

March 1, 2021

Members present: Daniels, Schaber, Meade

With a quorum present, Daniels called the meeting to order at 6:30 PM.

**Minutes**

Schaber made a motion to approve minutes of 02/16/2021; Meade 2nd; Roll Call: Ayes – Daniels, Schaber, Meade; Nays – none.

**02/16/2021 MINUTES APPROVED (3-0)**

**Old Business** -- None

**New Business**

1. **tempRES 2021-06: RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR FY 2022 GRANTS, THROUGH THE US DOT FEDERAL TRANSIT ADMINISTRATION, AS AUTHORIZED UNDER FEDERAL TRANSIT LAWS, AS CODIFIED, 49 USC SECTION 5311; USC SECTION 5339, and the Coronavirus Relief Fund (CARES Act), AS WELL AS THE OHIO TRANSIT PARTNERSHIP PROGRAM (OTP2). FINANCIAL ASSISTANCE FOR OTHER THAN URBANIZED AREAS AND FUNDS AVAILABLE FROM THE OHIO PUBLIC TRANSPORTATION GRANT PROGRAM AND OHIO ELDERLY AND DISABLED TRANSIT FARE ASSISTANCE PROGRAM AND EXECUTING A CONTRACT WITH THE OHIO DEPARTMENT OF TRANSPORTATION UPON GRANT APPLICATION APPROVAL, AND DECLARING AN EMERGENCY (Marsh/Chaffin)**

Deb Price, Incoming Transit Administrator, explained that this is the annual request for approval for the 2022 grants through federal and state funding. An emergency clause is included so that they can meet the grant deadline of 04/30/2021.

Meade made a motion to recommend to council; Schaber 2nd; Roll Call: Ayes – Daniels, Schaber, Meade; Nays – none.

**Legislation sent to council (3-0)**

2. **tempered 2021-21: ORDINANCE AUTHORIZING THE AUDITOR TO APPROPRIATE MONIES TO THE ADAMH FUND RECEIVED BY THE ADAMH BOARD ENDING DECEMBER 31, 2021. (Stotts/Boleyn)**

No one available to explain ordinance, however committee felt comfortable moving forward.

Schaber made a motion to recommend to council; Meade 2nd; Roll Call: Ayes – Daniels, Schaber, Meade; Nays – none.

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**Legislation sent to council (3-0)**

• **Items not on the Agenda**

**Item 1. Continuation of discussion from Council Meeting – Auditor regarding \$1.3 million/IRS**

<<Clerk Note: Auditor Landon continues to experience persistent technical issues that interfere with the quality of his audio. Most of the content is transcribed word-for-word to avoid any misunderstanding of intent, especially because of the audio problem. >>

Mr. Schaber asked about the council meeting last week and the issue brought up by Mr. Ratliff. Is there any light that can be shed on what was briefly discussed related to IRS withholding? Is there anything more that can be shared?

Auditor Landon read a prepared statement >> “Yeah, so at the last council meeting, the President of Pro Temp asked our office or asked if our office had provided all the information the Mayor requested by the Friday noon deadline. At that time our office was not prepared to provide a statement while working with the Law Director. During the discussion was suggested by the President Pro Temp that it was our opportunity to provide the public with information to be transparent. At that time, we preferred to wait until we talked with the City Administration. But since it was suggested that we were not being transparent, we will go ahead and release as much information as we can.”

