

**EXECUTIVE SESSION OF THE CITY COUNCIL****November 1, 2022**

The meeting was called to order by President McGee at 6:06 PM

President McGee called the roll. Absent members: 1 (J. Rivera) Present Members 12 (Anderson-Burgos, Bartley, Givner, Jourdain, Maldonado Velez, McGee, McGiverin, Murphy-Romboletti, Puello, I. Rivera, Tallman, Vacon).

The Pledge of Allegiance was recited.

Councilor Tallman made a motion to go into executive session for an update on litigation with no votes. Councilor Vacon seconded the motion. Motion passed on a call of the roll of the yeas and nays--Yeas 11--Nays 0--Absent 2 (Jourdain, J. Rivera).

President McGee welcomed City Solicitor Lisa Ball to the podium. Assistant City Solicitor Kathryn Degnan and Assistant City Solicitor Jeanne Liddy were also in attendance.

Atty Ball stated that there were 5 matters to update the Council on, 3 being in active litigation, 1 was concluded, and 1 was about to conclude. She then stated that the concluded NASDI litigation began in 2014. She then explained that in January of 2014, the city owned 400 High Street and the Council approved plans for its demolition. She then stated that a bid was opened that June, with NASDI being the low bidder. She added that a contract was executed that November for the demolition. She noted that NASDI had not submitted plans at that time to protect the surrounding buildings. She then explained that the building collapsed that December, and the city paid for relocation expenses of nearby buildings and their tenants. She further explained that demolition began in January of 2015, ending that October. She then stated that the city filed suit against NASDI in April of 2016, with them filing counterclaims against the city. She then stated that in early 2017, there were 93A letters sent to the insurance company. (Admin note: 93A letters are demand letters seeking payment for damages.)

She then stated that in March of 2017, the insurance company responded and denied liability. She then explained that they learned in November of 2020 that NASDI had filed for bankruptcy. She added that during the 2 1/2 years prior to that, NASDI got sued on a major bridge project in New York, a massive claim of around \$25 million, completely wiping out their insurance. She stated that they learned there was nothing the city could do because they only had insurance, which was exhausted. She then noted that the city's claim was around \$950,000, with NASDI's counterclaim of damages of around \$230,000 - money the city withheld from the demolition contract. She then stated that they had a trial date in May of the current year, but they were seeking to find a way to resolve the matter since there was no way to recover damages due to there being no insurance. She then explained that \$303,000 of the claim were liquidated damages, plus the value of the property, minus the amount held back made the actual to the city around \$165,000. She suggested that they could keep monitoring it through bankruptcy court but anything the city received would be pennies on the dollar. She also noted that they did not have a stipulation of dismissal as there was nobody to sign the dismissal. She suggested that the case was a lost cause. She noted that they had substantial legal fees for those 5 years the city was represented by Charles Emma, and trusted the city was being advised well. She suggested that NASDI had not been up front with the city as far as the other claims against them. She then reiterated that she did not believe there was anything more for the city to do on this case.

Councilor Vacon asked that if Atty Emma was following it for 5 years, would he not have been aware of other claims against NASDI.

Atty Ball stated that she had the same question and posed it to him. She then explained that they were doing discovery, answering interrogatories, and trying to get it into mediation. She noted the same thing was happening with another matter the city was pursuing. She added that COVID caused some delays. She stated that Atty Emma had emails showing he was monitoring it. She added that once they learned there was no insurance left, Atty Emma believed that the attorney representing NASDI was just as shocked as he was.

Councilor Vacon asked if the attorney representing the city would have filed a claim against the insurance.

Atty Ball stated that he did file the 93A claim and the insurance responded. She added that she believed somebody was being dishonest and it got to the point where there was nothing for the city to get.

Councilor Vacon asked how many more cases the city had with Atty Emma.

