

ORIGINAL

CITY OF BROOKSVILLE  
CITY COUNCIL

PROCEEDINGS: Executive Session Re:  
*Shawn Terry v. City of  
Brooksville - Presuit Demand*

DATE: May 2, 2011

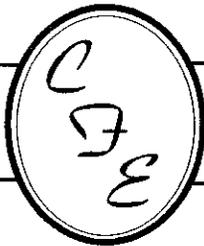
PLACE: 201 Howell Avenue  
Brooksville, Florida

REPORTED BY: C. GAIL DONATO, RPR  
Notary Public - State of  
Florida at Large

APPEARANCES: THOMAS S. HOGAN, JR., ESQUIRE  
JENNIFER REY, ESQUIRE  
DEBORAH HOGAN, ESQUIRE  
20 South Broad Street  
Brooksville, Florida 34601  
Counsel for City of Brooksville

COUNCIL MEMBERS:  
FRANKIE BURNETT, Mayor  
JOSEPH E. JOHNSTON, III  
Vice Mayor  
JOE BERNARDINI  
EMORY PIERCE

STAFF: T. JENNENE NORMAN-VACHA  
City Manager



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APPROVED BY BROOKSVILLE

CITY COUNCIL

ON

3/17/14

INITIALS

*PL*

P R O C E E D I N G S

1  
2 MR. HOGAN: We will then move on to  
3 discussion of Item D, Mr. Mayor, Shawn Terry  
4 versus City of Brooksville, presuit demand.

5 You want to do that or --

6 MS. REY: Um-hum. As you may be aware,  
7 Shawn Terry resigned his employment from the  
8 City, was subsequently arrested on a perjury  
9 charge, and was then found not guilty.

10 Following that not guilty verdict,  
11 Mr. Terry served the City with a letter on  
12 February 3 asking for the City to essentially  
13 indemnify him or pay him for the attorney's  
14 fees that he incurred in defending himself in  
15 that criminal action. The request for  
16 attorney's fees was submitted to the City's  
17 insurance carrier for payment, and the  
18 insurance carrier at this juncture sought a  
19 legal opinion from an attorney from the law  
20 group. Based on that opinion, it's the  
21 insurance company's perspective that the  
22 City, under Florida Statute 111.065, is  
23 required to pay Mr. Terry's attorney's fees.  
24 They've also indicated that that request is  
25 not a covered item, but in the interest of

1           compromise, are willing to agree to pay 50  
2           percent of those fees.

3           Mr. Terry's request for fees are the --  
4           essentially he's asking for approximately  
5           \$30,000 in legal fees, with 50 percent of  
6           those defense costs or \$15,790.60 is what the  
7           insurance carrier is agreeing to pay. They  
8           would pay 50 percent, the City pays 50  
9           percent then to compensate Mr. Terry.

10           This matter is before you because since  
11           that time the insurance carrier's offer to do  
12           that is available until May 6 or until  
13           Mr. Terry files suit. In the interim, the  
14           City has been served with a subsequent demand  
15           letter from Robert Michael on behalf of Mr.  
16           Terry, not only regarding attorney's fees,  
17           and the amount listed in that letter is  
18           \$31,581.19, but indicating that Mr. Terry's  
19           resignation was forced, potentially looking  
20           at maybe wrongful termination or some other  
21           issue.

22           We bring this matter before you this  
23           evening because based on our review of the  
24           statute and the facts as we know them with  
25           respect to Mr. Terry, it is our opinion that

1 the City is not obligated to pay Mr. Terry  
2 for the following reasons. I'll walk through  
3 the statute for you.

4 Essentially, the statute requires that  
5 for an individual to be eligible for  
6 attorney's fees, for the City to be in a  
7 position to pay attorney's fees for a law  
8 enforcement officer in defending himself in a  
9 criminal action, you have to meet 3 A, B, and  
10 C. So there are three elements that you have  
11 to meet.

12 A, however, is three parts. You have to  
13 have one of those three items. Essentially,  
14 A is: Did the officer's actions occur in  
15 response to what the officer reasonably  
16 believed was an emergency? Did the officer's  
17 actions occur when the officer reasonably  
18 believed that his or her action was necessary  
19 to protect the officer or others from  
20 imminent death or bodily harm? Or did the  
21 officer's actions occur in the course of the  
22 officer's fresh pursuit, apprehension, or  
23 attempted apprehension of a suspect whom the  
24 officer reasonably believed had perpetrated  
25 or attempted to perpetrate a forcible felony

1 as defined in Florida Statute 776, or the  
2 offense of escape?

