



**CITY OF ST. MARYS, GEORGIA
SPECIAL CITY COUNCIL MEETING**

September 8, 2010

**RESCHEDULED
September 10, 2010**

5:00 p.m.

AGENDA

I. CALL TO ORDER

II. INVOCATION: *Councilmember Post*

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

QUORUM: YES NO

APPROVAL OF THE AGENDA

V. BUSINESS:

A. CITY MANAGER'S COMPLAINT

VI. ADJOURNMENT:

**CITY OF ST. MARYS, GEORGIA
SPECIAL CITY COUNCIL MEETING
September 10, 2010**

MINUTES

PRESENT WERE: Mayor Bill DeLoughy
Councilmember Greg Bird
Councilmember Deborah Hase
Councilmember Sidney Howell
Councilmember John Morrissey
Councilmember Keith Post
Councilmember Chuck Trader

CITY OFFICIALS: William P. Shanahan, Jr., City Manager
Gary Moore, City Attorney
Donna Folsom, Human Resources Director
Roger Weaver, Planning Director
Bilal Muhammad, City Marshal
Todd Isernhagen, Sergeant-At-Arms

COUNSEL: James Stein, Attorney for Councilmember Bird

CALL TO ORDER:

Mayor DeLoughy called the Special City Council Meeting to order at 5:00 p.m. Councilmember Post gave the invocation. Mayor DeLoughy led the audience in the pledge of allegiance. Council roll call indicated a quorum of council members present for the meeting.

APPROVAL OF THE AGENDA

Councilmember Trader moved to approve the agenda as presented. Councilmember Morrissey seconded the motion. Voting was recorded as follows:

FOR
Councilmember Hase
Councilmember Howell
Councilmember Morrissey
Councilmember Post
Councilmember Trader

ABSTAINED
Councilmember Bird

BUSINESS:

Mayor DeLoughy stated the reason for the meeting was to address the complaint filed by the City Manager Bill Shanahan against Councilmember Bird. The issue will be addressed without digression. Statements will be made and facts presented to make a determination with respect to

the allegation. Three options were presented as the outcome of the meeting. The options were as follows:

1. Council could decide that the complaint has no merit and should be disregarded.
2. The City Manager could accept a letter of apology if the complaint was upheld.
3. Censure

A. City Manager's Complaint

Mr. Shanahan addressed the alleged statements that were made by Councilmember Greg Bird in an article appearing in the August 24, 2010 Georgia Times-Union. The statements and the City Manager's comments are as follows:

- a. Shanahan has conducted too many closed door meetings, Bird said, including some that Bird believes were held in violation of state law. He said that Shanahan and Council members violated the open meetings law this year when they met with a developer in private to discuss its plans to buy the Cumberland Harbour development. "To bring him (the developer) into a closed session does not fall within the parameters," he said.
 - a. Mr. Shanahan's answer: I was not at this meeting, in fact, if memory does not fail me, I was on leave.
- b. More recently, Bird said, city officials violated state law when they voted in closed session in June to buy a tract called the Gilman Boat House for \$1.3 million.
 - a. Mr. Shanahan's answer: Again, our Attorney has briefed that this was a legal action before this statement was put in this article.
- c. Bird criticized Shanahan for recommending the City get a \$43 million loan to expand the city's wastewater treatment capacity by 4 million gallons a day.
 - a. Mr. Shanahan's answer: First, we only increased the capacity by 3.2 MGD, we were under orders by EPD, the Mayor and Council were an active part of this process (we have minutes to show this) and this was the best decision under the then conditions.
- d. It certainly bears looking into how we possibly mismanaged the money.
 - a. Mr. Shanahan's answer: We have auditors review how we manage money each year and if we were doing something wrong or illegal, you would think that by now they would have caught it. I request that we bring in new auditors to evaluate the Waste Water Treatment Process and the purchase of the Gilman Boat House to see if I and/or the elected officials have done anything wrong.
- e. In addition, in the May 19, 2010, Georgia Times-Union, Councilman Bird stated that Shanahan knows nearly half the site is wetlands and is deliberately trying to mislead the FAA.
 - a. Mr. Shanahan's answer: Mr. Scott Seritt, manager of the FAA's Atlanta Airports District Office and coordinator of regional airport projects, in the same article stated the he was aware of the wetlands at the site. (I had actually given Scott a

copy of the Environmental Assessment that identified all of the wet lands on this site. (When asked by me, Councilman Bird stated that he did not think I had broken the law. But, he still made the statements in the paper.)

