

## ADDITIONAL INFORMATION

COUNCIL ITEM *8A & 11A*  
DATE *10-8-12*

MEMORANDUM

TO: MAYOR & CITY COUNCIL *mo*  
FROM: GREGORY J. ORAVEC, CITY MANAGER  
SUBJECT: RECOMMENDATION CONCERNING PROPOSED CHANGE TO THE RIVERLAND KENNEDY DEVELOPMENT OF REGIONAL IMPACT  
DATE: OCTOBER 5, 2012

As you are aware, at its meeting of September 10, 2012, the City Council tabled the agenda items relating to the Riverland Kennedy Development of Regional Impact until October 8, 2012. In the intervening time period, staff has continued to meet with representatives of Riverland Kennedy (A/K/A GL), Wilson Grove (A/K/A Anasca) and Southern Grove in an effort to: 1) rectify the parties' concerns with each other's development orders; and 2) negotiate a mutually acceptable amendment to the Annexation Agreement relating to Becker Road. While our meetings did produce a promising concept for the Annexation Agreement, the parties were unable to achieve a meeting of the minds on these matters. In fact, our last meeting ended in acrimony as two of the three developers left the room yelling at each other. Watching that exchange highlighted the possibility that the City might not be able to negotiate an appropriate amendment to the Annexation Agreement on good faith alone. This is a real problem since declaring a default of the Annexation Agreement is not nearly the "hammer" one would imagine because, in return for certain payments already made, the respective developers are entitled to designate 40% of its property released from the restrictions of the Annexation Agreement. Given that neither developer intends to build anything in the near term, I recommend that the Council table consideration of the Riverland Kennedy items until the meeting of December 10, 2012, when it should be able to consider them, Anasca's proposed changes and a proposed amendment to the Annexation Agreement at one meeting. Moreover, should the parties fail to come to a meeting of the minds on an amendment to the Annexation Agreement or fail to honor the existing one in that time period, I would recommend that the City Council continue to delay or deny any proposed changes to any of the development orders of the defaulting parties until the matter of the Annexation Agreement is resolved.

As I have mentioned before and as GL has convincingly argued, it would have been beneficial for the "divorce" of the parties to have happened at once. Anasca's submittal has presented us with an opportunity for a do-over. Let us take it for the long term benefit of all those involved.

The staff and I look forward to your action on this item. If you have any questions or would like additional information, please do not hesitate to contact me.

Thank you.

Attachments

Corrigendum: This memorandum should have been issued with a stated date of September 10, 2012. September 7, 2012, was the date the file was first created, but the memorandum was not completed and issued until September 10, 2012. The second sentence of the first paragraph clearly reflects that the memorandum was issued on the date of the City Council meeting, September 10, 2012. The change is noted below in ~~strike through~~ underline format. I apologize for any inconvenience the error may have caused. GJO, 9/19/12 *GJO*

## MEMORANDUM

TO: MAYOR & CITY COUNCIL

FROM: GREGORY J. ORAVEC, CITY MANAGER *GJO*

SUBJECT: RECOMMENDATION CONCERNING PROPOSED CHANGE TO THE RIVERLAND KENNEDY DEVELOPMENT OF REGIONAL IMPACT

DATE: SEPTEMBER 7 10, 2012

This memorandum serves to provide my recommendation concerning the subject. I apologize for providing it the day of the scheduled City Council meeting; however, I met with representatives of Wilson Grove, Riverland Kennedy and Southern Grove personally and via telephone Wednesday, Thursday and Friday, and the greater parts of Friday and the weekend were unexpectedly spent on Digital Domain. At least one concerned party and one councilperson have requested that this item be tabled. The staff and I will be ready to assist you in your deliberation of this matter tonight or in the future, as you see fit. In any event, you may find the outlined position very familiar because it focuses on the importance of completing the western extension of Becker Road and ensuring that the development of Riverland Kennedy does not detrimentally impact the roadways within Tradition and Southern Grove.

