

MINUTES OF A SPECIAL MEETING OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, HELD IN THE CITY HALL COMMISSION CHAMBERS, 100 NORTH U.S. #1, FORT PIERCE, FLORIDA, AT 3:00 P.M. ON TUESDAY, OCTOBER 13, 2009.

Mayor Benton called the meeting to order at 3:07 p.m.

The Pledge of Allegiance was recited.

Upon Roll Call, those present were: Mayor Robert J. Benton; Commissioners Rufus Alexander, Edward Becht, Christine Coke, and Reginald Sessions; City Manager David Recor; City Attorney Robert Schwerer; and City Clerk Cassandra Steele. Those absent: None. (Mayor Benton left the meeting at 3:45 p.m.)

The purpose of the Special Meeting was Joint Strategy Workshop prior to the Joint Meeting to be held on October 16, 2009, concerning Fort Pierce Resolution No. 09-23, Initiating process for negotiation of an Interlocal Service Boundary Agreement with the City of Port St. Lucie, and Port St. Lucie Resolution No. 09-R79, Responding to City of Fort Pierce Resolution No. 09-23, St. Lucie County Resolution No. 09-176, Responding to an Initiating Resolution of the City of Fort Pierce, and Fort Pierce Utilities Authority Resolution No. U.A. 2009-09, Setting forth its position on proposed water and wastewater service by the City of Port St. Lucie to areas north of Midway Road.

Agenda Items: (a) Review October 16, 2009 Joint Meeting Agenda; (b) Review aerial map of FPUA Bulk Service Area; (c) Discuss Interlocal Agreement between the City of Fort Pierce, the Fort Pierce Utilities Authority, and St. Lucie County - Bulk Service Agreement; (d) Discuss 1994 Agreement of Transfer of County Utility Systems by and between St. Lucie County and the City of Port St. Lucie; (e) Discuss FPUA cost estimate for Utility Improvements to serve the proposed Flatwoods Development; and (f) Discuss other Negotiation Strategies.

City Manager Recor said the City has embarked upon a formal process called out in the Florida Statutes, Chapter 171, Part II, Interlocal Service Boundary Agreement Act. The Agenda is driven by the Resolutions that were adopted by the City of Fort Pierce and by the City of Port St. Lucie. Two other jurisdictions have also adopted Resolutions as interested and affected parties - the Fort Pierce Utilities Authority and St. Lucie County. The Agenda for the Joint Meeting on October 16th identifies the issues that the City included in its Initiating Resolution, the things the City wants to talk about; the City of Port St. Lucie's Responding Resolution identifies the issues Port St. Lucie wants to talk about; and the issue that St. Lucie County stated in its Responding Resolution is on that Agenda as well for discussion. In preparing this Strategic Planning Workshop, staff tried to put together as much information as possible to give the Commission sufficient information to make informed decisions. These are policy decisions. The Joint Meeting on Friday is unprecedented as far as he knows. He is not aware of an occasion where the 15 elected officials and the Utilities Authority Board have gotten together to talk about planning issues as those affect each of their jurisdictions. So not only have they included as far as the background information for today's meeting, the resolution, but there is an aerial map

that shows the FPUA Bulk Service Area and a copy of the Bulk Service Agreement, and the original 1994 Agreement of Transfer of Utility Systems between St. Lucie County and Port St. Lucie that has a Service Area Map attached to it. The FPUA and Mr. Thiess have been very cooperative and have actually provided most of the background information. The FPUA has provided a cost estimate for the infrastructure improvements that would be necessary to service the development formerly known as The Provinces. But while Port St. Lucie has indicated that The Provinces has not come back before them within the 30 days it was supposed to, the purpose of this Joint Meeting is much bigger than that development in and of itself. What he is going to suggest they accomplish today is to make two policy decisions which they hope to achieve on Friday. Number one, that Midway Road will service as the north/south boundary for annexations for the cities of Port St. Lucie and Fort Pierce. The County may have an interest as far as the western boundary, because there is also a western boundary shown on that service map. That is the County's fight. The City's issue on Friday is the establishing, as per the original 1994 Agreement - which is more than a gentleman's agreement, more than a handshake, more than a memorandum of understanding, it is an adopted agreement - that Midway Road is the north/south boundary for annexations for their two jurisdictions. Number two, the second thing they would like to accomplish on Friday, is recognition that the area shown as the FPUA Bulk Service Area is the Utilities Authority's exclusive area for water and sewer, and that Port St. Lucie won't cross Midway Road. There are a handful of instances where the U.A. actually goes south of Midway Road. That can be negotiated. But those are the two primary things they want to accomplish on Friday: (1) North/south boundary for annexations; and (2) Understanding of the U.A.'s exclusive right to provide bulk service within Area B in the bulk service area. All this information given to them is intended to educate them, give them enough information where they can develop these strategies. If there is something else they want to accomplish, they can talk about that today. Does that accurately summarize where they want to go on Friday?

