

MINUTES
CITY COMMISSION MEETING
February 18, 2013

The City Commission met this date in special session in the Commission Chambers. A quorum being present, the meeting was called to order at 6:00 PM with the following in attendance

Mayor	:	John B Arnold, Jr.
Commissioners	:	Kay Hamilton
	:	Heyward H. Strong, Jr.
	:	Joe Morgan
City Clerk	:	Tammy Johnson
City Administrator	:	Carl Scott
City Attorney	:	Hayward Dykes
Attorney	:	Bruce Bowman

Other in attendance: Brenda Douglas (Court Reporter), James Butler (Camera), Mike Griffith (Bay Beacon), Terry Griffin, Stephen Griner, Dr. Michael Harris

EXECUTIVE SESSION

Mayor Arnold stated that the meeting was duly advertised. Mayor Arnold read aloud the “Notice of Special Meeting and Executive Session” concerning settlement negotiations or strategy sessions in Roberts VS. City of Valparaiso, Case No 11-CA-1663. Anticipated time is 20 minutes. The Mayor declared the meeting recessed at 6:05PM.

Executive Meeting

SPECIAL MEETING

The Special meeting resumed at 6:45 p.m.

Special Meeting

COMM. HAMILTON MADE A MOTION TO GIVE MR. BOWMAN THE AUTHORITY TO SETTLE THE ROBERTS CASE UP TO SIXTEEN THOUSAND DOLLARS. COMM. STRONG SECONDED THE MOTION, NO DISCUSSION TOOK PLACE, WHICH PASSED UNANIMOUSLY WITH A 3 - 0 VOTE OF THE COMMISSION. Mr. Morgan abstain from voting stating he had adjacent property to the property in question.

1. PERMIT DR. HARRIS'S OYSTER BAR

Mayor stated that we asked our Attorney if permitting the Oyster Bar as requested by Dr. Harris was legal. Mr. Dykes said he reviewed minutes and documentation provided by City Clerk and Administrator. It appears based on his review that Mr. Wyckoff had the opinion that the city has an easement but did not own the property underneath, that appears to be correct, that is generally the law in the State of Florida. Even if you have an easement the original property owner owns the property underneath. You have to make sure that the use of the property does not interfere with the City's ability to use its easement. Comm. Hamilton asked if we need to vote or is this his legal opinion. Mr. Dykes said that is his legal opinion and there is not a request to vacate the easement. He stated since we are not giving up any legal rights then there is no reason to vote. Comm. Morgan asked how this is any different than the Billingsley and Robert's case specifically. We claimed that it is our own not just an easement. Look at the tax records Compass Rose is not taxed waterfront. Comm. Morgan stated without further proof I just do not know, I do not have enough information. Comm. Hamilton asked if he had a problem with them building an Oyster Bar. Comm. Morgan said no. Comm. Hamilton said that is all we are talking about. Comm. Morgan said no we are not we are in a discussion about ownership of the land, and the public road down to the water. If it is public property we may need public input, if it is his property we do not need public input. It is a matter of transparency. Comm. Hamilton said in talking to Mr. Dykes about this I thought it would be a good idea to separate this permitting issue and not create another legal suit. It would be a good time to do Plat by Plat and get some clear resolution on the properties. This Plat (Plat II) is not as significant because almost every lot has a dock and I know it is always a dock issue. We have three Plats and we have three conflicts with Commissioners. If we take it one Plat at a time we will have a full Commission voting minus one Commissioner. Maybe we could avoid some of these suits in the future. Comm. Hamilton answering Comm. Morgan's question said the Oyster Bar would be built down by the water. Dr Harris, 205 Highland, the plans call for a 20X40 building to be situated so not to disturb the natural foliage, I think there are three trees will need to be taken down. There will be a deck on the back, dock and restroom facility. You do not have to come to the Oyster Bar to use the deck, dock or restroom facility. I built the Compass Rose to do something for the community. We are trying to preserve the environment it will all be on stilts no concrete. I believe it is something the community will really enjoy. Mayor Arnold stated that we appreciate Dr. Harris's interest and endeavors. Comm. Morgan asked that Dr. Harris not misunderstand his concerns as something against his business. Mr. Harris showed Comm. Morgan his survey it showed that his property ended at the right-of-way. Comm. Morgan stated that according to Dr. Harris's survey and the title he has he does not have any ownership of this land. While asking for a permit from the city he is asking to own in essence by use and by nature what is public property. That is the only clarification I'm asking. Mayor stated it has not been judged as public property. Comm. Morgan stated it has not been judged as his property and it is not titled as such. Mayor stated the city does not have title of the property. Comm. Morgan said nor does Dr.

