SPRINGDALE CITY COUNCIL

COUNCIL INVESTIGATIVE COMMITTEE

* * *

The above-captioned proceeding took place before Chairperson Meghan Sullivan-Wisecup and Committee Member Jeffrey Anderson at the Springdale Municipal Building at 11700 Springdale Pike, Springdale, Ohio, on Thursday, the 23rd of August 2018 at 6:59 p.m.

* * *
APPEARANCES:

On behalf of the Council Investigative Committee:

Dinsmore & Shohl, LLP

By:  Alan H. Abes
    Attorney at Law
    255 East Fifth Street
    Suite 1900
    Cincinnati, Ohio 45202
    513-977-8200
    abes@dinsmore.com

    * * *
MS. SULLIVAN-WISECUP: I'm going to order our CIC meeting for August 23, 2018, and please stand for the Pledge of Allegiance.

(Pledge of Allegiance.)

MS. SULLIVAN-WISECUP: I'm going to do the extensive roll call. Jeff Anderson?

MR. ANDERSON: Present.

MS. SULLIVAN-WISECUP: Meghan, myself, present. Also present is Al Abes as our legal counsel. First thing we have to do is approval of the July 5th minutes. Did you have any corrections or --

MR. ANDERSON: Move to adopt.

MS. SULLIVAN-WISECUP: Second. All in favor? Opposed? None. Abstained? Accepted. Second, the minutes from the last meeting, do you have any corrections?

MR. ANDERSON: Just one comment on it. I think on the header page on it showed that the meeting started at 6:57 or 6:58, and I know we checked our clock beforehand and it was after 7:00. I don't think we need a formal change, but I just wanted it noted that we did start after 7. Otherwise, move to adopt.

MS. SULLIVAN-WISECUP: Second. All
in favor? Opposed? None.

We have a new committee review draft. Alan, do you want to start off by explaining the draft and go from there?

MR. ABES: Sure. So at our last meeting, you tasked me with preparing the initial draft of an investigative report based on the evidence that had been collected pursuant to subpoena and also pursuant to the publicly available records. The task was to review that evidence and consider it in light of the law and formulate some initial narrative and conclusions for the committee to consider. We discussed in privileged conversation pursuant to Ohio law how the facts relate to the law and formulated the draft for the CIC to consider tonight.

The draft is a product of our discussion in terms of the legal advice I provided as to how the facts do relate to the law. They are at this point tentative conclusions contained in the draft. The draft is still subject both to editorial revision and to revision of the actual conclusions and recommendations drawn.

The draft is divided into five parts. One is just to provide context for why you're
issuing the report. Part 2 is to describe the investigative process that the CIC followed.

Part 3 is to provide just a brief background and outline of the initial allegations as to why the investigation is being conducted. It is not meant to be a complete recitation of every fact. As noted in the report, we will have an appendix that includes all of the written responses we received pursuant to subpoena. It will include the council minutes that we referenced and any other material referenced here. So all of the facts from which we draw to craft the narrative in Section 3 will be available with the report, everybody can read them.

One thing we've not done is, I did not draft this as I would a legal brief, so I have not -- I do not have a pinpoint citation to every single fact in here. I thought it would make it a little cumbersome and add to the length of the document unnecessarily. It's already kind of long and wanted to keep it as concise as possible. The same is true for the law. I did not cite a case or a statute for every single legal point because I didn't want to make it too cumbersome and seem like it was too legalistic. Unlike a brief, this
report is meant for consumption of the general public, so we do want it to be readable, but I can certainly add whatever pinpoint citations to fact or law, if you wish, if you think it's something that needs to be overly supported; but everything is supported by the record that will be included with the report.

In Section 4, I drafted findings and conclusions, again, in consultation with you both in privileged discussion. Those findings and conclusions do two things. No. 1, they sift through the evidence and propose findings of facts, so it's this committee's determination of what happened to the extent it can determine that, or in some instances it determines what is more likely than not to have happened. And in some instances, it determines that it can't make a finding because there is not sufficient evidence. And then the conclusions apply the law to the facts and determine as a matter of law what the facts actually mean and what the consequences are.

