

CITY OF APOPKA

Minutes of the City Council regular meeting held on July 19, 2017, at 7:00 p.m., in the City of Apopka Council Chambers.

PRESENT: Mayor Joe Kilsheimer
Commissioner Billie Dean
Commissioner Diane Velazquez
Commissioner Doug Bankson
Commissioner Kyle Becker
City Attorney Cliff Shepard
City Administrator Glenn Irby

PRESS PRESENT: John Peery - The Apopka Chief
Steve Hudak, Orlando Sentinel
WFTV News

INVOCATION: Mayor Kilsheimer introduced Pastor Waldemar Serrano of Remnant Christian Center, who gave the invocation.

PLEDGE OF ALLEGIANCE: Mayor Kilsheimer said on July 20, 1969, the lunar module of Apollo 11 touched down on the Moon's surface, carrying Neil Armstrong, Michael Collins, and Buzz Aldrin. The entire nation watched in awe as Neil Armstrong stepped out of the lunar module to become the first human to walk on the Moon, and he spoke these famous words, "*one small step for man, one giant leap for mankind.*" The Apollo 11 mission fulfilled President John F. Kennedy's 1961 call to the nation to land a man on the Moon and bring him safely back to earth before the end of the 1960's. He asked everyone to remember the sacrifice and bravery of the men and women of our space program as he led in the Pledge of Allegiance.

Mayor Kilsheimer recognized and welcomed Boy Scout Troop 10, who are here studying for their Citizenship in the Community Merit Badge.

APPROVAL OF MINUTES:

1. City Council regular meeting June 21, 2017.

Commissioner Becker said he had one minor change in the way the minutes read. He stated they imply his viewpoint for the purpose of the red light camera program is notice of violation reduction, wherein his personal viewpoint is reduction in crashes.

MOTION by Commissioner Bankson, and seconded by Commissioner Becker to approve City Council minutes of June 21, 2017, with the correction to the minutes as noted. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Velazquez, Becker, and Bankson voting aye.

AGENDA REVIEW: There were no changes.

PUBLIC COMMENT/STAFF RECOGNITION AND ACKNOWLEDGEMENT

Public Comment:

Robert Webster said he feels it is necessary to bring up that there seems to be some doubt about the Mayor being a voting member of the Council. He stated the Mayor is executive and does not have any legislative power. He said this puts the City in a bad position of only having four legislators and it should be amended by Charter, suggesting five would be an appropriate number.

Ray Shackelford said he wanted to applaud the willingness of the City Council to resolve the case with the former CAO. However, since the Mayor, CAO, and City Attorney were eager to pursue this case, he asked what the legal costs were to the citizens of Apopka. He said nearly \$2 million of the reserve fund balance was used in FY 2017 to balance the budget. He said the City of Apopka claims that there will be no fund balance transfers into the General Fund for FY 2018. He said for FY 2015 to 2018 the fund balance will decrease within 26%. He said of the eleven cities in Orange County with a population of 2,000 to 280,000, the City of Windermere has the lowest millage rate followed by the City of Apopka. He stated the City of Apopka increased its millage rate from FY 2016 to 2017 by 15%. He said even if the millage rate stays at 3.7876, it will be another tax increase due to increased property values. He said not one of the ten cities in Orange County increased its millage rate for FY 2017. He gave as an example the City of Eatonville with a population of 2,300 people, a millage rate of 7.3 and poverty rate of 21%, did not increase its millage rate for FY 2017. He stated Winter Park, Maitland, and Ocoee decreased their millage rates for FY 2017. He said the City of Apopka has the fourth highest poverty rate in Orange County. The City of Apopka also increased its water and sewer rates since FY 2015. He said of the cities in Seminole County; Altamonte Springs, Casselberry, and Lake Mary have a lower millage rate than Apopka, and did not increase their millage rate from FY 2016 to 2017. He said the budget for Apopka Begins and Ends with A will increase by 17%. He stated if the City wanted to give money to education, they should give it to the School Advisory Council, PTA, PTO, PTSA, or the IB Council to support the school improvement plan. He said the millage rate for Orange County Public Schools in FY 2017 was 7.11. He stated the budget for the part time city attorney will increase 50% for FY 2018. He said over the past week he has seen several older police cars that need replaced.

