

**MINUTES OF CITY COMMISSION MEETING**  
**HELD JOINTLY WITH THE COMMUNITY REDEVELOPMENT AGENCY**  
**FRIDAY, MAY 23, 2008**  
**DEBERRY ROOM, UTILITIES COMMISSION**  
**200 CANAL STREET, NEW SMYRNA BEACH**

Mayor Mackay called the meeting to order at 2:30 p.m. and the following answered present to roll call:

Mayor Sally Mackay  
Vice Mayor Randal R. Richenberg  
Commissioner J. S. Grasty  
Commissioner James W. Hathaway  
Commissioner Lynne Plaskett

The following Community Redevelopment Agency members answered present to roll call:

Chair Linda P. DeBorde  
Vice Chair Steve Dennis  
Board Member James M. Kosmas  
Board Member Cynthia M. Lybrand  
Board Member Thomas C. Williams

Also present were: City Manager John Hagood; City Attorney Frank Gummey; Finance Director Kathie Eichinger; Development Services Director Mark Rakowski; CRA Project Manager Kevin Fall; and City Clerk Janice Lowry.

**AMENDMENT OF CONTRACT WITH THE TRUST FOR PUBLIC LANDS (TPL) FOR THE PURCHASE OF THE ESTHER STREET OCEANFRONT (NORTH) PARCEL BY REMOVING THE CONTINGENCY FOR COUNTY FUNDING IN THE AMOUNT OF \$1,325,000, AND APPROPRIATION OF ADDITIONAL FUNDING FROM THE COMMUNITY REDEVELOPMENT AGENCY (CRA) IN THE AMOUNT OF \$1,325,000 FOR THE PURCHASE OF SAID PROPERTY, AND AUTHORIZING THE MAYOR AND REQUIRED STAFF TO EXECUTE ALL DOCUMENTS REQUIRED TO EFFECTUATE THE PURCHASE OF SAID LANDS IN THE AMOUNT OF \$4,400,000 PLUS NORMAL CLOSING COSTS.**

Mr. Hagood said as indicated at the last meeting, TPL was under contract with the property owner for purchase of the north parcel. He said TPL had a closing scheduled for May 30 with Mr. Neveleff and needed a commitment from the City that day if they were to move forward with the closing. He said as staff indicated a number of times, the City was expecting funding from the County in the amount of \$1,325,000 and that was equivalent to an intended contribution in the amount of \$25,000 for each off-beach parking space that would be created on the property. According to the revised site plan, the City tried to maximize that parking to increase the County's contribution to the maximum. He said that included 53 parking spaces. He said there was also a Memorandum of Understanding between the County staff and City staff.

He said that agreement was scheduled for consideration by the County at its May 1 Council meeting and City staff was advised that the County did not intend to present the Memorandum for consideration by the Council. He said the County was concerned over the audit comments contained within the City's financial statements and a meeting was being scheduled with the County staff to review those audit findings. He said the County staff had a number of questions, including questions pertaining to the CRA. Mr. Hagood said he and Mr. Gummey met with the County's chief financial officers and reviewed the audit findings and other questions. He said he spoke to the County Manager on Tuesday, at which time the County Manager indicated that he believed the presentation by City staff was sufficient and answered essentially all of the questions. However, it was apparent that the County Manager did not intend to appropriate funding from the County's budget for the \$1.3 million. He also said the County Manager indicated that they could not provide any support toward the actual construction of the project in the future. Mr. Hagood said the County felt that they were making a substantial contribution to the CRA and that contribution this year was approximately \$1.4 million. He said staff had received word from the Florida Communities Trust that the project had been moved to the funded category and the only remaining contingency was the County grant that was not going to happen. He said he had distributed a revised agreement. He said he had also distributed the conceptual plan for the project and that was the same one that was included in the management plan. He also provided a document indicating that the estimated cost of the acquisition phase would be approximately \$6.8 million, including the \$2.3 million for acquisition of the first parcel, \$4.4 million for acquisition of the second parcel and roughly \$100,000 in other acquisition costs. He said the \$2.3 million was funded by the City Stormwater Fund in the amount of \$1,750,000 and by the CRA in the amount of \$550,000. He said based on a forty-percent funding formula for FCT, approximately \$2,680,000 would be generated. He said the City did receive a 2006 Community Budget Initiatives Request from the legislature in the amount of \$100,000 and the City applied for another one this year in the amount of \$395,000 but it was not authorized by the legislature.

