



City Commission Special Meeting Minutes

February 15, 2023 at 3:30 p.m.

City Hall, Commission Chambers
401 S. Park Avenue | Winter Park, Florida

Present

Mayor Phil Anderson; Commissioners Marty Sullivan, Sheila DeCiccio, Kris Cruzada and Todd Weaver (virtual); City Manager Randy Knight; Assistant City Manager Michelle del Valle; City Attorney Kurt Ardaman; City Clerk Rene Cranis.

1) Call to Order

Mayor Anderson called the meeting to order at 3:30 p.m. He advised that Vice-Mayor Weaver is participating remotely.

2) Action Item

a. Commissioner Weaver's tenure

At the request of Mayor Anderson, the City Clerk read the motion from the February 8th meeting made by Commissioner Sullivan, seconded by Commissioner Weaver, "that the Commission keep Vice-Mayor Weaver on the Commission effective immediately."

Mayor Anderson read Section 2.07 of the Charter which states in part that the office of a commissioner shall become vacant upon the resignation (or other reasons), or forfeiture of the office, such forfeiture to be declared by the remaining members of the commission. He asked if the Charter gives the commissioner who has resigned the opportunity to withdraw or reinstate him or herself.

Attorney Ardaman said if the resignation was effective upon the sending of the e-mail, no, but if the resignation was for a future date, then Commissioner Weaver would have the opportunity to rescind that resignation. This is based on one case and an Attorney General opinion (in the context of a county commissioner) which essentially states if the resignation has not been effective, then the individual has the opportunity to rescind the resignation. The law does not provide for a commissioner to rescind the resignation if it was deemed to be effective as of Friday, February 3rd at 8:21 a.m. since it would be effective at that time.

Mayor Anderson asked if the Charter gives the commission the right to set aside or to ignore a resignation or take no action on a resignation. Mr. Ardaman said once the resignation is effective, the commission has no authority to accept or reject a resignation but does have the authority to rule on whether there was a resignation and if so, when it was effective.

Mayor Anderson said the main question is whether the e-mail was a resignation effective February 3rd at 8:21 a.m., in which case there is nothing that can be done about it and there is nothing the commissioner that resigned can do to change that. It stands and it creates a vacancy and the charter dictates how to move forward and fill a vacancy. He asked if there is a formal notice or format required for officials to resign.

Mr. Ardaman said there is no Florida statute or case law that provides a formal mechanism for resignation. A resignation by a local official can be verbal or in writing following different processes or procedures. The Charter does not provide any guidance.

Mayor Anderson believes the question is whether there was a resignation and if so, was it effective on February 3rd at 8:21 a.m. Since the last meeting, the city received an opinion from the city's human resources attorney, with experience in resignations, but there are many opinions based on personal experience.

Mayor Anderson noted that the definition of step down (subject line of e-mail) is to retire or resign and that the e-mail from Vice Mayor Weaver was sent to city senior staff e-mail group which includes the City Clerk. The e-mail is dated February 3, 2023 at 8:21 a.m. with the signature "Todd Weaver, Winter Park City Commissioner 2019-2023;" however, his elected term ends in 2025. He addressed the confusion following the e-mail as to whether there was a resignation, whether a format should have been followed, whether it was the intent, whether it was a mistake to be rescinded. He spoke about resignations in the employer/employee relationship where terms, timing or acceptance or rejection of resignations are in the hands of the employer. This situation differs in that the city is not the employer and per the Charter, once the resignation of an elected official occurs, it creates a vacancy and the commission has no authority to rescind the resignation. He is thankful that Vice Mayor Weaver advised him prior to February 3rd, as a professional courtesy, that he intended to resign, but terms and timing were not discussed. He summarized stating if this was a resignation as of February 3rd at 8:21 a.m., it went into effect and there is no power to rescind and the commission has no power to pretend it did not happen.

Commissioner Sullivan said Vice-Mayor Weaver stated in the public record that he would like to remain on the commission and rescind his e-mail. His full participation and voting in the last commission meeting indicate the commission did not accept his resignation as of the date on the e-mail. The commission is making a critical decision considering whether to remove a commissioner from office and begin the process of selecting another commissioner. He sees three options: remove Vice-Mayor Weaver from office, retain Vice-Mayor Weaver to complete the term of office or take no action allowing him to serve. He said the labor attorney's opinion states it was a resignation and effective at the time the e-mail was sent, but only if Vice-Mayor Weaver was an employee of the city, which he is not. He said the attorney's opinion did not provide applicable case law nor Attorney General's opinion. His final opinion was that "The

Winter Park City Commission will be tasked" to determine if Vice Mayor Weaver remains on the commission which is consistent with Mr. Ardaman's opinion. Key points are that Vice-Mayor Weaver statement that he wants to continue serving and that he was elected by Winter Park voters. The commission will decide whether to negate the will of the voters. In his opinion, it is in the best interest of the citizens of Winter Park that Vice-Mayor Weaver continue to serve.

Commissioner DeCiccio said the decision must be based on law. The commission sought an attorney's opinion who determined that the e-mail was a resignation and effective February 3, 2023 at 8:21 a.m. She referred to the Charter that states the commission is the judge of qualifications of its own members and the office shall become vacant upon resignation. She agreed with the opinion and therefore, he is no longer qualified to be a commissioner and the commission has no option but to follow the charter.

