

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD APRIL 22, 1996

I. CALL TO ORDER AND ROLL CALL

The Special Town Council meeting to consider the recommendation by Town Manager Robert J. Doney to discharge Finance Director Marie Crozier was called to order by President Lesly Smith at 2:05 p.m. in the Town Council chambers. On roll call, the following elected officials were found to be in attendance: Mayor Paul Ilyinsky; President Lesly Smith; President Pro-Tem Jack McDonald; Councilmen Leslie Shaw and Sam McLendon. Councilman Allen Wyett was absent. Also in attendance were: Town Manager Robert Doney; Town Attorney John C. Randolph; Personnel Director William Crouse; Assistant Town Manager Peter Elwell; and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Mrs. Pollitt. President Smith led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

A motion was made by Mr. Shaw to approve the agenda. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

IV. RECOMMENDATION BY TOWN MANAGER ROBERT J. DONEY TO DISCHARGE FINANCE DIRECTOR MARIE A. CROZIER

Mrs. Smith: Mr. Randolph, please.

Mr. Randolph:

Madam President, as you know this meeting was scheduled to hear the recommendation of the Town Manager as it related to Mrs. Crozier. Notice was given, pursuant to the Code, to Mrs. Crozier and to her attorney in regard to today's hearing. We have each been preparing to move forward with this matter as diligently as possible in order to bring it to you, and in order for you to fully deliberate and give full consideration to this matter. I learned for the first time last evening from Mr. Curtin that he felt that there were certain circumstances that existed which would--in his opinion, I think, and I will let him speak to this--prevent his client from having due process in the event she was forced to go forward to a hearing today. I therefore indicated to Mr. Curtin that if he wished to request that this Council continue the matter that he may do so, and I would invite Mr. Curtin to make a presentation directly to you at this point.

Mrs. Smith: All right. Mr. Curtin, please.

Mr. Curtin: Members of the Town Council, my name is J. Barry Curtin. I represent Marie Crozier along with Mr. Doug Duncan who is not here today.

Mr. Randolph has briefly encapsulated the events that occurred last night. Marie Crozier takes the position that she is innocent of the improper conduct that has been alleged against her, and she intends to defend herself and prove her innocence before the Town Council. In the course of preparing Marie's defense, it has come to our attention that Town employees have been intimidated from coming forward and expressing themselves by senior supervisory personnel within the Town.

I told Mr. Randolph last night and in the interest of not being overly incendiary, I sought to meet with both Mr. Randolph and the President of this Council in an effort to resolve this matter and to have today's hearing put off until these concerns could be inquired into and hopefully obviated or eliminated. Obviously, they are of a fairly grave nature, and I am prepared to provide Mr. Randolph with the information of the particular individual within a particular department that came to my attention--and understand this did not come to my attention until Saturday morning, all day, calling different people for the purpose of preparing them as well as Sunday morning. I then called Mr. Randolph at about noon time on Sunday in an effort to arrange to meet

with Mr. Randolph and the President of this body out of a deference to not have a surprise circumstance to come up because my concern as an officer of the court and in representing my client that she be accorded, in this tribunal, what we would call substantive and procedural due process.

My concern is that the level of comments that have been raised are of such a nature that it would clearly prevent her from having that before you today. The comments were communicated to over forty employees in the course of Town business, on Town property, Town time, and Town shifts. I will at the conclusion of this give Mr. Randolph better detail, but because of the nature of the public forum and because I am inviting you, the Town Council, and the senior management within the organization to look into this, and I would specifically ask that one or two Town Council members become involved in this investigation, because we found levels of intimidation that were serious enough that employees were not willing to come forward unless they were specifically subpoenaed by me. As you well know, under this format, we are not -- we have not established litigation yet and therefore subpoenas become a difficult thing to issue.

The intimidation was sufficient that in order to come forward, these parties requested to be directed to be here rather than feel they could come here of their own volition. That alerted me to such a level of concern in the problem of representing Marie and having people who expressed an interest and wanted to come forward, but felt a certain level of intimidation that I felt compelled to come to Mr. Randolph and to Mrs. Smith last evening. We met in this building at 5:30 p.m. and we discussed this for approximately one hour. I, at that time, requested, and it was my understanding leaving that meeting that this motion would be a joint motion. Both parties were concerned enough about the substantive and procedural due process issues which are raised by this, and I am only forebearing in the specifics of the allegation, because I don't think that is the proper form. I will be happy to meet, because I think that this is an investigation that you folks want to conduct and want to be involved in.

