

City Commission Workshop
January 22, 2019
5:30 pm

Vice Mayor Waters called the workshop to order at 5:30 pm.

Members present included Vice Mayor Wilbur Waters, Commissioner Tommy Chastain, Commissioner Janice D. Mortimer and Commissioner Shannon Smith. Also present were City Manager Bob Milner, Deputy Clerk Lisa Terry and City Clerk Ricky Thompson. Mayor Daniel W. Nugent was absent due to work.

Vice Mayor Waters turned the workshop over to Mr. Milner. Mr. Milner asked Mr. Thompson to introduce the attorney representing the city for this workshop due to a conflict of interest with Attorney John Cooper and Canopy Communications. Mr. Thompson introduced Clay Martin representing Folds & Walker. Attorney Martin said he is here to represent the city on a limited engagement to do due diligence with respect to Canopy Communications. Attorney Martin passed out a copy of their report to the commissioners. He said Folds & Walker was retained approximately 2 weeks ago to provide a due diligence investigation into Canopy Communications. Attorney Martin said as he was driving to work this morning, he saw a sign on a church that said the best wireless communication is prayer. He said Folds & Walker has done a survey of Canopy Communications and the contract they have proposed with the city and their recommendation to the city is to develop a request for proposals if they wish to become an internet service provider. Attorney Martin said broadband internet service in rural areas is a challenge. He suggested the city engage other public entities in its quest for high speed internet services. Attorney Martin said the city should affirmatively address the concerns raised in the letter if they decide to enter into an agreement with Canopy Communications. He said the investigation revealed that the city would unnecessarily expose itself to substantial financial and organizational risk by entering into an agreement with Canopy Communications. Attorney Martin said the details of the strategic partnership proposed by Canopy Communications are substantially and technically deficient. He said Canopy Communications lacks a business history as a new company in the field of wireless broadband services. Attorney Martin said Canopy Communications is unwilling or unable to provide the city with its financial information so the city can evaluate its financial standing. He said the number of legal conflicts arising from the past business ventures of Canopy Communications is significant. Attorney Martin said Canopy Communication's rights to the technology in which it claims a property interest cannot be confirmed based on the information Canopy Communications has provided. He said the viability of the technology that underpins Canopy Communication's proposal cannot be verified. Attorney Martin said Canopy Communication's principal address is in Plant City and appears to be a Post Office Box so they have no physical presence. He said Canopy Communication's principals, David Orshan and David Suarez, have been affiliated with numerous business entities over time. Attorney Martin said the principals have an extensive history of launching businesses related to communications. He said Folds & Walker has been able to verify that the principals are involved in at least 6 lawsuits in Marion, Palm Beach and Hillsborough Counties which are presently pending. Attorney Martin said Mr. Suarez is named individually in 2 of the lawsuits

and Mr. Orshan is named individually in 1. He said there is a judgement in the State of New York recorded in Hillsborough County for \$139,242.43. Attorney Martin said looking at the Master Services and Licensing Agreement and Termination Addendum reveals they are problematic. He said the document labels this transaction as a strategic partnership but it is not clear what Canopy Communications would be providing. He said the city would be responsible for all marketing, support and billing. Attorney Martin said with respect to the licensing component it is something that is granted by the owner of the property right to allow someone to use the property subject to terms and conditions. He said Folds & Walker has been unable to verify that Canopy Communications has any property right that it could license to the city. Attorney Martin said patents are recorded through the patent office which is a searchable database but Folds & Walker could not find any patent interests belonging to Canopy Communications. He said Canopy Communications declined to provide any patent numbers to allow them to determine ownership. Attorney Martin said the agreement has numerous undefined terms. He said there is a non circumvention and nondisclosure agreement. Attorney Martin said Attorney John Cooper said the city agreed not to execute that agreement but it still incorporates certain terms from that agreement. He said because of all these reasons Folds & Walker recommends the city take another course of action if they wish to provide broadband services. Vice Mayor Waters thanked Attorney Walker and said he is not interested in doing business with Canopy Communications. Commissioner Chastain said he is not interested in doing business with Canopy Communications. Commissioner Smith said he is interested in hearing what Canopy Communications has to say. Attorney Cooper said he is involved in the litigation and it occurred because of a sale of a business and that business did not pay its bills. He said Canopy Communications is very protective of its patents and its technology. He said the 3 patents are in protective status and will be for 12 months. Attorney Cooper said he would have liked to talk to Attorney Martin about these items beforehand. He said they would like to withdraw their proposal at this time. Commissioner Mortimer thanked Attorney Martin for doing his due diligence. Attorney Martin said you are very welcome.

There being no further business, the meeting was adjourned at 5:46 pm.