

MINUTES

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

JUNE 10, 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 7:03 p.m. Attending with Mayor Via were Commissioners John Penny, Mark Reed and Liz Towsley.

Absent: Commissioner Rick Glass

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, Community Development Director Doug Gutierrez, Human Resources Director Diane Cole, Information Technology Director Scott Gutauckis, Community Redevelopment Area Coordinator Marsha Radulovich, and City Clerk Valerie Manning.

B. Invocation

Mayor Via delivered the invocation.

C. Pledge of Allegiance to the Flag

2. PROCLAMATIONS AND PRESENTATIONS

- City Auditors, Brent Millikan and Company present the Comprehensive Annual Report for Fiscal Year ending September 30, 2007

Alex Kish, City Auditor from Brent Millikan and Company presented the Comprehensive Annual Report for Fiscal Year ending September 30, 2007 to the Mayor and Commissioners.

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3. CONSENT AGENDA

- Minutes from the Community Redevelopment Agency meeting – May 27, 2008
- Minutes from the Regular City Commission meeting – May 27, 2008

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

The motion **CARRIED** 4-0 unanimously: Reed – Yes, Penny – 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; Mike Lowe, Holly Hill resident; Sheila Hancock, 130 – 8th Street; Karen Wheatley, 364 Dorothy Avenue; Joann Vulpi, 1717 Aniston Avenue; Curtis Miller, 1730 Birmingham Avenue; Sharon Mitterholzer, 442 Dorothy Avenue; Lee Belanger, 1001 Indian Oaks West.

The following individuals came forward to speak to the Mayor and City Commission: George Fries, 1000 Riverside Drive; Jim Schultz, Ormond Beach; Steve ~~Martini~~ Marteeny, 321 S. Orchid Street, Ormond Beach (*shared his concerns with the Mayor and City Commission about the Police Department and spoke briefly about what had happened to him when he worked for the Fire Department; the investigation that took place and stated that he supports Commissioner Towsley*); Sue ~~Martini~~ Marteeny, 50 Beaver Lake Circle, Ormond Beach (*shared her concerns with the Mayor and City Commission about the Police Department and their investigation pertaining to her son, Steve Marteeny when he worked for the Fire Department and stated that she supports Commissioner Towsley*); Gilles Blais, 710 Magnolia Avenue; Jim Legary, 342 Burleigh Avenue.

5. **PUBLIC HEARING** – SECOND READING OF ORDINANCE 2830,
ADMINISTRATION OF OATH

Attorney Simpson read by short title:

ORDINANCE NO. 2830

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS, CHAPTER 82 – ADMINISTRATION, ARTICLE II – BOARDS, COMMITTEES AND COMMISSIONS, DIVISION 2 – BOARD OF PLANNING AND APPEALS, SECTION 82-79 – ADMINISTRATION OF OATHS, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Mayor Via opened public participation. No one spoke.

*Commissioner Reed moved **APPROVAL** for the Second Reading of Ordinance 2830, seconded by Commissioner Towsley.*

The motion **CARRIED** 3-1 unanimously: Reed – Yes, Towsley – Yes, Penny – Yes, Mayor Via – No

6. **VARIANCE REQUEST – 640 VIRGINIA AVENUE – APPLICANT: ROBERT SPIKER**

Doug Gutierrez, Community Development Director, gave a brief staff report about the variance request for 640 Virginia Avenue. The applicant is requesting a variance to permit a ten foot (10') relief from the required twenty-five (25') front setback on a corner lot. The variance request is to allow a 19' x 27.5' addition to the rear of the dwelling unit.

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

Mayor Via opened public participation.

George Fries, 1000 Riverside Drive, came forward with a question about his corner lot in regards to a future variance request but the Mayor had informed him that was a separate issue at another time.

Mayor Via closed public participation.

*Commissioner Penny moved **APPROVAL** for the variance request located at 640 Virginia Avenue, seconded by Commissioner Reed.*

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The motion **CARRIED** 4-0 unanimously: Penny – Yes, Reed – Yes, Towsley – Yes, Mayor Via – Yes

7. FIRST READING OF ORDINANCE 2831, AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS (LDR) – CHAPTER 86, CONSISTENCY AND CONCURRENCY

Attorney Simpson read by short title:

ORDINANCE NO. 2831

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS, CHAPTER 86, CONSISTENCY AND CONCURRENCY AND ADDING, SECTION 86-18 PUBLIC SCHOOLS, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Doug Gutierrez, Community Development Director, gave a brief staff report about the amendment to the Land Development Regulations (LDR), Chapter 86, Consistency and Concurrence pertaining to the Public Schools.

Mayor Via opened public participation. No one spoke.

