things to do in the parks.

Basketball courts are available at Brand Park at Paris and Laurence, Millward Park at Pleasant near Reeck and Sudman Park near Philomene and Cortland.

Play tennis at Champaign Park at Champaign and Balfour and at Community Park at Gahona and Philomene.

Walk around the tracks at Community Park, Kennedy Park at Euclid and Shenandoah, Millward Park and Riel Park at Euclid and Quandt.

Strengthen your hockey skills or just show them off at Champaign and Riel parks.

*located next page
Exhibit 4 →*

If all else fails, grab a picnic basket or sports equipment from your garage and have fun in your own way.

-- Lena Khzouz

City begins investigating vacant building status

MELVINDALE -- City Council members Wednesday approved the start of nuisance proceedings involving a vacant building at 18500 Dix.

Eric Witte, commissioner of the Department of Public Works, said nothing at all is going on at the building.

It's not for sale and is not used. It just sits there, being an eyesore and collecting mold. It has been neglected for about 10 years, he said.

Now that he has the permission, Witte said, a title search will ensure that all appropriate owners are notified of the city's intentions.

The city eventually will take the matter to court, where the judge can give the city permission to demolish the building or require the parties to negotiate in order to repair it.

-- Lena Khzouz

Mayor demands an end to leaked information

LINCOLN PARK -- Mayor Steven Brown threatened at Monday night's City Council meeting to launch a full-out police investigation if confidential information is ever leaked again to the public.

The News-Herald Newspapers recently obtained an in-house report given to the mayor and council by City Manager Steve Duchane that outlined an early retirement plan the city is offering to some of its longtime employees.

After verifying the information contained in the report, The News-Herald ran a front page story about the plan on Aug. 1.

While council members confirmed that the newspaper story was accurate, they were upset that the story was published before they offered the buyout to city employees.

Brown also criticized the recent release of a confidential report given to city officials by an outside attorney hired to help them write an anti-nudity ordinance.

While the information is protected by Michigan law under an attorney-client privilege and should have been kept secret, Brown said, it was released and published on a community Web site.

Exhibit 4

A city ethics ordinance prohibits officials from releasing confidential information, and if it happens again, Brown said, it won't be tolerated.

"When you have a sensitive situation which is subject to a closed meeting, it's not proper behavior to have that information released," he said.

-- Jason Alley

K of C sponsors three ways to help Jerry's Kids

LINCOLN PARK -- Those wanting to help children with muscular dystrophy have a few options other than just calling in a pledge to the annual Labor Day telethon.

Members of the local Knights of Columbus council again are hosting their annual celebration.

Sausage and all-you-can-eat pancakes will be served from 7 to 11 a.m. Sept. 6 at the hall, 25160 W. Outer Drive. The cost is \$3 for children 10 and younger, \$6 for adults and \$16 for a family.

A spaghetti dinner will be served later that day, from noon to 5 p.m., for the same price.

A classic car and truck show will be held in the parking lot from 9 a.m. to 5 p.m. Registration begins at 9 a.m. and the cost is \$15, which is payable only at the show.

Proceeds raised from all three events will be donated to Jerry's Kids.

For more information, call event organizer Del Perotta at 1-313-382-3431, Ext. 102.

-- Jason Alley

Library to offer stories for all kinds of folks

LINCOLN PARK -- Folktales will be the lesson of the day Aug. 18 at the public library.

Jan Longton will use her storytelling skills to share with youngsters some African folktales and American folklore.

The program begins at 2:30 p.m. and will last about a half hour. It's geared toward children 5 to 13 years old.

The event is free and registration is not required. Just stop in the library, 1381 Southfield, and enjoy the afternoon.

-- Jason Alley

Exhibit 4

vbrady5554

Council Person
Member # 50

posted July 31, 2004 12:49 PM July 31, 2004 12:49 PM Sunday's paper contains an article that I feel needs clarification.

The meeting Mayor and Council had was a closed door meeting and the contents of that meeting was " Specifically Confidential " information until we as a Council voted and if approved gave instruction to Mr. Duchane to present an offer to the unions.

The information was NOT presented to Mayor and Council prior to the meeting. By providing this information rather last minute it did not allow Mayor or Council to review it accordingly. Also I have not heard any memeber of the council object to the ERI plan. We scheduled another meeting regarding this plan, allowing for time to review the information appropriatley.

Does the plan consist of reconstructing and streamlining some jobs and services. Yes, it most surely does. My goal is to accomplish this in a manner that accords for NO LOSS of services and an increase in response time to all services provided.

But the article in itself is very misleading for several reasons.

- 1) Mayor and Council --- have no clue as to which employees may be interested in the ERI plan. Because it has not been voted on or presented to their unions.
- 2) Mayor and Council have NEVER had a meeting regarding LAY OFFS.
- 3) There would be 72 employees eligible under the PURPOSED PLAN. The one that was specifically to be confidential until Mayor and Council voted on the PURPOSED PLAN.
- 4) Mayor and Council have no idea on what positions will or will not be refilled or steamlined, that will be directly reflected by the employees who choose to accept the ERI, pending a vote of Mayor and Council.

I will also talk to Mr. Duchane regarding the release of this information prior to a vote of Mayor and Council.

Respectfully,
Valerie Brady



Exhibit 5