AGENDA ITEM NO. E-1a(ii) 9/20/12

ORIGINAL

CITY OF BROOKSVILLE
CITY COUNCIL
EXECUTIVE SESSION

PROCEEDINGS: Executive Session Re:
City of Brooksville v. Bond Safeguard Insurance Company Case No. CA-09-2388

DATE: February 1, 2010

PLACE: 201 Howell Avenue
Brooksville, Florida

REPORTED BY: C. GAIL DONATO, RPR
Notary Public - State of Florida at Large

APPEARANCES: THOMAS S. HOGAN, JR. ESQUIRE
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20 South Broad Street
Brooksville, Florida 34601
Counsel for City of Brooksville

COUNCIL MEMBERS:
LARA BRADBURN, Mayor
RICHARD E. LEWIS, Vice Mayor
JOE BERNARDINI
JOSEPH E. JOHNSTON, III
FRANKIE BURNETT

STAFF: T. JENNENE NORMAN-VACHA
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1 P R O C E E D I N G S

2 MR. HOGAN: The next matter on the agenda
3 is City of Brooksville versus Bond Safeguard
4 Insurance Company, Case Number CA-09-2388,
5 Fifth Judicial Circuit, in and for Hernando
6 County, Florida. Ms. Rey?
7 MS. REY: The City of Brooksville filed
8 suit against Bond Safeguard to foreclose on
9 two performance bonds that were securing
10 plat -- securing public works improvements
11 that were associated with the plat for
12 Cascades Phase I. It's Bond Number 5010541
13 and Bond Number 5017617, in a total amount of
14 $452,555.80. Each of these bonds, again,
15 secures road work, earth work, sidewalks, and
16 other public works improvements associated
17 with Cascades Phase I.
18 At this point the bond company has
19 conducted a site visit and made an assessment
20 about the improvements, and discovery
21 requests on behalf of the City have been
22 served on Bond Safeguard to gather additional
23 information.
24 Current negotiations have indicated that
25 the City's directed Bond Safeguard to

complete the remaining improvements. The remaining improvements include a second surfacing of the road, as well as the completion of sidewalks throughout the development in accordance with the development agreement ordinance that was adopted for the plat.

There is a possibility that the cost of completing the improvements may exceed the value of the bond, in which case the bond company may seek some type of settlement or other negotiation. In that case, we would recommend that Council consider agreeing to completion of the roads and adequate improvement of the roads, because there's some question as to whether or not the foundation or the base needs to be re-worked before the second lift of asphalt is completed, as an alternative to requiring them to complete the sidewalks as well.

Currently this case is not set for trial. We are awaiting an offer of some sort from Bond Safeguard for the City to consider to move forward.

MR. HOGAN: What is the state of the

pleadings?

MS. REY: At this point we have filed a complaint and they have filed an answer, and we are in discovery.

MAYOR BRADBURN: Did the City accept the first phase work?

MR. HOGAN: Yes. The first phase of the work was accepted and the bond was reduced to its current amount, around $200,000. The direction that we need is -- it's possible that the $200,000 won't cover the needed asphalt work and the sidewalks. So we have to maybe choose between asphalt or sidewalks, or make some other kind of compromise. But the bonding company's not going to be liable for any more than the face of the bond.

COUNCILMAN BERNARDINI: Question.

MR. HOGAN: Yes, sir?

COUNCILMAN BERNARDINI: If the road was substandard, is there not a warranty on that part of the work? I mean, if it's substandard it's got to be redone? Somebody -- I mean, we shouldn't have to suffer the consequences for that.

MR. HOGAN: Well, there's two issues

with the first lift of asphalt. Number One, I'm not certain that it was efficient as far as a first lift goes. But from what I know about pavement -- paving, is there's -- there is a base limerock, then you have the base lift, and then you have the second lift or finishing lift, which usually is an inch or more, depending on whether it's a state road or residential road.

So I went out to the site with Emory Pierce a long time back, when I first took on this job, and Emory didn't think there was a problem with it, but it has deteriorated over time. And the reason that there may not be a warranty claim here is because, once again, the developer in that project has filed bankruptcy. So there may not be anybody there for us to go after to enforce the warranty claim. We don't have a -- we're not in direct privity with the original paving company. In other words, the original paving company would have given their warranty to the developer, who's no longer there. That was Levitt and Sons.

COUNCILMAN BERNARDINI: Just seems to me

like there's a very important lesson to be learned through all this litigation.

MAYOR BRADBURN: You think?

COUNCILMAN BERNARDINI: We don't come out as winners in this.

MR. HOGAN: It's a rare occasion when you complete a litigation and have a really good feeling you won.

COUNCILMAN LEWIS: Question? Is this the main entrance road to Southern Hills?

MR. HOGAN: No, sir. This is into the development that's to the south off of the main road. It's Cascades, I believe is the name of the development. It was developed by Levitt and Sons. It's a parcel that was sold off by LandMar. The project was originally undertaken.

COUNCILMAN LEWIS: I may be wrong, but I don't think that road was ever turned over to the City because that's an internal road, and it is by their homeowners. They've got a CDD in there, and that's a community development district, and they're responsible for all of those roads in there.

MR. HOGAN: I think that the plan was

that the road was to be dedicated to the City upon completion.

