

VILLAGE COUNCIL SPECIAL MEETING MINUTES
Minutes of the Special Council Meeting of Tuesday, June 16, 2015
Village Hall Chambers
9705 E. Hibiscus Street

1. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE

Mayor Eugene Flinn
Vice Mayor John DuBois
Council Member Karyn Cunningham
Council Member Tim Schaffer
Council Member Larissa Siegel Lara

Staff present:
Village Manager Edward Silva
Village Attorney Dexter W. Lehtinen
Village Clerk Meighan J. Alexander

Mayor Flinn called the meeting to order at 7:00 p.m. Mayor Flinn asked former Council Member Dr. Edward Feller to lead the pledge of allegiance. He also announced that the Mayor of the Village of Pinecrest Cindy Lerner is present.

2. DECORUM STATEMENT: Mayor Flinn noted that the decorum statement was printed on the Agenda and did not need to be read:

Any person making impertinent or slanderous remarks, or who becomes boisterous, while addressing the Council may be barred from further appearance before the Council by the Mayor, unless permission to continue or again address the Council is granted by a majority vote of the Council. Applauding speakers shall be discouraged. Heckling or verbal outbursts in support or opposition to a speaker, or his or her remarks, shall be prohibited. No signs or placards shall be allowed in the Council meeting. Persons exiting the Council meeting shall do so quietly. All cellular telephones and beepers are to be silenced during the meeting.

3. REQUESTS, PETITIONS AND PUBLIC COMMENTS

Councilwoman Cunningham asked if the Council would allow Dr. Feller to provide historical information regard to Item B. The Council and Mayor Flinn concurred.

Vice Mayor DuBois moved to hear item 4B first. Seconded by Councilwoman Cunningham. All voted in favor. The motion passed unanimously (5-0.)

Mayor Flinn asked those who wished to address the Council to come forward. Vice Mayor DuBois stated that he had received communication from the gentleman who was coming forward and asked if the Mayor would allow the individual to speak for five minutes. Mayor Flinn agreed.

Mr. Raul Vergara, 8301 SW 184 Lane, of Cutler Bay Solar Solutions, was recognized as a contractor who is YGreene certified. He expressed his support for the PACE program; however, he stated the YGreene may not be the best program for everyone, but it does offer a homeowner the opportunity to improve their property. He provided some examples of success stories. Mr. Vergara explained that he gets charged a 3% fee that he absorbs; he does not add the YGreene fee to his customer's bill.

Mayor Flinn asked if the 3% is from the gross cost of the project. Mr. Vergara stated that if the customer utilizes YGreene, he pays 3% of the entire cost; if the customer finances the project through a bank, there is no fee. He stated that as a contractor, he makes more money by not utilizing YGreene.

Mayor Flinn asked if he was aware of any additional fee charged to the customer by YGreene. Mr. Vergara stated that he handles his customers and all of the customers' paperwork, including the Truth in Lending statement that breaks down all costs. Mayor Flinn asked for a sample copy of the documents.

Vice Mayor DuBois expressed his displeasure that funding/financing through YGreene places a debt instrument/a first mortgage on the property that is financed through a homeowner's property taxes, which is also financed at a high rate. He stated that his concern is with the exploitation of a homeowner due to the agreement with YGreene, through financing via Barclays. He asked if Mr. Vergara is permitted to buy the photovoltaic equipment on the open market, or is he required to purchase equipment through YGreene. Mr. Vergara stated that all labor and supplies are sourced by him, without input from YGreene. Mr. Vergara added that even with an 8% loan through the YGreene program, the homeowner will be saving money in the long run through electricity savings.

Mayor Flinn noted that a lower interest rate would result in additional cost savings, as well. Mr. Vergara agreed; however, he noted that YGreene protects the resident by making certain that the project is completed before Mr. Vergara is paid.

4. ITEMS FOR DISCUSSION/DETERMINATION:

- A. Update, current status, and potential direction with regard to the Green Corridor PACE District.

Vice Mayor DuBois expressed his concern as to whether a homeowner is provided information concerning the risk that someone would take by placing this new first mortgage on their property. He noted that the cost savings, even with a tax credit, did not justify a five to six percent loan. He added that the maintenance of the equipment in a tropical environment is also difficult and remains concerned with the exploitation of the interest rate issue.

The Council briefly discussed the maintenance of the projects.

Councilman Schaffer remarked that he is concerned with the lending practices and that homeowners may be inclined to use the program due to a perceived government endorsement. He noted that a homeowner is making a major

competition; however, she is aware that there are few financing options throughout the State.

