

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

Chairman Para requested Commissioner Spangler to lead the Pledge of Allegiance. The roll call was taken after legal counsel's opening comments shown below. All of the Commissioners were present as follows:

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

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 and Vicky Koren, Reporters for the NEWS JOURNAL; Brad Blais, Quentin Hampton, David Hood, Esq., Jerry Johnson, Derek Wainscott, 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) Developer Presentation Regarding Utilities Infrastructure:

Chairman Para opened the meeting by thanking all for being here this morning. He stated as an administrative matter before we start one of the other hats that I wear in the community is a fund raiser and an Executive Director of the Women's Care Center. The purpose of this disclosure is that I send out well over a 1,000 letters and flyers to people soliciting funds. A number of you all are on that mailing list, including Mr. Johnson, and if this constitutes a conflict of interest or whatever, I just wish to declare that. Again, this is just an administrative matter. He then stated at this time I turn the meeting over to Mr. Preston.

Mr. Preston stated good morning Mr. Chairman and members of the Commission. The purpose of the meeting this morning is to discuss the infrastructure needs of the Utilities Commission and particularly to provide an opportunity for members of the community to question and seek information regarding the developer's addendum agreement that's been prepared. So I would suggest that what we do at this time is just turn the meeting over to those who may have question or concern. My suggestion is that we listen to all and then concluding, that we as a body be able to respond where appropriate.

Chairman Para commented thank you and with that we will open it up for participation.

Mr. Preston then interjected, Mr. Chairman, sorry just a procedural item, we need a roll call. The roll call was then taken with those in attendance as shown above.

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

Mr. David Hood, Esquire, addressed the Commission and proceeded to have a handout distributed to the Utilities Commission and UC legal counsel. He stated a handout will make it easier I believe to follow the points we would like to make. We have appendices that will help us all go through this in a way that we can follow this I think a lot easier. I'm David Hood, 2300 North Atlantic Avenue, Daytona Beach, Florida. I represent the developers that you'll see on the front page of the handout that I gave you. Those developers are all developers that own property out west of I-95: Venetian Bay, The Palms, Landmar, Pioneer Land Trust. The reason this is important is that they own 9,018 of the 11,020 ERU's that are west of I-95 and that's part of the zone 1 which you're utility plan had done, zone 1, zone 2, zone 3.

Mr. Hood stated if you look at the second page there's one thing I think everybody can agree on, developers are not asking for anybody to spend one dollar of their money in helping them develop the property west of I-95. They're absolutely willing to pay their share of the cost to providing utility services west of I-95 but we have three caveats and those are the reasons why we're here. The first thing is we want to make sure these costs are allocated fairly. Secondly, we believe its in your best interests as well as our best interests to make sure that what gets constructed gets constructed at the best possible costs because ultimately your ratepayers are going to pay more. And third, we simply ask that what you do be legal. If we can deal with those three issues I think we can all stop fighting and we can all get on to the business of you making money as well as our people doing what they need to do to, build quality development for New Smyrna Beach.

Mr. Hood then stated to give you a little context here, you basically have right now rate fees which are essentially the fees you charge everyone for the services water, sewer, effluent, electrical. You've got connection fees which I also call capacity fees, and those you have two components, you have your inspection fees which are basically minimal charges that relate to whenever you get the developer agreement. The bigger one is the capacity fees which I believe currently right now are \$3,000 per ERU, that's the fees that you collect for the purpose of ensuring there is sufficient capacity for all of the development that is there.

Mr. Hood stated the reason we got here today is on July 17, 2006, you passed a resolution adopting what they call the addendum to developer agreement, that's Resolution 11-06. Basically if you did not have a development order then you had to sign this addendum in order for us to do any development. The key to the addendum is you charge now in addition to rate charges and connection fees, you're now charging a third item which is the infrastructure fee. And the way that you did that was, and the reason we're here, the reason why we're objecting is you calculated it based on the highest theoretical use of the property even though you already have agreements that limit that highest theoretical use. The second thing you're doing is you're requiring all of these fees to be paid up front, even though they're not going to be needed for 10 or 15 years. And then you also based it, when we do these numbers it works out to \$2,614 per ERU is the effect of this developer agreement that ya'll are requiring everyone to do. So the reason we're objecting to this is when you get right down to it you're requiring these huge up front payments to fund projects that don't even need to be on the board for five, ten or fifteen years.

