

City of Coral Gables City Commission Meeting
Agenda Item I-2
March 23, 2010
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

City Manager, Patrick Salerno
City Attorney, Elizabeth Hernandez
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia
Assistant City Manager, Maria Menendez

Public Speaker(s)

I-2 [1:24:20 p.m.]

Resolution authorizing the City Attorney to proceed with filing an action for breach of contract against ArcoArt Plus, LLC d/b/a Trolinet for failing to comply with the terms of the agreement with the City; and further authorizing the City Attorney to take all action necessary to represent the interests of the City.

City Attorney Hernandez: The first matter before you is I-2. We are requesting authority to file suit for breach of contract against ArcoArt Plus LLC, doing business as Trolinet for failing to comply with the terms of the agreement with the city and authorizing my office to take all action necessary to represent the interest of the city. At this time we've exhausted all our efforts in order to get the individuals responsible to pay, to comply with the terms of the agreement; the administration has exhausted all of their efforts. At this point we have nothing left to do but to move forward with filing suit. As you know, whenever the City Commission gives authority to our office to file suit, we always provide a final notice to the opposing side, providing them with thirty (30) days to come into full and complete compliance and we anticipate that may happen. When we did send the original first letter, we did say please contact us, so that we can try and resolve this, and there was no contact until a few days before this went on the agenda.

Commissioner Cabrera: Can I just ask a quick question?

City Attorney Hernandez: Yes sir.

Commissioner Cabrera: What is the amount owed to the city at this time?

City Attorney Hernandez: It is my understanding that it is in excess of \$100,000.

Mayor Slesnick: Do I have a motion?

Vice Mayor Kerdyk: I have a question, one more question. I thought we had notice on this in October or September, I have a memorandum from the Office of the City Manager saying there was an issue with these individuals, or maybe you should answer that or somebody from the City Manager's office, about this Trolley advertising not signing the amendment to their agreement, so why is it taking – I guess the question for me to you Maria or to the City Manager is why does it take from September or October to get to this state before we even move forward?- why do we even allow this person to accumulate so much time?

Commissioner Cabrera: Is that the memo?- may I see it?

Assistant City Manager Menendez: Commissioner the memo you are referring to is a memo that was sent to each of you and our City Attorney that dates back to September 30, 2009, when in fact they do, or rather let me go back a little bit; on July 7, 2009, this Commission approved an amendment to the agreement with Trolinet allowing for deferred payment with this payment starting September 16, 2009. Upon failure of making payment and actually even executing the amendment, staff informed our office that this in fact took place, we then notified each of you and we sent a notice to our City Attorney shortly after with a package advising her of the fact that this had taken place.

Vice Mayor Kerdyk: So why did nothing get done on this?

City Attorney Hernandez: What we try and do is negotiate; we try and get the parties to pay; we try and see if they are going to come into compliance; when we see that our efforts are fruitless, we then come to you for authority to file suit.

Vice Mayor Kerdyk: I think Commissioner Cabrera asked the question, we have \$100,000 that's owed to us...

City Attorney Hernandez: Over \$100,000.

Vice Mayor Kerdyk: And I assume that every month that accumulates some type of money, maybe you can tell me Maria, how much does it accumulate every month as far as – what's the contract for?- is it for \$10,000, or over \$10,000?- \$15,000?

Assistant City Manager Menendez: The old contract what's owed to us with the contract that we originally signed is \$156,600. If they were to execute the amendment, which again was adopted or approved by this Commission in July, they owe the City \$76,400, and that was of course just a deferral of payment in fact they would be paying the entire contract amount, but based on the amendment that's the amount they owe to date. Again, the amendment was not executed, so the

original agreement which calls for the amount that's owed to us is \$156,600, which is what I was informed by Public Works.

City Attorney Hernandez: Right, that's what we are pursuing because that's the only agreement that's signed to by all parties.

Vice Mayor Kerdyk: I'm just saying like in leases, we need to get on these things and not let them bleed so much, and handle these on a more expeditious basis. Whatever tenant, if the tenant goes a month over we need to push it a little bit more. This is from October now where are we?- March.

Commissioner Cabrera: "The eyes of March are upon us". When we did the amendment we were trying to give them a break, right?

Assistant City Manager Menendez: We were trying to give them a break as far as deferral of payments. The importance of the contract is that, or I'm sorry, the amendment, is that they also made a concession as a result of the deferral payment that they in fact would agree that if they would default, we the city would take over all of the capital improvements and all the equipment in the trolleys. Unfortunately they did not execute that agreement, they did not make payment, and we are in the situation we are in today.

