

ST. PETE BEACH CITY COMMISSION
SPECIAL MEETING AND REGULAR MEETING
MINUTES

Tuesday, December 23, 2008
5:30 p.m.

THOSE PRESENT:

Mayor Finnerty
Vice Mayor Metz
Commissioner Halpern
Commissioner Chaney
Commissioner Leonard

ALSO PRESENT:

City Clerk Theresa McMaster
City Manager Mike Bonfield
Susan Churuti, City Attorney's Office
Suzanne Van Wyk, City Attorney's Office (via conference call)

PLEDGE OF ALLEGIANCE

INVOCATION

ATTORNEY CLIENT SESSION

CALL TO ORDER

Mayor Finnerty called the meeting to order at 5:30 p.m. Mayor Finnerty wished everyone happy holidays. Mayor Finnerty turned the session over to Attorney Churuti.

Attorney Churuti stated that the Attorney Client Session is called to order.

Attorney Churuti advised that Attorney Suzanne Van Wyk will be participating in the meeting, via a conference call. Attorney Churuti provided a summary that was prepared by Attorney Van Wyk.

Attorney Churuti reported Mr. Weiss and Dr. Pyle were in the audience.

Attorney Churuti advised that this meeting concerns the lawsuits Pyle vs. The City of St. Pete Beach- Case No. 08-8642-CI; Pyle vs. City of St. Pete Beach – Case No. 08-8129-CI; Pyle vs. City of St. Pete Beach DOAH Case No. 084772; Kadoura and McCormick

vs. City of St. Pete Beach Case No. 08-10818-CI-19; Kadoura vs. City of St. Pete Beach Case No. 08-12498-CI-19, all of which are in the Circuit Court in the 6th Judicial Circuit.

Attorney Churuti explained that many cities and counties get into trouble with the “Shade Meetings”. She used as an example the City of Dunnellon that attempted to have someone other than the City Attorney to attend the “Shade Meeting”. She explained that having Attorney Van Wyk participate by conference call was appropriate under the law. She advised that Attorney Van Wyk was an expert in Urban Planning Law and holds a Masters Degree in Urban Planning Law which is why she is managing this litigation.

Attorney Churuti turned the meeting over the Attorney Van Wyk. She advised that there would be no public comment during his portion of the meeting.

Attorney Van Wyk stated that the document that she provided was a summary of the discussion for this meeting. She advised that City Commission asked that she try to re-open some negotiations or discussion about how to streamline the various cases in order to reduce the costs. She reported that she did have a conversation with Attorney Ken Weiss, last week, regarding negotiations for the pending cases. She advised that Attorney Weiss declined to re-enter negotiations, and no agreement was reached. She stated that she was attempting to streamline the cases. She stated that Attorney Weiss would like to streamline the cases by bringing forward some Motions for Partial Summary judgment for some of the cases.

Attorney Van Wyk stated that there have been a few approached that have been discussed with Mr. Weiss such as consolidating some of the cases; another idea offered by Mr. Lincoln is to have the three Attorneys meet and try to narrow down some of the challenges.

Commissioner Chaney asked about the Motions for Partial Summary Judgment. Attorney Van Wyk stated that she did think there was an actual plan of action. Attorney Churuti stated that partial summary judgment can sometimes add to the costs of litigation.

Upon inquiry by Commissioner Halpern, City Attorney Van Wyk advised that the City was the defendant in each case.

Attorney Van Wyk stated that the offer from Attorney Weiss, that is on the table, that in the administrative case that Dr. Pyle would stipulate to SOLV’s standing, which would eliminate the issue of whether we precede to trial, not knowing if they would be accepted as in intervener and whether their evidence would be accepted, so the city could reduce costs in defending that particular case. She reported that SOLV and the City have been sharing some of the expenses of the litigation already; for example between Attorney Lincoln who took the lead on preparation of summary judgment in the Kadoura case while she was taking the lead on the preparation of the administrative case.

Attorney Van Wyk stated that the City needs to participate in discover and the City needs to be present when its witnesses are deposed.

Attorney Churuti advised that SOLV may not be a party in the trial; it may only be the City when the trial takes place.

