



city council minutes

MINUTES
January 15, 2019
Regular Session 6:30 pm

The Belle Isle City Council met in a regular session on January 15, 2019, at 6:30 p.m. at the City Hall Chambers located at 1600 Nela Avenue, Belle Isle, FL 32809.

Present was:

Mayor Lydia Pisano
Commissioner Gold
Commissioner Anthony Carugno
Commissioner Jeremy Weinsier
Commissioner Mike Sims
Commissioner Jim Partin
Commissioner Sue Nielsen

Absent was:

Commissioner Harv Readey

Also present were City Manager Bob Francis, Attorney Kurt Ardaman, Chief Houston and City Clerk Yolanda Quiceno.

CALL TO ORDER

Mayor Pisano called the City Council Regular Session to order at 6:30 pm and the City Clerk confirmed quorum. Mayor Pisano welcomed District Commissioner Mayra Uribe. Commissioner Gold gave the invocation and led the Pledge to the flag.

CONSENT ITEMS

- Approval of the City Council meeting minutes – December 4, 2018
- Approval of the City Council workshop minutes – December 14, 2018
- Approval of the City Council workshop minutes – December 28, 2018
- Approval of Line of Credit from the previous year

Mayor Pisano called for a motion to approve the consent item.

Comm Nielsen motioned to approve the consent agenda items as presented.

Comm Sims seconded the motion which passed 6:0.

CITIZEN COMMENT

Mayor Pisano opened for public comment.

- Gayle Bouck residing at 2205 Cross Lake shared her concern with the debris dumped on Cross Lake Beach. The debris has degraded to black muck and is going down to the water. She asked for the City's assistance to clean up the beach area.
- Karl Shuck residing at 1658 Wind Willow Road shared his frustration with the response to his public records request he submitted for the Mayor's personal phone records from June 7, 2018. He stated that he has not received any records for 2016 and gave a brief update of what he has received to date.

There being no further comments Mayor Pisano closed citizen comments.

UNFINISHED BUSINESS

City Manager Francis gave a brief explanation as to why the agenda was changed to remove the ordinances. Unfortunately, due to circumstances out of our control at the Orlando Sentinel, the ads were not published on time and according to State law and the Charter the Ordinances could not be read for second reading and adoption because they were not advertised in the required time frame. The ad will be published accordingly for the next scheduled meeting.

Reimbursement of Attorney Fees - Commissioner Nielsen

City Manager Francis gave an update on the reimbursement of attorney fees for Comm Nielsen and provided a copy of the attorney's itemized bill as previously requested by Council. He reported that the City had placed a claim with the City's insurance company for all three reimbursements (Gold, Readey, and Nielsen) and the insurance company will be able to pay 50% of the original submittals leaving the City to pay the other half.

Comm Gold moved to approve reimbursement of attorney's fees to Comm Nielsen for \$20,000.

Comm Partin seconded for discussion.

Comm Partin stated that he has received feedback from a resident who was concerned about the amounts and asked why the City is responsible for reimbursement if the members were acting on their own accord and the violations were outside of their official acts. He further stated that the report shows that Comm Nielsen knowingly broke the Sunshine Law.

Attorney Ardaman stated that there are two bases for reimbursement, (1) Statutory and (2) Case Law. Concerning 2007 Case Law in FL, he explained the litigation must arise out of, and in connection with the performance of official duties and must serve a public purpose. With Sunshine Law, there cannot be a violation if the individual was not serving in a capacity as a City Commissioner. He said the State Attorney concluded its evaluation and said the case is now closed and there will not be any further action. Complicating the matter, the previous City Attorney did recommend that the individual commissioners hire their private lawyer. Attorney Ardaman said that the requirements for reimbursement have been met.

Attorney Stuart was present to answer any questions.

Comm Gold explained his justification for approval of the reimbursement and said that the City made a promise to each Commissioner that if they were not found guilty, they would be reimbursed. Also, the commissioners did not have the opportunity to appear in court to access innocence or guilt and most importantly the City's word should be binding.

Comm Sims also received an email from a resident in opposition and explained his reason for approval. To deprive a Commissioner reimbursement based on hunches and emotions is not something he can defend. He believes his vote should be based on findings and State law guidance.

Comm Carugno shared his concerns and said he also received some calls in opposition. He said every year Council is required to attend an Ethics Course and are aware of what is right and wrong. He does not agree with the other Commissioners and strongly disagrees with the reimbursement of attorney fees.

Attorney Jacob Stewart with offices at 1521 Mt. Vernon Street, Orlando, FL spoke on the concerns voiced by the Council. He said mere allegations can be career ending. He can assure everyone that this was a very large investigation, very complex, and very expensive. In his experience, agencies do not spend this much on an investigation and then walk away from it unless something is extremely wrong with their case. He said the Council requested an itemized invoice but he said that he charges a flat fee retainer instead of billable hours and his statement had to be recreated over the two years. He further added that billing by flat fees is becoming preferred to hourly billing in the profession and in his practice. He stands by his price and fees. He also contends that Commissioner Nielsen is completely innocent. He reminded Council that mere allegation does not mean guilt.

