

ORIGINAL

CITY OF BROOKSVILLE
CITY COUNCIL

PROCEEDINGS: Executive Session Re:
City of Brooksville v.
Travelers Casualty and Surety
Company of America and Chubb
Group Insurance Companies
(Federal Insurance Company)
Case No. 8:10-cv-2380-T-27AEP

DATE: April 18, 2011

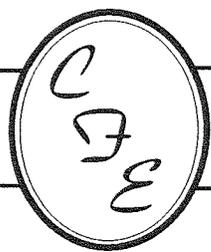
PLACE: 201 Howell Avenue
Brooksville, Florida

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

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

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

STAFF: T. JENNENE NORMAN-VACHA
City Manager



Carolyn J. Engel & Associates

Registered Professional and
Certified Verbatim Reporters

309 South Main Street - Brooksville, Florida 34601

(352) 754-1182

APPROVED BY BROOKSVILLE
CITY COUNCIL

ON 10/1/12 INITIALS [Signature]

P R O C E E D I N G S

* * * * *

1
2
3 MAYOR BURNETT: At this time turn it
4 over to our attorney at law, Thomas S. Hogan,
5 Jr.

6 MR. HOGAN: Thank you, Mr. Mayor. I
7 just want to remind Council of the procedures
8 that we follow in these executive sessions,
9 and one of them is that we want to be
10 courteous to Ms. Donato and speak one at a
11 time so that she can get -- make a good
12 record for us, so that we have a clear and
13 complete record at the time that this
14 transcript is published, and it will be
15 published sooner or later.

16 Also, I'd like to remind Council that we
17 have two distinct matters on the agenda
18 tonight, and only two matters, so I'm asking
19 you to please not discuss anything other than
20 what's on the agenda, and also once we've
21 completed Item C, we don't go back to Item C.
22 And once we start Item B, we don't go back to
23 Item C. We don't go to Item B from Item C.
24 We do them one at a time. That way we have a
25 nice, clean separate record, one from the

1 other. If we need to transcribe them, it
2 will be very unlikely that they'll be
3 completed simultaneously.

4 So what we have tonight is two litigated
5 matters, one of them which we want to give
6 you an update on. In one of them we have a
7 settlement proposal that's a bit complex, and
8 I hope we can get this done in a half an
9 hour.

10 COUNCILWOMAN BRADBURN: Mr. Hogan, may I
11 interrupt you just one moment? If you could,
12 as we're going through these items, delineate
13 for us -- because all of these things, in our
14 mind, are related and I want to make sure
15 that we're not crossing over. And if you can
16 delineate clearly which one we're actually
17 discussing.

18 MR. HOGAN: The first one will be City
19 of Brooksville versus Travelers Casualty and
20 Surety Company of America and Chubb Group
21 Insurance Companies, (Federal Insurance
22 Company), Case Number 8:10-cv-2380-T-27AEP.
23 And that is a State of Florida case number,
24 which is CA-10-2915 in the Fifth Judicial
25 Circuit in and for Hernando County, Florida.

1 And the first case is United States District
2 Court in and for the Middle District of
3 Florida, Tampa Division.

4 And, ladies and gentlemen, that case is
5 the matter in which the City has sued
6 Travelers and Chubb to foreclose on the bonds
7 that were issued in connection with the
8 construction of the Southern Hills, Hampton
9 Ridge project, and it consists of a number of
10 bonds. We have received a settlement
11 proposal. And so I think the way to save
12 some time here, we've prepared a power point
13 presentation outlining the proposal, and I'm
14 going to ask Ms. Rey to help me or I'll help
15 her, I should say, present that.

16 MS. REY: As you're aware, we filed suit
17 against Travelers and Chubb last fall. We
18 filed in Circuit Court, and they then
19 petitioned for removal to federal court. We
20 filed a Motion to Remand, and in the interim,
21 Duke Energy Corporation has filed a motion to
22 intervene. None of those motions have been
23 heard by the federal court judge to date.

24 However, counsel for Travelers and Chubb,
25 as well as Duke Energy as the potential

1 intervenor, asked both the City and City
2 Attorney whether or not there was interest in
3 participating in settlement negotiations at
4 this early juncture. As settlement is always
5 a possibility, we met on March 28, a couple
6 weeks ago, and it was representatives and
7 counsel for Travelers Casualty and Surety,
8 representatives and counsel for Chubb Group
9 Insurance Companies, which also does business
10 under the name Federal Insurance Company, and
11 Duke Energy, both internal and external
12 counsel, and a business representative. And
13 keep in mind, Duke Energy is the guarantor on
14 all of the bonds that were subject to the
15 suit, and is currently a potential intervenor
16 in the litigation.

17 The City Manager was present, and in
18 conjunction with Mr. Hogan and myself, we did
19 conference in various City staff; Bill
20 Geiger, Richard Radacky, and Will Smith as
21 City representatives for the purposes of
22 those negotiations.

23 We began about 10:00 AM in the morning,
24 and by the end of the afternoon, somewhere
25 around, I guess, 4:00 o'clock, we reached a

1 potential settlement. And to sum it up,
2 essentially Duke Energy has offered to settle
3 all five bonds for 3.5 million. We want to
4 remind you that this is the item that we took
5 on a contingency fee basis. Based on the
6 settlement amount, that rate would be 25
7 percent, so you'll see the amount reflected
8 there of eight seventy-five, resulting in a
9 net settlement amount of \$2,625,000.