Vice Mayor Metz inquired if SOLV will be joining the DOAH case. Attorney Van Wyk advised that SOLV is an intervener, which means they have petitioned the Court to participate in this case and to be accepted as a party, with some limitations. She advised that the intervention is being opposed by Dr. Pyle; that an offer has been received from Dr. Pyle to stipulate to SOLV's standing in exchange for the City to agree to not take the lead and let SOLV take the lead, for the Administrative Hearing. Attorney Van Wyk stated that currently the City is taking the lead and the question is "should that be changed".

Attorney Van Wyk pointed out that SOLV's interest is aligned with the City currently, but that may change, and the City is the defendant and will make the decision regarding the case. She advised that she would be present when the City's witnesses are deposed, which she can do by telephone, but there will still be a cost for her time; she will be present when any witnesses that Dr. Pyle and his Attorney might depose. She advised that under the Florida Bar Rules she has a duty to provide a confident defense. She advised that she will still be doing work on the case, no just showing up to the final hearing, and wanted to make sure that the City understands that when considering the offer.

Attorney Churuti advised that Attorney Van Wyk may want to make some arguments that SOLV will not be able to make as an intervener.

Vice Mayor Metz asked that any information regarding the lawsuits should be provided to the City, and if the information is public, the City Commission should be able to get a copy of the information. Attorney Van Wyk stated that she would provide any information that the Commission requests, that is a public record.

City Manager Bonfield stated that he relies on the City Attorney to send him the information that he needs, but not things that he does not need.

Commissioner Leonard stated that he is concerned about the legal costs associated with the case. He stated that he felt that the City Attorney should advise the Commission how to keep the legal fees within the budgeted amount and to come up with a legal plan that protects the residents and the City; when talking about SOLV taking the lead, he does not believe that SOLV's Attorney Robert Lincoln would have any fiduciary responsibility to the City in that matter. Mr. Churuti advised that Commissioner Leonard was correct regarding his statement about Attorney Lincoln.

Attorney Churuti advised that if the City gives up it's involvement in the case and allows SOLV to take the lead it could take away the Commission's power regarding decisions on the cases. She advised that Attorney Van Wyk will make sure that the City's rights are not compromised.

Attorney Van Wyk advised that at any time that she feels the SOLV is not aligned with the City that she would immediately report that to the City and request that any arrangement with SOLV be changed.

Commissioner Leonard asked if there were any grants or other type of funding available to help reduce the City's legal defense costs in these types of matters. Attorney Van Wyk stated that there was no funding that she is aware of. She advised that mediation could help reduce the costs, but it has been suggested informally, but no agreement was reached.

Attorney Churuti pointed out that currently there are five cases that are being discussed and there could easily be five more before the matter is resolved.

Commissioner Leonard stated that he is concerned that these legal matters may continue for a very long time and he wants to find a way to reduce the costs.

Commissioner Halpern stated that he agreed with Commissioner Leonard's comments. He felt that some of the responsibilities could be shared with SOLV to save some money, if the lawsuits are expedited and he encouraged the Commission to move these cases through the system quickly.

Attorney Churuti pointed out that the DOAH hearing is the critical path for this litigation which is the only thing that is keeping the City's Comprehensive Plan from going into effect. She advised that the other cases may or may not impact the Comprehensive Plan.

Attorney Van Wyk stated that if the City accepts the offer, her role in taking the lead for the DOAH case will change. She advised that there would be a financial savings if the offer is accepted, but she wanted to make sure that the City Commission understands that she will continue to work on the case, and not just show up at the trial. She estimated that there may be a 40% savings. She advised that it is her job to prevent any type of damage to the City or any loss in the City Attorney's representation for the City. She advised that she would protect the City's interest at all times.

Commissioner Chaney asked if Attorney Van Wyk was going to continue to take to Attorney Weiss about breaking down the cases to get an agreement that future litigation would be eliminated based on outcome. Attorney Van Wyk advised that she will do whatever the Commission directs her to do regarding these cases. Commissioner Chaney asked Mayor Finnerty if he would ask the Commission to support such an agreement.

