



**CITY OF CARMEL-BY-THE-SEA  
P.O. Box CC  
Carmel-by-the-Sea, CA  
93921**

September 1, 2015

Honorable Marla O. Anderson, Presiding Judge  
Salinas Courthouse  
240 Church Street  
Salinas, CA 93901

Dear Judge Anderson,

In November 2014, the City Council of Carmel by the Sea requested the Monterey County Civil Grand Jury (CGJ) to "review our organization, our corrective actions and make any additional recommendations." Concurrently, the CGJ received a request from residents of Carmel by the Sea to also review the then-circumstances of governance and how the municipal organization "got into this situation."

We appreciate the extensive work the CGJ undertook to produce its June 2015 report. We are well aware, due to the amount of materials which were requested and researched, that it was a monumental task. And while there were matters that arose during the investigation which tested each of our respective positions, the community and the Council extend a "thank you" for the work and efforts of the members of the CGJ.

As you will see from our attached responses to the Findings and Recommendations, there are matters on which we concur; there are others where we profoundly disagree. Thus is the nature of public life and public institutions.

Carmel by the Sea was incorporated on Halloween Day, 1916, by a majority of 27 votes. In addition to the election of its Board of City Trustees, later retitled City Council, the electorate voted J.E. Nichols as its first city clerk. Elected city clerks remained a stalwart of the municipal organization, operating as its CEO, until the mid-1970's when the local government morphed into a Council-Manager (City Administrator) structure. Carmel by the Sea is a General Law city pursuant to State law; it is not a charter city. Thus, many of its operational mandates, regulations and the roles and duties of some of its officers are prescribed by the State Legislature with gubernatorial approval. As a result, the local Municipal Code can be, and in some matters is, essentially silent as the general law provisions of the State take precedential status. There is no entry in the Index of the Municipal Code for the position of City Treasurer, no enunciation of that office's roles or duties. Government Code Section 41001-41007 prescribes the responsibilities of that officer.

In a Council-Manager (Administrator) form of government, the elected mayor's role is to serve as a chairman of the council. The Manager (Administrator) implements the municipal policies promulgated and adopted by the City Council.

The city manager professional was initiated in Staunton, Virginia, in 1908. The purpose was to place municipal operations under the tutelage of a non-political appointee, removing political patronage and partisan appointments from the responsibilities and duties of governance. The landscape of American cities had been ravaged with the likes of Mayor James Michael Curley of Boston, Boss Tweed in New York and the Tom Pendergast machine in Kansas City, Missouri, all political bosses who used their positions for financial corruption, electoral fraud and securing public jobs for political friends in their municipalities. The counter-balance to political governance is the Council-Manager (administrator) form of government. California Government Code Section 34851-34859 outlines the role and duties of a city manager (administrator) in this state.

## CORRECTIVE ACTIONS

In the November 2014 transmittal to the CGJ, the Council asked that it review "our corrective actions." Our efforts to "right our ship of state" began nine months before the CGJ issued its June 2015 report. Whether addressing personnel matters, contractual and procedural policies or the organizational structure, the Council and Staff have forcefully pursued actions to correct the issues which led to our request to the CGJ.

On contracts and purchasing procedures and policies, the Staff has undertaken the following actions which were cumulatively reported to the community and the City Council on 3 August 2015 at a public meeting:

- a. The Municipal Code pertaining to purchasing has been clarified to clearly state that the Staff's authorization limit is \$24,999 and that contracts beyond that amount must be approved by the City Council.
- b. Training of City Staff on the purchasing code and the processing of purchase orders was held on May 20, 2015.
- c. A contract review summary sheet and routing form have been created and purchase orders are established for the full amount of the contract upon the execution of the contract. This will enable the financial system to track the amount of payments made towards the maximum contract amount and will indicate when the total authorization limit has been reached.
- d. The City is preparing a Purchasing and Procedures Manual for all employees.
- e. All contracts beneath the \$24,999 limit entered into by the City Administrator are now listed monthly on the agenda for the Council's regular meeting.
- f. Contracts for professional service consultants and contractors include specific language that the vendor will not be compensated for any services exceeding the \$24,999 threshold unless so authorized by the City Council. The contracts detail that the "not to exceed" maximum amount authorized includes all substantive and incidental expenses.
- g. A contract review and routing form is operative and must be signed off by numerous officials before issued to the contractor. The routing form includes the term of the contract, the authorized expenditure limit, the scope of work and the fee schedule for processing of payments.
- h. A vendor checklist has been created to provide vendors pertinent information about the contract, billing, expectations, etc.
- i. Language is being drafted to be included in solicitations for bids and/or services which require public disclosure of conflicts of interest.

