

CITY OF DUNNELLON SPECIAL CITY COUNCIL MEETING

DATE: July 19, 2016

TIME: 11:00 a.m.

PLACE: City Hall

20750 River Dr., Dunnellon, FL34431

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Whitt called the meeting to order at approximately 11:00 a.m. and led the Council in the Pledge of Allegiance. Mayor Whitt asked if a citizen would volunteer to open with prayer. There was none. Mayor Whitt asked for a moment of silence.

ROLL CALL

The following members answered present at roll call:

Nathan Whitt, Mayor, Seat 1

Larry Winkler, Seat 2

Chuck Dillon, Councilman, Seat 3

Richard Hancock, Councilman, Seat 5

COUNCIL ABSENT

Walter Green, Vice-Mayor, Seat 4

STAFF PRESENT

Dawn Bowne, Interim City Manager/City Clerk

Jan Smith, Finance Officer

Mike McQuaig, Police Chief

Lynn Wyland, Staff Assistant

LEGAL COUNSEL

Absent

PROOF OF PUBLICATION

Mrs. Bowne announced for the record the agenda for this meeting was posted on the City's website and City Hall bulletin board on Friday, July 15, 2016.

Mayor Whitt's comments

There were none.

PUBLIC COMMENTS

There were none.

REGULAR AGENDA

AGENDA ITEM NO. 1 – BOND COUNSEL SERVICES AGREEMENT #AGR2016-34 WITH BRYANT MILLER OLIVE FOR REFINANCING OF THE BB&T LOAN

Mrs. Bowne stated Mrs. Smith has been working with Jud Freeman, the bond closing agent with Bryant Miller Olive. She explained the agreement is a contract for services and

establishes the fee. She said Mr. Freeman will draft the resolution and the remainder of documents for review at the August 3rd workshop and approval on August 8th. She stated if Council approves the resolution and bond documents, Mr. Freeman will prepare the documents necessary to close the week of August 12th.

Mrs. Smith explained Mr. Freeman's fee is \$20,000, which is stated in the contract. She stated the total issuance for this bond will be \$30,000. She said \$20,000 for bond counselor, \$5,000 City attorney review and \$5,000 for BB&T's legal department review. She stated the total cost of \$30,000 will be financed into the life of the loan.

Councilman Winkler asked which City attorney will be reviewing the loan documents.

Mrs. Smith replied Andrew Hand. She said he provided a quote for his services.

Mrs. Bowne explained he is the attorney Council has hired. She said Council agreed to retain Attorney Cassady to finalize several items and avoid the additional cost in bringing Attorney Hand up to speed.

Mrs. Smith explained due to Attorney Hand's contract not having a "fixed cost", he would charge his hourly rate, estimated at \$5,000 for the review.

Councilman Hancock said he thought BB&T would not require any legal services.

Mrs. Smith stated they require legal review of the documents prepared by the City's Bond Counsel.

Mrs. Smith explained this contract covers anything the Bond Counsel may be called upon to do. She said the City had a general service agreement in 2012. However, Attorney Hand recommended updating the contract with a fixed price and timeframe.

Councilman Hancock addressed Item #4 and said it speaks to limited assistance in the preparation of the official statement for the bonds, if they are publically offered. He said these are not publically offered.

Mrs. Smith stated they are not. She said the bank will hold them for their portfolio. She stated Item #4 isn't applicable and would only be applicable to a general obligation bond which encumbers ad valorem taxes. She said this agreement is for any kind of bonding the City would desire to enter into.

Councilman Hancock stated the bond closing firm will be paid \$20,000 upon successful completion, and if not, we pay an hourly rate for their efforts.

Mrs. Smith replied yes. She explained rolling the cost of issuance into the bond document. She said we have to maintain a certain level of revenues, establish a debt service reserve and set aside 1/12th of our annual payment into that reserve. She stated the City will not pledge

anything against the revenues without their consent. She said the bank wants to make sure they are protected.

Mrs. Bowne said Mr. Freeman offered to attend today's meeting to answer any questions Council may have regarding the agreement, but because this is a standard agreement, she didn't think it would be necessary. She stated he will be present at the next workshop for any questions Council may have in reference to the resolution funding document.

Councilman Hancock asked if there would be any issues with Mr. Freeman meeting the deadlines. Mrs. Smith replied no. She said the bank didn't anticipate the interest would change very much if we didn't meet that deadline. She said when she spoke to Mr. Freeman, he seemed very confident in meeting the closing date of August 12th.

Mrs. Bowne suggested scheduling Mr. Freeman for the Wednesday workshop.

