




# Memorandum

TO: MAYOR & CITY COUNCIL

FROM: GREGORY J. ORAVEC, CITY MANAGER 

DATE: FEBRUARY 6, 2013

SUBJECT: RIVERLAND/KENNEDY AND WILSON GROVES APPLICATIONS

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Over the course of the last two years and especially over the past eight months as I have become personally involved, the City has invested a substantial amount of time, money and effort in working with the representatives of Southern Grove (SG), Riverland Kennedy (RK) and Wilson Groves (WG) to modify their respective development orders. Unfortunately, despite leaving a negotiating session with terms in hand, terms which seemed to be beneficial to all parties, on January 29, 2013, RK withdrew from the multi-party negotiations. Since then, RK has requested to proceed with a past iteration with a new Becker Road twist that neither the staff nor I support, especially given the additional information and concepts which came to light as part of months of negotiations, and WG is attempting to move forward with the terms developed as part of the multi-party negotiations before RK's withdrawal.

Though this situation is multi-faceted and there are many competing arguments which can make its consideration very difficult, I believe these matters can be boiled down to the following essence:

- SG, RK and WG, but especially RK and WG, are competitors who are now bound together in the City of Port St. Lucie due to geography and, more importantly, the Southwest Annexation Agreement.
- There is a lot of history between the competitors, RK and WG, in Palm Beach County, which makes negotiating between the parties difficult.
- Though the "Super-DRI" contemplated by the Annexation Agreement never materialized, the Annexation Agreement, itself, married the developers together in a similar fashion.
- The economics of today are far different from the boom. The developers' desire to divorce themselves is natural due to those economics and competitive forces.
- A divorce between parties should not be carried out in piecemeal fashion. In hindsight, it would have been better for the approval of WG's first modified development order to be part of a comprehensive divorce which set the terms of all the parties who were previously married, both in their development orders and in the corresponding terms of the Annexation Agreement.
- We cannot go back in time; but, fortunately, WG and SG want additional modifications to the development orders. Consequently, the City does have the ability to facilitate the comprehensive settlement of this matter. Ultimately, this negates RK's fairness argument.
- At its heart, the fight with the development orders is based upon roadway construction. Everyone wants the most cost effective access possible. No one wants to have the trip capacity they construct (roads) used up by a third party, especially a competitor. Due to geography, WG is potentially at a disadvantage because of the number of miles it will have to build for access compared to RK, which benefits from proximity to SG. However, this is why you saw SG participate in previous conversations on RK's development order. SG does not want its capacity used up.
- The Becker Road provisions of the Annexation Agreement and the Annexation Agreement, itself, were the developers' insurance policy for access and other important aspects of development if anything went

wrong. Something did go very wrong—the economy. As a result, it is very important to consider any modifications to the development orders in concert with the Annexation Agreement.

- While the market is improving and I expect the build out of the Southwest Annexation Area to create vibrant thriving communities in the Southwest region of the City, construction in RK and WG is still a couple of years away, and build out is a few decades away. As a result, I do not believe you should feel rushed into making any decisions on the respective development order applications.

Based upon the above and the number of times the subject items have been modified and tabled, I would recommend that the City Council deny RK and WG's applications to modify their respective development orders and direct staff to delay the pursuit of any additional negotiating with the parties for a minimum of 30 days. It is my hope that with some time and a push from the City Council, the parties would return to the negotiating table refocused and ready to strike an accord. Moreover, I suspect that the parties' willingness to agree would increase as their dates to initiate construction firm up and get closer. In any event, the staff and I look forward to executing your decisions on these matters.

For additional information, you may wish to refer to the previous correspondence from staff or to request an update from staff. Please let us know.

Thank you.

- c: Roger G. Orr, City Attorney  
Jeff Bremer, Assistant City Manager  
Pam Booker, Senior Assistant City Attorney  
Roxanne Chesser, PE, Civil Engineer  
Daniel Holbrook, AICP, Director of Planning and Zoning  
Anne Cox, AICP, Assistant Director of Planning and Zoning  
Southwest Annexation Area Developers

## Greg Oravec

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**From:** Glenn Ryals <Glenn.Ryals@glhomes.com>  
**Sent:** Tuesday, January 29, 2013 7:11 PM  
**To:** Greg Oravec  
**Cc:** Larry Portnoy; John Carter (jfcarter@mintofla.com)

Greg,

I must unfortunately notify you that due to the continued changes, we are not in agreement to move forward. If you want to give this another 30 days, we will of course continue to work with the City to develop an acceptable NOPC for Riverland. We are done with the efforts to satisfy Anasca.

