

AGENDA ITEM 2-b

MINUTES OF A SPECIAL MEETING OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, HELD MONDAY, MARCH 12, 2007, IMMEDIATELY FOLLOWING THE WORKSHOP MEETING HELD AT 10:00 A.M., AT 200 CANAL STREET, NEW SMYRNA BEACH, FLORIDA

After a brief recess after the preceding UC Workshop Meeting, Chairman Para opened the Special UC Meeting and requested roll call to be taken, all of the Commissioners were present as follows:

Commissioner Walter Allen III
Commissioner Jeanne K. Diesen
Commissioner William E. Hall
Chairman Kevin J. Para
Commissioner Richard L. Spangler

Others in attendance were as follows: R. Rodi, General Manager/ CEO; R. Mitchum, Director of Electric Operations; T. Beyrle, Director of System Ops. & Generation; J. White, Director of Engineering; D. Hoover, Director of Water/ Wastewater; C. Montgomery, Director of I.T.; P. Perez, Director of H.R., E. Mahle, Public Information Manager; D. Simmons, Executive Asst./Recording Secretary; Bill Preston, Interim U.C. Legal Counsel; J. Hagood, NSB City Manager; F. Gummey, NSB City Attorney; City Commissioner Richenberg; M. Rakowski, NSB Director of Development Services; Donna Phillips, Court Reporter; Melanie Stawicki-Azam, Reporter for the NEWS JOURNAL; Brad Blais, Quentin Hampton, David Hood, Esq., Jerry Johnson, Derek Wainescott, Jim Morris, Esq., Tom Harowski, Peter Heebner, Esq., Jim Cullis, approximately eight other developers and/or representatives; and Bob Tolley, members of the public.

(1) Update on Infrastructure Projects:

Chairman Para then turned over the Special Meeting to Mr. Rodi.

Mr. Rodi thanked him and stated I wanted to, if you looked at the agenda it says update on infrastructure projects, and I think that this is somewhat germane to what we're talking about. As you know there's an extension of the 20" water line and the 16" reuse line along S.R. 44 from Airport Road to the east and it ends roughly at Williamson Boulevard, the named Williamson Boulevard, by the fire station. And the bill of sale has turned over those lines to the U.C. and both of them have been activated so there's water in each of them. What we did was we did some test flows again and at the same hydrant that we had previously tested, there was an improvement of 22% in the single hydrant flow. Now that sounds good but the fact of the matter is that it's still deficient for multi-use so we're getting very near the border that if you have 700 ERU's that are actually with occupancy permits and people are using water, the fire flows are on top of those actual stress uses. So when we talk about whether or not the Palms or other areas have sufficient water capacity, and I've said this I think rather consistently, that there would be some relief for some period of time by putting that leg in but we still have to go all the way back to that 24" line in order to serve that whole western area. That is just the primary feed, it does not address yet the loops that have to occur both north and south of S.R. 44. In the past I think I've described this as somewhat of a foot race in that we don't have the opportunity to approve a developer agreement or the addendum until the tail end of this process so I wanted to make a

(1) Update on Infrastructure Projects (cont.):

comment about that infrastructure installation to make you aware of where that stands today.

Mr. Rodi stated another aspect of this and staff has been working with developers internal to their subdivisions regarding the quality of the infrastructure installations. And the reason for that is trying to convey where we think that there may be some long term problem due to the quality of the actual construction that's going on. If you're installing electrical conduit, for example, you would want to have as straight of a run as you can and not end up with multiple "s" curves because obviously if you're pulling conductors through there then it limits really the ability to pull that conductor. Another aspect deals with the water system and the sanitary sewers if the right grades aren't being used, eventually we will apply a test to make sure that it is correct and if our warnings aren't adhered to then there's great risks for those persons who don't monitor the individuals actually constructing it. So there are a lot of internal related issues that impact the infrastructure in terms of both within the subdivision and external to the subdivision.

Mr. Rodi stated I wanted to make a comment about the electrical system. We have not heard from all of the developers out west, there's a DRI that we don't know really what's going to happen with that. But if we project that there are 16,000 new units of some fashion that is a significant load for our electrical system to the point where it exceeds our 115 KV capacity that we have right now. We essentially have two radial feeds, one coming out of Smyrna Sub. going to Airport Sub., we have another going to Field Street and I'm not talking about just from a standpoint of peaking capacity, I'm talking about capacity on a steady state basis. So if we have a capacity of, I'll just use a number and I'm not using it for accuracy purposes, but say its 100 MW's that we have today and this represents 2/3 of our existing, and our capacity's at 80, this is going to put 40, so we're overburdened. Part of what we're having to do when there is an outage is to shift that load around which is just good utility practice. So it can't be taken just in isolation about whether or not it is in those fees, and we did not include generation costs.

