

KARL N. FLAGG  
MAYOR - COMMISSIONER

MARY LAWSON BROWN  
VICE MAYOR - COMMISSIONER

ALLEGRA KITCHENS  
COMMISSIONER

VERNON MYERS  
COMMISSIONER

JAMES NORWOOD, JR.  
COMMISSIONER



*Regular meeting 2nd and 4th Thursdays each month at 6:00 p.m.*

ELWIN C. "WOODY" BOYNTON, JR.  
CITY MANAGER

BETSY JORDAN DRIGGERS  
CITY CLERK

RUBY M. WILLIAMS  
FINANCE DIRECTOR

GARY S. GETCHELL  
CHIEF OF POLICE

MICHAEL LAMBERT  
CHIEF FIRE DEPT.

DONALD E. HOLMES  
CITY ATTORNEY

**MINUTES**  
**CITY OF PALATKA**  
December 20, 2010  
Called Meeting

Proceedings of a special called meeting of the City of Palatka City Commission held on the 20<sup>th</sup> day of December, 2010.

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 Clerk Betsy Jordan Driggers; City Attorney Don Holmes; Finance Director Matthew Reynolds; Police Lt. James Griffith; Fire Chief Mike Lambert; Planning & Zoning Director Debbie Banks.

1. **CALL TO ORDER** – Mayor Flagg called the meeting to order at 6:00 p.m. and read the following meeting call, issued on December 13, 2010:

TO MESSRS: MARY LAWSON BROWN, ALLEGRA KITCHENS, VERNON MYERS  
AND JAMES NORWOOD, JR.:

You are hereby notified that a special called meeting of the Palatka City Commission is called to be held on Monday, December 20, 2010, at the regular meeting place of the Palatka City Commission at Commission chambers, 201 N 2<sup>nd</sup> Street, Palatka, Florida, to commence at 6:00 p.m.

The primary purpose of the meeting is to discuss the consideration & acceptance of the Downtown Palatka/Riverview Property Redevelopment Lease with CDP, Inc. (Tabled from December, 9, 2010)

An agenda will be published prior to the meeting.

/s/ Karl N. Flagg  
Karl N. Flagg, MAYOR

The following Commissioners acknowledged receipt of a copy of the foregoing notice of a special meeting on the 13<sup>th</sup> day of December, 2010.

/s/ Mary Lawson Brown

/s/ Vernon Myers

COMMISSIONER

/s/ James Norwood, Jr.

COMMISSIONER

COMMISSIONER

/s/ Allegra Kitchens

COMMISSIONER

**INVOCATION** - Commissioner Allegra Kitchens

**PLEDGE OF ALLEGIANCE** - City Attorney Don Holmes

2. **PUBLIC COMMENTS** – There were none

Mayor Flagg noted this is 10 years to the day that he was installed as Mayor.

3. **DISCUSSION** – Consideration and Acceptance of Downtown Palatka/Riverview Property Redevelopment Lease with CDP, Inc. (Tabled from December 20, 2010) – Andrew Ham, CDP, Inc. - Mr. Boynton said he and City Attorney Holmes have spent the past several weeks negotiating this lease with CDP. Many of the issues have been resolved to the point that they believe that what they have in front of them are the basic concepts. There are several issues he'd like the City Attorney to address. This lease contains several concepts they need to be aware of. As they see it, this is a good, workable lease agreement.

Mayor Flagg asked for a verbatim transcript to be entered into the minutes concerning the memorandum from City Attorney Don Holmes. Mr. Holmes said he's generated a memorandum (filed) that amounts to his summary of key elements of the lease. He didn't attempt to recite every element, but the basic concepts are easily discernable. It is not his intent to advocate for or against the lease. They were diligent in seeing that the language of the lease is straightforward. The concepts were proposed by CDP and they worked with those concepts to make them favorable from the City's perspective. This lease is for a 50-year term; unless default occurs, it's not possible to terminate the lease. There is no opt-out clause. CDP asked for the 50 year lease term.