And then in Section 5, there is a set of recommendations where the committee will take into account what happened factually, what it means legally, and provide recommendations for how
council should treat these subjects in the future and how it can either follow best practices or improve its performance to make sure, as best council can, that this situation doesn't arise again, or to the extent that there are questions about how to proceed, they are considered appropriately. So that's the structure of the report.

I think, obviously, I can answer any questions about it, but the next step would be to discuss the content of the report, to the extent you want to, and determine what revisions should be made and what the process should be from there.

MS. SULLIVAN-WISECUP: Mr. Anderson, do you have any questions about this?

MR. ANDERSON: I think my questions will be after the review. I just want to make sure that we have next steps, and I know that's on the agenda tonight. To be clear, though, as of reviewing this document, this draft is public record as well as the subpoenas and supporting documents, so people who have asked for those documents, they are now available to them. I know some people will receive them tonight.

MR. ABES: Yeah.
MR. ANDERSON: But just for the record, this document that we're reviewing and talking about is public record as a draft?

MR. ABES: Correct. And the only caution I would add is that it is still a draft, so this is not at least yet the final conclusion of council. To the extent that somebody takes the draft and advertises it as such, that's incorrect. The final report will be what this committee recommends to council for further consideration.

MR. ANDERSON: Right. To that point, we will as a committee make adjustments and deliberations as needed tonight, and then we make a recommendation this is our recommendation or will become our recommendation. No action comes out of this committee other than the report is drafted and submitted to the full council for its review?

MR. ABES: Correct.

MS. SULLIVAN-WISECUP: Okay. So then we can start to go through the content of it; is that correct?

MR. ABES: Yes.

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: How do you want to do
MS. SULLIVAN-WISECUP: I was going to say, how is that?

MR. ANDERSON: We've had privileged discussions, and I want to make sure that that's understood. Those are about matters of fact and the law and how it relates to the draft. What deliberations -- or how do you want to do that, Ms. Wisecup, how do you want to go through this? I've read the draft.

MS. SULLIVAN-WISECUP: On this, I believe that the intention was to go through and see if there were any additional changes that we wanted to make, if there were any questions we had on anything as it comes up, and then make adjustments from there based on our understanding of what should be in this. Is that -- I mean, that's what I had believed is what was going to be going on here. Is that --

MR. ABES: Yeah. And it's a little strange because usually these things aren't really debated in a public forum. So it might be a little difficult for the audience to follow, but I would not recommend that you go through every page and discuss everything as if it's a presentation
to the audience. I think the best thing to do would be to just consider your review of the draft, and if you have specific comments or questions, we address those. And then when you decide on the final report, that will be the opportunity for the public-at-large to see what you've done. So you can probably just, you know, whatever notes you have, we can just start there and take them one by one.

MS. SULLIVAN-WISECUP: I wanted to make sure I understand. When we go through here, we make notes. It is the expectation that we will be making a motion to adopt either this or modified with our suggestions or our questions as of tonight? I want to make sure I'm completely sure on that. That was my understanding and I want to make sure that that's the understanding of everybody here.

MR. ANDERSON: I would love for us to come to a consensus on a draft tonight. My goal is to have a motion that we can agree on of our final recommendation so that we can submit it to council to give them a full week-and-a-half before our next meeting so that we could have whatever discussion of the draft we need -- or of the final
recommendation with the full council at the next meeting. I would like to leave tonight with a final draft that we can turn right around and submit to the council members.

MS. SULLIVAN-WISECUP: That was my understanding too. I just wanted to make sure we were on the same page because that's what my expectation was of what we're doing. Okay. Okay. So we should start with did you have -- we'll start with yours. Do you have any questions, comments, changes, anything on this that was submitted here?

MR. ANDERSON: So this may come as a surprise.

MS. SULLIVAN-WISECUP: I think I know what you're about to say.