10 The next two items are for perspective.
11 One of the items in the performance
12 obligations for this suit was the wastewater
13 reuse facility, including both expansion and
14 reuse capability. There are approximately
15 \$1,354,000 left in grant funds available for
16 SWFWMD for that project. So the amount
17 available, including the proposed settlement,
18 for completion of the improvements for the
19 Southern Hills Plantation platted
20 improvements, as well as the wastewater
21 facility, would be \$3,979,453.

22 So that's essentially the offer that's
23 on the table from Duke Energy. Again,
24 typically the sureties would be the ones
25 putting forth a settlement offer, but as Duke

1 is the guarantor on the bonds it's ultimately
2 their dollar, and this is the amount that
3 we're working with. But the sureties were
4 present and all the parties on the other side
5 are amenable to the same settlement.

6 So at this juncture it's open for
7 discussion. We are looking for Council
8 direction as to this particular settlement
9 offer. In the event that City Council
10 chooses to accept it, we would then proceed
11 in negotiating a final settlement agreement
12 which would come back to you at a regular
13 public meeting for consideration and
14 approval.

15 COUNCILWOMAN BRADBURN: Mr. Mayor? What
16 was the amount that we were expecting
17 originally to achieve?

18 MS. REY: Okay. Since you asked, if you
19 give me just a moment, I have some background
20 information which may address those
21 questions. So if you'll indulge me, I'll
22 move forward. Initially the performance
23 bonds were issued for an original amount --
24 and, again, I'm looking at all of the bonds
25 for the Southern Hills Plantation project.

1 They were originally issued in the amount of
2 \$43,937,164.47.

3 However, portions of that work had been
4 completed, so at the time that the City filed
5 suit, certain improvements were completed and
6 accepted by the City. So an amount of bonds
7 were released, so that reduced the number to
8 \$20,140,498.73. This is the amount that we
9 made a claim for. However, I think it's
10 important to note that two of the bonds, the
11 bond for Phase One and the bond for Phase
12 Three were -- did not reflect the actual
13 level of improvements that had been completed
14 in the project.

15 For example, if you look, the Phase One
16 bond included the utility infrastructure
17 agreement and roadways to the tune of about
18 \$6,000,000. We filed on the penal sum of the
19 bond. However, prior to Hampton Ridge
20 seeking bankruptcy, they never sought a
21 release of the portion for the completed
22 work. So at our last executive session we
23 had talked about a potential discount, from
24 like twenty million to fifteen. Well, that
25 was actually more significant. It was twenty

1 million down to somewhere around the
2 outstanding improvements being less than a
3 million dollars, both for Phase One and for
4 Phase Three.

5 So although the Phase Three bond, the
6 penal sum of the bond was five million, the
7 actual cost to complete the remaining
8 outstanding improvements was not \$5,000,000.
9 It was some number less than that. So the
10 actual cost to complete is significantly less
11 than the penal sum of the bond.

12 COUNCILWOMAN BRADBURN: That accounts for
13 six million.

14 MS. REY: Yes.

15 COUNCILWOMAN BRADBURN: So twenty minus
16 six, we're down to fourteen.

17 MS. REY: Let me get to this last line.
18 Okay. This might be a better explanation for
19 you as to where we're at. And I apologize
20 for the small print. I'll do my best to read
21 them aloud to help you out.

22 The bond amount after releases, the
23 bottom dollar figure, is the \$20,140,000.
24 From there, the estimated cost of completion
25 with reuse capability and plant expansion, as

1 contemplated under the agreement, is
2 \$9,428,253.60. So I think that's the number
3 that you're trying to get at. It is the
4 perceived actual cost to complete the
5 remaining improvements.

6 COUNCILWOMAN BRADBURN: The nine million
7 is the perceived actual cost?

8 MS. REY: Correct.

9 COUNCILWOMAN BRADBURN: By whose book?

10 MS. REY: Based on engineering estimates
11 from the engineer of record, which is Coastal
12 Engineering. Yes?

13 COUNCILMAN PIERCE: That \$9,000,000
14 figure is in writing in various agreements
15 that we previously agreed to.

16 COUNCILWOMAN BRADBURN: Yes, but there
17 was a million dollar missing component, so is
18 this going to get us reuse?

19 MS. REY: Okay. To answer that
20 question, let me continue. The next column
21 over takes a look at the estimated cost of
22 completion with reuse, but without plant
23 expansion. And so the estimated cost of
24 completion to bring reuse online and to
25 complete the remaining improvements in the

1 Southern Hills Plantation plat is estimated
2 at \$4,897,000.

3 COUNCILMAN PIERCE: Would you repeat that
4 number, please?

5 MS. REY: Yes, \$4,897,000. There's one
6 other item I would like to point out to you,
7 and that is Phase Three A-1, which is a very
8 small part of the platted phases -- I believe
9 it accounts for 13 lots -- is platted, final
10 plat approved and recorded. There has been
11 no construction activity on that particular
12 plat. So one of the items that accounts for
13 the reduction is the bond was issued in the
14 amount of \$996,000. That includes a 25
15 percent mark-up from the estimated cost of
16 completion. So in the estimated cost of
17 completion, with reuse capability in that
18 number, is \$797,000. So it's discounting
19 that 25 percent mark-up.

20 COUNCILWOMAN BRADBURN: So let me see if
21 I understand. In our pursuit of twenty slash
22 fourteen million, we've come down all the way
23 to 3.8 million, which leaves us about 2.2
24 million short of accomplishing our goals.

