

CITY COUNCIL OF VENICE, FLORIDA

Private Attorney-Client Session

Venice City Hall

BEFORE: CITY OF VENICE COMMISSIONERS  
DEAN CALAMARAS, Mayor  
BURTON C. BROWN, Councilperson  
DAVID FARLEY, Councilperson  
RICK TACY, Councilperson  
VIRGINIA C. WARREN, Councilperson  
JOHN MOORE, Councilperson  
JAMES J. MYERS, Councilperson

GEORGE HUNT, City Manager

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Commencing at 5:15 p.m.

Roberts Reporting, Inc.

MR. ANDERSON: We're here this afternoon again in a Shade Meeting to discuss the ongoing FAA administrative proceeding. If you'll remember all the rules, everything is being taken down in a verbatim transcript. At the time that this matter is concluded this transcript will become a public record. I just caution you there because sometimes you'll want to be careful as to what you say because it will become a public record at some point in time. I believe the purpose of this was for me to give you an update as to what has transpired in the last two weeks and then for you to have any discussion with me or give me further direction.

I'll just take you through what we've accomplished in the last two weeks. We have engaged Thomas R. Devine of the Foley Lardner firm as co-counsel, and he was successful in obtaining an additional extension of time within which the City can file a response to the Notice of Investigation. That was an additional 30 days so our response is now due the end of February.

I also started to assemble and accumulate all of the documents that I will need to review and that I will then have to forward to Mr. Devine for his review in the formulation of an appropriate response. I sent out a series of memos to various constitutional

officers and department heads, but the things that we're looking for, we needed to go to the report on audit of airport revenue accountability that was prepared by the Office of the Inspector General in 1993 because a lot of the problems flow from that audit report. Then I asked for all correspondence either sent or received by the City concerning that report. I've gotten most of those documents and have worked my way through it.

We also then asked for every early draft of the ultimate September 28th, 1990 lease between the City of Venice and the Venice Golf Association. And then all correspondence either sent or received concerning the negotiations that resulted in that lease. Again, we wanted to see -- I know for a fact that we were into five or six various drafts, agreements were combined, there were ongoing negotiations, and I just need to become more familiar with how we wound up with the ultimate September '99 lease.

I've also requested each and every lease agreement between the City and the Venice Golf Association identified in the Notice of Investigation. You'll recall when you read the Notice of Investigation they went into a very detailed analysis of all of the lease agreements since the 1950s and how we got to this

current point. So I wanted to verify that their information was correct and get a feel for how it is that we became involved with the current lease and the one that I negotiated in 1988. And then I asked for all other agreements, contracts or lease agreements between the City and the Venice Golf Association, Inc. You'll remember that we used to have independent, affluent disposal agreements and some other things and I just wanted to make sure I understood all of the contractual obligations that flow between the City and the association.

We've also spent a fair amount of time -- Tom Devine has been in contact with the various FAA officials to try to feel out and get a better understanding of where they're coming from. And then Mr. Devine and I both have been doing legal research on basically two issues. Well, I take that back, three. Two issues raised by the FAA, and then the third issue raised by the VGA.

The first issue raised by FAA is in one of their conclusions where they believe that the City has failed to maintain a self-sustaining rate structure, which is then a violation of a grant assurance and thereby federal law. The notion here is, at least in our discussions with the FAA to date, they believe we left

money on the table, that we could have obtained a higher rental amount from the VGA, but we just chose not to. Their reliance there is something that we've talked about in the past, the 1988 lease had a provision in there that said after 10 years, which was the initial term, the VGA could exercise its next 5-year option to renew at which time the rent would become 12 percent of the fair market value of the leasehold premises which would be land and vertical improvements. That's how we came up with this \$276,000 a year as potential rental income. Well, the FAA has done their own analysis of those lease documents and has arrived at that conclusion, that we had the ability to leave the existing lease in place, the VGA did as a backup exercise their first 5-year option which then triggered the new rental amount at 276,000 a year. We chose not to, to renegotiate a new lease that became the September 1999 lease, and the rental amount is only \$160,000 a year. They believe by leaving money on the table we violated our requirement to be as self-sustaining as possible. So Mr. Devine and I are researching that, other decisions that FAA has made on that issue, whatever we can glean.

The second issue that we've been researching is they have alleged that we have diverted revenue in

violation of another grant assurance in federal law. This notion of revenue diversion is based upon their belief that we came off the \$276,000 or what would have been fair market value for the rental amount by them taking over the irrigation obligation. The FAA's contention is that by reducing rent due on airport property in exchange for recreational golfing facilities and the avoidance of wastewater treatment costs that that constitutes revenue diversion. We're looking into that.

Now the third issue has been raised by the VGA almost throughout the discussions that they've had and that the City's been participating in with the FAA, and that's that Public Law 5190, which is this notion that the FAA's own internal guidelines say that you do not include vertical improvements paid for and constructed by the tenant in the determination of fair rental value for the leasehold. We're looking to see how much play we can get from that. Nobody disagrees, neither the VGA, the City of Venice, or the FAA that 5190 has some play in this equation. The VGA would have you believe that that's a slam dunk defense. The FAA says, no, that might explain some things, but it certainly doesn't take away the notion of failure to be self-sustaining and revenue diversion. So we're

examining that to see what, if anything, 5190 affords the City of Venice and the VGA as a defense.

Just yesterday I overnighted a large stack of documents to Tom Devine. I talked to him this morning. When he gets those documents, which I have gone through line by line, page by page, and then I labeled them, he'll be calling me and we'll walk through that.

Then the next thing that I anticipate doing is I would like to schedule a telephone conference call with Mr. Devine, the Mayor, George, Larry Heath, and I. That is that functioning settlement group that we talked about. I just think we all need to be on a conference call with Tom Devine to make sure that after he's reviewed the documents, after he's reviewed the NOI, after he's had some time to research the legal issues we can get into a discussion to make sure that he understands our prospective, we understand George's prospective, and then he can give the benefit of his work to date. Tom had mentioned the idea of possibly coming down here and meeting face to face. Quite frankly, I didn't think the expense was warranted and that that can be accomplished by means of a telephone conference call. At least we'll try it that way. If we think we need him face to face across the table then we'll make those arrangements, but I'm trying to do

this without spending two arms and two legs. So that's pretty much where we are today.

