

## MEMORANDUM

**To:** Mayor Donald Kuchta, David Engle, Nick Molnar, Janet Tulley, Rita Darrow, Sylvia Hanneken, Joseph W. Diemert, Jr., and Diana L. Augustine  
City of Macedonia

**From:** Maribeth G. Wuertz, Esq.

**Date:** March 5, 2015

**Subject:** Investigation Regarding Job Performance of Finance Director Scott Svab

---

### **Background Facts**

This investigator understands that allegations concerning Scott Svab, Finance Director of the City of Macedonia were brought to the City's attention resulting in an investigation into these allegations by the City Law Department. The Law Department rendered its findings in a letter dated September 8, 2014. On September 9, 2014, Mr. Svab was placed on a paid administrative leave pending a final decision regarding his employment status. Following review of the Law Department findings, Mayor Kuchta advised Mr. Svab of his decision to terminate Mr. Svab's employment as Finance Director. Section 6.09 of the City Charter provides that the "Director of Finance can be removed by the Mayor if a majority of the members elected to Council approve such removal by vote at a regularly scheduled meeting of the Council." On September 25, 2014, at a regularly scheduled meeting of Council, the vote to approve the removal did not pass. Some members of Council expressed their concern that the investigation by the Law Department was biased against Mr. Svab and that he did not receive a fair, objective investigation. In response to those concerns, Mayor Kuchta retained, on behalf of the City of Macedonia, this investigator, an attorney with the law firm of Fisher & Phillips, to conduct an independent inquiry regarding the job performance and job conduct of Mr. Svab. Neither this investigator nor her law firm has any business or personal relationships with the Mayor, his staff, members of City Council, the Law Director, Law Department staff or the staff of the Law Director's law firm.

### **Scope of Investigation**

This scope of this investigation was to include a review of previous findings of the City Law Department investigation, as well as any other potential misconduct that may be uncovered during the course of the investigation. The Mayor expressly specified that the investigation conducted by this investigator on behalf of the City be impartial and objective. The investigation focused on whether, as an employee of the City, Mr. Svab violated City employment policies and procedures, or failed to carry out his duties as Finance Director, and if so, the import of this misconduct and whether the decision to terminate Mr. Svab's employment under standard human resource practice would be warranted. The investigation did not consider whether any conduct amounted to criminal violation of law.

The investigation included interviews of several witnesses. The investigator advised witnesses that she is an attorney with the law firm of Fisher & Phillips retained by the City to conduct an independent, objective investigation of allegations concerning the Finance Director, Scott Svab. Witnesses were further advised that the investigator's objective was to gather facts relevant to the allegations. Witnesses were asked to provide truthful information regardless of whether it

avored the City or Mr. Svab. Witnesses were assured that they would not be retaliated against in their employment for their participation in the investigation. Witnesses were further informed that the investigator would prepare a report which may include information provided by the witness and therefore they could not rely on anonymity.

The investigation also included a review of a number of documents, including those gathered in connection with the Law Department's investigation, documentation provided by witnesses and other documents provided by the City.

Mr. Svab refused to be interviewed and to cooperate with the investigation, however, his written statements provided during the Law Department's investigation were considered.

### **Standards of Performance**

The purpose of this investigation is to determine whether Mr. Svab's conduct and job performance met the standards expected of the position. This determination requires an identification of the standards of conduct for the Finance Director as set forth in the City Finance Director Job Description, and the City of Macedonia Human Resources Policies and Employee Handbook.

The Finance Director's duties and responsibilities are detailed in the Finance Director Job Description which establishes that the Finance Director "receives direct supervision from the Mayor." The Primary Duties section lists:

- Assist Finance staff in determining appropriate line items for accounting; and
- Monitors all department budget accounts to assure accounts transactions are accurate and within appropriation authority.

The Required Knowledge, Skills and Abilities section includes:

- Ability to develop and maintain effective working relationships with other City employees, department representatives, various private and public agency representatives and the public.
- Ability to provide effective supervision.
- Respond to inquiries and complaints from employees, elected officials and public.
- Effective analytical problem solving, decision making, project management, time management, prioritization, and organizational skills.

The City of Macedonia Human Resources Policies and Employee Manual also establishes standards and rules relevant to the allegations. The Nondiscrimination policy prohibits discriminatory treatment of employees based on various protected categories.

### **Nondiscrimination**

It is the policy of The City of Macedonia to provide all persons, employees and candidates for employment with equal opportunity regardless of age, race, color,

Page 2 of 17

**Attorney/Client Privileged Communication**  
**And Work Product of Counsel**

disability, religion, sex or national origin. This policy includes all City activities, recruitment, hiring, benefits, wages, promotions, transfers, separations, training, and employee facilities. Every official, manager, supervisor and employee is responsible for ensuring the compliance with and practicing of this policy.

(See the City of Macedonia Human Resources Policies and Employee Manual ("Employee Manual"), *Non-Discrimination*, p. 37). The Employee Manual's Serious Rules of Conduct list the type of conduct that could result in the employee's termination of employment, including:

**Serious Rules of Conduct**

2. An employee shall not use obscene, immoral, harassing, discriminatory and other improper language and gestures in the course of his/her job duties.
7. An employee shall not be insubordinate or fail to follow instructions or legitimate work orders of his/her supervisor.
11. An employee shall not falsify any City document record or related information.
13. An employee shall not harass or discriminate or engage in such behavior as prohibited by City policy or law.

(See Employee Manual, pp. 43-44).