Mrs. Bowne asked Council when making motion to consider this document, to include specific direction to staff with regard to utilizing the attorney and rolling the costs into the loan.

Mrs. Bowne stated Vice-Mayor Green was unable to attend tonight's meeting and requested she read the following email:

From: walter green [wig1950@yahoo.com]
Sent: Tuesday, July 19, 2016 8:58 AM
To: Dawn Bowne
Subject: Today' Council Meeting

Dawn,
I will be unable to attend the special council meeting scheduled for 11:00 A.M. today, July 19, 2016.
Please present my statements into the record.
I fully support the Bond Counsel Services Agreement, submitted by Bryant, Miller, Olive, dated July 13, 2016.
I am in agreement and support the proposal submitted by Ms. Jan Smith, Finance Officer, City of Dunnellon, dated July 12, 2016 addressed to Mr. David Orshan, Florida Fiber Networks, LLC. Mr Orshan's counter proposal is unexceptable.
I am available via my cell phone 352-209-7978 if you need to contact me.
Thanks,
Walter Green, Councilman
City of Dunnellon

Councilman Dillon moved the Mayor be authorized to sign Agreement #AGR2016-34 in the amount of \$20,000 with Bryant Miller Olive payable through the bond proceeds. Councilman Hancock seconded the motion and extended the motion to accept the closing costs of \$5,000 expected from BB&T, \$5,000 for City Attorney review, and accept the maximum \$30,000 total closing cost to be rolled into the life of the bond refinance.

Mrs. Smith stated because Attorney Hand provided an estimate for review, she would send him an email stating it was Council's decision to only pay up to \$5,000.

The vote was taken. The vote was 4-0.

AGENDA ITEM NO. 2 – FLORIDA FIBER RESPONSE TO CITY’S PROPOSED SETTLEMENT OF OUTSTANDING CHARGES

Council and staff engaged in lengthy discussion regarding the rent price and space. Councilman Dillon said he interpreted Florida Fiber’s response as a way to force the City into a long term lease because they want to apply all monies owed to them for future rents. He agrees with Councilman Hancock in that the City needs to pay all that is owed to Florida Fiber, and he feels this is an issue we have allowed to happen. He said first we allowed it with Florida Cable and if we enter into settlement with Florida Fiber, we are doing the same thing. He said we need to put them on notice.

Mayor Whitt stated he was taken back with their proposal. He thought there was an amicable feeling, at least when Mr. Orshan came to talk with Council.

Councilman Hancock read the following email he sent to council members and Mrs. Bowne:

I believe that the approach from the beginning is that the city should have legally declared the current operator in violation of occupying premises without a valid lease, and that they must vacate the property or execute a valid lease acceptable to the city.

From the beginning, I believe the city should have settled whatever amounts our finance director has determined the city owes the current operator, and not to include any amounts owed to the prior operator, who vacated their lease and violated their terms with the city.

From the beginning, I believe the city should have billed the current operator for whatever amounts our finance director has determined is owed by the current operator.

whatever funds are needed from the city to effect these measures should come from reserves if necessary, rather than any "horse-trading" and trade-offs of any balances owed by the parties.

This is another failure on the part of the previous city manager who failed to take charge of this situation, and must be resolved according to good business practices.

Therefore:

I think the city should be start eviction processes due to no existing lease with the current operator, and that the previous lease could not be assigned. If I'm not mistaken, this was the "process" that the previous city mgr. was to be reviewing or undertaking.

in addition, with our lack of success from our legal advisors, council should be prepared to pay whatever the city finance director has identified as outstanding balance owed by the city to the current operator (but not prior operator) from reserves, and proceed to seek legal remedy for funds the city finance director has identified as outstanding balances owed to the city by the current operator.

No further attempts should be made to deal with the current operator except to notify them of the city's disappointment in their response, and that the remedies outlined above will be pursued.

Councilman Hancock stated the City should pay for services used and settle it in "good faith", then go after whatever we think FFN owes the City.

Councilman Dillon suggested the Council direct Attorney Hand to proceed with either eviction or notice to vacate.

Councilman Hancock suggested the Interim City Manager and Finance Director make a final determination of what FFN owes the City and have legal counsel prepare an invoice with a cover letter from the attorney.

Mrs. Smith said she would confirm what the City owes FFN, using the date of September 1, 2015, the date Florida Fiber Networks bought Florida Cable.

Council and staff engaged in lengthy discussion regarding the amounts due by both parties.

Councilman Hancock reiterated the City should pay whatever is owed to FFN because it is their legal obligation, and if FFN walks away and never pays, then they are a bad debt.