City Attorney Hernandez: Right.

Mayor Slesnick: Do I have a motion?

Commissioner Withers: What?- what?

Mayor Slesnick: Approving the City Attorney to file suit, giving her authority to do that.

Commissioner Withers: Against whom? I mean, Liz has been talking to them for the past five-six months she said.

Mayor Slesnick: Now she wants the authority to file suit.

City Attorney Hernandez: ArcoArt Plus doing business as Trolinet.

Commissioner Withers: So what have they said? You said you've talked to them since November; you've been in conversations with them trying to collect and stuff, what did they say?

City Attorney Hernandez: Well we've been asked to give them another thirty days in order to try and reach an agreement with the city.

Commissioner Withers: And how did they do that?- on a phone call?- or a letter?

City Attorney Hernandez: An e-mail.

Mayor Slesnick: Chip, they are here today, they are listening to this entire conversation.

Commissioner Withers: I know they are.

Mayor Slesnick: I'm just saying they are fully aware, and it's my understanding, I don't know if it was said specifically, but I spoke to them and they have a meeting with the City Attorney coming up next week, but if we give her authority she said she's going to wait till after that meeting to actually file.

City Manager Salerno: I'm sorry.

Commissioner Withers: No, no, I'd like to hear your input.

City Manager Salerno: I don't know of any communications between the city until just recently, I think, since the notice, I think since the City Attorney sent notice in February, I think that's when the communications started between the parties; I don't know of any communications between my office or the City Attorney's office from October to February. There have been recent communications, but I can only tell you that once we ask the City Attorney to get involved I'm not aware of any communications with Trolinet.

Vice Mayor Kerdyk: Have they paid us any money, Maria?

Commissioner Cabrera: While she is coming up to answer your question. Let me ask you something, I brought up accountability a few minutes ago on another matter; OK, I appreciate the fact you brought that memo which I don't recall getting a copy of, but I probably did and reviewed it very quickly and dispensed with it. Who is accountable for that process?- did it somehow when that memo was generated, did that somehow send a bullet, or "a to do list" to the City Attorney's office to act upon it immediately?

Assistant City Manager Menendez: I can answer that sir. Following up to that memo on October 20th I sent a memo, I'm sorry October 12th, to our City Attorney, which she can probably respond to, which provided all the documents necessary and asking for her advice on how to proceed.

City Manager Salerno: With a reminder note Maria, you sent several reminders, one or two to the City Attorney to take appropriate action or something to that effect; what were the dates of those?

Assistant City Manager Menendez: October 20th and November 5th, following that memo.

City Manager Salerno: Which lead to the February 18th notice to Trolinet, correct?

Assistant City Manager Menendez: Yes. Sir to respond to your question, they have paid and this is information from our Public Works Department, they submitted \$2,178.40.

Commissioner Cabrera: For the whole time.

Assistant City Manager Menendez: For this whole time.

Commissioner Cabrera: Hey Bill, one of the things that fails to be articulated today in this discussion is that, and I'm getting off being a politician, I'm just talking based upon facts, this contractor reached out to me asking for help, and he actually was very candid and made me aware of all of the difficulties that he was experiencing in order to get this thing off the ground, and to do so properly, whether it was equipment failure or the inability of installations to be successfully done...pardon me?

Mayor Slesnick: Vandalism.

Commissioner Cabrera: Well vandalism was an after effect of the installations, but the point is that this vendor really tried very hard to reach out and to make parties know that, you know, he was here to work with us not against us, and this was way before that memo was circulated, way after messages to the City Attorney were sent out. So this dates way back and you know, people will start pointing and saying they weren't here and all that stuff, but the point is I did meet with this gentleman, and I did forward that information to the city and said, let's try to make this happen. Subsequently as Don pointed out, we had acts of vandalism at the cost of \$75,000, but even prior to that we had all kinds of installation problems; we had the inability for people to agree who was accountable for this problem; we had Cox pointing his finger at Higgins-Fallon; we had Higgins Fallon not knowing where to go on that particular project; we had the City Manager's office saying that it was already dealing with this. So, if we want to point finger we need to point fingers at the whole shooting match, not just the Attorney's office, not just the Manager's office, the whole "magilla" was bad from the beginning; and probably this is hurting us in a court of law, but if were to testify I would have to tell the truth, and what I'm telling you now is the truth. This thing was bad from the very beginning.

