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March 15, 2013

VIA E-MAIL

Mr. Michael Thompson
City of Foley
Post Office Box 1750
Foley, Alabama 36536

RE: Executive Session – Highway 59 Property

Dear Mike:

If the City Council desires, it can discuss in an executive session certain aspects of its desire to acquire the Highway 59 real property. There are two different exceptions to the open meetings law that come into play in this instance – the real property discussion exception and the litigation exception.

The real property discussion exception allows for the City to discuss in an executive session the consideration that it would be willing to offer to purchase or lease real property. Under this exception, only those people representing the City's interests can attend the meeting (not the land owner). The pertinent part of this exception to the Open Meeting law is set forth below:

(6) To discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. Provided, however, that the material terms of any contract to purchase, exchange, or lease real property shall be disclosed in the public portion of a meeting prior to the execution of the contract. If an executive session is utilized pursuant to this exception in addition to the members of the governmental body, only persons representing the interests of the governmental body in the transaction may be present during the executive session. This real property discussion exception shall not apply if:

a. Any member of the governmental body involved in the transaction has a personal interest in the transaction and attends or participates in the executive session concerning the real property.

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- b. A condemnation action has been filed to acquire the real property involved in the discussion.

Code of Alabama, 36-25A-7(a)(6).

The litigation exception allows the City to meet with their attorney in an executive session to discuss litigation-related matters. This includes matters that are not yet in litigation, but which are likely to be litigated if the City pursues a proposed course of action. It is my understanding that the City may decide to condemn the subject property if it cannot acquire it by voluntary means, and so it is my opinion that this exception would apply to our discussion of the legal ramifications and options available to the City should it seek to condemn the property. I will plan to attend tonight's Council meeting to discuss this issue with you and the Council. The actual text of this exception reads as follows:

(3) To discuss with their attorney the legal ramifications of and legal options for pending litigation, controversies not yet being litigated but imminently likely to be litigated or imminently likely to be litigated if the governmental body pursues a proposed course of action, or to meet or confer with a mediator or arbitrator with respect to any litigation or decision concerning matters within the jurisdiction of the governmental body involving another party, group, or body. Prior to voting to convene an executive session under this exception the governmental body shall receive a written opinion or oral declaration reflected in the minutes from an attorney licensed to practice law in Alabama that this exception is applicable to the planned discussion. Such declaration shall not otherwise constitute a waiver of the attorney-client privilege. Notwithstanding the foregoing, if any deliberation begins among the members of the governmental body regarding what action to take relating to pending or threatened litigation based upon the advice of counsel, the executive session shall be concluded and the deliberation shall be conducted in the open portion of the meeting or the deliberation shall cease.

Code of Alabama, 36-25A-7(a)(3).

If the City Council wants to go into an executive session, it would first need to follow the following procedure:

1. Motion to go into an executive session to discuss (1) the consideration the City may be willing to offer in order to purchase or lease real property and (2) to discuss with their counsel the legal ramifications and options available to the City to condemn real property.
2. Motion seconded and a majority voting in favor;
3. The vote of each member shall be recorded in the minutes;
4. After the majority vote, and before going into the executive session, the presiding officer shall state whether the City Council will

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reconvene after the executive session and, if so, the approximate time the body expects to reconvene. If the City Council will not reconvene, then this should be made clear, and the duration of the executive session does not matter, but the City Council cannot then go back into a regular meeting later.

Please let me know if you need anything further from me.

Very truly yours,



CASEY PINES