

**CITY COMMISSION
SPECIAL MEETING MINUTES
August 23, 2017**

(Approved)

8/23/2017 - Minutes

1. ROLL CALL

Commissioners Present:

Curtis Gibson, Robin Gibson, Deputy Mayor; Eugene Fultz, Mayor; Flora "Tonya" Stewart; Terrye Howell

City Representatives

Present: Kenneth Fields, City Manager; Albert C. Galloway, Jr. City Attorney; Jennifer Nanek, Assistant to the City Manager/Acting City Clerk

2. COMMUNICATIONS & PETITIONS

David Smith, non-resident, said he has known Clara for years and has never heard a complaint against her as President of the NAACP. He has never heard her use profanity. He said that Commissioner Gibson should have his day in court before anything is done. This issue has come up in the past.

Lisa Smith, non-resident, said that Clara VanBlargan is a good person and has been slandered throughout this whole mess. She goes out of her way to help anybody.

Sue Smith, resident, said that on the matter of Commissioner Curtis Gibson that the Governor's Office should not be involved. This issue should stay local. As she has experienced domestic violence situations in the past he should not be removed unless he is found guilty. On the matter of Clara, she has known her for 4 years, and she has always been helpful and honest. She has fulfilled all her requests in a timely manner. In 2015 when the report came out criticizing Mr. Fields for hindering records request one of her requests were involved. Clara has never revealed any sensitive information to her. If Clara had said that to Ed Bowlin a few years ago, then Clara would have mentioned it to her over the years as they have become friends.

Bob Peppel, resident, said as a fellow Rotarian he would like to express his support for Clara.

3. AGENDA ITEM

3.I. Status Of Commissioner Curtis Gibson

[Begin Agenda Memo]

SYNOPSIS

On July 30, 2017, Commissioner Curtis Gibson was arrested on charges of Domestic Violence – Battery (a first degree misdemeanor) and Domestic Violence – Aggravated Assault With a Deadly Weapon Without Intent to Kill (a third degree felony).

Section 112.51(2), Florida Statutes, provides as follows:

"Whenever any elected or appointed municipal official is arrested for a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor, the

Governor has the power to suspend such municipal official from office."

Accordingly, the City Attorney contacted the Office of the Governor's General Counsel and spoke with one of the attorneys concerning the matter. He was advised that Commissioner C. Gibson should first be given an opportunity to resign voluntarily. At the August 1, 2017, Commission meeting, Commissioner C. Gibson advised that he would not resign. The City Commission must now determine whether or not to direct the City Attorney to pursue a request on behalf of the City Commission that the Governor suspend Commissioner C. Gibson pending the resolution of his case.

RECOMMENDATION

That the City Commission determine whether or not to direct the City Attorney to pursue a suspension by the Governor until the criminal charges are resolved in accordance with law.

BACKGROUND

Section 112.51(1), Florida Statutes, provides that "...the Governor may suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties. (emphasis added)"

As set forth above, §112.51(2), Florida Statutes, authorizes the Governor to suspend a municipal official who is arrested for a felony.

A recommendation by the City Commission to pursue a suspension should not be construed as an opinion or judgment as to the merits of the charges or as to innocence or guilt related to the charges but whether, in the opinion of the Lake Wales City Commission, Commissioner C. Gibson should continue to participate in its deliberations and actions while the matter is pending. Should Commissioner C. Gibson be suspended, the remaining City Commission members shall appoint a temporary replacement until such time as the charges against him are resolved or his term expires. If he is acquitted or found not guilty or is otherwise cleared of the charges which were the basis of the arrest for which he was suspended, the Governor shall revoke the suspension and restore him to office.

If he is convicted of any of the charges for which he was suspended, the Governor shall remove him from office. If he pleads guilty or nolo contendere or is found guilty he shall be deemed to have been convicted, notwithstanding a suspension of sentence or a withholding of adjudication.

OTHER OPTIONS

The City Commission may decline to seek a suspension and Commissioner C. Gibson would continue to serve as a member of the City Commission.

FISCAL IMPACT

If the Commissioner is suspended and later reinstated, the City would be liable for back pay accrued during the period of suspension.

[End Agenda Memo]

Kenneth Fields, City Manager, reviewed this item.

Bill Ouellette, Attorney for Commissioner Curtis Gibson, said that this issue rested with the commission. That this is a permissive statute not a requirement. He reminded the Commission that Commissioner Curtis Gibson is innocent until proven guilty. He asked that the Commission vote to not recommend suspension.

Commissioner Stewart explained that she is a defense attorney and has worked domestic violence cases. There are a number of things that could happen in this case such as diversion program and a reduction of charges. A majority of cases are dropped by the State Attorney for a variety of reasons. She encouraged the Commission to keep this in mind. Commissioner Curtis Gibson getting convicted is a hard thing.

