

IN THE MATTER OF COMPLIANCE WITH FEDERAL OBLIGATIONS
BY THE CITY OF VENICE, FLORIDA

DOCKET NO. 16-01-11

Private Attorney-Client Session

May 27, 2003

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

ROBERT C. ANDERSON, Esquire
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Venice, FL 34292
Attorney for City of Venice

DATE: May 27, 2003
Commencing at 3:18 p.m.

Roberts Reporting

MR. ANDERSON: We're here once again for a Shade Meeting regarding the FAA-VGA dispute.

Just to tell you what component we're going to talk about today is I've always viewed this as a two-part problem. The first one was negotiating some sort of resolution with the FAA that was going to be agreeable to the City of Venice and the FAA. Then once we determined how much of a rental increase we were going to deal with, then the second component was to turn our attention to negotiations with the VGA to allocate responsibility for who pays that increase in rent. One of the things that we have done in order to determine the strength of our position was both I and the Foley Lardner Firm have done legal research to determine what, if any, legal grounds do we have to either rescind, cancel, reform or modify the existing lease to require the VGA to absorb the \$20,000 in rental increase. What we're doing today is I'm going to come back and advise you regarding the City's legal position and then discuss where we go from here.

After all the research that the attorneys working on behalf of the City have done, I have to advise you that the City's legal position to require the VGA to modify the lease to pick up the full rental increase isn't a strong position. We have researched every

theory that we can think of. We've talked about theories such as mutual mistake of fact, unilateral mistake of fact, public policy questions as to whether or not the lease put us into noncompliance with the FAA and for public policy reasons we could reform the lease. We looked at illegality. We looked at impossibility of performance, this notion that you enter into a contract but then it's impossible to perform under the terms and conditions because it puts us into noncompliance.

We've looked at commercial frustration of purpose of the lease itself. We've taken a look at the FAA grant assurances, the deed restrictions. We've exhausted every theory that either I or Tom Devine and his firm could come up with that would give us the ability to go into court and litigate with the VGA that would give us any degree of probability that we'd be successful. Our conclusion, and I've reviewed this with the attorneys of Foley Lardner just to make sure that we've all arrived at the same, is that the legal basis is weak. And also not only are the legal theories difficult at best, but from a factual standpoint this is problematic.

Any sort of litigation that the City of Venice would get in with the VGA over changing the rent

provisions of that lease, you know it's going to be highly visible, it's going to be in the newspapers constantly. You all are probably going to be deposed -- excuse me. Those members of the current City Council who were City Council members at the time the lease was approved would probably be deposed as to the thought process involved in your voting in favor of the '99 lease. George, you certainly as the lead negotiator for the City are going to be deposed and all of your involvement.

I also think that you need to know I believe that both Dan Boone and I would wind up being witnesses in that litigation, and therefore that would preclude us from being the attorney for the City, the attorney for the VGA. So both parties would be then required to get other counsel because you can't be a material witness at a trial and still be counsel for one of the parties. I think obviously because of my involvement in the negotiations I'd be a witness and certainly Dan Boone as the scribe of the document for the VGA would. I don't want to mislead you. There are causes of action that we could advance, but the likelihood of those being successful I don't think is great.

So moving to the next thing, what I believe is negotiations between the City of Venice and the VGA

concerning allocating that responsibility has a higher potential for success than litigating. Now we don't have to let the VGA know that we don't have a legal basis to take them to court. I have since we got back from Washington whenever it was appropriate laid that out as a possibility. You know, if need be we'll go to court over this, but hopefully we don't have to. But that was merely posturing us so that we'd be in a stronger position regarding the negotiations.

I know the Mayor and George have had discussions with VGA representatives since the Washington trip and they have shown some concern over my threat to go to court over this. At least it's in their equation and they're factoring it in to some degree. So I don't think we should -- I certainly don't plan to have a press conference later tonite that says I've advised the City Council that they have no legal basis to take the VGA to court. It's not going to be my intent. If I am asked and if I give any statements I am going to say that that is still an alternative available to the Venice City Council, we just don't want to proceed that way unless it's a last resort. But understand when you see and hear that in the paper, it's more smoke than fire.

