

The Crime

On June 7, 2006, the members of the Daytona Beach City Commission voted unanimously to purchase the home of fellow commissioner Rick Shiver for \$355,833.62. At the time of the purchase, the property is worth \$187,424.00. Shiver-and his attorney-pocket the \$168,000.00 difference. City Commissioners that night vote to cash out their colleague's home:

- Without an independent third-party appraisal;
- Without any sort of public price negotiation or attempting a counter-offer;
- Without even an attempt at due diligence.

While City Attorney Bob Brown and City Manager Jim Chisholm withheld certain vital information regarding the "just value" of the property.

The Underlying Incident

Taken from a Memorandum from Robert C. Brown, City Attorney, to The Daytona Beach City Commission March 1, 2006.

"On November 30, 2006, the City of Daytona Beach Shores experienced a power failure at one of its lift stations. To alleviate the problem, Daytona Beach Shores pumped wastewater into a Daytona Beach manhole cover to be processed through a Daytona Beach lift station. The lift station was unable to handle the increased flow. As a result, approximately 5,200 gallons of wastewater flooded the basement-garage (house was built into a hill) of City Commissioner Rick Shiver's home at 121 Harrison Road. The extensive flooding ruined most of the contents of the basement and they had to be discarded. Commissioner Shiver submitted a claim totally \$36,664.95 for cleanup expenses, including remediation, coliform clearance testing property damage. The Incident Review Committee initially authorized settlement of this claim up to \$36,664.95, subject to City Commission approval."

By June 5th City Attorney Brown is telling commissioners in Incident Review Committee had reconsidered; and was now recommending a payoff of \$365,733.62. However:

- Shiver never asked for more than \$145,000.00 to settle.
- There's no record of the Incident Review Committee ever meeting to consider Shiver's original claim in the first place; let alone to reconsider a settlement amount months later.
- There's no written request for reconsideration in the files indeed there's no proof that the committee members actually voted to bump the payout the Shiver to more than \$370,000!

Despite repeated public records requests for minutes, agendas and transmittals of Incident Review Committee meetings for the years 2005 and 2006, along with any/all notes taken by the members in the meetings, none have been forthcoming. The only documentation on file is an appraisal, ***paid for by Rick Shiver himself*** and prepared ***six months after the fact***; fixing the value of his home on Harrison Road at \$305,000.00 There's also no

physical, formal evidence that the members of the Incident Review Committee actually saw this document either.

What happened between March 1st and June 5th to cause such a surge in settlement? Shiver had hired an attorney on a *contingency* basis. Whatever the final settlement, the attorney would retain a third. At the time of the settlement, Shiver owed two mortgages totaling \$131,000.00 on the house. Volusia County Property Appraiser Morgan Gilreath had officially appraised Shiver's property at \$187,424.00 ***Just Value,*** land and building total together. Shiver's total equity: \$56,000.00

Immediately after the overflow incident, Shiver claims \$36,664.95 in actual damages and clean-up costs. The claim was pulled from the May 3, 2006 City Commission meeting agenda, and then later paid after the Commission voted to buy Shiver's home.

Why did they choose to pay for remediation and clean up of the home months after the accident, since Shiver never moved back in and it was going to be demolished anyway? Since it was remediated and cleaned he could have moved back in.

After hiring an attorney, Shiver's back, asking for \$106,000.00 –in “stigma” compensation for having to live in a house that suffered a sewage overflow incident. But that still isn't enough.

Shiver may have realized that because of his two mortgages-and having to share the payoff with his attorney-he simply couldn't afford a “fair market” or “just value” settlement. Were he to agree to a \$142,664.95 payoff: (***\$36,664.95 in actual damages plus the \$106,000.00 “stigma” claim***); or ***even \$224,088.95 (\$36,664.95 in actual damages pulse Morgan Gilreath's pre-accident appraisal of the property)***, Shiver would have been left “upside down” in his house.

