

REGULAR MEETING – MARION COMMON COUNCIL – AUGUST 4, 2020 – 7:00 P.M., CITY HALL

The Common Council of the City of Marion, Indiana met in regular session on Tuesday, the 4th day of August, 2020 at the hour of 7:00 p.m. in the Council Chambers, City Hall.

On the call of the roll the following members were shown to be absent or present as follows:

Present: Luzadder, Cowgill, Fouce, Batchelor, Cain, Fordyce, Henderson, Brunner and Cline.

Absent: None.

The minutes of the previous regular meeting of July 21, 2020 were presented. On a motion by Councilman Steve Henderson, 2nd by Councilman Don Batchelor, the minutes were approved as presented by the following vote. Aye: Luzadder, Cowgill, Fouce, Batchelor, Cain, Fordyce, Henderson and Brunner. Nay: None. Abstain: Cline (said he was under quarantine and had to miss so he will abstain).

COMMITTEE REPORTS: Councilwoman Robin Fouce said she had a report, Board of Works. Is that appropriate now? Council President Deb Cain told Fouce, sure, yes. Fouce said the Board of Works met Monday, August 3rd. The Marion Fire Department did update the 911 Policy to include that any take home vehicles owned by the department are to have the properly installed child restraints. That was approved and passed. And they paid the bills. Also, they did mention opening their meetings to the public for comment. She believes they said three minutes per person was on the topic of discussion. They were going to discuss that. So she wanted to notify them of that, Fouce said.

UNFINISHED BUSINESS

COUNCIL APPOINTMENT – Marion Utility Service Board – Council President Deb Cain told the Council, at this time they have one application from Mia Erickson, if they've had time to look at it. Councilman Mike Cline said, if a motion's appropriate, he will move that they approve Mia Erickson for the Council's appointment to the Marion Utility Service Board. Motion was seconded by Councilman Jim Brunner and carried by the following vote. Aye: Luzadder, Cowgill, Batchelor, Fordyce, Brunner and Cline. Nay: None. Abstain: Fouce, Cain and Henderson.

DISCUSSION WITH CITY ADMINISTRATION – LAWSUIT FUNDING – Council President Deb Cain said, okay, she thinks we were kind of considering that it would and anticipate at least an hour for the question and answer period but she doesn't want to restrict the Council members in asking their questions but she also wants to respect everyone's time and if we go over that, she has no problem with that. It may take longer and we need to make sure that we give appropriate time for all questions desired. She also anticipates that we may have to do additional discussions and meetings to follow up on anything after tonight. So she would like to welcome the Mayor, thank you for being here tonight. She's going to open first with a few questions of her own and then open the floor to questions following. She will start on her left and then go up on her right. And then, any follow up questions, please be prepared even after your first questions. If you have follow up questions from other people's questions, have those noted and prepared to ask. Mayor of Marion Jess Alumbaugh said he'd like to note that he also has Chief of Staff Mike Flynn here this evening, City Controller Julie Flores and City Attorney Tom Hunt as well. Cain said, okay, thank you very much. Okay, so her first question is that, since the calls have began and increased with the rapid, regarding rapid deterioration of the city in their neighborhoods, it seems like Code Enforcement Officers are not working as much or they're not out. This is the perception as we drive down the streets. Mayor Alumbaugh asked, whose perception? Cain replied, well, she's seen it. Other neighbors have seen it. The other members have received..... Alumbaugh told Cain, well let him phrase this. We're here to answer questions about the finances of the old Y and if it's operational, how we deal with those is really his decision and the Administration's decision. Mrs. Cain told Alumbaugh, okay, let her finish that question then. She was going to ask, has the Code Enforcement, has that office and any other departments, have they been defunded because of the lawsuit and the need of using....? The Mayor replied, no, but the state defunded some money. That's Blight Program's dried up some. In fact, if you recall Council, we talked about being cited just two years ago as one of the top two Blight Elimination cities in the State of Indiana. So he would disagree. Cain said, okay. So, there was a vacancy in the Code Enforcement. Has that been filled? Alumbaugh said they're in the process of filling that. Cain then said, okay. So the Council asked for a reporting of the anonymous donations given toward the lawsuit, we just

2

asked for an amount. The response was that these did not go through the city books and so no tracking was done in the city books so you didn't have a figure. We asked for that figure from Ice Miller. Have you been able to get that, Cain asked Alumbaugh. Alumbaugh responded, that's a legal question. He'll let counsel answer that. City Attorney Tom Hunt told the Council, none of those funds went through city books. They were paid directly to Ice Miller. Under the statute, the donors have requested anonymity and based upon that, you're not entitled to know who they are. Mrs. Cain told Hunt, we didn't ask for who they were. We asked for how much was given. Hunt said, he can't tell them. He doesn't know. Cain asked, and when are you going to be able to provide that amount? Hunt answered, we're not obligated to provide that under the Open Door Law because it is not city money, didn't come through city books. It went directly to Ice Miller. Mrs. Cain said, so then do we know that you were credited that money or did it just go to them and it did not go against the bills? Hunt stated, it should be reflected on the bills that you have been provided. Cain asked, and it would be reflected how? Hunt responded, it would be reflected on the bills that you have been provided. Cain told Hunt, okay, but the bills are charges that we had to pay so how would the reflection then show? Hunt said there would be a credit on the bill. Cain said, okay, thank you. Mr. Mayor, in Mrs. Flores' deposition, there were answers to questions that gave her great pause and concern. So, on page 21, Mrs. Flores was asked the question regarding anonymous donors and the answer that she gave is only her, she had heard about it through the media and she knew of no funds. In the Deputy Controller's deposition on page 54, it was answered that there were no knowledge of donations, that's not anything that comes through the city and there's nothing ran through the financials. So, can he assure her that he feels confident that Ice Miller gave them the credit for those donations? Mayor Alumbaugh answered, he feels confident that the donations went directly to Ice Miller. Cain said, but, her question then was does he feel confident that Ice Miller gave them the credit of those donations against the bills? Alumbaugh told Cain, he would put his trust in them, yes. Can he confirm that? He didn't dig that deep but he would say that he trusts them. They've been good advisors to us. They told us TIF deals they didn't think were good and said don't do it. Cain asked, would he please provide them with that invoice that shows that credit? The Mayor said they could seek it from Ice Miller. Cain said, okay, thank you very much. And then Mayor, on page 18, the question was asked for an estimate, not an actual figure, the best estimate as to the amount of bills that have been paid. Neither she, as the Controller, nor the City Deputy Controller could answer that question yet they are the ones that cut the checks and are charged from him to follow the money, know how much the city has to spend and not spend. So then on the follow up question, it was asked if there was anybody who was responsible for monitoring what the city has spent to this lawsuit. The answer was vague but in essence, to her, it read that no one was tracking how much was spent. So, why could no one answer that then and can he answer it now? Mayor Alumbaugh asked Cain, who is that question directed to? Cain said Mrs. Flores. City Controller Julie Flores asked Cain, is she talking about the deposition? Cain said she was. Flores stated, well at the time, she didn't know that she was going to be asked how much had been spent. She does have a lot more than the YMCA lawsuit on their plate upstairs. She has though provided all of them every invoice that was paid and the funds that they were paid from. So, she doesn't understand what her question is right now. Cain asked, so, then, today, tonight, she can tell them an exact figure then of how much has been spent? Flores replied, yes ma'am. Cain asked, and how much is that? Mrs. Flores stated she didn't know that off the top of her head. If she'll allow her to go get her file, she will tell them. But they were all provided that and should have that information in front of them. Mrs. Cain told Flores, thank you for getting your file, she appreciates it. She said, so another question that was asked, regarding was there a cap? Was there a total amount that they were anticipating to spend on the Y? Did they put into place that this is the last dollar amount that we're going to spend and the answer was that there was not anything in that knowledge from the Controller to know, okay, we've spent this amount of money, we don't have any more to spend because we already spent over that. So, did you go into this pursuit of the lawsuit with the knowledge and a firm cap spending or do you not have a cap of how much you're going to spend and determine how much you will not exceed? Mayor Alumbaugh said, well let him go backwards. When he was running for Mayor in '15, paving streets, #1 by far, second most was find out what happened to that money at the old Y and hold the people accountable, who did whatever they did to that money. So he gets elected and he asks John Seaver of Umbaugh and Associates, now Baker Tilley, financial advisors for the city since he took office, will he take a look at the old Y finances and see if there's any red flags and if there are, let him know. If not, he'll tell the community it's time to move on. Fast forward, they meet again. He said he said, what'd you find, John, any red flags? OMG Mayor, red flags everywhere. Why did the FBI ever leave? So that's when he hired Ice Miller. And the cost of justice, as you (Cain) once said last fall,

Mayor, I agree with you, I think we need to pursue this. The Mayor said, to not pursue this would be a travesty of justice. Justice doesn't always come cheap so he didn't put a cap on it. He's not sure where it's going to go. Right now, we know we're going to spend \$10,000 to \$15,000 appealing to the Indiana Supreme Court. If they say no, that's it, it's over and done. If they say and agree with us and the amicus group of attorneys throughout the State of Indiana who said that they think this should be heard in court, they don't buy the statute of limitations, they said that's not reasonable. That is an unreasonable expectation (inaudible) predecessor or anyone working for him would have blown the whistle on themselves and he totally agrees with that. So, at what price? Just four or five months ago, she said that Council President Cain said, right and she did and they had this discussion before today and she responded to that statement that yes, she did at the time because he had come to her to talk about it and he had assured her that this was a no brainer. We had a sure win. He had it all in his, it was no problem, it was a sure win. Well that didn't happen. The courts denied it twice. And she also remembers him stating that he had donors that were going to fund the whole cost. Alumbaugh said, no, he did not. Cain stated, and that didn't happen either. So, it didn't work out the way he said and she's concerned, she's at a pause. It's costing \$1,600,000 in a city budget that he has constantly said we don't have the funds, we don't have the funds, we're running on tight budgets. He keeps asking the department heads to cut back and cut their budget because we just don't have the funds to pay for things. But then we spent \$1,600,000 on a lawsuit that even at the beginning, as soon as she read the first page of the deposition, she's thinking in her limited mind of the law, how did we even think we had a prayer in winning this? But we spent \$1,600,000 of the taxpayers' money from a budget we don't have money from. So that's her stance on that. Mayor Alumbaugh said, a budget that is much healthier now than it was when he walked into the office in 2016.... Cain said, but it's not \$1,600,000 strong right now. Alumbaugh stated, Deb, we could argue this all day and night. Cain said, yes we could. Alumbaugh continued and said, but here's the deal. The people of the community, this lawsuit was going on in November, last November, front page of the paper, on the radio every time he goes on, he thinks the people voted what they want to see happen. They want justice. And she's saying that we have no chance to win? The statute of limitations should not apply in this case at all and to allow that, there's a, what's that phrase? Adverse domination, the State of Indiana needs to adopt that policy and if we can help enforce that, if we can make sure these things never happen to us again, (inaudible) when you're an elected official. Mrs. Cain said, and in the Supreme Court, there's only 5% of the appeals that are accepted by the Supreme Court so she doesn't know how..... The Mayor told Cain, yeah, we could drag this one on it sounds like, Deb. We feel it's worth pursuing and that's the Administration's call. Once the budget's set, he makes the decisions how it gets spent. If we need to come back for more money, we have to come through you guys and say hey, we need a little help, can you move funds for us? We've done that sparingly. Cain then said, okay, she'll go on to her next question. The question was posed in this, so then you don't have a cap on that. She's taking that as an answer no. A question was posed in the deposition stating the citizens of Marion were concerned about the money being spent on this lawsuit. Who within the city is monitoring the spending? The answer was the Board of Works approves the bills. The listing does not have an invoice attached on the amount of the fund or the funds paid from. So the clincher, to her, was, on page 28, the question does the Board of Works simply get a line item as to the amount to be paid relating to the lawsuit without any back up or support? The answer was yes. She will tell him, this caused her great concern and she thinks that he'll get affirmatives from the Council members. The Board of Works approves bills to be paid without back up from the Council, without back up, but the Council, we have oversight of the budget. Yet, neither entity knew how much was really being spent until the Council began asking questions. It was us that asked the questions. She wants to inform him that she feels that this is going to be a hot topic for budget time and how we anticipate approval of bills to be handled in the future. This is not acceptable in her mind. It's a travesty of handling finances and a lack of accountability. So how much did he inform the Board of Works in the spending of the lawsuit? Mayor Alumbaugh replied, they approve bills or don't approve bills, that's their job. Cain asked, so in approving the bills, what kind of conversation was held between the Board of Works and the Administration on these are your bills we're paying, this is how much we're paying out for the lawyers for the lawsuit, for the legal. Were they informed? You know, they don't, the difference between the Board of Works and what she sees is that these are bills that come to them without..... Alumbaugh told Cain, yeah, they do get detailed bills so that's not correct. And number one, to answer that question, she said that the citizens were asking about how much is this going to cost. He hasn't had one citizen come up to him and say they don't approve of this. The only people he's had any pushback from, and the Board of Works hasn't come to him saying "how much have you spent total?" Some of them are paying attention and probably know or have a

