



**REPORT TO  
ATHENS CITY COUNCIL MEMBERS FROM  
THE FIRE INSURANCE CLASSIFICATION INVESTIGATIVE COMMITTEE**

On November 28, 2006, the City Council (“Council”) for Athens, Tennessee, at a called special meeting, formed an investigative committee (“Committee”) to investigate controversies surrounding the downgrading of the City’s fire rating by the Insurance Services Office, Inc., (“ISO”) from a Class 3 to a Class 4. The City was officially notified of this retrogression by letter dated May 10, 2006.<sup>1</sup>

The Committee is charged with the responsibility of answering various inquiries.<sup>2</sup> Among these inquiries are: What members of the City Council and what employees of the City and other public agencies in McMinn County knew about the possible reclassification of the fire rating? Who was involved in the formal decision to accept the reclassification on behalf of the City and so notify ISO? Why did persons who knew about the reclassification and are identified in the Committee’s answer to the first two inquiries not notify the members of City Council of the potential fire rating reclassification? In the review hereafter, and accompanying review of the Exhibits, this Committee answers these inquiries for City Council and the public at large.

In undertaking this task, the Committee has taken sworn testimony of 12 different witnesses, including, among others, the Mayor, Councilpersons Alvey, Pelley, and Perkinson, City Manager Mitchell Moore, Fire Chief Bob Miller, Police Chief Chuck Zeigler, administrative assistant Kaye Burton, Director of Community Development Harold Hunter, and AUB Manager Eric Newberry. Some witnesses were interviewed twice, and Mr. Moore three times. It should be noted that Councilman Hal Buttram was not interviewed by the Committee since he did not take office until November 9, 2006, which covered only the latter few days of the period of this investigation. Mr.

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<sup>1</sup> See Exhibit 6.

<sup>2</sup> See Exhibit 43.

Buttram was in no way involved in the subject of this investigation. It is apparent that most City Councilpersons when elected or appointed to their initial position have little knowledge about ISO.<sup>3</sup> When councilpersons first come on the Council and they are made aware of ISO, there are a number of questions which may confront them. What is ISO? What function does it form? How does that function impact on the City budget? How does it impact on the citizens and taxpayers? What steps can be taken to get a more favorable fire rating from ISO? One reason why councilpersons may be unfamiliar with the phrase “ISO” is that ISO surveys may be many years apart. Mr. Moore testified that in his 25-year career in the city management field, the May, 2005, ISO survey of Athens was the first he had encountered.<sup>4</sup>

Insurance Services Office, Inc., (“ISO”) is a supplier of statistical, underwriting and actuary information for the property/casualty insurance industry. It conducts surveys of the fire suppression delivery system for various municipalities and communities, analyzes the same and awards the community with a classification based upon the survey and its analysis.<sup>5</sup> The surveys conducted by ISO are known as Public Protection Classification (“PPC”) surveys. For purposes of this report, the term “ISO survey” and “PPC” will be treated as synonymous. The ISO surveys result in fire ratings for various municipalities and communities. A rating of “1” indicates the top 10% on the points scale and results in the lowest possible insurance premiums. At the lower end of the scale, an ISO rating of “10” represents areas that have no fire protection.<sup>6</sup> According to ISO, “[m]ost insurers use the PPC classifications for underwriting and calculating premiums for residential, commercial and industrial properties.”<sup>7</sup>

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<sup>3</sup> Pelley, pp. 7 and 27. See also Alvey, pp. 4-5, 44.

<sup>4</sup> Moore, p. 12

<sup>5</sup> See Exhibit 6.

<sup>6</sup> See pp. 1-2 of Ray Crouch, Sr., report entitled “Understanding and Improving Your ISO Rating” which is part of Exhibit 9.

<sup>7</sup> See Exhibit 6.

The ISO grading schedule looks at three broad areas. The major area which constitutes one-half (½) of the maximum credit is the fire department itself. Various credits are awarded for engine companies, reserve pumpers, pump capacity, ladder service companies, personnel, training, etc. Forty (40%) percent of the maximum credit of the ISO survey deals with the water supply. The remaining ten (10%) percent of the maximum credits in an ISO survey deals primarily with communications pertaining to the receiving of fire reports and dispatching of the fire department companies.<sup>8</sup> There is a fourth element of the grading schedule referred to as the divergence factor which “simply stated, . . . is a built-in penalty for a jurisdiction that puts too much emphasis on the fire department over water supply or vice versa on the water supply to the neglect of the fire department.”<sup>9</sup> The ideal score for the divergence factor is a “0”.

The Public Protection Classification, or ISO fire rating, is based on the total percentage credit as follows:<sup>10</sup>

<u>CLASS</u>	<u>%</u>
1	90.00 or more
2	80.00 to 89.99
3	70.00 to 79.99
4	60.00 to 69.99
5	50.00 to 59.99
6	40.00 to 49.99
7	30.00 to 39.99
8	20.00 to 29.99
9	10.00 to 19.99
10	0.00 to 9.99

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<sup>8</sup> See ISO report entitled “Classification Details” based on May, 2005, ISO survey which report is a part of Exhibit 20.

<sup>9</sup> See Exhibit 9, p. 4.

<sup>10</sup> Exhibit 6, p. 3.

