

Jonathan Smith

From: Jonathan Smith
Sent: Monday, June 7, 2021 10:54 AM
To: Mark W. Peyser
Subject: Bisio Blog 6-6-2021
Attachments: 20210607111236323.pdf

Hello Mark,

Please see the attached printout from Susan Bisio's blog over the weekend and call me when you have time.

Thank you,

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CLARKSTON SECRETS

JUNE 6, 2021 BY CLARKSTON SECRETS

Someone Secretly Paid \$10,000 To Help the City Out – What Did They Get In Return? (And Yes, It's A Scandal)

What did some mystery person receive in return for a huge payment on the city's behalf? It's a fair question. City officials know the answer, but they aren't going to tell you, and they made damned sure that \$10,000 (or more) was routed around the city's books so that you can't find out. This wasn't a donation for a small piece of park equipment where the identity of the gift-giver isn't especially important to the integrity of city officials or city operations. Nope. This was someone paying off a huge part of an outstanding bill to the Howard & Howard law firm for Attorney Mark Peyser's legal services. Apparently, the city was surprised that when you hire and agree to pay a lawyer \$350/hour, it can result in large legal services bills. Shocking, I know. 🤔

(What follows are my own opinions formed after listening to city council meeting recordings, reviewing the city's records, and my own experience. You may draw a different conclusion, which I invite you to discuss in the comments.)

The disappearing March 2021 legal services bill

The city hired Peyser to represent the city at voluntary facilitation in the FOIA lawsuit. Our own city attorney couldn't do the work due to his "conflict." Why did the city attorney have a conflict? Because he caused the FOIA lawsuit, discussed settlement with the attorney that the insurer hired to represent the city (even though all settlement decisions belong to the city council), encouraged the city to continue the lawsuit when the city council wanted to settle (at a time when costs were much lower), and he billed the taxpayers for all of his "work" on the lawsuit (which was entirely unnecessary because the insurer-funded attorney was provided at no cost to the city). Worst of all, he told the city council that the city's insurer would pay all of my legal costs if the city were to lose the lawsuit, even though he'd received a letter from the insurer telling him that the insurer objected to

paying those costs because the insurer believed that the costs weren't covered by the city's policy at the very beginning of the lawsuit.

Because of the way that the city handles payment of its invoices, we wouldn't even have known about this secret \$10,000 payment without the dogged persistence of taxpayer Chet Pardee. Chet is truly the hero in this latest city scandal. And it is a scandal.

So how exactly were they trying to hide the payment?

Every city council packet contains a consent agenda for that night's meeting, which includes final and draft minutes of the last two-three meetings, a treasurer's report, a listing of check payments, and a copy of all the bills that need approval for payment. These documents are discussed – or not – during that portion of the meeting referred to as the “consent agenda.” One of the council members will make a motion to accept the consent agenda as presented, another council member will second the motion, and then there is an opportunity for the council members (and the public) to discuss the documents and to ask questions. After that, the council members vote to accept the consent agenda and they move on through the rest of the items on the meeting agenda. This vote acts as the city council's approval for all of the items related to the consent agenda, including the attached invoices seeking payment. The votes are almost always unanimous.

Chet Pardee has always been very interested in the city's fiscal health, which quite frankly, isn't good. For example, we're still dealing with the \$300,000 “loan” that the city council took from our water and sewer funds to pay the majority of the City Hall/DPW renovation costs over the objection of the taxpayers, even though the building could have been repaired for a very small fraction of that amount. If the city hadn't spent money that it didn't have on the building, we could have easily paid the recent (almost) \$100,000 obligation for our portion of the Oakland-Macomb Interceptor sewer repair cost out of those now-depleted water and sewer funds. The increase in your recent and next three sewer bills is an indirect result of that, despite the city manager's letter to you claiming that it wasn't. Blowing tens of thousands of dollars on new signs, sucking up to the restaurants and closing down paid parking for a year (even though that's how we pay for our desperately needed sidewalk and street repairs), and refusing to budget for the cost of the FOIA lawsuit didn't help matters either.