Mr. Shanahan further stated that in his opinion, putting these un-truths in the paper without checking their accuracy, and with a total disregard to what they will do to my professional reputation, is going to hurt my ability to grow professionally by finding employment in larger local governments. I am not sure what the answer is, but this needs to be made right. The really sad thing about this is, after the Council Meeting, Councilman Bird made contact with me to let me know that there would be something in the paper, but he did not know what.

Mr. Stein addressed Council on behalf of Mr. Bird speaking his mind on public issues, which falls under the US Constitution First Amendment - Freedom of Speech. Mr. Stein requested the same treatment another councilmember received when publicly asked to reprimand a fellow councilmember.

Councilmember Bird stated that the issues tonight were no different than what were discussed in the Mr. Shanahan's office privately. He commented that the press is the eyes and ears of this community who come to meetings, record conversations, and contact us for interviews. When he was telephoned by the newspaper there was a wide array of issues that were covered within 45 minutes. Mr. Bird stated he did not write the article, and some of the statements were not quotes but the reporter's opinions. Factors leading up to the telephone interview began when he spoke with Mr. Shanahan in his office about the Gilman boat house meeting that he walked into, and which was soon cancelled because a quorum was present. At the time, Mr. Bird asked who called the meeting. He was told it was called by the City Manager, and it was a Staff meeting. It upset him to know there was no communication received about the meeting even though he was on the Property Committee.

Councilmember Bird also spoke about this year's number of executive sessions held during council meetings for issues that did not qualify, were rejected by the city attorney and barred from discussion. The City Manager is supposed to know what items are appropriate for executive session. It is improper to meet in executive session then ask the attorney if an item is appropriate to discuss. Since being on council, there was an estimate of 48 executive sessions out of 63 open meetings, which he believed many were improperly conducted. Not out of malice, but out of the fact that honest questions were asked and they do not pertain to executive session.

Councilmember Bird addressed the Cumberland Harbour issue where Council met on May 14th with everyone present, and he was not in town until the following Wednesday. On Thursday, a telephone call was received from a developer wanting to know about the special meeting that was called for the next day. He contacted Mr. Shanahan that same evening to ask about the same meeting, and he believed the response was that it was called by the Mayor at 5:00 or 5:30, Thursday afternoon. The reason for the meeting was because a new developer wanted to do business with the City so the community project could be started back up. Councilmember Bird stated he spoke with Mr. Shanahan in his office to discuss a newspaper article on the new

developer which noted he was in foreclosure. Mr. Shanahan responded that it was personal and confidential. Councilmember Bird asked what was personal and confidential. Here was an individual wanting to do business with the City of St. Marys who was going through a divorce. Both of us came to terms that his personal business when he wants to do business with the City is in fact, City business. Upon leaving the office with Mr. Shanahan, the Planning Director happened to come in and was asked about the new developer to which he responded that it was personal. Councilmember Bird disagreed, and they discussed the issue. When Councilmember Bird began to investigate the developer he sent e-mails to the City Attorney about the individual. Had the City done their homework on the developer the fact would have been known that he was in several different foreclosures, not only in Georgia, but South Carolina. He was also the CEO of Catalyst and FDEBO, which was another Land Resources property. An important point was that the City was in litigation with the bonding company calling those bonds before this individual came on the scene. It was Councilmember Bird's belief that the meeting was improper because the City Attorney was not present when discussing a legal issue. Granted, there was relevance of real estate, but the city had already called the bonds. It was his opinion that this particular issue was not handled as well as it could have been.

