

CITY COMMISSION WORK SESSION
April 30, 2010

The work session was called to order by Mayor Kenneth Bradley at 12:11 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida.

Members present:

Mayor Bradley
Commissioner Tom McMacken
Commissioner Phil Anderson
Commissioner Beth Dillaha
Commissioner Carolyn Cooper
Attorney Larry Brown

Also present:

City Manager Randy Knight
City Clerk Cynthia Bonham
Deputy City Clerk Michelle Bernstein

This meeting was a work session with no public input.

Prior to the start of the meeting, Commissioner McMacken stated that he might have a potential conflict of interest regarding this issue. He stated that he discussed the item with Attorney Brown and was informed that he could participate in the meeting since it is a non-actionable meeting.

Commuter Rail - Review the April 12, 2010 letter from City Attorney Brown to the City Commissioners and City Manager Knight regarding legal matters pertinent to SunRail (a copy of this letter is attached for reference.)

Attorney Brown offered to answer questions while he discussed his opinions regarding certain legal issues presented by the commuter rail Interlocal Agreement between Winter Park and Orange County. He mentioned that both Commissioners Anderson and Dillaha previously raised several issues of concern and that staff might be able to provide additional information regarding the operation details and the specifics of liability. He reported that in his review of the special session law, he gained a sense about the liability that has been allowed by the legislature with respect to FDOT and the commuter rail commission and noted there are significant issues regarding governmental laws and principals that bear on governmental contracts.

In his letter dated April 12, 2010, Attorney Brown identified the main areas of legal risk and provided alternate language that would satisfy several areas of concern, if the Commission decides to amend the agreement and move forward. He stated that it is now up to the Commission to determine what action they would like to take based on the advice that he has provided. Attorney Brown explained that there are two broad areas of risks he has identified; one that current City Commissions and current governmental bodies should not bind future boards to long term financial commitments. He mentioned this is a 99 year agreement and referred to his opinion letter stating he looked into what he believes is the one remaining out clause: the 60 day window at the end of the FDOT funding period if there is no dedicated funding source. As referenced in his letter on page 1 and the top of page 2, he reiterated that "these risks include ambiguity in the opt out language that purports to give the City a future right to withdraw from the contract if there is no dedicated funding source and if the City cannot effectively terminate under the contract, then it

remains bound to a long term financing commitment that may exceed the authority granted by the Florida Constitution and conferred by the voters at the election called as a result of and pursuant to Ordinance 2693-07, 2694-07 and 2698-07.” His other concern is the word “defray”, stating that it could mean pay all of the expense or it could also mean pay a part of the expense.

Attorney Brown reported that Don Marcotte provided a spreadsheet which illustrates the projected expenses the City would incur from 2017-2036, stating the spreadsheet does not contain the full 99 year projection. He explained the sub-issues relating to this and that a court in the future could more likely be concerned about a contract that purports to obligate the City for years into the future on financial obligations and not knowing what that obligation is. Another concern he mentioned in the Interlocal Agreement was that he could not find a specific statement on how they arrived at the numbers, nor the methodology by which the numbers would be calculated or the factors that go into the calculation. He stated that this spreadsheet is a document that everyone is accepting as to what the City’s share of expenses would be.

The other issue he discussed had to do with the referendum election that was held, his interpretation is that the voters approved the expenditure of City funds for the design, development, construction and maintenance of a train station for commuter rail located in the City of Winter Park. He mentioned that when you look at the expenses which are vague and ambiguous, his interpretation is that the City will share a portion to include just general operating expenses, which is beyond the referendum language. He explained the Florida Constitution stating that you cannot create a debt obligation and further elaborated on this language and the Court’s interpretation as referenced in his letter on page 2.

Attorney Brown addressed a previous discussion with Commissioner Anderson regarding his opinion letter who asked him if an option could be to appropriate annually from non ad valorem funds. His reply was ‘yes’, it is an option. He advised that before you elect such an option, you should consult very confident financial advisors because it could impair the bonding capacity. He then referenced the Interlocal Agreement that City is not a party to and stated that the Interlocal Agreement that creates the Commuter Rail Commission Section 4.03 does contain a covenant to budget and appropriate from non ad valorem sources. He mentioned that the City does not have a similar provision in its agreement and referenced his email dated April 29, 2010 to Mr. Knight saying that it contained alternate language that would solve these issues and other issues (copy of April 29, 2010 email attached for reference).

Mayor Bradley stated he would like to discuss today the agreement between the City and Orange County and no other legality issues of Sunrail at this time.

Commissioner Dillaha questioned Attorney Brown about the non ad valorem revenue source required in the agreement, the state constitution and the voter referendum. Mayor Bradley asked about the difference between this agreement and the previous Community Center agreement which appropriated CRA ad valorem money and was not a voter referendum. He mentioned other numerous agreements that were similar and wanted to know how those vary in general with this one. Attorney Brown referenced a case that he cited in his April 12, 2010 letter and stated that the constitutional provision does not prohibit a governmental entity from budgeting for and appropriating funds for a specific project

which will be discrete and defined. He went into detail citing a City of Jacksonville v. Savannah Machinery and Foundary Co. case referenced in his letter on page 2, paragraph 2.