**Investigation Allegations, Findings and Conclusions**

Following are this investigator's findings and conclusions related to the original allegations against Mr. Svab as investigated by the Law Department and addressed in the Law Department's letter dated September 8, 2014 (subsections 1 through 8 below), as well as additional allegations of misconduct identified during this investigation (subsections numbered 9 through 12 below).

**1. Falsification of Public Record.**

**Allegation:** *Mr. Svab directed his subordinate, Jonelle Melinchenko (Accounts Receivable Clerk – Finance Department), to create a backdated invoice to Canal Fulton resulting in a benefit to Canal Fulton, where Mr. Svab is a Councilman. Mr. Svab also provided a false statement during an administrative investigation.*

**Findings:** Macedonia received a grant from the Ohio Department of Natural Resources (ODNR) to be used for a fishing event for children. The Macedonia Finance Department discovered it had double ordered fishing poles for the event. The excess poles were paid for from the City's budget – ODNR grant money was not used. Ms. Melinchenko contacted the vendor who agreed to refund the payment for the poles, provided the City paid for the shipping costs to return them. Mr. Svab, however, determined that the poles should be sold to Canal Fulton. According to Mr. Svab, who is also a Councilman for Canal Fulton, Canal Fulton had under spent its ODNR grant money for the same event and rather than return the remaining funds to ODNR, could use the money to purchase the excess poles

from Macedonia. However, the ODNR rant required that grant monies be expended by June 30<sup>th</sup> of the fiscal year in which the grant awarded. Therefore, ODNR grant monies awarded in fiscal year 2014 would have had to have been expended by June 30, 2014, otherwise the monies must be returned to ODNR. Therefore, any funds not expended by Canal Fulton for the 2014 fishing event prior to June 30, 2014 must be returned to ODNR.

Ms. Melinchenko questioned Mr. Svab as to whether it would be appropriate to sell these fishing poles to the City of Canal Fulton. Mr. Svab assured her that it was appropriate, but that the invoice would have to be backdated in order for Canal Fulton to comply with the grant requirements. Mr. Svab instructed Ms. Melinchenko to prepare the invoice with a May date. She did not feel comfortable in preparing a backdated invoice, and therefore, prepared the invoice with the correct date of July 23, 2014. Mr. Svab returned the invoice to her and ordered her to prepare a new invoice with a May 2014 date. He assured her that ODNR had approved the backdating of the invoice. Therefore, per Mr. Svab's order and assurance of ODNR approval, Ms. Melinchenko prepared a new invoice dated May 31, 2014.

Documents provided by Ms. Melinchenko include a copy of the original July invoice to Canal Fulton on which she notes, "Cancel and create new invoice with May date to comply with requirements from ODNR for Canal Fulton per Scott Svab."

In the written rebuttal provided by Mr. Svab during the law department investigation, Mr. Svab provided a statement in regard to the ODNR grant for the fishing event and the backdating of the invoice to Canal Fulton. Specifically Mr. Svab states, "**Mr. Landon said that would be fine to purchase the excess equipment but to make sure the invoice date is before the closing of the grant dated July 1<sup>st</sup>.**" According to statements from Mr. Landon, he did not advise Mr. Svab to backdate the invoice, and does not recall discussing the grant at all with Mr. Svab.

Mr. Landon affirmed in a written statement provided to the City of Macedonia Law Department that he did not authorize this action, would not authorize this action and he does not recall discussing this grant at all with Mr. Svab

**Conclusion:** The evidence supports the conclusion that Mr. Svab wrongfully ordered a subordinate to create a false document and misrepresented that he had received approval for this action from the Ohio Department of Natural Resources. It appears that the purpose of this action was to improperly benefit The City of Canal Fulton where Mr. Svab was a Councilperson. By these actions, Mr. Svab violated the City work rule that: "An employee shall not falsify any City document record or related information." Per the Employee Manual's Serious Rules of Conduct. Mr. Svab further failed to uphold his duty to "provide effective supervision" per the Finance Director Job Description.

## **2. Violation of Licensing of Contractors Ordinance – Great Lakes Hydro Seeding.**

**Allegation:** *Mr. Svab failed in his duty to ensure that contractor Great Lakes Hydro Seeding was registered with the City before commencing work.*

**Findings:** Contractors retained to provide services for the City of Macedonia are generally required to register with the City (obtain a permit and license) before

commencing work (see Codified Ordinance 1361.02). This requirement is necessary in order to protect the City's interests and to shield the City from liability for damages caused by the contractor. Although it is the contractor's obligation to comply with this requirement and seek registration, it is the responsibility of the department head or other City official to assure that the contractor has met its obligations. Great Lakes Hydro Seeding Company was hired to perform certain services for the City of Macedonia. Great Lakes Hydro Seeding was referred by Department of Service Director, Jim DeGaetano to Mr. Svab. The Company performed services and was paid for those services without obtaining proper registration. Mr. Svab's statement, referred to above, asserts that Mr. DeGaetano handled all aspects of contracting with Great Lakes Hydro Seeding. Mr. DeGaetano concedes he was not aware that registration was necessary for landscaping services, and has accepted responsibility for the failure to assure that this contractor was registered.