- j. A revised purchasing ordinance is in draft form and under review.

Additionally, the following actions were initiated by the Council or Staff:

- a. An outside, independent attorney was retained to examine questionable contracts which had been entered into in 2013 and 2014 by City Staff. The report was presented at a regular meeting of the City Council with public commentary taken upon the completion of the presentation.
- b. Monies were appropriated in the 2015-16 Budget for updating the City's financial hardware.
- c. The salary ranges for both the IT Manager and the HR Manager were increased in an effort to secure the best available professionals.
- d. An audit of several specialized accounts has been initiated.
- e. The City is preparing a Public Records Act policy manual for use by the Staff and guidance to the public.

## PERSONNEL

The CGJ's report addressed some matters focused on personnel and personalities. Here are actions the Council or Staff have undertaken since the latter part of 2014:

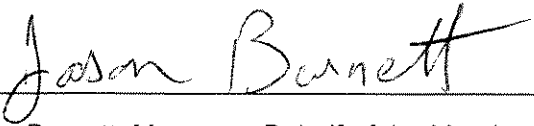
- a. In October, hired a City Administrator familiar with the community and the organization.
- b. Created a new position of Director of Budgets and Contracts and placed an experienced administrator in that position.
- c. Re-hired three long-time employees who had been previously discharged, thus settling the legal actions pending against the municipal organization.
- d. Hired a full-time Information Technology Manager to oversee and upgrade the City's antiquated system.
- e. Hired a professional search firm to recruit a full-time Human Resources Manager.
- f. Based upon the recommendations of both the City Attorney and the City Administrator following their independent reviews of documents, the City rehired three long-term employees who were discharged without progressive discipline. The Municipal Code lists specific disciplinary steps that are to be taken in personnel matters. The City settled the legal matters that had resulted from the terminations. These settlements were reviewed and agreed to by the City's insurance agency, a third party.

## CONCLUSION

The City Council strongly believes that in the past ten months, the City has become more transparent, has and continues to address matters which created the situations reviewed and reported upon by the CGJ, and has taken numerous steps to put safeguards in place to thwart future actions similar to those festering in 2013 and 2014.

We appreciate this opportunity to respond and again thank the members of the Civil Grand Jury for their work.

Sincerely,

  
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Jason Burnett, Mayor, on Behalf of the Members of the Carmel by the Sea City Council

Approved by the City Council on the 1<sup>st</sup> Day of September 2015.

## ATTACHMENT - 1

Findings F1 through F6 apply to the time period prior to the hiring of Mr. Jason Stilwell in late 2011.

Response: The Respondent agrees in part and disagrees in part with the findings 1 through 6. Findings 1 through 6 apply to a time period prior to the current City Council, the current Mayor and the current City Administrator. Attached is a response provided by Sue McCloud who was mayor during the timeframe in question (See Exhibit-A).

This city therefore will focus our responses on what the current City Council, Mayor and the City Administrator have done.

F1

In the time period noted above, City operations were undisciplined, as City policies were outdated, nonexistent or ignored. With several empty Department director positions, employees worked hard to keep up and paid little attention to standard municipal procedures.

Response: Since the time period noted above, the City Administrator had conducted an organizational review. The basic conclusion of this review was that, prior to 2012, each department had been asked to handle much of its own HR, IT, procurement and contract compliance. This was not judged to be a good delegation of responsibilities, especially given the complexities involved. Instead the City Administrator recommended a more centralized approach to each and the city was reorganized accordingly.

Recruitments were initiated to fill key vacancies, notably for "several empty Department director positions." The City Administrator hired or promoted several employees.

The current City Administrator and the City Council continue to find and correct areas of city operations where city policies are "outdated, nonexistent or are ignored."

F2

In the time period noted above, there were serious flaws and vulnerabilities in network system security, placing the City at risk financially and legally.

Response: The City Administrator has recruited and hired an IT director who is now onboard and working to address the IT system including a plan appropriate for the size and complexity of the Carmel-by-the-Sea government organization.