Mayor Finnerty stated that he felt that until Dr. Pyle and the others parties officially drop their lawsuits he did not see any reason to continue to pursue any offers. He pointed out that he felt that the City has an obligation to citizens to do the best they can. He stated that he was not comfortable with changing attorneys for the DOAH hearing and he felt that Attorney Van Wyk would be better to defend the City's and it's citizens vote.

Attorney Churuti stated that one issue is who should take the lead and can the SOLV Attorney do more work with Attorney Van Wyk monitoring that work; another issue is to “piece meal” certain issues of litigation and take them out order which would not be recommended, because it may be more expensive to the City and is less likely to be successful. She advised that she was comfortable having the SOLV Attorney taking the lead which could result in a 40% cost saving to the City.

Attorney Van Wyk stated that she is willing to reach out to Attorney Weiss regarding an agreement to move forward with certain pieces of the litigation if the City gets something in return and there is an agreement to dismiss a lawsuit based on the outcome. She advised that this offer has not been explored, but that it something to consider.

Attorney Van Wyk advised that the offer on the table is that the City would allow SOLV to take the lead in the DOAH case in exchange for Dr. Pyle to stipulate to the standing of SOLV in that case. She advised that the City Commission needs to provide her direction regarding the offer. She stated that it is not her recommendation that this offer be accepted, because she wants to have complete control over the case, but in an effort to streamline and reduce costs it is not a bad ideas, as long as she can participate to representative the City effectively.

Commissioner Chaney summarized the events that led up to the lawsuits. She suggested that travel expenses for the City’s Attorneys be limited because of the budget constraints for legal costs.

There was a general discussion regarding the City’s Attorney bills and the Attorney involved. Attorney Van Wyk advised that there can be as many as seven Attorneys involved to represent the City in these cases. She pointed out that they all have certain expertise, such as election laws, and land development laws, which is less expensive than hiring one attorney and have them try to learn all the necessary laws relating to the cases, in order to properly defend the City.

Commissioner Leonard stated that he has spoken to many residents who are concerned with economics and that the City is represented.

Mayor Finnerty stated that he did not agree with giving SOLV’s lawyer the lead role in representing the City in the DOAH case and have the City Attorney step in when there is something wrong. He stated that he wanted to keep the City Attorney as the lead on the case.

Attorney Van Wyk informed the Commission that even if she is not taking the lead on the DOAH case, she will read all the documents and monitor the activity and there will be a cost for those services.

Upon inquiry, Attorney Van Wyk disclosed that the DOAH case could cost the City up to \$45,000 and that between \$10,000 and \$15,000 has already been spent; and the 40% savings would be about \$12,000.

Upon inquiry, Attorney Van Wyk stated that she would prefer to be the lead Attorney for the case.

There was a general discussion of recovering Attorney costs after the litigation is over.

Attorney Churuti pointed out that SOLV has not agreed to the offer at this time, but they know that the Commission is discussing it at this meeting. She advised that SOLV is concerned with the stipulation.

Commissioner Chaney made a motion that the City accepts the offer from Dr. Pyle to let SOLV take the lead in the DOAH hearing, as long as Dr. Pyle agrees to a stipulation to SOLV's standing as an intervener in the case. The motion was seconded by Vice Mayor Metz. The motion was denied by a 3-2 roll call vote with Commissioner Chaney and Vice Mayor Metz voting "yes".

Commissioner Halpern made a motion that Attorney Van Wyk takes the lead in the DOAH case. The motion was seconded by Mayor Finnerty. The motion was approved by a 4-1 roll call vote with Vice Mayor Metz voting "no".

Attorney Van Wyk asked if the Commission wants her to demand an expedited hearing for the DOAH case, which she would file tomorrow. Attorney Churuti recommended that the City demand an expedited hearing regarding this case.

There was a general discussion regarding the City having a building moratorium until the lawsuits are settled.

Mr. Bonfield pointed out that if the hearing is expedited the case should be decided within 90 days. Attorney Van Wyk disclosed that the case should be scheduled for March or April. It was also pointed out that expedition of the case would cost less.

Commissioner Chaney stated that she would support expediting the case but was concerned about more lawsuits if properties are developed and then have to be torn down because of the outcome. It was pointed out that there could be a disclaimer for the building permits for people who submit plans for new development.