Atty Ball stated that she had one more to talk about that was about to conclude. She then moved onto another case involving former police officer, Rafeal Roca, who was terminated late 2021. She explained that there was a civil service hearing in August, was under advisement, and they were waiting for briefs from both sides. She then expressed an expectation she would have more to say on it at the next update. She stated that they felt the hearing went well. She then moved to another case that was about to conclude. She explained that the Roberts Field issue started in May 2016 when the city and Mountainview entered into a contract to redo the field, which was completed that August. She then stated that the city paid \$1.447 million to redo. She then stated that defects began to be noted in January of 2018. She then stated that she came in May of 2021 and they were looking to get it into mediation. She further stated that mediation began in August of 2021, went for 12 hours, and a settlement was reached. She stated that the city was looking to get its money back, but she found a sticking point in the attorney representing the city getting a percentage of what was recovered. She then explained that they agreed to do a complete redo of the field as well as pay the city \$50,000 toward engineering costs if that was the desired use. She added that the city hoped to get it done by the fall, but supply chain issues would lead to a delay until the following spring. She explained that prior to the mediation, she visited the field to understand the issues, finding that yard lines weren't straight, and there were shrinkage and drainage issues. She then explained that they would remove the existing turf, try to salvage some brock padding, give the city additional drainage and stone along the perimeter, and add additional brock padding. She stated that the \$50,000 may not need to be used for engineering costs. She added that the field would get a warranty of ten years. She expressed an expectation that the redo would take around 8 weeks to do, and they were hoping to do the track at the same time. She stated that a bid went out for the track prior to the mediation, and Mountainview was the only bidder on it. She noted that they held onto it due to the litigation, likely would put it back out to bid, and they would likely go with Mountainview if they were the only bidder.

Councilor Jourdain asked how the legal fees were handled.

Atty Ball stated that the agreement was for 38%. She added that on a bill of \$1.447 million, they could have gotten 38% but the cost of the rebuilt was different than the cost of the contract amount. She then stated that they agreed to \$200,000, an amount she believed was too high, but that she did not negotiate it and they just had to pay for it. She noted that it was being taken out of ARPA funds. She stated that it worked because it went toward fixing something in the community.

Councilor Jourdain stated that it was good the city was getting a new field, but the city was out \$200,000. He suggested taking that into consideration when considering Mountainview for future work.

Atty Ball stated that they tried to hold their ground on legal fees and walked out of mediation, but upon further reflection, did not feel it was in the best interest of the city.

Councilor Jourdain reiterated the point that the city was out \$200,000 and the city was on the losing end of all of these transactions. He then asked what Charles Emma was paid for the city getting nothing.

Atty Ball stated it was \$200,000.

Councilor Jourdain emphasized that through 3 cases having been discussed, the city was out \$400,000.

Atty Ball clarified that she did not have the figure for what Atty Emma was paid but would provide that.

Councilor Jourdain expressed his understanding that it was a lot for zero recovery in the end.

Councilor McGiverin asked if there was wiggle room on the materials used for Roberts Field.

Atty Ball stated that there was an issue with a recall of the padding used underneath and they were not willing to use that.

Councilor McGiverin expressed his understanding that there was a kneejerk reaction as to why they changed it when they contracted for the redo of the field, and there was misinformation about the pellets being cancer-producing. He then explained that the change in materials changes the vertical drain of the field, which was what protected athletes because the field wouldn't freeze like a natural field would in the winter. He then expressed a hope that they could try to get better material for the safety of players.

Atty Ball stated that she could ask someone to explain why they were not using that padding underneath.

Councilor McGiverin stated that he would also attempt to follow up. He then noted that Parks and the mayor handled this without the Council, adding that the Council had been very involved with the original field design because it had to be bonded to pay for it.

Councilor I. Rivera stated that he was happy to hear there was a conclusion, emphasizing that it had been a while. He stated that he had been hearing the field was going to become unplayable.

Atty Ball expressed surprise that they were still able to play on it based on what she saw.

Councilor I. Rivera recalled that when he was on the Parks Commission, it appeared that it was going to take much longer.