**Conclusion:** There is no evidence to support this allegation against Mr. Svab.

3. **Violation of Licensing of Contractors Ordinance/Failure to Supervise Contractor – Reighart Painting.**

**Allegation:** *Mr. Svab failed in his duty to assure that contractor, Reighart Painting, was properly registered with the City before commencing work and failed to supervise the contractor.*

**Findings:** In December, 2014, Mr. Svab hired Reighart Painting, of Canal Fulton, to paint certain administrative offices and common areas in the City Hall. Mr. Svab failed to assure that Reighart was properly registered with the City. Further, Mr. Svab authorized payment to Reighart, in spite of the fact that Reighart was not an authorized contractor in that it was not registered with the City. Subsequently, it was discovered that the painter and owner, Michael Reighart, had a criminal record including felony drug violations.

The maintenance of City buildings is the responsibility of the Service Department. Therefore, the hiring of a painter for the City Hall offices is the prerogative of the Service Director. Mr. Svab hired Reighart to paint certain areas of City Hall without prior approval or even knowledge of the Service Director. Mr. Svab did not disclose that the painter, Michael Reighart, was painting his (Svab's) personal residence at the same time. Mr. Svab maintains that the reason he hired Reighart was because he found his work and his prices to be exceptional. However, the quality of the paint job is seriously inadequate. Pictures obtained by this investigator show that the painter painted around bulletin boards and desks. For example, if a bulletin board is removed, a large white rectangle can be seen on the dark beige wall. Either Mr. Svab failed to properly monitor the painter's work or was aware of the inferior job and remained silent.

**Conclusion:** Once Mr. Svab hired Reighart to paint the City offices, he assumed responsibility to assure that this contractor was registered with the City and to monitor his work. Based on these facts, there is evidence to support the conclusion that Mr. Svab violated the licensing of contractor's ordinance and failed to properly monitor the work of a contractor retained by him to perform work for the City.

**4. Conflict of Interest/Failure to Comply with City Ordinance and Mismanagement.**

**Allegation:** *Mr. Svab failed to comply with a City Ordinance requiring the solicitation of quotes for goods and services, and failed to manage insurance coverage resulting in significant overpayment by the City.*

**Findings:** In February 2014, DiStefano Insurance Services, Inc., insurance provider for the City, sent a renewal quote to Mr. Svab advising that the current contract would expire on April 1, 2014. The proposed renewal was for a three-year period.

Macedonia's Purchasing Manual, which was developed by the Finance Department, sets forth the procedures that must be followed for the purchase of goods and services by City Departments. The Manual includes a "Formal Competitive Bidding" process and an "Informal Competitive Bidding" process. Due to the value of the service, at a minimum, the purchase of the liability insurance services required compliance with the Informal Competitive Bidding process which provides: "For purchases not subject to formal competitive bidding, City policy requires the departments to seek informal quotes from at least three (3) suppliers of the goods and or services." (City of Macedonia Purchasing, Manual 1.A.02).

Accordingly, Mr. Svab was required to seek quotes for the liability insurance coverage from at least three insurance vendors. Instead, without considering other quotes, Mr. Svab recommended renewal of coverage with DiStefano's. In an email, dated March 3, 2014, to the Mayor and other City personnel, Mr. Svab recommended the renewal of the DiStefano's contract but offered to solicit quotes if desired. Mr. Svab was instructed to seek other quotes as required by City policy. Mr. Svab did solicit quotes, including a solicitation of Jim Zuccaro of Summit Insurance Agency. However, per an email from Mr. Zuccaro dated March 11, 2014, he could not provide the requested proposal within the timeframe required by Mr. Svab. Mr. Zuccaro also pointed out that Mr. Svab had failed to give the required 60-day notice to DiStefano's regarding termination of their services and, "it may not be in your best interest to leave." (Conditions are imposed for failure to timely give notice.) Also in an email dated March 11, 2014 from Mr. DiStefano to Mr. Svab, Mr. DiStefano also references their agreement and the notice requirement.

Mr. Svab recommended the renewal of services with DiStefano's without soliciting other quotes in violation of the City's Purchasing Manual procedures. Further, due to Mr. Svab's failure to timely solicit quotes, and provide the required 60-day notice to DiStefano's, the City was denied the opportunity to entertain competitive quotes, and thereby, possibly, a lower cost of insurance coverage.

Further, Mr. Svab failed to provide an updated list of vehicles to be covered by insurance resulting in overpayment of coverage for approximately 30 vehicles that were no longer part of the City's fleet. When the account was originally written in 2011, the City had an inventory of 91 vehicles. Mr. DiStefano states, in a letter to the City Law Director, "We did not receive an updated list until December of 2013 and it was incomplete. We went back to the City and asked for an accurate list. In March, we received a completed list which had a total of 64 vehicles." A subsequent letter from Mr. DiStefano confirms that the City would receive a refund for the 2013 inventory adjustment, however, there would be no refund for prior years.

**Conclusion:** As detailed above, there is evidence to support the conclusion that Mr. Svab failed to obtain alternate quotes from insurance providers, as required and failed to make a claim for multiple years of overpayment of insurance premiums paid on fleet vehicles not in the service of the City. These failures of action constitute a substantive violation of the City's purchasing procedures, and Mr. Svab's job duties as Finance Director to provide, "Effective analytical problem solving, decision making, project management, time management, prioritization, and organizational skills" (see Purchasing Manual and Finance Director Job Description).

