

ORIGINAL

CITY OF BROOKSVILLE
CITY COUNCIL
EXECUTIVE SESSION

PROCEEDINGS: Executive Session Re:
**Application of Skyland
Utilities, LLC**
Case No. 090478-WS

DATE: April 19, 2010

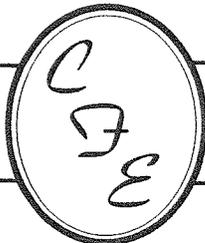
PLACE: 201 Howell Avenue
Brooksville, Florida

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

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P R O C E E D I N G S

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2 MAYOR BRADBURN: So we move on to Skyland
3 Utilities. I believe Mr. McAteer is going to
4 take us through that one.

5 MR. McATEER: Yes. Derrill McAteer,
6 Hogan Law Firm on Item E. It is the
7 application of Skyland Utilities, LLC to
8 operate a water and wastewater utility in
9 Hernando and Pasco Counties before the State
10 of Florida Public Service Commission.

11 Back in October we received notice, not
12 from the PSC or through the applicant, but
13 through the Hernando County Attorney's office
14 that Skyland Utilities, LLC had applied
15 before the Public Service Commission to
16 authorize a utility service in a specific
17 area. They're, in effect, requesting a
18 certificate for a utility system under
19 Section 367.021 Florida Statutes.

20 Basically, this is the multi-county,
21 multi-jurisdictional certification process,
22 review certification process, for a utility
23 in the state of Florida before the Public
24 Service Commission. We got notice of the
25 application on the day the objection was due,

1 so we filed an objection, after receiving
2 direction from the City Manager, and later
3 followed up with an amended objection.

4 The initial objection incorporated mostly
5 Hernando County's objections, to the point
6 they were relevant to the City, as far as
7 demands on infrastructure and our concern
8 about the financial capability of this
9 company, which, I think is well known. It's
10 the Evans family, the Evans property, which
11 is behind Skyland Utilities, LLC.

12 We got more specific with the City in the
13 amended objection filed under a motion --
14 after receiving a -- granted a Motion to
15 Amend, in which we attached two documents.
16 One was a document that Bill Geiger provided,
17 which was just simply an overview map showing
18 the two parcels were within less than three
19 miles of the City's first right to serve
20 boundary, and really almost basically less
21 than three miles from the southernmost
22 boundary of the City, about three miles from
23 the southernmost boundary of the City.

24 We also attached the interlocal service
25 boundary agreement between the City of

1 Brooksville and Hernando County. That
2 agreement draws a boundary around the City.
3 It says that the City shall have the first
4 right to serve for water and wastewater
5 utilities within a boundary, the southernmost
6 boundary of which is Powell Road.

7 However, the document also states that
8 if the County refuses to serve a parcel or is
9 not capable of serving, perhaps is a better
10 way to put it, outside of the City's first
11 right to serve boundary, then the City has
12 the first right to serve.

13 So I had a concern with that and thought
14 that was a point worth raising with the PSC,
15 because as a City, possibly, whatever
16 Council's intentions are at that time, if the
17 City decides to grow southward and has the
18 capability of growing southward, that they
19 could rub elbows with Skyland and possibly be
20 a competitor with Skyland, if the City wants
21 to expand its utility service to the south
22 and enters into Hernando County agreements to
23 do so.

24 And then I met with staff, because
25 discovery became an issue. There were large

1 scale discovery requests from Skyland, and
2 Richard Radacky -- Radacky is how I should
3 pronounce it -- Mr. Radacky was very
4 informative and very enthusiastic about the
5 issue of bulk water sale, and basically
6 multi-jurisdictional bulk water sales to
7 governmental and private entities out of
8 county, and basically laying pipes and having
9 miniature well fields, and the drawdown
10 issues. And he's far more than I -- it's not
11 really a legal issue, it's a factual issue --
12 he informed me of the way -- of the aquifer
13 flow under the City and how pumping could
14 affect the potable water supply for the City
15 of Brooksville, and that being a concern.

