

Clearwater, Florida, April 13, 2006

JOINT PUBLIC MEETING BETWEEN
BOARD OF COUNTY COMMISSIONERS AND TOWN OF REDINGTON BEACH

The Board of County Commissioners and the Town of Redington Beach met in joint session in the Clearwater Courthouse, Clerk's Large Conference Room, 315 Court Street, Clearwater, Florida, on this date at 6:11 P.M. with Attorney Charles N. Castagna presiding as facilitator, and with the following members present:

BOARD OF COUNTY COMMISSIONERS (BCC)

Kenneth T. Welch, Chairman
Ronnie E. Duncan, Vice-Chairman
Robert B. Stewart
Calvin D. Harris
Karen Williams Seel
John Morroni

TOWN OF REDINGTON BEACH

Linda J. Wilson, Mayor
Deborah Bradbeer, Commissioner
Sam A. Maniotes, Commissioner
Anna Yadevia, Commissioner
Dominic Amadio, Attorney
Timothy W. Weber, Attorney

Also Present:

Susan H. Churuti, County Attorney
Joseph Morrissey, Senior Assistant County Attorney
Stephen M. Spratt, County Administrator
Pick Talley, Director of Utilities
Other interested individuals
Cathy Fickley, Deputy Clerk

AGENDA

- I. Introduction.
- II. Statement of Issues by Representatives of the Town of Redington Beach.
- III. Statement of Issues by Representatives of Pinellas County.

- IV. Discussion by the Two Commissions Seeking an Agreement.
- V. If no Agreement is Reached, Discussion of Next Steps:
 - A. Additional meetings of entities or designees.
 - B. Final mediation.
 - C. Parties may avail themselves of “any otherwise available legal rights.”

INTRODUCTION

Attorney Castagna welcomed the members; provided a brief overview of his professional background; discussed Florida Statutes Chapter 164.1055 regarding the role of facilitator in the conflict resolution process; and related that he had disclosures to make; whereupon, he stated that he was an Associate at the law firm of Battaglia Ross from 1985 until 1987; that he has conducted mediations with Attorneys Morrissey, Weber and Amadio; and that he and Attorney Churuti were high school classmates.

STATEMENT OF ISSUES BY REPRESENTATIVES OF THE TOWN OF REDINGTON BEACH

Following a review of the agenda, Attorney Castagna requested that the town representative present a statement of the issues; whereupon, Attorney Weber provided the following historical background information relative to the town’s wastewater collection system:

- Town experienced problems with inflow and infiltration into the water system due to leaking, outdated pipes.
- Town conducted a study and the first phase to correct problems was initiated; repairs were made to 5,000 feet of pipe at a cost of \$600,000.00.
- Discussion with county staff took place in June 1998 re assistance with wastewater system; offer by county to take over the system was rejected by the town.

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- Town continued to explore other options in which to repair system; water was being purchased from the county at a wholesale rate.
- Following studies and additional discussions with county, town entered into agreement in 1999 and transferred the system and all rights to the county for \$10.00 and other good and valuable consideration; county agreed to budget, design and construct improvements to the wastewater system; county's intent was to install reclaimed water mains and to use its best efforts in completing the project by June 2001, at a cost of \$1.8 million.
- During contract discussions, the town expressed concern with regard to the number of times the roads would be torn up.

Attorney Weber reported that there were delays in the reclaimed water project; that a number of resurfacing issues arose as a result of the county's work; and that county staff indicated that \$25,000.00 would be allocated to correct the resurfacing issues. He stated that the mayor made a series of public record requests in July 2004 in an effort to determine the work that had been completed from the contract date through June 2001; that Mr. Talley's office did not respond to the requests until the end of September 2004; that the information provided included three towns, making it impossible to determine the work performed solely for the town; that in January 2005, Mike Sweet, Director of Utilities Engineering, responded to the public records request and indicated that he had not been present when the agreement was executed in 1999 and was, therefore, unfamiliar with the terms of the contract and the amount of work yet to be completed; whereupon, the town initiated conflict resolution proceedings due to the lack of contract substantiation.