Mr. Rodi stated as you know we are currently talking about alternate water supply. The reason for that is due to growth. We're talking about alternate energy supply, the reason is growth. So I wanted to make some comments about the infrastructure aspects of this. A concern and its one when you start to look at an issue beyond just your own point of view and you try to share the view of others, there are many valid views and having all of them come together into an approach that is effective for the benefit of all is certainly very difficult from an individual perspective. So I think that comes into play with some of our going forward needs.

Mr. Rodi stated certainly, as I had indicated during the workshop, it isn't that we're not interested in discussing and understanding, I did not want to convey to those others who aren't participating that we're doing something that would advantage one group to another group because the developers are both peers but they're also competitors and I think that needed to be said at this point. So that's what I wanted to do, to introduce what other discussion you may want to have.

Chairman Para thanked Mr. Rodi and said we will start with Commissioner Spangler.

(1) Update on Infrastructure Projects (cont.):

Commissioner Spangler stated I can be pretty brief about this, I can speak for my understanding of this Commission and what it does. We're a policy board and the policy that's relevant here is number one, our policy which I think we all agree on, is that the people who live here aren't going to pay for the infrastructure for the people that are coming in and I think we all are in agreement on that. Another issue that isn't raised is the issue of risk, it's also my understanding that this Commission's policy is that the risk will not be on the existing residents, all risks will be borne by the beneficiaries which would be the developers. As far as the lawyers and litigation, lawyers talk about legality but to me the law is about equity and that's what courts and lawsuits are about is finding out who gets the proper equity in a situation; it's not about suing each other, its about finding out what's right. As far as, and this is probably the main issue, I'm not interested so much in the legality of it, I am interested in equity, but I think really an issue here is the model that we use, correct, is it fair, is it equitable, and it's not this Commission's job to make that determination. We have consultants, we have engineers, we've done a model, you have consultants and you have engineers, and maybe you take exception to our model and I think that just as we welcome you all coming here and making your case, I believe I would certainly welcome your consultants and engineers to take their figures to our consultants and engineers and let them explain the model and you explain where you don't think its right. And I think that's what you're asking for and I think that's a good idea.

Commissioner Allen stated there needs to be fairness and equitability to all developers. I agree with Commissioner Spangler in his thought process but I think and there appears to be a need for a meeting of minds as far as the engineering staffs on each side, the consultants in looking through some of the things, and some discussion to look at even some means of an economical way to move forward for the development and that's going to take some time on our part, on your part, working through those. Looking at some of the numbers that were in the folder and we talk about electrical reconductoring, to build that on the west side is pretty substantial for this system. As a matter of fact just off the top of my head I would say it's about a 40% of what our system is right now when that starts being built out. You just don't run out there and reconductor just because you want to reconductor, that reconductoring has to take place for a reason. When you look at prudent utility practice to be able to provide a service, and much like water, you need to develop a loop availability to be able to switch the system around a major line coming out of service because of whether it be a natural disaster or if there was a need to rework a particular area. Those things come into play for a real need especially when you develop and you start building as we see the west side developing, so those things are real needs. So as we look at these, there's room to talk and I see that coming together with staff may be able to come with some reasons.

Commissioner Diesen stated I guess I'm saying the same thing that's already been said but I think it's the process that really interests me that we need to move forward quickly. Sometimes you know personalities get in the way of coming to a good conclusion, sometimes you try to negotiate with the same people over and over and it doesn't work but if you infuse some new blood or new ideas so to speak, so I would hope that we would be able to use our consultants to the maximum on this and try to bring some resolution where we can and then in the areas where we can't then we come back to the table again. But I do hope we can move forward in this and

(1) Update on Infrastructure Projects (cont.):

get everybody at the table and try to work out the places that we can. I mean this is a great document and on the face of it you could look at it and say well gee, I accept it but we know that isn't the way it goes because we can come up with a document too that is just opposed to that. So we need to have that availability of the table, of the round table, to get this worked out and I hope that we can do that real quickly.

Commissioner Hall stated I think I said most of that in a different way in the first meeting, but I agree with Commissioner Diesen speed is important but also accuracy. I want to make sure that, and I hope no one in the room takes this the wrong way, that we have done our job properly, if there are any errors on either side that we're all willing to admit it, stand up and character wise say hey, I was wrong there. If we're not willing to do that all of us might as well walk out the door and let's start the law suits now. But I think our consultants and the developers consultants and engineers, and our engineers are the ones that need to get down and try to settle this thing first. Take a look at it with all due speed and come back and again I do believe we need to talk about a time line because I've seen discussions go on for four years about policies. In the meantime there were cracks in the system and you can't have that, at the same time haste can make waste, and I don't want that to sound trite but that is the case. And we have to include our neighbors across the street, I think, in the discussions because a lot of the complaints do go to Mr. Hagood and the City Commissioners and the Mayor. He concluded by stating that's all I have to say.

