

City of the Village of Clarkston
City Managers Report
April 11, 2015

Storage area in Depot Park

On Wednesday May 6 you all should have received an e-mail from Mark McCloy suggesting we move the DPW storage area out of the park. There is no factual rational for Mr. McCloy's recommendation. Mr. McCloy is not a resident of the City.

Mr. McCloy used social media to stir up a firestorm of controversy regarding the City's DPW storage area. The result was the dissemination of information that was 100% incorrect. This also resulted in insulting and disparaging comments regarding the ethics of the Council and the City. Charges of collusion between the State and the County were made, inferring that they look the other way and allow the City to get away with improper management of an area close to the wetlands. In the Clarkston News letter to the editor he stated "some of it looks contaminated with a petroleum product and may not be environmentally suitable. Someone may have bulldozed a toxic waste site and conveniently unloaded the waste".

Mr. McCloy claimed we were storing contaminated asphalt millings in the park, next to a wetland, and that we were also using the area as a tire dumping ground. In fact there were only the two tires that had just been removed from the park 3 days before.

In the Clarkston News letter to the editor he stated "some of it looks contaminated with a petroleum product and may not be environmentally suitable. Someone may have bulldozed a toxic waste site and conveniently unloaded the waste".

After creating this controversy, Mr. McCloy contacted the MDEQ and The Oakland County soil erosion division to report the City for storing contaminated material in the Park.

The following is the response from the County and MDEQ

"Good afternoon Mark. The millings are NOT an environmental hazard because they are already processed and have been fully cured. The only issue would be if they were actually dumped into the wetland. Next to the wetland does not require any special provisions. I have had many residents throughout the county that have called because some builder or trucking outfit has stored millings next to a wetland or waters of the state and the MDEQ told us that it is not an issue until it actually goes into the wetlands. They say there are no harmful chemicals coming off of cured asphalt.

The silt fence you point out was from a few years back that we made them put up when they stored some erodible material there.

The woodchips and such I don't have any jurisdiction over."

The same concerns were addressed to the MDEQ by Mr. McCloy. Andy Hartz, MDEQ regional director's response is quoted:

"Joe is correct, asphalt millings ARE NOT a regulated waste. Unless someone has specific knowledge of contamination occurring on top of the asphalt when it was in place, it is assumed to be uncontaminated. They may be used as if it is clean fill. Fill placed into wetlands requires a DEQ permit. Fill next to wetlands does not. Please contact me if anyone has any questions...Andy"

Unfortunately Mr. McCloy chose not to disseminate the information from the MDEQ and the County in the same manner as he disseminated the incorrect information.

It should also be noted by the council that Jason regularly hauls away the big tree stumps and brush so there is never a large accumulation of material stored in this area.

Here are the facts regarding the DPW storage area:

The storage area was created by Gar Wilson, then DPW director in the 70's, and has been used in the same manner for some 50 years.

The area is inspected by the MDEQ on their rotation schedule. About 2 years ago the City was asked to put up a silt fence because of material that was stored at that time. That material has been removed however we still maintain the silt fence as a precaution. There has never been a recommendation from the MDEQ to move the storage area.

In December of 2014 Tammie Hazlet made a formal complaint to the County and MDEQ regarding using this space as a storage area. The area was inspected by both entities and declared safe. The City was not asked to move the area.

The storage area is inspected yearly by the Michigan Municipal League Liability Insurance carrier. In all the years we have been having this inspection there has never been one recommendation change how we are handling the City's DPW storage area.

In 2014 a complete inventory of Depot Park was conducted by the Clinton River Water Shed Council and the chairman of Lawrence Tech's Environmental program. They did not raise any objections to the storage area in Depot Park.

Based on these facts my recommendation to the Council would be to continue the storage area in the same fashion, thus not incurring an addition expenses for an unwarranted request.

Finance Committee

The Finance Committee met on Thursday April 29th. The committee is making a recommendation for a City Fund Balance Policy. Support materials are in the packet.

Facilities Committee

The Committee has met three times since the last Council meeting. The group will continue to meet this frequently in order begin construction in a timely manner.

