

Florida Governmental Utility Authority Board of Directors Meeting Minutes

Thursday, January 17, 2008 - 1:00 p.m.
Town of Dundee, City Hall Council Chamber
105 Center Street
Dundee, FL 33838

Board Members Present:

Lea Ann Thomas, Chairman, Polk County
Doug Meurer, Member, Lee County
Robert Knight, Member, Citrus County (joined the meeting in progress at 1:28 p.m.)
Charles Saddler, Member, Town of Dundee

Staff Present:

Crystie Carey, Utility Counsel, Nabors, Giblin and Nickerson, P.A.
John Pelham, General Counsel, Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
Tarek Fahmy, FGUA Director of Operations, GSG
Yvette Hartsfield, FGUA Community Services Manager, GSG
Donna Mallery, FGUA Chief Financial Officer
Faith Doyle, FGUA Clerk to the Board, GSG
Steve Spratt, Director of the Municipal Services Division, GSG

Guests Present:

Ed Goscicki, Severn Trent
Bob Dick, Severn Trent
Scott Coover, Lee County Attorney's Office

I - Call to Order

Chairman Thomas called the meeting to order at 1:20 p.m.

II - Invocation

Chairman Thomas requested that Mr. Charles Saddler offer the invocation.

III - Pledge of Allegiance

Chairman Thomas led the audience in reciting the Pledge of Allegiance to the American flag.

IV - Public Comment

No one present wished to address the Board.

V - Minutes I Approval of the December 19, 2007 Regular Board Meeting Minutes

Chairman Thomas asked for a motion to approve the December 19, 2007 meeting minutes. A motion to approve the minutes was made by Mr. Charles Saddler and Mr. Doug Meurer seconded the motion. With no further discussion and all being in favor, the motion was unanimously approved.

Chairman Thomas then moved to the Consent Agenda items and asked if there were any additions and/or deletions to the Consent Agenda.

Mr. Tarek Fahmy requested that items CA 5 and CA 7 be removed from the agenda. Mr. Pelham requested that item CA 6 be held until the board clerk returned with additional information concerning the item.

VI - Consent Agenda

CA 1 Approval of Work Authorization MP 08-03, with Malcolm Pirnie, Inc. for Consulting Engineering Services, for the Golden Gate Water System Distribution Improvements, FGUA Project No. GG 010 in the Golden Gate Utility System

Provided for consideration was Work Authorization MP 08-03 with Malcolm Pirnie, Inc. for the engineering services related to the engineering, permitting and design of the water system distribution improvements in the Golden Gate Utility System. This project is located within the Golden Gate service area and consists of approximately 4,600 linear feet of 6-inch diameter water main within the right-of-way of the following roadways: connect to the existing 89-inch diameter valve between the property lot 17 and 41 on the north side of 24th Place SW and 25th Place SW; turn south towards 24th Place SW and turn east on 24th Place SW; connect to the existing 14-inch diameter water main on 24th Place SW; turn south towards 25th Avenue SW and turn east on 25th Avenue SW; connect to existing 14-inch diameter water main on 25th Avenue SW; turn south on 44th Terrace SW and connect to existing 8-inch water main on 44th Terrace SW. These improvements will provide the supplemental water distribution capacity necessary for the fire flow and looping improvements within the area. The professional services included permitting, design services, construction bid services and contract administration for a lump sum cost of \$48,250. Staff recommended approval.

CA 2 Acceptance of the FGUA Standard Utility Infrastructure Conveyance and Service Agreement with DSW Development Group, L.L.C. for Sunshine Structures, FGUA Developer Project No. 08-005 LED, Located in the Lehigh Acres Utility System

Provided for consideration was the FGUA Standard Utility Infrastructure Conveyance and Service Agreement with DSW Development Group, L.L.C. located in the Lehigh Acres Utility System. Construction completion is anticipated to be in the first quarter of 2008.