Comm Carugno asked if there is any written document that the City was going to reimburse these Commissioners. Mr. Francis said these events occurred before his employment and he did not find any written document in the file. He said after speaking with Comm Readey, Gold and Nielsen, he was told by them that the then City Manager and City Attorney said the City would reimburse them for legal fees because he will not be able to represent them. Also, Mr. Francis said there was no process in place on how to handle this type of situation at that time.

Comm Weinsier said he is not sure if everyone would ever agree with what is true or false; however, there is State Law that states they should be reimbursed for their legal fees if there were no charges. He would like to move forward with the vote.

Mayor Pisano confirmed with the City Attorney that Comm Nielsen would be able to vote on this matter.

Attorney Ardaman referenced FS 112.3143(3) and FS 112.313(5).

Comm Nielsen said she does not mind recusing herself; however she will still be counter for a quorum.

Attorney Ardaman said it is safer if all Commissioners present vote on the motion and recommends Commissioner Nielsen vote on the motion.

Mayor Pisano called for a vote on the motion made by Comm Gold to approve reimbursement of attorney's fees to Comm Nielsen for \$20,000. The motion passed 4:2 with Comm Carugno and Comm Partin, nay.

Update on Cross Lake Purchase

Mr. Francis led the discussion on the Cross Lake purchase and gave a brief overview of the project. Due to Orange County's failure to notify the property owners of the first hearing, the project was put on hold. During that time, Orange County said they would not move forward until the adjacent property owner and the City came to some agreement in addressing the issues and concerns. In the meantime, the City has received an email from the adjacent property owner's attorney addressing several concerns known /unknown by the City. The City responded accordingly in a memorandum addressing the following concerns,

- Park is adjacent to the property owner's dock
- Park is 8-ft from the adjacent property owners house
- Ingress/egress
- Parking places
- Dirt road
- New boat ramp/dock at a location
- Cross Lake swimming and passive use
- Adjacent property owner's drain field issue
- Purchase of adjacent property owners property

In the January 2019 e-mail from the adjacent property owners' attorney, a three-way division of the Cross Lake Park property was proposed: 1/3 each to the two adjacent property owners and 1/3 to the City. The attorney stated that there were Council members on record at the April 17, 2018 City Council meeting who were supportive of the outcome the adjacent property owner sought. Commissioners were then polled to determine their position. They are in favor of providing an area of ingress/egress through Cross Lake Park to the neighboring land-locked property.

On April 17, 2018

- Comm Nielsen said she believes the City is required to provide ingress to a property owner who is landlocked adjacent to the land and would like the City to purchase the property and dedicate a piece of the park as a driveway for the applicant
- Comm Gold spoke in favor of working towards a solution to dedicate a piece of the park as a driveway
- Comm Readey said he is in favor of the City purchasing the property and have staff provide a plan to provide the applicant with a driveway

Mr. Francis asked the three Commissioners if they would like to provide a piece of the park for a driveway or continue with the purchase and extend the driveway down where the property owner will have access to a public right of way.

Comm Gold and Nielsen both agreed that they are looking for an amicable solution.

After discussion, Mr. Francis said once the City acquires the property, installs a surrounding fence and open/close access from dawn to dusk it will correct most of the concerns from the adjacent property owner. Discussion ensued on the fence height/style, mulch issue and clean-up of Cross lake Beach

NEW BUSINESS

Approval of Lance Settlement Agreement

Mr. Francis opened discussion on the Request for Relief on 7020 Seminole. The City has proposed a Settlement Agreement for approval. If the Council agrees to the Settlement Agreement, it will include the concessions to pay the City Attorney's fees totaling \$16,500. Mr. Francis noted that he received a concern from a resident that the Lance's should not be allowed to have a wall in the front.

Comm Nielsen said she has conflicted feelings but she fears that the development will look like McMansions on substandard lots. The request for variance does not meet the requirements of City code.

Comm Carugno said he had received many calls and emails in opposition. Also, there was a concern about the precedent set by the last lot split. He is in favor of lot splits depending on the area in the City. He asked if the City can change the Land Development Code to state that lot splits are allowed if they meet the code at the time and do not create a substandard lot. Attorney Ardaman said yes, discussion ensued on the definition of plotted lots. He further added that some residents concern is that applicants can appeal any vote and get approved.

Mr. Francis said the applicant has the right to file relief under section 70-51. The State law requires that the City throw a special magistrate negotiate mediation with the property owners to agree to a settlement agreement before moving to the next step. If a negotiated settlement cannot be agreed upon a lawsuit may follow.