The Payoff

With taxes and closing costs thrown in, moving expenses and Homestead tax credits, the actual dollar value of the Shiver Settlement tops out at \$371,000.00. That seems to be the whole point of the exercise, to put enough money in Shiver's pocket that he could buy a new house with cash.

Of that amount:

- The lawyer took home \$122,000.00;
- Both Shiver mortgages were paid off for \$131,000.00;
- Taxes and closing costs totaled approximately \$5,000.00;
- Leaving shiver with \$112,000.00 cash in hand to buy a new home.

The fact that Shiver was in debt when the incident occurred; or that he had to hire his attorney on a contingency basis, is not the taxpayers' problem. At least it shouldn't be. Ironically, the city couldn't pay Shiver's legal fees, since he hired his attorney on contingency and in contingency cases, there are no “attorney's fees” per se.

The only way the city manager and city attorney could ensure everybody got paid and Shiver would get back enough cash to buy a new home, was to arbitrarily-and artificially-inflate the value of the property; and therefore the settlement amount. That's exactly what happened:

- Sometime in March, City Manager Jim Chisholm is told that Shiver can't afford to accept a "fair-market" buyout.
- Chisholm, sensing an opportunity, orders City Attorney Bob Brown to bump the value of the Shiver property past the \$325,000.00 mark; and to insert the phrase "...*pre-accident appraised value*..." into all documents going to the commission.
- Shiver knows the settlement is inflated. He knows the "pre-accident" appraised value of his home was nowhere near \$328,000.00. He knows the documents going to his fellow commissioners are, at best, inflated; or at worst, fraudulent. But he doesn't say anything and accepts the cash. **And that's against the law!**

Key Facts

The terms "pre-accident appraised value" and the amount "\$328,000.00" are key to this taxpayer-funded fraud. From May 19th forward, City Attorney Bob Brown and the City Manager Jim Chisholm keep referring in their written correspondence to city commission to "...*the pre-accident appraised value of \$328,000.00*..." and the "...*appraised value of \$328,000.00*..." (and in all subsequent legal documents generated by their offices.)

Yet no "*pre-accident appraisal*" exists, save the one completed by Volusia County Property Appraiser Morgan Gilreath, fixing the "Just Value" of the property at \$187,424.00-land and building taken together. In 2006, the year after the incident, Gilreath fixed the "just value" of the land and building at \$270,597.00; the jump in appraised value was driven by the city's purchase of the property at the inflated price after the city purchase.

The Cover-up-Several Unanswered Questions:

1. Two previous mortgages Shiver had on his home would have required him to purchase and maintain homeowners insurance. Yet, there's no reference to any claim being entered against any insurance policy, by Shiver or by the city. Did Shiver submit a separate claim to the insurance companies and then "double-dip" the settlement or had he let his policies lapse?
2. The city demolished Shiver's house almost immediately after closing the purchase on Chisholm's order. Why? The city had just paid more than \$370,000.00 for a 1,600 square foot home located less than a block from the beach, and then destroyed it. Why no attempts to re-sell it, utilize it for storage, shelter, or even give it to a struggling non-profit agency? Did Chisholm order the house destroyed in order to cover up evidence of the bogus valuation or an illegal toilet installed without a permit in Shiver's basement?

Shiver was paid \$36,664.95 for remediation, clean-up, coliform testing and property damage. After remediation and clean up, the home would be habitable again. If remediation and clean up didn't work, there should be testing and reports indicating so, from an environment testing company or the Volusia County Health Department. No reports exist. Who determined Shiver's house was uninhabitable and needed to be demolished without performing significant environmental testing first?

3. The City of Daytona Beach never pursued the City of Daytona Beach Shores for the damages resulting from dumping 5,200 gallons of wastewater into the sewer the night of Nov. 30, 2005. Why no request to share the cost of the settlement? Could it be that Chisholm and Brown know the evidence/documentation/appraisal could never support a settlement that large for a house worth that little? Did Chisholm and Brown realize that another city manager or city attorney would see through the deception? Perhaps it was due to the negligence of the Daytona Beach Bethune Sewage Plant Supervisor, who agreed to accept 5,200 gallons of sewage form Daytona Beach Shores Facility Supervisor Brian Edwards, at 2:30am, on the day of the incident, due to the 'Shores' facility experiencing a failure of primary and secondary sewage processing systems.

