

MINUTES OF A SPECIAL MEETING OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, IN COMPLIANCE WITH SECTION 67 OF THE CHARTER OF THE CITY OF FORT PIERCE, FLORIDA, HELD IN THE CITY HALL, 3RD FLOOR CONFERENCE ROOM, 100 NORTH U.S. #1, FORT PIERCE, FLORIDA, AT 12:00 NOON ON WEDNESDAY, NOVEMBER 4, 2009.

Mayor Benton called the meeting to order.

The Pledge of Allegiance was recited.

Upon Roll Call, those present were: Mayor Robert Benton; Commissioners Rufus Alexander, Edward Becht, and Reginald Sessions; City Manager David Recor; City Attorney Robert Schwerer; and City Clerk Cassandra Steele. Those absent: Commissioner Christine Coke.

-----

The purpose of the Special Meeting was to Canvass the Returns of the **Municipal Election** held on November 3, 2009 and Presentation of Certificate of the Board of City Canvassers.

City Clerk Steele said they have the Election Returns (Statement of Votes Cast) in front of them, if they want to take a moment to review them.

City Attorney Schwerer said let him take a few moments to explain. This is a total tabulation of all votes cast in both District 1 and District 2. The reason it says "Unofficial Results with Provisionals" is because they will not be certifying the returns for District 2 pending ruling from the 19th Judicial Circuit Court. But it is official for purposes of District 1.

City Clerk Steele read the following Certificate:

CERTIFICATE OF THE BOARD OF CITY CANVASSERS  
FORT PIERCE CITY ELECTION  
HELD ON NOVEMBER 3, 2009

STATE OF FLORIDA)  
ST. LUCIE COUNTY)

WE, THE UNDERSIGNED, Cassandra Steele, City Clerk; Gertrude Walker, Supervisor of Elections; and Robert J. Benton, Mayor-Commissioner, constituting the Board of City Canvassers of Elections in and for the City of Fort Pierce, do hereby certify that we met in the City Hall, 3rd Floor Conference Room, 100 North U.S. #1, Fort Pierce, Florida, on the 4th day of November 2009 in accordance with Section 67 of the City Charter, and as shown by the returns on file in the office of the City Clerk and the Supervisor of Elections, we do hereby certify solely, exclusively, and entirely from said returns that:

For the election of City Commissioner, District 1, Seat 5, the whole number of votes cast was 1,099, of which number:

Rufus Alexander	received	826
R. Duke Nelson	received	273

Total Cards Cast: 3,904 (District 1 and District 2)  
(19.07% of Total Registered Voters: 20,467)

BOARD OF CITY CANVASSERS  
CITY OF FORT PIERCE, FLORIDA

/s/ Cassandra Steele  
City Clerk

/s/ Gertrude Walker  
Supervisor of Elections

/s/ Robert J. Benton  
Mayor-Commissioner

(CITY SEAL)

City Clerk Steele said she is not going to be reading the Certificate for District 2, because they are not going to be certifying that today.

Commissioner Becht asked why are they not certifying for District 2?

City Clerk Steele said Mr. Schwerer will give a Status Report.

-----  
The next item on the Agenda was Status Report on Case No. 56-2009-CA-008682 (Judge William Roby, 19th Judicial Circuit): Jones Calvin Peace III, Plaintiff, v. Thomas K. Perona, Gertrude Walker, and Cassandra Steele, Defendants.

City Attorney Schwerer said when they were in Court (November 2, 2009), Judge Roby issued an oral ruling to both Cassandra Steele, as the City's Election Official, and Gertrude Walker, as the Supervisor of Election, that he was not going to enjoin the election for District 2 based on the alleged disqualification of one of the candidates, and instead would allow the election to proceed. Judge Roby did rule that he did not want the results of that certified, pending a full hearing on the merits of the disqualification petition, and directed that a hearing be held today at 3:00 p.m., the day after the election, should the candidate who was sought to be disqualified - Mr. Perona - have placed first or second in the election. Mr. Perona did place second according to the votes. So that is the reason they are not certifying it. They have the Certificate, but it is not going to be signed, not officially certified. There is nothing prohibiting the Supervisor of Elections from tabulating all of the votes. Absent some challenge to that, which would be a separate issue, those votes are what they are. He may ask the City Clerk to read it to inform them of the results.

Commissioner Becht said Mr. Schwerer is reporting that Judge Roby entered a preliminary injunction against them?

City Attorney Schwerer said Judge Roby indicated that he was issuing injunctive relief to the extent that he did not want the election results certified, that was his order.

Commissioner Becht asked did he require posting of a bond for that?

City Attorney Schwerer said he did not require that.

Commissioner Becht asked has Mr. Schwerer ever seen a temporary injunction issued ex parte without a bond being required?

City Attorney Schwerer said it wasn't really ex parte to the City, but it may have been ex parte to other parties. He could have taken issue with Judge Roby's ruling as far as a bond was concerned; but at the time, it was premature in his mind and he didn't feel it was his place to start challenging the Judge, because it wasn't clear whether Mr. Perona was going to place first or second. He understands the concern here, that the City has been prohibited from certifying results.