I'll advise you of one thing, and I don't mean to make this any -- it isn't an issue to me and I don't think anybody else should make it an issue. But after the meeting of January 14th, the next day I contacted Dan Boone. I discussed with Mr. Boone his position letter that he sent to Mr. Bennett at the FAA in response to the Notice of Investigation. And I told Dan, I said if there's anything else that he or the VGA would like to submit to me for me to consider as I'm formulating the response to the NOI, I would be glad to do so. I haven't heard from him since until Friday of last week. I got a letter, and I don't think it's in this file, but it starts out by saying something to the effect I had hoped you would have contacted me to discuss this. And I know he copied you on it (referring George Hunt).

MR. HUNT: Uh-huh.

MS. WARREN: He copied me on it.

MR. ANDERSON: Oh, okay. And I thought to myself that's kind of a peculiar letter to write when I've had that telephone conversation. So I've just written him a letter today that basically said I hope that was merely an oversight on your part, but you will recall

that on January 15th I talked to you extensively about the VGA position and inviting your assistance. Again, I'm not saying that that was done for any ulterior motive or posturing or positioning, although I'm somewhat surprised now.

I always -- if I copy someone with a letter I think you put it on the distribution list so everybody sees whose getting copies. To have on his distribution list that he provided Mr. Shrode and Mr. Hunt with a copy, and then he gives blind copies to council I think is kind of inappropriate, but that's something Dan and I will discuss.

MS. WARREN: I don't know if anyone else got it, but I got.

MR. FARLEY: I got a copy.

MR. ANDERSON: Again, in that letter he basically said that the City and VGA are in this together and that there's nothing the FAA can do regarding the validity of the '99 lease. I've disagreed with him and advised him of such. Again, I know that VGA is a player in this equation. The FAA does not want to have any face-to-face meetings until we have answered the Notice of Investigation, which I think is appropriate. Our intention is to file that response and then schedule meetings with both the FAA and the VGA to

begin exploring a resolution of this matter which will bring us back into the good graces of the FAA and resolve our ongoing dispute with the VGA.

That's really an update, but I'll questions y'all might have.

MS. WARREN: I have a question about the letter of Mr. Boone and the effect of the filing of papers to intervene, the effect for them and the effect for us.

MR. FARLEY: The only copy I got was the intervene copy.

MS. WARREN: You didn't get the letter?

MR. FARLEY: I don't remember seeing anything other than the intervene letter.

MS. WARREN: I have it if anyone's interested in looking at it.

MR. ANDERSON: The letter said that it included a copy of a Notice To Intervene.

MS. WARREN: Right.

MR. ANDERSON: Mine didn't have the Notice To Intervene so my letter back to him said that was an oversight, please send me your Notice To Intervene. What they're trying to do is you can intervene into pending litigation or a pending administrative proceeding if you can convince the appropriate individual that you have an interest that needs to be answer any

heard for full resolution of the dispute, and I believe what they've decided to do is attempt to intervene in this administrative proceeding. I have read the federal regulations as to intervention in a Part 16 investigation, and I'm not so sure that they're going to let them intervene at this point in time. But I'm telling you that I will allow the VGA and Dan Boone to have input into this dispute to the extent that I think it's appropriate. Excuse me, to the extent that the settlement committee feels it's appropriate. That won't be a unilateral decision on my part. We'll discuss it.

Virginia, did that answer it?

MS. WARREN: One of my thoughts as you were talking about this is do we have the ability to not have them intervene? I don't know if there's motions done in this sort of thing or not, but do we have the ability to say we don't want them to intervene? Because I think I hear what you're saying is there may be some reason I don't want them to intervene.

MR. ANDERSON: I will provide you with a copy of my letter in response to Mr. Boone's. For those of you who didn't receive this, this is how it starts out. And it's dated February 6th. Dear Bob, I was hoping you would contact me in the FAA/City of Venice/VGA

matter due to the Notice of Investigation having been received from the FAA.

Folks, I made that contact on January 15th. And, in fact, I even went back through my time slips to see when exactly it occurred so when I responded to Dan I could do so. Y'all have paid me for that conversation already. Then he goes on to say, the City of Venice and the VGA have a long-term binding agreement, which, as you know, cannot be altered, set aside, cancelled or voided by the FAA.

I just responded, Dan, that I disagreed. Because I believe -- and folks, I'm not predisposed to any outcome. I'm just telling you if, as a result of this administrative proceeding, there is a determination and a finding that as a result of this lease the City is in noncompliance, I believe that finding of noncompliance would give the City an opportunity to cancel the offending lease. Because there's a provision in the lease that says landlord and tenant will abide by all rules, regulations, laws, et cetera. So I just advised Dan that I disagreed with that and I thought that a finding of noncompliance could have a cancellation effect.

Then he goes on to say the City and the VGA are in this together and I am confident that this matter can

be resolved. I just told him that I thought, yes, some of the issues are common, and as to those common issues I look forward to working with him, but other issues are exclusive as to the City. For instance, how this effects discretionary funding from the FAA and FDOT. VGA doesn't suffer any consequences from an adverse decision as to that, the City does. So as to at least those issues I don't think we're locked in step with the VGA.

MS. WARREN: But what you're saying, I believe, to answer my question is we do have the ability to not want them to intervene should we choose to do that, that is an option. And you're not able to tell me at this time why we might choose to do that?

MR. ANDERSON: We could oppose their Motion To Intervene. I haven't thought that through. But quite frankly, it's kind of a two-edged sword. I like as many people on my side of the table as possible to win the argument as long as the people on my side of the table have the same goal.

MS. WARREN: I hear you.

