

CITY COMMISSION SPECIAL MEETING MINUTES
January 22, 2009

The meeting of the Winter Park City Commission was called to order by Mayor David Strong at 2:00 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida.

Members present:

Mayor David Strong
Commissioner Margie Bridges
Commissioner Beth Dillaha
Commissioner Karen Diebel

Also present:

City Manager Randy Knight
City Attorney Trippe Cheek
Deputy City Clerk Nancy McLean

Absent:

Commissioner Phil Anderson

Discussion on the response to Orange County's 15 day notice related to commuter rail.

Attorney Cheek commented they are not discussing the opt out clause but the right to terminate. The concept was that if they did not receive the money to build the station, the City does not want to be obligated to continue with this agreement. Attorney Cheek read Section 6.2 (b) of the contract and stated that the City's position was that they need to be able to terminate and the County's position was there needs to be a timeframe on that. He explained that the Commission decided to send two letters to the County, one asking for clarification of issues and the other asking for potential changes. He stated the County responded and served as notice to the City that the County paid its second installment to FDOT for commuter rail. He commented that it was clear they were intending to trigger our 15 day window to terminate, if we have a right to terminate. He stated that they believe we do not have the right to terminate because the money was received, but if the City thinks they have the right to terminate, then let the period begin. Attorney Cheek answered questions. The Commission was also provided a letter from the House of Representatives, Committee on Transportation and Infrastructure regarding a number of Central Florida commuter rail stations that were statutorily designated for funding in Public Law 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU).

Commissioner Dillaha expressed concerns that we were never notified when the second installment was made in October 2007 and that the 15 day period is in October and not right now. She explained that she requested this meeting to review all of the responses that are in the letter from Orange County as well as the termination clause, and then to determine what they can and want to do going forward. Attorney Cheek responded that the court would most likely construe our agreement as the period of termination begins when we receive that notice. He commented that they need to treat this as though these 15 days are running even though we may have arguments that it is not.

Mayor Strong commented that there is evidence that the money has been received by someone. Attorney Cheek responded that Orange County and FDOT have said that we have the money. Mayor Strong commented that there is also conflicting information that the money has not been received and believed that our response should be if it has not been received (for the benefit of the City) we preserve our right to terminate the contract.

He stated he was supportive of that, but was not supportive of terminating the agreement because they missed a timeframe or because of some other issue.

City Manager Knight commented that Attorney Cheek made changes to the letter addressed to Mayor Crotty. Attorney Cheek explained that they received information from Orange County specifying exactly when the payments were made after the letter was drafted.

Commissioner Dillaha reiterated that she wanted to review the responses from Orange County and discuss how to resolve some of these things. She expressed there were a lot of promises made to the citizens in March 2007 and assurances to the City and wanted to ensure that it is clear in the agreement with Orange County. She stated if we are not going to get clarification using this termination clause then we need to renegotiate.

Commissioner Dillaha commented that she wants to ensure that the \$3 million is guaranteed to the City by FDOT or Orange County. She would like something placed in the agreement that FDOT will contribute \$3 million or less, if our station cost is less for construction. She stated we were also told there would be 50% Federal funding for the system and it has not happened yet. She wanted that addressed as a contingency and a guarantee. She commented that our operating costs have increased 31% since the vote in March of 2007 and wanted to know what the costs are now and to clarify these things in the agreement.

Mayor Strong agreed that if the \$3 million is not forthcoming they should have the right to opt out of this agreement. Commissioner Dillaha stated that it also needs to come in advance of construction and not two years after construction of the station; based upon when earmark monies come due. Mayor Strong commented that should not matter because we will not front the cost of construction.

Mayor Strong stated that even if the money comes from another source then they have met that expectation for our community. He believed that if it does not come then the City has the right to be released from this agreement without any exposure or liability. Commissioner Diebel agreed with that approach. He also commented on the operating expense and stated that this was always considered an estimate. He believed it will cost more and the citizens knew this and will either have to bear the additional cost or we will have the opportunity to opt out in 6 to 7 years.