4

really good guess as to how much. They're close but that's because they're paying attention when they do the bills. But, to say that they've asked him how much, no they have not. Council President Cain said, so the bills that they receive, it does not have funding accounts to where they know how much is being pulled out of each fund. So they don't even know, they don't, they're not aware and they are not privy to the information that it's being pulled out of this fund and we now only have instead of \$500,000 in it, we've already taken out \$480,000. That's her concern is that there was no tracking accountability in this lawsuit, according to the depositions, and until the City Council started asking questions and requesting answers, we didn't even know how much funds were spent. The Mayor stated, the local media was asking those questions before that. They were actually reporting on the amounts. So he would say, yeah, the questions were being asked from the media, both the local radio and the local newspapers. So they were asking those questions and gathering the information. Mrs. Cain told Alumbaugh, well, he sees her concern? She hopes that he realizes her concern is that there is not enough information to anyone, the Board of Works or anything on what is being spent, where is it coming from, so that we can have that available to know what's left in those accounts and what state is the city in in the finances. So, those are her questions. Mr. Cowgill, if he's prepared, if he needs a second or whatever, she'll let him get started. If he wants to turn his mike on please. Councilman Brian Cowgill said, thank you for coming tonight, Mayor. His first question is on the Rainy Day and the EDIT Funds, he doesn't know if that was his choice or if he was advised to use those funds. Was that just his choice or was he advised? Mayor Alumbaugh told Cowgill he has a Controller with 18 years of experience in Gas City as a City Clerk before he was elected, brought her over here. So she has a lot of experience in municipal government, as far as the finances. They talk, she makes her suggestions. What's his question there? Cowgill said his question is that in 2018, the Rainy Day Fund, we had \$300,000, 2019 it was down to \$170,000, and then this year, it's at \$14,000, which is pretty much zero. He just doesn't know if a lawsuit justifies a rainy day. You know, to him, a rainy day thing is the pandemic going on right now or if we were to have some kind of a financial hardship that hit us that we weren't prepared. He doesn't know, he just doesn't think that the Rainy Day Fund was the fund to take money out of, no more than the EDIT. Mayor Alumbaugh told Cowgill he appreciates his opinion. He appreciates his opinion. Cowgill told Alumbaugh he knows those are under his control and he understands all that. I'm sorry? Alumbaugh said he appreciates his opinion, that's his opinion. Again, let him remind him, we're much better off than we were in 2015 financially. Revenue did not exceed expenses. Cowgill said, and he would agree with that. He agrees with him on that. Alumbaugh said, we improved dramatically, while pursuing justice in what happened at the old Y. So we've made great strides. We're improving equipment at the same time. Cowgill asked Alumbaugh, what's the outcome that he hopes for? Alumbaugh told Cowgill he hopes they get their day in court because what happened should have never been allowed to happen. And when she (Cain) said that he told her we had a slam dunk, he's not a naïve child. No case in court's ever a slam dunk. We've seen that over and over through our history. But we feel like we've got a good case built. We just need a jury to hear it and a judge. And we think you'll be startled at some of the stuff that you'll hear about. And he realizes some of them were serving back then. He's not pointing fingers at you guys. He doesn't think you were given good information. He does not think you were given.... He told Councilman Luzadder, he mentioned that on the radio even that he felt like sometimes he wasn't getting good information from the previous Administration. WBAT has that on the radio, they did the interview. He listened. And in 2018, they sat here, except for the new members, and said at the end of the budget session that, and it was his opponent in the general election that actually brought it up first and then all other eight members spoke about it, this is the most transparent, approachable Administration they've ever dealt with and they sang Kumbaya to him. They're the same team. What's changed? Mrs. Flores asked the Mayor if she could interrupt. The grand total that they've spent on the Y Lawsuit so far is \$1,561,285.45. Very irritating that we hear \$1,600,000 tossed around all the time. She also, excuse me ma'am, excuse me, she has the last board report from yesterday, the Board of Works. Let her read across what's at the top – the date filed, APV number, name of payee, appropriation number, description, amount, and then the check date. So the board does get all of that. This is the board report so they do get details of what's being paid. She wanted to clear that up, Flores said. Mr. Cowgill said, he means, the whole thing is frustrating too, on our part, Mrs. Flores, because like when we read in the paper constantly that we are not communicating, that it's us, us, it's not, that's not the case at all. He means City Hall's been closed for four months. He means, and he's a new member, okay, so he's still learning how the Council works and everything. He thought that the Council and the Administration worked together on, you know, everything good for the city, projects, finances, whatever, and here it is August, he has yet to be approached by anybody, hey Brian, you know. He's

5

willing to help on anything. Mayor Alumbaugh told Cowgill, they actually met early this year, remember? Cowgill said, the one time, yeah, in January when he (Alumbaugh) first took over, or when he (Cowgill) first came in here and that was it. That's the only time they've ever met. The Mayor said, we are separate entities of government. You're elected (inaudible) and then he's the operational. Cowgill replied, he understands that and he's not trying to take anything from him. He's just saying, he guessed it's kind of the two heads are better than one. If we've got both entities working simultaneously for a common goal, he would think that that would be a good thing. Alumbaugh said, okay, but the big separator here is now, at this time, this Council is saying they don't think he should pursue the old Y case, we've spent enough money, stop it. He says to them that people voted in November knowing he was pursuing this and said keep pursuing it, let's get justice. Do everything you can to get justice first. Cowgill told Alumbaugh, and he doesn't doubt him, he's never lied to him, he doesn't doubt that people's told him. But he is telling him that he doesn't lie either. He has had a lot of people ask him why are we still going after this, after we were denied twice. The Mayor said, denied on the statute of limitations, not on the evidence. The evidence hasn't been heard. Mr. Cowgill said he's talking about the lawsuit. Alumbaugh replied, yep and both times it was denied was the judges saying the statute of limitations. Their expectation is that the Mayor or somebody working for the Mayor should have blown the whistle and said there are some things going on here we're not sure are being done right. Unreasonable expectation and that's why the amicus attorneys sided with us to take it to the Supreme Court. They said "you're absolutely right. That's not how real government works. That's not the real life way of government. Typically, somebody does that, the leader of the community, the Mayor, (inaudible), the next day, that person is no longer working with the city, or that night. Blow the whistle and you're gone. It's an unreasonable expectation. Cowgill stated, and he understands, he's not a lawyer, he doesn't know the law, he doesn't act like he knows the law and he thinks that the common citizen out there is in the same boat. So when we hear that the lawsuit was denied the first time then it was denied the second time, he thinks most people think well my gosh, if it's denied twice, why are we going? And that's because he doesn't know the law. He may be exactly right with what he's saying, Cowgill told Alumbaugh. Mrs. Flores said, sorry, just wanted to address about communication, Mr. Cowgill. She knows he's new. She's told this Council numerous times, she is in the office, call her. Mr. Henderson came a few times in his first term. She doesn't think she's ever talked to Mr. Batchelor. Mr. Cline called her maybe once or twice. Mr. Luzadder came to her office one time with the Mayor. Mrs. Cain, until recently asking for all the documentation, never called her on anything. Mr. Brunner, she doesn't think she's ever talked to him, or Gary (Fordyce). So, it goes both ways, like the Mayor said. Her office is open, she's there every day when she's not on vacation. So, you know, call her. She means, they didn't have to subpoena her. Ask her to come to a meeting. Call her and ask her about the bills. Don't have her copy 1,400-some pages, just call her. That's all they ask, Flores said. Mayor Alumbaugh said, and he would echo that because, Brian, he definitely agrees with that. He had kind of a naïve attitude when he was elected. He thought all Council members were all just going to work for the good of the community and work with the Mayor but he's finding out even some other Mayors have faced this. He can tell them, Tom Henry doesn't have that adversarial working relationship. If there's something he needs to do, let him know because he has, if they want to meet with him, even during this, just wear their mask, they're going to take their temperature and let's sit and talk and work things out. He chose to pursue the YMCA case, if that's what this is about, he chose to do it and, as Mayor, that was his responsibility. He had to make that call and he doesn't regret it. Councilman Cowgill told Alumbaugh, and he has no ill feelings towards him. They had a great meeting just a couple of days ago. Alumbaugh said, yes, Mrs. Fouce and you. Cowgill stated, and that's what he's saying. He loves when we work together like that. Alumbaugh replied, right. We just disagree on this and, again, most of the people he's talking to, maybe they're talking to different people but almost, he hasn't had anybody come up to him. They don't even talk about the lawsuit hardly ever. The ones that do tell him to go get justice. But if you'd walked with him in 2015, and keep in mind, as time passes, you forget. That was on the front burner back then and people were angry. The dots weren't connecting and people from a distance were noticing that. The newspaper was covering it with factual paperwork they were gathering, doing their research. There's a reason for it. He just can't go into the details. Cowgill asked the Mayor, can you answer this? When he asked them the hope of their outcome, is it to find somebody guilty or to get finances back? Can he answer that? Alumbaugh answered, we hope to get money back from one of the entities anyway and to help offset. They did get money back from one, if they recall, \$300,000 he believes it was. So they're hoping to get money from one of the other entities who has the resources. Just accountability. He doesn't want anybody ever to be able to take this position and do this ever again. Not in Marion, Indiana, really anywhere else but

