

Law Offices
NEILL GRIFFIN MARQUIS, PLLC
311 South Second Street
Suite 200
Fort Pierce, FL 34950

Richard V. Neill+^o
Richard V. Neill, Jr. +[☆]
Renée Marquis-Abrams*
Ian Eielson Osking
Brandon M. Hale

*Board Certified Wills, Trusts, & Estates Lawyer
☆Certified Circuit Civil/County Court Mediator
+ Board Certified Civil Trial Lawyer
^o Of Counsel

Mailing Address:
Post Office Box 1270
Fort Pierce, FL 34954-1270
Telephone: (772) 464-8200
Fax: (772)464-2566

Via email only

April 22, 2020

Mayor William G. Thiess
2512 Lightlewood Lane
Fort Pierce, Florida 34946

Mr. Dale Reed
2811 North Indian River Drive
Fort Pierce, FL 34946

Mr. James Grimes
3203 North Indian River Drive
Fort Pierce, FL 34946

Mr. John Langel
2511 North Indian River Drive
Fort Pierce, FL 34946

Ms. Ingrid M. Van Hekken
304 Anchor Way
Fort Pierce, FL 34946

Mr. Timothy Ritter
2513 Lightlewood Lane
Fort Pierce, Florida 34946

RE: Town of St. Lucie Village

Gentlemen and Ms. Van Hekken:

Please accept the following as our attorney's report for the April 28th meeting.

1. North Indian River Drive Project. Knowing that this item was coming up and that someone will likely raise putting the work out to bid, I asked my associate, Brandon Hale, to research whether the project had to go out to bid or not. Brandon's research confirmed my thinking that the applicable statutes do not require that it go out to bid. A copy of my email and with Brandon's memos is attached, I am also attaching my email with the General Counsel of the Ethics Commission indicating that bidding is not ethically required (presupposing it's not required by statute)..
2. Airport Training Traffic. Bill may be able to give us an update on this issue.
3. All Aboard Florida. I have asked Laura to email you the most current plans we have seen on the various crossings in the length of the Village, excluding Tamarac, and we will post those online also.
4. Vacation Rentals. This has become less urgent since the Legislature did not adopt any new legislation this session so we can defer until we are back to "in person" meetings.

5. Business Hours/Hours for Alcohol Sales. This item can similarly be deferred; but, I do have a memo from Ian on point which I am attaching. I wouldn't get too bogged down in the basic argument, but consider the last point which is that, Section 562.14 provides that, "Except as otherwise provided by county or municipal ordinance, no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the division between the hours of midnight and 7 a.m. of the following day." Consider whether that might be acceptable.
6. Caribee Colony/IRLWC. Scott pointed out an issue/question concerning Caribee Colony's ownership of river frontage and we will be trying to provide input on that.
7. Audit. Ingrid, Donna and I will still plan to meet to discuss matters that might be included in a resolution—once we're done social distancing. I have asked the accountant for suggestions.
8. Zoning Queries. Scott had a query concerning 3970 N. U.S. 1 Hwy in relation to the property's zoning type, permits and a new storage yard. We responded and I gather that this will be addressed in code enforcement going forward.
9. Miscellaneous Queries. We had a question from Carl concerning permit history on the King property at 474 Peninsula Drive. I had my assistant, Laura, pull up the permit related information we had on the King property and I have emailed them to Carl.
10. Northside Nursery Variances. We will plan to update you at our next physical meeting, but I can tell you that it appears the properties are not in compliance with the variances granted.
11. Codification of Zoning Amendment. I emailed Bill concerning the corrections that he had noticed and the corrections that we noticed in relation to the Permitted Use Table. He did not recall any further corrections of importance; so, we will proceed accordingly.
12. Comprehensive Plan Amendment. Javier Cisneros is still willing to do this work for us (updating the Future Land Use Map). I emailed him our marked up map and the list of parcels that need to be added.

On our EAR (Evaluation and Appraisal Report), we have been reviewing statutory revisions since 2013 to determine the necessity of revising the text of the Comprehensive Plan. Our determination of whether changes are needed must take place over the next couple of months as our EAR is due in Tallahassee in July.
13. TNT Construction (Information Request). Ms. Kairalla is a realtor with TNT Construction, the company is requesting information regarding developmental approvals for 2018-2019, and they seem mostly concerned with residential development. I'll follow up on this item.
14. Sarasola Generator. I think that this is still under review.
15. Occupational Licenses. I am carrying forward this note that it is probably time to update and revise the governing Village ordinance.