Further, we will not continue with the one person meetings for each developer. I have not been able to keep this on track on that basis and therefore we will only meet with our full team which will likely include our attorneys. We would like to work with the City and we believe we have a mutual respect in which we are interested in seeing ourselves and the City succeed in the future and we want to be a part of building a City for all people to achieve their dreams. We are quality builders with a respect and insistence on quality communities in which our homeowners have a strong desire to live. We are strong supporters of the communities in which we build our beautiful neighborhoods.

We will be meeting with our team over the next couple of days and will try to give you our ideas on how we would like to move forward at that time.

With Kind Regards,

Glenn

## Greg Oravec

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**From:** Pol Africano <pola@cmseng.net>  
**Sent:** Thursday, January 31, 2013 6:51 AM  
**To:** Greg Oravec  
**Subject:** Re: RE:  
**Attachments:** image003.jpg

Greg,

We would like to move on. The DO we submitted is in keeping with our Jan 23rd deal, previous road commitments, it's fair and balanced. It allows us to access our site without having to build over 2 miles of roads although we have to wait but that is the nature of our location. We have agreed to include language in the AA that protects us all in the event of a defaulting developer.

This deal also seems better for the City. We do not understand R-K objections but want to go in front of P&Z so that we can continue this process.

Please call me when you get a chance.

Thanks - Pol

Sent from my iPhone

On Jan 30, 2013, at 12:14 PM, "Greg Oravec" <[GOravec@cityofpsl.com](mailto:GOravec@cityofpsl.com)> wrote:

> Glenn,

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> This really is impasse. As I have clearly and publicly indicated in the months leading to this present moment, based upon what I have learned through these intensive interactions, I no longer support the approval of your proposed NOPC #2 and will be recommending denial. Moreover, I will be working with the City Attorney's Office to prepare the formal notice of default under the Annexation Agreement.

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> What is especially difficult to understand is how impasse came about after the parties finally seemed to come to terms. It would have been much easier for me to understand impasse at the beginning of December. I also lament that you elected to send this e-mail prior to discussing the issues with me.

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> Sincerely,

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> Gregory J. Oravec

> City Manager

> 121 SW Port St. Lucie Boulevard

> Port St. Lucie, FL 34984

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> (772) 344-4371

> (772) 871-5248 [fax]

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## Greg Oravec

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**From:** Roxanne Chesser  
**Sent:** Tuesday, February 05, 2013 5:04 PM  
**To:** Greg Oravec  
**Cc:** Jeffrey Bremer; Pam Booker; Daniel Holbrook; Anne Cox  
**Subject:** RE: SWAA

Greg,  
I'll take a stab at this....it looks like we started working on the divorce after Wilson Groves submitted their NOPC in October 2010. Since that time, the divorce was a part time project until late 2011 or early 2012 when you became involved. For the past year, as you are aware, the divorce has been a full time project.  
Thanks

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**From:** Greg Oravec  
**Sent:** Tuesday, February 05, 2013 3:31 PM  
**To:** Pam Booker; Daniel Holbrook; Roxanne Chesser; Anne Cox  
**Cc:** Jeffrey Bremer  
**Subject:** SWAA

Good afternoon,

I intend to write a memorandum tonight regarding the status of the subject. I will distribute for your feedback prior to an at large distribution tomorrow. How long have you been working on the "divorce" now? I believe I have been working on it for a year already. i would like to put that into the background.

