

Board of County Commissioners
Leon County, Florida
Special Meeting
August 17, 2005

A special meeting was conducted to negotiate the Fallschase Chapter 163 Development Agreement. The following were present in a publicly noticed meeting that was held on August 17, 2005, at the County Courthouse in the 5th Floor Conference Room; Commissioner Proctor, Commissioner Rackleff via telephone, County Attorney Herb Thiele, County Administrator Parwez Alam, Cari Roth, Gary DeNicola, Rick Bateman, Tasha Buford, and Carlos Alvarez.

The meeting was called to order at 11:00 p.m.

(See attached advertisement:)

TALLAHASSEE DEMOCRAT
PUBLISHED DAILY
TALLAHASSEE-LEON-FLORIDA

STATE OF FLORIDA COUNTY OF LEON:

Before the undersigned authority personally appeared Daniel Serrano, who on oath says that he is a Legal Advertising Representative of the Tallahassee Democrat, a daily newspaper published at Tallahassee in Leon County, Florida; that the attached copy of advertising being a Legal Ad in the matter of

NOTICE OF SPECIAL MEETING

in the Second Judicial Circuit Court was published in said newspaper in the issues of:

AUGUST 17, 2005

Affiant further says that the said Tallahassee Democrat is a newspaper published at Tallahassee, in the said Leon County, Florida, and that the said newspaper has heretofore been continuously published in said Leon County, Florida each day and has been entered as second class mail matter at the post office in Tallahassee, in said Leon County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has never paid nor promised any person, firm or coporation any discount, rebate, commission or refund for the purpose of securing this publication in the said newspaper.

DANIEL SERRANO

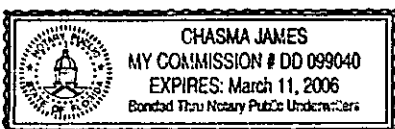
LEGAL ADVERTISING REPRESENTATIVE

Sworn To or Affirmed and Subscribed Before Me.

This 17 Day of August 2005, by Daniel Serrano, [Signature] Personally Known [Signature] OR Produced Identification [Signature] Type of Identification Produced [Signature]

(SEAL)

Notary Public
State of Florida



[Signature]

Legal Notices Legal Notices

NOTICE OF SPECIAL MEETING

The Board of County Commissioners of Leon County, Florida (the "County") hereby provides notice of a special meeting on Wednesday, August 17, 2005, at 11:00 a.m., at the County Commission Chambers, 5th Floor, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida, to consider negotiations with regard to the Fallschase Chapter 163 Development Agreement. All interested parties are invited to attend.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing a special accommodation to participate in this proceeding should contact Christine Coble or Facilities Management, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida 32301, by written request prior to the proceeding. Telephone: 488-9962 or 488-1948; 1-800-955-8771 (TDD), or 1-800-955-8770 (Voice), or 711 via Florida Relay service.

August 17, 2005

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Commissioner Proctor recognized Sheriff Larry Campbell. He mentioned that they met with FCT and TPL in dealing with the issues of process for acquiring the lake bottom and bringing it into public domain, as well as the elements for appraising properties such as this. He welcomed Commissioner Rackleff by way of telephone.

Commissioner Rackleff asked if there was a newer version of the Fallschase Chapter 163 Agreement. He was informed that he had a copy of the latest draft of the agreement.

Cari Roth, Miller, Brown & Olive, assisting the County Attorney in this matter, introduced the issue of Lake Protection. She stated that there has been some discussion about pulling the stormwater facilities that were proposed below the 51 foot contour out of that area and into the upland, but the Applicant is still analyzing the engineering ramifications of this.

Commissioner Proctor stated that they have reached agreement in that the Applicant will not develop below the 51 foot contour.

Rick Bateman, representing Fallschase, interjected and stated that that may be Commissioner Proctor's recommendation, but they have not agreed to that.

