

**MINUTES
DOVER CITY COUNCIL
SPECIAL MEETING
CITY COUNCIL CHAMBERS
TUESDAY
JULY 22, 2003
6:00 PM**

Mayor Nossiff opened the meeting and led the Pledge of Allegiance.

1. ROLL CALL

Members Present: Councilor Parks Christenbury, Mayor Pro Tem Thomas Dunnington, Councilor Jason Hindle, Councilor Robert Keays, Councilor Matt Mayberry, Councilor Kevin Quigley, Mayor Nossiff.

The Deputy Clerk read into the record that Councilor Raymond Tweedie and Councilor Brenda Whitmore are present as respondents for the special meeting.

The Mayor then asked the Respondents and their Attorneys to introduce themselves.

Brenda Whitmore was represented by Attorney John Durkin.

Raymond Tweedie was represented by Attorney Eileen Nevins.

Representing the City of Dover as Special Counsel was Attorney Chuck Douglas.

The Mayor then addressed some housekeeping matters. He stated that it is the consensus that the proceeding under 49-C:13 pursuant to the resolution of the Dover City Council of July 1, 2003 proceed on the basis of information contained in the report of the Dover Police Department as well as the condensed motion of specific accusations entitled "Cause for removal of Office" that has been furnished to the respondents. In addition to the remedy of removal, the resolution of July 1, 2003 indicated that in addition to that level of remedy of removal, that the Council would be empowered to authorize any additional appropriate or duly alternative additional corporate sanction other than removal as stated under Section 22-12, under the Code of Ethics. He then read into the record the Cause for removal of office for Councilor Ray Tweedie and then Councilor Brenda Whitmore. *(Available upon request)*

The Mayor asked for a roll call vote of the Council to incorporate the respective Cause for removal from Office as it refers to the respondents into the resolution of July 1, 2003. Motion passed on a 6-0 roll call vote.

Next, the Mayor stated it is the understanding that the rules this evening are going to be the rules and procedures as set forth in the procedural rules that were furnished to the respondents. Pursuant to that, in the event of a default, the Roberts Rules of Order will prevail, thereby making the decision of the majority of the Council final and binding, unless it is in the instance where more than a majority is required.

Mayor Nossiff then stated that we should bear in mind that we are here this evening representing the citizens of Dover. The citizens of Dover are the interested and potential aggrieved parties. We should also bear in mind that Councilors Tweedie and Whitmore were duly elected by the citizens of Dover and accordingly any remedy that we impose upon them this evening, specifically the remedy of removal, will serve to undo the will of the citizens of Dover who elected them to their respective offices, therefore this hearing this evening will

undoubtedly be beyond reproach, fair and impartial and thorough. Notwithstanding this, as the expression goes, “Justice delayed is justice denied” accordingly it is expected that testimony this evening be offered only when it is relative and germane to one of the issues that has been flagged and identified in either the resolution of July 1, 2003 in its entirety as originally adopted or as amended this evening adding the cause for removal memorandum as prepared by Attorney Douglas, that unless it is relevant to those issues as set forth this evening that we will endeavor not to hear that type of testimony. Therefore, duplicative testimony, repetitive testimony will not be permitted. It should be the goal of all parties to proceed with brevity and without delay tactics. It is in the interest of the City of Dover that we bring closure on this particular chapter and to that end he has asked the attorneys to work out some basic stipulations in order to expedite this hearing and avoid unnecessary testimony and there is one stipulation and asked that Counsel read it for the record.

Attorney Eileen Nevins stated the first stipulation is that Raymond Tweedie did give the memorandum in question to Eric Sweetser.

Mayor Nossiff clarified the stipulation as follows: Councilor Tweedie did furnish the memorandum of March 25, 2003 prepared by Attorney Battles on behalf of the City of Dover, to Eric Sweetser.

Mayor Nossiff stated that a second stipulation has been requested, that for record keeping purposes, the Clerk is to stop the proceeding when the tape has been exhausted and needs to be changed. *

Mayor Nossiff then turned the proceeding over to Attorney Douglas.

2. Removal Hearing pursuant to RSA 49-C:13

Attorney Douglas began by clarifying the charges and provided the Council with binders that contained potential exhibits of evidence that will allow them to follow along with the testimony. He stated the exhibits are divided by tabs and he will offer these for acceptance into the record.

Mayor Nossiff asked if there were any objections to the exhibits.

Attorney Durkin clarified that the respondents had only received these binders 3 minutes before the meeting began. He has no objections but would like the exhibits entered tab by tab.

(Attorney Douglas performed the swearing in of all witnesses for the City of Dover)

Attorney Robert Battles was called by Attorney Douglas as the first witness for the City of Dover.

Battle's testimony related to the memorandum of 03/25/2003.

Respondent Attorneys Durkin and Nevins both cross examined the witness.

Attorney Douglas offered Exhibit Tabs 1-8 into the record. No objections.

City Manager Paul Beecher was called by Attorney Douglas as the next witness for the City of Dover.

Beecher's testimony related to the nature of confidentiality and the release of the memorandum of 03/25/03.

Attorney Durkin and Attorney Nevins both cross examined the witness.

Attorney Douglas offered Exhibit Tabs 9-19 into the record. No objections.

Planning Director Steven Stancel was called as the next witness for the City of Dover. Mr. Stancel was cross examined by both respondent attorneys.