COUNCILMAN LEWIS: And it was never completed.

MR. HOGAN: Right. That's correct.

COUNCILMAN LEWIS: So is that going to be a problem, that it was never accepted by the City, about it being substandard like that?

MR. HOGAN: It's not going to be a problem in litigation because the road was bonded to the City to be completed. And they got as far as the first lift and then never completed it. The manhole covers are sticking up this high above the pavement.

COUNCILMAN LEWIS: My question, to go back to Councilman Bernadini's question and sort of reiterate, the fact that we wouldn't be necessarily looking for any type of restitution from the developer, but the actual person who had the contract to build the road, the contractor.

MR. HOGAN: The problem is you're not in privity with that contractor, and the other problem is that the contractor would say that the first lift of asphalt was adequate and

had you put the second lift on in a timely manner, it would not have deteriorated.

COUNCILMAN LEWIS: Okay.

MAYOR BRADBURN: Which brings it back to my original question: Did we accept the construction of the first phase? And it seems like we did.

MS. REY: As a point of clarification, the bonds were initially issued in a higher value, and then sometime around March 26 of 2007 the City authorized a reduction in the value of the bond to the $251,000 amount, and then again to the $201,000 amount. So they were originally issued for higher dollar values, and at some point a reduction in the bond value occurred.

MAYOR BRADBURN: And as I recall, that was not a unanimous vote. Mr. Johnston?

COUNCILMAN JOHNSTON: Once again, is this for informational purposes? You mentioned something earlier about possibly making a decision about whether we want to complete the road or sidewalks if push came to shove. Do you want that from us in advance of that being offered, or do you want to wait until

1 the offer is made by them?
2 MR. HOGAN: We would like to have some
3 guidance on what the City -- what the City
4 Council would like us to do. Because in all
5 likelihood, the bonding company is going to
6 come back and offer to either finish the road
7 or do the sidewalks or some combination
8 thereof.
9 COUNCILMAN JOHNSTON: Well, my personal
10 preference would be that the road get
11 finished, simply because, to me, that's a
12 little more important than sidewalks. If
13 you've got manhole covers sticking up several
14 inches above the roadbed, that's a potential
15 liability that we've got sitting out there
16 that no matter who owns the roads, they're
17 going to come looking for us. So that would
18 be my preference, to have the road finished
19 first and then whatever's left over, go
20 toward sidewalks, or however we do it.
21 MS. REY: Part of the reason why we're
22 seeking guidance and direction is that the
23 sidewalk requirement is pursuant to the
24 ordinance specific to this project. And so
25 because it will require, if that ends up

being the settlement the City goes with, it will require some type of modification to the ordinance. Without direction from Council, we try not to enter into negotiations without having clear direction on those type matters.

MAYOR BRADBURN: Councilman Bernardini, what is your preference?

COUNCILMAN BERNARDINI: I would say that I would rather have the roads, but if we haven't accepted it, then it's really not our road. So I don't know, I'm just kind of -- I mean, we got to go with, I guess, with the road, but if we don't like it, we don't ever have to accept it. Then we could have taken the money and built sidewalks with it. I mean, of course, with the price of construction going down, maybe we can get both. But if we have to choose one, I would go with the roads.

MAYOR BRADBURN: Vice Mayor?

COUNCILMAN LEWIS: Definitely with the roads, Mayor. My concern is with changing the ordinance, too, also. I know we can change it, but do we really need to, because it does say that the sidewalks will be in

there and in place before CO is issued for the homes once a home is built in there. And if you build those sidewalks in there right now, you put them across vacant lots, they're going to be busted all to pieces when they come in there and build those homes because they're going to be driving across them with cement trucks, tractors, clearing the property. Those sidewalks aren't going to have a chance.

And they're not going to know where the driveway is. They're not going to know if the house is a left-hand garage, right-hand garage, side garage, or what. So I'm like Councilman Johnston and Bernadini, I definitely go with the streets. Go ahead and do the streets.

One point of clarification, I heard Mr. Hogan say $200 000 and I heard $453,000 from down here. I like the 453,000 much better down here, if we can work towards that settlement.

MS. REY: There are two bonds, and each is approximately --

COUNCILMAN LEWIS: Okay. Both are around

two hundred?

MS. REY: Correct.

COUNCILMAN LEWIS: Just for clarification. Thank you.

MAYOR BRADBURN: And my preference would be the road. As far as the sidewalk goes, I think it would behoove us to look at those plans again and see where we could get the biggest bang for the buck. If we have three miles of road -- or three miles of sidewalk that needs laying and we could do a good mile that is strategically placed, then we should do that instead of just saying, oh, we're going to do the right side and leave it at that.

MR. HOGAN: Okay. Any other comments about City of Brooksville versus Bond Safeguard?

(Proceedings concluded.)

1 STATE OF FLORIDA)
2 COUNTY OF HERNANDO)
3 I, CARLA GAIL DONATO, Registered Professional
4 Reporter, certify that I was authorized to and did
5 stenographically report the foregoing proceedings
6 and that the transcript is a true record of said
7 proceedings.
8 Dated this 13th day of April, 2011.
9
10 Carla Gail Donato
CARLA GAIL DONATO, RPR
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