25 MS. REY: I'm not sure where you're

1 getting the two point --

2 COUNCILWOMAN BRADBURN: Okay. Here we
3 go. Started with 20 million.

4 MS. REY: Right.

5 COUNCILWOMAN BRADBURN: Which with the
6 discount or the credit brought it down to 16
7 million. You're saying the engineering
8 estimate just for one portion was nine
9 million.

10 MS. REY: No. Let me start here. Okay.
11 Let's deal with the plat improvements and
12 then we'll get to the wastewater reuse, and
13 it might be helpful from that perspective.
14 In Phase One the bond was issued for
15 \$6,000,000.

16 COUNCILWOMAN BRADBURN: I can't see that.

17 MS. REY: Well, it's approximately
18 \$6,000,000. Our claim for twenty million
19 included that \$6,000,000 amount. However,
20 the estimated cost of completion of the
21 outstanding improvements for Phase One is
22 only \$800,000. If you get to Phase Two,
23 Phase Two is a maintenance bond in the amount
24 of \$592,000. The estimated cost of
25 completion for the roadway repairs under the

1 maintenance and warranty issue is only about
2 \$200,000. When you get to Phase Three, the
3 bond was issued --

4 COUNCILWOMAN BRADBURN: Can I interrupt
5 you?

6 MS. REY: Sure.

7 COUNCILWOMAN BRADBURN: I already heard
8 you say that the engineering estimate was
9 nine million.

10 MS. REY: That is correct.

11 COUNCILWOMAN BRADBURN: Okay. We don't
12 need to go through that. But the settlement
13 agreement is calling for 3.8 or 3.5?

14 MS. REY: Three point five. The nine
15 million --

16 COUNCILWOMAN BRADBURN: Then you threw
17 out another number, 4.8 million.

18 MS. REY: Okay. The nine million is the
19 estimated cost of completion of all the
20 outstanding platted phased improvements,
21 wastewater reuse, and plant capacity
22 expansion.

23 COUNCILWOMAN BRADBURN: Right. Which we
24 have to do before we can do the reuse.

25 MS. REY: It is my understanding that

1 that is not correct. There are two
2 components --

3 COUNCILWOMAN BRADBURN: Emory?

4 COUNCILMAN PIERCE: No, you do not have
5 to expand the plant to shoot one of the reuse
6 components in there.

7 MR. HOGAN: Let me just interject here.
8 In the interest of time, we're trying to
9 compress what took six or seven hours in
10 negotiations down to half an hour. But my
11 understanding is -- agrees with what
12 Councilman Pierce said, and that's what we
13 were told by City staff during these
14 negotiations; that we had a choice to pursue
15 plant expansion with reuse or existing
16 facilities and still get reuse.

17 We explained to Duke and to Travelers and
18 Chubb first thing in the morning that one of
19 the City's priorities was to be able to stop
20 using potable water to water a golf course.
21 And so everyone then started working to get
22 to a point where the City would have reuse
23 water, but we could still maybe settle the
24 case.

25 So that was our understanding from

1 Coastal, which Cliff Manuel stayed around all
2 day and helped whenever we needed him. And
3 we also talked to Mr. Radacky and Will Smith
4 and Mr. Geiger, but we were given the same
5 information that you're giving us,
6 Councilman, that you could have reuse without
7 plant expansion. And we were --

8 COUNCILWOMAN BRADBURN: For how long?

9 MR. HOGAN: Well, that's my next
10 statement. We were further told that the
11 earliest that we would need the expanded
12 plant, if I recall correctly, was 2020, the
13 year 2020.

14 MS. REY: And that's assuming that all
15 of the City's obligations, as they currently
16 exist, come to fruition under the time lines
17 contemplated by the utility service
18 agreements.

19 COUNCILWOMAN BRADBURN: And the Southern
20 Hills agreement for their capacity reuse ends
21 when?

22 MR. HOGAN: I'm not sure I understand.

23 COUNCILWOMAN BRADBURN: Because we're
24 taking part of the reuse and we're using it
25 for Southern Hills; is that correct?

1 MS. NORMAN-VACHA: They purchased reuse
2 up to -- they have a guaranteed purchase --
3 well, it's free for the first seven years.

4 COUNCILWOMAN BRADBURN: Seven years.

5 MS. NORMAN-VACHA: First -- it's a
6 million gallons per day.

7 COUNCILWOMAN BRADBURN: All right. So
8 that's seven years of the capacity right
9 there. That gives us two years before we
10 have to expand.

11 MS. NORMAN-VACHA: No.

12 MR. HOGAN: That was the earliest by the
13 agreement if all of the developments that are
14 currently under development agreements come
15 online. Isn't that right, Mr. Pierce?

16 COUNCILMAN PIERCE: Yes.

17 MR. HOGAN: And it currently appears that
18 not very many of them are going to come
19 online. So the estimates that we were given
20 by Coastal at the meeting, I believe, are now
21 at 2040; is that correct?

22 MS. REY: I know at least by 2025 the
23 City will still have excess capacity to meet
24 its potable water commitments. And, again,
25 that's assuming a hundred percent of your

1 obligations under your current utility
2 service agreements come to fruition as
3 they're currently contemplated.

4 COUNCILWOMAN BRADBURN: Well, and I bring
5 this to mind because the legislation that
6 will be passed this session will not allow us
7 any additional revenue. It will be out of
8 our coffers to expand. So, again, we're
9 still millions of dollars short.