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

Mr. Hood stated when we look at that history, you'll see what we believe are some serious legal deficiencies in what you've done. The first one is the infrastructure fee is an impact fee, the law's pretty clear, it's no different than your connection fee, it's an impact fee. And you can only do a legal impact fee in the state of Florida, and there's several things you've got to do which we believe you haven't done legally. The first thing you have to do is you have to give 90 days legal notice, Statute section 163.3 1801 F.S. says that you've got to give 90 days notice. The notice that you gave is only 38 days notice. We went back, I've heard some people articulate on the record in other places that the reason that you complied with the notice is notice was given back in January. We've actually gone through every one of your minutes and not once did you ever give legal notice of an actual infrastructure fee, how it was calculated, how it was going to be imposed and in fact you could not have done that because you didn't get the numbers from Quentin and Hampton until late 2006. So the first problem you've got is you didn't do the legal notice correct.

Mr. Hood stated the second thing that we have a problem with is the law says you must use the most recent and localized data. What that means is you can't use some projected number that doesn't have any relationship to what real numbers are in New Smyrna Beach. You've got to use numbers that have some rational basis upon what you've got. He stated the last thing is you've got to do the dual rational nexus test which has been articulated by the Florida Supreme Court, and we can cut through all the legal jargon and basically what that means is if you're collecting money from a subdivision that money must go into creating some unique benefit for that subdivision, you cannot collect \$100,000 from one subdivision and part of that money to go to other issues, it has got to go to that particular place.

Mr. Hood continued and stated so when you look at that we think you have failed in these different ways. One we don't have sufficient notice, you've got it if you go through your minutes, when you did the actual legal notice it was in June, June 9, 2006, even that notice was defective because you did not have the actual numbers upon which your developer agreement was done. The second thing is and this is one that really hits us, you didn't do the most recent and localized data and the reason why we know that for a fact is if you look at items W-103 and R-X6 which are actually the S.R. 44 lines, you have estimated it at \$2,850,000 and that's what you are charging us but the reality of it is we've already built that and we built it at \$1.7 million. It's in the ground, done, finished, 37% off your cost calculation, and so you have an actual hard real dollar that you can calculate this which is recent and localized but you chose not to use that, you chose to use another number that has no basis in reality. Then the hypocrisy of that, just so you understand the frustration sitting on this side of the room is we say fine this is what we built, this is what we cost, then we ought to get a credit. But in fact the U.C. has told us no, we're still going to charge you the \$2,850,000, even though you build it for \$1.7 million; that itself is also illegal.

Mr. Hood stated the other is you're calculating it on the maximum theoretical use of the property even though you have already a development agreement that says I can't use it for more than that. In other words, I'll give you an example, you're calculating it on where it says 1,000 units when I have a RPUD that says I can't build more than 600 units and I can't change that. I've had

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

some of you talk to us and say well, we have to do it that way because what happens if somebody comes down the road in five years and changes or asks us to change. Actually the simple answer to that is if somebody wants to change it to increase it from your current agreement then you simply require them to pay the additional cost associated with increasing that.

Mr. Hood stated the third item, that's illegal, is you've calculated all these ERU's so that all of the people on the west side pay for it except for you. You own 660 acres, as recent as November of 2006 your minutes indicate ya'll have discussed leasing and selling of that property. You can't charge everyone on the west side of I-95 ERU's without also including your property within the calculation and we've done the calculation out as if you were in, it would be that you guys would also owe \$2,374,000 in ERU's. The argument is you may not want to sell it at this stage but if you're going to take all the property out west of I-95 and do it, then the ERU needs to be calculated with yours. And the last item goes back to the argument that we made earlier about how you have to have the unique benefit to the subdivision that pays. Well, Venetian Bay is already built almost everything that is even needed yet they're being charged ERU's as if they haven't put anything in or they need that. That's a classic example, it's not even complicated, that if you're charging Venetian Bay ERU's when they've already built the utility and the sewer and the effluent, then that by its face, on its face, is illegal.

Mr. Hood stated having taken all that why don't we just talk about what we agree on because I think we're closer to a solution than we may think we are and I think if you look on page seven I think we can all walk out of here and agree on three principles. We ought to pay for the cost of distributing the water, the sewer and the effluent west of I-95, I don't think anybody's disagreeing over that. The second thing we can agree for is that all of us agree that whatever it costs to build the distribution system west of I-95 it ought to be built at the best and most cost effective price; I don't think anybody disagrees on that. And the last item I think we all agree, if we think about it, is we ought not to build this infrastructure until it's needed. When it's needed it should be built but it shouldn't be built before that time.

