



Interoffice Memorandum

Minutes

Alafaya Trail (Avalon) Special Meeting

March 3, 2008

Members Present: Renzo Nastasi – Transportation Planning Division
Joe Kunkel – Public Works Engineering Division

County Staff Present: Brian Sanders – Transportation Planning Division
Roberta Alfonso – County Attorney's Office
Benj Hurt – Real Estate Management
Rita Gonzalez – Transportation Planning

Others Present: Beat Khali – Avalon Associates
Eric Marks – Avalon Associates
Jim Pratt – Graham, Builder et al

Mr. Nastasi opened the meeting at 11:08 a.m. stating that Mr. Lalchandani and Mr. Heath were briefed on Mr. Khali's proposal in general terms, as to what was provided to the County, and informed Mr. Khali that the County may want to go in a different direction if the parties can come to an agreement.

Mr. Kahli stated that in the best interest to the tax payers of Orange County, he has a more aligned idea. He is willing to perform on the present agreement but would like the opportunity to give a full presentation to the Board of County Commissioners.

Mr. Nastasi informed Mr. Khali that the County wants to continue the relationship and that this project is scheduled for a briefing at the Board of County Commissioners within the next 30 days. At that time the Board will want to know when and how this road will be built.

Mr. Nastasi added that the County is anxious to complete the survey and the Right-of-Way maps which are not yet finalized.

Mr. Kahli stated that the County needs to use leverage with Miller Sellen and Bowyer Singleton to get results in resolving these issues.

Mr. Nastasi stated that we have Mr. Cain's letter and that the County will pursue getting those issues resolved.

Mr. Nastasi stated that the major acquisitions needed are the Right-of-Way, the Pond at Stone Forest, and two corner clips for a signal. The other issues are temporary construction easements which may be resolved. The Right-of-Way needs are narrowing, the other ponds are on County property and the County will work with Utilities to secure those properties.

Mr. Sanders stated that there was a reconfiguring of the Ponds which provided the buffering desired, but we cannot install the traffic signal because it needs to meet warrants. There are conservation easement areas identified, but were never recorded and this is another issue which needs to be addressed.

Mr. Marks brought up the need for the corner clip and stated that there are issues they need to address with OUC in connection with the Park.

Mr. Nastasi explained the proposal, stressing that we have two signed existing agreements; the Avalon and the Morgran Agreements. He stated that the construction costs would be around \$25M and pursuant to the agreement, \$3.2M would be coming from the Morgran Agreement, and approximately \$2.5M from the Avalon escrow.

Mr. Khali thinks there is an error in the escrow account and it should be more like \$3.5M and that amount is accruing.

Mr. Nastasi stated that the County would be willing to cash fund some portion of that and that the balance would be package of impact fee credits and some cash.

Mr. Nastasi proposed that maybe \$5M should be in cash which would leave \$10M, which would be available for impact fee credits as opposed to the \$20M as it stands today.

Mr. Kunkel suggested that there would be \$7-10M available from the Morgran/Avalon Agreements which would make it \$15/18M short that would have to be funded by some mechanism to get the project into construction. We need to look at what can we do in the way of cash funding, also look at what we might have in impact fees and other revenue sources, and then the remainder would be paid in impact fee credits to Avalon. Mr. Kunkel asked what number would be suitable for Mr. Khali if \$18M was too high.

Mr. Khali stated that in 2001 the County had the money to build the road and chose not too widen the road, and now the County wants to give them impact fee credit.

Mr. Kunkel questioned the logic from the County's perspective and asked why the County would collect \$3.2M to go towards construction and then give it to Avalon in addition to the cost of the impact fees. Mr. Khali responded because he is financing the road. Mr. Kunkel asked then why do you want 6% overall plus 4% on top of that?

Mr. Sanders questioned the 100% impact fees for the cost of construction and on top of that you want the \$3.2M. Mr. Khali responded that it is in the agreement and it is clear.

Ms. Alfonso questioned their interpretation of the agreement where it states "get credit for your cost except for the third party cost that you may choose to use to pay for construction" as contemplated in Section 6. She explained how she interprets the language in Section 6 which was the same as Mr. Nastasi, but Mr. Khali, Mr. Marks and Mr. Pratt do not interpret the agreement in the same way.

Mr. Pratt referenced Section 3B which states 100% construction costs shall be credited in intervals as work is performed.

Mr. Khali asked why he should volunteer to finance a road and pay for everything. He stated that he would publicly bid the road if the County would not; he would finance the road but would not compete with the County, it would be at the County's cost. Mr. Khali suggested using an outside Auditing firm.

Mr. Nastasi stated that the County had made a decision to utilize impact fee money for transportation issues.