10 MS. REY: It's correct to say that the
11 three and a half million does not fund
12 complete plant expansion based as -- based on
13 how it was contemplated in the initial
14 wastewater reuse and expansion agreement.

15 COUNCILMAN PIERCE: Can I throw out a few
16 more facts? I'll confuse it more. Our sewer
17 plant is currently permitted at 1.9 MGD. Our
18 current average daily flows are probably
19 right about .9 MGD, and really probably less.
20 So we have a one million gallon per day, you
21 know, permitted extra capacity. At the rate
22 of 200 gallons per day per home, that's
23 5,000, equivalent of 5,000 homes, that we
24 have capacity for. And in all of Southern
25 Hills' wildest dreams, there are, what, 2,000

1 equivalent homes? So if we go to court
2 asking for money for expansion, they're going
3 to have those same facts and will beat some
4 people up a little bit. So us needing to
5 expand the plant is way off.

6 COUNCILWOMAN BRADBURN: Well, if I can,
7 and I'm not -- granted, you guys had, you
8 know, hours, but quite frankly, I've put
9 hours into this, too, and I don't want us to
10 sell us short, either short-term or
11 long-term. So here's the deal.

12 In my mind, we have two perspectives.
13 One, what they promised to do; and two, what
14 they can prove is actually needed. That
15 original promise, we gave them a lot. And
16 then they said that they would do a lot. So
17 if they fall short, I could care less. But,
18 you know, I know it's the whole thing with
19 what can you actually win in court, but the
20 promise is still there and the taxpayers
21 shouldn't be put on the hook for that.

22 MR. HOGAN: Let me -- Let me -- there's
23 many ways we could have started this
24 conversation tonight, and Jennifer and I
25 discussed this for a long time, and we

1 finally came to the conclusion the best thing
2 to do was to put the numerical facts up on
3 the screen and see which direction y'all
4 wanted to take the conversation.

5 One of the things that came out of this
6 meeting with -- oh, let's see, they had, one
7 -- they had five lawyers there. Two flew in
8 from Miami, two from Tampa, two from
9 Charlotte -- and one accountant, one CPA.
10 But when they came into the conference room,
11 I told Jennifer that they're all going to be
12 wearing Westchester t-shirts, and they were.
13 And, of course, they started off right off
14 telling us how we were going to lose the case
15 because of the Westchester decision. And we,
16 of course, said that that's not true, that
17 case is on appeal and hasn't been decided, so
18 we went back and forth on that issue.

19 But some of the legal realities are that
20 the Westchester case is on appeal, but it's
21 an uphill fight to win an appeal. When you
22 appeal a case, you have to get the higher
23 court to say that the lower court judge was
24 wrong. So we have that, and they know that.

25 However, we can also draw some

1 distinctions in the factual basis between the
2 Travelers and Chubb cases from the
3 Westchester case. And one of those
4 distinctions is in Westchester there was very
5 little construction work done in that land
6 before they defaulted and we foreclosed and
7 had to foreclose on the bond. In the
8 Travelers case, on some of the bonds, there's
9 a great deal of work that's been done; road,
10 water. There's even some homes in there on
11 some of these areas, with the exception of
12 Three A-1 and the construction of the reuse
13 plant.

14 So what -- and, of course, the
15 Travelers, Chubb and Duke Energy lawyers are
16 very smart and they understand that, and they
17 repeated that to us, that if they had to
18 litigate the case they would, of course,
19 settle those bonds that covered the work that
20 can be distinguished from the Westchester
21 case, leaving Three A-1 and the reuse plant.

22 Now, we haven't done -- we've done little
23 or nothing on constructing a reuse plant, so
24 it fits almost on all squares with the
25 Westchester case. And we've sold some lots

1 in Three A-1, but there's been no
2 construction started in Three A-1. They even
3 started to talk about maybe they would just
4 go buy the lot owners out so there will be no
5 lot owners in Three A-1 and that would be
6 cheaper than paying off the bond. And then
7 they can go to Court and say it all squares
8 with Westchester.

9 So we had that discussion back and forth
10 during the day. In the end, we started
11 looking for a way to get reuse without
12 actually expanding the plant. Now, I
13 understand your position and I agree that a
14 contract's a contract, and we should be able
15 to argue that. But the risk is also there.

16 COUNCILWOMAN BRADBURN: And, Tom, I
17 understand that. But the point is we went
18 from twenty slash fourteen to 3.5, and the
19 taxpayers will be left with the gap.

20 MR. HOGAN: What we tried to accomplish,
21 what we were trying to accomplish at
22 settlement was how do we get enough dollars
23 from the defendants and their guarantor,
24 Duke, in this case, so that we can put the
25 infrastructure in the ground and get reuse

1 for the taxpayers. That was the City
2 Manager's direction.

3 COUNCILWOMAN BRADBURN: And that was ours
4 as well.

5 MR. HOGAN: And yours as well. And so
6 we started negotiating in that direction.
7 And that's what we worked on all day. And
8 when you do enough of these mediations,
9 especially with insurance companies or people
10 who are working with other folks' money,
11 spending it, you kind of eventually, even
12 lawyers that have authority from their
13 clients, eventually you get the feel that
14 they've shown up with certain authority, they
15 have a certain amount of money budgeted to
16 settle a case.

