

**MINUTES OF THE FEBRUARY 9, 2018 SPECIAL SESSION  
GREEN COVE SPRINGS CITY COUNCIL**

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**Call to Order**

A duly called Special Session of the Green Cove Springs City Council was called to order Friday, February 9, 2018, at 5:30 p.m. in the City Council Chambers, 321 Walnut Street, Green Cove Springs, Florida.

**Invocation and Pledge of Allegiance to the Flag**

A moment of silence was held followed by the Pledge of Allegiance to the Flag of the United States of America.

**Roll Call**

**COUNCIL MEMBERS PRESENT:**

Steven R. Kelley  
Pamela J. Lewis (via phone)  
B. Van Royal  
Constance W. Butler, Vice Mayor  
Roy M. Timberlake, Jr., Mayor

**STAFF MEMBERS PRESENT:**

L. J. Arnold, III, City Attorney  
Derek Asdot, Asst. Chief of Police  
Julia W. Clevinger, City Clerk  
Danielle J. Judd, City Manager  
Mike Null, Asst. City Mgr. / Public Works Dir.

**Mayor to call on members of the audience wishing to address  
the Council on matters not on the Agenda.**

There were none.

**COUNCIL BUSINESS**

**1. Council response to St. Johns Law Group January 30, 2018 Letter on Behalf of Core Construction. Roy M. Timberlake, Jr., L. J. Arnold, III**

Discussion ensued with the City Council regarding the letter received by the City from the St. Johns Law Group on behalf of Core Construction as presented by Mayor Timberlake. Mayor Timberlake requested each Council Member inform the others of what they believed would be a fair settlement (\$140,000) which would be followed by discussion and a vote.

Mayor Timberlake noted the reason for this Special Session is because the City's legal counsel was not in a position to make a final offer to Core until the City Council authorizes the final offer. The purpose of this meeting was to identify a number for the City's best and final offer. Comments about the project would not be part of this discussion.

Mr. Arnold introduced Albert Franson, the City's special counsel, and advised that he had received a call from the opposing counsel who indicated he was aware of this Special Session.

Mr. Franson explained that the \$234,000 figure (the City's estimate of corrective work to be done) was a best case scenario if the City were to not go to court. Mr. Franson stated that he believed the City had a strong case for liquidated damages and a claim for the cost to repair the majority of the construction defects. As a result of discussions and mediation, Mr. Franson stated they were prepared to make the recommendation to the City Council of the offer to disperse to Core \$75,000 with the City retaining \$65,000 which, as noted in the letter, was rejected by Core Construction. The City was not required to divulge the consulting expert's figures as it was considered privileged at this point and would only be used if litigation was ensued.

Mayor Timberlake noted that regardless of what settlement was made, there would always be issues that would be debated. It is the City Council's responsibility to represent the interests of the citizens because the money that would go to pay for the corrections is not covered by retainage and would have to come from other projects and take funding away from things that they had already decided to fund in order to satisfy the requirements on the pool. It was specifically noted that the approximately \$5,000 was for an outstanding Change Order and work that was authorized in e-mail and subsequently completed; however, Core had yet to submit any official Change Order on the proper form. Once this pay request was put on the proper form, the City would go ahead and pay it since it was not in dispute. Mayor Timberlake expressed his strong feelings about liquidated damages considering how the City Council had asked the President of Core Construction to give the City a date that he was comfortable that he could meet. He was challenged multiple times on that date and it was his date. He was not forced into this date by the City. Furthermore, Mayor Timberlake felt very strongly that the City should litigate because the project had not been completed and delivered the way it was expected to be delivered. However, based on counsel's advice, and in the interest of moving things ahead, he would be inclined to take the balance of the \$140,000 and split it with Core Construction.

Mr. Arnold clarified that Core Construction was also in receipt of the "Punch List Items Remaining as of July 27, 2017" as compiled by Mr. Null and Matthews Design. Mr. Null reiterated that liquidated damages were not included in the \$140,000 figure.

Mayor Timberlake – City should litigate as the project has not been completed as contracted; however, he was in favor of the City retaining \$70,000; pay Core \$70,000.

