

**MINUTES OF THE SPECIAL COMMISSION MEETING of the City of St. Augustine Beach, Florida, held on Monday, January 26, 2009 in the Commission Chambers of City Hall, 2200 A1A South, St. Augustine Beach, Florida.**

**CALL TO ORDER**

The meeting was called to order by Mayor Charles at 7:00 p.m.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**Present:** Mayor Frank Charles, Vice Mayor Brud Helhoski, Commissioner Edward George, Commissioner Rich O'Brien, Commissioner Andrea Samuels.

**Also Present:** City Manager Max Royle, City Attorney Geoff Dobson, Police Chief Richard Hedges, Building Official Gary Larson, Finance Director Melissa Burns, and Deputy City Clerk Sharon Widdifield.

**MATTERS RELATED TO THE POSSIBLE PURCHASE OF PHASE I OF THE MARATEA PROPERTY:**

**1. Review of Proposed Purchase Agreement**

Mr. Royle pointed out the recently received changes to the agreement.

Tony Cubbedge, County Resource Manager, said he had been working to facilitate this purchase for the City and explained several sections of the contract that might need discussion.

The Extension Deposit item, Mr. Cubbedge said, says that half of the deposit is to be retained by seller for extensions even if the purchase is closed. This is a change from original contract, he said, and all the deposit needs to go toward the purchase price. The Commission agreed.

Commissioner George asked if another appraisal is needed. Mr. Dobson advised that while it is not necessary from a legal standpoint, there is likelihood that property values have decreased recently from 15-20%, so the purchase price could be above the appraised value. While the City can pay more than appraised value for good reasons, his opinion was that the City should know the actual value. If a grant is possible, he added, it will pay only the current value. Mr. Dobson said the appraisal could be available within the 30- to 45-day due diligence period.

Mr. Cubbedge agreed that an updated appraisal would be prudent.

Mr. Royle asked if the feasibility phase of 45 days was too short. The shorter time, Mr. Dobson said, had been included due to the deadline for applying for a grant. Mayor Charles said that 90 days is usual, but the City might ask for at least 60 days. There was no objection.

Commissioner O'Brien said a preliminary meeting had addressed the purchase price and that it was agreed that a 5% discount would be offered. This was later changed by the seller, he said, and he suggested proposing the original price of \$5,774,100 with the seller paying the pro-rated taxes. There was no objection.

Mr. Cubbedge noted that Section 6.6 on page 7 should reflect that public records laws affect confidentiality. Mr. Dobson had suggested adding "to the extent permitted by law" and the Commission agreed to change the wording as suggested.

Commissioner George commented that the contract limits the seller's remedy of any title defects to \$100,000. Mr. Dobson explained title defects and said that if the seller cannot remedy any defects within the feasibility phase, the City could cancel the contract.

Mr. Cubbedge said section 8.1 calls for the purchaser to pay due diligence and other costs, while it was agreed that the seller would be responsible for these.

Commissioner O'Brien commented that the seller will pay back taxes and pro-rated 2009 taxes. Mr. Dobson said the purchased property also needs to be cut out of the total parcel, as the City is not actually buying all of land. Standard practice is to prorate taxes as of the date of closing, Mr. Dobson said, and in Florida the seller pays from January 1st to closing and the buyer from the closing date to the end of the year.

Mr. Cubbedge noted in Section 12.2 a requirement for the buyer to maintain a landscape buffer on either side of an easement area. He suggested striking all wording after the word "undisturbed." There was agreement to make this change.

Mayor Charles commented on the sign on the city's property and said no picture of the sign was available. Mr. Dobson said an ordinance will be needed to authorize a sign on public property, and noted that the City will need a sketch.

In Section 12.3, Mr. Cubbedge said the requirement for fencing had been changed to "physical barrier" and felt this would be satisfactory. Mr. Royle said it would be necessary to delete any reference to Section 12.8, as that section was deleted.

Commissioner Samuels asked for clarification on Section 10.2 regarding failure of the seller to deliver closing documents. Mr. Dobson said that such failure to perform is usually due to an existing mortgage. If the bank forecloses, he said, the City could be dealing with someone else. He had no problem with wording.

Mr. Cubbedge referred to Section 12.7 requiring the purchaser to construct a temporary road. He felt the wording should read "may" construct. Shared maintenance of roadway improvements, he said, were based on acreage. He believed this should be a 50/50 split to reflect road usage.

Commissioner Samuels noted that Section 12.6 allows temporary blockage of the road during construction. Mr. Dobson explained that the roadway goes through wetlands, and construction there would require closing access for possibly six months.