MR. MYERS: May I interrupt you?

MR. ANDERSON: Yes, sir.

MR. MYERS: If we individually were to get a call from reporters I suppose the appropriate thing to do would be to refer them to you?

MR. ANDERSON: Well, that's the position that you've taken up until now. But, again, that is your decision. You're my bosses. If you want me to continue to be the spokesperson regarding this dispute I'll be glad to, but I don't want you to see in the paper, boy, Anderson is still waving this possibility of a lawsuit in front of the VGA's face when he told us at a Shade Meeting that it doesn't look real strong. I want you to understand that that's merely posturing because I think it will give us more of an edge at the negotiation table.

MR. MYERS: Yes, but I still think that by individually talking to the press we could very well screw up that whole posturing, as you call it. I think it would be better for us to refer any comments from the press to you. That would be my opinion unless you all disagree with me.

MAYOR CALAMARAS: Or just to say it's in negotiations now. It's probably a good time to talk about George and I having a meeting with them Friday, a week ago. We told them in pretty uncertain terms that

it was Council's position that you need to take this \$20,000 as your new rent. They said right up front that we don't think you've got a legal case. We said we think we do. Counsel said that if you don't take the \$20,000 that we're going to sue. They kind of threw it back that the City Attorney is driving this, it's his deal, he's doing this because he's going to make more money on it or something or another. So they feel that Bob's driving this whole thing to moving towards litigation only because they don't know that he's been saying all along in conversations we've been having that our case might be a little weak and we probably don't want to go to litigation.

George had some ideas on some things that we could do. If they would take the \$20,000, there's some fairness issues that they had. One of them is that they're paying for water and electric to transport water out to the dog park and Casperson Beach, and that's coming off their end of it.

MR. HUNT: And Brohard Park.

MAYOR CALAMARAS: And South Brohard Park. It's coming out of their water --

MS. WARREN: It's on their bill?

MAYOR CALAMARAS: Yeah. That's one issue. Another issue that we've already talked about was

the parking at the dog park, which would be a whole separate issue. It wouldn't be changing their lease to get the parking for the dog park, it would be over and above. It would be a whole new thing that we need parking out there so we need to either lease this property from the airport or the dog park -- or the golf course so that we can increase parking out there. That would also be a little bit of an offset for them and make it more collatable. So I think if we do some of those things - - were there any others, George?

MR. TACY: Are we talking about metering the different places or we're just going to estimate how much water that we're using for dog beach and for the South Brohard? Which way are we talking?

MR. HUNT: Now I'm looking at the feasibility of metering.

MAYOR CALAMARAS: They just felt that it's unfair for us, we're going to take this \$20,000 and we're providing water and electric, the pumping to get the water down to Casperson, Brohard, and the dog beach, and that's not fair, how about relieving us of that responsibility. It's something we can do without changing their lease. And then the dog park issue. Was there any other things?

MR. HUNT: Water, electric, and the dog park were

the three issues.

MAYOR CALAMARAS: If we did those things it sounded like they would go along with that. They'll take the \$20,000, there will be some offsets with the other things, and they might be happy with that. Now that's not set in stone and that's without going back to their board because they could very well -- Don Strode, according to Dan Boone, said what if we just ignore the City altogether and just keep paying our rent and that's it. If they do that there's probably not a whole lot we can do.

MS. WARREN: We still have the option of a lawsuit. It would seem we'd have to do something if they chose to ignore.

MAYOR CALAMARAS: Yeah.

MR. MYERS: Did you have any kind of a feel, George, as to what those particular benefits would amount to in dollars?

MR. HUNT: No, we don't have any sense of that yet.

MR. MYERS: Well, then that's not including the leasing of some land for dog park parking.

MR. HUNT: We've got to get some fair market value appraisal comparisons.

MAYOR CALAMARAS: They, of course, are looking at

it that, you know, we need an acre or two out there for parking and it's on the beach so it's worth, you know, a bazillion dollars. And yet the airport, we have a standard that we -- it's undeveloped airport property and don't we do that on a certain standard.