Mr. Hagood said there was an error in financial statements at the end of last year. On the acquisition of the first parcel the City Commission had indicated that \$550,000 would be appropriated from the CRA. He said staff had determined that \$550,000 was available in the Stormwater Fund for the acquisition and the remaining \$1.2 million would be allocated from the City's General Fund. He said it had been determined that the entire \$1.7 million was charged entirely to the Stormwater Fund, which resulted in the General Fund Unreserved Fund Equity being overstated by approximately \$1.2 million and the Unreserved Fund Equity of the Stormwater Fund being understated by \$1.2 million. He also said in March the CRA conducted a prioritization of all their projects for ranking purposes. He said out of twenty-eight projects Esther Street was ranked thirteen. He responded to Commission questions and asked if the Commission wished to continue with the acquisition and if so, how they wanted to fund it.

Mayor Mackay asked if anyone wished to make a motion. Commissioner Plaskett said the County Council had not yet made a decision and she was not sure about where they stood. She said she did not want to make a motion before hearing from the CRA and the public. Vice Mayor Richenberg agreed.

Mr. Gummey said there had been discussion at the end of the County Council meeting the previous night. He said this matter was part of a much larger matter that the County appeared to be headed toward considering in June. He said in charter counties the governing body had the power concerning CRAs. He read "In any county which has adopted a home rule power, the powers conferred by this part shall be exercised exclusively by the governing body of such county. However, the governing body of such county which has adopted a home rule charter may in its discretion by resolution delegate the exercise of powers conferred upon the county by this part within the boundaries of a municipality to the governing body of such a municipality..." He said the people who spoke at the Council meeting seemed troubled by their funding of CRAs and intended to summon all of the CRAs before them in June. He recommended that the Commission listen to that discussion when it was posted on the County website. He responded to Commission questions.

Mark Hall, CRA attorney, said there was an agenda item on July 3 where the CRAs were supposed to report to the County Council. He said the CRA met the previous week with Rich Michael, the Economic Development Director for the County, and he provided them with the guidelines for a report that would be made to the Council on July 3. Mr. Hagood said the proposed agenda for that meeting was a workshop for the County Council and Mr. Michael would present an overview of the countywide CRA initiatives. He said individual cities would make a presentation concerning the status of their CRA plans, a historical review of accomplishments, a historical overview of the CRA revenues, the strategic uses of CRA resources, a summary of what had worked and what had not worked, proposed future changes to CRA plans, and projected tax increments for 2008-2009. He said Daytona Beach, Daytona Beach Shores, DeLand, Holly Hill, New Smyrna Beach, Ormond Beach, Port Orange and South Daytona would be there. Mr. Gummey said apparently there would be two meetings, one for Daytona Beach and the other for the rest.

Vice Chair Dennis responded to questions concerning the expansion of the CRA.

Chair DeBorde said one of her concerns was that the CRA had never given an affirmative vote on the project and it was not in their plan. She said the only affirmative vote had been to lend the City \$395,000. She said it was (inaudible) since 2006 but anytime it was mentioned at any of the CRA meetings no action was taken. She said on March 31 there was a \$550,000 transfer from CRA funds for purchase of the south parcel because another grant had not come in but they were unaware of that. She said they found that out after the fact and she had expressed her concern before at a public meeting. She said on July 31 when they were doing budgets the paperwork showed \$550,000 budgeted for the Esther Street property and they did take action on that item. She said this was the first formal request they had received for total funding.

She felt that if they were to vote yes, the CRA would be violating the public trust. She said there were other issues of concern such as the property cost, the fact that it was an irregularly configured parcel of approximately two acres, and that the road going onto Esther Street was 15' wide with private property owners on each side. She recommended that the funding be denied.

Mr. Hall said it was unclear as to how the Commission wished to proceed. Commissioner Hathaway said he felt the County was setting up the City and had suggested to the City Manager that the City could take that money out of the CRA funds and spend it on Esther Street because they put so much County money into CRA funding. He said the monies would come out of the General Fund to reimburse the CRA reserve fund and he would hate to see another \$2.6 or \$2.7 million come out of the Reserve Fund this year. He said the stormwater problems could be contained on the south parcel.

Vice Mayor Richenberg said more discussion was needed before a decision was made. Mayor Mackay said all that was suggested was that a motion be placed on the table for discussion. Commissioner Plaskett said she did not feel any motion should be made yet. She said the project needed to move forward and the monies were necessary to do that. She said the City could apply for other grants to reimburse the CRA if needed.

