



## MINUTES

### BOARD OF COMMISSIONERS REGULAR WORKSHOP MEETING AUGUST 23, 2023 6:00 P.M.

The City of Madeira Beach Board of Commissioners held a regular workshop meeting at 6:00 p.m. on August 23, 2023, in the Patricia Shontz Commission Chambers at City Hall, located at 300 Municipal Drive, Madeira Beach, Florida.

#### **MEMBERS PRESENT:**

James "Jim" Rostek, Mayor  
Ray Kerr, Vice Mayor/Commissioner District 2  
David Tagliarini, Commissioner District 1  
Eddie McGeehen, Commissioner District 3  
Anne-Marie Brooks, Commissioner District 4

#### **MEMBERS ABSENT:**

#### **CITY STAFF PRESENT:**

Robin Gomez, City Manager  
Clara VanBlargan, City Clerk  
Thomas Trask, City Attorney

#### **1. CALL TO ORDER**

Mayor Rostek called the meeting to order at 6:00 p.m.

#### **2. ROLL CALL**

City Clerk Clara VanBlargan called the roll. All were present.

#### **3. PUBLIC COMMENT**

Bob Bello, 13301 Gulf Lane, asked if a question could be added and researched for the John's Pass Village Activity Center Public Informational Meeting scheduled for August 26, 2023. He did not understand why the transitional designation broke at 133<sup>rd</sup> Avenue on the west side of Gulf Boulevard. The character of 131<sup>st</sup> to 133<sup>rd</sup> and 133<sup>rd</sup> to 135<sup>th</sup> is very much the same.

#### **4. CITY ATTORNEY INTERVIEWS**

##### **A. City Attorney Interviews: Trask Daigneault LLP and Weiss Serota Helfman Cole & Bierman**

Vice Mayor Kerr suggested having Attorney Sarah Johnston sit at the dais so they could ask simultaneous questions.

Commissioner Tagliarini said he would like both firms to answer the same question at the same time so they could compare the responses and alternate who gets asked the question first.

Commissioner Brooks asked if it was typical for each law firm to do their presentation before questioning. City Manager Robin Gomez suggested it.

Commissioner Brooks asked if the City Attorney intended for his legal partners to participate in his presentation. The City Attorney said no, but they might have something to say during citizen input.

Mayor Rostek opened to public comment.

Tom Whalley, 60 137<sup>th</sup> Avenue Circle, said he did not understand why the Commissioners did not postpone the bids and use the Florida Bar tool to rebid. Many negative things have come out about Attorney Trask, and he did not know why the Commission would consider hiring a lawyer like that. There was a problem with the bidding that was put out because only two candidates responded.

Jay Daigneault, Managing Partner of Trask Daigneault Law Firm, said he has six board-certified lawyers in City, County, and Local Government Law. They value their relationship with the City and wish to continue serving its legal needs. He made statements about Attorney Trask's character based on twenty years of personal experience. He thanked the Board for considering their proposal.

Robert Eschenfelder, Attorney at Trask Daigneault Law Firm, addressed an email questioning the City Manager's use of DemandStar to put out the solicitation. DemandStar is one of the largest procurement platforms in the country and is used to solicit professional services. He did a simple Google search on public agencies that used DemandStar to solicit for their attorney and listed them. There could be various reasons why more firms did not submit to the City.

Jeff Beggins, 429 Boca Ciega Drive, said the lack of civility, the rudeness, the attacks, the political sidedness in the City is embarrassing. The political one-sidedness needs to stop, and he hoped the Commission could stop it. The bid was posted, and he thought the City Attorney had done great job.

Doug Andrews, 90 141<sup>st</sup> Avenue, agreed with Mr. Beggins. He worked with the City Attorney in numerous capacities while he worked for the City. Attorney Trask did not get fired from the City in 2017 when everything was happening. He and his firm refused to put in an application when the City put out an RFP. He thought it would diminish and embarrass the City in the RFP process if they went back out to bid. The RFP process could not be dismissed. They should interview the two applicants, and if they do not want to hire either of them, then go out to bid again. Attorney Trask has his full support.

