

**CITY OF WINTER PARK
CITY COMMISSION SPECIAL MEETING MINUTES
APRIL 30, 2007**

The meeting of the Winter Park City Commission was called to order by Mayor David Strong at 3:30 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida.

Members present:

Mayor David Strong
Commissioner John Eckbert
Commissioner Douglas Metcalf
Commissioner Margie Bridges
Commissioner Karen Diebel

Also present:

City Manager James Williams
City Clerk Cynthia Bonham
Attorney Trippe Cheek

Attorney Cheek provided copies of draft #3 of the Orange County commuter rail interlocal agreement that contained the County's revisions and was dated 4/23/07. He summarized the revisions to the agreement. He addressed the three exhibits; the Master Interlocal Agreement (MIA), the construction estimate for the Winter Park station, and system-wide expenditures. He stated the Commission has the entire package with changes as of April 23 but that there have been further discussions since that time. He spoke about the two main issues; cost and control. He also provided new language that he asked to be placed in the MIA related to control of land use. He stated that Orange County (Mr. Harrison) and FDOT have agreed to include this language in the agreement. He elaborated on the new language and also addressed the language regarding cost which he stated is an issue for the year 2017. Attorney Cheek then addressed the "opt-out" issue.

At this time he handed out an issue summary memorandum which listed the issues he believed were the primary issues on the table at the time of the work session. He provided the status of each issue. He stated they need to discuss the issue that the County has asked for provisions in the Winter Park Interlocal Agreement (WPILA) that says the City will not interfere with the operation of the system. He stated that was reasonable and that the Commission needs to agree this is acceptable to them.

Attorney Cheek then addressed issue #2 regarding the ongoing capital costs that the WPILA seeks to place on the City as of 2017. He stated at the time of the work session, the City was asked to pick up the undefined, unspecified capital costs. He stated that Orange County has eliminated this provision from the agreement.

Attorney Cheek addressed issue #3: "What are "local operating support costs" which Orange County's 4/23/07 revisions to the WPILA add as something to be paid by the City beginning in 2017?" He explained that this is the payment of cost in the event the City does not opt out. He commented that the County stated this is intended to be the replacement term for operations and maintenance. He stated he reviewed this in detail and that it is to pick up the City's share of Orange County's responsibility for the system operation costs as of 2017. He stated rather than being on a track mile basis, it will be on a passenger basis. He explained if it is based on a track mile basis, you know what ratio you will receive because we know the length of the track. He addressed his understanding that if you use commuter rail a lot, you will pay more, and if you use it

less, you pay less. He stated he asked Mr. Harrison if no one from Winter Park uses the commuter rail if the City would pay anything and the response from Mr. Harrison was 'no'; if there are no riders, the City would not pay any local operating support costs. He further explained the agreement as it currently stands concerning this issue.

Attorney Cheek explained he already covered Issue #4 concerning the cost to "opt-out".

Issue #5 was discussed concerning "What significant provisions from the City's most recent draft has Orange County rejected in the April 23 draft"? Attorney Cheek listed the items the City sought to have included in the agreement that the County had rejected at this time. He pointed out that the rejections were between Orange County staff level and him and that the County Commission has the final say regarding the approval. These are listed as: a) the three-year "rolling" opt-out right based on financial performance; b) a right to terminate if the Florida Legislature significantly changes the tax structure; c) provisions stating that the WPILA governs over the MIA in the event of a conflict (this is addressed, to some degree, by the new language proposed for Section 6.06 of the Master Interlocal Agreement clarifying land use control); d) the proposed \$588,000 cap on the City's annual exposure; and e) language recognizing the City's technical legal inability to bind future Commissions on budgetary matters (he stated that is a matter of law anyway but they were just trying to clarify that the City was not agreeing to do something they cannot do).

Issue #6 was addressed by Attorney Cheek concerning the Master Interlocal Agreement not being in final form, but is incorporated by reference in the WPILA. He stated he pointed this out to Mr. Harrison and the County understands that the City is not going to agree in final to something when the exhibits are not final. He stated we need to make sure that is correctly worked out and if any changes are made to the Master Interlocal Agreement, they need to be provided to the City to determine if they significantly change the City's position.