Mayor Benton said he believes so.

Commissioner Coke said Mr. Recor mentioned that the U.A. has gone south of Midway Road. Does he have specific instances they can be educated on now and the circumstances that surrounded that?

Mr. Bill Thiess, Director of Fort Pierce Utilities Authority, said they can prepare a map showing the parcels they serve. It is only a handful of parcels - the Alzheimer's facility, which went out of business shortly after the U.A. hooked them up, and a few more along there that front Midway Road. Port St. Lucie didn't have a water main there at the time.

Commissioner Coke said so there is a circumstance. What she doesn't want to happen is for them to tell Port St. Lucie they can't go north of Midway Road, and then Port St. Lucie says Fort Pierce has gone south of Midway Road already. She would like for the U.A. to be able to say why they did it.

Mr. Thiess said there is not a big customer base there, it is small potatoes compared to the western territory. It is minimal revenue. If they want to clean the boundary up, he thinks the FPUA Board would certainly consider that in a negotiation.

Commissioner Becht said what Mr. Thiess said is, it is a customer base. But the City has a tax base they have to be concerned about. On U.S. #1, even though there may not be a lot of customers, there is a big tax base without a corresponding big expense. At one time Indian River Estates was going to annex to the City, the FPUA made a wonderful offer and Indian River Estates accepted it. Then the County wanted to rebid or readvertise or something. The County handled that. And oddly enough, the results came back that Indian River Estates wanted to go with the County. Port St. Lucie signed off on Indian River Estates and said they did not care. Recently he read in the newspaper - and he does not like relying on what he reads in the newspaper - that Port St. Lucie made a stink about not allowing the County to serve on the south side of Easy Street. So when Mr. Recor goes in and says Midway Road is the dividing line, there have already been discussions that Midway Road is not the dividing line. At one time FPUA was going to go down to Easy Street, because Port St. Lucie said they weren't going to service it.

City Manager Recor said maybe he should include west of 25th Street.

Commissioner Becht said he thinks if they frame the conversation that way, they don't have to talk about what is east of 25th Street.

City Attorney Schwerer said the Resolution says Midway Road west of 25th Street is the area where they have asked that annexations not occur north of Midway Road for Port St. Lucie nor south of Midway Road for Fort Pierce, nor utility service going either way. There was a lawsuit when the Utilities Authority went and serviced... He believes it started with the Alzheimer's facility, but he thinks Port St. Lucie said it started with the church property on the south side of Midway Road. When Port St. Lucie was having a real problem with the developer of the Sharrett DRI, they had stopped their water lines at a point far south of Midway Road, and were not extending the lines into the Sharrett DRI because they were in a legal battle with the developer, they wanted a golf course built and everything else. This church needed water service. The Utilities Authority made a decision to serve it. The City was enjoined in later after the fact.

Commissioner Becht said let's just talk about west of 25th Street.

City Attorney Schwerer said that is west of 25th Street. There are three service areas. He believes Port St. Lucie wants to talk about getting those three or four service accounts hooked to their system.

Commissioner Becht asked it is not on the Agenda for Friday, is

it?

City Attorney Schwerer said it is Port St. Lucie's agenda.

City Manager Recor said identified in their Responding Resolution.

Commissioner Becht said the point he is trying to make is, let's not be hypocritical, let's talk about west of 25th Street and be consistent on that, and still leave them able to wheel and deal east of 25th Street.

City Attorney Schwerer said but those three are west of 25th Street, just on the other side of Selvitz Road.

Commissioner Becht asked FPUA is currently south of Midway Road?

City Attorney Schwerer said yes. But there was a lawsuit. More than one claim was made. The County, Port St. Lucie, the City, and FPUA was part of the lawsuit. He thought they had resolved the lawsuit.

FPUA Attorney Koblegard said there is no conflict with Port St. Lucie on any customers they serve south of Midway Road at this time. If they look at the County's transfer to Port St. Lucie, it follows Midway Road to the St. Lucie River and then it goes south of Midway Road. So that area was open to some extent.

