

AGENDA ITEM 2-a

MINUTES OF A SPECIAL MEETING OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, HELD FRIDAY, AUGUST 24, 2007, AT 10:00 A.M., AT 200 CANAL STREET, NEW SMYRNA BEACH, FLORIDA

Chairman Para requested Commissioner Allen to lead in the Pledge of Allegiance.

Chairman Para requested a roll call to be taken and all of the Commissioners were in attendance 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; L. Klinkenberg, Director of Finance; R. Mitchum, Director of Electric Operations; J. White, Director of Engineering; D. Hoover, Director of Water/ Wastewater; T. Beyrle, Director of System Ops./Generation; R. Lemoine, Director of I.T.; D. Simmons, Executive Asst./Recording Secretary; B. Preston, Interim U.C. Legal Counsel; Melanie Stawicki-Azam, Reporter for the NEWS JOURNAL; Steve Garthe, Esquire; Bob Tolley and Mrs. Tolley, Jim Taylor, Janice Baum, and Robert Rees, all members of the public.

(1) Southeast Interchange Complex, LLC – Memorandum of Understanding and Developer’s Agreement and Addendum:

Chairman Para requested Mr. Rodi to start with the first item.

Mr. Rodi stated this item is a follow on to the item we had at our last regular meeting where you had approved the Developer Agreement and the Addendum for the Southeast Interchange. A couple of points I’d like to make with regard to the Developer Addendum. One there was a scrivener’s error, the total remained the same for the contributions to infrastructure at \$309,755.60. Up above instead of \$277,531.20 for electrical supply it should have been \$177,531.20, and we have a corrected page for you. There are a few minor changes that involve the Letter of Credit and also the Memorandum of Understanding. Most of them are minor as far as correction of typographical errors, we added a word like “simultaneously” in the MOU and for the Letter of Credit it changed from ten years to one year on the premise that the work is going to be done very shortly so there’s no reason to leave a long Letter of Credit. And we do intend to cash the balance out within that one year’s period. You’ll also notice that there are no capacity fees for the Developer Agreement, those capacity fees will eventually be paid for by the new lot owners of the various parcels of this development so I wanted to explain why you would see zeros there. And obviously, then those new buyers would not be paying addendum fees because those are being covered by the developer at this time. So I wanted to explain those key points.

Mr. Rodi then stated with that I assume, Mr. Preston, that we have all of the documents and the Letter of Credit, etc.

Mr. Preston stated we have them all, I have originals and they have been executed by Mr. Holub,

(1) Southeast Interchange Complex, LLC – Memorandum of Understanding and Developer’s Agreement and Addendum (cont.):

the Irrevocable Letter of Credit, the Memorandum of Understanding, and the Developer’s Addendum.

Mr. Rodi then asked if there were any questions, and added if there are none then I would move that you approve this.

Chairman Para stated thank you Mr. Rodi, very good presentation. Is there any discussion or is there a motion?

Commissioner Diesen asked Attorney Garthe if he was in agreement with everything.

Attorney Steve Garthe addressed the Commission and stated yes ma’am. I’d like to thank the Commission for having a special meeting today and again special thanks to Mr. Rodi and Mr. Preston, they’ve been really good to work with. So everything is good to go from our standpoint.

Commissioner Allen made a motion to approve the Memorandum of Understanding and the Addendum to the Developer’s Agreement for Southeast Interchange Complex, LLC; approved the Memorandum of Understanding and Addendum to the Developer’s Agreement based on ERU approval – item 7-e. on 8-20-07, Developer’s Agreement and authorization for the General Manager/CEO to execute all documentation on behalf of the Utilities Commission contingent upon this developer’s (Paul Holub, Jr.) execution of said documents. Commissioner Spangler seconded this motion and the motion passed unanimously on a roll call vote.

Attorney Steve Garthe stated Mr. Chairman just one more thing, I can pick up, or Paul can pick up fully executed copies on Monday for the City Commission meeting on Tuesday?

Mr. Rodi answered yes.

(2) Approval of Minutes of Two Final Public Hearings and Regular U.C. Meeting Held August 20, 2007:

Mr. Rodi stated this is just what it is, they are minutes.

Commissioner Diesen made a motion to approve the minutes for the two final public hearings and the regular U.C. meeting held August 20, 2007 as submitted. Commissioner Allen seconded this motion and it passed unanimously on a roll call vote.

(3) Possible Other Business – Time for Commissioners:

Chairman Para stated okay, possible time for business, Mr. Rodi.

Mr. Rodi stated yes, we have something we’d like to do and at this point I’ll turn it over to Commissioner Spangler.