He spoke about comments made from citizens and that he has reviewed and considered all comments as the agreement was posted on the website for them to review. Attorney Cheek commented about a provision that he asked the County to re-write to allow the City to raise any disputes they have about whether we actually owe the money they say that the City owes and if there is a dispute about whether the City owes money and the time the City pays the money, that service would not be terminated at that time and there would be a process to go through. He stated this agreement is now not identical to what Maitland approved, but is better than the Maitland agreement because of the most recent changes.

Commissioner Metcalf complimented the City Attorney for his work. He asked as this project moves on and commuter rail is operating, and negotiations begin with other entities, if there is a most favored nation's clause included in the agreement in case the other entities are able to negotiate better than we did. He stated this would allow the City to benefit from the better terms and conditions so they receive what others receive. He stated he believed that Orange County will eventually eliminate the O&M payment. Attorney Cheek stated there is not a clause that reads like a most favored nation's clause and agreed that is a good idea. He stated he has not discussed that with Mr. Harrison but that maybe he would agree with that.

Mayor Strong asked about language within the MIA stating the Commission will be responsible for security on the corridor including station platforms. Jim Harrison, Orange County, provided information regarding security at the station and station properties. He stated that the security on the platform itself under the MIA is provided by the agency and not the County. He stated it is the responsibility of the agency and the local government partners to provide security on the corridor and on the platforms. He stated it is not anticipated that the County will have agents stationed on the platform on a full time basis. Mayor Strong reiterated the language in the agreement stating that each local government partner, i.e., Orange County, will be responsible for the cost of providing security for the station property, i.e., station parking area and other station property located outside the corridor, including improvements made thereto. Mr. Harrison stated that is in the MIA and perhaps this was overlooked in the WPILA. He stated it is not Orange County's intention to provide security at the station. He agreed to add language in Section 6.06 to clarify the security issue.

Mayor Strong asked other questions regarding the interlocal agreement. He addressed his understanding that the City would receive money from Federal sources for capital cost construction. He stated that Orange County has eliminated that the City's obligation is conditioned upon that but believed it may be elsewhere stated that if the City does not receive the Federal funding that the City is not obligated. Attorney Cheek responded that this is included in the agreement on page 10 of the red-lined version. Mayor Strong spoke about the County stating they want to receive the notice of termination before August 31, 2007 and expressed concerns that the City may not know if they are going to receive the funds by then. Mr. Harrison responded that he will work with Attorney Cheek to revise the language that will work.

Mayor Strong addressed other language in the WPILA concerning having a provision where a future Commission could not bind the City to budget the operating costs and asked since this was eliminated from the agreement if future Commissions could say the City cannot afford to pay this and will not do so. Attorney Cheek stated the obligation under the agreement will be on the City at that point but there is not a budget commitment contained in this agreement. He stated that is not being contained in the agreement is not an issue with him.

Mayor Strong spoke about the exhibits provided and asked about the minimum obligation of the City. Mr. Harrison responded that he does not know and that the cost estimate was generated by the FDOT. Mayor Strong stated he does not believe the City is bound by the estimate. Mr. Harrison agreed he did not see the City being bound to the estimate and there is a provision in the agreement concerning the 30% design and that the City has the opportunity to review the design and layout of the station and amenities but also to review the updated cost estimate.

Mayor Strong addressed the 3 year rolling opt-out that was suggested and asked if there are any periodic opt-out's that the County can agree to. Mr. Harrison stated that the County Commission directed him that the opt-out was a one time opportunity at 2017. He stated it is beyond his authority to agree to the 3 year opt-out and that the City would have to approach the County Commission to change that.

Mayor Strong then addressed the calculation of the O&M costs being a function of ridership in Winter Park and his understanding that the City residents are subsidizing

each rider and the more people that ride commuter rail the more the taxpayers are going to have to bear. Mr. Harrison stated he was not sure that was the case and as ridership rises, the farebox revenue goes up but was not sure the operating costs overall go up proportionately. He expected the opposite to occur that above a certain level, the more people that ride, the less the actual cost is.

