



City of Tarpon Springs, Florida

Mayor and Board of Commissioners
324 East Pine Street
Post Office Box 5004
Tarpon Springs, Florida 34689-5004
(727) 938-3711
www.ctsfl.us

January 24, 2023

To: Board of Commissioners

From: Mayor Costa Vatikiotis

Subject: Special Counsel Commissioning Resolution 2023-09

The subject resolution was prepared by me and reviewed by Mr. Schwartz through the City Clerk's Office for consistency. It considers the Special Counsel Request for Proposal, Carlton Fields' response, and the Commission's comments from the January 17th workshop, either explicitly or implicitly.

The draft scope of work which is the product of Tuesday's workshop is also attached. We will discuss the scope of work as part of this agenda item and approve it later unless the Commission has no issues with the draft. Once approved it will be an attachment to the resolution.

If you see anything that you believe needs clarification, please make it known to Ms. Jacobs who will then forward your comments to Mr. Schwartz. Please remember even though Carlton Fields is our Special Counsel, their responsibility is to preserve the integrity and impartiality of this investigation and protect their clients' interests, i.e., the City of Tarpon Springs, the municipal corporation. The City Commission is an entity of that corporation.

RESOLUTION 2023-09

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF TARPON SPRINGS, FLORIDA, FORMALLY ESTABLISHING A SPECIAL COUNSEL; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

WHEREAS, the City of Tarpon Springs is a Florida Municipal Corporation, and;

WHEREAS, the governance of the City of Tarpon Springs is vested in a Board of Commissioners duly elected by the City's residents to serve their interests, and;

WHEREAS, the Board of Commissioners are required to enact laws, govern impartially through those laws, and to ensure the public welfare, safety, and health of the residents and businesses, and;

WHEREAS, the Board of Commissioners authority and powers are delineated in the City Charter, and;

WHEREAS, the Board of Commissioners, in addition to the City Charter, are subject to ethics rules and other laws established by Florida Statutes, and;

WHEREAS, the City Charter provides for appointments of Charter Officials to administer the function of City Government, and;

WHEREAS, the Charter Officials in addition to their roles and responsibilities as determined by the City Charter and the Board of Commissioners are subject to their own ethics rules and standards of professional behavior established by Florida Statutes, and;

WHEREAS, the Charter Officials further rely on the City Staff to perform their duties in an impartial manner and consistent with the ethics rules and other laws established by Florida Statutes, and;

WHEREAS, from the Fall of 2017 to the Spring of 2022 certain quasi-judicial and legislative actions occurred that call into question the impartiality and propriety of the City Government, and;

WHEREAS, these actions have created a cloud of suspicion and mistrust over the City Government in the eyes of the residents, and;

WHEREAS, the Board of Commissioners desires to clear the air, restore the integrity of City Government and reestablish confidence with the residents, and;

WHEREAS, to achieve restoring these essential elements of good government, a well-qualified, independent, and impartial outside party is required.

NOW, THEREFORE, be it resolved by the Board of Commissioners of the City of Tarpon Springs, Florida, that:

Section 1. The law firm of Carlton Fields is hereby appointed as Special Counsel to investigate certain topics stemming from questionable quasi-judicial action of the City Government during the period of the Fall, 2017, through the Spring, 2022.

Section 2. The Special Counsel's commission is to document and evaluate the propriety of this topic in the context of due process, Florida's ethics rules, laws, and standards of professional conduct for public officers and attorneys, the Sunshine and Public Records Laws, and any other applicable laws.

Section 3. The Special Counsel is hereby authorized on behalf of the city government to contact any person or persons for interviews, questions, clarification, or any other purpose in the conduct of its investigation.

Section 4. The Special Counsel's client is the Municipal Corporation, i.e., the City of Tarpon Springs, and as such, the Board of Commissioners as an entity is subject to this investigation, as are individual Commissioners, Charter Officials, and senior City employees.

Section 5. The quasi-judicial action in question is the Anclote Harbor Apartments project and potentially any related Ordinance issues.

Section 6. The topics for this investigation are identified in the scope of work as attached to this resolution.

Section 7. The Special Counsel's report shall be discussed by means of a presentation during a public meeting, and the detailed findings, policy and other recommendations, and conclusions in a written report.

Section 8. The results of the investigation are to include the basis of any wrongdoing, if any, identified in the investigation and recommendations with respect to what actions, if any, should be taken as a result of the Special Counsel's findings.

Section 9. The Special Counsel's points of contact for administrative matters are hereby established as:

- a. City Clerk for obtaining public records and executing public records requests.
- b. Public Services Director for scheduling interviews with current City employees and scheduling of any public meetings requested by the Special Counsel.
- c. Purchasing Director for billing and invoicing matters

Section 10. If the Special Counsel seeks guidance from the City Commission, it is to be accomplished at a public meeting. If the communication is informational, such as a status report, it may be done at a public meeting or by written communication addressed to the Board of Commissioners.

Section 11. The City Commission acknowledges that the investigation may take up to eight months to complete.

Section 12. This Resolution shall become effective upon adoption.

ATTACHMENT 1 TO RESOLUTION 2023-09

SPECIAL COUNSEL INVESTIGATION SCOPE OF WORK

CARLTON FIELDS shall conduct an impartial and independent investigation into:

- (i) the communication and interplay between Tarpon Springs' Public Officers, employees, and its agents and the Morgan Group and its agents between Fall 2017 and Spring 2022 related to the Anclote Harbor apartment project;
- (ii) the February 2019 approval of, and the events leading to the approval of, Ordinances 2019-02 and 2019-03 (the "Ordinances"), which modified the City of Tarpon Springs' code to give developers more time to assemble building projects and tied conditional use to a final site plan instead of a building permit;
- (iii) real or perceived conflicts of interest or self-dealing related to the Anclote Harbor apartment project or the Ordinances; and
- (iv) related ancillary issues identified during the investigation into the Anclote Harbor apartment project or the Ordinances.

The scope of the investigation includes providing factual findings concerning the above topics. CARLTON FIELDS will render legal conclusions, based on the factual findings, as to whether there was a violation of Florida rules, laws, statutes, or the policies of the City of Tarpon Springs. CARLTON FIELDS shall provide recommendations with respect to what actions should be taken as a result of its factual findings and legal conclusions, including any applicable policy or procedural changes, if any, to prevent or correct similar conduct from reoccurring.

In addition, CARLTON FIELDS shall identify related ancillary issues, if any, that arise during the investigation. CARLTON FIELDS may advise the client of what additional actions, if any, should be taken with respect to those ancillary issues.

Upon completion of the investigation, CARLTON FIELDS will provide oral and written reports of the results of the investigation.

CARLTON FIELDS shall take reasonable steps to ensure the confidentiality of the investigation, documents, statements of witnesses, and all things related thereto until the conclusion of the investigation pursuant to Florida Statutes.

PUBLIC RECORDS DISCLOSURE

The City of Tarpon Springs is subject to Florida's extensive public records disclosure laws. Florida courts have held that the public records disclosure laws are **not** superseded by the attorney-client privilege granted pursuant to Section 90.502, Florida Statutes.

Pursuant to Section 119.071(2)(k), Florida Statutes, a limited duration exemption from public records disclosure applies to investigations into misconduct **until the investigation ceases to be active**.

Therefore, all information that is not legislatively exempt for some other reason (such as a bank account number or a social security number) and relates to the investigation will likely become available for public disclosure upon request following the conclusion of the investigation. All individuals participating in the investigation should be made aware of this limited duration exemption.