Since 1985, the City of Athens has had two ISO surveys. The first was conducted in January, 1986, and resulted in a total credit to the City of 72.77% resulting in a Class 3 fire rating.<sup>11</sup> The 72.77 percentage points which the City received is 2.77 percentage points over the minimum points required in order for the City to have a Class 3 fire rating. The second ISO survey was conducted in May, 2005, and resulted in Athens suffering a reduction of 12.34 percentage points in it's assigned credits.<sup>12</sup> Said reduction produced a Class 4 fire rating for the City which was ultimately confirmed by correspondence to Mayor Proffitt from ISO dated May 10, 2006.<sup>13</sup>

A comparison of these two surveys may prove helpful. Accordingly, the summary of the 1986 and 2005 surveys gleaned from Exhibit 20 follows:

<u>Feature</u>	<u>Maximum Credit</u>	<u>1986 Credit</u>	<u>2005 Credit</u>
Receiving and handling fire alarms	10.00%	9.22%	7.51%
Fire Department	50.00%	34.52%	25.39%
Water Supply	40.00%	30.44%	34.74%
Divergence <sup>14</sup>	_____	<u>- 1.41%</u>	<u>-7.21%</u>
TOTAL CREDIT	100.00%	72.77%	60.43%

From the above survey, it is clear that the retrogression of the fire rating from "3" to "4" resulted from the 12.34% decline in maximum credits, but perhaps more significant, is the fact that the 60.43% maximum credit under the 2005 report is only 0.44% above a Class 5 fire rating.<sup>15</sup>

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<sup>11</sup> See pp. 2-3 of November 6, 2002, fax to Chief Bob Miller from ISO which is a part of Exhibit 9.

<sup>12</sup> See ISO report entitled "Classification Details" based on May, 2005, ISO survey which report is a part of Exhibit 20.

<sup>13</sup> See Exhibit 6.

<sup>14</sup> Divergence is a reduction in credit to reflect a difference in the relative credits for Fire Department and Water Supply.

<sup>15</sup> See third page of Exhibit 6 which is the May 10, 2006, letter from ISO to the Mayor with attachments.

In February, 1997, Ray Crouch, Sr., a Fire Management Consultant with the Municipal Technical Advisory Service (MTAS) rendered a report to the City of Athens and appeared before the City Council. The first sentence to the introduction of Mr. Crouch's report states "[i]t should be clear to even the most casual observer of the Athens Fire Department that it is a very good fire department." There is no evidence before this Committee to suggest that the Mr. Crouch's 1997 observation is any different today. The Crouch report was made at the request of the then City Manager Mel Barker and Fire Chief Bob Miller. The purpose of the report was to make recommendations on how Athens could attain the highest possible level of fire protection in the most cost effective manner consistent with modern technology.<sup>16</sup> This 1997 report clearly states that the City of Athens does not meet its then Class 3 fire rating with respect to the distribution of fire stations. The report recommends the relocation of the existing Station 2 and adding two additional fire stations, one in the City Park area, and the other in the Mount Verd Road connector region as growth in that area requires. Further, the report recommends that the City "adopt an equipment replacement fund for its fire apparatus" and warns that the City should never allow itself to have a fire apparatus fleet with as much average age as it had at that time.<sup>17</sup> Higher priority on training, increased attention to the volunteer program, change in the paging equipment, and mutual aid agreements placed in writing are among the numerous recommendations which Mr. Crouch made in 1997. His conclusion is pertinent:

"You should not expect a pint of water to fill a quart jar. Neither should you expect you (sic) fire department to provide class 3 ISO service to a city that is much bigger than it was when the fire department received that rating."<sup>18</sup>

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<sup>16</sup> See Exhibit 9, "City of Athens Fire Protection Management Study" (Crouch Report), p. 1.

<sup>17</sup> See pp. 4-5 of the Crouch Report.

<sup>18</sup> See p. 8 of the Crouch Report in Exhibit 9.

Mayor Proffitt and Councilman Perkinson are the only present members of the Council who were councilpersons in 1997 when Mr. Crouch appeared before City Council. Councilman Perkinson seems to recall the presentation, but he cannot say positively.<sup>19</sup> Mr. Crouch's report had a more lasting impact upon the Mayor. In his interview, Mayor Proffitt repeatedly makes reference to the fact that based upon Mr. Crouch's report and appearance before the Council, he was under the impression that it was just a matter of time before the City's fire rating dropped to a Class 4 unless major capital expenditures were to be made.<sup>20</sup> What Mayor Proffitt took from Mr. Crouch's appearance before the Council was that the City, if surveyed then by ISO, would not retain the Class 3 fire rating.<sup>21</sup> Based upon Mr. Crouch's statements, Mayor Proffitt expected a Class 4 fire rating to be imposed upon the City because the Council had not fully acted upon the Crouch report. Long before the August 15, 2005, ISO letter, Mayor Proffitt was "resigned to the fact" that the City was heading in the direction of a Class 4 fire rating.<sup>22</sup> It is quite true that Mayor Proffitt did not discuss the change in the fire rating with any councilperson. It is obvious that he assumed that other councilpersons had received the first ISO letter. This assumption was justified, for as stated elsewhere, the responsibility to see that the other councilpersons received the first ISO letter (as well as all of the ISO correspondence) was that of the City Manager. When he received the first correspondence from ISO, Mr. Proffitt was aware that capital expenditures involving the increase in taxes would be necessary to retain the Class 3 fire rating.<sup>23</sup> He was of the opinion that it was not the proper time to increase taxes for this purpose.

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<sup>19</sup> Perkinson, p. 5.

<sup>20</sup> Proffitt, p. 12.

<sup>21</sup> Proffitt, p. 28.

<sup>22</sup> Proffitt, pp. 30-31; see also p. 36.

<sup>23</sup> Proffitt, p. 46.

