



AGENDA

Lake Park Town Commission
Town of Lake Park, Florida
Emergency Commission Meeting
Monday, January 30, 2012, 6:30 p.m.,
Lake Park Town Hall
535 Park Avenue

James DuBois	—	Mayor
Kendall Rumsey	—	Vice-Mayor
Steven Hockman	—	Commissioner
Jeanine Longtin	—	Commissioner
Tim Stevens	—	Commissioner
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Maria V. Davis	—	Town Manager
Thomas J. Baird, Esq.	—	Town Attorney
Vivian M. Lemley, CMC	—	Town Clerk

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Town Commission, with respect to any matter considered at this meeting, such interested 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. *Persons with disabilities requiring accommodations in order to participate in the meeting should contact the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.*

- A. **CALL TO ORDER**
- B. **PLEDGE OF ALLEGIANCE**
- C. **ROLL CALL**
- D. **DISCUSSION AND POSSIBLE ACTION:**
Consideration of Separation Agreement with Town Manager Maria V. Davis *
- E. **ADJOURNMENT:**

* This item is for Commission discussion and deliberation only, and not a public hearing item.



Minutes
Town of Lake Park, Florida
Emergency Commission Meeting
Monday, January 30, 2012 6:30 p.m.
Town Commission Chamber, 535 Park Avenue

The Town Commission met for the purpose of a Emergency Commission Meeting on Monday, January 30, 2012 at 6:30 p.m. Present were Mayor James DuBois, Vice-Mayor Kendall Rumsey, Commissioners Steven Hockman, Jeanine Longtin and Tim Stevens, Town Manager Maria Davis, Town Attorney Thomas Baird, and Town Clerk Vivian Lemley.

Town Clerk Vivian Lemley performed the Roll Call. Mayor DuBois led the Pledge of Allegiance.

DISCUSSION AND POSSIBLE ACTION:

1. Consideration of Separation Agreement with Town Manager Maria V. Davis

Mayor DuBois explained the purpose of the meeting. He stated that the Commission had been provided with a draft severance agreement for consideration. He stated that this was not a public hearing and public comments would not be taken.

Town Attorney Baird explained the severance agreement. He stated that two provisions were added on page 3 of the agreement. The first provision is a boilerplate mutual release provision whereas the Town releases Ms. Davis and Ms. Davis releases the Town. The second provision is in section 10 No Disparagement, and he noted it is a clause that is often used in employment contracts stating that the two parties will not make bad or untruthful statements about each other. He further noted violation of section 10 would be a breach of the agreement. He stated that the agreement provides for three month severance compensation and that the Town would pay for health care coverage and that Ms. Davis is entitled to her accrued annual leave.

Mayor DuBois asked Town Manager Davis if this was the agreement.

Town Manager Davis asked what the health benefits provision includes.

Town Attorney Baird advised that the health care provision included three months contribution of \$1,792.98.

Town Manager Davis stated that the provision does not represent the entire health care package.

Town Attorney Baird advised that the information was provided by the Town Finance Director, and advised that it does not include life, dental or vision insurance coverage.

Attorney Isidro Garcia asked to be recognized.

Town Attorney Baird advised that Mr. Garcia is the attorney hired by Ms. Davis to represent her and recommended that the Commission allow him to speak on Ms. Davis' behalf.

Mr. Garcia noted that the agreement was received by Ms. Davis on Friday, January 27, 2012 and that she has had a very short time to review this agreement. He requested that paragraph 3 on the first page be modified by striking the words "with the Employer in lieu of the termination of her employment with, or without cause".

Town Attorney Baird advised he would have no objection to the modification as recommended.

Mr. Garcia advised that the second change being requested is in section 4 that the severance be changed from three months to six months. He noted that he has reviewed the agreement and Ms. Davis is entitled to nine months severance and believes she has done nothing to warrant termination for cause and requested that the Commission consider six months of severance.

Mayor DuBois clarified that the two modifications are the deletion of the language in the second whereas clause and to section 4 changing the severance compensation to 6 months.

Mr. Garcia advised "yes".