Oyster Bar Permit

Harris. Mr. Dykes stated that the law is that if you have a Plat and you own the property up to a defined or platted road and when that road is deemed to be vacated or not accepted then the law recognizes that your property goes to the middle of the roadway if water on the other side you go the water. Comm. Morgan stated this road has not been deemed to be vacated just like the road to the south. Comm. Hamilton said the problem she looks at right now is that Dr. Harris is not going to wait for a resolution. I know from Dr. Harris that tomorrow he is going to be calling the "meanest" attorney he can find and we are going to be right in the middle of another lawsuit. Comm. Hamilton asked Mr. Dykes if we would win that lawsuit. Mr. Dykes said it would be difficult. Comm. Hamilton said she promises that is what will happen and asked do we want that. Comm. Morgan said he would plead with Dr. Harris to not do that, he believes truthfully there is a resolution to get you what you want. Mr. Dykes said the assertion on Plat III was that we intended to use the roadway for something. Comm. Morgan stated the same assertion for the trail can be made on this Plat as part of that Comprehensive Plan. Comm. Morgan said he sees fishermen and people utilizing that parking space etc. Comm. Hamilton stated it's our (Compass Rose) parking space. Comm. Hamilton asked the Mayor what his thoughts were. Mayor said his thoughts are that Dr. Harris owns that property, he owns all the property the city just has an easement. Comm. Hamilton then asked Comm. Strong his thoughts. Mr. Dykes said the issue needs to be decided whether or not this is going to go to a vote we do not want this to seem as polling the commission. **MAYOR ARNOLD MADE A MOTION THAT DR. HARRIS BE ABLE TO BE ISSUED A PERMIT. COMM. STRONG SECONDED THE MOTION.** Terry Griffin, 253 Grandview, stated he has no opposition to an Oyster Bar the only question is public perception, doing something that appears not to be in the interest of the public. Discussion needs to be in a public format. Mayor Arnold told Mr. Griffin that he actually owns to the middle of Grandview but your deed does not show that. He stated that is the same as Dr. Harris's property we have legal opinion that they own it and the city just has an easement. Mr. Griffin said if that is the case lets go to the records the public has access to and change that information, show the property to the waters edge. Comm. Morgan said and derives the taxes that go along with it. Mr. Griffin stated that perception is the responsibility of the Commission that in the public's eye there is no wrong doing. Dr. Harris stated he is the only owner that does not have a dock every other owner has already put a dock in and developed that property certain people have brought in dump truck loads of dirt. I'm not asking to change the ecosystem anyone who wants to fish there can. Comm. Morgan said he would have no problem permitting a dock if it was contingent on us not having to make any kind of decision that the land is Dr. Harris's. Mr. Dykes said he did not feel we were making that decision. Comm. Morgan asked is there a way we can codify the dock for public use. Dr. Harris said he would have no problem with that it is going to be open for public use. Mayor stated that we are only talking about the permit portion of the Oyster Bar. Mr. Scott stated you cannot have a dock till you make application to DEP and Army Corps of Engineers, once you get a permit number then you come to the city and we will give you a city permit. Paul Hartzog, Kay Hamilton and other individuals have state recognized DEP permits and the state recognizes that land as there own. Mr. Griffin stated we have docks all over the City and people do not own that land and they have to have liability insurance. There are several docks that are on public land that are not deeded to the person who owns the property across the street. **THE VOTE WAS HELD ON THE MOTION, WHICH FAILED WITH A 1 TO 2 VOTE OF THE COMMISSION. MAYOR ARNOLD VOTING IN THE AFFIRMATIVE AND COMM. MORGAN AND STRONG VOTING IN THE NEGATIVE. COMM. HAMILTON ABSTAINED.**

Mayor asked where do we go from here. Mr. Dykes said the City agreeing that if he gets his DEP permit and Army Corps of Engineers approval and if we issue a permit that were giving up any rights. Mr. Dykes would suggest we take a comprehensive look at Plats I, II, and III and the City come up with a comprehensive understanding how you want to treat those Plats. Mr. Dykes said he was not tasked with finding out if we owned the property I was tasked with seeing what the city had done in the past to try to have some continuity. Mr. Scott said he needs some direction on how to proceed. Mr. Scott said to resolve this issue and get past the permit deal can we give Dr. Harris an encroachment agreement right now and under the city's encroachment agreement Dr. Harris takes all the risk and if we ever want it back for any reason we just tear it down. Comm. Morgan said that would be fine he just does not want it conflicting with the ownership issue. **COMM. MORGAN MADE A MOTION IF DR. HARRIS IS WILLING TO SIGN AN ENCROACHMENT AGREEMENT TO BUILD HIS IMPROVEMNTS ALONG BAYSHORE DRIVE IN FRONT OF HIS RESTAURANT HE BE ALLOWED TO DO SO. MAYOR ARNOLD SECOND THE MOTION.** Dr. Harris said that was alright with him. Mr. Griffin said he believes that clears up the issue with public perception Mr. Dykes said he will get with Mr. Scott and they will look at the issues Comm. Morgan and others have brought up. We will come back with what we believe would be idea on how to treat Plat II from now on and have public hearings and also look at Plat I and III. This way we have a comprehensive policy moving forward. The public knows what they can and cannot do and the city understands how we are going to treat that. **THE VOTE WAS HELD ON THE MOTION, WHICH PASSED WITH A UNANMOUS VOTE OF THE COMMISSION 3 TO 0. COMM. HAMILTON ABSTAINED.**

2. **SCHEDULE CITY CHARTER STUDY WORKSHOPS**

Mayor said we will have a firm date at the March Commission Meeting.

ADJOURN

There being no further business to be brought before the Commission, the meeting adjourned at 7:25PM.

City Charter
Workshop

Adjourn

John B. Arnold, Jr.
Mayor

Heyward H. Strong
Chair, VCA

ATTEST:

Tammy Johnson, CMC
City Clerk

The DVD labeled February 18, 2013 contains the audio and video and will be kept as a permanent part of these minutes.