

MINUTES
CITY OF PALATKA
June 11, 2009

Proceedings of a regular meeting of the City Commission of the City of Palatka, Florida, held on the 11th day of June, 2009.

PRESENT: Mayor Karl N. Flagg
 Commissioner Mary Lawson Brown
 Commissioner Allegra Kitchens
 Commissioner Vernon Myers
 Commissioner James Norwood, Jr.

Also Present: City Manager Elwin C. Boynton, Jr.; City Attorney Donald Holmes; City Clerk Betsy Jordan Driggers; Police Chief Gary Getchell; Fire Battalion Chief Randy Porter; Planning Director Jim Lee; Assistant Planning Director Debbie Banks; Parks & Cemeteries Supt. Jeff Norton

CALL TO ORDER: Mayor Flagg called the meeting to order at 6:00 p.m.

INVOCATION – Reverend Nick Fecteau, Associate Pastor, First Baptist of Church Palatka

Pledge of Allegiance – As a group

APPROVAL OF MINUTES – 5-28-09 – Commissioner Norwood moved to adopt the minutes as read. Commissioner Myers seconded the motion, which passed unopposed.

1. PUBLIC RECOGNITION

PHS TOP TWO SUMMA CUM LAUDE GRADUATES: Kim Heh (4.80 gpa) and Ethan Hawkins (4.76 gpa) were present to receive a plaque presented by Mayor Flagg in recognition of their academic achievement and commitment as the top two graduates of the class of 2009. Vice Mayor Brown and Commissioner Myers joined Mayor Flagg in recognizing their accomplishments.

2. PUBLIC COMMENTS – There were none.

3. CONSENT AGENDA:

- a. Consent to correct Ordinance 06-45, adopted 10-26-06, per scrivener's error in zoning classification, from R-1A to R-3, as per Planning Board Recommendation and Public Hearings held at time of adoption, per Planning Director and City Attorney
- b. Authorize execution of Riverside Builders Contract Change Order #1 decreasing the contract amount by \$84,545.00, for a new contract sum of \$126,615.00 for the 2008-09 Water Works Renovation Project - City Manager
- c. Authorize execution of Riverside Builders Contract Change Order #2 in the amount of \$2,657.00 for a new contract sum of \$129,272.00 for the 2008-09 Water Works Renovation Project – City Manager
- d. Authorize 10% increase in current T-Hangar rental rates and set rental rates for 10 new T-hangars at Palatka Municipal Airport, per recommendation of Airport Advisory Board
- e. Declare as surplus for disposition per department requests:
 - Police Department and Airport Vehicles
 - Building & Zoning Office Equipment

Commissioner Brown moved to adopt the consent agenda as presented. Commissioner Kitchens seconded the motion, which passed unopposed. Commissioner Brown said Mr. Youell, the Airport Manager and the members of the Airport Advisory Board are to be commended for all the hard work they've done with the recent construction and upgrades at the airport.

4. REQUEST FOR COMMUNITY FINANCIAL ASSISTANCE to fund Summer Youth Pool Program – People Helping Each Other (PHEO) – Maurice Brown – Mayor Flagg noted this item was pulled from the Agenda at the request of Mr. Brown.
5. REQUET FOR COMMUNITY FINANCIAL ASSISTANCE for roof repairs to the American Legion Post 45 Building – Bruce C. Howe, Commander, Bert Hodge Post 45, 132 Putnam Co. Blvd. E. Palatka, said their present building has been in place since 1956 and has some serious maintenance needs. There is a wiring problem and the roof has leaks. They are a veterans' organization and assist local veterans. They also do community work. They understand that there may not be any money in the budget, but he asks they include the American Legion in next year's budget. He invited the members of the Commission to take a tour of the building on Saturday. They need help. Mayor Flagg said the Commission has the request in their agenda packet along with a reminder of all the various organizations they support. Citizens need to recognize the work the veterans have done for the freedoms we all enjoy. He wants to make sure this organization gets maximum exposure for their fundraisers. The City Manager has also provided a letter stating how sensitive the City is to their plight.

