

CITY OF CLEWISTON
Regular Commission Meeting
December 17, 2018

The City of Clewiston City Commission held its regular Commission Meeting in the City Hall Commission Chambers Monday, December 17, 2018. The meeting was called to order at 5:33 p.m. by Mayor Gardner. The audience joined in reciting the Lord's Prayer and the Pledge of Allegiance.

Commissioners Present: Mayor Mali Gardner, Vice Mayor Michael Atkinson, Commissioner Melanie McGahee, Commissioner Kristine Petersen and Commissioner Julio Rodriguez.

Personnel Present: Interim City Clerk Kathy Combass, Interim City Manager/Finance Director Shari Howell, Police Chief Aaron Angell, Assistant Police Chief Marci VanD'Huynslager, Community Development Director Travis Reese, Utilities Director Danny Williams, Code Enforcement Officer Debbie McNeil, City Engineer Scott Jones and City Attorney Gary Brandenburg.

Visitors Present: Andy Tilton, Leroy Hare, Jr., Michael Stevens, Asa and Betty Godsey, Laura Smith, Lance Ramer, Cheryl Gutjahr, Terry Gardner, Michael Ellis, Steve Schneider, Antonio Perez and Jerry Cochrane.

ADDITIONS/DELETIONS/CHANGES AND APPROVAL OF THE AGENDA - none

1. Consent Agenda

A. Commission Meeting Minutes – November 19, 2018

Vice Mayor Atkinson made a motion, seconded by Commissioner Rodriguez, to approve the Consent Agenda. Vote 5 yeas, 0 nays

ORDINANCE

- 2. Ordinance No. 2018-06 – First Reading** – Ordinance No. 2018-06 amends Section 110-499 of Chapter 110, of Division 13, the Commerce Park Industrial District (CPID), of the Clewiston Code of Ordinances.

Mayor Gardner summarized and read Ordinance No. 2018-06 by title. She explained that Ordinance No. 2017-10 was previously adopted by the Commission in order to streamline the process of selling land in the CPID and to prevent purchasers from having to make large expenditures up front and now, after review, staff feels it still includes language that may be interpreted to require up front expenditures from purchasers and recommends the adoption of Ordinance No. 2018-06 for clarification.

Vice Mayor Atkinson made a motion, seconded by Commissioner Petersen, to approve Ordinance No. 2018-06 on first reading and set the public hearing for January 7, 2018. Vote 5 yeas, 0 nays

RESOLUTIONS

- 3. Resolution No. 2018-52 – (This agenda item was tabled at the December 3, 2018 Commission Meeting)** - Resolution No. 2018-52 authorizes the Mayor to sign the As-Is Contract for Sale and Purchase Between City of Clewiston and Polaroma, LLC for the sale of the property located at 603 Commerce Court, Clewiston, FL, known as Lot 6 of Clewiston Commerce Park.

Mayor Gardner summarized and read Resolution No. 2018-52 by title.

Commissioner Rodriguez made a motion, seconded by Vice Mayor Atkinson, to approve Resolution No. 2018-52. Vote 5 yeas, 0 nays

Before the vote, City Attorney Brandenburg summarized the contract requirements of Buyer and explained that the City is making no representations or warranties with respect to the property; the Buyer has to provide title insurance, any surveys and any other studies will be at their expense and after the closing, the Buyer will be required to comply with the Commerce Park Industrial District ordinance by submitting an application to the City and filing all of the requirements. He also stated that the Buyer will need to give 30 days' notice in advance of closing to the City if they decide to sell the property to an unrelated party; the City will then have the right to repurchase the property at the price they initially bought it from the City. Ms. Bertha Garcia addressed the Commission on behalf of Mr. Manuel Santamaria, the owner of Polaroma, LLC, and expressed that they would like to close the sale on January 14. Attorney Brandenburg confirmed the closing date of January 14 would be okay. Ms. Garcia stated that Polaroma currently manufactures fragrances and flavors in Miami. She also stated that they plan to maintain a sales office in Miami and the manufacturing will be done here in Clewiston. She added that there are no hazardous materials and Polaroma does not do the finished product. City Attorney Brandenburg asked that a new contract be signed by Mr. Santamaria tonight because the contract that he initially signed had the wrong square footage.