Rod Love said he wanted to echo some of Dr. Shackelford's sentiments, but his focus is more on the budget workshops that have been taking place. He stated having attended budget workshops in the past, he understands that public comment is not included in that process and he understands to some extent why. He said he knows the Council is doing their due diligence, but asked that they take that a step further. He stated there has probably been some discussion on the increase of homestead exemption that will impact the city budget. He asked that they place the focus while going through the budget process on items deemed critical, such as first responders, law enforcement, focus on young people in areas of child welfare, and delinquency prevention. He stated to do some things that can be actually measured for success when spending taxpayers' dollars. He said the City of Apopka has a very unique situation based on the configuration of the city/county within Apopka. He emphasized when going through the budget process to focus on areas where there are critical issues such as healthcare, elderly in the community, stating he knows the city's budget does not focus in those areas, but when we get further down the road, if the homestead exemption goes forward, we will need to place priorities on areas we know to be critical.

Presentations:

1. Chief McKinley presented checks through the Guns and Hoses Basketball Competition to Nikki McGuire of N.A.O.M.I. Kids and Danyiel Yarbrough of New Journey Youth Center.
2. Chief McKinley presented a trophy to Officer Robert Campbell and the Apopka Police Department Walk Like MADD team.

CONSENT (Action Item)

1. Award a contract for the installation of reclaimed water main pipe along Ocoee-Apopka Road.
2. Award a contract for the purchase of ductile iron pipe and fittings for the reclaimed water main along Ocoee-Apopka Road.

MOTION by Commissioner Dean, and seconded by Commissioner Velazquez, to approve two items on the Consent Agenda. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

BUSINESS

1. **Authorize an agreement for the processing and marketing of Apopka curbside recycling material.**

Jay Davoll, Public Services Director, said this had previously been discussed in a budget workshop, and this item is coming before Council due to the change in status of our recycling, which has been free for some time. As of June 30, 2017, Orange County's contract expired and they did not get any bids to renew recycling, but they worked out an agreement with their current provider. Instead of our recycling being delivered at no charge, we will now be paying \$42 a ton to the same facility. He advised we have an agreement that we can piggyback off of Orange County.

MOTION by Commissioner Velazquez, and seconded by Commissioner Becker, to authorize an agreement with Waste Management for the processing and marketing of Apopka curbside recycling material. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

2. **Approve emergency repairs to the Water Reclamation Facility North Clarifier.**

Jay Davoll, Public Services Director, said this was a fatal problem that occurred to the north clarifier, which is a vital component to our Wastewater Plant. This was discussed previously at a budget workshop, stating it needs to be repaired and put back in place so the Wastewater Plant can be operated correctly.

MOTION by Commissioner Bankson, and seconded by Commissioner Dean, to approve repairs to the Water Reclamation Facility north clarifier. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

3. **Approve the Emergency Roof Replacement of the Fire Administration/Fire Station #1 Facility.**

Mr. Davoll said this is an emergency roof replacement for the Fire Administration/Fire Station #1 next to City Hall. He advised there were some photographs distributed to Council and this is a vital building that houses 911 Communications, Emergency Responders, and the servers for the

City. This was discussed during the budget workshop meeting.

Commissioner Bankson thanked staff for the additional photographs of the interior, stating this showed the importance of moving forward with this repair.

Commissioner Becker added this was the Fire Department, and epicenter of all the technology that keeps this City running, stating this was critical.

MOTION by Commissioner Becker, and seconded by Mayor Bankson, to approve the emergency roof replacement of the Fire Administration/Fire Station #1 facility. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

4. Contingent mediated settlement agreement for Richard D. Anderson.

Mayor Kilsheimer said before proceeding he wanted to express a few thoughts on why the City Council was being asked to address this issue tonight. He stated we were here because this Council voted unanimously on June 1, 2016 to terminate the City's contract and to sue Mr. Anderson. In his opinion, that decision by the City Council was the right decision to take, based on what they knew at the time of the allegations that were lodged against Mr. Anderson, and based on the fact that he made no attempt to avoid the embarrassment caused to the City by his actions. In other words, we had no choice but to take the action taken in June 2016. At the time of litigation the court ordered the parties to mediation. This is a routine aspect of any litigation, it is to be expected, and it cannot be avoided. Once you get to mediation, the parties have two choices: settle the case without going to trial, or continue taking the case to trial. In our case, before the mediation was ever ordered, the City's proposed settlement was rejected. He stated we proposed that both sides walk away from the litigation with no money exchanging hands. At mediation, the choice then became for him to decide on his own to continue taking the case to trial or bring a settlement agreement back to Council. After some reflection, it became clear that he could not substitute his judgement for this Council's judgement. With regards to whether or not the City should continue this litigation, it is in his opinion, better to express the will of this community through this City Council, rather than through his judgement alone. He chose to bring this decision back to Council. He stated with regards to the amount, this was the lowest amount to which the other side would agree. The question is put in front of the City Council without recommendation. He advised he would not express his opinion at this time, but he will at the time they take a vote.

