

CITY COUNCIL SPECIAL MEETING MINUTES

JULY 1, 2010

Mayor LaCascia called the meeting to order at 6:05 p.m.

ROLL CALL

Mayor Joe LaCascia, Vice Mayor Trudy Block, Councilor Nancy Adorno, Councilor Mike Blethen, Councilor Don Kimsey, City Attorney Jeff Sullivan and City Clerk Jackson.

Mayor LaCascia announced the special meeting is to hear from the petitioners, who are Orlampa, Inc. and the Howard C. Lucas Trust, concerning the Contraction from the City of Polk City.

Orlampa, Inc. and the Howard C. Lucas Trust – Petition for Contraction

Presentation of evidence from Petitioners requesting Contraction from the City of Polk City

Attorney Mike Gallaher, with Peterson & Myers, PA., represents the Petitioners; addressed the City Council after introducing Mr. Fragala (who will make a presentation a little later). Mr. Gallaher thanked Council for allowing time for them to appear and make their presentation; the contraction issue has been in the makings for the last five years. Mr. Gallaher then gave background information regarding the annexations that took place in 2004 of the property in question, and his clients' position at that time. Some of the topics discussed were as follows:

- Considered an involuntary annexation – client was approached in 2002 by the City; the benefits and burdens were discussed and his client concluded he didn't want to annex.
- Land is vacant and he requires no services from the City.
- The proposed annexation ordinance was taken off the agenda, and his client was assured a notice would be provided at such time the City was to reconsider the annexation ordinance in order to allow his client to attend the meeting and be heard; however, no notification was ever received. The hearing took place and then Hurricane Charley hit.
- The 30-day window to file the appeal of the annexation expired.
- The other City Council was aggressive and was more adversarial.
- An analysis was done for consideration to do contraction per State Statute 171.052.

Mr. Gallaher then went over the elements of contraction requirements:

- Key criteria – urban in character; it is vacant rural agriculture land
- Legal question to be answered is what did the City receive by annexation – purpose of annexation, no urban services, vacant land, no residents, City gained tax base, and impending development. Statute doesn't discuss tax base.
- Regulatory control – there is no land use regulation on this property by the City of Polk City
- Prior Council placed emphasis on 180 Service Area up to five miles; a lot of authority was used with the 180 Service Area Statute outside the municipal boundaries – not relinquish rights to service area.
- Key challenge – how are you going to provide utility services; focus on what you currently have
- Statute establishes process; you can decide to contract
- Statute provides a referendum; however, suggest the referendum is not appropriate
- Wants to be clear that because the period of time, it's not their preference. There is a value to Mr. Weeks facility; he has a great desire to have a better relationship with the City moving forward (he noted to take under advisement; not in the best interest of the city); there is an opportunity to change course. His clients will provide a letter to the Mayor; going forward it will be good to have a good relationship.

At this time Mr. Gallaher asked Mr. Fragala to discuss the technical analysis; once that is done he asked Mr. Weeks to speak and then he and his clients will take any questions.

Mr. Fragala then proceeded with this power point presentation as follows; a copy is included and made a part of the minutes:

- Petitioners
- Petitioners Properties
- Petition Summary
- Cost to Petitioners
- Purpose of Annexation
- Polk City – June 2004 (2,042 acres)
- Polk City – June 2005 (2,552 acres)
- Polk City – December 2008 (3,206 acres)
- Growth Thru Annexation
- Enclaves -- Attorney advised they are not suggesting the City created all five with one Ordinance; those are unrelated to this ordinance and are not an issue tonight.
- Pockets
- Enclaves and Pockets (map)

- Severed Orlampa Parcel
- Annexation and Contraction Criteria – not urban to the east
- Annexation & Contraction Criteria Part 1, Contiguity – not 60% of boundary
- Annexation & Contraction Criteria Part 2
- Petition for Contraction
- Annexation & Contraction Criteria Analysis
- Severed Orlampa Parcel
- Conclusions
- Area to be Contracted
- After Contraction
- Pre and Post Contraction
- Benefits of Contraction

Mr. Kermit Weeks addressed Council; he understands the City is going through bad times. This was intended to be submitted about a year ago, but discovered additional information was needed. He also advised he had advised the previous City Manager and City Council he had no intentions of developing this property for another decade; he is concentrating on increasing his current business. He knows there is concern that if the contraction is approved he is going to annex into Auburndale; however, he wanted to be his own player, but was forced to annexation into Auburndale in self-defense. Mr. Weeks advised he has nothing against this Administration or current City Council; he realizes the City is going through tough times and he admires and respects what new Council is doing. He wants to right what was wrong; he gave each Councilor a copy of a letter of the things they have done.

Questions from City Council, City Attorney and Public Comment

- Mayor LaCascia commented just as in an observation, in terms of presentation it was all done in the present tense, and the figures which were presented over the last five years in terms of the income that flowed from a taxable value into the City is depicted and is a very compelling argument as to exactly why and what the value is of maintaining this situation. Simply being a businessman and not withstanding the fact that Mr. Weeks has said he has no plans of developing in over a decade, we would be remiss as a Council if we did not look at what we would lose as a City if, in fact, that development took place in the next ten years (based on residential development of four units per acre on 300 acres could possibly net the City 1.2 million dollars in taxable revenue). As a Council we have to look at what is good for Polk City and the expense of getting to that point; clearly, the litigation expense, if we should decide not to allow this contraction. There is not a doubt in Mayor LaCascia's mind that Mr. Weeks' intent to take this to whatever level he had to in order to succeed in this contraction. It comes at a time when we have to look at, even if the merits of the case were in our favor, at the cost to the City to go forward; however, he thinks his Council, thinking in the best interest of Polk city, does have to look at the consequences of simply dismissing this issue in a rather cavalier way, and without looking for the value as he suggested that could be available going down the road. At this time Mr.