Chet almost always asks questions during the discussion portion of the consent agenda, even when the city council members don't bother to do so. He also makes comments

about the city's precarious financial condition at every public meeting during the general public comment opportunity offered at the beginning of every council meeting.

Chet repeatedly expressed concern about the debt that the city owed to Peyer's law firm. I've typed up an informal transcript of those discussions from the April 26th, May 10th, and May 24th city council meetings and provided a link to the recordings with a time marker so that you can hear how the city was deceptively laying the groundwork to accept the secret \$10,000 payment for yourself. I've also provided a link to the documents that Chet was questioning.

April 26th city council meeting

Recording link (discussion begins at time mark 0:25:49):
<http://216.11.46.126/CablecastPublicSite/show/3443?channel=2>

Document: 20210426 - Treasurer's Report, as of 3-31-21, page 21, of the 04-26-2021 City Council packet

Informal transcript:

Haven: Yeah, good question. Any others? All right, hearing none, let's move on to the acceptance of the consent agenda. I'll entertain a motion to accept our consent agenda as presented to us. Who'd like to make that motion?

Bonser: This is Ed. I'll second.

Haven: Thank you, Ed. A second please?

Wylie: This is Sue. I'll second.

Haven: Thank you, Sue. I have a motion and second to accept the consent agenda. Any discussion?

Haven: OK, hearing none, Jen -

Pardee: Yeah, this is Chet. I have a question please.

Haven: Yes, Chet. Go ahead.

Pardee: On the Treasurer's document listing, #7 is other checks for review, and to the left, it says "Howard & Howard," but there is no amount in the right-hand column. Does that mean that we've not received yet the invoice for Attorney Peyser for his work on behalf of the city in the month of March, even though it's the 26th of April?

Smith: Yes, Chet, both March and April billing will be sent as one bill. I talked with Mark yesterday. One bill will be sent for both March and April.

Pardee: Thank you.

Smith: And that was just a carry-over line item. Sometimes Greg [city treasurer] will use the stub, if you will, the left side of the spreadsheet there, even if it's zero-

Pardee: I understand. Thank you.

So, it was just a little placeholder entry by the city treasurer. Eh, no big thing. Just ignore it. It's a little bit of nothing. Nothing to see here.

May 10th city council meeting

Recording link (discussion begins at time mark 0:29:35):

<http://216.11.46.126/CablecastPublicSite/show/3445?channel=2>

Document: 20210510 - Check disbursement report, 4-1-21 - 4-30-21, pages 28-29 of the 5-10-21 City Council packet

Informal transcript:

Haven: All right. Let's move to our next agenda item, #9. We have a consent agenda. I'll entertain a motion to accept the consent agenda as it was presented to us, please.

Avery: This is Al. I'll make a motion.

Haven: OK, Al. Second please?

Luginski: This is Joe. I'll second.

Haven: Thank you, Joe. I have a motion and second. Any comments?

Pardee: Chet. I have a question please about the Howard & Howard 4-14 voided entry [question regarding TNR invoices omitted].

Haven: What's your question Chet?

Pardee: Well, what is it that drove the Howard & Howard voiding of an entry on 4-14? At the last meeting, I'd asked whether or not there'd been a Howard & Howard invoice, and I was told "no," but I see an entry that relates to 4-14 voided in the documents in the packet. [Question regarding TNR invoices omitted.]

Smith: OK, Chet. So, the Howard & Howard is one of the fees that Mark Peyser has charged the city but there was some question on a couple of the charges, and we just wanted to make sure that it was all fully documented so we decided, that was his, actually his March bill, so he said let me just pull that back and we'll give you a combined March and April bill. So, we had already written a check, but he said let me issue a new invoice for March and April combined and then we'll pay that. That will be the final statement for Howard & Howard. So we just, we're combining the last two months. [Omitted answer regarding TNR invoices.]

Pardee: So, the Howard & Howard invoice was in fact paid? Had it been approved by council?

