

Minutes of the Regular Meeting of the City Commission of the City of Auburndale held August 31, 2020 at 6:45 p.m. in the Commission Room of City Hall, after having been properly advertised, with the following members present: Mayor Tim Pospichal, Commissioners: Dorothea Taylor Bogert, Keith Cowie, Richard Hamann, and Jack Myers. Also present were: City Manager Robert Green, Finance Director/City Clerk Shirley Lowrance, and Police Chief Andy Ray.

Mayor Tim Pospichal declared a quorum present and the Meeting was opened with a salute to the flag.

Mayor Tim Pospichal read the notice of the Special Meeting of the City Commission of the City of Auburndale for Monday, August 31, 2020 to interview selected candidates for the position of City Attorney. The City Commission on August 24, 2020 selected the firms of Boswell & Dunlap and the Vose Law Firm for interview. For this period of time, we want to lay out how we will do the interviews. He said he had a few questions to ask and the Commissioners had a copy of his questions. He requested if the Commission asked a question that they ask the question of both groups of attorneys. He said this way they would have the same questions. We are hiring an attorney, but the attorney is going to work for the City of Auburndale. He said we would see them every other Monday. They will work with the City Manager, City Manager's Office, and Department Heads. After we interview the second group, they will leave the Commission chambers and hopefully we can get a motion and decide on the next City Attorney for the City of Auburndale. He said he hoped we could have a consensus to give the next City Attorney all the confidence of the Commission. Hopefully, we can ask them to bring back a contract for the Thursday night meeting.

#### **DISCUSSION ON INTERVIEW PROCESS**

Commissioner Dorothea Taylor Bogert asked if the two firms would be in the Commission room together.

City Manager Green said once the interviews start, the other party will go to his office across the hall.

Commissioner Richard Hamann asked if the contract they brought back would have more negotiations.

City Manager Green said they have provided their proposal with the retainer fee and the like. He said we have the Agenda packet ready for Thursday night. The last item on that Agenda is to consider the contract for legal services. They will present their written contract that is reflective of the agreement with the retainer.

Commissioner Jack Myers asked if the contract would be for multiple years and did it have escalators for the fees.

City Manager Green said that would be up for discussion on Thursday night, after they have been selected. We have already talked to both firms and they have the written agreement we had with Pat Kee. They do not expect some of the other benefits such as health insurance.

Commissioner Dorothea Taylor Bogert asked when we sent these proposal requests did any of them ask for our last five years of data on litigation. She asked if we provided any information like this for them to reflect on the costs.

City Manager Green said no, we were not requested to provide additional information and a lot of that would be public record anyway.

Commissioner Keith Cowie clarified once we are done with the interviews, both firms will be out of here while we make our decision.

City Manager Green said yes, almost like on election night where both groups will be called back into the rotunda and Assistant City Manager Tillman will go out and announce the decision of the Commission. We would ask both parties to stay in the rotunda and as the Commission adjourns, you could thank both parties

for submitting their application.

The consensus of the Commission was to begin the Interviews after a short break.

Break from 6:51 to 6:53

**INTERVIEW BOSWELL & DUNLAP LLP (Fredrick John Murphy, Jr., W. A. "Drew" Crawford; Seth B. Claytor),**

Commissioner Dorothea Taylor Bogert asked how we determined who would go first.

City Manager Green said it was in alphabetical order. At the last Commission Meeting, the firms were presented in alphabetical order also.

John Murphy introduced his partners Seth Claytor and Drew Crawford.

Mayor Tim Pospichal said he will start with his questions. He asked if John Murphy was the face we will see every first and third Monday. He said we have been spoiled in Auburndale, as in the last 45 years we have had two attorneys – Adrian Gabaldon and Pat Kee.

John Murphy said yes, he would be the one you see. He said he would be there unless he were ill or something prevented him from attending the Meetings. He said it was nice to have the continuity. In his background and things he provided in the proposal, one of the things that is comforting in selecting a lawyer is having someone you have rapport with, someone you can communicate with and trust. He said it was a face and comfort level. He said he understood that and he was the person. He said if it was his privilege to be selected by the Commission, you will see me.

Mayor Tim Pospichal said tell us about yourself and the firm.

John Murphy said he will be 58 in September, was born and raised in Detroit, his wife was born and raised in Bartow, and they met in college. They decided they wanted to come to Florida and particularly Bartow. He came down here from law school and practiced in Fort Myers for a couple of years and then came to Bartow. He said he has been here for about 32 years. He said he has had the distinct pleasure of associating with excellent, wonderful, high integrity men and women Clarence Boswell and my current law partners. He said the law firm has been around in some iteration or another since 1900. He said they are pretty proud of that fact. The firm has 12 lawyers and we do a full range of representation, but the focus is on municipal and local government representation. We have a number of long time clients. He said one of the things he likes and the law partners and associates like is that we establish rapport and relationships with the clients that are long lasting. He said there is a reason for that and we like to think it is because we give good service, high quality legal service at reasonable rates and that the confidence level is second to none. They have lawyers in the firm that do criminal matters, police matters, civil matters, litigation, transactional work and a lawyer that represents Polk State College. We run the gamut of the types of attorneys that you would likely encounter in practice. We particularly serve municipal government and perform a lot of services for the citizens we serve. He said it was nice to know if you select a firm like us that you have those types of backgrounds and experiences to pull from.