“Our intent has not been to blast the previous administration every time we have found their errors. Since it was brought up, we are supplying the information we have. First since taking office the following items have occurred:

- The city has been charged \$22,500 by the IRS because the last administration failed to send 1099 miscellaneous forms and W-2 <inaudible> statements to the IRS by the deadline for tax year 2018. Our office has appealed this decision and we are awaiting a response
- Our office has also had to pay nearly \$5,000 for sales tax the previous administration failed to pay the state of Ohio for the tax year 2019.
- In June of 2020, our payroll clerk was on leave for about a month. We went to the Mayor and told him we needed assistance of former members of the Auditor's office in helping process payroll. We met with the Mayor and Service Director and they were willing to help, but we were informed if they processed payroll, that city employees would not be paid until the following week. We determined that this was not acceptable and would cause significant damage to our city employees, therefore we sought assistance of our software company, New World, to process payroll.
- During the second payroll of the month, a former employee in another department was placed on the payroll by mistake either by the department or the software. We're not sure really sure why that occurred. The safety director did an investigation to determine that there was no criminal intent with that situation. The employee had to be taken out of the system and removed from the online payment process.

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- During the removal of the former employee with the assistance of our online payment provider and their support, the deposit line to the IRS account and routing number was removed in error.
- We searched paper and electronic records and could not find this information left to us by the previous administration anywhere in our records. Therefore, the only logical solution was to request help from our online payment provider to restore the deposit line to the IRS.
- Since we used the online support to restore that information, we believe that the system was in proper working condition because they were our experts in that arena.
- In December of 2020, we were contacted by the IRS that the city was \$8,000 short on our payments.
- At that time, our office did an investigation and found out that the online payment provider did not restore the IRS deposit account number but rather duplicated the State of Ohio deposit account number. Funds that were supposed to go to the IRS were therefore going to the State of Ohio.
- Since December, my office has taken the following steps:
  - We have restored our deposit account numbers to the IRS.
  - We have contacted the IRS and have provided them the sequence of events and backed up documentation to show that the city did make the payments but to the wrong accounts due to our payment provider giving us the wrong information.
  - We have contacted the State of Ohio requested a refund of overpayment of funds.
  - We have made payments to the IRS for the amount the city owes that went to the State of Ohio.
  - We have signed up to be able to view our IRS account online so that this doesn't happen again. We are looking into if the State of Ohio has the same type of available information available on a website online.
  - We have restructured our office and have implemented cross training to employees.
  - And finally, we have met with the Law Director to determine the proper course of action to take to recover funds and minimize potential city liability. The law director has advised us that we cannot determine the path of recovery until we determine if and what amount of the potential liability will be.
  - Since all of our penalties are currently either on appeal or have not been given to us, we cannot move in that direction yet. With the help of the Law Director, we will do whatever we can to mitigate or reduce penalties. This includes potential litigation that we are not able to speak on at this time.

I cannot take any more questions to get further comment due to this nature of the situation. Thank you.”

Schaber indicated that he had more questions, but that it does not do any good to ask questions. Daniels stated that he could ask any question that he wanted to because anything up there in that filing cabinet of the auditor's office is open to freedom of information act request (for a public record). Schaber stated that what struck him was that they do not know the dollar amounts, so it may or may not be significant. We have not received that refund (on the payment that went to the wrong place) back and then we made a payment to the correct account. Then where did that money come from? Is it a significant amount? There is a lot of open area there.

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Landon continued >> “Yes, the total amount was about \$1.28 million between June and December. That payment, like I said, was already made to the IRS and we were asking for that overpayment from the State of Ohio to come back to our checking account.”

Schaber continued. So, \$1.2 million dollars went to the State that was supposed to go to the IRS in federal taxes. Is that correct?

Landon >> “That’s correct because the our online payment provider -- when we had looked for that information in our records and they weren't -- it wasn't in existence -- the account number and routing number to the IRS that you would make those payments -- when it was deleted <inaudible> error we looked for those -- that information in the records -- they weren't -- it was not there. So, we went to our ACH clearing company that should have had that information and they gave us the State of Ohio information instead of the IRS information. <inaudible> So then it’s no different <inaudible> people and asked for them to give you a specific invoice for a specific company and they gave you company B instead of company A that you asked for.”

Schaber asked for confirmation that the IRS is paid now.

Landon >> “That is correct.”

Schaber asked if it is true that we have not received the \$1.2 million that was paid in error to the State.