3 So the circumstances regarding his  
4 conduct would have to fit one of those three  
5 things for him to meet Item A. Item B is  
6 whether or not the conduct arose within the  
7 course and scope of officer's duties, and  
8 Item C is whether or not the act or omission  
9 or commission were constituted -- constituted  
10 material departure from the City's policies  
11 and procedures, or generally recognized  
12 criminal justice standards.

13 So in this particular case the conduct  
14 relative to perjury did not occur in any one  
15 of those three circumstances that meet the  
16 element of A. So if it is deemed that he  
17 violated policy and procedure or that the  
18 conduct occurred in the course of his duties,  
19 he still has to meet that threshold question  
20 of did his conduct occur in one of those  
21 three circumstances related to emergency  
22 defense of self or others or in pursuit. And  
23 based on our understanding of the facts, none  
24 of those apply.

25 In addition to that, any demand for

1 attorney's fees by a law enforcement officer  
2 must be submitted within 30 days of  
3 completion of the verdict or trial. And if  
4 there is no agreement or no payment, then the  
5 officer has a defined period of time in which  
6 to seek leave of Court to then demand fees.

7 Although Mr. Terry's letter of February 3  
8 falls within the initial 30 day time frame,  
9 he did not comply with the notice  
10 requirements under the statute which require  
11 that the itemized list of expenses and costs  
12 be provided with the demand. And subsequent  
13 to that, when there was no non-payment or no  
14 communication from the City, he did not seek  
15 judicial intervention as to the nature of his  
16 fees or with the Court.

17 And so based on not only the timing of  
18 the events with regard to his quest -- his  
19 request -- or the lack of an itemized  
20 estimate, but also the underlying nature of  
21 the perjury charge not meeting the statutory  
22 requirements, it's our opinion the City is  
23 not required to pay him anything with regard  
24 to his fees at this juncture.

25 So we are looking for direction from you

1 in anticipation of litigation by Mr. Terry  
2 with regard to his fees, but also potentially  
3 his resignation for what is being alleged to  
4 be a wrongful termination.

5 MR. HOGAN: I think also, I might add,  
6 and correct me if I'm wrong, Ms. Rey, but we  
7 also disagree with the analysis of the  
8 opinion letter that was submitted by our  
9 insurance carrier as to why if we are liable,  
10 why they are not liable.

11 MS. REY: That's correct.

12 MR. HOGAN: So it's sort of a two-edged  
13 sword. We don't think that the City is  
14 liable for the fees, obviously. If you get  
15 into a litigated matter, there's some costs  
16 and time and expenses that sometimes you have  
17 to make a business decision about whether or  
18 not you're going to settle a case.

19 We also don't agree that if -- with the  
20 insurance carrier's analysis that if we are  
21 liable -- they say they're still not. We  
22 think if we are, they are. Maybe I explained  
23 that right.

24 COUNCIL MEMBER BERNARDINI: Well, I guess  
25 if they're going to pay 15,000, they're

1 accepting some type of liability.

2 COUNCIL MEMBER PIERCE: I was going to  
3 say if we pay Mr. Terry's requested amount,  
4 31,000 and change, is he going to then agree  
5 to release the City from all future  
6 liabilities with regard to his employment  
7 with the City?

8 MS. REY: It is something that we would  
9 ask for him to do if we chose to pay him  
10 that. That has not been part of the  
11 discussion at this juncture, so I can't  
12 represent to you that I have a commitment  
13 from Mr. Terry or his attorney that they  
14 would be willing to enter into a full  
15 release.

16 COUNCIL MEMBER PIERCE: My recommendation  
17 is pay the amount if he's willing to give us  
18 a full release.

19 MR. HOGAN: What would you do about the  
20 insurance?

21 COUNCIL MEMBER PIERCE: Well, they're  
22 willing to pay 15,000 now?

23 MR. HOGAN: Um-hum.

24 COUNCIL MEMBER PIERCE: Take what you can  
25 get from them.

1 MR. HOGAN: Try to negotiate a better  
2 deal with them and a full release from Terry?

3 COUNCIL MEMBER PIERCE: Okay. Negotiate  
4 as good a deal as you can from the insurance  
5 company and get a full release from  
6 Mr. Terry. But under any -- all  
7 circumstances, pay what he wants, get his  
8 full release. That's the priority. That  
9 would be my priority.