Andrew Ham, V. President, Community Development Partners, Inc. (CDP), said if they pursue historic tax credit equity, in the current tax credit market, the lease structure requires the property be leased for 50 years; also, since the property is not being contributed and only leased, it's customary for lenders to expect a long-term lease. Commissioner Myers noted tax credit equity will bring in investors.

Mr. Holmes said as of the commencement date, it cannot be later than May 22, 2011 so that this will be the value used in computing the rent, multiplied by the 10-yr average of municipal trust bonds, or an interest rate of 4.36%. The value of the property is \$724,882. If payments are being computed today, they are around \$31,604 a year or \$2,633.74 a month. Those payments won't change much over the term of the lease. This won't be reassessed each year. The bond rate may change, but he wouldn't imagine that will change much over the 50 year term. The value is not going to include the value of the improvements CDP makes and the lease payments won't change much. They can count on around \$31,000 - \$32,000 per year over the 50 years. This lease only applies to the 100 Block, or the block north of St. Johns Avenue, west of Memorial Parkway, East of 2<sup>nd</sup> Street and south of Reid Street. Commissioner Myers asked where that calculation came from and the rationale behind it. Mr. Holmes said that came from CDP. They spoke of a number of different methods of computing the lease payment; some didn't provide for the City to realize any rent from the property. CDP proposed this method and states they can live with this.

Mr. Ham said the reasoning behind using the municipal league bond fund is, if the city were to make a return on any cash investment, the City would at least get this return. Commissioner Myers noted if they could sell the property for \$750,000 they would invest it at that rate. Mr. Holmes said he'd like them to consider taking the assessed value as of the commencement date. He understands the logic of using a 10-year average; two or three years from now the land value won't change much, but it will 40 years from now. This could be a huge bargain for CDP. Commissioner Kitchens said the property is assessed at a maximum of 40% of the buildings if built before 1958. If they were renovated, the year of renovation is plugged in at that year. When these buildings are rehabilitated or renovated by CDP, the property appraiser will plug that year in and the assessed value of the buildings will become way more than they are now, even if the value of the land doesn't go up. She'd hope that when the buildings are rehabilitated, the base rate will be recalculated off of that assessed value instead of the value they are assessed at now. Mr. Holmes said CDP's argument is that they are putting the money into making the improvements; they shouldn't have to pay rent based upon the improvements they've made. His point was to forget about the improvements and talk about the raw value of the land. The property appraisers' office usually has a land value as well; he doesn't know whether or not if 40 years from now the land value will be so much higher than it is now. Commissioner Kitchens said her general concern is tying this to present assessed value for the next 50 years. The property is currently worth \$724,882 according to the property appraiser, which is supposed to be fair market value. They also have an outstanding loan for the high rise building. Just setting this on the 2011 value, it will go up a little each year. The assessed value will go up as improvements are made to the property. Commissioner Norwood said they will pay more in taxes as the assessed value goes up. Mr. Holmes said initially CDP will put \$3.6 million in improvements in the 100 block, which will generate around \$26,000 in taxes the first year.

Mr. Ham said this is redevelopment; this is a partnership between a municipality and a developer in an area that needs redevelopment. No one knows what the end results of the rent paying tenants, bank loans, etc. will be. CDP, Inc. thinks they can make these payments based on those anticipated receipts. This will also create new jobs in addition to the taxable value. They are providing economic development. Commissioner Kitchens concurred, but she'd like something built in so that they can renegotiate the rent as income starts pouring in from these properties. To tie it in for 50 years with no hope for an increase to the City is not realistic. Mr. Ham said they are getting more out of this due to the development. This is positive for the Downtown. Commissioner Brown said they are locking future commissions up to deal with this. As time moves forward, he will be realizing more income from this. The amount he charges the tenants will change as business and the economy improves. They need to look at a sliding fee scale. She knows they need help to get started. Commissioner Myers said they shouldn't lose site of the fact that the City isn't in this to make money, but to develop downtown and stimulate the economy. They couldn't sell this property for \$784,000, and if this redevelopment comes to pass it will be worth more. CDP has the difficult part of finding quality investors. This is a risk-free transaction for the City. In order to quantify that at this point, that is impossible. This is a redevelopment project, not a money-generating project.