In 2004, Manager Moore requested Chief Miller to provide a report on the possible annexation of the Mount Verd Corridor which involves property along Highway 305. In response, Chief Miller and those assisting him compiled an extensive report entitled "Report on the Possible Annexation of Property on Highway 305" which was submitted to Manager Moore on August 31, 2004.<sup>24</sup> Unfortunately, Mr. Moore never shared this report with any members of City Council.<sup>25</sup> Had the City Manager given this report to Council members then they would have had the benefit of Mr. Crouch's entire report which was also a part of Chief Miller's 2004 report. When first quizzed about the purpose of Mr. Miller's annexation report, Mr. Moore responded that the purpose was "[t]o see how the possible annexation of Mount Verd or Highway 305 would affect the fire department and its ability to --".<sup>26</sup> Another purpose, Mr. Moore later stated, was to evaluate Chief Miller's performance in preparing this report, which was part of the Chief's 12 goals for 2004.<sup>27</sup>

Included in Chief Miller's 2004 annexation report is his previous memorandum dated March 20, 2002, to the City Manager. The subject matter of this earlier memo was the Mount Verd Interchange (I-75) & CoRd 305 Fire Protection Review. The next to the last paragraph reads as follows:

"This area when annexed, will... put the ISO milage response for the fire department well over its 1.5 miles fron (sic) a engine company. It would be 2.5 miles the way ISO calculates on the map. It also would extend our 2.5 miles for a truck company. This would help justify a third Fire Station in that area. This is where a combination pumper/ladder would help."

There is nothing in the evidence before the Committee that this March 20, 2002 study by Chief Miller was given to any members of City Council.

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<sup>24</sup> See Exhibit 9; also Moore, p. 68.

<sup>25</sup> Moore, Vol. II, pp. 16 and 20. Proffitt, p. 26. Pelley, p. 12. Alvey, p. 52. Perkinson, pp. 29-32.

<sup>26</sup> Moore, p. 68, line 14.

<sup>27</sup> Moore, Vol. II, pp. 12-18.

What is the significance of the new fire rating of “4” from the previous rating of “3”? This is a question which has concerned the Committee throughout the hearings. Unfortunately, the City of Athens never did any definitive study to try to compare the increase in taxes which the citizens of Athens would have to pay if capital expenditures were made for fire equipment, new fire stations, and the cost of hiring and training additional fire personnel in order to maintain a Class 3 fire rating as opposed to the costs to the citizens of Athens in the form of increased fire insurance premiums if no action is taken, and the fire classification drops to “4” or lower. Chief Miller’s annexation report contains a study showing the increase in insurance premiums when the City’s fire rating is downgraded from Class 3 to Class 5. The study involved four different home values ranging from \$80,000.00 to \$200,000.00. The conclusion of this portion of Chief Miller’s report is that “...the maximum increase in any premium with a change from Class 3 to a Class 5 would be 5.5%.”<sup>28</sup> One would expect the increase to be less than 5.5% for a change from Class 3 to Class 4. Even though the increase in fire premiums may only be modest in percentage change, the Committee regards the failure of the City Council to be informed in advance about the potential change in the City’s fire classification rating as a serious breach in the flow of information from the City Manager’s office to the Council.

The findings of the Committee are in no way intended to reflect adversely upon the Athens Fire Department or Chief Miller. A Class 3 rating is definitely the exception and gave Athens certain “bragging rights”.<sup>29</sup> Indeed, the evidence suggests that the ISO inspector questioned in 2004 how Athens was able to get a Class 3 rating from the previous survey.<sup>30</sup> The Committee finds that any deficiencies relating to the fire department result from the failure of City Council to adequately fund the needs of the fire department over many years rather than any substandard performance by the fire

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<sup>28</sup> See Exhibit 9; specifically the document entitled “Insurance Study on Fire Ratings vs. Home Value”.

<sup>29</sup> Proffitt, p. 4, line 23.

<sup>30</sup> Miller, p. 43, line 6.



department or its employees. Since Mr. Crouch's 1997 report, the City has addressed some of the concerns expressed in this report; most notable of which is updating the fire department's fire fighting fleet and equipment.<sup>31</sup>

Early in the investigation, it became apparent to the Committee that two officials, Mayor John Proffitt and City Manager Mitch Moore, had knowledge of a fire rating change. Both acknowledge receiving the first letter from ISO dated August 15, 2005, which was addressed to Mayor Proffitt.<sup>32</sup> Mail coming into City Hall addressed to the Mayor is opened only by Mr. Moore or his administrative assistant, Kaye Burton.<sup>33</sup> Typically, mail addressed to the Mayor is copied with each Council member receiving a copy and the Mayor getting the original.<sup>34</sup> Mayor Proffitt understood this to be the practice.<sup>35</sup> This practice clearly accounts for why Mayor Proffitt assumed or thought that the other members of the Council had received a copy of the August 15, 2005, ISO letter.<sup>36</sup> Mr. Moore admits that it would be his responsibility to see that the other councilpersons received copies of this ISO letter.<sup>37</sup> Moreover, Mr. Moore thought that a copy of this letter had been placed in the other councilpersons' boxes.<sup>38</sup> The other three members of Council (Alvey, Pelley, and Perkinson) deny ever receiving a copy of the first ISO letter until after it surfaced in the public domain in the Fall of 2006.<sup>39</sup> Therefore, the Committee must conclude that the City Manager failed

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<sup>31</sup> See Exhibit 16; see also Proffitt, p. 13; and Perkinson, p. 46.

<sup>32</sup> See Exhibit 2. See also Proffitt, p. 6, line 8, and Moore, pp. 25-26.

<sup>33</sup> Moore, pp. 25-26.

<sup>34</sup> Moore, p. 26, line 7; see also Moore, p. 50, line 15.

<sup>35</sup> Proffitt, p. 9, line 9.

<sup>36</sup> Proffitt, p. 6.

<sup>37</sup> Moore, p. 51, line 22.

<sup>38</sup> Moore, pp. 29-30; also Moore, p. 77, line 11.

<sup>39</sup> Pelley, p. 15. Perkinson, p. 16; and Alvey, p. 52.

to distribute copies of the August 15, 2005, ISO letter to the members of the City Council other than Mayor Proffitt.