Commissioner Dillaha expressed her concern that the agreement is vague, open ended and unilateral favoring Orange County. She noted that the agreement with Orange County was signed in the late summer of 2007 with an estimated amount of operating and maintenance deficits of \$587,000 per year that the City would have to pay. Shortly after the agreement was signed, Orange County increased that amount to \$990,000, a 68% increase prior to the start of the project with no notice being provided to the City. Around December 2008 the City Attorney formally submitted a request for clarification, in which Orange County replied with a refusal for clarify or to change the language. Since that time material changes have been made to the project and amendments were made to the agreement. She noted that once again, the City was not notified.

Commissioner Dillaha stated her main areas for discussion today: ask the City Attorney in-depth questions to gain a better understanding of the legal issues, the material changes to the agreements since 2007 and any City agreements with FDOT including subordination agreements, and to discuss the Commission meeting date for any action that they might want to take today.

Commissioner Anderson addressed Attorney Brown to clarify his understanding on the several options that the City has, mentioning going to a referendum, doing a covenant to appropriate for non ad valorem taxes, to do nothing, or to amend. Attorney Brown stated if there was a referendum, we would need more detail from the county and we would also have to notify the voters with the exact information on what they would be voting on. He stated it could be done, but noted that it would take a little work so it could be defined sufficiently. Commissioner Anderson asked if there were any other options. Attorney Brown stated that the only other option would be to terminate, mentioning that he is not expressing a policy recommendation but is explaining the applicable law. He also mentioned that any contract can be amended whether it is silent or not.

Mr. Knight explained that he spoke with Mr. Harrison of Orange County about modifying the agreement. Mr. Knight stated that Mr. Harrison noted it is not his decision but he is open to carrying it forward to gain approval. He also noted that they do not believe the City can open the agreement for negotiations and that they are not willing to renegotiate all of the articles in the agreement. He stated that they are open to clarifying the opt out language if the dedicated funding source is not adequate to fund the entire amount; or if it goes away at some point, that opt out carries forward and that he is willing to take that forward to seek approval. Mr. Knight's recommendation is to propose language to Orange County stating that it would get us over the hurdle so that if there is a dedicated funding source then all of the financial issues are no longer issues.

Attorney Brown mentioned if there are adverse circumstances in the future, that could be an additional reason, but on the other hand, if you have the ability to non-appropriate in your sole discretion that may not be necessary. He also said if three Commissioners decide to amend the agreement to satisfy legal concerns that can be done if Orange County is willing.

Commissioner Dillaha talked about the agreements with FDOT and wanted to know about the rights the City is giving up. Mr. Knight said FDOT approached the City to sign several right-of-way subordination agreements. The City and a representative of the City Attorney's office Anthony Garganese attended a meeting with FDOT and asked them specifically what they are asking to subordinate and what they wanted the City to do because the agreements presented are vague. FDOT provided no response at the meeting and Mr. Knight stated that we still do not have an answer from FDOT, nor do we have an agreement. In addition, there is a piece of the western side of the track that is City property that they would like to have as right-of-way and are willing to trade us right-of-way on the eastern side, which is part of our Central Park giving us more park land. If we agree to that, it would be a swap.

Commissioner Cooper asked to clarify wording within Attorney Brown's letter whereby Attorney Brown responded. She stated the citizens of Winter Park should be treated the same way as if they have lived in Seminole or Osceola County, and should be paying our fair share of a regional transportation system; not a Winter Park transportation system. She was 100% behind the first idea that if they decide as a Commission and legal advice is that it is not doable, then we need to clearly define exactly what the payback is if we terminate. She stated we also need to understand who we will owe what money to, clearly define how much per year and a dollar value that we are willing to invest in the system. She also mentioned that we should put a cap on the exposure and noted that the sub-agreement changes significantly.

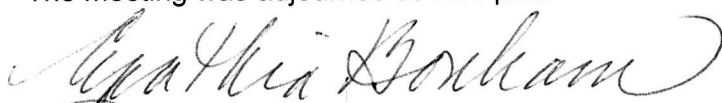
Mayor Bradley stated that this item will be discussed at the next Commission meeting on May 10, 2010 in anticipation of obtaining three votes to move forward. The items for discussion are as follows:

- 1.) Are we continuing to work on the goal to have a SunRail stop in Winter Park?
- 2.) Do we believe there are, or are not, legal risks that need to be mitigated within our current agreement with Orange County?
- 3.) If so, if we agree to the first or the second one, what do we do to mitigate those; what are the options to remedy this?

Commissioner McMacken stated if we do that there are certain items that need to be brought to the table by staff such as, if one of the resolutions goes to a referendum, what is the timing stand point and what are the implications, etc. Mayor Bradley agreed by stating this is something that needs to be addressed by staff for any of the items. He also asked staff to determine what our current obligation is at this point and years 7 and out.

Mayor Bradley called for the meeting of May 24, 2010 to be dedicated to the SunRail conversation and noted that all citizens are welcome for input and comment within the 3 minute allotment.

The meeting was adjourned at 1:33 p.m.



City Clerk Cynthia Bonham