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05/22/2008

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: Martin P. Black, AICP, ICMA-CM, City Manager 

DATE: May 22, 2008

RE: 2004 General Obligation Bond – Park Expenditures

Background

Mayor and City Council requested that staff undertake a review of the 2004 General Obligation Bond based upon concerns raised by the Citizens Oversight Committee that the proposed concept plans as authorized by Mayor and City Council for Tramonto Vista Park may be inconsistent with the bond conditions or commitments made by city officials during the referendum on the bond itself. When this assignment was given, it included direction for staff to continue with the design and permitting already authorized.

Analysis

Finance Director Jeffery Snyder and I completed independent reviews of the materials and his assessment is included as an attachment for your consideration. While Mr. Snyder (see attached) has appropriately confined his review to the specific provisions of the official bond statement and referendum ordinance, I included a review of educational materials and City Council meeting minute references to consider the broader community dialogue that accompanied the referendum.

The following are critical aspects for your consideration:

1. Ordinance No. 2003-20 (copy attached) authorizing the bond referendum provides that the single purpose of the proposed bonds pursuant to section 7 is for “the capital improvements to recreational facilities for residents of, and visitors to, the City. The recreational facilities for which the bond proceeds will be used **initially** (emphasis added), beach renourishment, rehabilitating the existing community center located at 326 South Nokomis Avenue, replacement of the municipal fishing pier located at 1600 South Harbor Drive, and **acquiring real property and improvements thereto to expand Brohard Park.**”

Note that these provisions offer a specific location for using the bond proceeds but do not define the type of improvements and do not include a specific reference to conversion of the Island Wastewater Treatment Plant.

493.Y
05/22/2008

2. Ordinance No. 2003-20 authorizing the bond referendum established specific public notice requirements for the referendum pursuant to Section 8. The language is not identical to that found in section 7 and would appear on its face to broaden the potential use of the bond proceeds as follows: "Shall the City of Venice, Florida issue bonds in an amount not exceeding \$10,000,000, bearing interest at not exceeding the legal rate, maturing within 25 years from the date of issuance, payable from ad valorem taxes levied on all taxable property within the City, to finance beach renourishment, rehabilitate an existing community center, replace a municipal pier, and **expand and improve a municipal park** (emphasis added)."

Note that these provisions do not define the type of improvements and do not include a specific reference to conversion of the Island Wastewater Treatment Plan, nor to the earlier specific reference to Brohard Park. While not clear from any of the materials, a reason for this difference in language may be directly attributable to statutory limits on the length of ballot descriptive language.

3. Section 8 of Ordinance No. 2003-20 authorizing the bond referendum includes an Exhibit A defining the specific public notice requirements for the referendum. The language of Exhibit A differs slightly from the language in Section 8 by adding back the reference to Brohard Park as follows: "Notice is given that a bond referendum will be held....to finance the cost of recreational facility capital improvements, specifically...and **acquiring real property and improvements thereto to expand Brohard Park** (emphasis added)."

Note that these provisions do not define the type of improvements but do include the earlier specific reference to Brohard Park.

4. Section 9 of Ordinance No. 2003-20 authorizing the bond referendum includes an Exhibit B reflecting the "Official Ballot" language for the referendum. This exhibit is notable in that it returns to the earlier language as found in the initial descriptions of Section 8 that provided that funds would be utilized to "...**expand and improve a municipal park**."

While not clear from any of the materials, a reason for this difference in language may be directly attributable to statutory limits on the length of ballot descriptive language.

5. The City produced an educational piece on the proposed bond referendum that was widely distributed to the community in advance of the election (see attached copy). Labeled as "Venice Visions 2003 – A Parks and Recreation General Bond Issue." The document includes a description of frequently asked questions and references to community information sessions for members of the public to become more familiar with the bond and the proposed projects. Of note in this piece is the specific reference that there are four parks and recreation projects "earmarked" for the funds, including ***"[p]urchase of the Island Wastewater Treatment Plant and conversion to a public, beachfront park."***

This educational brochure makes it clear that the intent of the bonds is limited to four projects and it consistently refers to what has become known as Tramonto Vista Park in general terms as a "beachfront park" without any specific reference to the scope of any associated improvements.

