

# CITY COUNCIL SPECIAL MEETING MINUTES

JUNE 15, 2010

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Mayor Joe LaCascia called the meeting to order at 7:40 p.m.

Mayor Joe LaCascia asked Pastor Lawlor to give an opening prayer and to remember the City Manager in his prayers.

Due to the prior workshop there was no roll call.

## **PRESENT**

Mayor Joe LaCascia, Vice Mayor Trudy Block, Councilor Nancy Adorno, Councilor Mike Blethen, Councilor Don Kimsey, Assistant City Manager Pam Peterson, City Attorney Jeff Sullivan and City Clerk Patricia Jackson.

Also present were City Planner Gene Kniffin, Code Enforcement Officer Kathy Delp, Librarian Mary Ellin Barrett, Smirna Martinez, staff member, and Mike Azzarella, who is with Hydro Solutions Consulting

## **Qualifications for Grant Writer – Ranking Sheet**

Assistant City Manager Pam Peterson advised Council the ranking sheet needs to be done on both qualifications that were received for Grant Writer (Summit Professional Services, Inc. and Guardian Community Resource Management, Inc.). At this time Vice Mayor Block advised she had created a summary sheet on both companies; she then went over the backgrounds of each company.

Council filled out their ranking sheets and Assistant City Manager Peterson tallied the scores as follows:

Summit Professional Services, Inc. scored 594  
Guardian Community Resource Management, Inc. scored 585

Mayor LaCascia made a motion to accept Summit Professional Services, Inc.; the motion was seconded by Councilor Adorno.

Roll Call: Vice Mayor Block-aye, Councilor Kimsey-aye, Mayor LaCascia-aye, Councilor Adorno-aye, Councilor Blethen-aye

5-eyes  
0-nays

At this time Scott Modesitt, who is with Summit Professional Services, Inc., thanked Council; there are a lot of different grants available, and he feels they can do some good things.

### **Mayor LaCascia – City Manager’s Contract**

Mayor LaCascia turned this portion of the meeting over to City Attorney Sullivan. Attorney Sullivan advised after the meeting on Tuesday he received a telephone call from Ms. Carrier; she made a conditional option to resign her position as City Manager with several conditions. Attorney Sullivan took the conditions in written form and created a separation agreement; he advised Ms. Carrier he would address Council tonight to see if those conditions are acceptable. At this time Assistant to the City Clerk Smirna Martinez made copies of the draft document for Council. Attorney Sullivan advised Council this is draft document and not binding at this point; if this document is accepted, it would be effective June 16 at Noon. Attorney Sullivan went over some of the non-financial issues of the agreement until they receive their copy as follows:

- One issue is that City Council and city staff agree no adverse comments about the City Manager or the time she worked with the City at a public meeting, to the media, or to the press. Ms. Carrier would also agree to do the same thing.
- Ms. Carrier would like a copy of her employment record at no charge, there would be no separate personnel file, and should a potential employer contact the City there would be a neutral reference given as to she worked for the City, what her job title was and what her salary was.
- If Ms. Carrier leaves, she can file for unemployment compensation, and the City agrees not to contest it.
- Release each other as it pertains to legal matters (civil actions). Mayor LaCascia gave an example of this.
- A breach of any of the terms of this Employee Separation Agreement by either party requiring legal proceedings, the losing party shall reimburse the prevailing party all reasonable costs and reasonable legal fees associated with the breach.

Attorney Sullivan then went over financial conditions as follows:

- Receive unused vacation time, sick time and personal time.
- Six months severance pay.
- Insurance coverage through December 2010, unless Ms. Carrier receives coverage from subsequent employer.

Attorney Sullivan advised if Council agrees with this, the City can appoint an Interim City Manager. He then advised there are two options: 1) Accept offer and appoint someone and Ms. Carrier would leave on June 16<sup>th</sup>, 2) If Council doesn't wish to accept, let the contract run out in September, and gave them financial figures for that. The difference would be approximately \$26,381 if Council let the contract expire naturally. There are some savings to let it run out, if it is worth waiting three months.

Discussions took place as follows;