Commissioner Spangler stated I have another resolution and added Chairman Para, you’re not

(3) Possible Other Business – Time for Commissioners (cont.):

finished. This is a resolution of appreciation for the honorable service of Kevin J. Para as a Chairman and Utilities Commissioner on behalf of the Utilities Commission, City of New Smyrna Beach. Whereas, the Utilities Commission, City of New Smyrna Beach, Florida, was created etc.; we'll get right down to it. Whereas the City Commission appointed Kevin J. Para to serve as a Utilities Commissioner commencing in September 2004, and whereas, Chairman Para has provided knowledge, insight, and personal sacrifice in order to fulfill his obligations to the community in this position, and whereas Chairman Para has introduced technology concepts, even though you ran out of fuel today, and forward thinking concepts for the benefit of the community. Now, therefore, be it resolved by the Utilities Commission, City of New Smyrna Beach, as follows: The Utilities Commission, City of New Smyrna Beach, Florida, does hereby express our appreciation to Kevin J. Para for his dedication, compassion and honorable service as Chairman and Utilities Commissioner, commencing September 2004 to September 2007. The rest of it is legal stuff and I just want to hand this to you Chairman Para. Commissioner Spangler handed him a framed certificate and stated thank you very much. Those in attendance then applauded Chairman Para.

Mr. Rodi stated we need a motion.

Commissioner Spangler stated and I would like to, since I can, make a motion that we approve this resolution. Commissioner Hall seconded this motion and the motion passed unanimously on a roll call vote. This resolution was numbered 8-07 and became effective immediately.

Chairman Para stated thank you all. It was a pleasure serving with you all and I just wish you the best as you forge forward. You've got your work cut out for you, I'll be in prayer for you, and anything I can do, let me know.

Commissioner Hall then stated did we ever get a picture of Chairman Para to put on the wall back there.

Chairman Para stated that's my fault, I dodged the bullet several times, but I will in my commitment.

Commissioner Diesen stated but do we get a picture of you getting this though, that goes to the newspaper?

Commissioner Spangler stated I think we should.

Chairman Para stated yes, I think we can do that. Mr. Beyrle and I will get together afterwards and do that.

Commissioner Spangler stated I have some other business. First question is I have this letter (proposed UC response to "Report on Three Day NSB City Budget Workshops for 2007-2008" distributed by Southeast Volusia Chamber of Commerce), is this a letter you wrote as chair and have mailed.

Chairman Para stated no I have not mailed it.

(3) Possible Other Business – Time for Commissioners (cont.):

Commissioner Spangler added we think you should.

Chairman Para stated all right, I wanted to because I represent the whole Commission in this capacity in this particular instance, and this was something that drew a lot of passionate discussion the other day. I wanted to make sure it reflected not only my thoughts but also the rest of the Commission so no one could say it was one of them or the other, I want this to be us all. So if there's anything that you all would like to interject into the letter let me know. If not, actually Mrs. Simmons had sent me the last name and I had drafted it and anyways I didn't put that in so my wife was without that, so I'll get that put in.

Commissioner Diesen commented it's not Kimberly, Kilday is the last name.

Chairman Para stated Mrs. Simmons sent it to me, I just did not have it when I was dictating on a different computer.

Commissioner Spangler stated we could also just leave the name out, that would be my recommendation.

Commissioner Hall stated my question is, I'm a member of the Chamber and I never received this.

Commissioner Diesen stated it went out to their committee and then it was disbursed to me.

Commissioner Hall asked to their directors, the board of directors?

Commissioner Diesen stated I'm not sure but it was sent to all the City Commissioners and to the City Manager.

Commissioner Hall stated okay, I'm just wondering why a "John Doe" member such as myself didn't receive a copy of the letter.

Commissioner Spangler stated that's a good question and the other question would be why did the people who did receive it, receive it? So I think this is calm enough if we leave the name out it's okay with me if it's okay with everybody else.

Commissioner Diesen stated yes, because I said a whole lot more than this; really, this is nice.

Commissioner Spangler then asked if anybody had any objections to Chairman Para's letter. He stated okay unless someone objects it is fine and as far as I'm concerned we need to take the name out.

Chairman Para stated I'll do it.

Commissioner Spangler stated it says the staff and they can be responsible for whomever that is.

Chairman Para stated that's why I did a rough draft to allow for corrections, I'll take the name out and protect the innocent.

(3) Possible Other Business – Time for Commissioners (cont.):

Commissioner Spangler stated I have one more thing since this is sort of like other business. We were discussing ways to counteract rumor and innuendo on Monday and I think we have had a couple of vehicles right in front of us and didn't see them. Resolution 7-07 which is a formally stated report of our steps and events of our progress and our accomplishments, this Commission was re-populated by the City Commission a few years ago with the expectation that the situation over here would change. At the time I was told by City Commissioners that they wanted the U.C. business to be out in the open. We have never formally reported back to the City and I want to make a motion that we send a copy of Resolution 7-07 and a copy of Mr. Preston's letter to the FBI to the City Commission and request that they formally acknowledge and endorse those documents. So what do you think Mr. Chairman, I mean you've been recognized, are you ready to be endorsed too.

Chairman Para stated that's well thought and well measured and it would be appropriate to do that because you're right, as far as protocol wise we never officially did that, so it would be a great idea.

Commissioner Spangler stated and we don't need to sit up here and be doing that.

Chairman Para interjected just send it on.

Commissioner Spangler stated so that's my motion, do I hear a second?

Commissioner Diesen requested now state it again, is it that you want a resolution from them.