Vice Mayor Metz made a motion to expedite the DOAH case. The motion was seconded by Commissioner Chaney. The motion was approved by a unanimous roll call.

Attorney Van Wyk asked that if any member of the Commission is contacted by any attorney in this case, other than the City Attorney, she needs to know, as they are under the obligation to not communicate with the City about litigation. She advised that they can contact the Commission if given permission by her, and that she may want to be present during the discussion. She stated that if they are contacted please call the City Attorney's office.

Attorney Van Wyk stated that all of the cases have the potential to go to the Supreme Court, especially Dr. Pyle's case regarding the ballot language. Attorney Churuti advised that she took a case to the Supreme Court and it took seven years.

There was a general discussion regarding the City developing its own Comprehensive Plan and putting it on the ballot for a vote while the lawsuits are still pending.

Attorney Churuti stated that the Commission will be getting written updates on the litigation every 30 days, which is exempt from the public records laws.

Attorney Van Wyk ended her telephone conference at this time.

Mayor Finnerty called for a 10 minutes recess and stated that the Regular Meeting will be called to order at 7:20 p.m.

Mayor Finnerty called the regular meeting to order at 7:20 p.m.

AGENDA MEETING

City Manager Bonfield asked that the discussion item regarding the Electronic Sign for City Hall be postponed until the January 14th meeting. Commissioner Leonard stated that he would also postpone his discussion item regarding the length of City Commission meeting. The Commission was in agreement to postpone these two discussion items.

REGULAR MEETING

1. Audience Comments

Mr. Ken Weiss, 11085 9th Street East, Treasure Island, stated that he heard Mayor Finnerty, during the Attorney Client Session, mention several times "frivolous lawsuits" being filed. Mr. Weiss, stated that "I have a standing offer to anyone in this Community to intervene in any of the cases in which I am counsel and to file a mini-motion that any of these cases are frivolous or without merit". He clarified that he just notified the City that based on their pleadings, he intends to seek fees if they do not modify their pleadings. He stated he disagrees with the City Attorney that it doesn't make sense to do these "piece meal". He stated that if the Commissioners were writing these checks out of their own personal check book and your lawyer told you that you are going to have to pay \$40,000 or \$50,000 to litigate a case in

January but that the case that will be decided in March may have eliminated the need to litigate that case, he would guarantee that they would not be writing that check for \$40,000 in January.

Mr. Weiss stated that what he has been trying to do for the last six months is to make offers trying to abate all these cases because there is one case that will determine the outcome of all the cases, which is the Kadoura case. He reported that for some reason the City Attorney does not think that is appropriate. He stated that he respects their decision, but completely disagrees with it.

Mr. Weiss stated that his client would not like to litigate the DOAH case because of the costs especially a case that may be heard in March or April that could completely eliminated the requirement to have that hearing.

Mr. Weiss reported that he has held off on these cases hoping that the City would finally recognize that it makes more sense to be billed for one case in stead of five cases. He stated that it may take longer but those cases can be resolved. He reported that as of today, because the City is not willing to accept his offer, he will be moving forward “full speed” on all cases. He stated that all of his offers have been rejected. He stated that he felt that is incumbent on the City or SOLV to bring any offers to him and his clients.

Ms. Mimi Gewanter, 265 Tessier Drive South, expressed her concern regarding the legal costs and suggested that Dr. Pyle should drop his lawsuits.

Ms. Lorain Huhn, 9425 Blind Pass Road, stated that on behalf of SOLV, that they would not take the case to the Supreme Court. She asked if someone could explain to her what happens in a case where there was an election that took place, a Comprehensive Plan was approved by the voters, and now the City Commission decided to introduce their own Comprehensive Plan.

Dr. Bill Pyle, 6600 Sunset Way, wished everyone a happy holiday. He referenced a newspaper article regarding the City’s sewer system needing repairs and a 30% rate increase to the residents. He was concerned also that nothing was mentioned regarding building height and density that were almost tripled; also the voters were not informed that the developer’s costs for infrastructure could be waived. He stated that the Florida Law states that the ballot language must accurately reflect what people are voting on, and he

felt that the ballot language was not clear. Dr. Pyle spoke about the costs of lawsuit, the cost to the residents to make infrastructure improvement and the waiving all developers infrastructure costs. He stated that the costs to residents for infrastructure could well exceed the cost to defend the lawsuits.

