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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 – BC Foley, LLC

Dear Mike:

If the City Council desires, it can discuss in an executive session certain aspects of its desire and plans to acquire the sites for the roads, the Event Center, and the new Utility Ball Fields and to construct certain improvements. There are two different exceptions to the open meetings law that come into play in this instance – the real property purchase exception and the trade or commerce 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 we would be purchasing the property from). Consideration offered by the City includes non-financial consideration like building improvements and other matters. 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:

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- 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).

The trade or commerce exception allows the City to protect its competitive position in its negotiations with others concerning matters of trade or commerce. This exception reads as follows:

(7) To discuss preliminary negotiations involving matters of trade or commerce in which the governmental body is in competition with private individuals or entities or other governmental bodies in Alabama or in other states or foreign nations Provided, however, that prior to such discussions a person involved in the recruitment or retention effort ... advises the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the competitive position of a party to the negotiations or upon the location, retention, expansion, or upgrading of a public employee or business entity in the area served by the governmental body if disclosed outside of an executive session,

Code of Alabama, 36-25A-7(a)(7). To use this exception, Mr. Rouzie or someone familiar with the transactions needs to advise the City (in writing preferably) in the minutes of the open meeting that a public discussion of these matters would have a detrimental impact or effect on the negotiations and the City's competitive position in securing the development.

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 terms and consideration the City may be willing to offer in order to purchase or lease real property and (2) to discuss matters of trade and commerce regarding a recruitment effort for new development in the City.
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.

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'Casey Pipes', with a stylized, cursive script.

CASEY PIPES