Mr. Holmes said the other concept was a net-profit concept, wherein the City would receive a proportionate share of the net profit equal to the percentage of the total value of the project of which the City land comprised, which doesn't guarantee the City any money. If revenues are down and expenses and operating costs are higher, there is no net profit and the City gets nothing. This is the one first proposed by CDP. If they make a lot of money, they get some money based upon a percentage of net profit. The City

can't control the expenses. If 10 years from now the City is getting zero rent, people won't be pleased. Mr. Ham said this is where they wanted to be; they want certainty in being able to put a lending package together for investors. It provides certainty. Commissioner Kitchens said she is looking at this as a redevelopment project; it is only ½ of the whole project. They took out a sizeable loan to purchase the highrise block. They are paying over \$333,000 per year in loan payments, paid out of Better Place funds, which will run out 2.5 yrs before the mortgage runs out. They need to offset that cost. She asked if CDP would object to revisiting the rent schedule in 10 years to see if income from the property would warrant an increase in the rent. Mr. Ham said that's a concept they'd have to think about. They'd have to determine the methodology, work up the formula. Mayor Flagg said the formula has to be the same, start to finish. They can't jump from one approach to a different approach. At this point they don't want to do anything that's going to cause this not to move forward. They may want to come back to this issue in few minutes, after they've looked at other areas of the lease.

Mr. Holmes said the rent is only nominal rent on CDP's improvements; the improvements have to be built within 36 months from the date CDP takes possession and they have to take possession within 30 days of the commencement date. For up to three years they will pay \$10/month; and once they receive their Certificate of Occupancy (CO) it will be paid in addition to the formula they just described. If they don't achieve financing by May 20, 2011 and three years from that date don't have a CO issued, they will be in default. This lease applies only to the 100 block; there is nothing in this lease that assures anything will be built on the old highrise site. If they don't move forward with the old highrise site, they can retain this lease on the 100 Block and the City would have the highrise block back. Mr. Ham said in the addendum to the preliminary development agreement, there is a schedule for property transfer agreements to be completed for Phase II. Another lease will be ready by May 20, 2011. Mr. Holmes said there is no penalty that would apply if that doesn't happen. This lease will not be affected. Commissioner Norwood said what they are doing with the 100 Blocks will be in direct competition with the present downtown merchants. They were looking for the hotel to come in. He asked what he's thinking by competing with merchants by doing this phase first. Mr. Ham said the reason they are not starting with the hotel is mainly because of the hotel market. Their hotel consultants said they should not open the hotel until late 2012 or 2013. If an appraisal is done on a hotel today, due to the supply available on the market, the loan value wouldn't be sufficient. They will bring the hotel on line when the supply of rooms has dwindled down. Commissioner Brown said two new hotels have opened within the last two years that are not on this prime property. Mayor Flagg said a lot of people were banking on these projects (Seminole, Georgia Pacific). Mr. Ham said the more retailers you have in a downtown area, and more different type of shops and types of restaurants, the more people come. This is variety and diversity. People get tired of one menu. Mayor Flagg said the concept is to have a pedestrian-friendly downtown with a lot of variety. People make decisions based upon choices. This is the magnet to get them there. They need the variety. Mr. Ham said the combination of the park plan and waterfront facilities and the private development will bring people downtown. Commissioner Kitchens said competition is a good thing and the "American Way." While talking to the manager of JC Pennys, she learned the higher ups in JC Penny headquarters are talking about moving the store; there's no competition here; they need competition. They are debating moving the store as there is no competition at the present location. Competition is a good thing. Commissioner Brown said they need to move downtown.