MR. ANDERSON: I'm sure all of you read Dan Boone's response to the FAA Notice of Investigation. It was inflammatory in areas, it said that he's even paying more rent than he should, and that the City owes

him back money. Those kind of things I don't know are in the City's best interest, and therefore I'm not so sure I want him sitting on my side of the table.

Again, folks, this isn't a Bob Anderson-Dan Boone. My client is the City of Venice. I am going to do everything that I believe is in the City's best interest to advance the City's legal position and make sure that the determination is appropriate for the City of Venice. If that has a benefit to the VGA, so be it. If it doesn't have a benefit to the VGA, I don't represent them, they don't pay me to represent their interests, and therefore that's just not a consequence as far as I'm concerned. So to the extent that we can lock arms and do battle together, fine, but I just don't think that our interests at this time are as closely aligned as Dan Boone would have you believe.

MR. FARLEY: Is there anything that we can do with Dan that puts the VGA on the nickel that benefits us in this process?

MR. ANDERSON: VGA is on the nickel. I've been told unofficially by the accountant who does some of that work that there's a considerable amount of money being paid for legal fees and they're doing what they can to buttress their argument that the FAA doesn't have much of a role in determining the validity of the

current lease. But again, I thought it was perfect - I think George hit it right on the head when he was talking about something else. We need to be cognizant that we can't just win the battle because we'll lose the war. We need to make sure that we have a resolution of this dispute that brings us back into the good graces of the FAA. If we have to eat a little crow to do it, we eat a little crow to do it.

I've gotten an accounting from Larry Heath that he shared, I know, with George, that says over the next five years we're looking at approximately \$12.4 million worth of federal and FDOT funding for airport improvements. I can't imagine that you people are going to put that at risk so that we can walk arm in arm with the Boone's and VGA. If you are, then you need to direct me. But I'm assuming that you aren't, and therefore we just need to get this resolved in such a manner that all three parties can get on with things and we can get airport improvements back to funding from both the feds and the state.

MR. FARLEY: A couple of questions on the '93 audit. One of those things on the '93 audit was diversion of revenue or they were accusing us, I guess, of diversion of revenue back then the same as they accused LAX of that \$10 million pick off that they got.

Did we do anything to respond to any of those diversion of revenues or any of the items -- I don't know how many items was in that audit report back from '93. How many of those things have we cured or not cured or not addressed?

MR. ANDERSON: I'm going through those documents. I was not involved in any response to the '93 OIG Audit Report, but I can tell you from what I've read George handled that and did a very nice job.

MR. HUNT: There's two outstanding. There's the golf course, which wasn't an issue at the '93 audit, and became an issue only when this opened up in '98. And the Senior Friendship Center. What we did on the Senior Friendship Center, Jack Reynolds' recommendation was they pay \$65,000 a year in land rent. We took an alternate proposal to Charlie Blair that since Governor Chiles and Senator Graham and the entire County Commission and everyone else had been at the ribbon cutting and assured the brothers that the land was free that we not charge them anything. The compromise agreement was \$3,000 to come out of the general fund of the City of Venice budget and go into the airport fund each year for rent for the Senior Friendship Center, and that's what Mr. Blair agreed to.

Now we have not made that transfer. That's eight years, that's \$24,000 we owe the airport. But because we had

gotten the airport up into the black so much where we're one and a half million dollars now in black, I didn't see the necessity of transferring \$3,000 a year for the Senior Friendship Center. All other parcels were brought into compliance that we were out of compliance with by one way or another.

MR. FARLEY: Does that seem to be a stick in the eye to them?

MR. HUNT: The Senior Friendship Center?

MR. FARLEY: Yeah.

MR. HUNT: No.

MR. FARLEY: So in essence we cured everything, but we've got other things that jumped up on the list after the audit report in '93?

MR. HUNT: We cured everything. In fact, Larry has a letter saying that the audit is cured and that we are in compliance.

MR. FARLEY: But we didn't get off the list? We're still on the S list?

MR. HUNT: When golf course negotiations opened up, individual people wrote letters to the FAA that caused them to investigate that particular lease. As of the '93 audit that lease was okay.

MAYOR CALAMARAS: Are you finished, David, with

your questioning?

MR. FARLEY: Yes.

MAYOR CALAMARAS: Let John ask his.

MR. MOORE: First of all, I want to ratify what Bob just said when he was speaking to us about the fact that he needs to be clear in his position to represent the City of Venice and this Council in this proceeding and not to worry too much about the VGA and their attorneys. Whether or not we should oppose or accept their Motion To Intervene, I don't think legal counsel is in a position to answer that question right now. I think they're going to need to look at that in the future and see whether it might be advantageous to us or not. But I'd just forget about it right now and let them do what they're going to do.

I'd like to make a few comments, though, about settlement because ratifying what you've said, we have got to settle this matter. We have got to reestablish a healthy, working relationship with the FAA or we're never going to get a park at the sewage treatment plant or so on and so forth, and we're missing out on millions and millions of dollars in FAA grants. They have just put the plug in the stopper and we're not getting a nickel.

On my own since our last meeting on the 17th I've

met with some people that I thought might be helpful to me. One is a gentleman named Kelly Rubino, President of MEA Group, an airport consulting firm in Sarasota that may be known to some of you. He just helped me educate myself a little bit about general aviation airports. I also met with this gentleman, Dr. Bart Bartanowicz, the retired FAA Regional Director from the New England region, and a retired Air Force Colonel. He spent 20 years with the FAA and got to senior government status.

He has offered -- and I met with him for this purpose. He has offered to meet with the settlement committee to let you pick his brain, to give you whatever advice he thinks might be helpful in order to give you the benefit of his thinking about what the FAA might be interested in or what they'd be receptive to in the way of a settlement and so on and so forth. He knows personally Mr. Bennett, the gentleman who wrote the Bill of Investigation. He knows him to be a reasonable person. I think Mr. Bartanowicz would be very helpful. Here's his resume. I think that the settlement committee in one of its first acts in meeting with counsel is possibly to talk to this gentleman.