Mrs. Smith discussed reserves and stated the public safety building fund has approximately \$13,400 in emergency reserves and approximately \$2,000 in the capital replacement reserve due to the sale of surplus property.

Councilman Hancock said he would be fine with taking what is owed from reserves, and asked Mr. Smith if the City should be searching for a new internet service provider.

Mr. Smith explained the City has Comcast as a backup, but it's not an "ideal" vendor due to their internet speed being 1/5th of what the City is receiving through FFN.

Councilman Hancock suggested the following two (2) motions:

Direct the Finance Director and the Interim City Manager to prepare a final calculation of what the City owes FFN for the services we have used, and settled with the operator.

Direct the Finance Director and the Interim City Manager to prepare a final determination of what the operator owes the City, invoice the operator, and have the City's legal counsel pursue eviction in the necessary manner.

Councilman Hancock recommended the City Attorney send the bill and a cover letter to FFN, demanding payment and vacancy of the building.

Council and staff engaged in brief discussion regarding their distrust of FFN.

Mrs. Bowne stated she reached out to FFN as a courtesy to let them know Council would be discussing this issue and did not hear back from them.

Councilman Dillon stated the City has shown, we accept the financial obligations owed as with UAB, BB&T and now FFN.

Mr. Smith asked if they pay what is owed, would Council still proceed with the eviction.

Council and staff engaged in brief discussion and determined it would not make a difference.

Councilman Dillon stated he is not willing to enter into a long-term lease with FFN.

Councilman Hancock stated the City would prefer to offer a one or two year lease until the City decides the desired use of the building.

Mr. Smith stated his concerns if the City evicts FFN regarding the impact to businesses and residents who have their service. He said from an economic standpoint, attracting business should be considered.

Councilman Hancock stated he not opposed to allowing them time to relocate.

Mrs. Bowne stated the City Attorney may be able to advise the Council regarding legal requirements under FCC we may have to comply with.

Councilman Hancock moved to direct the Interim City Manager and the Finance Director confirm the amount the City of Dunnellon owes the operator for services used and process the payment. Councilman Dillon seconded.

There was no further discussion.

The vote was taken and all were in favor. The vote was 4-0.

Councilman Hancock moved to have the City Attorney be involved with final billing to the operator from the City of Dunnellon based on information derived from the Finance Director and Interim City Manager; and, bill operator with a cover letter outlining the payment due; and; advise operator to make arrangements to vacate the building. Councilman Dillon seconded.

Mayor Whitt asked if Council would like to place a time-line on this. Councilman Hancock stated he would defer to the attorney.

Council and staff engaged in brief discussion and agreed to abide with no further contact or communication with FFN. The motion was modified to request the City Attorney include a statement in the letter directing FFN to contact him for future communications.

The vote was taken and all were in favor. The vote was 4-0.

Mrs. Bowne read the following from Vice-Mayor Green's email dated Tuesday, July 19, 2016: *"I am in agreement and support the proposal submitted by Mrs. Jan Smith, Finance Officer, City of Dunnellon dated July 12, 2016 addressed to Mr. David Orshan, Florida Fiber Networks, LLC. Mr. Orshan's counter proposal is unacceptable."*

Council Comments

Mayor Whitt reported on the Withlacoochee Basin and Economic Development Compact and the BMAP Plan.

Councilman Hancock reported on UAB meeting, budgets and the County acquiring the utility systems.

Council and staff engaged in brief discussion regarding Marion County Utility.

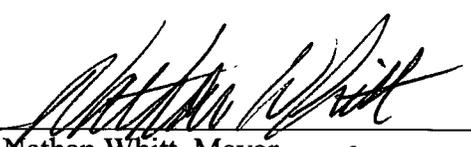
Mrs. Bowne discussed adopting of the CRA amendment by ordinance rather than by resolution. She stated a special council meeting will be scheduled prior to the August 3rd workshop for the first reading, and the final adoption will be during the August 8th special council meeting.

Council and staff engaged in discussion regarding the budget. Mrs. Smith stated she will provide a schedule for the budget workshops. She said the first workshop will be held on Tuesday, August 2, 2016 for the general fund. A budget workshop for utilities will be held on August 10, 2016.

AGENDA ITEM NO. 3 – ADJOURN

At approximately 12:24 p.m. Councilman Dillon moved the July 19, 2016 Special City Council meeting be adjourned. Councilman Hancock seconded. All members voted in favor. The motion passed 4-0.

Attest: 
Dawn Bowne, MMC
City Clerk 9-12-16


Nathan Whitt, Mayor 9-12-16