



CITY OF ANNA MARIA

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MINUTES CITY COMMISSION SPECIAL MEETING JANUARY 13, 2015 – 4:00 P.M.

Pledge of Conduct: We may disagree, but we will be respectful of one another. We will direct all comments to the issues. We will avoid personal attacks.

CALL TO ORDER

Chair Webb called the meeting to order at 4:00 p.m.

PLEDGE TO THE FLAG

ROLL CALL

Present: Mayor Dan Murphy, Vice-Chair Nancy Yetter, Commissioner Dale Woodland, Chair Chuck Webb, Commissioner Doug Copeland, and Commissioner Carol Carter.

Also present: City Clerk/Director of Finance/City Treasurer Diane Percycoe, newly appointed Interim City Attorney Ricinda Perry.

Press: Sun and Islander.

General Public Comment regarding non-agenda items and items not scheduled for future agendas will be taken at the beginning of the meeting with a limitation of three minutes. The Commission's intent is that General Public comment is to be used for the public to inform the Commission of new issues within the City. Public Comment regarding agenda items will be taken with each agenda item with a limitation of three minutes.

1. **General Public Comment** – None.

2. **Request Commission Approval of Mayor's Recommendation of Ricinda Perry as the Interim City Attorney – Mayor Murphy**

Mayor Murphy recommended and asked for the Commission's approval to hire Attorney Ricinda Perry as the City's Interim City Attorney. Attorney Perry would be hired to handle the City's Bert Harris claims. She would not be handling the pending vacation rental issues. Noting that the vacation rental issues is the biggest and most important issue currently being addressed by the Commission, Mayor Murphy said he would like the full-time City Attorney, once hired, to handle it.

Commissioner Woodland voiced concern about not utilizing the Interim Attorney for all City issues. He noted that Attorney Perry has a background with Anna Maria. A replacement, on the other hand, will most likely not know the City's codes, and a transition period will have to take place.

Mayor Murphy informed that an RFP has been prepared that will be issued within the next couple of days for the hiring of a full-time City Attorney. Deadline for submission is February 16, 2015. A committee (to include Mayor Murphy) will be put into place by that date for evaluating the proposals. Once the proposals are opened by the Committee, a short list of candidates will be made - which should take no longer than three or four days after the bid opening. The short list of two to three candidates will be brought before the Commission on an individual basis, then presented to the Commission as a group for final consideration. Mayor Murphy's goal is to have the process for hiring a full-time Attorney completed by the end of February 2015.

Commissioner Woodland acknowledged with Mayor Murphy's timeframe as stated, he would be comfortable with proceeding.

Mayor Murphy clarified, that in the process, the Commission can continue to process issues in relation to the vacation rentals without input from Attorney Perry.

Commissioner Carter noted she had been working with the Bert Harris issues. There are deadlines involved with the cases – January 22, 2015.

Commissioner Yetter stated that the Commissioner's had each received comments from concerned citizens in regard to the appointment of Attorney Perry. The main concern was that Attorney Perry may have a conflict of interest due to her husband's employment. She pointed out that the lead counsel on the Bert Harris lawsuits (Attorney Scott Rudacille) works from the same law firm as Ms. Perry's husband works in.

Attorney Ricinda Perry addressed the Commission. She agreed it was an important concern whether or not she would have any conflict. She stated she herself had no private clients she was servicing within Anna Maria. Though she has had Anna Maria clients in the past, she would not have any during the interim period while services are being provided to the City.

Attorney Perry stated the correspondence received from the concerned citizens was incorrect. She addressed the following:

- Statement that she was always late. Attorney Perry informed that in ten years for servicing the City of Bradenton Beach, she was only late one time to a Commission meeting - and it was due to traffic.
- Relationship with Blalock Walters Law Firm. Attorney Perry confirmed her husband serves as a partner in the firm. She stated they do not talk business when they get home. While she understands there could be concerns, she said it would be the Commission's decision. She said she was not assisting the City for the purpose of doing any favors – only to help the City during the interim period. She informed she had appeared in front of Attorney Scott Rudacille when he represented the City of Palmetto.

Attorney Perry stated she could approach serving as Interim Attorney in an unbiased, open-minded, and professional manner. Referring to the Abrahamson Bert Harris claim, she informed it was 99% complete. There was not much discussion that she would have in making interpretations. She has reviewed all the work completed by former City Attorney Jim Dye. No drafting of any settlement agreement, short of the Commission giving direction, will be made.