Council Member Royal – City retain \$45,000; pay Core \$95,000

Council Member Lewis – City retain \$70,000; pay Core \$70,000

Council Member Kelley – City retain \$75,000; pay Core \$65,000

Vice Mayor Butler – City retain \$75,000; pay Core \$65,000

Mr. Franson advised the City Council that, due to the type of contract, there was no fee mechanism to get attorney fees back. In such case, those costs may exceed what may be

recovered by the City. This would not include the expert witness fees. He recommended that the City disperse the remaining proceeds. This would put the City in a better position. Mr. Franson also confirmed that the same exposure would apply to Core Construction should they decide to litigate.

Mayor Timberlake recognized John Whiteman, 723 N. Magnolia Avenue, Green Cove Springs, who acknowledged that he worked for the St. Johns Law Group and questioned the City Council's thought process by not allowing opposing counsel to view the consulting experts' report if the City was trying to avoid litigation. Mr. Franson noted the report was not a full analysis of all the damages and the costs could rise. It was a consulting expert and, therefore, was not required to be disclosed.

A MOTION WAS MADE BY COUNCIL MEMBER ROYAL TO PAY CORE CONSTRUCTION \$95,000 AND THE CITY RETAIN \$45,000. THE MOTION WAS SECONDED BY VICE MAYOR BUTLER. THERE BEING NO FURTHER DISCUSSION, THE MOTION FAILED BY THE FOLLOWING ROLL CALL VOTE: AYES – COUNCIL MEMBER B. VAN ROYAL. NAYS – STEVEN R. KELLEY, PAMELA J. LEWIS, CONSTANCE W. BUTLER, AND ROY M. TIMBERLAKE, JR., MAYOR.

A MOTION WAS MADE BY COUNCIL MEMBER KELLEY TO PAY CORE CONSTRUCTION \$75,000 AND THE CITY RETAIN \$65,000. THE MOTION WAS SECONDED BY VICE MAYOR BUTLER. THERE BEING NO FURTHER DISCUSSION, THE MOTION FAILED BY THE FOLLOWING ROLL CALL VOTE: AYES – COUNCIL MEMBERS STEVEN R. KELLEY AND CONSTANCE W. BUTLER. NAYS – PAMELA J. LEWIS, B. VAN ROYAL, AND ROY M. TIMBERLAKE, JR., MAYOR.

A MOTION WAS MADE BY COUNCIL MEMBER LEWIS TO PAY CORE CONSTRUCTION \$65,000 AND THE CITY RETAIN \$75,000. THE MOTION WAS SECONDED BY VICE MAYOR BUTLER. THERE BEING NO FURTHER DISCUSSION, THE MOTION WAS APPROVED BY THE FOLLOWING ROLL CALL VOTE: AYES – COUNCIL MEMBERS STEVEN R. KELLEY, PAMELA J. LEWIS, AND, CONSTANCE W. BUTLER. NAYS – B. VAN ROYAL AND ROY M. TIMBERLAKE, JR., MAYOR

Mayor Timberlake requested a motion be made to have checks cut for the Change Order for \$5,000 and the settlement offer of \$65,000.

A MOTION WAS SO MADE BY VICE MAYOR BUTLER. THE MOTION WAS SECONDED BY COUNCIL MEMBER LEWIS. THERE BEING NO FURTHER DISCUSSION, THE MOTION WAS APPROVED BY THE FOLLOWING ROLL CALL VOTE: AYES – COUNCIL MEMBERS STEVEN R. KELLEY, PAMELA J. LEWIS, B. VAN ROYAL, CONSTANCE W. BUTLER, AND ROY M. TIMBERLAKE, JR., MAYOR. NAYS – NONE.

Ms. Judd made the following announcements:

- Staff would bring back dates on the February 20<sup>th</sup> Agenda to schedule for an informal Town Hall Meeting on the opioid epidemic after the Visioning Session on Saturday, March 3<sup>rd</sup>. The overwhelming preference by the guest speakers was on a weekday; however, City Council preferred it to be held on a Saturday from 10 a.m. to 12:00 p.m. Chief Asdot would consult with the guest speakers as to their availability.
- The postcard mailers for the Visioning Session had been mailed out today.

After meeting with Mr. Franson, Mr. Arnold clarified that counsel could use the contents of the consulting expert's report when speaking with the opposing counsel.

**Adjournment.**

There being no further business to come before the City Council, the meeting was adjourned at 6:06 p.m.

CITY OF GREEN COVE SPRINGS, FLORIDA

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Roy M. Timberlake, Jr., Mayor

Attest:

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Julia W. Clevinger, CMC, City Clerk