Commissioner Dillaha disagreed about the citizens knowing how much it can cost as far as operating and maintenance costs per year. She believed that this also needs to be addressed and our citizens should not be paying any operating and maintenance costs for this system. She commented that it represents a double taxation to our citizens, it is a 99 year commitment to fund an operating deficit and we have no idea what that will amount to. She stated it is unfair and unreasonable that all the other counties are funding the operating and maintenance costs for their cities except for Orange County. Mayor Strong commented that we need to find a way to preserve our right to opt out if there is no permanent funding for the operations and believed that was the intent. Attorney Cheek read the Orange County clarification letter on page 2 section b) "Local Operating Support Cost and Absence of Dedicated Funding". He believed that they were interpreting it to mean that the funding requirement means funding everything and

that was our understanding as a City when we entered into the agreement. Mayor Strong commented that we should express our concern and it should be done tomorrow and if they do not receive a positive reaction by Monday then they can take it up again. He stated that his interpretation all along is that if a permanent dedicated funding source does not exist at the time of the opt out then we are free of further obligation and not a one year temporary funding source. He stated that Orange County needs to be willing to clarify that and we need to communicate with them. Attorney Cheek read provision 5.3 (d) which Orange County referenced. Attorney Cheek explained the next step is to write a letter on what was discussed and ask them to respond by tomorrow.

Commissioner Dillaha reiterated that she wanted clarification that there has to be \$3 million received prior to the beginning of construction of the project so that Winter Park is not out of pocket for any money. Mayor Strong stated we are never out of pocket on any money. He believed that we need to clarify that despite evidence to the contrary that if \$3 million is not forthcoming to Winter Park through some source then we retain our right to terminate this agreement. There was further discussion on the operating and maintenance issue and the funding source.

Commissioner Diebel commented that our citizens voted to fund this and it went to referendum. She stated the referendum language clearly stated the funding of this and we have taken proactive measures to budget for that in the years that the costs are established. She stated at some point a future Commission will decide whether or not it is still important for Winter Park to have this operational and if it can be funded. Commissioner Dillaha commented that citizens voted on using City funds to construct a commuter rail station in the City and did not vote on the use of ad valorem revenue for 99 years with no cap and no say in the matter.

Commissioner Diebel commented that we have a contract that states "all" and an opt out clause. She commented that we have the right to opt out at any point that we decide the funding source is not "all". Attorney Cheek spoke about the opt out and the dedicated funding source in more detail. Mayor Strong commented that if we are going to be in this partnership, then there should be clarity of the rights and obligations.

Commissioner Dillaha commented that the language has changed in the termination clause from what it stated in another area and it no longer refers to "all". She wanted this clear and in writing if it is the intent of Orange County. Commissioner Diebel asked Mayor Strong about his intentions if Orange County does not clarify. He stated that if they do not respond to the question he will have concerns about their motivation.

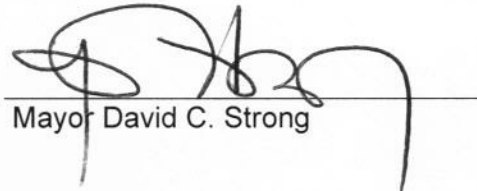
Motion made by Commissioner Dillaha that Attorney Cheek drafts a letter to Orange County expressing our understanding that \$3 million will be received for construction of our station. She added that will be received prior to construction so that the City of Winter Park is not paying up front for construction of the station. Mayor Strong asked that be deleted and make it a separate motion because he would not support that part. Commissioner Dillaha agreed to strike the second part. **She continued that they clarify that Winter Park will not be required to pay operating and maintenance costs associated with the commuter rail service.** Commissioner Dillaha asked for assistance from Attorney Cheek.

Attorney Cheek stated that his understanding of the discussion today was to write a letter regarding two things: 1) we construe the agreement to mean if we do not receive the money to build the station we are not bound to build the station; and 2) we believe that our ability to opt out exists at the time called for in the agreement if there is no permanent funding source for all costs. He stated both of these issues relate to construing what the agreement says. **Motion made by Commissioner Bridges to use Attorney Cheek's language; seconded by Commissioner Dillaha. Upon a roll call, Mayor Strong and Commissioners Bridges and Dillaha voted yes. The vote carried 3-1. Commissioner Diebel voted no. Commissioner Anderson was absent.**

Mayor Strong commented that he would like Attorney Cheek to verbally communicate today what we are trying to accomplish and see if it is an insurmountable issue. Attorney Cheek explained that his intent is to email this to the Director of Growth Management Jim Harrison by the end of business today.

Commissioner Dillaha also commented that a promise was made regarding the 50% Federal funding for the project for all the capital costs. She believed the Federal funding for the project should be there as a contingency. Commissioner Bridges agreed that this is a very important contingency. Attorney Cheek commented that the 50% requirement that is dealt within the interlocal funding agreement is between FDOT and local government partners and we are not a party to that.

The meeting adjourned at 3:02 p.m.



Mayor David C. Strong

ATTEST:



City Clerk Cynthia S. Bonham