

**VERNON MYERS**  
MAYOR - COMMISSIONER

**MARY LAWSON BROWN**  
VICE MAYOR - COMMISSIONER

**ALLEGRA KITCHENS**  
COMMISSIONER

**PHIL LEARY**  
COMMISSIONER

**JAMES NORWOOD, JR.**  
COMMISSIONER



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

**BETSY JORDAN DRIGGERS**  
CITY CLERK

**MATTHEW D. REYNOLDS**  
FINANCE DIRECTOR

**GARY S. GETCHELL**  
CHIEF OF POLICE

**MICHAEL LAMBERT**  
CHIEF FIRE DEPT.

**DONALD E. HOLMES**  
CITY ATTORNEY

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

## MINUTES CITY OF PALATKA June 23, 2011

Proceedings of a regular meeting of the City Commission of the City of Palatka, Florida, held on the 23<sup>rd</sup> day of June, 2011.

**PRESENT:**

Mayor	Vernon Myers
Commissioner	Mary Lawson Brown
Commissioner	Allegra Kitchens
Commissioner	Phil Leary
Commissioner	James Norwood, Jr.

Also Present: City Manager Elwin C. Boynton, Jr.; City Attorney Donald E. Holmes; City Clerk Betsy Jordan Driggers; Finance Director Matthew Reynolds; Planning Director Thad Crowe, Police Chief Gary Getchell; Assistant Police Chief James Griffith; Fire Chief Mike Lambert; Fire Marshal Mark Lynady

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

**INVOCATION** – The Reverend Ben Tippet, Founding Pastor, Victory Christian Fellowship

**PLEDGE OF ALLEGIANCE** – Led by Fire Marshal Mark Lynady

**APPROVAL OF MINUTES** –5/26/11 Pre-budget Workshop; 6/9/11 Regular Meeting – Commissioner Kitchens moved to approve the minutes as read. Commissioner Norwood seconded the motion, which passed unopposed.

1. **PUBLIC RECOGNITION/PRESENTATIONS** – There were none.

2. **PUBLIC COMMENTS**

Christy Sanford, 312 Dodge Street, said she has noticed over time the City Limits have been extended, but the city limits sign still sits at the intersection of Hwy 100 and SR 19. She was wondering if the City would update its city limits sign placement.

3. **CONSENT AGENDA:**

a. **Authorize execution of a Supplemental Scope and Fee Proposal in the amount of \$42,380.00 with Ayres Associates** for Post Design Engineering Services on the WWTP Improvements/Ph IV Reuse Project, per City Manager's recommendation

- b. **Authorize execution of Change Order #1 to the Masci Corporation contract reducing the contract amount by \$1,249,429.49**, for a new contract amount of \$878,147.51, for construction of WWTP Improvements/Reuse Project, Phase IV, per City Manager's recommendation
- c. **Authorize Execution of Change Order #2 to the Masci Corporation contract decreasing the contract amount by \$4,151.88**, for a new contract amount of \$873,995.63, per City Manager's recommendation

Commissioner Brown moved to pass all items on the Consent Agenda as read. Commissioner Kitchens seconded the motion, which passed unopposed.

4. **CONSIDERATION OF REVISED SCHEDULE OF DEADLINES/DATES Re: CDP/City of Palatka Agreements** – Andrew Ham, V. President, Community Development Partners, Inc. – Mr. Boynton distributed his memorandum and a memorandum from the City Attorney (filed.) Mr. Ham said he's just received a copy of these memorandum, which recapitulates what their other memorandums have said. They are requesting the full development schedule be adjusted forward so they can continue their work. In hindsight, they should have made this request when developing the lease agreement. It's taking much longer in these economic times to get this project financed. This would have helped to avoid some of the confusion reflected in the City Attorney's memorandum. There are other items he's also addressed. He thinks Mr. Boynton's Option 2 recommendation will address Mr. Holmes' recommendations and extending the deadlines. With that, he requests the agreement and addendum be amended respectively.

Mr. Boynton said his memorandum identifies two issues: one is that the development schedule listed in the agreements and addendum have been out of sequence, and are getting further out of sequence. He's asked Mr. Ham to look at the schedule for modification. This commission understood that the hotel would be further down the line and would not be sequenced concurrently with the development, but those dates weren't reflected as such.