6. The City prepared and released a general media announcement regarding the proposed bond referendum on June 26, 2003 (copy attached). These materials are of note since they reflected prepared statements and quotes attributable to key city officials and expectations for the proposed bond. Similar to the educational brochure referenced above, the press release consistently refers to Tramonto Vista Park as a "beachfront park" but offers no specific insight as to the scope of any improvements that might be contemplated. The press release reinforces prior referenced materials that make it clear that funds may be shifted between the four projects, but clearly provides that ***"...the bond money is strictly limited to use for parks and recreation capital projects."***

This press release reinforces the intent of the bonds is limited to four projects and that the funds may only be used for parks and recreational capital projects.

7. In anticipation of a variety of speaking engagements and community educational outreach, Mayor and City Council held a 'Bond Issue Orientation Workshop' on July 8, 2003 (workshop materials and agenda attached). There are several components of these materials, including an invitation from the Mayor to request that the city provide speakers to any community meeting or gathering to answer questions from the public. The Mayor's June 25, 2008 letter references the subject project as ***"purchase of the Island Wastewater Treatment Plant for conversion to a public beachfront park."***

8. The July 8, 2003 workshop materials include more specific information on each project and proposed bond expenditures that can help further articulate the intent for use of the bond funds. These materials generally label Tramonto Vista Park as "beachfront park" but also includes a Facts and Reference Guide to the park. Significantly the overview includes references to the city's adopted 1981 Comprehensive Plan and the designation of the wastewater treatment plant as a "*future public beachfront park*." In addition, the descriptive materials go on further to describe the project in the Park Project Summary as follows: "Subsequently, the infrastructure and amenities for a passive public park will be installed [emphasis added]."

These workshop materials reinforce the intent of the bonds is for the beachfront park to be a passive park.

9. The July 8, 2003 workshop materials include a section described as 'park highlights.' These materials offer the following additional specific information regarding the proposed park:

"Plans for the new passive park include:

- *Parking Lot*
- *Walkovers and boardwalk*
- *Dune creation and sea oat planting*

Also under consideration:

- *Public restrooms*
- *Expansion of adjacent Paw Park parking lot'*

These workshop materials reinforce the intent of the bonds is for the beachfront park to be a passive park and offer a specific list of potential improvements.

10. The City Clerk has identified several sets of minutes of Council meetings during which the bond and park were discussed (see attached). Generally these minutes continue with a variety of references to the proposed park in terms of its being beachfront, passive and at the location of the Island Wastewater Treatment Plant. Specific to this point, on several occasions members of City Council emphasized following the approval of the bond that the proposed park would be passive. At the time of the consideration of the bond ordinance at the August 12, 2003 City Council meeting, staff found one reference to including a 'band shell' at the proposed park and that was suggested by a member of the public.. Note that the City Council took specific action as part of this consideration to authorize the bond referendum to remove all 'open-ended clauses' in the ordinance so that it was clear that the bonds could only be used for the purposes described. Further to that discussion, approval of the ordinance included deletions to eliminate provisions that could have been construed to allow bond funds to be used for other recreational capital improvements not specified in the earlier City Council discussions or public education materials.
11. There have been several critical changes to conditions since the approval of the bond referendum that Mayor and City Council will need to consider prior to final approval of the Tramonto Vista Park design and amenities. Most significantly is the changed economic and fiscal environment as a result of voter and state legislature-imposed tax reform and limits to general government revenues. These new fiscal constraints will require that Mayor and City Council carefully consider the scope of ultimate improvements at the park not only in terms of capital costs but also on-going maintenance and operations costs.
12. The existing adopted Comprehensive Plan and the City Code of Ordinances defines city parks in terms of either "dedicated" or "designated." Dedicated parks are "...to be used and developed exclusively for the enjoyment by the general public as public parks, including but not limited to such uses as playgrounds, play fields, quiet landscape areas, cultural activity areas, waterfront activity areas, or any appropriate combinations thereof." Designated parks "...are not intended to preclude the city from permitting such non-conflicting public functions in the public use areas and parks that are necessary to the public health, safety and welfare such as providing sewer, water, electric and other utility lines and related minor structures and systems essential to serving the public." Brohard Park is identified as a "dedicated park" and its boundary includes Tramonto Vista Park, the Pier/Sharky's and Service Club Park.