Smith: No. It wasn't paid. We issued a check, and it was sitting on my desk, and then I talked to Mark, and he said let's just void that one, and I'll give you a combined March/April bill later, so-

Pardee: Thank you for responding.

Now the story was that there "was some question on a couple of the charges" that Smith wanted to make sure were "fully documented" and the March and April invoices would be combined. But, despite those questions and concerns, the city wrote a check to Peyser but didn't mail it. Nothing to see here. Just business as usual.

May 24th city council meeting

Recording link (discussion begins at time mark 0:24:57):
<http://216.11.46.126/CablecastPublicSite/show/3463?channel=2>

Document: 20210524 - Howard & Howard email & invoice, pages 22-24, 05-24-2021 - City Council packet

Informal transcript:

Haven: OK, hearing none, let's move on to the next item on our agenda, which is what's called the accept- or consent agenda, and I'll entertain a motion to accept the consent agenda, which is a summary of minutes, a treasury report, final minutes from 4-26-21, draft from 5-10-21, and a treasury report dated 5-24-21. These are all put into one location so they can be dispensed with expedience here in this motion, but if anyone wants to take anything out or take a, have a question or something pulled from that grouping, they can certainly do that. That's the way that is engineered. So, I'll entertain a motion to accept it as it is presented to us and a second.

Wyllie: This is Wyllie. I'll make a motion to accept the consent agenda as presented.

Haven: Thank you, Sue. Second please?

Bosner: This is Ed. I'll second.

Kniesc: Kniesc. I'll second.

Haven: Ed, were you first? Thank you, Ed Bonser for that. We have a motion by Wyllie, a second by Ed Bonser. Any discussion about this?

Haven: OK, hearing none, Jen would you take the roll please?

Pardee: This is Chet, Mayor. I have a question.

Haven: OK Chet.

Pardee: So we have a Howard & Howard invoice, and I recall in the last council meeting we talked about a Howard & Howard check that was written and then withdrawn, and I assume that it was, and it was from the 14th of April, so I'm sure we've talked about a March invoice that had come from Howard & Howard, but now it doesn't seem like there is

a March invoice anymore. I can certainly see the April enumeration, and I see the note that says this is the final- I'm just trying to figure out what happened to the March invoice?

Smith: OK, Chet, I will speak to that. So, **we did receive a very generous donation for about \$10,000** to go towards our legal expense fees. So, the Howard & Howard bill that **the check was issued to Howard & Howard**, so they removed that slightly over \$10,000, they removed that from the balance due. **We knew this was coming at the last meeting**, but we didn't have it, so we retracted that invoice at the time, and in fact that did completely wipe out the March bill and another about \$2,500 of the April bill. So, that's great news for the city. We saved just over \$10,000. So, the balance due now is just \$1,855. That is the total and final balance due.

Pardee: The attorney was paid what was billed in March and will be paid what he's billed in April - it just is not coming from city funds?

Smith: That's cor- that's not coming from the city at all, **never passed through the city**.

Pardee: Yeah.

Smith: And that was an anonymous donor, and **the one condition that that donor made was that it remain anonymous, so we're honoring that**.

Pardee: Thank you.

Did you catch that? Before Chet interjected with his question, the city council was ready to quickly vote without comment to approve the consent agenda. Is it because the other council members were all in on keeping yet another secret from the taxpayers, or was it that they weren't paying attention to the very unusual handling of the Howard & Howard legal services bill? (I can't think of a third option, frankly.) Obviously, they all knew that Peyser had March legal service charges, and they were remarkably incurious about those missing charges. You can decide for yourself if they were in on the subterfuge.

In these latest comments, Smith admits that he knew full well that he was misleading Pardee on May 10th. Back then, his excuse to Pardee for the odd handling of the Howard & Howard invoice was that there was "some question on a couple of the charges" that Smith wanted to make sure were "fully documented." Obviously, that wasn't true at all. On May 24th, Smith admitted that what he was doing instead was making arrangements for a secret, off-the-books payment to Howard & Howard. And please know that Peyser would

not have been able to ethically accept a secret payment from a third party to pay a client's bill without that client's consent.

