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LAND USE • REAL ESTATE • ENVIRONMENTAL LAW

December 17, 2009

The Honorable Ken Hagan
Hillsborough County Commissioner
601 E. Kennedy Boulevard
Tampa, FL 33602

Re: Appraisal of Cone Ranch

Dear Commissioner Hagan:

I was pleased to be appointed to serve on the Cone Ranch Advisory Committee, and very pleased yesterday that the Board of County Commissioners voted to accept the committee's recommendation to transfer the Cone Ranch property to the Environmental Lands Acquisition and Preservation Program (ELAPP). However, I am concerned that the BOCC also voted to obtain very costly appraisals of the property.

Utility and Commerce Administrator Mr. Mike Merrill informed the BOCC yesterday that the bond covenants require any sale of the Cone Ranch property to be at a fair market price based on highest and best use as determined by an appraisal. However, an examination of the bond covenants reveals that this is not the case. Therefore, it would be an unnecessary and irresponsible expenditure of taxpayers' money for the county to obtain costly real estate appraisals since the bond covenants do not require an appraisal and also do not require the property be sold for fair market value based on highest and best use.

The Cone Ranch Advisory Committee was also informed by county staff and the water department's bond attorney that the bond covenants require any sale of Cone Ranch property to be in an arm's length transaction, for fair market value based on highest and best use, which would require comparison of possibly three to four appraisals. These claims were repeated at almost every meeting of the advisory committee; however, the committee was never provided a copy of the bond covenant provisions, and I regret that we did not request a copy. Yesterday at the BOCC meeting a member of the public provided me with a copy of the bond covenants that had been obtained through a public records request. It was not until then that I became aware of the actual provisions.

In particular, section 11.07 of the Amended and Restated Utility System Bond Resolution, R03-112 (Bond Covenants) governs the sale of the "System." A copy of this provision is enclosed with this letter. The Bond Covenants define the "System" to include all of the utility properties, owned or leased by Hillsborough County, that supply, distribute, or treat water and wastewater services that are operated and maintained by Hillsborough County. Therefore, it is not clear that Cone Ranch is even part of the "System" since it does not supply, distribute, or treat water and wastewater services. Nevertheless, even if Cone Ranch is part of the "System," section 11.07 of the Bond Covenants does not require an appraisal for sale of the "System."

On the contrary, section 11.07 states that the "Issuer," which is defined as Hillsborough County, will not sell or otherwise dispose of property of the System having a fair market value of that exceeds \$500,000, unless a procedure is followed to determine that the property is surplus. That procedure requires the following three steps: (1) the Director of the Water Department must find the property is "no longer necessary, useful or profitable in the operations of the System;" (2) a Qualified Independent Consultant must find it is in the best interest of Hillsborough County to sell or dispose of the property; and (3) the Governing Body, defined as the Board of County Commissioners, must adopt a resolution concurring with the findings of the director and consultant and authorizing disposition. Bond Covenants, §11.07(1)(b).

Thus, the Bond Covenants do not require a determination or finding of exactly what the fair market value of the Cone Ranch property is. They require only that a procedure be followed to make findings that the property is no longer necessary, useful, or profitable, and that procedure is required only if a determination is first made by a Qualified Independent Consultant that the fair market value of the property exceeds \$500,000. It is unnecessary to obtain a costly formal appraisal to determine that the fair market value of the 13,000-acre Cone Ranch property exceeds \$500,000. In fact, Mr. Jim Roberts, who is a representative of the water department, wrote in an email to a member of the public that "the book value of Cone Ranch is \$12,189,394, the amount paid for the property in 1988."

In addition, the Bond Covenants define "Qualified Independent Consultant" broadly as any one or more "qualified and recognized" consultants having the reputation, skill, and experience necessary to perform the acts and duties required. There are undoubtedly persons who meet this definition who are qualified to determine that the fair market value of the Cone Ranch property exceeds \$500,000. For example, a professional accountant might make such a determination by reference to the value of the Cone Ranch property as reflected on the water department's balance sheet referred to by Mr. Roberts as stated above, or the water department's most recent audit report. In addition, a professional realtor or real estate appraiser might make such a determination by reference to the price Hillsborough County originally paid to acquire Cone Ranch, or by comparison of sales of similar lands. In either case, a costly formal appraisal is not necessary.

The Bond Covenants also require that the proceeds from the sale or disposition of any part of the System must be placed in the utility's Renewal and Replacement Account if the proceeds are less than ten percent of the fair market value of the fixed assets of the System as

Commissioner Ken Hagan

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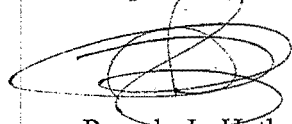
reflected on the most recent audit report. §11.07(2)(a), Bond Covenants. Of course, this determination can be made by comparing the actual sale price of the disposed property with the total value of the System fixed assets. Thus, an appraisal of the Cone Ranch property is not necessary to satisfy this provision either.