As you are aware, the Southwest Annexation Area (SAA) is comprised of Southern Grove, Riverland Kennedy and Wilson Grove. It is a product of the 2004 Annexation Agreement as subsequently amended; and led to the entitlement of approximately 26,788 dwelling units in southwestern Port St. Lucie pursuant to three developments of regional impact (DRIs). Originally, although the three developments were separate DRIs, they were considered as a whole. They were subject to the same Annexation Agreement and shared many important development conditions, most notably roadway improvements, and traffic analysis through the Western Annexation Transportation Study (WATS). Given that the three parties compete with each other, this union created a lot of tension from the start. However, with the tremendous demand for development at that time, the parties managed to work towards common goals. Unfortunately, as the Boom busted and as it became time to allocate specific roadway improvements from the collective to individuals, the tension boiled over and caused the respective parties to seek separate development order conditions. This situation is often referred to as the "divorce". Wilson Grove was the first to complete the split, followed by Southern Grove, and Riverland Kennedy now hopes to complete its separation. With the benefit of hindsight, I wish that the City would have required all parties to complete the split at the same time. We could have better ensured fairness, and we could have effectively compelled the amendment to the Annexation Agreement, which is now needed. Unfortunately, we cannot go back, and only one party is left subject to the form of the old development order.

As more particularly set forth in the Planning Department's packet, the City has worked with Riverland Kennedy and all of the other parties of the SAA all summer in an attempt to fairly and equitably complete the split. Though there was a promising "all hands" meeting on July 17, 2012, which had City staff hoping that the parties had come to mutually agreeable terms, including a revised Annexation Agreement, Riverland Kennedy, for reasons only its representatives could fully explain, withdrew and went back to a proposal which was slightly modified from the one presented to the City Council on July 9, 2012. The crux of this proposal is found as Exhibit "B" in your meeting packet.

Please be advised that I do not support the proposed development order as it was transmitted to the City Council as part of the September 10, 2012, meeting packet because it does not fully address the potential for impacting roads within Tradition and Southern Grove, and it does not comply with the spirit of the Annexation Agreement, which requires Riverland Kennedy to provide for the construction of the first two lanes of Becker Road on its property. (Please note that the previously provided development order does require Riverland Kennedy to widen Becker Road from 2 to 4 lanes and from 4 to 6 lanes though in Phases 2 and 3, respectively.) Accordingly, I met with City staff and Riverland Kennedy with the goal of addressing these perceived shortcomings. The result of these meetings was the insertion of the following notes into a revised Exhibit "B" of the development order:

Note No. 1: No building permits shall be issued for development that generates more than 4,000 total net external p.m. peak hour trips or 3,300 residential units, whichever occurs first, until a contract has been let for the construction of the initial two lanes of Becker Rd. from Village Pkwy. To Community Blvd.

Note No. 2: If the Annexation Agreement is amended to provide that the construction of the initial two lanes of Becker Road from Community Boulevard to N/S B is required no earlier than 2018, or later if agreed to by all parties of the Annexation Agreement, then the construction of the initial 2LD shall become a Phase I responsibility of Riverland/Kennedy in place of the requirement that Riverland/Kennedy widen the roadway from 2LD to 4LD.

Note No. 1 addresses the concerns over the impacts to the roadways of Tradition and Southern Grove by ensuring that Becker Road will be there to meet the traffic demand generated by the development of Riverland Kennedy. Note No. 2 includes the same basic language that was included within Southern Grove's development order. It allows for the phasing of the construction of Becker Road to be changed consistent with the spirit of the Annexation Agreement and, hopefully, with the letter of a soon to be completed Revision to the Annexation Agreement.

Attached for your consideration, please find a revised Exhibit "B", entitled "Conditions of Approval", with the above notes inserted. The notes are the only changes.