*Commissioner Reed made a motion to **APPROVE** the First Reading of Ordinance 2831, seconded by Commissioner Penny.*

The motion **CARRIED** 4-0 unanimously: Reed – Yes, Penny – Yes, Towsley – Yes, Mayor Via – Yes

8. FIRST READING OF ORDINANCE 2832, BACKFLOW PREVENTER MAINTENANCE

Attorney Simpson read by short title:

ORDINANCE NO. 2832

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING CHAPTER 70, ARTICLE IV, WATER SYSTEM, OF THE CODE OF ORDINANCES, CITY OF HOLLY HILL, FLORIDA; REVISING SECTION 70-107 BY ELIMINATING THE REQUIREMENT THAT BACKFLOW PREVENTERS BE MAINTAINED BY CITY FORCES AND ELIMINATING THE FEES FOR MAINTENANCE, AND BY ESTABLISHING A REQUIREMENT FOR ANNUAL MAINTENANCE AND CERTIFICATION BY THE PROPERTY OWNER AND ESTABLISHING A FEE FOR VERIFYING THE CERTIFICATION; REPEALING ALL LAWS OR PARTS OF LAWS IN CONFLICT HERewith; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

Chris Hurst, Public Works Director/City Engineer, gave a brief staff report about the backflow preventer maintenance to the Mayor and City Commission.

Mayor Via opened public participation. No one spoke.

There was some discussion amongst the Mayor, City Commission and staff and the Commission suggested an amendment to the ordinance to read as follows: Any repairs shall be completed with ten days of the inspection revealing the need for such repairs, *“unless extended by the Public Works Director for sufficient cause”*.

*Commissioner Towsley made a motion to **APPROVE** the amendment to the original motion, seconded by Commissioner Reed.*

The motion **CARRIED** 4-0 unanimously: Towsley – Yes, Reed – Yes, Penny – Yes, Mayor Via – Yes

Mayor Via asked for a vote on the original motion at this time.

*Commissioner Penny made a motion to **APPROVE** the First Reading of Ordinance 2832, seconded by Commissioner Reed.*

The motion **CARRIED** 4-0 unanimously: Penny – Yes, Reed – Yes, Towsley – Yes, Mayor Via – Yes

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9. **RESOLUTION 2008-R-22 23, CITY OF HOLLY HILL COMPREHENSIVE EMERGENCY MANAGEMENT PLAN**

Attorney Simpson ready by short title:

RESOLUTION NO. 2008-R-22 23

(was read into the record as Res. No. 22 but after the meeting the City Clerk recognized that it should have been Res. No. 23)

A RESOLUTION OF THE CITY OF HOLLY HILL, FLORIDA, ADOPTING A NEW COMPREHENSIVE EMERGENCY MANAGEMENT PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

Mayor Via opened public participation. No one spoke.

*Commissioner Penny made a motion to **APPROVE** Resolution 2008-R-23, seconded by Commissioner Reed.*

The motion **CARRIED** 4-0 unanimously: Penny – Yes, Reed – Yes, Towsley – Yes, Mayor Via – Yes

ADDENDUM ITEM TAKEN HERE:

A-1. RESOLUTION 2008-R-22, ALLEGATIONS OF WRONGDOING AGAINST PUBLIC SAFETY DIRECTOR DON SHINNAMON, COMMANDER MARK BARKER AND FORMER CITY MANAGER JOE FORTE

Attorney Simpson read by short title:

RESOLUTION NO. 2008-R-22

A RESOLUTION OF THE CITY OF HOLLY HILL, FLORIDA, SUPPORTING THE DETERMINATION OF THE CITY MANAGER REGARDING THE REVIEW OF THE ALLEGATIONS OF WRONGDOING AGAINST PUBLIC SAFETY DIRECTOR DON SHINNAMON, POLICE COMMANDER MARK BARKER AND FORMER CITY MANAGER JOE FORTE; PROVIDING THAT THE ALLEGATIONS OF WRONGDOING AGAINST PUBLIC SAFETY DIRECTOR DON SHINNAMON, POLICE COMMANDER MARK BARKER AND FORMER CITY MANAGER JOE FORTE ARE ASSERTED BY LIZ TOWSLEY IN HER INDIVIDUAL CAPACITY AND ARE NOT BEING ASSERTED ON BEHALF OF THE CITY NOR THE CITY COMMISSION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

Mayor Via opened public participation.

Curtis Miller, 1730 Birmingham Avenue, stated he just wanted to come up and say that he strongly suggests that the Commission accepts this and do what he thinks is the right thing to do as a Commission and distance themselves from the personal situation. If it's not a Commission thing, as a whole, he thinks they should distance themselves from it.

Sheila Hancock, 130 – 8th Street, stated all the public records that she has asked for, she has paid for the public records for her requests and she wants to know if Ms. Towsley is paying for hers?

Mayor Via closed public participation.

*Commissioner Reed made a motion to **APPROVE** Resolution 2008-R-22, seconded by Commissioner Penny.*

Mayor Via asked how did this come about?

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Attorney Simpson stated his conversation with Labor Counsel.

Mayor Via stated the question is, when do you separate yourself as an individual and then as a Commissioner? Does this, in essence, separate Commissioner Towsley from being a Commissioner in her actions?

