

City of Fort Lauderdale

*City Hall
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
www.fortlauderdale.gov*



Meeting Minutes - APPROVED

Monday, May 13, 2013

3:00 PM

City Attorney Interviews

City Commission Conference Room

CITY COMMISSION WORKSHOP

FORT LAUDERDALE CITY COMMISSION

***JOHN P. "JACK" SEILER Mayor - Commissioner
BRUCE G. ROBERTS Vice Mayor - Commissioner - District I
DEAN J. TRANTALIS Commissioner - District II
BOBBY B. DuBOSE Commissioner - District III
ROMNEY ROGERS Commissioner - District IV***

***LEE R. FELDMAN, City Manager
JOHN HERBST, City Auditor
JEFFREY MODARELLI, Assistant City Clerk
HARRY A. STEWART, City Attorney***

Meeting was called to order at 3:03 P.M. by Mayor Seiler.

ROLL CALL

Present: 5 - Mayor John P. "Jack" Seiler, Vice-Mayor Bruce G. Roberts, Commissioner Dean Trantalis, Commissioner Bobby B. DuBose and Commissioner Romney Rogers

Also Present: 5 – City Manager Lee R. Feldman, City Auditor John Herbst, Senior Assistant City Clerk Jeff Modarelli, City Attorney Harry A. Stewart

OLD/NEW BUSINESS

BUS-1 13-0715 INTERVIEWS FOR THE POSITION OF CITY ATTORNEY:

Each candidate gave introductory remarks on experience, answered the following questions and made concluding comments.

Paul Bangel

Mayor Seiler asked about supervisory experience. Mr. Bangel discussed his experience as Manatee County Attorney where there were three attorneys and three support staff. Currently there is one legal secretary shared with another attorney and a paralegal. In Indian County, there were two other attorneys, two paralegals and one legal secretary.

Commissioner Rogers asked how Mr. Bangel might handle the office differently. Mr. Bangel did not anticipate it would be very different. He would consider there being more interaction between members of the Commission and assistant city attorneys. He would also consider more overlap of responsibilities. If possible, he would try to reduce outside counsel cost by bringing some things inhouse. As to whether he would be the lead counsel, it would depend on the type of case. He mentioned areas where he might serve as lead or co-counsel. It may be possible to increase inhouse handling of cases for labor employment as well as foreclosures.

Commissioner Trantalis asked about the foreclosure process. Mr. Bangel indicated that one approach would be to file lawsuits to abate public nuisances which gets the violator's attention. Commissioner Trantalis asked about how he would approach the homeless issue. Mr. Bangel indicated he would look toward strengthening the City's ordinances to the extent legally possible.

Vice Mayor Roberts asked what issues he sees would be facing the City that the City Attorney's Office would be dealing with. Mr. Bangel advised E-911 dispatch, Aquatic Complex redevelopment, Bahia Mar, Wave Streetcar, Marina Lofts, disposition of surplus real property, code enforcement, construction management, and South Side School. He indicated that he has not been involved in the E-911 dispatch and therefore could not comment. Vice Mayor Roberts asked about improving the public/private partnership process. He indicated that he has not been involved in that area. Vice Mayor Roberts asked how he would lessen the City's exposure to liability. Mr. Bangel commented that in Manatee County, they conducted training seminars for staff.

Commissioner DuBose asked about preventive lawyering. Mr. Bangel felt preventive lawyering is inherent in the job. Creative code enforcement would be up to the Commission. Before a lawsuit was filed, there would be need for Commission direction. He explained the system in Manatee County. As to

how he envisioned the City Attorney's Office in five years, he thought it would not be dissimilar to what it is today. There has not been much change in the past ten years. It is an efficient office.

Commissioner Rogers asked how he would measure the efficiency and effectiveness of the office. Mr. Bangel indicated that he would like to know the workload of every attorney. It is difficult to respond to today's status. Mayor Seiler asked if there is a system in place today that tracks who is working on each issue. Mr. Bangel advised that each attorney has an area. There is a spreadsheet with who is responsible for departments, divisions and issues. There is designated backup. There is tracking of what everyone does. He elaborated upon a system in Manatee County where departments submitted requests for legal services which lent to sufficient information being furnished. With today's technology, such an approach may be a thing of the past.