- Mayor LaCascia – discussed the possibility of letting her stay and work it out. Per this agreement the City would pay approximately \$80,923 and payments would be made on a monthly basis over a seven month period. If we wait until September 30, the City would have to pay a lump sum and save approximately \$27,000.
- Vice Mayor Block asked if she is going to come back to work; Mayor LaCascia advised not if Option One is chosen.
- Vice Mayor asked what if she doesn't come back. Attorney Sullivan advised he hasn't spoke to Ms. Carrier regarding her working. Option One will pay her more money, but makes it more attractive to the City due to staggered payments rather than a lump sum; there would be a clean break and no litigation.
- Mayor LaCascia commented that was precipitated interest -- the City Manager hasn't been coming to work since June 1; it is reasonable of what the intentions were if she was ill and what direction to go in. The City Attorney called to inquire, and she (City Manager Carrier) gave him what she wanted. The City has been without a leader for two weeks; we are dealing with the County regarding the \$536,000 impact fees and payments on the property, and refinancing of debt and the perception of the general public. Maybe we need to straighten out our business before we can move forward. We are dealing with public record of the audit situation and people who are looking at a government that is not taking control over their deficiencies. Mayor LaCascia feels we should get this City moving; we can't do something without a leader, and he doesn't think the leader should be the City Manager. Council needs to look at cost restrictions; it would be an additional \$26,000 to do something now and get a functioning government in place. How much is it really going to cost. Mayor LaCascia is open to discussion; his concern is about the City and moving forward.
- Attorney Sullivan advised City Manager Carrier is under a contract; if there are four out of five votes for her to be terminated, the City would be required to pay her and it would be in a lump sum (\$80,000). Attorney Sullivan doesn't believe this is an option. The options are to accept this agreement, let her contract run out or make some type of counter offer. If you agree with the proposed agreement, she would resign and it would cost the City approximately \$26,000 more. Council needs to decide what the risk/reward would be to get the City moving forward and not worry about legal issues arising in the future.
- Mayor LaCascia commented it would cost approximately \$1,000 a week to get on with City government.
- Councilor Adorno questioned accrued time if she resigns and if she should stay and use her accrued time; she was given the cost of accrued time if she resigned. Should the City Manager stay through September, but had to use sick time and vacation time (due to medical reasons), someone would have to step in and take over until she is better or returns. Attorney Sullivan advised if the City Manager is unavailable, she can appoint an acting City Manager to act in her place. Mayor LaCascia advised should that happen, City Council could over-ride her decision, or could ratify her decision.

- Councilor Kimsey advised one of the advantages of the agreement for the City Manager is having a neutral rating from Council.
- Mayor LaCascia advised she is pricing her terms and conditions.
- Attorney Sullivan commented the City Manager not being here is due to illness; he doesn't know if she is too ill to work, but he does know she is not faking her illness. Mayor LaCascia advised we have been without a City Manager for two weeks and hopes she gets well; no one is saying the City Manager is faking. The only fact we are dealing with is what is best for the City at this time; he is interested in moving the City forward. We have to do a budget and how can we do that without a leader; how can we meet with the County and banking institutions without a leader. This is not a good situation; it will cost approximately \$4,000 a month for the next seven months.
- Councilor Blethen asked about vacation and sick time under the contract. Mayor LaCascia advised it is under contract and it is \$38.46 per hour, and she is entitled to a vehicle allowance of \$400 per month.
- Mayor LaCascia is not happy, but reasonable; it would be spread out over time, and he wants to move forward and run government.
- Councilor Blethen commented if Council agrees to this, it would be effective tomorrow versus three months.
- Vice Mayor Block asked if drawing down on vacation and sick time, would that help knowing she is ill and can't work.
- Councilor Blethen asked if a claim was filed for unemployment, would she receive unemployment while she receives severance pay.
- Councilor Kimsey feels we should bite the bullet and pay her. Councilor Blethen agrees, but we would be looking at seven months before we could hire someone else.
- Mayor LaCascia advised we will need to look at restructuring; look at what we have.
- Councilor Adorno advised City Manager Carrier is telling the City what she wants, and wanted to know if the City could tell her what they would like. City Attorney Sullivan advised this was not the City Manager's initial offer; there has been some give and take to come up with this agreement. The City Manager initially wanted to be paid in a four month time frame, and the City Attorney doesn't see the City Manager giving much on the numbers. He also mentioned additional negotiations could take longer, and it could take longer if the City Manager hires an attorney.
- Councilor Adorno advised she was looking at some way to get the numbers down. She agrees to look at this if the other Council is interested. She understands certain conditions; however, the City doesn't have money; how can we do this when we don't know if we will have money three or four months down the road. Mayor LaCascia suggested looking at the vehicle allowance.
- Councilor Blethen asked about Items 9 and 10 under the proposed separation agreement. City Attorney Sullivan explained items 9 and 10, which pertained to life, health and disability insurance, retirement into both the Florida Retirement System and the ICMA-RC.