Councilmember Bird stated that he was not saying that the purchase of the Gilman boathouse property was good or bad because time will tell. Council met in executive session and he knew that it was perfectly legal, and so did the reporter when he telephoned on August 24th. That part of the quote did not come from the telephone conversation. Councilmember Bird had done his homework and knew discussion could be held in executive session for the purpose of purchasing real estate, keeping minutes and voting. He was not at the meeting but he assumed members of council knew they were voting to have the City try to buy the property, is it not correct? Council could have met in public but chose not to, and he did not have a problem with it. Councilmember Bird questions were with the fact that when council did this in executive session they approved authorization to allow Councilmember Trader, Councilmember Morrissey and the City Manager to bid on behalf of the City. Was the purpose for doing it in private was so no one knew, public awareness, what the City was doing until it was done and after the fact?

Mayor DeLoughy stated it was done because you do not tell someone you were going to bid or you might as well not bother. This is the way business is conducted in bidding situations. You cannot let someone know how much you were willing to bid, which is the price. It is appropriate to be conducted in closed session and once action has taken place the city is required to provide minutes. Everything was done properly and this was discussed with the City Attorney.

Councilmember Bird referenced an interoffice memo that was dated May 20, 2010 that is in reference to the waterfront park extension to report. The Planning Director had written a report under the direction of the City Manager to prepare a concept plan for the extension of the waterfront park via former Gilman boathouse property. At the bottom of the page it states the purchase price of the Gilman boathouse parcel with an estimate of \$2 million and a total cost of the project \$10,700,000. This document was handed to a prospective bidder prior to the bid, when an official bid was to take place. Councilmember Bird spoke to the City Manager to ask where he received his marching orders to have it presented, and how did the Downtown Development Director go to a prospective bidder and give them a copy. The document was

shown to Councilmember Bird by the prospective bidder and his family that the City was going to pay \$2 million so it took them out of the bidding.

Councilmember Bird addressed the \$43 million water/sewer bond that was done in December 2007, before he took office in January 2008. The City Manager had recommended to the outgoing Council to approve the loan of \$43 million. The quote really read, we (referring to the Council and City Manager) could have done a better job on how that money was spent. Over the last couple months the Gaines Davis subdivision was a very big issue. Councilmember Bird stated he did not know the area was annexed when he was running for office but another candidate did. The reality of it was that several current councilmembers including Councilmember Bird and the outgoing council spent the \$43 million. Councilmember Bird stated that his comments to the reporter (that did not get in the paper) were, "How is it that the City could spend \$43 million and we did not take care of the people in the Gaines Davis subdivision and close the Weed Street Plant." In a report by Councilmember Trader it would cost an estimated \$3.5 million to take care of those issues and save \$2 million per year. Councilmember Bird further addressed that when the City had \$43 million, it was his belief that a single person on this council or prior council would have taken care of those issues had the pressing need been brought before them.

Councilmember Bird stated he depended on the City Manager who was the professional. He also expressed how upset he was when he walked into the meeting at the DDA building and about the whole process after the purchase when he received a stack of papers on the property after the fact when he was on planning, purchasing and property committee. He was completely left out, and he held the City Manager largely responsible, when he saw me all the time. Councilmember Bird further expressed his disappointment in Mr. Shanahan and his actions as a City Manager, not as an individual because he believes he is a good man. As a City Manager the ball was dropped, and because he dropped the ball, Councilmember Bird dropped the ball. He depends on the City Manager for what he says and his recommendations.

Councilmember Bird stated the things he did were for the people of this community because he heard complaints. In fact, the Tribune (our legal organ) had sent the City letters about the Cumberland Harbour meetings and that they were illegal. There are times when it cannot be decided if things are legal or illegal. Everyone has an opinion on those issues and they could be resolved in a court of law. Councilmember Bird further stated that what he gave was his opinion, and when he said it was time for the City Manager to go, he meant it, but he did not come up with it himself. Chuck Trader came to him twice about getting rid of the City Manager, which is the same opinion as he had. Councilmember Bird commented that the finger could be pointed at him, but a lot of things were done wrong. Our community is supposed to be premised on open government and he thought we had a lot of backroom government.