The Daytona Beach Sewage Plant Supervisor wasn't trained well enough to understand that his lift station couldn't handle and additional 5,200 gallons of Daytona Beach Shores sewage. He called Edwards back at 3:34am telling him to stop pumping, since some flooding was occurring in Daytona Beach. The City of Daytona Beach has no record of these calls or interviews of the Plant Supervisor. This information was obtained from the City of Daytona Beach Shores.

4. Did Shiver pay capital gains tax on his windfall?

5. Two other incidents of lift station failure and resulting damages in Daytona Beach should be noted as comparatives. On or about August 2004 a back up or overflow occurred at Colonial Colony Apartments on Beville Road in Daytona Beach. The City of Daytona Beach denied and continues to deny negligence and any responsibility for the damages. Colonial Colony Apartments settled the issue for \$3,000.

On or about November 2, 2006 a failure occurred at a City of Daytona Beach lift station serving 113 Executive Drive. Two bathrooms in the law firm of Boehm, Brown, P.A. were flooded. The City of Daytona Beach paid \$14,617.90 for clean up, replacement of carpet, restoration and plumbing services. Note the City Commission did not offer to pay for the loss of value from the 'stigma' of having sewage back flow into an apartment or office. Why didn't Daytona Beach offer to purchase these properties as they did in the Shiver incident?

6. The most troubling question is: what did the city commissioners know; and when did they know it? The city attorney states the "*...pre-accident appraised value...*" of a property is \$328,000.00 and nobody thinks to ask to see his documents? Such a request undoubtedly would have to have proven awkward...since no "*pre-accident appraisal*" of the property ever existed showing a value of \$328,000.00.

While city commissioners might not have known the “*pre-accident appraised value of \$328,000.00*” was a fiction; Shiver, his attorney, City Attorney Bob Brown and City Manager Jim Chisholm knew. Those city commissioners might not have known that Shiver would walk away with \$168,000.00 in taxpayers’ money, fee and clear, however, Shiver knew.

Time Line

- November 30, 2005. The overflow incident took place.
- Shiver originally asks for \$36,664.95 in damages from the city;
- On or about March 1, 2006, the incident Review Committee supposedly approves his claim and recommends a settlement award of \$36,664.95; Clean up- \$13,000; Loss of Personal Property- \$23,000;
- The \$36,664.95 settlement figure holds firm through mid May.
- By May 19th, 2006, however, Shiver’s claim for damages supposedly had been sent back to the Incident Review Committee for modification (Why? And By whom?)
- Shiver’s attorney Jim Rose has hired a State Certified Residential Property appraiser who supposedly reports the loss-in-value to Shivers home, from the “stigma” of a sewer overflow incident, at \$106,000.00
- On or about June 1, 2006, for no apparent reason (at least none on the record and none in the files), the Incident Review Committee chooses to **disregard** Shiver’s two previous claims and instead recommend the purchase of his home **in its entirety** ...and at the “*pre-accident appraised value*” of \$328,000.00; plus \$1,350.00 in moving expenses; plus \$8,500.00 in temporary loss of homestead tax cap benefits.
- On May 19th, 2006, City Attorney Robert Brown sends a letter to the Daytona Beach City Commission recommending payment of \$370,233.62 for clean up, remediation, coliform clearance testing, personal property damage, loss of value, home purchases, closing costs, and temporary loss of homestead tax cap benefits.
- On June 8th, 2006, a Settlement And General Release Of Claims is entered into by Shiver and the City of Daytona Beach for the amount of \$370,233.62 signed by Shiver, May Yvonne Scarlet-Golden and city Attorney Robert Brown.
- June 2006-June 2007-Numerous public records requests filed by Daytona Beach resident Ron Bynum.
- Summer 2007-Florida BAR complaint filed against City Attorney Robert Brown.