

CONCERNED NSB RESIDENTS AND TAXPAYERS

New Smyrna Beach, Florida 32170

Harvey T. R. Mitchell, Chair

Contact-us@reformnsbgovt.org

January 2, 2009

To: The Honorable Sally Mackay, NSB Mayor
From: A Group of Concerned NSB Residents and Taxpayers
Subject: Anglers Club Lease

In these very difficult economic times, the NSB City Commission has the legal obligation and fiduciary duty to generate, collect, and apply all potential revenues in order to provide the most cost effective city services to the residents and taxpayers of NSB. At the core of these City services are those associated with public safety, including police and fire, and those necessary to support public and private city infrastructure, such as the public works department.

After the Commission's action last fall to hold the line on the millage rate, it was our understanding that the Commission was serious about reviewing all aspects of city government in an effort to increase sources of tax revenue. Since this was supposed to be done jointly with citizen input, we, as taxpayers, began our own review in anticipation of sharing it with the Commission, as we look forward to the 2009-2010 budget in what can only be a tougher economic climate.

Our review began with the Anglers Club lease and its financial contribution to City revenue, primarily due to its prominent and valuable location. The resulting analysis you will read here is but the first publication of our citizen review, a process which several commission members appear to be reluctant to engage in given their failure to support your recent motions to begin a formal review of city government and budgets. As we progressed it became crystal clear to us that this lease should not continue, for a variety of reasons which you will read in this document. Most importantly, permitting a private men's club to operate a 43-slip docking facility on City property directly adjacent to the City Marina is irresponsible and a slap in the face of every taxpayer that continues to pay their fair share into the operation of City government. Any contract, lease, agreement, arrangement, or action by the City Commission that denies or diverts such revenues from benefiting the

residents and taxpayers of NSB is fiscally irresponsible and totally unacceptable.

Facts and Analysis

This document presents a history and analysis of a long-term lease between the City of NSB (lessor) and the Anglers Club of NSB, Inc. (lessee) for City owned property located at 2 N Causeway in NSB. The lease provides for the following:

1. All land, buildings, 43 boat slips, docks, boat houses, paved parking lots, barbeques, gazebos, retaining walls, and seawalls owned by the City are leased to the Anglers Club.
2. This is a 99 year lease scheduled to continue to the year 2043.
3. The rent per year is \$25.

All statements, findings, facts, comments, recommendations, and opinions presented in this document are based upon information received pursuant to Public Record requests to:

- a. The City of NSB.
- b. The Volusia County Property Appraisers Office
- c. Volusia County Public Records
- d. The U.S. Small Business Administration (SBA)
- e. The State of Florida Bureau of Public Land Administration

Issues

I. Angler Lease page 2:

“Lessee covenants and agrees to pay said Lessor, as rent for and during said period, the sum of twenty five dollars for each and every year during the period of said term.”

“Lessee further covenants and agrees to bear, pay and discharge, in addition to the rent herein reserved, all taxes, assessments and levies of every name, nature and kind.”

Property Tax due the City of NSB (1988-2008)

For the past 20 years, the Volusia County Appraisers Office has valued the leased land at 2 N Causeway under the agreement with the City of NSB on average at five dollars (\$5.00) per year. In 2008, the assessed land value was raised by the Appraisers Office to \$943,677. (See Attachment A)

Questions:

- What caused this sudden and dramatic increase in the valuation of the land located at 2 N Causeway?
- Have any City Ordinances or Laws been violated during this 20 year period?
- Were any intentional misrepresentations made to the County Appraisers Office during this 20 year period?
- Are any back taxes due the City of NSB?

(Note: Attachment B sets forth the Public Record request to the Volusia County Appraisers Office. Other Public Record requests were similar in nature but obviously dealt with specific information requested from the government agency to which it was directed.)

II. Angler Lease page 5:

“The Lessee shall not assign this Lease or underlet the premises here in described, or any part thereof, except upon the written consent thereto of the Lessor and upon any such assignment or underlease being consented to by said Lessor.”

Angler Lease page 6:

“A commercial boat yard shall not at any time be maintained on these premises.”

On Tuesday, November 9, 2004 at a NSB Commission meeting, former Mayor Vandergriff, and Commissioners Hathaway and Plaskett voted to approve an assignment of the subject lease to the U.S Small Business Administration in order to guarantee a loan of \$205,500 to the Anglers Club. Such loan was “to be used for the benefit of the business conducted on the leased premises: 2 N Causeway, NSB, Florida 32169.” (Volusia County

Public Records, Instrument #2005-044437, Book 5496, Page 3234) City Attorney Gummey approved the assignment as to form and correctness on 2-18-05. Mr. Hagood attested to the assignment on behalf of the City on 2-17-05.