Mr. Hood stated and we actually show up today with the solution and we would like and urge for you to consider this solution, we're here to talk about this solution, and we think the solution complies with all three of the principles that we all agree on. The first one is we know what the improvements are and we have already agreed among ourselves to allocate the cost of whatever it's going to cost to put the infrastructure west of I-95. If we can agree to our proposal there's several big benefits to all of us. One, you don't keep the lawyers living in the lifestyle to which they'll become accustomed. I'm pretty sure nobody's sitting up there nor anybody on this side have any great thing about wanting to pay lawyers to spend the next year or two years litigating this issue. The second thing is if you look at our proposal and most importantly what it does for the U.C. it takes all the risk off of you. If we're willing to pay the price of putting the distribution system west of I-95, if we're willing to put it in when it needs to be put, we're willing to take the risk that if prices go up since we're paying for it there's no more risk on the U.C., then it seems to us that that's a proposal that keeps the lawyers out of your pocket, keeps them out of our pocket. Second thing is it gets the tax base on line when it should with the

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

infrastructure that it ought to have, and third you don't have the risk. You guys have had risk in the past that didn't work out real well but as we sit here today, we're telling you we can handle everything out to the west, take the risk, whatever the cost is that's our issue, we'll build it according to the specs.

Mr. Hood stated one big item policy wise is your electrical, let me just deal with that in that electrical is different from water and sewer. In your rate, if you go back and read your minutes in how you calculate the rate, the rate includes estimates of what its going to cost to build the infrastructure, the transmission infrastructure for additional areas. So if you're charging it in the rate, and then you're trying to charge us again on the backside, that's basically double dipping. The second thing is electrical is different than water and sewer, electrical is basically a redundant design system, plus you're buying electricity at different rates and selling electricity at different rates; water and sewer is pretty much a confined area, confined dollars and cents.

Mr. Hood stated if you look at the last item which is number 11, if I could ask you to kind of look at that because I'm going to walk through that a little bit. If you look at 11, what it is, is a chart and that very first column is the U.C.'s cost estimates which is what you based your ERU's to us. It should be the very last item under 11; everybody got it? So the reason we get the \$28.8 million, which is divided by the number of ERU's which is why we're at the \$2,600 number, this is ya'lls cost estimate that was done. Remember my example about how you projected \$2.8 million and it only cost us \$1.7 million, that's on this item you'll see on the left. The very next column says improvements to be funded with connection fees. Those are the two numbers that we believe are really capacity issues for the entire system, they don't have anything to do solely with those properties to the west of I-95, The wells and the filter upgrade, if you go back and read what Quentin Hampton wrote those are numbers that have to do with upgrading the entire system all, zones 1, 2, and 3. So we believe those numbers should not be involved in the \$28.8 that we need to divide. The second item is an item improvements to be resolved by engineers, the third column, and you'll go down there and you'll see W-117 where there's \$2.2 million; everybody follow me there?

Chairman Para answered yes sir.

Mr. Hood stated that's an item that our engineers believe they have a reasonable disagreement with your engineers, but they're also confident if the two engineers just sat down they could probably figure out what the difference in opinion and probably resolve that. The fourth item is improvements to be replaced with alternative, that's the fourth column. You'll see down there there's \$2 million in that column, that's the effluent where the design is to build some big tank, frankly, we believe in accordance with your own policies that there's a better way to do the effluent without a tank, can be done with lakes, and we believe that's a number that comes out when the two engineers sit down and talk that through. You'll look at the fifth column which is improvements to be funded by rate charges, all those numbers starting from \$2 million down to \$250,000, it adds up to \$4,795,000, that's your electrical where we just talked about how those numbers ought not be part of this particular charge because that's part of your rates already; you'll be double dipping if you do that. So the last item we have left in the last column are the

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

improvements we believe actually that we need to build, at some point in time when it's appropriate. You'll see there, if you go all the way to the bottom it's \$16,995.00, everybody follow me there, well, we've already built \$4.5 million of that so what we're really talking about, what's left, is about \$12 million not \$28.8 million.

Mr. Hood stated so when I talk about our solution, we're really not as far apart as it may appear and we really believe if we take some of your own statements in the past, the solution is already here, we just hope that we can sit down and work this out. And that's when, if you take this number and go back to page 8 of our presentation, which is right before the appendix number 1; everybody got that; I'll kind of work my way down it slowly. The first thing we believe ought to be done is within 30 days of today have your personnel and consultants meet with our engineers and review the infrastructure plans that we just went over on the chart, and discuss those items that we raised as issues, remember the wells and as well as the effluent tank, as well as the other item. Let the engineers sit down so that we're not fighting about that here, we believe the engineers can sit down and work that out. And also figure out what the time schedule needs to be in order to put that infrastructure in place. Once they've met, after that 30 days, give you a report and us a report and then give us a certain period of time, 30 days, from getting that report that we either agree to it, if we don't agree to it, we'll send you our objections with our proposal and we'll also tell you how we intend to allocate the responsibility for us paying for and building all of that. After we get through that period, 15 days after that we would ask that you would reconvene and either approve the agreed upon plan or let us talk about what little issues we have left and make a resolution at that time.

