

## **SWFRPC Emergency Executive Committee Meeting/Conference Call June 23, 2011**

The Executive Committee of the Southwest Florida Regional Planning Council held a meeting/conference call on Thursday, June 23, 2011 at 2:00 p.m. in the 1st floor conference room at the offices of the Southwest Florida Regional Planning Council located at 1926 Victoria Avenue in Fort Myers, Florida.

### Committee Members

Councilman Charles “Chuck” Kiestler, City of Marco Island (Chair)  
Commissioner Karson Turner, Hendry County BOCC (Vice Chair)  
Commissioner Carolyn Mason, Sarasota County BOCC (Treasurer)  
Vice Mayor Mick Denham, City of Sanibel

### Other Members of the Council

Councilman Forrest Banks, City of Fort Myers  
Commissioner Brian Bigelow, Lee County BOCC

### Guests

Mr. Todd Pokrywa, Schroeder-Manatee Ranch, Inc.  
Mr. Jay Brady, Gulf Coast Business Review  
Mr. Wayne Daltry

### Staff

Mr. Ken Heatherington, Executive Director  
Ms. Liz Donley, Legal Counsel  
Mr. Dave Hutchinson, Planning Director  
Ms. Janice Yell, Finance Manager  
Ms. Nancy Doyle, HR Operations Manager  
Ms. Nichole Gwinnett, Administrative Staff Specialist  
Mr. Dan Trescott, DRI Coordinator  
Ms. Deborah Kooi, Sr. Administrative Staff  
Ms. Rebekah Harp, WebMaster/Information Specialist  
Ms. Angie Tomlinson, Purchasing Agent  
Ms. Whitney Grey, Sr. Environmental Planner  
Mr. David Crawford, Senior Planner  
Mr. Brian Raimondo, Sr. Transportation Planner  
Mr. Jim Beever, Senior Planner

### Call To Order

Chair Kiestler called the meeting to order at 2:03 p.m. and asked the committee members if everyone had received his notes, along with Ms. Donley’s responses and if they had a chance to review them. Ms.

Donley distributed the materials to attending committee members, other Council members, guests and staff and gave everyone a few moments to review the materials.

Chair Kiester asked if any members of the Executive Committee had any questions regarding the materials which were distributed. No comments were made at this time.

Chair Kiester opened it up to the members of the Council for comment. No comments were made at this time.

Chair Kiester explained that he called the meeting due to the concern of the actions taken by the Executive Director in opposition to what the Council requested that he do. Also, due to the apparent strife that it has caused the staff and perhaps the Council members and/or their host city/county to the point that they may withdraw their annual stiffen from the RPC. He stated that he is fearful that the Executive Director has placed the Council in jeopardy by his actions.

Chair Kiester then recommended that the Executive Director be immediately placed on suspension. However, given the memorandum distributed from the Council's Legal Counsel, Liz Donley, he has agreed to change his recommendation to include immediate suspension with full pay and benefits.

Vice Mayor Denham asked for Mr. Heatherington's input in regards to the Council's recommendation from the June 16<sup>th</sup> SWFRPC Board Meeting. Mr. Heatherington stated that he feels that the Council is acting premature since there hasn't been a Finance & Budget Committee meeting held and as he understands the motion it is putting into abeyance the layoffs of staff and continue the Council meeting until June 30<sup>th</sup>. Staff has a number of options to be considered.

Vice Mayor Denham stated that the motion was passed unanimously by the Council that is the action that the Executive Director should take. He then stated that he is actually surprised that Mr. Heatherington hasn't complied with that particular action and place the other issues on hold until the meeting of June 30<sup>th</sup>. Mr. Heatherington stated that no employee has been released of their job until the meeting of June 30<sup>th</sup>, until the Council adopts the budget that they choose to adopt.

Vice Mayor Denham asked Mr. Heatherington if he has already issued the paperwork for the release of a number of employees. Mr. Heatherington replied yes as of July 1<sup>st</sup>. Vice Mayor Denham stated that it seems that by doing that it seems that a decision has already been made and it is viewed as being made by many other Council members as well. Mr. Heatherington noted that he has that authority to take such action as he sees fit, but he also said that the Council had recommended that the policy be reviewed so staff has been working on a number of budget concepts for the Council's Budget and Finance Committee to review and recommend approval to the full Council. This includes the rehiring of the laid off employees and the reduction of hours of staff. He noted that there will be three to four options presented to the committee on the 29<sup>th</sup>, then they will chose which option they prefer and present it to the full Council on the 30<sup>th</sup>.