Vice Mayor Kerdyk: I think what happened was is that he had good intentions when he came in here; he hit an economy that tanked...

Commissioner Cabrera: Yes, but it was more than just that, it was more than just the economy.

Vice Mayor Kerdyk: That was a big portion of it because the economy tanked, he had the idea, I think we had this idea of about 2008, the beginning of 2008, he got....in 2009, we all know what happened the beginning of 2008. So yes, I met with him too, I talked to him...

Commissioner Cabrera: And in good conscience and in good faith he really wanted to make this work. I felt very comfortable with this guy and talking to him and I felt his pain, and I came back, and that's a funny thing, I came back and said, hey, whatever we need to do let's just fix this thing, because we all approved it. I told this guy on the day we approved it, he had me at hello, and I really meant it because I wanted to generate some sort of revenue for the trolley; and now this is just a failed experiment and we want to throw as many folks under the bus as we can

or underneath the trolley, but the reality is that this thing was bad from the beginning, it wasn't well managed, and that's really the truth; you all can print whatever you want, and come up with any conclusions you like, but the truth is that this project stunk from the very beginning.

Commissioner Withers: What are these revenues owed to us?- what are they for?- do you know Ralph?

Commissioner Cabrera: Sir?

Commissioner Withers: What are these revenues that are owed us?

Commissioner Cabrera: Oh, I have no idea; I'm assuming – I don't know. I didn't even know it's a \$100,000, in excess of \$100,000.

Commissioner Withers: How did we get to that number Maria?

Assistant City Manager Menendez: I'm sorry? How did we get to that number?

Commissioner Withers: I understand the \$76,000; was this a commitment...?

Assistant City Manager Menendez: Contract – it was an RFP process; a process that took place in 2008, and they were selected because they were the ones that provided the best return for the city.

Commissioner Withers: Right, I remember all that.

Assistant City Manager Menendez: Right. So there's an RFP process and we're trying to follow the letter of the agreement that we have signed with them.

Commissioner Withers: And the agreement, and I'm sorry, I'm just totally...

Assistant City Manager Menendez: The agreement called for, and I don't have the exact number, but it was over \$300,000 a year, that the city would receive, and it would help support the trolley...

Commissioner Withers: And it was based on a percentage of...

Assistant City Manager Menendez: It was a flat fee...

City Attorney Hernandez: \$13,800 a month.

Assistant City Manager Menendez: Right. Their proposal was based upon a flat fee per month.

Commissioner Withers: Regardless of their opportunities, their revenues...

Assistant City Manager Menendez: We had other responses that were tied to other forms which were not selected because again, the highest return...

Commissioner Withers: OK. So my question to Liz is, obviously Ralph has laid out some personal opinion. Liz from October or September to the writing of this recent letter, the conversations you had with them that you said you were attempting to negotiate and stuff, did they mention that they had issues that Ralph just laid out?

City Attorney Hernandez: The position of my office is issues notwithstanding, we asked them to contact Mr. Jim Kay from the Public Works Department to resolve any issues they have. Our position is merely you signed the contract, you owe money, pay the money. If they want to negotiate a new agreement or if they want to – they didn't sign the subsequent agreement that was brought forth to the City Commission.

Commissioner Withers: I understand that was last month or three weeks ago or something, the middle of February.

City Attorney Hernandez: Maria when was it that....

Assistant City Manager Menendez: July 7....

Commissioner Withers: No, no, February was when the letter, but I'm talking about between the time these folks started to default until February, there were conversations that you said you were calling them back and forth trying to negotiate and all that.

City Attorney Hernandez: But there were maybe one or two e-mails, you know, I would have to pull them and you know.

Commissioner Withers: So they never mentioned anything about they were unhappy with...?

City Attorney Hernandez: I'm not aware of any issues that they had with regard to the city; I'm only aware of the simple issues that were reported to me....

Commissioner Withers: I'm kind of seeing where Ralph is coming, because look, if I owe someone a lot of money and I've got problems with that person because it's really affecting my ability to pay them, I'm going to be shooting flairs up all over the place.

Commissioner Cabrera: But he did, but he did; and what I did was I went to the City Manager's office and at that time we had an Interim City Manager and I made that person aware of what was happening, my opinion about what was happening...

Commissioner Withers: But don't you think if an attorney is banging on you to collect that you are going to express...