Mr. Hood stated the next thing we would ask you to do is then simply allow us to be, as a matter of policy, once you've agreed to what you want, let us build it. We can build it cheaper and we can also build it when we need it to be built upon the time frame you and us have agreed to. The last thing we would ask you to do is make it based upon actual yield, not theoretical yield and you have the ability to stop anybody from coming in down the road and amending that because if they want to amend it you simply require them to pay for whatever it costs to do that. And frankly, one of those issues we would also ask you to do as a policy is if somebody's developing a parcel, let the end user use actually be what you charge on the ERU, not some theoretical use but actually at the time that the end user comes; if you've got multiple parcels, let them pay for it at the end. We would also ask you as a matter of policy to take the electrical infrastructure numbers, the \$4.5 million, take that out of your \$28.8 million as a matter of policy since that's basically double dip. The third item is your property is part of west I-95, it should be included within the calculation. And then the capacity needs, that's why you collect connection fees, those capacity fees need to be the ones handling the general capacity issues, not this particular number. If you would adopt the policy that we've put here on page 8, right in front of appendix 1, we believe it is in your best interests because you can look at all the taxpayers and all the ratepayers and tell them not one dollar of the growth west of I-95 as it relates to the utilities is being charged to or can be charged to you. And the second thing you can do is you can make sure it gets built when it needs to be built, gets built at the best possible price that the ratepayers on the west side will get that benefit, and I think you end up in a situation where we keep the lawyers from all making a fortune. If you have any questions, I'll be glad to answer them.

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

Chatman Para asked if there were any questions.

There being none, Mr. Hood stated I appreciate you taking the time to listen to us and we thank you for the opportunity to stand before you and outline some of our concerns.

Chairman Para thanked Mr. Hood for his presentation. Chairman Para then asked if there was any other public participation.

Mr. Pete Heebner addressed the Commission and stated he was with the firm of Heebner, Baggett and Upchurch, 523 North Halifax, Daytona Beach, Florida. We adopt most of the arguments by Mr. Hood other than the fact that the lawyers shouldn't get wealthy, I thought that was an inappropriate argument or at least he may be more financially secure than I. We have a little different problem. We've been involved in this process for some time, I represent a company called Venetian Palms, Inc., which is a purchaser from Venetian Bay or its principles of some 733 acres adjacent to Route 40, and was zoned appropriately for 1,000 units. We paid a premium price for that land under the assumptions and based on certifications that all the offsite infrastructure was there, we paid a premium for that purpose. Because off site infrastructure is always a risk you take in these projects and we wanted to be sure that we didn't have that and we paid the premium for that assuming that we paid for that in the purchase price of the property. However, as we went through the approval process through the City, we received a PUD approval for approximately 1,000 units including what they call 50 work force units. Those are basically a euphemism for lower priced housing for working persons within the community. In June, or May and June, when you were passing this resolution that Mr. Hood had referred to, I was not a part of that process but the developers tell me that they were advised that this would be a slight increase in the connection fees, that you could pay it as a project was phased, you could use LC's, Letters of Credit, or you could bond it or something like that which would be typical, more like the typical impact fee. Subsequently after going through all of the negotiations, receiving all of our permits, every single permit we need to start construction today is in place but for the developer's agreement, the addendum that you have placed before us.

Mr. Heebner stated when we began this negotiation, again I say we, the developers, they went before the staff and were advised that you are going to have to pay, I think its \$2,832.99 per unit, up front, for all 1,000 units, or otherwise we're not going to sign this, therefore they don't sign off on the FDEP permit and we can't get started. We've been ready to go since basically November, it costs us about \$150,000 carry per month while we're not developing. It's going to take us at least a year and a half to probably even provide the infrastructure, the dirt work, the site work, and probably the build out is probably going to be seven to ten years depending on market conditions. This kind of fee is also very difficult to finance, how do you tell your bank all of sudden it's going to cost \$2.9 million more, it wasn't in your business plan, you've got all these costs loaded on top of the units, we don't think you can do it for that, we don't want to finance it; it creates a whole lot of issues when you have that thing pop up in the last moment.