13. Within the recreation and planning profession, parks have historically been broadly characterized as either for active or passive recreation. Typically active recreation refers to a range of uses that would include more intense development or facilities, such as playgrounds, team sport play fields, recreational buildings, community swimming pools and the like. Passive recreational areas typically emphasize the open-space aspect of a park and may include items like picnic areas, trails, and conservation/landscape areas.
14. Brohard Park is included within the scope of the existing interlocal agreement for parks maintenance between the City and Sarasota County. With this in mind, it will be incumbent to include county staff in the review of the ultimate design of the park and its facilities so that they may anticipate impacts to their staffing and budgets.

Conclusion

Based upon the various documents and materials, I believe that it is clear that the intent for use of the bond funds at Tramonto Vista Park is that they be used to improve that area as a "passive park." Absent a local definition for passive park and in consideration of the various materials and statements documented in the attached historical documents, it would appear that the improvements already conceptually approved by Mayor and City Council are not inconsistent with the identification of Brohard Park (and therefore Tramonto Vista Park and Paw Park) as a "dedicated park." Finally, reading the "park highlights" description as the most limiting of the materials distributed in concert with consideration of the bond referendum, a legal determination as to whether or not bond funds may be used for any improvements beyond (1) parking, (2) walkovers and boardwalk, (3) dune creation and sea oat planting, (4) public restrooms and (5) expansion of parking for the Paw Park is appropriate. I would suggest that it is appropriate for the City Attorney to advise you on the following items:

1. Since picnicking and picnicking facilities (including picnic shelters) clearly fall within the common understanding of passive recreation and all of the existing city public beachfront parks include these types of facilities, can the bond proceeds be used for these improvements?
2. Can the bond funds be utilized to create beachfront volleyball courts?
3. Can the bond funds be utilized to install playground equipment?
4. Can the bond funds be utilized to fund the purchase of a portable stage?
5. Can the bond funds be utilized to prepare an open landscape or hardscape area that may be used to temporarily erect a portable stage, tent or similar structure?

Recommendation

The City Attorney is now charged with rendering legal advice to you to determine whether any of the above-described or other any additional facts that he may identify, serve to specifically limit the scope of improvements to Tramonto Vista Park that may be funded through the bond funds. Note that the City Council has within its prerogative the ability to allocate other funding sources towards construction of any improvements that the City Attorney may advise are not legally proper under the terms of the bond.

Staff recommends that the City Council take no additional formal action at this point, pending completion of the preliminary design, engineering and permitting work currently underway in furtherance of your direction and existing decisions. Upon completion of the City Attorney's review and the estimates of construction costs, Mayor and City Council will then have the ability to weigh different alternatives that consider all economic, operational and legal constraints.

cc: Charter Officers
Nancy Woodley
Jeffery Snyder
CMO Staff

ISLAND BEACH WASTEWATER TREATMENT PLANT - PARK CONVERSION FACTS AND REFERENCE GUIDE

Overview

After more than 50 years in service, the city-owned Island Beach Wastewater Treatment Plant, located on the Gulf of Mexico between Brohard Beach and Caspersen Beach, will be decommissioned due to its advanced age, high operating costs and vulnerable location directly on the Gulf of Mexico. The newly updated Eastside Wastewater Treatment Plant will soon serve the entire City of Venice.