The water facilities to be installed include approximately 40 feet of jack and bore directional drilled 10 inch water main to tap into the existing 10 inch water main located on Lee Street. Additionally, a 2 inch meter and 2 fire hydrants with the associated infrastructure will be conveyed. The wastewater facilities to be installed include approximately 220 feet of 6 inch pipe with a direct tap into the 6 inch force main existing on Westgate Boulevard. The estimated value of the infrastructure is \$30,908.

The agreement was signed for the developer by Richard C. Johnston, who has the authority as the Managing Member of DSW Development Group, L.L.C. Staff recommended approval of the FGUA Standard Utility Infrastructure Conveyance and Service Agreement to provide water and wastewater utility services to DSW Development Group, L.L.C. FGUA Developer Project No. 08-005 LED, located in the Lehigh Acres Utility System.

CA 3 Acceptance of the FGUA Standard Utility Infrastructure Conveyance and Service Agreement with Lehigh Industrial Property L.L.C. for FGUA Developer Project No. 07-055 LED, GPTK Lehigh # 5 in the Lehigh Acres Utility System

Provided for consideration was the FGUA Standard Utility Infrastructure Conveyance and Service Agreement with Lehigh Industrial Property L.L.C. located in the Lehigh Acres Utility System. Construction completion is anticipated to be in the first quarter of 2008.

The water facilities to be installed include a direct tap on the 10 inch water main on Waldo Avenue North that draws water from the existing system. Additionally, a 1 inch meter with the associated infrastructure will be conveyed. The estimated value of the infrastructure is \$3,320. The site will have a privately owned septic system. The agreement was signed for the developer by Manuel Garcia, who has the authority as the Registered Agent of Lehigh Industrial Property L.L.C. Staff

recommended approval of the FGUA Standard Utility Infrastructure Conveyance and Service Agreement to provide water utility services to GPTK Lehigh # 5, FGUA Project No. 07-055 LED located in the Lehigh Acres Utility System.

CA 4 Acceptance of the FGUA Standard Utility Infrastructure Conveyance and Service Agreement with CHKO Group, L.L.C. for Developer Project No. 07-096 LED, Parks Medical Complex Located in the Lehigh Acres Utility System

Provided for consideration was the FGUA Standard Utility Infrastructure Conveyance and Service Agreement with CHKO Group, L.L.C. for Developer Project No. 07-096 LED, Parks Medical Complex located within the Lehigh Acres Utility System. Construction completion is anticipated to be in the first Quarter of 2008.

The wastewater facilities from Parks Medical Complex will connect to the existing sewer manhole # MH 860 near the complex on Business Way that connects to the collection transmission system. The water facilities to be installed include a 1 inch water main on Business Way that draws water from the existing 10 inch water main on Business Way. Additionally, a ¾ inch meter and the associated appurtenances will be conveyed. The estimated value of the infrastructure is \$9,093. The agreement was signed by Chanun Park as Managing Member of CHKO Group, L.L.C. Staff recommended approval of the FGUA Standard Utility Infrastructure Conveyance and Service Agreement to provide water and wastewater utility services to CHKO Group, L.L.C. FGUA Project No. 07-096 LED, Parks Medical Complex located in the Lehigh Acres Utility System.

CA 5 Acceptance of the Conveyance Close-out Package for Bank Strip Center, FGUA Developer Project 07-026 LED, Located in the Lehigh Acres Utility System in Lee County, Florida

This item was removed from the agenda at the request of the Director of Operations.

CA 6 Acceptance of the Conveyance Close-out Package for JSW Building # 7, FGUA Developer Project 07-029 LED located in the Lehigh Acres Utility System in Lee County, Florida

This item was pulled from the consent agenda for further discussion by General Counsel. Please see the notes below.

CA 7 Acceptance of the Conveyance Close-out Package for Classic Car Wash # 2, FGUA Developer Project 07-041 LED, located in the Lehigh Acres Utility System in Lee County, Florida

This item was removed from the agenda at the request of the Director of Operations.