Town Manager Davis advised that she is concerned about the health care benefits because what is in the agreement presented is not what was discussed with Town Attorney Baird. She stated the discussion included all health care benefits not just medical.

Town Attorney Baird advised that he did discuss all health care benefits being included. However, in his discussion with each Commission there was no agreement to provide any other benefit than medical. He noted that some Commission members were opposed to offering health care. He stated that he does not believe providing life, dental and vision insurance is required. He explained that providing all health benefits including life, dental and vision insurance would be required if this was a termination without cause according to Ms. Davis' employment agreement. He stated that this is a voluntary resignation and according to section 23 of the employment agreement Ms. Davis is not entitled to any compensation or benefits. He explained that the severance agreement exceeds the requirements of section 23 of the employment agreement and further noted that voluntary resignation is at the sole discretion of Ms. Davis.

Mr. Garcia stated that the third requested change is to provide in addition to the medical insurance that life, disability, vision and dental insurance also be provided. He noted that the cost to provide the additional benefits for three months would be minimal estimating

it would be less than \$1,000. He noted that they are asking for six months of severance and three months of insurance to include medical, disability, life, vision and dental.

Town Attorney Baird clarified that the request is to include all the benefits referenced in section 22 of the employment agreement. He read from the agreement the following items: medical, dental, vision, long term disability, short term disability and life insurance. He also noted it would include the pension contribution which is 15 percent each pay period.

Mayor DuBois recommended changing section 4b of the severance agreement by adding the word "benefits" after the word "employee's" and striking the remainder.

Mr. Garcia recommended changing section 4b by adding the word "benefits" after the word "employee's" as per section 22 of the employment agreement.

Town Attorney Baird clarified that section 12 of the employment agreement cites the health benefits.

Mayor DuBois asked if that concludes the proposed changes to the agreement by Ms. Davis and Mr. Garcia.

Mr. Garcia advised "yes".

Commissioner Hockman asked if section 4a can be modified as follows: that the six months severance pay be placed in escrow until State of Florida Ethics Commission and International City/County Management Association (ICMA) make their findings.

Mr. Garcia stated that Ms. Davis would not be amenable to the addition of this provision. He further stated that this is voluntary resignation and that Ms. Davis has been cleared of any wrongdoing by the Inspector General's office and the Palm Beach Ethics Commission and is not aware of any pending investigation by the Florida Ethics Commission.

Motion: A motion was made by Commissioner Stevens to approve the severance agreement as amended specifically to amend the second whereas clause deleting "in lieu of termination of her employment with or without cause", changing section 4b to provided health benefits as per section 12 of the employment agreement, and section 4a changing three months severance to six months' severance. The motion failed due to a lack of a second.

Motion: A motion was made by Commissioner Stevens to approve the final severance agreement as amended as follows: in the second whereas clause deleting "in lieu of termination of her employment with or without cause", changing section 4b to provide health benefits as per section 12 of the employment agreement, and providing three months severance.; Vice-Mayor Rumsey seconded the motion.

Commissioner Hockman requested clarification of section 3 Mail. His understanding is that all mail or e-mail received by the Town is public record.

Town Attorney Baird explained that if they are personal e-mails, sent to the Town e-mail address they would not be considered public record, and this provision ensures that while she changes her contact information that those personal e-mails and mail are forwarded to her. He noted failure to forward personal e-mail and mail could have ramifications if she is damaged.

Commissioner Hockman stated he still wants the severance placed in escrow until the State Ethics Commission and ICMA make their findings. He noted that if either entity makes a finding of wrongdoing she would have been rewarded for her wrongdoing by providing her with this severance agreement. However, if there is a finding of no wrongdoing then the funds would be released to Ms. Davis. He stated that he had an issue with the unemployment compensation and wanted the clause removed. He stated that he had an issue with section 12 Non-Admission that it should read employee.

Town Attorney Baird advised that section 12 Non-admission, if it is the Commission's preference, could be reciprocal and read both "employer and employee".

Commissioner Hockman requested that a clause be added that the Town of Lake Park has not and will not pay for attorney fees for any attorney contacted by employee in this matter.

