

MINUTES

**MINUTES
REGULAR COMMISSION MEETING
CITY OF HOLLY HILL, FLORIDA**

APRIL 22, 2008

1. CALL TO ORDER

A. Roll Call

Mayor Via called the meeting to order in the Commission Chambers at City Hall, 1065 Ridgewood Avenue at approximately 7:05 p.m. Attending with Mayor Via were Commissioners John Penny, Rick Glass, Mark Reed and Liz Towsley.

Also attending were the following staff members: City Manager Tim Harbuck, Assistant City Attorney Scott Simpson, Public Works Director/City Engineer Chris Hurst, Finance Director Kurt Swartzlander, Assistant Finance Director Susan Worde, Public Safety Director Don Shinnamon, Commander Mark Barker, PAL/Recreation Executive Director Chuck Beach, Human Resources Director Diane Cole, Community Redevelopment Area Coordinator Marsha Radulovich, and City Clerk Valerie Manning.

Prior to the regular City Commission meeting, Mayor Via opened the meeting with the agenda for the Community Development Block Grant (CDBG) Fund Distribution Plan.

**PUBLIC HEARING – COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
FUND DISTRIBUTION PLAN – FY 2008-2009**

Public Works Director/City Engineer, Chris Hurst gave a summary of the fund distribution plan pertaining to the sidewalks on the north side of Flomich between Megan Bay Circle and Center Avenue. Mayor Via opened it up for public discussion but no one spoke. The City Commission was in favor of the CDBG Fund Distribution Plan for FY 2008-2009 as proposed by staff and there was *consensus* from the Commission to try to put a pad in for the VOTRAN passengers as well.

*Commissioner Reed moved **APPROVAL** for the Community Development Block Grant (CDBG) Fund Distribution Plan for FY 2008-2009, seconded by Commissioner Glass.*

The motion **CARRIED** 5-0 unanimously: Reed – Yes, Glass – Yes, Penny – Yes, Towsley – Yes, Mayor Via – Yes

B. Invocation

Mayor Via delivered the invocation.

C. Pledge of Allegiance to the Flag

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2. PROCLAMATIONS AND PRESENTATIONS

- Water Conservation Month – April
- Arbor Day – Friday, April 25, 2008

Mayor Via read the proclamations for the record.

3. CONSENT AGENDA

- Minutes from the Community Redevelopment Agency meeting – April 8, 2008
- Minutes from the Regular City Commission meeting – April 8, 2008
- Minutes from the City Commission workshop – April 8, 2008
- Equal Employment Opportunity Program Plan – 2008
- 2007 Infiltration and Inflow Project – Altair Environmental Group Bid Award – not to exceed \$217,800 (for video recording selected sewer laterals)

*Commissioner Glass moved **APPROVAL** for the Consent Agenda, seconded by Commissioner Penny.*

The motion **CARRIED** 5-0 unanimously: Glass – Yes, Penny – Yes, Reed – Yes, Towsley – Yes, Mayor Via – Yes

4. AUDIENCE PARTICIPATION Regarding items not on the agenda.

The following individuals came forward to speak to the Mayor and City Commission to share their concerns, frustrations and a majority of the individuals asked for Commissioner Towsley's resignation effective immediately: Peter Myrick, 1713 Aniston Avenue; Sheila Hancock, 130 – 8th Street; Joann Volpe, 1717 Aniston Avenue; Curtis Miller, 1730 Birmingham Avenue (*also spoke on "malfeasance"*); Snake Andress, Holly Hill resident; Gilles Blais, 710 Magnolia Avenue (spoke about public safety); Donald Moore, 1585 Riverside Drive (*asked for Commissioner Reed's resignation as well due to him trying to silence the public from speaking*).

5. RESOLUTION 2008-R-18, WATER AND SEWER RATE INCREASE

Attorney Simpson read by short title:

RESOLUTION NO. 2008-R-18

A RESOLUTION OF THE CITY OF HOLLY HILL, FLORIDA, ESTABLISHING THE WATER AND SEWER RATES FOR THE CITY OF HOLLY HILL FOR THE FISCAL YEAR BEGINNING MAY 1, 2008; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

Mr. Harbuck informed the Mayor and Commissioners that this is an 8% increase on the water and sewer rates to facilitate in financing the expansion to the Wastewater Treatment Plant.

Commissioner Reed asked some questions about the Enterprise Fund and clarification; possibly a report (summary).