Mayor Tim Pospichal asked his standing and the firms standing with the Florida Bar.

John Murphy said we are all in good standing and have no issues. He said he was proud of that. He said he failed to mention from the first question of tell me about yourself that he also had the opportunity to get to know your management and leadership team. He mentioned by name the Administrative Staff and Department Heads he had met. He said Pat Kee was his good friend as well as colleague. He had the opportunity for about a year to work with the City Staff and handle various Code Enforcement, Police and

other matters. In the last two months, he has been acting as the City Attorney. He said he had the opportunity to get to know the Auburndale team and he thought that was important from his prospective. He said he was proud of that.

Mayor Tim Pospichal asked if he or the firm had ever been reprimanded by the Florida Bar.

John Murphy said no.

Mayor Tim Pospichal said we have all read it, but please explain the proposed fees for charges and litigation.

John Murphy said in the proposal, we selected the flat fee rate of \$81,000 per year that provides for an unlimited menu of services. Frankly we mirrored the arrangement you had for the last 23 years with your attorney Pat Kee. We did increase the hourly rate for matters of litigation. He said to the extent that there are consultations or shade meetings those are included in the monthly retainer fee, with no additional charge. Additional charges would be for appearance in court and active participation in legal matters, which ultimately the Commission would control. The rate quoted was a blended rate of \$170 per hour, which is a little lower than what we would charge but we felt was fair to you and us. He said the City has pretty good insurance and for the significant part of litigation you would never see a fee from us. The City has insurance council for representation. Matters outside the scope of insurance the Commission would control what happens in litigating matters. We decided to go back two budget years and based on the two months as Acting City Attorney and year actively working with the management team, we think \$81,000 a year as a flat rate is a fair fee. We estimated the amount of time and services to be furnished. We also included in the proposal subject to Commission approval like in Mr. Kee's contract an increase that was justified we would talk about that. We believe we can deliver the legal services to the City of Auburndale for that amount. He said the hourly rate might be a little higher than other quotes and certainly higher than Mr. Kee's. He said given the length and breadth of what we may have to do and the experience. We feel comfortable with that. At the end of the day, the fees paid and as steward of the public's dollars – you ultimately determine. He said there is no open door or no cash register of fees and anytime we would anticipate expenditures we would come to the City Manager and Commission to make sure you are aware of how it is affecting the bottom line.

Commissioner Dorothea Taylor Bogert asked what it meant by blended rate.

John Murphy said all the lawyers in their firm, whether practicing 10 years or 40 years all charge the same rate. Someone might be justified in charging \$300 per hour.

Commissioner Dorothea Taylor Bogert asked about assistants and paralegals.

John Murphy said that was a lower rate and was included.

Commissioner Dorothea Taylor Bogert asked about any expected cap on expenses over a period of time.

John Murphy said the expense would be things such as filing fees, which the Commission would control. We anticipate that any expenses over \$500 we would seek permission and make sure the budget provided for this.

Mayor Tim Pospichal said you do not have an office in Auburndale. He asked if he had any issue with travel to meet with City staff face to face.

John Murphy said no problem with travel, as they go all over Polk County. They are in Bartow, the County seat. We would not bill for that and it would be included in the flat fee. He said it took him 17 minutes to get here from his office. He said he would like to come and meet absent of Covid. He said he felt it was

good to have face to face meetings with people.

Commissioner Dorothea Taylor Bogert asked if they were able to do distance meetings with zoom and such.

John Murphy said yes.

Mayor Tim Pospichal said the City Charter stipulates you work for the Commission but most of the time your assignments will come from the City Manager or the City Manager's Office. He asked how he saw this relationship working.

John Murphy said he understood the Commission, the five elected officials, are who he works for collectively. He said he understands, you hire and fire and make decisions. He said you have to interact with the City Manager. He said you have a wonderful City Manager. He said he enjoys working with the City Manager. The City Manager and his staff are who generally generate most of the work and Agenda's presented on first and third Mondays. He said you have to have a good rapport with that person or that person's staff. He said he feels very comfortable. He said he thought you probably know this, but Auburndale is a very desirable place. It has political stability, management stability, and you are leaders in the pack. He said for example, when you look at your budget to be approved October 1, that is a professional document that speaks for itself. He said thanks to your leadership and your vision, things are going well and you want to keep that.