Commissioner Spangler stated I want to make a motion that we send a copy of Resolution 7-07 and a copy of Mr. Preston's letter to the FBI to the City Commission and request that they formally acknowledge and endorse those documents.

Commissioner Diesen stated okay so you're asking for a formal.

Commissioner Spangler stated yes.

Commissioner Diesen stated of the entire City Commission.

Commissioner Spangler stated yes, at a meeting.

Chairman Para stated acknowledgement and endorsement.

Commissioner Spangler stated right, that's all.

Chairman Para then asked is there a second.

Commissioner Diesen seconded Commissioner Spangler's motion.

Chairman Para then asked if there was further discussion on the motion.

Commissioner Hall stated yes, why the FBI, we've already sent information up there.

(3) Possible Other Business – Time for Commissioners (cont.):

Commissioner Diesen stated we're going to send them the letter, a copy of the letter.

Commissioner Hall stated well why don't we send it to the FDLE and the State Attorney's office.

Commissioner Spangler stated the reason why is because there's so many people that don't yet know anything about it, they still think that we're the people that caused the problems. They still don't know where the money went despite the newspaper headlines and everything and because that was part and parcel of what three of us were sent over here to do, and we've never really said anything to them, I think that formally, it's my opinion, that we need to say that. This is what happened, this is what went to the FBI, we don't know where it will go from there but this is what we did.

Commissioner Hall stated I will agree with it if we agree that the next time we have a workshop or a meeting with the City Commission that its brought up eyeball to eyeball. Every time I got a petition from a group I put it in my file 13, that's the trash can, because it's easy to be anonymous. That's one of the things I don't like about email, it's easy to sound off because you're not facing somebody who disagrees with you face to face. So I have some reservations about your movement or your...

Commissioner Spangler stated okay we can add that but I don't think that would really, necessarily, but we can request as a part of that motion that they address this with us at a workshop. I don't have a problem with that either.

Commissioner Hall stated we're suppose to have a workshop coming up soon don't we.

Commissioner Spangler stated well we don't know, it's a moving target.

Commissioner Hall stated but I would like to see this as part of the agenda.

Commissioner Diesen stated so you're just asking that to be added to the agenda not to the motion.

Commissioner Spangler stated otherwise let's put our public mouth where our private mouth is, let's just, this is what we're saying and then we want them to have their say too.

Commissioner Spangler then stated so I make that motion.

Chairman Para then asked is there a second.

Commissioner Diesen seconded the motion and added I did that once.

Chairman Para stated you did, I apologize. He then asked if there was further discussion from any other Commissioners. There being none, he stated I just want to say that I think the purpose behind it as I perceive it is to again completely conclude our involvement with this and declare that to those that have oversight over us and say we finished what we were suppose to do. It isn't so much like we're saying something, Commissioner Hall, in the dark or anything else. I think it's just to say you know we finished, here it is. And I think that's a great idea Commissioner Hall though, that the Commission discuss if there are any loose ends at the City Commission, because again with their

(3) Possible Other Business – Time for Commissioners (cont.):

oversight they may direct us back to reviewing something again. But yes, that way the community can recognize that the matter was settled in the light of day and that this Commission has no further action on it. That way it doesn't pop up and float around in future Commission discussion, it's done and done, and so the City Commissioners as well.

Commissioner Spangler stated and then with Commissioner Hall's suggestion, if they don't like what we've done they'll have a forum where they can explain if they don't want to endorse us.

Chairman Para stated that's not the purpose behind it, to close off discussion to the City, it's simply to say we're done, how about you guys.

Commissioner Spangler stated we're done, you need to know it officially.

Commissioner Diesen stated and I'm not sure that there should be finality attached to this because as you know with a lot of things they can come back a different direction or from a different place. We never know when that may happen and it might be that at some point we would be reinvolved, so...

Commissioner Spangler stated well there's no finality in the list of our accomplishments because it's ongoing and there's no finality in the FBI investigation until they say there is, so I would agree.

Commissioner Diesen stated exactly.

Chairman Para stated it's just that we have done all we can with what we've got.

Commissioner Spangler stated that's right, we've done it and everyone needs to know that we've done it.

Chairman Para stated right, our responsibility of oversight, is at this point, complete.

Commissioner Spangler stated right.

Chairman Para stated very good. No other discussion, please call the roll.

Commissioner Spangler's previous motion (a motion that we send a copy of Resolution 7-07 and a copy of Mr. Preston's letter to the FBI to the City Commission and request that they formally acknowledge and endorse those documents) then passed unanimously on a roll call vote.

Chairman Para then confirmed there were no further comments from the Commissioners at this time.

(3) Possible Other Business – Time for Commissioners (cont.):

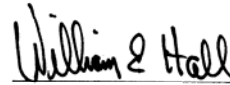
There being no further business to come before the Commission, Chairman Para closed the Special U.C. meeting at 10:24 a.m.

APPROVED



CHAIRMAN

ATTEST:



SECRETARY-TREASURER

These minutes were formally approved by the Utilities Commission at their September 17, 2007 meeting.