6

this is a place he loves, the people he wants to do his duties for and serve this community well. And if he did that, he's just telling them, his family would have held his ass, they would have held him accountable. City Attorney Tom Hunt told Mr. Cowgill, that's a great question, it really is and it was a two part question. Are they hoping to get money, hoping to find out somebody did something wrong? The answer is yes to both of them. That's what the lawsuit's about. The facts of this case have not come out. It's been denied on a procedural technicality, as the Mayor has mentioned. They just want their day in court to explain what went on because that's what the taxpayers have wanted to know, and number two, to get reimbursement. And that's a great question, he's glad he asked that because that's what this is all about is trying to get reimbursement, but at the same time, trying to let the public know what happened to all that money. There's a story to be told and Mrs. Cain has picked out handpicked things from a deposition that really don't pertain to the lawsuit, but he's telling them, those depositions are full of facts that'll just stand the hair on the back of their neck straight up and that's what they're trying to do. So, thanks for the question. That was a good one, Hunt said. The Mayor told Cowgill, and let him add this, Brian. What's to stop him or any other Mayor in the future, if they know that the statute of limitations and have access to attorneys that can tell them if you do this, this, two year statute of limitations apply, you're going to be in office for three and a half more years. Cowgill said, well he would hope that our elected officials would be honest people. He knows that's not always the case but that is his hope. The Mayor said that's why we really think it's important if we can get this adverse domination adopted in Indiana as well. A number, many states have it. We just don't. Councilwoman Robin Fouce said, thank you Mayor for coming today. She hopes this is the beginning of many more where we're together and we deal with city business, certainly not under this auspice but under the standard things that we do to manage and run the City of Marion. So she looks forward to that. Any part that she can play in facilitating that and helping that happen, please know that she's open and you know, she comes to him, she calls him if she has an issue and she'll continue to do that. Hopefully, they can bridge the gap that exists between the Council and the Administration. We are one, we're one Marion and we need to mimic that in how we interact with one another. Having said that, that doesn't change where we are and where we find ourselves today. She's gotten a lot of feedback. She's a District 4 elected person, official for District 4 and as she sits here and hear him say that, you know, the people elected him and so they must have wanted the lawsuit to continue and no one has ever given him information or indication that they wanted something other than him pursuing the lawsuit. Well, she sits here today to let him know that she talks to constituents regularly and she doesn't get that same feedback that he's sharing with them. She gets they want to know, they want to know why their streets aren't paved, they want to know why this hasn't happened, why this isn't done, why we're economically not able to serve them better as taxpayers of this community. And so, while she may agree, you know, if someone's broken the law and something's been done improper and illegal, certainly she would want us to pursue it. But she's at a fork in the road in terms of what is the cap on that? Where do we stop? Where do we move on? Where do we, she doesn't want to say lose but where do we count our losses? Certainly, he knows more than she does and so some of that, she has to trust him. But what she does know is that we certainly could use \$1,600,000 in another way here in Marion in terms of employees. We had a question on our questionnaire, question 11 asks how do you justify why we spent this money on a lawsuit appeal when our Compliance Officers, City Maintenance need vehicles, A/C, heat? What is really important to Marion and how we serve Marion? Mayor Alumbaugh told Fouce, yeah, that was a question that Judge Hunt described as argumentative from an attorney perspective. We've upgraded equipment. We've been upgrading equipment in every department, much more than it's happened in years. So, keep in mind, while the lawsuit's going on, you guys said we're doing more with less. And Kathi's (City Clerk Kathleen Kiley) got these things in the records of the meetings. This Administration is doing more with less. It's been incredible to watch. We're doing better with the finances, even though we're pursuing justice in the lawsuit. We're upgrading our equipment more than it's been done in the past, during the lawsuit. So we're still doing all these other things operationally. We're paving more streets. Every penny in the streets in getting used. That's the one he gets the most compliments on, keep paving Mayor. He will say some people say "pave my street though" and it's usually in a small neighborhood. We're paving the major thoroughfares first but we've paved and paved. At the end of last year, we paved over 1/3 of all miles of the city roads in Marion. That's a lot of paving. But every penny that gets put into the roads, from the state, is being utilized for the roads. So we feel like we're doing all that and pursuing the lawsuit. We're getting better financially. Nobody could predict the pandemic, he agrees with that. There are going to be some tough decisions to make, we know that, but we have come a long way. Fouce said, Mayor, what would he have her tell her constituents? Having kind of shared with him the

7

feedback that she's getting, what would he have her to tell them? Alumbaugh told Fouce, tell them that when he ran in '15, #2 on the list, after paving the roads, was pursue this, pursue justice. And if anybody thought lawsuits were going to be inexpensive, especially we know the one we think we can get some money from, they're going to stall. They've stalled it as long as they could. They've played stall ball. They forgot 1975. We know how to play against the stall and we persevere and that's what we're doing. They wanted to drag it out, they wanted to get this community to turn against him. Guess what? The election came and went, they didn't turn against him. The community did not turn against him and he was still pursuing the lawsuit. So tell them there's a lot of people out there that realize it wasn't going to be cheap but pursue justice because we don't ever want this to be allowed to happen again. If you don't do that, Robin, what stops somebody else? Fouce told Alumbaugh she's all for the law and so she doesn't refute that. She can't say to him today, other than after having read the court's opinions, that she wouldn't say well hey, somebody did something wrong, go after them. She can't say that. Actually she won't say that. But she will say she feels there has to be a stop loss at some point and so she pretty much has reached that point, based on her conversations with her constituents. Certainly, she may have had one person say contrary but the majority of them, they want to know what was spent and how and why are we continuing to do it. And so, that's their words and so she's accountable to them. You know, she supports him in as much as she can. They disagree with where we are now but she doesn't ever want him to think that she doesn't support his efforts toward the good of Marion. Perhaps they have different avenues that they want to pursue to make that happen and hey, this is the nature of people being individuals. But, in terms of return on our investment, Brian kind of brought that up, or Councilman Cowgill brought that up, does he have a projected return on our investment? Say we win the appeal to the Supreme Court, which the chances are minimal, in her opinion. She's not a lawyer, not a judge, not any of that, but in her opinion, the chances are minimal but say we do get to that point. Now we go to litigation. What is our projected return on our investment because we're going to invest mega-more than where we are now to go through a trial. So is there a projected return on our investment? Will it be worth the money that we have spent? Mayor Alumbaugh told Fouce, if she's just looking from the financial, he doesn't know, we don't know what the court would rule. If we get this day in court and the jury rules in our favor then the judge determines the amount that the entities would have to pay. But don't forget the adverse domination. If this helps impact change for the future, that makes this much more difficult to ever happen again anywhere in the state, that's what justice is about. We've lost, you know, you've watched t.v. and the news, we're losing our way between right and wrong and we can't continue down that road. We've got to stand up and get in the gap and say "no more, not on my watch". Ms. Fouce replied, yeah, our kids are watching us and they're watching us have silly, ridiculous, petty, back and forth in the news and toward one another and it's unacceptable. We can do better. We are commanded to do better. And so, we all have our times but certainly, as a rule, we can do better. She wouldn't want an intern with her today, walking her journey of City Council, city politics, city adults, people that have sworn to serve. She would shudder at illustrating that to our kids. And she's not preaching to him. Hopefully he's in agreement, we can do better. And so, she just wants him to see her heart in this. She doesn't have a vendetta against him. She's probably more so for him than some that play like they are. The only other question that she would have, we did win, what, \$300,000 through a settlement. Where was that money deposited and what, if anything, is it General Funded or where did that money go? Mrs. Flores said they deposited that into the EDIT Fund. Fouce said, okay, and then our lawsuit bill is being paid out of the EDIT Fund. Alumbaugh responded, right. That's our miscellaneous (inaudible) those things you have to take care of day to day operations. Councilman Gary Fordyce said he has no further questions on the information or the lawsuit. Councilman Jim Brunner said, Mayor, first of all, he wants to get something off his chest and he only has one question for him. No one on this Council has served as many years as he has in public service, a little over a quarter of a century, School Board, City Council, and he has found him to be the most straightforward, easy to work with Superintendent/Mayor he's worked with so he just wanted to get that off his chest and let people know, if you try and work with you, you're a very easy person to work with so he thanks him for that. Alumbaugh told Brunner he appreciates that. Brunner stated, secondly, the only question he has and he's been asked this from a lot of people, give us the timetable of where we are on the appeal and what's the best possible and worst possible time we'll be getting some results. The Mayor replied, well first let him and then he'll let Tom Hunt address that because he's part of the Judicial System most of his life but President Cain mentioned it earlier. We're at the Supreme Court but the chances (inaudible) let this go to court, they have so many cases they look at and they really narrow it down but the chances aren't great that we'll get our day in court, and for that, he's sad. But again, he's privy to a lot more

information than you guys are because of this position he holds and working with Ice Miller and the City Attorney. So, you know, this stuff he knows that may never get heard and that's sad. But President Cain was absolutely right, the chance of the State Supreme Court hearing this is not great at all. They take a very small percentage. And he'll let Tom Hunt answer the second part of that. Mr. Brunner said, Tom, again the question was what's the best case scenario, worst case scenario and when we might hear something? Mr. Hunt told Brunner, okay, good question. First of all, the figure quoted by Mrs. Cain is not accurate. It's not a good figure but it's not 5%. Before he answers his question, let him tell them a little bit about how this works. When a case gets to the Supreme Court, each side gets to write a brief about why they think the court ought to take the case. The court does not have to take the case. And generally speaking, they'll even turn down cases that they know the decision was wrong, simply because it does not affect a broad range of Hoosiers or doesn't affect a law that pertains to a broad range of Hoosiers. They look at those isolated cases that are going to have the biggest impact across the state. So when we sat down after we got the disappointing result from the Court of Appeals, we talked with the folks at Ice Miller and he talked with the Chairman of their Appellate Division, who's probably had 35, 40 years experience in the appellate field, and we decided that we needed to make the issue, he's trying to think of a better word than sexy, but it had to be attractive enough to grab their attention and that's how we settled on this adverse domination aspect because it does affect the day to day operations of cities across the state. If someone in control of a city can do wrong and not be held accountable for it and have the statute of limitations run while they're still in office, you're encouraging this behavior. That's a real problem and so the folks at Ice Miller framed our issue in that context. London Witte gets 30 days to come back and write their brief then we get to respond to that. That's already happened. The court meets once a week in conference and what happens is the briefs go to the Clerk's Office, the Clerk gets them all bundled up, assigns it to a judge who's going to write the opinion. That judge will have his Law Clerk write a memo on why we should take it and why we shouldn't take it. That's circulated to the other five judges. They meet in conference once a week and they vote and it takes three of the five to vote to take the case. He anticipates, he can't guarantee but he anticipates hearing before the end of the summer because it's been fully briefed for about three weeks now, he thinks, and he suspects that by Labor Day, we should hear. If we hear and they take the case then there will be an oral argument and then the court will decide either for us or against us. If they decide against us, that's it. If they side for us then we get to go back and have our day in court. He told Ms. Fouce she mentioned that she read the opinion, and he thinks a lot of people had, from the Court of Appeals, the reason she didn't see anything about the facts in there is because this was decided on a procedural technicality. It had nothing to do with the facts, they weren't even discussed. It was on the question of whether or not the statute of limitations ran and they based it on an arbitrary date in 2014 when Mr. Seybold was still Mayor. And that's our argument, that he wouldn't have sued himself. Why would he? So the statute didn't begin to run until January 1st of 2016 when Mayor Alumbaugh took over and that's the argument. That's the argument that the Indiana Municipal Lawyers Association has joined in with us and we think, hopefully, that'll be successful, Hunt said. Mr. Brunner told Hunt, so to follow his line of thinking, if this indeed you do get a favorable report back to you by Labor Day, when could we possibly be in court then? Hunt replied, well, if we win, it'll be sent back to the Trial Court. There's a brand new judge in it now. Judge Haas recused himself so that new judge is going to have to take time to, and he can't remember who it is, have to take time to get acquainted with the case but, for all practical purposes, discovery has been finished. So we're ready to go to trial. If they tell us we win, we're going to tell the Trial Court Judge we're ready to go. But, based on the calendars of the courts, it could be six months, it could be nine months. Councilman Steve Henderson told the Mayor he said something a while ago about doing everything we could to pave streets and using all the money that we had available. He disagrees with that and he'll tell him the reason why. How many times have we taken advantage of the \$1,000,000 matching grant through the state? How many times have we put up the \$1,000,000 and the state provided \$1,000,000 where we would have had \$2,000,000 per year? Mayor Alumbaugh told Henderson he doesn't think they have. They just used the money the state gave. Henderson said, well and that's what makes this \$1,600,000, \$1,500,000, whatever you want to argue that amount to be. Alumbaugh stated, but that's his call, it's an operational issue. Henderson said, right, but that's why the people are asking about the paving of the roads and he (Alumbaugh) said that was #1, the trial was #2. Okay? We, as Council people, went on the hook last year and raised the LOIT and we did that in anticipating of the taxpayers getting more roads and more things paved. Instead, the money out of that account has been used to pay this lawsuit. Alumbaugh said, correct, some of it. Mr. Henderson said, so it kind of puts us on the hot seat.... Alumbaugh told Henderson, you're saying we would have