Cliff Shepard, City Attorney, said he would be providing a brief recitation of how we got to where we are, then he would explain what he can about mediation, and advised he can only talk about the settlement agreement in front of Council. As known, from reading the newspapers, Mr. Anderson pled no contest to the most serious charge he was facing, that being leaving the scene of an accident causing serious bodily injury. No contest means he is allowed to not contest the charge, and be sentenced. He was sentenced to three years of felony probation, but has the potential, after he completes the probation, to have his record cleared at some future date. He stated we do not know whether that will happen. It also means that the plea he entered cannot be used against him in the civil case, so we would have to prove in our case, to the extent the judge agrees with us, that its germane, that the things he was charged with, or at least the things he pled to, which means the evidence would have to be presented of the other people who saw him there,

and all the things in the reports. He said one might ask, if he has already entered a plea, why don't we know what happened, since he is no longer in legal jeopardy. He advised his deposition was taken after the plea, and in his deposition he had his criminal lawyer with him. Mr. Anderson asserted the Fifth Amendment as to literally everything about the accident. He stated it was likely, in his opinion, that Mr. Anderson will be unable to maintain his counterclaim against the City. This does not mean the City's risk is limited. We would have to go to trial, prove all the things we said, and a judge would have to rule those things constitute a breach of contract. He stated in almost every civil case you are ordered to mediation, which we were, and this was completed by the end of June. The Mayor attended this mediation on the City's behalf, and in terms of what happened there is all privileged information, except for the settlement document provided. He stated if the settlement is agreed to and the case is over, we will file the appropriate paperwork with the court, the payment of \$60,000 will be made and the case will go away. He advised this does not mean the City will never hear from Mr. Anderson again, stating the only things he could not do, as with any convicted felon is prohibited from doing, is voting and carrying a firearm. He advised if they come to the point of making a decision on this settlement, as proposed, it will need to be as written. He affirmed if the Council decides to approve the settlement, the Council votes and they are done. If they chose not to approve the settlement because they want to change and/or call for a counter proposal, they could only do that after they first reject or accept the settlement that is on the table.

Discussion ensued regarding legal fees if the City chooses to go to trial. In response to Commissioner Becker, City Attorney Shepard advised wages could be garnished, but not pension.

Commissioner Velazquez said she has followed social media and many of the residents feel that Mr. Anderson's integrity was not there, and he did not conduct himself in the highest manner in representing the City of Apopka.

Mayor Kilsheimer opened the meeting to public comment.

Ray Shackelford said the social media does not represent him or many of the citizens. He has discussed this with citizens too and they would like to see this approved and go away. He stated we need to move forward and save the taxpayers money and stop spending it on legal fees. He said he appreciates what the Council does for the City, but asked they not assume the social media speaks for every person.

Rod Love said it has been said that no one in this room feels what took place should have ever taken place. He stated he would not give a recommendation to Council, but at the end of the day we all have to make decisions. If he had to make a decision of whether to put his home and family in jeopardy financially, he will sit back and make the tough decisions. He asked if they can afford to proceed forward. He said there were a lot of issues going on and there will be some fiscal constraints facing them in the near future. He stated he hated what took place and he does not condone it. He suggested these decisions be made as if they were making them for their family and finances.

Gannon Kelly with Boy Scout Troup 10 had some clarifying questions and asked if Mr. Anderson had been charged as a felon for a hit and run accident, to which City Attorney Shepard responded in the affirmative, stating Mr. Anderson was charged with that and several other felonies, the most serious being leaving the scene of an accident with serious bodily harm. Mr. Kelly asked for

clarification regarding the law suits. Mr. Shepard explained the City was suing Mr. Anderson for breach of contract that stated he was not to behave in such a way that would bring embarrassment to the elected officials or to the City in the way it conducts its business and we alleged he did that. After Mr. Anderson pled no contest to the most serious charge, he then turned around and sued the City. Mr. Kelly asked what the main focus of his counterclaim was. Mr. Shepard explained that all the things we say Mr. Anderson did wrong were not a breach of contract.

No one else wishing to speak, Mayor Kilsheimer closed the public comment.

Commissioner Becker said he respected Dr. Shackelford and Mr. Love's comments regarding financial responsibility, but the first question he asks himself is right versus wrong. He said he was glad the Boy Scouts were here because that reminds him to live by the Scout Law, stating a scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent. He stated these are the value system that everybody, and certainly the residents of Apopka are entitled for them to make decisions on the dais. He said for that reason, he is willing to risk dollars if it means they are doing the right thing to protect the integrity of the people of this town who entrust people like Mr. Anderson.