I might also tell you that he's going to meet with

Dan and Jeff Boone on Friday. I have talked to Dan and Jeff Boone about this problem. I've done mostly listening, to be honest with you. I haven't talked to them too much. I've mostly listened. You usually listen to them. I've tried to assess their position. And I do think that while they certainly have a client to represent, I do think that they are going to be receptive to participating in a settlement. So I think if the settlement committee can come up with some terms and go to them I think those negotiations could be productive, and I urge the committee to do that.

Mr. Hunt had come up with a lot of suggestions, and I'm not going to discuss those. I'll let him discuss them if he wishes. Mr. Myers came up circulated a memo about Katherine Harris and I want to reinforce what we said before. While I don't see any problem, maybe if Katherine Harris picked up the phone and called Mariam Blakey (phonetic), who is the administrator at the FAA, and said we have this problem down in Venice and I would like to have the Venice people come up and meet with your Assistant Administrator for Airports, who is Woodie Woodard, and can you set that up. If that's what she does, that's fine. But I agree with Mr. Myers completely, that we don't want to tackle this by coming up with a pure

political solution now. All we're going to do is tick off the FAA and we're going to hurt ourself down the road. I agree with that 100 percent.

Somebody mentioned that this airport might be buyable or sellable. If there's anybody out there, St. Joe or anybody with enough money who wants to buy it, I think they better come forward now -

MR. FARLEY: Stan Thomas.

MR. MOORE: -- before we start spending money on it.

MR. FARLEY: Stan Thomas, who has purchased the Taylor Ranch, has shown interest and sent his man Bruce Williams down to look at it again, talk about it. He's the one who talked about it before. He has offered to relocate the thing, but he has also offered that he will send his jet to this committee to go -- he'll fly them up there. He don't want to be involved other than it's available. He thinks it's a great opportunity for us to cure a lot of things with FAA. FAA told George and I that if we came up with a buyer to relocate that they certainly would look at it

MR. MOORE: According to Bart Bartanowicz you don't necessarily have to relocate it. The criteria would probably be that it would be sold for fair market value. So the price is going to be high.

MS. WARREN: If it stays in the same location, perhaps.

MR. FARLEY: But his total interest is -

MR. MOORE: In relocating.

MR. FARLEY: in relocating. His interest in relocating is that -- well, he may have other interests and somebody needs to talk to him other than me. But his interest in relocating is that if he spends \$80 million to build a new airport, he says that it's not that high a figure to build a new airport down on Taylor Ranch, and works out some kind of agreement with us for a swap, then he gets that property for some kind of development or something. Somebody needs to deal with them who better understands how it could happen. I'm just the guy that said, hey, if it can happen, make it happen.

MR. MOORE: Just think fair market value whether it's a relocation of the airport or a buyout. The FAA is probably open to either.

MAYOR CALAMARAS: Jim, you've been trying to get in.

MR. MYERS: If I understand this situation correctly with the FAA and general aviation facilities, and specifically the Venice Airport, the FAA theoretically at least, not so theoretical after all,

they would, as a perfect situation, they would like to see the leaseholders, the tenants, if you will, pay enough money into the airport fund where the City would not have to get any money at all from federal funds to maintain the airport. I said theoretically. That would be their ultimate goal; is that correct?

MR. HUNT: Uh-huh.

MR. MYERS: I know I'm talking theoretical because we could never reach that goal because it would cost millions and millions of dollars a year to maintain it obviously. But what my point is, if you relocated the airport out to the Taylor Ranch or wherever, you still have that obligation of trying to generate the funds which will limit the amount of money that the federal government, state government has to pay into the maintenance of that airport; is that correct? Or am I off base?

MR. FARLEY: If they build a new one, that's correct. If they build a new one then you wouldn't be needing \$12.5 million next year from the federal government.

MR. HUNT: But you would need operating expenses, and that's what the land leases nominally pay is operating expenses.

MR. FARLEY: That's what they're willing to talk

about. I'm just saying that somebody needs to get with Stan Thomas or Bruce Williams and say we're ready to talk.

MAYOR CALAMARAS: I don't know how feasible that is because he's got to recoup that \$80 million it's going to cost to move the airport so what kind of development are we talking on the south end of the island? It would almost have to be really intense housing of some sort.

MS. WARREN: That's how I see it.

MAYOR CALAMARAS: But I don't know. I have no idea what he's got in mind. We probably should talk to him to see if that's feasible.

MR. FARLEY: I'll just tell him to send some kind of proposal to George or to you (indicating to Mayor Calamaras). That's why I said at the last meeting if I came in here with Bill Gates and said I've got Bill Gates -- I don't have Bill Gates, but I've got his cousin. Anybody that owns the fastest private jet in the world, you know, has got to have some money somewhere.

MR. MOORE: I don't think it's outside the realm of possibility if somebody has the money and the desire. I'm just saying as crazy as it sounds if that's a possibility I think they need to start moving

on it. I'm not going to tell them how to do it. The FAA is going to have to make that decision.

MR. FARLEY: I'll have him jump in then.

MAYOR CALAMARAS: I'd like to hear the proposal. Getting back to the issue at hand, though, is where do we go now. George, do we have any proposals or anything that we can do in the meantime while we're doing all this?

MR. HUNT: I've got a couple of ideas, but I need Bob to finish his legal research and tell us where we stand in terms of it. There's a couple alternatives. We can request that the VGA raise their rates to pay additional money into the rent. I had it worked out with Congressman Miller's office that the FAA would accept approximately \$216,000 a year. We can do something with the irrigation system. We can take back the operation of the irrigation system. That seems to be the whole sticking point is I can't convince anybody of the value of the irrigation system and its annual operating maintenance, and I never could up there. The fact is you can't run a golf course without an irrigation system, but they believe it was an obligation of utilities because that's what they were brought up to believe. So we can always take back part of that and demand more rent. I'm sure VGA would give

us the whole \$276,000 if we took the debt service and the annual maintenance on the irrigation system back. We'd lose money out of the deal, but the airport would gain money.