9

money, we can't use that money. You're talking about the match? Henderson told Alumbaugh, you can use that money any way you want to use it, that's your choice, but it's not necessarily the Council's choice. Okay? Mrs. Flores said, we did go for Community Crossings twice. She doesn't know exactly the amounts. The first year, we did not go, Mr. Henderson, for the \$1,000,000 because we didn't have the match and that was well before the lawsuit started. But we have gotten two awards from Community Crossings. Sorry that she doesn't know those amounts right now. Henderson told Flores, \$765,000 and you used the Water Works paving to get that done. Flores said, she's just saying. We did go for Community Crossings. Henderson said he does know the figures. Flores replied, okay but we did go for the.... Henderson stated, but the point is taken that we could have had, over this last six years, if we'd have had \$6,000,000, we'd have had \$12,000,000 worth of roads. Let's just move on. That's just one of the things. But we went on and raised the LOIT so they could spend the money on this lawsuit. That's your choice, not our choice. But, he wonders how the taxpayers that are skimping by, that are having to pay this extra tax that we put on them, knowing it's not going towards the roads or whatever. That's disturbing to him. Alumbaugh asked Henderson, so you don't think we should pursue justice with the lawsuit? It's too costly, justice? Henderson told Alumbaugh, well, he hates to tell him but when this all started, he (Alumbaugh) told him it was all going to be funded by..... Alumbaugh stated, no, he did not tell anybody that. Henderson said, yeah, you, absolutely. He'll swear on anything you want to put out here, that's what he told him and obviously other people in this room got told the same thing. All of us can't be lying. That's what he got told. There again, that was 2015. A lot of things changed since then. How many defendants are in this lawsuit? Hunt told Henderson, the primary defendant is London Witte. Then there are, it's hard to answer because there are shell corporations from Michael An that are involved, Michael An's estate's involved, Chad Seybold's involved. There are a number. Henderson asked, okay and who represents each one of those groups? Hunt replied, a fellow out of Chicago represents London Witte and he doesn't frankly know who represents Chad Seybold. Henderson said, okay and who represents the estate of Michael An? Hunt answered, nobody. Henderson asked, nobody has taken that and Hunt said no. Henderson asked Hunt, then why is his name on the front page of that document saying that he does that? Hunt asked Henderson, you think there's something suspicious about that? Henderson replied, well, he's not a lawyer. He just sees his name as representation. Mr. Hunt stated, well let him tell him why. In order to sue somebody that's dead, you have to open their estate and a creditor, which is the City of Marion, can open the estate. And so you have someone from the creditor be appointed as personal representative to open the estate to sue them. Henderson asked, and so, we couldn't have done somebody else, other than him? Hunt asked, who? Henderson said, well, we have several different lawyers on the city payroll. Hunt asked, what difference does it make? Henderson replied, well, it's a matter of perception. It may not be illegal or whatever.... Hunt asked Henderson, why is he suggesting it's illegal? Tell him what his grounds are. Henderson stated, well if he's representing a defendant, Michael An.... Hunt said, no, he's not representing him. Henderson said, well it says.... Hunt said, no, Mr. Henderson, you're mistaken. It doesn't say that. Henderson stated, so what does it say on that front page? Hunt said he represents the creditor and he's the personal representative representing the creditor. Henderson said he doesn't ever see the word creditor in there. He's just asking because it doesn't look right, okay? Hunt said, he's just telling him what the law is. Henderson said, yeah, it just doesn't look right. Hunt told Henderson, if he wants to extrapolate something sinister from that, that's his issue. Henderson said he's not insinuating any of that. Hunt replied, well he thinks his questions certainly do. Henderson replied, well, it just wants answers. Okay? Just like all the people that ask him why.... Hunt said, Mr. Henderson, he answered his question. So why doesn't he accept it? Henderson said, he doesn't have a choice, he's not a lawyer. He just wanted an answer. So, in moving forward with this lawsuit, how much do we expect to spend if we go to trial? Mayor Alumbaugh said, we don't know yet. Henderson asked, could it be another \$1,600,000? Alumbaugh told Henderson, we don't know yet. You're throwing figures out. We don't know yet. Henderson said, he means, do we have any kind of guesstimate of any sort? No? Alumbaugh said, why would you guess? Henderson responded, well, we're trying to do a budget here coming up. Now, we borrowed \$3,800,000 last year to keep this city open. Alumbaugh said, well he can tell him the people that we are involved in the lawsuit with hope you guys stop it. They absolutely hope you do. That'll be for you to deal with. Henderson told Alumbaugh, that's your choice and not the Council's choice but he hears it all the time about why are we doing this and he reflects what Robin said because people ask him all the time, why are we doing this, why are we doing this and he can't believe that he doesn't have one person to even tell him that. He doesn't understand how that happens. He must live in a different side of town than him. But, as we move forward..... Alumbaugh said, again, let's go back to the November

election when he was still pursuing this lawsuit, the vote turnout for him was pretty strong. He's saying that tells him they're saying pursue justice. Henderson said, that just says tells him they prefer one person over another. Alumbaugh said, in 2015, that was one of their most adamant requests. Henderson said, and he understands that but he guessed he doesn't understand, with all the other lawsuits the city has going on, that we still have going on, we haven't got any updates as a City Council of what's going on with those. We'd like to know what's going on with some of the other stuff too because budget time's coming, we don't know what's going to happen there. The state is telling us we better prepare for a 20% loss this year. Alumbaugh told Henderson, call, get a meeting set up when he has concerns. Sit down with him and Julie. Henderson told Alumbaugh, well he'd love to do that, but unfortunately, he's a little busy right now with his wife and taking care of her right now. She's not in very good shape. Alumbaugh commented, he knows that. Henderson stated, but preparing forward, we've got to find 20%. Every dollar is going to count, and if we borrowed \$3,800,000 last year, we're going to have to find 20% more. He doesn't know how his (Alumbaugh) math is but that puts it at about \$4,500,000 that we're going to have to borrow next year. We need to find that somewhere and if we have an ongoing lawsuit that's going to continue to take money out of our Rainy Day Fund or our LOIT Fund or whatever other funds that we can manipulate those out of, and he's even seeing funds that we shouldn't even be using money for and he's not even going to discuss that. He doesn't even want to go there. But we need to just be aware that we're not the bad people here, we're trying to help, we're trying to make sure that we do not get ourselves backed into a corner. And we don't know how long this virus is going to last. We don't know how long people are going to be out of work. We already know that the effect of this is killing small businesses. So, our tax revenue is just going to go in the pot. That's our concern with going forward, can we really take another \$1,000,000 or another \$1,600,000 or whatever it's going to take to finish this thing? Are we even going to be in that position? Mayor Alumbaugh said, we may know the answer to that within the end of this month. The State Supreme Court may say nope, we're still going to say the statute of limitations applies. Henderson told Alumbaugh, he just wants him to know where he's coming from because he looks at it from a money standpoint. We need every dime we can get and anyplace we can find that, we need to look. If we need to flip rocks up and look under it or whatever, we need to do that. Alumbaugh replied, he looks at it from the mandate they gave him when he was running for Mayor and got elected in the fall of 2015 and took office in '16 and they said if you get elected, pursue justice and hold those accountable that were a part of the YMCA. Mr. Henderson replied, and he understands that's the one he chose but there are several other ones he could have chose along with that and he thinks he understands that. There's other derivitories (sp?). Alumbaugh stated, there's no question, if we had \$1,600,000, \$1,500,000, we would be able to use it for other purposes but, again, he stands by that. They told him, pursue the justice in this thing, find out who did it and what they did and bring them to justice. Henderson told Alumbaugh he just hopes, moving forward, that he and the Administration look really hard to see what we really need and what we really don't need as far as spending because, in his opinion and his opinion alone, this could be a budget as tough as what happened in the Depression. It could mean that much. Councilman Don Batchelor told Alumbaugh, Mayor, a statement that he made earlier, there's no ceiling, there's unlimited, there's no limit to how much money he will spend pursuing this lawsuit. That says to him that, since there's no cap, then he has a blank check to spend all the money he wants to spend and he doesn't think that an open checkbook with no limit, he thinks that's a concern of his. Next question is this lawsuit started what, in '16, when he first went into office in '16. Mayor Alumbaugh told Batchelor, yeah, probably middle to late '16. Batchelor said, so going into the fifth year, and Judge Hunt mentioned that it could come in, they could make a decision at any time and also it could be a continuation. So, since there's no limit on how much we can spend, does he anticipate coming before the Council asking for an additional appropriation to pursue this lawsuit? The Mayor said it depends on how it plays out. You know, if we get a quick court date and the trial goes quickly, that would be one thing, and again, we may get told by the end of this month or yet this summer or fall, the State Supreme Court may say it's over, it's all done. We still stand by the statute of limitations. From a perspective of your average citizen, he doesn't understand that ruling, whatsoever. Batchelor told Alumbaugh, also, he mentioned that information has been released to the news media and the Council is getting second handed information. He thinks that's a little twisted. He thinks the Council should be informed of certain things before it goes to the news media because he was out in a public place and they called him saying "what is this that's going on?" He doesn't know because we haven't been informed and that is very embarrassing. Alumbaugh told Batchelor, well the media didn't. He didn't call the media and say here's the deal. They called him and asked questions. His door's open. Any time he's wanted to meet with him, he meets with him very quickly. If he has those

questions, come talk to him and he'll be glad to answer them. Batchelor said, he's just saying, just out of acknowledgement, acknowledgement of the Council members. That should be automatic information. He shouldn't have to set up an appointment with him and he's already sitting on the information. He thinks it should be sent to the Council. Alumbaugh asked, what information would he want, specifically? Batchelor replied, well, he doesn't have a laundry list of information but when he met with him back in, whenever it was, February, whenever it was they had their one on one and he said to him, even in that meeting, the lack of communication between him and the Council needs to be better and he said to him that he was going to try to be more forthcoming and stuff then. And, at this time, he understands this epidemic, this crisis that we're currently in, perhaps has delayed because even City Hall has been closed for four months, for the most part. So, that's what he's saying. He would appreciate better communication and he doesn't want to rely on getting information from the news media when he feels that he should have been informed prior to. Also, and this is his last question he has, the money, since we don't have a cap on the money that we're going to spend and he doesn't know whether it's going to cause him to come back to the Council for an additional appropriation then, therefore, if that does occur, then there's going to have to be some cuts or adjustments made in other areas in order to accomplish this. Mayor Alumbaugh asked Batchelor, is that a question? Batchelor said yeah. Alumbaugh asked, what's the question? Batchelor said, the question is, if he has to come back before the Council, asking for an additional appropriation.... Alumbaugh said, what is he willing to give up? Batchelor said yeah. Alumbaugh stated, yeah, we'd have to have that discussion. His sense is, based on this conversation here today, that you're probably not going to want to do it anyway, as a Council. He's sensing, he doesn't know that, he's just saying that's his sense of it right now. Batchelor asked, not going to do what? Alumbaugh answered, finance the lawsuit. He doesn't know that. But again, that was his mandate and they said find out what happened and we feel like we know. We know what happened we feel like and we want that day in front of a jury and a judge so it never happens again. Councilman Mike Cline said, Mayor, Counsel, Controller in the back of the room, Chief, thank you guys for showing up, for giving us your Tuesday. He's got one question. It's based on a hypothetical but it could happen. If the Supreme Court (inaudible) on this and it comes back to us, and he cannot imagine you guys haven't thought of this, he'd be disappointed if you haven't, how precisely are you going to pay for it? Where exactly is the money going to come from? You have to have thought about that. Alumbaugh told Cline it's come from the EDIT Fund, almost exclusively. Not exclusively but almost always from the EDIT. Cline asked Alumbaugh, and you are the arbiter of that fund? You decide where it goes? Alumbaugh said, what's that? Yes. Cline asked, how much is in the fund, how much comes to the fund, ballpark figure, in a year? Alumbaugh told Cline that would be Julie to tell you because it ebbs and flows. Cline replied, she's already had enough. Oh, no she's not. He thought she was. Flores told the Council she doesn't know that off the top of her head. The Mayor said, he will share this with them. She shared some news with him today to tell them how we are still taking care of the daily operations. The Insurance Fund is getting close to being zeroed out and that was \$4,200,000 when we took office in 2016 in the red. So, he hears they're concerned about how we're going to do this but we've been taking care of business and he's very proud of this team, he really is. They're doing things the right way and we've been very frugal. Cline asked Flores, is that a question he can bug her with later and he'll share her answer? Flores told Cline, absolutely, yes. Cline stated, okay, he'll bug her later. Thank you, he's done. Councilman Brad Luzadder said, first Mayor, thank you for coming. Thank you to Mike and Julie as well as Tom. He thinks this Council is up in arms because we just don't know the information that you have and he understands that we sort of went down this way before but he guessed, in hindsight, numbers are larger than what we would have probably expected for a lawsuit, at least in his realm of it. And he says that for the reason that he went before the County Council and asked them to work with us to increase the LOIT, or the LIT, by \$1,400,000. We went ahead and did that, this body went forward and did that and the monies in which it went to hasn't really been used for the betterment of the citizens, which was the reason in which we went and asked for the extra money. And so, being it's being paid out of the EDIT Fund does cause us a little quar (?) because, as we were told, the \$300,000 from Farmer's State also went into the EDIT Fund. Is it his understanding that that money has been spent also? Mayor Alumbaugh told Luzadder, well, the EDIT Fund is strictly our day to day operations fund basically for those expenses that come up, that you need to pay the bills and you pay it. Every department has their own budget they operate in. If they need an additional appropriation, they come to you guys to get approval on that. But the EDIT Fund's set up with you guys every year. During the budget hearings, we have that set up and we use it and then it's up to him how he wants to use it operationally. And, he thinks he hears you saying you don't think it's a good use of it for the lawsuit.

