

A workshop meeting of the City Commission was held on March 5, 2013 at 5:00 p.m. in the Commission Chamber at the Municipal Administration Building. The meeting was called to order by Mayor Michael S. Carter.

COMMISSIONERS PRESENT: Christopher Lutton; Betty Wojcik; Jonathan Thornhill; Mayor Michael S. Carter

COMMISSIONERS ABSENT: Terry Y. Howell arrived at 5:03 p.m.

CITY REPRESENTATIVES PRESENT: Terry Leary, City Manager; Albert C. Galloway, Jr., City Attorney; Clara VanBlargan, City Clerk; Jacquie Hawkins, Deputy City Clerk

[Meetings are recorded but not transcribed verbatim]

Commissioner Wojcik made the following statement for the record:

"Before I recuse myself, I want to make a brief statement for the benefit of those who may not understand the recusal process as it stands today. There is a state statute that requires that before you take a vote on something of which there might be a conflict of interest, that before taking that vote, you have to declare what that conflict is, then not vote.

However, there is a local ordinance that was passed a couple of years ago, and that local ordinance is supposed to be more restrictive, in that it does not allow me to participate in anything having to do with an issue that is going to come before us tonight, and that came before us during the last workshop before the regular City Commission meeting. It requires that I recuse myself and leave the room, which I did do in both cases.

Last time, before the workshop began, I stated what my reason was and left the room according to how I should do that. But, before the City Commission, when we got to that item on the agenda during the regular City Commission meeting, I recused myself and I did not give the reason why I was recusing myself and I am not required to do that again. Everyone who was in the room, first of all, was in the room during the workshop. You previously stated this was a continuation of the workshop and I am not even required to do that according to the city's more restrictive ordinance.

That being said, I recuse myself from this workshop because it is considered, according to the Lake Wales ordinance, to be a conflict of interest and I have to vacate the room and cannot participate in the discussion.

Thank you very much."

Agenda Item 2. Memorandum of Understanding Between the Lake Wales Chamber of Commerce and the Lake Wales City Commission – Formation of an Economic Development Council (EDC)

[Begin agenda memo]

SYNOPSIS

The City Commission is asked to discuss a proposed agreement with the Lake Wales Area Chamber of Commerce to enhance economic development endeavors.

RECOMMENDATION

This will be the second workshop of the Commission to evaluate and discuss the proposed agreement between the City and the Chamber. This workshop is necessary for all parties involved in order to be certain that all issues are covered.

Please review both drafts and be prepared to comment.

BACKGROUND

On February 19, 2013 the City Commission held a workshop in order to discuss a proposal by the Lake Wales Chamber of Commerce to join forces with the City in order to enhance economic development endeavors. This would result in the formation of an "EDC" (Economic Development Council). Many members of the Chamber of Commerce and the public were present to give input to the Commission.

The Commission decided to submit comments to the City Manager and City Attorney for inclusion in the proposal.

There are 2 drafts included in your packet, clearly watermarked with City and Chamber to identify the proposals. The City Attorney incorporated most of your comments and concerns. Those not included will be addressed in the workshop.

The Chamber version does not include language that was originally incorporated in their Memorandum of Understanding or the power point presentation. For example: The goal of updating the EDP Plan adopted in March, 2011 has been eliminated; CRA projects are not addressed; a minimum of 2 years is required before either party can cancel the agreement.

[End agenda memo]

City Manager Terry Leary reviewed Agenda Item 2.

Mayor Carter said he was a little disappointed that they have two documents to deal with. He said the concerns he expressed and documented to Ms. Leary got into the city version for the most parts but did not make it into the chamber version. He said we need to have one document that has the concerns and questions from each of them, which is what he thought they accomplished last time.