F3

In the time period noted above, contracts were mismanaged with regard to public bidding, purchase order processing, and services provided with expired contracts.

Response: Since the time period noted above, the City Council has updated the purchasing policy and has requested staff to come back with an even more systematic review of the policy and its implementation, drawing on the best practices of similar organizations throughout the state for "public bidding" and "purchase order processing." Staff has brought forward "expired

contracts" on a regular basis for City Council review and the City Council has brought those contracts up to date. The Respondent will continue doing so until all "expired contracts" have been brought into compliance with our municipal code and policies. The City Administrator has assigned a senior manager to oversee public bidding, purchasing and contract compliance.

F4

In the time period noted above, the City Council was not provided with contract payment schedules or accumulated payment tracking reports.

Response: In the time period noted above, the City Council and community were provided with the check register. This format, while essential, does not provide for an easy way to spot trends, see the larger financial landscape or monitor "contract payment schedules or accumulated payment tracking reports." Since the time period noted above, the City Council budgeted for new financial software and, consistent with City Council direction, the City Administrator has made such software a high priority of our new IT manager. As an interim measure, the check register now includes "contract payment schedules" and "accumulated payment tracking reports" for the larger contracts and the City Council receives quarterly financial reports.

F5

In the time period noted above, the Human Resources process was mismanaged with regard to pay grades, progressive discipline, and proper staff training, and was lacking in leadership.

Response: In the time period noted above individual departments managed their own Human Resources. This system did not work well and the City Council budgeted for filling the HR position. A recent recruitment failed to find a qualified candidate and the recruitment continues. The new HR manager will provide the "leadership," "proper staff training," and appropriate "progressive discipline." The City Administrator and the City Attorney have also employed the services of an outside labor law attorney, reflecting the complex nature of labor law in California.

F6

In the time period noted above, the Public Records Act request process was unstructured, noncompliant, and ad hoc.

RESPONSE: The Respondent agrees in part and disagrees in part. The large majority of Public Record Act requests were immediately processed and responded to by the City Clerk. If the City Clerk had a question or a concern, the process had been that the Clerk conferred with the City Attorney prior to issuing the response. City agrees this process was not followed by all members of the City Staff at a later time and was instead referred to outside law firms without consulting with the City Attorney. The City Council adopted a new policy regarding Public Record Act requests.

F7

The Mayor and City Council did not fully execute their responsibilities of inquiry and oversight.

RESPONSE: The Respondent disagrees. The City of Carmel by the Sea is a General Law city established pursuant to the California Government Code 34102 et. Seq. and is commonly referred to as a Council/Manager form of government. In a Council/Manager form of government, the City Manager has the power to administer the day-to-day affairs of the city, including the power to hire and fire employees and perform such other functions as the City Council directs. The Mayor and City Council members in a General Law city provide policy direction and are not authorized to involve themselves in employee matters. When the Mayor and members of the City Council did exercise their power of inquiry, the information requested was not forthcoming or was inaccurate.

F8

Neither the Mayor nor the City Council members received any formal training or substantive orientation on the responsibilities of their positions.

RESPONSE: The Respondent disagrees. The Mayor as well as members of the City Council have attended various workshops sponsored by the League of California Cities on a variety of subjects regarding the role of a city council member as well as a number of other workshops on municipal governance. In addition, the Mayor and members of the City Council have attended the mandatory class every two years regarding AB 1234, as well as local training workshops dealing with the Ralph M. Brown Act, Public Records, Conflicts of Interest and decision making.

F9

The Mayor and the City Council members were more responsive to political pressure than to the need for effective governance.

RESPONSE: The Respondent disagrees. The Mayor and City Council members are elected representatives of the Carmel by the Sea community and as such are responsible to the community. Being responsive to the community is a major part of their commitment to serve as a public servant and is an integral part of governance.

F10 AND F11

THE MCCGJ EXEMPTED F10 AND F11 FROM REQUESTED RESPONSE.

F12

There was no credible evidence to support allegations of contract splitting, cronyism or any other wrongdoing under Mr. Stilwell or Ms. Paul.

RESPONSE: The Respondent cannot speak to the evidence reviewed or the content of the interviews since it was not present during the Civil Grand Jury interviews. The City refers the Civil Grand Jury to the independent review of contracts by attorney Stephanie Atigh. The City

also refers the Civil Grand Jury to Paragraph 9 of the Separation Agreement and Release between Mr. Stilwell and the City which states as follows: 9. Professional Reputation. City shall refrain from any statements, public or private, concerning Employee which would have the effect of damaging his professional reputation or personal character.”