Chairman Para thanked Commissioner Hall and stated as I listen to each of you there's threads of consistency and that is that we have some really competent consultants and folks that can come to the table as Commissioner Diesen says and help us work through these things. I'm hearing consistencies in our conversation regarding a willingness to discuss this. Following up on Commissioner Hall, your comment as far as a timeline, I too agree with that, time needs to be respected on both sides of this. Consistent with the summary page, not any other aspect or instrument in the summary page that Mr. Hood presented, would a 30 day, 30 day, 15 day timeline, is that something Mr. Rodi, would that be something that we could adhere to.

Mr. Rodi stated I think we could use that as a starting point and if there's a need to change then it will become obvious through the discussions. I think the intent is just to try to put a stake in the ground and say well here's a starting point lets try and get this thing moving so it doesn't take extensive amounts of time.

Chairman Para stated all right and I think that's what I'm hearing up here, we need to arrive at a point rather expeditiously where we came either to a point of agreement on issues narrowing them down or points of disagreements and then if you fellows needed to go to the next level we certainly respect that.

Mr. Rodi stated I wanted to make one other comment and I needed to reinforce this, my perspective of the development community is ya'll are very intelligent, you're very capable, that isn't an issue, the concern that I have is the differences among and throughout different parts of this city. So that in the discussions much of what our concern will be is an accommodation for

(1) Update on Infrastructure Projects (cont.):

an application from others. I well recognize that you're saying things with all good intent and all good interests but I wanted to have that as a fundamental understanding from the perspective that I think we're obligated to take as we move forward here.

Chairman Para stated and I think what you're saying, if I might press it a bit further, is that this would be open to the public and any other participant.

Mr. Rodi stated I think it should be.

Chairman Para stated I wholeheartedly agree that this is an open forum, it will be duly noticed and it will be a review of this, so we can then take a final review and final look at this, and then we'll be resolute in whatever the decision is collectively. So that's the sentiments and I wholeheartedly concur and I'll open it up for public participation at this time.

Mr. Pete Heebner addressed the Commission and stated he was representing Venetian Palms. He said let me, since this is a special meeting and a separate set of minutes, let me again emphasize the study on the fairness of the amounts and all that could go on forever and I think we're being "Pollyanna" to think its going to take 60 days or whatever.

Chairman Para stated no sir, I think we're going to set a pretty tight timeline on it and we're not going to waste a lot of time discussing it.

Mr. Heebner stated but there are two policy issues that Venetian Palms is asking you as policy makers to change. First of all it's like any other impact fee pay as you go, as I've stated previously we are not even going to even turn one spigot for at least a year and a half out there so we have no impact on your system for at least a year and a half plus until phase one is done. Normally what you do is you pay the impact fee or whatever you want to call it on the units that are coming on line that are going to have an impact, and that's these 250 units, at such time as we pull for the next phase you pay then. Our problem is now we have to come up with a check for all your connection fees of about \$3.3 million based on our developer's agreement but that doesn't appear fair because we're not having any impact on your system until we get in line. The second issue is the fact that we're not allowed to use a Letter of Credit or some sort of bond, at least get us started so that whatever you guys agree on in the future, whatever that is, if we don't pay it you've got a bond or a surety to do so. So I don't understand why, what's the policy reason for not allowing use of the surety bond.

Chairman Para stated let me just take a stab at this and I run risk my colleagues are sweating their palms right now when I begin to talk. What Commissioner Allen said, you say that you're not impacting our system right now because you're just breaking ground, the reality is that we can't build these systems over night. Commissioner Allen was correct, as far as the build up for all this infrastructure that goes into this to take care of this is not something that we as a utilities, as a governmental body, that we turn on a dime and provide. So I understand there's arguments on both sides of this issue, I think the bottom line here is that we've got now a mechanism by which you all can vent these issues in a forum that I think will be productive in getting down to

(1) Update on Infrastructure Projects (cont.):

some distillation of poignant issues. These are the issues, these are what we can't resolve, staff, engineers, and consultants, and this is what has to then come back before us, and then we'll ultimately weigh in on it.