Commissioner Proctor stated that his recommendation, which accommodates the interest of our environment and the interest of our present ordinances, is that they not build below the 51 foot contour mark. He explained that after attending the yesterday's meeting and discussing the lake bottom, a new issue was raised, and because of this, he requested that Sheriff Campbell attend the meeting. He recognized Sheriff Campbell as the Co-Chairman of the President's Homeland Security Task Force over 13 counties in North Florida. Commissioner Proctor asked Sheriff Campbell, for the record, whether or not aquifers are potential target points for terrorist, and how they are viewed by Homeland Security for protection.

Sheriff Campbell explained that, certainly, the aquifer areas have been taken into consideration by Homeland Security to insure the safety of our country.

Commissioner Proctor asked Sheriff Campbell if Homeland Security could support a grant saying that County Scientists have identified this area as a potential threat that deserves protection and purchase the aquifer.

Sheriff Campbell stated that he is not familiar enough with the Homeland Security issue as it pertains to this particular situation to give an educated guess as to whether or not Homeland Security would deem this as a project for grant funds.

Commissioner Proctor requested that staff assist Sheriff Campbell in investigating whether or not this aquifer qualifies as a threat point.

Sheriff Campbell explained that he can steer staff into the right direction. Commissioner Proctor thanked Sheriff Campbell for attending the meeting and for sharing his thoughts.

Cari Roth confirmed that the County would pay half of the local match required for the FTC grant.

Commissioner Proctor stated that in terms of optimum numbers, an application pending this year could bring the County, at most, 6.6 million, and if the application was submitted for next year's cycle, would be 9.9 million dollars.

Ms. Roth explained that that would require pre-acquisition of the property by the Applicant.

Mr. Bateman interjected and said that it would require pre-acquisition by either TPL or the Applicant, he stated that TPL mentioned that the Applicant would be the County, but TPL could actually be the conduit to purchase it or hold it until the grant is granted.

Ms. Roth explained that that was true, except TPL stated that they have a policy against being an applicant for an FCT grant, so the exchange between TPL and the County would have to occur before the application is made to FCT, which would be in May.

Commissioner Proctor stated that TPL indicated at yesterday's meeting that they had decided to take themselves out, and therefore, it would be up to the County. Mr. Bateman interjected and stated that that is not what happened yesterday, they said that they were not an Applicant to FCT for the grant, but they also said that they were willing to help in any way that they could.

Doug Hattaway, Trust for Public Land, stated that TPL does have a policy in place that they do not submit applications as an Applicant, but they are willing to help out in any way and support the County in submitting an application. He explained that the distinction that he is hearing is pre-acquisition as opposed to a joint acquisition, and what would dictate between the two would be whether or not the County owned the property at the time of the submittal of the application.

Commissioner Proctor asked Mr. Hattaway to explain the timing issue and distinguish the advantages and disadvantages of the current owner and the application being made, versus the County being the owner and the application being made.

Mr. Hattaway stated that, based on his understanding of FCT, if the County were to submit an application next year by their application deadline and not own the property on that particular day, the maximum they could apply for is 6.6 million dollars, which is 10% of the total money available, but if the County owns the property by the application deadline, they can apply for 9.9 million dollars, which is 15% of the total money available. He also stated that if the County wishes to maximize its leverage ability of the County's funds against State funds, the County could pre-acquire the acquisition and have the ability to apply for the 9.9 million dollars.

Mr. Bateman mentioned that they are willing to hold a mortgage with the property as collateral so that they County would not have to put out all of this money, in other words, they could pay Fallschase a diminimous amount of money on the property with the mortgage, and then make their application with the FCT.

Mr. Hattaway stated that if the County were to have a mortgage on the property, then that would qualify as pre-acquired under their definitions.

Commissioner Proctor stated that there will be three resolutions to this issue that will be presented to the Board, and stated that he intends on suggesting the first option as being the most appropriate resolution.

County Administrator Alam urged Commissioner Proctor to vote against this option. He voiced concern regarding what could happen if the FCT did not approve the 9.9 million dollar funding to the County. He stated that this would put the County and the taxpayer's at risk, and it could force the County to buy the property for 11 million dollars, which in his opinion, is not justifiable.

