

JOCKEY CLUB/CITY OF NORTH PORT
CANINE CLUB RELATIONSHIP- THE FUTURE

18 February 2022

BACKGROUND

1. The Canine Club was constructed and opened on 04 September 2010 on land governed by a lease between the City of North Port and the Jockey Club of North Port Property Owners Association Inc. It is operated and maintained by the City of North Port.
2. On 15 July 2021, the Parks and Recreation Advisory Board (PRAB) met to discuss expanding the footprint of the Canine Club further into Jockey Club leased land¹. Members discussed the lease between the City and the Jockey Club indicating they required consent/concurrence from the Jockey Club for further expansion. Later, on 28 September 2021, the North Port City Commission discussed the expansion of the Canine Club². Again, discussion covered approaching the Jockey Club to release the property to the City for expansion.
3. The Jockey Club was made aware of this proposal as a result of a telephone call on 30 September 2021. Tricia Wisner, Assistant Director Parks and Recreation spoke with David Casarsa, Jockey Club Vice President regarding the proposal to expand the Canine Club into Jockey Club leased land. She stated the City required an agreement by the Jockey Club to do so in accordance with the terms of the lease³. She provided a link to the City of North Port to provide access to meeting minutes and other documentation. When Ms Wisner mentioned the need for Jockey Club approval on the expansion, the question arose as to why and how the Jockey Club originally gave permission for the construction of the current Canine Club.

AIM

4. To discuss the relationship between the City of North Port and the Jockey Club of North Port POA Inc. regarding the future of the Canine Club (Appomattox Bvd).

SCOPE

5. This paper shall demonstrate that the City of North Port violated the Lease Agreement with the Jockey Club regarding the location and construction of the Canine Club. It will also set the conditions for a negotiated settlement between the City and the Jockey Club regarding the City's continued operation of the Canine Club.

¹ PRAB Minutes 15 July 2021, Agenda Item 21-0899 refers.

² City Commission Minutes 28 September 2021, Agenda Item 21-1323 refers.

³ The Jockey Club Board of Directors voted to not approve the request by the City to expand the Canine Club at a Board meeting held on 14 February 2022.

DISCUSSION

6. The Lease Agreement between the City of North Port and the Jockey Club is found at FLAG A. The lease governs Tracts E, J, K and L within the fifty- second addition to Port Charlotte subdivision according to the plot thereof recorded in plat book 21, pages 13and 13a through 13nn, of the Public Records of Sarasota County, State of Florida. The Canine Club is located within portions of Tracts L and K (FLAG B refers).

7. The Lease Agreement, specifically paragraphs 16 and 17, reserve the use of the designated Tracts for the “sole enjoyment and use of the Lessees membership”, the Lessee being the Jockey Club; bestow upon the Jockey Club “the rights which the Lessee would have if it were the fee simple owner of subject property”; and, “the Lessee shall be fully responsible for the management of the subject property, and **shall have sole discretion and control as to the activities and uses conducted on or about it** so long as the same do not constitute a breach of the covenants and agreements contained herein” (**Bold** text is that of the author). From these paragraphs it is clear that the Jockey Club has the authority to approve or reject any requests by any agency for the use of the designated Tracts. This has been confirmed by various departments in the City of North Port regarding:

- a. The Parks and Recreation request to expand the Canine Club further into Tracts L and K;
- b. The City’s request to use Tracts K and J for parking in support of Woofstock”; and
- c. Historical requests by the City to use Tract J as a marshalling area for the annual Santa Claus parade.

8. In order to override paragraphs 16 and 17 of the Lease Agreement, the City sought a legal opinion from Attorney Sarah Blackwell (FLAG C). In it she argued that paragraph 6 of the Lease, specifically the sentence, “Lessor shall have the right, in its sole discretion, to provide and pay for such improvements as may be necessary for the health, safety and welfare of the general public, and such improvements shall become the property of the Lessor at the expiration of the term of this Lease”, was the clause that allowed the City to act in its own interests in securing the land needed to construct the Canine Club. However, this sentence was taken out of context as it is situated in a paragraph that allows the Lessee (Jockey Club) to construct buildings or make alterations to the property with permission from the Lessor (City of NP) and allows the Lessor to assume and “pay for such improvements” for the “health, safety and welfare of the general public ...”.⁴ Further, the possible solutions provided to the City by Attorney Blackwell all involved financial compensation to the Jockey Club.

