

KARL N. FLAGG
MAYOR-COMMISSIONER

MARY LAWSON BROWN
VICE MAYOR - COMMISSIONER

GEORGE E. SANDERS
COMMISSIONER

JAMES NORWOOD, JR.
COMMISSIONER

ALLEGRA KITCHENS
COMMISSIONER



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

ALLEN R. BUSH
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
PALATKA CITY COMMISSION
June 28, 2007
Special Called Meeting – 11:30 a.m.

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

ABSENT: Commissioner George Sanders

Also Present: City Manager Allen R. Bush, City Attorney Donald E. Holmes, City Clerk Betsy Jordan Driggers, Assistant Clerk Karen Venables, Police Chief Gary Getchell, Parks & Cemeteries Supt. Jeff Norton, Water Plant Supt. Melvin Register

Mayor Flagg called the meeting to order at 11:37 a.m. and read the following call, dated June 20, 2007:

MESSRS MARY LAWSON BROWN, ALLEGRA KITCHENS, JAMES NORWOOD & GEORGE SANDERS:

You are hereby notified that a special called meeting of the Palatka City Commission is called to be held at the regular meeting place of the City Commission at City Hall, 201 N. 2nd Street, Palatka, Florida, on Thursday, June 28, 2006, to commence at 11:30 a.m.

The purpose of the meeting is to consent to the following items:

- *a. Remove the deed restriction from the deed of land given from the City of Palatka to River Ventures, Inc. now owned by Elite Hospitality, removing the "Holiday Inn" franchise restriction;
- *b. Authorize execution of Amendment #4 to HTA Agreement for Engineering Services for RC Willis WTP dated 11/1/01 in an amount not to exceed \$855,000;
- *c. Authorize execution of Amendment #1 to Ayres Associates Engineering contract #30-1603 for CDBG #N-43, for post-design services on an as-needed basis in the amount of \$15,000
- *d. Approve expenditure of Cemetery Funds for Ground Scan (\$3,800) and Solar Lights w/Brackets (\$2,279.04) for East Oak Hill Cemetery;
- *e. Authorize execution of DOC Work Squad Contract #WS396 in the amount of \$111,554.00 for renewal of the Parks and 2nd Streets paid inmate squads, effective October 1, 2007 (replaces Contract #'s WS176 & WS178);
- *f. Concur on Commissioners' nominations of Mayor Flagg, Vice-Mayor Brown, City Manager Bush, City Clerk Driggers, Finance Director Williams, and Parks & Cemeteries Supt. Norton for Cities of Excellence Awards as listed;

*g. Designate Commissioner George Sanders as Palatka City Commission's Voting Delegate to 2007 Annual FLC Conference, Aug. 16 – 18, 2007;

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

We acknowledge receipt of a copy of the foregoing notice of a special meeting on the 20thth day of June, 2007.

/s/ Mary Lawson Brown
COMMISSIONER

/s/ George E. Sanders
COMMISSIONER

/s/ James Norwood, Jr.
COMMISSIONER

/s/ Allegra Kitchens
COMMISSIONER

~~ End ~~

Mayor Flagg stated the City Manager requested consent item (a) be pulled from the Consent Agenda for discussion. Commissioner Kitchens moved to approve consent items (b) through (g) of the Consent Agenda as presented. Commissioner Norwood seconded the motion.

Commissioner Brown stated she would like names from the City submitted for the 2007 Florida League of Cities "Cities of Excellence" Awards, and requested this item be placed on the next agenda. The City Clerk stated the deadline to submit nominations is August 10, 2007. Mayor Flagg stated it could be put on the consent agenda at the next Commission meeting with specific names nominated. There being no further discussion, a vote was taken on the motion, which passed unopposed.

REQUEST TO REMOVE DEED RESTRICTION FROM QUALITY INN DEED: Mr. Farid Ashdji, partner, Elite Hospitality, Daytona Beach, owner of Palatka Riverfront Quality Inn, stated it came to his company's attention that the deed to this property contains three deed restrictions placed upon it by the City of Palatka in 1977, when the property was conveyed to River Ventures, Inc. One of these, which was a condition of the sale of this property to River Ventures, Inc., requires the motel on the deeded land be operated as a franchise controlled by Holiday Inns of America. Mr. Ashdji stated he understood why it was done, but in order to complete their refinancing, the new lender has required Elite Hospitality to obtain a release of the Holiday Inn deed restriction from the party that created the restriction, which is the City of Palatka.