17 So we started pushing to try to get them
18 to that number. And then about 3:30, 4:00
19 o'clock it became apparent that the maximum
20 amount of authority they had to settle this
21 case was three and a half million dollars,
22 and that after that it was worth it for them
23 to go to court to see what happens. Because
24 they can drag this out for three or four
25 years, and they have the Westchester case on

1 their side, at least until we see what
2 happens on appeal.

3 So we played that poker game, and we got
4 to the three and a half million dollars, and
5 I felt certain that that was the maximum of
6 their authority, and I believe that it was.
7 They told us that it was after we concluded
8 the session, so I know that it was. One of
9 the attorneys from Tampa that's been around
10 for a long time, and I feel that he told me
11 pretty straight after the session was over
12 that three and a half was their walking
13 point. And we got them to three and a half.

14 At that point it's our obligation to come
15 back to you all to tell you what happened.
16 Now, --

17 COUNCILWOMAN BRADBURN: Okay. Well,
18 okay, again, I understand all that. I know
19 how negotiation works, mediation works, got
20 all that. The question I still have is you
21 threw out nine million, which was the
22 engineering estimate, and then you threw out
23 4.8 million, but the settlement offer is 3.5.
24 So I ask again, where do we -- how do we make
25 up the gap?

1 COUNCILMAN JOHNSTON: The way I see it,
2 I'm looking at these numbers, and correct me
3 if I'm wrong, 3.5 million is before
4 contingency fees are deducted, and also
5 before the SWFWMD number is added back in.

6 MS. NORMAN-VACHA: Correct.

7 COUNCILMAN JOHNSTON: If you add that
8 SWFWMD number back in, the figures that you
9 actually have here was like 3.89 or 3.9 or
10 something like that, so we're about a million
11 short of the estimated cost without reuse; is
12 that correct? Without expansion, I mean.
13 Reuse without expansion, we're about one
14 million short with the settlement offer at
15 3.9. So about a million under the estimated
16 cost to complete reuse only, but without
17 expansion. Which, as Councilman Pierce has
18 stated, we're probably not going to need for
19 30 years.

20 MS. REY: And let me clarify, the
21 distinction between the four million and the
22 three, there were concessions in the context
23 of negotiations on Phase Three A-1. The cost
24 to complete was \$797,000. When looking at
25 settlement funds and potential for

1 renegotiation with GreenPointe as a
2 possibility, there in that settlement amount
3 is not \$797,000 for Phase Three A-1. It's a
4 discounted amount.

5 So if you're trying to do the math of
6 where the money's coming from, there was a
7 discount off of the bond amount for Phase
8 Three A-1, based on the litigation risks,
9 given the Westchester decision and where
10 things are at.

11 COUNCILMAN JOHNSTON: And that was going
12 to be my next question, is how GreenPointe
13 figures into some of these figures in the
14 future. I mean, is it a possibility that
15 some of that can be offset, that gap that may
16 exist be offset with negotiations with
17 GreenPointe?

18 MS. REY: Yes.

19 MR. HOGAN: You need to --

20 COUNCILWOMAN BRADBURN: But in what
21 context? Because this coming legislation is
22 going to hand tie us so far, I just don't
23 know how you're going to even enter that.

24 MAYOR BURNETT: Well, I think if
25 everything's good, based on what I hear, up

1 until 2025, and we meet all the capacity, and
2 we are over-capacified, the area, as far as
3 reuse, by that time something tells me that
4 representatives, legislators and all will be
5 changed in Tallahassee. And just like you,
6 when you make a decision here today, in 2020
7 somebody else probably -- we all probably
8 won't be here, I hope some us will be here,
9 but a council will make a different decision
10 than what we made today. That's how I see
11 that.

12 I think, personally, and looking at these
13 things and being in litigation durn near all
14 of my life, especially dealing with the
15 school system, for what they done and what is
16 left and what needs to be done, I think our
17 team did an excellent job to do that.
18 Because one thing I do know, we are the
19 council, we can make that decision and say,
20 no, we're not going to accept it, and we
21 could try and take it through trial. Then we
22 could end up with zero. That's the greater
23 risk. At least we would have something. At
24 least we could get by with that. And that's
25 just my personal observation and to share

1 with council based on my experience in
2 dealing with litigation.

3 COUNCILWOMAN BRADBURN: Well, Mr. Mayor,
4 I'm not negating their prowess in the
5 negotiations. What I'm saying is, you know,
6 we have a right to some righteous anger here.
7 And, you know, that's a far cry from what the
8 covenant was. Far cry. And now the users
9 and taxpayers are going to be on the hook for
10 the rest.

11 And I might remind everyone that the
12 court has also made it clear that whatever
13 money we get must be used for what it says
14 it's going to be used for. We can't make a
15 decision come budget time, well, I'm sorry,
16 we don't have enough money to finish reuse or
17 enough to finish those utilities because
18 we've accepted the money and we're on the
19 hook and we must find a way to do it.

20 MR. HOGAN: Wait, what are you talking
21 about?

22 COUNCILWOMAN BRADBURN: Well, you --
23 remember the first argument in court was
24 that, you know, the judge said well, there's
25 no guarantee that they're actually going to

1 use it.

2 MR. HOGAN: Well, wait, you're mixing
3 Westchester and Travelers. There will be no
4 court order in this case. There will be --
5 got two different things going on here. We
6 tried to come to a logical process in the
7 negotiations throughout the day. When we
8 negotiated with them, we negotiated on each
9 separate bond. However, at the end of the
10 day, Duke is going to be writing a check to
11 the City for 3.5 million in exchange for a
12 release.