Kurt Swartzlander, Finance Director, spoke on the Enterprise Fund and the various funds that the City has and spoke briefly about the fund balances/reserve on those; spoke on the water and sewer fund for clarification.

Chris Hurst, Public Works Director/City Engineer, spoke about the meeting that took place on November 27, 2007 in regards to this item for the expansion/improvements.

Mayor Via opened public participation.

The following individuals shared their concerns about the increase to the Mayor and City Commission: Joseph Leston, 610 Unabelle Street; Traci Anderson, 916 New Castle Court; Jim Legary, 342 Burleigh Avenue; Gilles Blais, 710 Magnolia Avenue; Maureen Monahan, 215 – 5th Street; Greg Burgess, 228 Carswell Avenue; George Fries, 1000 Riverside Drive; Sheila Hancock, 130 – 8th Street (*mentioned that they have a choice of the 8% or they have a choice of no water*).

Mayor Via closed public participation.

There was some discussion amongst the Mayor, City Commission and staff at this time.

*Commissioner Glass moved **APPROVAL** for the Consent Agenda, seconded by Commissioner Penny.*

The motion **CARRIED** 3-2 on roll call vote: Penny – Yes, Glass – Yes, Reed – No, Towsley – No, Mayor Via – Yes

6. REQUEST TO THE CITY BY CHIEF DON SHINNAMON AND COMMANDER MARK BARKER TO HIRE INDEPENDENT COUNSEL

Commissioner Towsley filled out *FORM 8A – Memorandum of Voting Conflict for State Officers* and handed it to the City Clerk and under the advice of her attorney, she will be exiting the Chambers during this item of discussion; when it is over she asked for the Mayor to call her back in.

Mayor Via had a legal question for Attorney Simpson regarding any and all correspondence that happens to the EEOC complaint – is this prejudice to Chief Shinnamon's or Commander Barker's case or any case of Commander Barker and Chief Shinnamon coming forward?

Attorney Simpson spoke briefly about the cautions that they would have to take because of the EEOC complaint that is in effect; anything leading up to it or the facts about it. Attorney Simpson informed the Mayor and City Commission the reason for this coming before them tonight is because in the City's Charter, the City Commission can authorize the City Attorney to employ an assistant whenever is deemed necessary or expedient to employ such additional counsel. Attorney Simpson informed them that he selects the attorney but the City Commission sets the compensation.

Chief Don Shinnamon, Public Safety Director, shared his concerns and frustrations; gave a brief history of the past couple of years to the present of the constant harassment of Commissioner Towsley not only towards him but also towards Commander Barker; the most shocking to him was the fact that Commissioner Towsley followed him 100 miles to the City of Jacksonville and took pictures of his car in a parking lot where he was teaching a class on *Interstate Mutual Aid* to a group of police officers - (*pictures that Commissioner Towsley took of her following him were shown to the Mayor and City Commission for the record*); read his concerns to the Mayor and Commissioners for the record. Chief Shinnamon and Commander Barker have submitted a formal request for the City to hire independent counsel against Commissioner Towsley for the constant harassment from her and the stalking.

Commander Mark Barker, informed the Mayor and City Commission that he is angry about all of what has been taking place over the last couple of years to the present; mentioned the newspaper article that was in the paper today and the blogs that accompanied that newspaper article that mentioned his wife, by name specifically - he loves his wife and she doesn't deserve this. Commander Barker read into the records the various things that have been taking place of the past couple of years regarding Commissioner Towsley and her constant harassment and the working history/relationship that he and Chief Shinnamon have together with the Police Department and the Police Officers. Commander Barker informed the Mayor and City Commissioner that he simply cannot and will not have his character, reputation, honor and his family further tarnished by Commissioner Towsley.

Mayor Via asked Mr. Harbuck a question pertaining to the work ethics of Chief Shinnamon and Commander Barker. "In reviewing all the material that has been turned in to you, is there any action that you have deemed that needs to be taken in this matter?"

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Mr. Harbuck stated he has seen nothing that has been submitted to him that rises to the level to warrant any type of disciplinary action.

Mayor Via asked, including suspension and/or termination?

Mr. Harbuck stated including suspension and/or administrative leave or termination. Mr. Harbuck informed the Mayor and Commissioners that he is satisfied with the both of them; every complaint that was made, he is satisfied with the response that was given to him.

Mayor Via opened public participation.