After the vote, City Attorney Brandenburg informed Ms. Garcia that the ordinance regarding the Commerce Park Industrial District that regulates everything on the lots in that district is located on the City's website. Mr. Santamaria, on behalf of Polaroma, LLC, signed the updated contract.

4. **Resolution No. 2018-53** – Resolution No. 2018-53 authorizes the Mayor to sign the As-Is Contract for Sale and Purchase between the City of Clewiston and NQAS Corp. for the sale of the property located at 519 Commerce Court, Clewiston, FL, known as Lot 4 of Clewiston Commerce Park.

Mayor Gardner summarized and read Resolution No. 2018-53 by title.

Vice Mayor Atkinson made a motion, seconded by Commissioner Petersen, to approve Resolution No. 2018-53. Vote 5 years, 0 nays

Before the vote, Ms. Cheryl Gutjahr of Rawls Real Estate distributed a packet to the Commission with a proposed drawing of the building that NQAS Corp. is planning to construct on the property. She explained the company is looking to expand their facility and stated that it would be approximately 3 years until the construction is complete because they are currently under a lease in their current building. They also stated their plan is to pay cash for the property and finance the construction through one of the local banks. She added that NQAS Corp. ships harvester replacement parts over from Australia and then supplies them to the harvesting company and that no repairs are done at the facility.

MISCELLANEOUS ACTION AND DISCUSSION ITEMS

5. **Approval of 2019 Commission Meeting/Workshop Schedule** – At the December 3, 2018 City Commission Meeting, the Commission agreed that two monthly meetings will continue to be held along with a workshop before the first meeting each month.

Vice Mayor Atkinson suggested that the time of the Workshop scheduled for January 28, 2019 be changed to begin at 3:30 p.m. City Attorney Brandenburg confirmed that he will attend the workshop via telephone.

Commissioner Petersen made a motion, seconded by Vice Mayor Atkinson, to approve the 2019 Commission Meeting/Workshop Schedule with the time of the January 28, 2019 Workshop to be changed to 3:30 p.m. Vote 5 years, 0 nays

6. **Approval of Change Order No. 2 for the Block 201 Utility Relocation Project** - This Change Order in the amount of \$8,566 allows for the elimination of the asbestos concrete waterline in the alley of Block 208, the connection of 5 water meters along Block 208 alley

to the waterline along Pasadena Avenue and the removal of two 8” valves from the original agreement.

City Engineer Scott Jones addressed the Commission and stated that this is an opportunity to eliminate the asbestos concrete waterline and connect the water meters along the Block 208 alley to the waterline along Pasadena Avenue. He noted the contractor will have 30 days to complete the work and is looking to start very soon. He also noted the old pipe will be abandoned in place and confirmed there is no hazard to anyone as long as the asbestos pipe is in the ground.

Commissioner Petersen made a motion, seconded by Vice Mayor Atkinson, to approve Change Order Number 2 in the amount of \$8,566 for the Block 201 Utility Relocation Project. Vote 5 yeas, 0 nays

7. **Appointment/Re-appointment of Commissioners to the Hendry-Clewiston Recreation Board** – The Hendry-Clewiston Recreation Board consists of two Hendry County Commissioners, two Clewiston City Commissioners and one Hendry County School Board Member. Due to the departure of Commissioner Roland and the reorganization of the City Commission, two Commissioners should be appointed/re-appointed to the Board.

There was a brief discussion as to whether the Hendry-Clewiston Recreation Board was active or not. ICM/Finance Director Howell stated that it was her recollection from the Board’s last meeting that the City Manager and County Administrator would get together to decide what to do with the money that was gifted from U.S. Sugar. She noted that she is not sure if that ever occurred and feels it would be better to go ahead and choose two Commissioners to serve. She added that she has talked to County Administrator Jennifer Davis who would like to meet with City management to go over some items and this matter could be added. Commissioner Rodriguez and Vice Mayor Atkinson agreed to serve on the Hendry-Clewiston Recreation Board.