Commissioner Howell said she cannot vote on events that she has not seen. The law has not put him in jail so she cannot say that he should be suspended.

Deputy Mayor Robin Gibson said that we are not in a criminal court and that they do not determine guilt or innocent. That decision is done at the courthouse. This is a public forum for elected officials. Our duty is to uphold the public trust and the public looks to us for stability, reason and good judgment. We need to conduct ourselves to where we can continue to deserve the trust and confidence of the people who elected us. In the Police Department an officer who is charged is automatically suspended with pay. This gives the accused the opportunity to get things straightened out. Deputy Mayor Robin Gibson said he has previously served as general counsel to a governor and has had to handle these types of cases. He supports recommending suspension to the Governor's Office.

Mr. Ouellette said that it is a policy in many agencies to have automatic suspension but for them it is mandatory. In this case for the Commission this is permissive policy, not required. This activity was not done in public but in private. This matter should be left for the justice system to deal with.

Mayor Fultz said as its a strong possibility that these charges will be reduced and that we will have to pay a temporary replacement as well as back pay to Commissioner Curtis Gibson if he comes back. The State Attorney will handle the investigation. He is innocent until proven guilty and by recommending suspension we are declaring him guilty already.

Commissioner Howell made a motion to not recommend suspension for Commissioner Curtis Gibson. Commissioner Stewart seconded the motion.

Roll Call Vote

Commissioner Howell "YES"

Commissioner Stewart "YES"

Deputy Mayor Robin Gibson "NO"

Mayor Fultz "YES"

Motion passed 3 -1.

3.II. Status Of The City Clerk

Mayor Fultz said that the report is finished. He said that the investigator has done a thorough job. He asked the Commissioners if they have read the report. The other commissioners confirmed that they had.

Kenneth Fields, City Manager, reviewed the history of the status of the City Clerk. In April he recommended termination but the Commission decided to hire a private investigator. An investigator was hired to investigate allegations concerning whether Clara VanBlargan made false and derogatory statements concerning the signing of the fire fee resolution and whether her conduct is detrimental to the morale and effectiveness of city administration. Mr. Fields said that on the matter of the fire fee resolution process there were mistakes made all around. That process could have been handled better. What followed that is a matter of debate. The investigator finds that Ms. VanBlargan never actually said that she was threatened to be fired but that was her perception. She never said those words to Mr.

Bowlin although Mr. Bowlin claims otherwise. On the second matter as to whether or not her conduct was detrimental to the effectiveness of City employees the investigation is more clear. There were numerous interviews with a wide range of City Employees showing that Ms. VanBlargan is not an effective member of the City's team. She might be a wonderful person out side of City Hall and an upstanding member of the community. Here at City Hall her actions are not conducive to a good working environment. This was not something that happened yesterday. This has been happening under past City Managers. He has counseled her repeatedly but she is a disruptive influence and is counterproductive.

Philip Sigmund, an attorney from Orlando, who represents Clara VanBlargan and has represented her in the past. He asked the Commission not to terminate her employment. She has worked for the City for a long time, since 2000, and since 2003 as the City Clerk. All of the problems with Ms. VanBlargan have been in the past 2-3 years since Mr. Fields has been her supervisor. This investigation showed that there was an explanation for what she was accused of. She has not had a chance to tell her side of the story. He said that Mr. Fields was holding a grudge from the events of 2015 where an investigation was done concerning accessibility of public records in Lake Wales. After those events Mr. Fields acted on the first chance he got when this issue came up to demand that he be fired. In the first issue which was objective she was exonerated. In the second part it is very subjective. All the interviews are with people who work under Mr. Fields. The other employees complaints are subjective and Ms. VanBlargan did not have a chance to rebut these allegations. Mr. Fields' rush to have her fired is retaliatory. The Commission should go around him and direct her and discipline her if they feel its necessary. Give her a chance to fail on the rules they set up.

Mr. Fields said the list of those interviewed were several not just a few. This did not begin with him. Ms. VanBlargan has had problems with fellow employees before he came here. He did not sit in on any interviews and he did not tell employees what to say. When Ms. VanBlargan was taken off probation two years ago she was told that we don't want anymore drama. This is a pattern with Ms. VanBlargan. Minor issues get blown up to be major issues that involve other agencies including the Commission. At some point enough is enough and he stands by his recommendation for termination.

Deputy Mayor Robin Gibson said that he has known Clara VanBlargan a long time and she has been helpful to him in the past. This is an unworkable situation that is laid out in the charter. The Clerk is under the supervision of the City Manager but the Commission hires and fires her. We can't give her direction or reviews. Their provision is oddball and uncommon. They have no way to know what goes on in the administration. The investigation tracked essentially what the City Manager said in his April memorandum. There was no substance to the allegations made about the fire fee as far as Clara VanBlargan. These were just mistakes that were remedied. They really have no idea about what goes on inside City Hall and must rely on the investigation. It shows that Ms. VanBlargan was a disruptive force. These charges were substantiated. We need to change the charter as we need a better solution than the one we are stuck with.