Board Member Kosmas said the CRA and Mr. Hall attended a recent joint conference and part of the conference centered on the audit done by the state on the Daytona Beach CRA. He said they all had differences of opinion on how money could be applied but they all had a specific understanding that the CRA was only authorized to expend funds that were designated specifically in their plan. He said they had not even considered this as part of their plan and would be prohibited by law from funding it that day.

Mr. Hall said at the last CRA meeting there was discussion to the effect that the plan needed to be amended. He said the current plan had not been updated for ten years. He said he agreed with Board Member Kosmas that regardless of the merits of the project, it was not in the CRA budget or plan and part of the audit findings were that if a project was not in the plan, an audit would be triggered. He said he had not seen a signed contract and they might want to continue the matter until they found out whether the City was being set up.

Mayor Mackay asked Mr. Gummey if it was his understanding that they could take a vote and he said that was his understanding. Mr. Hall said that was his understanding.

Vice Chair Dennis said people often did not understand that the CRA was not a typical City department but were governed by state statutes and had to function in a very specific manner. Mr. Gummey said the CRA area master plan of December 1995 included a plan for capital construction projects and ongoing management programs and the focus was encouraging new development and construction opportunities, private individuals and companies. The master plan programs were focused on improving businesses and so forth. Capital construction projects were listed in order of priority.

He said the CRA should help implement the stormwater management plan that the City adopted for the CRA area. He said the stormwater master plan, Volume I, prepared by ECT in September 2004 provided for a project as shown on the map which was referred to as the North Atlantic Avenue Drainage Pump and Pond. He said it appeared that the line ran from south of Normandy down to Florida Avenue and showed a pond slightly south of Esther Street on Atlantic Avenue and fairly close to the area of this land acquisition. It was also listed in a schedule of costs of projects. He said the stormwater plan that it referenced was adopted in 2004. Chair DeBorde said the stormwater plan was adopted ten years after the CRA plan was adopted and Mr. Gummey said it was nine years. Discussion followed.

Board Member Kosmas said that was enabling-type language and those were not specific itemized plans as he understood the state audit to require of the CRA. He also said notwithstanding the prohibition against the CRA funding the project, they were also prohibited from funding any projects that would otherwise be funded by the municipality. He questioned whether the CRA could fund it at all.

Board Member Williams said they learned during the audit that the CRA could not spend funds on a project that was traditionally funded by another agency and part of this project was off-beach parking, which was in the master plan of the Beach Services Department. Mr. Gummey said he was not aware of any scheduled funding of the project by the County Beach Services Department. Staff responded to Commission questions and discussion followed.

Greg Chelius, State Director, Trust for Public Lands, said he could not make any recommendations on how the Commission should proceed. He said a tremendous amount of money and time had been expended on the project and he hoped they could see their way through to funding it and seeking grants to help in development, and working with the County for additional funding. He said an answer was needed that day and there was no question of another extension. He and City staff responded to Commission questions and discussion followed.

Adele Aletti, Gone Bonkers, Flagler Avenue, asked if there was any legal maneuver by which the City could get funding from the County. Mr. Gummey said he knew of no way the City could compel the expenditure but the City did lease 27<sup>th</sup> Avenue to the County and the County improved it. She said she was in favor of the project but understood the CRA's position.

Jim Smith, 413 Florida Avenue, said the issue was a case of reallocating CRA priorities. He said FIND should be tapped for some funding.

Gordon Smith, 210 North Atlantic Avenue, spoke in favor of the purchase.

Frank Marshall, 109 Esther Street, said in 2004 he had indicated to the CRA that he had an idea of how the City could do stormwater management, have a park and ultimately do the streetscape between Flagler Avenue and Esther Street.

He had met with Mrs. Lewis and Mr. Roberts and came up with a concept plan and Mark Rakowski wrote an application for an FCT grant. He said it went to Tallahassee the following year, got excellent points and was very close to being funding several years ago. He suggested borrowing the money and then going to the County Council. He said it was very difficult but it might be possible to hold all the stormwater on the south side. He described grant funding available for the project. He responded to Commission questions.

