

CITY OF OPA-LOCKA
"The Great City"

CLERK'S ACTION SUMMARY MINUTES
SPECIAL COMMISSION MEETING

October 4, 2010

6:00 p.m.

City Commission Chambers
777 Sharazad Boulevard
Opa-locka, FL 33054

1. ROLL CALL:

The City Commission of the City of Opa-locka, Miami-Dade County, Florida, met in special session on Monday, October 4, 2010 at 6:11 p.m. in the City Commission Chambers, 777 Sharazad Boulevard, Opa-locka, Florida. The following members of the City Commission were present: Commissioner Dorothy Johnson, Vice Mayor Myra L. Taylor, Commissioner Rose Tydus, Commissioner Timothy Holmes and Mayor Joseph L. Kelley. Also in attendance were: City Manager Clarence Patterson, City Attorney Joseph S. Geller and City Clerk Deborah S. Irby.

2. INVOCATION:

The Invocation was delivered by Mayor Joseph L. Kelley.

3. PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was recited in unison..

4. FIRST READING ORDINANCE:

- a. **AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF OPA-LOCKA, FLORIDA, APPROVING AN AGREEMENT WITH FIRST SOUTHWEST TO ACT AS THE CITY'S FINANCIAL ADVISOR; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR REPEAL OF ALL PRIOR ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**
Sponsored by C.M.

The above ordinance was read by title by Attorney Geller.

It was moved by Commissioner Holmes, seconded by Commissioner Johnson to pass the above ordinance on first reading.

There being no discussion, the motion passed by a 5-0 vote.

Commissioner Tydus	Yes
Vice Mayor Taylor	Yes
Commissioner Holmes	Yes
Commissioner Johnson	Yes
Mayor Kelley	Yes

5. DISCUSSION:

a. Final Judgment of Foreclosure/Town Center Properties

With her organization having a governing board, Commissioner Johnson asked, is there any violation with her voting on this issue?

Attorney Geller advised that it is not a violation; Commissioner Johnson has a governing board but she is not a member of it and any action the Commission takes will not move directly to her benefit so there is no violation.

With the organization being a 501c3 a charitable organization, Commissioner Johnson asked, is there a violation to accept donations from anyone?

Attorney Geller replied, no. The only possible question would come up if the city was making a direct donation and even under those circumstances it's still permissible.

Commissioner Johnson stated for the record that the City of Opa-locka has never and will never donate to the Portrait of Empowerment.

As a result of the last special meeting relating to this matter, Manager Patterson said there were some questions as to whether or not the city should bid on the property, but at that time he didn't have the information he has today. As of today, the sale will take place on October 5, 2010 and there hasn't been any direction as to whether or not the city should bid on the property.

Attorney Geller informed the Commission that he received an email from Ravi Batta of Rosenfield Stein Batta, P.A. whose client JWV Florida Properties, LLC who is the judgment holder confirmed that if they are the successful bidder they would honor the lease with the city (a copy of the email was provided to the Commission). After speaking with Mr. Batta, his client is planning to bid on the property for at least the amount of the judgment which is \$6,541,000.00. The city has posted a bid bond of \$330,000.00 which is the 5% of the anticipated maximum bid of \$6.6 Million Dollars so that if the Commission decides to go forward and make the bid then they are prepared to do so; but they would require clear instructions from the Commission as to the amount.

He explained that the city would be able to make a bid for the property, if that's the pleasure of the Commission, by using certain unrestricted funds in the general account and borrowing additional funds from the enterprise fund which are restricted funds and must be paid back over time from general fund revenues. The financial advisor and the Finance Department could advise the Commission as to the feasibility of doing that. However, he spoke to the Assistant County Attorney and was told that the county

sometimes this kind of thing but they always pay it back by the end of the fiscal year, although he did not want to go as far as to say that was a requirement he did suggest that the city consult with its auditor to see if it would constitute an audit exception and whether it would be a significant audit exception.