Although Mayor Proffitt is willing to accept responsibility for the failure of the other councilpersons not receiving copies of the ISO correspondence addressed to him at City Hall,<sup>40</sup> the Committee does not hold him responsible at all for this failure. It is not the duty of the Mayor - whoever that might be - to come to City Hall each day, open mail addressed to him, make copies, and then be responsible for placing copies of the letters in the boxes of each of the other councilpersons. To impose such a responsibility upon any mayor borders on incredulity. Rather, this responsibility clearly lies with the City Manager and his subordinates.<sup>41</sup>

At this point it is appropriate to differentiate the conduct of Mayor Proffitt and that of the City Manager. The former involves an oversight based upon an assumption that other members of Council had received the ISO letter of August 15, 2005. The conduct of Mr. Moore, on the other hand, involves a more conscious awareness on his part that except for Mayor Proffitt, the other members on Council did not know about the fire rating change. The City Manager initiated and responded to correspondence after receiving the first letter from ISO dated August 15, 2005 (Exhibit 2). Over the next nine months, a series of letters was exchanged between the City and ISO. Council members Alvey, Pelley, and Perkinson never saw or knew about any of these letters until the ISO controversy erupted in the Fall of 2006.<sup>42</sup>

There is no indication that Mayor Proffitt ever corresponded with ISO. Mr. Moore twice wrote ISO. First, on September 9, 2005, requesting an extension, and again on April 17, 2006, to advise that the City could not comply with a Class 3 fire rating. From the evidence, it appears that Mayor Proffitt was unaware of either of these two letters until the ISO controversy arose in the Fall

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<sup>40</sup> Proffitt, p. 6.

<sup>41</sup> Moore, p. 51, line 22.

<sup>42</sup> Alvey, p. 52; Pelley, pp. 15 and 32; and Perkinson, p. 16.

of 2006.<sup>43</sup> Mayor Proffitt assumes he received the ISO letter of October 13, 2005, granting the City an extension. This letter was addressed to Mr. Moore, but copied to the Mayor. Mr. Proffitt acknowledges receiving the March 30, 2005, letter from ISO regarding the inaction of the City. He did not discuss this with Mr. Moore.<sup>44</sup>

City Manager Moore's first letter following the ISO's initial correspondence with the City was an appropriate response by the City Manager asking for an extension of time until February 1, 2006.<sup>45</sup> The decision to request an extension of time in which to respond to ISO's first letter was a unilateral decision made by Mr. Moore.<sup>46</sup> Any fault associated with this decision lies not in the fact that Mr. Moore requested the extension without consulting with the Council, but rather in his failure to inform the Council of that decision. Mr. Moore testified that he again thought he had placed copies of his February 1, 2006, response to ISO in the councilpersons' boxes.<sup>47</sup> This testimony is somewhat disturbing in that the letter shows a carbon copy going only to Chief Miller. If Mr. Moore had intended for Council to receive copies also, one would think that he would likewise show copies going to the members of Council as well as Chief Miller. Mr. Moore concurs in this assessment as evidenced by the following question and his response thereto:

Q: Well then, how is anyone to know to put this in the councils' boxes if you don't show a copy to the Council?

A: That's why I say, by practice we typically do that. If I say, "Kaye put that in the Councils' boxes," then that's what as done. Typically you're correct. I mean, **if we were going to for sure make sure it got in the Councils' boxes, we would have put "C.C. City Council..."**<sup>48</sup> (Emphasis supplied).

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<sup>43</sup> Proffitt, pp. 29-30, 34.

<sup>44</sup> Proffitt, pp. 36-37.

<sup>45</sup> See Exhibit 3.

<sup>46</sup> Moore, p. 29.

<sup>47</sup> Moore, pp. 29-30.

<sup>48</sup> Moore, p. 53, line 12

There was a two-fold reason for requesting the extension from ISO according to Mr. Moore. One was to allow the City time to determine what costs would be involved in order to retain the Class 3 fire rating. In the ensuing six months after receiving the August, 2005, correspondence from ISO, Mr. Moore implemented no action designed to ascertain the costs involved in retaining the Class 3 fire rating. No request was made of Chief Miller for further studies or reports.<sup>49</sup>

The second reason for the extension request was to give the City Council an opportunity at its annual planning session to be held on January 20-21, 2006, to discuss the matter in greater detail. This did not happen either. The City Manager timely requested the City Council members to rank in order of importance some 30 items to be discussed at the annual planning session. In the compilation of the rankings, "ISO" was the 20<sup>th</sup> item on the agenda; however, due to time constraints the ISO item was never reached on the agenda.<sup>50</sup> In placing "ISO" on the agenda<sup>51</sup>, Mr. Moore stated that he assumed that all members of Council knew what ISO meant, but he can't say if they were aware of the issues pertaining to ISO.<sup>52</sup>

The two newest members on the City Council, Dick Pelley and Shannon Alvey, state they were not particularly familiar with the term "ISO" as it appeared on the agenda for the annual planning session.<sup>53</sup> However, it should be noted that both Councilpersons Alvey and Pelley, as well as all other members of Council, had received a copy of the study prepared by the State Planning

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<sup>49</sup> Miller, pp. 24-28.

<sup>50</sup> Moore, pp. 18-23. See also Proffitt, p. 20, line 15.

<sup>51</sup> Mr. Moore's recollection is that he was the one responsible for placing ISO on the agenda. Moore p. 21.

<sup>52</sup> Moore, p. 23.

<sup>53</sup> Pelley, pp. 7 and 27. See also Alvey, pp. 4-5, 44.