Thank you,

Greg

RIVERLAND/KENNEDY LLP  
1600 Sawgrass Corporate Parkway, Suite 400  
Sunrise, FL 33323

Glenn Ryals  
(954) 753-1730 (phone)  
(954) 575-5366 (fax)  
glenn.ryals@glhomes.com

February 1, 2013

Via Email – [GOravec@cityofpsl.com](mailto:GOravec@cityofpsl.com)

Greg Oravec, City Manager  
City of Port St. Lucie  
121 SW Port St. Lucie Blvd.  
Port St. Lucie, FL 34984

Re: Riverland/Kennedy, LLLP  
History of Settlement Negotiations and Request for Approval of NOPC #2

Dear Greg:

We are also lamenting that an amicable resolution with the parties at hand was unattainable. Although we have operated in good faith and in the spirit of compromise, it appears that others have the sole objective of trying to better their own position which has thwarted the parties from a mutually acceptable resolution. We understand that others may think further settlement talks are warranted in this matter; however, the ever changing positions and continuous delays demonstrate that an impasse is long overdue and we simply must move forward. If you look back at the discussions and meetings that have taken place, what was agreed to at one meeting was not acceptable at the next. The final goal line keeps moving and changing without an end in sight. Accordingly, we have taken the opportunity below to review the history of our prior negotiations which may help others understand the reason an impasse has occurred. Additionally, the below outline may help you prepare your position paper regarding our pending NOPC.

1) Wilson Gove NOPC Approval - When Anasca changed their DO for Wilson Grove during the 2 week period after they received P&Z approval, we were forced to respond under extremely short time constraints and we worked with your staff and the Council to educate everyone about the conflict that would result with the pre-existing Annexation Agreement. Unfortunately, in the confusion that appeared at the dais, the City Council moved forward with the approval of the Wilson Grove NOPC based on an understanding that Anasca would submit another NOPC which was supposed to resolve the conflict that was created with the Annexation Agreement. However, the expected amendment that was required to resolve the conflict still has not been agreed to and Anasca withdrew that NOPC application. Accordingly, the direct conflict with the Annexation Agreement remains at this time even though there were very few issues that had to be worked out to resolve the conflict.

As you may recall, it appeared at the City Council meeting on the Wilson Grove approval that Wilson Grove was going to build Becker Road from Village Parkway to N/S B as part of its lane mile allocation as established by the City. However, it became apparent that Wilson Grove did not intend to pay for these improvements which shifted these burdens to Southern Grove and Riverland/Kennedy. Further, the

requirement that Wilson Grove build Becker Road from N/S B to Rangeline Road was extended to the end of Phase 1 which delayed the Wilson Grove obligations. This is also contradictory to the Annexation Agreement, which requires that the entire Becker Road be built up front and not at the end of Phase 1. As a result, Southern Grove and Riverland/Kennedy are required to build Becker Road to the Wilson Grove property but Wilson Grove is granted a delay for its portion of Becker Road. In addition to the direct conflict created with the Annexation Agreement by this delay, the extensions granted to Wilson Grove have resulted in the inequitable treatment of the other parties who have the greater and undue burden of completing or paying for improvements without such extensions.

2) Southern Grove Substantial Deviation - During the 2 years since the Wilson Grove NOPC was approved, Riverland/Kennedy has attempted to process our NOPC using the lane mile allocation that was established by the City. Unfortunately, we were asked by City staff to delay our NOPC request until Southern Grove's substantial deviation request was processed because the Southern Grove application had significant importance for the City to timely address. In good faith cooperation, we accommodated the City's request and postponed our NOPC.

When the Wilson Gove NOPC was approved, Anasca clearly indicated to the Council that it was ready to start development which would trigger its road construction obligations. However, during the process of the Southern Grove substantial deviation approval, Anasca changed its position and insisted that Southern Grove insert language which indicated that Southern Grove would build Becker Rd. from Village Pkwy. to Community Blvd. by 2018. This agreement was subject to a future amendment of the Annexation Agreement in which Wilson Grove was supposed to assume responsibility for other roads which was intended to balance out the allocation of lane miles between parties. Anasca was willing to wait 6 years for the construction of Becker Rd. until 2018 allegedly based on a negative change in market conditions. We are confident you will recall Anasca's prior position during the Wilson Grove approval that it was ready to start development and that City staff and the Council will independently recognize that market conditions have improved over the past 2 years and not declined.

