



City of Margate

5790 Margate Boulevard
Margate, FL 33063
954-972-6454
www.margatefl.com

Meeting Minutes Special City Commission Meeting

Mayor Arlene R. Schwartz
Vice Mayor Antonio V. Arserio
Commissioners:
Anthony N. Caggiano, Tommy Ruzzano, Joanne Simone

City Manager Cale Curtis
City Attorney Janette M. Smith
City Clerk Joseph J. Kavanagh

Friday, July 9, 2021

3:00 PM

Commission Chambers and Zoom.us
Webinar ID: 879 9244 8230

<https://us02web.zoom.us/j/87992448230>

CALL TO ORDER

ROLL CALL

Present: 5 - Commissioner Anthony N. Caggiano, Commissioner Joanne Simone, Commissioner Tommy Ruzzano, Vice Mayor Antonio V. Arserio and Mayor Arlene R. Schwartz

Mayor Schwartz attended in person.

Vice Mayor Arserio attended in person.

Commissioner Caggiano attended via Zoom.

Commissioner Ruzzano attended in person.

Commissioner Simone attended in person.

City Manager Curtis attended in person.

City Attorney Smith attended via Zoom.

City Clerk Kavanagh attended in person.

Attorney David Tolces of Weiss Serota Helfman Cole & Bierman attended in person.

MOMENT OF SILENCE - INVOCATION

PLEDGE OF ALLEGIANCE

1) RESOLUTION

- A. ID 2021-310** APPROVING MARGATE SEPARATION AGREEMENT AND GENERAL RELEASE BETWEEN JANETTE SMITH AND THE CITY OF MARGATE, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

RESOLUTION 21-055

A motion was made by Vice Mayor Arserio, that this Resolution, should be discussed. There was no second.

MAYOR ARLENE R. SCHWARTZ explained that there was an issue with the agenda software this morning, she questioned whether the City Commission had an opportunity to review all the documents.

Discussion ensued.

VICE MAYOR ANTONIO V. ARSERIO discussed City Attorney Smith's severance of 20 weeks being reduced to 10 weeks.

COMMISSIONER ANTHONY N. CAGGIANO referenced Section 2, paragraph B, of City Attorney Smith's employment contract which states that if she resigned, she would not receive anything. He understood that she informed others of her intention to leave by a certain date and believed that she quit her job. He indicated that by the language of the contract, she should not receive anything apart from any outstanding vacation pay and sick time.

VICE MAYOR ARSERIO questioned if any of the City Commission had an opportunity to speak with City Attorney Smith or any other party.

MAYOR SCHWARTZ was advised a week ago on Friday that City Attorney Smith was looking to do this and on Monday, she decided to give the City four weeks' notice which would be August 7th.

COMMISSIONER TOMMY RUZZANO indicated that he had a conversation with City Attorney Smith. He said that although City Attorney Smith may have informed others of her intention to leave, there was nothing guaranteed in writing, so that the City was at the point of negotiating.

Discussion ensued on a verbal notice period versus a written notice period.

ATTORNEY DAVID TOLCES advised that it would need something in writing as it would be difficult to effectuate that provision in the agreement.

MAYOR SCHWARTZ explained that she would prefer to negotiate. She advised that the City owed City Attorney Smith for sick and vacation of approximately \$47,139 and that she made \$3,561 per week which meant that she was looking to be paid \$35,100 for a total sum of over \$80,000. She said at the last City Commission meeting, they discussed not raising a Fire Assessment Fee (FAF) and indicated that this sum equated to 700 people having their FAF rebated. She was beyond disappointed with the language and intent of the agreement and would have been happier with five weeks' severance and three months of medical insurance.

Discussion ensued on negotiating terms.

CITY MANAGER CALE CURTIS explained that from the original draft the City had created and presented to City Attorney Smith, the only changes were that the settlement amount stipulated compensation paid through July 9th, the payment of accumulated leave, payment of 10 weeks of severance and the one month of health insurance through

August 31st. He said that with the details of the agreement, the other change was that the City would be providing mutual releases of all claims and liability. He advised that in the original agreement, it was a one-sided release of City Attorney Smith towards the City.

MAYOR SCHWARTZ said that she would go with the original agreement.

CITY MANAGER CALE CURTIS said for the record, what was before the City Commission was what City Attorney Smith had agreed to right now. He advised that if the City Commission chose to make changes, City Attorney Smith would ultimately have to agree to those.

Discussion ensued including severance and a one-time gross compensation.

CITY ATTORNEY JANETTE M. SMITH said she offered to stay longer and provide additional time for a smooth transition. She assured the City by saying that she did not have another job next week and it was brought to her attention that they wanted it to be completed today.

COMMISSIONER TOMMY RUZZANO said that this contract was poorly written by the City. He understood City Attorney Smith wanted to leave and indicated that it was in her favor to use the contract. He questioned whether it would be non-negotiable if City Attorney Smith went down to five weeks.

CITY ATTORNEY SMITH said that she never spoke with legal counsel but discussed the situation with the City Manager. She thought the agreement was extremely favorable to the City and that she did not write the agreement. She informed that she had not taken a vacation in two years and earned that money as part of her agreement. She had a lot of gratitude for working with the staff and City and wanted to leave on amicable terms.

Discussion ensued on the 10 week severance, negotiating terms and the definition of amicable.

CITY MANAGER CALE CURTIS explained the mutual releases which was not in the original contract but would be inserted into the same. He said that the agreement included mutual releases of future claims, current claims and anything that was to come before the City or City Attorney Smith, they were releasing each other of any and all types of claims.