It involved more than one department within the Town in our inquiry and therefore it was fairly wide spread. At which point I felt compelled to come forward and to ask Mr. Randolph and Mrs. Smith what they wanted to do. Our suggestion last night was that this be a joint motion; therefore, I would not have had to get out of my chair. Unfortunately, Mr. Randolph did call me back later last night and said if the motion were to go forward, it would have to be on behalf of Marie Crozier. That is why I am before you.

If you have any specific questions, I will be happy to answer them; however, my recommendation is that the Town direct an inquiry as to what level of intimidation or suppression is involved here and whether Marie Crozier can get a fair due process hearing with an opportunity to call all of the appropriate witnesses who feel free to speak. I think there are some very fundamental first amendment issues involved in this and what Town employees believe to be intimidating behavior, and I would direct that this needs to have Council's attention as well as staff's attention in its review.

That's it I think at this point, and we do request that this hearing be continued from today, because I do not believe that in light of these circumstances, that you can go forward -- that I'm in a position to present to you witnesses who feel free to speak in unfettered fashion.

Mrs. Smith: Thank you, Mr. Curtin. Mr. Randolph.

Mr. Randolph: Madam President, upon hearing this information from Mr. Curtin last night, I indicated to him that, under the circumstances, that I would recommend a postponement of this hearing today, in the event that was his request. You have heard that indeed that is his request. We take these allegations seriously; however, because Mr. Curtin has not provided me the detail in regard to the general allegations he has made, we have not had an opportunity to verify the truth or veracity of his comments. One thing is clear however, the Town is interested in providing Marie Crozier and all of its employees every element of due process. Marie Crozier is entitled to a full hearing before this Council, and she is entitled to have anyone she desires to testify on her behalf. No employee of the Town or any other person should feel any reticence appearing before the Town Council and testifying to the truth on anyone's behalf. We are simply interested in the truth and presenting evidence to you, the Town Council, which will assist you in reaching your deliberation. Although we cannot substantiate Mr. Curtin's allegations, we suggest that the Town do all it can to assure persons who desire to testify in this matter that they should feel entirely comfortable in so doing. It is therefore my recommendation that the Town Council grant Mrs. Crozier's request for a continuance in order that the Town can assure all who are interested in testifying in this matter that they should feel free to testify without fear of retribution or reprisal.

Already, Mr. Doney and I have met with department heads to encourage them to advise those within their departments that they should feel free to testify in order that Mrs. Crozier's due process rights will be protected to the fullest extent possible. Additionally, I am working with Mr. Doney to provide a means of communication to every employee who is desirous of doing so--that they should feel free to testify if called upon to do so by any party in this matter that is before you.

We would request that this matter be given at least a week in order that we can do everything we can to assure every employee within this Town that they should feel no discomfort in coming before this Council and testifying in regard to this matter.

Therefore, it is my recommendation to you that this continuance be granted and that you set a time certain in the future that we can address this matter. I thank you for that.

I would, before I leave this matter, like to introduce to you, Jeff Pheterson who is at the table. Because of my involvement in this matter and consulting with Mr. Doney, I felt that it would be appropriate for the Town Council to have an attorney who could consult with it during the deliberations in this matter, rather than relying on any advice that I might give in regard to it. Mr. Pheterson is here at the table with me and will be happy to advise in regard to the public hearing process.

Mrs. Smith: All right. Thank you Mr. Randolph. Mr. Pheterson, do you concur with Mr. Randolph's recommendations that the hearing be put off?

Mr. Pheterson: Yes, I think that in as much as the request bears on due process issues, the best way to afford this individual with a free and open opportunity to come before the Council would be to grant this request. I would suggest that it be for a specified period of time that we leave here knowing what the next scheduled date would be.

Mrs. Smith: Thank you very much. We will set a date at this meeting. I, for my part as President of the Town Council, take the allegations from Mr. Curtin very seriously. As you know, Mr. Curtin, we are in the sunshine, so two members of the Town Council cannot meet with anyone at the same time. But you can be sure that the Town Council will make sure that there is nothing wrong that every employee at every level in the Town feels protected and secure in their job and will come forward to testify on whomever's behalf they are called.

Members of the Council, I would like to recommend that we set the dates for next week, Thursday, the second, and Friday, the third of May. Would you check your books please? That gives you ten days, Mr. Curtin, and that gives the Town ten days. We will be working that whole time on the investigation of your charges. Gentlemen?

Mr. McLendon: I would prefer the second, myself.

Mrs. Smith: I believe it's going to go two days. I'd like to set aside the two days so that Mrs. Crozier and the Town feel they have ample time to speak and present whatever evidence that this body should hear sitting in its quasi-judicial capacity. There will be no rush to justice here, Mr. Curtin.