Mr. Bangel responded to Commissioner DuBose's question about his professional affiliation and civic involvement.

Robert Dunckel

Mayor Seiler asked about supervisory experience. Mr. Dunckel indicated when he was in private practice, it was as a sole practitioner. Because he had matters that went beyond his ability to cover the cases, he brought attorneys onboard. For fifteen years, Dennis Lyles was part-time City Attorney, which left those in the office in a position of mentoring and supervising the other attorneys.

Vice Mayor Roberts asked what legal issues he sees would be facing the City. Mr. Dunckel felt during the economic downturn there has been a vacation, but he foresaw redevelopment increasing. He felt this Commission has a different perspective on redevelopment. He saw redevelopment as the major issue. He mentioned neighborhood compatibility, more affordable housing and apartment units. Vice Mayor Roberts asked about improving the public/private partnership process. Mr. Dunckel commented that some may say that the charter is an impediment, but he did not agree. He is currently involved in Fire Station 54. He was involved in both of the Milton Jones' transactions. The second transaction was negotiated in the Sunshine. Mayor Roberts asked how he would lessen the City's exposure to liability. Mr. Dunckel felt the practice of law is about understanding what is important to the opposition. In the development field, there are things that can be done to more proactively get the other party to meet their needs within the City's parameters. In employment discrimination, he felt the City could be more proactive with seminars or instructional periods. With respect to police liability, he did not think there is that much that can be done. They come in many shapes, sizes and forms. The best that could be done would be educational programs.

Mr. Dunckel responded to Commissioner DuBose's question about his professional affiliation and civic involvement. As to how he envisioned the City Attorney's Office in five years, Mr. Dunckel felt there may be a need for more concentration in the area of land development. He would make more extensive use of continuing legal education programs and redundancy in various fields by assistant attorneys. He felt the newer attorneys should get more involved in litigation. He would consider a little more aggressive use of paralegals.

Commissioner Trantalis asked about the issue of neighborhood compatibility. Mr. Dunckel felt staff needs to make a much more aggressive use of photographs. He went on to discuss how the court would see a case and whether there is substantial competent evidence supporting the lack of neighborhood compatibility. The more specifics that the City puts into the formula, the more capable the City will be. It is not a black and white answer all of the time. There is always room for negotiation and compromise. Commissioner Trantalis asked about having an inhouse city attorney versus outside counsel. Mr. Dunckel advised that he has worked in both systems and does not have a strong preference. He elaborated upon his experience with outside counsel of Dennis Lyles. If there is an outside counsel

approach, he believed staff would adjust and adapt to the new style. Commissioner Trantalis asked about the potential for cost savings and its efficiency. Mr. Dunckel felt it could be equally efficient. There may be need for an additional attorney, but the outside counsel compensation is something the Commission would balance with the number of hours. Commissioner Trantalis asked about the homeless issue and how he would address it. Mr. Dunckel indicated that he is familiar with the litigation in Miami and some of the litigation in this city. He felt there could be a more productive product by getting involved with the faith-based organizations. It is a resource that needs to be cultivated. He felt a lot could be accomplished in that direction. Commissioner Trantalis asked about code enforcement. Mr. Dunckel commented that the objective is compliance and not to take one's home away. He suggested being more aggressive with some techniques, such as seeking injunctive relief and being more proactive in negotiating lien settlements and compliance. He mentioned being more flexible in looking at the equity cushion of the individual and what does the individual have to lose, for example. The City could be more proactively involved with respect to trash, rubbish and debris by removal and trying to pursue the property owners.

Commissioner Rogers asked what he would do differently as City Attorney. Mr. Dunckel referred to his response to Commissioner DuBose. He would consider adding a paralegal. He liked the idea of creating a Continuing Legal Education (CLE) library in varying subject areas. He felt the younger attorneys should have some involvement in litigation and working with quasi-judicial boards. Commissioner Rogers asked about decreasing the level of outside counsel. Mr. Dunckel indicated that he would be quite cautious in terms of expertise. The labor area may be a possibility. An analysis would be needed. Additional staff would be required. Commissioner Rogers asked how the efficiency and effectiveness of the office can be measured. Mr. Dunckel mentioned more aggressive use of offers of judgment and requests for admission could hold it down. He would conduct an analysis with Assistant City Attorney Wald, who is an excellent litigator, on how to make better use of existing staff. Commissioner Rogers asked what types of matters he would delegate and those he would handle personally. Mr. Dunckel indicated that he would delegate everything, but work carefully with the attorneys on matters of the highest impact so that the transactions would be better structured.