Mayor Tim Pospichal asked as you are employed by other cities, what keeps you the busiest in the other cities.

John Murphy said growth management issues and planning. He said there is a lot of that happening all around and it is important to get it right and that it is appropriate to the community. He said Utility work is very significant with a lot of repair and replacement and expansion of systems as growth comes. He said there is a host of other things but planning and growth. We saw no stopping of growth even with Covid. He said economic development appears to be alive and well in Polk County.

Commissioner Keith Cowie said you mentioned growth management. He asked him to share his experience in growth management issues including land use and zoning.

John Murphy said over the years he had the fortunate luck of being involved in a number of significant projects. He described the CSX Intermodal Facility that Winter Haven adopted in 2006 -2007. It was then called the Development of Regional Impact or DRI and the City of Lake Alfred has the Green Swamp, as does Auburndale. We were very instrumental in establishing zoning and land development regulations that were specific to what was Chapter 380 of the Florida Statutes. It was sort of the State Growth Management Act and they wanted to ensure the area of the Green Swamp was protected, with appropriate land use and zonings in place. We have had a lot of large residential projects. industrial warehouse, and institutional projects. He said he has been involved in a lot of annexations that are land use related. He said we represent the City of Mulberry and they have a very significant annexation effort that involves cooperation with the County. He said it is similar to what the City did when you adopted the Large Scale Comprehensive Plan amendment where you adopted the PUD and zoning ordinance, where you applied the law to a specific piece of land. He said those are the type of specific examples and experience he has had. He said he could recite a list of the subdivision and other matters, but he thought those were significant.

Commissioner Keith Cowie asked him to share one case where he had to go to litigation and how that turned out.

John Murphy said in the CSX case they got sued by the Sundance Ranch Estates folks, who were residents who lived in a subdivision immediately adjacent to the east of the mainline railroad tracks. They sued us in State and Federal court. There were a number of parties involved – Winter Haven, CSX, and CSX subsidiary

entities. We had a number of attorneys involved in that litigation. It ended up we had a number of dispositive motions heard by the court. At the end of the day we ended up after about two years of litigation and countless hours of depositions, we ended up entering into an appropriate settlement agreement that resolved the issues. It was a pretty significant litigation matter that probably I am biased in saying vindicated some of the policy decisions that my client Winter Haven had made with regard to building in safeguards to buffer and protect the residents of the Sundance Ranch Estates, whose interests we did not disregard. We ultimately reached a situation where everyone's interests were protected. He said he thought that was a good resolve for everyone.

Commissioner Jack Myers asked if there was outside council or was he the main council for the City.

John Murphy said we used both. We had outside council and he was also co-council. He said he participated a little more than usual, in cases like that. He said he was with the insurance council Dean, Ringers, Morgan, & Lawton and CSX had McGuire Woods out of Jacksonville and Bo Gardner. He said there were a number of law firms involved, but he and Mr. Crawford from his firm and others from his firm he did participate in that matter.

Commissioner Richard Hamann asked what the firm's strengths and weaknesses were in representing Auburndale.

John Murphy said the firm's strengths – the fact that we have depth, the fact we have integrity, the fact it is our privilege to represent clients we like to keep. We do not want to come and go. We establish long term relationships. He said when it appeared to him that in the last 46 years the City had only selected two lawyers, he said that was pretty significant. He said we want to be that lawyer that firm. We are here and we are not going anywhere. He said he thought that mattered to develop a rapport. For weakness, we all can grow and develop. We want to make sure we are being responsive to your needs. Just because you represent one City does not mean that is a cookie-cutter approach to the representation. It was not really a weakness but something they were constantly mindful of. He said he did not know if there was a weakness. He said it was really more of a privilege to represent public clients. You have a high fiduciary duty of the citizens and taxpayers you represent and we take that very seriously. It was almost a higher standard.

Commissioner Jack Myers said we kind of touched on the growth management issues with land use and zoning and the types of courts you have worked in. He asked what other experiences he had with CRA's, water issues, DEP spillage and reporting them, water wars, FDEP and FDOT.

John Murphy said our firm in addition to representing municipalities represents a number of CRA's. He said he has actually served on the Bartow CRA for a couple of years and was chair. That CRA was established before the County became a Charter County and was established in 1986-1987. The CRA was composed of individuals who were not Commissioners, who were all appointed by the Commission. He said he served and that he also represented them. He said he has also represented CRA's who are the City Commission plus two members of the public. Those were delegated their CRA authority by the County, such as Winter Haven. More recently Lake Alfred and Mulberry have established CRA's which were delegated by the County. Those are important as they involved the Community Development Trust Fund and tax increment received. He said there are some very specific things under Chapter 162 that you must use those monies for. He said you have to have a very good working knowledge on how you may appropriately spend and how you may appropriately allocate those funds. This is something we are familiar with and advise our clients on a continuing basis. In regard to water issues, that is something we are involved in from the very beginning. We see SWFWMD, CFWI, and FDEP as being the life blood for where are your going to get your water, how are you going to acquire it, and at what cost. We think it is very important that we have a regional approach, which we participate with the Polk Regional Water Cooperative. That is not to suggest that individual utilities that are members of this, Auburndale as an example, do not have important things that have to be taken care of. To get to the FDEP and FDOT, you have to have a very credentialed and licensed water plant operators and wastewater plant operators because, you are correct, there are some very significant recent