Comm Gold said this is always going to be a non-compliant area because a vast majority of lots are 70 foot lots and a few are 55-foot flag lots. The only way to get to a point where this area can be compliant is to combine all of the homes in the area, in an overlay district.

Mayor Pisano opened for public comment and allowed for a 2-minute presentation from each speaker.

- William Haan residing at 2909 Trentwood Blvd spoke in opposition to the lot split and the settlement agreement and said it would set a bad precedent.
- Bob Harrell residing at 2800 Trentwood Blvd spoke in support of the lot split mainly because the majority of the lots on that street are small lots. At the time of the original request, those in proximity were in favor. Those opposed were not adjacent neighbors. Mr. Harrell clarified that the applicant has an accumulation of three lots that he wants to make into two. He does not believe the City should make a restriction on how big a house can be built.
- Anna Marie Fiola residing at 2493 Trentwood spoke in opposition of the lot split because it will affect the density and create a negative impact on the water quality.
- Charlene Kennedy residing at 2624 Homewood Drive spoke in opposition to the lot split because it will create a bad precedent and create a negative effect for the quality of the Lake.
- Beth Lowel said she would give her time to Emily Wakley.
- Emily Wakley residing at 3019 Indian Drive spoke in opposition to the lot split that does not meet the minimum zoning requirements. She provided an overview PowerPoint and said the City is slowly changing the zoning in the area without actually going through the proper channels to change the zoning.
- Debra Donham residing at 6904 Seminole Drive said she would like to see everyone follow the rules and protect the lake water quality.
- Greg Gent thanked the City for their partnership for making the Boat Parade a success.
Greg gent residing at 2924 Nela Avenue spoke in opposition to the lot split and gave a brief overview PowerPoint of the approval process. He said he would like to see the City review and follow the Code and procedures.

There being no further comment Mayor Pisano closed public comment for Board discussion.

Attorney Tom Callan with offices at 921 Bradshaw Terrace, Orlando FL representing the applicant spoke on the key points of the Settlement Agreement which included:

- Setback 70 ft from NHWM elevation
- Demolition of the house to occur within a certain period
- Regulate square footage
- Types of construction
- Swale in the back yard
- Fencing
- Boat Docks

Attorney Callan spoke on the following legal points,

- The City denied the variance and the Staff report had errors with the wrong code standards by the City Planner and the Planning Zoning Board which were covered in the Request for Relief
- Should the four variance standards each be met or weighted as whole
- Is there a conjunctive to meet all 4-criteria in Section 42-64
- There is no over development on the lake
- The city engaged on the improper plebiscite
- The city allowed impermissible Ex-parte communications referenced repeatedly in the record of June 2018

If there is a denial, the applicant can move forward with two homes on the two lots that meet the code without a variance each lot at 22,000 square feet meeting all setbacks.

In this juncture,

- the house has no value – it's a detriment
- it is a reasonable use of the property with no environment issues
- it is in harmony with the neighborhood
- it is geared towards new development, not infill
- will not create a precedent and it is supported by many of the neighbors, except by the Weinsiers
- it is an unnecessary hardship to have an oversized lot of 150ft in perpetuity when the surrounding homes are 70-75ft

Comm Sims said the intent of hardship is more to protect the applicant and never intended to mean if the hardship cannot be proven the request cannot be approved.

Comm Weinsier said he had not heard a clear statement of the hardship being met. If there are no requirements or standards for hardship, then everyone will get a variance. Comm Weinsier spoke on examples of change and said the City needs to stand behind the code. If the City is going to rezone by variance, then the City will need to change the code.

Discussion ensued on new development standards and substandard lots. Council discussed creating a precedent. Attorney Ardaman said the law is very clear, variances are considered on a case by case basis, and granting or denial for one property is not a precedent for any other property. Every parcel property is considered unique under Florida law; separate and apart.

Comm Nielsen said it is extremely frustrating for citizens to go through this process over and over. The question keeps coming up, why do we have a code. Attorney Ardaman said everyone has property rights and the right to pursue due process leaving the City to pay for defending the request.

Attorney Callan gave a comprehensive presentation of the case and reiterated all the reasons for approving the agreement and the variance. Further dialogue between Comm Weinsier and Attorney Callan ensued regarding the existence of a hardship.

Comm Carugno asked for a recommendation from the City Attorney or City Manager to continue the discussion or table the discussion and schedule for a workshop to revisit the Code. Attorney Ardaman said if the Council is going to consider changing the minimum lot size in this area is up to the applicant to agree for the delay. Attorney Callan said his client would like to move forward for a vote.

Mayor Pisano called for a motion to extend the City Council meeting to 9:30 pm.

Comm Weinsier motioned to extend the meeting to 9:30 pm.

