

City of Coral Gables City Commission Meeting
Non-Agenda Item – Settlement Proposal between M. Pass and the City of Coral Gables
February 24, 2009
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Donald D. Slesnick, II
Vice Mayor William H. Kerdyk, Jr.
Commissioner Maria Anderson
Commissioner Rafael “Ralph” Cabrera, Jr.
Commissioner Wayne “Chip” Withers

City Staff

Interim City Manager, Maria Alberro Jimenez
City Attorney, Elizabeth Hernandez
City Clerk, Walter J. Foeman
City Clerk Staff, Billy Urquia

Public Speaker(s)

Roxcy Bolton, Coral Gables Resident

[Start: 12:22:54 p.m.]

Mayor Slesnick: Under City Attorney Items, before we go to any Pending Litigation Report of the City Attorney, I have a memo that has been addressed to us, actually to Liz, from Mr. Crosland regarding the Margaret Pass case and this involves a proposed proposal of settlement that I presumed that we have been presented by Ms. Pass and her attorney. I have been advised by special counsel that it would be unwise or unrecommended that we discuss the merits of this case or the merits of the settlement, but we have been asked to either accept or reject the settlement, and so if it is your pleasure to have a motion by somebody to either accept or reject this without further comment, we can do that; we are not taking public testimony, this is a litigation issue.

Commissioner Anderson: As far as commentary could, we can just give a comment as to why we may go for or against it, just limited to that.

Mayor Slesnick: Yes, sure, you can do that. You can certainly comment as to why you would be for or against it absolutely, but I have been advised that it would be.

Commissioner Anderson: Sure, no I wouldn't be speaking on the merits of anything, just my own personal thoughts.

Mayor Slesnick: And we can refer this, Ms. City Attorney could we refer this to an executive session if that is the desire. This is a thing before the Trial Board, is that considered litigation?

City Attorney Hernandez: No, it is not.

Mayor Slesnick: OK. No, it is not, so we can make no comment you have the memo, you can make a decision one way or the other, or we can move on.

Roxy Bolton: Is this in relation to dispensing money?

Mayor Slesnick: It is in a relationship a proposal to settle an existing case.

Roxy Bolton: [inaudible]

Commissioner Cabrera: Alright, are we waiting for a motion.

Commissioner Anderson: I'll move.

Commissioner Cabrera: OK, I am going to move, I am sorry ma'am, were you going to...?

Commissioner Anderson: No, go right ahead.

Commissioner Cabrera: You may have competing motions here.

Commissioner Anderson: You never know.

Commissioner Cabrera: You never know.

Commissioner Anderson: But go ahead.

Commissioner Cabrera: You never know, I am going to move that we not accept any kind of settlement at this time.

Commissioner Anderson: I'll second that.

Mayor Slesnick: It has been moved by Mr. Cabrera and seconded by Ms. Anderson that we not accept the proposal that it is before us to settle the Margaret Pass issue. Does anyone have a comment to make?

Commissioner Anderson: I do.

Mayor Slesnick: OK.

Commissioner Anderson: I think it is important because I have actually commented at times in the paper, and I'll limited strictly to some philosophical issues. For me it is not a question of personal issues because with Ms. Pass I have always held with great respect, and she and I have had in the past a cordial relationship based on that, but I cannot support the payment because it sends the wrong message to three groups. It send the wrong message to employees that are doing what they are suppose to do day in and day out, and it sends the wrong message to

employees who may have an axe to grind with the City, who view the City as an open cash register, and I can't tolerate that; and last but certainly not least and maybe the most important, residents and taxpayers expect us to lead by example and to have a zero tolerance policy for any actions that blemishes the City is certainly has been a tough time including for Ms. Pass I am sure, but hopefully, we can put this to rest, but I can't support the payout.

Mayor Slesnick: Any other comments?

Commissioner Withers: Yes, I have a question, can I ask a question about the functioning of the Trial Board and the process they go through?

City Attorney Hernandez: Sure.

Commissioner Withers: Is there a judge or a mediator that oversees the legislative functioning of the Trial Board?

City Attorney Hernandez: The Trial Board serves as an Independent Board of the City and basically, they have their own attorney; City Administration has Mr. Crosland and there is no mediator that mediates over that Board.

Commissioner Withers: So I am assuming that each side tells their story.

City Attorney Hernandez: Absolutely, it is definitely an evidentiary proceeding.

Commissioner Withers: OK, and they come up with a recommendation, is that correct?

City Attorney Hernandez: That is correct.

Commissioner Withers: Is that a non binding recommendation to the City, or is it a binding recommendation to the City?

City Attorney Hernandez: It would be a binding decision to the City.

Commissioner Withers: So if the Trial Board rules in favor of Ms. Pass, they can increase this amount?

City Attorney Hernandez: I do not believe that the Trial Board has the authority to enter a monetary amount, their authority is limited to reversing the decision of the City Manager or affirming it or modifying it with conditions.

Commissioner Withers: So if they uphold the City Manager's determination, then the recourse is civil court.