Attorney Perry informed that her job, under the Florida Bar, is to let the Commission know there is an apparent perception of bias that exists due to her husband being a Blalock Walters partner with Attorney Rudacille - who practices law as part of that firm.

Commissioner Yetter questioned Attorney Perry's experience with Bert Harris claims.

Attorney Perry informed a few years ago she had represented the Olympia Theatre that was in the City of Palmetto, has attended a number of seminars on Bert Harris, and has addressed Bert Harris issues in Bradenton Beach – where Attorney Perry currently serves as City Attorney. She stated she would not put in the effort on Bert Harris claims if not feeling confident and capable of rendering her services.

Public Comment –

David McCormick, 426 Magnolia Avenue, thanked the Mayor and Commission for making the decision to replace former City Attorney Jim Dye.

Mr. McCormick noted that in September 2014, the Commission had set forth a process to deal with building codes and weekly rental issues relating to the loss of the residential nature of the community. He felt replacing Mr. Dye was a step in the right direction. He stated there had been frustration from residents and Commissioners that proactive advice from Counsel was not being provided.

Feeling she had a conflict of interest, Mr. McCormick believed that hiring Ricinda Perry was a mistake. He said it was his belief that Ms. Perry had advocated issues for her clients in the past that have led to the issues that the City is currently dealing with.

Mr. McCormick suggested hiring legal counsel having expertise in Bert Harris - and one that could provide the appropriate counsel to fulfill the duties for maintaining a residential community with a limited commercial district.

Mr. McCormick provided the following names of individuals that he suggested the Mayor consider for appointment: Attorney Robert K. Robinson and Attorney Michael Connelly.

Commission Discussion

Chair Webb stated he had known, and had worked with and against, Attorney Perry for the past ten to fifteen years. He had suggested Attorney Perry to the Mayor as the Interim Attorney due to being confident of her ethics and capabilities. He pointed out that the Interim Attorney is a place-holder until a permanent Attorney is hired - and he could not think of an Attorney practicing in this type field that did not have a conflict. Chair Webb said he would be comfortable following Attorney Perry's advice.

Commissioner Carter acknowledged she would be comfortable hiring Attorney Perry on an interim basis. She has had discussions with Ms. Perry over the last couple of days due to the Bert Harris issues and felt her counsel was very wise in that regard.

Commissioner Woodland asked if Ms. Perry planned to respond to the City's RFP.

Attorney Perry said she personally did not know that she would be applying under the RFP due to her commitment to the City of Bradenton Beach who has significant issues they are facing. She could not commit, that if selected as the permanent City Attorney for Anna Maria, that she could meet the demands of the City.

Motion: Move to approve Mayor Murphy's recommendation to appoint Ricinda Perry as the City's Interim Attorney.

Action: Approved. Motion made by Commissioner Doug Copeland, Seconded by Commissioner Carol Carter. Motion carried unanimously.

3. Discuss Bert Harris Claims – Commissioner Carter

Commissioner Carter announced she had met with Interim City Attorney Perry twice in the past two days to review the Bert Harris claims.

Interim City Attorney Perry explained she had been contacted about serving as Interim Attorney the previous Friday. The following Monday she met with Jim Dye, spoke with the City's Appraiser on the Bert Harris claims, and received the files.

Attorney Perry had invited Attorney Scott Rudacille to attend the meeting that evening. A review of the process, beginning with the adoption of the LAR Ordinance in May 2014, was explained by Attorney Perry. The LAR Ordinance serves as the subject resulting in the filing of the Bert Harris claim being discussed that evening. An extension for responding to the Abrahamson claim had been granted and had been continued to January 22, 2015.

Attorney Perry informed prior to being asked to serve as Interim City Attorney, she had already made a commitment to be out of the country the following week. As a result, she asked that the Commission address the case this week.

A review of the purpose for the Bert Harris Act was explained by Attorney Perry. She acknowledged that an appraisal of Mr. Abrahamson's properties had taken place. The notice to the Department of Legal Affairs had been sent. The City currently is in the stage where a written statement of allowable uses on the property, and a settlement proposal, is required. Once the City has taken that step of making the settlement proposal, if rejected, it gives the claimant the immediate right to go to court. If the City is unable to settle the case, and the case then has to go before a Judge, a jury trial is held who determines the total amount of compensation to the property owner for the loss of the value.

If a trial is required, the City will have to retain the appraiser for providing appraisals at a cost of \$10,000 per appraisal for litigation – resulting in \$70,000 before any court fees. The appraiser's professional testimony would

also be required. Details on the process for going before the Judge followed. The Judge would then determine the costs and reasonable attorney's fees that are awarded to the claimant.