Commissioner Bridges asked about the construction estimate concerning the assumptions and exclusions. City Engineer Don Marcotte responded that the estimate was based on a generic kiss and ride stop without any consideration of the existing infrastructure that Winter Park has. He stated this estimate came from the FDOT and they did not know what they could use until they get into the design at the station. Commissioner Bridges asked about the rail signalization and if this will be changed. Mr. Marcotte responded this will be modified and the costs have been included in the state's portion of the capital cost, including relocating the track. Commissioner Bridges asked if the track is still going to be moved. Mr. Marcotte responded that the intent is to move the track and they will not know until the design phase and they coordinate with Amtrak if it can be done.

George McClure, 1739 Shiloh Lane, provided a power point presentation regarding concerns of citizens who followed the commuter rail issue very closely. He stated he was a member of the disbanded Commuter Rail Task Force and is using some materials in his presentation that the task force collected, not that it is an endorsement of the task force.

Shay Silver, 725 Pansy Avenue, addressed the language within the MIA concerning emergencies and insurance/self insurance. She suggested adding another exhibit regarding insurance.

Nancy Shutts, 2010 Brandywine Drive, asked about the City paying 100% of our share of the Fixed-Guideway Bond debt service and other monies and that the County will not reimburse the City's 30% for 45 days. She addressed the importance to negotiate issues that are important to the City to protect Winter Park. Attorney Cheek stated it is written that the City pays and then we are reimbursed.

Kim Allen, 271 Virginia Drive, provided information regarding security, janitorial service/maintenance, cost to establish quiet zones and other costs associated with the commuter rail station.

Will Graves, 3048D George Mason Avenue (non-resident), spoke about the number of voters that passed the commuter rail referendum. He stated that the City does not have to agree to any of this nor have a stop here.

Susan Gabel, 1539 Golfside Drive, expressed concerns with the O&M depending on the ridership in Winter Park and Orange County not paying those costs.

Pete Weldon, 700 Via Lombardy, thanked the Commission for dealing properly with the essential issues and making sure the City is protected by placing safeguards in the agreement. He stated the risks have been well summarized.

Carol Card, 1645 Berkshire, expressed concerns with the lack of parking and people not utilizing the rail system using the parking that is available.

Commissioner Diebel stated she is comfortable with the interlocal agreement as it is written. **Motion made by Commissioner Diebel to accept the Interlocal Agreement in its current state, inclusive of the paragraph that Attorney Cheek has negotiated to include Section 6.06, Application to Other Municipalities, which will be inclusive in the master agreement interlocal agreement. Motion seconded by Commissioner Metcalf.**


Commissioner Bridges stated she wanted Attorney Cheek to continue some of the negotiations he is already pursuing as she was not fully comfortable with the language and did not believe it fully protects the City as it is currently written. She believed there were still too many open ended non-capped protections throughout the agreement.

Mayor Strong stated he will not support the agreement in its present form but would be very comfortable supporting the agreement if there were better opt-out provisions included. He expressed concerns with committing the City for 99 years with this agreement. He stated there were other issues raised today that he believed the County would agree to that could be a part of the agreement to include: 1) identify a way to audit the ridership, 2) a force majeure provision, and 3) to consider the calculation of the boardings considering the addition of Maitland to the system. He stated he will not support it without the addition of these provisions.

Commissioner Eckbert offered an amendment to the motion and second to strike the words "or operate" on page 11, Section 6.02.


Commissioner Diebel agreed to the amendment and withdrew her original motion. Motion amended by Commissioner Eckbert to strike the words "or operate" from page 11, Section 6.2 of the WPILA and to accept the Interlocal Agreement in its current state, inclusive of the paragraph that Attorney Cheek has negotiated to include Section 6.06, Application to Other Municipalities, which will be inclusive in the master agreement interlocal agreement; and that the agreement include any additional modifications discussed this evening that were acceptable between Orange County and the City. Motion seconded by Commissioner Diebel. The motion carried with a 3-2 vote with Commissioners Eckbert, Metcalf and Diebel voting yes and Mayor Strong and Commissioner Bridges voting no.

Mayor Strong adjourned the meeting at 5:06 p.m.



Mayor David C. Strong

ATTEST:



Cynthia S. Bonham, City Clerk