City Attorney Schwerer said it was open when FPUA went in. But Port St. Lucie wants it back now.

FPUA Attorney Koblegard said FPUA had the water there and PSL did not. PSL lost because of that. Also, on Easy Street, the County thought that they would hook up the customers on the south side of Easy Street. Port St. Lucie objected and said Easy Street is the boundary. So the County withdrew and Port St. Lucie is now serving - at a tremendous cost - everyone on the south side of Easy Street. So they cannot raise, to his knowledge, any conflict whatsoever about any property the FPUA serves today south of Midway Road.

Commissioner Becht said that is good news.

City Attorney Schwerer said but Port St. Lucie is still going to talk about it.

FPUA Attorney Koblegard said but he doesn't think they have an argument to make on any other issues other than what they are meeting to talk about.

Commissioner Sessions said they are trying to work something out with PSL. But is Fort Pierce coming to the table with clean hands? They have already breached the agreement by serving the church and the Alzheimer's Center. That is what PSL is going to hold over their heads.

City Manager Recor said it may have been at the time; but it may not necessarily be appropriate now. That is part of the negotiation.

Mr. Thiess said there was no breach of any agreement. The agreement that established this service territory was an agreement between St. Lucie County and Port St. Lucie. The FPUA served those parcels just because there was no water service available from Port St. Lucie. Port St. Lucie did not have water mains in the area at the time.

Commissioner Sessions asked so there was no preexisting agreement?

Mr. Thiess said none whatsoever.

FPUA Attorney Koblegard said there is no conflict in that area today.

City Manager Recor said if Port St. Lucie has an interest now, if they want to withdraw the U.A.'s lines to north of Midway Road, now is the time to have that discussion.

Commissioner Sessions asked in fairness, if they want to abide by this agreement, if it is an issue of just relinquishing services to these two parcels, is that a problem?

Mr. Thiess said he thinks the FPUA Board would be willing to discuss that, because the revenue is minimal, it is not worth fighting over. If the FPUA has something to gain, like keeping PSL south of Midway Road the rest of the way out, that is a no-brainer. They would give up a very little bit and would get insurance for the future.

Commissioner Sessions asked who were the parties in that lawsuit?

FPUA Attorney Koblegard said the City, the U.A., and Port St. Lucie. He does not think the County was in that.

City Attorney Schwerer said he thinks it was the Montana II the County got involved with somehow.

FPUA Attorney Koblegard said they came to mediation on the second phase of that, he thinks.

City Attorney Schwerer said there were two phases to that lawsuit. They refer to it as the Montana territory. He does know it is something PSL wants to talk about. It is in their Responding Resolution. That is what PSL claims is the hypocrisy. That is the typical language, how they refer to it.

Mayor Benton asked doesn't PSL serve north of Midway Road to Tropicana?

Mr. Thiess said yes, they have Tropicana.

City Attorney Schwerer said that was a preexisting service of the County's. The County owned the utility that Port St. Lucie now operates and has greatly expanded. But the original utility was owned by the County. It was sold or transferred to Port St.

Lucie in 1994. All the utilities the County owned were transferred to Port St. Lucie. At the time, that utility was servicing the Tropicana plant north of Midway Road. Under the County's agreement with Port St. Lucie, Port St. Lucie was allowed to continue to serve that.

Commissioner Coke asked why didn't the FPUA object to that?

City Attorney Schwerer said they were not able to claim any territory because that was not... In order to stake out a territory, they have to do some things legally. They have to declare it as their territory and adopt a resolution or ordinance, go through the public hearing process, and then they have to put the lines in the ground to serve the area. Those lines were preexisting at the time, the County had already declared that as their territory. So there was no objection the FPUA could have legally raised, even if they wanted to.

FPUA Attorney Koblegard said they never had any argument over Tropicana during his time and he doesn't recall Buck Bryan (former FPUA Attorney) ever mentioning it before.

Commissioner Coke asked if they have already allowed PSL through whatever means to service north of Midway Road, doesn't that give them a precedent already?

FPUA Attorney Koblegard said FPUA didn't have any lines in the ground at that time, nor have they ever declared that as an area to serve. That keeps them outside of that being a position they could take.

Commissioner Coke said she understands they didn't declare it and couldn't serve it. But her concern is, PSL is already north of Midway Road.