Mark Moriarty

Mr. Moriarty provided a mission statement and reviewed it during his introductory remarks. It was made a part of the record.

Mr. Moriarty responded to Commissioner DuBose's question about his civic involvement. As to how he envisioned the City Attorney's Office in five years, Mr. Moriarty hoped the office would be the best in the state. He would like to have the Florida League of Cities, when faced with an issue, ask how Fort Lauderdale is handling it. He would like the staff to be experts in their fields and be resources to the legislature when there is a pending issue and provide information about the practical effect.

Commissioner Trantalis asked about his familiarity with homeless issues and how he would address the problem. Mr. Moriarty indicated he would bring the full resources of the office to the issue. He discussed an issue of instituting impact fees for schools and how Orlando paved the way. He has some experience with church organizations feeding the homeless in public parks which impacts the functionality of the park and its availability for everyone. A permitting system was initiated that limited the frequency and time. He went on to discuss the Occupy Movement and the strong stand taken to get them out of the park. Commissioner Trantalis asked about abandoned properties and code compliance. Mr. Moriarty felt it could be declared unsafe by the building official and demolished or handled through foreclosure. If it is not abandoned, it is a matter of communicating to the mortgage holder and getting title to the property if the mortgage holder does not wish to rehabilitate it. Otherwise, it should be cited and the property owner advised of the issue. If they fail to comply, proceed with foreclosure so that the City could fix it.

Commissioner Rogers asked what was the highest profile case he has handled. Mr. Moriarty commented on his involvement with the historic preservation ordinance in Fort Myers as well as their active nuisance abatement program. There have been appeals and denials of zoning requests and eminent domain proceedings. In some nuisance abatement matters where the property owner is making more money from the nuisance than the fines. He took the matter to circuit court and the individual was ultimately incarcerated. In terms of delegation, Commissioner Rogers asked how he would determine what to keep inhouse and what would be given to outside counsel. Mr. Moriarty commented that outside counsel has the benefit of malpractice insurance that may be helpful in certain matters. If there is a conflict or lack of competency in a particular field, outside counsel would be used. Lastly, if there is a large issue and too much of a drain on resources, outside counsel would be sought. The city attorney's office is pulled in many different directions and it is advantageous to have an experienced litigator to follow through with every motion and pleading. Commissioner Rogers asked how the efficiency and effectiveness of the office can be measured. Mr. Moriarty indicated that budget is one way. There is no way to control the number of plaintiffs. He would have the attorneys keep time records so that the City could get fees back when a case is won.

Vice Mayor Roberts asked what critical legal issues he sees would be facing the City. Mr. Moriarty was not aware of any unique to Fort Lauderdale, but from his involvement and knowledge around the state, he felt civil rights seems to be the issue. He felt it could be handled inhouse. Mayor Roberts asked how he would lessen the City's exposure to liability. Mr. Moriarty elaborated upon the thinking in Fort Myers having to do with trend analysis of claim data. Mayor Roberts asked about his experience with public/private partnerships and his ideas about facilitating such partnerships. Mr. Moriarty felt it would be a matter of communication.

Mr. Moriarty responded to Mayor Seiler's question about his position and tenure with the City of Fort Myers. He has been a member of the Florida Bar since 1996. Mayor Seiler asked whether Mr. Moriarty oversees any outside counsel. Mr. Moriarty indicated that work in the office is kind of a joint process. He is another set of eyes on files. Mayor Seiler asked how the work is divided between him and the City Attorney. Mr. Moriarty explained that the City Attorney handles election, mayoral and council issues and Mr. Moriarty handles tort contract litigation issues. Because the office is so small, there is tremendous overlap. Mayor Seiler asked about supervisory skills including that of outside counsel. Mr. Moriarty advised that as risk manager, he oversees two people. He has indirect authority over the entire city. Outside counsel is rare. He confirmed for Mayor Seiler that he serves in the City Attorney's absence at council meetings and individual meetings with council members.

Note: The Commission recessed from 4:45 p.m. to 4:49 p.m.