laws that require you to report issues almost in real time. He gave the example of the Winter Haven Hospital who had a diesel spill in Lake Maude on June 12. It had to be reported immediately. The spill was limited and had to be reported. It was a private entity. If the truck you are operating happens to discharge some diesel or hydraulic fluid, you have to report those things to the FDEP. He said he thought it was very important to have an attorney who understands those things. He said you could do in-service and continuing education programs in conjunction with your manager and keep your staff and utilities staff up to speed. The FDOT District One Offices are in Bartow and we enjoy a good relationship with them. He said District Secretary L. K. Nandam is a great guy. You want the five-year FDOT work program to include corridors in your City. You have to have political representation on the TPO, but you also have to have a good working rapport with the FDOT, the people in District One and FDOT in Tallahassee. He said they routinely interact on behalf of their clients on various road projects and various ancillary things to assist with expanding lights and intersections. He said you have evidenced this in your Agendas – cooperation. Joint participation with other local governments and State agencies is an essential element to be successful. There is a limited source of funds and you want to be as responsive as you can be.

Commissioner Jack Myers said you have appeared before all those agencies. He asked him to describe himself as a lawyer for the City of Auburndale in one word.

John Murphy said integrity.

Commissioner Dorothea Taylor Bogert asked what was the most important responsibility for being the City Attorney.

John Murphy said there are a number of things, but the chief responsibility is to have integrity and communication. He said you have to be clear with the communication with the client and provide timely, competent advice. You have to be able to address the question honestly, to not give a guess but give an answer. Do your homework and be prepared. He said all that is so important in representing local governments. You cannot have flip responses or shooting from the hip, that does not work. He said you have to understand that people are relying on you to give proper advice. He said he does not shy away from that, as it is part of the duty and he relishes it. He said he recognizes he is not a 6<sup>th</sup> Commissioner. He said it is not his decision that matters. Their role is to provide advice and council when asked and to foresee things.

Mayor Tim Pospichal asked if John Murphy had any questions for the Commission.

John Murphy said he did not have any questions but wanted to add some things. He said his entire career, for the past 33 years, he has represented local governments with his partners and in practice with his law partners. Mr. Crawford joined the firm in July 2005. Mr. Claytor joined the firm in July 2011. The other lawyers in the office have been there a little longer. He said he thought it was important for him to convey to you how serious we are and what a privilege it would be for us to serve as your City Attorney for the City of Auburndale. He said he recognized it was important to understand the fee structure and he hoped it was within the budgetary constraints we all have to operate under. He said at the end of the day, we want to build and retain confidence and trust. When you hear something we say to you, that you believe it or trust it or if you have a question you ask it and that you do not let us off easy. You demand and expect an answer. You are all answerable to the constituents that elect you and it is important that you have legal representation. He said having had the ability to work with Mr. Green and his leadership team this past year and the relationship he was able to make meant a lot to him and helped him understand Auburndale. He said he wished he had more time with Mr. Kee. Once we engage with a client, we like to keep that client so his hope and goal would be if selected we are here for the long term. He said he will be 58 in September and the two guys behind him are a little younger. You will usually see me, but they will be doing a lot of work as well as staff in the office. We are here in Polk County, he was not from Polk County, but is here by

choice and raised his kids here.

Mr. Crawford said his family has been here for six generations in the County.

John Murphy said both Mr. Claytor and Mr. Crawford were his colleagues, but also his friends. He said we trust each other to have each other's back.

The Commission thanked them.

Break was taken from 7:30 p.m. to 7:32 p.m.

**INTERVIEW VOSE LAW FIRM LLP (Gretchen R. H. "Becky" Vose; Wade C. Vose; John M. Cary)**

Mayor Tim Pospichal said he had a few questions then each Commissioner had questions. He said you probably did your research and we have had two lawyers in the last 45 years. He asked if she was the face of the firm, he will see every other Monday.

Becky Vose said yes, she will be the face.

Mayor Tim Pospichal asked her to tell about yourself and the firm.