Commissioner Petersen made a motion, seconded by Commissioner McGahee, to re-appoint Commissioner Rodriguez and appoint Vice Mayor Atkinson to serve on the Hendry-Clewiston Recreation Board. Vote 5 yeas, 0 nays

8. **Appointment of Member to the Golf Course Advisory Board** – The Golf Course Advisory Board consists of seven members. Board Member Asa Godsey has resigned and Joe Whitehead has applied for the vacancy and appears to be qualified.

Mayor Gardner thanked Mr. Godsey for the time he served.

Vice Mayor Atkinson made a motion, seconded by Commissioner McGahee, to appoint Joe Whitehead to fill the vacancy on the Golf Course Advisory Board. Vote 5 yeas, 0 nays

9. **Discussion regarding Berner Road Sidewalk Project** – City Attorney Gary Brandenburg agreed at the December 3, 2018 Commission Meeting to draft a letter to the property owner notifying them that the sidewalk has been rejected and will need to be replaced.

City Attorney Brandenburg recommended that the Commission adopt the recommendations contained in his memo to the Commission dated December 4, 2018 as the City’s policy.

Commissioner Petersen made a motion, seconded by Vice Mayor Atkinson, to adopt the recommendations contained in Attorney Brandenburg’s memo to the Commission dated December 4, 2018 as the City’s policy. Vote 5 yeas, 0 nays

City Attorney Brandenburg stated that he wrote a letter to the property owner requesting the 4” sidewalk be replaced with a 6” sidewalk and the car stops adjacent to the sidewalk be removed as they are a tripping hazard to pedestrians and are a violation of the ADA. He recommended the City not issue any further permits or inspections for those properties if the actions are not undertaken. Mayor Gardner stated that Mr. Royal contacted her this afternoon and stated that because he followed the specifications given to him by the City

Engineer, he does not feel that he should be required to replace the sidewalk since that was what was provided to him by the City Engineer. Attorney Brandenburg reminded the Commission that the engineer had previously stated that there was a conflict in the plans; the plans indicated to replace the existing sidewalk with the same specifications but a drawing of the sidewalk showed a 4" sidewalk. He stated that the engineer for Royals should have asked for clarification. Mayor Gardner stated that Mr. Royal explained that the car stops were placed to protect pedestrians and to keep people from parking on the sidewalk. Code Enforcement Officer Debbie McNeil addressed the Commission and stated that a certified notice of violation was sent out today which will provide another ten days for the removal of the car stops. She also stated that car stops cannot be used adjacent to the sidewalk as it is cited as a tripping hazard to pedestrians who walk on the sidewalk under the City's Public Nuisance Code. City Engineer Scott Jones addressed the Commission and stated the engineer that designed the sidewalk specified a 4" sidewalk which is standard DOT specification. He also stated that the plan sheet said to replace existing sidewalk and the thickness of the existing sidewalk was unknown to the contractor and Engineer Jones. He added that 4" sidewalks are standard and 6" sidewalks are normally used across intersections where there is traffic over a sidewalk. He said it was only after the sidewalk was done that it was realized that it was 6". He explained that the City agreed to remove the existing sidewalk to work with Royals. Mayor Gardner stated that Mr. Royal stated that his original estimate for the sewer line replacement from the engineer drawings was \$20,000 and ended up costing \$100,000 because of the length of the sewer line. Attorney Brandenburg agreed to talk to Mr. Royal to try to reach an agreement on the issues regarding the sidewalk and car stops and another issue with regard to water capacity. Commissioner Rodriguez stated he feels that City Engineer Jones should have recused himself as the engineer for the City on this project. City Engineer Jones stated that he informed the City that they had been asked to do the sewer line project and was told to go ahead and do the project. Regarding the sewer slope issue, he explained that they design things to meet a standard and the standard is not a conflict with the City but once the design is done, their job is done. He stated they designed the project to a standard; it was built to that standard and approved by DEP. He stated the contractor made a mistake and did not build the sewer slope according to the plans. He explained that DEP said the sewer will function; it will flow 2 feet per second, which is the design standard, and approved the project. He stated that because the project did not meet the plans, rather than require the contractor to dig it up and do it over again, they required the owner to agree if there are any issues with the sewer slope within the next twelve months, they will replace it at their cost because there is asbestos concrete service to the plaza that has several restaurants, which service broke twice during construction and they did not want them to dig that up and break the service another time. Commissioner Rodriguez asked Attorney Brandenburg if he felt there was a conflict. Attorney Brandenburg stated that he believed there was a conflict and that is why Johnson-Prewitt & Associates, Inc. asked for approval. He explained that the City's contract with Johnson-Prewitt & Associates, Inc. states that if there is a conflict, you have to notify the City and the City has to approve it. He stated that it could be questioned if the City is the department head or the City Commission, which is why his memo that was just adopted states that from now on, notifications of conflict have to be in writing to the City Manager and the response has to be in writing so that there is a clear trail.