Commissioner Sessions asked but wasn't that before the Transfer Agreement was put in place? Wasn't it preexisting?

City Attorney Schwerer said yes.

Mayor Benton said he thinks they had a gentleman's agreement that when the day comes that FPUA has pipes in the ground on the north side and PSL has it on the south side, eventually those few that are being served by one would be served by the other.

Commissioner Coke said so they will give PSL the Alzheimer's Center and PSL will give them Tropicana.

Mayor Benton said he thinks that was the understanding, whenever the lines are in and build-out occurs.

Mr. Thiess said that makes sense. He doesn't recall ever talking about that. Port St. Lucie eventually ran a main down Midway Road on the south side. FPUA's main is on the north side of Midway Road. Presumably, PSL could serve all the other parcels there anyway, because their main comes down and connects at 25th Street. So FPUA would never pick up any more customers over there. They have just less than a handful, so...

City Attorney Schwerer said but they would be required to pay the service hook-up fees and everything to PSL.

Mr. Thiess said normally when something goes like that, the FPUA would give the customer back the impact fees they had paid, and then the customer would pay the impact fees to the other side. They have done that already with some residential properties on Saeger Avenue. FPUA has a main on Saeger Avenue between Citrus Avenue and Oleander Avenue. Port St. Lucie doesn't have a main. FPUA went ahead and served them. They talked to PSL's utility people and just handled it at a lower level. Whenever PSL runs a main down here, FPUA will refund the impact fees, disconnect, and then PSL has them. They are not interested in grabbing little bits of territory down there, it is not worth fighting over.

Commissioner Becht said before he can intelligently negotiate either giving away or not giving away those properties, he needs to know whether those have been annexed or not annexed into the City, and what changing the services from FPUA to PSL utilities means in terms of the provision of other services. Do they have a map that can show them where the FPUA line on the north side of Midway Road stops and connects with a County line on the north side of Midway Road?

Mr. Thiess said they don't connect with the County on Midway Road at all.

Commissioner Becht asked so those lines on the north side of Midway Road are FPUA's?

Mr. Thiess said FPUA lines on the north side of Midway Road, roughly between the Midway Industrial Park going back east. The aerial map they have shows part of that, but it doesn't show all the way back to 25th Street. Commissioner Becht said they don't have the right to have retail service on the west side of I-95 as those things exist today. That being said, the FPUA has lines west and into the County retail service area. Is that what Mr. Thiess is telling him? Show him on a map where the FPUA lines are on the north side of Midway Road. What he heard him say was, the County does not have lines on the west side of Midway Road.

Mr. Thiess said no, FPUA is on the north side.

City Attorney Schwerer said the west side by I-95, they have lines. It bypasses the Tropicana property.

Mr. Thiess said this is Area A and Area B on the map. They have a bulk connection point at Okeechobee Road and the Turnpike.

Commissioner Becht said he is more concerned with Midway Road.

Mr. Thiess said the County has a 12-inch loop that goes to the Fairgrounds, it comes down and deadends somewhere around the Landfill.

Commissioner Becht asked is there water in that line?

Mr. Thiess said there is water in it; but he does not think there are any customers on it.

Commissioner Becht asked legally does that matter if there are customers or not? He thought the legal requirement was, there is water in the line.

Mr. Thiess said as far as protecting that service territory north of Midway Road, there is water in the line and it is pressurized, to his knowledge.

Commissioner Becht asked where does the FPUA line...?

Mr. Thiess said eventually the County intends to connect that line to the FPUA's 12-inch mains on the other side of the Turnpike.

Commissioner Becht asked so FPUA is still east of the Turnpike?

Mr. Thiess said yes. These are the FPUA's 12-inch mains through Midway Industrial Park.

Commissioner Becht asked there is no connection between the FPUA line on the east side of the Turnpike and where the County deadends on the west side of the Turnpike?

Mr. Thiess said no, not yet. They would have to bore the Turnpike. This the 12-inch line that serves the Alzheimer facility and the church. That comes all the way down and continues east on Midway Road.

City Manager Recor asked isn't that included in the estimated cost of infrastructure improvements to service Flatwoods?

Mr. Thiess said yes.

Commissioner Becht asked is the connection to get out there and improve the County line so it has the capacity they are looking for, and connect it? Also, wastewater issues as well, is that in the \$5 million figure?

Mr. Thiess said yes.