MR. ANDERSON: I actually don't have any questions going in for the draft that we have tonight. Unless there's some points that you wanted to discuss, I feel that the draft that is before us shows a careful process, was done with gathering a lot of information from a lot of people from an event that occurred over a year ago and reconciles that as best we can and describes the situation and opportunities for us to do
better in the future. I mean, I think there's conclusions inside of here that help us all be better at governing and would improve council rules in that area, especially around confidentiality. Some of this is already covered through other means.

So I think my opening position, and I welcome any comments to think about, is I feel that the draft reflects the facts and the recommendations that are presented are sound and reasonable.

MS. SULLIVAN-WISECUP: I'm going to further shock you and say that, like Alan earlier, the only thing I had a question about was my wording was that it said Council Person Vanover instead of President Vanover. So I didn't know if there needed to be a distinction or do we care that much? He is a councilman and that is a legitimate title that he holds.

MR. ABES: We identified him as the president and presiding officer.

MS. SULLIVAN-WISECUP: Okay.

MR. ABES: Then, whenever I just referred to him, I just said Council Person Vanover, but we can do it however you wish.
MS. SULLIVAN-WISECUP: I'm not overly critical, but I just wanted to make sure that we all felt that that was okay, that no one was going to be overly critical or anything about that, but that was the only thing that I had seen in all of it that really stuck out to me.

MR. ABES: Okay. So I did in reviewing the draft one more time, I caught one typo. Actually, I didn't write it on here because I wanted to keep a clean copy, but I think there is the word To that needs to be With, and I can change that, assuming that there's no objection to that.

The only other thing I need to do with the draft is I need to fill in the citations to the appendix. So I didn't want to put together the appendix until we actually decided what would be in it, so I will put together the appendix. It will basically just be kind of a binder that's got different tabs, and everything we've cited will have a tab number. So wherever we've cited something in the document, I'll just insert the tab numbers so people know where it is in the appendix. So those are the only changes that I would propose to make, fixing one typo and adding
citations to the appendix.

MR. ANDERSON: I'm fine with those changes.

MS. SULLIVAN-WISECUP: I'm absolutely fine with those changes. I will entertain a motion.

MR. ANDERSON: Is there anything else that you would need to finalize this or you feel that we need to discuss in order to finalize this?

MR. ABES: If you're comfortable with the findings and the conclusions, I am. I don't think any further discussion is necessary.

MR. ANDERSON: With those two changes noted, I move that we accept the draft as written tonight as the CIC final report to submit to city council.


Next on our agenda is the next step process. I'm guessing the next step is that, like you said, to make those changes, you'll send them in, and we can get these out to elected officials so that they can review it prior to the September meeting.

MR. ANDERSON: Yeah. Let's be clear,
so the distribution for the report is the
president of council, and then the president of
council would submit it as part of the preparation
packets to the rest of council administration.

    MS. SULLIVAN-WISECUP: Yes.

    MR. ANDERSON: Just formally, does it
matter, do we send it to Mr. Vanover or everyone?

    MR. ABES: I'm not familiar enough
with your normal procedure to know. I'll tell you
probably from a logistical standpoint just based
on the size of the appendix, it might be easier if
we just sent it in one e-mail to everybody at the
same time, but I'll defer to you about that.

    MR. ANDERSON: So Mr. Vanover is in
the audience, and I see two thumbs up, which I'm
taking as indicating that we can e-mail the final
draft and the appendix to all city council members
as well as the city administrator and Mayor
Webster, would that be appropriate, and the
assistant administrator, Amanda Zimmerlin as well?

    MS. SULLIVAN-WISECUP: And legal
director.

    MR. ANDERSON: And Legal Director
Forbes. Did I miss anyone?

    MR. ABES: I don't think so.
MS. SULLIVAN-WISECUP: Oh, yes, and our clerk of council, Kathy McNear. Thank you.

MR. ABES: Everybody attending the executive session?

MS. SULLIVAN-WISECUP: Yes, yes.

MR. ABES: That's fine. So I can do it tomorrow.

MS. SULLIVAN-WISECUP: Okay.

