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January 16, 2013

VIA E-MAIL

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

Re.: Executive Session – Real Estate – Snook Lease

Dear Mike:

In response to your question, it is my opinion that the City Council can discuss in an executive session the terms and consideration that City might be willing to offer to terminate its lease with the Snook Foundation and re-take possession of certain property.

The City Council is authorized, if it desires, to discuss certain aspects of this potential property transaction in an executive session provided it does so in the confines of certain limitations. First, the City Council can only discuss in an executive session the consideration and terms that it is willing to offer, or the fair market value of the property. Other aspects of the contemplated transaction cannot be discussed in executive session. Second, no one from the other side of the transactions (i.e., the tenant) can be in the executive session. Only those people representing the City's interests can attend. Also, if any member of the City Council has a personal interest in the transaction, they are not allowed to attend the executive session.

The pertinent part of this exception to the Open Meeting law is set forth below:

(a) Executive sessions are not required by this chapter, but may be held by a governmental body only for the following purposes:

* * *

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

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

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 the consideration the City may be willing to offer to re-take possession of certain property currently leased to the Snook Foundation.
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 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 PIPES