Vice Mayor Kerr reported the DemandStar broadcast list figures. There were 91 clicks, 41 of which were unique companies where if more than one person from a law firm clicked, it was only counted as one. Of the 41 clicks that opened it up, there were 11 downloads. The plan holder list showed eight of the eleven downloads were law firms.

Vice Mayor Kerr said the City Manager provided a list of law firms specializing in municipal government in the agenda packet. There are only three firms in Pinellas County. He found there are fourteen firms in Hillsborough County.

Vice Mayor Kerr asked if both firms that applied fully completed the RFQ as requested. The City Manager said yes.

Mayor Rostek said they would have each candidate introduce themselves and summarize their experience.

Attorney Sara Johnston, Weiss Serota Helfman Cole and Bierman, P.L., introduced herself and provided a brief background about her and the firm.

City Attorney Trask introduced himself and the lawyers from the firm in the audience. He provided a brief background about him and the law firm.

#### QUESTION AND ANSWER

##### Commissioner Brooks

Commissioner Brooks asked the City Attorney to clarify what board-certified specialist by the Florida Bar in City, County, and Local Government AV Preeminent rated attorney meant on his application and what Attorney Johnston's certification is.

City Attorney Trask said he has been board-certified in City, County, and Local Government Law since 2013. He has been vetted by the Florida Bar Certification Program, which requires a certain expertise, a certain number of years practicing in the local government area, a certain number of continuing education, and passing a very difficult exam. The AV Preeminent designation is the highest designation a lawyer can have. It is not easy to get, and it is difficult to maintain.

Attorney Johnston said she is not board-certified, but a significant amount of attorneys in the firm are. They cover Labor and Employment Law, Appellate Law, and Construction Law.

##### Commissioner McGeehen

Commissioner McGeehen asked if either applicant currently represented any client that could possibly create a conflict of interest with the City.

Attorney Johnston said she did not, and the Florida Bar governs conflicts. Before they could submit a response, they had to run a conflict check with their clients firm-wide. The firm does not represent anyone that would be adverse.

City Attorney Trask said his firm did not have a conflict. He disclosed a conflict a couple of years ago when they were negotiating the Interlocal Agreement between the beach communities and the library, but they went to the two municipalities they represented and obtained Waivers of Conflict.

#### Mayor Rostek

Mayor Rostek asked what each candidate thought the top three most important roles and responsibilities of a City Attorney were.

Attorney Johnston said providing sound legal advice, having open communication with the elected body, and working with the Charter Officers.

City Attorney Trask said providing sound legal advice is what they all want to do—being a counselor to the Board of Commissioners, acting only at the direction of the City Commission, and being available to City staff and City staff issues.

#### Vice Mayor Kerr

Vice Mayor Kerr asked Attorney Johnston if Kenneth Weiss has any connection with Weiss Serota Helfman Cole and Bierman, P.L. He asked the City Attorney if he could clarify if the City ever released him or if he always left on his own accord.

Attorney Johnston said no, the Weiss is Richard Weiss, one of the firm's founding attorneys, and they have no affiliation with Kenneth Weiss.

City Attorney Trask said he resigned from being the City Attorney in late 1990 or early 2000. In 2017, he let his contract term expire and was not going to apply for the position based on the divisiveness in the City. His partner Erica Augello stepped in immediately as the Interim City Attorney to make sure the City continued to be represented.

#### Commissioner Tagliarini

Commissioner Tagliarini asked each applicant how they would describe their communication style. What steps would they take to ensure that a person with no legal background would understand the information they share?

City Attorney Trask said he makes himself available and immediately responds by email or phone. He would either say he would research it or present his thoughts and get back to them with additional information. Commissioner Tagliarini asked if that was a step consciously made or gave a legal answer. The City Attorney said he would provide a legal memorandum if the Commission asked for it. If the Commission asked for his opinion, he would give it based on 35 years of municipal government.