Commissioner Rodriguez made a motion, seconded by Commissioner McGahee, to remove Johnson-Prewitt & Associates, Inc. as the City's lead engineer and approve Johnson Engineering, Inc. as the City's lead engineer. After discussion, Commissioner McGahee withdrew her second and the motion failed for lack of a second.

Commissioner Petersen stated that she is not in favor of removing Johnson-Prewitt & Associates, Inc. as the lead engineer because she feels it is important that we have access to the historical information and the work that has been done for the City. Attorney Brandenburg stated that historical documents that are not original documents of the City belong to the engineer and are public records and copies can be obtained by paying for those copies. There was a discussion regarding the bestowed status of the lead engineer. Attorney Brandenburg explained that Johnson-Prewitt & Associates, Inc. is the City Engineer and the other two companies are special engineers and that the City can rotate any work to them that they want. He stated the City Charter says that you will appoint a City Engineer; it does not indicate any process for removing or replacing the City Engineer with another City Engineer. He then clarified that the Commission may remove and replace the current City Engineer

with one of the other special engineers but they do not have to do that even if they wished to give all of the work to one of the special engineers. Special Engineer Andy Tilton of Johnson Engineering, Inc., addressed the Commission and stated that they have done some small things for the City, have given some prices to Public Works Director Scheffler for jobs that have not yet come forward and have talked to Utilities Director Williams about doing a lift station and force main replacement design. Commissioner McGahee expressed that she feels this issue should be addressed internally and will be taken care of with a strong City Manager. Commissioner Rodriguez stated that he has not been happy with Johnson-Prewitt & Associates, Inc. as the City Engineer and feels it is time to hire a new City Engineer. Mayor Gardner stated she feels if the Commission would like to look at changing the City Engineer; it should be an agenda item with input from staff, the Interim City Manager and the new City Manager. Commissioner Rodriguez expressed his concern that nothing is going to be done and then in another four years, another Commission will say they should have been terminated years ago. Mayor Gardner stated that she would like more time to look at this matter closer. Commissioner McGahee suggested that the matter be placed on the agenda for discussion of the second meeting after an Interim City Manager is hired. Commissioner McGahee withdrew her second to Commissioner Rodriguez' motion and the motion failed for lack of a second.

- 10. Consideration of Appointment of Keith Warren Davis as the Special Magistrate for the City of Clewiston** – Due to the resignation of City of Clewiston Special Magistrate James Watt, City Attorney Gary Brandenburg has recommended Keith Warren Davis for the position.

City Attorney Brandenburg stated that Mr. Davis is certainly qualified and is willing to serve and recommended that the Commission approve the hiring of Mr. Davis. He also stated that a contract could be prepared to be considered at the next meeting.