5. **Circumventing Time Clock Bidding Requirements Imposed by Council.**

**Allegation:** *Mr. Svab failed to comply with City Ordinance requiring him to advertise for bids for the purchase of electronic time clocks and submit bids to Council; and failed in his duty to assure that a contractor is properly registered with the City before commencing work.*

**Findings:** On March 14, 2013, the City Council passed Ordinance 9-2013. The Ordinance directed the advertisement for bids for the purchase of electronic fingerprint time clocks for use by City employees. The Ordinance further provided that **the Department of Finance should analyze the bids and submit them to Council for final award of a contract to the lowest and best bidder.** Mr. Svab contracted with Cleveland Time Clock and Service Company. There is no evidence that Mr. Svab had received any other bids nor submitted them to Council for final award of a contract "to the lowest and best bidder." The electronic time system was installed on November 20, 2013. In a letter dated June 26, 2014 from Douglas Davenport, Marketing Services, Cleveland Time Clock Company to Mr. Joseph Diemert, City of Macedonia Law Director, Mr. Davenport confirmed that he did not provide a bid in response to an advertisement. Instead, he was contacted by a City official and asked to provide a quote. He was not informed of Ordinance 9-2013 which required advertising for bids. Accordingly, Mr. Svab obtained the services of Cleveland Time Clock and authorized payment for those services in violation of the Ordinance. As a result, Cleveland Time Clock was required to and did reimburse the City and remove the time clock system.

In regard to this transaction, Mr. Svab not only failed to comply with the Ordinance, he also failed to comply with City procedures requiring that contractors register with the City. On March 4, 2014, Cleveland Time Clock was sent a letter from the City of Macedonia informing it of the failure to obtain proper registration. Registration was obtained on April 15, 2014, well after the November 20, 2013 date that the time clock system was installed. As the Department Head who oversaw the hiring of the time clock service, Mr. Svab had a duty to assure that this contractor had proper registration, which he failed to do.

**Conclusion:** The evidence substantiates this allegation and leads to the conclusion that Mr. Svab violated City ordinances requiring solicitation of bids and requiring that contractor register with the City.

6. **Violation of Tree Fund Ordinance, Failure to Maintain Working Relationships.**

**Allegation:** *Mr. Svab failed to effectively manage three fund monies; assist staff in determining appropriate line items, resulting in delays in the payment of vendors; failed to*

Page 7 of 17

**Attorney/Client Privileged Communication  
And Work Product of Counsel**

*promptly respond to concerns of other departments; and showed an inability to maintain effective working relationships with other department representatives.*

**Findings:** Generally when a developer commences work for the City such as developing a new residential subdivision, the developer is required to pay certain fees, including fees for the planting of trees on tree lawns. As the planting of trees does not occur until the development is near completion, the money that is initially paid to the City is maintained in an account until it is needed by the Service Department to pay for the tree planting. Typically, the developer pays the fees to the Building Department. The Building Department would forward the payment to the Finance Department to enter in the proper account for the Tree Fund. At the time the trees were to be planted, the Service Department requests the fees to cover the cost of the planting.

Mr. DeGaetano, Service Director, experienced ongoing problems in obtaining the Tree Fund money. Often when the developer or home owner requested that the trees be planted, Mr. DeGaetano discovered that there was a zero balance in the Tree Fund. This created a difficult situation with a developer or home owner, as there could be an extensive delay in planting trees due to the inability to locate the funds. For example, in May 2014, Mr. DeGaetano sought the funds that had been deposited by the developers for the Gardens at Highland and Canyon Woods subdivisions. However, the subdivision Tree Fund showed a zero balance. The balance should have included funds deposited by the developers for the Gardens at Highland and Canyon Woods, as well as other subdivisions that had not yet been completed. Receipts indicate that fees had been paid for the Gardens at Highland project and the Canyon Woods project. However, these funds could not be located and made available to the Service Department to cover the cost of planting the trees. Ultimately, Council was required to approve the transfer of money from the General Fund Revenue to the Tree Fund.

Mr. DeGaetano, Service Director noticed that his problems with the Finance Department began after Mr. Svab's son was not hired as a service employee for the City. In March 2013, when Mr. DeGaetano was appointed head of the Service Department, his former position in Service became available. Mr. Svab's son applied for the position. During that time, Mr. Svab and Mr. DeGaetano were with the Mayor in the Mayor's office. Mr. Svab made the comment to Mr. DeGaetano that if he hired his son, Mr. Svab would have to leave him alone. Mr. Svab's son was interviewed, however, not hired. In the spring of 2014, another position in the Service Department became open and Mr. Svab's son applied for the position, and again was interviewed but not hired. Subsequently, Mr. Svab entered the Service Department offices intending to remove all of the Tree Fund files. Mr. DeGaetano objected and the two went to the Mayor's office. During the meeting, Mr. DeGaetano declared that he was not going to get fired because Mr. Svab prevented him from doing his job, and that Mr. Svab should be fired. Mr. Svab's response was that he was not going to get fired because he has the votes of Council. Mr. Svab denies making these comments, however, they are corroborated by Mayor Kuchta.

**Conclusion:** The evidence supports the conclusion that Mr. Svab merged Tree Fund deposits into the general fund without identifying those funds in a form that would make them available to the Service Department when needed. Because, as Director of Finance, Mr. Svab has ultimate responsibility for the management of the Department; the inability to locate these funds when needed constitutes mismanagement on his part. Accordingly

Page 8 of 17

**Attorney/Client Privileged Communication  
And Work Product of Counsel**

he has failed to meet his job requirements including: “assist Finance staff in determining appropriate line items for accounting”; “monitors all department budget accounts to assure accounts transactions are accurate and within appropriation authority”; “ability to develop and maintain effective working relationships with other City employees, department representatives, various private and public agency representatives and the public”; and “respond to inquiries and complaints from employees, elected officials and public (see Finance Director Job Description).