Secondly, there are three documents that spell out specifically what is expected by the Commission. He had the City Attorney look over them to determine what needed to have been presented to the Commission prior to this date, and what needs to be done. The City Attorney's memorandum spells out specifically that a version of the Finance Plan was presented in April of 2010. The Commission, at the time, did not take action on that finance plan. The Agreement states that formal action should have been taken on that business and finance plan, and this needs to be done. Also, in May of this year, the Developer was supposed to have taken ownership of the property. The lease commenced in May and possession should have been taken by the developer in June. They are not in a position to do that; that aspect of the contract has not been fulfilled.

Mr. Boynton said the final issue is the action to be taken on the Development Agreement. He is not sure when that final development agreement should be acted upon; whether it should have been taken after the 100 Block development agreement was presented, or after the hotel phase development agreement has been accepted. They may want to work up a new document and a new schedule, that doesn't have any loopholes or outs; it is what it is. Mr. Ham has proposed a new schedule. He believes if they do move forward with Option 2, there are other things Mr. Ham needs to present to the Commission to take action on. He needs to come back in July and present his business and finance plan, for the Commission to take action upon. In short, those are the three criteria within the existing agreements that need to be fulfilled, as identified by the City Attorney. They need to take action to allow the existing agreements to be modified. Mr. Holmes has offered two other options; one states an indication that the developer is in default, and the Commission would move forward with issuing a default agreement, and the other is to modify the agreements more definitively, more than just dates.

Mr. Boynton said for the three years they have been going at this, they have entered into an agreement per year. Another three or four months is not going to put the City into a situation it can't react to. If they start over, it will take another 12 – 18 months to get back to this point. They all know this doesn't happen overnight; it takes time. He's looking at this from a stance that he believes they are close; in the next few months the developer will know if he can commence December 1. They will have updates throughout this time frame. They need to agree on a commencement of development date by all parties.

Mr. Holmes said there are three separate documents that have been generated, and minutes from two separate meetings. The documents are the Lease Agreement, the Preliminary Development Agreement (PDA) and Addendum, which are all in writing, and the minutes from the City Commission's August 26 and April 22 meetings, in which action was and was not taken, respectively. Mr. Boynton is correct in stating there is technical default in the agreements; the lease provided a commencement date of May 20, and CDP would take possession 30 days later, or June 20th. Under the lease, the City can provide them with a 30-day default notice; they would either correct it, or the City can terminate the lease after the "clearing of breach." At the end of 30 days, they would be in default. There were dates in the agreements that weren't met; some were extended. In his opinion, the Development and Finance Plan was not approved and accepted; it was presented, but there was no motion to accept and approve it as reflected in the minutes. There was approval that the development was to commence in May, 2011, and it didn't, which means they would have closing on 100% of the financing. Commissioner Kitchens said the lease said the development shall commence in May, 2011, except as extended by agreement of the parties. Mr. Holmes said they've never extended the commencement or possession date of the lease, only extended the development agreement. Commissioner Kitchens said they can, but have failed to do so. Mr. Holmes said they have contracts; they are making new agreements unless they are implementing a clause under the agreement to extend it. The extension dates under the development agreement have passed; they can, however, enter into new agreements. They need to be careful about this. The development deadline was established orally; it was extended to May. That hasn't been met. At this point there is a need to at least visit the situation. They definitely need to either accept or reject the development and financing plan; if CDP's position is they've already presented it, the Commission can accept or reject what's been presented. They have a preliminary PDA but not a final agreement; there's language in the final development agreement stating CDP is supposed to present a market study and final marketing plan for the hotel as well as lender information, referenced in the PDA, which he does not think has been presented. There is a final development agreement contemplated by the PDA, which needs to solidify what the development will be, and it needs to comply with the requirements of the PDA, and they need a commencement date.