Becky Vose said she appreciated the opportunity to be here. She introduced Wade her son and John Cary and said they were all partners in the law firm. She said they have seven local government lawyers and you will have the benefit of our entire firm. We have intentionally limited our practice to local government representation and the reason is they have a passion for local government law. She said she has been doing this for 47 years. Wade has been sitting in local government meetings for pretty close to that, as he used to sit in back and do his homework, when she would go to meetings. We find people who have a passion for it. She said she has found that if we represent businesses, which she used to do it was problematic, if she represented the developer and City. She said she could easily represent the developer, as she understood how the process works. If she represented the developer and they wanted to develop in one of our Cities or County, they would think they have a leg up and might ask questions and think they could get some benefit and that is a bad situation. She said we have limited cities because of something that happened to her in Orange County. Many years ago, when she represented three different municipalities in west Orange County. We limit our representation so there are never any conflicts with other municipalities. We represent eight different governmental entities – one County and seven cities and they are in eight different counties. At one point in her life, she represented three west Orange County cities – Windermere, Winter Garden, and Oakland. There was an issue which was key to all of them due to growth. Windermere and Oakland did not want any part of it and Winter Garden lived for it. There were things going on in the County that west Orange had to agree on. There was one newspaper reporter for the West Orange Times, who use to go to the meetings and hear me answer questions on how to accomplish things and frankly I was giving different advice because they wanted to accomplish different things. It came out in the newspaper and I ended up having to resign. She said she did not have to resign but realized this does not work. It made her feel uncomfortable. She said she started looking in different directions and became City Attorney for Longwood in Seminole County, Saint Cloud in Osceola County, Eagle Lake in Polk County, Deltona in Volusia County, and Cocoa Beach in Brevard County. We have an interesting practice, but we try to make sure we do not have any conflicts. Over the years, she has developed a philosophy of local government. She said she has learned a lot of law and also how to be a good city attorney. She said probably the number one thing and most important thing is that we know we are not Commissioners. Nobody elected us. Our personal policy preference has no business in our local government practice. We do what you want. You tell us what you need to accomplish. And the second most important thing is we are not the guys or the gal who says no. She said she could not tell you the number of times she sees City Attorneys who say no you cannot do that, it is not legal there is a Statue that prohibits it and that is the end of it. We believe our job is to find out what you want, do research, get creative, figure out a path you can

take to accomplish your goal in a legally defensible manner and that is what we try to do. Over time, she has discovered that what really works is to do the work for a city on a flat fee basis that includes litigation. She said that was important to them. When you are a flat fee basis, there is no stopping from any of you calling or senior staff calling. This way we get brought into things at the very beginning. When she use to do work on an hourly basis, she would get brought in when it was half done and she would say I wish you would have called to talk about it because you cannot do that in that way. We can accomplish it, but you cannot do it that way. We try to get brought in on everything in the beginning, so we do not have impediments to people calling us. Where the litigation part comes, she has a conscience and thinks there is a problem with a City Attorney actually making extra fees if they have let their City get involved in litigation. She said she sees it as a problem. We creatively come up with ways to do things to keep out of litigation. Sometimes litigation happens and there is nothing you can do about it. The way we handle it is we go for the jugular and we just hit them and we get things resolved to be benefit of our City and do not play around with it. There is not a lot of motion practice. We do an analysis and figure out what works.

Mayor Tim Pospichal said you have actually answered some of my questions. He asked what her standing and the firms standing with the Florida bar.

Becky Vose said she was 47 years in good standing and all of our attorneys are in good standing. We never had a problem or have been reprimanded by the Florida Bar.

Mayor Tim Pospichal said your firm does not have an Auburndale office. He asked if she saw any issue with travel to meet our City staff to face to face.

Becky Vose said no issue at all. If we are blessed and you hire us, you will be our second closest one. Geographically you are a lot closer than almost all our other clients, with the exception of Oakland.

Wade Vose said he was in Brooksville all day.

Becky Vose said she was in Anna Maria today. She said they represent Cocoa Beach (east coast), Daytona Beach Shores (east coast), Brooksville (center west), Okeechobee County (center south), Indian Town (south), Anna Maria, Oakland, Bunnell (Flagler County). She said Indian Town is Florida's newest town. You are close, so no problem at all.

Mayor Tim Pospichal said our City Charter stipulates you work for the City Commission; however most assignments will come from the City Manager. He asked how she saw this working relationship.

Becky Vose said that is what we have in virtually all of our cities and County. She said that was not a problem at all. As long as the Commission, gets along with the City Manager it is not a problem.

Wade Vose said that is the case in most of the local governments we represent. We work for the City Commission and with the City Manager. We know at all times who we work for – the five of you. The people who are talking to us will be the City Manager, Police Department, and so on. He said they navigate that relationship every day.

Becky Vose said this is one of the reasons we love this kind of work. City governments bring in really good people and we love working with them.

Mayor Tim Pospichal asked what keeps them most busy with the other municipalities.