Mr. Holmes said the City won't have the discretion to approve the subleases; CDP can rent to whoever meets zoning. Commissioner Norwood said they need to make sure the appropriate zoning is in place for the type of businesses they want. It was noted this property is currently zoned downtown riverfront. Mr. Homes said the City does have a

right of approval on wholesale assignment, but not unlimited discretion approval. They cannot delay an approval of an assignment; Section 14.3 describes the type of factors they can look at. The City is granted a security interest, but it is subordinate to the interest of lenders and equity partners, which means it won't ever translate into any tangible money. He doesn't object to this; CDP needs this to get financing. They also are subordinate in insurance proceedings for a fire/casualty loss. Lenders would have first interest in any payout. CDP is not allowed to pledge the City's ownership interest as collateral; this is critical. It will never be taken in foreclosure. They could have a mechanic's lien or construction lien, but there is a performance and payment bond provision on any improvements worth more than \$100,000.

Mr. Holmes said, in addition to base rent, CDP will be required to pay all expenses related to the property and this starts within 30 days of finance. Upon termination of the lease, all fixtures will become the property of the City. Exhibit C will describe the improvements CDP will construct. If they do anything more, they'll have to have the City's approval. Exhibit B describes the parking lot the City will build, and stipulates if the City doesn't build it, the City will contribute \$160,000 to CDP and let them build it. The other terms are not irregular, unusual or harmful to the City. Commissioner Brown asked if the money for the parking lot comes from grants. Mr. Boynton said the money for the parking improvements is contemplated from the CDBG grant. The \$260,000 is included in that. They have not approached USDA regarding parking facilities. The money they have is adequate for a 100-space parking lot.

Mr. Holmes said, as to Sec. 29.10, this is a relatively standard clause that states the lease is the entire agreement between the City and CDP and incorporates all other documents they've entered into. The City has entered into two prior documents. There was some talk about merging those documents into this document, which means those documents will go away. He drafted some language for that, but doesn't have a strong feeling about this. Added to the language that's already there, he recommends adding ". . .with the exception of that Preliminary Development Agreement dated August 27, 2009 and the Palatka Preliminary Development Agreement First Addendum dated May 14, 2010, which are specifically incorporated by reference into this lease but which will not be deemed to have merged with this lease. In the event of a conflict between this lease and those other documents named above, this wording and terms of this lease shall prevail and control". They can modify this and add it to the end of Section 29.10. Commissioner Kitchens said this wording clarifies everything.

Mayor Flagg said he'd like to know if there are any issues within each individual article of the lease agreement. He asked they keep comments related to the article they are discussing.

Mr. Ham started with a general description of the property in Phase 1. He said this is the renovation of the present buildings and the addition of a new building. The other part is a parking lot behind the 100 Block. The uses that are included are retail/commercial, restaurant, and general commercial tenants on the ground floor buildings and new building, and the 2<sup>nd</sup> floor is rental apartments. As far as the lease document is concerned, he'd recommend it. As Mr. Holmes has done a good job of summarizing this, he'd be happy to entertain questions on any of the sections of the lease rather than going through each one.

Phase I Lease Agreement was discussed article by article, as follows:

Article 1 - Definitions – Commissioner Myers said he uses the term "substantial completion" and asked if that's defined. Mr. Ham said it is there and is when they obtain a CO.