Referring to the first conflict resolution meeting between the town, county staff, and counsel, Attorney Weber stated that an agreement had been reached wherein an accounting would be provided to the town. He related that when the accounting was received, it once again included information pertaining to other towns; and that the town's Director of Public Works attempted to analyze it, and reported that it appeared that the county had expended approximately \$12,000.00 on behalf of the town.

Attorney Weber stated that a mediation was scheduled; whereupon, he described prior efforts to resolve the issues; and indicated that the town has not received a definite completion date for the project; and that the town has recently received a notice to

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proceed with regard to the pumping stations. He distributed a document titled *Sewer Fund Revenue & Expense Analysis 1990 – 1998*, a copy of which has been filed and made a part of the record, and related that the town contends it has lost revenue as a result of the transfer of the wastewater system to the county; that the previously offered \$25,000.00 for resurfacing and paving has come off the table; and that a claim for damages will be filed if the matter is not settled. In response to query by Attorney Castagna, Attorney Weber stated that the town requires a firm commitment by the county of a completion date for the work to be performed under the contract, and reimbursement of attorney fees and costs in the approximate amount of \$16,000.00 to settle the matter.

STATEMENT OF ISSUES BY REPRESENTATIVES OF PINELLAS COUNTY

Mr. Talley stated that he had requested to meet with the Town of Redington Beach Commission, but a meeting had never been scheduled. Alluding to historical background information, he read a July 14, 1998 St. Petersburg Times newspaper article titled *Redington Beach stymied over leaking sewer system*, a copy of which has been filed and made a part of the record; whereupon, Mr. Talley addressed the following assertions made by Attorney Weber:

- Agreement was made with the town that the wastewater system would be transferred to the county for \$10.00; county would be responsible for the design and construction of improvements to the system at a cost of \$1.8 million; county to use its best efforts to complete project by June 2001.
- It was the intent of the county to install the reclaimed water system in conjunction with the wastewater system according to agreement, and as per town minutes of August 18, 1998.
- Installation of the reclaimed water system was delayed due to earlier phases of construction along the beaches and pending lawsuits.
- Reclaimed system was installed in 2002-2003 and \$1 million in wastewater pipelines were replaced; streets were torn up one time.

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- Design of the lift station replacement took place in 2003, and manholes and pipe lining were completed in 2004.

Mr. Talley related that he had received public records requests from the mayor; that the subject contract was combined with two other cities; that he invited town staff to a meeting to ascertain what information was being requested; and that the town did not respond to his invitation. He stated that in September 2004, he met with Mayor Fontaine and determined that the town was requesting an accounting of the work completed and remaining, and the cost to date; whereupon, Mr. Sweet provided the information to the town and again requested that a meeting be scheduled to discuss the matter; however, the town did not respond. Mr. Talley contended that there was no administrative attempt on the part of the town to resolve the issues prior to litigation.

Referring to a document titled *Redington Beach Revised Cost Summary 03/30/06*, a copy of which has been filed and made a part of the record, Mr. Talley pointed out that the work completed to date is at a cost of \$1.5 million; whereupon, he related that all manholes have been relined; that 18,000 feet of pipe have been replaced; that 8,000 feet of pipe not replaced have been relined; and that the town now has the newest wastewater collection system in the county. He indicated that the design for three pump stations began in 2003; that the streets will not be torn up as the stations are located in isolated areas; and that the contract completion date is expected to be October 8, 2006, at a total cost of \$2.5 million.

Alluding to the town's assertion that the system could have been a revenue-producing asset, Mr. Talley distributed an annual audit report by Auditor John Hauser for fiscal year ending September 1998, a copy of which has been filed and made a part of the record, and indicated that the report was included with the town's minutes of September 1998. He pointed out that the report indicates that the wastewater system was not generating enough income to support the system; and related that there had been a 50 percent increase for wastewater fees to all wholesale customers on the beaches; and that had the town retained control of the system, it would be going further into debt.