Cynthia Everett

Mayor Seiler asked about supervisory skills. Ms. Everett advised that she has experience as a division chief in the State Attorney's Office being responsible for three attorneys as well as administrative staff. In her private practice, she has supervised up to three people. In Opa-Locka she supervised one attorney on staff, paralegal and support staff. In Pinecrest she was responsible for being informed with outside counsel's work and keeping the village council informed also.

Commissioner Trantalis asked how she would deal with the situation of a proposed development different than the surrounding existing buildings. Ms. Everett elaborated upon the composition of Pinecrest and their anti-density preference. Although recognizing there will be new development and redevelopment, the village has enacted a code for it. When there is a clash, staff listens carefully and tries to find a way to be accommodating. They get the opposing parties together, allow for public input, make sure the developer understands the area, neighborhood and residential concerns, and see if there is a way to accommodate. Pinecrest has been quite successful. On the other hand when there is reasonable,

competent substantial evidence to be against a development, the council is willing to stand firm. Without defined standards, Commissioner Trantalis asked what she would recommend to avoid clashes between developers and residents. Ms. Everett explained that she worked with staff to re-write the land development regulations to minimize those clashes. The regulations recognize transition areas to accommodate reasonable growth. She would want to make sure Fort Lauderdale's code does the same. Commissioner Trantalis asked about experience with homeless issues. Ms. Everett indicated that Pinecrest has had issues with transients and panhandlers at intersections. She is currently in the process of developing a task force. She cited one example with day laborers in the Home Depot parking lot and how it was solved. She concluded by saying that there is a core group that wants to live on the street and it is an ongoing issue that everyone is dealing with.

Vice Mayor Roberts asked what primary legal issues she sees would be facing the City. Ms. Everett indicated she researched the city, but did not find much in terms of problematic areas. She would first want to learn from the Commission. One of her first concerns would be personnel. The personnel is who is out in the community and if there are issues, that would be where they would be. She would want to make sure there is proper support, training and feedback. A well-trained workforce will eliminate a lot of issues. Most of Fort Lauderdale's personnel is police and fire. Vice Mayor Roberts remarked that she has touched on his next point a little. He asked what steps she would recommend to avoid potential liability in the future. Ms. Everett indicated that one practice is to always consider issues with an expiring contract when a new one is contemplated. She would speak with the chief of police to find out his or her issues as well as the union. She confirmed her belief that training is paramount.

Commissioner Rogers asked about her experience in personnel and labor law. Ms. Everett advised that she is board-certified by the Florida Bar on labor and employment issues. She elaborated upon her experience in Pinecrest with the police union. In the U.S. Attorney's Office, they dealt with more traditional labor unions. She also sometimes gets involved in union matters in her private practice. She participated in collective bargaining both in Pinecrest and Opa Locka, but nothing contentious or unique. Commissioner Rogers referred to background information she submitted where it says she was successful in a Florida Supreme Court case. He asked her to elaborate on it. Ms. Everett indicated it was a forfeiture case, stemming from seizure of a marijuana grow house in Pinecrest.. She described the particulars. Commissioner Rogers asked for an example of how she would mentor attorneys in the office. Ms. Everett commented that she has been raised to mentor. She would want to be sure that she is appropriately reflected by the people in her office. She does the same with support staff.

Commissioner DuBose asked how she envisioned the City Attorney's Office in five years. Ms. Everett felt it is important for everyone to understand their responsibility. If there are difficulties meeting those responsibilities, she would want to know why and to make sure the individual has what he or she needs. She does not like to see people be pigeon-holed. Particularly for younger lawyers, she would like for them to have the opportunity to experience various things. She mentioned cross-training. Everyone should be able to advocate, to communicate and feel comfortable in court, although she recognized that not everyone's skills are suited for court. Ms. Everett responded to Commissioner DuBose's question about her professional affiliations and civic involvement.

Pam Booker

Ms. Booker responded to Mayor Seiler's question, indicating there are five attorneys and five administrative assistants in her current position with the City of Port St. Lucie. There has been downsizing from seven attorneys. She serves as the number two person. Mayor Seiler asked about her supervisory skills and experience. Ms. Booker explained that she recently trained an attorney on staff to handle a forfeiture case. There are contract files that she has handled which have been turned over to other attorneys. If questions arise, they will consult her. She responds to questions of council members and citizens. She also gives advice and guidance to the office manager about staff matters. She described

her experience with working with outside counsel. There are five attorneys in Port St. Lucie and most cases are handled inhouse.