Attorney Simpson stated that's what he is trying to accomplish. The purpose of this is to...he doesn't know where all this ends up someday and what he is trying to do is protect the City and basically say with this, "this is not action that has been authorized or condoned by the City or the City Commission" and he is just trying to insulate the City. Will it ultimately accomplish that goal? Hopefully, they will never find out but it can't hurt. And that's why it's being...when he discussed it with Labor Counsel, he recommended it and thought it was a good idea so that's why it's before the Commission.

Mayor Via stated so under the fourth WHEREAS, where it says, "*Liz Towsley's involvement in the filing of this complaint was in her individual capacity*", that's not saying "what" individual she is at that time; just that she is an individual which of course she has to be to be a citizen or to be a Commissioner. So, it's not like separating the two, right?

Commissioner Reed stated he thinks it's pretty clear.

Attorney Simpson stated he is trying to *distance* "this" City and "this" Commission as a whole from this issue to the best he can to protect this City. Regardless...he doesn't know what's going to happen...how this all shakes out in the end; hopefully nothing will happen out of this whole thing but something could – he is just trying to protect "this" City.

Commissioner Penny stated he thinks it's the prudent thing to do. Recent history, when Ms. Towsley sat before the Commission and told them that the issue was dropped and everyone was happy and the Commission discussed...he thinks he even said Ms. Towsley needs to be reeled in or reigned in or something like that, he was quoted in the paper and he doesn't know how to stop the actions. So, his obligation is to protect the City and the only way he sees to protect the City from future legal allegations is to try and separate themselves from Commissioner Towsley's actions because he can't believe what she tells him when she sits before the Commission.

Commissioner Reed stated his only discussion is to express his disappointment that the Commission has to deal with this. This is very embarrassing for the City and the citizens and not so much for him but for this City and the citizens. It's embarrassing; he is sorry that they have to deal with this again.

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Mayor Via stated he has to speak to “rights”; people have rights and rights are going to be determined...they have been determined by the Constitution and they may be further determined by a Court of Law, which ever way. Mayor Via stated he doesn’t look at this as doing something to stop peoples rights or do anything else, he concurs that it apparently looks as if this insulates the City from an individual’s actions. Based on that, is there any other discussion from the dais? Commissioner Penny stated he would just like to remind the Commission that in Commissioner Glass’ absence that a 2-2 vote would be a failure of this Resolution and Commissioner Penny further stated that he wholeheartedly supports it and he hopes the majority of the Commission does.

Commissioner Towsley stated she would just like to say, “I did not...when I said I would not bring it back up to you (the Commission) or Tim, I didn’t. I kept my word with that.” Commissioner Towsley stated the Florida Department of Law Enforcement (FDLE) was already in the works.

Commissioner Towsley stated, “Tim can attest to what we had talked about”. She had talked to FDLE, several of the other officers had talked to FDLE – it was already in the works. After that meeting that night (referring to the April 22nd City Commission meeting), FDLE, the attorney there, said, “Please send me your proof documents.” Commissioner Towsley stated, “Tim also stated that if FDLE asks for an investigation, he would welcome one”, but Commissioner Towsley stated but that is not what happened. Commissioner Towsley further stated and actually, if they wanted to clear everything up and have it dropped, why wouldn’t they do an honest investigation? They cannot use the City Attorney who is part...who is the Trustee for a corporation for Mr. Forte...it was not a legit investigation; they can’t do it in one day. So, what do they have to hide?

Mayor Via stated, “Scott, I am really uncomfortable answering anything she says because of the EEOC complaint.” That would go to the grounds of that. Does this Resolution have anything to do with the EEOC complaint? Is it a separate entity?

Attorney Simpson stated, no. It has nothing to do with how those allegations will be investigated or reviewed, prospectively.

Mayor Via stated, “Attorney Simpson, Ms. Towsley is able to vote on this action, is that correct”?

Attorney Simpson stated ultimately, that’s a decision for her but he does not perceive a voting conflict of interest.

The motion **CARRIED** 3-1 by roll call vote: Reed – Yes, Penny – Yes, Towsley – No, Mayor Via – Yes

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10. COMMITTEE REPORTS

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

None.

11. COMMUNICATIONS

A. City Manager

Mr. Harbuck informed the Mayor and City Commission that they will be having a YMCA workshop on June 24th.

B. City Attorney

Attorney Simpson spoke briefly about Attorney Mike Lambert and the attorney fees capping out at \$1,000 in regards to the April 22nd City Commission meeting about hiring an attorney for Chief Shinnamon and Commander Barker.

C. Mayor & Commissioners

Commissioner Reed mentioned that he had the opportunity to play disc golf the other day; spoke briefly about Java Junction.

Commissioner Penny spoke briefly about the crime statistics that he received from the Police Department.

Mayor Via reminded the Commission about the next NXBL game this Friday night at Hollyland Park starting at 7:30 p.m.; mentioned the passing of former Mayor of South Daytona Joe Piggotte and that his funeral was today and well attended by the community.

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12. ADJOURNMENT

The meeting officially adjourned at approximately 8:50 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.*