MS. WARREN: The utility people.

MR. HUNT: It would fall upon the utility rate payer.

MAYOR CALAMARAS: Burt had a question. He hasn't had a chance yet.

MR. BROWN: Yeah. I think that 12 percent -- I'm not used to leases of this -- I am commercial leases. Twelve percent for the valuation seems excessive.

MR. ANDERSON: I did a good job, didn't I?

MR. BROWN: Yeah.

MR. ANDERSON: In all seriousness, folks, we've got to put that into context. In 1988 I had initiated an eviction proceeding because the golf course had allowed the golf course to deteriorate to such a degree. They came to me and we struck a settlement. In the settlement we made them do a list of improvements during the first 10 years of the new lease. As part of the settlement we did a new lease with them. That's the 1988 lease.

In order for them to have the money available to do the necessary improvements we made the rent for the

first 10 years artificially low, well below fair rental value, with the understanding, though, that at the end of the 10 years as soon as they exercised the next option to renew, it would jump up to 12 percent of the fair market value of the leasehold. Now was that a little on the high end, yes, but it was like the current rate plus a little more to make up for the rent we didn't receive in the first 10 years. That was agreed to by the VGA. Very explicit in the 1988 lease that that's what would happen.

That's what motivated the VGA to come in the City of Venice in the late '90s to say can't live with that rent provision on the option to renew, you got to give us some relief. That's what got the negotiations going and ultimately led to the '99 lease. The FAA perceives that as we left money on the table because, in fact, they did exercise the option as a fallback position and we didn't charge them the contract rate, we reduced it. That's where they say we aren't meeting the grant assurance which says we will make the airport as self-sufficient as possible, self-sustaining.

MR. HUNT: Because they don't recognize any value in the irrigation system.

MR. ANDERSON: Well, even now -- they took that irrigation system. Our people did computations as to

what it would cost us to maintain and those numbers bounce around in approximately \$35,000 a year. That's from our people saying the City's expense in maintaining that irrigation system is approximately \$35,000 a year. Now we can argue a little more or a little less, but about \$35,000.

The FAA is saying, all right, even if we give you that to you, and they aren't conceding that at all, but even if they give us \$35,000, then they say you settled for \$160,000, you moved a \$35,000-a-year obligation so that means a total bottom line of \$195,000. But you had contractual ability to receive \$276,000, why did you leave that money on the table. If we could show them that the '99 lease generates either through swapping obligations or anything else something closer to the \$276,000, we might not be in this dispute. But they see every dollar short of the \$276,000, which was the contractual rent, as being money we left on the table which violates our grant assurance for self-sustaining.

MS. WARREN: Your number of \$35,000 that you're talking about there, Bob, is to run the irrigation, the old irrigation system?

MR. ANDERSON: Correct.

MS. WARREN: The old one without building a new one. So then my question would be, okay, what's it going

to cost us to build a new one and operate it?

MR. HUNT: And now we've got those costs.

MS. WARREN: Do we know what they are?

MR. HUNT: The cost of the irrigation system was \$1,227,000 of which the VGA is paying \$108,000 a year in debt service. They are right now operating in the \$35,000 to \$40,000 annualized range. They expect that to increase during the summer and they are predicting -- and this was their prediction, not mine -- that annualized costs for operation of the new system will be in the \$75,000 to \$80,000 range because these are big monsters of a natural golf course type irrigation system.

MR. ANDERSON: And the thing that you -

MS. WARREN: The final dollar is 183, I think, if I hear what you're saying?

MR. HUNT: That's basically.

MR. ANDERSON: But you have to be careful. That's not an apples-to-apples comparison.

MS. WARREN: Understood.

MR. ANDERSON: And in the 1988 litigation they made some allegations that the irrigation system out there was inappropriate for golf course irrigation.

MS. WARREN: They being?

MR. ANDERSON: VGA. As part of the settlement documents I got them to acknowledge in writing that the existing system was adequate for golf course irrigation. So that issue has been put to rest. VGA signed a document acknowledging that that old system was adequate for golf course irrigation.

MR. HUNT: That type of system.

MR. ANDERSON: That system. The system installed, maintained, and operated by the City of Venice is adequate for golf course irrigation.

MR. HUNT: I have memorandums from John Lane saying he's going to need \$500,000 to replace controllers within the next 24 months.

MR. ANDERSON: But that's a different issue. What I'm saying is they have now constructed out there a true golf course irrigation system, all right. It is the orange as compared to the apple. We had no obligation under any agreement whatsoever to construct a new irrigation system for them that would be a golf course irrigation system.

MS. WARREN: Our obligation is \$35,000.

MR. ANDERSON: Our obligation is to repair and maintain the existing system. But they didn't want us to repair and maintain the existing, they wanted a new golf course irrigation system. The way they've done

that is through the negotiation of the '99 lease, taking the rent savings in those negotiations and then putting it into the cost of constructing, paying debt service, and maintaining a new golf course irrigation system, extending the term of that lease for a sufficient amount of time to recapture their capital investment. But again, it's not an apples-to-apples comparison.

MR. TACY: Just putting it in other words to see if I completely understand, what you're saying is that they had a Ford that was actually doing the job, and they now have a Lincoln?

MR. ANDERSON: Yes.

MS. WARREN: But the Ford was 40 years old or something like that.

MAYOR CALAMARAS: As I recall in the discussion, the irrigation system, as it was, was in pretty bad shape. And John Lane spent a lot of time repairing it and renovating it. It was needing to be repaired at some point. I have a question as to while all of this is going on, while the research is going on, if we came up with a settlement with the VGA that we take back to the FAA, could we do that in the meantime or do we have to wait?