Mr. Tony Cahill, 9343 Blind Pass Road, stated that he did not agree with Dr. Pyle's statements. He was concerned with the costs of the lawsuits that the City will have to pay because of Dr. Pyle's cases. He stated that he "protests" Dr. Pyle's actions.

Mr. Bob Manning, 200 1st Avenue, stated that the sewer line will be replaced regardless of any new development. He stated that any new structure will have to have a study performed at the time of the building, if it affects the infrastructure, another study needs to be done and they will have to pay for it. He stated that he did not agree with Ms. Chaney's suggestion that the City develop a new Comprehensive Plan.

Jane Gottwald, 102 23rd Avenue, stated that she read the newspaper article regarding the City's legal costs. She read from the article "we are in an unfortunate situation of defending what the residents voted for and it is calling for more than we can afford". She stated that it is a privilege to vote and she was against the City developing their own Comprehensive Plan. She stated that she was upset by Dr. Pyle's remarks regarding the ballot issues.

Ms. Rosemary Manning, 200 1st Avenue, stated that she was concerned with changes being made to the agenda during the agenda meeting portion of the meeting. She felt that it was unfair to citizens that read the agenda and think a particular item will be discussed at a particular time. She pointed out that at the last meeting the Commission spent 20 minutes talking about the agenda order. She thanked Commissioner Leonard for postponing his discussion items at this meeting, she felt that all discussion items should be dropped. She stated that a few residents approached her in the grocery store and stated that they did not know that the Commission voted for a budget that was not sufficient and felt that the Commission should have followed the Budget Review Committee's recommendations. She stated that she was not against providing hotel rooms for the City Attorneys. She stated that she felt **that there was too much public discussion regarding the current lawsuits.**

Mr. Ron Holehouse, 113 12th Avenue, stated that he was concerned that some City Commissioners have continued to referred to “The Holehouse Lawsuit”, he stated that there is no lawsuit as of yet, and that he would like to keep it that way. He disclosed that he has intervened in the SOWA case which is regarding his property. He stated that he felt that the City Commission should not be micro-managing the City Attorney’s Office. He asked for his bed and breakfast property to be grandfathered for the number of units that he currently has.

Ms. Terri Finnerty, 9245 Blind Pass Road, gave an update on the Support Our Troops program.

2. Consent

- a. Approval of minutes from the October 9, 2007 and October 23, 2007 City Commission meetings and the June 16, 2008 Special Commission Meeting.**
- b. Authorization for the Mayor, City Manager and Chief of Police to renew the Pinellas County Combined Mutual Aid Agreement.**
- c. Resolution 2008-33 declaring as surplus certain City owned vehicles and authorization for the City Manager to dispose of said vehicles that are no longer needed as part of the City fleet.**

Commissioner Halpern made a motion to approve the consent calendar by reading it in its entirety. The motion was seconded by Vice Mayor Metz. The motion was approved by a unanimous roll call vote.

3. Action Items

- a. Authorization for the Mayor to sign a one year agreement with Pinellas Suncoast Transit Authority (PSTA) and the City of Treasure Island, Florida to provide trolley bus service.**

Commissioner Chaney made a motion to approve Authorization for the Mayor to sign a one year agreement with Pinellas Suncoast Transit Authority (PSTA) and the City of Treasure Island, Florida to provide trolley bus service. The motion was seconded

by Vice Mayor Metz. The motion was approved by a unanimous voice vote.

Ms. Rosemary Manning stated that she supports public transportation.

4. Items for Discussion

a. Installation of Electronic sign for City Hall – City Manager

This item was removed from the agenda.

b. Gulf Boulevard Beautification – Commissioner Chaney

Commissioner Chaney suggested that Penny for Pinellas funding be used for beautification of Gulf Boulevard. She asked if the Commission would consider earmarking those funds towards the crosswalks project for the length of Gulf Boulevard to include medians and decorative lights. She estimated that the cost would be around two-million dollars, including landscaping.

There was a general discussion regarding cross walks, undergrounding utilities, the width of the sidewalks and bike lanes.

