

**CITY OF PALMETTO
SPECIAL CALLED CITY COMMISSION MEETING
November 8, 2010
2:00 PM**

Elected Officials Present

Shirley Groover Bryant, Mayor
Tamara Cornwell, Vice Mayor, Commissioner-at-Large 2
Tambra Varnadore, Commissioner, Ward 2
Brian Williams, Commissioner, Ward 3

Elected Officials Absent (Attending by phone)

Alan Zirkelbach, Commissioner-at-Large 1
Mary Lancaster, Commissioner, Ward 1

Staff Present

Jim Freeman, City Clerk
Attorney Hankin, Special Counsel
Scott Rudacille, Chief Assistant City Attorney
Allen Tusing, Public Works Director
Diane Ponder, Deputy Clerk-Administration

Mayor Bryant called the meeting to order at 2:04 p.m.

Mayor Bryant read a letter relating to the Dedication Agreement (23rd Street) and Phase II Agreement (re: ball fields) regarding attorney fees into the record, a copy of which is attached hereto and made a part of the minutes

1. CITY COMMISSION AGENDA APPROVAL

MOTION: Commissioner Williams moved, Commissioner Cornwell seconded and motion carried 3-0 to approve the November 8, 2010 Agenda.

2. EXTENSION OF DUE DILIGENCE FOR PHASE II PALMETTO BALL FIELD AND DEDICATION AGREEMENTS

Attorney Rudacille advised Commission that a written request from a Commissioner to attend a meeting by telephone could be waived for today's meeting.

MOTION: Commissioner Williams moved, Commissioner Cornwell seconded and motion carried 3-0 to approve the acceptance of Mary Lancaster and Alan Zirkelbach to participate in this meeting by telephone.

Attorney Hankin reviewed the amendment that was passed by Commission November 3, 2010, limiting attorney fees to \$100,000. A copy of the amendment has been received from Manatee Fruit, which redacted out the cost reimbursement, which would then default to the language in the contract, i.e. no cap on the attorney fees.

Attorney Hankin reviewed the options of the City to 1) agree to the amendments made by Manatee Fruit or 2) terminate the contract. Mayor Bryant agreed that the attorney fees are problematic, but cautioned the Commission to consider the current stage of the project, together with the fact the City is on "the cusp" of applying for the grants [that will fund the project]. She also commented on the contractors that have also been delayed, and the benefits the City will lose should the project not occur.

Discussion ensued on the attorney fees estimated to be approximately \$140,000, a figure verbally submitted. Attorney Hankin confirmed that a written amount was requested, but has not yet been received. Mr. Tusing suggested that consideration should be given to the possibility that the attorney fees

could be considered the cost of the land, which equates to \$10,000 per acre. Attorney Hankin confirmed that the position of Manatee Fruit has been consistent, in that they are not willing to accept a cap on attorney fees.

Mayor Bryant departed the meeting at 2:30 p.m.

Discussion ensued on what Commission considered "reasonable fees" and the continued accumulation of the fees.

Attorney Hankin opined that the amendments do somewhat delay Manatee Fruit Company's future fees by delaying their due diligence such as surveys and title work until after the City funds the project. He opined that Mr. Preston does not want to be responsible for fees should the project not happen.

Attorney Hankin stated that the agreements stated that \$63,000 will be paid on execution and \$27,000 plus all other accrued attorney fees will be paid at closing. At execution there was an estimated \$90,000 of accrued fees. He confirmed that today Commission can only approve the extension of the due diligence period, as amended by Manatee Fruit Company, for 30 days with an option to extend for an additional 30 days, at no cost. He confirmed the due diligence is at the City's sole discretion, and the topic of negotiating the fees can be brought back to Commission next Monday.

Mr. Freeman confirmed \$913,000 from the proceeds of the sale is available for the project. There is a possibility that the CDBG grant could fund approximately 5% of the fees, but that amount would still have to be taken from City funds set aside for the project.

MOTION: Commissioner Williams moved and Commission Varnadore seconded to authorize the mayor to execute the two amendments to the Dedication Agreement and Phase II Agreement as revised by Manatee Fruit Company, notwithstanding the prior motion approved November 3, 2010. A roll call vote was taken, as follows: Commissioner Williams-Yes; Commissioner Varnadore-Yes; Commissioner Zirkelbach-Yes; Commissioner Cornwell-Yes; Commissioner Lancaster-Yes. Motion approved 5-0.

Attorney Hankin stated the City has until noon tomorrow to execute the amendments.

Meeting adjourned at 3:00 p.m.

Minutes approved: November 15, 2010

James R. Freeman

James R. Freeman
City Clerk