Vice Mayor DuBois expressed his concern with the Village giving the authority to allow these loans through the Village's real estate taxes, stating that the loan is superior to the first mortgage. Mayor Lerner stated that the loan is subordinate to the first mortgage. She added that YGreene sends correspondence to the property owner's mortgage company and must receive approval from the mortgage company prior to the loan being approved.

Village Attorney Lehtinen stated that he believes the funding a "voluntary special assessment"; however, he has not performed the research as to whether it is a superior assessment to the mortgage.

Councilwoman Cunningham asked if the Village of Pinecrest provides information to the public. Mayor Lerner stated that they provide information on their website and also distribute a booklet to the residents. She stated that she would provide the information to Councilwoman Cunningham.

Councilwoman Siegel Lara asked if YGreene has an exclusive agreement with PACE. Mayor Lerner confirmed that YGreene did; she believes there is no other vendor in South Florida performing this sort of work, although other cities are providing funding and providing this program through municipal funding.

Councilwoman Siegel Lara wondered whether homes under the YGreene program are taking longer to sell, due to the additional tax assessment.

Attorney Lehtinen noted that the YGreene is a special assessment lien placed on a property by this district. He explained that the separate governmental entity is PACE, a Florida dependent special district, which has hired a third party administrator that runs the District, which is YGreene. He explained that the third party administrator is performing the government function, similar to a city manager.

Cutler Bay Councilwoman Sue Loyzelle, 9275 SW 185 Terrace, expressed her support of allowing options to the residents.

The following individuals addressed the Council: Frank Magnini, 16625 SW 82 Court; and, Steve Kreisher, 18201 SW 98 Avenue.

Former Councilman Dr. Ed Feller, 7960 SW 144 Street, provided a history of the program in Palmetto Bay. He explained that an amendment was made to the Ordinance by then-Councilman Patrick Fiore to include a bill of rights to explain the program to the residents. He asserted that the ordinance was not modified, nor were people provided the information.

Vice Mayor DuBois remarked that the exclusivity that YGreene enjoys is fundamentally the problem with the interest rates. Councilman Schaffer concurred, adding that he is concerned with the perception that the Village is endorsing this program.

Discussion ensued concerning the “bill of rights” and the enabling Ordinances concerning the PACE Program.

Mayor Flinn stated that modifications may have to be made to the website in order to be certain that the information is accurate.

Attorney Lehtinen expressed that the for-profit status of YGreene raises the concern of a conflict of interest. He noted that there is some confusion with regard to a relationship between the governmental authority and a private company. He stated that there is a constitutional law in Florida that prohibits a government from using its funds to benefit a private company; however, YGreene is cloaked as a government entity. Attorney Lehtinen further explained that there is confusion with the program, as if it is not YGreene that is being benefited by using government special assessment power, then it is the individual home owner that is using the government special assessment power to benefit themselves. He stated that, in general, the Village’s special assessment lien would take priority over a mortgage.

Pinecrest’s Mayor Lerner noted that she had texted Attorney Chad Friedman (counsel to the Green Corridor District) and he advised that the PACE liens are primary to the first mortgage. She suggested the Council coordinate a meeting with Attorney Friedman and the Town Manager of Cutler Bay in order to be fully informed.

Mayor Flinn suggested that Attorney Lehtinen meet with Attorney Friedman. He asked Clerk Alexander to be certain the next YGreene meeting is noticed for compliance with Sunshine laws.

- B. Negotiation of Employment Agreement with Edward Silva as Village Manager. If successfully negotiated, adoption of Resolution offering an Employment Agreement to Edward Silva and subsequent appointment following acceptance of same.

Vice Mayor DuBois moved this item forward. Seconded by Councilwoman Siegel Lara.

Attorney Lehtinen advised the Council that the purpose of this discussion is contract negotiation. He provided a draft document for consideration.

Mayor Flinn stated that as the Council has expectations of the Manager, there is a need for a defining document wherein each Council Member signs the agreement. He opined that this document would assist with regard to managing disputes.

Attorney Lehtinen stated that the document would be an addendum, and the Council should have time to review the document. He opined that the proposed addendum would not affect the at-will contract.

Vice Mayor DuBois asked how number one of the contract would be different from the job description in the Charter. Attorney Lehtinen stated that the job description is within the Charter; the document drafted by Mayor Flinn is how the manager and the council perform.

Attorney Lehtinen asked the Council to consider the matter concerning salary, noting that a fixed number can be more valuable with fringe benefits. He noted that the State in recent years prohibited severance pay over 20 weeks; therefore, a higher salary may be considered as the Manager will not be protected by a substantial severance. He explained that the previous manager had a better severance.