16 So we -- after we went through discovery
17 and met with staff, we had a conference call
18 with Skyland's attorney and a local engineer,
19 Cliff Manuel, and we raised that issue with
20 them. Now, Skyland had already proposed a
21 settlement agreement to the City in a very
22 skeletal form. That settlement agreement
23 would need to be amended significantly. Our
24 office would not suggest that anything
25 proposed from Skyland be accepted. I want to

1 be clear on the record on that. It would be
2 something that would have to be amended
3 significantly.

4 But one thing they did propose, the point
5 was to confine their residential or customer
6 service to those parcels, but they wouldn't
7 confine both water or bulk water type sales,
8 which are two different things, but bulk
9 water sales. They would not restrict or
10 agree to any restriction on bulk water sales,
11 which threw up a flag, I believe, to staff.
12 Staff can speak for itself, but that was a
13 concern of the staff.

14 And the way I set up this outline was to
15 try to note that there are legal concerns on
16 our part in staying in it. However, there
17 are policy and political concerns and perhaps
18 benefits to staying in it for Council. And
19 it's kind of an interesting thing. It's
20 different than most litigation we've worked
21 for you. Most litigation we've had before
22 you, the City is -- it involves a piece of
23 City dirt; with the City's annexing, the City
24 is clearly a party.

25 In this case we may have standing issues

1 because these parcels are all outside the
2 City's not only incorporated boundaries, but
3 also the interlocal service boundary
4 agreement. The southernmost first right to
5 serve area is three miles, basically, south
6 of that; 2.7, to be exact.

7 So I have a concern with that because if
8 there is no settlement agreement issue and a
9 certificate is issued, then Skyland can do
10 basically whatever it wants within the
11 purview of the Florida Statutes, which is
12 fairly broad. However, it is not my point to
13 tell Council how they want to work with
14 Hernando County or how they want to pursue
15 the bulk water issue, which is an issue of
16 policy, pertinent policy concern.

17 I have to advise Council that if no
18 settlement is entered into with Skyland, that
19 we could possibly have no restrictions
20 whatsoever if the PSC finds that Brooksville
21 does not have proper standing to stay in, or
22 if Hernando and Pasco Counties and the City
23 of Brooksville were to lose outright the
24 certificates issue.

25 So that is, I guess, the balance, the

1 counterweight that you're looking at, is
2 staying in it to show -- as my understanding,
3 there was some interest from staff in showing
4 support for Hernando County and its issues in
5 this, and riding, for lack of a better term,
6 shotgun with the County on this issue, and
7 also the bulk water issue, versus the fact if
8 we're going to get anything out of it, I
9 would say now might be the time. Now, on
10 Friday there was a stay. A settlement may be
11 the way to do it.

12 The reason I bring up the stay is
13 Hernando County has filed an appeal. It's a
14 very convoluted piece of litigation.
15 Hernando has filed what amounts to an
16 interlocutory appeal with the First District
17 Court of Appeal, because it's an
18 administrative action, and that's where
19 jurisdiction lies, with the First District
20 Court of Appeal. Because they don't want the
21 Public Service Commission to even have
22 jurisdiction over this matter. So they're
23 still fighting the Public Service
24 Commission's jurisdiction. So it's a fairly
25 juvenile matter.

1 MAYOR BRADBURN: Is that because of the
2 commissioner assigned to the case?

3 MR. McATEER: You mean the current
4 chairman of the Public Service Commission?

5 MAYOR BRADBURN: Well, I understand it's
6 been assigned to Commissioner Argenziano.

7 MR. McATEER: Yes, that's the current
8 chairman, also, of the Public Service
9 Commission. But they -- I don't know if
10 that's what the political reasons are for the
11 County. They are not happy with the Public
12 Service Commission having jurisdiction. They
13 don't believe it's really truly
14 multi-jurisdictional because there's not even
15 a plan where -- how the pipes would run
16 between Hernando and Pasco, how these --
17 basically frozen out orange groves, is what
18 these are. Evans Properties is a big orange
19 grower, or they were. These frozen out
20 orange groves, how are they linked together
21 between Hernando and Pasco County?