9. In 2008, the Minutes of the Parks and Recreation Advisory Board (PRAC) addressed issues regarding the Canine Club (Paw Park as it was then referred). Legal issues, resident concerns, siting and

⁴ The actual wording of paragraph 6 of the Lease Agreement follows:

“6. The Lessee shall not construct or locate any buildings upon said premises nor make any alterations in or upon said premises without first obtaining the written consent of the Lessor. Any such construction, location or alteration made in or upon said premises shall be made at the sole cost, charge and expenses of the Lessee. The Lessee, locating or constructing any buildings upon these premises shall retain ownership of such buildings. The Lessor shall have the right, in its sole discretion, to provide and pay for **such improvements** as may be necessary for the health, safety and welfare of the general public, and such improvements shall become the property of the Lessor at the expiration of the term of this Lease.” (**Bold** text is that of the author)

“such improvements” refers to the buildings and alterations added by the Lessee with the approval of the Lessor.

operations were mentioned in the minutes without provision of detail.⁵ There are no further records in PRAC minutes pertaining to the Canine Club (Paw Park) after the April 2008 meeting for the remainder of that year. The Jockey Club has no record of having been approached by the City regarding resident concerns, legal issues or lease negotiations. There is no record of the Canine Club ever being brought before the City Commission (as stated in the April 2008 minutes) for approval.

10. In 2009, PRAC minutes discuss the requirement for, and obtaining, approval from the Development Review Committee, the Southwest Florida Water Management District and the finalization of construction bid documentation. There was no Jockey Club involvement. The only record the Jockey Club has regarding the Canine Club are the minutes of a Special Meeting of the Board of Directors held on 16 February 2009 (FLAG D). The minutes record that, "Due to changes in property laws, cities can now take ownership of any property they declare to be necessary for city development." It is unlikely that the Board would have come to this conclusion on its own right and that the Board was informed or influenced by an external source. Given FLAG C and the lack of any consultation or negotiation with the Jockey Club, it is most likely that the City provided this advice. The Jockey Club accepted this advice and chose not to seek an opinion from its attorney.

11. PRAC minutes of meetings held in 2010 focused upon contracting and construction updates as well as discussions regarding the opening of the Canine Club on 04 September 2010. As stated previously, the Canine Club opened on that date and continues to operate.

12. A Public Records Request and search by David Casarsa in the Fall of 2021 and a separate search conducted by Tricia Wisner (Parks and Recreation) determined that there are no ordinances, resolutions, memoranda, agreements, city commission resolutions (apart from 12 December 2007⁶) or amendments to the lease that authorize, sanction or support the construction of the Canine Club on land leased by the Jockey Club. This was further confirmed by Commissioner Jill Luke who was also unable to find any documentation.

13. A request submitted through the City's Online Records on 09 February 2022 for a copy of the survey/drawings for the Canine Club is attached at FLAG E. According to the drawing, there is only one known survey marker, that being in the south-east corner near the bridge crossing Myakkahatchee Creek. The southern boundary is assumed to run along the Appomattox Blvd right of way; the remaining boundaries are not specified, with the limits of the northern boundary being the most unclear. Had there been an agreement between the City and the Jockey Club the legal severance would be specified in the drawing. As this was not done, the actual size of the Canine Club footprint is another aspect that requires discussion.

⁵ PRAC minutes 17 January 2008 discussed legal issues, resident concerns, siting and operations issues. PRAC minutes 21 February 2008 reported the project is under legal review and the negotiating of a lease agreement. The details are unknown.

PRAC minutes 10 April 2008 discussed a meeting between Bill Ward (Staff Liaison) and the City Atty regarding property issues pertaining to the Paw Park. The project was to go before the City Commission for approval.

⁶ City Commission Special Meeting Minutes, 11 December 2007, Agenda Item 5. The City Commission voted unanimously to select the Jockey Club as the site for the "Family Paw Park". The minutes state "Mr Pingree clarified the process of obtaining proportions of the land under lease from the City to the Jockey Club Area." There was no detail provided regarding this process.