10 COUNCIL MEMBER JOHNSTON: I would agree.  
11 Again, but only if we could get a full  
12 release from any and all actions. I'm not  
13 happy about it. I'm wondering how the  
14 Markham Group comes up with such a  
15 diametrically opposed position reading the  
16 same statute. I know attorneys do that all  
17 the time, but what was their logic under the  
18 first three category things you were talking  
19 about? I was listening to you and I could  
20 see how that is a requirement. It doesn't  
21 fit in this instance.

22 MS. REY: In their -- our perception, I  
23 have not spoken with the attorney who wrote  
24 that particular opinion, but in reviewing the  
25 opinion, it is our perception that it's an

1 understanding of the facts and the underlying  
2 nature of what his arrest was for.

3 His actual arrest was a perjury charge  
4 related to a deposition testimony, which was  
5 related to an incident. That incident, the  
6 facts surrounding that incident, could be the  
7 basis on which they're saying one of those  
8 three threshold items are met.

9 MR. HOGAN: I agree with you. I don't  
10 think they have a clear understanding of the  
11 facts at all. And the statute is designed to  
12 reimburse an officer for legal fees that  
13 arise in some sort of a tort claim that would  
14 arise from a high speed chase or if someone's  
15 injured or the use of -- the use of force or  
16 deadly force where someone's either injured  
17 or killed and the police officer is  
18 personally sued. That's what's envisioned by  
19 the statute.

20 So how the insurance carrier's lawyer  
21 comes to a point that Mr. Terry's expenses  
22 should be paid, but the insurance carrier is  
23 not liable, you can try to -- I don't  
24 understand how he gets there at all. But  
25 expediency could easily dictate the business

1 decision that y'all have been discussing.

2 COUNCIL MEMBER JOHNSTON: My preference  
3 would be not to -- I agree with Mr. Pierce.  
4 If we can get a full release and make  
5 anything else that's a possibility go away, I  
6 don't know that that would come to anything,  
7 but in the end it's just sometimes like  
8 throwing good money after bad and just stop  
9 the bleeding while you can. Councilman  
10 Bernardini?

11 COUNCIL MEMBER BERNARDINI: Go along with  
12 what's been said. I mean, you know, my  
13 personal thoughts on these issues were that  
14 you were always protected if you were  
15 arrested or something happened to you in the  
16 line of duty. That's just my thought of it.  
17 I didn't know there was those three elements  
18 in A that you discussed. I guess when  
19 they're talking to you about that, you know,  
20 those three things, as they sell you a  
21 policy, I don't mean that in a personal way,  
22 but talking about you're covered in case  
23 something happens to you, you're not really  
24 as covered as you think, as the officer  
25 thinks.

1           MR. HOGAN: That's a statutory provision  
2           describing exigent circumstances. It does  
3           not mean that the City, either by written or  
4           unwritten policy, can't decide that the fair  
5           thing to do is to pay the fees. So if you  
6           decide tonight that you are either paying the  
7           fees because you don't want to get caught in  
8           the quagmire of a lawsuit and have a  
9           distraction for your City staff or your City  
10          attorneys and you just want it to be done and  
11          get a release, or whether you think that it's  
12          the right thing to do as a policy matter.  
13          Either way, we would seek a, you know, a  
14          release, full release, and the case would be  
15          done and over with. So I think you have the  
16          authority to go either way with it. That's  
17          your option.

18          CHAIRMAN BURNETT: I don't really agree,  
19          based on the three criterias that has to be  
20          met, but sometimes it's peace be still. You  
21          know, I wouldn't want to see the City getting  
22          dragged out to court, but I do want it  
23          understood that I don't agree with it. But  
24          if it will make peace be still, then I'll go  
25          along with what Council Member Pierce and the

1 Vice Mayor is saying. Because I have seen  
2 those types of cases in the court of law and  
3 sometimes you just put it up under the bridge  
4 and go on, and keep -- because I think this  
5 one may end up going to court. It would take  
6 a lot of staff time. Especially when the  
7 insurance going to pay 50 percent of it. So  
8 it's not like you paying the whole thirty  
9 thousand. But peace be still on that.