This SBA assignment was revisited by the City Commission at a City Commission meeting on Tuesday, December 13, 2005, when the Anglers Club asked the Commission to increase the guaranteed amount from \$205,500 to \$322,700. Former Mayor Vandergriff along with Commissioners Hathaway, Grasty, Plaskett and Richenberg unanimously approved such increased guarantee. City Attorney Gummey stated that he had not found any problems with the document.

Questions:

- Did the NSB City Commission have the legal authority to guarantee the SBA loan to a private men's club?
- Did any Commission members have a conflict of interest pursuant to State Ethics Laws in voting for such guarantee?

III. Submerged Land Lease with the State of Florida

On January 1, 2008, the Anglers Club received a Submerged Lands Lease renewal for a 43-slip docking facility from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. (Volusia County Records, Instrument #2008-039672, Book 6197, page 3802)

Our inquiry has not been able to find any documentation that such Lease was approved by the City or that the City was a co-applicant for this Submerged Lands lease.

Section 17, NON-DISCRIMINATION of this Submerged Land Lease Agreement with the State of Florida states:

“The Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap or marital status.” (Book 6197, Page 3804)

The Charter of the Anglers Club states the following:

Article 3:

Members

“Membership in this corporation shall be open to white male citizens over 21 years of age.” (Book 6197, Page 3823)

On November 24th 2008, the U.S. Small Business Administration wrote to us the following:

“It is true that the SBA does not make loans to organizations or businesses that restrict or discriminate with regard to race or sex.”

IV. Angler Lease page 3

“Lessee shall conform to all Municipal Ordinances or Laws affecting said premises”

Anglers Lease page 7

“All buildings or improvements of any kind placed upon the premises herein by the Lessee during the term of this Lease shall be the sole property of the Lessor upon the termination of the Lease... by reason of the default of the Lessee to conform with any and all of the covenants and conditions herein, and that said Lessor shall not be required to pay any compensation to the Lessee.”

Final Thoughts

As previously indicated in this document, our group received a tremendous amount of information from the City of NSB, the Volusia County Appraisers Office, Volusia County Public Records, the U.S. Small Business Administration, and the State of Florida. Unfortunately, our review and analysis of this information raised more questions than it answered. These questions include, but are not limited to, the following:

- For 20 years (1988-2008), the County Appraisers Office was persuaded to value the land covered by the Lease for almost zero (0). Whose representations from the City or the Anglers Club convinced the County Appraiser that this valuation was correct?

- What event in 2008 led to or caused the sudden and dramatic increase in valuation of the Land to rise from \$16 to \$943,677? Were any laws violated? Are back property taxes due the City?
- Who at the City was responsible to monitor the valuation of City properties under lease, with the intent to maximize tax revenue for the City?
- Why has the City audit firm not uncovered this and other inconsistencies in the value of city property?
- Based upon the language in the U.S. Small Business Administration assignment, what exactly is the “business” to be conducted at 2 N Causeway?
- What representations did the Anglers Club make in its application to the SBA to justify their business plan in order to repay the SBA loan for \$322,700?
- Did the NSB City Commission have the legal authority to guarantee the SBA loan to a private men’s club?
- Why is the City unable to produce the loan application, business plan, and other documentation regarding the assignment of the lease to the SBA?
- What impact does the Non-Discrimination Clause in the Submerged Land Lease with the State of Florida, as well as the non-discrimination provision of the SBA loan process, have when viewed against Article 3 of the Anglers Club Charter regarding membership in the organization?
- What legal issue is presented to the City of NSB by the Angler Charter, Article 3 provision?
- Now that the City Commission is aware of such provision in the Angler Club Charter, does the Commission have a legal obligation or moral duty to take action regarding the Angler Lease with the City?
- Was it required for the City, as owner of the leased property, to consent and approve the Submerged Land Lease with the State of Florida?
- Was it necessary for the City, as owner of the leased property, to be a co-applicant for the Submerged Land Lease from the State of Florida?
- How much revenue is lost each year to the City of NSB by permitting a private men’s club to operate a 43-slip dock facility on City property directly adjacent to the City Marina?

- Has the Anglers Club conformed to all City Ordinances and Laws in dealing with:
 - a. The Volusia County Appraiser?
 - b. The U.S. Small Business Administration?
 - c. The State of Florida?
- Does the City of NSB assume any legal liability for not taking action to inquire into the issues presented in this document?
- Is the provision regarding litigation in the Lease (page 7) the 1944 version of today's contract law language making the Lessee responsible for paying all costs and attorneys' fees for litigation between the Lessor and the Lessee?
- Will inaction by the NSB City Commission regarding the above referenced issues make the City subject to the provisions and sanctions of Section 141 (b) of the Internal Revenue Code?