Mayor DeLoughy requested the City Attorney to address Mr. Stein's concerns. Councilmember Morrissey requested the City Attorney provide an answer on the structure of the Ethics Committee as to why this issue was not brought before them as legal counsel for Mr. Bird is present but not for Mr. Shanahan, for the record. The Mayor responded that Mr. Shanahan has a right to an attorney but this is not a court of law or a trial. We are here to try to find out whether

the facts support the document and if the complaint is valid or not. Mayor DeLoughy stated it is not an ethics complaint, therefore it does not come under ethics. It is Mr. Shanahan's privilege to have counsel if that were the case, but it is not a court of law and we are not bound by their rules.

The City Attorney commented that this has not been presented as an ethics complaint nor does he think the provisions or prohibition of the Ethics Ordinance apply in this situation. No one has a right in this proceeding to have an attorney. Mr. Stein has been allowed to speak and he thinks it is fine but for anyone to have a right for an attorney to speak for them in this proceeding would have been done if Mr. Shanahan brought one with him. The City Attorney made it clear that he was not representing Mr. Shanahan. He represents the City of St. Marys. The City Attorney responded to Mr. Stein that he does not see a first amendment violation here. No one is prohibiting Councilmember Bird nor can prohibit Councilmember Bird from speaking his mind. The issue here is whether Council as a whole approves of those actions and wishes to take a stand in regard to them. He also pointed out the first amendment protects your right to have that stand as well. The City Attorney read the City Ordinance Section 2-57. The city council shall sit in the judgment of itself and shall have the power to discipline its members by censure, reprimand, or warning, as the conduct of any individual member so warrants. Censure is generally understood to be an official expression of a disapproval or condemnation. There is no liberty interest, no property interest involved or taken from anybody on a comment as part of the council as a whole as to its perception of the issues before it. In my opinion, it is appropriate for this Council to consider the complaint.

Mayor DeLoughy stated there were five issues to look at and Council needs to determine the validity of each issue and how Mr. Shanahan's reputation could be damaged.

- a. Shanahan has conducted too many closed door meetings, Bird said, including some that Bird believes were held in violation of state law. He said that Shanahan and Council members violated the open meetings law this year when they met with a developer in private to discuss its plans to buy the Cumberland Harbour development. "To bring him (the developer) into a closed session does not fall within the parameters," he said.

Councilmember Bird stated if the statements were not in quotes, it was the reporter's opinion of what was said. Some of the comments were misinterpreted and did not come from that conversation. At the last meeting, an item was brought up in executive session and the City Attorney said it was not appropriate to discuss.

Council discussed the paper printing misquotes, false statements and comments; damage to Mr. Shanahan's reputation being part of the job; that not all councilmember's chastise or crucify a public employee in the press; conduct of a councilmember, keeping opinions private, protecting our employees and whether the comments were made.

Councilmember Hase asked whether the city was liable when public officials make those kinds of comments to the press and if sued does the E&O insurance cover it. The City Attorney responded probably not. However, there is a duty on the part of the City to protect its employees

from harassment. Those comments are not actionable against the City. He believes that E&O would cover it if the City were sued.

- b. More recently, Bird said, city officials violated state law when they voted in closed session in June to buy a tract called the Gilman Boat House for \$1.3 million.

Councilmember Bird stated he did not make the statement because the Attorney General's office was contacted about the vote. Councilmember Hase requested that Councilmember Bird apologize to the City Manager. Bird Councilmember Bird moved for adjournment. Motion failed for lack of seconded.

- c. Bird Criticized Shanahan for recommending the City get a \$43 million loan to expand the city's wastewater treatment capacity by 4 million gallons a day.
- d. It certainly bears looking into how we possibly mismanaged the money.