On May 10th, Smith also told Pardee that the March and April Howard & Howard invoices would be combined. As you can see from the invoice that I linked above, there is no combined invoice. The proper way to show no charge items on a legal services bill is to document the service and to write a zero or "no charge" on the right-hand side. Instead, every charge on the final invoice is for an April service date. Apparently, the city doesn't think you're entitled to know what Peyser was doing on the city's behalf and which charges he made disappear - even though those charges were really incurred on your behalf because the city answers to you, not the other way around.

Smith provided an interesting detail about the "anonymous donor" during the public hearing on the 2021-2022 budget discussion at that same May 24th meeting, beginning at time mark 1:17:47:

*Smith: We also have to consider the lawsuit. What did the Bisio lawsuit cost us? So, we had a \$35,000 that was our portion of the settlement. That's been well communicated. But we also had legal fees. We paid about \$22,750 in legal fees to Howard & Howard. The good news is, as I reported tonight, that's about \$10,000 less than it would have been **because of a charitable organization or business** that contributed to that, so we're fortunate in that way, but we still had about \$57,000, almost \$58,000 on those two expenses....*

No, Mr. Smith, you didn't "report" anything. Pardee asked a direct question that you were forced to answer. But now we know that the anonymous donor is not an individual. Smith said that some ostensible "charitable organization" OR a business made a secret, off-the-books payment directly to Howard and Howard that expressly didn't go through the city.

Sounds totally above board, eh? Well, I don't think so. People with pure motives who don't have things to hide don't need to do them in the dark.

And word to the wise, Clarkston government - if you want to avoid legal expenses in the future, the next time someone asks you for records, give them up. Otherwise, start saving your pennies for the next lawsuit because it will certainly come.

The secrets continue

You may recall that I told you in a separate post that I believe that the city council violated the Open Meetings Act (OMA) on two occasions while they were considering the FOIA lawsuit settlement. At the first meeting, the council deliberated and voted on an overall \$160,000 settlement in a secret, closed session – but all they told the public was that the city had agreed to pay \$35,000 in open session (even though the lawsuit was only against Clarkston, it didn't matter how the settlement was funded, and the city would have had to approve those other contributions toward the total).

Shortly after that, the city council deliberated and voted on the final written settlement agreement in a second secret, closed meeting, but they only told the public that they were authorizing the city manager to sign some undisclosed settlement agreement that would bind the city. The city manager admitted that all of the city council members had the agreement in front of them during the closed session when the council members who were present deliberated and approved it. The city manager claimed that all of this secrecy was necessary *because the city had promised to keep the identity of the other contributors – and the amounts of their contributions – a secret from you, the taxpayers.* They did this by *ensuring that the settlement checks for the other two contributors never went through the city* so that you wouldn't be able to obtain the information through a FOIA request. (Sound familiar?) If I hadn't published the two checks and the settlement agreement, you would never have known that the city attorney's malpractice insurance carrier made a \$35,000 contribution toward the lawsuit settlement. I don't think that's something that the city should have kept from you, don't you agree? After all, we taxpayers were forced to pay the city attorney for all of his unnecessary "help" with the FOIA lawsuit, and malpractice insurance carriers don't make payments on behalf of their insured attorneys unless they believe that there's been . . . malpractice.

Peyser was present at both closed meeting sessions to advise the council regarding the FOIA settlement and the closed session. We objected before the first secret, closed session (but Peyser was too busy to get back to us before the meeting). My lawyer and I got into quite a heated discussion with Peyser about the city's attempts to hide that settlement agreement from the public before the second secret, closed meeting during which the council voted to accept the settlement agreement. Peyser told us that he believed that the city could keep the settlement agreement details from you based on his experience working as a hired outside lawyer for the City of Detroit (almost twenty years ago!), because that's how they handled things.