Michael Fazio, 104 Moor Avenue, Interlachen, Member, Bert Hodge Post, said the building belongs to the City of Palatka. Any improvements they make to the building will be removed when they vacate it and it is returned to the City of Palatka. It is the City's responsibility to put a new roof on their building and upgrade the electrical. They don't own the building. Mayor Flagg said the request is on record. If the City owns the facility, there is some responsibility. He is asking for deeds and lease agreements. Mayor Flagg said they were not aware that the City owned the building. Mr. Fazio said their records show the City has given them a \$1.00/year perpetual lease. Mayor Flagg said they will get the facts and consult with the City Manager and City Attorney, and a recommendation will come before the Commission. He will also make certain the Chief Building Official does what he needs to do.

6. DESIGNATE A VOTING DELEGATE to the 2009 FLC Annual Conference, August 13 – 15, 2009 – Commissioner Kitchens nominated Commissioner Brown. Commissioner Myers seconded the motion, which passed unopposed.

7. RIVERFRONT PARK PLANNING AND ENGINEERING CONTRACT PROPOSAL with Michael Redd & Associates - DISCUSSION OF CONTRACT TERMS – Mr. Boynton read his memorandum into the record concerning the Palatka Riverfront Engineering Study award of contract. He stated he was given authorization to negotiate a contract with Michael Redd & Associates. Michael Redd & Associates has proposed this work be done in phases. After careful consideration, he believes this is the right way to do this. Once the initial project is complete, Mr. Redd will then present a schedule of services to complete. While it may run over budget, he believes the compensation requested for the initial phase is acceptable. He believes the City Attorney and he can negotiate a good contract. He is comfortable with the Phase I amount of \$86,600 for the Phase I items noted, and is asking he and the City Attorney be authorized to negotiate a contract. If they subsequently can't come to an agreement on Phase II, they can move forward in a different manner. Mayor Flagg asked how this changes the context of the original RFP, and if this alters the scope of what they asked for. Mr. Boynton said the project budget of \$198,000 has not changed. Most firms responding would design around that. Administratively, the scope of services has not changed. The budget has not changed. As they get into the conceptual design aspect, the budget and cost of services could change. Mayor Flagg said his concern is that if the work is phased, and negotiations break down with the vendor, does that put the City back to the beginning? Mr. Boynton said no, they have delineated the scope and they have to hold the community meetings to determine what the citizens want. This will determine the permitting requirements. They need to know what they will be permitting to know what the permitting requirements will be. These factors may affect the cost of the project considerably. They could go out for an RFQ process for the Phase II work if they cannot come to an agreement with Mr. Redd. The vendor at this point does not know what he has to design. If they get into this and find that the City wants a seawall along the River, that may require years of permitting. If they want a wooden boardwalk instead of floating docks, that may require considerable cost adjustments. Until they identify some fundamental basic engineering, it is a little tougher for the contractor to put a cost to the engineering concepts. The concept may exceed any budget they may have. It may be a \$10 million project. That may change what they do. All the surveys and environmental studies are being done as Phase I, and may dictate some of the charrettes they are doing. Commissioner Norwood asked if there is liability for the city since phased work was not part of the RFP. Mr. Holmes said he has not looked at the specific wording of the RFP, and without doing so he cannot say. The contract as presented isn't acceptable, and the concept of phasing the services may be the best option. Mayor Flagg suggested a recess until copies of the original RFP can be obtained for the Commission and City Attorney

RECESS – the meeting was recessed upon a motion by Commissioner Kitchens, seconded by Commissioner Norwood and passed at 7:05 p.m.

RECONVENE - Mayor Flagg called the meeting back to order at 7:15 p.m. and continued with the Orders of the Day.