Attorney Johnston said she has worked with a lot of new Boards, and her communication style has to adapt to who she is talking to. It is important that the elected officials feel comfortable when they walk into meetings with confidence that they understand the issues. She maintains an open-door policy and is available at all times. She does not bill for phone conversations and quick conversations with her elected officials.

#### Commissioner Brooks

Commissioner Brooks asked Attorney Johnston if she has or does represent any other municipalities in Pinellas County and if she or someone from her law firm could attend the five required meetings listed in the RFQ. She asked City Attorney Trask the same thing and to follow up on what was already said in his presentation.

Attorney Johnston said she does not represent any other cities in Pinellas County, but they briefly represented Kenneth City. She does not have any conflict with any of the meeting dates. She would want to be the primary attorney but has two backups if she cannot attend a meeting. Commissioner Brooks asked why she no longer represented Kenneth City. Attorney Johnston said they hired a new manager and decided to go another route with their attorney.

City Attorney Trask said he covers all City Commission meetings unless he is on vacation. He prosecutes all the cases before the Special Magistrate for code violations and handles the Special Magistrate variance hearings. Attorney Eschenfelder covers the Civil Service Commission meetings. There is an associate that covers the Planning Commission meetings.

#### Commissioner McGeehen

Commissioner McGeehen asked both applicants where they stood as far as where freedom of speech stops, and it becomes outright bullying the Commission when they are approached at the podium, by email, or by phone by expressive people.

Attorney Johnston said where it stops is how it is defined. They should have procedures or guidelines as a Board. There needs to be a reasonable standard and a warning or notification so people know the boundaries. The policy needs to be implemented fairly and consistently.

City Attorney Trask said he does not have a position on the bullying issue. The Board has rules of procedure they adopted, and they look at them every year and re-adopt them. They have specific provisions relative to civility. He offered a few options when people got out of hand when addressing the Commission. Ultimately, the Mayor is responsible for controlling the meeting and speakers.

#### Mayor Rostek

Mayor Rostek asked both applicants if the city attorney has an obligation to advise the Board and staff if zoning ordinances do not comply with the City Code, the Comprehensive Plan, or other actions by the City.

Attorney Johnston said yes. The City Attorney signs off on the ordinances as legally sufficient. Attorneys advise the Board and staff, but they can vote how they want.

City Attorney Trask said yes. The City Attorney should be giving legal advice and helping the Board through a process when an ordinance is being presented. They are only going to apply the Code when they know it is valid. There are some provisions in the Code that may be considered outdated or preempted as a direct result of a change in the law.

#### Vice Mayor Kerr

Vice Mayor Kerr asked Attorney Johnston how her firm was unique in land use. She had mentioned in her packet that she worked with redevelopment agencies and asked what that was.

Attorney Johnston said land use is a significant strength of the firm. The land use division is led by an attorney who is a certified planner and board-certified in city and local government law. The head of their municipal division also specializes in land use law. She said Community Redevelopment Agencies are a specialized area in businesses that get together and agree to contribute a portion of their tax assessments that go back into redeveloping the business area. It is usually used for blighted areas. Vice Mayor Kerr asked what her firm could offer in expertise in the John's Pass Village Activity Center. Attorney Johnston said the firm has experience in Special Districts, but it sounds more like planning.

Vice Mayor Kerr said he would like City Attorney Trask to take the opportunity to address any misconceptions that are out there.

City Attorney Trask addressed some things Attorney Johnston mentioned. The community redevelopment area is statutory driven. He explained the process a city goes through to establish a specific jurisdictional area as neglected. The City would get a bigger dollar portion of the ad valorem taxes that sit in a fund called a Redevelopment Agency Trust Fund that is managed by the Community Redevelopment Agency, which is normally the same as the city commission. The funds are used to make the area less neglected. It is not a process he would see in Madeira Beach.

City Attorney Trask said there is nothing he could say about the reasons why things happened during the 2017 planned development processes. The issue is resolved, and they should not keep focusing on it. As the City Attorney, he does not make decisions; the Commission makes decisions. He does not control development in the City of Madeira Beach. The constant attacks on him are unfounded.