Fun fact. I was employed by the City of Detroit as a litigator right around the same time that Peyser was working for them as an outside counsel. During my time there, the City of Detroit paid its claims, lawsuit settlements, and judgments directly from city funds. Whenever I was authorized by my supervisor to settle a lawsuit, I would enter all of the details about the case into a database program. Once I finished, the database would merge the information that I entered into a word processing file and reams of paper would print out on the printer – the settlement agreement, the stipulated order to dismiss the case, the confidential memo to the city council describing the case and why I thought it was in the city's best interest to settle, etc. Unless there was a unique and costly lawsuit that required a special agreement, this was the cookie cutter way that settlements were handled. Essentially, the only things that changed between lawsuits were the facts of the case, the reasons why settlement was recommended, and the amount of money the city was being asked to agree to pay. I don't think it's unreasonable to estimate that this process happened hundreds of times each year because each attorney in my section of the litigation department had between 30 and 40 cases (or more) to handle at any one time.

Peyser claimed that because the Detroit City Council didn't vote on settlement agreements in open session, Clarkston didn't need to do so either. Since I didn't attend the city council meetings involving my lawsuit settlements (my supervisor did), I can't say one way or the other if the Detroit City Council was violating whatever version of the OMA statute was in effect at the time. What I can say is that the way the City of Detroit handled its lawsuit settlements was unique in terms of the rest of my litigation experience. For example, the city would demand that the plaintiff's attorney sign a stipulation to dismiss his/her client's lawsuit with prejudice (meaning that it couldn't be brought again) and ask the court to enter that order *before* we would even send the paperwork to accounting to cut the settlement check. It would have been malpractice for a lawyer to do this when dealing with any other public body, but everyone understood "that's just the way the city did things" and they would go along with it because they wanted to get paid. And, as much as I loved working for the City of Detroit, does any reasonable person think that using the city's method to resolve lawsuits should be a model for any other public body, especially given what happened later on with former City of Detroit Mayor Kwame Kilpatrick and his secret settlement debacle?

Read about it here if you need to refresh your recollection:

<https://www.judicialwatch.org/corruption-chronicles/secret-city-documents-prove-detroit-mayor-perjury/>

If these secret, closed council meetings involved anything other than my FOIA settlement, I would have filed a criminal complaint against all of the participating city council members with the Oakland County Sheriff, and I would also have filed a lawsuit against the city under the OMA. This continuing unlawful conduct is unacceptable, and apparently, the only thing that grabs their attention are lawsuits. But, if I'd done that, then I would, in essence, be asking the court to set aside the FOIA settlement agreement because it was improperly authorized, and I had no interest in doing that. Instead, I decided to publish everything that the city was trying to hide because I believed that you were entitled to know the details. Apparently, the irony of engaging in secrecy and opacity in connection with a transparency lawsuit continues to be lost on our city officials.

Give all of this, it should surprise no one that Peyser was once again willing to help the city conduct business in secret by accepting a direct \$10,000 off-the-books payment, ensuring that the identity of the person signing the check would remain unknown to the taxpayers, and then resubmitting his bills after the money was deducted from the city's account balance with Howard & Howard. We know that the city manager and the treasurer were involved in taking this large, secret payment based on the treasurer's reports and the city manager's public statements. I think that it's fair to assume that the city manager would also likely have included the mayor and city attorney in this scheme, because let's face it, our city manager rarely wipes his nose without consulting with those two. And none of them would have said a damned thing about it if it weren't for Chet Pardee's persistence.

**There is NO authorization for any city official
to conspire with a secret donor to accept an
off-the-books payment for a city obligation**

The charter is the equivalent of the city's constitution and was approved by the voters. All authority for our public officials to act in our name flows from that which the charter permits. Let's take a look at the authority that the charter gives to this cast of characters and see if any of them are authorized to accept large, secret payments through subterfuge, in exchange for extinguishing part of a city obligation, and then concealing the name of the person paying the city's debt so the taxpayers are left in the dark about whether the donor had any nefarious reason for making the contribution.