Town Attorney Baird advised that the severance agreement does not obligate the Town to pay for her attorney, therefore the clause is not needed.

Commissioner Hockman requested that a statement be added as follows: "Should the employer find any contracts or etcetera signed by the employee during the last two weeks of employment while occupying the position of Town Manager and deems them questionable that they become either null or void or the employer reserves the right to serve recourse against the employee."

Vice-Mayor Rumsey advised he had no comments at this time.

Mayor DuBois advised he had no comments at this time.

Commissioner Stevens asked if Ms. Davis were to apply for unemployment compensation what would it cost.

Finance Director, Anne Costello advised that it would cost \$250 per week.

Commissioner Stevens asked how long the unemployment compensation would last.

Town Attorney Baird advised 26 weeks.

Human Resources Director, Bambi McKibbon-Turner advised that 26 weeks is the maximum unemployment compensation unless extended by the Federal Government. She

stated that the Town is considered a reimbursable employer, which means the Town must reimburse the Unemployment Compensation Program for any claims that are made against the Town.

Commissioner Stevens asked if Ms. Davis applied for unemployment compensation what it would cost the Town.

Human Resources Director McKibbon-Turner advised it would cost \$6,500.00 for 26 weeks of unemployment benefits.

Mr. Garcia advised that Ms. Davis is obligated to state her income and would not be paid for the length of the severance pay.

Commissioner Stevens supported the acceptance of the severance agreement with three months of severance compensation and three month of health benefits and urged the Commission to adopt his motion.

Commissioner Longtin advised that the severance agreement does not represent her communications with the Town Attorney. She stated that a revised agreement was provided today between 1:00 pm and 2:00 pm and that she has not had the opportunity to review the agreement. She requested that if there is no resolution to this matter tonight that the Commission obtain a neutral and unbiased attorney to represent the Commission. She stated that she has been told for several years that the Town does not have money, so now we are supposed to come up with a bunch of money. She stated that the Commission is talking about the proposed severance agreement as if it was already decided, that in fact the Town will be entering into one. She stated that the Commission's responsibility under the "Town code section 2.81 Appointment and Removal of Town Manager (a) the Town Manager shall hold office at the pleasure of the Commission, appointment and removal of the Town Manager requires a four out of five majority vote of the Commission, (b) term of employment shall be established by contract not to exceed one year from date of hire or anniversary date." She stated that the employment contract as per section 3 Term was a one year contract and renewal for one year and that it expired in February 2009 therefore the Town is under no obligation to compensate Ms. Davis.

Commissioner Hockman stated he wants the severance pay to be held in escrow until the State Ethics Commission and the ICMA render a decision on whether an ethics violation occurred.

Vice-Mayor Rumsey stated that he supports entering into a severance agreement with three months severance pay and benefits.

Commissioner Longtin stated that the Commission has the option and perhaps the responsibility to terminate with cause. She stated that according to the employment agreement dated January 3, 2007 between Maria Davis and the Town "Section 21 Termination for Cause, if the Town Manager is terminated for cause the parties agree that the Town is under no legal obligation to pay the Town Manager any severance pay." She stated that according to the agreement the definition for cause is willful neglect of duty including the inability or unwillingness to properly discharge the responsibilities of

office. She stated that examples of such are the October 5, 2011 Commission Agenda. She stated that the October 5, 2011 Commission Agenda was 497 pages and of which 450 pages were minutes, over three months worth of minutes that were not submitted timely to the Commission. She stated that according to the employment agreement "section 9 Hours per Week the Town Manager shall devote whatever time is necessary to properly perform the duties of the position a minimum of 40 hours per week is necessary for adequate job performance. The amount of minutes being allowed to pile up is inexcusable." She stated that failure to conduct general maintenance such as, the sprinkler system would cost \$2,000 to have fixed that, but that a general maintenance item came before the Commission. She stated that this is a sign someone is crying out for help, sending out the personal information of all Town employees, social security numbers and addresses, without their knowledge or consent is inexcusable, to take no action to correct that is inexcusable." She stated that the remainder of the Commission may need to come to an agreement because she does not know if she would be able to do anything but termination with cause, and that it may, or not will, end up in a lawsuit.