MR. ABES: It won't take long, obviously, to put the appendix together or fix the citations. It probably will be in the afternoon at some point, and then I can just double check with you and make sure that we're good to go, and I can send it to everybody.

MS. SULLIVAN-WISECUP: That sounds perfect to me.

MR. ANDERSON: Yeah. In terms of these meetings, so we will have this looked at and added to the agenda for the next council meeting?

MS. SULLIVAN-WISECUP: Yes, it is so added.

MR. ANDERSON: So I assume we would like Mr. Abes to be there as well.

MS. SULLIVAN-WISECUP: Are you available for that, the first Wednesday?
MR. ABES: It's the 5th?

MS. SULLIVAN-WISECUP: The 5th.

MR. ABES: I am available.

MS. SULLIVAN-WISECUP: Okay.

MR. ABES: And then I'm not sure how council will wish to proceed, but it would probably make sense for the CIC to provide some sort of verbal report to kick off the discussion, probably want to decide who's going to do that and how to go about it.

MS. SULLIVAN-WISECUP: Okay. So at the meeting, we'll do just like as any other report, like if you don't have any objections, I'll go ahead and start it off, and then, you know, I always turn and see if you have anything, so if you have something to add, please add, and then we'll go from there, because I'm sure that there will be something. I will just present it as, you know, everyone has already received the report that we have done from the investigation. I'll probably go over, you know, the process of it, that we were asked or tasked to do this, we sent out questionnaires, we did fact-finding, and all that kind of stuff.

MR. ANDERSON: Yeah, that sounds
good. I would be sure to emphasize the fact that as an independent committee, we came to consensus on the report, the depth of the report, the questions that were asked, who was questioned, and the conclusions that, to my knowledge, there's no item in the report that we have substantive disagreement on based on the report, so this is a unified position.

MS. SULLIVAN-WISECUP: Absolutely.

MR. ANDERSON: I think that's important for people to understand when we present the report, is independently we reviewed this as asked.

MS. SULLIVAN-WISECUP: Yes.

MR. ANDERSON: And we are in agreement as the findings and the conclusions.

MS. SULLIVAN-WISECUP: Oh, we are in absolute agreement, yes, I would agree. Okay. I will make sure that when I do my talk that that is part of it. And then we would open it up if anybody had questions or comments, and then that's when we throw you into the mix.

MR. ABES: Yeah. You can ask me to participate at any point.

MS. SULLIVAN-WISECUP: Okay.
MR. ANDERSON: It's my understanding at that point, it would be up to the pleasure of council whether we continue, if there's follow-ups. I know in our scope, we agreed that if there were follow-ups from the report that was in scope from the committee and we would take those. I believe it's still appropriate for us to have our next scheduled meeting --

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: -- if for no other reason than to approve the minutes from this meeting and to close it out.

MS. SULLIVAN-WISECUP: I would agree.

MR. ANDERSON: Okay.

MS. SULLIVAN-WISECUP: So basically, procedurally, all we have to do is send out the information to council, present it at council, answer questions, see if they want to go further with it or if they want to, you know, accept it as it is. And then we'll have our next meeting, and depending on what council directs, we will either continue or we will close out.

MR. ABES: Right. It's possible that in following up on any of the recommendations, they might want this committee to assist with that
or they might want to just handle that directly.

MR. ANDERSON: Certainly. I mean, some of the recommendations might just simply be to defer to the rules or the charter revision group and not require -- I don't believe that there's anything in the recommendations unless there's follow-up on questions or matters of fact that would require us to reconvene, but it's certainly up to them.

MS. SULLIVAN-WISECUP: Yes. Okay. All right. So we have our next step process. Do we feel complete in that? I feel complete in that.

MR. ANDERSON: I just have one more follow-up question. Just as a documentation standpoint, so we had a number of documents that were work product -- and if we need to answer this outside of this meeting, that's fine, I just want to make sure we don't lose it. We need to also be able to answer to city council or the law director what happens with those documents, right, the remaining documents, any of the early work product? I want to make sure that we're following records retention for those documents as well.