(Section redacted)

Atty Ball stated that the final matter was that of Will Councilor Puello versus the City of Holyoke. She then noted the complicated matter of discussing this case with the plaintiff present, but she believed it was important how it all came to be. She then explained that it came up because several reporters called their office and brought to their attention that there was a possible violation of the charter, and did they want to comment on that. She added that she usually would not want to comment on those sorts of things. She then stated that they were surprised to learn he was coming back and would be attending Council

meetings. She then expressed having agreed at first that a bail violation was different from a conviction, as that was how most courts worked in Massachusetts. She added that you could get up to 90 or 120 days, was not a conviction, although it could be used toward getting a sentence on a case. She then explained that Rhode Island was different. She then stated that they looked into it out of doing their due diligence as Section 46 of the charter stated that the seat was vacated if an incumbent has a conviction. She then explained that in Rhode Island, a 46G bail offense was criminal contempt, carrying with it the possibility of one year in jail, a \$1,000 fine, and defendants were entitled to a hearing. She then stated that there was a waiver of a hearing, and a 90 day sentence was imposed. She then emphasized that they did not decide they were going to be out to get this person, but it in her mind as in those of her staff, it seemed clear they had a conviction in front of them. She further emphasized that they all felt shock that this was what they were looking at. She then explained that they immediately notified the mayor and the City Council president. She then stated that while she understood what happened in Superior Court, she respectfully disagreed. She emphasized that it wasn't personal, adding that if it was, they would have appealed the ruling. She added that they were trying to enforce the charter, which was clear in its wording that a seat is vacated if an incumbent has a conviction. She added that she still believed they did nothing wrong. She then stated that the matter was still in litigation and, as the plaintiff was there, she was not going to discuss litigation strategy.

Councilor Bartley asked for clarification of what she meant by the matter still being open. He then asked that while he knew the matter was still open in Rhode Island, was it still open in terms of Holyoke.

Atty Ball stated that Holyoke has answered the complaint and there would be further dates to appear. She added that Councilor Puello asked for an injunction to be put back in, but there was also a request for attorneys' fees that would be litigated.

Councilor Bartley asked who in the Law Department was licensed in Rhode Island.

Atty Ball stated that she did not need to be licensed there to interpret their laws, but she was not.

Councilor Bartley asked Atty Liddy and Atty Degnan if they were licensed in Rhode Island.

Atty's Atty Liddy and Atty Degnan (off mic) stated that they were not.

Councilor Bartley asked if the matter was in state court or federal court in Rhode Island.

It was stated off mic (unclear who stated it) that the matter was in state court.

Councilor Bartley stated that while he heard Atty Ball's opinion, he found the superior court judge's opinion was pretty firm that Holyoke was way off track.

Atty Ball stated that she respectfully disagreed.

Councilor I. Rivera asked to confirm his understanding that if Councilor Puello had not plead, he could have gotten more than 90 days.

Atty Liddy responded to the question off mic and was inaudible.

Councilor I. Rivera suggested that if Councilor Puello was innocent, he would have saw the hearings through. He added that from his own personal experience, someone pleads out if they have been caught.

Councilor Jourdain asked why Atty Degnan wrote the opinion.

Atty Ball stated that when they learned this was happening, it was her ten year wedding anniversary, and she was out of town.

Councilor Jourdain emphasized that the magnitude of the removal of an elected official from their position, overturning an election, could have waited until she returned from celebrating her anniversary. He stated that he did not believe it was fair to Atty Degnan.

Atty Ball stated that she was concerned about votes being taken and not being proper votes if someone didn't have a right to sit in the seat. She noted that, much to her husband's dismay, she had been on the phone with everyone in the Law Department, the mayor, and anyone who needed her opinion on this. She emphasized that Atty Degnan was more than capable of defending the decision.

Councilor Jourdain stated that the point was that an opinion of that magnitude needed to come from the City Solicitor, not an assistant.

Atty Ball stated that it was her opinion.

Councilor Jourdain stated that she should have put her name on it.

Atty Ball reiterated that she was not here, but she would have put her name on it. She reiterated that the timing of it was not great but could not change how that worked out.

Atty Degnan stated that she read the opinion to Atty Ball and she knew what was being said. She then stated that she did not believe she was being left out to the wind.