It was decided to gather more information and discuss this matter at a Special Workshop on February 3, 2009 at 6:30 p.m.

c. Length of City Commission Meetings – Commissioner Leonard

This item was removed from the agenda.

d. Board of Adjustment appeal process – Commissioner Chaney

Commissioner Chaney asked Mr. Robert Urban, a member of the Board of Adjustment, to address this item.

Mr. Urban explained that in order to grant a variance there are five conditions that have to be met under the City's code; if the applicant can't provide sufficient evidence to support a variance, by law, it's his understanding that the variance can not be granted. He suggested that the City Commission or the Special Master hear the

appeals to the Board of Adjustment cases, not the Court which would avoid the Court costs.

Mr. Steve McFarlin, 2nd Palm Point, pointed out that over the past two years the City has only had to defend two variances in Court; one of which was the Urban's. He stated that he did not agree with Mr. Urban's comments. He provided a legal document regarding an appeal case that has a ruling. He disclosed that he attended the appeals hearing and three judges spent almost a full hour on the Urban's case which involves 3.5 feet of docking; 45 feet off his seawall, which was in place for over five years; obviously it was not noticed by the naked eye and was discovered after Mrs. Urban researched his permit file. He stated that the dock was built as permitted but later found to be in error; it extended out unto a 250 foot wide canal and was only 3.5 foot over actual Code; a variance was granted; the Urban's spent over \$10,000 of taxpayers money, in legal fees, fighting this variance that had no adverse effect them and he felt that it was nothing but an act of personal vengeance. The Board of Adjustment and the First and Second Court of Appeals ruled against them. It was later discovered that the Urban's had illegally constructed a dock without any permits and they were fined \$1,000's of dollars and ordered to reconstruct their dock to code. He stated that he did not get any fines for his dock error because it was legally permitted. He was against the changes to the Board of Adjustment Appeal Process because there have been no appeals filed against the current Board of Adjustment.

Commissioner Chaney stated that when these cases go before the Board of Adjustment, that the Judge does not hear the elements of the Board of Adjustment.

Mr. McFarlin stated that the Judge does see the City's laws and criteria for granting a variance. He stated that he did not think that that Mr. Urban (as a Board of Adjustment member) should be trying to "undermine" the Chairman of the Board.

Attorney Churuti explained the appeal process.

Mr. Urban stated that the reason they lost their case was because the Court stated that they did not have sufficient standing for them to take up the case. He stated that he did not agree with Mr. McFarlin's comments regarding his lawsuit.

Ms. Urban stated that she has provided all the information regarding the case mentioned by Mr. McFarlin. She felt that Mr. McFarlin was not "telling the truth".

Mr. Bonfield pointed out that the Commission has heard these cases in the past and that almost every case that went before the Board of Adjustment where an interested party did not like the decision of that board, they brought the cases before the City Commission which resulted in a rehearing of the entire case. He pointed out that it added at least 1-2 hours to the Commission Meetings.

Ms. Churuti advised that if the Commission wants to hear the Board of Adjustment cases they should eliminate the Board of Adjustment.

Mr. Bob Manning, 200 1st Avenue, stated that he has tremendous respect for City Attorney Mike Davis and stated that he felt that he was a great resource for guidance to the Board of Adjustment in order for them to make proper decisions on granting variances.

Mr. McFarlin stated that the Board of Adjustment sometimes grants variances because all parties are in agreement, even if all five criteria are not met. He stated that if there are legitimate objections to a case, normally they are not granted if they do not meet the five criteria. He disclosed that he felt that it was very difficult to meet the five criteria for granting variances.

There was a general discussion regarding the five criteria for granting variances. It was pointed out that the Board of Adjustment needs some direction.

Attorney Churuti explained how the Board of Adjustment should review variance requests.

Commissioner Chaney suggested that Attorney Davis attend the meetings at least once every three months to guide the Board, unless staff determines that they need him at a particular meeting.

Mr. Urban agreed that the Board needs the City Attorney's guidance during the meetings.

Mr. Bonfield stated that after each election and the new board members are appointed, they are given a training session.

5. City Manager, City Attorney and City Commission Reports

These individual reports were given verbally.

6. Adjournment

Being no further business, the meeting was adjourned at 10:00 p.m.