CITY TREASURER, Section 5.5

The Treasurer shall: (a) Have the custody of all monies of the City, the clerk's bond and all evidences of value or indebtedness belonging to or held in trust by the City; (b) Keep and deposit all monies or funds in such manner and only in such places as the Council may determine, and report the same in detail to the Council; (c) Have such powers, duties and prerogatives in regard to the collection and custody of state, county, school district, and city taxes and monies as are provided by law; (d) Disburse all city funds in accordance with the provisions of statute, this Charter and procedures to be established by the Council; and (e) Perform such Duties in connection with the office as may be required by law, the ordinances or resolutions of the council, or by the City Manager.

Nope, the charter says nothing about the treasurer's ability to help the city accept large, secret payments. What about the city manager?

CITY MANAGER - FUNCTIONS AND DUTIES, Section 5.3

The City Manager shall be vested with all administrative powers of the City not inconsistent with provisions of this Charter. The City Manager shall perform the duties of the office under the authority of and be accountable to the Council. It shall be the duty of the City Manager to: (a) See that all laws and ordinances are enforced; (b) Supervise and coordinate the work of the administrative officers and departments of the City, except as otherwise provided in this Charter, and except the work of the Clerk in keeping the council records and as the clerical official of the Council; (c) Prepare and administer the annual budget under policies formulated by the Council and keep the Council advised as to the financial condition and needs of the City; (d) Establish and maintain a central purchasing service for the City; (e) Employ or be responsible for the employment of all city employees, establish, supervise and coordinate the personnel policies, compensation and practices of the City in accordance with any employment ordinance of the City; (f) Keep informed and report to the Council the work of the officers and departments of the City and secure from the officers and heads of administrative departments such information and special reports as the City Manager or the Council may deem necessary; (g) Furnish the Council an annual report which shall consolidate the reports of all city departments; (h) Resolve conflicts of authority between officers and administrative departments or, in the absence of administrative authority occasioned by inadequacy of charter/ordinance provisions, supply the necessary authority so far as may be consistent with law and the ordinances of the City, and direct necessary action to be taken in conformance therewith, making a full report immediately to the Council; (i) Attend all meetings of the Council, with the right to

be heard in all council proceedings, but without the right to vote; (j) Recommend to the Council, from time to time, such measures as the City Manager may deem necessary or appropriate for the improvement of the City or its services; (k) Prepare and maintain an administrative code defining the duties and functions of the officers and departments of the City which, when adopted by the Council, shall supplement this Charter in establishing the duties and functions of each officer and department of the City; (l) See that the terms and conditions of any public utility franchise, or in any contract, are faithfully kept and performed; (m) Perform such additional duties as may be granted to or required of the City Manager from time to time by the Council so far as may be consistent with the provisions of law; (n) Establish any procedures necessary to carry out any of the foregoing duties; and (o) Preserve all city property and equipment.

Gee whiz, there's nothing within the city manager's authority to accept large, secret payments and hide them from the taxpayers either. Does the mayor have that authority?

MAYOR AND MAYOR PRO TEM, Section 4.9

The Mayor shall preside at all meetings of the Council, shall speak and vote at such meetings as any other Council member, shall be recognized as the Chief Executive Officer of the City and as head of the city government for all ceremonial purposes but shall have no administrative duties. The Mayor shall be a conservator of the peace, may exercise within the City the powers conferred upon sheriffs to suppress riot and disorder, and shall have authority to command the assistance of all able-bodied citizens to aid in the enforcement of the ordinances of the City and to suppress riot and disorder. The Mayor or his/her designee shall be empowered as the conservator of public health, safety and welfare in cases of natural or manmade calamity as provided hereinafter by ordinance. The Council at its first meeting following each regular city election shall elect one (1) of its members as Mayor Pro Tem by an affirmative vote of a majority of its members. The Mayor Pro Tem shall act as Mayor during the absence or disability of the Mayor.

The mayor is nothing more than a glorified city council member who chairs the city council meetings and has some extra ceremonial duties. And gosh, I'm not seeing anything within the mayor's authority to accept large, secret payments and hide them from the taxpayers either. If the city attorney was involved in this latest scheme, does the Charter at least give him any authority to do this?