Councilor Jourdain reiterated that something this delicate needed to have a caution and thought, adding that he believed it could have waited. He then asked if there were a few rewrites or was it something put together in a day.

Atty Ball stated that it was a decision they were talking about right up until she was leaving after looking through all of the documents they had. She added that they were confident in what they were doing. She then reiterated that they believed they were doing the right thing with respect to the charter.

Councilor Jourdain emphasized that the judge came to an entirely different opinion. He then suggested that they should have considered if there was a 25% possibility they were wrong, that they should not have proceeded.

Atty Ball stated that they were 100% certain between the four of them.

Councilor Jourdain expressed concern that they were all certain they were right when the court declared they were wrong. He noted that the opinion dissected every argument and turned it on its head. He then stated that the city needed to be careful on these types of decisions.

Atty Ball stated that she agreed, but believed they did look at this carefully. She noted that they had information that they hadn't included in their argument.

Councilor Jourdain stated that was their job to provide that. He then stated that having sat in the courtroom, he did not believe a convincing argument was made. He reiterated that any chance of being wrong should have led to holding up and making sure the city gets it right. He suggested that could have meant bringing in experts from Rhode Island or an affidavit from a legal expert in Rhode Island. He then expressed frustration that the City Council was completely left out this but was named as a defendant in the lawsuit. He recalled that when he asked a question about it at the meeting when this was announced, no information was given as to what the facts were that caused the removal. He added that the answer was that it could not be stated then but Councilor Puello knew. He then emphasized that people had a right to know what happened if a councilor was thrown out of office. He then expressed concern that any councilor could be thrown out of office without any discussion or appeal. He then asked if a councilor was entitled to their own legal counsel paid for by the city in this kind of dispute. He recalled that in a previous case regarding the needle exchange program, the judge at that time was clear that members of the Council had independent right of counsel, not just the City Solicitor representing them if there were divergent interests.

Atty Ball stated that it was different when the dispute was intentional conduct.

Councilor Anderson-Burgos stated that Councilor Puello's dealing with Rhode Island was also the business of his constituents and that was kept from them. He further stated that while he was not a lawyer, he suggested that the laws of Rhode Island should be able to be looked at and be applied here. He then expressed an assumption that the judge who ruled was a Massachusetts judge, and likely wouldn't know the Rhode Island laws as well. He agreed with an earlier point that someone from Rhode Island should be brought in to discuss this.

President McGee stated that the meeting had run out of time.

Councilor Vacon took issue with the suggestion that the meeting was out of time.

President McGee stated that it was 7:00, but a motion could be made to keep going.

Councilor Jourdain made a motion to continue the executive session until the discussion was complete. He then asked to confirm that this was the last matter.

Atty Ball confirmed that it was.

Councilor Vacon seconded the motion. Motion passed.

Councilor McGiverin wished Atty Ball and her husband a happy anniversary.

Councilor I. Rivera expressed amazement to see the Council splitting hair over this situation. He suggested that there was no integrity from the beginning. He added that this was about the person skipping bail, which was the only reason anyone found out about this. He then questioned how people could defend this and create arguments. He agreed that more due diligence could have been done to make sure the laws matched, and that the conclusion could fit Massachusetts case law. He then suggested that people should not be acting like skipping bail wasn't committing a crime.

Councilor Vacon recalled that the previous fall, the Council was advised that it was the body that determined the eligibility and qualifications of the members of the body. She then stated that at the end of August, a newspaper article quoted the City Council president as saying orders had been filed to ask our City Solicitor and Personnel Department to look into the matter and advise the Council accordingly. She

then stated that the Council was still waiting for them to get back to the City Council and advise on what the appropriate steps were. She then stated that the next thing that happened was a letter to the city councilor on September 1st. She then suggested that this left the full City Council out of the process, adding that she was stunned it happened this way. She added that she was later surprised to find out the president, mayor, and Law Department were involved. She questioned if others knew and she was one of the only ones who didn't.