Mayor Flagg noted the Commission received a memo from the City Clerk in regards to Elite Hospitality, Inc.'s request to remove the "Holiday Inn" deed restriction. The Commission also received copies of the recorded deeds and 1977 Resolution, which specifically states the restrictions are:

1. That the above described property shall only be used for the construction of a motel and related facilities under a franchise from Holiday Inns of America;
2. Construction of such motel shall commence not more than six (6) months from the date hereof; and

3. In the event construction is not commenced as above, the City of Palatka shall have the right to re-purchase the above property for a purchase price not exceeding \$100,000.00.

Mayor Flagg stated all those conditions were obviously met.

Mr. Holmes stated in Florida, deed restrictions with certain reservations and with certain explanations are generally enforceable if they are clear on the face of the instrument. The exceptions and the explanations that the case law creates essentially are that they may not be enforceable if the character of the area has changed to the point that the deed restriction is no longer appropriate. If the deed restriction is too restrictive, the general rule of law in Florida is one that discourages restraints on the free use of property. The general concept of law in Florida is that property is to be freely used by the people that buy it in accordance with the zoning laws and other restrictions. In his opinion, in looking at the deed restrictions that are present in this case, he does not believe a deed restriction that would restrict the use of the property to a Holiday Inn is probably an enforceable restriction. Singling out a motel franchise and restricting the property to that use in perpetuity, which means forever, in his opinion, would not apply nor be enforceable by a court. Looking at the face of the instrument, it implies that the main intent of the grantor, which was the City of Palatka, was to make sure a motel got built quickly. This was fine then, and was enforceable for that 6-month period. After 30 years has passed, if they were to say that it is enforceable to require the property owner to keep a Holiday Inn on site, he does not feel a court is going to find this to be reasonable. It is also his opinion that the question gets muddier from there. He is not so sure that a court couldn't interpret the deed restriction to be enforceable from a perspective of requiring a motel on site, and this may be an arguable point. The deed restriction does not have a termination date, which many do. It is not as simple as giving the Commission a two-line memo saying the restriction isn't enforceable, because it is arguably enforceable from the perspective of restricting the use to a motel or motel-type facility. The argument on the other side would be that it restricts the use of the land, or maybe the land use or character of the property or surrounding lands has changed to the point that restricting it to use for a motel is no longer feasible, and the court would consider those points. The question is, is the City looking to enforce the deed restriction to keep it as a motel, which he believes is arguable.

Commissioner Kitchens stated she talked with a former Palatka Mayor regarding this deed restriction. He told her this stemmed from a court order, and she questioned whether the City would be liable for some type of lawsuit if this came down as a court order. Mr. Holmes stated it is not a court order that was in question. Generally, you look at the face of the instrument to determine its intent. This does not reference a court order, nor does it say it is pursuant to the terms of a court order, so he cannot respond to the question. He does stand by what he said earlier, which is that he is confident that the City would not be successful in requiring the use of the property as a Holiday Inn franchise.

Mayor Flagg stated the Commission needs to consider whether the restrictions have been complied with, number one being the construction of a motel under a franchise of Holiday Inn, which was done. They also met the deadline of six months. It is his understanding that the item that is creating the issue for refinancing is the reference to a Holiday Inn franchise, as it is now a Quality Inn.

Commissioner Kitchens asked the City Attorney if the document that releases the restriction also releases the City of Palatka from any obligations. She would also like to see some monetary consideration for removing that restriction, such as payment of the recording fee. Mr. Holmes stated the Estoppel Letter says the City will not enforce the restrictions. In his opinion, a release of deed restriction would be appropriate, and he does not have a problem with the one that has been drawn up by Elite's counsel, in which paragraph B states that "the City desires to hereby release and terminate that portion of the Deed Restriction requiring the motel on the Property to be operated under a franchise from Holiday Inns of America." The release does not go as far as to say the whole restriction is released. As to recording fees, those would be \$10.00 and would be paid by Elite Hospitality when they record this instrument, once it has been executed by the City of Palatka.

Commissioner Brown moved to approve Consent Agenda Item (a) to remove the "Holiday Inn Franchise" deed restriction from the 1977 deed of land given from the City of Palatka to River Ventures, Inc. now owned by Elite Hospitality, and authorize the Mayor to execute the Release of Deed Restriction. Commissioner Norwood seconded the motion, which passed unopposed.

There being no further business to discuss, the meeting was adjourned at 11:54 a.m. upon a motion by Commissioner Kitchens.

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

PERSONS WITH DISABILITIES REQUIRING ACCOMMODATIONS IN ORDER TO PARTICIPATE IN THIS MEETING SHOULD CONTACT THE CITY CLERK'S OFFICE AT 329-0100 AT LEAST 24 HOURS IN ADVANCE TO REQUEST ACCOMMODATIONS.