He disagrees. But he was the one mandated when he was elected to pursue justice. Luzadder asked Alumbaugh, was that the only mandate you were given was to pursue the lawsuit? Alumbaugh replied, we're paving a lot of streets. He's been told that that's the most paving, by many people, that they've seen in years. Again, we paved over 1/3 of all the city streets, miles of city streets, by the end of last year, according to our City Engineer Mike Graft. He was very proud of that. So we're doing a lot of paving. The lawsuit, either you like it or you don't, it's an opinion that everybody's going to differ on probably but it is what it is. We've been able to take care of paying the lawsuit while still getting healthier financially on our day to day operations. Luzadder asked, are there departments for the city that have lacked in equipment because of us pursuing the lawsuit? Alumbaugh told Luzadder, when you say lack equipment, he'd love to have all new vehicles. Certainly that would be great. But, there again, the lawsuit was something he thinks is very important. Don't know his predecessor well at all, some of you do. But right's right, wrong's wrong, he wants justice for the people of Marion. That's what they told him, pursue justice, see this to the end. He wants justice for what happened at the old Y. Luzadder asked, and can he explain to him what justice would be in his sights? Alumbaugh replied, well our day in court and hopefully the judge and jury say yeah, this wasn't okay, that we rule against these people and we rule in favor of the City of Marion. Then they will settle, financially, but also we think that adverse domination, if we can get that changed, as we talked to you and Deb, Mike Flynn and himself, that's huge too. These weren't just mistakes. Not mistakes. That's not the right word. Mr. Luzadder said, but he asked it before with him, at what cost? Alumbaugh replied, \$1,500,000 or so right now, we don't know yet. That may be it. We may not spend much more because the State Supreme Court may say in the next weeks or month, hey, we're going to say statute of limitations still applies. Keep in mind, what they're saying is to his predecessor or somebody working for him should have said there's stuff going on here that doesn't look right, I'm going to let the courts know. We think that's unreasonable for anybody, that they would do that, unless they just wanted to start a new job anyway. Luzadder asked Alumbaugh, and you firmly believe that we have enough money to move forward with this? Alumbaugh answered, we've been doing it for four years while improving financially. We've been doing it for four years, now four and a half, while improving ourselves financially and upgrading equipment. Could we have done more, as Councilman Henderson pointed out, if we had more money? Probably, but again, what's the priority? He hears some of you saying the lawsuit's not our priority. Mr. Luzadder said, and so the payoff would be from London Witte at about \$3,000,000? Alumbaugh answered, we don't know what they would get told to pay. It's not up to us to choose that number. The one entity settled out of court. Luzadder said, for \$300,000? Alumbaugh said, correct. Luzadder asked, do we believe that the estate of Mr. An has the money to reimburse? The Mayor stated, we don't know. We (inaudible). There's (inaudible) of money there but we don't know. Luzadder said, it seems like the city didn't know going into this. Alumbaugh told Luzadder, you're looking for a financial return only and we told you in our meeting, what stops the next person from sitting in this seat, saying statute of limitations, City Attorney, you know, what's the statute of limitations for this? And if they say two years and you're in it for three and a half, four more years, do it now, statute of limitation applies, nobody can touch me. Luzadder said he would think that there's nine members here that would move to stop that. He thinks that we're a little smarter than what we were in the past. Alumbaugh said, some of you were here when this happened. Some of you were here when this went down. Luzadder said he can't say that, we didn't see that. Alumbaugh said, well that's what he's saying, he doesn't think you were given good advice. Luzadder told Alumbaugh, you're deadly right. We were not given good documentation and there was a lot of things that were changed. Alumbaugh said, well this stops it when somebody wants to go down the road, it still holds them accountable later on, if we can get this changed, at the state level, every community in the state, adverse domination. Luzadder said, looking into our budget for next year, where is he seeing that we're going to have to make strong cuts? Alumbaugh replied, we're still in discussions about that. We're still having discussions about where we think, if we're going to make cuts, where would they be and how would we do it. We'll talk to you guys about that first when we do our budget hearings because you're going to have your input and you're going to want to share what you think, right? Luzadder said, well he would hope so. He guessed, if we would have some talk with that, he wished there would have been some stronger communication moving forward before this. Alumbaugh asked, in regards to what? Luzadder answered, with the lawsuit and the spending of funds. Alumbaugh stated, we've been doing this for four and a half years. It's been all across the media, they were reporting on it. You guys know about it, he thinks all of you do. If they want him to do a better job, as Councilman Batchelor challenged him to let them know where we're at, he can do that. But either you're for the lawsuit or you're not, there's not much grey area from what

he's hearing here today, from the nine Council members. He thinks it's pretty evident who is saying stop it and who's saying you know what, pursue justice, we agree. Luzadder said, he was just thinking if we move forward, he wants to make sure we have the funds in which to do it. Alumbaugh said, well he doesn't know what those amounts would be. He can't give them any particulars on that. We don't know. And again, we may not move forward. We may be told again in a month or two, hey, State Supreme Court ruled with the other judges, they're not going to do it because statute of limitations. So, this conversation would be pointless then because that means it all stops, it's over. Luzadder told Alumbaugh, well he guessed he trusted him when he said he had some stuff that we didn't know, and Mayor, he'll tell him, he still trusts him with the information in which he says he has. But he doesn't know if a higher court is going to trust that we have the right information. And that scares him, especially since we are looking at tighter budgets. So, it's not that he doesn't want him to pursue something, he does wish he had been asked when we go to spend an astronomical amount of money of that. But that didn't happen and he's okay but he will tell him, it's tough for him moving forward when we don't know what may be coming. Alumbaugh told Luzadder, well if you recall, when he first took office, that budget was already set by his predecessor for 2016 so we used the funds when that started, out of that previously planned budget from 2015 Council. But since then, the lawsuit's been going on and it's been pretty much public knowledge what's going on because these folks here from the radio station and this gentleman from the news media, the paper, they're covering it. It's been going on for some time now, since 2016, and it's no secret that it's been costing money. Some say \$1,500,000, some say \$1,600,000, we know that. So, he guessed his question to them is, do you think we should continue the lawsuit if it costs more money? Luzadder replied, he doesn't know. Alumbaugh replied, well that's the call he has to make. Luzadder stated, he doesn't know right now. Alumbaugh said, He doesn't have that choice. He has to say yes or no. Mr. Luzadder told Alumbaugh, he looks at the audience and you say you came into a budget in 2016 and in the audience are two members of that Council who he knows were very strong in putting that budget in which together and he knows that they did their work, just like we did with putting that together. So, you were able to make it through on that 2016 budget. Alumbaugh responded, right, no that's what he means, but we operated within that budget which was previously planned and then ever since then, it's been the Council in '17, '18 and '19 were the people serving during his first term. Now this is a new Council to some extent. Luzadder said, well and we've always made sure that money was there for his departments. Mayor Alumbaugh stated, again, he'll go back to 2018, at the end of that budget session, and you guys, to a person, just said this has been a very open and transparent and what a team and excited, all four of us being up here, sitting here and said this is the most open and transparent Administration we've ever had. And some of you have been here for quite a while. Luzadder said he just wished the openness was before we found out about stuff in the media. Alumbaugh replied, well that started probably in '17 maybe. Some of this stuff started way back when the lawsuit began. Luzadder stated, well, he understands. He tells them that they're not privy to day to day operations, that that's under his auspice, but we don't see the stuff until it comes before us and then once a budget's passed, we have to sit back and listen and go on, whether we agree with it or not. So, we made those choices and we have made sure that he had money for those departments. So, Mayor, this is not an antagonistic thing. This is simply saying that the communication has not been there and moving forward, we would like to have a little bit more communication, financially, as we move forward. It's not personal, Mayor. It's the business. Mayor Alumbaugh replied, and when you're talking the operational, the operational stuff, he doesn't mind your input. If you have ideas, share them, but in the end, that's going to be his call. He has to make those operational decisions of what he thinks is best, based on the budget he has to work with, which you guys help approve. He'd love to have your ideas, if you guys think of something, but don't be made at him if he disagrees and says here's why he disagrees. But if you have ideas for things you think are going to make us better operationally, that's how he thinks Robin's speaking, that's how we should be communicating as a team and have those candid conversations. He doesn't have to have the right idea, he just wants to get it right and if somebody's got a better idea and he thinks it works better, he'd embrace it and say hey, Councilman so and so told him that they thought, he thinks it's working great. He has no problem with that. Luzadder said he would like to see that move forward that way and, again, it's not antagonistic. We just want the information so that we can make the right decisions, moving forward with the budget. He needs to make sure that he's (Alumbaugh) going to have the money he needs in which to run the city but he also has to know that we've spent \$1,500,000 that we weren't planning on spending that wasn't really done for the citizens. We're in an idealistic lawsuit, either it is or it isn't. Alumbaugh said, idealistic? Idealistic lawsuit? Wow. Mistakes were made. That's what he's saying, this is more than that, Brad, because we have inside knowledge.

Luzadder said, we know that there were things done that were not right. Alumbaugh replied, oh yeah and that's a soft way of phrasing it. Luzadder stated, and so, we shape ourselves so that it doesn't happen again. Alumbaugh said, and that may take a lawsuit to put that in place. That's the sad part of this. Mr. Luzadder asked, why can't it be between the Mayor's Office and the Council to work together so that it doesn't happen again? The Mayor asked Luzadder, did you work with his predecessor? Luzadder replied, not very well. Alumbaugh said, he's just saying. If you have this in place, like many states do, there's no escape because you can't say the statute of limitations applies. Now if you did anything that's questionable or worse, there's a day of accountability hopefully. Luzadder told Alumbaugh, well he can tell him that there was many, many a time that he didn't leave a Council meeting before his phone rang or he had words back and forth with the Administration because things didn't work out exactly the way they wanted it. Well, he's sorry, that's not the way it works. We have to work together and it's not always going to be working in the right.... Alumbaugh told Luzadder, you just said that, you know, why can't we work... Because of what happened before he took office, at the old Y, that's why there's a lawsuit pending right now while we're trying to get our day in court. And he (Luzadder) was working with that head of the city and that Administration and what's to stop it from happening again if we don't win this lawsuit and get the state to change their rules and say the statute of limitations does not apply to elected officials? Councilman Luzadder told Alumbaugh, Mayor, he thinks we're going to have to agree to disagree. He thinks that this Council deserves to be able to know how we're going to move forward and financially, if we're going to be able to do it. At this point in time, coming to budget time, he's going to be looking at being as tight as possible so this Council would have a little bit more input into the way in which the monies go because at this point in time, we didn't know where a lot of it was going and how it came and what accounts in which it came from. We now know it was from the Rainy Day Fund, the EDIT Fund (inaudible) but he sat on the Board of Works. There's a lot of times with the Board of Works that it's never discussed so this Council is supposed to be up on to those monies and when we start to do that, it becomes adversarial and it shouldn't be that way. Alumbaugh said he agrees. Luzadder said, they should be able to come backward and forward and we can have the conversations. Alumbaugh said, he agrees, we should be working together for the best for Marion. Sometimes we won't agree on what we think is best. That's the nature of government. They have their role in government, he has his role and they're not always going to agree on what's best. That's why we have elections, to let people decide and that's why we do it every four years. Luzadder told Alumbaugh, well, they're both lucky that they have three more years. Alumbaugh said, three and a half, but who's counting. City Clerk Kathleen Kiley said, three years and five months. Cain said, she's counting because she's going to retire. Mr. Luzadder said, Madam President, thank you. Council President Deb Cain said, okay, the follow up is hers and then she'll start back around. She told Mrs. Flores she quoted them a dollar amount that was spent. Is that \$300,000 received from the bank, is that included in that or was that subtracted from that amount? Does she know what she means? Flores told Cain she believes she asked for the expenses so that was a receipt so the \$1,568,000 that she gave them are the expenses that were paid. Cain said, okay, thank you. And then the appropriation that's on the Board of Works, what is left out on that equation, in her opinion, is, okay, how does she word this? The appropriation on the Board of Works list gives them a number but it does not tell them how much is in the budget and what is left in the budget. Is that a correct statement? Flores said they have appropriation reports that are available if they are asked for. Cain said, okay thank you. She told the Mayor she hears him saying that we have a stronger budget but is that also saying that we have \$1,600,000 to spend on the blight, along with this lawsuit? Because the blight is something that the citizens and the neighborhoods are mostly concerned about and they don't see a forward movement on that. Mayor Alumbaugh replied, well again, we were recognized just two years ago as one of the most efficient Blight Elimination Programs in the state so he would argue that. Cain said, okay but her question was then do we also have \$1,500,000 to spend on the blight? Alumbaugh told Cain, you're saying would that be a better use of the money is what she's asking. That's his call and he firmly believes in the lawsuit because.... Cain asked, okay, but do we have an additional \$1,500,000 to spend on blight? Alumbaugh responded, no, not right now. Cain stated, okay, that was her question. Also, in his deposition, he was asked did he campaign on the lawsuit, on pursuing the Y, and he responded he didn't remember. He also was asked did he mention that to the media or the Council and he said he didn't remember. But today he keeps saying that's what he campaigned on. Alumbaugh said he was told by citizens that that was important. Cain said, okay thank you. Alumbaugh asked Cain, so does she believe that's not something we should pursue, the lawsuit? Cain said she was just asking, that was her question on his deposition. Alumbaugh told Cain, that's his question to her. Does she believe we should pursue the lawsuit? Mrs. Cain asked, any further?