Commissioner Thornhill said he had the same question; How did that come about? City Attorney Chuck Galloway said that initially the Chamber brought forth a Memorandum of Understanding, which he revised to include comments from the Commission. He provided it to David Fisher, who is assisting with the Chamber, to work on the process. They went through a couple of drafts, talked some more, and the final Chamber draft, in his opinion, was a workable document. The reason it was revamped in that manner is because of a couple of Attorney General opinions that address whether or not economic development is purely a governmental service, which they say it's not but can be dealt with by both cities, counties and private entities. This particular private entity has determined that it does not want to function and cannot function under government sunshine or public records and so the provisions that were done, more than anything else, addressed that. He said the simplest route would be to make changes to the Economic Development Agreement from the Chamber because that's the better document to make final revisions to and because this forum gives the Commission the opportunity in essence to negotiate with the Chamber. There is no other forum in which that can be accomplished. He said he was prepared to make note of their changes.

The following were changes to be made.

Commissioner Thornhill requested the following change, expressed the following concern, and made the following comments:

- **Article 2, d, e, and f:** change the wording from "private business concerns" to "private business entity".
- **Voting and Authority:** Commissioner Thornhill said it was supposed to be a 50/50 partnership and yet the City gets two votes out of 12 to choose the director. The City was therefore paying an equal share but not getting an equal vote. The City will always be outvoted, especially if members can buy in to become part of the EDC. As an example, if the Commission wants to push a policy for the economic development of the Longleaf Business Park, and the EDC didn't want to go in that direction, the City would always be outvoted.

- Commissioner Thornhill did not think the agreement was right for the City at this time and said he would like to have the opportunity to fix what we have now.

Commissioner Howell had the following comments and a concern.

- **Board:** Commissioner Howell said the city could not have more than one Commissioner on the Board because of the Sunshine Law, but they could put a Department Head on it.
- **Article 3:** "It is understood that EDC services will be rendered largely at 340 W. Central Avenue, Lake Wales, Florida 33853; but that the EDC will, on request, come to City Hall or such other places as designated by the City to meet with the City's representatives". Commissioner Howell was concerned that the EDC would only come to City Hall if requested. City Attorney Chuck Galloway said the EDC can come whenever they choose for the purpose of things like taking a prospect to different departments such as water and wastewater. He said it was worded this way to clearly delineate that this will be a separate entity that functions apart from the City.
- **EDC:** Commissioner Howell said she thought it was good that the Mayor would be the city's cheerleader and the EDC would also be trying to get jobs on behalf of the city.
- **Two Versions:** Commissioner Howell said the two versions said basically the same thing but she liked the City's version better because it was clearer and explained more. The Chamber's version was 'matter-of-fact'.

Commissioner Lutton had the following concerns, comments, and question:

- **Funding:** Commissioner Lutton said the City would have to come up with \$28,000 + from the operating budget. Mr. Galloway said according to the CRA Plan, CRA Funds can be expended for Professional Services, which is what this would provide.
- Commissioner Lutton thought the EDC was a really good idea.
- **CDBG Grants and CRA Functions:**
 - Commissioner Lutton said transferring economic development over to a non-profit entity would basically be at the same work level but he asked for confirmation that the EDC would not be able to do CRA functions and grants. Mr. Galloway said the EDC cannot engage in any public function such as administering CDBG grants or administering the CRA. Economic development would take place with the EDC but there still would be economic development within the City. It is not an assignment of a governmental responsibility to another entity.
 - Commissioner Lutton said he is concerned that everything Mr. Gallup is doing right now will not be covered under the EDC. Right now Mr. Gallup is the only one on staff that has the skill set for working on grants, bonds and the CDBG and it concerned him that we were transferring only a part of a job with no money to get the rest done. Mayor Carter said Jennifer Nanek has gotten grants for the city in the past, and CDBG grants are contracted out anyway so that might not be a big problem.
- **Image:** Commissioner Lutton was concerned about the bad image Lake Wales has of not being business friendly and said it needs to change. He explained the hurdles such as communication and customer relationships that need to be overcome.
- **Separate Entities:** Commissioner Lutton said after researching he has come to the conclusion that the EDC would be more effective if it was a separate organization from the Chamber.

Mayor Carter had the following concerns, questions, and comments:

- **CRA:** Mayor Carter said he was concerned that the new EDC could do nothing in the CRA and yet most of Lake Wales is in the CRA.