City Attorney Hernandez: The recourse is up to whatever Ms. Pass' attorney.

Commissioner Withers: What I mean, is that would be the next step if Ms. Pass' side wanted to take it any further.

City Attorney Hernandez: Right it is their choice.

Commissioner Withers: If they upheld Ms. Pass then it would come back to us again to review if we wanted to accept this offer or another offer, how does that work?

City Attorney Hernandez: It is my position that if the Trial Board accepts the Manager's position or upholds the Manager's position, it is my position that under a separate provision of the City Charter this Commission can take whatever action it deems appropriate or necessary with regards to any director or officer of this City.

Commissioner Withers: OK. But if they uphold Ms. Pass' position. Then does it come back to us again, or what happens next?

City Attorney Hernandez: I am of the opinion that if they uphold Ms. Pass' position regardless of whether it comes under the Trial Board section or under a separate provision of the City Charter which says that this Commission is free to eliminate positions and direct the Manager to fire it, would come back to you in one format or another.

Commissioner Withers: And if they modify it, that is the same as accepting Ms. Pass' position.

City Attorney Hernandez: Right.

Commissioner Withers: So what we are doing is we are basically saying we want this to go to the Trial Board if we vote this down. Correct?

Vice Mayor Kerdyk: Or we don't want to pay the sum.

Commissioner Cabrera: I am saying I want this to continue as a Trial Board item.

Commissioner Withers: That is what I said, if you accept it then it won't go to the Trial Board, I am assuming it is over with, if you don't accept it, then we are sending it to the Trial Board. That is the whole issue.

Commissioner Cabrera: The process continues.

Commissioner Withers: Right and philosophically this Commission has always had a philosophy of how we feel about the Trial Board.

Commissioner Anderson: I don't like the Trial Board, for me it is picking of the two poisons.

Commissioner Withers: OK. That is where we are headed.

Commissioner Anderson: It is not an easy thing, and for me philosophically, I think the Trial Board could become a political issue.

Roxcy Bolton: [inaudible] Nobody knows what is for.

Mayor Slesnick: Ms. Bolton that is a proposal that has come to us, it is not us making that up, so we can't tell you what it is for.

Roxcy Bolton: [inaudible]

Commissioner Cabrera: We'll read it, we'll read it to you.

Commissioner Anderson: It is just a document.

Commissioner Cabrera: Commissioner Withers, somebody wants to read it.

Mayor Slesnick: I'll read it.

Commissioner Cabrera: Don't look at me like that, come on.

Mayor Slesnick: Well, this is a memorandum to Elizabeth Hernandez, from Jim Crosland our special counsel, February 24, 2009 reference Margaret Pass and it reads as follows: "As you know, Ms. Pass has appealed her termination as the City's Director of Building & Zoning to the City's Trial Board. The Trial Board hearing is scheduled for March 23 and 25, 2009. The City and Ms. Pass have attended mediation in an attempt to settle this matter. To settle this matter, Ms. Pass wants the following: The sum of \$275,000.00. \$150,000.00 would be payable within fifteen (15) days of the effective date of any settlement agreement. \$62,500.00 will be payable no later than January 31, 2010. Another \$62,500.00 would be payable no later than January 31, 2011. All payments are subject to the usual deductions for employee withholding and taxes. Withdrawal of the disciplinary letters dated September 7, 2007, and October 24, 2007, issued by David Brown, which shall be considered null and void and shall be so documented. The City will confirm that Pass retired in October 2007. In exchange, Ms. Pass will provide the City with a full waiver and release of all claims and she will dismiss the action pending in front of the Trial Board. Although the final wording has not been established, other provisions of the Agreement will include, but are not limited to: A waiver by the City of all civil claims against Pass; Pass' agreement that she will not discuss the settlement; A no re-employment provision; A mutual non-disparagement clause; A neutral reference provision; A 21-day consideration period and 7-day revocation period; and, Provisions for dealing with enforcement of the Agreement or a breach of the Agreement. We request that the City Commission consider the terms of this settlement and either approve or reject the same. We have a motion before us to reject the same. Any further discussion?

Commissioner Withers: Well, my last question to Liz would be is there not an option to say let's try keep negotiating this thing, not vote on this and not send it to the Trial Board.

City Attorney Hernandez: You can instruct Mr. Crosland on that and however you wish, Commissioner Withers if you want them to go back and meet again.

Commissioner Withers: Well, philosophically we have all had issues with the Trial Board...

Mayor Slesnick: Well Chip, I think that it goes without saying that anytime up and to and including the day of the hearing that the attorneys are always authorize to continue mediation and continue negotiations.

Commissioner Anderson: And actually in my conversation with Mr. Crosland, I suggest a few things that might be better, that didn't involve money or if it was it was minimal, to cover certain things.

Mayor Slesnick: We have a motion before us to reject the proposal that has been put before us from Mr. Crosland, all those in favor of that motion say aye.

Altogether: Aye.

Mayor Slesnick: Oppose like signs. Thank you.

[End: 12:33:30 p.m.]