14. Unless the City can demonstrate otherwise, it is evident that the City of North Port violated the lease with the Jockey Club by appropriating portions of Tracts K and L without the approval of the Jockey Club. The City did not heed the advice provided by its legal counsel, nor is there any resolution, ordinance, lease amendment, memorandum of understanding, or record of decision/discussion that authorized the construction of the Canine Club on land governed by the lease (FLAG A). The Jockey Club is aware that Statute of Limitations prevents the Jockey Club from seeking restitution from the City in spite of the City's omission in not following its own regulations and acting as if the Jockey Club was a non-participant when it should have been treated as an equal partner in regards to the Canine Club decision.

15. Notwithstanding the Statute of Limitations that prevents the Jockey Club from seeking restitution for the past errors undertaken by the City of North Port, the Jockey Club intends to assert its control over all leased tracts in accordance with the Lease Agreement (FLAG A), paragraphs 16 and 17, for all current and future use of the leased tracts. The Jockey Club acknowledges that none of the current City staff are responsible for the actions of their predecessors and it is not the intent of the Jockey Club to seek out and blame individuals. However, the Jockey Club is not prepared to accept the status quo and wishes to enter into negotiation with the City of North Port regarding the future of the Canine Club.

16. The Jockey Club is prepared to accept the Canine Club on the leased properties in its current form and have it operate in the same manner as it has for the last decade, but not without compensation. The Jockey Club seeks a financial settlement regarding the City's present and future use of the land upon which the Canine Club sits, entering into an agreement that would avoid a legal confrontation. However, should negotiation prove unsuccessful, the Jockey Club would have to give due consideration to seek a resolution through the courts. Such an escalation would result in public scrutiny and negative public relations regarding the City's actions. While no longer legally responsible for actions in the past, the City would be morally responsible and be hard pressed to justify its requirement for other individuals and agencies to abide by City regulations when it has not done so itself.

CONCLUSION

17. The City of North Port violated the terms of the 1981 Lease Agreement with the Jockey Club by appropriating portions of the land governed by subject lease without compensation to, or approval from, the Jockey Club. There are no documents that legitimize the location and construction of the Canine Club.

18. In two separate meetings held in 2021, the City of North Port has acknowledged the requirement to seek the approval of the Jockey Club regarding the use of the properties governed by the 1981 Lease Agreement. (Footnotes 1 and 2 refer). In addition, the City's request to the Jockey Club for permission to expand the size of the Canine Club further demonstrates the Jockey Club's legal position as stated in the Lease.

19. The Jockey Club seeks fair compensation for the use of the land upon which the Canine Club sits for the present and future. The Statute of Limitations precludes the Jockey Club from seeking restitution for the City's past actions. If possible, the Jockey Club seeks a settlement without having to resort to legal action.

20. The Jockey Club wishes to maintain its harmonious relationship with the City of North Port and hopes that the City act in a responsible manner to correct the errors/omissions made by previous City staff members and, with the Jockey Club, determine a fair and equitable solution to this problem.

RECOMMENDATION

21. It is recommended that the City conduct an in depth review of its records to find record(s) of agreement between the City of North Port and the Jockey Club concerning the authorization and construction of the Canine Club on land governed by the 1981 Lease Agreement in order to diffuse this situation.

22. Failing the finding of records mentioned in para 21, it is recommended that the City of North Port enter into negotiations with the Jockey Club regarding a financial settlement, as was recommended in the 2008 legal opinion given to the City (FLAG C), concerning the future use of the Canine Club on land governed by the 1981 Lease Agreement within thirty (30) days from the date of this paper. This timeframe is to allow City staff to conduct their own research and develop its position in preparation for discussion.

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List of Flags

- FLAG A – 1981 Lease Agreement
- FLAG B – Photomap – Leased Tracts/Canine Club Location
- FLAG C – Canine Club Legal Opinion – 18 March 2008
- FLAG D – Jockey Club Special Meeting Minutes – 16 February 2009
- FLAG E – Canine Club Site Plan C-200 – December 2008; rev 5 - 26 August 2009