Commissioner Becht asked where is Tropicana on the map? So Tropicana is kind of in the heart of the area. If they are going to negotiate with losing a couple of little accounts on the south side of Midway - so they can lose the hypocrisy PSL is complaining about - then FPUA picks up Tropicana on the north side and PSL will pick up these little accounts on the south side.

Mr. Thiess said that would clean up the boundary.

Commissioner Becht said that would eliminate the hypocrisy PSL is so concerned about. He would like to accommodate them.

City Manager Recor asked what were the issues they talked about, the consumption?

Mr. Thiess said Tropicana has a very peakish demand, it pulls hard on that system. It was a big problem a while back. But now that they built a 3 million gallon storage tank down there, he does not know it is as big a problem. Tropicana draws hard when they need it, when they are producing juice. But they need another tank out there.

Commissioner Becht said Tropicana needs a tank. Flatwoods needs a tank. If FPUA is going to go west, they need a tank. So Tropicana would benefit by a tank now, because they have some kind of irregular service. And Flatwoods needs a tank. And the City, in order to preserve its southern flank, needs a tank. So it seems it would benefit the FPUA and the City and Flatwoods to get a tank built out there, and it may benefit Tropicana. Other things that happen here, he would point to the Breckenridge Project - which is now named The Trails at Ten Mile Creek - it has water issues. His understanding is, Creekside has water issues. They don't have a problem today, because they don't have any people out there.

Mr. Thiess said they never completed the \$5.5 million of improvements that was required under the Development Agreement.

Commissioner Becht said eventually there is going to be people out there and they are going to need water out there. The system that would be contemplated by Flatwoods, which is west of I-95, and by The Trails at Ten Mile Creek, which is west of I-95 and the Turnpike, and by Creekside, all three projects would benefit by FPUA going west of I-95 and the Turnpike. The first step is bringing in WalMart. When is that going to be done?

City Manager Recor said they are close.

City Attorney Schwerer said the final language in the agreement is going to Bentonville, Arkansas.

Commissioner Becht asked 30 or 60 days? When WalMart comes in, the Landfill can be brought in. When that comes in, the next domino that could fall is the Flatwoods property. So those moves protect the southern flank of Fort Pierce's ability to expand to the west. If they don't make that move, they are vulnerable with Port St. Lucie. Mr. Koblegard and Mr. Schwerer had three good arguments why Port St. Lucie can't serve north of Midway Road. But when the City annexes out there and covers its flank, then that is another argument why Port St. Lucie ought not be supplying water there. It strengthens the City's position and the County's position that the County would be the provider, and eliminates Port St. Lucie's ability to slide in there and provide water. So the annexation policy, the provision of utilities, Fort Pierce's ability to control and plan its own growth, all of these things go together with what they are trying to do here and have been doing for years.

City Attorney Schwerer asked does the Commission understand the position Port St. Lucie is taking in this case? His

understanding is that Port St. Lucie first attempted to declare this Area A - the triangle area with Midway Road on the south - as their service area. That was fought by the County. The County believes they have secured the necessary documentation from South Florida Water Management District and others to solidify their position.

City Manager Recor said that was part of Port St. Lucie's staff review and recommendation of the Flatwoods project, that it was not included in their Comprehensive Plan and it was not identified as a service area. Port St. Lucie had adopted some form of map, but it has never been included in their Comp Plan and it is not in their service area.

City Attorney Schwerer said so the issue of whose territory it is, the legal and factual issue, the County is very strong saying it is their area. Fort Pierce joins with the County and says it is the exclusive provider for that area and it is designated for their future annexation.

City Manager Recor said right. PSL's response in their Responding Resolution was, show how the FPUA has the capacity to serve, show how St. Lucie County Utilities has the capacity to serve. At least on FPUA's side, they can address that issue on Friday.

City Attorney Schwerer said in a nutshell, without going through the details of the legal ramifications, once they declare that territory as theirs under the statutes and do what is necessary and put their lines in the ground, which has been done... The lines aren't dry, the lines have water. Port St. Lucie's position is, the lines are too small, the infrastructure is too small to service at this point in time; and that all Port St. Lucie has to do is jack and bore Midway Road on the south and deliver a gusher of water to this developer. That is an issue of how much is it going to cost. Because he thinks the FPUA's position is, if this loop is completed at developer or customer or County expense, FPUA can then provide the volume of water and wastewater necessary to service Flatwoods.