Office in April, 2005 (Exhibit 23), before the January, 2006, annual planning session.<sup>54</sup> A perusal of this document may have produced an inquiry concerning the term "ISO".<sup>55</sup>

No fault can be assigned to Mr. Moore for the Council failing to reach the ISO item on the annual planning session agenda. However, when this item was not discussed at the annual planning session, Mr. Moore had at least five other meetings with Council at which he could have placed the matter on the agenda for Council to consider. Mr. Moore sets the agenda for work sessions with the input of Council members. For whatever reason, the City Manager never brought the ISO matter up for discussion at any of the following meetings with the Council, to wit:

Work Session	Monday, February 13, 2006
Council Meeting	Tuesday, February 21, 2006
Work Session	Monday, March 13, 2006
Council Meeting	Tuesday, March 21, 2006
Work Session	Monday, April 10, 2006

Mr. Moore's testimony on the failure to bring the ISO matter forward from the annual planning session agenda follows:

Q: What was done about discussing this I.S.O. issue after this planning session in January of 2006?

A: There was no further discussion about it. There should have been.

Q: My question is why.

A: And, again, I'll take responsibility because it was my responsibility for taking it forward. Again, I have gone back and racked my brain. I made a mistake. I made several mistakes. I mean, I should have taken that to a following work session. Whether that work session was February or that work session was March, it should have gone forward to a work session. It did not.

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<sup>54</sup> Alvey, pp. 46-50 and 58. Pelley, Vol. II, pp. 8-9. See also Exhibit 25.

<sup>55</sup> See Exhibit 23, p. 6 where the following references to "ISO" are made: "The City of Athens enjoys an ISO rating of three (3) and is served by two (2) stations. The ISO rating allows those residents of Athens to receive discounted fire insurance premiums."

Seven days after the April 10, 2006, work session, Mr. Moore wrote ISO to advise "...that the City of Athens will be unable to make the necessary improvements to retain our Class 3 designation."<sup>56</sup>

The decision to send this letter was unilateral on Mr. Moore's part. He did not consult with the Mayor or any member of City Council.<sup>57</sup> No councilpersons received a copy of this letter.<sup>58</sup>

By all accounts, Mr. Moore is a knowledgeable, competent, and experienced City Manager. He has shown fortitude in his willingness to accept responsibility for a number of mistakes committed with respect to the ISO fire ratings. One of the first mistakes was the failure to share with City Council the August 15, 2005, ISO letter to Mayor Proffitt. If the only impediment in the distribution of ISO information was this first letter from ISO, then the failure could readily be attributed to mere oversight, an omission susceptible to all from time to time. As matters emerged, a more disturbing pattern evolves.

To label this pattern is difficult at minimum. If this Committee could detect a motive for Mr. Moore's conduct as it relates to the ISO matters, it would be much easier to label his actions. One might speculate as to motive, but there is no evidence whatsoever that Mr. Moore had anything to gain or lose by the City's decline in its fire rating. There was nothing unexpected in the City's decline from a Class 3 to a Class 4 fire rating. Nine (9) years before, the Crouch report had forewarned the City of this decline. Mayor Proffitt knew that the retrogression from Class 3 to Class 4 was a distinct possibility. Councilman Perkinson knew that without certain changes (i.e., location of stations, equipment, etc.) the City was in danger of losing its Class 3 fire rating.<sup>59</sup> Before leaving

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<sup>56</sup> Exhibit 5.

<sup>57</sup> Moore, pp. 65-66. See also Pelley, pp. 16 and 32.

<sup>58</sup> Moore, p. 66. See also Proffitt, pp. 29-30 and 36-37; Alvey, p. 52; Pelley, pp. 15 and 32; and Perkinson, p. 16.

<sup>59</sup> Perkinson, p. 7.

Athens - presumably, during his exit interview following the May, 2005, survey - Steve Stross of ISO opined that it was unlikely that the City would retain its Class 3 rating.<sup>60</sup> Even before the ISO survey, Mr. Moore himself anticipated a decline of perhaps greater proportions. Why else would he ask Chief Miller, as part of his annexation report, to conduct a study to determine the impact if the City's fire rating went from a Class 3 to a Class 5?<sup>61</sup> Mr. Moore testified that the fire rating changes "would have nothing to do with the discussion of annexation. The ISO rating was based upon the inspection that was conducted when Mr. Stross was here".<sup>62</sup> Mr. Moore went on to explain his reasoning as follows:

"The only time that an annexation would come into play is when they (ISO) come back the next time to do an ISO rating".

As best as he could determine from "experts", Councilman Perkinson was also of the opinion that the change in the fire rating would not be a factor in the annexation.<sup>63</sup> Chief Miller opined similarly.<sup>64</sup>

If Mr. Moore is correct in this assertion, then there should be no reason associated with the annexation issue not to divulge the information concerning the City's fire rating.<sup>65</sup> Why not at the May, 2006, work session or the Council meeting eight days later inform the Council of the ISO survey conducted earlier in the month by Mr. Stross? Which is best for any city manager - to give too little information and foster accusations of withholding or to give too much information and be

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<sup>60</sup> Miller, p. 10.

<sup>61</sup> Moore, pp. 78-81.

<sup>62</sup> NOTE: Steve Stross, the ISO field representative, was in Athens to conduct the ISO survey on May 5-6, 2005. See Miller, p. 7.

<sup>63</sup> Perkinson, pp. 19-20.

<sup>64</sup> Miller, pp. 34-37.

<sup>65</sup> Moore, p. 83, line 5.

criticized for not filtering the significant from the insignificant? Admittedly, this situation puts any city manager on the proverbial “horns of a dilemma”. It seems to the Committee that providing too much information is the lesser of two evils.<sup>66</sup> Mr. Moore’s management style seems to err in favor of providing too little information. Shortly after the ISO issue came to the Council’s attention, Councilperson Alvey started making inquiries about the ISO matter. Responding to inquiries of the Committee about why more information was not provided, Mr. Moore testified as follows:

“At no time has any Council Member asked, ‘Can I see the file for I.S.O. or can I see all the documentation for I.S.O.?’ That was never asked...If she (Ms. Alvey) had asked for the file, if she had asked for all correspondence, that’s what she would have received...I gave her exactly what she said. ‘This notes attachments, and I don’t have the attachments.’ It was my mistake not to ask her, ‘Do you want the entire file?’ But I did not.”<sup>67</sup>

Mr. Moore’s inability to give any plausible explanation for not keeping the Council informed about the ISO issue serves only to feed charges from mere oversight to an intentional cover-up. One councilperson even suggested that Mr. Moore may be guilty of some criminal misconduct.<sup>68</sup> The Committee finds no evidence supporting this latter allegation.