MR. TACY: Well, yeah, but it's also meant just strictly to be recreational which knocks the daylights out of the value.

MAYOR CALAMARAS: Oh, yeah. We wouldn't want to be going there and saying we're going to raise your rent to \$20,000 and we're going to give you \$40,000 a year for the dog park. I don't think we want to be doing that. Of course they threw that out. Oh, yeah, rent \$35,000 or something for the dog park. I laughed and said I don't think so. That's where we are.

There are some things that they sounded like they would agree to. They still had to go back to their board. We probably should come up with -- where do you go from here? Are we the ones that make a proposal? Do they make it?

MR. HUNT: We said at that meeting in the morning that we were going to make a proposal.

MR. TACY: I have a question. Was one of the angles that you looked at that this is a valid lease, number one, until the \$80,000 is being paid is it a

valid lease or has it been a valid lease or technically is the old lease the one that's controlling?

MR. ANDERSON: The 1999 lease is valid and it's in effect at this time. I don't think we can question that. They have moved forward at our request and installed the irrigation system which was required of them by the lease, and we have accepted \$160,000 a year as the rent under the 1999 lease. Both parties since 1999 have been operating as if that lease was a done deal between the VGA and the City of Venice. I think we'd be hard pressed now from a factual standpoint to say somehow that the '99 lease is not valid.

What I looked at was if you've got a valid lease but provisions in it for whatever reason throw one party into noncompliance with the regulatory agency, is that enough to somehow open it up, rescind it, reform it or whatever. And that's what I'm saying, we looked at all those theories to see if, indeed. A mutual mistake of fact. That's the idea that we all thought FAA didn't need to approve it, whatever we did was fine and away we went. Well, obviously we know now differently. A unilateral mistake of fact. Maybe VGA didn't think that way, but we did. Impossibility of performance. We can't allow that lease to operate under its terms and conditions without falling into

noncompliance with the FAA.

But all of those theories are going to fall back on this notion of maybe it's just that the City of Venice made a bad deal and we have to live with the results, and if the rent is \$160,000, the rent is \$160,000. And if in order to come into compliance with federal sponsor obligations with the FAA we have to subsidize that lease, the Court might find that, saying, listen, folks, there's nothing in the lease which specifically says this lease is subject to FAA confirmance. The only thing close to it

MR. TACY: That got left out?

MR. ANDERSON: It's not in the lease. And the only thing close to it is their obligation to install the irrigation system was not until such time as the lease was approved by the FAA. That's the closest we come to what we call a condition precedent.

The last comment that I had was remember that whatever the final settlement is between us and the FAA, between us and the VGA, that's going to have to be voted upon at a regular City Council Meeting. So we've got one phase done. We have the terms and conditions of our resolution with the FAA over the dispute. Now what we've got to do is come up with the terms and conditions of our resolution with the VGA. Then what

I'm saying is I think it should be brought together as one, a settlement proposal.

If, indeed, we wind up subsidizing some portion of the increased rent, George is going to have to recommend to you where we come up with that fund. If there are some offsets -- and we've got to be careful. Our deal with the FAA is based upon the notion that the rent received by the Airport Enterprise Fund from the VGA lease is going to go from \$160,000 to \$180,000. And they don't want to hear about, yeah, we got it up to \$180,000, but then we gave them offsets and setoffs and credits and everything else. So we need to do that deal and put that to rest.

Then I agree wholeheartedly with the Mayor and George that the VGA shouldn't be paying for water consumption and power consumption for anything other than their leasehold. So if we need to do separate metering or credits or something like that, that's appropriate. But that would be appropriate notwithstanding the current dispute.

Then the other one is if the City has a need to take back some of the leasehold for the purposes of public parking at the paw park, that can be a collateral deal, some side lease where we lease it from the VGA for so much. But I'm saying we need to try to

keep some line of distinction between those because the FAA is still looking to see that the Airport Enterprise Fund realizes \$180,000 in annual rent and not that it's offset by a lot of other things. So I think we need to be clear on that one.

MR. HUNT: The water and power would be out of the utilities budget anyway.