3) P&Z Approval of Riverland/Kennedy NOPC - After a change of City Managers we were told that we had to change our NOPC application from what the prior administration had mutually negotiated with us and we were then required to include all of the prior DO roads, even though these roads were not necessary pursuant to the Western Area Traffic Study (WATS). Despite the prior negotiations, the City's position was changed to preclude us from deleting any roads. This inequitable position was forced on us despite the fact that both Wilson Grove and Southern Grove were previously allowed to delete roads which had been required by their prior DOs. In (what we believed) was an effort to mitigate our inequitable treatment, we were advised by yourself and City staff that there was no objection to Riverland/Kennedy delaying the phasing and thresholds of our road obligations. However, when we presented our NOPC which included a positive recommendation of staff, we were attacked by neighboring DRIs who raised concerns about traffic issues that might be created as a result of delaying certain roads. Unfortunately, City staff remained silent and did not publicly support the position that they had taken with us in negotiations leading up to our hearings. Despite this setback, we again worked with Staff to address any potential legitimate traffic concerns, revised our NOPC and then finally received P&Z approval.

4) Council Hearing on Riverland/Kennedy NOPC - Upon submitting our revised NOPC which addressed our phasing and threshold concerns to City Council, together with positive staff approval, Anasca asserted that our DO conflicted with the Annexation Agreement because our DO did not reflect an obligation for us to build the first 2 lanes of Becker Rd. from Community Blvd. to N/S B. Anasca asserted its objection even though the same issue existed in the Southern Grove DO and even though Anasca had requested the same language in the Southern Grove DO in regards to the construction of Becker Rd. by 2018. So

despite Anasca wanting this language in Southern Grove, Anasca was opposed to the same concept in our Riverland/Kennedy NOPC. Of course, Anasca's position was unfounded because the NOPC submitted by Wilson Grove and approved by Council already reflects that Wilson Grove is responsible for this portion of Becker Rd. improvement, as per the City's lane mile allocation, and it was not necessary to be included in the Riverland/Kennedy NOPC (which would have resulted in even further confusion and conflicts). Yet, despite the foregoing, we were tabled once again and were instructed by Council to attempt to work out the Becker Rd. conflict.

5) Recent Negotiations – In the last 2 months, it appeared we were very close to an amicable agreement amongst the parties (including Anasca) under which Wilson Grove would build the first 2 lanes of Becker Rd. from Village Pkwy. to N/S B and Wilson Grove would be allowed to delay construction of the western portion of Becker Rd. from N/S B to Rangeline Rd. to the end of Phase 1. The foregoing would have been consistent with the Wilson Grove DO that was approved 2 years ago. However, Wilson Grove expressed a concern that the first 2 lanes might be more expensive. So the 3 developers paid \$8,000 each to retain the City's engineer, Captec, who developed plans and a scope of work to evenly allocate the cost of the 2 lane, 4 lane, and 6 lane improvements of Becker Rd. This was intended to assure that Wilson Grove would not pay an unfair cost for the first 2 lanes.

At this point, you stated that the City was going to build the first 2 lanes of Becker, subject to public bid, and Wilson Grove would simply fund the construction. This alleviated concerns raised regarding Wilson Grove directly building this improvement. Anasca also agreed that should Riverland/Kennedy be required to build the first 2 lanes of Becker Rd. through Southern Groves (a Wilson Grove required improvement) then Wilson Grove would pick up responsibility for 4 laning Becker Rd. through the Riverland/Kennedy DRI (which is a Riverland/Kennedy required improvement).

Also in the latest negotiations, you expressed your agreement to delete 2 more lane miles from the Wilson Grove share of lane miles (Paar Dr. from N/S A to Rangeline Rd.). Such deletion would have provided a further reduction in the lane miles that Wilson Groves would have been required to build. As you know, Wilson Groves is already allocated less road miles than its proportionate share under the City's lane mile allocation formulas. A further reduction simply exacerbates the inequality of the situation.

Although it appeared the parties were at the doorstep to completely resolve once and for all the Becker Rd. issue, Anasca then proposed additional terms requiring further allocations or shifting of roadway obligations amongst the parties which thwarted a Becker Rd. settlement.

6) Negotiations Turned Towards E/W 3 – On Friday, December 7<sup>th</sup> (which was 3 days before the Council meeting on our Riverland/Kennedy NOPC), Anasca abandoned the prior Becker Rd. discussion and decided it wanted Riverland/Kennedy to build E/W 3 to Anasca's property which would provide Anasca access and it also wanted to delay its obligations to build Becker Rd. This would result in an acceleration of Riverland/Kennedy's obligation to construct an additional 3 lane miles.