Mr. Hagood said he had talked to Delbert Harvey of Florida Communities Trust and asked Mr. Harvey if the City would still be eligible for reimbursement for a portion of the acquisition cost if they only acquired the south parcel. He said Mr. Harvey said there was no guarantee, but it was stated a year ago when application was made that if the City could meet all the program elements on the south parcel that were used in the scoring process for the grant, it would go into a review process and Mr. Harvey believed that the City would be eligible for reimbursement of about \$900,000. Dr. Marshall said he did the concept plan and the City would not be able to meet the program requirements on the south side. Mr. Hagood said they had discussed that.

Chair DeBorde said she attended the workshop Dr. Marshall referred to and the item was added onto the agenda at the last minute. She said there had been a three-minute presentation and that was all the CRA had ever seen from Dr. Marshall.

Robert Rees, 391 Granada Street, spoke in opposition to the purchase because of the need to cut spending.

Susan Young, 317 Esther Street, asked if the numbers could be reduced or if there were any backup contracts and Mr. Chelius said this was the lowest price that could be negotiated with the property owner by the Trust. He said he did not know of any other offers and the state would not approve more than the property was worth. Discussion followed.

Mr. Chelius said the City had agreed to sign a contract with FCT, who fully expected the City to purchase the property. If the Commission chose not to go forward and remove the contingencies that day, the Trust for Public Lands would no longer be under contract with the seller. He said the City would then be essentially hoping that the property might be there sometime down the line, or the seller could decide not to sell the property to the City and then the FCT money would go away. He said TPL believed that if a decision were not made that day, there would not be another opportunity.

Chair DeBorde asked Mr. Chelius if the money would still be there if the City came back to TPL at a later date and said they had found the money or renegotiated. Mr. Chelius said that was a question for the City Attorney with regard to the FCT grant.

Mr. Gummey said the grant was from FCT, which was an agency of the state, for \$2.8 million and he believed the grant would remain in place for a certain period of time if either the City or TPL were able to enter into an agreement with North Beach Developers to purchase the property. He said at midnight there would be no enforceable contract for purchase and it would be in the owner's hands as to whether he wished to negotiate a new contract.

Board Member Kosmas said he felt the CRA was being pressured and did not have time to review it. He said their concern was whether they were authorized to expend the amount of money requested. He said he felt the property owner could be approached for another extension to give the CRA the opportunity to review it.

Diane (inaudible), 201 North Peninsula Avenue, urged that the City request funding from the CRA and said the price of the property would not go down.

Robert Rees asked how much more money the City would have to put into the infrastructure and for maintenance. Mayor Mackay said the Parks and Recreation Department had been asked to provide a rough estimate on how much it would cost to maintain the park and that was in excess of \$70,000 per year. Mr. Hagood said they indicated that for both parcels, for the total scope of the conceptual plan, maintenance would be approximately \$75,000.

Board Member Lybrand said consideration should be given to the fact that people expected to pay for parking all over Florida and the City could use that as a way to carry costs on some of the projects.

Alice Hampton said she owned a home at the corner of Lincoln and Atlantic and consistently fought flooding. She spoke in favor of the purchase.

Dan (inaudible), 1608 Beacon Street, spoke in favor of the purchase.

Commissioner Hathaway noted the costs for extension that were paid to the property owner. Mr. Hagood said the City had paid \$75,000 to extend the contract for several months and that was nonrefundable.

Sheila Smith, 406 Esther Street; Nicole Carney, Vice President, Flagler Merchants' Association; and Marie Bushey, 24<sup>th</sup> Avenue, spoke in favor of the purchase.

Mr. Rakowski read sections from the CRA plan covering goals and objectives. He noted the number of projects that were not specifically listed in the plan and said the purchase was consistent with the plan. In response to questions he said the property was zoned B-4 and someone could build a nine-story, seventeen-unit condominium there with approximately \$250,000 per unit as the going rate or \$4.2 million.

Kevin Fall, CRA Project Manager, provided his interpretation of how projects were figured into a redevelopment plan. He said the CRA's concern was that the project had not gone through the traditional budget process. Discussion followed.

Commissioner Grasty asked Mr. Gummey for his legal opinion on using the CRA money to purchase the property. Mr. Gummey said there were two issues. One was the legal use of CRA money and there was no doubt that it was a valid public expenditure. He said the question was whether the CRA had procedurally properly authorized its expenditure (inaudible) the City. He said there were indications in the plan that showed that they had ranked it in their project list but whether that would meet the requirements of an audit conducted in subsequent years was always open to question. He provided information concerning a case involving Daytona Beach.