13 There will be no -- your hands will not
14 be tied as to how you apply those sums.
15 There will be no court order in this case.

16 COUNCILMAN BERNARDINI: So if you went to
17 court, then the judge would set a court order
18 and say you have to spend the money for that.

19 MR. HOGAN: Right.

20 COUNCILWOMAN BRADBURN: Well, okay. So
21 without the legal condition there, it's
22 still, in my mind, a moral and ethical
23 condition that, you know, we've accepted it
24 for that purpose and we have to -- we have to
25 do it. And we also want to do those things.

1 It's just that now we've got to --

2 MR. HOGAN: Well, I think, Councilwoman,
3 I think what you would have to do is if you
4 settled the case and you ended up with the --
5 you're going to be compelled to spend some of
6 the money at the dictates of your SWFWMD
7 grant, so that's going to determine how some
8 of the dollars are spent. But the remainder
9 of the dollars can be spent on a priority
10 schedule set by City Council.

11 If that means that you get your plant up
12 and running to provide reuse water without
13 expanding it and there's nothing left to
14 finish the curb and gutter in Three 1-A, then
15 that's a priority set by City Council. If
16 GreenPointe wants to move into Three A-1
17 sooner than the City's ready to provide an
18 infrastructure, then that's when the door
19 opens to negotiate with them as to whether or
20 not they're going to provide that
21 infrastructure, or some of it. So it's not
22 the same as Westchester.

23 COUNCILMAN PIERCE: Could you put the
24 settlement agreement back up there?

25 MS. REY: While I'm doing that, I do

1 just want to point out to you that your
2 commitments to provide reuse under your
3 SWFWMD agreement is by 2012. I believe it's
4 December of 2012. So we're also looking at
5 that time frame. In the event that SWFWMD is
6 not --

7 COUNCILWOMAN BRADBURN: It's in the
8 coming budget.

9 MS. REY: If SWFWMD is not amenable to
10 renegotiating that time frame, there are
11 several issues. One is the City has already
12 accepted, I believe, about a million and a
13 half for reuse, and if they're not capable of
14 bringing reuse online within the time frame
15 contemplated, you're at risk for losing the
16 available funding, and also at risk for
17 potentially having to reimburse SWFWMD for
18 money the City has already passed on to now a
19 bankrupt developer.

20 COUNCILMAN PIERCE: Within the realm
21 of -- is that 1.3 million from SWFWMD, they
22 have a hundred fifty, three hundred thousand
23 of retainage. Is that number included in
24 that 1.3?

25 MS. REY: I don't believe so.

1 COUNCILMAN PIERCE: Okay. Then it
2 doesn't matter. The 3.5 million settlement
3 offer, in theory that obligates us to put
4 water and sewer into this 13-unit mini
5 subdivision.

6 MS. REY: Three A-1.

7 COUNCILMAN PIERCE: Three A-1.

8 MS. REY: The performance bond issued for
9 Three A-1 is a component to that 3.5.

10 COUNCILMAN PIERCE: Okay. If we accept
11 that 3.5, then the obligation, if somebody
12 says I want to build my house out there, then
13 are we obligated to provide them with paved
14 road and water and sewer?

15 MS. REY: The obligation to provide
16 water and sewer comes along with the approval
17 of the final plat. This is where there's an
18 opportunity then to potentially approach
19 GreenPointe and renegotiate the terms of that
20 particular plat.

21 MR. HOGAN: Also, I think to answer your
22 question, Councilman, if someone came in to
23 pull a permit to build in Three A-1, and the
24 City were to tell them we don't plan to have
25 water and sewer there for 36 months, three

1 years, 48 months, 60 months, then you would
2 put them on notice, and then you would have a
3 discussion, I'm sure, but you're not
4 obligated like you were if you were under
5 court order to do it.

6 COUNCILMAN PIERCE: I believe there's
7 enough money available to complete the reuse,
8 satisfy our obligation to the water
9 management district, and still provide some
10 kind of water and sewer service to this
11 13-unit subdivision in a pinch. And knowing
12 how Chief Smitty and Mr. Radacky are, I
13 think -- I think we ought to accept the offer
14 and move on.

15 MS. REY: Mr. Radacky and Will Smith
16 have indicated that the reuse component is
17 current estimates from Encore, which was the
18 original design-build contractor, is between
19 2.8 and 2.9 million, and that would bring
20 reuse online based on the current
21 infrastructure that's there.

22 COUNCILMAN JOHNSTON: I agree with
23 Councilman Pierce. I also agree with
24 Councilwoman Bradburn. We can get
25 righteously indignant and angry over the

1 thing, but the company's bankrupt, you know.
2 Your bond is not your bond anymore. We've
3 all found that out, unfortunately. And I
4 think without tying this up for another three
5 to five years in court, which the attorneys
6 say is very easily possible -- I mean, that's
7 not beyond the realm of possibility in the
8 least -- to be able to get this on and get
9 reuse out online within the time frame that
10 we've contracted with SWFWMD -- you can
11 always apply for an extension, but they're
12 not liable to give it to you at this point if
13 there's no reasonable contemplation that
14 you're going to be able to tell them when
15 that deadline's going to be.

16 So I agree with Councilman Pierce. I
17 think it's not the greatest thing, but it's
18 probably as good as we can do at this point
19 and it's probably good to just go ahead and
20 get this one behind us.