Commissioner Howell reviewed the report. On the first one she understands that mistakes were made. If the City Attorney and City Manager knew of these mistakes then these should have been told. This should not have been held back. She does not like everyone she works with but she has to work with them. She deals in a professional manner only with those who may be dishonest. In a workplace you need to find a way to get along or gone. We need to forget things that happened years ago. If many employees are saying the same things against you then this might not be for you. Commissioner Howell said she wished Clara had evaluations done on a regular basis. She does not care what happened years ago under past City Managers. She would liked to have been able to see patterns. She believes 50% of everybody.

Commissioner Curtis Gibson said that much of this was brought forth during a high point election time. He says that he will vote against the recommendation because proper procedures have no been followed. Mr. Fields did not do an evaluation over 4 years and disciplinary memos appeared in her file without opportunity to respond. All employees deserve due process in equal application in City policy. The differences among co-workers seem to be based on personality conflicts not performance issues. He would be willing to vote for a settlement of some kind to allow for a departure for dignity.

Commissioner Stewart said she doesn't really know Ms. VanBlargan. She was helpful to her during the election. They all agree that the fire fee issues was a mistake on the part of the City and all involved. The big question in that was whether those statements were made or not. The investigation seemed to say that she made the statements and Mr. Bowlin seemed to change his statements. The other issues about her conduct with other city employees and how it affects the morale of other employees. If she comes back what will the morale be in the City then? Will we be able to get things done? Or will we be here again?

Mayor Fultz said that when he first ran for office Ms. VanBlargan was helpful to him. He lost faith in her when she accused him of losing a document that she ended up having on her desk. The accusation in today's Ledger about him and Ms. Suri conspiring against her tells him she hasn't change. All the people the investigator talked to are not all liars with only Clara VanBlargan telling the truth. Mr. Fields discussed these concerns with Ms. VanBlargan repeatedly but she doesn't change. Even past City Managers had similar issues not all of them are lying. The Mayor said that he would not continue to keep an employee like this if he owned a business. This needs to be nipped in the bud. If she came back it would not be a good working relationship and carrying forward.

Mr. Fields reviewed the current status. Back in April they offered Clara VanBlargan the opportunity to resign with a severance package. She chose to reject that agreement. If she is terminated then she is terminated for cause and loses her vacation and sick time and this will go on her record as a termination. She can still choose to resign on her terms and collect her leave. Those are the options.

Deputy Mayor Robin Gibson said that they can't require someone to resign so he suggested giving her time with her lawyer to decide. Mr. Sigmund said that Ms. VanBlargan wanted her name cleared more than anything. He agreed to take time to discuss these options with Ms. VanBlargan.

The Commission recessed at approximately 7:53 p.m.

The Commission was called back to order at 8:13 p.m.

Mr. Fields explained that they tried to work things out with Ms. VanBlargan's Counsel but no agreement was reached. Ms. VanBlargan would prefer an up or down vote on her termination.

Mayor Fultz made a motion to terminate Clara VanBlargan for cause. Deputy Mayor Robin Gibson seconded the motion.

Roll Call Vote

Mayor Fultz "Yes"

Deputy Mayor Robin Gibson "Yes"

Commissioner Howell "No"

Commissioner Curtis Gibson "No"

Commissioner Stewart "Yes"

Motion passed 3 -2

Deputy Mayor Robin Gibson said he would like to set in motion the process to change the charter to modify the City Clerk position. Mr. Fields said we have time to add a charter change to the ballot. Commissioner Curtis Gibson asked that we reach out to the City Clerks association for a recommendation. Commissioner Howell asked Mr. Fields to do the evaluations on the next City Clerk on a regular basis. Mr. Fields said that now with the merit pay raises he is doing evaluations now for all department heads annually. He has two left. Commissioner Howell asked about evaluating the City

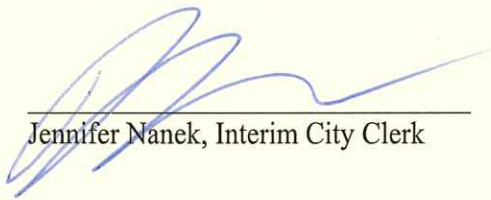
Attorney. Mr. Fields said the Commission will evaluate the City Attorney in February. Deputy Mayor Robin Gibson agreed with the suggestion by Commissioner Curtis Gibson to reach out to the Clerks association for their recommendation on the structure of the City Clerk.

The meeting was adjourned at approximately 8:19 p.m.



Mayor/Deputy Mayor

ATTEST:



Jennifer Nanek, Interim City Clerk