New Playground Equipment

The equipment the City purchased from Clarkston Co-op nursery has been installed. The City hired a certified playground safety installation man to do the installation. We are waiting for the availability of the appropriate wood chips required for playgrounds. Environmental Wood Solutions is donating the material, which is a huge savings to the City. I expect to have that done within the week.

Scamp Walk

The walk, which started in Depot Park, was held on Sunday May 3rd, The only problem was the amount of trash left out in the open. Animals scattered it throughout the park. The City event form will be changed to help events know how to correctly dispose of the trash.

A **HUGE** thank you to John Myland who took an hour of his time on Thursday to pull out the invasive garlic mustard plant that was starting to overtake an area at the West end of the park!

Cory Johnston's e-mail to the Council

Referencing the e-mail the council received from Mr. Johnston's regarding the following council action on June 10, 2013.

Resolved by Sabol, supported by Bisio that as of June 3, 2013 first we rescind the resolution from the minutes of December 4, 2004 regarding calls and city business and that as of now calls regarding City business to any of our professional consultants, Planner, and Engineer, should be made only by the City Manager, department heads, or as appropriate and at the City Manager's discretion, the delegate or designate of the City Manager.

Additionally, in an emergency situation in which the City Manager is unavailable, the Mayor may make contacts as needed under the circumstances. The Mayor may also, under these conditions, designate or delegate as necessary. In this case the Mayor will inform the City Council of the emergency situation and contacts being made. The City Manager is deemed unavailable because of disability or other reasons and there is immediate need for someone to perform duties that the City Manager would otherwise perform.

In all cases, whether an appointment by the City Manager or an emergency situation, the City Manager will be included on all written communications and informed, in writing, of any other contacts.

Roll Call Vote: Ayes: Luginski, Bisio, Hunter, Sabol and Roth

 Nays: Haven and Hargis

Resolution Approved.

Mr. Johnston failed to include Council discussion as follows:

Attorney Ryan addressed the council and commented that the City Attorney is in a different position. The attorney reports to the council and should not be in the same category as the Planner and Engineer.

The above action only includes the Planner and Engineer NOT the City Attorney. Clearly the Mayor and Attorney have the right to have a discussion regarding City Business.

In this weeks Clarkston News

In Phil Custodio's column this week he took umbrage with the fact that I said I couldn't remember what I talked to the City Attorney about. I also stated "who knows." This was my way of handling an inappropriate question about my privileged conversations with the City Attorney. Apparently Mr. Custodio feels he has a right to ask me to breach my responsibility to handle City business with the attorney. He was asking me to behave in an unethical manner. I want to assure the council that I have NEVER talked to ANYONE regarding my conversations with the attorney. Mr. Custodio's question was totally inappropriate. Perhaps the way I answered his question was inappropriate however I was so astounded he was baiting me to breach my right to have a private conversation with the City attorney I did not give the most appropriate answer. Protecting the privacy of attorney client conversations is a basic premise of law. Given the events in Oakland Township this past week regarding a Council women being investigated for prosecution for making public attorney client privileged information I want to be very clear with the council regarding this matter.

Andrea Beaudoin's article "City considers up to \$568,000 bonds.

At no time did the Council or the facilities committee commit to issuing bonds. In fact it was stated the amount money was to small to bond.

"The City must vacate the property within of year of notice". The City knows we must vacate 3 East by December 31. I immediately received an e-mail from Neal Wallace clarifying that we knew the December 31 deadline.

"The City has about \$250,000 in the bank" Using this number they went on to calculate refunds to residents....if we were to cut our mill rate. This is an incorrect number. The fund balance is closer to \$189,00. All their calculations regarding tax refunds to residents are incorrect. This is an old issue settled last year during budget review.

In the article regarding Mr. Adler and the property at Waldon and Main it was stated I said the "property owner Ed Adler agreed to plant some flowers or trees on the lot. Adler said he never agreed to do so." I not make that statement. The meeting with Mr. Adler and his attorney happened a week and a half after the last council meeting. We discussed possible remediation solutions in an attempt to compromise to lessen the impact the now treeless lots have to the historic district. It was a productive meeting. City Attorney Ryan and Mr. Adlers attorney will work out the details.