Landon >> “That that is correct. We are working on getting those funds back and we were told that we would get those back.”

Schaber asked where in the world did the second \$1.2 million come from?

Landon>> “That information was already sitting in cash on our accounts. It’s not like we pulled this money from somewhere we shouldn't have. It was money that the city had already. We use that cash to make that payment.”

Schaber said that did not want to keep going on and he really did not want to place any blame on anybody, but what would be the proper procedure to grab \$1.2 million dollars for whatever bill? He understands that it was collected once, sent in error, but he is concerned about what that does to cash on hand and how does that affect carryover? The first quarter is tough on the City. He is surprised that they could write that check.

Landon >> “You’re welcome to stop into my office. I can show you the bank -- the bank – statements. In fact, we actually <inaudible> stand how many employees in the city who could access the bank statements <inaudible> on a date <inaudible> under a view only account. They can't go in and modify it. So, there's another point that we have been more transparent. This is just cash that's been coming in and cash we've had in our account. Yes, after making that payment, we are fine. We still have plenty of cash in our accounts to continue processing role in paying our bills.”

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Meade asked if this second round of \$1.2 million need to go through the Finance Committee.

Landon >> “Mr. Chairman, again this isn't <inaudible> already sitting in cash -- not -- it's not something that needs to go to Council to be appropriated and this was already an obligation that we are required by law to meet. So, it wasn't something where we needed an additional appropriation or anything like that. This is money that is already sitting in cash -- that you have already appropriated for payroll, so we have to meet that obligation.”

Mr. Schneider (920 Cambridge Avenue), President of City Council stated that it sounds like there was a mistake that was made, and the auditor's office is working to rectify it. He appreciates that. His only concern is whatever penalties that exist, and he is sure there could be some. The IRS could forgive it, but the IRS does not usually. He is concerned that the penalties not become a taxpayer concern. Mistakes happen and accidents happen. He is concerned that whatever penalty exists out there does not become a taxpayer thing.

Landon >> “Mr. Chairman, like we said, back in October of 2020, we paid \$22,500 to the IRS due to tax forms needing to be filed in 2019 for tax year 2018 <inaudible> were filed a month late. That was under the previous administration – again -- I'm not going to throw anybody under the bus -- I'm just stating the facts. That was already done prior to us coming into off <inaudible> and those charges weren't assessed until late summer -- I think in 2020. And we brought that appropriation to Finance Committee and to Council back in October -- but that was taxpayer funds. Those fees were an additional appropriation that the taxpayers did pay. And I certainly understand your point, Council President. I definitely feel the same way. Like I said, we are working with the Law Director on various remedies to mitigate any potential liability but again we don't know what the actual liability will be until the IRS would actually assess us any potential penalties. And given a pandemic and being able to show that we have documentation that we were trying to make those payments to the IRS and they just went to the state of Ohio. We feel very confident that we could possibly get those penalties waived or reduced.”

Meade stated that he understood that the original payroll was approved by Council. He asked if the second payment would require an additional appropriation, if we are talking about a total a total of \$2.4 million.

Landon >> “Mr. Meade -- it wasn't -- it wasn't paid twice. It was only paid once. Because it wasn't being paid, then we had we had to make that payment. And any other additional questions I'm going to defer to the Law Director since we had met with him and spoken about our various remedies to tackle this situation.”

Daniels gave an example: If I have \$3 million. I owe \$1.2 of that to the IRS and I pay it to the state of Ohio. Now I've only got \$1.8. I've got \$1.8 and I've got \$1.2 with the State of Ohio and I take another \$1.2 out and give it to the federal government. \$1.2 comes back from the state, whenever that happens to be. So, whatever obligations that \$1.2 had during the time that I sent it to the state and the time that I get it back, how do those upcoming encumbrances get paid? Is that the question?

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Meade agreed. He stated he was puzzled about the money being paid to the state and the IRS. He thinks that could create potential problems with other bills and seems like a lot of money moving hands. He wants to be sure that everything is going through the proper channels.