The following individuals shared this thoughts and opinions – either in favor or not in favor, of hiring independent counsel for Chief Shinnamon and Commander Barker: Bill Arthur, 1140 Riverside Drive; Sheila Hancock, 130 – 8th Street; Russell Bennett, 1678 Copy Cat Printing, Inc., Ridgewood Avenue; Gilles Blais, 710 Magnolia Avenue; George Fries, 1000 Riverside Drive; Snake Andress, Holly Hill resident; Maureen Monahan, 215 – 5th Street; David Spearin, Ormond Beach; Jim Legary, 342 Burleigh Avenue.

Mayor Via closed public participation.

There was some discussion amongst the Mayor, City Commissioner, and Attorney Simpson pertaining to the hiring of an independent counsel for Chief Shinnamon and Commander Barker; shared their frustrations and concerns about the whole matter.

Attorney Simpson mentioned that the reason Chief Shinnamon and Commander Barker are asking for independent counsel is that they know that he is here representing the City; there is Labor Counsel that represents the City and they don't believe, either the City Attorney or the Labor Counsel are there looking at their interests as employees. The City has counsel but what Chief Shinnamon and Commander Barker are asking for is somebody independent of the City's counsel, which would include Attorney Simpson and Labor Counsel, to look at what their rights are; to protect their rights not against third parties but against what is alleged to be done by Commissioner Towsley. Attorney Simpson mentioned that Chief Shinnamon and Commander Barker are not asking to hire someone to sue the City and they have indicated that if it gets to that point, they understand that they will have to have their own attorney and they have to pay for it.

Mayor Via asked Mr. Harbuck how many times has he told Commissioner Towsley, based on the evidence that he has, that he doesn't see any further action to be taken.

Mr. Harbuck stated, three to four times.

Mayor Via asked about the money and hours spent on this so far by staff.

Mr. Harbuck stated over \$6,000.

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Commissioner Penny asked about Civil Service protection for the employees; what is the process if they go to Civil Service?

Mr. Harbuck mentioned in order for any employee to go to Civil Service they have to have some sort of disciplinary action against them, which none has been taken in this case.

Attorney Simpson read the functions of the Civil Service Board for the record.

*Commissioner Reed made a motion to **DENY** hiring independent counsel, seconded by Commissioner Glass (for DISCUSSION).*

Commissioner Reed mentioned his motion to deny this counsel is by no way for any indication, that he does not support our police officers and our system of government or the City Manager. They need to deny this to prevent the precedent of hiring attorneys for “possible” cases. There has been nothing brought to the City Manager that warrants any disciplinary action. Commissioner Reed mentioned when he reviewed everything he saw human nature, he saw good-will amongst some comrades in the Police Department; he didn’t see anything else. He thinks common sense will always prevail up here on the dais and one person will not upset this City to that degree. While he does not support hiring an attorney, he will give his upmost support to the City Manager and Chief Shinnamon and Commander Barker.

Commissioner Glass mentioned he was in the Chief’s and Commander’s position one time with the City and he had to hire his own lawyer; had a lot of calls today about the City paying for this lawyer; he doesn’t agree that the City should have to pay for it – it’s the citizens money and that’s who called him. Commissioner Glass wished them luck and hopes that it stops here.

Commissioner Penny mentioned that he is in favor of hiring independent counsel. He puts himself in the employees’ position and Chief Shinnamon and Commander Barker are asking the Commission for help. Commissioner Penny mentioned that he would not support hiring an attorney for an employee and supervisor conflict because the City has processes to deal with that. This is a very unique process where they are trying to protect themselves from an elected official. The only way to get passed this is to follow through with it. If the Chief and Commander hire an independent counsel and Commissioner Towsley receives a letter from that attorney, ordering her to cease and desist any unfounded accusations in the future that might be the way that they can stop these accusations from coming to the City Manager.

Commissioner Glass asked what happens if the City retains a lawyer for Chief Shinnamon and Commander Barker and Commissioner Towsley resigns, is that money wasted? After they hire the lawyer and she decides to resign, is the City out the entire fee or is it just minimal?

Attorney Simpson stated he would assume this would be an hourly rate arrangement; it would depend how much time the attorney spent on it. Attorney Simpson stated he would probably not recommend to this Commission retaining somebody for a lump sum amount of money to look into it; he thinks it should be hourly with a cap; the cost would be limited.