City Manager Recor said if it is a bigger issue to service Area A, after they clean up the hypocrisy of north and south, they could always contemplate a bulk service agreement with Port St. Lucie Utilities until such time as FPUA has the capital improvement charges for development in that area for the cost of increasing capacity and storage.

(Mayor Benton turned the gavel over the Mayor Pro Tem Sessions and left the meeting at 3:45 p.m.)

Commissioner Becht said last week he met with one of the representatives for Flatwoods. The number Mr. Thiess had given to them was \$5 million. That number was not frightening to them, they were okay with it. So Flatwoods is not frightened by a \$5 figure to bring water to them and take wastewater from them. That gets FPUA its foot in the door. The bigger issue becomes, how do they change this area from the County's retail service area to the FPUA's retail service area? The City

currently gets \$7.8 million of their \$35 million budget from the services that their utility provides. If they can expand the FPUA's retail service area, that transfer to the City's budget goes up. That should help keep the rates either where they are or even lower them. But if the City does not help FPUA to grow, then of necessity their rates are going to become more expensive. One idea that has been bandied about... The FPUA is in the negotiation phase with the County for redoing the Interlocal Agreement for rates on water and wastewater. He has had conversation with all five County Commissioners about changing the retail service area of the County, because the County's area is retail service when they get across I-95 and the Turnpike. What he has suggested is, instead of that being the retail service area for the County, that the City through the FPUA have a retail service area that goes out to the urban service line.

FPUA Attorney Koblegard said SLC Ordinance 04-023 (Creating St. Lucie County Water & Sewer District) declared that area as the area the County is going to serve and it has a map attached.

Commissioner Becht said what he is looking for is the urban service line, not the retail service line. The strategy, if they could get the County to concede their retail service area up to the urban service line, then that is all the City needs. Because there is really not going to be anything permitted west of the urban service line without them having to change where the urban service line is.

FPUA Attorney Koblegard said he thinks those are both on this map. (Mr. Koblegard displayed a map.) The diagonal line is the County's area. The western boundary of that is their urban service boundary at this time. The County declared all of that in this Ordinance as the area they will serve water and wastewater.

Commissioner Becht said urban, by definition, means it should be city. So if FPUA goes out to the urban service line with their retail area, the County can have everything in the county area which is rural, and the FPUA will retain the right to serve what is in the urban area. Even though it is in the County, it is designated as being in an urban service area; and urban service area implies urban services, which is defined as water and wastewater services. So there is a sound logical argument for pushing this with the County. The County has a problem because of the rate structure with water and wastewater right now with certain mis-moves they have made with their utility, where they need to negotiate with the FPUA for a different rate structure and extensions of services and those types of things. So the County has to negotiate with the FPUA on those issues. What he is asking this Commission is to give a consensus to the FPUA that they want the FPUA to push for the retail service area of FPUA to be co-existent with the urban service line as depicted on the County's urban service line. Right now as he understands it, the County sets where the urban service line is. He thinks generally it is west of I-95 and the Turnpike, and it is an area that will be prone to grow. There will be another wave of progress up from Miami and Fort Lauderdale and West Palm Beach.

There eventually will be an influx of wanna-be residents from the north the next time a cold wave hits up north. So this is an area he would like to see them grab for their FPUA service. He wants to make sure everybody understands, if the FPUA makes more money, the City gets a bigger annual transfer.

Mr. Thiess said at this time they are working on the Bulk Water & Wastewater Agreement, which is a separate agreement from the Interlocal Agreement that establishes Area A and Area B. If they want to go into that Interlocal Agreement, it is a different issue; and it is something that the FPUA, the City, and the County get involved in.

Commissioner Becht said what he is looking for is a consensus from the Commission that yes, they want the FPUA to push - and will back the FPUA in its push - to expand its retail service area.

Mr. Thiess asked do they have some support on the County Commission for that?

Commissioner Becht said there are probably two naysayers and three open minds. So if they start with the three open minds...

Mr. Thiess said that would essentially get the County out of the utility business with the current customers.

Commissioner Becht said Mr. Thiess does not have to say that out loud. The County is supposed to serve in the county area. This is the urban service area.

City Attorney Schwerer said they have never agreed with that map as it depicts the retail service area for FPUA as excluding the Airport. The County is claiming the Airport through that map and the City does not agree.

Commissioner Coke said yes, they have had that battle many times.

City Attorney Schwerer said the Airport is still an open issue as to retail service to be determined at a later point. The FPUA is still serving it, right?