Mr. Khali proposed that we use the Morgran money and County money to fund and construct the road.

Mr. Nastasi restated his proposal to utilize the funds to construct the road and ask Avalon to fund a certain portion of the road in exchange for road impact fee credits at a lower number of impact fee credits.

Mr. Nastasi informed Mr. Khali that the County cannot accept his proposal as submitted. There would have to be some renegotiating and restructuring of the existing agreement. There is a process and a protocol that the County needs to follow.

Mr. Pratt feels that the County's response is not responsive to the explanations as to what was wrong with the existing agreement and how the new agreement would serve to benefit everyone. It was received as self interest which is not the case.

Mr. Nastasi stated that at issue is an existing agreement and pursuant to that agreement Avalon is responsible for constructing the road and will receive road impact fee credits for the construction of the road.

The County is willing to meet them half way, put in some cash, utilize the funding that is available and do the construction of the road.

Mr. Nastasi stated that under a renegotiated agreement the County would construct the road.

Mr. Khali asked why not finance the road yourself.

Mr. Marks stated that the cul-de-sac is a problem and the road needs to be built.

Mr. Khali asked why we are not accepting his proposal.

Ms. Alfonso asked whether Mr. Khali was not happy with the original agreement and if that is why he came back to Roadway Agreement Committee. The agreement brought to the Committee was not reviewed. Comments can be addressed before hand and then brought to the committee for approval.

Mr. Nastasi stated that overhead cannot be paid with impact fees.

Mr. Marks suggested going to Morgran to resolve some of the existing issues, and that there are ways to solve every one of the County's concerns.

Mr. Nastasi stated that all are in agreement that the existing agreement may not be the best for all parties involved, but what is being proposed as it stands today is not something the County can pursue.

Mr. Kunkel stated that public bidding is the better way to go. What was identified in the agreement was that we would look at two recently bid projects (hard construction costs) to come up with a cost per foot or cost to the County.

Mr. Marks stated that the second element would be the financing. Avalon proposed to finance the project and the County would pay them back through road impact fee credits over a 6 year period. Versus, Avalon collecting all the impact fees (all \$4M or maybe \$12 M), and giving the County a very specific number (budget) so the County would know how much money would be paid to Avalon.

Mr. Pratt stated that they expect costs to go down about 20% and they would be able to market the impact fees, mark them down and sell them quickly at a discount of about 15%. Avalon would lose the benefit if they go out to public bid, so the preference as a consequence, would be cash payment versus road impact fee credits.

Mr. Khali restated his position.

Mr. Nastasi informed him that the management fee is a problem and a bigger issue is over a stretch of 5-6 years, taking a proportion of impact fees for the area and shifting them making it available to finance the project plus an interest rate.

Mr. Nastasi stated that the way the proposal is written right now has the road funded by cash. These road impact fees are revenue that the county expects within a certain timeframe would be made available to the developer to utilize in exchange for services, it's not hard cash. Impact fees are to be used for transportation projects in that zone.

Mr. Nastasi asked if Mr. Khali was looking for cash as opposed to impact fee credits. There is a big difference.

Mr. Khali responded yes.

Mr. Nastasi asked Mr. Khali if \$15M or \$10M was unacceptable. Mr. Khali stated it is unacceptable.

The current agreement finances the discount rate and cost to carry over the period of time it takes to sell.

The County inquired where is the funding would be allocated from?

Avalon is willing to work with the County.

Mr. Nastasi stated that what the County has done in the past is pipelined money to particular projects over a period of time, but would have to need to arrive at a dollar amount for the construction value, in order to have a better perspective for the committee.

For the County it is dealing with the unknown. The County is committed to other projects in this District.

Mr. Nastasi stated using 80% rather than 1/6th. Would need to agree on the ultimate cost of the project, the appropriate time frame, and the amount yearly.

Avalon seemed to think this was ok, but needs to do a methodology.

Mr. Nastasi questioned who would build the road. Mr. Khali responded Avalon would build it.

Mr. Nastasi stated there may be an issue with the overhead, some other issues and at the end; the County may have to fall back to the original agreement. The way this proposal stands at present is not acceptable.

At the Roadway Agreement Committee there will discussion of pipelining the impact fees after the cost of construction is established to determine the timeframe. Need to wait for the design to be complete before going out and bid.

It was suggested that Avalon provide a term sheet with bullet points to distribute to the Roadway Agreement Committee instead of making changes to the Agreement due to timing.

Avalon is preparing a 15 minute presentation for the Committee to try and convince the members that there is an advantage to the County.

Mr. Nastasi stated that County staff is looking for a fixed amount and an Agreement that makes sense.

Meeting adjourned at 12:55 p.m.