Article 2 - Grant of Lease- no comments

Article 3 – Term; Possession – no comments

Article 4 – Base Rent – Commissioner Kitchens said she' like to see the rent calculated each year based on the tax assessed value for the prior year. The base rate for 2011 would be based on the 2010 assessed value. In 2012 the base rate would be calculated on 2011 values, etc, as opposed to setting it permanently on the 2010 value. Mayor Flagg said he'd like to think this through in not making any adjustment at least for the first 15 years so as to not affect the financing component. If they adjust in 15 years that shouldn't create a problem. This is land only. Commissioner Kitchens said she can live with that. Commissioner Myers said once it's been renovated, the value of the property will go up dramatically. The equity investors are the ones with the risk; the City has no risk at all. From a banker's point of view, to evaluate the loan and request, you need to nail down the expenses for a certain period of time. Commissioner Brown said they can readdress it in 25 years. They need to give future commissions a way to look at this. They need something in there to allow a future commission to readdress this. Right now, they have TIF money they didn't have 30 years ago. They want to make things better, but have to look out for everyone. She'd like to see them have some way of reassessing this in the future. Commissioner Kitchens said the net profit concept would be fairer to all. Mayor Flagg said that creates a gamble for the City. They all want what's fair and equitable. They need a 25 year analysis, but not change the formula used. It will be an administrative action. Commissioner Norwood said they want to lock in the risk for investors; they don't want to adjust formulas on a yearly basis. Mr. Holmes asked if he's talking about an income analysis, or applying the same formula to a new value. Mayor Flagg said they need to stay away from the income.

Mr. Ham said they would rather have some certainty. As an example, on the rental apartments, there are programs available that are HUD loan guarantees through an FHA program. It guarantees loans for 40 years. It's a great program; lenders like those loan guarantees for that length of time. The discussion about 25 years would cause some difficulties; HUD won't want to approve a loan guarantee with "ifs" in it. Mayor Flagg said if there was a set percentage increase in 25 years, that's not an "if." Mr. Ham said they'd need to sit down and work up that formula in language they agree on, and come back and present that. Mr. Holmes asked about a certain yearly increase, such as 1.5%. You never know totally what your rent will be, but you'll have an idea. A 1.5% multiplier or CPI multiplier would give certainty. Mayor Flagg said he likes the CPI concept. It doesn't give him certainty, but creates a certain formula. Commissioner Myers said that would be acceptable to a lender. Mr. Ham concurred and said he'd like to take that particular part in the lease back to the partners for their approval. Mayor Flagg said if he takes that back, he can take everything back. The Commission can approve the lease contingent upon his partner's approval. Mr. Ham said he will define the terminology and discuss that. Mayor Flagg said he'd like some tentative terminology tonight. They can put it in as contingent language. Sec. 4.1, base rent calculation, would be submitted for approval to the Commission and based upon annual adjustments based upon the CPI. Mayor Flagg asked Mr. Holmes to work up language as they move forward with the rest of the lease articles. Mr. Holmes said there are many consumer price indexes; Mr. Ham said they want to use the proper language.

Article 5 - Use of Premises - Commissioner Kitchens said she has no problem with this, but there's been talk of FloArts putting classrooms in this project, and asked if anything in Article 5 prevents classrooms. Mr. Ham said he doesn't read it that way; commercial rental property is any type of rental and includes classrooms and galleries.

Article 6 - Utilities and Services; Operating Expenses; Financing Documents - no comment

Article 7 - Condition and Care of Premises - Commissioner Kitchens said exhibit B was not attached, but she now has the exhibit so she has no problem with it.

Article 8 - Return of Premises – no comment

Article 9 - Holding Over – no comment

Article 10 - Compliance by Tennant – no comment

Article 11 - Rights Reserved to Landlord – no comment

Article 12 - Maintenance – no comment

Article 13 - Alterations – no comment

Article 14 - Assignment and Subletting - Commissioner Kitchens said in Article 14.5 there is a typo on the first line. It states “notwithstanding anything in the contrary in this article 15. . .,” it should be 14.

Article 15 - Waiver of Certain Claims; Indemnity by Tenant – no comment

Article 16 - Damage or Destruction by Casualty - no comment

Article 17 - Eminent Domain - no comment

Article 18 - Default – no comment

Article 19 - Subordination – no comment

Article 20 - Mortgagee Protection - no comment

Article 21 - Estoppel Certificate - no comment

Article 22 - Subrogation and Insurance - no comment

Article 23 - Nonwaiver - no comment

Article 24 - Authority of Tenant - no comment

Article 25 - Real Estate Brokers - no comment

Article 26 - Notices - notices no comment

Article 27 - Hazardous Substances - Commissioner Kitchens said under Article 27.8, indemnification, paragraph (b), the last part says 28.7; it should read 27.7 and needs to be corrected.