Board Member Kosmas said Mr. Gummey had stated that the project was in the CRA plan and each CRA member had indicated that it was not the case. He asked Mr. Gummey if he would be of the same opinion assuming that the ranking did not include it in the plan. Mr. Gummey said it would certainly take away one of the facts that would support the CRA's interpretation, but he had not heard a response to the language in the plan that said that the CRA shall help implement the stormwater management plan that the City had adopted for the CRA area. He said it would appear that stormwater was a part of the plan. Discussion followed.

Commissioner Plaskett asked how long it would take the CRA to put the project into their plan if some agreement could be reached. Mr. Hall said the CRA could hold a special meeting next week or the week after but that was their call, and at that point they could do an amendment. He said the CRA just turned in a draft budget and that would have to be amended and the project would have to be placed in the plan. He said the attorneys present were not advocating anything but were present to provide counsel. He said his opinion was that if they said yes at the present meeting there would be some exposure. Discussion followed and staff responded to questions.

Alec Baetzman provided information on the property value per square foot and noted that it was zoned B-4, Commercial, and he thought the City did not include the portion out to the mean high water line anymore. Mr. Rakowski said ownership would go out to the mean high water line so officially there would be three acres including the south parcel. Discussion followed.

Commissioner Hathaway said his concern was that if the CRA did not provide funding and the City decided to go ahead and fund it, there would be over a thirty-percent drop in the City's reserves. Discussion followed, some of which was inaudible.

Vice Chair Dennis suggested asking for the extension and continuing the meeting to give the CRA members the chance to review the matter the following week.

Mayor Mackay said she wanted written documentation to be provided to everyone. Mr. Hagood said staff presented the master plan at the last City Commission meeting and that included the estimates for costs, including \$800,000 for structures. Mayor Mackay asked if it had been provided to the CRA and he said it had not. Mayor Mackay said they needed to meet again the following week. There was a consensus to meet in two weeks since the following week would be a short week.

Rose Lopopolo, 1907 Hill Street, said perhaps an alternative might be to do some type of sharing of the cost.

Commissioner Plaskett asked Mr. Chelius if he could request a thirty-day extension from the property owner. Mr. Chelius said he would do the best he could to obtain an extension. He asked what he could give the property owner in the way of a date. Mr. Gummey said he did not think they could do that at that point because there were two items for consideration. One was to approach the County and he did not think realistically they would get a response from the County until the County engaged in the CRA process. The other was to amend the CRA plan and he felt that would take some consideration as to how to go about it and who should be involved. He did not think that either he, Mr. Hall or Mr. Rakowski were prepared to give Mr. Chelius a timeline on doing that. Mr. Hall said it could be added to the capital projects list and they would not have to amend the whole plan. He also said that the budget could be amended if the Board wanted to do that. Board Member Kosmas said the CRA could provide a decision within thirty days. Chair DeBorde said she disagreed because they were currently in the budget process and there was no way that staff could pull all the documents together since their budget was due July 1. She said they might be able to do it in forty-five to sixty days. Mr. Hagood said it would be an amendment to the current budget, not next year's budget. Chair DeBorde said it would still be difficult because of the shortage of staff. Discussion followed. Mr. Hagood said he could have some of the finance staff assist them in budget preparation.

Mayor Mackay said they were not ready to make a decision and asked Mr. Chelius to do the best mediation possible with the owner. Mr. Chelius said in that case it was best that the option be dropped at that point until there was a time that a decision would be made. He said he would rather not ask the owner for another extension that could not be met. Discussion followed. Mr. Hagood said the budget workshops for the City would be held July 30, 31 and August 1. Chair DeBorde said that would give the CRA sixty days and that would work. There was a general agreement on July 31 as the date. Vice Mayor Richenberg said he would like to consider parking fees at the oceanfront park.

#### OTHER BUSINESS

None.

ADJOURNMENT

City Commission business was concluded and Mayor Mackay adjourned the meeting at 6:10 p.m.

**MINUTES OF THE JOINT CITY COMMISSION WORKSHOP WITH THE COMMUNITY REDEVELOPMENT AGENCY HELD ON MAY 23, 2008, WERE APPROVED AT THE REGULAR CITY COMMISSION MEETING HELD ON SEPTEMBER 23, 2008.**

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**SALLY MACKAY, MAYOR**

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**JOHNNY R. BLEDSOE  
CITY CLERK**