Mr. Heebner stated now we certainly understand we developers should pay their own way, these are seasoned developers, they've been through this in other counties and other areas and know

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

what its like and agree with that. At the same time this particular fee, even adopting the legal arguments by Mr. Hood, seems very inappropriate and I think much care should be given to that. Now, we don't want to fight, we don't want to litigate, we don't want to argue about it, what we would like to do is we'd like to ask you for some relief. We have attempted with the staff to try to work out something in terms of using letters of credit, our first phase is only 250 units but instead we have to pay the entire up front amount. We would like some immediate relief, your negotiations, perhaps litigation if things go south on us, it's going to take a long time; we don't have that kind of time. What we would like you to do is instruct your staff to sit with us, sit down with us, allow us to pay whatever the fee is for at least the first phase, do it 'in phases so at least its doable for us financially, and then whatever you agree on later down the line, whatever it is more, less whatever, then we pay that as it goes or we get a refund or whatever takes place. We'd like to be able to use letters of credit and bonds, it's much cheaper for us to do it that way obviously. You're still protected just as much as anybody else and in the end when the units are actually constructed then the payments are made. So if we can, we need to have that kind of relief now because we simply cannot wait for this litigation and these negotiations to continue that period of time. We understand Senate Bill 360 as it implies Chapter 163 and how all that works, we understand that but I don't believe frankly the way its being conducted necessarily comports with the legislative mandate that you received from the legislature.

Mr. Heebner stated I have a couple of questions for you, I don't know if you can answer them for us or not because we don't quite understand how this will work. Venetian Bay as I understand it is running a 20" line out Rt. 44 right now, do they receive credits for that construction. See we're not putting any infrastructure in, we understand that, but do they receive credits for whatever the value is, whether you would put \$1.7, \$2.5, whatever it is, do they get credits for that?

Chairman Para asked Mr. Rodi to respond.

Mr. Rodi stated the answer to that question is yes, it's a balanced accounting and we discussed that at our last regular U.C. meeting and then a payment is to be issued to Venetian Bay for the differential as we were viewing it.

Mr. Heebner stated okay, now is the portion of our money that's paid, depending on how we pay it and when we pay it, is that used to repay Venetian Bay for the utilities he put in the ground, or to pay the credits, I'm sorry.

Mr. Rodi stated the actual construction was based upon a requested MOU that was also publicly vetted between Venetian Bay, and in fact at Counselor Morris' request, to put infrastructure in the ground. And the reflection of my previous comment about payment was under that MOU.

Mr. Heebner stated I guess the final. question would be now, and I presume that the 20" line that's being constructed, that will serve the Palms as well.

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

Mr. Rodi answered eventually, when that line is connected to the east side of I-95 to a 24" main that exists there.

Mr. Heebner stated in summary, just to repeat myself, what we're asking for is some immediate relief to allow us to go ahead and start construction. The outline of the potential solution is fine but that's going to take time, it's usually going to take longer than we all expect and anticipate because of all the vagaries of our time frames but we would ask that you would instruct your staff to immediately sit down with us, allow us to go ahead and pull our permits at least for the first phase, either bond it, using that Letter of Credit, whatever's necessary, and then when you all get it all worked out, we pay whatever we owe at that point in time. We think that's the most fairest thing to do.

Chairman Para stated fair enough and then asked didn't we have a mechanism for bonds or letters of credit.

Mr. Rodi explained during the transition period when we started in February there were some developers that needed to move forward, we had implemented a Letter of Credit pending the final approval of the addendum so that was used in some cases but since that time we have no longer used the Letter of Credit.

Mr. Heebner stated we presented that, we were told its been a change in policy by somebody, they would no longer accept Letters of Credit or surety bonds, we're not quite, I don't know what the rationale is but.. .

Chairman Para stated well I think the answer is in the beginning when we were working through it, from January on, we had a mechanism for Letters of Credit but in July when we adopted the Addendum then it became "cash in the barrel head" as I understand it, correct.

Mr. Heebner stated apparently so, and it's not negotiable, apparently so, that's what we were told.

Chairman Para stated right, it was a part of our addendum and that's where we stand right here today and that's what were talking about.

Mr. Heebner stated we'd request that you amend that policy.

Chairman Para stated so noted and then asked if there were further questions.

Mr. Jerry Johnson addressed the Commission and stated good morning, thank you for having us, and giving us the opportunity to speak here today. He stated he lives at 3895 or 3695 Grand Tuscany, not sure which, but in New Smyrna Beach. Just a couple of items that I wanted to clarify, Mr. Hood did a great job and I think he kind of gave us a great overall view but the two things that I think that are important, maybe three things that are important that I would like to emphasize is that number one existing today, I think most of the engineers will agree, that there is capacity as we stand here today in that Venetian Bay area of 3,000 units of storage, and 2,600

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

plus units of water, and effluent as well. Currently less than 600 units are being utilized at this time, so even today there is capacity for 2,000 units if nothing else was done today. We certainly realize and agree with the Director that the additional line that we're more than happy to pay for and install, I think the \$833,000 line is what the Director, Rodi and we have talked about that will give the extra capacity to handle the future development of the Palms as well as the capacity limits of what Venetian Bay could be.