Councilwoman Siegel Lara asked if the ending salary of \$168,655 of the previous manager was per the contract.

Councilman Schaffer stated that there was cost of living added to the initial annual salary. Vice Mayor DuBois noted that the Council raised the salary by 10% retroactively for the last six months of employment.

Discussion ensued regarding cost of living. The Clerk explained that the cost of living was part of the Manager's contract. Attorney Lehtinen stated that, similar to the Clerk's contract, the Council could include a provision that allows an automatic increase, if an annual review is not performed. He noted that this was included in the Clerk's contract due to the Council not performing an evaluation on the Clerk for many years.

Following discussion concerning evaluation, Vice Mayor DuBois suggested that an annual review is the time for adjusting salaries. Mayor Flinn concurred, but added that the funds need to be included in the budget. Councilwoman Siegel Lara concurred.

Vice Mayor DuBois stated that if the Clerk will be receiving 2% automatic merit, if no evaluation, then the Manager should receive the same.

Vice Mayor DuBois asked how cost of living increases (COLA) are considered. Manager Silva explained that COLA's are based upon the budget and the national average. Councilman Schaffer stated that salaries are under the control of the village manager.

Following comment, the Council agreed that Manager Silva will be given COLA, if all other employees are receiving it, and an automatic 2% increase, if the Council neglects to perform an annual evaluation.

Attorney Lehtinen raised the issue of the retirement plan. He noted that the Village offers 6% and an employee can match up to additional 6%. He stated

that this benefit is equal for all employees; however, the prior manager had an additional 6% in deferred compensation and the Clerk has an additional 3%.

Following brief comment, the Council concurred to offer 6% into deferred compensation, in addition to the standard retirement benefit offered to all employees.

Attorney Lehtinen reviewed issue 5, Personal Time Off (PTO.) He noted that the former manager's contract capped at 90 days. He stated that Mr. Silva would keep his previously earned PTO.

Councilman Schaffer raised the matter of insurance. He noted that the Village would cover the cost of the premiums for health, life, accident death and dismemberment, but asked if there would be a separate contract for disability. Attorney Lehtinen stated that he was informed by the Human Resources Department that the policy would be for one year and include a 30-day waiting period.

Mayor Flinn recognized former Vice Mayor Linda Robinson. She expressed her support for Mr. Silva.

Mayor Flinn suggested that the Council consider short term disability regardless, with a long term disability policy for a premium not to exceed \$4,000.00.

Councilwoman Siegel Lara suggested providing short-term disability; then, providing a long term disability allowance with a premium not to exceed \$4,000, in addition to the medical and dental and accidental death and life insurance.

Vice Mayor DuBois suggested \$1,500 for a short-term disability policy; \$4,000 for a long-term disability policy. Mayor Flinn stated that the manager could select the policy, but not receive the excess if the premium is less than what is allocated. The Council concurred.

Attorney Lehtinen asked the Council's direction for phone and auto allowance, noting the previous contract was \$200 for phone, \$750 for auto.

Vice Mayor DuBois suggested reducing the auto allowance to \$600. Mayor Flinn suggested \$500. Councilwoman Cunningham stated that \$550 was included in the contract. Manager Silva explained \$550 was the allowance or the lease of a hybrid/electric American car.

Mayor Flinn stated that the manager could lease up to \$550 or take the allowance of \$550. The Council concurred.

Attorney Lehtinen noted that under Section 5.4, the manager would be entitled to the same holidays that employees enjoy.

Vice Mayor DuBois raised the matter of PTO hours. Following discussion, the Council concurred that if the manager has to work a holiday, he would receive compensatory time.

Following discussion as to the appropriate level of PTO and cap for those hours, the Council concluded that 8 hours per pay period accrual would result in 6 weeks, annually, of PTO time. The Council concurred to provide 8 hours of PTO per pay period with a cap of 120 hours.

Mayor Flinn suggested deleting the section on Holidays, noting that the manager is an on-call employee.

Attorney Lehtinen noted that while there is a termination clause, Florida is an at-will employment State.

Councilwoman Siegel Lara stated that while the maximum term is four years, she prefers to review each two years with an automatic renewal for an additional two years. Following brief comment, the Council concurred, noting that the 30 day notice to not renew remains (60 days' notice from Mr. Silva to Council.)

Attorney Lehtinen began discussion on Section 6.2 Termination for cause. The Council concurred to use the existing language.