Commissioner Proctor stated that if the language was conditioned and if there were come contingencies made to this option, it would eliminate many of these concerns. He stated that he strongly believes that the City should be involved in this process, and that this property deserves to be in public domain and protected.

Commissioner Rackleff stated that there is no question that the County needs to buy the lakebed, what is at issue is the cost of the lakebed.

Commissioner Proctor raised the concern of the construction of a stormwater pond that is being built in a flood zone in the Lake Jackson area.

John Kraynak, Director of Environmental Compliance, stated that the stormwater facility is in a flood zone, but that it is adjacent to the higher end of the flood zone. He explained that the Board passed a comp plan provision that allowed stormwaters for retrofit purposes for areas that had not received prior stormwater treatment. He stated that they adopted the provision to the comp plan and the LDR's to enhance water quality and to insure the protection of the lake.

Ms. Roth explained that the distinction between the two is retrofit facilities versus facilities to serve new developments. She stated that the County made specific exceptions to its code requirements to not have these facilities in the floodplain for retrofit, retrofit being where you already have a significant amount of urban development that didn't have the same rules, therefore, you have to come back after the fact and provide stormwater treatment for the previously existing developments.

Mr. Kraynak added that there were extensive studies done by the Public Works Department and that they first tried to find areas outside of the sensitive features where these facilities could be placed, but there was no reasonable alternative, other than to put the stormwater facility closer to the floodplain.

Commissioner Proctor asked whether or not they could use the language in the developmental agreement to allow stormwater facilities to be built below the 51 foot mark.

Ms. Roth answered that they are trying to stay as close to the comp plan and code as possible. She stated that the code would have to be changed in order to accommodate allowing new developments to be treated the same as retrofit.

Mr. Bateman stated that it is clear that there are areas of the community that are being treated differently than others.

Commissioner Proctor asked Mr. Kraynak, if the scientific recommendation suggest that it is necessary to built below the 51 foot, could that be done.

Ms. Roth stated that there is an option to do that, but she reminded him that the Florida Community's Trust grant money would not be available for the purchase of the lake bottom for use as a stormwater facility.

Mr. Kraynak stated that there is nothing on the table indicates that they have to use Lake Lafayette in terms of retrofit and that there is no certainty that Lake Lafayette will have to be used for stormwater purposes. He stated that once the TMDL is set, the City has to come up with a basin management action plan in order to achieve the TMDL.

Ms. Roth added that if the County of looking for the City's participation in the FCT grant, the discussion needs to be had now. She stated that if the County acquires the property in conjunction with the City and there is a decision later on to turn part of that property into a regional stormwater retrofit facility, they would have to pay FCT back their portion of the money for that property.

Commissioner Proctor confirmed with Mr. Bateman that they had, in fact, reached a landscaping agreement of 15%. Commissioner Proctor arrived at

625,800 as a commercial recommendation. He also mentioned that the DOT meeting that took place last week. He stated that the report indicates that DOT is very much aware of their rights to step in if they were not satisfied with the traffic study outcome. He suggested postponing the presentation of the Chapter 163 Development Agreement until September 13th. He mentioned that they have agreed that the County has the right of way yielded for Buck Lake Road, but he requested that Fallschase put this in writing.

Mr. Bateman stated that this is true, but they would have the right to be compensated for it, a taking of eminent domain, and they have indicated that if this agreement comes together, they will donate the right of way for Buck Lake Road as per the previous plans.

County Administrator Alam stated that if the agreement is not presented on August 30th and is delayed to September 13th, then the second meeting is on September 20th, and there is only one week between the first and second public hearing, he asked County Attorney Herb Thiele if one week was enough for the second public hearing, or under the statute, is two weeks needed.

County Attorney Thiele stated that it requires a seven day notice in advance, so they would have to notice it before the first meeting is actually conducted. He suggested having the second public hearing at the first meeting in October.