All of these questions could very easily be answered if the Anglers Club would share with the City the following:

1. A list of all former and current Club members.
2. Copies of the original applications to the SBA and the lending institution holding the \$322,700 note.
3. A copy of the original application to the State of Florida for the Submerged Land Lease and all annual filings made to the State of Florida for the past 5 years.
4. All communications between the Anglers Club and the Volusia County Appraisers Office regarding the valuation of the leased land and all representations to the County Appraiser regarding the use of such leased land.

Our group of concerned NSB residents and taxpayers strongly believe that the time has come (after 65 years) to terminate this unconscionable Agreement with the Anglers Club. We sincerely believe that it is incumbent upon the City Commission to take immediate action. The NSB City Commission has a legal and moral obligation to all NSB citizens, residents, taxpayers and voters to deal directly with the issues presented in this document.

Members of our group will be attending the NSB Commission meeting on January 27th; we trust that the Commission will announce a response to this document no later than the meeting that evening.

ATTACHMENT A

HISTORY OF JUST TAXABLE VALUES

YEAR	LAND	BLDG (S)	MISC	JUST	ASD	SCH ASD	NS ASD	EX E M P T	TXBL	SCH TXBL	A D' L EX	NS TXBL
2008	943,677	160,882	108,909	1,213,468	1,213,468	1,213,468	1,213,468	0	1,213,468	1,213,468	0	1,213,468
2007	16	161,902	111,444	273,362	273,362	0	0	0	273,362	0	0	0
2006	16	147,834	96,783	244,633	244,633	0	0	0	244,633	0	0	0
2005	6	141,940	83,488	225,434	225,434	0	0	0	225,434	0	0	0
2004	5	126,485	59,995	186,485	186,485	0	0	0	186,485	0	0	0
2003	5	119,102	64,133	183,240	183,240	0	0	0	183,240	0	0	0
2002	5	112,393	69,550	181,948	181,948	0	0	0	181,948	0	0	0
2001	5	111,034	74,957	185,996	185,996	0	0	0	185,996	0	0	0
2000	5	108,911	80,347	189,263	189,263	0	0	0	189,263	0	0	0
1999	5	101,424	86,782	188,211	188,211	0	0	0	188,211	0	0	0
1998	5	99,928	93,214	193,147	193,147	0	0	0	193,147	0	0	0
1997	5	96,458	99,692	196,155	196,155	0	0	0	196,155	0	0	0
1996	5	94,155	106,125	200,285	200,285	0	0	0	200,285	0	0	0
1995	5	92,829	112,560	205,394	205,394	0	0	0	205,394	0	0	0
1994	5	90,700	115,831	206,536	206,536	0	0	0	206,536	0	0	0
1993	5	120,442	108,344	229,791	229,791	0	0	0	229,791	0	0	0
1992	5	93,863	27,903	121,771	121,771	0	0	0	121,771	0	0	0
1991	5	93,863	29,259	123,127	123,127	0	0	0	123,127	0	0	0
1990	1	91,463	28,672	120,136	120,136	0	0	0	120,136	0	0	0
1989	1	88,210	28,795	117,006	117,006	0	0	0	117,006	0	0	0
1988	1	86,234	29,892	116,127	116,127	0	0	0	116,127	0	0	0

ATTACHMENT B

To: **Morgan B. Gilreath, Jr., Volusia County Property Appraisers Office**
Subject: **Request for all records regarding the 2008 Land valuation of the property located at:**

- 2 N Causeway, NSB
- Short parcel I.D. 7417-01-03-0010
- Key number 3801121

Such records shall include:

1. All communications, in whatever form, including, but not limited to, all written, electronic, and recorded communications associated directly or indirectly with the increased 2008 Land valuation of \$943,677.
2. All written materials, in whatever form, associated directly or indirectly with the consideration and review for the 2008 Land valuation of such NSB property. Such written materials shall include, but not be limited to, all notes, memoranda, work products, opinions, and recommendations regarding the increased 2008 Land valuation of \$943,677.
3. The communications and written materials, referred to above, shall specifically include all petitions whenever made to the Value Adjustment Board by the lessee of the subject property.
4. The requested records, referred to above, shall specifically include, but not be limited to, communications and written materials to, from, or between the following individuals:
 - a. Mr. Morgan Gilreath,
 - b. Ms. Cornelius
 - c. Attorney Wood
 - d. Mr. Michael Brewer
 - e. Mr. Jeff Cosat
 - f. Elisha J. Strapp
 - g. An unknown employee referred to as CHS
 - h. The immediate supervisors of Cosat, Strapp, and employee CHS

Questions:

1. What specific date in 2008 did the \$943,677 Land valuation become effective?
2. Does the property valuation of \$1,213,468 include the 43 boat slips and docks currently leased to the Anglers Club pursuant to the submerged land lease granted to the Anglers Club by the State of Florida?