

Harrisburg City Council Minutes May 28, 2014

The Harrisburg City Council met on this date at City Hall, located at 120 Smith St, at the hour of 6:30 p.m. Presiding was Mayor Robert Duncan. Also present were the following:

- Kimberly Downey
- Mike Caughey
- Robert Boese
- Sarah Puls
- Youth Advisor Garrett Ross
- City Administrator Brian Latta
- City Recorder/Asst. City Administrator Michele Eldridge
- Finance Officer Tim Gaines
- H.A.R.T. Director Edie Moro

Absent this evening were Roger Raven and Don Shipley. Also in the audience was School District Administrator Brian Wolf.

Concerned Citizens in the audience:

- H.A.R.T. Director Edie Moro told the Council that she was here to introduce herself. She stated that they will continue to do a good job with what Peggy started, to serve individuals, groups and families.
- Downey appreciated her looking at funding so quickly after the levy failed.
- Moro said that hours for the H.A.R.T. Center are a little different now, and went over the services that H.A.R.T. still offers the citizens. She wants to make sure that they continue to give kids something to do.

The matter of Approving the Minutes of April 23, 2014

- Downey said that the dollar figure on pg. 3 was incorrect.
- After looking at the minutes, Caughey suggested that we simply remove the dollar amount.
- Downey then **motioned to amend the minutes by removing the 'It was under \$50' on pg. 3, and was seconded** by Puls. **The City Council then voted unanimously to approve the minutes from April 23, 2014, as amended.**

The matter of a Discussing the Harrisburg Library Guild's Request to Coordinate Food Vendors for Summer Concert and Movie Events.

Staff Report: Latta noted that Harrisburg Library Guild (HLG) has asked permission to coordinate providing food vendors for the Summer Concert series. He had indicated in his report that we should further explore this, and had some concerns that he expressed in his analysis. The HLG then followed up with another letter, which does answer some of his concerns. That is in front of you. (Please see Addendum No. 1) That might not be exhaustive. He recommends that we approve this, and further explore this opportunity.

- HLG President, Barb Shipley, thanked the Council for the opportunity to address them. The tea is this Saturday, and she hoped to see them at the event. She thanked Council for their support of HLG and its endeavors, and went over the basis of the offer that was in the agenda bill. The HLG would still like to obtain some revenue from concessions, and hope that the Council will allow them to try to provide vendors for the concert series. She talked about some of the future fundraisers for HLG.
- Puls cautioned that people who are used to a one day event license from Environmental Health might have an issue with further insurance coverage. The vendors will need to obtain the correct licensing from Linn County.
- Downey asked if we knew of any groups who give away food, etc., for the events.
- Barb Shipley told her that during the movies, Calvary Chapel provides free hot chocolate and coffee. However, they don't provide anything during concerts.
- Latta said that he had stated that perhaps the vendor should obtain a street vendor license, which is oversight from the City. In this case, HLG is basically taking on the City's responsibilities of overseeing the vendor. We are happy to relinquish that responsibility, as long as we can work with the Guild on administrative oversight.

The City Council talked about how much a vendor would pay if they wanted to do a temporary license for multiple events, plus a vendor fee. If the Guild tries to get someone, and they don't, then we are right back in the same spot...without a food concession service. Puls thought that they should try to get a mobile unit. Latta thought it was a great suggestion, but he has been calling, and not been able to find one that's available yet. Caughey was concerned about them getting any fees from this, but Latta said that up to two vendors will net \$100 a night, for a max of \$500. Downey said she wasn't opposed to the HLG trying this. The citizens will be glad that there is food down here, and if the HLG is still helping to provide it, they'll probably be happy. Latta said then if you are ok with this, and all the terms, then you can motion to approve the HLG request consistent with the materials that they provided.

- Caughey then **motioned to approve the request for the HLG, to select vendors to provide concessions for movies and concerts. He was seconded by Puls, and the City Council voted unanimously to approve the motion to allow the HLG to find vendors to provide food concessions during concerts.**

The matter of a Discussion with the Harrisburg School District Regarding Security Issues and Possible Support from the City.