Mr. Bateman stated that they are willing to postpone it until September, but they are not willing to wait until October. He explained that all they are waiting for is the traffic analysis, and they do not believe that the traffic analysis will legally obligate them to do any mitigation.

County Attorney Thiele stated that the County has never held public meetings within a week of each other. He raised another issue and stated that Fallschase if not vested for 625,800 square foot of commercial, therefore, it is his position that that would constitute a substantial deviation to the DRI development order and there may be a whole other set of criteria and schedules that would need to be done in order to meet the commissioner schedule.

Commissioner Proctor stated that he sticks to his recommendation of 625,800 square foot for commercial. He raised the next area of concern which was commercial traffic. He mentioned that a DOT meeting that was held, and also stated that he believes that the Applicant and the Developer will be able to resolve any issues that they may have. He requested that Ms. Roth inform the public on the 90 East funding and how close the County is to construction.

Ms. Roth stated that the all of the funds will be available in 2013.

Mr. Bateman mentioned that at the last meeting he was told that the funds would be available in the year 2010.

Ms. Roth clarified that they have been placing approximately 3 million aside per year in an attempt to accumulate the 16.5 million needed to construct this segment, and if they're able to do this, they will have all of the funds available by the year 2013.

County Administrator Alam stated that between the funds that DOT is budgeting and the funds that the County will receive back, they are expecting to bid the job in 2010, but the actual construction of the project would take two or three years to complete.

(Commissioner Proctor requested that a short recess be taken.)

Commissioner Proctor stated that he, personally, needed to be advised regarding a few technical issues. He raised the next issue, site plan review. He stated that he is going to follow the advice that council has suggested, the recommendation of a Type B site plan.

Ms. Roth stated that the Type B recommendation would be a DRC approval.

Mr. Hattaway added that Type B requires pre-application, staff technical review, and a DRC meeting. He stated that this process would take approximately two months to meet the statutory requirements.

Mr. Bateman stated that there has been no discussion regarding the Type B site plan, and stated that they are not agreeing with the Type B, and recommended a Type A review.

Commissioner Proctor asked Mr. Hattaway to explain the Type A review. Mr. Hattaway explained that it is basically the same as a Type B, but without the DRC review. He added that approval of the Type A would also eliminate a DRC public hearing, but public notice would still be given.

Mr. Bateman stated that that is all that they are requesting, to do away with the DRC review and the DRC public hearing. He mentioned that the DRC hearings are noticed as being a public hearing, but that you are not allowed to speak or comment.

Commissioner Proctor stated that the best council that he has received is a Type B, and he feels that it's appropriate.

Mr. Bateman stated that he fully understands that, but that they are not agreeing to a Type B review. He voiced concern as to previous approvals on certain issues that had no precedent.

Commissioner Proctor stated that they can not consummate the 163 agreement without clarity as to the development rights of the McGill's and the Bank's.

Ms. Roth stated that the code requires that all legal and equitable owners of property covered by development agreement execute the agreement within 30 days. She added that if there are some of the parties in the project area that are not agreeable in doing that, then they would need to parcel their rights out so that you don't give all of the rights to one property owner.

Mr. Bateman stated that that is exactly what is written in the 163 development agreement.

Gary DeNicola mentioned that he has been in contact with both parties and they have agreed, assuming that they can agree to terms, to consent to the 163 agreement.

Commissioner Proctor requested that there be a commitment of some type of land that will be provided for public uses, library, park, activity center, etc. He added that Fallschase is not expected to pay for this; the County will build and fund the project.

Mr. Bateman stated that they are going to work to accommodate the County's request concerning this.

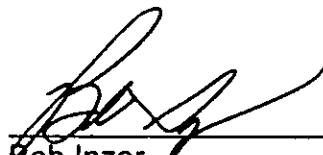
Commissioner Proctor thanked all parties and staff for attending the meeting.

The meeting adjourned at 1:00 p.m.

Approved: 
Cliff Thael, Chairman

ATTEST:




Bob Inzer
Clerk of the Circuit Court