CA 8 Acceptance of the Conveyance Close-out Package for Lehigh Medical Center, FGUA Developer Project 07-038 LED, Located in the Lehigh Acres Utility System in Lee County, Florida

Provided for the Board's acceptance was the conveyance close-out package for the Lehigh Medical Center, Florida Governmental Utility Authority (FGUA) Developer Project No. 07-038 located in Lee County, Florida. The water facilities being conveyed to the FGUA consist of 64 linear feet of 6-inch water mains and associated infrastructure. The wastewater facilities being conveyed to the FGUA consist of 382 linear feet of 8-inch force mains and associated infrastructure. Both water and wastewater will connect to existing facilities on Beth Stacey Boulevard. The total value of assets being contributed to the FGUA is approximately \$50,000. Bills of Sale were provided with a detailed list of the infrastructure and costs. Staff recommended acceptance of the conveyance close-out package for Lehigh Medical Center.

A motion to approve CA 1, CA 2, CA 3, CA 4 and CA 8 was made by Mr. Doug Meurer and seconded by Mr. Charles Saddler. All were in favor and the motion was unanimously approved.

Mr. Fahmy then requested the Board to consider the additional information provided for agenda item CA 6 Acceptance of the Conveyance Close-out Package for JSW Building # 7, FGUA Developer Project 07-029 LED located in the Lehigh Acres Utility System in Lee County, Florida. The project is located along the south side of Lee Boulevard at 5513 SW 8th Street Lehigh Acres, FL 33971. The water facilities being conveyed to the FGUA consist of 368 linear feet of 10 inch water mains and associated infrastructure. The new 10 inch water main replaces the existing water main that now runs through the property being developed. The new 10 inch water main is being conveyed to FGUA along with an easement. The developer requests that the existing easement be vacated in place of the new easement provided to accommodate the future construction of the required wastewater force main. The wastewater for this building will be conveyed in combination with a future project of the developer. The total value of assets being contributed to the FGUA is approximately \$39,000. Staff recommended acceptance of the conveyance close-out package for the JSW Building #7 Utility Facilities that are located in the Lehigh Acres Utility System, Lee County.

Mr. Fahmy reviewed the revised easement and attorney's affidavit provided and noted that the requested easement vacation would be provided after acceptance of the revised easement by the Board, rerouting of the pipeline, clearance by the FDEP and upon abandonment of the old pipes per regulations.

With no further discussion requested by the members, Chairman Thomas asked for a motion to approve the consent agenda item CA6. Mr. Doug Meurer made a motion to approve items CA6. Mr. Robert Knight seconded the motion. All were in favor and the motion was unanimously approved.

Chairman Thomas then moved on to the Finance and Administration agenda items.

VII - Finance and Administration

FA 1 Other Items

There were no finance and administration items to be presented to the Board.

VIII - Operations

OP 1 Recommendation to Reject All Bids for FGUA Project No. LE 065, Miscellaneous Potable Water Main Projects, in the Lehigh Acres Utility System

Provided for consideration was the Malcolm Pirnie letter of November 28, 2007 recommending rejection of all bids received for FGUA Project No. LE 065 on November 6, 2007. The altered design criteria stipulated by Lee County in its second written response to the Development Review Order, received November 20, 2007, two weeks after bids were received, resulted in a significant increase in construction cost. Also provided for information was a copy of the bid tab, attendance sheet and advertisement for the project. Staff recommended rejection of all bids for FGUA Project No. LE 065, Miscellaneous Potable Water Main Projects, serving the Lehigh Acres Utility System due to changes in design criteria and that it is in the best interest of the FGUA to have this competitively bid rather than change ordered.

Mr. Doug Meurer made a motion to reject all bids for FGUA Project No. LE 065 for miscellaneous potable water mains in the Lehigh Acres Utility System. Mr. Charles Saddler seconded the motion. With no further discussion the motion was unanimously approved.