Commissioner Becht said he wants to be very clear, that based on Mr. Schwerer's interpretation of Judge Roby's ruling, the City has been prohibited from certifying the results from District 2. Not only the City, but this applies to Ms. Walker as well.

City Attorney Schwerer said yes. And while one may take issue with that...

Commissioner Becht said he is hard-pressed to find the harm to the Supervisor of Elections, her being enjoined from doing something. But at this time it appears to him that very shortly the City will suffer harm because of Judge Roby's actions. They may or may not have to have a Special Election. They may perform a Runoff Election and nothing happen. So strictly from the perspective of the City, because that is the only focus that is relevant in this room - when does Mr. Schwerer see the necessity for asking Judge Roby to require the Plaintiff to post a bond?

City Attorney Schwerer said he is going to be asking for some bond today. He is waiting to see what happens at this evidentiary hearing at 3:00 o'clock and how far the Judge gets into the case. He understands there are a lot of issues to be discussed before the Judge could make a final ruling on this disqualification petition. So this may take a multitude of hearings, it may involve candidates other than Mr. Perona asking to be heard, depending on the Judge's rulings. For instance, what is the relief? In one respect, there is a line of authority that suggests that if the second candidate is disqualified, the first candidate might just automatically...

Commissioner Becht said this is where they get into the speculative nature of the harm that the City might incur.

City Attorney Schwerer said they don't know what is going to happen here and how many candidates are going to now challenge, depending upon what the Judge's rulings are and what remedy the Judge is going to fashion as a result of this petition. He can't tell them what he is going to be asking for as far as a bond. The City has at stake in this instance certainly the costs involved with another election.

Commissioner Becht said he wants to be clear on the record,

whoever Mr. Peace is - he or any other person that is qualified - has a legal right to file whatever it is they want to file. He does not want to unnecessarily thwart that or intimidate anybody. But what he does want to take into consideration is, the City is entitled to have whatever the consequences of the City are if the action is without merit or if he is not a duly qualified person, the damages that befall the City should be taken into consideration as soon as they can. He is not saying to heck with the candidates; but he is not talking about the candidates, he is talking about what is happening with the City.

City Attorney Schwerer said he is not aware at this point in time of any prohibition for the other party to this case, Mr. Perona, to ask for an appropriate bond as well. That is up to Mr. Perona. For the City's interest, he will be asking for a bond. But it really is going to depend on how the hearing goes today. He certainly would hope that Judge Roby is not intending to have a two hour hearing and decide this case today. He would certainly advocate that the City wants to make sure that whoever emerges as the candidate who is elected after whatever process is the people's choice and is a legitimate candidate under the law and is not subject to being challenged, so on the first meeting in January they have a valid Commission.

Commissioner Becht said they want everybody's vote to count. Judge Roby needs to be very careful that he does not disenfranchise anybody.

Commissioner Alexander asked should Mr. Perona be disqualified? There has to be a statute, there has to be something already, procedures in place to disqualify a person. He raised that question back when they were trying to put Ms. Cully... There was two vacant spaces, Mr. Perona had put his name in the hat, right? Where since then has things changed that no one can answer still today whether he should be disqualified?

City Attorney Schwerer said that issue is before the Court now. The Court will have to hear evidence, testimony, and arguments of law on that. He is going to defer to Judge Roby. He has his own independent feeling as a lawyer. But different lawyers might have different opinions.

Commissioner Alexander said they all know right from wrong.

Mayor Benton said what concerns him is that he, Commissioner Becht, and even back to Commissioner Burdge, they were all members of the City Planning Board when they were elected. They stepped down after they were elected. It hasn't been an issue. They have a Governor who is running for Senate as a sitting Governor. Eddie Enns was on the FPUA Board when he ran for Mayor. They have a County Commissioner running for Congress. There is an Attorney General running for Governor. Now, this is an appointing Board where somebody is maybe learning the job, and it becomes illegal? He does not understand it.

Commissioner Alexander said but they don't have the policies nor procedures.

Mayor Benton said they do not. The State Law was changed when the Governor wanted to run or if he was chosen to run for Vice-President, he believes that is what changed the State Law. The

law appears to be changing as it goes along. But it hasn't been an issue in the past. His concern is, if they were to certify this against the Judge's wishes, because they don't have a written Court Order... There are three attorneys sitting here. They would just be certifying that the electorate voted this way. What could the ramifications to the City be?

City Attorney Schwerer said as an officer of the Court and as counsel to the City... The City Clerk is their election official. It would place her in severe jeopardy because she was present, the Judge was talking to both her and Ms. Walker, including himself and Mr. McIntyre (County Attorney). It was pretty clear what the Judge said. His advice is that when a Judge gives an oral ruling in Court, particular a restraining type of ruling, they need to honor it.

Commissioner Alexander asked where are they at now?