10 COUNCIL MEMBER JOHNSTON: I think we also  
11 need to be cognizant of the fact that this is  
12 just an offer, and they may not accept it.  
13 They may decide that they want to go after  
14 wrongful termination or whatever and get big  
15 bucks and back pay and all that sort of stuff  
16 and they may reject it out of hand. All we  
17 can do is say we'll make the offer and if  
18 they decline the offer, then, you know.

19 MS. REY: In the event that the offer is  
20 accepted and a full release is negotiated,  
21 any final settlement agreement or release, as  
22 to that matter, would come back to Council on  
23 a regular agenda item for review and  
24 approval. If for some reason either the  
25 offer is rejected or they're not amenable to

1 a particular release, we'll go from there.

2 COUNCIL MEMBER BERNARDINI: So is that a  
3 motion by --

4 MR. HOGAN: I think we have a full  
5 understanding. We're going to do this one  
6 differently and that's okay, but I think we  
7 have a full understanding that you want us to  
8 bring back a settlement agreement and that  
9 you want us to -- authorizing us to pay as  
10 much as \$30,000, get a full release from  
11 Mr. Terry, and in the meantime get as much of  
12 that reimbursed by the insurance carrier as  
13 we can. Got it?

14 MS. REY: I think we got it. For  
15 clarification, it would be up to 30,000 or  
16 the 31,000 that you --

17 COUNCIL MEMBER JOHNSTON: Thirty-one,  
18 whatever it is.

19 COUNCIL MEMBER PIERCE: I don't care. I  
20 wouldn't object to a little leeway, make it  
21 35,000, not to exceed 35,000. Give them some  
22 walking around money to walk away, far away.

23 MR. HOGAN: Is that the direction?

24 COUNCIL MEMBER BERNARDINI: Sure.

25 COUNCIL MEMBER JOHNSTON: Okay.

1 MR. HOGAN: Okay. That seems to be the  
2 direction of Council. Just so you understand  
3 why, we don't understand the insurance  
4 carrier's opinion. Little excerpts from it,  
5 at first he says I have no opinion as to  
6 whether PRM or the City is responsible, for  
7 those facts are not before me. But if the  
8 City is not covered by PRM for alleged  
9 criminal conduct -- and I bet it isn't --  
10 then the City would likely be the responsible  
11 party. He goes on to say, "I believe this is  
12 one of those cases where Shawn Terry's case  
13 represents legislative intent and should be  
14 the public policy." So I don't know. I  
15 don't know. I don't know what he's saying.  
16 So I think we understand your direction.

17 COUNCIL MEMBER BERNARDINI: I think it's  
18 kind of like a previous judge we had that  
19 said one thing and then --

20 MR. HOGAN: Yes, sir.

21 COUNCIL MEMBER BERNARDINI: -- after he  
22 said that, he said something else.

23 MR. HOGAN: Maybe this gentleman will go  
24 on to be a judge.

25 COUNCIL MEMBER JOHNSTON: Maybe he was a

1 judge.

2 MR. HOGAN: Anything further on the Shawn  
3 Terry vs. City of Brooksville presuit matter?  
4 Mr. Mayor?

5 CHAIRMAN BURNETT: Anything else,  
6 Council? Anything else?

7 Okay. We're going to adjourn from the  
8 executive session and take a five-minute  
9 break.

10 (Proceedings concluded.)

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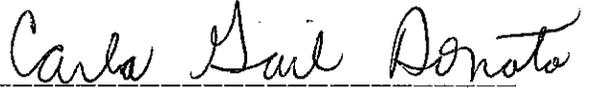
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1 STATE OF FLORIDA )

2 COUNTY OF HERNANDO )

3 I, CARLA GAIL DONATO, Registered Professional  
4 Reporter, certify that I was authorized to and did  
5 stenographically report the foregoing proceedings  
6 and that the transcript is a true record of said  
7 proceedings.

8 Dated this 28th day of January, 2014.

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11 CARLA GAIL DONATO, RPR

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