Mr. McDonald, second and third?

Mr. McDonald: Yes.

Mrs. Smith: Mr. Shaw?

Mr. Shaw: Those dates would be o.k.

Mrs. Smith: Mr. McLendon?

Mr. McLendon: Second and third, yes.

Mrs. Smith: All right. Mr. Wyett is out of town because his mother-in-law died, but he will be here next week. I am sure in the mean time, we will check with him on those dates. May I have a motion?

Mr. Doney: Time, Mrs. Smith?

Mrs. Smith: I would like to have a motion, please, from someone that the hearing will be recessed until the second and third.

Mr. McDonald: Just one question. I want to know what measures you're expecting or are to be taken between now and the hearing date regarding communicating to employees?

Mr. Randolph: We have taken the first step and that was immediately upon learning this information from Mr. Curtin, having a department head meeting, advising them of what we learned and advising them of our concern over that. The department heads will now speak to everyone within their departments and let them know that no one should have any apprehension about testifying at a hearing before this Town Council where they are simply asked to come and testify as to the truth. And beyond that, although we haven't determined exactly what we would do, it has been our thought that we would provide a written communication to all of the employees to let them know just that--that they should feel no discomfort in coming forward in regard to a matter such as this.

Mr. McDonald: Now that we have a date certain, how about a time certain?

Mrs. Smith: All right. 10:00 a.m.? 10:00, Thursday. Mr. Curtin? Thursday at 10:00 a.m., May 2? Is that convenient for you?

Mr. Curtin: (barely audible) If that's the time Council chooses, yes.

Mr. McLendon: Could I ask a question?

Mrs. Smith: Mr. McLendon.

Mr. McLendon: I am not sure if this should be addressed to Mr. Curtin or Mr. Randolph. I assume from what I have heard that these are employees beyond those interviewed as part of the investigation that has already been performed?

Mr. Randolph: As I understand, in speaking to Mr. Curtin, in preparation of his case, he contacted people to see if they would come forward and testify and he indicated he had some problems as he has indicated here. Now, a suggestion has been made by Mr. Curtin that the Town Council should be involved in some kind of investigation. It is not our intent to involve the Town Council in an investigation in regard to this matter at this time. It is our intent to do everything we can to assure that due process is afforded Mrs. Crozier in regard to this hearing, and our intent, at the staff level is to communicate to these employees that they should feel no discomfort in coming forward.

Mr. McDonald: Let me make it clear to Mr. Curtin, that I will not support another continuance. It has to go that day, because I will not be around after that, so with the thought in mind this is the only continuance that will be heard that day or days. So, I would certainly vote against any continuance beyond that point. Thank you.

Mr. Doney: I'd like to, and with Mr. Randolph's direction on this issue in extending the offer to Mr. Curtin, in order that the Town staff through our department heads and supervisors can plan accordingly, if Mr. Curtin has certain individuals that he does want to be here for the hearing, that he specify those in a certain period in advance to Mr. Randolph, so that we can properly schedule employees to be relieved from their work and do what we need to do and make sure Town government operates operationally and organizationally. It has to be. And I think we deserve that as far as our fulfillment of our duties and responsibilities. So, I would ask Mr. Randolph to whatever degree we can accomplish that, I think--what I need to insure through the department heads that we are planning accordingly.

Mr. Randolph: Yeah--I think that whoever is involved in coming forward to testify on either side, should advise their department head of their intent to come to this meeting, and if that is something they should arrange with their department head so that if the work, so that if there is any arrangement that needs to be made in that regard, those arrangements will be made with their department head.

Mr. Doney: Does that mean that we ...can we ask, Mr. Randolph, that we get a list of those employees? I just want to make sure that we are providing due process opportunity and, however, that we are doing our work which needs to be done and is during this interim process.

Mr. Randolph: Mr. Doney, I will work with Mr. Curtin in that regard.

Mr. Shaw: I realize that due process is the basis of our form of government and it's a key issue that we have to deal with, but on the other hand, I think also we have to realize that the employees and the Town have to go on with their life. What assurances do we have that there will not be a due process claim a week from today or when we have this meeting on the second, as Mr. McDonald said this is just going to go on and on and on?

Mr. Randolph: You have no such assurance that there will be no such claim.

Mr. Shaw: At what point then, do we make a determination, based upon the facts as they have been presented to us and then allow whether it be the appeal process or some other process to go forward to allow the Town to continue to do its business and to allow us to continue to do our business?

Mr. Randolph: I think you should make that determination when you begin this hearing on Thursday morning, May 2.

Mr. Shaw: I just don't see what changes in that determination between today and next Thursday. I heard what you said but I'm...