Mr. Johnson stated the other thing that I think is very important is that when we say yes, we will go and build these things, we build them to your design, to your specifications, to your inspectors, like we have done everything else. By us building these does not mean that it will be one iota different than if anybody else built them including the City, just hopefully as we've experienced, less expensive. And the third thing is you all control the time tables, there is nothing that gets built unless we have and we can certify and we have agreement with the Utilities Commission's engineers that there is capacity there or they don't, the planning people, the City Commission, and your people would not allow any farther development if there were, in fact, any restrictions on the utilities that were designed and available for the project. So you still control everything, you control the quality, you control the quantity and designs, but basically we have for today's and the immediate future, considerable excess capacities for us to go on doing the things that perhaps the Palms want to do and the continuation of ours.

Mr. Johnson stated and finally and I will be quiet, that it kind of is wrong, very wrong to me that you all tried to charge us ERU's for water and sewer lines in streets, roads, that we have put in there two years ago, to come back now and say that you're going to charge us for that; I just don't think that was what ya'll meant to do. Thank you very much.

Chairman Para thanked Mr. Johnson and asked if anyone else would like to speak publicly before we close public participation.

Mr. Hood addressed the Commission again and stated I also represent Paul Holub who has the southeast corner of I-95 and S.R. 44, it's a six lot commercial and he also would echo the same thing as Mr. Heebner which is either allow Letter of Credit or some other mechanism a bond and also adopt as the policy that at the time the end use is determined and pulled is at the time that you determine what the number of ERU's. For instance, you're charging him as if he was going to build 220 unit hotels when he in fact may be putting a Cracker Barrel in with three. We're saying as a matter of policy, and you're protected because then you're going to collect exactly what it is you're entitled to at the end. So he would ask, as well as Mr. Heebner's client, that when you talk about your overall change of policies that you would include that as well.

Chairman Para stated so what you're saying currently right now with our addendum is that we take into consideration the maximum potential that the property could ultimately be utilized for and what you all's argument is that now its being used for this and that's what's going to be permitted.

Mr. Hood stated well at the time, what we're saying Mr. Chairman is that at the time he actually

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

gets the end user, I mean let's say he has a lease with the hotel, at that time he comes in and you basically charge him at what the end user is, not what this theoretical thing is as opposed to what reality is. You've got the control because you can't pull the permit without showing you what he's doing.

Chairman Para stated I think I understand the difference, thank you Mr. Hood.

Commissioner Diesen commented there are some PUD's however that has the capacity for auxiliary units and I don't know how you would ...

Chairman Para stated so that would be then ...

Mr. Hood interjected that's a great question but you already get capacity because you're collecting capacity fees, we're talking about the other, the ERU, the infrastructure fee.

Commissioner Diesen stated right, I know what you're talking about, but that is an issue. Like in Venetian Bay I know the developer's agreement allows for auxiliary units to be built at a later date.

Mr. Hood stated but you still have sufficient capacity Dr. Diesen and you also have the ability with the infrastructure, it's already being paid to put in, so there's no down side and no risk to the U.C. in that regard.

Commissioner Diesen stated I will consider that comment.

Mr. Jim Morris addressed the Commission and stated if I might briefly, I represent Landmar and you may recall some of you that I spoke to you in regard to the ability of the users to construct facilities and it's a fairly standard practice I spoke to you about it then. Its also standard practice that the developer pays the cost of the installation and they bond the cost of the improvements with you so it's a guarantee, it isn't as if you look to that Letter of Credit or bond as a means of payment but rather you look to it as a guarantee that the developer will pay for the work involved. In regard to the auxiliary units, Commissioner Diesen, from a standpoint of what might happen with auxiliary units, first of all the land development code mandates that sort of mechanism be put in but even if you looked at it at the maximum number, the point is that there is a calculable maximum number when you look at the development agreement and it differs from the theoretical maximum. I would say the one place where it probably doesn't differ is in the Utilities Commission's property because you don't have a development agreement for that property but you could voluntarily limit it but when you talk about how you control things over time, any developer agreement is going to set the maximum number and you can certainly use that number in order to estimate the cost involved. The developer constructing the infrastructure will pay for it from their costs and then will be able to move forward. Finally, from a standpoint of how you look to the future, future development is tied to the ability of that land user to pay those costs, if they don't pay those costs or present guarantees to you to pay those costs, then the U.C. does not issue the authorization for them to move forward. And in the end, the result is that