Vice Mayor Denham asked Mr. Heatherington if it would be unreasonable for him to put out a statement that he is reviewing a variety of options and not just the option that has been given to the Council. In other words, you are open to other alternatives to solving this budget crisis because at the moment the only message that is put out is to let some key players go. Mr. Heatherington stated that he would agree to submit such a statement and would ask that either Ms. Donley, Ms. Doyle or Ms. Yell would submit in his absence in his name.

Vice Mayor Denham noted that the Executive Committee was also ready to present some options. Mr. Heatherington stated that he would gladly entertain those options as well.

Commissioner Mason asked if Mr. Heatherington was recommending that the Council wait until the continuation of the Council meeting on June 30<sup>th</sup> to make a decision in order to hear the other options and that the suspension of the Executive Director is premature. Mr. Heatherington replied yes, he would like to have the opportunity to present the options to both the Budget & Finance Committee and the full Council.

Vice Mayor Denham stated to Mr. Heatherington that you may not like what decisions were made by the Council, but they were the decisions and he feels that Mr. Heatherington needs to listen to what the Council had to say and act in accordance to the Council's wishes. He stated that it appears that Mr. Heatherington has "thumbed his nose" at the Council's decision and just went right along with your decision. He feels that Mr. Heatherington needs to recognize the comments which were made and the wishes of the Council and act accordingly.

Commissioner Mason stated that the Council recognizes that the Executive Director has the authority to hire and fire staff and the Council doesn't; however, the Council is responding to an absolute up roar from the community that requires a response. She then stated that she feels that the Council should give Mr. Heatherington the opportunity to present those options and then make a decision accordingly.

Commissioner Turner stated that he believes that the Council is sending a very bad message. The Council is charged with reviewing and proper planning for our region and the Council was sent a very clear and direct message this year from the legislature. He then said that if the Committee does decide to suspend Mr. Heatherington then he feels that it is premature, because he feels that communication is a two-way street. He stated that Vice Mayor Denham's comments are very well received with regards to that it could be perceived that Mr. Heatherington "thumbed his nose" at the Council by stating that we are going to move forward with the removal of the employees of the Council. At the same time in Mr. Heatherington's defense, he took offense to the references that he was down in Brazil on a holiday and he is embarrassed that he did not come to his aid when those comments were made by members of the public and also by members of the Council.

Commissioner Turner stated that he is ashamed that he doesn't know how many professional planners are on staff and he doesn't believe that it is a fair statement that Mr. Heatherington has removed most of the planning staff or all of the professional planners. He then asked Mr. Heatherington how many, with the removal of the three current employees, professional planners remain on staff. Mr. Heatherington replied 18-23, including the staff of the CHNEP and MPO. They have all agreed to step up to the planning requirements that are necessary.

Commissioner Turner stated that he agrees with Commissioner Mason and noting that there was a lot of public in attendance at the June 16<sup>th</sup> Council meeting that stated that the Council can't lay off these employees, but the fact of the situation is that all of the cities and counties are in the same situation and making extremely difficult decisions during these budget times. He then stated that Mr. Heatherington acted, while some view it as too aggressively, and should have visited with the Executive Committee or with the full Council. He enacted on what he thought was the best actions for the Council with regards to budget constraints and with the ability to carry the path forward of what the Council stands for. He feels that the Committee and the Council should give Mr. Heatherington the opportunity to justify it and

that there should be more close discussion with the Budget & Finance Committee and perhaps the Executive Committee. He doesn't feel that Mr. Heatherington should be suspended but allowed to present the options as proposed by Vice Mayor Denham.

Chair Kiester stated that suspension does not mean that Mr. Heatherington could not attend the June 30<sup>th</sup> meeting of the full Council to explain his actions and present his alternative options.

Commissioner Karson stated that in his professional experience when he doesn't want someone on his team he suspends/fires them.

Vice Mayor Denham asked what the definition of a planner is. He feels that his definition of a planner versus Mr. Heatherington's definition is slightly different. He is looking at the matrix which was distributed and according to his definition, a planner should have a planning degree or an AICP and there less than a handful in the RPC which qualify as professional planners.

Chair Kiester stated that experience is sometimes better than having a degree in planning or having membership to the American Institute of Certified Planners. The standard for an advertisement for an open planning position is a planning degree or you can substitute years of experience for that degree.

**Commissioner Mason moved and Vice Mayor Denham seconded to allow Mr. Ken Heatherington to present his options to both the Budget and Finance Committee on June 29<sup>th</sup> and to the full Council on June 30<sup>th</sup> before taking any other action. The motion passed with a 3-1 vote.**

Chair Kiester stated that he needed to reiterate his concern and if the motion had contained a conditional phrase to the effect that the Executive Director could not take any more personnel actions between today and June 30<sup>th</sup>.