- Kevin Bouffard, Lakeland Ledger, asked about the legal liabilities if staff or Council breaks the gag order. He then questioned the first amendment and the authority to impose a gag order. Attorney Sullivan advised this is done by mutual agreement, and is not a gag order. There is no provision in the agreement for breaking that agreement; however, if damages are proven they can sue. There are no putative damages or consequences. Mayor LaCascia commented he understood why the City Manager would want that; in reality of hiring someone it is the responsibility of hiring party to do due diligence. After brief discussion, City Attorney Sullivan advised he does not perceive this to be a gag order; just no negative comments. He further stated he is glad there is no penalty provision; can't control that. Mayor LaCascia asked if it was unusual; City Attorney responded no. Mayor LaCascia asked Attorney Sullivan if we go forward can we look at consequences of the clause. City Attorney Sullivan advised he does not want to do things because other people have done them; however, if this is a deal breaker, he will be happy to dig in and research this to if it has been challenged. He does not see a penalty; it is professional. Mayor LaCascia asked each Councilor if this is a deal breaker, and their responses are as follows:
  - Councilor Blethen – no, it is all public record
  - Vice Mayor Block – not a deal breaker
  - Councilor Kimsey – not a deal breaker
  - Councilor Adorno – not a deal breaker
  - Mayor LaCascia – is happy with it

Councilor Blethen commented with what the Mayor and Vice Mayor have done, get more creative and move forward. Vice Mayor Block asked if we (Council) could have a day, go to her, and if she is really ill then spend down the sick and vacation time – is that good enough if doesn't say come back. Mayor LaCascia discussed the possible risk of putting this back into play – don't know what's going to happen; you currently have an agreement in place, and not sure what consequences are. After further discussion, Councilor Adorno asked if the public could comment. At this time Mayor LaCascia asked if anyone from the public would like to speak; and there is, to please come forward and give your name and address. The following spoke:

- Ted Borsjé, 210 Bayberry, addressed Council and asked about the unemployment benefits. Mayor LaCascia explained how that would work; Councilor Blethen advised she would receive severance pay.
- Mrs. Schneider, 775 Teaberry, addressed Council and feels the City needs to move on; bite the bullet because the City can't move forward if you don't do this.
- Al Schneider, 775 Teaberry, asked if a motion was made to accept the agreement. If you do not accept this and the City Manager is still on payroll, does she accrue vacation and sick time? Mr. Schneider was advised she would continue to accrue that time. Then he wanted to know if Council thinks the City Manager would be willing to take a lesser amount; the order of business is to provide the continued operation of the government.

Councilor Kimsey made a motion to accept the draft agreement as put forward by Attorney Sullivan in its entirety (separation agreement); the motion was seconded by Councilor Blethen.

Roll Call: Councilor Adorno-aye, Mayor LaCascia-aye, Councilor Blethen-aye, Vice Mayor Block-aye, Councilor Kimsey-aye.

5-ayes

0-nays

At this time Mayor LaCascia called a brief recess so that the City Attorney could call the City Manager to see if she is still in agreement with the proposed separation agreement, and to get it signed tonight so we can move forward.

Mayor LaCascia called the meeting back to order at 9:35 p.m. City Attorney Sullivan advised City Manager Carrier confirmed she is still willing to abide by the terms of the agreement; Kathy Delp is on her way to get the agreement executed, and it will be effective June 16, 2010, at Noon.

Mayor LaCascia advised the City has to provide for the continuation of running the government. Under Charter C-20(B) the City Council will appoint an acting Manager for a period of thirty (30) days; the Mayor will entertain discussion on a motion, and it will be appropriate to pick a person to act in that position for a period of 30 days. It can obviously be any member of staff, or it can be any member of Council. Mayor LaCascia went on to say that normally you cannot occupy two positions; however, there is an exception to that rule that makes an exception to C-20. Usually a person on Council could not be on Council and act as an Acting City Manager at the same time; you can't hold two elected positions, but there is an exception in the Charter when a the position of City Manager is vacated by something like a separation agreement.

Councilor Blethen asked who wanted to serve. Councilor Adorno advised she would like to make a nomination; she first considered Pam Peterson, who is the Assistant City Manager, but she has expressed she is not interested. Councilor Adorno then nominated Patricia Jackson for 30 days. Vice Mayor Block asked if it would possible to let a Council Member serve as Acting City Manager; there has been a lot going on, and feels this would be the best avenue to take in order to let things calm down and get some organization established. Mayor LaCascia advised this can be done under the Charter. His suggestion would be for a member of Council to take this position for a period of 30 days rather than rush to judgment; this will allow an opportunity to look at a lot of options, which may not be before us at this time. Vice Mayor Block nominated Mayor LaCascia; however, Mayor LaCascia declined because he wants to avoid any sense of impropriety with him also being the Mayor.

Mayor LaCascia made a motion to nominate Vice Mayor Trudy Block as Acting City Manager; the motion was seconded by Councilor Adorno. Under discussion, Councilor Kimsey advised this was done once before; he believes the Mayor took over.

Roll Call: Mayor LaCascia-aye, Vice Mayor Block-aye, Councilor Adorno-aye, Councilor Kimsey-aye, Councilor Blethen-aye

5-eyes

0-nays

Vice Mayor Block made a motion to adjourn the meeting; the motion was seconded by Councilor Adorno and unanimously carried.

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Patricia R. Jackson, City Clerk

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Joe LaCascia, Mayor