
From: Michael Browning <mbrowning@newmoonmgmt.com>
Sent: Monday, October 26, 2015 12:30 AM
To: Richard Payne
Cc: Craig Cates; Samuel Kaufman; Margaret Romero; Clayton Lopez; Billy Wardlow; Jimmy Weekley; Shawn D. Smith
Subject: Citizen Article regarding Planning Board

Dear Judge Payne:

First let me congratulate you on your recent election to the City Commission. My hat is off to anyone who serves our community in that arena – and the headaches that go with it, Hence my first letter to you as a newly elected commissioner.

I was deeply disturbed reading today's paper and frankly put little credence in what it reports, excepting, perhaps the date. Apparently there is some suggestion of removing Richard Klitenick as the representative of your district. I am cc'ing the other Commissioners as I know that now elected you cannot under the Sunshine Law discuss these matters, but perhaps your advisors or their advisors might examine Mr. Klitenick's removal at least until his term runs out. I will make some assertions below you might follow up on before making this decision.

The Planning Board or Board of Adjustment was not so long ago a function of the City Commission. The Commission would close the Commission meeting and then reconvene as the Board of Adjustment. Even though the decisions made by the Commission were quasi-judicial, lobbying on Board of Adjustment matters was inevitable thus making what were to be legal reviews seemingly tainted by politics. I am sure that many a past Commissioner can tell you what a headache it was with constituents who did not understand the difference between the legislative role and the quasi-judicial role. After years of wrangling beginning with Commissioner Scales, the Planning Board was created. I invite you to call Judge Scales as to the merits of such a plan and the success of this politically independent board.

When I was in practice I think it is safe to say that for the first 15 years I was at nearly every City Commission Meeting, usually on a Board of Adjustment matter. As I limited my practice and ultimately closed it some 10 years ago I was personally ecstatic to see an independent board created though the creation was toward the end of my legal career. I was later appointed and am honored to be on this board. After Mr. Klitenick and Mr. Gilleran, I am one of the longest sitting members. We currently have three attorneys: Mr. Klitenick, Christy Spottswood and myself. We have two business owners: Mr. Gilleran and Sam Holland as well as Peter Pike, an architect and Ms. Lisa Tennyson, the Legislative Affairs and Grants Acquisition Director for Monroe County. I think it is the best group the City has ever had to be seated for these issues. You can check with the City Attorney, but I do not believe since I have been on the board there has ever been a successful court challenge of any of our decisions. Most major decisions and appeals, however, come before the City Commission thus allowing that body as the final word.

At just about any other time I would never contact and be presumptuous enough to question a commissioner's decision regarding their choice of a Planning Board Member. I was appointed by Danny Kolhage and following him stepping down and the election, I immediately offered my resignation and was grateful that Commissioner Wardlow maintained confidence in me and has allowed me to continue to

serve. Should he ask me to resign in favor of a more suitable candidate I would not think twice. However, these are not ordinary times. In fact these are extraordinary times.

We are currently reviewing and rewriting the land development regulations which will guide land use and growth for our community for decades to come. Of paramount importance is our ever present challenge of Work Force Housing. We have a very narrow window to get this right. The consulting firm the City has hired has some great ideas to allow for greater density to accommodate this desperate situation. We currently have a new Planning Director who undoubtedly is qualified, but certainly is a novice with our City Code; Mr. Erskine, the Assistant City Attorney who acts as counsel for the Planning Board is preparing to retire; and Ms. Spottswood, whom I deeply admire, is relatively new to land use law. To lose Mr. Klitenick at this time, in my opinion, would be a catastrophic when the City needs the most experienced land use lawyers and members during this critical time. An appointment like this is not like making an appointment to the Tree Commission or HARC where the worst thing that can happen is the wrong tree gets chopped down or a house gets painted an ugly color.

I practiced law before you starting some 30 years ago so you know me and certainly have opinions about my skills. I have known Mr. Klitenick for probably 25 years, having practiced law with him and certainly consider him one of my closer friends. Obviously our friendship might be viewed as the real motive but I assure you it is not. This simply is the worst time to replace the most knowledgeable member of the Planning Board. If you find Mr. Klitenick unsuitable for the position so be it, but I would urge you to at least allow him to serve out his term and see us through this next year and the revisions to the Land Development Regulations which is undoubtedly the most important issue before the Planning Board and certainly one of the utmost importance to the future of Key West probably long after we are gone.

Yours Humbly,

Michael

Michael L. Browning
Managing Member
New Moon Management Group, LLC
402 Appelrouth Lane
Key West, FL 33040
Phone: 305-304-9072
mbrowning@newmoonmgmt.com