MR. ANDERSON: My concern is this. I think we

need to have. an assessment of FAA's position to know what it is that's going to make them happy before we go to the VGA and say this is what we need to make this resolved. To start it the other way, I don't know that you're going to help yourself. The FAA has said, City of Venice, we would love to meet with you, we would love to sit down and try to resolve this, we welcome that. But they want us to respond to the Notice of Investigation because they want us -- they want to be able to know really where the factual and legal differences of opinion are. They want to nail us down to a position and then we can sit down and negotiate.

What I've been telling Tom Devine when we're formulating our response, it is important that everybody have some level of discomfort. So we are going to present a very strong legal argument that we have not violated any of our federal sponsorship obligations because I need the FAA to do some self-examination and maybe some doubt as to how strong their position **is**. I need to do the same thing with VGA. Dan Boone writes me a letter that says there's no way the FAA action can effect the existing lease. I fire a letter off back to him, Dan, I disagree with you, the finding of noncompliance could cause a cancellation of your existing.

He needs to have a little discomfort thinking he could lose the benefit of the 1999 lease. Where does that put him? That puts him into the first 5-year renewal option of the 1988 lease at an annual rent of \$276,000, plus a new irrigation system, the Lincoln, with an incredible debt service. His power expenses, my understanding, what people are telling me is his power costs to run this new system is just going through the roof. So that's the discomfort level that they feel.

The City's discomfort level, we have all of our federal and state funding at risk. So that's our discomfort level. If everybody's a little uncomfortable that's how you then sit down and say let's make everybody's discomfort go away, how can we arrive at that. That's what we're trying to do. We're setting that table.

MR. TACY: Didn't you say at our last Shade Meeting that the VGA is not using their system enough to use the amount of water agreed to in the lease?

MR. ANDERSON: My understanding is that under the agreement they have an obligation to take an average daily, monthly flow of 400,000 gallons. They have not been taking that because of the power cost associated. Is that your understanding?

MR. HUNT: Yep.

MR. ANDERSON: So technically I think they are in breach of the agreement. What we've got to do is say to ourselves if we're meeting all of our permit conditions for affluent disposal then the fact that the golf course isn't taking a 400,000 gallon average daily, you know, that might be a technical violation that we just don't need to trigger. Now if all of a sudden it put us in a downward spiral where we've got, you know, the pond's full and we aren't disposing of it and we start having permit violations then obviously we're going to have to look downstream and figure out who's causing us the problem. But my understanding at this point in time, the fact that they haven't taken their contractual allotment hasn't caused us any problems, but it's certainly one more piece of the puzzle. Again, everybody needs to be a little uncomfortable.

MR. HUNT: They're going to have to increase their consumption as the summer approaches because otherwise they'll fall in default of the condition of the golf course.

MR. ANDERSON: That's one of those chips that you've just got in the file and at the appropriate time you play it, but I don't think now is the time yet.

What I'm trying to do is -- and, folks, I don't have the magic answer. My assessment, though, is I need to file the notice -- excuse me, file the response to the Notice of Investigation and engage FAA in discussions so that I can see where we are with them. Then once I can get a handle on that then I engage discussions with the VGA to see how close I can bring them to this middle, and a resolution of all the three parties.

Because the whole key here is all three have to participate in the resolution. It's got to be universal or it's not going to do us much good.

I mean, it might not happen and then we're going to have a situation where we might patch things up with the FAA, but in order to do so we've got to declare the '99 lease to be cancelled which puts us into litigation with the VGA. But my thought is, folks, right now, just so you know my mind set, if I've got to do battle with either the FAA with our grant funding at risk or the VGA over a breach of the lease, I'd rather be fighting VGA here in circuit court over a lease document that I feel pretty comfortable would be subject to cancellation because it violates federal law.

MAYOR CALAMARAS: David.

MR. FARLEY: Will we be curing all of our ills?

I'm talking about the Senior Friendship Center. When you negotiate with them are we going to come home with a clean slate or are we going to leave something out there that somebody may come back and whack us on?

MR. HUNT: The Senior Friendship Center will be cured by simply transferring \$24,000 to the airport fund.

MR. ANDERSON: If we have to write a check for \$3,000 a year to keep the FAA happy, I'll help you write it.

MR. MOORE: That brings up another point. Do you have a retainer agreement with Mr. Devine?

MR. ANDERSON: I have an engagement letter that's on its way. I asked him again. I always, when I bring in outside counsel, ask for a standard engagement letter, but we were under the gun and I just told him get me that extension. But he's assured me in this morning's conversation that the engagement letter is on its way.

MR. MOORE: What's he charge?

MR. ANDERSON: I think it's \$275 an hour.

MR. MOORE: Is there any cap or limit or anything? I mean, basically he's doing what you're asking him to do?

MR. ANDERSON: Right.

MR. MOORE: So you've got a reign on him?

MR. ANDERSON: I have a reign, but it's pretty loose right now because I perceived you wanted me to do everything I need to do to resolve this, that we've got enough risk, that this is a hot enough issue that I'm supposed to get it done. And if that means spending money like on Delaparte with the ASR or acute toxicity, you know. I mean, we spent, what, half a million on each one of those. I'm not saying that I'm giving Tom Devine that kind of budget, but I'm not constraining him. Only in the sense that, you know, like he said, I think it would be a good idea if I flew down and spent a day with you all. And I said, no, I think we can handle that in an hour or two on a telephone conference call. I mean, I can see that meter spinning.

MR. MOORE: Well, I'm just concerned about his meter running. If we're talking, like George said, that maybe we could settle this at \$216,000. That's \$56,000 a year difference in rent, right there we'd settle it. Maybe we could jack up the greens fees down there. I don't know how many rounds they play a year, but if they added a buck or two to the greens fees that might generate enough money.

MR. HUNT: I think they play 180,000 rounds a

year.

MR. MOORE: I know that might be a simplistic viewpoint, but, I mean, there might just some really simple ways of resolving this case without running up a lot of expensive attorney's fees. And I'm sure he's got paralegals and everybody else charged on that retainer agreement, too.

