

M I N U T E S

SPECIAL COMMISSION MEETING  
SOUTH PASADENA, FLORIDA

TUESDAY, DECEMBER 23, 2014  
COMMISSION CHAMBERS - 9:00 A.M.

MAYOR CALABRIA CALLED THE MEETING TO ORDER AT 9:00 A.M. THE INVOCATION WAS GIVEN BY COMMISSIONER ELSON. AT THIS TIME MAYOR CALABRIA CALLED FOR A MOMENT OF SILENCE IN HONOR OF THE THREE POLICE OFFICERS WHO WERE RECENTLY KILLED. ALL PARTICIPATED IN THE PLEDGE TO THE FLAG.

ROLL CALL: COMMISSIONERS BRUCE HOWRY, MAX ELSON, GAIL NEIDINGER, AND MAYOR CALABRIA. ABSENT: VICE MAYOR ARTHUR PENNY. ALSO PRESENT: CITY CLERK CARLEY LEWIS, CITY ATTORNEY DAVID OTTINGER, PUBLIC WORKS DIRECTOR GARRY ANDERSON, FINANCE DIRECTOR JAMES GRAHAM, COMMUNITY IMPROVEMENT DIRECTOR NEAL SCHWARTZ, AND DEPUTY CITY CLERK BRIANNA WETHERWAX.

**DISCUSSION ITEM**

- Consideration of settlement for garbage franchise fees from Progressive Waste Solutions

Finance Director Graham reviewed a memo (attached to Minutes as Exhibit A). He spoke regarding franchise fees owed to the city from Progressive Waste Solutions for the last six years. He stated that Progressive has said that they owe the city \$38,000 in franchise fees for the last three years. He further stated that their records for the three years prior to that period have been archived. He said that he estimates that \$54,000 is owed to the city for the six year period and he considers that estimate to be reasonable and conservative.

In response to Commissioner Howry, Fred Olsen, Progressive Waste Solutions, spoke regarding Progressive's accounting and record keeping. He stated that Progressive took over the garbage contract from Republic and had received account information from them. He further stated that they can go back three years from 2014 in their records but their system was converted approximately four years ago and some tax body code information was not entered correctly.

In response to Commissioner Howry, Mr. Olsen stated that the franchise fees that should have been paid to the city were not paid to anyone.

In response to Commissioner Howry, Mr. Graham spoke regarding missing accounts and properties. He stated that Public Works Department staff went throughout the city and listed every property in the city and their dumpster sizes. He further stated that there were approximately 37 properties that the city identified that were not on Progressive's receipt reports.

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In response to Commissioner Neidinger, Mr. Graham spoke regarding the decrease in franchise fees collected by the city. He stated that the city is not privy to information regarding turnover and changes in the number of pickups. He further stated that he had expected approximately \$360,000 in revenue for the contract but the city only collected \$175,000.

Mr. Graham spoke regarding garbage franchise fees owed to the city. He stated that he estimated that Progressive owes the city \$31,600 for the last three years but Progressive calculated that they owe \$38,000.

Ian Boyle, Progressive Waste Solutions, spoke regarding franchise fees. He stated that records prior to 2010 have been archived but the last three years have been corrected. He further stated that they have worked in good faith to come to a resolution and would like to compromise.

Commissioner Elson stated that the city's estimate of \$54,000 is a compromise. He further stated that he is not willing to come down from Mr. Graham's estimate.

Mr. Graham stated that \$46,000 was offered by Progressive at a previous meeting.

Discussion ensued regarding auditing Progressive's records.

In response to Mayor Calabria, Mr. Graham stated that he believes the amount owed could be as high as \$63,300 and as low as \$54,000. He noted that the estimate of \$54,000 is conservative and he feels \$46,000 is too low.

Commissioner Neidinger questioned why it took so long for the city to recognize the shortfall.

In response to Mr. Olsen, Mr. Graham stated that the offer of \$46,000 was made in order to meet in the middle between the \$38,000 Progressive calculated and his estimate of \$54,000.

Mayor Calabria questioned if \$50,000 would be reasonable.

City Attorney Ottinger spoke regarding Progressive as the city's garbage service provider. He stated that cities put trust in their franchisees and Progressive breached that trust. He questioned Progressive's accounting processes and why they cannot reconcile their records.

Mr. Olsen stated that the errors made were data entry issues.

Mr. Graham stated that as accounts were turned over, Progressive coded them incorrectly.

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Discussion ensued regarding settlement amounts.

In response to Commissioner Howry, Mr. Olsen stated that they would pay \$54,000 if the Commission will vote to settle the matter today.