Atty Ball stated that the first part was the 90 days where there was no conviction, he was continuing to be paid, and there was nothing to do even though he was not here because there was no violation of the charter at that point. She then explained that it was only after they looked at Rhode Island laws that they were convinced there was a conviction, which was when they brought it to the mayor's attention. She then further explained that they couldn't go around telling every councilor because of the Open Meeting law, and that time was of the essence.

Councilor Vacon stated that a special meeting could have been called about this so that the Council could be advised. She emphasized that the Council was sued for something it did not know about. She asked who knew this was going on.

Atty Ball stated that nobody else knew except for the Law Department.

Councilor Vacon expressed frustration that one councilor had spent the last year talking about how transparent everyone needed to be about a charge where it is not a conviction when the person talks at every meeting about how he is a convicted felon and every article about it says he was convicted for marijuana, but they leave out cocaine dealing, illegal guns, and assault on a police officer.

Councilor Maldonado Velez expressed concern that the councilor was not currently in the room.

Councilor Vacon emphasized that she was going to have her say and she had the floor.

Councilor Murphy-Romboletti asked for decorum.

Councilor Vacon stated that she had not interrupted when one councilor pronounced another one guilty. She then reiterated that people were calling for transparency when they were not providing it and was calling hypocrisy for what it was. She added that she did not see anyone running for Council putting out articles about their convictions.

Councilor Anderson-Burgos stated that was a lie and everyone knew about his. He further asked why some councilors kept defending Councilor Puello.

Councilor Vacon stated that she would not be shouted down.

Councilor Anderson-Burgos asked why she hadn't offered the same defense for former mayor, Alex Morse, when he was only being accused.

President McGee called for order.

Councilor Puello called Councilor Anderson-Burgos a savage.

Councilor Anderson-Burgos took issue with that implication.

President McGee repeated his call for order.

Atty Ball stated that there was one item that the press was about to know about, the case regarding Councilor Puello in the district court, he was indicted and would be arraigned that Friday. She stated that she believed the Council should hear it from her first and not from the press.

Councilor Jourdain noted that Atty Bissonnette had done a legal opinion, and he was looking to understand more about removals. He then stated that he was not defending anyone but wanted to ensure process was being followed. He then asked where the charter empowered the City Solicitor to be the final determiner of what was a conviction. He noted that the opinion stated that the Council determined the qualification of its members so if this was a qualification issue, why was it not brought to the Council to look at.

Atty Ball stated that she did not want it to be her decision but was not sure who else would make it. She then stated that it fell on the Law Department to make legal interpretations of the charter, and she believed it was clear what the charter said.

Councilor Jourdain asked her to clarify her opinion of the charter saying the Council was the final determiner of the qualifications of its members.

Atty Ball stated that they could be in conflict with each other. She noted that they were looking at Section 46, not Section 13.

Councilor Jourdain stated that while 46 was the rule, their application should come down to Section 13 which said that it was a qualification question of its own members. He noted that none of this was discussed in the legal opinion. He then questioned where it went from here so that the process could be better in the future. He then emphasized that making sense of the process was not a defense of the underlying issue. He added that until the Council was told about the removal, the body was out of this. He further noted that the Council was advised not to comment on it, which he agreed with. He then reiterated that if something like this happened in the future, Section 13 needed to be considered and the rest of the members needed to be consulted.

Atty Ball noted that this was uncharted territory for everyone, and expressed hope that the city wouldn't have to deal with this kind of issue again.

Councilor Maldonado Velez agreed that this was uncharted territory but also agreed with the frustration that some councilors. He recalled that the current Council began its term being told that it as a body decided who can stay as representative on the Council. He suggested that this was the same situation, and that consistency was key. He noted that they tried to bring it up, were told not to talk about it, and then the next thing that happened was the Council was being told the councilor was no longer here. He then suggested that it was an open question if the councilor in question was around to pull papers for the next election.

Atty Ball stated that she would not comment on that right now.

Councilor Bartley made a motion to conclude the executive session and declare that no votes were taken in executive session. Councilor Tallman seconded the motion.



President McGee thanked the Law Department for their updates.

Motion passed on a call of the roll of the yeas and nays--Yeas 12--Nays 0--Absent a (J. Rivera).

Adjourned at 7:18 PM