

**CITY OF PALMETTO
SPECIAL CITY COMMISSION MEETING
November 3, 2010
5:30 PM**

Elected Officials Present

Shirley Groover Bryant, Mayor
Tamara Cornwell, Vice Mayor, Commissioner-at-Large 2
Alan Zirkelbach, Commissioner-at-Large 1
Mary Lancaster, Commissioner, Ward 1
Tambra Varnadore, Commissioner, Ward 2
Brian Williams, Commissioner, Ward 3

Staff Present:

Mark Barnebey, City Attorney
Jim Freeman, City Clerk
Allen Tusing, Public Works Director
Diane Ponder, Deputy Clerk-Administration

Mayor Bryant called the meeting to order at 5:37 p.m., followed by a Moment of Silence and the Pledge of Allegiance.

Swearing-in of all persons intending to address City Commission.

Public Comment (non-agenda items): None

1. CITY COMMISSION AGENDA APPROVAL

MOTION: Commissioner Zirkelbach moved, Commissioner Williams seconded and motion carried 5-0 to approve the November 3, 2010 Agenda.

2. EXTENSION OF DUE DILIGENCE FOR PHASE II PALMETTO BALL FIELD AND DEDICATION AGREEMENTS (M. Barnebey)

Mayor Bryant stated that not all the due diligence will be performed by the expiration of the 30-day agreement, and inquired if the City can opt out if issues regarding the soil are insurmountable. Attorney Barnebey advised Commission that the City has until 5:00 p.m. on November 8, 2010 to opt out of the agreement. After that time the city cannot terminate the contract.

Attorney Barnebey introduced Michael Hankin (by phone) and Andy Cohen, both attending as City Special Counsel.

Attorney Barnebey informed Commission that in anticipation of not having all the due diligence completed by the agreement's date and time, a meeting was held with all the involved entities to request an additional 30-day extension, which was agreed upon by the parties at that time. Upon receipt of the extension period proposal, [Manatee Fruit] is requesting an additional \$27,000 to cover their costs and fees to grant an extension and also to delay their due diligence timeframe until closer to closing. Discussions were held with all the entities involved in the project regarding the conditions for granting an extension for the due diligence period.

Based on comments during discussions, it is estimated that since the initial \$63,000 in fees and costs were incurred, there has been an additional \$80,000 (including the \$27,000 being requested to grant the extension) in fees and costs incurred. There is potential for additional fees to be incurred, but no estimate has been made.

Attorneys Hankin, Cohen and Barnebey held a general discussion with Commission regarding the City's options and any potential liability regarding fees should litigation occur, referring to the motion adopted by City Commission on May 17, 2010. Discussion ensued on what "reasonable" fees will total.

Also discussed was the initial environmental testing showing some contamination at the site, which is one of the reasons for the proposed 30-day extension period.

Commission discussed capping the attorney fees. Mayor Bryant stated that an amount of \$90,000 has been discussed with Manatee Fruit and rejected. Attorney Barnebey opined that if Commission agrees on an amount to cap the fees and it is rejected by Manatee Fruit, the City can terminate the contract, as it governs the fees at this stage of the contract.

MOTION: Commissioner Zirkelbach moved, Commissioner Lancaster seconded and motion carried 5-0 to authorize the Mayor to execute an Amendment to the *Dedication Agreement* between the City of Palmetto and Manatee Fruit Company, Inc. (commonly referred to as the "Dedication Agreement") and an Amendment to the *Agreement Regarding the Transfer of Lands and Construction and Operation of Park Facilities* among The School Board, The County, The City of Palmetto and Manatee Fruit Company, Inc. (commonly referred to as the "Phase II Agreement") to (1) provide for extensions of the Inspection Periods contained in the Dedication Agreement and the Phase II Agreement until December 8, 2010; (2) provide for extensions of certain other deadlines for the city to provide boundary surveys and sketches and descriptions of easement areas; (3) provide an extension of time within which Manatee Fruit Company is required to give or respond to title objections until later on in the transaction, when the City has obtained a commitment for funding for the new 23rd Street Roadway project, and; (4) imposing a limitation on the amount of reasonable costs and fees, including attorneys fees and costs, which the city shall pay to Manatee Fruit Company related to these two agreements in a maximum amount of \$100,000, which includes any sums previously paid to Manatee Fruit Company pursuant to these agreements. In the event that said Amendments cannot be agreed upon under the above terms, the Mayor is authorized to terminate the agreement prior to 5:00 p.m. on November 8, 2010.

Mayor Bryant announced that the City will delay the grant application until the matter is resolved.

Mayor Bryant displayed a possible alternative site for location of ball fields. The property owner has indicated that environmental issues have been successfully resolved.

Mayor Bryant discussed the re-carpeting of Commission Chambers.

Attorney Barnebey informed Commission that the City has received a petition in relation to the PBA unionizing the Police Department.

Commissioner Cornwell reminded certain Commissioners of a meeting that has been scheduled for November 9, beginning at 7:00 p.m. The CRA Board will hold a joint meeting with the CRA Advisory Board that date beginning at 5:30 p.m.

Mr. Freeman informed Commission that the antenna at City Hall that previously held City technology equipment will be removed in preparation for the installation of the new generator.

Meeting adjourned at 7:10 p.m.

Minutes approved: November 15, 2010

James R. Freeman

James R. Freeman
City Clerk