CITY ATTORNEY, Section 5.6 (a)

The City Attorney shall: 1) Advise the Council on all matters of law and changes or developments therein, affecting the City; 2) Act as legal advisor and be responsible to the Council. 3) Advise the City Manager concerning legal problems affecting the city administration and any officer or department head of the City in matters relating to official duties when so requested in writing, and file with the Clerk a copy of all written opinions; 4) Prosecute ordinance violations and represent the City in cases before the Courts and other tribunals; 5) Prepare or review all ordinances, regulations, deeds, contracts, bonds, and such other instruments as may be required by this Charter or by the Council, and promptly give an opinion as to the legality thereof; 6) Upon request of the Council, attend meetings of the Council or any other meeting; 7) Defend all city officers and employees in all actions arising out of the performance of their official duties as directed by the Council; 8) Obtain the Council's approval to commence or conclude any civil litigation; and 9) Perform such other duties as may be prescribed by this Charter or the Council; (b) Upon the City Attorney's recommendation, or upon its own initiative, the Council may retain special legal counsel to handle any matter in which the City has an interest, or to assist the City Attorney.

Struck out again. There's nothing within the city attorney's authority to accept large, secret payments and hide them from the taxpayers either.

In sum, there is ZERO authority under the charter for any of these people to accept an under-the-table "gift" in exchange for extinguishing part of a city debt.

Dang, is there anything in the charter that authorizes anyone to accept a gift on behalf of the city? Yes. Gifts are addressed in only one section of the charter:

RIGHTS AS TO PROPERTY, Section 4.27

The Council shall have the power to acquire for the City by purchase, gift, condemnation, lease, construction or otherwise, either within or without its corporate limits, and either within or without the County of Oakland, private property, for any public use or purpose within the scope of its powers, whether herein specifically mentioned or not; and shall have the power to maintain and operate the same to promote the public health, safety and welfare.

Ah, so the city council has some authority here. Not surprising. But if the city council accepts a gift, they have to have a quorum to do it. The charter language is limited to property, but ethical public bodies with nothing to hide always accept or reject gifts in

meetings that are open to the public so that the public can be assured that the gift-giver isn't trying to buy favors. Our city government is regularly accused of favoritism, and those accusations certainly appear to be justified in a lot of cases. Our city officials also seem to think they are running some sort of private fiefdom where they can do what they want, when they want, for the benefit of those whom they like, and they clearly don't believe that they have to answer to the taxpayers if they don't feel like doing so. Otherwise, they wouldn't be trying to hide any financial transaction from the taxpayers to whom they are responsible.

**What does our secret benefactor hope to receive
(or already has received), in exchange for the \$10,000 payout?**

Your city officials went through a lot of the trouble to ensure that this huge sum of money was deliberately funneled outside of the city and directly to Peyser. And the city manager admitted it! Though I haven't sent a FOIA to the city to confirm my suspicion, I would place a large wager that the involved city officials avoided creating any paper trail regarding the arrangements by using phone calls, non-city email accounts, in-person meetings, and personal devices to set up the secret transaction. The reason for doing this is obvious - if they were above board and accepted the money properly, that would create public records that you would be entitled to see. If you could see the paperwork, then you would learn the identity of the donor and decide for yourself whether this was influence peddling or not. But you don't get to know, because once again, your arrogant city officials believe that they have the authority to promise confidentiality when conducting city business and that they are entitled to funnel payments to entities outside of city hall - even though they have no such authority.

So, what do we know about the secret payment?

The city manager suggested that the secret payment was from a charitable organization OR a business. Charitable organizations make contributions that are consistent with the purpose for which they are formed. Are you aware of any charitable organization that could pay off a city government's legal bills without running afoul of its primary purpose? Me either. And I think that the city manager used the phrase "charitable organization OR business" just to mislead us. Frankly, I think that it's reasonable to conclude that a business made the secret payment.