Mr. Holmes said his Option #2 just says they will go back and put new, clear, concise dates into the agreement, and doesn't get into each of the three agreements. They pick the three things they know they need, which is adoption of the development & financing plan, adoption of a final development agreement, and a commencement date, and say "notwithstanding anything else in all these other documents." They need to address the lease date, also, at this time. The development and lease dates were consistent; May 2011. Neither have been met. Option #2 redefines and adds a fourth document to the other three, plus the two sets of minutes they have. First, they will need to modify the lease so the commencement date is "whatever". Right now it says the commencement date is either when he has 100% financing for Phase 1, or May 20, whichever occurred later. That was put in because originally there was no ending date; it was an opened-ended lease. Next, they need to require a consideration for adoption of the DFP take place, and consider a final development agreement, and affix a commencement date for Phase I (parcel A). He didn't even get into the hotel. If they aren't in compliance with the first dates, it

doesn't make sense to talk about dates that are beyond those dates. Commissioner Kitchens concurred.

Commissioner Kitchens concurred with Mr. Holmes' memorandum. Commissioner Brown said they didn't receive this until they walked into the meeting. She is very disappointed; she thought by this time Mr. Ham would be ready with something. Times are hard, but they need to make this happen. This will help a lot of people. They are putting potential businesses "on hold." They need to create a business atmosphere and bring in new businesses. How many times will he be back to extend this? It's time to make a move. She can't see further extensions.

Commissioner Kitchens said if they choose Option #2, there will be a definite, absolute final deadline that won't be extended. She appreciates Mr. Ham's response to the RFDQ; Mr. Ham's group was the only one that responded on both occasions. He's been straightforward and has worked with the Commission and shows great patience. Sending him away now would be bad business. Mr. Ham has put a lot of time and effort into this without a dime from the City. They need to give him an opportunity to clarify things; they dropped the ball and didn't vote on something they needed to vote on. Mr. Ham has stayed with the City. They need to give him at least the rest of this year. When times were good, he was the only one that came forward. They owe him that consideration. She'd like to go forward with Option 2.

Commissioner Norwood said they have options; they need to be patient. Times are bad. It's not just Mr. Ham that hasn't met deadlines; the Commission has also not met deadlines. Option 2 is his choice. This will provide hard and fast deadlines.

Commissioner Leary said he's been trying to figure this out for two days. It's difficult to digest this memo they just received and make a decision tonight. His concern is, the Commission told Mr. Ham that if he came back without financing, that was it. He asked Mr. Ham if he had a letter of credit or financing in place? Mr. Ham responded he did not. Commissioner Leary said he would have taken the development scheme and done it in parcels. A hotel is not a practical option for downtown. They need food, beverage and attractions for people to come. Blue Crab indicates that. He can't vote to support option 1 or 2 tonight. He'd like a special meeting to consider the options. He's not inclined to redo the RFQ process, but he's very disappointed; he was looking for Mr. Ham to come back with his financing and letters of credit.

Angela Murtagh, 726 St. Johns Avenue, President, Downtown Palatka, Inc., said they are the merchants of St. Johns Avenue. This affects them strongly. Mr. Ham's project started over three years ago; the merchants downtown have been waiting. They are struggling. She understands things are extremely hard in this economy. As merchants, they have been holding on for a long time. It's more difficult to operate now on a day to day basis. Downtown Palatka should be bustling. They need to make a decision to move this forward. They've given this sufficient time. They need to go ahead. Mr. Ham was told he was to present financials to the Commission today. The solution may be for Mr. Ham to work with someone else who could assist him. They need some movement downtown. They've lost 3 or 4 businesses this month; businesses go out on a day to day basis. It's difficult to do business here. They need to move this along. She supports Option 3.

Michael Gagnon, 713 Emmet Street, said times are extremely tough. This is business. If the contract is in default, they need to end this. The City doesn't need to give any more extensions. The economy won't be better in six months. Don't extend the deadlines.

Christy Sanford, 312 Dodge Street, said she spoke with Mr. Ham last month regarding creative ways to move this along. He said if he had a tenant, that would provide collateral and a loan would be easier to get. The question is do they have one? Is there the possibility for the

College or Florida School of the Arts to enter into a lease? She sees no outreach. CDP has a good track record. She wonders if CDP really still wants to work with Palatka; she's seen no interest from him.