As you have already noted, the Wilson Grove DRI is the furthest away from I-95 and other existing roads. Accordingly, it should be expected that Wilson Grove should need to build more roads up front to access its property. Based on negotiations, it appears Anasca is attempting to have others build the access roads that should be Wilson Grove's obligation. Of course, Anasca has attempted to obtain this same undue advantage since the outset when Anasca submitted its NOPC over 2 years ago.

Once again under undue time constraints, we attempted to find common ground together with Anasca. We agreed to split the cost of E/W 3 from Community Blvd. to N/S B. The parties then had a meeting with you on Wednesday, January 23<sup>rd</sup>, and discussed an agreement for the City to build the segment of E/W 3



which could have resolved all the same issues that had been previously raised and negotiated for a resolution on Becker Rd. As you will recall, we also discussed again the appropriate re-allocation of obligations if Riverland/Kennedy had to build Becker Rd. through Southern Grove, then Wilson Grove should pick up the 4 laning of Becker Rd. through the Riverland/Kennedy parcel.

Although prior negotiations with various parties at various times included discussions to delay or postpone construction of roads, during the January 23<sup>rd</sup> meeting, you asserted your position now required that all Phase 1 roads could not be delayed beyond the end of Phase 1. However, less than 1 week later, at our meeting on Tuesday January 29<sup>th</sup>, Anasca asserted its desire to move a significant portion of its Phase 1 roads into Phase 2 which was in direct conflict with your mandate that Phase 1 roads could not be delayed. Additionally, Anasca asserted that it would also delay the segment of Becker Rd. from N/S A to Rangeline Rd. to their Phase 2, even though its original DO conditions required construction in Phase 1.

In addition to the changes (once again) on the timing of road construction, Anasca also changed its prior position in the January 29<sup>th</sup> meeting regarding the Becker Rd obligations. Months ago (and re-confirmed on January 23<sup>rd</sup>), it was agreed by all the parties that if Wilson Groves failed to build Becker Rd. through Southern Grove then Riverland/Kennedy would construct that segment and Wilson Grove would be responsible for the 4 lane of Becker Rd. through Riverland/Kennedy. However, at this latest meeting on January 29<sup>th</sup>, Anasca retracted this agreement and instead it proposed the parties draft some type of language to amend the Annexation Agreement whereby the allocation or swapping of road obligation would be dealt with in the future. Obviously, this simply kicks the can further down the road without certainty or timely resolution.

Another example of the ongoing flip flop in the negotiated positions is the recent change regarding the City's construction of E/W 3 through the Riverland/Kennedy. As you know, on January 23<sup>rd</sup>, it was stated that the City would construct this E/W 3 segment which would have resolved the issues involved with Wilson Grove directly constructing the road. However, at the January 29<sup>th</sup> meeting, Anasca asserted that Wilson Grove should be permitted to construct the road instead of the City. Again, things that appeared to be resolved continue to be reasserted and changed throughout this process. .

(7) Settlement Impasse and Conclusion - To our frustration, we could provide you with many more negotiation sagas; however, the foregoing is sufficient to demonstrate why we are no longer in a position to continue negotiations with the other parties involved. At this point we have deemed an impasse in the settlement talks and we are seeking final approval from the Council for our NOPC. Obviously, we are hopeful that City staff will recommend approval of the Riverland/Kennedy NOPC. As you will recall, we previously brought this same NOPC before Council together with staff approval at which time the only objection raised was in regards the alleged conflict between our NOPC and the Annexation Agreement road obligation for the first 2 lanes of Becker Rd. from Community Blvd. to N/S B. Although we still maintain that there is no conflict because Wilson Grove has this obligation in its own NOPC that was approved by Council, we have since agreed to reinsert this Becker Rd. obligation in our NOPC (which is duplicative with Wilson Grove). Accordingly, the only prior objection is now moot.

Given staff's prior recommendation of approval, we request staff's renewed recommendation of approval and we look forward to finalizing our NOPC on February 11<sup>th</sup>.

Sincerely,  
RIVERLAND/KENNEDY, LLP

Glenn Ryals