ATTORNEY TOLCES said that he was not the attorney who drafted the contract but advised that the mutual general release would exclude City Attorney Smith from any potential liabilities towards the City. He also advised that it would release the City from any liabilities to City Attorney Smith, which was not unusual in those type of situations.

Discussion ensued on whether there had been any negotiations and reference to five weeks' severance.

CITY MANAGER CURTIS advised that he shared negotiation updates with the City Commission pertaining to City Attorney Smith. He explained that the negotiation started out with a proposal from City Attorney Smith with a severance of 20 weeks and three months of health insurance. He said that they went back to City Attorney Smith with five weeks and three months of health insurance to which she declined and returned with essentially 10 weeks and one month of health insurance. He advised that there had not been any direct negotiation between this City Commission in a public setting with City

Attorney Smith but there had been a back and forth between City Attorney Smith and himself. He believed that negotiations had reached its limit and he discussed this with the City Commission on an individual basis. He also believed that the best thing to do was to bring a best and final offer from City Attorney Smith to the City Commission for consideration. He said that it was within the City Commission's ability and rights to ask questions and present City Attorney Smith with an alternative. He advised that the agreement contained in the back-up had been agreed but not signed as there was correspondence stating that City Attorney was agreeable to it.

Discussion ensued on negotiations.

A motion was made by Commissioner Caggiano, seconded by Vice Mayor Arserio, to give Janette M. Smith 10 weeks' severance and one month of health insurance to sign the termination agreement.

Discussion ensued between the City Commission and City Attorney Smith on negotiations and termination.

TRACY VAN WINKLE, 1020 SW 61ST AVENUE, asked if the City sat down with City Attorney Smith to ascertain why she wanted to leave. She also referenced how City Attorney Smith was treated at the Planning and Zoning (P&Z) meetings. She said that they should give her what she wanted and sever their ties. She also questioned P&Z Chair Zucchini's current status on the board.

VICE MAYOR ARSERIO responded to Ms. Van Winkle's comments.

RICHARD ZUCCHINI, 380 LAKEWOOD CIRCLE E AND CHAIR OF PLANNING AND ZONING (P&Z) addressed accusations of texting during board meetings. He alleged that City Attorney Smith made mistakes during her tenure. He said that City Attorney Smith worked in a position of confidence at Margate and should be held to a non-responsive or gag order going forward.

Discussion ensued.

CITY ATTORNEY SMITH responded to Mr. Zucchini's comments and referenced a mutual non-disparagement clause which counsel advised against.

MR. ZUCCHINI continued to discuss this Item.

LAUREN BERACHA, 6950 NW 14TH PLACE, agreed with Ms. Van Winkle's comments pertaining to the manner in which City Attorney Smith was spoken to at the last P&Z meeting. She also referenced using residents' money for car allowances and said that City Attorney Smith should have the 10 weeks.

MAYOR SCHWARTZ responded to Ms. Beracha's comments.

VICE MAYOR ARSERIO responded to Ms. Beracha's comments.

ELSA J. SANCHEZ, 6930 NW 15TH STREET, agreed with comments from Ms. Beracha and Ms. Van Winkle. She discussed the way City Attorney Smith was treated. She

concluded with the 10 weeks.

The motion carried as follows:

Yes: 3 - Commissioner Caggiano, Commissioner Simone and Vice Mayor Arserio

No: 2 - Commissioner Ruzzano and Mayor Schwartz

ATTORNEY TOLCES advised that in light of the City Commission's actions, the agreement would be signed and effective July 9, 2021 that Ms. Smith would not be City Attorney. He said it was his understanding in discussions with City Manager Curtis with the City Commission's concurrence that he would be reviewing matters which would otherwise be reviewed by the City Attorney and planned on being at the City Commission on Wednesday, July 14, 2021.

ADJOURNMENT

There being no further business, the meeting adjourned at 4:06pm.

Respectfully submitted,

Transcribed by Salene E. Edwards



Joseph J. Kavanagh, City Clerk

Date: 9/2/2021

PLEASE NOTE:

If a person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting, the person will need a record of the proceedings, and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Anyone desiring a verbatim transcript shall have the responsibility, at his/her own expense, to arrange for the transcript.

[Appendix A – Zoning – Section 3.3] Any representation made before any City Board, any Administrative Board, or the City Commission in the application for a variance, special exception, conditional use or request for any other permit shall be deemed a condition of the granting of the permit. Should any representation be false or should said representation not be continued as represented, same shall be deemed a violation of the permit and a violation of this section.

Any person with a disability requiring auxiliary aids and services for this meeting may call the City Clerk's office at (954) 972-6454 with their request at least two business days prior to the meeting date.

One or more members of the City of Margate advisory boards may be in attendance and may participate at the meeting.

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- A copy of the Agenda for this Meeting is posted on www.MargateFL.com and on the main bulletin board outside City Hall located at 5790 Margate Blvd, Margate, FL 33063.

- Any comments related to any item on the agenda can be submitted to the City of Margate via the following e-mail address: JJKAVANAGH@margatefl.com.

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Go to www.margatefl.com

Go to "Agendas & Minutes" > Find the respective meeting date and click "Agenda Summary" to view the agenda items and see the Zoom meeting website address

PRIOR to the start of the meeting, email Public Comments to JJKAVANAGH@margatefl.com (all public comments that are three (3) minutes or less will be read into the record.)

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Topic: "Virtual Meeting - Margate Special City Commission "

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1. Users who call in can dial *9 to raise their hand and dial *6 to toggle mute/unmute
2. If going through mobile (phone\tablet) app, to raise hand select "Participants", then see option to raise hand.
3. On the computer users should click "Participants" then see option to raise hand
4. Once you have been selected to speak, you will be prompted to unmute your device or stay muted.