

**MEETING MINUTES OF WORK SESSION BETWEEN STAFF AND
TWO OR MORE COUNCIL MEMBERS
CITY OF BONITA SPRINGS
FRIDAY, FEBRUARY 3, 2017 3:30 P.M. – 5:10 P.M.
CITY HALL, ROOM 118
9101 BONITA BEACH ROAD
BONITA SPRINGS, FLORIDA 34135**

I. ROLL CALL

Present

Peter O'Flinn, Deputy Mayor
Amy Quaremba, Councilwoman
Carl Schwing, City Manager
Anne Wright, Finance Manager
Audrey Vance, City Attorney (joined late)
Deborah Maclean, Public

II. DISCUSSION OF BONITA SPRINGS WONDER GARDENS MORTGAGE LOAN. CITY COUNCIL WILL BE RECEIVING INFORMATION FROM CITY STAFF IN RELATION TO THE LOAN AGREEMENT.

Mr. Carl Schwing, City Manager opened the meeting to discuss the Bonita Wonder Gardens. Inc. (BWG) loan receivable owed to the City at 3:30 p.m. Friday, February 3, 2017.

Councilwoman Amy Quaremba began the discussion stating one of the purposes for this meeting is to see what kind of viability there is for the BWG to repay the loan. The Form 990 for the time period of May 2015 to April 2016 listed only five contributors. Ms. Quaremba expressed concern as to how much cash flow they are capable of generating. Ms. Quaremba does not think it's very much if you look at the financial statements. She views this as a red flag.

Background regarding how long the Bonita Wonder Gardens has been in existence was provided. Ms. Audrey Vance, City Attorney, stated the first City Council agenda item green sheet was February 18, 2015, right when they were forming. The property settlement was April 13, 2015.

Inquiries were made regarding the BWG financial documents that have been provided to the City. Finance Director, Anne Wright stated the financial documents that the City has are the Form 990 for the period May 1, 2014 through April 30, 2015, the Form 990 for the period May 1, 2015 through April 30, 2016, audited financial statements for the year ended April 30, 2016, and internally prepared tax basis financial statements for the eight months ended December 31, 2016. The City also has a Business Plan dated May 1, 2016 which was presented to City Council in conjunction with a BWG update presentation on May 4, 2016. City Attorney, Audrey Vance explained that the funding participation agreement set forth what was required to be included in the business plan. There were nine requirements. Councilman O'Flinn asked staff to determine what information the banks had received from BWG and whether they received any projections. Councilman O'Flinn also requested the amount of the contributions collected since inception.

Ms. Wright stated that the City loaned \$3.5 million dollars to BWG. The property purchase was \$2.9 million and the difference was to be used for start-up costs and improvements that would be needed. Ms. Wright provided a list of how the \$3.5 million was spent.

Ms. Wright observed that there has been a lot of focus by the BWG on making improvements to the Gardens and to creating a viable operation to which people will want to contribute. Councilman O'Flinn said for what it's worth, his personal view is that the Wonder Gardens has to continue. We believe in it, we just have to understand what we have here. Councilwoman Quaremba believes they have a long way to go.

Ms. Quaremba inquired about the restrictions on the deed as she is concerned about the impact on the property's appraised value for purposes of loan to value. City Attorney, Audrey Vance explained there are different sets of restrictive covenants which are included in the green sheet. The first restriction relates to the use of the property. The second restrictive covenant has to do with the leasing of the restaurant. There is some additional language on restrictions, signage, store preservation and coordination of special events.

Councilman O'Flinn asked if legally the City could assist BWG in a scenario which would assist BWG during months when they may not have the cash to make the bank payments. For example, BWG goes to the bank and they borrow whatever the bank will lend them. The money they get from the bank, is given to the City to repay the loan from the City. BWG makes the payments to the bank to pay off the loan. In those payment periods where BWG can't make those payments to the bank, the City has the obligation of stepping up to lend BWG the money to make those payments. Ms. Vance explained that would be a scenario of an obligation exceeding one year. The email Ms. Vance received from Steve Miller, addressed in the green sheet from the Feb. 1st meeting, addresses State law that does not allow this. Ms. Vance stated that the City is not allowed to commit to a continuing obligation of over 12 months. That's a constitutional issue. We are not allowed unless we take it to the voters as a referendum as a general obligation. But at that point, we are obligated to make that payment.

