

ADDITIONAL INFORMATION

COUNCIL ITEM 11B
DATE 1/24/11

Resolution 11-201

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January 24, 2011

Via Email and Hand-Delivery

Jerry A. Bentrott, City Manager
City of Port St. Lucie
121 S.W. Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5042

Re: Wilson Groves Development of Regional Impact - NOPC

Dear Mr. Bentrott:

Our office represents Riverland/Kennedy, LLP ("Riverland") which is the current title holder of an approximate 3,844 acre parcel located in the western portion of the City of Port St. Lucie. The Riverland property is subject to both the Annexation Agreement, as amended, with the City of Port St. Lucie and the Development Order for the Riverland/Kennedy Development of Regional Impact. The Riverland property is immediately adjacent to an approximate 2,451 acre parcel owned by ACR Acquisition, LLC ("Wilson Groves") which parcel is subject to the Development Order for the Wilson Groves Development of Regional Impact and the Annexation Agreement, as amended.

We understand that there is a NOPC for the Wilson Groves DRI which will be coming before the City Council of the City of Port St. Lucie for approval on Monday evening, January 24, 2011. On behalf of Riverland, we are writing to advise you that Riverland is formally objecting to approval of the NOPC for the Wilson Groves DRI, because (i) such approval would have a material adverse impact on Riverland, which effect may have been unforeseen or not anticipated by the City to date in its consideration of the Wilson Groves NOPC and (ii) such approval would constitute an improper amendment of the Annexation Agreement.

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City Manager's Office

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Rec'd by
Clark

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The Annexation Agreement, as amended, provides that Becker Road will be constructed from I-95 to Rangeline Road and that each of the three developers with parcels along that route (currently, Wilson Groves, Riverland/Kennedy and Southern Groves) will pay for that portion of the construction through their respective parcels. This was the contractual arrangement, because it gave all three parcels access to both Rangeline Road and I-95 with each developer paying their share for the roadway segment through their respective properties. The Annexation Agreement further provides that should a developer not pay for that share of the roadway system being constructed through its property (the "Defaulting Developer"), that one of the other two developers who had paid for that roadway construction could demand full reimbursement from the Defaulting Developer together with interest at 18% per annum, attorneys' fees, etc. Thus, each developer was required to pay for its share of the roadway construction and also had the right to obtain reimbursement if it paid for the construction through another developer's property.

The Wilson Groves NOPC, however, materially changes the underlying concept of the Annexation Agreement and what had been agreed to by the parties, because it now allows Becker Road to stop at the eastern boundary of Wilson Groves and not continue to Rangeline Road until more than 2,200 residential units have been constructed in Wilson Groves. Thus, instead of going all the way through from I-95 to Rangeline Road, Becker Road will dead end two miles east of Rangeline Road, at the eastern boundary of the Wilson Groves property for many years to come. Furthermore, since the roadway construction obligations in the Annexation Agreement are not being addressed by the NOPC, Wilson Groves would potentially have the ability to demand reimbursement from Riverland for that approximate one mile section of Becker Road which would go through the Riverland parcel. Thus, potentially, Riverland could wind up paying to build the road which would give access to the Wilson Groves property. This would be counter to the Annexation Agreement and adversely impact Riverland, because Wilson Groves would then have the benefit of having someone else pay to build a roadway from I-95 to its front door without having the obligation to build Becker Road through its own property.

In a similar manner, the roadway network system described in the Wilson Groves NOPC is being presented as its fair share of the roadway network system for the overall area. As part of that fair share contribution, Wilson Groves, at its own cost, is proposing to extend Becker Road from its current terminus at Village Parkway to its eastern property line. While Riverland has no objection to this methodology, if the Annexation Agreement terms are not modified and if Wilson Groves is then allowed to seek reimbursement from Riverland for this roadway construction, then Wilson Groves will not be paying for its fair share of the roadway network system as required by the Annexation Agreement and the

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proposed NOPC coming before the City Council tonight.

From a fundamental standpoint, given the subject matter of the Wilson Groves NOPC, the City should look at both the Development Orders for the DRI's and the Annexation Agreement together since the Annexation Agreement and Development Orders were all considered together as part of an overall development plan for the southwest portion of the City. The Wilson Groves Development Order should not be modified without considering how such modifications would be contrary to the other agreements or impact the various parties through the other agreements. In effect, should the City approve the Wilson Groves NOPC, as presented, Riverland would consider this to be a unilateral modification by the City of the Annexation Agreement, which modification would have a substantial adverse impact to Riverland.

In the Fourth Amendment to the Annexation Agreement dated November 16, 2009, Wilson Groves also obtained the right to seek reimbursement for the construction of Becker Road from a developer annexing into the City west of Rangeline Road. Again, since the construction of Becker Road is being presented as a portion of the Wilson Groves fair share contribution to the roadway network system, should Wilson Groves be able to obtain reimbursement from a third party, then Wilson Groves will not be paying its fair share. In addition, if a party, such as the potential inland port, lying west of Rangeline Road is required to reimburse other developers for a substantial portion of the construction of Becker Road, then it would become extremely difficult for the City to keep the truck traffic from such development off of Becker Road and could prevent the City from forcing that heavy truck traffic onto the desired roadway network of Rangeline Road and Crosstown Parkway and to have those links improved to handle said traffic. No builder should be reimbursed for paying for its fair share of the roadway network.

Finally, Riverland believes that the fair share methodology apparent in the Wilson Groves NOPC has over looked the cost of the various intersections which must be constructed within the roadway network system. The cost of the intersections can be extremely high and the intersection costs should be considered as well as the lane miles when determining the fair share contribution from each of the developers involved. Simply put, if the intersection costs are not included in the analysis, the shares allocated among the developers will not have been determined on a fair or equitable basis.

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Please understand that Riverland does not object to the concept of Wilson Groves constructing Becker Road from its present terminus to the eastern edge of the Wilson Groves property as part of the fair share contribution by Wilson Groves. To the contrary, it is the ability of Wilson Groves to seek reimbursement for what should be their fair share from either Riverland or from a subsequent developer lying west of Rangeline which creates the inherent inequity. Furthermore, the fair share methodology should also include an analysis of the intersection costs, as well as the road lane miles involved. For these reasons, Riverland is not suggesting that the NOPC be denied, but simply be deferred or tabled until such time as these issues can be adequately addressed and amendments made, as necessary, to the Annexation Agreement and the fair share methodology analysis.

Thank you very much.

Sincerely,



Harold G. Melville

HMG/sv

cc: Roger G. Orr, Esq. (via email & hand-delivery)
Pam E. Hakim, Esq. (via email & hand-delivery)
Daniel Holbrook (via email & hand-delivery)

MaryAnn Verillo

From: Shelly Valente [shvalente@bellsouth.net]
Sent: Monday, January 24, 2011 2:07 PM
To: MaryAnn Verillo; Roger Orr; Pam Hakim; Daniel Holbrook
Subject: Tonight's Council Meeting
Importance: High
Attachments: 20110124135329829.pdf

Please find attached correspondence from Attorney Harold G. Melville regarding tonight's 7:00 p.m. City Council meeting.

Thank you,

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