F13

The General Law/Weak Mayor structure was often misunderstood by Carmel citizens and the City Council.

RESPONSE: The Respondent cannot comment, either agreeing or disagreeing, as there is no information or polling data on which to base a response.

F14

THE MCCGJ EXEMPTED F14 FROM REQUESTED RESPONSE

F15

The governance and administration of the City is unduly influenced by the reportorial and editorial practices of *The Carmel Pine Cone*.

RESPONSE: The Respondent wholly disagrees. The City Council has taken numerous actions which have been editorially criticized by *The Carmel Pine Cone*.



F16

The position of City Treasurer is underutilized and so provides little benefit to the City.

RESPONSE: The Respondent wholly disagrees and this recommendation will not be implemented. The duties, roles and responsibilities of the Office of City Treasurer are aptly listed in Government Code Section 41001-007 and are very specific on the limited role of the City Treasurer.

F17

The City Treasurer was isolated from any meaningful role in the contract/invoice disbursements and tracking system.

RESPONSE: The Respondent partially disagrees, as to have (or had) the City Treasurer engaged in the aforementioned role would have been partially contrary to the separation of duties between the City's finance and contracts employees and the duties of the Treasurer. State Law specifies that the Treasurer shall monthly report to the "legislative body" providing an "...accounting of all receipts, disbursements, and fund balances." The Treasurer has no role in contracts.

F18

There was no evidence of any systematic review of contracts in excess of \$25,000 by legal counsel as to form or content.

RESPONSE: The Respondent agrees and disagrees in part. Prior to the dates in question, the City Attorney reviewed contracts and provided approval or recommended changes which were then incorporated into the contracts. During the time period in question, Administrative Staff referred some contracts to the City Attorney for review and comment which were later revised or amended without further City Attorney review.

F19

A significant amount of money is spent on outside counsel as it supplements the City Attorney position in numerous matters including but not limited to labor and employment concerns, public records requests, general business and facilities, joint powers agreements, municipal law, and miscellaneous lawsuits.

RESPONSE: The Respondent agrees. (See response to Recommendation #R14.)

F20

Historical averages of amounts spent on outside legal services over the past five years would support a full-time City Attorney and staff where such attorney would have experience in contracts, employment matters, and Public Records Act requests, as well as municipal law.

RESPONSE: The Respondent disagrees. See Response to Recommendation #R14.

F21

The City Council seriously failed to exercise its power of inquiry in its decision-making process regarding rehires, by excluding the City's outside defense counsel from the process and by negotiating hasty settlements of claims in the early or pre-litigation stages, which precluded any meaningful scrutiny of these employment issues.

RESPONSE: The Respondent wholly disagrees. The City Attorney had discussions with the outside counsel referenced by the Civil Grand Jury who was retained to represent the City in the termination matters involving the employees. Due to the fact that the City Administrator had been verbally approved for substitution as the hearing officer in the Fenton termination appeal, he could not discuss the case with the defense attorney as it would have constituted ex-parte contact. He did converse frequently with the outside counsel who represented Mr. Stilwell when he served as the hearing officer in the four day Fenton hearings in June 2014.

The settlements were not "hasty." The City Attorney and City Administrator had daily conversations on these personnel matters (including weekends), consulted with both private practice and municipal attorneys, met with attorneys representing the terminated employees, reviewed the personnel files, notes from the Skelly hearings, read the Fenton hearing transcripts of over 400 pages, and reviewed the written and stated causes contained in the termination correspondence. The City Attorney and City Administrator made recommendations to the City Council based upon their independent reviews of this information.

It is ironic that the Civil Grand Jury states these efforts to bring fairness to the unnecessary firing of four long time employees was "hasty" since a private practice attorney retained by the City and involved in these termination matters told the City Administrator on 19 February 2015 that the decision process for ending the careers of the employees was "very aggressive" for the alleged offenses.

R1

The City require all elected officials to undergo The League of California Cities "New Mayors and Council Members Academy" formal training, for each new term of office.