22 There's nothing in the application that
23 shows it. They allege they're going to link
24 them. They haven't even said how yet. And
25 so Hernando County doesn't believe they've

1 met the threshold for jurisdiction of the
2 PSC, and that's going to be a fight at the
3 First District Court of Appeal level.

4 Again, we got that at five o'clock on
5 Friday after I had already written this memo,
6 so that is an issue which takes some of the
7 pressure off of this case. The case is
8 automatically stayed pending First District
9 Court of Appeal action. How long it takes an
10 administrative action is somewhat news to me,
11 because I haven't -- hopefully they deal with
12 them faster than they deal with regular
13 Circuit Court appeals to District Courts of
14 Appeal, which usually take about a year.
15 Hopefully it's a faster process than that,
16 but I can't promise you that it is, and I
17 don't know that it's to our detriment that it
18 might be a slow thing. In this case having
19 the DCA take its time may be a good thing
20 because then it gives Council some time to
21 consider this issue, if that's your
22 indication.

23 But it's my job to point out that if this
24 goes to a conclusion, whether we're dismissed
25 out or whether we lose outright, we stay in,

1 lose outright with Hernando County and Pasco
2 County, that we could lose any chance of
3 securing any rights, which we might have in a
4 settlement agreement.

5 MAYOR BRADBURN: Bernardini, Councilman
6 Bernardini?

7 COUNCILMAN BERNARDINI: Well, I
8 understand what we have to lose, but on the
9 bulk water side, this about bulk water. This
10 ain't about serving a few customers up here
11 with some houses. It's about bulk water.
12 It's about getting that bulk water and right
13 now transporting it to the south.

14 And I think that we should stick behind
15 Hernando and Pasco County, stay with them on
16 this issue. I know that our water runs from
17 east to west. You take and you dam up the
18 other side of our water flow, and look what
19 happens to us, they can dry us up, just like
20 they did down in Pasco County with those
21 lakes and everything that happened down in
22 there. And I just think we need to stick
23 into this fight and stay with them as long as
24 we can and not let that water flow to the
25 south.

1 Because that's what it's about. It's not
2 about serving a few residential customers and
3 a few businesses that they have along the
4 line. They don't even want to talk about the
5 bulk water, and that's why they don't want to
6 talk about it.

7 COUNCILMAN LEWIS: I concur, Mayor, with
8 everything Joe said.

9 COUNCILMAN BURNETT: Concur.

10 MAYOR BRADBURN: Well, as you know, I
11 know a thing or two about the water wars. I
12 also know a thing or two about the leadership
13 of SWFWMD wanting to become a greater
14 regional water regulator, and that, I don't
15 believe, will bode well for the City's local
16 resources.

17 I also know about the support favored by
18 some leaders of SWFWMD to diminish the 2005
19 legislation on local sources first. Those
20 all play a part in this. While I don't think
21 that we should exert great legal effort to
22 this matter, I think that we can mirror the
23 County's a lot and do the legal responses
24 necessary to preserve our unique issues, but
25 if it means taking the bulk of the work by

1 the County, retyping it and signing our names
2 to it, I'm okay with that.

3 Let them take the upper hand, but we have
4 to preserve our standing. Because down the
5 road, if we don't put our name into the fray,
6 we might not have a say. I think that the
7 PSC -- and this is just me, but, you know, I
8 would think the PSC would retain its standing
9 because that's why they exist. And certainly
10 the PSC is aware of the water issues in that
11 area. So I think we need to stay on course.
12 I think that we need to maintain some legal
13 input here, but I don't think that we need to
14 duplicate all the efforts of the County at
15 our expense.