Article 28 - Title and Covenant Against Liens - no comment

Article 29 - Miscellaneous - no comment

Article 30 - Exculpatory Provisions - no comment

Signature Page – Mayor Flagg noted his name is spelled with a “K.”

Mr. Holmes asked if they wanted to make those changes in article 29.10 - Entire Agreement –Commissioner Kitchens moved to add the City attorney’s suggested wording, “with the exception of that Preliminary Development Agreement dated August 27, 2009 and the Palatka Preliminary Development Agreement First Addendum dated May 14, 2010, which are specifically incorporated by reference into this lease but which will not be deemed to have merged with this lease. In the event of a conflict between this lease and those other documents named above, this wording and terms of this lease shall prevail and control”, to the end of the last sentence in Article 29.10. Commissioner Brown seconded the motion. A roll call vote was taken with the following results; Commissioners Brown, Kitchens, Myers, Norwood and Mayor Flagg, yes. Nays, none. The motion was declared passed.

Article 4 readdressed – Mr. Holmes read language he suggested be appended to the end of article 4.1: “Base rent shall be adjusted on each anniversary of the lease after the day of stamp of completion by the change in the Consumer Price Index (CPI) for all urban consumers’ US city average (CPI-U).” Mr. Ham said he thinks that would be fine. He will check to make sure they are applying the correct “CPI.” Commissioner Norwood moved to add the City Attorney’s suggested wording to Section 4.1, Base Rent, referencing adjusting the base rent based upon the correct CPI. Commissioner Myers seconded the motion. A roll call vote was taken with the following results; Commissioners Kitchens, Myers, Norwood, Brown and Mayor Flagg, yes. Nays, none. The Motion was declared passed.

There being no further discussion Commissioner Myers moved to accept the Downtown Palatka/Riverview Property Redevelopment Lease, Phase I, with CDP, Inc. as amended. Commissioner Norwood seconded the motion. A roll call vote was taken with the following results; Commissioners Myers, Norwood, Brown, Kitchens and Mayor Flagg, yes. Nays, none. The motion was declared passed.

Mayor Flagg congratulated Mr. Ham. Mr. Ham thanked Mayor Flagg for his leadership, saying he thinks this is a good agreement. Commissioner Kitchens noted this is contingent upon his partners accepting the agreement. Mr. Ham said without speaking for his partners, this is agreeable with the proper index language noted.

Mayor Flagg congratulated Mr. Boynton and Mr. Holmes on their successful negotiations.

**4. ADMINISTRATIVE REPORTS**

The City Clerk noted the City Hall Christmas Luncheon is scheduled for Wednesday, Dec. 22. at noon.

**5. COMMISSIONER COMMENTS**

Commissioner Myers concurred on Mayor Flagg’s leadership on this project, and on the work of Mr. Boynton and Mr. Holmes. He thanked Mr. Ham for his cooperation.

Commissioner Brown said she’s attended an insurance trust meeting and brought back information on tax laws passed by congress, and she distributed that analysis. She also brought back information on fiduciary responsibility. She wished everyone a happy holiday.

Commissioner Kitchens said tonight there will be an eclipse of the moon, which begins at 12 am and only happens once every 372 years, as it occurs with the winter solstice.

Commissioner Kitchens thanked City Attorney Holmes for being patient with her e-mails and phone calls, and discussing her various concerns with her. They can thank him for them not being here until 4 am working out her concerns. She appreciates his taking time to meet with her on legal issues. She wished all a Merry Christmas and Happy New Year.

Mayor Flagg recognized presence of Commissioner-Elect Phil Leary. He looks forward to seeing them all on January 3rd.

6. **ADJOURN – There being no further business to discuss, the meeting was adjourned at 7:25 p.m. upon a motion** by Commissioner Brown, seconded by Commissioner Myers.

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

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