

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF NORTH BRANCH IN THE COUNTY OF CHISAGO AND IN THE STATE OF MINNESOTA

SPECIAL SESSION

JUNE 1, 2015

CALL TO ORDER: The North Branch City Council met in special session and Mayor Hagen-Kennedy called the meeting to order at 5:00 p.m.

PLEDGE OF ALLEGIANCE:

ROLL CALL: Councilmembers present were Kathy Blomquist, Theresa Furman, Kirsten Hagen-Kennedy, Joyce Borchardt, and Robert Canada. Staff members present were City Administrator Konrad and City Attorney Squires.

FACT FINDING REPORT:

Acting Mayor Furman took over the meeting at this point.

City Attorney Squires explained that on April 14, 2015 there were resolutions introduced related to censure and removal from committees as to the Mayor and Councilmember Blomquist. Ultimately, those motions were tabled and his office was asked to conduct a fact-finding inquiry and prepare a report and prepare a memo on the issues of censure and removal from committees.

City Attorney Squires noted that the report and memo are attorney client privileged information and he indicated the fact-finding report was provided to the Attorney for Mayor and Councilmember Blomquist. The Council can waive attorney client privilege with regard to this document for the public by vote of Council. Attorney Squires indicated that public comment is not automatic at a special meeting but can be allowed by vote of Council. He then suggested that the Attorney for the Mayor and Councilmember Blomquist be allowed to speak.

Attorney Squires indicated that he reviewed the resolutions previously provided by Councilmember Borchardt and would recommend in the Now, Therefore provision that the language "and for using her position" be taken out. The reason is that a censure would be appropriate for not having qualified the statement as a personal statement and part of that clause relates more to the content of the speech.

Attorney Squires said he received a long memorandum from the Attorney for the Mayor and Councilmember Blomquist and he has received that but it does not change his recommendation. He does not necessarily disagree with one issue raised regarding appointment to the EDA because it is a separate legal authority. He would recommend not removing from the EDA for the unique reasons specified.

Blomquist asked how the report is supposed to be discussed publicly if it is attorney client privileged. Attorney Squires said that he is not suggesting that every fact cannot be discussed but was saying the memo in its entirety is privileged and Council needs to vote to waive privilege in order to release copies to the public.

Attorney Macabee said there are a lot of facts and a lot of legalese but she wants to speak common sense. Councils can censure for violation of law or duty and she would ask where the breach of duty is in this situation. Ms. Macabee said that it is nerve wracking to speak before the legislature and there is no duty of law to declare this is their personal opinion. Ms. Macabee said that Mayor Kennedy said that the Council voted against me in her comments. Ms. Macabee said that Blomquist would have heard her colleague state that they were voted against so it was clear this was their personal opinion. Everyone understood that the City Council majority voted against them. Ms. Macabee indicated that even if one person came to speak against the bill 99% of the time the legislature would have gotten out of the item because they only take on a bill if there is no controversy. Ms. Macabee indicated there is no duty of care or formal law that has been violated in this instance. Ms. Macabee said that the Code has nothing specific about censure but it does say if there is no other procedure the Council will follow Roberts Rules of Order. Roberts has a provision regarding something happening outside of the hearing then there is supposed to be a formal process involving witnesses and cross examination. Ms. Macabee indicated that this does not seem fair to her from an attorney standpoint so she has no way of knowing if this is the total truth. Ms. Macabee said her clients wanted to know if there was an ulterior motive to this and there were a bunch of questions and none of them were asked. Roberts Rules of Order has survived for so long because it is a sophisticated document. Formal disciplinary measures should be reserved for very serious situations and should be handled or resolved informally before moving forward with disciplinary resolutions. Ms. Macabee said that no one has said they want to run to the Court and get anyone to pay money by raising first amendment rights violations they just want to be able to continue serving constituents and work out in a collegial way, how to move the City of North Branch forward.

Furman asked who is paying the fee for Ms. Macabee. Ms. Macabee indicated she is not required to tell anyone but she will share the information. Her clients took a lot of money out of their retirement funds and, at one point she realized that they were not able to afford the bill she waives her fee. She then said she usually waives her fees when she believes in something.

Attorney Squires said that the point about Roberts Rules you have to remember that the two issues are censure and removal from committees. Censure is not punishment it is disavowing the actions of a member or expressing disapproval so it is not punishment and the same is true of committee assignments. Attorney Squires said he knows of no case law that states that there has to be a Code of Conduct in place in order to censure. Attorney Squires said that due process involves knowing the charge and having the ability to respond and that has been provided. Attorney Squires said that they have

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endeavored to be fair and provide due process so that the parties understood what the issues were and could present their views on the matters.

Ms. Macabee said her point was to bring out that there is nothing that would tell an ordinary citizen how they are to act absent a Code of Conduct. Ms. Macabee indicated there is a recent 8th Circuit Court case where employees were removed. There is no question that removal from Committees would impact ability to do the job that they were elected to. She then said that she feels that censure requires a breach of duty and there has not been a breach of duty. Ms. Macabee further stated that she believes removal from committees is a punishment and Roberts Rules spells out how that is handled.

Furman asked the difference between how a regular citizen versus a Councilmember should address the legislature. Ms. Macabee said that as long as a regular citizen does not say they are representing the City they have done their duty.

Motion by Borchardt, seconded by Canada, to remove the censure motion from the table.

Ms. Macabee said that they have asked for removal of the motion to censure or ask for a motion to table and allow a good faith effort for informal resolution.

Konrad noted that the State Dispute Resolution representative will be at the June 9 meeting to present their program to the Council.

After discussion members voted: Ayes – 3, Nays – 2(Hagen-Kennedy/Blomquist).
Motion carried.

Motion by Borchardt, seconded by Canada, to reinstate Resolution No. 043-06-01-15, "A RESOLUTION TO CENSURE KIRSTEN HAGEN-KENNEDY, MAYOR" as amended by Attorney Squires.

Ms. Macabee asked that there be an effort to try and resolve this matter in an informal way rather than proceeding with a disciplinary proceeding. Attorney Squires indicated that he does not believe that censure is punishment as he has previously addressed.

After discussion members voted: Ayes – 3, Nays – 2(Hagen-Kennedy/Blomquist).
Motion carried.

Motion by Borchardt, seconded by Canada, to adopt Resolution No. 044-06-01-15, "A RESOLUTION TO CENSURE KATHY BLOMQUIST, COUNCILMEMBERS" as amended by Attorney Squires. Members voted: Ayes – 3, Nays – 2(Hagen-Kennedy/Blomquist). Motion carried.

Borchardt indicated that she will follow legal counsel recommendation and not move the other motions for removal from committees.

Motion by Canada, seconded by Borchardt, to adjourn.

ADJOURNED: at 5:36 p.m.

Respectfully submitted,

Bridgitte Konrad, City Administrator
jrl/TOSS