Mayor and Board of Aldermen

Page 3

April 22, 2020

16. St. Lucie School. I have been told that the property may be declared “surplus” so that the School Board can dispose of it.

17. 2020 Election. The current aldermen all reapplied and no one filed to contest the election; so, I hope that no further action is needed beyond filing papers and swearing people in. I’ll plan to drop this matter.

18. Ethics Class. The Ethics Class was canceled due to the circumstances with the COVID-19. I’ll drop this item for now.

19. Referrals to Special Magistrate:

- a. 4050/4058 N US 1 (Zito)
- b. 2450 N US 1 (Top Notch Marine) – is under review
- c. 3429-3463 Old Dixie (Danks) – has been given notice
- d. 3100 N. US 1 (Sarasola)

Do feel free to call if there's anything you want to discuss with me before the meeting.

With best regards.

Yours very truly,

/s/ Richard V. Neill, Jr.

Richard V. Neill, Jr.

RVNjr/mk
Enclosures

cc: Donna Dennis, Clerk (w/encls.)
Scott Dennis (w/encls.)

Cathy Townsend (w/encls.)
Wesley Taylor (w/encls.)

Laura Marotta

From: Richard V. Neill, Jr.
Sent: Thursday, March 19, 2020 2:12 PM
To: William Thiess (william.thiess@stlucievillagefl.gov)
Cc: Donna Dennis; Scott Dennis; Laura Marotta
Subject: NIRD project -- bidding
Attachments: 20-03-02 Memo to Brandon RE North Indian River Road Project.pdf; 20-03-08 Memo fm Brandon RE North Indian River Drive Project.pdf; 20-03-17 Memo fm Brandon RE NIRD Project-CCNA.pdf

Bill,

Although the numbers that I suggested to Brandon (on the project cost) were a little off, Brandon's research confirmed my thinking that the applicable statutes do not require the North Indian River Drive Project to go out to bid, even based on the somewhat higher numbers you had projected.

For the file, I am attaching my initial memo and his responses.

You will also remember that I previously inquired of General Counsel of the Ethics Commission who confirmed that there was no ethical obligation to seek competitive bids.

Regards,

Richard

Richard V. Neill, Jr., of
Neill Griffin Marquis, PLLC
Post Office Box 1270
Ft. Pierce, FL 34954
Telephone: 772-464-8200
Fax: 772-464-2566
rneilljr@neillgriffin.com

CONFIDENTIALITY

The information contained in this e-mail, including any attachments, is privileged and confidential, intended only for the use of the individual or entity to whom it is directed. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this e-mail or any attachment is strictly prohibited. If you have received this transmittal in error, please reply to the sender that you have received it in error and then delete it. Thank you.

MEMO

TO: Brandon Hale
FROM: Richard V. Neill, Jr.
RE: North Indian River Drive Road Project
DATE: March 2, 2020

St. Lucie Village is getting ready to move forward on repaving North Indian River Drive including to raise elevations in low spots.

I estimate the expense to be \$90,000.00 plus \$10,000.00 in engineering fees.

The question is whether the Village, an incorporated municipality, must competitively bid the project. I am attaching an AGO which has some general discussion indicating that a municipality typically does not have to bid a project unless specifically, statutorily or otherwise required. (In that opinion, it appears that there is a statute that requires utility work to be bid and my initial thought is that, in the context, “public works” does not include roads.)

Ian has done some work on this in relation to our garbage contract but I don’t think I see that compiled in my village files on the server.

Note the comments about the CCNA. We have a city engineer who may have been selected competitively. I am hoping we don’t have to go back and figure that out but rather that, given the size of this project, engineering need not go out to bid.

Do we have to competitively bid this project or any portion of it?

CONFIDENTIAL MEMORANDUM

TO: RVNJr.
FROM: BMH
DATE: March 8, 2020
RE: North Indian River Drive Project

I. Applicable Law

Generally, there is no requirement under the common law that municipalities competitively bid projects to contractors. *Dept. of Transportation v. Groves-Watkins Constructors*, 530 So. 2d 912 (Fla. 1988). However, in derogation of the common law, the Florida Legislature has passed several statutes that require public entities to competitively bid certain projects.