Staff Report: Latta said that in January of last year, representatives from the Harrisburg School District worked with Linn County Law Enforcement, and came back with findings to upgrade security at the schools. The school district has provided us with documentation, such as locking devices and window tint that would help with security. The district believes that this will cost around \$5,000. In talking with the administrator, Brian Wolf, Latta found that the School District Budget Committee did approve the \$5,000 budget line. If the City Council wants to contribute money to this endeavor, then the money will need to come out of the general fund, which is just stabilizing. We've been making tough decisions to cut back on expenditures, to get the contingency back to where it's healthy again.

- School District Superintendent Brian Wolf went over the steps that the School District went through to prepare for emergencies. They had already prepared a comprehensive manual for what to do with certain emergencies that also covered intruders. However, shortly after that was completed Sandy Hook happened. They held a board meeting, and brought in the County Sheriff, and Skyped in the former Governor, to talk about ways to avoid a situation like Sandy Hook. Shortly after that, Mayor Duncan approached them, and said that perhaps the City could assist. As Latta said, they had a comprehensive security review with Linn County, and formed a task force to discuss this. He went over the needs, such as a specialty lock to allow students or teachers to lock a room from within, rather than risking themselves entering a hallway to lock a door, to having window tint to block vision into the building. They also discussed a fence in order to create a closed area around the schools. The costs for the projects are roughly \$4,700, and they have a budget of \$5,000, but the estimate is rough. They'd like some cushion, and any amount would help.
- Gaines hadn't realized that the school had approved a budget for this. The school is important, but we are in the same place as them, with cuts in H.A.R.T. and in parks.
- Downey asked about the line we used to have for donations' to groups like the Neighborhood Watch
- Gaines told her that we only helped to fund the Senior Center, and the Neighborhood Watch.
- Downey thought we had supported the sports too at one time.
- Gaines told her that was the Harrisburg Sports Program.
- Downey said then that all of our donations are spoken for.
- Gaines asked if the school had access to grants for this kind of thing?
- Superintendent Wolf said that he wasn't aware of any. If there was, it probably wouldn't pay for materials; just more awareness and training.
- Gaines said that we just applied for a grant for the security cameras from the Marine Board, and our insurance company also had a grant available.
- Downey suggested that they go through the insurance company they use, perhaps they would have something.
- Superintendent Wolf said that he would.
- Downey said that we don't have any money; we had our budget committee meeting last night, and she's still a little depressed after that.

- Latta added that where we can cut, we've cut, and that's where we are now. The general fund is heading in the right direction, although it's not where we want it. He suggested that perhaps the City Council could look at this again, in the future, if the school has difficulty in keeping to their \$5,000 budget.
- Downey felt we should revisit this in the future. It's super important to protect our kids, especially with things getting worse and worse, but she'd like to wait until the school has more information.
- Superintendent Wolf said that the safety of our kids is a community issue, not just a school one. It's important to all of us. If we have a cost overrun, then perhaps the City can look at it again.
- Mayor Duncan said that he hopes that they understand our willingness. Right after Sandy Hook, there were a lot of high emotions. He wonders if something like that happened last week, if we'd be doing something different now.
- Downey suggested that the school ask for individual donations. She wouldn't mind donating, and others may not either. They can also ask businesses, like Dari-Mart.

The matter of Reviewing the Municipal Judge Salary

Staff Report: Latta said that he would provide a brief summary of what's in the agenda bill. Back in 2004, we had conversations with the Judge. At the time, we paid Linn County \$100 to \$125 a month to pay for Municipal Court Services. In 2005, the City Council authorized a compensation increase from \$125 to \$900. Then, in May 2008, there was a second increase from \$900 to \$1,275. There was a contract between the City and the judge, stating that the City would not pay benefits for him, including PERS. However, we've found that it conflicts with state law, and we've been told that we are responsible for this. The PERS goes back to 2005, when we started this relationship. PERS is still working on the final amount, but it's roughly \$15,000, the last we heard, that will be contributed to Judge Lemhouse's account. The City will also have to pay PERS going forward from now, so this recommendation is based on the upcoming year; we should maintain the municipal judge salary to be \$1,275. To accommodate that, we can reduce the salary somewhat, so that the combined salary and PERS benefits both come to \$1,275 total. You can see the options in the analysis. It roughly equates to a \$3,000 difference between the two options. He also explained that the City doesn't pick up the 6% PERS contribution for part-time employees, of which the Judge is one. Therefore, the Judge will be paying the 6% contribution. He also showed how the municipal court expenses are situated, so that the Council understands how much that is.