MR. ANDERSON: I think the biggest concern we have now and the biggest expense is probably last month and this month, and he and I both digesting all of the documents that have been created as a result of this so that we can prepare a response to the Notice of Investigation that is strong enough that we put a level of discomfort in the FAA.

MR. MOORE: I have one other question that's probably pretty frivolous, but does anybody here know who are the officers and directors of the VGA, Incorporated, or who the stockholders are? I couldn't tell you who one of them was. I wouldn't have any idea.

MR. FARLEY: I don't know that we have a list of the stockholders.

MR. ANDERSON: I periodically run corporate status reports on everybody who the City does business with. I got a list of the directors, officers, registered

agent. In the dispute that we had over the approval of the '99 lease someone gave me a copy of supposedly the shareholders in VGA. It's a closely-held corporation, it's not public knowledge, but somebody shared it with me. But I'm not so sure that the source had the level of credibility that I felt comfortable saying, yeah, I got a shareholder list. Do you know what I mean? I think I put it in the file and I haven't gone back to it. We know pretty much who those people are. They're people who've been around here for quite some time. They brought that facility out of the ground. I knew Barry and David.

MS. WARREN: I have a question to John. What is the relevance of that?

MR. MOORE: What is the relevance of that, I don't know. I just figure the more information you have, the better armed you are.

MR. FARLEY: You're probably going to find that the major shareholders there is Don Shrode and Dan Boone.

MS. WARREN: We got into that discussion over -MR. BROWN: Boone told me once that he didn't have a part in that. Whether it's true, I don't know.

MS. WARREN: My point in this is when you get into that kind of a discussion, and I can understand wanting

information, that got into the original -- or the '99 lease we're talking about now. That part got into who the shareholders were, how they were making big money, and that became an emotional issue of some people in the audience. I don't like to cloud the issues with that because I don't think that's relevant other than for knowledge is what I would say. We've gotten into those arguments before when another golf course, Waterford Golf Course, wanted to know who was going to benefit from it and all that. Those are private and I'd just soon keep that out of what we're doing.

MR. HUNT: That would be an incredibly complex analysis because you'd have to look at the first 10 years when they were investing and not making any money, you'd have to look at the 10 years that -- who was the guy that ripped them off?

MR. ANDERSON: Carl Rolman (phonetic).

MR. HUNT: Carl Rolman was running it and took all that money. How you could determine whether or not they've made a fortune or made something else, that would be a -

MS. WARREN: And was that illegal to make that fortune? But I want to get back to what Bob, if I may, Mayor, is saying that's going to be the course we're going to take until the 28th. So we're going to

prepare our papers and we're going to submit them, correct?

MR. ANDERSON: Yes, ma'am.

MS. WARREN: And then somewhere before the 28th or after, I need clarification on this, we're going to have a conference call?

MR. ANDERSON: Before the 28th because I just want us to have a generalized discussion between all the players down here and Tom Devine before he finalizes the response to the Notice of Investigation. I want to make sure that he understands our concerns, where we think there are strengths, where we believe there are weaknesses, just to make sure. I mean, I don't want this guy just to be some guy in Washington, D.C. who receives mail from somebody down in Venice, Florida every now and again, but he's going to be the author of the response. I want to make sure that we're on the same page, much the same way that that attorney over on the east coast wrote the appellate brief on Wilson and Saputa (phonetic). Well, we had a couple of telephone conference calls with him because I wanted to make sure he understood the issues, I wanted to make sure he understood the facts. I just didn't want to say, hey, you're provided by the insurance carrier, whatever you do is fine by me.

We got burned by Mr. Hootman (phonetic) on the Esplanade litigation and I've assured you that I'd never allow that to happen again, you know, where we just got counsel and just kind of said, oh, he's handling it so let's not watch. I watch these pretty closely.

MS. WARREN: Okay. Further, the 28th the papers are submitted, what is the return in an answer to those papers? What's the date? When are we going to hear from them?

MR. ANDERSON: They don't have to respond to our response. What they will do is after we've filed our response to the Notice of Investigation they will afford us an opportunity to then enter into settlement negotiations. They will pursue those negotiations as long as they see that they're being pursued in good faith and that they look like they're productive. At some point in time if they just aren't getting anywhere or we aren't closing the gap, they might say we're just going to go ahead and let the administrator make his determination. And then that triggers that whole thing about an administrative hearing assigned to a hearing officer.

MS. WARREN: After the 28th that opens up for a face to face?

MR. ANDERSON: Correct. Because they have told us, in fact, they did it in correspondence to George, saying they do not want to have a face to face with us until such time as we have filed a response to the Notice of Investigation. And they've reiterated that in every conversation with me and in every conversation with Tom Devine. So we understand that so we're going to go ahead and what we're doing next is -- and again, that scenario, the next thing that we'll be doing is we'll have this conference call with Tom Devine to make sure that he knows the players on the City's settlement committee and that we feel comfortable that he understands the issues, the facts, and that we understand where he is. Then he will file the response to the Notice of Investigation. That will then engage us in settlement discussions with the FAA.

As soon as I've got a feel for where the FAA is and what might be the magic number to make everybody happy, I will then engage the VGA in settlement negotiations as to what they have to do in order to get this resolved. Then probably we're going to wind up maybe getting all three players together. Although, it might be more beneficial for us just to deal with VGA, and then us on this hand to deal with the FAA, but then finally, hopefully come up with this universal

settlement which will make the FAA happy, bring us back into their good graces. We'll have to do some sort of modification to the '99 lease, FAA will then bless it, and hopefully this is over. At least that's what I'm shooting for.

MAYOR CALAMARAS: David.

MR. FARLEY: If we write to them do we put a sand spur under their saddle if we say, you know, you gave us this amount of time and then you gave us an extension, so in response if we haven't heard anything in 120 days we can assume that everything is right in our letters?

MR. ANDERSON: Doesn't work that way.

