

# PORT LABELLE UTILITY SYSTEM ADVISORY BOARD MINUTES

November 18, 2008  
Hendry County Board of County Commissioners Chambers  
25 E. Hickpochee Avenue  
LaBelle, FL 33035  
2:00 P.M.

## **Board Members Present:**

George Davis, Chairman  
Han Mouthaan  
Warren Grant

## **Board Members Absent:**

Richard Bass  
Paul Samerdyke

## **Other Attendees / Speakers:**

Roger Greer, PLUS Director  
Yvonne Cayce, PLUS Staff Assistant  
John Capece, PLUS Advisory Board Facilitator  
Shane Parker, HC Engineer  
Danny Nelson, Tetra-Tech  
Jennifer Davis, Budget Director  
Chuck Svirik, CHL

### **1) Call to Order – George Davis**

Chairman, George Davis, called the meeting to order at 2:00 p.m. on Monday, November 18, 2008.

### **2) Review of July Minutes**

Copies of the July 21, 2008 minutes were distributed and reviewed by members. Motion to accept minutes was made by Warren Grant and seconded by Han Mouthaan. Motion carried unanimously.

### **3) Director's Report – Roger Greer**

Roger Greer stated that there has been little change since the last Board Meeting, with only three new connections; one in Banyan Village and the others in units 1-9.

Yvonne has been working diligently to collect debts owed to PLUS from homes that have been and that are going into foreclosure. She has been corresponding with banks, title companies, and realtors via telephone and letters, and has created a spreadsheet in an effort to track the debts and collections associated with these foreclosed properties. In addition, she is also trying to locate individuals that still owe outstanding final bills. It's difficult, however, to find these people, as they have left no forwarding address for many do not wish to be found.

As requested from our last meeting, she has also prepared a spreadsheet listing all accounts with debts totaling over \$500.00. (Spreadsheets distributed to Board Members for review).

We are still looking into placing liens on properties in an effort to collect the debts against them, and are currently waiting on legal opinion from the County Attorney.

### **4) Water Consumption Data – John Capece**

John stated he had updated the treated water consumption and wastewater processing data sets. Referring to graph one, he noted that the average gallons per day are back down to 250,000. This very low level corresponds to levels prior to January 2005. As well as the average coming down, the minimum came down, and there was a dramatic drop in the maximum. When the maximum and average approach one another, it means there's a steady consumption as to usage. This usage, however,

does not seem to be tied to irrigation. Referring to the back graph, Wastewater Plant, a high peak was experienced in August with infiltration of storm water into the sewer pipes. From 2005-2008, the annual peak has increased each year, which may be attributed to differing rainfall events, although it is suspected that it's from continual degradation of sewer pipes. Even with the peak, the overall consumption level has moved below 50% of our wastewater treatment plant capacity. The bypass has been completed, freeing up capacity at the Wastewater Treatment Plant, but it looks like the annual average will be over 50% and may go up to about 60%. Even if the sewer problems are repaired as far as leakage of storm water into the system, it's not thought that it would get below 50%. The other way to handle this would be to re-rate the wastewater treatment plant, increasing the overall capacity, which would not involve infrastructure.

Danny Nelson commented that 50% triggers having to do a capacity analysis report. This study will project when certain thresholds are met. Hovering around the 50%, we may not want to do anything with infrastructure at this time. It would be less expensive to do a capacity analysis report yearly.

John agreed that in 2009 we probably want to do the capacity analysis report. The amount of wastewater that we're treating is 84% of potable water delivery volume, with some of this being storm water.

#### **5) Replace Well Bids – Roger Greer and Danny Nelson**

Danny informed the Board that two bids were received for replacement of the south well. Irrigation Plus, a local well driller, came in as the low bidder at \$209,000, well below Tetra Tech's estimate of \$250,000. The submitted schedule in the bid package indicates that the well could be completed within six months.

Chairman George Davis asked if there was a motion to accept the bid submitted by Irrigation Plus. *Motion to accept was made by Han Mouthaan and seconded by Warren Grant.* All were in favor and the motion carried.

#### **6) Revised SFWMD Water Use Permit Application – John Capece**

John Capece invited Board Members to review the two-page handout with the graph on the front and information on the back from SFWMD stating that we are over our permitted capacity by approximately 25%. In response to our initial permit application, they've asked us to do some additional modeling.