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

you have an infrastructure system which has adequate pressures for fire flows, you have delivery that's paid for by the users, and then you have capacity fees paid back to the city that look at the absorption of your wellfields and other facilities to take the load. It's a fairly standard practice and I think you've already heard the objections in regard to the estimates of the numbers over and when you consider that a 37% error in calculation results in over a million dollars in one real world example. I think it probably is to me one of the most vivid facts in the information that was presented that shows there is something wrong with the estimations and its not to infer anything other than there's a mistake in terms of the facts involved and that can be corrected. That is respectfully the overall solution that we're looking for, Mr. Hood talked to you about policies, but those are all directed towards looking at what the actual numbers are and paying those numbers at the time they are needed. Thank you.

Chairman Para thanked Mr. Morris and asked if there was any other discussion. There being none, Chairman Para closed the public participation.

Mr. Preston stated first, thanks to Mr. Hood, Mr. Heebner, Mr. Johnson and Mr. Morris, I appreciate you coming with an attitude of seeking to come to a successful resolution of any outstanding issues. I think that we do agree on several things, one, none of us want to fight, two we, most of us at least, I don't think Mr. Hood does, we all like wealthy lawyers, and thee, when we get beyond argument we come down to numbers. What is the bottom line, what are the bottom line numbers, for the needs that we have and the needs that you have. The goal I think is also common, the Utilities Commission wants to provide excellent service to its ratepayers, all of its ratepayers.

Mr. Preston stated I will speak more conceptually about the developer's agreement and the addendum rather than particularly address a lot of the legal issues, I think the legal issues are and have been considered and are valid. But I think conceptually what we have to look at is that the role of the U.C. is to plan for the future and particularly its mandated to plan for the future. So what we have done at the U.C. is to plan for the infrastructure needs for all of the area serviced, not just one particular development. In doing so we are required to place infrastructure such as to support all the potential for the development and all of its area. If we provided infrastructure to service one development and another was subsequently developed along the same line that required greater service than what was planned or provided, we would then have to withdraw what we put in and replace. The idea of the infrastructure fee is to provide for all potential growth. The idea of using maximum usage as a guide for determining costs is again if a development is not developed to capacity today but is tomorrow and we place infrastructure based on today's projected growth we would be deficient tomorrow; it's simple. So if a development were permitted by comprehensive plans, PUD plans, to develop ten units and only put in five, and we plan for five and later the additional five were built, it doesn't make much difference to us if the additional five were paid for later, we would have planned for the original five and have infrastructure placed for the original five and not the entire ten. So though it sounds like a good argument we have to plan for maximum growth. I think that the idea of the numbers, whether they be the engineering numbers, the actual costs of construction, is something where we as a staff would be glad to discuss, sit down, negotiate, how can we best provide best

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

service, that includes costs. So I appreciate you coming forward and seeking to do that, I believe that's where we are as well, so if we can come together with valid good numbers for construction it serves the best interests of all.

Mr. Preston stated paying up front, paying up front for the infrastructure fees allows the Utilities Commission to provide the infrastructure and the services to you when it constructs it, which is today. If your development goes in requiring needs greater than what exists and we cannot service those needs without placing infrastructure, we need to put that infrastructure in today. But we put that infrastructure in not just to service your needs, but all the potential needs in the particular area and today we're talking about the west side primarily.

Mr. Preston stated also it's important to note that in the addendum there is a true up period, a ten year true up period. This is a period after which we have placed infrastructure we determine actual costs, and if monies were deposited in an escrow account exceed that actual cost, they then are reimbursed to the developer. So there's not an overflow or a windfall for the Utilities Commission in this infrastructure format.

Mr. Preston stated one issue was raised in particular the U.C. property itself, the U.C. property is not being developed. I think it was Mr. Heebner said that there was no developer's agreement for the U.C. property, that's true there's no developer agreement for any property that's not being developed. If that property were to be sold, and there's no comment whether or not that's an indication by the U.C., then that current owner, should it be developed, would in fact come before the U.C. for a developer's agreement.