21 MR. HOGAN: We don't vote in executive
22 session, Mr. Mayor, but we need more
23 direction as to how to proceed with this
24 offer.

25 COUNCILMAN BERNARDINI: I got a question.

1 You said something about the road, that there
2 was money in there for the road, to redo the
3 road or something like that? I forget what
4 you said when you were talking about the
5 roads.

6 MS. REY: Several of the bonds secure
7 road maintenance issues, which is the
8 Southern Hills Plantation Boulevard, Southern
9 Hills Boulevard. There's some maintenance
10 and repair that's due because of a faulty
11 irrigation system. The irrigation system has
12 been fixed, but the actual road repair has
13 not. That was a warranty issue that's
14 covered under the bond contemplated in this
15 number.

16 There are some warranty road repair
17 issues in Phase One, and there is a second
18 lift of asphalt, I believe, in Phase Three
19 that needs to be completed. Those are the
20 road improvements, as well as potential
21 construction of a new road in Phase Three
22 A-1, which is not constructed at all.

23 There is nothing in this amount, and it's
24 not secured by your bonds, for Governor's
25 Boulevard. The bond requirement for Governor

1 Boulevard did not trigger until after Hampton
2 Ridge had already filed bankruptcy. So I
3 believe it was December of 2010 that they
4 were then supposed to post a bond to secure
5 Governor Boulevard. As you know, they filed
6 bankruptcy a significant time before.

7 COUNCILMAN BERNARDINI: But there was a
8 number like 700,000 for the road improvements
9 and maintenance work and warranty? I think
10 that you had --

11 MR. HOGAN: Let's go back.

12 MS. REY: The 700,000 number is seven
13 hundred ninety thousand -- 797,000 for Phase
14 Three A-1, which is roads, water, and sewer,
15 sidewalks and lighting and all of the platted
16 improvements.

17 COUNCILMAN BERNARDINI: Okay. Which one
18 of those numbers is for the maintenance?

19 MS. REY: In the Phase One bond, the
20 800,000, the proposed settlement amount, we
21 allocated approximately 600,000 for that.
22 That is the Southern Hills Boulevard road
23 repair and Phase One repair.

24 Phase Two, that is about 200,000. Phase
25 Three is, again, the second -- remaining

1 second lift. The second lift is completed on
2 a portion of it. There is a portion that
3 needs a second lift.

4 COUNCILMAN BERNARDINI: You said that you
5 thought that it was less money than what you
6 allocated of what was up there for repairs
7 and maintenance on those roads. I should
8 have stopped you when you were talking, but
9 you were going so quick I couldn't interrupt.

10 MS. REY: I completely understand. The
11 reduction is in -- the penal sum of the bond,
12 the face value of the bond for Phase One was
13 \$6,000,000. Under the bond, the contract
14 terms, the City is only entitled to the
15 amount necessary to complete the improvements
16 the bond was intended to secure.

17 And so if we had an engineer out there to
18 do a cost estimate of the amount of
19 outstanding improvements, it would nowhere
20 near get to \$6,000,000. The developer never
21 sought release of the bond amount for
22 completed work prior to filing bankruptcy.
23 The actual contemplated cost of completion,
24 to date, based on the work that's already
25 been done, is about 800,000.

1 So if we went to court and went through
2 the whole process and had an engineer and
3 experts and they determined the amount of
4 money necessary to complete the improvements
5 is really only 800,000, that's all the City
6 would be able to get. They wouldn't
7 necessarily be able to get the 6,000,000.

8 MS. NORMAN-VACHA: I think he's referring
9 to Phase Two where you talked about the
10 maintenance bond. There's only a maintenance
11 bond left in Phase Two, right?

12 MS. REY: That is correct. Phase Two is
13 a maintenance bond.

14 COUNCILMAN BERNARDINI: How much is it?

15 MS. NORMAN-VACHA: I really think that's
16 what you're talking about.

17 MS. REY: The face value of the bond is
18 \$592,486.

19 COUNCILMAN BERNARDINI: And you reduced
20 that?

21 MS. REY: The estimated cost, based on
22 the engineer's assessment, is 200,000.

23 COUNCILMAN BERNARDINI: That's the one I
24 don't believe, because I've rode on those
25 roads and I think they're going to have to do

1 a lot of work on those roads to bring them
2 back up to an acceptable level of service.
3 That's just my opinion. I don't think that
4 one is acceptable. I'm not an engineer, I'm
5 just a guy that rides on the roads and
6 watches them crumble away.

7 MR. HOGAN: We discussed that,
8 Councilman, and that's what the engineers
9 told us. They called City staff and they
10 seemed satisfied. There may be a little --
11 there's a slight misconception because in the
12 Westchester case there was no work started,
13 so we went after the entire face amount of
14 the bond. In this case a lot of the work has
15 been done and nearly completed, so under the
16 bond law you don't get the face amount of the
17 bond. You get what it would cost to finish
18 the project.

19 We have two other things that I -- I know
20 we're short on time, but I want to put on the
21 table. One of them that motivated us was the
22 fact that you have an ordinance that worked
23 against us in Westchester that says that the
24 City must first complete the work before you
25 could make a claim on the bond. That's an

1 old ordinance that, you know, has been around
2 since before any of us, but it's on the slate
3 to get that amended. But it's still there,
4 and Travelers and Chubb are certainly well
5 aware of it and they would use that as a
6 defense against us. We have certain
7 arguments, but the judge in Westchester
8 didn't buy them, so we have that hurdle to
9 overcome.