- Judge Lemhouse said that he's always appreciated the support that Council has provided to both courts. As you know, he's primarily the Justice of the Peace for Linn County. He provides services for Brownsville, Halsey, Harrisburg, Tangent, Sodaville, and Waterloo, amongst others. Brownsville and Harrisburg both pay him to operate a free standing municipal court. He is considered an employee in Brownsville, and always has been, although that's not the case for Harrisburg. That was Harrisburg's choice. [Harrisburg chose to have him be an independent contractor.] He then called Councils attention to Linn County Agreement and Order 2005-116, and its amendment, which sets the ground work for payment to the Judge. It says that the City shall accept the responsibility for the compensation of payroll costs, workers comp and retirement

benefits required by law. In the following page, it provides again for specific compensation for the Judge. It says that he shall not be considered an employee of the City for any purpose, and that the city shall not be required to provide any employee benefits to the Justice of the Peace, including but not limited to worker compensation insurance. That paragraph is now null and void, because it's not legal. The IRS says that you must pay through payroll, and PERS said that if you are on payroll, that you must pay PERS benefits. He is willing to pay the 6% of the normal employees contribution, because that's required for part-time employees, and he doesn't want to be treated any differently from any other part-time employee, but he will insist that we hold up to the paragraph 6.1 in the amendment to the IGA order 2006-116.

- Latta noted that he was asking for option No. 2, which would give him a salary of \$1,275, and then his benefits of PERS on top of it, for a total monthly comp of \$1,507.94. He had a question for the Judge. We have an agreement form Linn County that was executed before the judicial services agreement, which is signed on the back of the page. Did you know that we were doing something that wasn't allowed?
- Judge Lemhouse told him no, this was something that was requested by the City.
- Latta asked him what was requested.
- Judge Lemhouse said that the City requested that he be an independent contractor. He had no problem with that. However, we found that wasn't possible for PERS purposes. Neither he nor the City knew about that when we signed this agreement.
- Latta said that in the agenda bill it explains that we were in contact with the IRS, who said that we had to treat it in this manner.
- Mayor Duncan said then that basically, you are saying that's it not unlike the state vs. federal government. The federal government always trumps the state, so even though we signed this agreement, the law in regards to PERS nullified the agreement, so then we have to go by the first clause. He asked if Gaines had worked on any of these agreements.
- Gaines told him that was all done between Bruce Cleeton and the Judge.
- Mayor Duncan asked how they had found out about all this.
- Gaines said that PERS brought it up in a compliance review, just in the last three months.
- Mayor Duncan said that in the last Sheriff's report, that 15 people didn't get cited. He would hate to have to finance this suggestion by digging more money out of people.
- Judge Lemhouse then went over misdemeanor filing rates, of which Harrisburg has the lowest level in Linn County. That comes from continuity in the administration of justice and the law. He's been here since 1995, and has significant influence on those outcomes. Allowing fewer citations than warnings is not necessarily the practice of other cities. However, the City of Harrisburg, through several discussions, has made it clear that they don't want everyone to be cited and would prefer warnings. If you change this policy, then the revenues from Municipal Court will increase. Not everyone who is cited will be convicted, and not everyone convicted will pay; that's one of the reasons we don't have much crime in Harrisburg.
- Mayor Duncan liked the fact that if people do something wrong, that the consequences mean that you have to go in front of Judge Lemhouse.

- Latta noted that when investigating this with the IRS, that back in 2008 we had received clarifying documents that the Judge doesn't meet the criteria for being an employee, so there was no reason to change his present status. They did require us to process him through payroll, and they didn't consider him to be an employee. Because of that, we satisfied the IRS, and now following their guidance, we got in trouble with PERS. That's how we got in this position. He appreciates Judge Lemhouse, who does a fantastic job for our community. He is the judge you don't want to go in front of. We provide for Municipal Court Services for the City. His understanding of the IGA is that it outlined the rules for how to pay the judge, and then we did our homework, and decided that according to the IRS that he shouldn't be treated as an employee, and then we signed a contract which assumed compensation without benefits to be \$1,275. Because we assumed, incorrectly on behalf of both of us, that it didn't include paying benefits, that if we need to apply benefits that our total compensation should be kept at what we agreed upon.