Stancel's testimony related to the events surrounding the eventual release of the 03/25/03 memorandum to Eric Sweetser.

A recess was called at 8:15 and reconvened at 8:25 p.m.

The Mayor stated that all parties have agreed that the proceedings will be concluded this evening and not continued to another night.

Attorney Douglas offered Exhibit Tabs 20-22 into the record. No objections.

Detective Sergeant Thomas Stinglen, investigator for the City of Dover Police Department, was called as a reluctant witness for the City of Dover. Respondent Attorneys Durkin and Nevins both cross examined the witness.

The City of Dover did not wish to call any further witnesses, but stipulated that Captain Tony Collaruso was on the list as the investigator for the City of Dover Police Department who conducted the interview of Eric Sweetser.

A recess was called at 9:50 p.m. and reconvened at 10:00 p.m.

Attorney Durkin stated that he and Attorney Nevins have conferred and agree that they will offer limited witnesses due to the limited time.

(City Attorney George Wattendorf performed the swearing in of all witnesses for the respondents)

Paul Chamberlain, Director of Design and Construction for the University of New Hampshire Facilities Division was called by Attorney Durkin as respondent Whitmore's first witness.

Chamberlain's testimony related to Whitmore's e-mails at the University of New Hampshire.

Attorney Douglas cross examined the witness.

Attorney Karen Forbes from Shaheen and Gordon, representing the Paul Street litigants, was called as a witness by Attorney Durkin.

Attorney Douglas moved to strike the testimony of this witness due to attorney/client privilege and being unable to cross examine the witness fully.

The Mayor ruled that the testimony of this witness would be stricken from the record. Attorney Durkin's objection to this ruling noted for the record.

Attorney Nancy Quinlan was called as the next witness for respondent Whitmore.

Douglas objected to this witness because it was the same situation as the previous witness as she represents Eric Sweetser as well as respondent Whitmore and asked if she will be waiving that attorney/client privilege.

2 separate recesses were called and reconvened between 10:25 p.m. and 10:30.

Councilor Hindle moved to suspend the rules to allow the meeting to go past 10:30 p.m. and go on until concluded, seconded by Mayberry.

Motion passed on a 6-0 roll call vote.

Attorney Quinlan would not consent to waive attorney/client privilege regarding Eric Sweetser, but that Whitmore has consented to waive attorney/client privilege. She was then allowed to testify. Her testimony related to her legal opinion on Brenda Whitmore regarding potential conflict of interested on various issues.

Attorney Douglas cross examined the witness and then she was excused.

Attorney Durkin stated that the respondents will call Eric Sweetser, Brenda Whitmore and Ray Tweedie as their final witness this evening.

Eric Sweetser, 2 Wallingford Street, was called as a witness for the respondents.

Sweetser's testimony related to his relationship with the respondents, the Paul Street Association and SaveDover group and the circumstances of his obtaining the 03/25/03 memorandum.

Attorney Douglas cross examined the witness.

Ray Tweedie was called to testify and cross-examined by Attorney Douglas.

Brenda Whitmore was called to testify and cross-examined by Attorney Douglas.

Attorney Douglas then asked that Exhibit Tabs 23-31 be entered into the record.

Attorney Nevins once again stated her concern that the respondents did not have time to review these exhibits prior to the meeting, but allowed the exhibits to be entered into the record.

A recess was called as 12:40 p.m. and reconvened at 12:48 p.m.

A closing statement for Respondent Ray Tweedie was given by Attorney Eileen Nevins.

A closing statement for Respondent Brenda Whitmore was given by Attorney John Durkin.

A closing statement for the City of Dover was given by Attorney Chuck Douglas.

End of Testimony

Mayor Nossiff explained that there now needs to be a motion made for on Councilor Tweedie to remove for Cause under 49-C:13,

Councilor Quigley moved to vote on the motion to remove Councilor Tweedie for Cause under 49-C:13.

Nossiff continued stating that 49-C:13 is the limited remedy for removal and takes 4 votes to pass, and if that is not successful and does not pass, then at that point we would have a possibility of motions for a lesser sanction. Before we take up this matter, which Councilor Quigley has moved, he asked if there is any interest in discussing the merits of the petition against Councilor Tweedie before taking up the removal vote.

He asked for a showing of hands to have a discussion among themselves publicly on the merits of the claims against Councilor Tweedie.

The vote failed 2-4, Mayor Pro Tem Dunnington and Councilor Mayberry in favor.

Councilor Hindle then seconded the motion to remove Councilor Tweedie for Cause under 49-C:13 previously made by Councilor Quigley.

Motion passed on a 5-1 roll call vote, Dunnington opposed.

Mayor Nossiff asked for a hand vote to discuss the merits of the claims against Councilor Whitmore. Motion failed on a 2-4 vote, Dunnington and Mayberry in favor.

Councilor Quigley moved to vote on the motion to remove Councilor Whitmore for Cause under 49-C:13, seconded by Hindle.

Motion passed on a 5-1 roll call vote, Dunnington opposed.

3. Adjourn

Quigley moved to adjourn, seconded by Christenbury.
Motion passed unanimously.

Meeting was adjourned at 1:15 a.m. on 07/23/03.

Valerie A. French
Deputy City Clerk