Mr. Ham said they are definitely interested in working with the City and the Downtown, and these properties. Public-Private Partnerships are what they are talking about. They take time; they are not easy. On their project, The Nichol House Condos, they worked for three years in good times to put that deal together. They recently financed a civic center project for Richmond Hill in the amount of \$6 million using creative financing. They are getting ready to close on a \$3 million bond financing for a fire station for another Georgia City. They don't lack financing expertise. This project has taken longer than anticipated. They are confident they can break ground by the end of the year.

Mayor Myers said he is also disappointed; however, he believes the prudent option is Option 2. If they cancel this, they are back to square one. Even if they fast track this, they wouldn't be in this position for two more years. It's difficult to get financing in good times. Tenants bring something to the table, but don't make or break a deal. They are only looking at four months. There will be a drop dead date. It will be this Commission's decision whether to extend it. Everyone would understand that this would be an absolute drop dead date. They need to see this through; the economy is improving. It's going through a down-dip, but no further recession is expected. He is in favor of Option 2.

Commissioner Kitchens moved to accept Mr. Boynton's recommended Option #2 and to direct Mr. Holmes, Mr. Ham and Mr. Boynton to work out the new schedule and for the Commission's consideration at the July 14<sup>th</sup> meeting. Commissioner Norwood seconded the motion.

As to the sequencing, Commissioner Leary asked Mr. Holmes when the final development plan phasing would be approved. Mr. Holmes said Phase I is the 100 block retail and residential structures, with parking facilities. Mr. Ham said this is the buildings fronting on 2<sup>nd</sup> Street, the parking beside it, and another building along St. Johns Ave. Mr. Holmes said the hotel was pushed back when it looked like the feasibility of hotel financing wouldn't be possible anytime soon. That is now Phase II. The way the document reads now, CDP is committing to one phase at a time; they are not now committing to a hotel. The lease only deals with the 100 block property. All the conversation to this point has concerned the 100 block and the initial development, which does not include a restaurant. This is retail/residential to front 2<sup>nd</sup> St. and St. Johns Ave. Commissioner Brown said they have a lot of vacant retail buildings now; she asked if he's done anything to market these buildings? Mayor Myers said that is Mr. Ham's and his lender's problem. The owner of the property is responsible for attracting tenants. Commissioner Brown said she'd like to know who will be in there. Mr. Holmes noted the City will own the property. Mayor Myers said CDP, Inc. will have a leasehold interest in the property for 50 years. Commissioner Kitchens said no one knows what will go into vacant buildings. Commissioner Leary asked when the restaurant will go in. Mr. Ham said the restaurant originally was shown on a portion of the 100 Block where the parking lot is now. It is no longer depicted in the 100 block. In the recommendation they show a restaurant as Phase III. Mayor Myers said the rendering was shown in Mr. Redd's plan. Commissioner Kitchens said Mr. Ham originally located the restaurant in the 100 block, but Mr. Redd's plan reconfigured that and showed the restaurant in the Riverfront Park.

Mr. Holmes noted the Parcel A development is slated to commence development April 1, 2012, which is the restaurant. Mayor Myers asked if that date will be adjusted. After discussion, there was consensus that all dates will be adjusted during talks prior to the next meeting. Commissioner Brown asked how this affects the City's own waterfront development. Commissioner Norwood said they need to start looking at what they can do with their own

development through the CRA. Mayor Myers said they have money for the streetscaping for the first two blocks and parks. There are no funds available for the remainder of the development. They are working on boating improvement now. Commissioner Kitchens said the two projects will complement each other. They understood the riverfront park development would be phased over 15 – 20 years. As they get money, they build another component.

The question was called and a roll call vote was requested and taken, with the following results: Commissioners Kitchens, Norwood and Mayor Myers; yes. Commissioners Brown and Leary; no. The motion passed three in favor, two opposed. Commissioner Brown asked that they get a due date as soon as possible so they can get this going, and put in the agreement that if this is not done by a certain date, this will all be over. They extended this for 30 days last month and Mr. Ham did not come with his finance plan. She wants it made clear this is the last extension.