Commissioner Petersen made a motion, seconded by Vice Mayor Atkinson, to approve the hiring of Keith Warren Davis as the Special Magistrate for the City of Clewiston. Vote 5 yeas, 0 nays

- 11. Consideration of Appointment of Wendell Johnson as Interim City Manager** – Due to the resignation of City of Clewiston City Manager Al Perry, the Commission agreed, at the December 3, 2018 Commission Meeting, to consider appointing Wendell Johnson as the Interim City Manager. Each Commissioner met individually with Mr. Johnson last week.

Commissioner Petersen made a motion, seconded by Vice Mayor Atkinson, to appoint Wendell Johnson as the Interim City Manager for the City of Clewiston. Vote 5 yeas, 0 nays

It was noted that Mr. Johnson's compensation would be \$11,000 per month; he would be an independent contractor, would provide his own housing and would begin working on January 7, 2019. Mayor Gardner noted that the compensation does not exceed the City's budget on what is currently being paid for a City Manager.

Commissioner Rodriguez made a motion, seconded by Commissioner Petersen, for the contract for management services with Wendell Johnson to provide for compensation in the amount of \$11,000 per month to be paid to Mr. Johnson, to state that Mr. Johnson's starting date is January 7, 2019 and to contain 30 day notice termination provisions for both parties. Vote 5 yeas, 0 nays

- 12. Discussion regarding process for hiring a City Manager** – Due to the resignation of City of Clewiston City Manager Al Perry, the Commission agreed, at the December 3, 2018 Commission Meeting, to establish a recruitment committee to help with the hiring of a new City Manager. Each Commissioner designated one person to the committee. Since four out of the five designees declined to serve, the Commission should discuss how they want to proceed.

Mayor Gardner suggested the recruitment committee be dissolved and Mr. Johnson perform the process of hiring a City Manager and work with City Attorney Brandenburg and business community leaders to provide a list of candidates for the position to the Commission.

Commissioner Rodriguez made a motion, seconded by Vice Mayor Atkinson, to dissolve the selection committee. Vote 5 yeas, 0 nays

Commissioner Petersen stated that the person she selected for the committee received a call asking him to decline to serve on the committee so that they would not have to meet under the Sunshine Law. She expressed that she would like to make sure that those same people who were designated do not meet outside of the Sunshine Law. Mayor Gardner stated that Mr. Johnson could meet with individuals in the community to receive their input. She expressed that she feels because Mr. Johnson has previously handled a similar situation in Lake City, has previously worked with the senior advisors and knows the community, he would be able to help with the selection of a City Manager. Commissioner Petersen stated that she does not have any concerns with Mr. Johnson handling the process.

13. Departmental Monthly Activity Reports - Presented for information only.

PUBLIC COMMENTS - Mr. Jerry Cochrane addressed the Commission and expressed that he agrees with former Commissioner Phillip Roland that the City should give notice to FMPA that we want out of the rolling 30 year contract. He suggested that it be added to the agenda to be discussed at a workshop. Mayor Gardner stated the Commission had previously discussed the matter and voted not to give notice. Attorney Brandenburg stated that the City would need to hire an expert to advise us if we wanted to think about getting out. Utilities Director Danny Williams noted that there are benefits with FMPA. Mr. Cochrane stated he feels the City should still look at the matter.

COMMENTS FROM CITY MANAGER - none

COMMENTS FROM THE CITY ATTORNEY – Attorney Brandenburg informed the Commission that he received a report from the City’s lawyers on today’s hearing regarding Clewiston Commons’ request for a preliminary injunction to prevent the City from enforcing its codes. He stated the report said the hearing went well and we should be hearing from the Federal Court within the next month.

COMMENTS FROM THE CITY COMMISSION – Mayor Gardner thanked Director Howell for acting as City Manager. She also wished everyone a Merry Christmas and expressed that she is excited for the New Year.

ADJOURNMENT

The meeting adjourned at 6:57 p.m.

Mali Gardner, Mayor

Mary K. Combass, Interim City Clerk