One might argue that there was an intentional cover-up, but the evidence before the Committee does not justify this conclusion when judging the overall conduct of Mr. Moore during the period covering this investigation. When Mr. Moore placed the ISO matter on the annual planning session for discussion, there certainly was no intent to cover up this issue.<sup>69</sup> Discussions between City Manager Moore and Fire Chief Miller militate against any conclusion of a cover-up on the part of Mr. Moore. Between the time that the City received the first letter (Exhibit 2) from

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<sup>66</sup> See also Perkinson, p. 21, line 15.

<sup>67</sup> Moore, pp. 39-40.

<sup>68</sup> Alvey, p. 27.

<sup>69</sup> See Exhibit 1, p. 2. See also Exhibit 33, p. 4.



ISO in August, 2005, and Mr. Moore's final response to ISO by letter dated April 17, 2006 (Exhibit 5), City Manager Moore and Fire Chief Miller had a series of discussions about what the City could do "to bring the I.S.O. rating back to a Class 3."<sup>70</sup> Mr. Moore was responsible for setting up a meeting with Steve Stross in December, 2005, so that Mr. Stross could "...further explain what we would be required to do to get to a three."<sup>71</sup>

On the other hand, many of Mr. Moore's actions support the conclusion of this Committee that Mr. Moore had to be aware of the fact that information regarding both the fire ratings and annexation was not being shared with members of City Council. Documents were withheld from the Council which should have been afforded to them. Following, in chronological order, is a list of some of the documents which support this conclusion:

- |     |           |   |            |
|-----|-----------|---|------------|
| (1) | 31 AUG 04 | Chief Miller's Annexation Report.   | Exhibit 9  |
| (2) | 15 AUG 05 | Letter from ISO to Mayor Proffitt.  | Exhibit 2  |
| (3) | 09 SEP 05 | Letter from Mr. Moore to ISO requesting extension of time.  | Exhibit 3  |
| (4) | 13 OCT 05 | Letter from ISO to Mr. Moore granting extension. Copies to Mayor Proffitt and Chief Miller.             | Exhibit 7  |
| (5) | 30 MAR 06 | ISO letter to Mayor Proffitt regarding planned improvements to retain fire rating.                      | Exhibit 8  |
| (6) | 17 APR 06 | Letter from Mr. Moore informing ISO the City could not retain Class 3 fire rating.                      | Exhibit 5  |
| (7) | 10 MAY 06 | Formal notice from ISO as to Class 4 fire rating.   | Exhibit 6  |
| (8) | JUL 06    | Annexation Study for the Mount Verd Corridor prepared by the State Planning Office updated from APR 05. | Exhibit 27 |

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<sup>70</sup> Moore, pp. 17-18. Miller, pp. 12-13 and 17-19.

<sup>71</sup> See Exhibit 15, email from Mr. Moore to Chief Miller; see also Miller, pp. 61-62.

As previously stated, Athens' first ISO survey in over 19 years was conducted in May, 2005. One year later, Athens' fire rating was downgraded from a Class 3 to a Class 4.<sup>72</sup> During this year's period of time, the annexation of the Mount Verd Corridor was coming to the forefront. After years of considering the matter, the Athens Municipal-Regional Planning Commission voted on April 4, 2005,<sup>73</sup> to recommend the annexation of the Mount Verd Corridor based upon the April, 2005, study prepared by the State Planning Office.<sup>74</sup> City Council members were given a copy of the April, 2005, State Planning Office study.<sup>75</sup> Stacy Morrison, a State planner, requested all Council members to study this document in preparation for the public hearing on the annexation at the Athens Regional Park on August 23, 2005.<sup>76</sup>

Thirteen days after the Planning Commission voted to recommend the Mount Verd annexation to City Council, Mr. Moore signed off on a letter dated April 17, 2006, to ISO basically saying that Athens cannot meet Class 3 fire rating specifications.<sup>77</sup> The convergence of the proposed annexation with the ISO issue requires this Committee to scrutinize the actions of City officials to see if their actions with respect to one issue were influenced by the other. Again, the spotlight must focus upon the City Manager. Initially, there seemed little connection between these two issues confronting the City. Indeed, Mr. Moore may be exactly right in his analysis of the annexation having no impact upon the present fire rating.

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<sup>72</sup> See Exhibit 6, May 10, 2006, letter from ISO.

<sup>73</sup> See Exhibit 40; minutes of this meeting.

<sup>74</sup> See Exhibit 23.

<sup>75</sup> Moore, Vol. III, p. 6. Ms. Alvey received at the annexation public hearing on 08-23-05 her copy. Alvey, pp. 48-49.

<sup>76</sup> See Exhibit 25.

<sup>77</sup> See Exhibit 5.

A matter has surfaced, however, which causes this Committee great concern. The State Planning Office prepared a study in April, 2005, pertaining to the Mount Verd Corridor. This study notes that the impact of annexation upon the fire department budget will be \$1,980,000.00, of which \$300,000.00 is a recurring annual cost for personnel. The study notes that Athens has a Class 3 ISO fire rating.<sup>78</sup> This was the study upon which the Regional Planning Commission recommended annexation.<sup>79</sup> In July, 2006, an updated version of this study was prepared by the State Planning Office.<sup>80</sup> The July, 2006, update is an appendix to the earlier study. The appendix is the last six (6) pages of the latest study, and the most significant change is that the fire department's summary of estimated expenditures goes from \$1,980,000.00, to zero.<sup>81</sup> Another pertinent change dealt with the sanitary sewer system for the annexed area. Alternate No. 4 with a cost estimate of \$4,575,883.00 was substituted in the later report for Alternate No. 1 which had a cost estimate of \$3,290,760.00 in the earlier report.