OP 2 Approval of the Bid Award to Expertech Network Installation (U.S.) Inc. and Authorization for the Chair to execute the Standard Construction Agreement with the low bidder for FGUA Project No. GG014 Base Bid, Golden Gate Wastewater Transmission and Collection System Improvements in the Golden Gate Utility System

Provided for consideration was the proposed bid award to Expertech Network Installation (US) Inc. and a request for authorization for the Chair to execute the Standard Construction Agreement with the low bidder for FGUA Project No GG014 Base Bid, for the construction of 850 lf of six-inch diameter force main and appurtenances in the Golden Gate Utility System. This project will increase capacity of the force mains transporting wastewater to the wastewater treatment plant and is scheduled for completion within 180 days from the issuance of the Notice to Proceed.

The bids for this project were opened and reviewed by FGUA staff December 20, 2007. The lowest base bid price was submitted by Expertech Network Installation (US) Inc., a Nevada corporation and, a Florida licensed company. Therefore, award of this project was recommended to the lowest responsive bidder, Expertech Network Installation in the amount of \$149,219.

Also provided was a letter from the FGUA's engineering consultant, ARCADIS U.S, Inc, with further details on all bids received, and recommending award to Expertech Network Installation (US) Inc. General Counsel reviewed the bids and found Expertech Network's bid responsive. A copy of the advertisement for the project, bid tab (prices include base bid and additive alternate) and attendance sheet were provided for information. Staff recommended approval of the Bid Award to Expertech Network Installation (US) Inc. and authorization for the Chair to execute the Standard Construction Agreement with the low bidder for FGUA Project No. GG014 Base Bid, Golden Gate Wastewater Transmission and Collection System Improvements in the Golden Gate Utility System.

OP 2a Approval of Work Authorization GSG 08-08 with Government Services Group, Inc. for General Inspection Services for Golden Gate Wastewater Transmission and Collection System Improvements, Project No. GG014 Base Bid in the Golden Gate Utility System

Provided for consideration was Work Authorization GSG 08-08 with Government Services Group, Inc. (GSG) who will perform 186 hours of general construction inspection services that will include observation and documentation of the construction of the Golden Gate wastewater transmission and collection system improvements in the Golden Gate Utility System. GSG will provide the information collected and recorded during the inspections to the FGUA's engineer of record for this project, ARCADIS. GSG will review all project documentation gathered in the field and will provide comments and recommendations during project execution prior to placing this project into service as required by the FDEP rules and regulations.

The work authorization provides for GSG to perform general construction inspection services that will include observation and documentation of the construction work performed during the Golden Gate Wastewater Transmission and Collection System Improvements. This project is required to add and replace wastewater collection and force main system pipes as determined necessary to improve hydraulic conditions in the Golden Gate Utility System.

The attached work authorization for inspection services is for a not-to-exceed amount of (\$21,140) (scrivener's error on the agenda abstract the actual work authorization amount was \$21,148.) estimated by the average weekly hours associated with the inspection of this project. Staff recommended approval of Work Authorization GSG 08-08 with Government Services Group, Inc. for general inspection services for the construction of the Golden Gate Wastewater Transmission and Collection System Improvements, GG014 Base Bid, in the Golden Gate Utility System.

Mr. Charles Saddler made a motion to approve items OP2 for the Bid Award to Expertech Network Installation (U.S.) Inc. and Authorization for the Chair to execute the Standard Construction

Agreement with the low bidder for FGUA Project No. GG014 Base Bid, Golden Gate Wastewater Transmission and Collection System Improvements in the Golden Gate Utility System and OP2a for Work Authorization GSG 08-08 with Government Services Group, Inc. for General Inspection Services for the same. Mr. Doug Muerer seconded the motion. With no further discussion the motion was unanimously approved.

OP 3 Status Update on Public Information Meeting Regarding the FGUA Project GG015 Deep Injection Well Construction in the Golden Gate Utility System

Mr. Fahmy informed the Board that the public meeting was successful with approximately 35 residents and Collier County staff attending. The County was extremely satisfied with the FGUA's presentation. However, nine customers with a direct view of the construction have requested compensation for their inconvenience. They believe that they should not have to pay fees. Mr. Fahmy stated that he would present the request to the FGUA Board for consideration. Discussion ensued with Mr. Doug Meurer questioning the bond covenants and if they would allow the waiving of fees for certain individuals. FGUA legal counsel stated that it was most likely not permitted and that the fact would be verified. The Board's consensus was to not provide any special consideration for the nine customers requesting waived fees.