**7. Wrongful Delay of Issuance of Purchase Orders.**

**Allegation:** *Mr. Svab wrongfully delayed the issuance of purchase orders requested by the Building Commissioner and the Service Director, failed in his duty to maintain effective working relationships with Department Representatives, and failed to respond to inquiries and complaints from employees.*

**Findings:** When a contractor is retained to work on a particular project such as roadway construction, the contractor provides a quote, which is presented to Council. Council will then pass an Ordinance appropriating the funds necessary for the project. Once the Ordinance is passed, the Finance Department is advised and then issues a purchase order (PO). The Contractor can then submit its bill and be paid from the funds allocated through the PO. In cases of a major project, the contractor may bill monthly.

In her capacity as Building Administration Assistant, Andrea Maye, regularly works with the Finance Department. She worked with four different Finance Directors for the City of Macedonia during her tenure with the City. One of her responsibilities is to request purchase orders from the Finance Department. In her experience, the Finance Directors would issue a purchase order as soon as Council passed an Ordinance appropriating the related funds. In most cases, the purchase order would be issued the day after the Ordinance was passed. However, when Mr. Svab was Finance Director, the Building Department experienced significant delays in getting purchase orders issued by the Finance Department. This was particularly true when an invoice for an engineering contractor, GPD, was involved. Ms. Maye was required to repeatedly request purchase orders in order to cover invoices from GPD. Mr. Svab would request copies of Ordinances that should have already been in his possession. Sometimes it would take up to six months, without explanation, until a purchase order was issued for GPD.

The City Engineer, Nick Fini, is employed by GPD and not the City of Macedonia. However as City Engineer, he reports to Mr. Michael Hlad, Building Commissioner. Shortly after Mr. Svab became Finance Director, he approached Mr. Fini and proposed that he, Mr. Fini, be hired as an employee of the City. Mr. Fini declined the offer, preferring to stay with GPD as a City Engineer on a contractor basis. Mr. Svab had, also, made comments to Mr. Hlad that he preferred to hire an engineer for the City rather than use the services of GPD, complaining that GPD was too expensive. Mr. Svab recommended the hiring of an engineer, Matt Moellendick. Mr. Hlad met with Mr. Moellendick in approximately July, 2011. However, Mr. Hlad advised Mr. Svab that GPD was able to provide engineers with different expertise depending on the projects needed by the City electrical, water, etc. and that it would be difficult, if not impossible, to find one engineer who had expertise in all of these areas. Mr. Hlad subsequently discovered that Mr.

Page 9 of 17

**Attorney/Client Privileged Communication**  
**And Work Product of Counsel**

Moellendick had been terminated by GPD and that he was a co-council person with Mr. Svab on the Canal Fulton City Council. Mr. Svab had not revealed this information to Mr. Hlad. Following the refusal of Mr. Fini to consider a position with the City as an employee and the refusal of Mr. Hlad to support the dismissal of GPD and hiring of the engineer recommended by Mr. Svab, GPD experienced excessive delays in payment of its invoices for services that had been rendered.

On several occasions it took a meeting involving the Mayor, Mr. Hlad, Mr. Svab, Mr. Fini and Mr. Fini's boss, Mr. Darwish to get the PO's issued and the invoices paid. Examples of delays in in payment of GDP invoices are summarized below.

- Westwood Drive & Airplane Drive Road Improvement Projects. Ordinances 38-2014 and 39-2014, passed on June 12, 2014, authorized the appropriation of funds for the Airplane Drive Road and Westwood Drive improvement projects. A work order was submitted from the Engineering Department by City Engineer Nick Fine on June 20, 2014 requesting the amount needed to commence work on the road program, and requesting a purchase order in the amount needed so that the project could begin. A week later, on June 26, 2014, the purchase order had not been issued. An email was sent to Mr. Svab from the Building Department requesting that a PO be issued "ASAP."
- State Route 82 Phase 3, Invoices-10% Local Share. On November 19, 2013, Mr. Fini sent an email to Mr. Svab attaching invoices representing seven months of bills that had not been paid, and requested payment. Mr. Svab assured him that payment was forthcoming, however, Mr. Fini was required to send another email requesting payment and noting that GPD had not been paid for the entire year. Finally, a meeting was held involving the Mayor, Mr. Fini, Mr. Darwish and Mr. Svab. Mr. Svab offered no reason for the delay in payment and said that the payment would be forthcoming.
- I-271 Ramp Relocation. This project involved the widening of I-271 by ODOT, including a section through Macedonia. Macedonia was interested in moving an on ramp for safety purposes. Mr. Fini requested a purchase order so that he could commence work on the project. Time was of the essence as ODOT needed a commitment from the City, including assurance of the right-of-way. ODOT would not delay the project and would go forward without the City and the City would miss the opportunity for the relocation project. A series of emails involving Mr. Fini, Mr. Svab and a Building Department employee addresses Mr. Fini's request for a PO and repeated requests from the Building Department for the PO. Mr. Fini's original request was dated December 3, 2013, and as of January 9, 2014 the PO had not been issued. In fact, in order to prevent jeopardizing the City's ability to participate in the project, Mr. Fini commenced with preparation, including attending ODOT meetings, even though a PO had not been issued which would authorize payment for his services.

Dezirae Stoker, as Accounts Payable Clerk, confirms the delays in issuance of purchase order to the Building and Service Departments and that she often received complaints from the Building and Service Departments regarding the delays. Sharon Sopata, Service Department Clerk, repeatedly went to the Finance Department to complain about delayed purchase orders that were needed to pay delinquent invoices. On one occasion when Ms. Stoker relayed a request from Ms. Sopata, Mr. Svab responded, "Let her wait."

During the time Mr. Svab has been on an administrative leave, the Building and Service Departments have received purchase orders on a timely basis. The Finance Department has received no complaints about delays in the issuance of purchase orders. Mr. Svab has not offered substantive reasons for the delay of purchase orders of his records requests.

**Conclusion:** The evidence supports the conclusion that Mr. Svab wrongfully delayed the issuance of POs and payments relative to miscellaneous authorized projects and services, including the projects detailed above. He thereby failed to meet his job requirements defined in his job description as:

- Ability to develop and maintain effective working relationships with other City employees, department representatives, various private and public agency representatives and the public.
- Respond to inquiries and complaints from employees, elected officials and public.

Effective analytical problem solving, decision making, project management, time management, prioritization, and organizational skills.

#### **8. Violation of City Public Records Policy.**

**Allegation:** *Mr. Svab violated the City Public Records policy by procuring, and in some cases releasing, City documents on his own and did not follow City Procedures, including requesting the records through the Custodian of Records.*

**Findings:** The City of Macedonia's Public Records Policy specifies the manner in which requests for public records will be processed. In a memo dated January 16, 2013, from the Law Department, City employees were reminded that public record requests should be referred to Diana Augustine, the Designated Records Custodian and Coordinator for all administrative departments. It is the duty of the Custodian of Records to track all requests. Appropriate procedures must be followed to assure compliance with state law, as well as to protect confidential information that is exempt from disclosure. The Records Custodian is also charged with contacting the Law Department regarding any questions of legal compliance. The City's Public Records Policy applies to all public records requests received by the City, including requests received from City employees, Council members or other officials. Requests from those individuals should be forwarded to the Custodian of Records.

Mr. Svab has repeatedly violated the Public Records Policy by procuring and releasing records on his own accord and not through the Records Custodian. On occasion, he simply told the Records Custodian that he had released the records – and refused to submit a request. He also has directed staff to make copies of public records for him. For example, Mr. Svab directed Ms. Stoker, to provide him with copies of all applications related to the position for which his son was not hired. (Ms. Stoker was assigned to the Human Resources Department at the time.) Ms. Stoker advised Mr. Svab that he must comply with the public records request policy and procedures. Also, after Mr. Svab returned from his first administrative leave of absence, Ms. Stoker witnessed him making

copies and asked if there was a public records request. Mr. Svab gave her some cash for the copying costs. She inquired as to what account she should put the money and how to mark it, but did not get any direction from Mr. Svab.

In 2013, Mr. Svab scanned and released cell phone numbers for SWAT, Incident Command and the Rescue Squad telemetry numbers, creating a concern regarding usage of those numbers that would interfere with police department and fire department operations.

**Conclusion:** Accordingly, the evidence supports the conclusion that Mr. Svab violated City policy and procedures regarding public records including the City of Macedonia's Public Records Policy. This violation created an inaccurate record required to establish legal compliance, and thereby exposes the City to legal risk. While Mr. Svab has the right, as does any citizen, to request public records, as a Director of a City department, he may not exercise this right as a means of retaliation against another City employee.

## **9. Acts of Retaliation and Harassment.**

**Allegation:** *Mr. Svab delayed the issuance of purchase orders, failed to make three fund money available, and submitted records requests for the employment records of the Building Commissioner and Service Director in order to harass and retaliate against them for their participation in an investigation regarding his misconduct and for complaining about him to the Mayor.*

**Findings:** Building Commissioner Hlad and Service Director DeGaetano believe that Mr. Svab's delaying purchase orders, inability to access tree funds and numerous records requests pertaining to their employment with the City are in retaliation for their complaints about Mr. Svab and their participation in the investigations concerning Mr. Svab's conduct as Finance Director.

As noted above, The Mayor terminated Mr. Svab's employment following an investigation by the Law Department, (which did not become effective because it was not approved by a majority of Council). The findings of the Law Department regarding misconduct by Mr. Svab included testimony from Mr. Hlad and Mr. DeGaetano. On September 29, 2014, Mr. Svab returned from his administrative leave and the same day submitted a public records request for "wage history, performance evaluations, feedback, etc., personnel records of Mike Hlad (Bldg Comm.) & Jim DeGaetano (Svc. Dir.)." Subsequently, Mr. Svab made public records requests for "Mike Hlad's time sheets for 2010, 2011, 2012, 2013, 2014" (requested on 11/3/14). Mr. Hlad and Mr. DeGaetano have complained to the Mayor about the records requests and that they are being harassed and retaliated against by Mr. Svab for their participation in investigations related to Mr. Svab's conduct as the Finance Director.

Evidence that the delay in purchase orders was retaliation by Mr. Svab is detailed in subsection 7 above. Further evidence in support of finding that the delay in the issuance of purchase orders was retaliatory is provided by Mr. Svab in his statement to Council confirming that, "I have not had one complaint from the fire, dispatch or police, or the recreation center departments in regards to invoices or purchase orders and timeliness of checks being processed!"

While Mr. Svab has been on leave, neither the Building Department nor the Service Department have experienced delays in getting purchase orders issued from the Finance Department.

**Conclusion:** Although there is some supporting evidence, it does not definitively establish retaliation or harassment. Nonetheless, these actions create an appearance of retaliation and harassment. The evidence does support a finding that Mr. Svab has failed to satisfactorily demonstrate the required job skill of: "Ability to develop and maintain effective working relationships with other City employees, department representatives, various private and public agency representatives and the public" (see Finance Director Job Description).