5. **ORDINANCE** amending Chapter 42, Article III of the Palatka Municipal Code to revise the “False Alarm” Ordinance – 1<sup>st</sup> Reading – Tabled from June 23, 2011 – The Clerk read an ordinance entitled AN ORDINANCE OF THE CITY OF PALATKA, FLORIDA, AMENDING CHAPTER 42 OF THE MUNICIPAL CODE OF THE CITY OF PALATKA, FLORIDA BY RESTATING ARTICLE III, BURGLAR/PANIC/DURESS ALARMS, IN ITS ENTIRETY; AMENDING DEFINITIONS, AMENDING SECTIONS ENTITLED ALARM MONITORING COMPANIES, ALARM VERIFICATION CALLS REQUIRED, USED OF LICENSED CONTRACTORS, ALARM DISPATCH RECORDS, FALSE ALARM NOTIFICATIONS AND PENALTIES, SUSPENSION OF ALARM REGISTRATION, SUSPENSION OF RESPONSE, APPEAL OF DENIAL, SUSPENSION, OR REVOCATION OF A REGISTRATION, APPEAL OF DENIAL, SUSPENSION OR REVOCATION OF A REGISTRATION, REINSTATEMENT OF REGISTRATION, NO OBLIGATION TO RESPOND, AND ALARM SYSTEM FEES AND FINES SCHEDULE; ADDING A SECTION ENTITLED REGISTRATION PROCEDURES; AND DELETING SECTIONS ENTITLED ALARM SYSTEM OPERATOR REQUIREMENTS; REGISTRATION REQUIRED; APPLICATION; FEE; TRANSFERABILITY; FALSE STATEMENTS, AND REGISTRATION DURATION AND RENEWAL; PROVIDING FOR THE RENUMBERING OF CHAPTER 42, ARTICLE III ACCORDINGLY; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE. Commissioner Kitchens moved to approve the ordinance on 1<sup>st</sup> reading. Commissioner Leary seconded the motion.

Commissioner Brown said they discussed the financial impact of this ordinance on citizens. She'd like to see the Assistant Chief work with alarm users more on compliance. If they go up on fees, some folks can't pay this. One citizen told her that when heavy trucks pass her house, the alarm goes off due to the vibration. Commissioner Norwood said they are talking about charging individuals \$25 to register alarms, and \$25 for renewals. It will cost each household \$25 per year. The fee for violation of registration is \$100.00. It talks about fines being levied, and fines for not paying fines. There are two ways to actually register an alarm; one is to apply in person at the Police Department, and another is to do it online. This fee is to cover the administration cost. Normally when you do things online you get a break in price. He thinks they have to charge a fee, but they can decrease the fee for filing online. He asked if there is a way to reduce the registration fee for those who register on-line.

Asst. Police Chief James Griffith said they can look at reducing registration fees for on-line registration. Mayor Myers said the whole reason for putting this ordinance in place is to reduce the cost of responding to false alarms for the police department. They had one officer who only responded to false alarms. People had no fines for all their false alarms. The ordinance is in place to decrease expense in the Police Dept. Commissioner Brown said there are senior citizens who live on fixed incomes. They don't have money to pay for registration. She asked if they can give senior citizens a break. People are struggling to eat. They've gone up on everything. Some people can afford this, but some can't. Mayor Myers said this is for repeat

offenders with false alarms. You can have three false alarms before you pay a fine. This only applies to alarm company dispatchers who call the police for service. If your alarm system doesn't call the police, there's no cost. Commissioner Kitchens said the water bills went up last year; the commission had no concern about raising those rates. This is only \$25 per year. The purpose of this change is to clean up the ordinance. This consolidates two boards; it streamlines the process. The fees are only slightly changed. The only other option is to direct the police not to respond to alarms or make citizens pay the fee for responding to all false alarms. The problem is if it's a bank, more than one officer has to go. It ties up officers who can't respond to real law enforcement calls.

Commissioner Norwood said they are going from zero to \$25 for registration. If you register online, that saves administrative costs. It's worth waiving the \$25. If you fill out the registration online, they should reduce the cost. It saves on data entry. Asst. Chief Griffith said they can build in a reduction for online registration. Even if someone registers on line, PD staff still has to take whatever they submit and plug it into the data base. This may change with an outside agency administering it. Commissioner Brown said some people don't have credit cards for online payments.