The City of LaBelle has withdrawn any request for us to provide supplemental water to them. Given the water quality problems that they're experiencing, some of their customers may feel it advantageous to purchase water from PLUS, but that is not to happen. We are, therefore, unable to include that capacity, and our request will move forward without consideration of the City of LaBelle.

#### **7) Rate Study – Danny Nelson and Roger Greer**

Roger Greer informed the Board that he, Jennifer Davis, and Danny Nelson met today at 11:00 a.m. Tetra Tech has requested more current data. We should have something within a couple of weeks, hopefully by the next meeting.

#### **8) Special Assessment & Connection Fees – John Capece and Roger Greer**

John Capece stated that there is an issue with the connection fees that needs to be addressed. The connection fee is made up of several different components, and has not been revised in a long time. The special assessment fee for distribution lines in Banyan Village is about equal to the total connection fee. John stated he, Roger, Jennifer, Mark Lapp, and Dan Stevens have met and discussed this issue. Jennifer is working on finalizing numbers so we can segment and split out the cost of the transmission

line. The special assessment can be revised, giving us an idea on estimates, and what the new connection fee should be. Once we have the numbers on the distribution lines, transmission lines, and water plant, a formula will be created to determine the charge.

One of the biggest questions the Advisory Board will have to consider is whether to maintain a uniform connection fee, or to begin having different connection fees based on units. George Davis stated they should be different and should reflect what the cost was for that particular unit.

Jennifer Davis said one way would be to separate the connection fee from the assessment. At present, the assessment is built into the connection fee, and the two should be separated due to the difference in cost to run the lines to the different areas. She added this is the way it is done in other Counties and Cities.

Referencing Banyan Village properties, Chuck Svirk with CHL said the Utility Agreement signed in 1996 should be considered. Escrow funds for these properties were yielded over to the County, and he doesn't feel that Banyan Village customers should be penalized with higher costs due to an eight-year delay of installing water lines. He feels these customers should have the same costs, and that it would be discriminatory to charge them more. (Charles Erwin handed out copies of the agreement for the Board to review). As to the additional million-dollar cost incurred when hitting cap rock, Mr. Svirk said he didn't know what should be done about that, but the cost for water lines in one unit should be the same for another.

John Capece stated the agreement said we would deliver water to all the lots, but depending on how you read that agreement, you could say time differences should not play into the fee differences.

#### **9) Seagrape Water & Sewer Lines – Chuck Svirk**

A packet on the Seagrape area located in Unit 4 was distributed. Chuck Svirk addressed the Board stating CHL has owned the land since 2003. It had 3 years of back taxes when they purchased the land and now about 8 years of back taxes in all. He presented a combination of issues. First, this is part of the Utility Agreement, which encompasses Units 1-9, Unit 102, and Banyan Village. He said they came to Roger years ago to talk about bringing the water and sewer to this area. The area has to have both water and sewer because of the mandated agreement that once the unit hits 33% density, the sewer would have to be put in, and unit 4 is at 76%. Also, if the area is within ¼ mile from a sewer hook-up, then a hook-up is necessary. Chuck stated they are ready to commit to put the roads in, and that the developer could put the water and sewer lines in as was done with the development of Oak Haven Estates. He said, as they read into the agreement, the agreement prohibits them from doing that. CHL distributed copies of the Utility Transfer Agreement, highlighting section 2 (Service Obligations) and section 5 (Assignments). Oak Haven Estates does not have to put in a sewer line because they have 2-acre lots. The Seagrape area was platted for quarter acre lots, which does not allow for wells, therefore, the lots require both water and sewer service. The County is taxing the Seagrape area as single-family buildable lots, yet he cannot get permits to build. He said in paying these taxes for eight years, it has run into a considerable amount of money, and he feels the development of this property has to go forward. Seagrape has 157 platted lots and he is before the Advisory Board asking them to make a recommendation or to give feedback on a time line. He said the taxes would not be current until they get the project moving, and that there has been interest in Seagrape even though the market is terrible at this time. Mr. Svirk stated upon examination of the utility agreement, no exclusion for Seagrape was found. He added this is the last of the lots, which were promised water and not delivered water. He said the good news, it's a smaller area; the bad news, it will have to go through another bonding issue like the Banyan Village project. To turn this area into real lots, CHL would have to survey where all the roads and easements would be, the area would have to be cleared, the sewer and water would be brought

in, and then a final grade on the roads and blacktop. Request is made for a time line from the utility for the installation of the utilities before they can move forward.