At the last meeting, he said that the City Manager provided three alternatives with one being his recommendation as oppose to bidding on the building. Based on conversations with the attorney for the judgment holder, while the city was originally in a position to bid to protect the city's rights, based not only on the representation from the attorney for the judgment holder but also substantial legal research done, since the city was not joined in the lawsuit, not named as a party and not served and since the city's lease pre dates the mortgage he is confident that they will have a period of time if someone is awarded as the successful bidder other than the judgment holder, the city will not be facing some kind of immediate rid of possession and of course the judgment holder said they will honor the lease.

Attorney Geller further said at this time it is not their recommendation that the city needs to bid on the Town Center Property, but it's the pleasure of the Commission.

Mayor Kelley said one of the reasons they are having this meeting is because the Commission received documentation at the last regular commission meeting that the building was in foreclosure and not having all the information to make a clear directive to the City Manager as to what the City Commission wanted to do.

Commissioner Holmes said he is not concerned if the judgment holder bid on the building and decides to evict the city. His concern is that the city needs to bid on the building because there's a good chance of the city owning the building. The money the city pays for rent can be used to repay any loan or bond we get.

He further said if someone out bid the city then we should prepare to move out of Town Center One.

Commissioner Johnson said she is concerned about borrowing money from the Enterprise Fund when State legislation dictates what you can use that money for.

She further said although the county may have did that, is that the right thing staff is suggesting?

Attorney Geller said staff is not suggesting it. When the Commission was faced with dire circumstances that was an option staff looked at. If it is the will of the Commission to place a bid on the property, the money has to be put up in full by noon the following day.

He further said neither the county attorney nor he found anything that prohibits borrowing money from the Enterprise Fund in State law, but it is not the same as saying it is necessary in keeping with general accepted accounting principals as applicable to governments or whether it could cause an exceptional in the annual audit report.

Commissioner Johnson asked, where are the savings from the eighteen months when the city did not pay any rent?

Dr. Ezekiel Orji informed the Commission that the city has an audit every year and any money that is not spent goes into the fund balance and it is carried over.

Commissioner Johnson asked, are those funds still available?

Dr. Orji replied, yes. That is why the city has cash at hand that was suggested to use to bid on the property.

Commissioner Johnson asked, how much rent does the city currently pay to occupy Town Center One?

Dr. Orji said about Forty One Thousand Dollars (\$41,000.00) per month and about Four Hundred Ninety Eight Thousand Dollars (\$498,000.00) per year.

Commissioner Johnson asked, how much money the city has in the Enterprise Fund as of 2010 and how the money was previously spent?

Roderick Harvey of Harvey, Covington, & Thomas LLC said the Proprietary Fund has three funds and they are Water & Sewer, Stormwater, and Solid Waste. The cash flow statement generated for Water & Sewer in 2009 was \$2.5 Million Dollars. The operating, investing, and financing net increase from the Water & Sewer Fund for 2009 was Nine Hundred Thirty Six Thousand Dollars (\$936,000.00), that amount includes and expenditure of Five Hundred Fifty Nine Thousand Dollars (\$559,000.00).

He further said based on his discussion with Dr. Orji as of today he will provide the commission with numbers. The General Fund account has \$2.3 Million Dollars of which \$1.4 Million Dollars can be used for the purchase. The Water & Sewer Fund account has \$5.7 Million Dollars of which \$4.5 Million Dollars can be spent.

Dr. Orji said staff has suggested using One Million Dollars from the Water & Sewer Fund. This is unrestricted money that has been put in a CD to see if the city can get more interest back. He further said Five Hundred Thousand Dollars will be use from the Loan Reserve.

He continued by saying this money will be refunded by taking out a loan.

Commissioner Johnson said she think this type of business dialogue should have been given to the commission prior to coming to the meeting.

Commissioner Holmes asked, are you saying the money that was supposed to be for rent has not been paid and the money is being kept in an account?