Ms. Hartsfield stated that the County Commissioners had requested a monthly update on the construction. Chairman Thomas asked what the length of the project would be and how many days the twenty-four hour drilling would take place. Mr. Fahmy stated that the entire project should take approximately ten months and that twenty-four hour drilling would last approximately one hundred and sixty days.

OP 4 Acceptance of the FGUA Standard Utility Infrastructure Conveyance and Service Agreement with J. Fergus, Inc for the Developer Project No. 08-004 LED, Advance Auto Parts Located in the Lehigh Acres Utility System

Mr. Fahmy requested that an additional item that was not part of the original agenda be considered by the Board. The FGUA Standard Utility Infrastructure Conveyance and Service Agreement with J. Fergus, Inc for the Developer Project No. 08-004 LED for Advance Auto Parts located in the Lehigh Acres Utility System was presented to the Board. Construction completion is anticipated to be in the first Quarter of 2008. The wastewater facilities will connect to an existing 4 inch wastewater force main on 8th Street. The water facilities to be installed are a 1 inch potable meter with a backflow prevention device with a gate valve and the associated infrastructures which is connected to a 10 inch water main on 8th Street. The estimated value of the infrastructure is \$30,357. The agreement was signed for J. Fergus, Inc by John II C. Fergus, President. Staff recommended approval of the FGUA Utility Infrastructure Conveyance and Service Agreement to provide water and wastewater utility services to J. Fergus, Inc, FGUA Project No. 08-004 LED for Advance Auto Parts located in the Lehigh Acres Utility System.

Mr. Robert Knight made a motion to approve the FGUA Standard Utility Infrastructure Conveyance and Service Agreement with J. Fergus, Inc. for the Developer Project No. 08-004 LED, Advance Auto Parts Located in the Lehigh Acres Utility System. Mr. Charles Saddler seconded the motion and with no further discussion the motion was unanimously approved.

IX - Information Items

IN 1 Status Update on the Florida Governmental Utility Authority (FGUA) Capital Improvement Project (CIP) Program

The Capital Improvement Project Program status bar charts were included in the Board Agenda for their reference.

IN 2 Status Update on the Florida Governmental Utility Authority (FGUA) Community Outreach Program

The Community Outreach Program monthly status report for the previous month was included for review.

IN 3 Minutes of the December 19, 2007 FGUA Utility Advisory Committee Meeting

The minutes of the December 19, 2007 FGUA Utility Advisory Committee Meeting were included for review.

X - System Manager

SM 1 Approval of 2008 Florida Governmental Utility Authority Board of Directors Meeting Schedule

Mr. Sheets presented the revised 2008 FGUA Board Meeting Schedule that was reviewed by the Board and now includes the various association meetings for the year. Mr. Sheets inquired if the Board would prefer holding the strategic planning session in conjunction with the February or March meeting and if they would like the meeting to be facilitated by Dr. Mel Jurado. The Board gave its consensus to hold all of the regular meetings as scheduled, to have the strategic planning session facilitated by Dr. Mel Jurado and for staff to advise if the planning session would be held in February or March as soon as arrangements are made. Mr. Sheets stated that the annual budget and capital improvement plan schedule would be presented to the Board at the February meeting.

SM 2 Other Items

Mr. Sheets informed the Board that 2008 is the 10th year the FGUA has been in operation and asked the Board if they would like staff to plan any type of recognition of the anniversary. Mr. Sheets also stated that because of the official records that have accumulated it is necessary to seriously consider issuing a request for proposals for records management and imaging services. Chairman Thomas suggested that the imaging system that provides document retrieval via the web should be researched. Mr. Sheets stated that either a request for proposals or joint purchasing opportunity (piggy-back) would be presented to the Board no later than March.

Mr. Sheets informed the Board that staff attended the Hendry County Board of County Commissioners meeting on Tuesday, January the 15th and that there has been action taken by Hendry County on becoming a member of the FGUA. The southwest section of the County will be designated as the FGUA's service area. An interlocal will be drafted and presented to the FGUA Board in March.