There being no further discussion, a roll-call vote was taken with the following results: Commissioners Kitchens, Leary and Mayor Myers; yes. Commissioners Norwood and Brown; no. The ordinance was declared passed on 1<sup>st</sup> reading, three in favor, two opposed.

6. **PRIORITY LIST ADOPTION** – USDA Visioning Meeting Project Prioritization – City Manager and Staff – meeting scheduled for July 11. Mr. Boynton said Staff took input from the Commission and others on priorities, and put together a list of priorities that are not listed in order of priority, which was distributed. Staff sent the list to USDA for their comments, and they returned it noting which projects they could help with; the list that was distributed shows those projects highlighted. This is not to say that the items USDA can't help fund can't also be prioritized. The Clerk said USDA suggests they take the full priority list into the meeting, as all their "community partners" will be in attendance, and they need to get community mobilization on their priorities, whether USDA can help with them or not. They tried to incorporate all the suggestions into specific categories; Commissioner Kitchens asked her to distribute her list of priorities, as she wanted them to know why she listed them. Commissioner Kitchens said she'd hoped they could get a consolidation loan so they can lower the interest on their debt. She thinks the Capitol City Bank building would be perfect for School of the Arts, but it is her understanding they don't want to sell the building. Mayor Myers thanked the Clerk, City Manager and his assistant for their work on putting the priority list together.
7. **CITY OF PALATKA EMERGENCY ORDER NO. 2011-01** prohibiting open burning and other specified activities that present potential fire risks, per State of Florida Executive Order No. 11-128, issued by Governor Scott on 6/13/11, which declares a State of Emergency in the State of Florida as a result of ongoing wild fires and the threat of further fires – Adopt – The Clerk read City of Palatka Emergency Order #11-01. Commissioner Kitchens moved to adopt City of Palatka Emergency Order No. 2011-01. Commissioner Leary seconded the motion, which passed unopposed.
8. **ADMINISTRATIVE REPORTS**  
Mr. Boynton asked Fire Chief Mike Lambert and Fire Marshal Mark Lynady to speak about the fireworks display. Palatka's display is still on. They want to reassure citizens on how they are going to keep everyone safe.

Chief Lambert said the use of the barge to stage fireworks makes this much safer. It's staged in the water and a good distance from land. They are going to 6" mortars, and not 10" or 12" as

they've used in the past. It cuts down on height and debris. They meet all 'distance from land' requirements. Their boat will be out patrolling and checking the shore line. The fireworks company is hiring three firefighters to be on the barge with extinguishers. A fire truck will be at the City Dock and all personnel will be on call, and PD personnel will be on hand. They don't have a lot of woods around the display. They have not had an issue with brush fires in the past. Commissioner Kitchens said she'd spoken to Chief Lambert about the burn bans. She was concerned if the wind was blowing to the west, it would blow cinders to Harts Point. Chief Lambert told her they monitor the wind; it rarely blows in that direction, and if the wind blows in that direction, the display will be stopped. She hopes the citizens will comply with the ban on fireworks. This is a controlled display.

Commissioner Leary asked if they have to get permission from State Emergency Management for Palatka's display. Chief Lambert said they do not.

9. **COMMISSIONER COMMENTS**

Commissioner Brown said she's talked to merchants on St. Johns Avenue, who told her they urged Blue Crab to extend its festival to at least 8<sup>th</sup> Street. It was done during Azalea Festival and they made money. Blue Crab stopped at 7<sup>th</sup> Street, and this impacted their businesses. She asked the City Manager to speak to Blue Crab organizers about this.

Commissioner Brown asked those who received the FLC Quality Magazine, if they don't want their July issue of Quality Magazine, to please pass them along to her. She has people who want copies of the magazine.

Commissioner Leary said it may be prudent to hold a workshop on downtown redevelopment. He does not think they are going to accomplish their goals without getting food and beverage downtown. How they will do this he doesn't know, but these are two things that attract people. They have an ample amount of retail space downtown. There's a lot of communication that can be fostered with the downtown merchants and community as a whole. The biggest question he gets is when the other 100 Block buildings are going to be torn down.

Commissioner Kitchens said she has no objection to another workshop; they've had many. They've met with merchants, the public, etc. and CDP's plan was the outcome.

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

\*Attachment \*\*Separate Cover