Alumbaugh said yeah. Cain said, absolutely not. She told Mr. Hunt she had another question for him. The Mayor said that no one in the previous Administration spoke up but it's her understanding that he was the city legal counsel at that time of the previous Administration. So she knows that Council members were not aware of everything going on. They didn't have that information. Did he have information to be able to speak up? Mr. Hunt told Cain, no. Cain asked, okay, so it's just across the board.... Hunt said, let him just interject and he thinks Mr. Harker, if he did not, he should have advised her that he can't talk. He has attorney/client privilege and what she's asking him to do is violate that and commit an ethics violation and he's not going to do it. Cain said, okay, she removes the question, thank you. She also brought up the Supreme Court, she has it in front of her. They accepted, there were 869 cases, 50 of them were accepted so you divide that and that's 5.7%. She just wanted to make that note. So Mayor, you do not have an amount is what she's understanding on a cap that you're going to spend on continuing this lawsuit. Alumbaugh said he doesn't know how you forecast that. We'll see if we get a court date. Again, the cap may have already hit us and we just don't know yet. The State Supreme Court may rule against us. Cain stated, so her question is he has an open ended amount to spend on the lawsuit then? He doesn't have an amount in his head or in his mind that he says okay, we're just done, we don't have any more to spend? Alumbaugh said his expectation is that we'll go to court very quickly, if the Supreme Court rules in our favor, and that the trial won't take that much longer then. Because we have our case together and he's pretty sure they do too after this much time has passed. So it's just whenever we get the jury and the judge and get it to the court. Mrs. Cain asked Alumbaugh, so if the city does not get its day in court, will he reveal to them the information that has influenced him to pursue this lawsuit so that the Council and the public have that? Alumbaugh answered, there's information at the courthouse right now. The courthouse has information now that's public record. The story was getting told by our previous Editor of the Chronicle, he was doing articles about it back in '14, '15 and there's information over there that can be accessed, public record, if the media chooses to do so, whether it be the print or the radio or whatever. Cain said he keeps stating that he can't give them any information. Alumbaugh replied, we can't. Does she mean when it's over? Cain said, yeah. When it's over, she was asking when this case is over.... Mr. Hunt said, Mrs. Cain, the facts of this case are set out in great detail in the Motion for Summary Judgment, which is in the court's file over in the courthouse. It's open to the public. Anybody can walk up to the counter, ask to see the file, make a copy of the motion, take it home and read it at their leisure. We are not going to talk about it. Cain asked, after the case? Hunt said, we're not going to talk about it. We can't. What he thinks they need to understand is London Witte is listening. They pay attention to the public meetings here. Council attorney Martin Harker said, Mr. Hunt, the question was, after the lawsuit was over, if the information (inaudible)? Hunt told Mr. Harker to let him finish. We can't talk about this because London Witte is listening and they use information against us. That's where part of that information came from in the deposition that she read. It came from somebody in this building who called London Witte's lawyer and told them. After the lawsuit, they'd be happy to sit down and talk with them but, for right now, if they want to know what happened, they can get that Motion for Summary Judgment and see all they want to see. It's all in there. Cain said, thank you, and that was her question. She asked after the city, after the city lawsuit. So, then, this is her last comment or question, actually probably the last comment more than a question. Mrs. Flores has stated that she had not until this time called or stopped by her office but she has emails where she did contact her and she did stop in her office at different times but that was before COVID. And it's like she said to him, Mayor, she stopped in his office but COVID shut the building down. She can't just stop in anymore. Alumbaugh told Cain, if she wears a mask, he'd still see her by appointment. Just let them know. Cain stated, okay so then she had an email today that she sent to him requesting if there was a possibility that we could have a police officer or someone out in the hallway to take temperatures like they do in other public gatherings. She sent that at 9:16 a.m. this morning and never got a response. Mayor Alumbaugh told Cain, okay, preferably, he wouldn't want to use a police officer. We're so, as you guys know, public safety's short staffed right now. He'd rather have as many out on the streets as we possibly can. Cain said, okay but she didn't even get a response to even tell her well we can't do that, he'll provide this or he would ask that they provide somebody. So communication goes both ways. Alumbaugh replied, right and moving forward, we'll try to make sure that somebody's here but he would prefer not a police officer, just again because we're so short staffed. They need to be on the street. Council President Cain said, she's talking about communication going both ways. So, she just feels concerned about the offensiveness because we're asking questions. We're asking questions and we're given oversight and he says that accountability of the last Administration is where it was lacking and why this happened and so we're trying to be that accountability and she's just concerned on the

16

offensiveness of the answers, specifically defensiveness towards her. She's asking the hard questions. She's asking the hard questions. She's never had, she's never had any issues with him. She doesn't have issues with him. This is not personal. These are questions. She's just asking the hard questions, she's asking the difficult questions. As President, she is more the voice asking for information and she has been perceived as harsh, as not wanting to work with him, as picking on him. She has been told that there's different people that have been together and having their prayer time and they're praying because we're picking on him. We're not picking on him, we're just asking the hard questions. She worked with him a lot before COVID, on everything, on a lot of issues. She stopped in just to see how he was. She just stopped in at other offices to see how everyone was. She'd stop in and ask a question and she told him many times she appreciated that and we had that open communication. COVID is what took that away. Not this lawsuit, it was COVID. It was the shutting down of the offices, the inability to have that open door, walk in communication. And in the end, she's here to represent the citizens, just like all of us here on the Council and Marion deserves that we work together but it goes both ways, both feelings. She asked Mr. Cowgill if he had any follow ups. Councilman Cowgill told Cain, well she had one of his follow ups on when this is all said and done, the information you guys are privy to, so Mr. Hunt answered that. It's just, this is confusing to him, he means, because we hear you guys are privy to all this information but then you guys said if we go over to the courthouse, we can get that information? Is that right? Okay, so you're not really privy more than we are, you just know where to get the information basically. Mayor Alumbaugh told Cowgill, well we've been involved in it, with the attorneys and the investigation. Cowgill replied, well yeah. Okay, like again, he's willing to work with him. He's known him a long time, Jess, they've never had problems. But, he means, he also knows that things that he's told doesn't always work out the way that he's told either. So he just wants to make sure that we are completely honest with each other. Alumbaugh told Cowgill, elaborate on that, something that he didn't follow through on. Cowgill replied, Station 1. Alumbaugh said, and he told him why. Cowgill stated, he understands that but for a year and a half, he had probably 10 meetings with him, Mayor, this is (inaudible) because don't let the citizens raise this money, absolutely, I'm behind you, I'm behind you. And then when the money was raised and it was time to go and then it was like, well we can't do it now. But he's got to, he's got to understand his point on that, Cowgill told Alumbaugh. Alumbaugh said, he gets it. Cowgill said, he means, he went out there and put himself on the line, having the citizens raise this money and it just, it makes him look bad. So he's just wanting to just, you know, let's be.... Alumbaugh said, but the conflict with OKRA was we had two grants working at the same time and he said, right now, he has to prioritize the downtown development. Some of these people are putting millions of their own dollars into these investments, we need to try to get that grant. Cowgill said, and he understands that. Alumbaugh said he had to make a tough call. Cowgill said he understands that. Alumbaugh said it wasn't easy for him either because they lived in that place with rain coming in on them, just to go to use the restroom and get rained on if the rain was coming down. That's how bad it was in there. Councilwoman Robin Fouce said, thank you Madam President. Mayor Alumbaugh, a couple of follow ups. He's eluded to his re-election and the success of that being that the support of the people wanting him to pursue this lawsuit and that's what he promised and that's what he did. But, she was there. He also promised some other things and she'd like to beckon to him to fulfill those as well. He promised that he would collaborate with the Council and to date, we're here because that hasn't happened, in her opinion and her experience. So, she would beckon him to change that. Like Councilman Batchelor said, it's unacceptable for us to hear things that are going on in our city, as city leadership, from the media. Where is the line of communication? That's part of an efficient, progressive, business entity, which we are, and so she would beckon him to incorporate that more so into how we do business. You know, she doesn't want to subpoena him. Subpoena's not her go to. But how else were they to get him there? They invited him several times. So, she doesn't want to live in the past so he doesn't even have to answer that. But she does want to move forward with a better understanding, and so, how do we start communicating and where is that, how do we collaborate? Can they get his commitment to attend Council meetings regularly? Mayor Alumbaugh told Fouce, he will be here when he can. He's also got a, he will also be here when he can but he also, and he knows Steve Henderson's dealing with some things, he's dealing with something very near and dear to him, a mom who's failing. She's 91. These last two years have not been easy and they're really not easy here lately and when he sits with her in the hospital, he's praying for his (Henderson) wife. He knows Steve and he aren't as close as he'd hope they'd be but he knows he loves her dearly and she's on his heart when he's sitting there next to his mom. Because, by the way, you only get one visitor, you can't rotate out. At Marion General, with the pandemic, you're the only visitor they get so nobody can come and substitute