Becky Vose said it was different for each City. She told of a morning call from an attorney in Cocoa Beach over a downtown neighborhood dispute. She said she was able to talk him off the wall and they are going to get it resolved. She said most of her time is spent on the phone or internet or returning emails. She said we answer our phones on weekends or early in morning. We write legal opinions, we do contracts and a

lot of contracts for the County. Wade has basically written an entire Ordinance book for Indian Town, as they are setting up a brand-new municipality. She said different strokes for different cities.

Commissioner Keith Cowie asked about growth management experience in land use and zoning issues.

Becky Vose said she has been doing this for 47 years, Wade Vose for 17 years, and John Cary many years too. This is probably the topic that keeps us the busiest, as far as subject matter. She said she has done a lot of litigation regarding zoning challenges, variance challenges, petitions for certiorari, and Burt Harris Claims in Anna Maria. We had 117 Burt Harris Claims and we actually did not pay a dime for any of them. She said she was proud of that, as we got all of them worked out. I was asked by the City of Indian River Shores to rewrite their zoning ordinance, their Land Development Regulations. She said it was a chore, but we did it.

Wade Vose said in addition to dealing with implementing a whole new Comp plan in a new City, even when you have been doing it a long time, you still learn a lot when writing a new document. An important point to keep in mind about land management and land development is we focus closely on what it is the five of you want to accomplish. He said this is at the core of what we are trying to do. We may have in our own head what should be done but that is completely irrelevant. Our job is to accomplish what you want to accomplish. He gave the example of Anna Maria and Cocoa Beach both coastal, tourist towns. They have completely different philosophy when it came to vacation rentals and knocking down little houses and building up big houses for vacation rentals. Anna Maria wanted to squish them and Cocoa Beach did not care and in fact are radically encouraging development. There the majority of the Commission wanted to increase height limitations that were in their Charter. We spent 2½ years jumping through hoops to make that happen and now projects are coming out of the ground. On Anna Maria, they wanted to keep everything nice and quaint and the way it has always been. We did that too. It is figuring out what you want to do and then we bring out the tools to make it happen.

Commissioner Keith Cowie said you mentioned earlier you try to avoid litigation, but it happens sometimes. He asked for an example where it did lead to litigation, how that turned out, and where you defended some land use or zoning matters.

Becky Vose said when they took over as City Attorney for Deltona, which is a large City of 87,000 people, the prior City Attorneys had just kicked a whole bunch of cases down the road. There were all kinds of depositions, hearings, and other things. There was nothing ever accomplished. Wade and I picked what was their biggest case, a multi-billion dollar case where during the 2004-2005 hurricanes Deltona was faced with having flooding of about 25,000 homes. There are a lot of lakes there and they are all interconnected through weirs. They decided to open the weirs and drain their lakes. They drained it into unincorporated Volusia County onto property that was not developed and it prevented the flooding. It was what was needed. The people who owned this acreage sued. It did kill all the trees and was right for development. She said she researched it and said this is the one we will take to trial and show these people what is going on. She took the matter to the City Commission and said she recommended an offer of judgement for \$50,000. They were asking for multiple millions maybe \$3.5 million. If they do not respond and if we win, they will have to pay our fees. The Commission was happy to do that. We sent it off to them and on the next day she did a notice for trial. She said she did not see much in the way needed for discovery. She said there were legal issues involved. Surprisingly they were not backed up in Volusia County so about a month and half later they had a two-day judge trial. The attorney for the plaintiff came in said are we going to settle and we said we are trying to settle. During the two-day trial, the Judge took it under advisement and a week later we got the order in and we won. There was no liability on the City. She said she knew the case law and so did the other side. There is no liability when there is a danger to homes to flood other property and you do not have to pay the damages, per case law. She filed the motion for attorney fees and they went into the hearing on attorney fees and the Judge said why not mediate the attorney fees before the hearing. We went to mediation and the plaintiff wrote a check for \$100,000. She said she was working on a flat fee, but they knew what my time was worth and that is how you determine attorney fees. She said when that

was over, she called all the other attorneys on other cases and said hey I have a story to tell you. She said she told them if they wanted to get confirmation to called Kristy Wilson. She said Kristy Wilson was kind of the premier imminent domain lawyer in the Orlando area. She said Kristy told her later that she got some phone calls. She said all of the litigations, 11 cases, immediately settled.

Commissioner Jack Myers asked if she was on the other side of the Burt Harris, would she have gotten money.

Becky Vose said there were three different law firms and two of them were very good. She said she thought she knew more about that than they did and how it worked.

Wade Vose said with Burt Harris claims there are games that could be played. They were playing checkers while we were playing chess.

Commissioner Jack Myers said he was watching that from afar, but closer when he was vacationing. He said he was shocked the City did not pay anything.