Weeks advised Mayor LaCascia is making the assumption any development would be residential, and advised there would not be one single residence on any of the property; it would all be tied into Fantasy of Flight. Mr. Gallaher advised technically, there is no reason why the City would not be able to go back to Mr. Weeks once the City had time to get their house in order. The question is not now we got you and are going to keep you and hold you hostage; it is what we can do to entice you. He thinks Polk City will be here ten years from now. Mayor LaCascia advised Mr. Gallaher he made a good point; something has already been put into place to position Polk City in that ten year period of time.

- Mr. Al Schneider, 775 Teaberry Trail, asked Mr. Fragala if in the analysis he figured the cost of infrastructure to bring from this point to the property in question. Mr. Fragala advised he did not do that. Mr. Fragala advised usually when annexation is done, the applicant wants something from the City.
- City Attorney Jeff Sullivan then went over several issues concerning the contraction. He asked Attorney Gallaher if the original petitioners, Mr. Weeks and the Howard/Lucas Trust were on behalf of Orlampa or if they were individually. Mr. Gallaher advised they were individually; he also noted an owner of the lake bottom who is not a petitioner, but is included as one of the legal descriptions. Attorney Sullivan addressed consent to annexation documents that were signed by owners, as well as the Howard/Lucas Trust. Attorney Sullivan also confirmed properties owned by Orlampa, Inc. and Imperial Polk Properties. The petitioners are owners of the property today.
- Councilor Adorno asked about the comments Attorney Gallaher made regarding not receiving notification of the public hearing for the annexation ordinance. Attorney Gallaher advised the original ordinance the City was proposing for annexation as withdrawn and the City Manager at that time had agreed to send them a notice of the public hearing once the City made the decision to move forward; however, notification was never given to Mr. Weeks or himself of the public hearing.
- Councilor Kimsey asked if a copy of the request could be given to the City Manager; Attorney Gallaher advised he would send a copy to the City Clerk and City Manager. City Attorney Sullivan advised that has no bearing on this contraction.
- Councilor Blethen asked if anything was found to be illegal in 171 or 180 to the original annexation; Attorney Gallaher advised yes – they would have challenged the annexation. Attorney Gallaher advised the analysis of the contraction is the mirror of annexation.
- Councilor Blethen commented it is interesting this property is not going to be developed as housing. Attorney Gallaher advised he is not aware of any

conversation between the Mr. Weeks and the City; he feels if it was going to be developed as residential, it would have been done five or six years ago.

- Mayor LaCascia asked Mr. Fragala what would be the benefits of contraction; Mr. Fragala advised Polk City will avoid a costly litigation to defend prior annexations (Mr. Fragala referred to Ordinance 1019).
- City Attorney Sullivan asked about the triangle, which is considered an enclave. He was advised it is seven acres and a home was built on that property in 2000 or 2001. Mr. Douthit was living there during the annexation.
- Mr. Warren addressed Council and advised something that has not been addressed is the perception that this is leaving with the citizens of Polk City; he doesn't understand why Fantasy of Flight wants to hurt Polk City and it makes him feel bad.
- Jeff Lelynn, 1513 State Road 559, addressed Council and advised he looks to Council to right this wrong; he perceives it being wrong.
- Councilor Kimsey commented it is advantageous to be partners rather than adversaries; he is looking forward to working with them in the future, and it was a very good presentation.
- Jesse Douthit addressed Council; he believes good faith has been demonstrated. He then discussed the positive things they have done or attempted to do in the past; they will continue in good faith and have a good neighbor policy, and will continue to volunteer and be proactive if barriers are removed. Mr. Douthit then discussed the acoustics in the Council Chambers and commented he would be more than happy to consult and help with this problem; Mayor LaCascia advised they may take him up on his offer.
- Vice Mayor Block asked if it is time for negotiation.
- Mayor LaCascia advised the next step is to hear from the City Attorney as a group or individually. City Attorney Sullivan advised we have until the middle of August; the July meeting is too soon to make a decision, and we may need to have a special meeting in July for discussion.
- City Attorney Sullivan briefly discussed the annexation that took place in 2004 and the perception people have of the City; the City has consent of annexation from Mr. Lucas and to suggest an involuntary annexation of all the property is incorrect. He wants to get this corrected. More than 50 percent of the property owners gave consent for annexation, and at that time Mr. Turlington was the majority owner.

- Attorney Gallaher discussed the involuntary annexation of five parcels of property, which were all different sizes, and he discussed the annexations that took place in 2004 as it relates to the State Statute and having a referendum. The property owners in question did not want to annex.
- Councilor Blethen commented a lot has been done, and now we need to figure out how to make amends and get the community back together. Councilor Blethen feels there are things that took place, and all he can do is ask for forgiveness because he thinks we are going to try and change it. He welcomes their help to come to a good ending and get back on a very good keel going forward with Polk City, Auburndale and the I-4 Corridor. Councilor Kimsey commented we are a work in progress.

Vice Mayor Block made a motion to adjourn; the motion was seconded by Councilor Adorno and unanimously carried. The meeting adjourned at 7:30 p.m.

Patricia R. Jackson, City Clerk

Joe LaCascia, Mayor