

CITY OF BROOKSVILLE
201 Howell Avenue
Brooksville, FL 34601

COUNCIL WORKSHOP
MINUTES

December 14, 2015

3:00 p.m.

Brooksville City Council met in workshop session with Mayor Natalie Kahler, Vice Mayor Robert Battista, and Council Members Betty Erhard, Frankie Burnett, and William Kemerer. Also present was City Attorneys Tom Hogan, Clifford Taylor and Jennifer Rey; T. Jennene Norman-Vacha, City Manager; Ginny Wright, City Clerk; Richard Radacky, Director Public Works; Bill Geiger, Director of Community Services.

CALL TO ORDER

The meeting was called to order by Mayor Kahler, followed by an invocation and the Pledge of Allegiance.

QUASI JUDICIAL PROCEEDINGS

City Attorney Tom Hogan provided a detailed PowerPoint presentation review of Quasi Judicial Proceedings and Statutory Requirements.

Attorney Hogan provided an explanation of a quasi judicial proceeding as the action taken and discretion exercised by public administrative agencies or bodies that are obliged to investigate or ascertain facts and draw conclusions from them as a foundation for official action. He noted a decision can be acquired upon hearing the affected parties with due process. Council Member Kemerer asked if the City Council can require a time limit for individuals to speak. Mr. Hogan responded you must provide notice and allow affected parties a fair opportunity to be heard in accordance with the basic requirements of due process; via the U.S. Constitution and the Florida Constitution. Parties must be permitted to finish their valid points. Attorney Hogan noted parties have the right to present evidence and to cross-examine adverse witnesses.

Council Member Burnett asked who needs to be sworn in. Attorney Hogan responded both the parties, i.e., the petitioner and the opposed must be sworn in, as well as any expert witnesses to include staff, engineers involved, etc. Council can decide if they want to accept these individuals as an expert based on questions they ask.

Florida Statutes Section 286.0115 provides a safe refuge to public officials who may have been exposed to ex-parte communications.

Public officials are required to disclose ex-parte communications in order to assure that an adverse party has the opportunity to confront, respond and rebut any such disclosure in an effort to prevent any appearance of impropriety. If there is any ex-parte communication the City Clerk is to make copies and to provide to the City Council.

Attorney Taylor stated the importance for City Council to review ex-parte communications upfront rather than wait. Attorney Rey provided an outline in accordance with Florida Statute 286.0115(1)(c)2 that states any person not otherwise prohibited by statutes, charter provision, or ordinance may have any ex-parte communication with any local public official on the merits of any matter on which action may be taken by any board or commission; on which the local public official is a member and that the presumption of prejudice is removed as long as the subject of the communication and the identity of the person, group or entity with whom the communication took place is disclosed and made a part of the record, prior to final action on the matter. This includes a written ex-parte communication as long as the writing is made part of the record before final action on the matter.

Attorney Hogan provided detailed information and explained competent substantial evidence must amount to more than bare allegations or objections as it must establish a justifiable reason for support for oppositions to an issue. He stressed that competent substantial evidence is not hypothetical, speculative, fear or emotion based, generalized statements or irrelevant as to the requirements that must be met. Evidence must be legally sound, based on facts, reliable and credible, material and relevant, tends to provide a point that must be proven; establishes a reasonable, substantial justification for the point argued; and a reasonable mind would accept as enough to support the argued for conclusion. Attorney Hogan also provided several examples of insufficient evidence, as well as examples of sufficient evidence.

Attorney Hogan provided a brief review of Quasi Judicial Hearings as follows:

- Parties must be afforded due process
- Notice
- Opportunity to be heard
- Disclosure of all ex-parte communications

Council must adhere to the essential requirements of the law.

Council's decision must be based on competent substantial evidence.

Vice Mayor Battista discussed a case in which a city council/county commissioner refused to speak with constituents. He explained the case in detail, adding that you must take notes to lay-out the facts presented for each case and base your decision on facts/substantial elements of the case. City Attorney Hogan expressed to be sure to practice preventative law. Maintain good decision making records via written facts and back up documentation on file.

ETHICS IN GOVERNMENT

Attorney Taylor provided a PowerPoint presentation “Ethics in Government” review of Chapter 112, Code of Ethics for Public Officers. He stressed the importance of ensuring the City’s ordinances are reviewed thoroughly and provided several case examples i.e., Jesus Fellowship, Inc. v. Miami-Dade County; and Pollard v. Palm Beach County. Attorney Rey discussed in detail the Standards of Conduct; Unauthorized Compensation; Misuse of Position; Doing Business with One’s Agency; Conflicting Relationships; Voting Conflicts; Misuse of Information; Nepotism; Gifts; - Honoraria; Revolving Door, and Required Disclosures Forms as follows: Financials Statements; Sole Source of Supply; Voting Conflict Memorandum Quarterly Gift Disclosures.

A detailed presentation was provided with highlights as follows:

Unauthorized compensation

Several case examples were provided such as the Wasserman suit.

Dual Roles:

As a county or municipal employee you may not hold office as a member of the governing board of the entity that concurrently employs you.

Misuse of public positions

As a public officers you may not perform your official duties corruptly use or attempt to use your official position or use any property or resource in your trust to secure a special privilege for yourself or others.

Misuse of Information

As a current or former public officer you may not disclose or use information not available to the general public that you learned of because of your official position for the benefit of any person or business entity.

Nepotism

As a public official you may not appoint, employ promote or advocate to another to appoint, employ or promote. Any relative for a job in the agency may not be appointed employed or promoted by the collegial body of which a relative of the individual is a member.

Gifts

Any service or thing statutorily listed or having an ascertainable value accepted directly or indirectly by recipient or on recipients behalf for recipient’s benefit without equal or greater consideration within 90 days. Examples of gifts were provided by Attorney Taylor.

Attorney Taylor stated the City’s Code of Conduct is more restrictive than the State Statutes. He stated the importance to not accept gifts as indicated to sway votes, etc. Council Member Kemerer said he cautious not to take gifts at all. The

City Manager indicated gifts over \$25 must be reported on a quarterly disclosure form.

Doing Business with One's Agency

As a public officer you may not accept public employment with the State or any political subdivision if you know or reasonably should know that the position is offered for the purposes of gaining influence or advantage due to your office or candidacy. You may not while acting in your official capacity purchase or lease form you own business, you may not sell or lease to your own governmental entity on behalf of your own business.

Conflicting Relationships

You may not own or work for (as employee or contractor a business that is subject to regulation by your own agency.

Honoraria

Attorney Taylor explained an n honorarium is a payment of money or anything of value given directly or indirectly as consideration for an oral presentation or a writing to be published. If you receive an honorarium related expensed form a lobbyist, vendor, or political committee, you must report name/address/affiliation of payer, amount, date of event, description of expenses each day and the total value provided annually.

Statement of Financial Statements

Attorney Taylor provided a review of all areas including forms.

Penalties for Violations

Public Officers penalties can include impeachment; removal from office, suspension from office, forfeit up to 1/3 salary up to 12 months; public censure and reprimand, civil penalty up to \$10,000, restitution.

ADJOURNMENT

There being no further business to bring before the Council, the meeting adjourned at 5:00 p.m.



City Clerk

Attest 

Mayor