- **Sunshine Law:** Mayor Carter asked if there was a conflict with the Sunshine Law. Mr. Galloway said the way it was drafted it would not be subject to the Sunshine or Public Record laws.
- **Public Records:** Mayor Carter asked if that would pose a problem as far as the City and the public finding out what's going on. Mr. Galloway said it did, and in the proposal funding will be given with no strings attached. It will be a function away from the city and the Commission will not have the ability to direct how the funds are utilized other than what is expressed in the Agreement. Mayor Carter said the City has had similar arrangement in the past for example with the Depot Museum, B Street, and the Senior Center.
- **Separate Entities:** Mayor Carter said it was his understanding that the intent of the agreement is that in time the EDC will be a separate and distinct function of the Chamber and yet he saw nothing of that nature in the contract or any type of timeline. Brian Marbutt, Chamber President, said that to be separate was the ultimate goal and he would add that to the Agreement. But, as far as a timeline, he said the Lakeland EDC was part of their Chamber for 25 years and they just separated. He said he did not want that to be the case in Lake Wales but they don't know what the timeline will be and don't feel comfortable setting one. Mr. Galloway said it could be included as a goal in the preamble but it wouldn't be enforceable.
- **Page 2 under Services:** "Monitor and aid in the retention, expansion and development of existing businesses (including minority owned businesses)." Mayor Carter wanted to know why it had to be even mentioned that minority owned businesses would be included.
- **Article 6a:** "The elected Mayor or other member of the City Commission, with the consent of the Mayor, may serve as a member of the EDC, along with the City Manager or other city staff, as deemed appropriate by the Chamber." Mayor Carter asked if the words "deemed appropriate by the Chamber" meant that the Chamber is going to be the one to determine who represents the City. David Fisher from the Chamber Board said the wording had been in a previous version of a draft. Mr. Galloway said that would only affect city staff. The city manager is one member and under the Charter the Mayor would be the other, but if the Mayor assigns it to another Commissioner, that would apply to them.
- **Article 4 - Payment:** "The City will pay the EDC the total sum of One Hundred Thousand Dollars (\$100,000.00) annually payable in equal quarterly payments on or before the fifth day of the beginning of each quarter. Mayor Carter said he thought in the original agreement the City wouldn't pay the \$100,000 until the Economic Development Director was hired. Mr. Galloway said he and Mr. Fisher discussed that and decided that would need revision to reflect that the payment wouldn't kick in until they actually hire someone.
- **Article 7 b** – "Either party may terminate this Agreement after the initial two (2) year term upon one hundred and eighty (180) days written notice to the other of its intention to terminate." Mayor Carter said he had great difficulty with this. He said the citizens need to be well protected in the agreement. What he would like is the following;
No cancellation within the first six months. After that first six months there needs to be a cancellation clause with a six months notice.

Mayor Carter said that would effectively give the Chamber a one-year window though it certainly doesn't mean that window would be exercised. Though it would be up to a vote of the then Commission, if the director is doing his job, there is no reason to think they will pull the plug on him. It would be there just in case the Commission is not happy with the results and the bottom falls out. Without that the city would be making available nearly a quarter of a million dollars with no say so as to whether it should continue or not and with no protection. Mr. Fisher said that was in there because it will be hard to find a director to move to Lake Wales with only a six month commitment. He said that it also says in the Agreement that if the money is not in the budget it basically makes the agreement null and void. It is a two-year contract but if it is not approved in next year's budget it essentially goes away anyway. Mayor Carter said he realized

that they may have difficulty hiring an Executive Director on those terms but quite frankly it should not be a burden on the City and it is a Chamber issue for them to figure out how it should be handled.

Mayor Carter, before opening it up to public comment, asked that they be respectful, polite, and professional.