Mr. Preston stated so I'll be glad to be responsive to particular questions but I wanted to speak generally about the agreement itself. I think that it responds to a lot of your concerns about the agreement and then when it comes down to the numbers I believe I can speak on behalf of the U.C., let's sit down and talk numbers. I believe that the U.C. has demonstrated, particularly with Mr. Johnson, its willingness to do so. In that case Mr. Johnson actually installed infrastructure offsite of his property for a credit from the monies he would have paid pursuant to his addendum. He wanted to do that because he had said he could do so at a more cost economical manner. I believe that the numbers came in actually fairly close to what was projected by the U.C. so I don't believe that the discrepancies will turn out to be as great as you think, but lets sit down and talk. He concluded by stating I believe that's all that I have.

Chairman Para then asked if the Commissioners had any questions for Mr. Preston or any further comments, Mr. Rodi.

Mr. Rodi stated I'll make comments at the end.

Commissioner Hall stated I'm just curious as to how the setups going to be for further discussions or are there going to be, I'm not clear if we're going to have further discussions number one, so somebody needs to clarify that for me. Number two, if we are, how's it going to be set up, is it going to be staff talking with the developers and the attorneys or is it going to be

(1) Developer Presentation Regarding Utilities Infrastructure (cont.):

us or somebody representing us sitting in on the meeting, and maybe somebody from the City; if somebody could explain that to me. Second, thumbing through this document Mr. Hood, I noticed you put in the Aberdeen case, that was a bad move, I'll talk to you privately about that one. But, I think time is of the essence, I mean we can talk forever, there comes a time when someone's going to have draw the line in the sand and say okay we've done enough talking. So is there going to be a timeline if we do enter into discussions or are we going to, at our next U.C. meeting, make it clear that we're sticking with the addendum and the threat of going to court doesn't bother us. And I don't want that to sound egotistical but if I had a \$5.00 bill for every time I was threatened somebody was going to take me to court I could have retired 25 years ago, and probably you all are the same way. So, how do we go forward with a format that's going to fit what Mr. Hood has said, what Mr. Heebner has said, and I've worked with both of these attorneys as their firms were on retainer fees when I was Superintendent of the School System, and they did a superior job. What's Mr. Preston's role going to be in it, what about our firm that we have on retainer fee, are they going to be on it, what's going to be the role of yourself, what's going to be the role of staff; my mind is just not clear as to where we're going.

Commissioner Diesen stated we have a regular (special) meeting following this meeting, correct.

Chairman Para stated is that the purpose for us to work through some of these things at that meeting, okay. He then stated good questions, many of the things that I'm asking myself while we sit here and listen. He then asked if there was any further discussion from Commissioners; hearing none, Mr. Rodi.

Mr. Rodi stated I would also like to thank everyone for coming. I had, prior to this meeting, a request from Mr. Cullis and Mr. Johnson to meet with me. One of the reasons I did not was not to irritate them but the point is this is a high profile, very important issue for the community and if you go in behind closed doors and speak with people and come up with some other understanding or any other issue that wasn't previously discussed in an open forum, it raises questions for those others who are not seated in this room. There are developers in the central area, there are developers in the eastern area, I'm talking about in zone 3 and zone 2, who have not spoken to this issue and their issues in some cases are even different than the issues that were presented here. Noting that we have recently passed a new conflict of interest and ethical standard criteria, that's my primary driver for saying no. I'm pleased that you have spoken openly and candidly about this and it really reflects the difficulty in trying to determine the future when the future's unknown. That's a lot of what the issue is, is that we see this, and I wanted to just again thank you for coming. I wanted to personally explain publicly why I said no. So with that I will just say we'll wait until the next meeting.

(2) Possible Other Business -Time for Commissioners:

Chairman Para stated now it's possible time for Commissioners at this first meeting.

Commissioner Spangler stated I think if we're going to meet again after this meeting then any comments I would have can be saved.

(2) Possible Other Business -Time for Commissioners (cont.):

The remainder of the Commissioners stated they had no comments and Chairman Para stated then I will wait for the next meeting as well. He then stated again gentlemen thank you all for being here today, these are wonderful ways to begin this process of discussing.

Mr. Hood addressed the Commission again and stated just so that we understand, if this meeting was not successful, there's a workshop meeting with the City Commission, if I understand what's happening, you're now going to your regular meeting and we'll know at the end of that meeting whether we need to meet with the City.

Chairman Para interjected I think it will be worth sticking around for.

Mr. Hood stated as long as I understand what you're doing, thank you.

Chairman Para stated all right and with that we'll move for adjournment.

There being no further business to come before the Commission, Commissioner Diesen made a motion to adjourn and Chairman Para closed the U.C. Workshop meeting at 10:58 a.m.

APPROVED:

  
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CHAIRMAN

ATTEST:

  
\_\_\_\_\_  
SECRETARY-TREASURER

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