Daniels stated that he had a discussion with Auditor Landon earlier in the week or last week. His concern was that the State of Ohio wanted to credit our account, which is unacceptable. He does not know what the City's obligation is to them annually. He does not want the State of Ohio holding the money for 6-12 months and crediting our account until we finally get paid up to \$1.2 million. That needs to come back to the City and that would be his contention for why they are talking about it.

Schaber asked about the line item for the federal withholding. If it went to the wrong place, would that line item be less or a negative amount? Should that prompt an appropriation through the Finance Committee to cover the negative amount in that line item?

Daniels said that seems to make the best sense, but it did not happen. We need input from the Law Director to find out if it needed to happen. He is not present.

Schneider asked for clarification. His understanding is that the money was paid, but it went to the wrong place. The City is relying on the State of Ohio to get that back and then it is going to the IRS.

Landon >> "When we get the money back from the State of Ohio, that would just go back into our cash account. The money had already been paid to the IRS <inaudible>, so we're already set there. The other thing is that we made copies of that account information for physical copies of it now instead of searching for the previous records -- not finding anything in the previous records and then being given the wrong information by <inaudible> our payment provider. We've taken additional steps or none of those <inaudible> happen again."

Mr. Schneider asked if the payment company was found to be an error, what liability do they hold? If they can find that the payment company -- the company that is the intermediary -- is at fault, do they have some form of insurance that could possibly cover any penalty or financial liability that may come back to the City?

Landon >> "Mr. President, <inaudible> answer that at this time."

Mr. Meade asked if the payment provider set up the payments to the IRS and to the State. He feels like that would be a premium level of service. He feels like they did not but allowed that may be incorrect. He asked if they set up the payments to the IRS and to the State or is that done by the Auditor's office?

Deputy Auditor Watts >> "Mr. Chairman. This was the original accounts to the IRS and to the state were set up back when the New World came about, which was I think in (20)12 wasn't it? Might have been earlier than that. So, that's why... the payment provider had all the information

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and that's why we relied on them to set up the account. Here again, what we believe to be fault... We can't really say anything right now because we have to determine if we're going to have loss and before you can bring any action, you have to determine what your loss is. And that's what the Law Director said was. Before we can look at bringing/taking any steps to retrieve any funds that could have been lost by the taxpayer's loss, we have to determine what the damages are. So, once we determine what the damages are on our appeals and on our discussion with the IRS, then we can make the step forward to recovering funds. Certain down certain lines of certain avenues, if it be from them or other sources. But there's several options that the Law Director brought up that you know are just okay we could do that but first we got to figure out how much money we've lost. And so, if the state comes back on like that \$22,000 and say "okay, well yeah I guess you did file in time, we're wrong, here's your money back" then there's no loss. So, there's nothing to recover. Same thing with the IRS. If the IRS says, "well okay it looks like you tried to do it, but it didn't work. So, there's no penalty, no interest." If the IRS ever does that. Then there would be no avenue for us to take to recover the funds. So, you know, with Mr. Schneider's question too, you know, there until we determine what the loss is, we cannot really determine our next steps. And so, we're waiting on the IRS. Well, we're not really waiting. We've taking an active role in contacting them to try to move the ball along faster rather than sit back and wait for the IRS to tell us what the problem is and how much or if we're fault. If we're at fault or if we're not going to be found guilty or whatever, it is we've tried to move the steps along faster so that we can get the plan forward to become clear."

Aaron Rollins (850 Vernon Heights Boulevard) asked if any of these accounts are interest bearing. Is there a potential loss that would have been realized, understanding that \$1.2 million of the taxpayer's money has left that account?

Landon >> "Mr. Chairman. We do believe that the money that was sent to the State of Ohio that should have gone to the IRS -- we could possibly have interest on that since that was additional money paid to them that wasn't actually owed to the State of Ohio, so that money could have accrued interest there. I don't know if that's exactly your question or not I hope that <inaudible> a little bit."