The Council then discussed some of what might happen if we didn't have municipal court services. The Judge pointed out that if you have a contract with the Linn County Sheriff to handle citations in the City, then the fine is collected by the peace officer for the City. If you don't have a contract with them specifying that, then that doesn't apply. If it's a crime; not traffic, then it depends on how far the case is going, and if it needs to go to the jury, and how quickly it is resolved. Gaines asked if they get 50% of the revenues, do we get more than 50%? The Judge told him that you get it all. In the City of Lyons, if you have a fine of \$500 for a criminal act, then a certain amount goes to the State of Oregon, and the rest goes to Linn County. In Harrisburg, the first \$25 of each fine goes to the State of Oregon, and the balance goes to the City of Harrisburg. Downey asked if that meant that the Judge gets paid from the budget. Gaines told her he is paid in the general fund, in personnel services.

The Judge pointed out that our compensation for municipal judge services is less than any other courts, and significantly less than Junction City. He's not asking for an increase; he's asking for the Council to follow what is in the table of 6.1 in the amendment to the IGA of 2006-116, which is to treat him as an employee. Mayor Duncan asked him what would happen if we went with Staff's recommendation. Judge Lemhouse told him that if he wasn't satisfied with the results, then he would tender his resignation as a Municipal Judge, and would continue as a Justice of the Peace with Linn County.

The City Council then discussed how we've done what is right and legal, and leaned towards staying out of grey areas, and then when it comes to federal law vs. state law, even though we both signed an agreement, it's not worth the paper it's written on. Puls thought we should go with option 2. Downey said that she's hates it when stuff like this comes up, when it wasn't done right in the first place. Caughey said that he's really foggy about these numbers. That is assuming that the City is responsible for the City's portion of the PERS, but could Latta explain that a little differently? Latta told him that there are two pieces. The first is that we have an employer contribution we must pay on behalf of our employees. The employee pays the 6% portion. Legally, the employee must pay the 6%, but the employer can choose to cover that as well. We do that for all regular benefited employees, but not for part-time employees. The option that he is recommending is that we keep the total compensation at \$1,275, so that reduces Judge Lemhouses' salary slightly, and all his compensation, which includes the

benefits portion, still comes to \$1,275. Caughey asked if there were other component's that we were supposedly responsible for? Gaines told him that we pay FICA. When we counted him as an independent contractor, we paid him out of accounts payable, and then he had to count that on his taxes. Judge Lemhouse added that we did that for a few years, and then went to a W-2. Gaines explained how the City was handling PERS in the past. Now, we report everyone, even half-timers, and call PERS immediately if we have any questions.

Latta asked the Judge if we could run a scenario. If we wanted to not be one of the freestanding municipal courts, and wanted to be like other cities in the county that don't have one. We have a Justice Court, which is you. If we didn't have Municipal Court, and a traffic ticket was issued, would it just go to Justice Court, where it's assessed a fee, or would we have to rewrite the IGA, which would allow a certain amount to go the state, and the rest to the county. How is that split? Judge Lemhouse said that if you had an agreement of police services, then you'd get revenue from ½ the traffic convictions, if they are collected. You would lose the ability to determine which cases to prosecute, especially crimes, and what you prosecute as violations. Cities that terminate municipal court generally lose control over their quality of life. They can no longer trespass, or charge disorderly conduct. We don't have jury trials in Justice Court in Linn County. The District Attorney will not prosecute in the Justice Court. They are prosecuted in a jury trial, not as misdemeanors. The Judge felt that the City would encounter greater costs by eliminating their municipal court, and going with just Justice Court. There would be additional charges for jail time, over what you currently pay. Right now, your contract with the Linn County deputies allows for transferring prisoners to jail, at no cost to the City of Harrisburg, other than the current contract. Revenue for the City would be less, not more. The only offenses for which a City would receive a share would be for traffic violations.

Latta said that he doesn't agree with what the Judge is saying; if we reduce his salary to make up for the PERS addition, which we didn't foresee in the original contract. If we paid those benefits, and that salary, we'd still be in compliance with 2005-116.1. We would be paying you for services you are performing, and all the employer costs. He doesn't see any conflict of 6.1 if Council were to try to reduce his salary to match \$1,275 with PERS included. Judge Lemhouse told him that there is a constitutional law that is in Section 1, of Article 7 in regards to compensation for a judge; his salary can't be reduced until the first Monday of January in 2015. You can't reduce his salary. Latta said ok. The Judge added that he was re-elected, so his term will continue. Latta said then that our hands appear tied, and we can't reduce the salary, so that makes our decision pretty simple. Downey asked the Judge if he minded paying the 6% employee contribution, and the Judge felt that was fair.

