

# CITY COUNCIL WORKSHOP MINUTES

JULY 20, 2010

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Vice Mayor Block called the workshop to order at 6:05 p.m.

## **ROLL CALL**

Mayor LaCascia, Vice Mayor Block, Councilor Adorno, Councilor Blethen, Councilor Kimsey, City Attorney Jeff Sullivan and City Clerk Jackson

## **Attorney Sullivan – Contraction Petition (Orlampa, Inc. /Lucas Trust)**

Vice Mayor Block made an announcement this is a continuation of the Public Hearing held July 1, 2010, for the contraction from Polk City; she then turned this portion of the meeting over to City Attorney Jeff Sullivan.

Attorney Sullivan advised this is still considered a “work in progress”, and there some other things he will need to do before he finalizes his opinion to the City Council. One of the things he will need to do is meet with Jennifer at the Central Florida Regional Planning Council; he has not been able to meet with her as of today and he is not comfortable giving his final opinion until he has that meeting. We have a meeting August 10; however, we have until August 24 before we have to move forward with a formal response.

Attorney Sullivan then presented City Council with the following:

- He looked at the petition for legal efficiency, and has concerns the petition itself is not legally sufficient. The petition was filed under State Statute 171.051, and under that particular Statute it says contraction may be initiated by 15% of the qualified voters in the area that wished to be contracted. The petitioners in this case are Orlampa, Inc. and the Howard Lucas Trust, which represents more than 15% of the property owners; the Statute doesn't say qualified owners, it says qualified voters.
- Attorney Sullivan has concerns because the petition was not brought by the proper properties. Orlampa, Inc. submitted the petition; however the Polk County Property Appraisers Office does not show Orlampa, Inc. as the owner. He then gave the property owners names.

- Attorney Sullivan then went over the definition of a qualified voter, which is governed by State Statute 171, and again advised Council 15% of the qualified voters has to file, not the property owner. He feels if the petition was not filed by the right parties, it is insufficient, and would have to be denied because it was not brought by the right parties. If the Statute doesn't allow this, the City can't entertain the contraction; however, he is still doing research.
- Attorney Sullivan advised there is not a lot of case law concerning contraction; the last case being 1976. This is not something that happens every day, and he will continue to look into it. He will look at factual and legal obligations.
- Mayor LaCascia asked who Jennifer was; Attorney Sullivan advised she is with the Central Florida Regional Planning Council, and they are under contract with the city. The Attorney wants to use her expertise for the contraction; Mayor LaCascia asked if she was involved during that time, and Attorney Sullivan advised she may not have been, but the agency she works for probably was.
- Councilor Kimsey asked what the Attorney's opinion would be if the right parties brought the petition that owned the property. Attorney Sullivan advised it is limited to the municipality -- if they own or a petition filed by 15% of the qualified voters. If there are no qualified voters in that area, then the petition couldn't be filed.
- Attorney Sullivan then referred back to the initial annexation whereby there is a 30 day time period for any party who wants to challenge it in court, and that was not done. There was a remedy to challenge the annexation at the time it was done.
- Attorney Sullivan advised this particular contraction statute is limited to who can file a petition for contraction.
- Councilor Blethen asked if we have a count of voters in that area; Attorney Sullivan advised he doesn't think there are any qualified voters. When you look at the Statute you look at the plain language, and it says "15% of qualified voters"; if there is a group of people or category you cannot read into it or make exceptions. This particular law has been on the books for 20 to 30 years.
- Attorney Sullivan commented it appears the petition was not filed by the right parties; as he stated earlier, he will have to do some more digging.
- Mayor LaCascia asked if the term "voter" applied to an individual not a corporation. Attorney Sullivan advised the definition of qualified voter is in the State Statute. Mayor LaCascia asked if at this point there are no voters that we can ascertain at this point within the geographical boundaries of the petition. Attorney Sullivan advised his point is the petition was not filed by a person.
- Attorney Sullivan advised this is where he is at as of now; he wanted to bring this up to Council to look at, and the plain language is where you start. Discussion took place regarding Statute 171.051; Attorney Sullivan commented Section 171.051 deals with contraction; however, the definition of qualified voter is in Section 171.