Mr. Tarek Fahmy provided the Board an update on the water main break that happened in Lehigh Acres. The East County Water Control District was conducting road construction on Coolridge Road and hit the water main coming directly from the plant and caused a major service interruption. The contractor had requested locates but because the field operators didn't use the additional information updating the maps for the recently constructed new line it was not marked. Mr. Ed Goscicki of Severn Trent addressed the Board and stated that the incident should not have happened and that it was an embarrassment. Mr. Robert Knight was concerned about the costs

associated with this incident. Mr. Goscicki stated that the direct costs for the incident will be paid by Severn Trent.

XI - Utility Counsel

UC 1 Other Items

There were no items to be presented to the Board by utility counsel.

XII - General Counsel

GC 1 Acceptance of Outstanding Encumbrance on Westgate Regional Centre Conveyance

In November 2007, the FGUA Board accepted conveyance of utility conveyances for Westgate Regional Centre subject to receipt of an acceptable title insurance policy covering these conveyances. The title policy was offered by the developer in lieu of the standard attorney's affidavit of title. The developer has subsequently provided a title commitment indicating the exceptions to coverage proposed and the General Counsel objected to a number of these proposed exceptions. All of the exceptions to coverage objected to by the General Counsel have been removed except one. The remaining coverage exception involves a declaration of restrictions recorded at Official Records Book 1976, Page 1466 of the public records of Lee County. Essentially this declaration of restrictions restricts the use of the parcels being conveyed and places a reservation for easements on the parcels. The General Counsel has argued that the Florida Supreme Court's ruling in *Ryan v. Manalapan*, 414 So. 2d 193, 196 (Fla. 1982) (holding "restrictive covenants are no more enforceable against a governmental body when it acquires land for public purposes by purchase than they are when it does so by eminent domain") indicates that no part of a declaration of restrictions is applicable to FGUA acquisitions. The title company has agreed that most of the restrictions outlined in the declaration are not title encumbrances for the FGUA but insists that the alleged easement reservations are still encumbrances on the title. Consequently, the title company has agreed to limit its exception to coverage to only the alleged easements that were created by the document. This still leaves the possibility that in the future someone could try to place utilities on the property interests conveyed to the FGUA by claiming that the parcels were subject to the easements described in the declaration of restrictions – and if this were to happen, the title policy would not pay to defend the title.

General Counsel advised the Board as follows:

1. It is the General Counsel's opinion that the Florida Supreme Court's ruling in *Ryan v. Manalapan* precludes such easement creation in the future as such easement would arise from a declaration of restrictions which the Court finds inapplicable to governmental property. However, Florida courts have yet to decide a case directly analogous to this situation.
2. Even if a court were to find that *Ryan v. Manalapan* did not protect the FGUA property, the alleged easement arising from the declaration of restrictions is limited to only the 6 feet of the property adjacent to the property boundaries. Consequently, the easement would not likely interfere with the FGUA's use of the utilities located within the parcel and even if there was a conflict, FGUA could argue that, as a utility provider, it too has the same right of easement under the declaration of restrictions and that it has a prior existing use that is superior to and protected from any subsequent inconsistent use.
3. It does not appear that the developer obtained enough of the original declarant's land to allow it to amend the covenant to remove the title encumbrance.
4. In light of these facts, the General Counsel opines that the risk of this title encumbrance is low to moderate.

Mr. Robert Knight made a motion to accept the outstanding encumbrance on the Westgate Regional Centre Conveyance and authorize the clerk to record the required documents. Mr. Doug Meurer seconded the motion and with no further discussion the motion was unanimously approved.

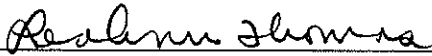
GC 2 Other items

There were no other general counsel items to be discussed.

XIII - Board Items

BD 1 Other Items

With no further items to be considered by the Board the meeting adjourned at 1:47 p.m.



Lea Ann Thomas, Chair