Councilmember Bird stated that he criticized us (Council). Had he known about the Gaines Davis subdivision and cost of the Weed Street Plant they would have been priority items but they were not presented by the City Manager as a priority. The statement was made, we could have mishandled the money not that it was stolen. Out of \$43 million, \$3 million could have been used to make good on the promises made 10 years ago to Gaines Davis and closed down the Weed Street Plant to save \$2 million. Not have as much capacity to serve the people nor shut down the plant. Councilmember Bird referenced an email sent from the Deputy City Manager in 2008 in regards to Cumberland Harbour giving back 600 units of compasity, which EPD approved giving to other developers. The City was able to supply eight developers with 40% of their requested wastewater usage. Most of those eight projected starting in 2008 but only three did anything. The slowdown was seen in 2008 so we geared up to give the big developer huge capacity but in reality it never materialized.

The City Manager stated it was brought up to the engineers but the decision was made to get Point Peter constructed and pump 13 upgraded. The City could not bring on Gaines Davis before this was accomplished because the system would not support the capacity.

Councilmember Bird reiterated that the statement about the mismanaged funds was made because of the bond not taking care of our other problems, not that there was anything done illegally.

- e. In addition, in the May 19, 2010 Georgia Times-Union, Councilman Bird stated that Shanahan knows nearly half the site is wetlands and is deliberately trying to mislead the FAA.

Councilmember Bird stated that the reporter telephoned him about a phrase on the new appraisal with and extraordinary assumption about being instructed by the City Manager Bill Shanahan to appraise 480 acres as if it were all usable land, and no wetlands. His

comment to the reporter was well that's a lie. Bill knows it has wetlands. Cantrell's appraisal is bogus, corrupt. They did an appraisal when half of it is wetlands and is on the flood plain. They bought 1,895 acres in 2000 and they were giving the city 480 acres of the bottom land that they could not do anything with. The appraiser itself says they were not provided any information on the environmental assessment to make their decision.

Mayor DeLoughy stated that maybe the reason for it not all being wetland was because it would all be mitigated. Councilmember Bird asked the City Manager who instructed him to tell Cantrell there were no wetlands because it did not come from Council. The reporter said he called the FAA and they did not instruct the City Manager to have the appraisal done without the wetlands because they needed to be included in the appraisal. Councilmember Bird was told one thing by the City Manager and another by the FAA so they are now being included. He stands by his remarks.

Councilmember Hase asked whether Councilmember Bird said that Mr. Shanahan was deliberately trying to mislead the FAA. Councilmember Bird responded yes he did because the FAA is Federal Aviation Administration and Mr. Shanahan was talking about Scott Seritt. It is bogus, fraud and inaccurate. It needs to be redone.

Mayor DeLoughy asked Council if there were any other questions or comments. He stated that many things were said back and forth with a lot of contradictory statements.

Councilmember Bird moved to adjourn. Councilmember Howell seconded the motion.

Councilmember Trader stated he made mistakes the same as Councilmember Bird made mistakes but we should respect one another and our differences of opinions, deal with facts and be sensitive to our employees and discuss it in private not in the press. Support the City and each other; holding oneself to higher standards; learning to work together; comments being taken out of context and misconstrued; getting the facts and being sensitive to our employees.

Councilmember Bird stated that he went to the Mayor's office in the beginning of the year about something that was in the paper to bring in the parties to come to some resolution. Trust is important and what is needed is team building.

Councilmember Hase stopped talking to the Times Union because of being misquoted. Some journalists are better at talking to us instead of coming up with a story. She encouraged Councilmember Bird to not take what a journalist says as fact without checking it out. Councilmember Hase also encouraged all elected officials not to crucify our employees or make detrimental nor disparaging remarks that need to be handled with personnel issues the way that professionals do it. Since Councilmember Bird did admit to some of the comments, she would like to see an apology.

Councilmember Bird stated that for any mistake he has made, if you tell him which one he made, he will apologize for his mistake. In regards to discussing in the backroom the purchase of real estate it was his opinion that the handbook says you do not vote in executive session but come out in public to vote. He was not at that meeting either.

Councilmember Hase commented that an apology is to the City Manager. We can say whatever we want to each other as it was pointed out. He is our employee.

Councilmember Bird disagreed and stated because he is the City Manager he is held to a higher standard because he guides us.