Mr. Heebner stated we understand the numbers, I mean that's going to take place over time, that's still not our point. Our point is that we would like to be able to pull permits tomorrow, which we can, every permit we've got we're ready to go and start turning dirt, we cannot because of your permit, and we're asking that instead of paying you the \$3.3 or whatever it's going to ultimately be, that we're at least be able to bond that amount or bond the amount of the first phase, so at least we can get started. And whatever it is, it is, we'll pay it when the time comes, it's not we're unwilling to pay for it, it seems really difficult to finance a situation of that nature. The second thing again is why not allow the LC, you've done it in the past, what's the policy reason for not allowing a LC or surety.

Chairman Para stated I think Commissioner Spangler has poised himself, I think he's going to answer that.

Commissioner Spangler stated well first of all its unfortunate this is not City of Edgewater because you might make a little more headway because this same argument just happened. I think my understanding is first of all we don't want to renegotiate the whole thing with every single developer because as soon as we renegotiate something with you because of your particular situation. Everybody's situation is the same, it's a lot of money up front, there's interest costs, there's expenses, the amount of money you have up front is really, I'd say, predicated on the size of your development. If you tell me that you have millions you have to put up front, that tells me you have a big development and you're a big player, so to that extent it's fair. But it's my understanding that the bond is not cash, it's a promise of cash and what the Chairman is saying, absolutely correctly I think, is that it takes cash to do the work that we have to do before we let you start; that's my understanding of it.

Chairman Para thanked both and asked if there were any further comments.

Mr. Dave Hood addressed the Commission and stated the bottom line on the time frames, is we talked for seven or eight months with your staff, our view point, the reason we put down time frames is we would like for you to adopt those as strict time frames so that we don't keep talking with, like all of us old guys things can go two or three years talking, and that's why we went through the trouble outlining 30, 30, 15. We would ask that you stick with those time frames.

Chairman Para stated well I can't allocate personally as an individual Commissioner, I can only working through Commissioner Hall in his comments, and he said it needs to have some time brackets around it and I referenced your time limits. I think that if we can all agree on a consensus that 30 days is sufficient to begin the first leg of the journey, and I think what we heard up here too was after that 30 days, if there isn't movement that's satisfactory to both sides, then we'll address that at a regular Utilities Commission meeting. Is that sufficient Counselor?

(1) Update on Infrastructure Projects (cont.):

Mr. Hood stated that's sufficient as long as we get the very next Commission meeting.

Chairman Para then asked if that was acceptable up here, with my colleagues.

Commissioner Diesen stated sure, we can even have a special meeting called if necessary. We have no desire not to follow the time frame and even be more expedient if possible.

Chairman Para stated now if you all get in a week's time to a point where there's resolution, then we'll all show up here and cheer each other on.

Mr. Hood stated as long as we have that commitment from a policy viewpoint on your side then we're comfortable.

Chairman Para stated yes, and I guess just to kind of summarize everything, I'm an individual who really likes people when at all possible that we get along and that's part of City government here. We move differently, there's different constraints on us compared to the people in the legal world and the development world so we're all trying to work within those. I think this is a good first step and I thank you for presenting it in that context.

Mr. Jim Morris addressed the Commission and stated I wanted to make sure that all your comments, and I think they do reflect the fact that you intend for the discussions to be complete in scope. In other words, design, timing, payment, and manner of guaranteeing payment.

Chairman Para stated I have not put any restrictions on staff and I imagine you all and staff to be very candid. I agree with my colleagues, I'm not an engineer nor am I a consultant that has an expertise in these areas so we have to rely on the expertise that we have hired and put in place. So yes, we'll listen to the comments and we've not put any restrictions on them.

Mr. Morris stated well actually I'm asking that you do that by making sure the scope is full and complete so that you don't have partial discussion. It may involve your attorney as well as your engineers because you do have a full scope of discussion that's covered today and I wouldn't want to hit the session with the engineers and have them say well, we're engineers and this is what we can deal with but the other stuff is outside our ability to talk about. Now if we go there and they say they can't do that then they can report that back to you but the important thing to us is the scope of discussion be full and complete. I think your comments incorporated that but I want to make sure the record is clear in reflecting that.

Chairman Para stated and I think its good that you pressed that point because that's my understanding is that we'll be full in our review and those areas that don't sort themselves out, I'm certain that both of ya'll will report back and say these areas don't sort through.

Mr. Morris stated thank you.

(2) Possible Other Business – Time for Commissioners:

Chairman Para asked if there was further discussion, there being none he closed public participation.

Chairman Para then asked if there were any further comments from the Commissioners.

There being no further business to come before the Commission, Chairman Para closed the U.C. Special Meeting at 11:37 a.m.

APPROVED:



CHAIRMAN

ATTEST:



SECRETARY-TREASURER

These minutes were formally approved by the Utilities Commission at their April 16, 2007 meeting.