As you may be aware, the representatives of Wilson Grove do not agree with the language for the development order even though they found it acceptable within Southern Grove's development order. I believe that this is due to a fundamental mistrust between the parties. Representatives of Wilson Grove argue that the proposed development order should specifically include the first phase of Becker Road. Unfortunately, without a corresponding amendment to the Wilson Grove development order, there would be no way for Riverland

Kennedy to ensure that it would not get stuck with an extra two lanes of Becker Road, which would throw off the equitable distribution of roadway improvements.

In addition to reviewing the newly proposed notes, you may find it useful to consider the following points as you consider the proposed development order:

- It is likely that this and the other SAA DRI development orders will be amended multiple times in response to changing market forces over time. By way of comparison, the development order for St. Lucie West has been amended about 16 times.
- It is likely that the build out of these developments will occur over thirty or more years.
- Given the uncertainty introduced by changing market forces over such an extended period of time, it would be possible to pay for and then argue the results of hypothetical traffic studies for a very long time. Rather than doing that, City staff believes it has introduced several safeguards to the development order which have also been noted by the City's traffic consultant, Veronica Altuve, PE, Keith and Schnars. In her memorandum of September 7, 2012, which is attached for your reference, Ms. Altuve notes that the proposed development order includes the following safeguards:
  - Traffic monitoring [It is important to note that Condition 15 is what allows the City to expedite required traffic improvements to meet demand];
  - Trip generation analysis as part of the site plan and subdivision plat approval processes; and
  - Limiting the development program until the initial two lanes of Becker Road between Village Parkway and Community Boulevard are let for construction.

Though it is imperfect, the staff and I believe that the proposed development order (with the two inserted notes) represents a fair and equitable conclusion of the process to separate the DRIs and adequately protects the City's interests. The staff and I look forward to your action on this item. Regardless of the outcome, once deliberation over this item has been concluded, we will turn our attention to the amendment of the Annexation Agreement.

If you have any questions or would like additional information, please do not hesitate to contact me.

Thank you.

Attachments

## Karen Phillips

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**From:** Greg Oravec  
**Sent:** Monday, October 08, 2012 8:53 AM  
**To:** Karen Phillips  
**Cc:** Mayor Faiella; Linda Bartz; Michelle Berger; Shannon Martin; Jack Kelly; Daniel Holbrook; Anne Cox  
**Subject:** FW: Southwest Annexation Area

Karen,

The below correspondence relates to the GL items on the agenda.

Thank you,

Greg

Gregory J. Oravec  
City Manager  
121 SW Port St. Lucie Boulevard  
Port St. Lucie, FL 34984

(772) 344-4371  
(772) 871-5248 [fax]

**PORT ST. LUCIE**

*A GROUP OF PEOPLE DEDICATED*

*TO ONE THING:*

*MAKING THE WORLD A BETTER PLACE.*

*STARTING WITH PORT ST. LUCIE.*

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**From:** Larry Portnoy [mailto:larry.portnoy@glhomes.com]  
**Sent:** Monday, October 08, 2012 8:50 AM  
**To:** Greg Oravec; Glenn Ryals  
**Cc:** John Carter (jfcarter@mintofla.com)  
**Subject:** RE: Southwest Annexation Area

We both did. To say the least, we are extremely disappointed that your position has changed. You told us that you wouldn't sand bag anyone when we left the meeting and by the time we walked out, you said that you were going to keep your previous recommendation. I have something from you in writing which says that we will not have to do any amendments to the annexation agreement until our NOPC has been completed. We have multiple staff recommendations of approval which went before Council and then there was your memorandum for the last meeting. While it came out late, you also recommended approval. During all this time, we have made multiple concessions, while Anasca hasn't given an inch. It seems like you changed your mind based upon the argument at the end of the meeting that we had with Pol. I wouldn't think that because two parties don't like each other is a basis for penalizing their project. We had been tabled several times because of our trip thresholds. There certainly isn't any more concern about that. For your memo to say that there can be a "do over" baffles my mind. We have told everyone that we would build the first two lanes of Becker if it was guaranteed that Anasca would four lane the road. As I recall, this was your idea and we accepted it. For them to blow it off and only want to build future roads which may never be built, should show their true colors.