Mr. Randolph: Let me answer that, if I might. The changes between now and then is that this will give--since this has come to our attention--and has not come to our attention before, this will give us every opportunity to afford the due process that is being requested and we are going to do everything within our power to assure that between now and the time this matter is scheduled for hearing.

Mrs. Smith: I believe too, Mr. Randolph, that you and I met with Mr. Curtin yesterday afternoon, at his request, to see that the process was done in the most diplomatic, democratic way for everyone concerned and if you would like to stand up now, Mr. Curtin, and give us reassurances that this due process will continue along or at least begin next Thursday. There might be a degree of comfort for Council who is concerned about an additional delay.

Mr. Curtin: I have indicated, that I have requested on behalf of Marie Crozier, that a Council member be involved in the investigative activity which I believe is consistent with what I said to you last evening, and if not, I want to clarify that point. I believe that this is necessary so that a comment like Mr. Shaw's is placed in context and that Mr. Shaw, as he sits here and deliberates, can understand from a report from one of you, who are ultimately charged with the responsibilities of the Town--all of these other people work for you--you are the decision makers. You as decision makers need to determine whether you can give Mrs. Crozier procedural due process next Thursday. And if your determination is that you can at the out set of the meeting, having participated in an investigation, then we will be..that will at least clear the issue, Mr. Shaw, that came to me over the weekend in my efforts as an attorney to prepare with my client. I don't have the definitive answer as I stand before you. I have spoken with a number of Town employees who were given to me by the Croziers or by other folks as people who wish to come forward and express their opinions concerning certain of the allegations, and when I contacted these people, they expressed fear for their jobs, reprisals, the issue of reprisals, and this was sufficient, and that is why I am answering your question specifically.

The fact that the Town Manager had a meeting this morning, I think is a very good initial gesture. I would request this Council to do more, and if you can assure me with that, we are prepared...this is not...believe me done for deliberation or delay. I have worked all weekend and quite an extensive period of time to be prepared. I was ready to go, as I told Mr. Randolph. This is not delay for the purpose of delay, perhaps, Mr. McDonald you may have been inferring. Mrs. Crozier is ready to go forward with her case. The problem is that due to the this issue of suppression and intimidation, that we were not really in a mode to go forward because people felt pressured by the government that you are responsible for. Now, I ask you when that process is ready? You want to arbitrarily set May 2, that is fine. I suggest then that you be busy about that investigation and that you can assure myself, my client, and I suggest other people in this Town that the way is cleared for a due process hearing for Marie Crozier or anybody else who is in this circumstance. I am just presenting to you a matter that is quite grave, and I think I tried to convey this in a very diplomatic fashion to Mrs. Smith and Mr. Randolph yesterday the only way I know how.

Mr. Pheterson: Just briefly--I think that the request that the individual members of the Commission--one or more than one of you--become involved in any sort of process that would occur between now and the time of the hearing, I think that would be in error. What we are looking at on May 2, is a due process hearing which will be held pursuant to the Charter of the Town of Palm Beach and its Code of Ordinances. Your role in that is to consider the recommendation that has been made at this point by the Town Manager. I think that you also have a role in assuring that the hearing, whatever date it does occur, is an open and fair hearing for Mrs. Crozier, and it is a forum in which she can call witnesses, of her choosing, who can come forward in a free and open manner and testify truthfully. That would be appropriate for you to give a continuance if it appears that going forward today would not result in such a hearing. It would also be appropriate for you to direct Town management to take whatever actions it deemed necessary to assure that all employees or citizens or any witness that there would be no reprisals taken. But I think that it would be in error for one or more of you to become actively involved in the facts of this case between now and the time that the hearing would start.

Mrs. Smith: All right. Mr. McLendon, is there something you wanted to say?

Mr. McLendon: I forgot what it was, Mrs. Smith. I'm sorry.

Mrs. Smith: All right. Mr. Shaw then Mr. McDonald.

Mr. Shaw: Can you explain to me why we could not start this hearing now and then allow this to continue at a later point? Obviously, the initial presentation was to be made by Mr. Doney to lay down a set of criteria or reasons behind his decision, and if we feel that we need to--and if Mr. Curtin feels that he needs to--obviously he does--continue this, we have already agreed that this will probably go on for more than a day when we start it. Is there a reason we could not instead of continue tomorrow, continue a week from today? Does that change the way this case is heard?