Becky Vose said there is no secret, as it is all public record. We made offers to the people. On a Burt Harris claim, you get two appraisals one with the zoning change and one without it. You show what the difference is and that is the damages. They appraised the property from a business standpoint what it actually throws off in rental. For a \$6 million home might throw off the equivalent of a \$2.5 million home, as far as the value of the cash flow. We look at their appraisals, the before and after, and give them an offer. We will buy your house for \$2.5 million. They know they can sell it on the open market for \$6 million. Some of them called me back and said you do not have that much in reserves. She said actually they have a lot in reserves. She said from her understanding the Mayor says he has a line that would go from City Hall to the bay of people waiting to come up with the money to buy these. If you could buy a \$6 million dollar house for \$2.5 million. We settle all of them. We figure out how to kind of game it, to your benefit. She said that is kind of what is fun about what we do. The nice thing is we are always on the good guys side. If we worked for private business and we game stuff like this, we might not always be on the good guys side and that is why we do this.

Commissioner Richard Hamann asked what are your firm's strengths and weaknesses in representing Auburndale.

Becky Vose said their strength was that they are probably the best local government firm in Florida. She said that was pretty obnoxious to say, but she believed it. We have just attracted the best people and we have people who are passionate about doing what we do. She did not know of a weakness.

Commissioner Jack Myers said we talked about courts you have appeared in. He asked about experience with other State agencies such as DOT and FDOT, water issues, and CRAs.

Becky Vose said we have a very active CRA in Cocoa Beach, Brooksville, and Deltona. We have kind of done it all.

Wade Vose said he set up a new CRA, the second one in Deltona.

Becky Vose said she works on water issues for Cocoa Beach, Anna Maria, and Oakland. She said Oakland is on Lake Apopka and there are a lot of environmental issues where we have a lot of interaction with FDEP. On the coast and in Okeechobee, we have a lot of interaction with the Army Corps of Engineers.

Commissioner Jack Myers asked if they had any dealings since the new laws about spills and reporting them immediately.

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Wade Vose said not too much fortunately. We did have an incident in Bunnell.

Becky Vose said in Longwood, they had an issue with yellow paint. She said her husband was an environmental engineer and when she represented private firms, he used to bring her in on a lot of things related to clean up litigation. She was involved in a big suit involving an Orlando dry cleaner next to Lake Eola was sweeping the chemicals out the back door.

Commissioner Jack Myers asked about Brownfield experience.

Becky Vose said yes, they did a lot of Brownfield work in Deltona.

Commissioner Jack Myers asked in one word how she would describe herself as an attorney for the City of Auburndale.

Becky Vose said attentive, involved, and excited.

Commissioner Dorothea Taylor Bogert asked what do you feel is the most important responsibility of being City Attorney.

Becky Vose said the most important is giving you good advice and being very clear with it. A yes and no answer is usually not enough. She said you need to explain why the answer is yes or no. If the answer is no, I never leave it there. She said she will say we can make it happen, because each and every one of you want the best thing for Auburndale and if it truly is the best thing and it is not illegal, we can make it happen. She said there are many paths.

Mayor Tim Pospichal asked if they had any questions for the City Commission.

John Cary asked what the Commission's vision was for what you want to see for a City Attorney.

Mayor Tim Pospichal said somebody that is dedicated, somebody that has the answers, does the research, is attentive to our needs, and works well with our City Manager, staff and Department Heads. This will be very important to us. In 45 years, we have had two attorneys and have grown used to seeing the same person. The City has 16,534 citizens but they are important to us. He said from listening to her, he believed that was how she approached her work and that was very important to us here in Auburndale, as it is in all your cities. He thanked them for coming.

Break from 8:09 p.m. to 8:11 p.m.

Mayor Tim Pospichal called the meeting back to order.

Commissioner Jack Myers said if we wanted to take someone to court and have someone litigate for me, he thought the last law firm would be the one. However, in all the time he has been on the Commission he could count on one hand how many times we needed litigation.

Commissioner Keith Cowie said he thought her point was not to get into litigation.

Mayor Tim Pospichal said she was ready to go, if it happens.

Commissioner Jack Myers said he liked Boswell's answer as far as the one word. He said he liked John's answer better.

Commissioner Dorothea Taylor Bogert said they both have incredible resumes. She said she spoke with Assistant City Manager Jeff Tillman previously about the fees, as we are accountable for the stewardship. If

we have to go to litigation, it would be very rare and she understood that. She said Jeff Tillman mentioned that if it were a serious issue we would go with outside council. They put all that in a flat fee, all inclusive. One of the biggest costs of litigation is not just the hourly but the expenses. Her biggest concern was the difference of having the litigation included. She said she liked Boswell & Dunlap because they were local and familiar with our town. She asked if we could ask the City Manager's perspective.

Mayor Tim Pospichal said no, we are hiring. He asked City Manager Green how many cases of litigation we have experienced in his tenure.