Questions immediately come to light. How did this later report come into existence? Who requested it? Who received copies of the same? On July 6, 2006, Mr. Moore, Eric Newberry of Athens Utilities Board, and Tim Roach of the State Planning Office met at City Hall to finalize the sewer plan of services for the proposed annexation.<sup>82</sup> Mr. Roach does not recall any discussion of the ISO rating at this meeting or revising the expenditures for the Athens Fire Department.<sup>83</sup> Twelve

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<sup>78</sup> See Exhibit 24, pp. 10-11.

<sup>79</sup> See Exhibit 24, p. 3; also, Exhibit 40.

<sup>80</sup> See Exhibit 27.

<sup>81</sup> See Exhibit 27, p. 25. It should also be pointed out that the police department's summary of estimated expenditures went from \$143,780.00 (the first study, Exhibit 23) also to zero in the July, 2006, updated study (Exhibit 27, p. 25).

<sup>82</sup> Moore, Vol. III, pp. 6-8. See also, Roach, pp. 2-3. (Exhibit 44)

<sup>83</sup> Roach p. 3 (Exhibit 44)

days later on July 18, 2006, the City Council approved on first reading the annexation.<sup>84</sup> According to Mr. Roach, City Manager Moore called him in mid-July, 2006 and requested an update to the April, 2005 (Exhibit 23) study, and Mr. Moore provided the information on the ISO fire rating.<sup>85</sup> Mr. Roach gave this updated study only to City Manager Moore.<sup>86</sup>

When asked which of the two studies (Exhibit 23 or Exhibit 27) the City Council should have been considering when they voted on annexation at the July, 2006 meeting, Mr. Moore responded that Exhibit 27 (which is the updated July, 2006, study) is the one Council should have been considering.<sup>87</sup> Mr. Moore further testified that his office would be responsible for the distribution of both studies to members of the City Council.<sup>88</sup> The evidence is most compelling that no members of City Council ever saw the updated July, 2006, study. Mayor Proffitt had not seen the appendix at the end of Exhibit 27 which is the main revision to the April, 2005, study until he was questioned for the second time by the Committee on January 18, 2007.<sup>89</sup> The Council discussions which Mayor Proffitt recalls always involved a Fire Station 3<sup>90</sup>, but this has been deleted from the July, 2006, updated study. Mayor Proffitt recalls no discussions involving the revisions to the first study.<sup>91</sup> He did not have any discussions with Mr. Moore about changing the April, 2005, annexation study (Exhibit 23).<sup>92</sup> When Ms. Alvey was shown a copy of the addendum to Exhibit 27, which is the

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<sup>84</sup> See Exhibit 39.

<sup>85</sup> Roach, p. 3 (Exhibit 44)

<sup>86</sup> Roach, p. 4 (Exhibit 44)

<sup>87</sup> Moore, Vol. III, p. 12

<sup>88</sup> Moore, Vol. III, pp. 13-15

<sup>89</sup> Proffitt, Vol. II, p. 21.

<sup>90</sup> Proffitt, p. 12

<sup>91</sup> Proffitt Vol. II, P. 10

<sup>92</sup> Proffitt, Vol. II, p. 13.

2006 updated version of the April, 2005, annexation study, and asked if she had ever seen it before, her response was: "I haven't been given this information. I've never seen this information. I didn't know it existed."<sup>93</sup> Councilman Pelley never received a copy of the July, 2006 study nor was he aware of any of the revisions contained in this study.<sup>94</sup>

NOTE: The Committee took second statements from Councilperson Proffitt, Pelley and Perkinson as well as Kaye Burton. As of Thursday, February 1, 2007, the second statements of Mr. Perkinson and Ms. Burton had not been typed by the court reporter, but from the notes of the Committee's secretary and the recollection of all members of the Committee, Mr. Perkinson testified that he had never seen Exhibit 27 with the appendix until he was questioned by the Committee about it.

The Committee finds that the City Manager was the only city official involved in the request to revise the initial annexation report (Exhibit 23) prepared by the State. Further, the Committee finds that the City Manager did not share the July, 2006 updated annexation study with anyone. It was not a part of the files provided for the Committee by Mr. Moore's office. At the request of the Committee, Kaye Burton was able to obtain a copy from the State for the Committee on the day of one of its hearings in January, 2007. When asked who gave the information to the State planning office so the initial study could be revised Mr. Moore responded: "It could have been me. It could have been Bob. It could have been a combination of people. I don't know."<sup>95</sup> When asked whether the updated version of the annexation study was provided to City Council, the City Manager responded as follows: "I can't swear to it, no. I would assume that it was. ...There's no reason for it not to have been."<sup>96</sup>

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<sup>93</sup> Alvey, p. 64, line 4.