Mayor Flagg noted they had received copies of the RFP for technical services. After reviewing the RFP, Mr. Holmes said the actual proposals themselves would be more important. They were required to be submitted in writing. If someone had a right to complain it would be based upon the premise that some proposals were all inclusive, and now the contract that is being submitted won't conform to the proposal. If the proposal was for five items, and the contract is

only for two items, they may have a deviation between the proposal and the contract. If someone chose to challenge it may be on that basis. He doesn't know if bottom line prices were included in the proposal, or not. He can't say whether or not this is prejudiced. He can't say whether or not a bidder would claim that the scope had been changed. He doesn't think their actions in going to a phased approach would be invalid; if someone included a bid for the entire job for whatever the grant funds were, and we rejected that, and then take a phased approach and the contract exceeds the grant funds on subsequent phases, that bidder could object that the City essentially deviated from the terms of the bid. Mr. Boynton said this is an RFQ, not an RFP. Mr. Holmes said if this is only a request for qualifications, there is no problem, as they are only going to terms and price at a later time. Mayor Flagg noted the Request states it is an RFP. Mr. Boynton said they received 17 proposals and shortened the list to the top five, and conducted interviews with those top five firms.

Mr. Holmes noted that the RFP package he was provided does contain evaluation criteria and those criteria don't speak to price or even to scope of work; only to the company, qualifications, past & present experience, and willingness to meet budget requirements. While the term "RFP" was used, the evaluation is clearly a request for qualifications criteria. Commissioner Kitchens said she was on the selection committee; they mostly looked at qualifications. She said she is not happy with this contract. She spoke with the City Manager, who informed her that Mr. Redd said he couldn't do this work for \$198,000, and he was supposed to work out pricing with him. During all interviews, Mr. Redd was asked and confirmed that he could specifically do this work for that price. There are 16 different points that were made with money values, and there are 32 different items that show that the price is to be determined. This leaves a bad taste in her mouth. She understands they can't say specifically what the permitting will cost, but the first phase is almost half of the budgeted amount. The contract should state that the total amount of contract pricing shouldn't take the City over the amount of the grant. Mr. Redd and his Associates were not her first choice, and did not even make her top 10. She noted they came in over budget on several projects, but liked their presentation, which was very impressive. She went along with the rest of the commission, and felt better after his presentation to the commission. Now she doesn't feel good about it again, and especially so after looking at his contract. She doesn't believe Mr. Redd should be doing a master plan on the 100 and Highrise blocks, as they are negotiating with Mr. Ham on that work.

Mr. Holmes said he also had that term highlighted in his review of the contract. If they can get past the issue of phases, they can decide if Section 1.6.4 wouldn't be part of the basic services contract. The only items that are really designated for completion with an allocation of price are the first 16, through paragraph 1.4.4. Everything below that has a TBD by it. If the Commission ends up directing them to move forward on a phased approach, he recommends the first phase be those items Redd indicated they would do for a given price. He understands these are the items they need to complete in order to come up with prices to do the work that follows. If they handle this on a phased basis, he recommends they draw a line at the point they actually stop giving itemized costs, and anything below that line should lead to subsequent phasing.

Commissioner Kitchens read the section on page 14, paragraph 5.2, additional services, into the record, regarding direct labor costs for employees doing work on the project. She objects to Mr. Redd multiplying the employee labor costs by 3.10; this is not right. Mr. Boynton said this is an industry-standard multiplier. Mr. Holmes said he agrees with Commissioner Kitchens, because if they end up with a phased contract, they need a flat labor cost. Commissioner Kitchens said there is an 18% fee for late payments, which is high. Mr. Holmes