MR. FARLEY: They have the ability to tell us you've got 30 days to respond, we have -

MR. ANDERSON: No. That's not an FAA mandate, that is the rules. That's the Federal Register saying that when an agency issues a Notice of Investigation the respondent will file his response within 30 days. That's not the FAA telling us, that's the Federal Register saying this is how this game gets played. We had the ability to ask for an extension of time, they granted it. They didn't fight us over it, they just granted it. Now they've granted us a second extension of time. So they haven't been overbearing in any way,

shape or form. My conversations with them have been very productive, very cordial. So I don't want to do anything that's going to antagonize these people because that's just counter-productive.

MR. FARLEY: You don't have any idea that we'll be sitting here a year from now having the same discussion because they have not responded back?

MS. WARREN: I hope not. The hours at \$275.

MR. ANDERSON: Okay. You have to understand the FAA has now initiated an administrative proceeding. They are not going to allow these files to stay out there for forever because if that was their state of mind they wouldn't have even sent us the Notice of Investigation. They've already stopped our funding. They've already told us they haven't approved the '99 lease. They want to bring this to a conclusion. In fact, they're the ones who have pulled the trigger by filing an administrative proceeding.

MR. FARLEY: Do we have one individual person that this is a bur under his saddle within the FAA or is this an FAA-wide decision? Do we have one person that we can say this guy is pulling the trigger on us?

MR. ANDERSON: No. I think you personalize this too much on the FAA side. I haven't been to any of your meetings in Orlando, I haven't had any -- I don't

think I've ever had a conversation with this Mr. Reynolds, okay. So these are people that I know nothing of. I know you and George both have very strong feelings for the FAA people that you've dealt with, but I don't think Washington has personalized this. I don't think you've ever met with Bennett?

MR. FARLEY: No.

MR. ANDERSON: I don't think you've ever met Mr. Bennett?

MR. HUNT: No.

MR. ANDERSON: Okay. This guy was just handed a file and said do what's necessary, and what's necessary was to file the Notice of Investigation. I don't think he's made this personal. In my conversations with him and the other people in the FAA Washington office, they haven't led me to believe in any way other than they seemed very -- they thought it was a positive development that there were fresh faces on behalf of the City of Venice.

MR. FARLEY: Who gave this to Bennett and said bring this to a head.

MR. ANDERSON: I don't know that.

MR. HUNT: Dean Springer (phonetic). That would be the logical one. He's the Orlando district office director.

MS. WARREN: But I think Bob makes a point that we've got to, it seems to me, set aside the rhetoric that has been going on in the personalities and we've got to concentrate on getting this finished as quick as possible and having a settlement that's going to make some of us uncomfortable on one side and somebody else uncomfortable on the other. So if that's where we're going for, that seems good. That seems what counsel is saying. Let's go for that. But I'm not comfortable getting into the personalities any more than I'm comfortable about knowing who the golf stockholders are.

MAYOR CALAMARAS: Jim.

MR. MYERS: That's the reason why I made the comment which John reiterated a little while ago about keeping Katherine Harris out of these whole discussions. I really think we'd be hurting ourselves.

MR. BROWN: At this point.

MR. MYERS: Well, at this point because we don't know what the other point is down the road. I think we should keep the politicians out of the act at this point in time.

MAYOR CALAMARAS: John.

MR. MOORE: If I can say also, I think somehow we need to convince Dan Boone he needs to tone down his

rhetoric in these letters.

MS. WARREN: Exactly.

MR. MOORE: That's very inflammatory. I've read a lot of those letters and he uses all these inflammatory words and that's just terrible.

MR. ANDERSON: Anything else y'all need?

MS. WARREN: Well, what do we do about getting some information to counsel as to what the conference call did and -- I guess what I'm saying is how soon do we come back to another Shade Meeting?

MR. ANDERSON: What I'd like to do is I'd like to do the next Shade Meeting the first meeting in March. We would have filed our response, we would have had the initial contact then with the FAA, and I'll be in a position to really tell you where we are.

MR. HUNT: We're going to have the Executive Session for labor.

MR. ANDERSON: Yeah. That's going to be quick. It will just be an update. I think I need like a half hour with you all on March 11th. That Executive Session on the collective bargaining, that's not going to take much more than 45 minutes or an hour. Two weeks from now is the 25th. That's before our response and I might not even have the response for you.

I think the next big chapter in this is going to be the response, and then our initial contact with FAA thereafter. Therefore, I'll be glad to do another Shade on March 11th, but I think that's the soonest you need one unless you want to meet with me.

MR. FARLEY: I may be in Arizona with a new grandbaby. If I am, you go without me and I'll get filled in later.

MR. HUNT: I like your earlier idea of maybe a special meeting for the labor negotiations so we don't conflict with them. Jane stopped me after the regular meeting and said that she thought if she put everything else aside she could be ready earlier than the first meeting in March.

MS. WARREN: That might please them in that we're not holding back.

MR. HUNT: So we're looking at the 4th, 5th or 6th, somewhere in there a special meeting at 4:00 or something for labor negotiations.

MR. ANDERSON: That's strictly when Marty, Jane and Rally (phonetic) and the Chief are ready because I'm just the mouthpiece.

MAYOR CALAMARAS: We have to go back in and reconvene and then adjourn.

MR. ANDERSON: Correct. Thank you very much. We're off the record.

(THEREUPON, this private attorney-client session was concluded at 6:25 p.m.)


CERTIFICATE

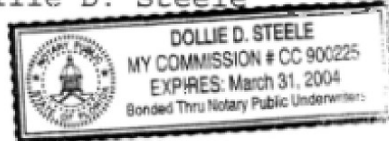
(STATE OF FLORIDA)

(COUNTY OF SARASOTA)

I, Dollie D. Steele, Professional Reporter,  
do hereby certify that I was authorized to, and did  
stenographically report and electronically record the  
foregoing proceedings, and that this transcript is a true and  
complete record of my stenographic notes.

IN WITNESS WHEREOF, I hereunto set my hand this  
27th day of February, 2003.

  
Dollie D. Steele



Notary Public  
State of Florida  
Commission expires 3-31-04