MS. SULLIVAN-WISECUP: Sure.
MR. ANDERSON: So if it's a matter of collecting them and sending them to Kathy or if we maintain them ourselves, I would like to get that answered. I don't know, Mr. Abes, if you're able to answer that tonight or if it's a follow-up.

MR. ABES: In advance of that meeting, I will look at the work product and privilege issues and we will have an answer as to how that's to be addressed going forward.

MR. ANDERSON: So that's a we'll get that at the council meeting or ahead of that separately?

MR. ABES: It's probably a good idea to talk about that separately first, and then we can address it with the council.

MR. ANDERSON: Okay.

MS. SULLIVAN-WISECUP: Okay.

MR. ANDERSON: So that's the one item in addition to the report, because I believe at some point, there's a hand-off that has to happen between CIC council and anything the law director, Mr. Forbes, might want, because long-term, ongoing records requests and things like that, he'll need to be able to respond to those and the initiation will be through him.
MS. SULLIVAN-WISECUP: They should already have everything except for our e-mails and our original work product.

MR. ANDERSON: Yeah.

MS. SULLIVAN-WISECUP: Because they have minutes and all that kind of stuff. All right. Then, our next business is kind of what we just said, the CIC closing procedures. I think we kind of went over a little bit of that. And it will depend upon, No. 1, what happens at council and if they have any more directives that they would like us to do; and then, like you said, turning everything over, which Alan will look into and advise us as to that next step. Was there any other thing with the closing? I don't know how we go about closing.

MR. ANDERSON: Well, I just have one point I just want to make sure we're on the same page with. So now that the report is public record and is our committee's recommendation, is there any advice that you can give us as counsel for how we should address any one-on-one questions that might come up? I know during this process, the majority of the public and other council members have been very respectful of the process.
I just want to make sure that we have our rules of engagement for what's appropriate, if there's questions. So this report is out, people are going to read it in different phases. If somebody has a question of us, are there any restrictions or concerns about this? Obviously, we won't speak about prior work product that might still be privileged. With this report, are we still under CIC meeting obligations between Meghan and I or what advice can you give?

MR. ABES: So you're not restricted in terms of having a one-on-one conversation. You already mentioned it, but let's just be careful that anything that has been privileged or work product remains as such, unless it's been released, and the only thing is this draft report. So don't talk about the conversations that we've had privately, but if somebody asks you about the report or any related subject, you're free to talk about it. I think the best practice would be that until council has had the opportunity to review the report, it's probably not a good idea to have discussion about it. If a council person wants to talk ahead of time, that might be a good idea to have a discussion about it, if they have questions
or just want clarification in advance of the meeting, but I don't think that it's a good idea to have a lot of discussion before it's introduced publicly and discussed in council, that's the best forum for people to discuss it, but there are no restrictions otherwise. So I think the best thing is to use some caution and common sense because I think you want to make sure that council is able to contribute to the narrative going forward because it's being turned over to them for recommendations.

The other thing is that you still remain a committee, so if the two of you are talking, then, it could be construed as a meeting. So you want to be careful that you don't do anything that inadvertently runs afoul of the open meetings.

MR. ANDERSON: Until CIC is formally closed, still any CIC business that we are both present, we should avoid that both in e-mails and in conversations; is that right?

MR. ABES: Yes.

MS. SULLIVAN-WISECUP: Not a problem.

MR. ABES: The committee is ongoing, council could refer something back, so let's just
keep that in mind.

MR. ANDERSON: But if somebody had a question about one of the points in our conclusions, it's certainly okay to answer, but we might want to defer until the conversation in public.

MS. SULLIVAN-WISECUP: But not if we're together, we can't talk about it. One of us will have to walk away.

MR. ANDERSON: We're so close to the goal line, I just want to make sure we don't trip. Thank you for that.

MS. SULLIVAN-WISECUP: Yes, yes. Okay. So our closing procedures, go back to that, it will all kind of depend on what the next steps are, and we will go forward from those kind of as they come. Once we have our directive from council and we have our next meeting, we will go over the final closing procedures, and if council is happy with what we have recommended and they take it and we're done, then, at our next meeting, we will approve minutes and I guess it will be abolished. I don't know if council does that or we do that. I don't know how that works.

