

Palmetto City Commission  
Special Meeting held in the  
Carnegie Library  
April 9, 2007 7:00 p.m.

Elected Officials Present:

Larry Bustle, Mayor  
Eric Ball, Vice Mayor  
Tamara Cornwell, Commissioner  
Mary Lancaster, Commissioner  
Tambra Varnadore, Commissioner  
Brian Williams, Commissioner

Staff and Others Present:

James R. Freeman, City Clerk  
Michele Hall, Attorney  
Chris Lukowiak, Public Works Director  
Tanya Lukowiak, CRA Executive Director  
Diane Ponder, Deputy Clerk-Administration

Mayor Bustle called the meeting to order at 7:00 pm.

Mayor Bustle referred to the information paper he distributed to the Commission and staff regarding Olympia Theater, which is attached hereto and made a part of these minutes, stating the information paper provided a recap of where the City is in the case and potential alternatives available to the City.

City Attorney Michele Hall requested a 6:00 pm shade meeting for April 16, 2007 to discuss litigation expense and settlement strategy in response to the Olympia Theater decision. The meeting will last one hour. She also requested the City Clerk secure a court reporter for the meeting.

Mayor Bustle turned the meeting over to Attorney Mickey Palmer. Attorney Palmer stated his belief the City had presented the best case possible, using witnesses with common knowledge. He further stated he was disappointed in the outcome but respected the decision of the court. Mr. Palmer opined there may be room for disagreement and there may be grounds for appeal.

Mr. Palmer discussed the options available to the City:

1. Motion for rehearing: Recommended not pursuing given the fact the City would have to show the law was misinterpreted or a point of law was overlooked. A motion for rehearing is limited to the records before the court and could lead to a revised opinion to correct any errors made in the first decision.
2. Appeal: There are some grounds for appeal. Mr. Palmer stated he would prefer to discuss the particulars in the requested shade meeting.
3. Mediation: There has been an offer from the Jarvis's attorney (Mr. Moore) to mediate. A skilled, impartial mediator can assist in developing a settlement. Mr. Moore has indicated that all options are open. If mediation is decided upon, it should be done quickly, as the outcome could influence the City's decision concerning appeal. Mr. Palmer stated a skilled mediator could cost \$300 per hour.
4. Do nothing: The City will be allowed to review a detailed attorney billing. The Jarvises will be required, by law, to submit a detailed attorney billing 30 days prior to a fee hearing. Mr. Palmer stated he would prefer to discuss anticipated expenses in the requested shade meeting.
5. The City may file a new eminent domain at any time. There is no statute of limitation applicable to eminent domain cases. Mr. Palmer stated the decision strongly hinted that if

the City established a more thorough public necessity, the City may prevail in the order of taking.

Commission discussed the mediation option. Mr. Palmer informed Commission he has received no indication from Mr. Moore what the Jarvis' want for the building, but mediation may reveal the purposes they have in mind. He further stated mediation is a non-binding process; any settlement agreed upon would be contingent upon Commission's approval.

Ms. Varnadore stated she is not in favor of mediation or refilling the motion. Mrs. Lancaster stated that if settlement is reached where the City owns the building, the Jarvises should not have any more privilege to the building than any other citizen. Mr. Ball was open to mediation. Mr. Williams inquired if Mr. Moore's fees would be charged during mediation. Attorney Palmer stated he did not believe Mr. Moore would charge an hourly fee for mediation. Attorney Hall stated mediation could also result in a settlement that will include attorney fees.

Mr. Palmer suggested it was appropriate to authorize Attorney Hall and him to identify a mediator and schedule a mediation date, given the time constraints on an appeal. Commission will consider the item after the shade meeting.

Ms. Varnadore questioned why the City should continue to spend money when the City is not interested in a partnership with the Jarvises. Mayor Bustle discussed potential scenarios where the partnership could exist for a period of time, comparing them to discussions held on the Manatee Players proposition.

Mayor Bustle discussed the City's reasons for pursuing the taking of the Olympia Theater. He stated he still believes the theater can be a catalyst in the development of the area surrounding the building. Mr. Williams cautioned the City must keep in mind what is affordable.

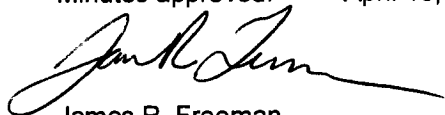
Mr. Palmer informed Commission Mr. Moore has instructed his clients not to give interviews and asked the Commission to also refrain from commenting to the press. Mayor Bustle commented on his responses during recent interviews.