DISCUSSION BY THE TWO COMMISSIONS SEEKING AN AGREEMENT

Referring to Mr. Talley's comments, Attorney Weber stated that the reclaimed water system was completed in December 2002; that the town questions why all work was not completed at that time; and alluding to sewer fund revenues and depreciation, he indicated that the town contends that profits were lost. Discussion ensued wherein Chairman Welch commented that in his experience as an accountant, depreciation is taken into consideration when determining net income; whereupon, Attorney Weber

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indicated that when breach of contract cases are litigated, depreciation is not included in the calculation of lost profits.

Thereupon, in response to query by Attorney Castagna, Attorney Weber indicated that the town requests an agreement that the county perform the work in accordance with the terms of the contract, subject to permissible delays; and that in lieu of damages, the town would like to be reimbursed for any monies it expended in attempting to resolve the issues.

In rebuttal, Mr. Talley stated that design of the lift stations began in 2003; that Chairman Welch addressed the issue of depreciation; that county staff attempted to cooperate with town staff on an administrative level; and that attorney fees and costs would not have accrued had the town staff agreed to meet to resolve the issues.

Attorney Morrissey referred to a document prepared by William Puller titled *Town of Redington Beach Cash Flow Analyses & Rate Comparisons December 8, 1998*, a copy of which has been filed and made a part of the record, and related that the auditor indicated several times throughout the report that the town needed to increase its rates; and that the sewer system was not in good financial shape. Attorney Morrissey pointed out that costs were rising dramatically due to improvements at the South Cross Bayou Water Reclamation facility; and suggested that the town representatives review the report schedules should the issues not be resolved tonight.

Thereupon, Attorney Churuti related that one issue that caused a delay in installation of the reclaimed water system was due to the treatment plant improvements financing process; whereupon, she provided historical background information regarding the legal process in which the reclaimed water system availability fee was challenged.

Deliberations ensued wherein Mr. Spratt commented that the contract language should include unforeseen conditions prohibiting completion of the project, and Attorney Weber concurred; whereupon, Attorney Castagna noted consensus with regard to the contract issue; and requested that it be memorialized. During further deliberations, Attorney Weber requested complete copies of the contracts; and it was agreed that monthly progress reports would be provided for the town's review; whereupon, Attorney Castagna requested discussion with regard to the claim for damages.

Thereupon, Attorney Weber asserted that the initial claim for lost revenue is approximately \$240,000.00; that the issue regarding the increased wholesale rate would have to be factored into the lost revenue analysis; and that the town is interested in recouping the \$16,000.00 expended for attorney fees and costs; whereupon, Chairman Welch stated that had the town met with Mr. Talley as he had requested, the monies may

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not have been expended; and indicated that he believes the original offer by the county of \$5,200.00 is fair.

During discussion, Mayor Wilson reiterated the reasons why the town moved forward with the conflict resolution process; and stated that the request for \$16,000.00 remains. During lengthy discussion, Commissioner Stewart suggested that the town and county each pay \$8,000.00; and Attorney Castagna offered to reduce his fee to \$750.00; whereupon, following further discussion and input by Commissioner Yadevia, it was the consensus of the members that each board pay \$8,000.00.

Discussion continued and in response to query by Commissioner Seel pertaining to the escalating costs of building materials, Mr. Talley indicated that the materials in short supply would not be primarily used in the pumping station project; whereupon, Commissioner Seel assured the town members that staff would monitor the submission of the aforementioned monthly reports.

Attorney Weber noted that Florida Statutes require that a resolution be passed by each entity, memorializing the terms of the agreement; and suggested that the terms be summarized and a vote taken; whereupon, Attorney Churuti indicated that a resolution would be presented to the BCC at a later date.

Thereupon, Attorney Morrissey proposed the following terms:

- County to pay the town \$8,000.00.
- County to provide the town with construction contracts for the pump stations.
- County to provide monthly reports regarding the progress of the construction of the pump stations.
- County will not cancel construction of the pump stations.

CONCLUSION OF MEETING

The meeting was adjourned at 7:54 P.M.