Vice Mayor Roberts asked what critical legal issues she sees would be facing the City. Ms. Booker understood that the E911 issue has been resolved. She understood there is an outstanding issue with respect to solid waste. Port St. Lucie worked through the issue with the county and has interlocal agreements in place. She felt all local governments have financial and economics issues or budgetary constraints. Mayor Roberts asked how she would lessen the City's exposure to liability. Ms. Booker indicated that she would work closely with risk management staff and make sure department directors are informed. Education is key and critical for department directors and lower level staff.

Commissioner DuBose asked how she envisioned the City Attorney's Office in five years. Ms. Booker indicated she would hope there would be an amazing relationship between the City Attorney's Office and the City Manager's Office. With such a relationship, the citizens get the absolute best service. She would like the Commission to be confident of the legal opinions and for the staff to be confident that they can get sound legal advice. Ms. Booker responded to Commissioner DuBose's question about her professional affiliations.

Commissioner Trantalis asked about her familiarity with homeless issues and how she would address the problem. Ms. Booker indicated that it is not an issue in Port St. Lucie. Commissioner Trantalis asked how she has addressed situations where developers want to change an area's character, that is, neighborhood compatibility. Ms. Booker indicated that Port St. Lucie has been very pro-growth. There were extractions from developers to address impacts to roads, water and sewer. She was instrumental in negotiating complicated annexation agreements for such amenities as schools and fire station sites. She explained how Port St. Lucie handles infill development. Meetings are held where affected residents neighboring a new development are invited to describe the project and work out their concerns. There have been several contentious projects, such as Walmart and Sam's Club. There has been a lot of give and take. Projects are not approved unless the developer works with the City and what the residents want. She believed issues should be worked out by staff before the project comes to the commission.

At Commissioner Rogers' request, Ms. Booker elaborated upon cases she handled in federal court concerning telecommunications and Religious Land Use and Institutionalized Persons Act.

Mayor Seiler asked about Port St. Lucie's involvement on the issue of digital domain. Ms. Booker was heart broken about this. She elaborated upon the particulars and explained that the agreement would have been substantially different if the opportunity had presented itself. She does feel it is her obligation to speak to the issue in a private setting.

In response to Mayor Seiler, Maxine Singh, Commission Assistant Coordinator, advised that the ranking form in the backup was provided by the search firm. The City Attorney advised that the form was not used by the City Attorney Search Committee.

Commissioner Trantalis felt the Commission should consider these areas in weighing the candidates: 1) experience with regard to subject matter areas; 2) seamlessness of transition; 3) sensitivity to Fort Lauderdale issues; 4) supervisory experience; 5) responsiveness to questions asked; 6) communication skills; 7) poise and tenacity; and 8) connectivity to the community. Discussion ensued as to a ranking process and consensus was reached to rank one through five, with one being the highest choice.

Vice Mayor Roberts:

- 1.Everett
- 2.Dunckel
- 3.Booker
- 4.Bangel
- 5.Moriarty

Commissioner Trantalis:

- 1.Dunckel
- 2.Booker
- 3.Moriarty
- 4.Everett
- 5.Booker

Commissioner DuBose:

- 1.Everett
- 2.Booker
- 3.Moriarty
- 4.Dunckel
- 5.Bangel

Commissioner Rogers:

- 1.Dunckel
- 2.Everett
- 3.Bangel
- 4.Moriarty
- 5.Booker

Mayor Seiler:

- 1.Everett
- 2.Dunckel
- 3.Booker
- 4.Moriarty
- 5.Bangel

Ranking Results:

Everett – 9
Dunckel – 10
Booker – 15
Moriarty – 19
Bangel – 22

Mayor Seiler noted negotiations could proceed with Ms. Everett and, if not successful, proceed to Mr. Dunckel. He asked that the City Auditor, City Attorney and City Manager assist with negotiations. Some discussion followed concerning salary. Mayor Seiler believed Ms. Everett is earning about \$150,000. There has been general agreement that the salary would be less than the current City Attorney's salary. He hoped that both Mr. Dunckel and Mr. Bangel will stay.

The workshop adjourned at 5:58 p.m.