City Attorney Schwerer said they are going to go to a 3:00 o'clock hearing.

Commissioner Becht said he had interrupted the City Clerk and asked why she was not reading the Certificate for District 2. So what Mr. Schwerer has now elaborated on, what he wanted in the record, is they can't even read the Certificate for District 2.

City Attorney Schwerer said he wants the tabulation of the election presented. He does not think that is an issue. The Judge didn't restrain them from doing that. Ms. Walker has done her job, she conducted an election, the numbers are what they are. The certification of the candidate is a separate process. They are reporting the numbers only as to District 2. He wants something in the record that suggests what the numbers are, so they know based on the number of votes what they are looking at - the number one candidate, the number two candidate, the number three candidate, and the number four candidate. He thinks they should at least report the results.

City Clerk Steele said that is what she broke the motion down on the Agenda into two.

Commissioner Becht asked is Ms. Walker okay with that?

Ms. Gertrude Walker, St. Lucie County Supervisor of Elections, said yes, she is.

Commissioner Sessions said it is what it is. They are not certifying. But the numbers, they are saying go ahead and put it on the record.

City Attorney Schwerer said yes.

Commissioner Sessions said even those numbers that do not certify.

Commissioner Alexander said the motion says it is not certified pending the ruling. So if they go by the motion, they have done what they are supposed to do. Each motion is different.

Commissioner Sessions asked Mr. Schwerer does not think that is

going to be an issue? They are talking about something that perhaps may be in litigation two or three months.

City Attorney Schwerer said first of all, Judge Roby's order did not prohibit them from conducting the election, it didn't prohibit folks from voting. The votes have been tabulated. All of that is a matter of fact and record. They are not prohibited from publishing that on the record. They just can't certify that the number one candidate is Ms. Coke and the number two candidate is Mr. Perona because of the pending lawsuit, which potentially could result in Mr. Perona being disqualified. So they are not certifying the number one and number two candidates today, but they are certifying the total number of votes that were cast for all four candidates. That he thinks they have a legal obligation to do. The statute and rules require they do that.

Commissioner Becht asked if they don't do that, could the Judge even decide? Because he needs to know who is number one and number two in order to go forward.

City Attorney Schwerer said yes, he needs to know that.

-----

Motion was made by Commissioner Becht, seconded by Commissioner Sessions, that the results of the November 3, 2009, City Election be certified as follows: For the election of City Commissioner, District 1, Seat 5, the whole number of votes cast was 1,099, of which number: Rufus Alexander received 826 and R. Duke Nelson received 273; and that Rufus Alexander received a majority of the total votes cast for such office and be declared re-elected.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Sessions, and Benton. Those opposed: None.

-----

City Clerk Steele read the following Certificate:

CERTIFICATE OF THE BOARD OF CITY CANVASSERS  
FORT PIERCE CITY ELECTION  
HELD ON NOVEMBER 3, 2009

STATE OF FLORIDA)  
ST. LUCIE COUNTY)

WE, THE UNDERSIGNED, Cassandra Steele, City Clerk; Gertrude Walker, Supervisor of Elections; and Robert J. Benton, Mayor-Commissioner, constituting the Board of City Canvassers of Elections in and for the City of Fort Pierce, do hereby certify that we met in the City Hall, 3rd Floor Conference Room, 100 North U.S. #1, Fort Pierce, Florida, on the 4th day of November 2009 in accordance with Section 67 of the City Charter, and as shown by the returns on file in the office of the City Clerk and the Supervisor of Elections, we do hereby certify solely, exclusively, and entirely from said returns that:

For the election of City Commissioner, District 2, Seat 4, the whole number of votes cast was 2,796, of which number:

Curtis Boyd	received	706
Christine Coke	received	986

Tom Perona	received	758
Rick Reed	received	346

Total Cards Cast: 3,904 (District 1 and District 2)  
(19.07% of Total Registered Voters: 20,467)

BOARD OF CITY CANVASSERS  
CITY OF FORT PIERCE, FLORIDA

/s/ Cassandra Steele  
City Clerk

/s/ Gertrude Walker  
Supervisor of Elections

/s/ Robert J. Benton  
Mayor-Commissioner

(CITY SEAL)

Motion was made by Commissioner Alexander, seconded by Commissioner Sessions, that the results of the November 3, 2009, City Election for the election of City Commissioner, District 2, Seat 4, the whole number of votes cast was 2,796, of which number: Curtis Boyd received 706; Christine Coke received 986; Tom Perona received 758; and Rick Reed received 346; but this be designated as unofficial returns and not certified pending ruling from the 19th Judicial Circuit Court (Case No. 56-2009-CA-008682).

Those voting in favor of the motion were: Commissioners Alexander, Becht, Sessions, and Benton. Those opposed: None  
-----

There being no further business, Mayor Benton declared the meeting adjourned at 12:35 p.m.  
-----

Adjournment.

ATTEST:

\_\_\_\_\_

CITY CLERK

\_\_\_\_\_

MAYOR COMMISSIONER