MOTION WAS MADE BY COMMISSIONER HOWRY, SECONDED BY MAYOR CALABRIA TO ACCEPT \$54,000 AS SETTLEMENT FOR THE UNPAID FRANCHISE FEES OWED TO THE CITY BY PROGRESSIVE WASTE SOLUTIONS.

|       |                        |     |
|-------|------------------------|-----|
| VOTE: | COMMISSIONER HOWRY     | AYE |
|       | COMMISSIONER ELSON     | AYE |
|       | COMMISSIONER NEIDINGER | AYE |
|       | MAYOR CALABRIA         | AYE |

**UNANIMOUSLY APPROVED**

Mr. Graham spoke regarding a previous request he made to roll vacation days forward. He requested permission to roll additional hours forward if he is unable to use them by the end of the year.

The Commission approved Mr. Graham's request to roll additional hours forward.

Mayor Calabria spoke regarding a phone call between a WTSP employee and City Attorney Ottinger. He stated that he spoke to the woman and referred her email to City Attorney Ottinger.

City Attorney Ottinger stated that he received the complaint. He further stated that he has not decided if he is going to respond to the woman.

Mayor Calabria stated that it is improper for anyone with the city to hang up on someone. He stated that it should be resolved and an apology should be offered.

Commissioner Neidinger spoke regarding Mayor Calabria's email to Amy Marinec. She stated that she does not know if City Attorney Ottinger hung up on Ms. Marinec or not. She further stated that Ms. Marinec was not very kind when she spoke with City Clerk Lewis. She said that she did not like that Mayor Calabria apologized to Ms. Marinec on behalf of the City Commission and feels he does not have the right to do so.

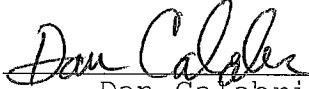
Mayor Calabria stated that he feels he has the right to answer because Ms. Marinec wrote to him. He further stated that City Attorney Ottinger has not denied that he hung up.

In response to Mayor Calabria, Commissioner Neidinger stated that according to a city resolution, items are supposed to come before the Commission before they are sent out.

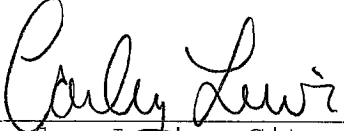
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Mayor Calabria spoke regarding members of the Commission staying within their departments.

There being no further discussion, the meeting was adjourned at 9:48 A.M.

  
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Dan Calabria, Mayor

ATTEST:

  
\_\_\_\_\_  
Carley Lewis, City Clerk  
12-23.14s

# Memo

To: City Commission

From: Finance Director Jim Graham

Date: December 19, 2014

Re: Garbage Franchise Fees

On December 17, 2014, Public Works Director Garry Anderson and I met with Fred Olsen and Ian Boyle from Progressive Waste Solutions regarding franchise fees collected by the city during the last six years. According to their records, they calculated that approximately \$38,000 is owed to the city in unpaid franchise fees for the last three years, 2012-2014. No substantiation of this figure has been provided to the city as of the date of this memo. Per Mr. Olsen and Mr. Boyle, records from the previous three years (2009-2011) have been archived and are not readily available for evaluation.

Based on financial statements from the previous contract period with Republic Services, I have estimated that the city has historically collected approximately \$20,000 per year in garbage franchise fees. This would equate to \$120,000 over a six year period. However, over the past six years, the city has collected only \$66,000 from Progressive. Therefore I estimate the amount due to the city in unpaid franchise fees to be approximately \$54,000. I consider this estimate to be conservative, potentially low and a concession from both parties.

Due to the difficulty in estimating the franchise fees for the period of 2009-2011, Mr. Olsen and Mr. Boyle proposed a compromise and were prepared to pay \$46,000 to settle.

Based on our records and the corrected November franchise fee receipts, my recommendation is that the city's estimate of \$54,000 is more than reasonable. The attached spreadsheet outlines my calculations leading to this estimate.

**City of South Pasadena**  
**Progressive Waste Solutions - Franchise Fee Analysis**

| <b>Year</b>                                       | <b>Actual<br/>Fran Fees<br/>Collected</b> | <b>Estimated<br/>Fran Fees</b> | <b>Estimated<br/>Shortfall</b> |
|---|---|--------------------------------|--------------------------------|
| 2009  | \$14,731                                  | \$20,000                       | \$5,269                        |
| 2010  | \$12,067                                  | \$20,000                       | \$7,933                        |
| 2011  | \$12,111                                  | \$20,000                       | \$7,889                        |
| 2012  | \$10,625                                  | \$20,000                       | \$9,375                        |
| 2013  | \$9,423                                   | \$20,000                       | \$10,577                       |
| 2014  | \$8,297                                   | \$20,000                       | \$11,703                       |
| <b>Estimated Shortfall Due for FY 2009-2014</b>   |   |                                | <b>\$52,746</b>                |
| <b>Estimated One Month Shortfall for Oct 2014</b> |   |                                | <b>\$1,200</b>                 |
| <b>Total Estimated Shortfall Due</b>              |   |                                | <b>\$53,946</b>                |