In other business, Mayor Bustle informed Commission the relocation of the Veterans Monument to Palmetto has been removed from the table because the installation of the boat ramp opposite the monument has been tabled.

There was a meeting with the Triathlon One O One promoter. Questions still remain unanswered. Mayor Bustle stated he had given the promoter until Monday morning. Mr. Williams asked Commission to confirm it was their intention to allow the Mayor to make the decision on the event and report his decision at the April 16, 2007 Commission meeting. Commission concurred with Mr. Williams's interpretation of their directions to Mayor Bustle and staff.

Meeting adjourned at 7:55 pm.

Minutes approved: April 16, 2007



James R. Freeman  
City Clerk

Information Paper  
on  
Olympia Theater Decision  
April 9, 2007

**BACKGROUND:**

- Judge Dubensky issued his decision on City's eminent domain suit on April 2, 2007.
- City has until April 12, 2007 to file a motion for a rehearing. A motion for rehearing is restricted to the record that is already established before the court. We cannot bring in new evidence such as a newly revamped "study." To bring in new evidence, we would be required to file a brand new lawsuit and repeat the process all over again. In a rehearing we would be limited to arguing to the judge that he misunderstood or misconstrued certain facts or certain elements of the law. (This information was provided by Mr. Palmer.)
- The City has 30 days to appeal the judge's decision.
- Total legal expenses could amount to as much as \$500,000. The Jarvis's legal expenses are unknown and would probably have to be decided by the judge.

**ALTERNATIVES:**

1. Do nothing except negotiate and settle both sides' legal expenses.
2. File for rehearing.
3. File for an appeal.
4. File a new lawsuit after addressing all of the court's concerns about necessity.
5. Make another attempt to negotiate/purchase/mediate the property from the Jarvises.

**DISCUSSION OF ALTERNATIVES:**

1. If we decide to drop the issue and just pay our legal bills and forget the matter, we still have a problem with an empty theater and no appropriate location for a multipurpose auditorium. All of the positive reasons we have for owning the theater still exist, especially the role it would play as a cultural center and gathering place for the community. It appears unlikely that the Jarvises would have the resources to develop the theater any time soon.
2. Filing for a rehearing would be speculative, at best. I understand we would have to show the judge that there is some point of fact or law that he overlooked or misinterpreted, and that could be a tough sell. The order of the court contains many statements that reflect favorably upon the City. Requesting a rehearing would provide the court with an opportunity to revise or supplement the existing order, possibly in a way that would reflect negatively on the City.
3. Mickey and Michele believe there are reasonable grounds for an appeal. The standard of review on appeal, however, is very deferential to the lower court such that an appellate victory is never a sure thing. Appeal issues would need to be discussed in detail with Michele and Mickey. I assume we would delay paying the legal fees until the appeal was settled.
4. Filing another eminent domain suit is potentially a good approach, although it would involve more legal fees. I believe that Attorneys Moore and Hennessy

would probably not represent the Jarvises in a new lawsuit because the judge implied in his order that if the City more effectively established a “reasonable necessity” it might win the next time. Attorney Moore also expressed this in his cross examination of Tanya. It is likely that Moore and Hennessey represented the Jarvises on a contingency basis, so they most likely would not want to represent them in a subsequent suit if they thought that they would probably lose.

5. There is some indication that Mr. Moore might be planning to recommend to the Jarvis’ that they negotiate a sale to the City in lieu of them having to defend against another suit by the City. If a teaming agreement is proposed, I suspect that the Jarvis would try to retain ownership of the building and some involvement in the programs that are held in the building. The commission has not shown interest in any teaming arrangements in the past.

NOTE: The above information is mostly my opinion and certainly not based on any legal knowledge. I’ve used information from Mr. Palmer and Michele has seen it, but the alternatives and opinions are my creations. The reason for a special commission meeting after the reception for Mr. Hunzeker is to get Commission’s opinions and alternatives, and to figure out where we go from here. I’m not asking for a Commission decision on Monday evening. On April 16<sup>th</sup> we’re proposing a Shade meeting with Mr. Palmer at 6:00 pm, and we can discuss our legal options then. We’re also proposing to leave this subject on the 7:00 pm agenda, but it could be removed if there’s no further need to discuss the matter.

Mayor