Rollins asked would the City have gained any interest on that \$1.2 million over "x" number of months that it was not in a City account.

Landon >> "Mr. Rollins, are you speaking about the city's cash account where that money would have been sitting?"

Rollins affirmed.

Landon >> "Yeah. All of our checking accounts are interest bearing."

Rollins said that, whether or not the IRS issues a penalty or not, the taxpayers lost out.

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Landon>> “As you might know that checking accounts are paying next to nothing right now, so we don't really rely -- I mean the city doesn't rely -- on interest income <inaudible> our checking account.”

Daniels remind everyone that in the course of this conversation they have talked about loss and who should be responsible for that. He believes that the City should look at the contract to see if errors and omissions are even a covered loss. He would prefer not to have this conversation with the City and a vendor if there is no action that can be taken. That could have a further damaging effect on the relationship. He is not saying that no action should be taken, but they probably need the Law Director present to discuss that. He asked for any further discussion outside of the specific topic of loss.

Landon >> “Mr. Chairman. Yes, there's one final thing I would like to bring up. <inaudible> To some of the previous items I brought up that were outside of control. The other thing is we are working with the State of Ohio and cleaning up the City's books. When I took office, we had found out that the City's books were off over \$100 million... through over the last 10-12 years. <inaudible> I would believe of journal entries and various things not taking place that would normally happen. And so, we are working with the State of Ohio and getting those cleaned up and we believe we'll have all of that resolved by Summer.”

Service Director Chaffin >> “Mr. Landon, I'm going to stop you right there. That is not an accurate statement and I will not tolerate that being put out. There is no money missing. There was never any money missing and our audits will prove that. Now, I expect you to retract that statement that there was \$100 million missing.”

Landon >> “Well Miss Chaffin, we have the documentation. I didn't say the money was missing. I said it wasn't properly accounted for on the books.”

Chaffin >> “That means it's missing sir and you will not get by with that kind of a statement. To make that type of a statement. That's defamatory and I will not have that being said, no sir.”

Mr. Ratliff>> “Mr. Chairman. Can I ask a couple questions? When was the payment made to... when was the \$1.2 whatever million made to the State of Ohio? In what month and year was that made?”

Landon >> “Again, Mr. Chair <inaudible> We don't have legal counsel here. I had said that a few minutes ago. I would like legal counsel to be present to be able to continue further answering questions.”

Ratliff >> “Like you don't have a calendar? Without legal counsel you don't know what month that something was paid? \$1.3 million? That you need legal counsel for. <<silence>> You're not going to answer that either? Well, Mr. Chairman, the problem that we have here is we have an Auditor's Office that has made a \$1.3 million mistake. And he has spoken ample times tonight and not one time did he take accountability for his mistake. This wasn't the previous administration's mistake. This wasn't a payment agent mistake. Our Auditor's office paid \$1.3

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million to the wrong person. I don't know when because 'Mr. Transparency' won't say. But I'm going to assume it was quite a while ago. And I'm going to assume that we haven't done accurate audits of our own office. And I'm going to assume that an accurate audit from the auditor would have caught this mistake months ago. But we want to sit here tonight and make statements that we don't want to blast any former person and then he wants to make defamatory lying statements. And, you know, I don't understand how the incompetence that has come out of that office... can't even sit here and say, 'we messed up and we're sorry and we're trying to fix it'. But I think common sense would tell us if you've paid \$1.3 million that was put forth in the budget that we were going to pay and then you repay \$1.3 million, you needed to come back to council. You've paid now \$2.6 million instead of \$1.3, made our books \$1.3 million short, and didn't even have authority to do so. So, I think it's probably good that we do have legal counsel because, you know, the guy may need it. I don't know."

With no other business, Daniels adjourned the meeting at 7:05 PM.

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Chairman Daniels

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Clerk of Council