My perception of the meeting was that Anasca was finally ready to accept that they could not pull the wool over everyone's eyes any more and they were finally recognizing they had to build their fair share of the lane miles. Thus, they were

willing to build the first two lanes, provided they didn't have to build out to Range Line at this time and we agreed with that. Then it became a matter of how the road was to be constructed and as Glenn told you, we felt that you guys could have worked that out without us even being involved. The only "do over" is to allow Anasca to continue to try and get out of building their fair share of lane miles. There is absolutely nothing that the City will gain, nor will Riverland/Kennedy or Southern Groves gain anything. This "do over", is only for the benefit of Anasca. Village Parkway is Southern's main road, Community is ours and it makes sense that Becker is theirs. Had the divorce happened like it should have and we were to continue to be responsible for building the first two lanes of Becker, then we would have required Anasca to build portions of Community to keep the pot fair.

The issue of who builds Becker certainly wasn't a problem for Anasca when they asked for their NOPC, nor was the issue that a technical default had occurred. This certainly wasn't an issue for the Southern Groves substantial deviation either. Now that the City has divorced two of the three parties, the one party who is getting hurt, is the one who pointed out to staff and the Council the mistake they were about to make. Now, we're the same party who is being asked to pay the price for the mistake of others.

Lastly, your recommendation to delay until December will obviously be post election. There will be at least one new Council Member, if not more. To keep this issue outstanding and to put the burden on others to figure out what is up or down on this, seems unfair to future council members. New members will have no knowledge or history of these issues. Anasca has already started the lobbying process for a potential successor by having him speak at a previous hearing. **I know I am biased, but if the annexation agreement is never modified, then the worst thing that happens is that Anasca is forced to live with the development order they asked for and they must pay their fair share of the lane miles, as determined by City Staff, without the chance to double dip. If I am missing something with my assessment, please feel free to point it out to me.** Even if this happens, that doesn't preclude them from trying to file a lawsuit against us to enforce what they perceive whatever rights they feel like they have under the Annexation Agreement. We are the only negatively impacted party in this entire fiasco and we're willing to live with the inconsistencies created by others, provided we can have our own development order.

The network created by Staff and the Council is completely broken without our roads. We are nothing more than the missing pieces to a puzzle built by others. To us, it really is that simple. Why Anasca continues to get life lines defies logic. We plan on being at the hearing tonight and making these points known to Council. We're hoping that they will understand the issues and finally put us on an equal playing field with Anasca.

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**From:** Greg Oravec [mailto:GOravec@cityofpsl.com]  
**Sent:** Monday, October 08, 2012 8:13 AM  
**To:** Larry Portnoy; Glenn Ryals  
**Subject:** FW: Southwest Annexation Area

Dear Larry and Glenn,

Did you get the correspondence I sent you? I received the below message.

Thank you,

Greg

Gregory J. Oravec  
City Manager  
121 SW Port St. Lucie Boulevard  
Port St. Lucie, FL 34984

(772) 344-4371  
(772) 871-5248 [fax]

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**From:** MAILER-DAEMON

**Sent:** Friday, October 05, 2012 8:24 PM

**To:** Greg Oravec

**Subject:** Delivery Delayed: Southwest Annexation Area

**Delivery is delayed to these recipients or distribution lists:**

[Glenn.Ryals@glhomes.com](mailto:Glenn.Ryals@glhomes.com)

[larry.portnoy@glhomes.com](mailto:larry.portnoy@glhomes.com)

Subject: Southwest Annexation Area

This message has not yet been delivered. Microsoft Exchange will continue to try delivering the message on your behalf.