for him. He was it so he's spending time with her when she goes up. She goes to the emergency room, she dehydrates often. And there's other things going on in his life. Some of that's made front page newspaper stories too. You know, we all have family issues but stuff happens. But when he can be here and if there's anything important at all that's one of those topics that he knows he needs to be here. But if they'll recall, when he ran in '15, and he's tried to empower you guys, he has not been that Mayor that's said if you don't vote for this this way then you're doing a disservice to the city. He's listened to them say what they feel about the lawsuit and he's told them, he just said here's my opinion. He's wanted to empower them. He's said you're elected officials, you deserve the respect of not having him as the elected official and head of the city tell them what to do. They need to make their own decisions, based on the information they're given and he's respected that for four and a half years. He's not tried to tell them what to do. So he will be here when he can. When he's not, there's a reason almost every time. Ms. Fouce told Alumbaugh, Mayor, he certainly understands the importance and the severity of our financial status and projections in budgeting, moving forward. And so, she wants to support him but how does she do that and he won't support their effort. And so she would beckon with him to come to a meeting. She said publicly she didn't feel like they needed to invite him to a meeting that he already should be at. She still feels that and it's nothing behind his back. She's letting him know she feels that. She just thinks it's important. She thinks it'll cut some of this extra stuff out, that ridiculousness that goes on, if they could just get him here as he can and it be more consistent. Certainly is he aware of the subpoena powers of the Council? Alumbaugh said they are now. Fouce said, so they don't want to do that, she doesn't. She'll let him know that she doesn't. But what is she to do if they need him and they can't get him? The Mayor replied, well he would say this. They gave them a date, it was just around some vacations and this is that date that they said they can all be there then. Fouce said, but well before we started on this budget lawsuit review, well before that, we had Council meetings. Just a few, she's new, she just started in January, you know, but well before that, there was not great active participation in our Council meetings. Prior to getting elected, she attended and there was not, and she doesn't want to, you know, slam anybody that has family things. Hey, we all have family life. She, herself, takes care of her mother. But, she would just ask him to consider honoring his word when he said he would collaborate with the Council and make that an action word, moving forward. Alumbaugh told Fouce, and he would challenge her the same. Let's both work on that and do a better job of it because he thinks you want to do the best you can for your ward, in particular, but for the rest who are citywide, that's the whole community. Your main focus will be your ward because that's who elected you and he gets that but, yeah, he would love to have a good relationship with all nine of them. Work with him and he'll work with them. That's all he can say. He will do what he can, he wants to do things right. When it's all said and done, he wants to make sure the man above's happy with the way he conducted and went about his daily work, that he did it the right way. And he feels like there's some issues here. He would say, he does feel like there are six of them that it's strained and he doesn't want that. He doesn't want that relationship. If he weren't Mayor, there wouldn't be that tension between some of us, at all. We'd see each other at the grocery and we'd have great conversations but when there's these two different roles of government, sometimes you butt heads a little bit because you have a difference of opinion, like we do right now on the lawsuit. Those are just differences of opinion. It doesn't mean he feels like they hate his guts or anything, he doesn't feel hate towards them. They're just not always going to agree. But he does want to be a better communicator with them moving forward, with all of them. Ms. Fouce told Alumbaugh, we appreciate communication and collaboration. Thank you, Mayor, for showing up tonight. Councilman Gary Fordyce said, he has nothing, Mayor. Thank you for showing up and his team. He appreciates it very much. Councilman Jim Brunner said, thank you, Mayor, for your time. Councilman Steve Henderson said, he just thanks all of them for showing up and he appreciates it and he hopes that this has brought the olive branch that we needed to settle this once and for all. And, including the other lawsuits that we've got out that we're in the dark on. We know they exist so we don't want to be caught in this same situation in one of those. Mr. Hunt told Henderson, he wondered if he could tell him what those are. Henderson said, well, there was a Café Valley deal, which he has never known whether that got resolved or not. Hunt said there's not been a Café Valley lawsuit. What are the other lawsuits? Henderson asked, there wasn't a Café Valley lawsuit? Hunt said, no. Henderson asked, then why was a \$50,000 check written to Ice Miller? Hunt replied, because they helped us settle errors that were made by the Auditor's Office in not transferring the correct amount of money that went to the TIF Bond. Henderson told Hunt, which you understand when we see a check and don't understand and we try to get answers and nobody answers those questions. Hunt asked, when did he ask? Henderson said that would have been at the end of last year. Hunt asked, who did you ask? Did he come to him?

Did he come to the Mayor? Henderson told Hunt, no, he wouldn't come to him on finances. At that point in time.... Hunt told Henderson, well, if he thought there was a lawsuit, he would think that he would have come to him. Mr. Henderson, he's said a couple of times tonight "all these other lawsuits" and he's just trying to find out what other ones there are. Henderson said, well maybe somebody else can tell him (Hunt) the other ones that are still up in the air. The other one had to do with the RCA property and the man that used to own the hotels. Hunt responded, oh, he died. That's been dismissed. Henderson said, okay, well we don't know that. Okay? We have no idea how that ended. So, he means, that's just examples of the things that we don't know. Mr. Hunt stated, but you know, it does work both ways and if you have questions, all you have to do is pick up the phone and call. Henderson said, yeah, and most of the time when you ask those questions, when he was asking questions like that in the Board of Works, they would not even acknowledge him and to this day, somebody that asks questions that's represented from this Council to the Board of Works don't get acknowledged. Hunt replied, well he's not the Board of Works. He's just saying that there's been a lot of discussion.... Mr. Henderson said, we can ask questions about checks. Hunt said, he's just saying there's been a lot of discussion tonight about lack of communication. He's just here to tell them it works both ways. He's here every day, the Mayor's here every day, Julie's here every day. All you've got to do is pick up the phone and call and it's just, this whole business about setting dates. Reasonable people pick up the phone and say hey, we want you to come to a meeting, how are you fixed for this day? Unreasonable people set a date and then threaten to go to court if you don't show up. All it takes is a phone call. It works both ways and we're happy to come and explain, answer questions, or do it over the telephone or come into the office. His door's never closed. Hunt told Henderson, he's here to tell him that his comment that there are other lawsuits is incorrect. There are no other lawsuits, other than the typical automobile wreck or slip and fall and those sorts of things that the insurance companies are taking care of. But there are no other lawsuits. Henderson asked, and so those are things that don't concern them? Hunt said he doesn't understand that question. Henderson asked, well, if a lawsuit gets settled, doesn't it have to be paid? Hunt replied, not necessarily. Henderson asked, okay, so you don't need money to settle a lawsuit if you lose? Mayor Alumbaugh said the insurance company pays it. That's why we pay them monthly. Henderson stated, okay, so we have an insurance company that will cover that. Hunt responded, right and Alumbaugh added, if it's settled. Henderson replied, okay, that's the answer. Thank you, he got the answer. The procedure here, maybe this will help them, the procedure here at the Council is that we're directed not to bother you guys. We're to go to our President, present the problem and let them contact you. Hunt asked Henderson, who directed you to do that? Henderson told Hunt that is the way the Council runs. Hunt said, okay, we don't have a control over that. He's just telling him he can call.... Henderson told Hunt he's just telling him the procedure why he doesn't call him. Okay? Council President Deb Cain told Mr. Henderson that was in previous years when we had to do that. Hunt stated, he can't control that. He's just telling him that we all have telephones and our doors are open and all you've got to do is come and see us. Or call us up and say, hey, I've got a question, do you have an answer for me? This works both ways. Now your internal pecking order, that's not us. We're not imposing that. Henderson said, we're in the process of changing that. Mayor Alumbaugh said, and he wanted to make sure, especially for the newer ones, if any of the Council people called Nikki or Stacey while he's been Mayor, he knows Deb probably more than anybody took advantage of that, to meet with him and ask questions and discuss things because we try to get you in within 24 hours. If we can't get you in the same day, we're trying to get you in the next day because that's the respect he believes they deserve as the elected officials. The people of our community put you at this table to do what we think's right for the community. He wants to hear from them. Again, we may not agree on everything. Sounds like some of us don't agree on the litigation at the old Y. It doesn't mean we have to be enemies, you know? He was on teams with guys he didn't run around with after practice, but during the game, we had one focus and that was to do the best for Marion High School basketball. That's all he asks of you guys. He's willing to work with them, he wants the best for Marion and he wants them to be a big part of that. And if he's not communicating well enough, he's going to work on it. But, call him, call him, call his cell. Anybody that knows him for very long, from his days in other places working, knows that email isn't his thing. He does not like looking at a screen. He doesn't like Zoom meetings. He doesn't do email but if they call him, he's usually going to get back with them pretty quickly. Or if they text him, he'll usually get back with them pretty quickly. But he hates sitting at a computer and looking at it. It's just not him. He's sorry, he's old, he's just not wired that way. He's not a tech guy. And he'd much rather, if he can, see them face to face and talk. He thinks how they can build better relationships too. You can do a little bit by phone but if we can sit down more often and just talk and you air your ideas and your

problems in your wards and your community, he thinks we'll build a stronger bond. He loves people, he's a people person, he likes to be around people and he's willing to work with all nine of them to make Marion a better place. Just reach out to him and they'll get them in within 24 hours if at all possible. Council President Cain said, Mr. Batchelor? Councilman Don Batchelor said he doesn't have anything further. Cain said, Mr. Cline? Councilman Mike Cline said, nope. Cain said, Mr. Luzadder? Councilman Brad Luzadder said, no follow up. Mrs. Cain said, in closing, she's just going to make a couple of statements in response. Mr. Mayor, he stated that, you know, he hoped that in public, you know, he can stop and talk. She means, they've stopped in the grocery store many times. A couple of times they saw each other, they just talked. They haven't seen each other since COVID, they haven't seen each other since this started, in public. So, to say that he knows there are six of them that would work with him, she hopes that he's not putting her in those three that aren't because she hasn't even been able to see him in public to indicate that... She's still there with him. She still trusts him, she's still behind him and she agrees with the question, they'd just like to have him here at Council meetings, and if he can't, maybe the Chief of Staff, Mr. Flynn, can be here. Not to tell them how they need to vote, what their decisions should be, but just to have the presence and then maybe even give them an update of the city affairs. So that was the thought and, you know, we're asking oversight questions. Don't condemn them for that. That's what they're just trying to do. They're just trying to ask questions of the oversight of the money spent and the budget and they're doing it because they've been elected, just like him. They're working for Marion, just like him. And she just feels it's not fair to be condemned for that. You know, the decision to pursue the lawsuit has been his but their concern then on the flip side is where the money's coming from and how can it be spent and do we have that much money that he just spent on a lawsuit to also then put into the city and he's answered that "no" before. So, that's just her follow up, Cain said. Mayor Alumbaugh told Cain, and he guessed what he was trying to say about the six people, he said he gets the sense six, basically what he was trying to convey was he believes six people probably are more against the lawsuit than for it. Don't know what the other three are but they're not asking those questions as much and, again, that was a decision he had to make. He can't think, well he's not sure if he's for it or against it, he had to make a decision. And every year, he has to make that decision, is it worth pursuing? Mrs. Cain said, and she just wanted to say, again, thank you, Chief of Staff Mike Flynn, for coming. Thank you, Judge Hunt, for being here, appreciate it. Mrs. Flores, thank you. And the Mayor, thank you too.

Council President Deb Cain said there are a few things they need to do finish up before they close tonight and she does need the Mayor to be here for that. She also believes that Mr. Harker, that he might have some follow up or some statements or questions. Council attorney Martin Harker said, well, he does. Since Mr. Hunt has mentioned reasonable response time and two way communication, he's wondering on behalf of the Council when he may expect either a written or a verbal response to his July 17th letter since it's now August 4th and he's heard nothing so far. City Attorney Tom Hunt said, well he did answer his first letter, Mr. Harker. He did answer his first letter, Mr. Harker, despite its angry and confrontational tone and oftentimes misstatement of the law. But he answered it. The second letter, he's sure he knows, (inaudible) requests. They were inappropriate and not supported by the law. Let's start with the vacation times. Why did he demand that he know when their vacations are? Mr. Harker told Hunt the Council wanted to prevent any future scheduling missteps. Hunt asked, had he thought of picking up the phone and calling like reasonable people do to set a meeting? Harker told Hunt, as you said earlier, communication works two ways, sir. Hunt asked Harker, how did we know that you wanted to set a meeting? Harker replied, well he didn't indicate that he was on vacation in his email to Ms. Cain. He only indicates that members of the staff were not going to be, or that were going to be on vacation. Hunt told Harker he's not answering his question. Why didn't he pick up the phone and tell them they wanted to set a meeting? Harker said, well, because, up to that point, the Mayor's presence had been requested at the June 23rd meeting and he didn't show up. Mr. Hunt said, well, he doesn't want to get into the illegal meeting aspects of this because we're trying to get off on the right foot. He (Harker) advised them that it was appropriate to conduct an illegal meeting. He advised the Mayor that he should not attend. His question is..... Harker stated, once again, he didn't pick up the phone to let him know that. Hunt said, excuse me, let him finish and Harker told him, certainly. Hunt said, his question is, they're not going to get their vacations because they don't have an obligation to clear those with him. All he has to do is call and ask if they're available on a particular date and they'll set a convenient meeting for all of them. Council President Deb Cain asked if she may interject and Hunt told her sure. Cain said, and that could have just been a response to their question. Just explain to them like that, that would have