said the contract is confusing at best. If the commission can move forward with authorizing a phased approach they will scrap this entire contract; it contains a lot of contradictory terms. The City would be agreeing to a basic service contract. Article 1 on page 2 describes basic services the City is agreeing to obtain from them. The contractor defines all 48 of the services he describes, but only defines the cost for the first 16. Literally, they are agreeing to buy "a pig in a poke". Mayor Flagg said there seems to be some unrest with the contract as it is presented. He has multiple concerns that have nothing to do specifically with Michael Redd and Associates. There was one commissioner that was a liaison to the selection committee, and the rest of the commission doesn't have any detail on what happened during the selection process. They don't have the information in front of them that was provided to them on at the time the selection was made. They are not ready to vote on this contract. Mr. Holmes and Mr. Boynton should revisit this. If they are voting on a contract with a consultant, that consultant needs to be present at the meeting. He recommends they table the issue and allow the City Manager and City Attorney to do what needs to be done to get a contract that is more suitable, and make arrangements for the provider to be at the meeting. Commissioner Kitchens said she has submitted her legal questions to the City Attorney, and has no problem with tabling this tonight. She also has the same concerns. She doesn't feel good about the phases. They had many good firms that submitted. What concerns her is that at one time Mr. Redd had agreed to the price, but now he is backing away from that. She wonders if they want to go with someone that can only do Phase 1, or do they want to negotiate with the next listed firm to see what they can do. Mayor Flagg said there are too many variables. He has no problem with the judgment of the City Manager regarding negotiating. He'd like the City Manager and City Attorney to present them with a suitable contract. Commissioner Myers said he has problems entering into an open-ended contract that is funded by a grant. He asked if the City has to repay the money if they exceed the grant funds. He concurs that tabling is the wise thing to do. Mr. Holmes asked if they are tabling to get more information related to the selection process and agreement, or does the commission want them to negotiate an agreement? They need direction as to whether a phased agreement is acceptable or not; he needs to know what concept to utilize. Mayor Flagg said they have a base to work from and a grant amount. He does not want to come up short. He'd prefer to have an agreement with the entire scope. All the players need to know that all bidders had an opportunity to present a phased approach. Mr. Holmes said that is a policy decision; he just wants to know what direction to go in.

Mayor Flagg said he doesn't want a consultant to come in and turn things around unless they have justification. He doesn't want the consultant to be the City Manager. Commissioner Norwood said it makes sense to do this in phases, as they need to know certain things up front. If they go to phasing, one thing to consider is that this contract will be null and void; the City Manager will have an opportunity to draw up a suitable contract with phases, but the consultant will have to consult on the contract. Mr. Boynton said he noted in his memorandum that the contract needs some work; his request is to negotiate a contract with the consultant. If the consultant can give them a whole number, that's great. If not, they can reject it and move on to the next consultant on the list. He wants to know if they want to go forward with a phased contract or not. Mr. Holmes said he believes it very unlikely that any consultant they hire can guarantee them he can do all the research, design, development, construction, supervision and construction itself for this amount of money. There are so many unknowns in terms of permit fees that they can't provide. If they said they could do it the City should try to hold them to it, but he can't believe anyone would bid it that way. They don't even have a design. If it is to include permitting and construction costs, he doesn't see how it would happen. Mayor Flagg asked how many phases he believes it will take. Mr. Boynton said three phases; the first phase is before them. The second phase includes the design phase after the

meetings, a final design and to begin design engineering. The third phase is construction administration. They are looking at two phases; the final phase would be removed. The final design will complete the phases; once the final design is complete they can finish their work. Mr. Holmes said this is not construction, just design and construction administration. This money isn't going to build anything.

