

ORMOND BEACH SPECIAL CITY COMMISSION MEETING
HELD AT CITY HALL TRAINING ROOM

April 13, 2007 4:30 p.m.

Present were: Mayor Fred Costello, Commissioners Lori Gillooly, Troy Kent, Ed Kelley, and Bill Partington, City Manager Isaac Turner, City Attorney Randal Hayes, and Assistant City Clerk Lois Towey.

- 1) Meeting call to order by Mayor Costello.
- 2) Settlement Offer – Diana Price vs. City of Ormond Beach

3) Close the Meeting.

Item #1 - Call to Order

Mayor Costello called the meeting to order at 4:31 p.m.

Item #2 – Settlement Offer – Diana Price vs. City of Ormond Beach

City Attorney Randy Hayes introduced Mr. Mark Levitt of Allen Norton & Blue, the City's labor counsel, who represents the City with collective bargaining matters and public-related disputes. He stated Mr. Levitt was the trial lawyer handling the case of Diana Price vs. the City of Ormond Beach.

Mr. Mark Levitt advised that this case had been pending for some time, and they had been vigorously defending it. He stated the case was scheduled for trial on April 16, 2007, and was anticipated to be a fairly lengthy trial with significant costs associated from this point forward. He noted that in the last ten days more reasonable settlement demands had been received from Ms. Price, but there were risks when a case went to trial. He stated he was recommending that the City Commission approve settlement in the amount of \$50,000 as being in the best interest of the City. He noted that attorney fees would be about \$31,000, and Ms. Price would receive about \$19,000 in settlement.

Mayor Costello asked about the termination items being disputable or acknowledged; whereby, Mr. Levitt stated that the incident that led to the City's decision to terminate Ms. Price was an internal affairs investigation that revealed it appeared Ms. Price was working at a tavern/bar without receiving prior authorization for outside employment and that Ms. Price was using the City's computer system for purposes other than pure law enforcement.

Mayor Costello asked if Ms. Price had presented evidence to provide a link to a police investigation versus an outside link to those people; whereby, Mr. Levitt stated they believed the charges against Ms. Price justified termination.

Mayor Costello summarized that a jury might not accept the termination by the City; whereby, Mr. Hayes advised that there was always uncertainty with a jury trial and that Mr. Levitt was recommending they accept the current proposal.

Mr. Turner stated that the Commission's decision was an indication of the potential for certainty in terms of capping the cost of the settlement.

Commissioner Kelley asked if Mr. Levitt was prepared to go to trial on April 16; whereby, Mr. Levitt stated he was prepared to go to trial.

Commissioner Kent noted that it was interesting that Ms. Price's attorney would receive more than she would in settlement. He stated he believed the information presented in the staff report and felt the City had a great case. He expressed his concern that this case would open up Ormond Beach for future settlements, and he did not like being put in this type of position. He stated he was not comfortable settling for \$50,000 and was concerned about two other pending lawsuits. He stated he favored Mr. Levitt going to court.

Commissioner Kelley stated he agreed with Commissioner Kent in that the City was not at fault, and he would rather go to court.

Mr. Hayes clarified that a previous shade meeting was a discussion of the issues with no formal agreement or directive to offer any settlement package.

Commissioner Partington stated he agreed with Commissioners Kent and Kelley regarding the City's liability in this matter, but he stated he felt the jury might not be sympathetic to the City's position. He stated he favored voting to settle the case for \$50,000 as he felt it made good business sense at this time.

Ms. Gillooly stated she agreed with Commissioner Partington about settling, and she asked about a cap on the settlement; whereby, Mr. Levitt stated that Ms. Price would be entitled to potential back pay, potential reinstatement of some type of front pay, compensatory damages (emotional distress), and attorney's fees. He stated that if she prevailed, she could easily be

awarded potential emotional distress (cap of \$300,000), back pay of \$20,000, front pay of \$200,000, and attorney’s fees of \$125,000.

Commissioner Gillooly asked about his fees to this point; whereby, Mr. Levitt stated they were approximately \$100,000. He stated the fees relative to the trial would be about \$25,000.

Commissioner Gillooly stated she looked at the long-term, financially prudent thing to do. She stated her first reaction was not to settle because the City was not at fault. She stated that she felt the Commission should go with the recommendation of Mr. Levitt as a sound business decision.

Mr. Levitt advised that this settlement would not be sending a message to other plaintiffs that the City was a target and gave away money.

Commissioner Kent expressed his concern about the cost of future settlements and the effect on employee pay raises because of the lack of funds caused by these settlements.

Commissioner Kelley expressed his opinion that the City had to defend itself without the opportunity to recover attorney fees. He stated he believed it was a violation for someone to use their police authority to access records for personal use.

Commissioner Kent stated that he had a problem with settling when the City was not at fault.

Mayor Costello summarized that Commissioners Gillooly, Kelley, Partington, and he favored settling the case, and Commissioner Kent favored going to court.

Commissioner Partington moved, seconded by Commissioner Gillooly, to approve a \$50,000 settlement in the case of Diana Price vs. the City of Ormond Beach, and to authorize counsel to prepare settlement agreements.

Call Vote:	Commissioner Gillooly	yes
	Commissioner Kent	no
	Commissioner Kelley	yes
	Commissioner Partington	yes
Carried.	Mayor Costello	yes

Item #3 - Close the Meeting

The meeting was adjourned at 5:03 p.m.

APPROVED: _____ May 1, 2007

BY: _____
Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk