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**CITY OF DELTONA, FLORIDA
SPECIAL CITY COMMISSION MEETING
WEDNESDAY, JULY 29, 2009**

A Special Meeting of the Deltona City Commission was held on Wednesday, July 29, 2009 at the City Hall Commission Chambers, 2345 Providence Boulevard, Deltona, Florida.

1. CALL TO ORDER:

The meeting was called to order at 4:32 p.m. by Mayor Mulder.

2. ROLL CALL:

Mayor	Dennis Mulder	Present
Vice Mayor	Michael Carmolingo	Present
Commissioner	Zenaida Denizac	Present
Commissioner	Janet Deyette	Present
Commissioner	Michele McFall-Conte	Present
Commissioner	Paul Treusch	Present
Commissioner	Herb Zischkau	Present
City Manager	Faith G. Miller	Present
Acting City Attorney	Charles Cino	Present
Deputy City Clerk	Joyce Kent	Present

Also present: Human Resources Director Tom Acquaro; Finance Director Robert Clinger; Deputy City Manager Dave Denny; Assistant Finance Director Lori Montague; Parks & Recreation Director Steve Moore; and Fire Chief Robert Staples.

3. BUSINESS:

A. Direction to staff re: Fire Special Assessment District (SAD).

Mayor Mulder stated he had time to review some of the issues regarding the Fire Special Assessment District (SAD) and he met a couple of times with staff this week. He stated he understands that this means that the Public Safety Complex would be delayed, hopefully minimally and he hopes the SAD is an option when the economy is better and people can better afford it. He stated it is in the City's and the resident's best interest to not move forward with the SAD at this time.

Motion by Commissioner Zischkau, seconded by Commissioner Denizac to direct staff not to move forward with the SAD at this time.

Motion carried with members voting as follows:

Commissioner Denizac	For
Commissioner Deyette	Against
Commissioner McFall-Conte	For
Commissioner Treusch	For

1 **Commissioner Zischkau** **For**
2 **Vice Mayor Carmolingo** **For**
3 **Mayor Mulder** **For**

4
5 **B. Discussion to provide further direction to the Negotiating Committee re: the Settlement**
6 **Agreement for Mr. George Trovato.**

7
8 Commissioner McFall-Conte stated the meeting Saturday morning consisted of herself, Charles
9 Cino, Sheri Sallade, Tom Acquaro, and George Trovato. She stated Mr. Cino and herself brought
10 forward six (6) months' severance as allowed by Mr. Trovato's contract, an additional three (3)
11 months' severance for a total of nine (9) months' severance at a cost of \$92,817, 18 months' of
12 COBRA at a cost of \$10,000, accrued vacation and sick time which is allowed by the contract at a
13 cost of \$61,000 bringing the total amount offered to Mr. Trovato at \$164,372. She stated this
14 would include a Hold Harmless Agreement, a mutual not talking disparagingly, Mr. Trovato
15 would resign in good standing and a positive letter of reference signed by the Mayor. She stated
16 most of these things were agreed upon but, the one thing that could not be agreed upon was the
17 severance package. She stated Mr. Trovato contacted Mr. Cino and he stated he did not want the
18 "not talking disparagingly" included in the agreement. She stated Mr. Trovato contacted Mr. Cino
19 again and stated he would take nine (9) months' severance but, did not want to sign a Hold
20 Harmless Agreement. Commissioner McFall-Conte stated she could agree to take out the "not
21 talking disparagingly" but, could not agree to take out the Hold Harmless Agreement. She stated
22 Mr. Trovato wanted his resignation effective date to be October 1st and she suggested August 1st.
23 She stated Mr. Trovato wanted any revocation to be addressed to the City Manager and not the
24 Acting City Attorney and she did not agree.

25
26 Mr. Cino stated Mr. Trovato indicated he was not making any offers and that the meeting Saturday
27 was just discussion. He stated he agreed with Commissioner McFall-Conte that he would want
28 some kind of a Hold Harmless Agreement or he would not be doing his job. He stated Mr.
29 Trovato indicated that if he was asked to sign a Hold Harmless Agreement he should be
30 compensated an additional six (6) months' severance but, he would agree to nine (9) months'
31 severance without signing a Hold Harmless Agreement. Mr. Cino stated Mr. Trovato kept
32 bringing up that he wanted the same benefits that were given to the City Manager.

33
34 Commissioner Zischkau stated it is clear that the majority of the Commission is for Mr. Trovato's
35 termination. He stated he checked with Mr. Cino who informed him that the City has some sort of
36 insurance that has a \$10,000 deductible on law suits which would be approximately one (1)
37 months worth of Mr. Trovato's pay. He suggested just waiting Mr. Trovato out, paying him
38 minimum wage, suspending him indefinitely and then letting him sue the City which would act as
39 a legal resignation. He stated the Commission should not vote to offer Mr. Trovato anything more
40 at this point and Mr. Trovato has to come to the Commission with a reasonable counter offer.

41
42 Mr. Cino stated Mr. Trovato was not tied to the October 1st resignation date. He stated it is not a
43 good idea to pay Mr. Trovato minimum wage and suspend him indefinitely. He stated he spoke
44 with Attorney Skip Fowler who stated suspending Mr. Trovato for a period of time and lowering
45 his wages would be considered a termination which would violate the City Charter.

46
47 Commissioner Denizac asked for an explanation of the \$61,000 for accrued sick leave. Ms. Miller

1 stated the amount is based on what Mr. Trovato accrued since the very first day of his employment
2 that he has not used. Commissioner Denizac asked if there is a record of the days Mr. Trovato has
3 been absent and Ms. Miller replied all City staff fills out timesheets and leave slips when absent.
4 Ms. Miller stated the former City Manager instituted a cap on sick time at 400 hours and what an
5 employee banked they kept and are eligible to take which is why he has over the 400 hours of sick
6 leave. Commissioner Denizac stated the Commission cannot work with Mr. Trovato and she
7 pleaded with Mayor Mulder to provide the 5th vote to terminate Mr. Trovato so he would be given
8 what is in his contract.

9
10 Vice Mayor Carmolingo stated he agreed the amount is more than what the City should be paying
11 and he does not understand why Mr. Trovato is counter offering when what he is being offered is
12 more than generous. He stated he is in favor of all the work done by Commissioner McFall-Conte
13 and he would like Mr. Trovato to accept the agreement and leave.

14
15 Commissioner Deyette stated she believes in moving forward but not at the risk of the City and the
16 taxpayers. She asked what had been spent on legal fees thus far and Ms. Miller replied Mr. Cino
17 submitted an invoice for \$7,600 at the agreed hourly rate and is averaging about 20 hours a week,
18 there will be some expenses from the labor attorney and some expenses if the Commission decides
19 to contract with a legal firm while searching for a new City Attorney. Commissioner Deyette
20 stated this should not be about emotions but, a business deal. She stated she does not expect Mr.
21 Trovato to sign a Hold Harmless Agreement when he has been wronged and if he cannot sue the
22 City why is the Commission worried about him signing a Hold Harmless Agreement.

23
24 Mayor Mulder stated out of everything he has heard he has not seen any reason to vote to fire Mr.
25 Trovato. He stated he agrees with Mr. Cino that a Hold Harmless Agreement is needed for the
26 City. He stated he agrees whole heartedly that if the Commission is going to give anyone more
27 than their severance package that is due to them then there ought to be a Hold Harmless
28 Agreement for the City. He stated he is interested in Mr. Cino and Commissioner McFall-Conte
29 working out an agreement with Mr. Trovato between 9 - 12 months' severance that allows "only"
30 the City to be held harmless.

31
32 Commissioner McFall-Conte stated if 10 ½ months' severance is offered than she would suggest
33 lowering the amount of COBRA provided to Mr. Trovato.

34
35 Commissioner Denizac stated she is willing to compromise and agree to offer Mr. Trovato nine
36 (9) months' severance but no more and Mayor Mulder replied understanding that Mr. Trovato has
37 already rejected nine (9) months' severance.

38
39 Commissioner Treusch stated he asked Ms. Heekin and Mr. Cino if Mr. Trovato violated any of
40 the five (5) reasons mentioned in the Charter to terminate a Charter Officer and he was told no.
41 He stated he was told by Ms. Heekin that the City could be liable for a law suit if Mr. Trovato
42 wanted to do so. He stated he does not support terminating Mr. Trovato or doing anything other
43 than what is in the Charter.

44
45 Commissioner Zischkau asked if an indefinite suspension amounts to a termination than what can
46 Mr. Trovato recover from the City if he was to sue the City and Mr. Cino replied he would be
47 entitled to back pay and attorney's fees. Commissioner Zischkau stated the Commission should

1 not be offering Mr. Trovato more than what he is entitled to under the contract. He recommended
2 offering Mr. Trovato 1 - 6 months' severance.

3
4 Commissioner McFall-Conte stated this is about what is best for the City and she would love Mr.
5 Trovato to take 6 months' severance but, it is not realistic. She stated suspending him indefinitely
6 would not be the best thing for the City. She stated she is not ready to assume liability and she
7 will not support one (1) year of severance. She asked that if an agreement is reached before the
8 next Regular City Commission Meeting that this item be placed on the agenda.

9
10 Commissioner McFall-Conte asked if this item is placed on the next Regular City Commission
11 Meeting will public input regarding Mr. Trovato's contract be allowed during the public input
12 portion of the meeting. Mayor Mulder replied he will call a Special City Commission Meeting
13 before the Regular City Commission Meeting and Commissioner McFall-Conte agreed.

14
15 **Motion by Commissioner Zischkau, seconded by Commissioner Denizac to terminate**
16 **George Trovato as City Attorney.**

17
18 **Motion failed with members voting as follows: (5 votes affirmative votes required)**

19		
20	Commissioner Denizac	For
21	Commissioner Deyette	Against
22	Commissioner McFall-Conte	For
23	Commissioner Treusch	Against
24	Commissioner Zischkau	For
25	Vice Mayor Carmolingo	For
26	Mayor Mulder	Against
27		

28 **Motion by Commissioner McFall-Conte, seconded by Vice Mayor Carmolingo to go back to**
29 **negotiations with George Trovato and offer 10 ½ months' severance.**

30
31 **Motion failed with members voting as follows:**

32		
33	Commissioner Denizac	Against
34	Commissioner Deyette	Against
35	Commissioner McFall-Conte	For
36	Commissioner Treusch	Against
37	Commissioner Zischkau	Against
38	Vice Mayor Carmolingo	For
39	Mayor Mulder	For
40		

41 Mayor Mulder stated during the discussions there was obviously a number and terms that were
42 acceptable to Mr. Trovato. He stated the issue is one, he comes back to work or two, the
43 Commission reaches a number that is mutually acceptable.

44
45 Commissioner Denizac suggested offering Mr. Trovato what he is entitled to and have him sign a
46 Hold Harmless Agreement.

47

1 Commissioner McFall-Conte stated there will be a problem if Mr. Trovato does not accept the
2 agreement because he will be back to work and she personally is not comfortable with that. She
3 asked the Commission to agree to allow her to offer Mr. Trovato 10 ½ months' severance or have
4 Vice Mayor Carmolingo or Commissioner Denizac do the negotiations in her place.

5
6 Commissioner Zischkau stated the Commission is operating under misinformation because there is
7 no way Mr. Trovato can come back and work even a day under this Commission. He stated Mr.
8 Trovato cannot be protected by the Charter because he has an ethical duty not to represent an
9 unwilling client.

10
11 Commissioner Zischkau asked if Mr. Trovato brought two (2) separate counts against the City,
12 one (1) being breach of the written contract with him and two (2) for a tort of wrongful
13 termination is there any way that a tort of wrongful termination from an attorney could succeed
14 under Florida's at will standards. Mr. Cino replied it depends on who the client is, this has not
15 been litigated but, it seems to him that the voters made the decision that a super majority is needed
16 to remove a Charter Officer.

17
18 Mr. Cino stated staff has asked for direction and the Commission has done everything but that. He
19 stated the 10 ½ months' severance might work or it might not but, let's give it a shot.

20
21 **Motion by Commissioner McFall-Conte, seconded by Vice Mayor Carmolingo to direct Mr.**
22 **Cino and herself to continue negotiations with Mr. Trovato and to re-enter negotiations on**
23 **severance not to exceed 10 ½ months.**

24
25 **Motion carried with members voting as follows:**

26
27 **Commissioner Denizac For**
28 **Commissioner Deyette For**
29 **Commissioner McFall-Conte For**
30 **Commissioner Treusch Against**
31 **Commissioner Zischkau Against**
32 **Vice Mayor Carmolingo For**
33 **Mayor Mulder For**

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35 **4. ADJOURNMENT:**

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37 There being no further business, the meeting adjourned at 5:45 p.m.

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42 **ATTEST:**

Dennis Mulder, MAYOR

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Joyce Kent, DEPUTY CITY CLERK

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