Attorney Perry informed that the issue of the City agreeing to the terms of the settlement agreement that are contrary to the City's current City codes had been vetted between Attorney Dye and Attorney Rudacille. They had agreed creative ways - that may not be in compliance with the LAR Ordinance - could be determined.

Attorney Perry presented details relating to the damages the City could be liable for in a Bert Harris claim.

Attorney Perry informed that the negotiations were largely complete when taking over the case. However, the Commission must agree to the settlement terms. She reminded the Commission are up against a short timeframe – and one extension had already been granted.

The Commission had previously made the decision of retaining Ms. Wilson for the purpose of providing the appraisals. When speaking to Ms. Wilson on the phone, she informed Attorney Perry that she was not engaged for her services until sometime the previous December. After working on the project, there had been discussions with former City Attorney Dye as to her scope of work. Attorney Perry informed that Ms. Wilson does not have the answer to what the City's damages are. Due to the cost of \$10,000 per property for rendering an appraisal for the properties, a decision for doing a City-wide study of what the impact of the LAR had been was asked of her. Though providing an indicator as to possible damages, Attorney Perry stated such study would not be specific to the damages at issue.

Ms. Wilson has advised Attorney Perry she would have the results of the study to the City "soon." Also, that she was having her Assistant put together more information and that "she may not be able to conclude that the LAR had caused adverse impact on the property values, and that determining what that is, is a complicated nuisance to measure." A 30 to 45 day period was estimated for receipt of the study. Ms. Wilson has indicated the reason for the City not having the estimated damage report, is that the City did not want to spend the \$10,000 per property if actually planning to go down the road of settlement.

Commissioner Carter reported that she and Mayor Murphy had discussions with Ms. Wilson in late December asking if another appraisal would be received. Ms. Wilson indicated the City's property values were actually higher in the new LAR versus the old LAR and it is hard to calculate. To Commissioner Carter's knowledge, there was no discussion that if the City went for a full appraisal - that it would cost the \$10,000 per property.

Chair Webb stated without full appraisals, the City does not know what the damages are, or if the claimants appraisals are accurate. As a result, the City does not have the appropriate information to make the proper decision.

Recognizing the appraisal could not be obtained in time, *Attorney Perry* asked if the \$10,000 was authorized, could the appraisal be received by January 22 – and was informed it could not be accomplished. As a result, she wanted to get a feel as to whether or not the City could prevail if going before a jury. After asking Ms. Wilson if she could 100% say that the LAR had a positive impact on the property values – Ms. Wilson answered she could not. Asking if Ms. Wilson could say the LAR was neutral and had no impact on the properties, Mr. Wilson indicated she could not. She could, however, state that all the property values have gone up – that there are a number of factors that affect property values. Explanation relating to the claimants appraiser's report followed.

Attorney Perry felt there was a good chance that a jury would find there was some (even if minor) decrease in the value due to not being able to build as much as they could have built. With that in mind, Attorney Perry advised the Commission for following the decision Commissioner Carter, Attorney Dye, Attorney Rudacille, and Mr. Abrahamson have come up with for settling.

Attorney Perry then brought attention to the details she provided the Commission relating to each of the remaining pending Bert Harris claims. She explained that the only case that returned attorney fees was the McLean property. Explanation followed.

A meeting will be held between Mayor Murphy and the Florida Municipal Insurance Trust (FMIT) to determine what coverage the City may have in regard to the Bert Harris claims. Mayor Murphy suggested FMIT Sales Representative Andy Hanson be asked to appear before the Commission. *City Clerk Percycoe* pointed out that the maximum coverage the City has through FMIT for Bert Harris claims is \$1million. Discussion followed.

Commissioner Copeland stated he would like the process sped up, and felt with the following Tuesday being the deadline to respond on the Bert Harris claims, the sooner the Commission could get the information, the better. He also asked that the other Bert Harris claims be discussed at this time.

Chair Webb asked if allowing the Applicants to build under the pre-LAR Ordinance would be a proper settlement. He felt there would be no impact under the LAR Ordinance if the Commission were to allow the Applicants to build under the pre-LAR Ordinance. Also, they would not be tied to receiving any attorney's fees.

Interim City Attorney Perry said though she had started working on that research, her timeframe had been too short to make a determination. Attorney Perry said she could not find where it was triggered in case law.

Commissioner Carter responded noting there were some mitigating measures felt to be appropriate to include focusing on the esthetic changes.