Commissioner Cabrera: But at that time there was no banging of attorneys.

Commissioner Withers: But Liz said she was.

City Attorney Hernandez: There was no banging of attorney.

Commissioner Cabrera: No, no, I'm talking about – this is before the program – when I talk about this program stinking, I'm talking about the very beginning when these folks – no, no, no, I need to say this, when these folks were trying to install plasma screens or LCD screens and we couldn't get it done...

Commissioner Withers: March, April, May, whenever that was.

Commissioner Cabrera: Whatever the date was, the same day I met with the Charter School people, you know, the point is I can tell you that this guy was frustrated.

Commissioner Withers: OK. My feeling after hearing this conversation Don, is I'm not ready to file suit against this, that's just how I feel. I don't know how you all feel, I mean, I think if we have another meeting, a real meeting and find out the real facts then yes, but there is too much hear-say going back and forth. I don't know how you feel.

Mayor Slesnick: Well, all I know is that the City Attorney was only asking for the underlying authorization to move forward if and when she sees that the time was right, that's what she's asking for. She has in fact set up another meeting with the company, so – we can wait until after her meeting.

Commissioner Withers: I would rather.

Mayor Slesnick: But I do have to say this, Mr. Manager, I do have to say this; I'm not pointing fingers, I've got them pointing at me, you are looking at the five of us who voted on all these things, but it does bring to my mind Ralph's conversation, Chip's responses and so forth, does bring to my mind, and something that Maria said that the next time we do something like this, I'm not going to be looking for the quickest return, or the biggest return, but a business plan that makes sense; and listen I know we do that anyways, but it probably was something that I overlooked in considering this, it sounded great, maybe we should have somehow caught the fact that it was maybe too good to be true; and I'm not saying we were mislead; they believed what they did, I have to assume that, and we believed what they did, but I think that maybe instead of the biggest, quickest return...

Commissioner Withers: Yes, but Don, it shouldn't have taken us October, November, December, January, five months before we even send a letter to these people.

Commissioner Cabrera: But there were problems way, way before then.

Commissioner Withers: Whether they owed us money or not, we thought they did, and from October, November, December, January to February was when the first official contact by letter,

Liz said she had a few e-mails, five months we knew we had a problem and we didn't try to collect still.

Commissioner Cabrera: But that's not true, it wasn't five months, it was way before five months, that's my point. Let me tell you how bad things got. This gentleman, no please listen to me; this gentleman wanted to meet with me a second time and I denied giving him a meeting, and the reason I denied giving him a meeting was I had already communicated with the city and said, we've got problems here folks, this ain't working right.

Commissioner Withers: No I understand. I'm saying from the time that Maria and the City Manager, I don't even know if Pat was City Manager...

Commissioner Cabrera: No, he wasn't, he wasn't here, I will speak up and say he wasn't here.

Commissioner Withers: I don't even know who – October was when we realized we had financial stress in this business deal.

Commissioner Cabrera: We knew before then.

Commissioner Withers: And it wasn't until February 2010 that we started chasing this down, that's what bothers me.

Commissioner Cabrera: That's the way it wants to get framed, that's fine.

Mayor Slesnick: Well let's ask this....

Assistant City Manager Menendez: I need to make a point for the record. In July of 2009, when we brought before you the amendment, we took into account all of the past issues that we've had with the whole, like the Commissioner described, the whole monitors, and unable to install the monitors, and unable to do this, and vandalism, that is one of the reasons we brought this item before you and say hey, look, we want to work with Trolinet, we want to give them what they are requesting, which is the deferral of payment, so that was our way of working with them.

Mayor Slesnick: But Maria, thank you, and I remember that clearly; Maria, it was a positive recommendation brought to us and we approved it, but it was a remedy for the non-payment as opposed to remedying a bad business plan, if there was. Please don't misunderstand me, I'm not going back and saying it was a bad business plan, I say it certainly gives me pause to think in the future when we review these things, you know, it's too easy for public officials to be pushed into trying to get the biggest buck-bang as opposed to the best plan, OK, that's all. Does anybody wish to make a motion on this; Mr. Withers has expressed his desire to at least wait till after Ms. Hernandez has her meeting with...

Vice Mayor Kerdyk: It doesn't matter. She has to come back to us anyway when she meets.

Commissioner Cabrera: I support his recommendation.

City Attorney Hernandez: We'll put this back on at the next Commission meeting then.

Mayor Slesnick: Alright.

[End: 1:45:42 p.m.]