<sup>94</sup> Pelley, Vol. II, pp. 9-12

<sup>95</sup> Moore, Vol III, pp. 19-20

<sup>96</sup> Moore, Vol III, p. 11

How did a controversy of such magnitude as to justify a special committee ever start in the first place? Save for a question by an inquiring citizen, this controversy may have never surfaced. At the City Council meeting on October 17, 2006, Sheree Hutson inquired about a recent article in the Daily Post-Athenian which mentioned the change in the fire rating.<sup>97</sup> Ms. Hutson had learned a “few months prior” of the change from someone (not Chief Miller) with the fire department.<sup>98</sup> Prior to the October 17, 2006, Council meeting Ms. Hutson did not disclose the information which she had learned about the fire rating change to any public official<sup>99</sup> nor was she the source for the October 3, 2006, Daily Post-Athenian article.<sup>100</sup> At the request of Mayor Proffitt, Chief Miller responded briefly to Ms. Hutson’s inquiry at the October Council meeting. At the conclusion of this meeting, Ms. Hutson requested a copy of the ISO report from Chief Miller. He referred her to Mr. Moore.<sup>101</sup> The day after the Council meeting Ms. Hutson sent the following e-mail to Mr. Moore:

“Mitch,  
I asked Chief Miller about getting a copy of the ISO report and was told that I need to go through you. So, I am writing to request a copy of the ISO report from approximately 13 months ago. Please let me know when your staff has finished copying it and will come by and pick up a copy.”<sup>102</sup>

Mr. Moore was out of town and his administrative assistant, Kaye Burton, exchanged e-mails with Ms. Hutson which are also a part of Exhibit 21. Ms. Burton in her testimony advised the Committee that she was in touch with Mr. Moore after receiving the first e-mail from Ms. Hutson. Mr. Moore directed Ms. Burton as to what specific documents were to be given to Ms. Hutson in response to

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<sup>97</sup> See Exhibit 51.

<sup>98</sup> Hutson, pp. 4-5.

<sup>99</sup> Hutson, p. 7.

<sup>100</sup> Hutson, p. 8.

<sup>101</sup> Hutson, pp. 11-12.

<sup>102</sup> See Exhibit 38.

her inquiry.<sup>103</sup> Ms. Hutson was given four pages by the City Manager's office. The release of this information consists of the cover sheet to Mr. Crouch's February, 1997, report and page 2 only of that eight page report plus the August 15, 2005 two page letter from ISO.<sup>104</sup> The Committee finds that the information which Mr. Moore directed Ms. Burton to release to Ms. Hutson was evasive and non-responsive to her legitimate request. The information did not give Ms. Hutson the ISO report she requested. No request was made for Mr. Crouch's February, 1997 report, but if that was to be supplied then the entire eight page report should have been given to Ms. Hutson.

For whatever reason, there emanates from the City Manager's office a reluctance to divulge information. To support these conclusions, one only needs to consider three (3) occurrences. First, is the lack of information given to Council considering the ISO fire rating change. Second, is the scarcity of information give to Councilperson Alvey upon her inquiry. Last, is the non-responsive information given to Mrs. Hutson.

If the Council takes only this finding to heart and none other, this investigation will be well worth the effort. Council should insist that the doors to freedom of information, consistent with the best interest of the City and the applicable Tennessee law, be kept open and not selectively closed. Full disclosure should be the rule rather than the exception. The citizens have the right to know how their affairs are being managed. The City Manager has a duty to ensure that information relative to the deliberative processes of the Council is afforded to its members.

In conclusion, it is the findings of this Committee that Mayor Proffitt, City Manager Moore, Fire Chief Miller, Police Chief Zigler, and a representative of the Athens Utilities Board all knew about the possible change in the City's fire rating from a Class 3 to a Class 4. All received the first letter from ISO dated August 15, 2005. Mr. Moore acted on his own in notifying ISO that the City

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<sup>103</sup> The second interview with Kaye Burton has not been typed as of February 1, 2007.

<sup>104</sup> See Exhibit 4.

of Athens was unable to make the necessary improvements to retain the Class 3 fire rating. Chain of command requirements precluded any City employee from forewarning Council members of a possible change in the fire rating, or, likewise, in advising them once the change was effective. It is with considerable reluctance and regret that the Committee finds that Mr. Moore knowingly failed to provide Council members with pertinent documents relating both to the ISO matter and to the Mount Verd Corridor annexation. Mayor Proffitt's responsibility for the failure of the other councilpersons to be informed of the ISO matters is far less. He clearly knew about the pending change in the ISO fire rating and knew about the ultimate change. Based upon the practice for distributing mail addressed to the Mayor, the Committee finds it is a fair assumption that Mayor Proffitt was sincere in his belief that other members of the Council were receiving copies of the ISO correspondence. This assumption by the Mayor that other members of Council were receiving the ISO letters coupled with his predisposition to accept that the City's fire rating was going to be downgraded, unfortunately led to inaction on his part as related to the ISO issues. Mayor Proffitt, like other Council members, was not privy to the updated July, 2006, annexation study prepared by the State Planning Office. Councilpersons Perkinson, Pelley, and Alvey had no knowledge whatsoever of the matters relating to the ISO fire rating change until Ms. Hutson's inquiry at the October, 2006, meeting of the City Council.


The Committee members have several recommendations which they would be willing to share with the Council if so requested. The charge given to the Committee by the Council, however, does not include recommendations.

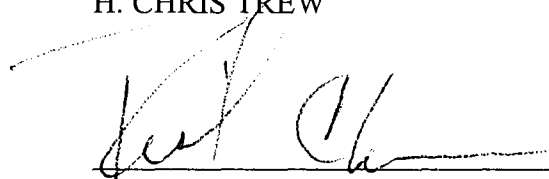


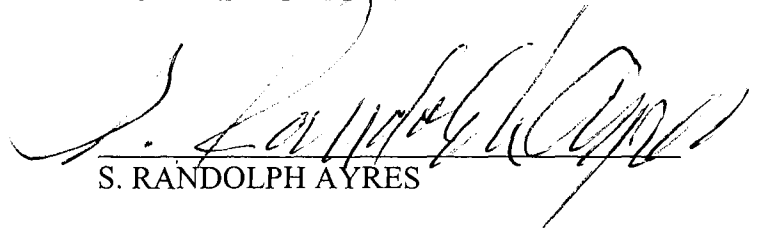
We thank the members of City Council for this opportunity of service.

SIGNED this the 7<sup>th</sup> day of February, 2007.

Respectfully submitted,

  
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H. CHRIS TREW

  
\_\_\_\_\_  
RICHARD NEWMAN

  
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S. RANDOLPH AYRES