16 MR. McATEER: The only -- I will speak
17 to that one issue. We cannot completely ride
18 at ease, because they do style the discovery
19 requests specifically to the City. The
20 discovery requests that we work with and
21 which take up a lot of staff's time and legal
22 time, are styled specifically to the City.
23 There are some redundancies with the County,
24 but they are not in any way exact. They
25 wanted to know where the City's pipes were.

1 MAYOR BRADBURN: So do we.

2 MR. McATEER: Well, south of downtown.
3 But the point being, I know what they're
4 doing. They're looking for a way to get the
5 City out of this because they want one less
6 face in that panel when there's the lawyers
7 in opposition to the certificate standing in
8 front of the PSC, they want one less head,
9 one less political face, out of that panel
10 objecting.

11 MAYOR BRADBURN: Sure.

12 MR. McATEER: And that's what they're
13 doing. What I meant by standing was they
14 want to knock out the City and say, hey, you
15 don't have, because of where your utilities
16 are and where your first right to serve
17 boundary is, you don't have a legal right to
18 standing to stay in this case before the PSC,
19 and Skyland is trying to knock us out. I'm
20 not saying they're going to be successful.
21 I'm not saying we won't fight that with
22 everything we've got. What I'm saying is
23 that there is the risk, because of the facts
24 in the dirt and on the ground and in the
25 paperwork, that they can make a coherent

1 argument that it's the County's bailiwick and
2 the City shouldn't be in it.

3 I understand what the City's concerns are
4 very clearly, but at the same time I have to
5 advise you that that may be, and I think it
6 is what their approach will be to the City.
7 And I do believe, you know, they'll ask,
8 maybe even ask for depositions or testimony
9 from some of the City's people, and that will
10 cost costs. So I'm just advising you.

11 MAYOR BRADBURN: Well, this is, again,
12 I'm only one of five here, but this is our
13 water we're talking about. We already have,
14 for lack of a better term, entities out there
15 who want to steal our water. We have a
16 regional water supply authority that does not
17 look favorable on -- they want to grab our
18 water. We have diminishment of the
19 Comprehensive Plan rules, Senate Bill 360.

20 We have a movement on for the greater
21 regional water control, we have a movement to
22 diminish the local sources first. We have to
23 do whatever we can to protect our local water
24 sources. And granted, we don't control the
25 aquifer. But we can do our part. So to me,

1 I don't really see it as an option. That's
2 my perspective.

3 MR. McATEER: I've said all I need to
4 say. All I needed to do is just make you all
5 aware of that. If you ask us to move
6 forward, we'll move forward. We won't try
7 to -- I know you have a budget, or a
8 monetary, fiscal concern, perhaps, but at the
9 same time we will satisfy the City's
10 interests so that we stay in it. If we don't
11 respond to discovery, we'll be kicked out.
12 We have to respond to the request. Anything
13 that is procedurally correct, we have to
14 respond to with a quality response or we'd be
15 out simply from not participating in the
16 litigation. But really it's Council's call.

17 COUNCILMAN LEWIS: Mayor, do you need a
18 motion for them to continue to partnership
19 with the County and Pasco?

20 MAYOR BRADBURN: I think that that would
21 strengthen our stance, yes.

22 COUNCILMAN LEWIS: I'll make that
23 motion.

24 COUNCILMAN BERNARDINI: Second.

25 MAYOR BRADBURN: We have a motion and a

1 second to continue our allegiance in the
2 County's effort to intervene on the Skyland
3 application.

4 COUNCILMAN LEWIS: Keep us advised, too,
5 please.

6 MAYOR BRADBURN: All in favor?

7 (Councilman Lewis, Bernardini, Burnett,
8 Johnston and Mayor Bradburn indicating
9 affirmatively.)

10 MAYOR BRADBURN: Opposed? Motion
11 carries 5-0.

12 Thank you, Mr. McAteer, Ms. Rey. This
13 concludes our executive session. We stand
14 adjourned until our regular meeting.

15 (Proceedings concluded.)
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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.

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CARLA GAIL DONATO, RPR

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