The property on which the plant sits has been leased from the Venice Municipal Airport. The airport's real estate transactions are subject to the review and approval of the Federal Aviation Administration (FAA).

In the City's comprehensive plan, adopted in 1981, the site was designated as a future public beachfront park when it was no longer viable as a functioning utility. However, it was not possible to project a closing date, and no funding was allocated or available for a park conversion project. Discussions regarding the plant's future were renewed in late 2002, when the upgrade of the Eastside plant was nearing completion and it was clear that the Island plant would no longer be needed.

With the issue of the plant property at the forefront of the City's agenda, a contingent of Venice area residents organized a petition drive to encourage the City to purchase it from the airport, decommission the plant and convert it into a public park—thus extending Venice's public beach space. Hundreds of signatures were presented to the Venice City Council, and the Council subsequently voted to proceed with such a plan.

Park Project Summary

If the wastewater treatment plant property is purchased by the City of Venice, the plant must be decommissioned—a process of closing, decontaminating, and restoring the site. Subsequently, the infrastructure and amenities for a passive public park will be installed.

Project cost

(Preliminary estimates - not yet sent to bid)

Estimated total	\$3 million
Amount available:	-0-
Amount from bond issue:	\$3 million

Cost:

\$3 MILLION

Includes the purchase of 5.19 acres from Venice Municipal Airport, decommissioning of plant, and construction of park

Timeframe

Negotiation and purchase of property	Immediately following bond issue vote
Project design phase	January-June, 2004
Solicit bids/select contractor	July-August, 2004
Plant decommissioning	August 2004
Construction begins	November 2004 (after turtle season)
Park complete and open	January, 2005

Park Highlights

Plans for the new, passive park include:

- Parking lot
- Walkovers and boardwalk
- Dune creation and sea oat planting

Also under consideration:

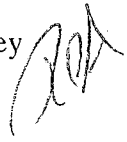
- Public restrooms
- Expansion of adjacent Paw Park parking lot

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**FROM THE OFFICE OF
THE CITY ATTORNEY**

MEMORANDUM

TO: THE VENICE CITY COUNCIL

FROM: ROBERT C. ANDERSON, City Attorney 

DATE: JANUARY 23, 2013

RE: PINEBROOK PARK

On December 4, 2012 John Holic, Ed Lavallee and Lori Stelzer directed me to assemble and review all documents concerning Pinebrook Park and to then issue a legal opinion regarding the legal status of Pinebrook Park. On December 7, 2012 I requested all city departments to search their files and to provide me with all documentation regarding Pinebrook Park. The requested documentation has been received and reviewed and I shall now render the requested legal opinion.

Section 46-1 of the code of ordinances identifies all of the parcels of land that constitute the city parks system. Wellfield Park is identified as a designated park. Pinebrook Park is not identified. The legal description of Wellfield Park is the west half of the southwest quarter of Section 4 and the west half of the northwest quarter of Section 9, Township 39 South, Range 19 East, Sarasota County, Florida. This legal description encompasses all of the land informally referred to as Pinebrook Park.

No one has produced any documentation which demonstrates that Pinebrook Park is a dedicated or designated park within the city parks system. All documentation assembled and reviewed indicates that Pinebrook Park is nothing more than a portion of Wellfield Park. Based upon the above, I am of the opinion that (1) Pinebrook Park is not a park within the city parks system; (2) the land informally referred to as Pinebrook Park is a portion of Wellfield Park ;and (3) Wellfield Park as a designated park in the city parks system is subject to all of the provisions of Chapter 46 of the code of ordinances.

Should you have any questions concerning this matter, please do not hesitate to contact me.

RCA/dlc

Copies to:

Lori Stelzer, City Clerk
Edward F. Lavallee, City Manager