

MINUTES
CITY COMMISSION MEETING
August 2, 2012

The City Commission met this date in special session in the Commission Chambers. A quorum being present, the meeting was called to order at 5:00 PM with the following in attendance.

Mayor	:	John B. Arnold, Jr.
Commissioners	:	Heyward H. Strong, Jr.
	:	Diane Kelley
	:	Joe Morgan
	:	Kay Hamilton
City Clerk	:	Tammy Johnson
City Attorney	:	Hayward Dykes

Others in attendance: Anita Griffith (Court Reporter), Joan Morse (Camera), Mike Griffith (Bay Beacon)

EXECUTIVE SESSION

Mayor Arnold stated that the meeting was duly advertised. Mayor Arnold read aloud the “Notice of Special Meeting and Executive Session” concerning pending litigation in Bradley vs. City of Valparaiso, Case No. 2009-CA-001965. Anticipated time is between thirty minutes to forty-five. The Mayor declared the meeting recessed at 5:02 PM.

Executive Session

Bradley Litigation

SPECIAL MEETING

The special meeting resumed at 6:23 PM.

Comm. Kelley left during the Executive Session

Mr. Dykes said based on discussion in the Executive Session the commission needs to decide whether or not that they want a rehearing. If they do they would have to file a motion ten days. MAYOR ARNOLD MADE A MOTION THAT WE DO NOT SEEK A REHEARING IN THE BRADLEY CASE. COMM. MORGAN SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY WITH A 4 - 0 VOTE OF THE COMMISSION.

Do Not Seek Rehearing

COMM. MORGAN MADE A MOTION TO AUTHORIZE MR. DYKES TO OBTAIN THE TRANSCRIPTS OF THE TRIAL AND TO INVESTIGATE THE FEASIBILITY OF AN APPEAL. COMM. STRONG SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY WITH A 4 - 0 VOTE OF THE COMMISSION.

Authorize Mr. Dykes to obtain Trial Transcripts

Mr. Dykes stated that the firm Mr. Aschauer is with has filed a motion to withdraw from the Bradley Case. The firm feels based on the court’s order they cannot represent the City. In the Courts order Judge states that the Commission is at fault does indicate there could potentially be some blame to go towards Mr. Wyckoff the former City Attorney and trial counsel which happen to be Mr. Aschauer’s firm. Mr. Ascharuer’s firm after they reviewed the ruling they sent it to an outside attorney for review. They felt they could not continue to represent the city because it could be seen as being at odd with the city’s best interest. You need to decide if you want to agree to their withdrawal if you agree to this you can have another attorney step in, I would suggest myself. You need to decide whether or not you want to take any action against Mr. Wyckoff and Rose Sundstrum and Fumero. Commissioner Hamilton said at the minimum we would be looking for some recovery, because for them to withdraw at this point and time they have put us in a difficult situation there will be extra cost put on us. Mr. Dyke’s recommends we negotiate with them indicating because of the situation we are going to have to get someone up to speed and there will be additional cost and because of that they reduce there bill accordingly. The worse they could do is say no, then the commission would have to decide if they wanted to pursue anything against them.

MAYOR ARNOLD MADE A MOTION THAT WE APPOINT MR. DYKES AS THE ATTORNEY OF RECORD IN THE BRADLEY LITIGATION AND WE WOULD ACCEPT THE WITHDRAWAL OF FRED ASCHAUER’S FIRM. COMM. HAMILTON SECONDED THE MOTION. Comm. Morgan stated essentially we are letting them off the hook, Mr. Dykes stated no, we are letting them off the case, we are not letting them off whether or not the city decides to do anything against them. THE VOTE WAS HELD ON THE MOTION, WHICH PASSED UNANIMOUSLY WITH A 4 - 0 VOTE OF THE COMMISSION.

Appoint Mr. Dykes as the Attorney of Record

COMM. MORGAN MADE A MOTION TO GIVE MR. DYKES THE AUTHORITY TO DISCUSS RECOVERY OF COST OF ASSIGNING A NEW ATTORNEY UNFAMILIAR WITH THE CASE. MAYOR ARNOLD SECONDED THE MOTION. Comm. Morgan stated we are not recusing either Mr. Wyckoff or the attorney of record for the case for any negligence on their part. THE VOTE WAS HELD ON THE MOTION, WHICH PASSED UNANIMOUSLY WITH A 4 - 0 VOTE OF THE COMMISSION.

Mr. Dykes stated he will contact Mr. Aschauer tomorrow and let him know what has transpired tonight.

Mr. Dykes stated because of the way the order came out he has purposely not moved forward with Mr. Wyckoff’s outstanding contract. The Monday after the order came out Mr. Wyckoff emailed him and said if we cannot resolve his contract issue this week (by tomorrow) he plans to file suit. I did not respond, as a commission you need to decide how you want to proceed. In my opinion if we sign a release as we were contemplating that will prevent the city

seeking any type of damages in the future. Comm. Morgan asked why, when it is a contractual issue and we decided to do this so we did not get sued by him. It is not a release of responsibilities. Mr. Dykes stated the release I was working Mr. Wyckoff released the city of any future liability any known or unknown and the city released him. You could limit it only to the contract. He saw this as an opportunity for the city to go to Mr. Wyckoff and say we are not going to pay you anything we will agree not to sue you basically if the commission decided it didn't want to get into additional mediation. You are not guaranteed you would win a case against Mr. Wyckoff. You may win but you would still have the expenses of going to trial. It would be a difficult case.

MAYOR ARNOLD MADE A MOTION THAT WE WITHDRAWAL THE PROPOSED SETTLEMENT OF \$5,500 WITH MR. WYCKOFF AND WE TRY TO SETTLE FOR \$1.00 WITH THE AGREEMENT NO SUITS ON EITHER SIDE HE DOES NOT SUE US WE DO NOT SUE HIM. The motion died for lack of a second.

COMM. HAMILTON MADE A MOTION THAT WE CANCEL THE PREVIOUS DECISION TO OFFER MR. WYCKOFF THE \$5,500 AND THAT WE AUTHORIZE MR. DYKES TO NEGOTIATE AND SEE WHAT HE CAN BRING BACK TO US AS AN AGREEMENT. MAYOR ARNOLD SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY WITH A 4 - 0 VOTE OF THE COMMISSION. Mr. Dykes stated just to be clear on the motion he is going to withdrawal the previous offer of \$5,500 and we do not have an offer at this point to resolve it but, he is to speak with Mr. Wyckoff and see what he feels is appropriate and he will bring back to the commission then we will see where we go.

ADJOURN

There being no further business to be brought before the Commission, the meeting adjourned at 7:05 PM.

Cancel
Previous
Offer to Mr.
Wyckoff

John B. Arnold, Jr.
Mayor

Heyward H. Strong
Chair, VCA

ATTEST:

Tammy Johnson, CMC
City Clerk

The DVD labeled August 2, 2012 contains the audio and video and will be kept as a permanent part of these minutes.