A. The Local Bid Law, Fla. Stat. § 255.20, et seq.

The Local Bid Law, Fla. Stat. § 255.20, requires municipalities, amongst other public entities, who are seeking to construct or improve a public building, structure, or other public construction works, to competitively award the project to “an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$300,000.” Fla. Stat. § 255.20(1). With regards to projects for electrical work, the “local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$75,000.” *Id.*

Despite the above, Fla. Stat. § 255.20(1)(c) does permit some exceptions to the bidding requirements. Notably, pursuant to Fla. Stat. § 255.20(1)(c) a local government is not required to competitively award a construction project if: (1) the replacement, reconstruction, or repair is necessitated by an emergency; (2) the construction project is for repair or maintenance of an existing public facility; or (3) the governing board determines at a public meeting that it is in the best interest to perform the work with the government’s own personnel. Fla. Stat. § 255.20(1)(c)(1), (5), & (9).

B. Utilization of Minority Business Enterprises, Fla. Stat. § 255.101, et seq.

With regards to competitive bidding, the Florida Legislature has implemented some statutes that are aimed to redress certain past discriminatory practices. Under Fla. Stat. § 255.101(2) “[c]ounties, municipalities, and special districts as defined in chapter 189, or other political subdivisions of the state are encouraged to be sensitive to the effect of job-size barriers on minority businesses. To this end, these governmental entities are encouraged to competitively award public construction projects exceeding \$100,000.”

In strictly interpreting the statute and the legislature’s use of the term “encouraged”, it is clear that municipalities have the option to comply and are thus not required to competitively bid

projects exceeding \$100,000.00. Although the statute is not controlling, it is worth noting and should at least be contemplated by any governing board.

C. Municipal Law Requirements, Fla. Stat. § 180.24, et seq.

Municipalities are subject to certain specialized bidding requirements pursuant to Fla. Stat. § 180.24. Under that statute,

“[a]ny municipality desiring the accomplishment of any or all of the purposes of this chapter (Municipal Public Works, Chapter 180, Florida Statutes) may make contracts for the construction of any of the utilities mentioned in this chapter, or any extension or extensions to any previously constructed utility . . . provided, however, construction contracts in excess of \$25,000 shall be advertised by the publication of a notice in a newspaper of general circulation in the county in which said municipality is located at least once each week for 2 consecutive weeks, or by posting three notices in three conspicuous place in said municipality one of which shall be on the door of the city hall; and that at least 10 days shall elapse between the date of the first publication or posting of such notice and the date of receiving bids and the execution of such contract documents. For municipal construction projects identified in s. 255.0525, (referring to municipal projects in excess of \$200,000.00) the notice provision of that section supersedes and replaces the notice provisions in this section.

Fla. Stat. § 180.24(1).

Unfortunately, the language “desiring the accomplishment of any or all of the purposes of this chapter” as used in Fla. Stat. § 180.24(1) provides no clear guidance. Although only persuasive, Florida Attorney General Opinion 94-28 does provide a good summary of the purposes of Chapter 180. That opinion states:

“Chapter 180, Florida Statutes, authorizes municipalities to provide municipal public works outside their corporate boundaries. Among the activities authorized by Chapter 180, Florida Statutes, are providing a water supply for domestic, municipal or industrial uses and providing for the collection and disposal of sewage and other liquid wastes. *See* s. 180.06(3) and (4), Fla. Stat. (1993). Incidental powers are also specifically provided: "And incidental to such purposes and to enable the accomplishment of the same, to construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works[.]” Section 180.06(6), Fla. Stat. (1993).”

AGO 94-28

In reviewing this AGO and the remaining sections of Chapter 180, it appears that the purposes of chapter 180 deal exclusively with water and sewer services.

II. Analysis and Conclusion

Here, St. Lucie Village is an incorporated municipality that is expressly subject to the requirements of Fla. Stat. §§ 255.20, 255.201 & 180.24.

In looking at each statute in turn, it would not appear that St. Lucie Village, although subject to Fla. Stat. § 255.20, would need to competitively award the project under that particular section. Under the Statute, a municipality is only required to competitively award projects that are projected to cost in excess of \$300,000.00. Because the proposed project for St. Lucie Village is only estimated to cost \$90,000, plus an additional \$10,000 in engineering costs, the project does not appear to rise to the level that requires competitive bidding and consideration. However, even if the project were to meet the statutory threshold, it may still not have to be competitively awarded as it is a project undertaken as a repair or maintenance of an existing public facility as provided in Fla. Stat. § 255.20(1)(c)(5).

With regards to Fla. Stat. § 255.201(2), it is clear by the language of the statute that St. Lucie Village is not required to competitively award projects in excess of \$100,000. However, the legislature found the issue to be compelling enough to codify, therefore St. Lucie Village should at least consider bidding the project on the grounds of being sensitive to job-size barriers on minority businesses if such project final projected cost exceeds the \$100,000 threshold.