#### Commissioner Tagliarini

Commissioner Tagliarini asked Attorney Johnston for her take on whether a mayor or chair of a small board can make or second a motion and if it is required for them to vote last.

Attorney Johnston said most cities that follow Robert's Rules of Order follow a modified version. She usually advises the mayor or chair to not make a motion or second it so they can have the ability to control the discussion. But, as a body, it is for them to decide. She has always seen the mayor vote last. It is usually adopted as part of the written rules.

City Attorney Trask said their rules do not provide for what the Mayor can or cannot do. His role is to keep the meeting moving. The Mayor can make a motion, but he has always suggested he pass the gavel to the Vice Mayor. The Vice Mayor would then run the meeting. He has never taken a position that the Mayor should vote last. The maker of the motion should vote first, the person who made the second vote second, and alternate the next voters.

#### Commissioner Brooks

Commissioner Brooks asked Attorney Johnston how often she felt she would need to communicate and meet with the City Manager and how often she would meet with the two other Charter officers.

If she were hired as the City Attorney, she would not be a transition attorney. They would not want to be passed off to a different attorney. She asked Attorney Johnston to clarify. She asked Ms. Johnston how she would handle being inundated with emails from residents in and out of the City.

Attorney Johnston said she meets regularly with the managers and Charter Officers. She has an open-door policy. She said this is the area she lives in, and this is where her focus is. She would not do a transition and move on. She said she works for the Board of Commissioners and would be respectful of the residents and give them her time.

City Attorney Trask said he has a two-hour block of time scheduled every other week for sit-down meetings with the City Manager, Charter Officers, and staff as necessary. He represents the Commission, and if there were a need to respond to a resident, it would usually come from City staff. If the City Manager asked him to get involved, a meeting would be scheduled.

#### Commissioner McGeehen

Commissioner McGeehen asked Attorney Johnston if she was the City Attorney and he was a new Commissioner, how would she describe the Sunshine Law to him.

Attorney Johnston said she would conduct one-on-one training with elected officials.

City Attorney Trask said he met with Commissioner McGeehen and the City Manager almost immediately upon his taking office and gave a primer on the Sunshine Law, Public Records Law, possible exemptions, Gift Law, disclosure forms, and conflicts of interest. His partners provide the in-depth trainings.

#### Mayor Rostek

Mayor Rostek said he had no further questions.

#### Vice Mayor Kerr

Vice Mayor Kerr asked Attorney Johnston for her opinion on how the City handled the Finance Director position.

Attorney Johnston said they have a sitting City Attorney who has already given his opinion. But if she were to become the City Attorney, she would give a written opinion.

Vice Mayor Kerr asked what her firm's experience is with planned unit development and if she recommended the use of planned unit development in coastal communities. If she uses planned unit development, does it override all other zoning?

Attorney Johnston said it should comply with the Comprehensive Plan and the underlying zoning. Her firm has a lot of experience working with planned unit developments. She has experience with form-based codes with overlay districts. She worked with some planned unit developments, but they never ended up being built.

Vice Mayor Kerr asked City Attorney Trask if he was aware of certain defects in a planned unit development application, would he explain it to the Commission.

City Attorney Trask said he would make it known to City staff so it could be addressed at the beginning of the application process.

Attorney Johnston said she would rely on staff and a dedicated attorney for larger developments.

Commissioner Tagliarini

Commissioner Tagliarini asked what the cost of their retainer was per month, what was included in the retainer, and what was billed separately.

City Attorney Trask said he proposed a retainer of \$7,500 per month, which covers the first 40 hours of his time. After the 40 hours have been met, it is \$225 per hour.

Attorney Johnston said they did not propose a retainer. They would bill \$275 per hour for the first few months, notwithstanding any litigation. When she structures a flat fee, it would include the traditional routine items. Special projects would be billed hourly. She wanted to get a better sense of what would work for Madeira Beach before proposing a retainer.

Mayor Rostek asked if they would charge for travel time.

Attorney Johnston said she does not charge for travel.