RESPONSE: The Respondent disagrees and the recommendation will not be implemented. The current Mayor and City Council Members have attended League of California Cities meetings and conferences. Any Council can encourage and recommend attendance at League sessions but not require its Members to attend. There is case law that sitting city councils cannot bind future councils or its members.

R2

The Mayor and City Council conduct a structured review of the City's departments each month, to ensure proper oversight of City operations and more aggressive use of their power of inquiry.

RESPONSE: The Respondent disagrees and will not conduct structured reviews of the City's departments each month as it already receives monthly reports. The City Council engages in annual goal setting. It establishes its priorities and those goals are reflected in the annual budget adopted in June. The Council receives monthly reports in its regular meeting agenda packet on various departmental operations. Carmel by the Sea has a Council-Manager form of government. It is the responsibility of the City Administrator to provide oversight of City departmental operations.

R3

The City immediately procure or upgrade to an appropriate IT System and secure the data network.

RESPONSE: The Respondent agrees and this recommendation is being implemented. Monies are in the FY 2015-16 Budget for implementation during the current fiscal year.

R4

The City immediately hire an experienced Human Resources Director and fill all open positions as quickly as possible.

RESPONSE: The Respondent agrees and the process for hiring is underway. The City Council has approved an increase in the salary range for the position of Human Resources Manager and a recruitment by a professional firm is underway.

R5

The City define and utilize a formal, mandatory progressive discipline system to be consistently applied for all employees disciplinary matters.

RESPONSE: The Respondent disagrees and this recommendation will not be implemented because the Municipal Code (Section 2.52, Article IX) already establishes a formal progressive discipline system. Section 2.52.295 states "The following disciplinary actions are available:

counseling, oral reprimand, written reprimand, emergency suspension, suspension, disciplinary demotion and dismissal.”

The City is having a labor expert review its personnel policy to assure it conforms to current best practices.

R6

The City require that all employees undergo formal training, with specific focus on job responsibilities, City policy, and Municipal Code guidance for their specific positions.

RESPONSE: The Respondent agrees and this effort is underway. Any organization can improve its employee training efforts. The City has undertaken in the recent past specific topic training for all employees. The City Administrator has included monies in the budget and this will be assign this as a top priority for the new Human Resources Manager.

R7

The City immediately procure and implement appropriate, full-function financial management software.

RESPONSE: The Respondent agrees. The adopted 2015-16 Budget contains \$150,000 as the initial financing for this software. The City's new IT Manager began service on 1 July and has been given assignment as a top priority for implementation during the current fiscal year.

R8

The City review the contract awarding process to ensure that the Carmel Municipal Code provisions are being followed at department levels, and that where called for, public bidding is used.

RESPONSE: The Respondent agrees and changes have already been made to the City's contracting practices. The City has reviewed its processes for contract awarding. The Council received an update at its meeting of August 3 on changes to internal controls, procedures and independent reviews. A purchasing procedures manual is being prepared by an outside agency.

R9

The City review (or rewrite if necessary) the purchasing process, to ensure that the Carmel Municipal Code provisions are current, complete, and are being followed.

RESPONSE: See response to R8 above.

R10

The City adopt a procedure whereby all major contracts are reviewed and signed off by the City Attorney and City Treasurer.

RESPONSE: The Respondent partially agrees and finds part of the recommendation unwarranted. All major contracts are reviewed and approved as to form by the City Attorney. Further review and processing and compliance are the roles and responsibilities of the Director of Budgets and Contracts and of the Finance Manager, not the City Treasurer. Involvement by the City Treasurer would be outside of the duties of that office which are prescribed in the Government Code of the State of California.

R11

The City report periodic payments under contracts to the City Council, in a manner which reflects the total contract amount and total payments to date, as well as the current monthly payment.

RESPONSE: The Respondent agrees and this effort has been partially implemented. The new financial hardware will make such reports easily available as part of the Council's monthly payments review. As an interim measure, larger contracts are broken out in the monthly Check Register which the Council receives in its agenda packet as recommended.

R12

The City establish a content list for City contract files and assure that such files contain (as applicable): bidding process compliance (RFP); vendor proposal and all attachments; legal review; staff summary report to the City Council; City Council resolution; and where there are contract amendments, all of the foregoing as appropriate.