Attorney Scott Rudacille, Blaylock Walters, referred to the handouts pointing out the number shown as the pre-LAR square footage – based on what could have been built prior to the LAR. Discussion continued relating to the mitigation settlement for the properties of allowing to build pre-LAR, along with offering concessions to the architectural aspects, and 50% lot coverage.

Chair Webb asked that Mayor Murphy ask Planner Garrett to review and provide calculations based on both the pre-LAR and post-LAR standpoints.

Attorney Perry noted one of the pieces of the settlement agreement was the Applicant has to comply with the City's future codes.

Commission discussion followed. *Chair Webb* asked that a special meeting be held for further discussions. He asked Attorney Rudacille if his client would be willing to allow the City a short extension.

Attorney Rudacille acknowledged he would speak to his client - but did not feel it was fair. He noted they had been in discussions for seven months. If the Commission was at a point where there would be a conceptual agreement, they may then be willing to extend. He informed he would be out of town and would be returning the following Tuesday.

Action: It was the consensus of the Commission for providing a conceptual agreement for the purpose of requesting an extension.

Attorney Rudacille confirmed that upon obtaining a conceptual agreement, they would agree to an extension. The agreement can be provided the week after Attorney Perry returns.

Chair Webb explained that the purpose was so all attorneys on both sides could be present when the Commission discussed it. He pointed out he has a problem with the 50% lot coverage.

Discussion followed as to the meeting date and time when all Commissioners, and both attorneys, could be in attendance.

Commissioner Yetter expressed her concern about the McLean claim requesting an additional \$700 amount in the event the City did not settle the Bert Harris claim. She suggested the case be taken to court – or the City will give them what they want, minus the attorney fees.

Commissioner Carter encouraged each Commissioner to individually meet with Interim City Attorney Perry to go over what she knows as the process. She indicated the only information she had been informed of involved the claims being handled by Attorney Rudacille. Other than an initial meeting with Shawn Kaleta and his attorney, she had not been involved in anything else through the City's former attorney.

- **Motion: Move to approve an extension to January 28, 2015 at 6:00 p.m.**
Action: Moved by Commissioner Doug Copeland, Seconded by Commissioner Carol Carter.
Motion carried – All Aye.
- **Action: A special meeting was scheduled for Thursday, January 22, 2015, 6:00 p.m. FMIT Sales Representative Andy Hanson will be asked to be in attendance to provide information on the City's coverage for Bert Harris claims. Any Commission questions should be emailed to Mayor Murphy.**
- **Motion: Move to authorize the Mayor to move forward for the issuance of an RFP for the purpose of seeking a full-time City Attorney for the City of Anna Maria.**
Action: Approved. Moved by Commissioner Doug Copeland, Seconded by Commissioner Carol Carter.
Motion carried – All Aye.

Interim City Attorney Perry asked that she be provided whatever additional information the Commission wants in preparation for the Thursday, January 22 meeting. She will provide copies of the settlement agreement. In regard to the two Kaleta properties, Commissioner Carter has not reviewed one of those settlement agreements, and it has gone to Sean Kelly who works out of Thompson Najmy's firm. She has not yet received approval of the settlement agreement from Mr. Kaleta based on the agreement drafted by Attorney Dye.

Both Chair Webb and Commissioner Yetter stated the Commission had never authorized any settlement agreement relating to the Kaleta claims.

Attorney Perry informed there is a \$12,502.50 amount plus costs, and an amount of \$1,645.00 for the McLean settlement. She questioned if those amounts incorporate the \$700. She ask if Attorney Dye had agreed to a settlement offer that did not include the \$700 amount. She asked if the Commission was in a position of settling it without the \$700. If so, she would not be requesting an extension from the McLean's attorney, Mr. Mackey.

Commissioner Copeland reminded the McLean offer had already been made and approved by the Commission.

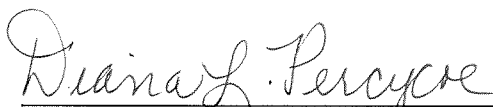
Action: After discussion, it was the consensus of the Commission that the settlement offer, as originally approved by the Commission, would stand. Also, that the Commission does not want Interim City Attorney Perry to seek any further extension relating to that case.

Commissioner Copeland thanked Commissioner Carter for all her hard work relating to the Bert Harris claims.

Press Comment – None.

Adjournment

The meeting was adjourned at 5:40 p.m.



Diana L. Percycoc, CMC, City Clerk

Approved: 2/26/15

Minutes approved: 2/26/15