City Attorney Trask said travel time is in the retainer until it reaches the 40-hour mark, and then it would be billed hourly.

Vice Mayor Kerr

Vice Mayor Kerr said Attorney Johnston's firm represented many cities and asked her how it would benefit Madeira Beach.

Attorney Johnston said they have procedures in place for other cities and can easily modify them so they can be implemented to fit Madeira Beach.

Vice Mayor Kerr said City Attorney Trask's firm had been an anchor in the coastal communities and asked how that would benefit Madeira Beach.

City Attorney Trask said they understand issues that happen in beach communities. The lawyers in his firm represent 16 municipalities and boards, and they share their legal research with each other. His firm represents the vast majority of the cities in Pinellas County. He distributed a list of the cities his firm represents. One of the lawyers in his firm follows the legislative process in Tallahassee and drafts an updated report on pending litigation they believe affects local governments.

Vice Mayor Kerr asked Attorney Johnston how she would familiarize herself with the City's ordinances if selected.



Attorney Johnston said she had already done a lot of research. She spends a lot of time reviewing and preparing for meetings.

#### Commissioner Tagliarini

Commissioner Tagliarini asked each applicant to describe a project they worked on as a municipality attorney that they are proud of.

City Attorney Trask said he is proud of the project where Caddy's is. It was supposed to be a high-end steakhouse. One of his concerns was protecting Tom and Kitty Stuart Park. He thought they did a great job negotiating the development agreement.

Attorney Johnston said she did a P3 project (Public-Private Partnership) where they turned a park into a Charter School with a soccer academy.

Mayor Rostek opened the floor for discussion.

Vice Mayor Kerr said he was torn.

Commissioner Brooks said City Attorney Trask has served the City well and he has done a great job.

Commissioner Tagliarini said the choice is difficult.

Commissioner McGeehen thought both sides did a great job.

Mayor Rostek said it would be a tough decision. Vice Mayor Kerr said he would re-watch the video, reflect on the answers, and continue researching.

Vice Mayor Kerr said if they are not satisfied with the firms that responded, they should look at re-soliciting, but if they are confident in the firms that responded, they deserve a vote.

## **5. UNFINISHED BUSINESS**

### **A. Request for Information (RFI) 2023-06 Continuing Engineering Consultants and Urban Design Services Contract Approval**

Public Works Director Megan Wepfer said they issued a Request for Information because they are not looking for a firm to work on a specific project. It is for project-based, capital improvements or as needed. It was posted on DemandStar on June 19<sup>th</sup>. It was broadcast to 1,500 recipients, and they received 12 responses. A team of four staff members went through and scored the submittals. A perfect score would be 45 points. Of the twelve firms, there were nine they would like to move forward with and sign contracts.

Vice Mayor Kerr asked if there was a requirement for the firms to be local. Director Wepfer said it was not a requirement, but they were looking for a firm with coastal experience.

Director Wepfer said the contracts would be brought to the Board at the next regular meeting.

Commissioner Tagliarini asked if they were satisfied with all the submittals. Director Wepfer said yes.

Vice Mayor Kerr said it is prep work; they have done their due diligence for when they need a service.

The consensus of the Board was to bring the contracts to the regular meeting for approval.

Commissioner Tagliarini said he had the following four conflicts with the schedule from now until June:

- December 13, 2023, BOC Regular Meeting
- January 10, 2024, BOC Regular Meeting
- March 13, 2024, BOC Regular Meeting
- May 8, 2024, BOC Regular Meeting

He requested they consider moving the start time to two hours earlier.

The City Manager said there would be an item on the agenda for the next regular meeting to move the start time to 2:00 p.m. for the December 13<sup>th</sup> regular workshop meeting and 4:00 p.m. for the regular workshop meeting. When they approve the 2024 calendar, they can set the time for the other three meetings.

## **6. ADJOURNMENT**

Mayor Rostek adjourned the meeting at 8:35 p.m.

ATTEST:

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James “Jim” Rostek, Mayor

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Clara VanBlargan, MMC, MSM, City Clerk