Comm Gold seconded the motion which passed 6:0.

Comm Gold said he would like to see the Code changed to fit the neighborhood or area.

Comm Carugno motioned to deny the Mediated Settlement Agreement between the Lances and the City for 7020 Seminole Drive.

Comm Weinsier seconded the motion which passed 4:2 with Comm Sims and Comm Gold nay to deny.

Approval of Lot Split for 7020 Seminole (Lance Property)

Approval of the Lot Split will not be conserved due to the denial of the Settlement Agreement.

Approval of Landscape Bid

City Manager gave a brief overview of the landscaping services. The landscaping bid was re-advertised because the Council changed the chemical application frequency. The City received three bids, Dora Landscaping - \$84,349.10, Groundwerks - \$110,400 and Millennium Grounds & Water-\$175,400. In the past, the City has received complaints about Dora Landscaping, and we were going to consider them a non-responsible bidder; however, over the past few months they have had a change of staff and we were assured us that we would not have any further problems. He asked for approval of the Dora Landscaping bid for \$84,349.10.

Comm Sims motioned to approve the bid of Dora Landscaping for \$84,349.10.

Comm Nielsen seconded the motion which passed 5:0, Comm Gold was out of the room.

Appointments to MetroPlan Orlando Committees

City Manager Francis asked for Council appointment of an elected official to serve as the primary and alternate to the MetroPlan Orlando Municipal Advisory Committee (MAC) and the Transportation System, and Operations Committee (TSMO)

Comm Nielsen motioned to appoint Mayor Pisano as the primary representative to the MetroPlan Orlando Municipal Advisory Committee and Bob Francis as the primary representative to the Transportation System and Cooperation Committee (TSMO).

Comm Carugno seconded the motion which passed 6:0,

Alternates can be appointed at a future meeting.

Approval of Supervisor of Elections Use Agreement Contract for the March 12th, 2019 Municipal Election

City Manager Francis asked for approval of the 2019 Vote Processing Equipment Use Agreement and Elections Services Contract for Municipal Elections.

Comm Nielsen motioned to approve the Contract, not elect to pay return postage for Vote by Mail Ballots and not to elect the supervised voting process.

Comm Sims seconded the motion which passed 6:0

CITY MANAGER'S REPORT

Approval of the Wallace Field Use Agreement with CCA

City Manager Francis said the Agreement would be coming back to the Council for review and approval. He said he asked CCA not to provide renderings to Council until the Use Agreement is approved. Mr. Francis spoke on the concerns made by Council and addressed Section 3(a) Restrictions, 3(b) Non-Exclusive Use and 3(c) Parking and Traffic. The City will have priority of the field and will only need to notify CCA that they need the field. CCA will have to reserve the use of the field, or the field will be opened to the public. The only other change to be corrected in the Recitals is to designate the field an Open Space zoned parcel. Also, Mr. Francis pointed out the eight additional elements that CCA will have to incorporate into the plan which includes, 1-irrigation, 2-drainage, 3-fitness equipment around the track, 4-benches around the track, 5-bike racks, 6-bat houses, 7-gate between CCA property and Wallace Field (in the existing wall) and 8-defined parking area. Mr. Francis asked for approval of the Use Agreement as discussed.

**Comm Nielsen motioned to approve the Agreement for the use of Wallace field by CCA.
Comm Partin seconded the motion.**

Comm Carugno said he is not in agreement because the City has not reviewed the final plan or the design of the park. He does not want to limit the design to the school and their needs and not take into consideration the options for all the residents in the City.

Mr. Francis said before this agreement goes any further CCA will need to bring the site plan back to the City for review and approval. Discussion ensued.

Attorney Ardaman said the City has 120 days (four months) for both entities to approve the same concept, site plan and improvements for the property. If not approved the agreement terminates.

The motion passed 4:1 with Comm Carugno, nay and Comm Sims not present for the vote.

Mr. Francis said the City had been asked to schedule 2 candidate forums. The forum dates are as follows:

Feb 7th – Mayoral Forum
Feb 20th – District 3 Candidates
March 7th – Mayoral Forum

Mr. Francis reported that Orange County is going to place a concrete medium at Hoffner/Conway intersection. The poles are cost prohibitive. They will still allow for left-hand turns into Cork & Fork and will also allow Wawa to construct a right-in, right-out pork chop intersection properly.

Comm Weinsier reminded everyone of the Chili Cook-off January 26th. Information for the event can be found at the pinecastlehistory.org.

ATTORNEY REPORT – no report

MAYOR'S REPORT – no report

COUNCIL REPORTS – no report

ADJOURNMENT

There being no further business Mayor Pisano called for a motion to adjourn. The motion was passed unanimously at 9:30 p.m.

Yolanda Quiceno, CMC, City Clerk