- Downey thought it was fair as well. We all make mistakes. Your services are much needed, and everyone knows how they feel about crime.
- Caughey said that he felt we needed to go with option 2. He doesn't like to see any consideration for how much revenue we bring in from Municipal Court. If it paid for itself, that would be wonderful, but he's not seeing that's what our goal should be. Equitable justice is much more important to him. He's sorry that we had this issue come up in the first place, that insufficient research was done for what requirements should have been between federal and state law, but with this change, we should be complying with everyone and we've learned a lesson on how to look at things. His suggestion is that we go with option 2, with the stipulation that the Judge will pay the 6% portion of PERS.

- Puls had already indicated earlier that she felt we should use option 2.
- Boese said that with the recent research that has been done, and with what the Judge has said, he feels that we have our hands tied. He told the Judge that he got lucky with a loophole in your favor for sure. He also thinks we are rewarded that you are the Judge here, and to compensate you for what you do here, he feels we should go with option 2. He hopes we are done with this now, and that there is nothing else we need to be doing.
- Judge Lemhouse said that he hoped the same thing.

Downey asked why there was such a big surge back in 2005 and 2008. She couldn't remember the reasoning. Mayor Duncan thought it was something to do with the county. Latta said that he spoke with the county administrator, who said that the pay for the Judges wasn't going well, which is why they all turned to the cities for their portions.

- Ross said that Boese said it really well, and he too was leaning towards option 2 with this situation.
- Caughey asked if we needed a new contract, or do we just make the changes?
- Latta told him that with the 2008 agreement, Cleeton had said that he would return with a resolution authorizing the \$1,275 salary. That was never done, so we will do that now. He doesn't think we need to come up with any new agreement. We'll rip up the one that is no longer valid, and will go with the IGA.
- Judge Lemhouse said that the only problem with this agreement is the 2nd paragraph. The rest of it is probably ok. He thought the City would want to keep the power having the ability to appoint a pro-tem judge.
- Latta recommended we just do nothing with the agreements then. He'd like a motion that we will increase the Judge's salary to pay for his PERS compensation.
- Downey then **motioned to keep the Judge's salary at \$1,275, and add the PERS on top of it, and also to treat the Judge as any other part-time employee, and to require him to pay his portion of PERS.** Puls seconded the motion, and the **Council voted unanimously to approve the motion to go with option no. 2 in the agenda bill, allowing the Judge to keep the current salary amount, and to pay the employers share of PERS in addition to that, while the Judge would pay the 6% employee portion, because he is a part-time employee.**
- Latta said that he would submit a resolution in the future, and possibly a new agreement, if that works for Council.

The matter of Approving a Parade Permit for the Old Fashioned 4th of July Parade on July 4, 2014.

- Downey **motioned to approve the 2014 Old Fashioned 4th of July Parade Permit subject to the conditions of approval.** Caughey seconded the motion, and the **City Council voted unanimously to approve the 2014 Parade Permit for the 4th of July.**

The matter of Amending the Policy on Utility Bill Messages to Include the New Reader Board Staff Report: Latta said that the board should be here on Friday. We still have to install the antenna on our building, which will be up shortly. He anticipates some community involvement with the reader board. We had the same interest in the utility bill messages. Eldridge and he had come up with some ideas to address the messages, and we can generate an amendment

to the one resolution, or we can create a separate resolution to deal just with the reader board. He went over the agenda bill; with the order of priority being City departments, City affiliated non-profit organizations, then special districts, followed by citizens, along with some policies on cost and how long messages can be up on the board.

Caughey brought up how many characters can be on the board at one time, and Puls suggested that we look at graphics too, such as a balloon on the end of a happy birthday message. Downey didn't want to make a decision yet, and would like to see how the sign performs first. Boese asked how fast it changed messages, and Eldridge noted that most people will slow down on Hwy 99 coming into town to check them out. Caughey agreed with waiting a while before making a decision, and Mayor Duncan suggested we put a moratorium on it for a month.