I discussed these provisions yesterday with Utilities and Commerce Administrator Mr. Mike Merrill, and bond counsel Mr. Mark-David Adams. They both acknowledged that the Bond Covenant provisions do not expressly require an appraisal for disposition of System properties. However, Mr. Adams argued that the utility always obtains appraisals before disposing of property, and anyway the bondholders might be concerned if an appraisal were not obtained. To the contrary, I would argue that both the bondholders and the taxpayers would be concerned if they knew the county wastes public money obtaining costly appraisals that are unnecessary. In addition, the BOCC's decision yesterday was to transfer the Cone Ranch property to ELAPP; not to sell it to a third party in an arm's length transaction. If this were an ordinary arm's length sale, an appraisal would customarily be obtained and paid for by the purchaser.

Finally, the BOCC's decision to transfer the Cone Ranch property to ELAPP does not involve a title transfer at all. The county acquired the Cone Ranch property in 1988, and financed the purchase by issuing bonds that were secured by a covenant to appropriate from the county's non-ad valorem revenues. (See June 29, 2009 presentation by Mark-David Adams, Edwards, Angell, Palmer & Dodge, LLP.) Thus, the Cone Ranch property became a county real estate asset, titled in the name of the county, financed by issuance of tax revenue bonds. In 1991 those 1988 bonds were refinanced with utility revenue bonds, and control of the Cone Ranch property was transferred to the water department. Apparently no costly appraisals were necessary for that transfer to take place, notwithstanding the bond covenants encumbering the county's assets. Moreover, the title to the property did not change; it is still owned by the county as originally titled. Thus, to transfer the property out of the water department and into ELAPP should be no more complicated than the original transfer of the property from a general county real estate asset into the water department, notwithstanding the current bond covenants.

In conclusion, obtaining costly appraisals in order to transfer the Cone Ranch property from the water department to ELAPP is an unnecessary waste of taxpayer's money. I urge the BOCC to revisit its decision authorizing such appraisals.

Respectfully,

A handwritten signature in black ink, appearing to read "Pamela Jo Hatley", is written over a circular stamp or seal.

Pamela Jo Hatley

RESOLUTION NO. R03-112

AMENDED AND RESTATED
UTILITY SYSTEM BOND RESOLUTION

ORIGINALLY ADOPTED AS RESOLUTION NO. R98-154
BY THE BOARD OF COUNTY COMMISSIONERS
OF HILLSBOROUGH COUNTY, FLORIDA ON AUGUST 5, 1998

HILLSBOROUGH COUNTY, FLORIDA

As Issuer

RESOLUTION NO. R03-112

A RESOLUTION AMENDING AND RESTATING IN ITS ENTIRETY RESOLUTION NO. R01-068 ENTITLED: "A RESOLUTION AMENDING AND RESTATING IN ITS ENTIRETY RESOLUTION NO. R98-154; AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$225,000,000 JUNIOR LIEN REFUNDING UTILITY REVENUE BONDS, SERIES 2001, OF HILLSBOROUGH COUNTY, FLORIDA, TO BE APPLIED TO REFUND OUTSTANDING UTILITY REVENUE BONDS OF THE COUNTY; PROVIDING FOR ISSUANCE OF ADDITIONAL PARITY BONDS; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SUCH BONDS; PROVIDING FOR THE PAYMENT THEREOF SOLELY FROM CERTAIN PLEDGED REVENUES; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE"; REPEALING RESOLUTION NO. R85-0225, AS SUPPLEMENTED AND AMENDED, UPON THE EFFECTIVE DATE HEREOF; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Upon motion by Commissioner Castor,
seconded by Commissioner Frank, the following resolution was
adopted by a vote of 6 to 0, with Commissioner(s) _____,
_____ voting No; Commissioner(s) Platt
being absent.

WHEREAS, Hillsborough County, Florida (the "Issuer") previously adopted Resolution No. R98-154 on August 5, 1998 (the "Original 1998 Resolution"); and

WHEREAS, the Issuer previously adopted Resolution No. R01-068 on April 4, 2001, amending and restating in its entirety the Original 1998 Resolution, and thereafter adopted Resolution No. R01-084 on April 18, 2001 which amended and supplemented the same (collectively, the "Original 2001 Resolution"); and

WHEREAS, pursuant to the Original 2001 Resolution, on May 17, 2001, the Issuer issued its \$186,105,000 in original aggregate principal amount of Hillsborough County, Florida Junior Lien Refunding Utility Revenue Bonds, Series 2001 (the "Series 2001 Bonds") to refund outstanding utility revenue bonds of the Issuer; and

WHEREAS, on February 4, 2002, the Issuer entered into a forward interest rate swaption agreement (the "Interest Rate Swap Agreement") relating to a future refunding of its \$176,700,000 in original aggregate principal amount of Hillsborough County, Florida Refunding Utility Revenue Bonds, Series 1993 (the "Series 1993 Bonds"); and

(net of pre-issuance accrued interest) shall be substituted for the original stated principal amount if that Series of Bonds is sold at either a net original issue discount or premium exceeding two percent (2%) of its stated redemption price at maturity, and (b) to the extent that no Bonds of a particular Series are Outstanding any longer, the aggregated stated original principal amount for such Series shall be deemed to equal zero).

