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FEATURED

Key Colony Beach files motion to dismiss City Hall petition drive

By RICHARD TAMBORRINO Special to The Citizen
Aug 23, 2023



Laurie Swanson, center, hosted a petition signing event at Inch Beach earlier this month.
Photo by Richard Tamborrino

The Key Colony Beach City Commission met recently at the Key Colony Inn and

proceeded along mostly traditional lines – until discussions and details regarding the city’s response to the temporary injunction through a motion to dismiss emerged. The temporary injunction was filed against the city to block the City Hall rebuild.

Laurie Swanson, who is leading the Concerned in KCB petition drive to garner enough signatures to hold a referendum vote, addressed the council at the very start of the Thursday, Aug. 17, session. She began by asking the commission to, “listen carefully what I have to say” and chided the commission about the “hundreds of letters the city has received opposing the rebuild without response.”

Later in the meeting, City Attorney Dirk Smits referenced Florida statute 286-11, subsection 8, which states that “any board or commission of any state agency or authority of any county ... may meet in private with the entity’s attorney to discuss pending litigation to which the entity is presently a party before a court.”

Smits announced he would lead a closed-door “preparation” meeting the following morning with the commissioners and counsel (by phone) to “get advice regarding pending litigation and strategy” as well as “litigation expenses and possible settlement options.” This meeting would essentially be the precursor to any city response to the injunction.

Smits added that no voting would occur at this session but that he would take the received advice and proceed accordingly, which might include filing a motion to dismiss the petition drive and the subsequent injunction.

However, it was learned afterward that Smits had already filed the motion on Aug. 15, two days before the commission and closed-door meetings. He then filed an amended motion on Aug. 17, after the commission meeting. This indicates the motion to dismiss was already in progress and not conveyed as such at the commission meeting.

The City of KCB's case (number 2023-CA-000205-M) is against Swanson and was filed Aug. 15 in Monroe County. It seeks to dismiss the injunction on "the sole basis for seeking injunctive relief is the assertion that she wishes to attempt to overturn the contract award through a future Referendum Petition." It goes on to state the city has "three main reasons" for this action. The city maintains that Swanson failed "to plead the elements necessary to maintain an action for temporary injunctive relief, that Florida law does not authorize the use of municipal referendum power to challenge matters concerning appropriation and procurement and that the city is entitled to sovereign immunity for discretionary-level planning decisions such as budgetary considerations."

The amended motion was filed Aug. 17 and includes additional language. It added that the "temporary injunction primarily (was) seeking (to) block any action by the city to move forward with construction efforts following a contract awarded by the city to reconstruct its city hall complex that was determined to be substantially damaged by Hurricane Irma in 2017."

Both motions state that since Hurricane Irma damaged City Hall, "over the course of the next five years, the City Commission held numerous open meetings and the public was afforded multiple opportunities to provide comment concerning the city's ongoing discussion as to whether to repair or demolish and rebuild a new City Hall."

Swanson is challenging that last claim, on the basis the city did not conduct "numerous open meetings" and she has been unable to obtain any record of those meetings from the city. Swanson has submitted a Freedom of Information Act request to City Clerk Silvia Gransee for recordings from those meetings.

Also, later in the session, Smits reviewed the status of the city hiring an independent investigative attorney to look into the allegations of fraud that may have occurred post-Hurricane Irma, which involved the altering of the City Hall

floor before a FEMA inspection. Smits was vague about the status of how this issue was proceeding but did suggest he would have a report to share with the commission at the conclusion of the investigation.

More traditional city business dominated the remainder of the session.

Commissioner Tom Harding reviewed the city's challenges securing competitive bids, specifically related to stormwater and utility bids. Harding said the city only received a single stormwater bid while the only other injection well bid was five times higher than Haack Excavating, Inc bid.

City Administrator Dave Turner expressed hope the millage rate "could be dropped a little without cutting any city services". The subject of police and fire was addressed briefly, with Turner saying that since the police are awaiting finalization of their unionizing efforts, he didn't know what to budget for police. The negotiations for the renewal of the contract with the city of Marathon for fire should be completed by Sept. 7, he added.

The commission also conducted a deep discussion about whether Sunset Park should be made available for large events. Turner felt this could be a strong for-profit opportunity for the city, while Commissioner Freddie Freeman warned that cleanup, noise, parking and potential resident concerns would outweigh the benefits. The city currently allows only small group events at the park.

One agenda item that wasn't discussed in detail was the financing plan for a potential City Hall rebuild, ostensibly because the city remains in a quasi-holding pattern while the petition drive and the proposed dismissal is in process.

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