With regards to Fla. Stat. § 180.24, St. Lucie Village, as a municipality, is obligated to comply with the requirements of the statute. However, the statute expressly states that municipalities only need to bid projects where the municipality is desiring to accomplish a purpose under Chapter 180. Because Chapter 180 appears to specifically apply only to water and sewer services, a municipality seeking to repave a public roadway and raise low areas likely does not need to bid the project even if such project is in excess of \$25,000.00.

In sum, it would seem based upon these facts, St. Lucie Village is not required to competitively bid the project but, depending upon whether the final projected project cost exceeds \$100,000, might want to consider competitively awarding the project based upon the recommendation of the legislature for municipalities to be sensitive to job-size barriers on minority businesses.

CONFIDENTIAL MEMORANDUM

TO: RVNJr.
FROM: BMH
DATE: March 17, 2020
RE: North Indian River Drive Project – CCNA

I. Applicable Law

Florida Statute § 287.055 titled the “Consultants Competitive Negotiation Act” (CCNA) is a Florida statute that “establishes a systematic method for acquiring professional services and applies to virtually every public body in the state.” *Florida Construction Law and Practice* § 7.17(A) (FLCLE). Generally, the statute states:

“Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project the basic construction cost of which is estimated by the agency to exceed the threshold amount provided in s. 287.017 for CATEGORY FIVE or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, except in cases of valid public emergencies certified by the agency head.”

Fla. Stat. § 287.055(3)(a).

Pursuant to subsection (2)(a), an Agency is defined as “the state, a state agency, a municipality, a political subdivision, a school district, or a school board.” Fla. Stat. § 287.055(2)(a). A project “means that fixed capital outlay study or planning activity described in the public notice of the state or a state agency under paragraph (3)(a)” and may include “a grouping of minor construction, rehabilitation, or renovation activities.” Fla. Stat. § 287.055(2)(f).

Although the CCNA applies to a broad range of agencies and projects, it specifically applies under the statute to certain projects that are in excess of statutory thresholds. According to Fla. Stat. § 287.055(3)(a) for projects, an agency need only competitively negotiate professional service contracts that exceed the amount provided in s. 287.017 for category 5 projects, which is expressly limited under Fla. Stat. § 287.017(5) to projects in excess of \$325,000. Fla. Stat. §§ 287.055(3)(a) & 287.017(5). For a planning and study activity, such statutory thresholds are lowered to a category two, which is defined as a project in excess of \$35,000. Fla. Stat. §§ 287.055(3)(a) & 287.017(2).

II. Analysis and Conclusion

Here, St. Lucie Village (SLV) is an incorporated municipality that is expressly subject to the requirements of Fla. Stat. § 287.055(3)(a). Because SLV is subject to the requirements of the statute, it must provide notice of certain projects and competitively negotiate certain professional services, including professional engineering services.

However, SLV need only publish notice and competitively bid those certain projects which exceed the statutory threshold of \$325,000 for standard projects. For planning and study activities, SLV need only publish notice and competitively bid those projects which exceed \$35,000.

Because the proposed North Indian River Drive Project requiring professional engineering services is only estimated to cost \$100,000, including the cost for the professional engineering services, SLV is not required to publish notice and competitively negotiate the professional engineering services for the North Indian River Drive Project.

Laura Marotta

From: Anderson, Chris <ANDERSON.CHRIS@leg.state.fl.us>
Sent: Monday, January 07, 2019 8:02 AM
To: Richard V. Neill, Jr.
Subject: RE: Question regarding procurement

Richard,

It's good to hear from you. Happy 2019.

As to your question below, there is no general, affirmative requirement under the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes) that goods and services always be purchased through competitive bidding/negotiation. Rather, sealed competitive bidding to the lowest or best bidder (not ITNs, RFPs, RFQs, or similar mechanisms sometimes referred to as "bidding") can be an exception to what otherwise would be conflicting under F.S. 112.313(3) and/or the first part of F.S. 112.313(7)(a), if the elements of one or more of those prohibitions exist (for example, doing business with one's or one's family's company or with one's employing company); see CE Form 3A, viewable at and printable from www.ethics.state.fl.us. However, one should always check to make sure there is not a local ordinance, local purchasing policy, statute or special act requirement outside the Code of Ethics, or other standard that requires a competitive purchase.