He also failed to uphold the City's standards for treatment of employees. The Employee Manual also provides that: "The City is committed to courteous and considerate treatment of its employees at all times as an accepted standard of behavior. Consequently, the City is committed to a work atmosphere that is free of tension caused by demanding or harassing conduct: (see Employee Manual, p. 37).

**10. Failure to Seek Reimbursement for Funds for Right-of-Way for the Route 82 Project.**

**Allegation:** *Mr. Svab failed to seek reimbursement of funds for the Route 82 Project.*

**Findings:** While Mr. Svab was on administrative leave, it was discovered that he had not sought reimbursement from the State of Ohio for right-of-way services for a Route 82 project. The City became aware of the failure to seek funds in November 2014 when the Law Department was informed that Macedonia had not sought reimbursement on any funds on the right-of-way services for the Route 82 project with ODOT. Per Building Commissioner Hlad, he and the City Engineer, Nick Fini, had discussed the need for Mr. Svab to seek reimbursement after an ODOT meeting. The reimbursement value is equal to \$354,200 of unpaid money to the City; representing 80% of the anticipated expenses.

**Conclusion:** The evidence supports the conclusion that Mr. Svab failed to seek reimbursement on these substantial funds and that the failure constitutes negligence of his duty as Finance Director and standards of job including "Effective analytical problem solving, decision making, project management, time management, prioritization, and organizational skills" (see Finance Director Job Description).

**11. Acts of Insubordination while on Administrative Leave.**

**Allegation:** *Mr. Svab committed numerous acts of insubordination while on a paid administrative leave of absence.*

**Findings:** While on administrative leave, Mr. Svab was not to perform any work on behalf of the City or contact City employees, unless requested to do so by the Mayor. Mr. Svab violated this directive by engaging in various acts of insubordination as detailed below.

- Mr. Svab contacted the City IT software vendor regarding establishing remote access to the City's network. This action was taken without approval of the Mayor and in violation Mr. Svab's administrative leave. Mayor Kuchta was advised via an email

from a representative of the City's finance software vendor, CMI, that she had received a request for a quote for IT services to allow Mr. Svab to access the City's software network in order to work from his home. The representative inquired as to whether Mr. Svab was authorized to request the quote and spend the City's money, and whether he was permitted to log into the City's financial software in order to work from his home. In response, the Mayor sent a cease and desist order to Mr. Svab dated October 28, 2014, advising Mr. Svab that he had been contacted by the City vendor about ordering financial software to be used at home. The Mayor further stated, "You certainly have no permission or ability to order, solicit, purchase or buy for yourself, any of our City's software or information from any third party."

- Mr. Svab worked on the City budget with a Council member. In the October 28<sup>th</sup> letter reference above, the Mayor advised Mr. Svab that Councilwoman, Sylvia Hanneken, announced that she was working with Mr. Svab on the budget. The Mayor warns, "As your supervisor, you are again reminded to have no contact and perform no City services, unless my office calls you for some particular information." An interim Finance Director had been hired to manage the Finance Department (including to assist with the budget) during Mr. Svab's leave. The letter concludes by warning Mr. Svab that he is to cease and desist from attempting to harass or intimidate any City Council member or any other employee of the City, and that such behavior would be added to charges of insubordination.
- In December, 2014, a message was left from the County Fiscal Office, "Christine" indicating that she was returning Mr. Svab's call. The Mayor called Christine to advise her that Scott was on an administrative leave. Christine informed the Mayor that Scott had requested information regarding a TIF (tax increment financing) estimate on a particular parcel of land.
- Mr. Svab refused to cooperate with this administrative investigation as directed by his superior, Mayor Kuchta. Initially, Mr. Svab demanded an affidavit from the investigator assuring that she did not have business or personal relationships with the Mayor or the Law Director or the Law Director's law firm; a copy of all questions to be asked during the interview; the right to record the session, and to have his attorney present at the interview. The investigator assured Mr. Svab that she did not have any personal or business relationships with anyone connected with the City of Macedonia, the Law Department or the Law Director's law firm, and that she had provided this information in a letter that was provided to the Mayor and to Council. She also advised him that this was an internal administrative investigation and not a legal proceeding, therefore, it would not be appropriate to have a lawyer present. Also, as Mr. Svab was aware that the investigation was concerning all of the allegations and findings based on the Law Department investigation, it would not be necessary to provide him with written questions in advance. This investigator agreed to the recording of the interview. Subsequently, Mr. Svab informed the City of Macedonia's Human Resources Director that he refused to participate in the investigation.
- In an email dated January 17, 2015 from the Mayor to Mr. Svab, the Mayor stated that as Mr. Svab was on a paid administrative leave he was obligated to do as the Mayor's office required of him, including cooperating with the administrative investigation. He

further advised Mr. Svab that he did not have authority to ask the investigator for an affidavit and assured Mr. Svab that the investigator had provided written verification that she had no personal or professional connections with City Administration, Council, the Law Director or his law firm. The Mayor also advised Mr. Svab that he, of course, had the right to invoke the Fifth Amendment protecting against self-incrimination. The Mayor warned Mr. Svab that refusal to cooperate with the investigation would be considered insubordination. Mr. Svab continued to refuse to participate in the investigation. 5 days to contact

**Conclusion:** The evidence supports the conclusion that Mr. Svab violated a City Rule of Conduct that: "An employee shall not be insubordinate or fail to follow instructions or legitimate work orders of his/her supervisor (see, Employee Handbook, Serious Rules of Conduct).