City Manager Green said you would be surprised, there is an awful lot. We are members of the Florida League of Cities Insurance Trust, which represents us on most of the liability claims. If the garbage truck backs into a vehicle, Pat Kee never saw it. If an employee has a false termination, Pat Kee never saw it. Those liability claims we pay for with our premiums to the Florida League. In 30 years, there are maybe half dozen cases that did represent litigation not represented by the League. The cases would be the land use matters, the Lawsuit with Polk City and one with the Utility Director that was stealing. Those go to the appellate courts. It may not be this attorney in either firm to represent us in the appellate court. The Commission would hire the outside council. We hired Greenburg Traurig to represent us in the Polk City matter. We knew at that time they were top dog in the game. They came on the recommendation of the Jack Brandon, who was Polk County's most knowledgeable at the time for land use and zoning.

Commissioner Dorothea Taylor Bogert said recently we had foreclosures that Boswell worked on.

City Manager Green said he did not see that as litigation. It was just filing documents with the court and would be included.

Commissioner Jack Myers said Boswell had an excellent real estate attorney.

Commissioner Dorothea Taylor Bogert said they have excellent attorneys.

Commissioner Keith Cowie said they are both extremely talented. Vose did a good job in their proposal with lots of great examples, such as Anna Maria. He said he agrees with Commissioner Bogert about the fees and the litigation. He said he realizes it is a small portion historically. It is nice that the Vose firm includes that. He said he thinks the Mayor hit on it in the beginning, it is a relationship with us, with the City Manager, and City Staff. They have established some of that relationship working with Mr. Kee in the past and being the Acting City Attorney for the past several months. He said he leans toward the Boswell Firm and based upon the interviews as well. He said nothing that came out of that interview would sway me from choosing them as our next City Attorney or next firm.

Commissioner Richard Hamann said he concurs with Commissioner Cowie for the Boswell firm. He said when we choose to go to litigation like with Polk City, we want to go with our guns loaded and the best attorney and law firm. It cost us a lot of money, but we prevailed.

Commissioner Jack Myers asked about the annexation of the lake bottoms and who represented us.

City Manager Green said Jack Brandon.

Commissioner Dorothea Taylor Bogert asked if Boswell & Dunlap has done any significant outside work for us.

City Manager Green said just in recent months, he did the foreclosures and only items after Pat became ill. He said no matter what the claim is, we report it immediately to the Florida League of Cities.

Commissioner Jack Myers said we could always settle for the maximum of \$200,000 unless it becomes a bill

in the House. There is a limit to the liability.

Commissioner Dorothea Taylor Bogert said one of the important things having grown up here with Adrian (Gabaldon) being the City Attorney and knowing Pat (Kee), she thinks relationship is one key factor in this. She said she was a little concerned about the difference, as she wants to be about to tell her constituents why did you hire someone that could potentially cost more. She said she felt that was a huge advantage, even though they go all over the State. She said she thought there was a huge advantage to knowing and being local. She said knowing not only Auburndale, but Polk County and the developmental side. She said she saw that John was Chair of the CFDC, which is a huge part with our growth. She said she thought with that insight there is more than just local municipality issues although she thought Vose has outstanding experience in that. She said she thought there was an advantage to having the relationship and working relationship and experience locally and truly understanding that local aspect. She said this sways her over the fees, which was her biggest concern. She said knowing and seeing the work he has already done and knowing the integrity of the firm, and relationship factor and it being a very strong emphasis in his discussion is definitely a swaying factor.

Commissioner Jack Myers asked Police Chief Andy Ray if he had any dealings with the Boswell group since they have been here.

Police Chief Andy Ray said he has met with John (Murphy) a couple of times with foreclosures, code enforcement issues, and an officer involved shooting.

City Manager Green said the officer involved shooting went straight to the Florida League of Cities.

**Motion** by Commissioner Jack Myers, seconded by Commissioner Keith Cowie, to hire Boswell & Dunlap.

Mayor Tim Pospichal said he wanted to concur with everyone. We have a local person, who can talk PRWC, understands Flenke's foreclosure, understands our Police Department. We had a piece of property recently closed on, the Lift station and John knew the area and had paperwork here in minutes.

Commissioner Richard Hamann said to take it a step farther, he knew about our CRA agreement with the Town of Dundee.

Commissioner Jack Myers said the Chair of the CFDC and the Innovation District.

Upon vote on motion and to ask them to present a contract. All ayes.

City Manager Green said if it is acceptable to the Commission, Assistant City Manager Jeff Tillman will pull both the parties into the rotunda and announce the Commission's decision. He thanked Assistant City Manager Jeff Tillman for his work on the process of the City Attorney, he handles all the City's HR from hiring to advertising and we appreciate his efforts.

The Commission thanked Assistant City Manager Jeff Tillman for his work on the process of hiring the City Attorney. They said they were provided with great communication.

Meeting adjourned at 8:25 p.m.

I HEREBY CERTIFY that the foregoing Minutes are true and correct.

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Shirley A. Lowrance, Finance Director/City Clerk

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