Concerning severance, the Council concurred that the maximum of 20 weeks would be acceptable, accruing over the years of employment. Ten weeks is provided initially, accruing three weeks per year to a maximum of 20 weeks over the term of a four year contract.

Attorney Lehtinen raised the issue in Section 7 concerning outside business. He explained that this section allows Mr. Silva to have a business, but not manage it, and he cannot do business with the Village or have customers within the Village boundary. Mr. Silva concurred.

Attorney Lehtinen stated that Section 8 stated that the Council and Management acknowledge that performance measures can be created at a later date.

Councilwoman Cunningham thanked the Mayor for preparing the manager/council addendum. Councilman Schaffer concurred, but stated that the document seems to mirror a job description. Councilwoman Cunningham read the following language from the South Miami employment agreement:

A. The City may annually review the performance of the City Manager in May of each year, in accordance with the process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the City and the City Manager.

B. The annual evaluation process, at a minimum, shall include the opportunity for both parties to: (1) conduct a formulary session where the governing body and the City Manager meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period; (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year, (3) next meet and discuss the written evaluation of these goals and objectives; and, (4) present a written summary of the evaluation results to the City Manager. The final written evaluation, prepared by each commission member individually, shall be completed and delivered to the City Manager and the City Clerk within thirty (30) days of the initial formulary evaluation meeting, if any.

Following discussion, the Council concurred to consider the addendum at a future meeting.

The Council commenced discussion concerning the Manager's salary. Mayor Flinn asked Mr. Silva if he were still interested in asking for \$195,000. Mr. Silva stated that due to the State law reducing the severance, this amount is appropriate.

Mayor Flinn remarked that as this is the first village manager position held by Mr. Silva, he believes that Mr. Silva making more than the previous manager would not be appropriate. He stated that he could be in favor of the salary if Mr. Silva would be acting as Building Official, as well.

Attorney Lehtinen stated that the Council may wish to define the job of manager in such a way to avoid dual office holding.

Vice Mayor DuBois expressed his opposition to Mr. Silva holding both positions. Councilwoman Cunningham concurred.

Councilman Schaffer suggested that a director be hired to manage the building department, but Manager Silva remain as Building Official.

Councilwoman Siegel Lara stated that she is not in favor of the highest level of the administration holding multiple tasks.

Mayor Flinn asked how the Village will be issuing permits in the meantime. Manager Silva advised that the Building Official of Pinecrest is serving in that capacity. Councilwoman Cunningham asked if Mr. Silva is overseeing the department. Manager Silva stated that he was.

Mayor Flinn asserted that the perception of dual office holding is of concern, as the manager is responsible for all performance that gets done in every department, not just one. He suggested the salary of \$150,000.

Councilwoman Cunningham suggested that the former manager's final salary be the starting salary.

Manager Silva provided salaries of various municipal managers, noting that the severance for the position has been reduced by State legislation. He stated that \$150,000 would be less than what he is currently earning and he would not accept that salary level.

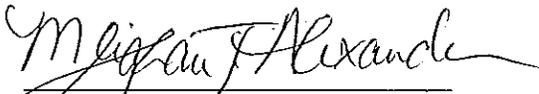
Councilwoman Cunningham reiterated the salary level of \$168,654.71. Councilwoman Siegel Lara suggested that \$175,000 be offered due to the reduction in PTO and the reduced severance. She noted that \$175,000 is commensurate with the neighboring cities. Vice Mayor DuBois concurred with Councilwoman Siegel Lara. Councilman Schaffer suggested \$170,000.

Councilwoman Siegel Lara moved to set the salary level at \$175,000. Seconded by Vice Mayor DuBois. The motion carried (3-2, Mayor Flinn and Councilwoman Cunningham opposing.)

Vice Mayor DuBois moved to direct Attorney Lehtinen to prepare a contract for approval at a Special Council meeting set for June 24 at 6 pm. Seconded by Councilwoman Siegel Lara. All voted in favor.

5. NEXT MEETING AND ADJOURNMENT: The Meeting adjourned at 11:45 pm.

Prepared and submitted by:



Meighan J. Alexander, CMC
Village Clerk

Approved by the Village Council on this 8th day of September, 2015.



Eugene Flinn, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE VILLAGE FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW. WHILE THE FLORIDA STATUTES DO NOT REQUIRE TAPE RECORDINGS, TO THE EXTENT THAT TAPE RECORDINGS ARE MADE, THE TAPES MAY BE REQUESTED FROM THE VILLAGE CLERK FOR REVIEW AND/OR COPYING. THE VILLAGE OF PALMETTO BAY CAN NOT GUARANTEE QUALITY OF ANY RECORDING.