Commissioner Stevens stated that he would support a voluntary resignation with a severance agreement as the most beneficial way to handle this situation and that this is in the best interest of the Town to move forward.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Hockman		X	
Commissioner Longtin		X	
Commissioner Stevens	X		
Vice-Mayor Rumsey	X		
Mayor DuBois	X		

Motion passed 3-2

Mayor DuBois asked Ms. Davis and Mr. Garcia if the severance agreement is acceptable.

Ms. Davis advised she would need to confer with her attorney.

Mr. Garcia asked if the motion was for three month severance compensation and three months of all of the benefits.

Commissioner Stevens advised the motion was for three month severance compensation and three months benefits as per section 12 of the employment agreement.

Motion: A motion was made by Commission Stevens to recess the meeting; Commissioner Hockman seconded the motion.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Hockman	X		
Commissioner Longtin	X		
Commissioner Stevens	X		
Vice-Mayor Rumsey	X		
Mayor DuBois	X		

Motion passed 5-0

Meeting recessed at 7:30 p.m.

Meeting reconvened at 7:37 p.m.

Town Attorney Baird advised that Mr. Garcia asked for clarification regarding whether the pension contribution by the Town was included. He noted that in section 12 of the employment agreement pension benefits are included. He noted if inclusion of the pension contribution is acceptable then there is an agreement between the parties.

Commissioner Stevens asked what the cost of the three months of pension contribution.

Finance Director Costello advised that three months of pension contribution would cost \$5,485.74.

Commissioner Hockman asked for the total severance cost for three months.

Finance Director Costello advised the total cost for severance compensation, benefits and pension contributions for three months would be \$52,588.16.

Vice-Mayor Rumsey asked for the total severance cost for 6 months.

Finance Director Costello advised that the total cost for severance compensation, benefits and pension for six months would be \$99,830. 05.

Commissioner Hockman asked if a lawsuit where to be brought to the Town is the maximum cost to the Town \$100,000.00.

Town Attorney Baird advised if sovereign immunity applies it would be \$100,000.00. However if a civil rights lawsuit is brought attorney fees would be additional and could exceed \$100,000.00.

Commissioner Stevens advised that he does not agree to include the pension contribution.

Vice-Mayor Rumsey advised that he does not agree with the inclusion of the pension contribution.

Mayor DuBois noted that the modification to include the pension contribution has not been accepted and asked Ms. Davis if the agreement would be acceptable as presented.

Ms. Davis agreed.

Town Attorney Baird advised that the Commission should appoint an Interim Town Manager at this time. He further explained that the Town form of government is Manager/Commission and a Town Manager would be necessary to carry out administrative functions as the Town Commission cannot act in this manner. He noted that an appointment of a Interim Town Manager until a permanent Town Manager is hired can be considered at the Wednesday, February 1, 2012 meeting.

Mayor DuBois suggested Public Works Director Dave Hunt.

Commissioner Stevens asked if Mr. Hunt would accept the appointment of Interim Town Manager.

David Hunt advised that he was approached on Friday by Town Attorney Baird whether he would accept the position of Interim Town Manager and declined. He advised that he would accept the appointment until the Wednesday, February 1, 2012 meeting in an effort to assist the Town.

Motion: A motion was made by Commissioner Stevens to appoint David Hunt as Interim Town Manager until the conclusion of the Commission Meeting on Wednesday, February 1, 2012; Vice-Mayor Rumsey made the second.

Vote on Motion:

Commission Member	Aye	Nay	Other
Commissioner Hockman		X	

Commissioner Longtin		X	
Commissioner Stevens	X		
Vice-Mayor Rumsey	X		
Mayor DuBois	X		

Motion passed 3-2

ADJOURNMENT

There being no further business to come before the Commission and after a motion to adjourn by Commissioner Stevens and seconded by Commissioner Hockman, and by unanimous vote, the meeting adjourned at 7:48 p.m.



 Mayor James DuBois



 Town Clerk, Vivian Lemley, CMC



Approved on this 15 of February, 2012