10 Additionally, one of the things that
11 Councilwoman raised about how do we explain
12 this to our citizens, and that was a concern
13 to me as well. We asked the City Manager if
14 we could seek a second opinion on the
15 settlement, so the City Manager directed that
16 we go to your bankruptcy counsel in
17 Jacksonville because they're unswayed by any
18 community connections here in Brooksville and
19 Hernando County. They know the case because
20 there's a lot of parallels between the
21 bankruptcy case and the Travelers and Chubb
22 case.

23 And they did a detailed analysis,
24 Mr. Rogerson did, and he came to the
25 conclusion after his analysis. And I'll cite

1 some of it for the record here. Two cases
2 that lawyers usually look at trying to decide
3 whether a settlement offer is good or not,
4 either from an ethical or from a legal
5 standpoint. One of them is State of Hawaii
6 versus Federal Emergency Management Agency,
7 294 Federal Third 1152, Ninth Circuit case
8 from 2002. And the other one is -- the other
9 one escapes me.

10 Anyway, there are certain criteria that
11 you should go through in analyzing a
12 settlement. And one of them is whether or
13 not -- you have to analyze the risk, and then
14 you have to analyze the ability to pay, and
15 you have to analyze the time value of money,
16 and whether or not the proceeds could be
17 applied to the intended purpose.

18 So we've been -- they went through that
19 analysis. And in conclusion, Mr. Rogerson
20 stated that, "As with any legal matter, there
21 is always a risk that the City would not
22 achieve the best possible outcome in
23 litigation of the surety action, and the
24 settlement eliminates any uncertainty. Based
25 on the foregoing, it is the undersigned's

1 opinion that the proposed settlement
2 agreement is reasonable, represents a benefit
3 to the City, and reflects prudent judgment."

4 So we have -- that settlement analysis
5 will be available for any of you to read in
6 our office, so long as this remains a
7 litigated matter, but it is a pretty good
8 analysis of the case, similar to our analysis
9 of the case. It analyzes -- it analyzes the
10 probabilities of success. It analyzes the
11 complexity and expense and duration of the
12 case, difficulty of collecting a judgment,
13 and all of the other factors to a full and
14 fair assessment of the wisdom of the
15 compromise. So --

16 MAYOR BURNETT: At this time we're going
17 to ask for -- we cannot --

18 COUNCILWOMAN BRADBURN: Wait, wait, I'm
19 not finished. If I might? Dan, why did Duke
20 Energy file an intervention?

21 MR. HOGAN: Duke Energy filed to
22 intervene in this matter because they are the
23 guarantor on both of these bonds, and they
24 would ultimately have to pay -- pay for the
25 damages or the settlement. And they wanted

1 to take control of the case.

2 COUNCILWOMAN BRADBURN: Thank you. I
3 think that's the crux of this. You know, I'm
4 not pleased about the settlement offer, and I
5 don't think any one of us should be. But I
6 think the whole reason why they intervened is
7 because they want to flex their muscle and,
8 you know, we just don't -- we can't compete.
9 So while I'm not happy, I don't see that we
10 really have a choice, but at the same time I
11 want everybody to be reminded that that means
12 that we have some other obligations this
13 budget session. As long as everyone
14 understands that, move ahead.

15 COUNCILMAN PIERCE: The 3.5 million
16 dollar settlement obligates us to maintain
17 and repair Southern Hills Boulevard, the
18 entrance road?

19 MR. HOGAN: No.

20 COUNCILMAN PIERCE: No?

21 MR. HOGAN: The only thing that you're
22 obligated to do for 3.5 million dollars is to
23 release, sign a release, telling Chubb,
24 Travelers, Federal Insurance Company and Duke
25 that they are released and you will not sue

1 them for issues arising out of these bonded
2 matters.

3 COUNCILMAN PIERCE: Okay. We never
4 accepted Southern Hills Boulevard entrance
5 road --

6 MR. HOGAN: That --

7 COUNCILMAN PIERCE: -- formally.

8 MR. HOGAN: -- another issue.

9 MAYOR BURNETT: Okay, Council, we're at
10 the point now that we need to give our
11 attorney some direction. We cannot vote on
12 it, but I'm going to ask each individual
13 Councilman to please give the attorney your
14 direction, please, starting with
15 Councilwoman --

16 COUNCILWOMAN BRADBURN: I've already
17 stated.

18 MAYOR BURNETT: Councilman Pierce?

19 COUNCILMAN PIERCE: Let's accept the
20 offer.

21 MAYOR BURNETT: Councilman Bernardini?

22 COUNCILMAN BERNARDINI: No.

23 MAYOR BURNETT: Councilman Johnston?

24 COUNCILMAN JOHNSTON: Accept.

25 MAYOR BURNETT: Accept.

1 MR. HOGAN: Anything, Councilman
2 Bernardini, that we could tweak or try to do
3 differently or --

4 COUNCILMAN BERNARDINI: I just, you know,
5 either your word and your bond is worth
6 something, or it's not. And obviously it's
7 not. And we've got -- well, that's all we
8 can talk about, so.

9 MR. HOGAN: Okay. Thank you.
10 Mr. Mayor, nothing further on that matter.

11 * * * * *

12 (Proceedings concluded.)

13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

COUNTY OF HERNANDO)

I, CARLA GAIL DONATO, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record of said proceedings.

Dated this 9th day of August, 2011.


CARLA GAIL DONATO, RPR