"Resolution" means this Amended and Restated Utility System Bond Resolution as adopted by the Issuer.

"Serial Bonds" means all Bonds of a Series other than Term Bonds.

"Series" means any portion of the Bonds of an issue authenticated and delivered in a single transaction, payable from an identical source of revenue and identified pursuant to the Subsequent Resolution authorizing such Bonds as a separate Series of Bonds, regardless of variations in maturity, interest rate, Amortization Installments or other provisions, and any Bonds thereafter authenticated and delivered in lieu of or in substitution of a Series of Bonds issued pursuant to this Resolution.

"Series 2001 Bonds" shall have the meaning ascribed thereto in Section 6.01(B) of this Resolution, and in the whereas clauses above.

"Series 1993 Bonds" has the meaning ascribed thereto in the whereas clauses above.

"S&P" means Standard & Poor's Credit Market Services, a corporation organized and existing under the laws of the State of New York, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

"Subordinate Indebtedness" means any bonds, notes or other evidences of indebtedness which are by their terms junior and subordinate in all respect to the Bonds authorized to be issued under this Resolution in accordance with Section 11.14 hereof.

"Subordinate Indebtedness Account" means the Subordinate Indebtedness Account created and established pursuant to Section 9.01 of this Resolution.

"Subsequent Resolution" means a resolution of the Issuer adopted subsequent to the date of this Resolution.

"Swap Obligations Account" means the Swap Obligations Account created and established pursuant to Section 9.01 of this Resolution.

"System" means the complete utility properties (including the Water System and the Wastewater System) supplying, distributing and treating water and wastewater services (including reclaimed water services) now or hereafter, operated and maintained by the Issuer, whether owned by or leased by the Issuer, together with any and all improvements, extensions and additions thereto hereafter constructed or acquired and other related or similar services the Governing Body directs to be operated and maintained by the Department as part of the System.

(2) As soon as practicable after the end of each quarter, the Director of the Water Department shall certify to the Governing Body that the System is in compliance with the then applicable covenants of this Resolution (other than the rate covenant) during the quarter just ended.

(3) A copy of each audit and report shall be available for inspection at the offices of the Issuer and shall be promptly mailed to any Bondholder requesting the same.

Section 11.07. No Mortgage or Sale of the System.

(1) The Issuer will not mortgage, pledge or otherwise encumber the System. The Issuer will not sell or otherwise dispose of any property of the System if the fair market value of the property in question as determined by the Qualified Independent Consultant:

(a) does not exceed \$500,000, unless the Director of the Water Department first finds in writing that such property is no longer necessary, useful or profitable in the operations of the Issuer;

(b) exceeds \$500,000, unless (i) the Director of the Water Department first finds in writing that such property is no longer necessary, useful or profitable in the operations of the System, (ii) next the Qualified Independent Consultant finds in writing that it is in the best interest of the Issuer that such property be sold or disposed of, and (iii) then the Governing Body, by resolution, concurs in the findings of the Director of the Water Department and of the Qualified Independent Consultant, and authorizes the sale or other disposition of such property.

(2)(a) if any sale proceeds received from the disposition of the property in question are less than ten percent (10%) of the fair market value of the fixed assets of the System as determined from the most recent audit report, the proceeds shall be placed in the Renewal and Replacement Account.

(b) If any sale proceeds received from the disposition of the property in question are ten percent (10%) or more of the fair market value of the fixed assets of the System from the most recent audit report, the proceeds shall be placed in the Debt Service Account to be used to redeem Bonds as provided in Section 9.07(3).

(3) Notwithstanding anything in the foregoing paragraphs (1) and (2) of this Section 11.07 to the contrary, the Issuer shall have and hereby expressly reserves the right to sell, lease, donate or otherwise dispose of any of the property comprising a part of the System which shall have become unserviceable, inadequate, obsolete, worn out, or unfit to be used in the operation of the System or is no longer necessary, useful or profitable in such operation if (i) such finding is made in writing by the Director of the Water Department, and (ii) if the property is real property totaling more than 15,000 square feet, the fair market value as determined by a Qualified Independent Consultant of the real property in question is not more than \$100,000.