Mayor Charles asked if the City could have right of first refusal to prevent development of the remainder of the property. Mr. Dobson explained that this means the City would match any other offer for the land, but it wouldn't affect the owner developing the property themselves. The seller would have five years, he said, to develop the land.

Mr. Royle asked why the City should maintain the seller's landscaping and utilities, and Mr. Cubbedge suggested the word "may" in the first sentence of Section 12.7 instead of "will." The Commission agreed to that change and to sharing 50% of the road maintenance up to where Phase II begins.

Mr. Cubbedge did not know why Section 12.8 had been removed by the seller. Mr. Dobson said the sellers had applied to the Planning Board to modify the PUD to increase number of units, etc. Mr. Royle said he would look into why this section was removed.

Section 14.2 was discussed, and Mr. Dobson said the City cannot give a blanket indemnity agreement. Mr. Cubbedge noted references to indemnification also in Section 15.

In Section 17, Mr. Dobson asked that any lawsuits should be heard in St. Johns County, since the real estate is here and the agreement will be executed here.

Mr. Royle referred to the latest changes in Section 18 that deleted the first paragraph of section 18 and inserted a new second paragraph. This paragraph indicated that the City's intention is to build a new public park and will use reasonable best faith efforts to amend the Comprehensive Plan and regulations to rezone the property as Parks and Recreation. It would also permit a sign on the access easement. The seller, he said, has not yet presented the referenced schedule. Mr. Dobson said this is basically the change he had requested, although the language may need to be tweaked.

Commissioner Samuels asked if the permits issue had been dealt with. Mr. Dobson said the proposal on page 17 addresses this.

Mr. Royle noted that the wording "as they relate to phase II" had been added to Section 18. Mr. Dobson said that the problem is with water retention being on City's property. Mr. Cubbedge said the seller should construct any additional pond acreage needed for phase II over the City's needs. Mr. Dobson said the Commission can't contract away the power of the Planning Board to decide development issues. If the final development plan is not approved, he said, the seller can cancel the contract.

Mr. Cubbedge reviewed several minor changes. He noted that the term "indefinitely" had already been stricken from the last part of Section 18. Correct contact addresses are needed on page 19, he said, and Section 19.9 should show the venue as St. Johns County. He also noted that corrected wording was needed on the signature page and that Note 3 on Exhibit B should be modified to agree with earlier sections regarding the seller paying taxes.

Mr. Royle asked that the times for notice were extended to ten days rather than five.

Mr. Dobson and Mr. Royle agreed to work on a revised contract

## **2. Approval to Have 2008 Appraisal Updated**

**Motion:** to authorize obtaining an updated appraisal, **Moved by** Mayor Frank Charles, **None Seconded.**

**Vote:** Motion carried by unanimous voice vote (**summary:** Yes = 5).

**Yes:** Commissioner Rich O'Brien, Vice Mayor Brud Helhoski, Mayor Frank Charles, Commissioner Edward George, Commissioner Andrea Samuels.

## **3. Budget Resolution 09-01, to Amend FY 09 General Fund Budget to Appropriate \$5,300 for the Appraisals**

## **4. Budget Resolution 09-02, to Amend the FY 09 General Fund Budget to Appropriate \$50,000 as a Deposit on Purchase of Phase I of the Maratea Property**

**Motion:** to approve Budget Resolutions 09-01 and 09-02, **Moved by** Mayor Charles, **Seconded by:**  
Vice Mayor Brud Helhoski.

**Vote:** Motion carried by unanimous voice vote (**summary:** Yes = 5).

**Yes:** Commissioner Rich O'Brien, Vice Mayor Brud Helhoski, Mayor Frank Charles, Commissioner  
Edward George, Commissioner Andrea Samuels.

Mr. Royle asked what would happen if the purchase fell through after are bonds obtained. Mr. Dobson said that bond funds are usually required to be spent within three years and that the City should be sure there are no pre-payment penalties for the first five years.

**Motion:** to adjourn the legislative session in order to convene a union negotiation strategy meeting out of the Sunshine, **Moved by** Commissioner Andrea Samuels, **Seconded by** Vice Mayor Brud Helhoski.

**Vote:** Motion carried by unanimous voice vote (**summary:** Yes = 5).

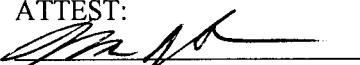
**Yes:** Commissioner Rich O'Brien, Vice Mayor Brud Helhoski, Mayor Frank Charles, Commissioner Edward George, Commissioner Andrea Samuels.

The legislative session was adjourned at 8:10 p.m.

The special meeting was reconvened at 9:15 p.m. to close the strategy meeting, and the special meeting was then adjourned at 9:20 p.m.

  
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Mayor – Commissioner

ATTEST:

  
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City Manager