Councilmember Hase stated that she wrote yes or no by each of the statements with three yeses, one no and one questions mark. Plus Councilmember Bird stated he stands by his remarks whether they were in error or not.

Councilmember Morrissey stated that everyone here needs to understand things, hold this City close to our hearts and when emotions run high comments are taken out of context and misconstrued. Respect one another and not hurt another human being. We all have difference of opinions but we need to support the City and each other. In this case, an employee felt that a councilmember was wrong and a councilmember that felt for the most part he is right. Some collaboration of the information could have led him to speak differently or interpreted differently. We should hold ourselves to the higher standard no matter what the interpretation.

Councilmember Bird stated that the work between the city council and city manager is important and it is still a business. An apology from the standpoint from either party, he was not sure. We have a right to disagree with the City Manager but not the right to disrespect the City Manager. Councilmember Bird asked the City Manager, even though they disagreed on some issues, had he ever disrespected him. If he ever disrespected him, to accept his sincerest apology. The City Manager accepted the apology and apologized if he offended Mr. Bird.

Councilmember Trader commented that we should not put the City at risk though our actions.

ADJOURNMENT:

Councilmember Trader moved for adjournment of the meeting. Councilmember Bird seconded the motion. Voting was unanimous in favor of the motion. Mayor DeLoughy declared the Special Council Meeting adjourned at 6:35 p.m.

Respectfully submitted,



Darlene M. Roellig, City Clerk



City of St. Marys, Georgia
418 OSBORNE STREET
ST. MARYS, GEORGIA 31558

NOTICE OF SPECIAL CITY COUNCIL MEETING WITH CERTIFICATE OF SERVICE ATTACHED, AND THE WAIVER OF NOTICE AND CONSENT TO THE SPECIAL MEETING, AS SIGNED BY THE COUNCILMEMBERS OF SAID CITY, WERE READ AND ORDERED SPREAD UPON THE MINUTES OF THIS MEETING FILED FOR OFFICIAL RECORD.

TO: *Councilmember Greg Bird*
Councilmember Deborah Hase
Councilmember Sidney Howell
Councilmember John Morrissey
Councilmember Keith Post
Councilmember Chuck Trader

You are hereby notified that the Council of the City of St. Marys, Georgia is hereby called to a Special City Council Session on ~~Wednesday, September 8, 2010, 5:00 p.m.~~ has been rescheduled on Friday, September 10, 2010 in the Council Chamber at City Hall in St. Marys, Georgia, for the following purpose:

BY: _____

William T. DeLoughy
MAYOR

ATTEST: _____

Darlene M. Roellig
CITY CLERK

DATE: _____

September 7, 2010

CERTIFICATION AS TO SERVICE OF SPECIAL COUNCIL MEETING

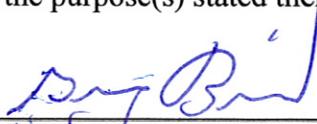
I, Darlene M. Roellig, the duly appointed Clerk of Council for the City of St. Marys, Georgia, do hereby certify that on Thursday, September 2, 2010, I served in the manner prescribed by law upon each of the Councilmember's named in the foregoing Notice of Special Council Meeting.



Darlene M. Roellig, City Clerk

WAIVER OF NOTICE AND CONSENT OF SPECIAL COUNCIL MEETING

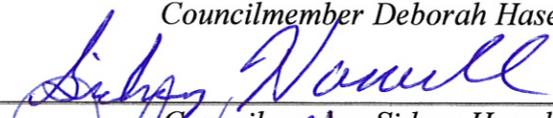
We, the undersigned Council members of the City of St. Marys, Georgia, do hereby accept service of the foregoing Notice of Special City Council Meeting and do hereby consent and agree that the Council of the City of St. Marys, Georgia shall meet at the time and place named in the said Notice of Special City Council Meeting and for the purpose(s) stated therein.



Councilmember Greg Bird



Councilmember Deborah Hase



Councilmember Sidney Howell



Councilmember John Morrissey



Councilmember Keith Post



Councilmember Chuck Trader

ATTEST: 

Darlene M. Roellig, City Clerk

DATE: September 10, 2010