MR. ANDERSON: And I agree that from what the two of you discussed with them and then what we discussed, we can make all of those things happen. We just have to do it in such a way that we keep the FAA happy with the resolution we've struck with them. But we can do it just by doing it in two different deals.

MAYOR CALAMARAS: And I think everybody still has to hold the position that we'll sue if they don't accept the terms of the lease. Because if it leaks out to them that we probably can't do anything, what you just may get is we've got a lease for \$160,000, that's what we're living with, and then we'll be forced to do something different or we'll be forced to subsidize the \$20,000.

MS. WARREN: Okay. That's what I wanted to talk about was the other side of the coin was that if we decide we're going to look at this and we're going to eat that \$20,000, I don't have a problem with it. To

me it's the lesser embarrassment than going into a lawsuit that's going to take I don't know how long.

MR. MYERS: Beauceau dollars, too.

MS. WARREN: Beauceau dollars and I don't know how long.

MR. ANDERSON: High visibility, difficulty for a lot of us, an expense that is probably unwarranted. I think there's another way to get there.

MR. FARLEY: If you take our attorney out of the calculations and their attorney, we'd spend a lot of money right there.

MS. WARREN: I'd rather take the -- if you want to call it embarrassment now than to take it three or four months down the road and we've decided to do something different.

MR. HUNT: I've got John Lane looking at all the different things that he provides out there and whether he has correctly assumed them or whether he's fostered them over on the golf course.

MS. WARREN: He has what?

MR. HUNT: Fostered them over on the golf course. And so if you'll come up with a very clean report that will delineate anything that we can back out that we properly can.

MR. MYERS: If I understand you, and maybe I

didn't quite understand you, Bob, about the FAA does not want to hear that you're subsidizing that other \$20,000, et cetera, et cetera or did I misunderstand you?

MR. ANDERSON: They don't care if we subsidize it completely. They just want to make sure that whatever result there is that the Airport Enterprise Fund gets \$180,000. As far as they're concerned, and we told them right at the meeting in Washington, it might be that all we're going to do is \$160,000 from the VGA and the City of Venice will have to kick in the other \$20,000. And they said we really don't care where it comes from, just so they realize it.

MR. BROWN: Let me make a question. For this extra \$20,000 that I guess the City is going to have to come forward with, can't we get some minor concessions from the VGA like parking space for say \$10?

MR. HUNT: That's one of the things we're going to work on.

MR. MYERS: Didn't you just say that you can't try to make one intermingle with the other as an offset?

MAYOR CALAMARAS: Totally separate issues.

MR. TACY: In other words, we will come up -- the way I understand it, we will come up with an agreement that either the VGA will pay the \$180,000 or \$160,000

and \$20,000 to us, and then we'll -- you know, preferably we get them to pay the \$180,000, we reduce whatever they're paying in electricity, and then we turn around and we negotiate some kind of a settlement to use the land for the parking.

MAYOR CALAMARAS: Yeah. And that softens their blow. They're going to take a \$20,000 a year blow and what that does is soften it a bit. And the airport gets their money and it's not a direct subsidy. They're all fair issues. Parking for the beach, the fairness issue as to whether they're supplying anything or not. But we should still be saying publicly \$180,000 and we'll sue if not. Otherwise, they're liable to just turn their backs on us.

MR. ANDERSON: If I had a magic wand the way to resolve this is for the VGA to say, fine, we'll agree to an amendment to the lease that provides the rent goes from \$160,000 to \$180,000, okay, first phase. And then what we do is we consummate that because that will make FAA happy, that will make us happy, VGA. We modify the lease accordingly, it's \$180,000, done deal. We put that to rest. But then there can be a gentleman's understanding that as soon as that dog goes to sleep we then have this deal where we're going to start metering South Brohard, the dog park, and take

that expense away from the VGA and we're going to rent a certain portion of their leasehold for parking at the paw park for this amount. But what I'm saying is you want to close the first one really clean.