Thank you for the question,

Chris Anderson

C. Christopher Anderson, III

General Counsel and Deputy Executive Director

Florida Commission on Ethics

(850) 488-7864

From: Richard V. Neill, Jr. <RNeillJr@neillgriffin.com>
Sent: Saturday, January 05, 2019 12:19 PM
To: Anderson, Chris <ANDERSON.CHRIS@leg.state.fl.us>
Subject: Question regarding procurement

Chris,

A member of our municipal governing body has queried whether Board members are generally obligated, **ethically**, to purchase goods and services through competitive bidding/negotiation.

My advice has essentially been that, so long as the Village's procurement is handled in accordance with Chapter 287, including **not** using a competitive process when **not** required, a board member would not be exposed to ethics charges for approving a procurement process which does not include competitive bidding or negotiation.

He feels strongly that he has been advised to the contrary at seminars, so I'm checking with you to make sure that I'm not missing something.

The only exception that comes to my mind would be if the Board member were doing business with himself or herself/his or her company or family. And, that's the only circumstance in which I see the competitive negotiation issue mentioned in your outline.

So, leaving aside the issue of doing business with oneself or one's family, is there any ethical issue that could arise from using **or not using** the competitive process **in compliance with Chapter 287**?

Thanks in advance for your thoughts.

Regards,

Richard

Richard V. Neill, Jr.
Town Attorney
Town of St. Lucie Village, Florida

Neill Griffin Marquis, PLLC
Post Office Box 1270
Ft. Pierce, FL 34954
Telephone: 772-464-8200
Fax: 772-464-2566
richard.neill@stlucievillagefl.gov

Please Note: Florida has very broad public records laws. Most written communications to or from myself of Village officials regarding Village business are public records available to the public and media upon request. It is the policy of St. Lucie Village that all Village records shall be open for personal inspection, examination and / or copying. Your e-mail communications will be subject to public disclosure unless an exemption applies to the communication. If you received this email in error, please notify the sender by reply e-mail and delete all materials from all computers.

From: Anderson, Chris [<mailto:ANDERSON.CHRIS@leg.state.fl.us>]
Sent: Thursday, April 05, 2018 3:08 PM
To: Richard V. Neill, Jr.
Subject: ethics outline and table of contents for outline

Richard,
It was a pleasure speaking with you by phone.
Chris Anderson
C. Christopher Anderson, III
General Counsel and Deputy Executive Director
Florida Commission on Ethics
(850) 488-7864

Memo

To: RVNjr
From: IEO
Date: 3-30-2020
Subject: SLV- Across the board prohibition of being open past a certain time

I found an academic article on this subject (although it does not discuss blanket restrictions) that I have saved under my St. Lucie Village files under Bars and Nightclubs.

In regards to whether or not the Village can (properly) enact legislation which forces all businesses to close a designated time of the night, there are multiple considerations to take into account.

The first point is the Commerce Clause of the United States Constitution. It is unconstitutional for a municipality to enact an ordinance that interferes with interstate trade (a blanket ordinance would most definitely be seen as such). That does not mean that you cannot regulate local trade or even interstate trade, but there has to be a legitimate purpose (and it is always best to use the least restrictive means possible). Crime prevention is a legitimate purpose, but prohibiting all business I believe would be over reaching and overbroad.

Also, as with any governmental regulation, it must serve a legitimate purpose and the legislation must be (at a minimum) rationally related to achieving the goal sought. I do not know of a rational basis that we would have for a ban on all business past a certain time of night. (You would be hard pressed to argue that closing Grimes for all purposes (including emergency repairs) serves a rational purpose.) Also, you have to look at the intent of the legislation and what the legislation is trying to prevent or regulate. Are we trying to prevent commerce (if so that would be pre-empted by the commerce clause and we would move into a stricter test to survive a constitutional challenge). If the goal is to prevent dangerous or illegal behavior, then we may have a legitimate police purpose. But, there must be some support for why it needs to apply to all business (and I do not think that it would).

The easiest way to think about blanket legislation is to consider how it would affect existing businesses that do not cause any harm to the public (like the storage facilities or Grimes A/C, or basically all of the business in the Village).

The flip side of the coin is that you could make blanket legislation that then makes exceptions for those types of businesses that do not cause an issue. But, again, how do you choose which business is exempt and which is not? Also, that type of legislation would be very cumbersome to enact and would have to be quite the lengthy document.

If we must pass legislation, then it should be specifically tailored to the issue at hand and would be best to apply as narrowly as possible.

But, Fla. Stat. §562.14 already regulates the selling of alcohol for onsite consumption. Pursuant to that statute, the magic hour is Midnight (that statute does give the municipalities the authority to expand that time frame (or decrease it) if you wanted to).