RESPONSE: The Respondent agrees and this recommendation is being implemented. The City already has an individual file for each contract and a master list of all contracts. Each file contains a routing slip with contract which delineates the amount and the supporting documentation such as the Council Resolution, exhibits, W-9 forms, City Administrator and City Clerk sign off lines. There is also for each contract a General Information sheet detailing the length of the contract, amount of dollars, the vendor's business license number and any special terms of the contract.

R13

The City enhance the role of the City Treasurer such that the position has responsibility in the day-to-day financial management, including tracking the status of all contracts, identifying payment overages, and reporting to the City Council.

RESPONSE: The Respondent disagrees and this recommendation will not be implemented. California Government Code Section 41001-41007 delineates the role and responsibility of the Office of the City Treasurer. Overseeing day-to-day financial management and the tracking of contracts is not a duty of the Treasurer's Office but is the duty of the City's finance and contracts staff.

R14

The City make the City Attorney position a full-time City employee requiring meaningful experience in the areas of contracts, employment law, and Public Records Act requests, as well as municipal law.

RESPONSE: The Respondent disagrees with this recommendation and it will not be implemented. Studies by/for small cities show the cost of a full-time attorney and ancillary staff are more expensive than contracting for legal services. The law is too complex to expect a single person to be an expert in all areas. A 2013 Study by the Municipal Resource Group contains several cogent comments about contracting vs. having a full-time city attorney. Although this report was prepared for a municipality larger than Carmel by the Sea, some findings are applicable to a city of any size. Amongst the findings of the study were:

- 1) "Cities with in-house (full time) City Attorney staff generally still use outside counsel for specialized services, particularly litigation."
- 2) "Contemplation of an in-house (full time) City Attorney Office must also plan and budget for support staff. The benchmark data includes a minimum of one administrative position would be required, such as a legal secretary, and at least a part-time paralegal."
- 3) "Non-personnel costs for a City Attorney Office (full time) include mandatory State Bar dues, recommended practice area section memberships, professional memberships, mandatory continuing legal education, office supplies, subscriptions, conference and travel, law library and books and subscriptions, automated legal research (Westlaw or Lexis), computers and software licenses, minor capital outlays and other similar legal office expenses." "A budget for an in-house (full time) City Attorney Office would also include contract costs for specialized outside counsel...."
- 4) "Transitioning to in-house (full time) City Attorney services would also involve certain startup costs, such as recruitment, one-time purchase of equipment and furniture, law office materials, books and supplies, and other start-up expenses."

R15

The City Attorney manage the selection, and oversee the engagement of outside legal counsel, including the review and approval of their billings.

RESPONSE: The Respondent agrees and this has been implemented.

FINDINGS

F1. Based on the lack of a time frame and specifics in this finding, we can state that City operations and procedures were disciplined and adhered to existing policies. Due to the economic downturn, a number of positions were combined to decrease operating costs.

F2. Based on the lack of a time frame and specifics in this finding, we can state that Council did not have access to nor did it use the City network until at least April 2012.

F3. Based on the lack of a time frame and specifics in this finding, City contracts were managed as appropriate for either a personal services contract or publicly bid contract. Council did receive monthly reports of all checks written which included payments for contract work. Council did not have responsibility for processing purchase orders.

F4. Based on the lack of a time frame and specifics in this finding, we can state that City contracts usually contained a defined payment schedule coupled to deliverables.

FS. Based on the lack of a time frame and specifics in this finding, after the resignation of the HR officer, leadership was provided by an in-house HR person, the City Administrator and finally under negotiation was possible HR management by the City of Monterey.

F6. Based on the lack of a time frame and specifics in this finding, we can state that requests under the Public Records Act were compiled professionally and with alacrity by two individuals in house in consultation with the City attorney.

N.B. There are at least two glaring factual errors in the text should you wish to comment on them or feel that the info might change your response:

1. Pg 9 First sentence under "The New City Administrator" ..."following the departure of Guillen, Stilwell was hired..." Not so, John Goss was hired on an interim basis for a year or so.
2. Pg 9 Last sentence para 2 same section..."the recruitment and interview process in which Stilwell did not participate." Not so, check with Heidi as she sat next to Jason during the interview and Stilwell made it clear for I would say over a year that he had someone who would be excellent and he was waiting for her. I understand that this caused some problems as someone was selected who gave up his job I believe on the east coast and then was told he was not wanted here. There was talk of a suit but I don't think it ever came to that.

From: Sue McCloud, Former Mayor 2000-April 2012