Puls asked about the sign on the north end of town; was it being worked on. Latta said that was something Tim B. was working on, and that has fallen through the cracks. He said that we need to check in with Larry Buckles about that.

- Downey **motioned to table the reader board message issue until the future.** Caughey **seconded the motion, and City Council voted to table the reader board issue until a future meeting.**
- Boese said that with it arriving Friday, how soon will it be operational?
- Latta said that the electricians will install the sign, and wire it, then give us the component's we need. The antennae that will talk to the sign is based at our water plant facility, so we have to run conduit from that to our computer. We will send messages from here to Rick at the shop, who will upload them to the reader board.
- Downey suggested we have a celebration when it is completed.

Others:

- Latta noted that he has now finally moved into his new house; he is now local.

PW Vehicle

- Latta talked about the vehicle that used to belong to Tim Bunnell. Amy Bunnell would like to purchase the vehicle, and we are open to that, if we can get a fair market value. There is no reason why we need that particular vehicle. We do have it in our possession now. We have had it appraised, and we will bring it to the City Council at the next meeting, to decide if we want to sell it.

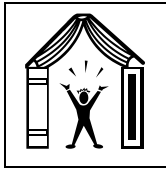
Poplar Plantation

- Latta brought up that we will need to finish getting information from the engineer for the poplar plantation. We have some revenue set aside in the sewer fund, which we hope will cover the cost of the trees. We can use a little bit of the SDC's for the expansion.

With no further information to discuss, the Council adjourned at the hour of 8:14 p.m.

Mayor

City Recorder



The Harrisburg Library Guild

354 Smith St, Harrisburg, OR 97446 phone 541-995-6949

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Tax ID: 30-0552080

May 27, 2014

Dear Mayor Duncan, and Members of the City Council;

In the agenda bill for the City Council meeting of May 28, 2014, Brian brought up some important considerations in his analysis of the HLG request to coordinate food vendors. We had already addressed most of these, but hadn't included it with our letter of request. These are our responses.

1. The vendor fee should be \$50 a night to start. \$25 is what it cost to be a vendor when the City first started the summer sounds program. If we get vendors that aren't happy with the amount, then we can adjust as needed.
2. Two vendors can help keep up a variety of foods/drinks. If you have more than 2, then I fear that nobody will make any money. A lot of attendees to the summer sounds bring their own dinners to the park. Those that were buying were partially folks that were supporting the Guild. We will put up signs that indicate that the vendors present help to support HLG.
3. Hours of operation: 5:00 – 9:00 for summer sounds. Ready to serve food at 6:00, closing down at 8:30. We weren't initially considering movie nights at all. We hope to work with H.A.R.T., or another group to provide concessions for those.
4. We currently don't require a business license for 4th of July vendors. We hope that Council will waive this requirement because it is a City and sponsor provided entertainment. A sidewalk vending license is \$100, and none of the vendors we've talked to will be willing to pay that, plus a booth fee. This option would likely leave us without any concessions at all. That's nice for our businesses, but also inconvenient if all you want is something cold to drink, when you don't want to leave the concert.
5. Power is available via the pole, which is what the Guild used previously. If somebody wants a connection to water, then we'd have to provide it for them from City Hall, from behind the enclosure next to the back door. During the 4th of July, and for our previous concessions, we've provided a hose to go from the bib to under the fence on the enclosure behind City hall. We'd prefer to not have to do this, since we would have to have someone be responsible to come down at 9:00 and unhook the water line.
6. Power is readily available at this location. There is no generator noise if a vendor is hooked to power. A kettle corn vendor could make noise....they can hook up to power too. If even with power, they are loud, then they can back up to the end of the street by Moore.
7. Trash cans are provided by the City in the closed off portion of the street. Vendors will need to lay down cardboard, or something to protect the street if they will have grease

spilling out. They will be required to cart out their own grease, etc., at the end of the evening; garbage too if it's substantial. (Same as 4th of July vendors.)

8. Vendors will need to show us a certificate of liability, with the City and the HLG as additional insureds. (Mike Whiteaker, the cook for Ron D Voo, is one of the vendors who want to do this. He has year around liability insurance, and has no problem doing this.)

Thank you,

Barb Shipley, President

Michele Eldridge, 1st Vice-President

LeaAnn Hart-Chambers, 2nd Vice-President

Unapproved