been perfect. Hunt told Cain, well he doesn't know whether she authorized this letter of July 17th. If she didn't, he'd like for her to read it. Cain said she did read it with Mr. Harker. The reason that they asked can we have whatever vacations you may have planned right now is so that, like when we asked for the presence of the Mayor at two regular City Council meetings and that was, he didn't come then and that was just an emailed invitation. And so, that's why we had to go, that's why it went further with the actions of the subpoena because we had asked for that attendance and it didn't.... Hunt said, you asked for an attendance at a meeting that was to be held out of the public eye so you could control.... Cain said, no, it was a regular City Council meeting. Hunt replied, well, be that as it may, don't just set a meeting. Call us and see if we're available. We're reasonable. Mrs. Cain told Hunt that was a scheduled meeting on that request to the Mayor. Hunt replied, alright, and he couldn't come. And then when they were ordered to appear at a different meeting and he said they can't be there but they'll be there August 4th, he doesn't quite understand why that was an issue. Cain replied, because the statement was only "we can't be there". There was no explanation. Because, after he explained.... Hunt asked, why didn't they call them up? Cain answered, because the email did just, all it did was state there was staff, she doesn't have that one in front of her, there's staff that was going to be out so they cannot be there. But, you know, she asked the Mayor on a phone call, she said well, if all four of them can't be here, can we just ask questions to those that can be here? That was the question asked. She wasn't given an answer on that so then we went to, okay, well we'll just, we'll request everyone to be here. But again, we weren't told who couldn't be here. To be honest, if she had known that he (Hunt) couldn't be here and she understood that they wanted him to be here to make sure that, you know, they were answering questions they could and weren't put, as you said, there are people that record it, like Ice Miller, that follow everything, she would have understood at that point. But that was not information given to them. Hunt said, all he's saying, Mrs. Cain, is all you have to do is call and say "we want to have a meeting, would like your presence, are you available then?" and we can work it out. Cain replied, okay and she'll do that in the future, but at the same time.... Hunt stated, instead of having him (Harker) send a scorched Earth letter like this a second time isn't going to get you anywhere. Cain said, but at the same time, we asked for their presence and it was denied. Mr. Hunt said they demanded their presence. They didn't ask if they were available. Mrs. Cain said she emailed the Mayor and asked him to be at the City Council meeting and he was not present at that meeting. Thank you. Hunt stated, well, his point is, next time this happens, call them. Don't have him send a scorched Earth letter. That isn't how reasonable lawyers deal with each other. He's practiced law in this community for almost 50 years and he has never sent a letter like this. And that's why he didn't respond to it. Cain replied, well, she's not going to keep arguing because she could argue back on how we are.... Councilman Brad Luzadder said, let's just move on. We're not going to get anywhere by going back and forth. We, as a Council, want to move forward with this so let's leave it at that. Hunt told Luzadder, they do too. He agrees, Brad, let's leave it at that and let's call each other. Let's not have our lawyer send scorched Earth letters. Luzadder said, he would say that reasonable people, like he said, should be able to work together and he believes that's what we should be doing. Hunt said he absolutely agrees with him. Luzadder stated, so we're reasonable, he's reasonable, reasonable people can work together so let's do that. Hunt said he's all for it and they'll do it. He promises them that. Mr. Luzadder asked Mrs. Cain, is there anything that is going to move us forward? Cain said, no, let's take a break and then they have three things to look at after the break. Mr. Hunt asked, does this involve us? Cain replied, yes, it involves the Mayor and that's all. They'll meet back at 9:15 p.m., Cain said.

The Council reconvened at 9:20 p.m. and Council President Deb Cain said, okay so we asked in our letter that the Administration will accept a budget for the budget hearings. Mr. Mayor? So she sent that calendar with the information. Does he accept that calendar? Mayor Alumbaugh told Cain he's going to work with the team to be sure they're all going to be there so they can do this in a timely manner and he'll let her know. Cain said, well she has the dates of the, and that's why she sent it, so he would have time, and she has the dates and the departments to be heard on those dates and then the first reading and the second reading and the third reading. City Controller Julie Flores said just a little bit of issue that she has is that she thinks if it's about the budget, she's sorry, she took her mask off, if it's about the budget, she thinks it should come to her and not to the Mayor. She didn't know anything about this. So, you expect the Mayor to give it to her. She thinks the communication should be with her if it's in regards to the budget. She was told not to say this but it's kind of irritating that she never received a subpoena. She got invited to one meeting and that was the illegal meeting in June that she was told not to attend because we were excluding the public. Cain said, well she's just.... Flores told Cain, excuse me. She never received anything for July 7th. She couldn't have come because

she was on vacation. She didn't know anything about the July 21st meeting. A subpoena. Nothing was given to her. She thinks Aisha brought her one for tonight that was not signed. So, again, she thinks out of respect, if it has to do with the budget, it should come to her. So she doesn't know what budget calendar she's talking about exactly. She had to, in May, do a pre-budget workshop, a pre-budget form to fill out and they ask when the hearings would be and she's submitted that. It's certainly not written in stone but it's been submitted. She thinks she had on there for the public hearing the second meeting in September and then adoption October 6th, if she recalls but she's not sure. She does not meet with her DLGF Rep until August 20th so while she has information a little bit right now, they provide pretty good information at that meeting so that is by teleconference August 20th. Cain said, okay, so in the budget calendar proposed, she had the first reading on September 22nd, which is the second meeting in September, a second reading and public hearing on October 6th and then a third reading and adoption on October 20th. What she had proposed in the budget calendar is that we start meeting with the departments on August 17th and August 20th, August 24th, August 25th and August 27th. Mayor Alumbaugh said, Madam President, can we wait to start those until right after the DLGF on the 20th? That'd probably put us back one week later. That way we'll have the final information from them on the 20th of August. Then we'll know, we'll have a better game plan. Cain said, what she was trying to do on this budget calendar is to spread the meetings out more so that we didn't have meetings from 6:00 p.m. to 10:00 p.m., which has happened in the past. So that's why she had spread those out. If we push it any closer, after the 27th, there's not much time for us as a Council to meet to be able to get questions to you and responses. So, let her look at a calendar here. Alumbaugh said, so really the two meetings we'd want to delay, if we could, would be that one for the 17th and the 20th and move them to the next meeting and start from there, if that would work. It'd still get us in way before the deadline which is... He asked Flores what's the deadline for getting the budget submitted to the state and Flores said November 2nd. Alumbaugh said November 2nd is the deadline for having it to the state. Cain said, yeah, she spoke to a gentleman and he gave her that date and she has it on this resolution she wants to present. Alright, so she will change the calendar and have it set for, they'll move those first two dates into August 1st and September 1st. That's a Monday and Tuesday. Alumbaugh asked, September 1st? Flores said, August 1st? Alumbaugh replied, yeah she meant September. Cain said, August 31st and September 1st. So then that, the department heads would be the 24th, 25th, 27th, 31 and September 1. And she'll redo this. Then the next thing was asking to request his attendance every month and we thought well maybe we could just be able to work the calendar around between him and the Chief of Staff because we'd love to hear from him also at times to just tell us about, you know, affairs of the city, just give them updates but also be in the audience if we need to ask any questions. We thought if we could ask for him to be on the first Tuesday of every month and Mr. Flynn on the third Tuesday of every month and if one of them is not available, the other one could come. Is that an appropriate request? Mayor Alumbaugh replied, well like he said before, he'll be here as much as he can, based on life happening around him but he'll be here as often as he can and he knows he'll (Flynn) try to be here as often as he can and we'll try to make sure we're here, both of us, once a month. On one of those Tuesdays, you get a chance to see us and if you have questions, you can talk to us. They'll do their best to honor that. Mrs. Cain told Alumbaugh, so he's saying they'll do their best to honor once a month or they'll do their best to divide it to where one of you can be here each meeting? Alumbaugh answered, well, try to have representation every time there's a meeting. For the most part, we feel like we've done that. Again, his life's changed some, family-wise, but that's just the season in his life right now. She's 91 so, yeah, but they'll try to honor that and be here so they can ask questions. If they want them to give them a summary of what's going on currently... Cain said, yeah, it doesn't have to be lengthy. Alumbaugh said that will help with communication he thinks. Cain stated, yeah, it doesn't have to be stuff he can't tell them about, like who is the owner of that restaurant over there until they want to be revealed but just the idea that, you know, hey, I've got something new coming, look for this great thing coming, or just any other affairs. And then, just to be here if they have a question because there have been times that she asked him to come up and answer a question if he could. She appreciates that, thank you. And then, then another thing was that we would like to also hear from the department heads, just a bi-annual report and so she can send him like a schedule of... Her idea is like to have a department here in January, you know, in those two meetings. They can choose which, the first or the third Tuesday of the month in January. It'd be like between three departments that they could choose which one they want to be here. If they can't make it to either one then they would have a representative that could be here. Because we would like to hear from the department heads too, just to give us, you know, any, she doesn't know, just so we can ask them what do you need, what can we do for you or they can tell us this is what our department's been doing or we'd like help on this.

Is that appropriate? Alumbaugh replied, yeah, we'll meet with the department heads and have this discussion and say hey, they're wanting you to be there more often, because they've all got a full time job too, but they'd like you to be in attendance and have that discussion with them. He'll give her the feedback once they've met and get their perspective on it. Mike always knows what's going on because they all talk to him on a regular basis. He lets him know what's going on, especially if there's really hot button issues and so they already have most of that information. Not always but most of it. So yeah, they'll try to accommodate that one. Mrs. Cain asked Alumbaugh, can she just send him a suggested idea? Alumbaugh said, yeah, and a calendar. Cain stated, yeah because she kind of looked at the departments and went along with, like budget time, who took the longest and who took the shortest and those are the ones she put together and then chose, listed a whole month so they had the option to come one of two Tuesdays. So they would be coming twice a year. Okay, thank you very much. And she didn't do anyone for, she didn't do any, she kept out August and September because it's budget time. Her main focus was budget time for August and September. She didn't want to put that load on anybody. Okay, thank you. And then, she also, she knows that this wasn't the practice of previous Administrations because she did ask. She specifically asked Darren Reese if this had been a practice of during department head meetings, of minutes being kept, you know, being held and then submitted to the Council, just so we could see what was going on. So she was wondering if he is going to put that into practice and going to be able to provide those for them in the future. Alumbaugh said, you know, most of that stuff is all about operational stuff. He means almost every department head meeting. He knows Mike has every department head meeting they've held each month. He's got them on a list of every department head meeting by date and he could print it out. They are meeting on a regular basis with them but what do they want from the Administration with regards to the department heads? Cain replied, well since they're only looking at them coming twice a year, then those minutes would give them an idea, just gives them an idea this discussion, we need to do this to get roads, we need this grant money, we need this. Maybe they can find help for them or maybe they can come up with ideas and a good plan to help with that but if they, that's communication. Alumbaugh said he doesn't foresee roadblocks with that but let him meet, out of respect for his department heads and Mike, meet with them and have this discussion and say "here's what they're hoping to do", that clarifies it a little more what you were trying to get from the department head meetings. Cain said, yeah. It's just that open communication, additional information for us to get and say oh, well we can help you with that. It's like Mrs. Fouce and Mr. Cowgill took the ball and rolled with it for the first responders and they did an excellent job. She was so excited to hear about the outcome and what's going on with that. And you know, maybe there's other ideas that we might have that we can help with. So, that's it. Is there anything else from anybody else? She appreciates it, Mr. Mayor. Councilwoman Fouce said, Madam President, while we're all here, are we sure that we have all the requested documents that we need, and if we don't, how are we going to follow up and just work with them to communicate what is needed additionally? Cain told Fouce, thank you. Okay, so Mrs. Flores will probably have to respond to this, if she's still here. The credit card statements, she indicated she needed additional time and she was just wondering when that might be. Is that going to be like later in October after budget? Flores told Cain, Madam President, she believes she sent an email that it would take at least 30 days, which would be August 20th. They should have that documentation by August 17th. They had to actually ask the credit card company for that. Theirs are all packed away in boxes, high up on shelves. She's not going to ask her staff to dig through that. It's going to take an enormous amount of time. Apparently, it's taken the credit card people an amount of time too. So hopefully we'll have that by August 17th. Mrs. Cain told Flores, thank you. She just knows that in that email, she also indicated she was in budget meetings and such and she just didn't know if she needed additional time. Thank you. Mayor Alumbaugh told the Council, yeah, when they do request information, would they please include the purpose, why they're inquiring about whatever they're request is and what's the purpose? It might help them be able to expedite what they're getting and be more direct in supplying an answer if they know what they're seeking. Cain said she thinks she did that but she will.

Being no further business to come before the Council, on a motion by Cowgill, 2nd by Cline, the meeting adjourned. Time being 9:35 p.m.