Mr. Pheterson: Well, it could, because there will be a--as with any attempt to move forward in a hearing setting--there is a case essentially that unfolds in a certain manner and if certain witnesses were to be called today and then there would be another week to continue an investigation, Mr. Curtin may be put in a posture where he may or Mr. Randolph may be put in a position where they may say they would have asked other questions of a witness if they didn't know the issues. Issues may arise between now and then, in short. I would think that in order to approach this from the perspective of providing the best due process hearing, which I think is clearly what the Town Council is interested in doing, the best way would be simply to adjourn at this point and commence the hearing at the date in the future.

Mr. Shaw: At the advice of two counsels, then, I would like to make a motion that we adjourn at this time until next Thursday ...now, I don't believe we have made the motion..

Mrs. Smith: We haven't gotten the motion to grant the hearing to next week. I asked for a motion, and I haven't got the motion yet. You are recommending then that this be put off until the second of May at 10:00 a.m.?

Mr. McDonald: Let me make a motion first. I would like to move, then Mr. Shaw can make his motion. I would like to move that the Town Manager's office be instructed to perform or conduct any investigation that they deem

necessary to remedy or correct any due process violations, and that every employee or any employee be encouraged, if they so desire to testify at Mrs. Crozier's hearing next week.

Mrs. Smith: Do I have a second?

Mr. Shaw: Second.

Mrs. Smith: Thank you. Mrs. Pollitt?

Mrs. Pollitt: Mr. McDonald?

Mr. McDonald: Yes.

Mrs. Pollitt: Mr. Shaw?

Mr. Shaw: Yes.

Mrs. Pollitt: Mr. McLendon?

Mr. McLendon: Yes.

Mrs. Pollitt: Mrs. Smith?

Mrs. Smith: Yes.

Mrs. Smith: May I have a motion for next week?

Mr. Shaw: Yes. I'll make a motion that we adjourn this meeting until next week at which time we will continue to review the recommendation of the Town Manager.

Mr. McDonald: Second.

Mrs. Smith: Thank you. Mrs. Pollitt.

Mrs. Pollitt: Mr. Shaw?

Mr. Shaw: Yes.

Mrs. Pollitt: Mr. McDonald?

Mr. McDonald: Yes.

Mrs. Pollitt: Mr. McLendon?

Mr. McLendon: Yes.

Mrs. Pollitt: Mrs. Smith?

Mrs. Smith: Yes.

Mrs. Smith: That's Thursday, May 2, 10:00 a.m.

Mr. McLendon: Can I ask a question?

Mrs. Smith: Mr. McLendon.

Mr. McLendon: I heard the comments or recommendations against Council participation in any further investigation. Is that because we would tend to compromise our positions sitting in a judicial situation?

Mr. Pheterson: It's for a variety of reasons, and that is one of the reasons that you will ultimately be sitting under the Code of Ordinances in the Charter as the final decision maker and from the perspective of due process, it may be better if everything you hear, you hear through the hearing process rather than coming to the hearing with significant additional information. In this setting, that is not automatically improper, but it would tend to provide a more fair hearing for that to occur. In addition, we are dealing with issues involving the United States Constitution which--depending upon the results--may lead to subsequent litigation, and the more that one is individually involved, the more that one may be individually exposed in any subsequent litigation that may occur.

I am not suggesting at all that such litigation is contemplated at this point or that it will occur, but it might.

Mr. McLendon: Sounds ominous to me.

Mrs. Smith: All right. Mr. Curtin, is there something ?

Mr. Curtin: Just in response to Mr. McLendon's point, if I might comment. I am sort of reminded a little bit of the aphorism that I heard not too long ago, that when the lion lies down with the lamb, the lamb doesn't sleep too well.

For a part of the process here, is to invite your participation or if not your participation, then I suggest an independent party's investigation or participate in that investigation so there is some objectivity. Because I think that the problems that I am presenting to you are within the administrative group, and I think that needs to be reviewed for the very purposes that I have discussed with you. I invited Town Council -- at least one member so there is not a sunshine law violation--so if there was a perception of this issue and the depth which is independent in many respects of Marie Crozier's hearing but does bear upon it because of the right to due process. So I partially disagree with your counsel's position. I just wanted to state that for the record.

Mr. McDonald: I think that I would agree with counsel's recommendation. I don't think the judge should be investigating a case that is going to be heard before him. I think that's the point where the judge needs to exude his objectivity. So, I would agree with our counsel.

Mrs. Smith: Any further discussion?
(There was none.)

Mrs. Smith: All right. Mrs. Pollitt did we call the roll on that?

Mrs. Pollitt: Yes, we did.

Mrs. Smith: All right. Thank you.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

Motion made by Mr. McLendon to adjourn. The meeting was adjourned at 3:40 p.m.

Mary A. Pollitt
Town Clerk