Councilwoman Quaremba asked what happens if the City accepted the default on the loan and takes the property. If in a default position, what are our choices? The alternative is you take the property and then do something with it. Ms. Audrey Vance stated that in the State of Florida, there are jurisdictions that acquire roadside attractions, we can study those. There was discussion relating to how a potential foreclosure would be handled. Mr. Schwing explained that there are a number of things that could happen in a foreclosure. The key has always been, let's try to preserve it, and I don't expect we would be looking at options that would be contrary to the preservation of the roadside idea. The bottom line is that this operation has been seen as one of the anchors downtown.

Councilman O'Flinn referenced the available fund balance as shown in the FY 2017 budget book, and requested the impact on the City's finances if the loan repayment does not occur, and if there was a foreclosure. Ms. Anne Wright stated that we now have the September 30, 2016 fund balance number, so she will update the Budget at a Glance for that updated number, and show the City's financial impact given the various scenarios discussed.

Councilman O'Flinn observed that we have a lot of good will created by BWG already, it would be good to carry it forward. The Wonder Gardens has done a great job, but we need more people in the mix. We should talk to Thomas Hecker, BWG Executive Director. Improvements have been made, but to make this more of an attraction, more improvements have to be made and that requires capital funds. We would need a business plan with financial projections. Councilman O'Flinn was very impressed by Thomas' vision and his background.

Ms. Wright asked if they were talking about not paying the Road Impact Fee Fund back in accordance with the current resolution. Mr. Schwing answered, yes we still have to do that.

Ms. Vance stated that we have the green sheet that was prepared last time and the direction is to bring this item back to Council. She questioned whether the Council Members envisioned changes. Councilman O'Flinn indicated "yes", but they are still trying to fact find. Councilwoman Quaremba stated that her personal view is we don't have a 2-week deadline, technically we have till June. Mr. Schwing stated he was under direction to bring it to council by February 15th.

Ms. Quaremba stated that there are a number of questions that require a lot of discussion. If we go down this route that has been proposed, Ms. Quaremba believes the City will be in the same position five years from now, so we might as well talk about these things now. Councilwoman Quaremba wants all the options on the table so we can explore these thoroughly. Councilwoman Quaremba believes that this should be the Wonder Gardens primary obligation.

City Manager Schwing wanted to make sure that all were aware that BWG would be looking at higher interest rates, such as 4.5% on an interest rate, for the Wonder Gardens to borrow \$1 million from a bank. The City requested Dennis Gilkey, BWG Board Member, to have a conversation with bankers to see if they would be interested in making a loan to BWG, so this is the ball park interest rate of what they would be considering. Ms. Quaremba believes that should be done by BWG and asked about the six banks participating in the loan as a public service. Mr. Schwing stated that might still happen. Mr. Schwing stated that the City would be in second position, which means we would want a first right of refusal if the loan was headed for a default with the banks.

Councilwoman Quaremba states that we have to prepare the people, we have to prepare the Council. Councilman O'Flinn plans to meet with Dennis Gilkey and Thomas Hecker and ask for Thomas' vision and what that vision would cost.

Councilwoman Quaremba suggested we could have a continuance on the 15th's agenda.


III. PUBLIC COMMENT

Deborah Maclean stated that it is her strongest desire that the Garden stays in the community in its funky nature. However, she has toured it and understands that some things need to happen. It is not a botanical garden, it does not meet a botanical designation. Ms. McLean does not know if this is what the Council wants, but she would like it to be a City property and then the City would have the option of selecting who would manage it.

IV. ADJOURNMENT

The meeting was adjourned at 5:10 p.m.

Respectfully submitted,



Carl Schwing, City Manager



Anne Wright, Finance Director