Vice Mayor Denham noted that Mr. Heatherington has agreed to put out a statement immediately indicating that there are other options to consider and also include within the statement that Mr. Heatherington will not take any more personnel actions between today and June 30<sup>th</sup>.

Chair Kiester explained that in his discussions with Legal Counsel, Ms. Donley, the Chair has the power to suspend the Executive Director but he didn't want to use that power. He felt that it this issue should go before the Executive Committee for discussion.

Commissioner Bigelow stated that he will lead the charge on June 30<sup>th</sup> to seek Mr. Hetherington's termination. He explained that this is due to because he met with Mr. Heatherington the day after the Governor vetoed the DCA funding for RPCs and tried to appeal to Mr. Heatherington to come up with some alternatives. During the discussion, Mr. Heatherington stated that he was hoping that the legislature would overturn the veto. On June 16<sup>th</sup> the Council asked for more alternatives and with Mr. Heatherington's reaction to the Council's recommendation was the third strike in his book. He then stated that he is really concerned about any further damage that can be done by Mr. Heatherington's leadership. He then asked Mr. Heatherington to consider, if trying to stay as the Council's Executive Director is in the region's best interest then maybe come to the June 30<sup>th</sup> meeting with your preference of how to be existed out if the Council chooses that avenue.

Vice Mayor Denham stated that what has been concerning him is what the Governor intends to do with legislation that is passing that is appropriate to this particular situation. It is his understanding that the Governor is not changing the planning requirements of local organizations, but instead that the State does not want to control what goes on locally. The local control of development is still going to be significant and going to be a requirement and planning of DRIs is going to increase not decrease. The Governor's Office wants to take it from a state level to the local level.

Mr. Heatherington asked if the Executive Committee has any recommendations on the budget as an alternative. Vice Mayor Denham stated he doesn't believe that the Executive Committee has made any recommendations, but he had presented some suggestions during the Council meeting. He said that he would be willing to present his suggestions to either Mr. Heatherington or to another staff member that he chooses.

Chair Kiester stated that when the Executive Committee met he produced an agenda for the purpose of looking at options. He then stated that to the best of his knowledge that the four employees who were laid off have not been reinstated and asked if the status of those employees is to stand until June 30<sup>th</sup> or beyond. Secondly, what about the issue of administrative leave for Mr. Dan Trescott?

Mr. Heatherington replied that administrative leave was based on violation of the Council's personnel policies. It wasn't taken lightly and it was well documented. The layoffs were going to take effect on July 1<sup>st</sup>, but that now depends on what the Budget and Finance Committee is going to recommend to the full Council in accordance to what the options are. It was contained within a balanced budget after the Governor's letter rescinding the funding for the RPC's through DCA, but there are other ways of addressing the income revenue streams.

Vice Mayor Denham suggested to Mr. Heatherington that he reverse his decisions in regards to the employee layoffs, administrative leave, and cut hours until the June 30<sup>th</sup> Continuation SWFRPC Board Meeting. Mr. Heatherington agreed.

Councilman Banks suggested to Mr. Heatherington that he listen to the audio recordings of both the Executive Committee meeting and the Council meeting.

Vice Mayor Denham asked Mr. Heatherington who on staff he would like to have him discuss possible alternatives with. Mr. Heatherington replied Ms. Donley, Ms. Doyle and Ms. Yell. Vice Mayor Denham stated that he would prefer to discuss it with Ms. Donley. Mr. Heatherington stated that would be fine and she will provide the information to both Ms. Doyle and Ms. Yell.

The meeting adjourned at 2:50 p.m.

## Memorandum

From: Nancy Doyle-HR/Operations Manager

To: Dan Trescott, Project Manager

Through: Ken Heatherington, Executive Director

Date: June 23, 2011

Subject: Rescission of Layoff Notice dated June1, 2011 and Administrative Leave Notice dated June21, 2011

At the Executive Committee emergency meeting held today, Mr. Heatherington agreed to reinstate all staff that received written notice of layoff and/or reduction of hours on June 1, 2011.

Under the direction of the Executive Director, Ken Heatherington, in his absence, this notice shall serve as written notice that the notifications received informing you of layoff and/ or reduction of hours has been rescinded.

In addition, Mr. Heatherington has rescinded the notice of Administrative Leave, dated June 21. Entry code for key pad at back door has been changed to 3791.

## Memorandum

From: Nancy Doyle-HR/Operations Manager

To: Dave Crawford, Dan Trescott, Jason Utley, Gaila Triggs, Rebekah Harp, Tim Walker, Debra Kooi, Angela Tomlinson

Through: Ken Heatherington, Executive Director

Date: June 23, 2011

Subject: Rescission of Layoff Notice and/or Notice of Reduction of Hours, dated June 1, 2011

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