Gosh, why would any business do such a thing? Were they trying to "grease the skids" for future favors? Was it a way to compensate for past favorable treatment? Only the city

knows, and not only aren't they going to tell you, they took great pains to hide the manner in which this huge payment was made.

Hey, I have an idea . . . maybe we could address all of the city's financial woes this way. So, you need a variance for your front steps? No problem! All you need to do is pay us the equivalent of ten slabs of sidewalk because we can't afford to fix the sidewalks. Want to avoid a fight over your new fence in the historic district? Well, that's going to be more expensive. Maybe you need to pay for all of the crack filling on city roads for the week. Want to do some development in the city? Well, our roads are in pretty bad shape - catch our drift? The city could even help everyone with this by promising to keep your identity a secret and making arrangements for you to pay the contractors and suppliers directly. That way, no one can make a pesky FOIA request and figure out what's going on. Don't want to pay up? Well, then you can just take your chances with the regular process. Good luck with that! We know who our friends are.

Sound ridiculous? Maybe. But the city invited this type of speculation when it made the decision to hide a huge payment for a city obligation from the public. We are entitled to know who might be trying to influence city officials in the future or who might be scratching the city's back because of past favors. And should the city deny anyone a variance or the right to make changes to his/her home, or give a business or a developer a hard time while other homeowners and businesses seem to sail through all city requirements with no problems at all, I think that invites a lawsuit on the basis of preferential treatment. And the best thing about lawsuits is discovery, because that means that you can force the city manager, mayor, treasurer, and city attorney to sit their butts down in a deposition chair and make them answer questions under oath about who this anonymous donor was and whether and to what extent that person received a benefit that wasn't provided to you.

Vote them out. If you are an ethical person, please consider running for office because we certainly need you. And if you're reading this and are thinking about moving to the City of the Village of Clarkston, I guess I would ask why on earth you would want to do that. Until there is a change in leadership, you would only be subjecting yourself to outrageously high taxes, mismanagement, overspending, favoritism, and lots of secret, back door deals.

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Chet Pardee

June 6, 2021

In a public meeting a citizen asked Tom Ryan whether his malpractice insurance could pay Bisio suit damages. Tom answered he did not know. A citizen asked the City Manager for a copy of the City's Errors and Omissions insurance policy provided through Michigan Municipal League. The citizen was asked to submit a FOIA request. The City Manager did not have a copy of the policy, but would speak with the insurance agent to get one. The City Manager provided a copy of the policy (like September 2020) to the citizen which clearly indicated that that damages in a lost law suit could be

covered by the insurance policy. The citizen wondered to himself how many council members would need to resign in order for the E&O insurance to pay. Several months pass. Peyser is hired. Peyser pursues the insurance companies. The city dodged a bullet by the insurance companies paying \$125,000 of Bisio damages. The City dodged a bullet with the Bisios willing to accept one half of their expenses. The City had no plan than would have enabled the City to pay the portion of Bisio damages covered by insurance companies. The current budget includes \$244,000 for capital expenses, budget year ending 6/30/21. The proposed budget for 2021-22, presented in the public hearing on 5/24/21, to be approved in the 6/28 council meeting, includes \$55,000 for capital expenditures, one fifth of the current budget. When a citizen raised the question in the 5/24/21 council meeting of what council members concluded from the comparison of the two numbers. Silence. Then a council member said, well COVID..... No. The City suspended Paid Parking which would have provided the only source of funds for Capital Expenditures. Like \$80,000. No, the city has a financial problem with insufficient revenue to pay for street and sidewalk repairs. Listen to the Planning Commission meeting on 6/7/21 where the Capital Improvement Plan will be reviewed. This plan will go to council for approval on 6/14/21. The Planning Commission will be asked who has the responsibility for providing the revenue for the Capital Improvement Plan to be implemented. The Capital Improvement Plan is required by the State of Michigan. The Capital Improvement Plan will show future projected costs of \$200 K, \$400 K ... \$600K. with no plan to provide the revenue. A citizen believes that council members do not have a clue...

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