- Attorney Sullivan advised at this stage what we are supposed to do is study the petition, do due diligence and make a decision to propose an ordinance to contract or deny the request to adopt an ordinance to contract. If we deny the request for the ordinance, we have to deny it stating our factual reasons for doing so. At that point it could end it, and if the petitioners agree there is a mistake they could file a separate petition down the road, or they could disagree with our findings and file a lawsuit in Circuit Court and let a Judge decide. If his interpretation holds by the time we have our final meeting, his recommendation would be the petition is not legally sufficient, and that would be the grounds for Council to decide what they wanted to do. If the Council rejects the petition, the petitioners can then decide to challenge in Court and say they don't agree and think the City did it wrong; the Judge would review the Statute and what the City argument is versus the Petitioners argument. At this stage we are not in litigation and there's no court proceeding; it's strictly a request that the City pass this ordinance; if the petition isn't legally sufficient, we simply can't do something that's not legal and he couldn't recommend we accept it if it's not legally sufficient.
- Councilor Blethen asked about Jennifer; Attorney Sullivan advised she works for the Central Florida Regional Planning Council (CFRPC), but she's familiar with the City's Comprehensive Plan and the city. She has the resources to pull up and create detailed maps; she wouldn't be providing any legal analysis. Attorney Sullivan wants to double check the maps that were submitted and she would be the one to assist with those.
- Councilor Kimsey asked if the Attorney was saying with no connection to the property financially, but just a resident they could bring suit for contraction (in general). Attorney Sullivan gave an example -- if there are 100 people living on this property, they would need 15% of the qualified voters. Councilor Kimsey asked even if they have no financial interest in the property; Attorney Sullivan then read from the Statute; it doesn't specify anything else; however, from what he can tell with this particular area, there are no people who live on this property. He is only looking at the Petition, and the petitioners Orlampa, Inc. and the Howard Lucas Trust are not qualified voters. They could have appealed the annexation in 2004; parties affected by the annexation can appeal and anyone could have challenged it in 2004.

Vice Mayor Block asked if there were any other questions. There being none she advised we will schedule another meeting as evidence becomes available to us and the taking of evidence will remain open, and the continuation of this meeting through August 24, 2010

### **Mayor LaCascia – Update of County Issue**

Mayor LaCascia advised a meeting was scheduled for July 19 with the County Manager; however, that meeting has been moved to the first week in August (County Manager has issues he is dealing with) and he will give an update after that meeting

### **Acting City Manager Trudy Block – FGUA Update**

Acting City Manager Block has nothing to report at this time; FGUA has given the proposed contract to their department heads for review and she hopes to have something by the end of this week. Acting City Manager Block reported on the trip and tour of the facilities she and Gene took in New Port Richey. They spoke to FGUA customers who seem to be thrilled with FGUA; they also met one of the Pasco County Commissioners and met with one of their customers who had an issue with black water. Some discussion followed regarding FGUA and when the City could expect to see a proposed contract. More discussion took place between Council concerning review of the proposed contract and making sure all aspects are looked at regarding revenues and actual expenditures, Acting City Manager Block advised during this process, they are looking at taking the Mt. Olive System off-line and moving it to the Cardinal Hill Plant, which will save the City money. Brief discussion took place about looking at other companies that manage systems, and who may be able to assist with financing as well.

Acting City Manager Block advised Council will receive the proposed budget for fiscal year 2011 next Monday; she asked Council to review and have their questions ready for the workshop. The Sewer Fund is not balanced at this point (\$381,000), but is fixable from a financial statement side.

Acting City Manager Block announced again the taking of evidence for the contraction remains open until August 24; therefore this meeting will remain open until the next meeting dealing with the contraction.

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Patricia R. Jackson, City Clerk

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Trudy Block, Vice Mayor