MR. ANDERSON: I believe that council
MR. ABES: Council will do that.

MS. SULLIVAN-WISECUP: Perfect.

MR. ANDERSON: One last item of old business. I know it wasn't on the agenda that was written. Was it intentional that we didn't have a section for comments from the audience?

MS. SULLIVAN-WISECUP: No, no, that was not intentional. That was because this week has been crazy and I didn't put that on there. Absolutely, we can add that, if you would like to.

MR. ANDERSON: I know that we had given an opportunity for communications.

MS. SULLIVAN-WISECUP: Absolutely.

All in favor? Okay. At this time, we would open up to communications from the audience. If anybody has anything to say, please step up to the microphone, state your name and address.

MR. ROBERTS: I have one question.

MS. SULLIVAN-WISECUP: Come up to the microphone, if you can.

MR. ROBERTS: Where do you get a copy of the report you're talking about? Bill Roberts, 104 Harter Avenue.

MR. ANDERSON: Do you want me to
answer? Do you want to answer?

MS. SULLIVAN-WISECUP: You go ahead.

MR. ROBERTS: You said it was public record.

MR. ANDERSON: It is. So a copy has been made available to the city administration, so any public records requests like that, you simply have to either contact the city administrator or call the front office, or stop by the administration building and they'll print you off a copy. We might have an extra copy here. I can check.

MR. ABES: I think what we should do, is we should make a draft available tomorrow at the same time we make the final report available, so everything will be in the hands of the city administrator, and you just need to contact him or that office and they'll have a copy of it tomorrow.

MR. ROBERTS: City administrator, his last day is tomorrow.

MR. ANDERSON: But the new one, John Jones, starts on Monday. He started this past Monday.

MS. SULLIVAN-WISECUP: There's
somebody here.

MR. ANDERSON: They're both in the office tomorrow, both Derrick and John.

MS. SULLIVAN-WISECUP: Last day is the 31st.

MR. ROBERTS: I just want to get a copy of it.

MS. SULLIVAN-WISECUP: Absolutely, absolutely.

MR. ROBERTS: Thank you.

MS. SULLIVAN-WISECUP: You're welcome.

MR. ROBERTS: So it will be there Monday?

MR. ANDERSON: Tomorrow.

MS. SULLIVAN-WISECUP: Tomorrow.

MR. ROBERTS: Tomorrow?

MS. SULLIVAN-WISECUP: Huh-uh, yes.

It may not be available until tomorrow later, correct?

MR. ABES: It might be late tomorrow, but if you catch him then, great, but certainly by Monday.

MS. SULLIVAN-WISECUP: Okay. Do we have anything else for old business?
MR. ANDERSON: No.

MS. SULLIVAN-WISECUP: I'm sorry, I forgot. Anyone else have anything to say in the audience? Second call. Third and final call. We're closing the communications from the audience. Do we have any additional old business?

MR. ANDERSON: Nothing for me, thank you.

MS. SULLIVAN-WISECUP: Our last point.

MR. ANDERSON: Move to adjourn.

MS. SULLIVAN-WISECUP: I agree.

Let's go.

(Thereupon, the deposition was concluded at 7:29 o'clock p.m.)

* * *

* * *
STATE OF OHIO       
COUNTY OF MONTGOMERY )  SS:  CERTIFICATE

I, Lisa M. Conley Yungblut, a Notary Public within and for the State of Ohio, duly commissioned and qualified,

DO HEREBY CERTIFY that the above-named proceeding was reduced to writing by me stenographically in the presence of the parties and thereafter reduced to typewriting.

I FURTHER CERTIFY that I am not a relative or Attorney of either party, in any manner interested in the event of this action, nor am I, or the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).
IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Dayton, Ohio, on this day of September 2018.

LISA M. CONLEY YUNGBLUT, RMR, CRR
NOTARY PUBLIC, STATE OF OHIO
My commission expires 7-28-2019