To tell you the truth, that's in the VGA's best interest, too. They could get a lot of play by stepping up to the plate and saying, fine, you got a good settlement with the FAA, it requires an additional \$20,000 a year, we'll amend our lease and we will pay it. They'll get a lot of atta boy's for it, they ought to get some good publicity out of it, the deal goes down and it's resolved. Then once the dust settles and we get through the headlines then we implement the metering and a new lease with them just on some land for the paw park parking.

MR. TACY: The metering could be done without even really getting into the press.

MR. ANDERSON: Correct. That's administrative stuff.

MAYOR CALAMARAS: Yeah. That's strictly a technical thing.

MR. ANDERSON: And then we just talk up the need for increased parking at the paw park, we do that at a meeting or two, and then we say, hey, listen, it's ideal. The VGA -

MR. TACY: It would be a whole lot nicer if Dan hadn't come down to talk about the dog park today.

MR. ANDERSON: To tell you the truth, no, that set the stage nice. You got this excess, you got them parking on the side of the street, now we just lead into this notion of we need more parking out there. Well, whose got some available land in the vicinity of the paw park? VGA. Let's see if they won't give it to us.

But you got to understand that whatever deal we strike with them to rent some vacant land for the paw park is going to be scrutinized. So we've got to make sure that our valuation, our formula, how we arrived at the rent calculation stacks up to everything else we've done out there for recreationally designated vacant land. I mean, if all of a sudden we're charging everybody else \$12,000 an acre and we agree to rent it from VGA for \$35,000 an acre, we're all going to take some whacks on that one. But we can do all that. I'm just saying if I had my druthers, I'd love to see the VGA step to the plate, agree to an amendment to the lease to provide the \$20,000 with a gentleman's understanding that we're going to correct those other things as soon as the dust settles.

My final recommendation to you all, given all of

this stuff, is it is in the City's best interest to negotiate a resolutions matter with the VGA and not to litigate. I would say that just like George said, he didn't want to be visible in the FAA discussions because of the fear of being a lightning rod, I think now I am the lightning rod as it relates to the VGA. They think I'm the nasty guy who is threatening a lawsuit, that I'm the only one over here chomping at the bit saying let's sue them. I think the negotiations with the VGA should continue between George and the Mayor and work with the VGA, get that resolution, then fill me in. I'll make sure the documents reflect it and the way we've done it is going to pass muster. But I don't think I need to be at the table because the one settlement agreement I was at, it really got into Dan Boone saying it's black, Bob Anderson saying it's white, and that's just not in everybody's best interest to get this resolved. So I think for this next component the lead should be George and the Mayor.

MAYOR CALAMARAS: And I think that everybody should keep in mind that the lease, as it stands now even, relieves the City of a huge financial responsibility. It's a good lease. Even if we had to take the \$180,000 as a hit we're still ahead. That

lease was going to cost us \$1 million for replacing that whole sprinkler system and another \$40,000 to \$80,000 a year in maintenance that we're not looking at right now. So keeping that in mind, we still are ahead.

MR. ANDERSON: Any questions? Any comments?

MR. MOORE: I think what you've just outlined is excellent. I think that with you in the background, with the Mayor and George taking the lead and negotiating with the VGA, I think we ought to move quickly to try and resolve it. Because I agree with you that ultimately the best scenario would be to get an amendment to the existing lease that showed that the VGA did up the rent to \$180,000 in compliance with the agreement. And then that's a done deal. And then we can move forward and make the other concessions. But I think you need to move forward now and find out what they are and get them done as quickly as possible to end it. The longer this drags out, I think the less likely we are of being able to do that.

MR. MYERS: I still think Council should button their lip on this thing --

MR. MOORE: I agree with that.

MR. MYERS: -- and refer any press to Bob.

MR. ANDERSON: Do you all want me to continue to

be the spokesperson?

MR. MOORE: Yeah, I think that's a good idea.

MR. FARLEY: Yeah, especially since you're going on vacation.

MR. ANDERSON: That works really well.

MR. MOORE: Good idea.

MR. ANDERSON: They can't get me over there.

MAYOR CALAMARAS: Okay. Let's go.

(THEREUPON, this private attorney-client session was concluded at 3:45 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
9th day of June, 2003.

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


Dollie D. Steele