PUBLIC COMMENT

David Smith, Rep. from the NAACP, expressed several concerns:

- **Sunshine Law:** Mr. Smith asked Mr. Galloway if the State Attorney General would agree not to prosecute regarding these private meetings behind closed doors. Mr. Galloway said the Agreement was drafted to avoid that problem and the possibility of someone seeking a declaratory judgment, whether or not Sunshine applies. He said he read the applicable Attorney General opinions, and it was both his opinion and Mr. Fisher's opinion that the Agreement as drafted would not cause Sunshine or Public Records to come into play.
- **Public Records:** Mr. Smith said he has two businesses in Lake Wales so he pays city taxes. He said \$100,000 is going to be moved out of city funds and though he is paying taxes he won't have any say so. He felt he was entitled to know where the money was going. Mr. Galloway said if someone wanted to see, for example a contract they were negotiating or a list of contacts, that would not be a public record and would not be something they would have to respond to. Mayor Carter said contractually they would be required to make quarterly or timely reports, and those documents would become public record. Mr. Galloway said that whatever is submitted to the city would be public record but what doesn't get submitted to the city remains not subject to public request.
- **Audit:** Mr. Smith asked if there would be an audit. Mr. Galloway said they would not be audited. They will file a report as to how the money was expended, which according to the contract will only be for economic development purposes, and that document would become a public record. Mayor Carter asked if an audit could be required and Mr. Galloway said it would cause Public Records and possibly Sunshine issues.
- **Meetings:** Mr. Smith was concerned that he couldn't go to the meetings. Commissioner Thornhill said only the members of the Chamber and EDC would be able to go to the meetings.
- **Members:** Mr. Smith asked if those living outside the city limits could be members. Mr. Galloway said anyone that the Chamber chooses to be a member can participate. Mayor Carter said you do not have to live in the City of Lake Wales to be a member on the EDC.

Doris Gukich, 1137 Lake Shore Drive, asked how often the Commission received reports from the current Economic Development Director, monthly, quarterly, or annually. City Manager Terry Leary said they constantly update the Commission on CRA and CDBG projects. The Commission is aware of issues dealing with infrastructure, for example when they put the FIOS in for the Business Park. The Commission doesn't receive a list of every contact made, but that doesn't mean they couldn't get one.

Steve Sorensen, 1145 N. Lake Shore Drive, said he doubted that the public is allowed to attend meetings Mr. Gallup has with prospective businesses. The Sunshine Law is a difficult thing when you are dealing with making private business negotiations public. He said the City didn't always have an economic development director, though there still was the function of one. He said that transferring that function to the Chamber is not that different. Mr. Galloway said that what staff does is not subject to Sunshine, for example if Mr. Gallup had a meeting and didn't take notes or if he talked with someone on the phone and no record was made. Also, there is a statute that allows negotiations to be kept confidential if the party wants to do so. Mr. Sorensen said that basically there is not much difference. Mr. Galloway agreed but said the issue that is raised is that some people will want to be able to query the EDC and get a response.

Page 2 Article 2-a of the City's draft, "Update the current Economic Development Strategic Plan ("EDSP") and adopt it as a guideline for the EDC outlining desired goals, objectives and performance measures for the economic development of the City."

City Manager Terry Leary said that was adopted by the Commission in 2011 and it is not included in the Chamber version, so it is not going to be a focus for the EDC. Mr. Fisher said if they get the money they will have to plan economic development for the City. The reason they took that out was because, to carry out that plan, it would have to be set up as a city function which would be a Sunshine issue. But, the Plan obviously would be in their goal. Ms. Leary said the Plan calls for interaction between the City and the Chamber. Commissioner Lutton said that in the Plan the interaction was between the Chamber and the Economic Development Director, and now that would be handled by the EDC. Mr. Fisher said the Plan was approved by the City and the Chamber so the Plan would be the starting point. There will be just as much interaction between the City and the Chamber.

Mr. Hunt Jr., PO Box 631, referred to page 13 and asked for confirmation that the study cost \$30,000. Commissioner Lutton said it was \$75,000. Mr. Hunt said they boiled down the different studies from the surrounding cities. He said in the Winter Haven Plan, they required a 5 year commitment. Mr. Hunt read several sections of the Plans and made comments.

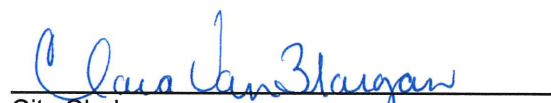
Mr. Galloway said he made notes of all the comments and he and Mr. Fisher would meld them into one agreement and bring it back to the Commission at the next meeting for Commission consideration.

There being no further business, the meeting was adjourned at 6:06 p.m.



Mayor/Commissioner

ATTEST:



City Clerk