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Mayor Via stated the major statement that he wants to make is that this has to stop! And it has to stop now! By any means that is available to them. It's very obvious by this Commission, by every member of this audience that they want this conduct to stop! Nothing will be done from this point forward! Mayor Via stated, "Chief Shinnamon, I want more than anything else to find the right tools to be able to make this stop and it hurts me that your reputations are being damaged in this and when it goes to the family side, it cuts deep." Mayor Via mentioned the problem he has with the legal counsel part is that they set a precedent that they don't know where they go. The decisions made by this Commission, often, are for the good of all people; they often do not make a decision based on just one individual person, business, or situation.

*Commissioner Reed made a motion to **DENY** hiring independent counsel, seconded by Commissioner Glass.*

Mayor Via mentioned that a "yes" vote would be a "no" to the hiring of independent counsel.

The motion **CARRIED** 2-2 on roll call vote: Reed – Yes, Glass – Yes, Penny – No, Mayor Via – No (*Towsley not present in Chambers – abstained from voting; see form attached*).

*The motion **FAILED** for a tie roll call vote.*

Mayor Via asked if there was any other motion that a Commissioner wanted to entertain on the floor.

*Commissioner Penny made a motion to **HIRE** an independent counsel. Mayor Via asked if there was a second. This motion does not fail; this motion is not recognized by the Chair because it does not have a second.*

*Commissioner Glass made a motion to **PUT A FUTURE CAP** on the spending to hire independent counsel; (negotiations will come in the future), seconded by Commissioner Penny.*

The motion **CARRIED** 3-1 on roll call vote: Glass – Yes, Penny – Yes, Reed – No, Mayor Via – Yes (*Towsley not present in Chambers – abstained from voting; see form attached*).

Mayor Via asked for Commissioner Towsley to return to the dais at approximately 9:30 p.m.

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7. COMMITTEE REPORTS

Members of the Commission are encouraged to give a brief report from the various committees on which they serve.

Mayor Via gave a brief committee report on WAV.

8. COMMUNICATIONS

A. City Manager

None.

B. City Attorney

None.

C. Mayor & Commissioners

Commissioner Reed mentioned the sidewalk at Flomich – Java Junction; has he had any luck with that or plans; has he been able to talk to the property owners? Is there any update?

Mr. Hurst mentioned that they have met with the property owner and he has been very amenable; they don't have a final answer back but they are moving in that direction.

Commissioner Reed mentioned the letter that he received from George Fries about sidewalks/crosswalks.

Commissioner Penny spoke about Civil Service protection and issues; not all of the employees are protected by any representation; Charter Review Committee discussion – would like to have a workshop on that.

Commissioner Reed asked Attorney Simpson if he has been working on the ballot referendum.

Attorney Simpson stated it will be at the next Commission meeting.

Mayor Via mentioned the loss of Attorney Simpson's mother; the services will be this Friday at 5:30 p.m. at Light Chapel Church in South Daytona.

Commissioner Penny mentioned that Mayor Marchman passed away last week and her funeral service is tomorrow at 11:00 a.m. at Central Baptist Church.

Mayor Via reminded everyone about Relay for Life this Friday/Saturday in Hollyland Park - opening ceremonies starting at 6:30 p.m.

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Commissioner Reed mentioned that they have had discussions in the past, since he has been elected, where they had behavior issues with the Mayor or other Commissioners, about unilateral making decisions and he thinks they have demonstrated tonight, that when one of us goes forward to the City Manager and has no further support, that would constitute a unilateral decision and he hopes a lesson has been learned here this evening.

Commissioner Towsley stated in her defense, she went to Mr. Harbuck, she did not keep pushing this, it was brought forward to him, they discussed it that after tonight it would be dropped; she would still do her position as a City Commissioner which she has done and nothing he can say that she has done anything wrong in her six months; everything they spoke about was before she was elected as a Commissioner. She brought it before Mr. Harbuck and he took it to the Commission – after tonight, they decided it was dropped. Commissioner Towsley stated, “It is dropped.”

9. ADJOURNMENT

The meeting officially adjourned at approximately 9:40 p.m.

Attest:

City of Holly Hill, Florida

Valerie Manning
City Clerk

Roland D. Via
Mayor

Florida Statutes 286.011 and Government-In-The-Sunshine Manual

“The minutes of Sunshine Law meetings need not be verbatim transcripts of the meetings; rather the use of the term “minutes” as stated in F.S. 286.011, contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting.”

A verbatim copy of Sunshine Law meetings (e.g. City Commission meetings/workshops/Agency meetings and CRA meetings) are available upon request to the City Clerk during regular business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m.