John asked Mr. Svirk that if the County accepted the assertion it had an obligation to undertake the sewer and water line installation, was Mr. Svirk asking the County for a joint time line on dividing the task responsibilities and coordinating the various steps involved in the construction process.

Mr. Svirk replied that surveying, and removing trees in getting the area ready for water and sewer would require a period of weeks, not years. He stated that CHL just needed the date that this is commencing, and then CHL would get the work done. If the site clearing was not ready then PLUS wouldn't start the line installations.

Shane Parker, County Engineer, said we do need to evaluate the letter from CHL, and before any clearing or grubbing takes place, they need to get their survey and construction plans approved by the County.

Jennifer Davis, County Budget Director, asked Mr. Svirk if the agreement of 1996 which he keeps speaking about, is the same agreement he has in litigation at the present time. He said it is included in the same litigation with Banyan Village. Jennifer said the litigation is not finalized and the Judge has not made a decision. She, therefore, cautioned the Advisory Board on making any decision until the Judge finalizes it. She added, knowing this agreement is in litigation with the courts, troubles her as she sits in the audience listening to pressures made to the Advisory Board for a decision. She feels this could set precedence in the court's decision. Jennifer also said Mr. Svirk speaks of all the taxes he's paid, but only \$50.00 per lot, allowed as good faith payment, has been paid because it is in litigation. She said the County is out over 1.2 million dollars in taxes that has not been paid on any of these lots, and that does not include the 2008 taxes.

Mr. Svirk said Jennifer was correct, however, stated the main topic under litigation is over taxation. He said Jennifer made it sound like the attorney is going to make a ruling on whether this agreement is valid, or not, and that's not the issue with the litigation or the premise of the case. He asserts that he missed the peak of the real estate market because of the timing of the installation of the water line. He said when they purchased the lots they were assessed \$1,000. The assessment has gone up over a period of time to \$26,000 a lot. He said Jennifer correctly stated they made a good faith payment. However, their argument is, if they didn't have water, the lots were not legal to sell based on the State law for a developer of more than 25 lots. An individual can sell and be exempt from that law because they only have one lot. He said since it was illegal to sell the lots, why should they pay the increase on the taxes. At the least, give them the right to start assessments at those values once the water is deployed and the lots are legal. He reiterated the premise of the lawsuit is concerning taxation, and not the utility agreement referenced.

John Capece commented that he didn't understand the relevance of the pending legal case to the matter discussed by the PLUS Board regarding Seagrape service obligations.

Jennifer Davis responded that she just wanted the Board to be aware that the matter was in litigation and one of these decisions could affect the situation.

The PLUS Advisory Board members said they don't feel they can make a decision today. John summarized the Board's questions as: (1) What relationship, if any, exists between the CHL lawsuit and provision of water service lines by PLUS to Seagrape. (2) If the County is moving forward to provide water lines to Seagrape, what agreements need to exist between the parties to obligate and coordinate

time lines. They also need feedback from the County Engineering office before moving forward between the two parties. And, per Shane Parker's assertion, make sure legal counsel is in agreement with any decision(s).

John said he would follow up with the attorneys before the next meeting.

**10) Other Issues**

None

**11) Closing Statements**

Jennifer Davis stated staff needs to make a decision on the rate structure for connections and assessments, and bring this back to the Board for review.

Han Mouthaan asked if Mark Lapp, County Attorney, could speak to the Advisory Board on issues presented today. Jennifer replied that Mark could speak on anything but CHL matters.

Han requested that the Advisory Board members be kept up to date, via email, as to matters relating to these issues.

**12) Schedule Next Meeting & Adjourn**

The next meeting will be scheduled at a later date. Board Members and associates will be notified when determined.

Chairman, George Davis, asked for a motion to adjourn. Motion was made by Warren Grant and seconded by Han Mouthaan.