He further asked, has the city been paying rent on a monthly basis?

Dr. Orji replied yes, the city has been paying rent on a monthly basis.

Mayor Kelley said based on the information, he does not want to move and shift dollars around and at this point he is more incline to let the bid go forth. The City Attorney put the Commission on notice that they are in a good position for the lease to be honored. His recommendation remains the same for the city to build its own building because it will allow them more time to see how they would finance such a project. The estimated amount to build a new building was about \$4.5 Million Dollars which is less expensive and will allow them time to look at possible financing and other funding opportunities. There are a lot of funds available for building new constructions and going green. He said he does not feel comfortable shifting money around to bid on the Town Center Building.

He further said since the city has a year to year lease he is directing City Manager to bring the commission back recommendations for the city to build our own building.

Vice Mayor Taylor said she made her position clear at the previous meeting regarding standing still and perhaps re-negotiating the lease.

She asked, is the bid bond refundable?

Attorney Geller said the bid bond is 100% refundable as long as the city does not bid.

Vice Mayor Taylor asked, if the judgment holder is the successful bidder will they honor the present lease?

Attorney Geller replied, yes. They said they may want to look at small revisions and he said the city may want to make revisions as well.

Commissioner Tydus said the lease is not in jeopardy and she think we should remain where we are and the city needs to think twice about being in the landlord business.

She further said she is not comfortable with the financial explanations that have been given and banks are not loaning any money at this time.

Commissioner Johnson said it is her understanding if the city choose to stay still then the Commission is directing the City Manager to start looking at possible land for the city to build its own building.

Mayor Kelley said that is correct and the purpose of this meeting is to give the City Manager and City Attorney clear directives if it was the will of the Commission to bid on the property.

Commissioner Johnson said the City Commission directed the previous Interim City Manager to look at the property formally known as the Opa Hotel. She asked, is that one of the possible locations?

Manager Patterson replied, yes.

Commissioner Holmes said the city has a ten year lease with a year to year negotiation with Town Center One.

Commissioner Holmes said he would like to make a motion to bid on the Town Center Building.

Attorney Geller said for the record he would like the Commission to understand that the city has a written undertaking from the judgment holder and it is questionable if it is binding and they may not be the successful bidder, but he does feel the city has a good legal defense. It is not a guarantee that someone could not attempt as a new buyer to terminate the city's lease and the law is not 100% clear; however it is clear to him that they can not just go into the court and have us evicted.

- b. Possible Commission Action regarding city hall administrative offices
- c. Resolution:

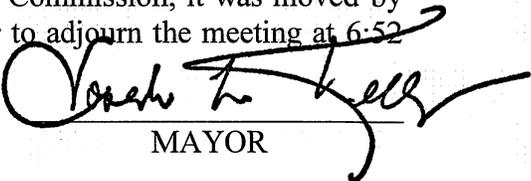
A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF OPA-LOCKA, FLORIDA, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO BID UP TO THE AMOUNT OF _____ AT THE FORECLOSURE AUCTION SET FOR OCTOBER 5, 2010 OF THE PROPERTY KNOWN AS TOWN CENTER ONE. *Sponsored by C.M.*

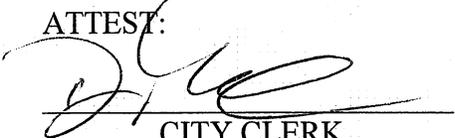
Commissioner Holmes made a motion that the City Attorney or City Manager go to the foreclosure auction on October 5, 2010 to place a bid in the amount up to \$7.5 Million Dollars for the property known as Town Center One.

The motion died for a lack of second.

6. ADJOURNMENT:

There being no further business to come before the City Commission, it was moved by Commissioner Johnson, seconded by Vice Mayor Taylor to adjourn the meeting at 6:52 p.m.


MAYOR

ATTEST:

CITY CLERK