Commissioner Bankson said Mr. Love talked about that, and he asked if the point has been made if damage has already been suffered and are they extending something that only further hurts our City for personal vindication. He stated they all had sat through the budget meetings and this was not to put money over principle. He said looking at the financial side, it has a moral implication as well, because it affects what we can do for our citizens. Looking at the fiscal side, if they settle, they could possibly save \$70,000 in attorney fees in the best case scenario. He stated he was willing to fight a fight he knows we can win, but he did not want to risk further damage to the City by keeping something going on that can be resolved. He declared he was not defending those actions, but he was seeing the other side of where we are as a City.

Commissioner Dean said he agreed with Commissioner Bankson and stated we need to put this behind us, forget about going back to court, and settle.

MOTION by Commissioner Bankson, and seconded by Commissioner Dean to approve the mediated settlement agreement for Richard D. Anderson. Motion failed by a 2-3 roll call vote with Commissioners Dean, and Bankson voting aye, and Commissioners Velazquez, and Becker, and Mayor Kilsheimer voting nay.

Commissioner Velazquez said when Mr. Anderson retired he was getting his certification as an EMT and inquired if he still had that certification.

City Attorney Shepard said from the records he reviewed, Mr. Anderson was a licensed Paramedic and it appears this was in place at the time of the accident.

In response to Commissioner Becker inquiring if the City could renew the settlement offer to walk away, City Attorney Shepard said it was fair to say that was an open proposal and he would make sure his new attorney knows that is an open proposal.

Commissioner Bankson said it was important as a City to heal, stating there were valid and moral

reasons on both sides of that argument. He stated as we go forward, we need to heal as a City and come together as we proceed.

City Attorney Shepard said he would keep Council apprised of any developments that could impact the decision made this evening.

5. Apopka Comprehensive Plan – 2017 Evaluation & Appraisal Report (EAR)

David Moon, Planning Manager said staff requests authorization from City Council to submit a letter to the Florida Department of Economic Opportunity to proceed with an evaluation of the Appraisal Report of the City's Comprehensive Plan. By State Statute, every seven years the City is to amend its Comprehensive Plan. State Statutes have been amended in recent times to give the City the option to amend the Comprehensive Plan or wait another seven years. Due to changes that have occurred in the City, there are a number of obsolete and outdated policies that are no longer practical. Staff feels it is necessary to go through an Appraisal and Evaluation process. The Planning Commission reviewed this request and recommends the City proceed with an Evaluation and Appraisal Report. The City has until August 1, 2017 to notify the State whether we will proceed with this process, and if proceeding, we have one year to complete the Evaluation and present our amended Comprehensive Plan to State agencies. Mr. Moon advised one of the steps we will follow if directed by City Council to proceed, is that staff will prepare a work program that includes a public involvement process during the evaluation. He advised the Planning Commission will hold workshops and provide recommendations to City Council.

MOTION by Commissioner Bankson, and seconded by Commissioner Velazquez to approve proceeding with the Apopka Comprehensive Plan Evaluation and Appraisal Report (EAR). Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

PUBLIC HEARINGS/ORDINANCES/RESOLUTIONS (Action Item)

1. Ordinance No. 2525 – Insubstantial Change to PUD Development Condition D.4. – Apopka Holdings, LLC.

Mayor Kilsheimer announced this was a quasi-judicial hearing. Witnesses were sworn in by the clerk.

David Moon, Planning Manager, said this was an insubstantial change to the PUD Development Condition previously approved. The request by Apopka Holdings, LLC, is a minor change basically on the material of a wall. The neighboring areas have requested the brick wall be a vinyl fence to make it more of a residential feel.

Mayor Kilsheimer opened the meeting to a public hearing. No one wishing to speak, he closed the public hearing.

MOTION by Commissioner Velazquez, and seconded by Commissioner Bankson, to approve the insubstantial change to PUD Development Condition as presented. Motion carried unanimously with Mayor Kilsheimer, and Commissioners Dean, Velazquez, Becker, and Bankson voting aye.

CITY COUNCIL REPORTS

Commissioner Becker one point he picked up on, as they work on the budget, if the Council could be provided some information of what the proposed homestead exemption would mean to the City of Apopka.

Mayor Kilsheimer advised this matter would be on the general ballot in November 2018.

Commissioner Dean asked about the landscape plan for Fire Station 5, to which Chief Carnesale advised it was being worked on and he should have it within a couple of weeks.

MAYOR'S REPORT – There was no report.

ADJOURNMENT – There being no further business the meeting adjourned at 8:30 p.m.

ATTEST:

Joseph E. Kilsheimer, Mayor

Linda F. Goff, City Clerk