Mr. Boynton said the City attempted to go to the State Boating Program but they had no plans, which were required. The grant was given to the City to develop plans. It has been modified and expanded to meet the needs of the city. They don't want to piecemeal projects anymore. He wants a conceptual design of the entire riverfront. When the City figures out what it wants, Redd can give them a price. There is nothing in the grant that says you can't put your own money with it. If the City can't get the whole thing done with the money that was allocated he just wants to determine if they can use the grant to do only part of the scope. Mr. Boynton said the State wants bid-ready documents so they will know what they are funding. People's ideas change throughout the span of a few years. After reviewing this, he believes the phased program is more beneficial. Mayor Flagg said he doesn't want to switch positions in the middle of this; they need some Phase I and Phase II numbers locked in. Commissioner Kitchens said money was discussed in the interviews and they said they could do the work for the amount of the grant. All five presenters agreed to that. When Mr. Redd came before the commission, the commission asked him point blank if they could do the work for \$198,000, and he said they could. Commissioner Norwood moved to table the matter until the City Attorney and City Manager could come back with contracts for Phase I and Phase II tied together with firm contract amounts, saying this is to make sure the vendor does not change in the middle of the project, so they can bring back to the commission something they can actually work with. Commissioner Myers seconded the motion. Mayor Flagg said this is so that whatever administrative or legal deficits Mr. Boynton and Mr. Holmes feel need to be included can be brought to the table; they do not want three phases to have three different consultants. If the grant covers two phases, they need a contract to cover two phases with a dollar amount, whatever that may be, so that if the amount exceeds the grant they will know up front that they need another funding source. Mr. Boynton asked for confirmation that the Commission wants a firm number for both phases I and II; Mayor Flagg confirmed they want a lump sum contract for Phase I and Phase II. It cannot be left open ended. They are clear this needs to be done in phases. Commissioner Kitchens asked for clarification on whether or not they want all three phases done, possibly by two different consultants. Mayor Flagg said he is not advocating for two different consultants. There being no further discussion, a roll-call vote was requested, with all members of the Commission voting in the affirmative. The motion was declared passed.

8. ADMINISTRATIVE REPORTS

Fire Battalion Chief Randy Porter said this week the Fire Department kicked off a fundraising campaign for the restoration of the old fire engine; they are selling raffle tickets for two "Gator" mountain bikes provided by Wal Mart. Tickets are \$5 each or 3 for \$10 and are available.

City Manager Boynton said the City has scheduled the July 4 holiday for Friday, July 3. It has come to his attention that Putnam County has scheduled their July 4th holiday for Monday, July 6th. He asked the commission if they want to entertain moving the City's holiday to July 6th for conformity. He will discuss this with department heads tomorrow and determine if there is any adverse affect. Having different holidays could create some confusion. Mayor Flagg said it is his wish that County and City administration would discuss these on the front side. It is less confusing if there is a policy in place. If it is the City's policy that if the holiday falls on Saturday then Friday is the official holiday, and if the holiday falls on Sunday then Monday is

the official holiday, then that is the policy. It is already set. If someone wants Monday off they can take a holiday. If there needs to be a policy change, that can be brought to the Commission. This is an administrative decision. There was consensus of the commission that this is an administrative decision.

9. COMMISSIONER COMMENTS

Commissioner Kitchens said there is some questionable activity going on at Hank Bryan Park and asked if there is money in the budget to put lighting there on the side opposite of Crill Avenue, in order to curtail the night-time activity.

Commissioner Brown said the Community Gardens meeting is scheduled for Monday, June 22, at Price Martin Center, and will begin at 6:00 p.m. She hopes they all attend to encourage people to do this. She is going to pass announcements along to churches and organizations in hopes they will pass them along to their membership.

Concerning whether or not other commissioners will attend, there was consensus that Sunshine Laws dictate the advertisement of the meeting to the newspaper.

Commissioner Norwood said, with this being the growing season, many stop signs are being covered and obscured by vegetation. He'd like to get these stop signs cleared and the areas around them mowed in order to alleviate hazards. Also some right of ways in people's yards need to be mowed back as tall grass, plants and weeds are obscuring vision at intersections.

Mayor Flagg said Sunday is Flag Day. It is also his 23rd wedding anniversary.

10. ADJOURN – There being no further business to discuss, the meeting was adjourned at 7:30 p.m. upon a motion by Commissioner Brown

ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE MAY NEED TO INSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. FS 286.105