Commissioner Cruzada said he never received the e-mail but understands the confusion surrounding it. He said he sees no express will of intent. He felt Commissioner Weaver was contrite and apologetic when he stated his desire to continue to serve. He cited case law and state statutes for candidates and the resign to run rule which addresses the aspect and quality of resignations which he used as a guide in the absence of case law. He feels the e-mail was vague without clearly stating what he is stepping down from (Vice-Mayor or Commissioner), no mention of the word resignation or an effective date. He spoke about the risk of giving an opinion on the intent of another commissioner. He asked that the commission look at State Statutes (resign to run rule) that states resignations must be in writing with an effective sent directly to the city clerk and the governor's office and is irrevocable. He said the people who elected Commissioner Weaver need to ask his intent and if they are not pleased, there is the option for recall. He said he does not want to take this away from the voters.

Commissioner Weaver apologized for the cause of this special session. He reiterated he neither sent a resignation letter to the city clerk or the Governor. He said he was feeling overwhelmed that morning and should have gave it more thought before sending the e-mail. Over the weekend, he received support and requests to reconsider. He said the e-mail was not a resignation but like a courtesy to any employer. He said he has made some changes wants to support the citizens through the remainder of his term.

Discussion was held on the e-mail subject, date and time, and signature line "Winter Park City Commissioner 2019-2023. Mayor Anderson felt these were indicators of a resignation and Commissioner Cruzada said it is not expressly written in the body of the e-mail and he will not imply intent.

Commissioner Sullivan said he believes the labor attorney's opinion came from the perspective of an employee of the city under contract law, which is not the case, but agrees that this is a matter for the commission to decide.

Commissioner DeCiccio believes the e-mail clearly informs residents that he is stepping down which is synonymous with resignation. She cited instances in the e-mail where it is written in past tense, appears to be a farewell, speaks about regrets and unfinished business and moving forward on initiatives with his absence that indicate his resignation.

Members of the commission discussed the language and restated their position.

Mayor Anderson noted the motion on the table to retain Commissioner Weaver.
Commissioner Sullivan withdrew his motion.

Motion made by Commissioner Cruzada to “see if we can make a determination as to whether or not Commissioner Weaver's resignation is legally sufficient or not;” seconded by Mayor Anderson. (Restated at roll call vote)

Bonnie Jackson, 3009 Temple Trail, believes there is nothing vague or ambiguous about the e-mail given the end date on the signature line and the subject, stepping down. This and Commissioner Weaver’s regrets and desire to rescind his resignation clearly shows that he did resign.

Kim Allen, 1800 W. Fawsett Road, said because Commissioner Weaver was elected overwhelmingly, the voters are his employer and said that there is no clear guidance about resignations. She spoke about the Charter and State Statutes (resign to run) relating to resignations and asked the Commission to allow Commissioner Weaver to serve having been elected by the voters.

Greg Seidel, 1251 Lakeview Drive, former commissioner, spoke about integrity and said he believes this is a resignation, but reminded the commission that they have the ability to appoint him back on the commission if the commission determines he did resign.

Wendy Nissan, 750 Pinetree Road, said residents entrusted the commission to run the city with integrity and believes that trust has been violated by even having this debate. She feels this is clearly a resignation and the commission should follow city code, not statutes (resign to run) that do not apply. Residents deserve to have a committed commissioner in this seat, and if Commissioner Weaver feels he cannot, the voters deserve to elect someone who is willing to do so.

Beth Hall, 516 Sylvan Drive, said she feels the labor attorney’s opinion is not applicable and presumes Commissioner Weaver’s intentions. As an attorney, she did not find the letter insightful, helpful, constructive or convincing and as a citizen, she found it to be a waste of money. Both attorneys agree that the commission is empowered under the charter to determine the qualifications of fellow commission members. She urged the commission to find Commissioner Weaver to be qualified.

Jan Hommel, 258 Lyman Avenue, said although she interpreted the e-mail as a resignation, she said the effective date is key. When she asked Commissioner Weaver

when this was effective, he said he would be at the next commission meeting and did not know when he was going to resign.

Pat McDonald, 2348 Summerfield Road, said she did not receive the e-mail but as a former personnel manager, she would have asked for an effective date. She feels the e-mail is meaningless and should have had the word "resign" and an effective date. She asked that the commission to consider that he changed his mind.

Jim Fitch, 1820 Via Genoa, cited Commissioner Weaver's many accomplishments and feels the commission should not override the voters who elected him.

Gigi Papa, 1440 Hibiscus Avenue, said she has lost trust in Commissioner Weaver and although he was elected, he resigned and it should be accepted and move forward on accordance with the Charter.

C. J. Williams, 2021 Temple Drive, said conditions change for everyone, which is what happened in this case, and we need to be flexible. He does not see a solid case for removing a commissioner.

The motion was restated as a question: Is Commissioner Weaver's e-mail legally sufficient as a resignation?

In response to questions. Mr. Ardaman said all members of the commission can vote and that one can only abstain if they inure to a special private gain or loss, but an exemption allows elected official to vote on matters pertaining to their salary. He opined that it would be improper for Commissioner Weaver to recuse himself.

Mayor Anderson stated a yes vote means it was a resignation and no vote means it was not a resignation. **Upon a roll call vote, Commissioner DeCiccio and Mayor Anderson voted yes. Commissioners Sullivan, Cruzada and Weaver voted no. Motion failed with a 2-3 vote.**

3) Adjournment

The meeting adjourned at 5:00 p.m.

Mayor Phillip M. Anderson

ATTEST:

City Clerk Rene Cranis