**12. Inappropriate Conduct towards Staff/Failure to Supervise Staff.**

**Allegation:** *Mr. Svab did not often provide effective supervision of staff in that he often refused to review and sign off on their work and did not provide sufficient assistance in determining appropriate line items.*

**Findings:** Mr. Svab refused to check the work of the Accounts Payable and Receivable Clerks on a daily basis and to sign off his approval even when requested by the clerks to do so, according to his prior clerk, Ms. Butto, as well as current clerks Ms. Stoker and Ms. Melinchenko. City employees cited numerous examples of inappropriate treatment by Mr. Svab as detailed below.

- Several witnesses stated that Mr. Svab made comments that he would prefer to hire younger women in the Finance Department. At the time Mr. Svab became Finance Director, there were two clerks in the Finance Department, Lorraine Flanagan (dob 8/30/59) and Laura Butto (dob 1/23/57). Mr. Svab fired Ms. Flanagan and transferred Ms. Butto to the Service Department. He hired the current Finance clerks, Dezirae Stoker (dob 7/19/88) and Jonelle Melinchenko (dob 7/31/89). Mr. Hlad stopped going to lunch with Mr. Svab because of derogatory comments Mr. Svab made about Lorraine Flanagan and Laura Butto such as: "old and slow - nice to have younger women." Mr. Svab also made comments about older workers, asking when certain people were going to retire so that he could bring in younger people.
- Several staff members state that Mr. Svab is disrespectful towards staff. For example, Ms. Butto heard Mr. Svab tell Ms. Flanagan that she was "stupid" and that "a high school person could do a better job." Ms. Butto also stated that she was in shock and embarrassed when, during a staff meeting, Mr. Svab announced that she was being moved to the Service Department. He had not discussed this with her. Ms. Melinchenko is concerned that Mr. Svab will retaliate against her for providing information regarding the backdating of the fishing invoice. While Mr. Svab was being escorted out of the Finance Department due to being placed on administrative leave, he asked Ms. Melinchenko if she had talked to the law department about the fishing grant, and if she had communicated with the Law Department via email.

- One evening Ms. Stoker and Mr. Svab were both working late in the Finance Department. Mr. Svab was reviewing documents related to record keeping issues flagged by the State Auditor in 2012 and 2013. Mr. Svab began yelling at Ms. Stoker that it was her responsibility to make sure the records were correct and that “It will be your ass if anything goes wrong.”

**Conclusion:** The above findings establish the conclusion that Mr. Svab has not demonstrated the skills required by the Finance Director Job Description, specifically:

- Ability to develop and maintain effective working relationships with other City employees, department representatives, various private and public agency representatives and the public.
- Ability to provide effective supervision.

Furthermore, as a Department Director, Mr. Svab is expected to model and enforce the City’s commitment to provide courteous treatment of employees and a work atmosphere free of tension and harassing conduct (*see* Employee Manual, p. 37). To the contrary, Mr. Svab’s derogatory comments to and about coworkers violated these standards.

## **Summary**

The City Charter establishes the City’s right to terminate the Finance Director’s employment at any time at the discretion of the Mayor and subject to approval by a majority vote of Council (City Charter 6.09). As the City’s right to terminate the Finance Director’s employment is not limited by contract or regulation, the Finance Director’s employment is “at-will.” Employment-at-will recognizes that either the employer or the employee may terminate the employment relationship at any time with or without notice and for any lawful reason or no reason. Therefore, the City has the right to terminate Mr. Svab’s employment without notice and without providing a reason or cause.

However, this investigator was directed to further provide an opinion as to whether application of accepted employment practices in the Human Resource industry to the conduct of Mr. Svab would support a termination of his employment. It is not the role of this investigator to recommend termination or other disciplinary action, but rather, as directed, to give a professional opinion as to whether termination of employment would be justified under standard employment practices. Those practices generally consider an appropriate discharge to be one where there is a known work rule or a standard of conduct that is violated; the employee knew or should have known that violation of these requirements could result in discipline, up to and including termination of employment; and the evidence supports a violation of the work rule or standard of conduct.

In most cases, first time or minor violations are addressed through counseling and warnings. However, termination is warranted for repeated violations or misconduct that is egregious.

In this matter, there was notice of clear job expectations and standards through the job description, employee manual, purchasing manual, work rules, ordinances and other City procedures referenced above. The evidence supports that Mr. Svab did not meet expectations and standards, and violated rules and procedures.

Memo to City of Macedonia  
Re: Investigation Regarding Job Performance of Finance Director Scott Svab  
March 5, 2015

Under standard employment practices, as applied by the Human Resources industry, some of the misconduct such as inappropriate comments to and about staff, failure to provide oversight of staff and accounting procedures that caused disruption to operations, initially, is normally addressed through counseling, training and warnings. However, there are other significant acts of misconduct by Mr. Svab that would warrant termination under standard employment practices because they were brought to Mr. Svab's attention and then repeated (such as failure to assure registration of contractors). Finally and perhaps most significant, the evidence identified egregious acts of misconduct that would warrant termination under standard employment practices without prior warnings. These acts of misconduct include: ordering a subordinate to create a false document and the various acts of insubordination by Mr. Svab during his administrative leave of absence.

In conclusion, the evidence, as described above, supports the conclusion that Mr. Svab violated City employment policies and procedures, and failed to carry out his duties as Finance Director. Although as noted above, the Finance Director is employed at-will, the conduct described above would support a decision to terminate his employment with the City of Macedonia under standard employment practices.