Mr. Thiess asked the Airport property? Is that on bulk rate?

City Attorney Schwerer said they had an Annexation Agreement with the Airport.

Commissioner Coke said they still have an Annexation Agreement.

Mr. Tim Perkins, FPUA Director of Water/Wastewater Systems, said he thinks the Airport itself is retail.

City Attorney Schwerer said but that is an issue with the County, it has nothing to do with Port St. Lucie obviously. It is an unresolved issue with the County. They may recall that Interlocal Agreement where they set up the retail service area reserved two areas - Indian River Estates and the Airport.

Commissioner Becht said get back to the urban service area west of I-95 and the Turnpike. He has had conversations with County Commissioner Grande, who has an open mind. He has not talked with County Commissioner Coward, but he suspects he will not be in favor of it and will be against it. He has talked to County Commissioner Craft about it and he has an open mind, essentially said he didn't care. He had a conversation with Chris Dzadoovsky before he was a County Commissioner and he had an open mind; but now he is not sure what his position will be. He spoke with County Commissioner Lewis and she had an open mind to it. As part of a resolution to a bunch of issues, they all had open minds to it. Mr. Thiess had asked, are they receptive to it? He is telling him, after private conversations with each of them one-on-one... He did not mention it to County Commissioner Coward, because he did not want him to be alerted to it and start a proactive campaign to kill it before it got any legs underneath it, and that is what he will do if he hears about it.

Mayor Pro Tem Sessions asked why is it advantageous for the County to continue to service that area?

Commissioner Becht said he will speculate. County Commissioner Coward is a planner who will understand that without control over the retail water, he cannot control the development. He suspects if they talk specifically about Flatwoods, he will drag County Commissioner Grande with him, because Commissioner Grande hates with a passion the Flatwoods project - his vision for St. Lucie County is that Flatwoods will have no residential in it, it will be all industrial and commercial. That is a good idea, but he does not know how well it fits into the real world. So the benefit to the County is money and planning. He thinks County Commissioner Coward is less worried about the money than he is the planning. Conversely, it is very important to the City of Fort Pierce to be able to control what happens there because the City inherits what is designed. He will refer to the Bent Creek development on the west side of Hartman Road, south of Orange Avenue. His recollection is, there are two or three points of entry into that subdivision of several hundred units. That is not the way the City would have designed it. There should have been an entry/exit onto Whiteway Dairy Road, but there is not. One might want to speculate why there isn't? If they look at who lives on Whiteway Dairy Road and who was sitting on the County Commission at the time, they will be able to figure out what there is not exit onto Whiteway Dairy Road. He does not want to get bogged down on Bent Creek; but lets not lose sight of what they would have done differently had they had the opportunity to plan it before it came into the City. And now lets try to preserve a buffer of property the City can plan to complement their city, rather than a free-standing subdivision that really has no connection to Fort Pierce. It has no connection. The whole focus of the subdivision is to shoot people out to I-95 so they can go up to Indian River County or down to the Treasure Coast Mall to do their shopping, and not work them into Fort Pierce. This is why utilities and annexation are important strategically to the long-term health of Fort Pierce.

City Attorney Schwerer said the other issue he understands Port St. Lucie is going to raise is, they view Midway Road as running through the entranceway to their city and therefore they are interested in discussing impacts of what occurs on the north and south side of that, which was at one time a justification for them annexing to the north so they could control that. But under Chapter 171, Florida Statutes, this is a prime opportunity for all of them to plan both sides of that roadway and agree on what it is going to be, so that the impacts to Fort Pierce and the County and Port St. Lucie will be lessened. That can be accomplished under a Chapter 171 agreement.

City Manager Recor said they have indicated that. They indicated that earlier this year in February, that they could handle that similarly.

Commissioner Coke said with all due respect she wants to remind Mr. Recor that when they indicated in February that they would work together and plan and make sure the impact fees... That is when Port St. Lucie met with them right here in City Hall (February 12, 2009) and said no problem, they will never ever go north of Midway Road. They should never have a meeting that they don't tape.

City Manager Recor said they taped that meeting and they have minutes.

Commissioner Coke said Port St. Lucie says they have minutes of that meeting; but apparently they lost the part where they said they won't go north of Midway Road.

City Manager Recor said PSL taped the meeting and have minutes as well; but it is funny that the two sets of minutes don't reflect the same meeting.

Commissioner Coke asked can they hear clearly on their tape...? Maybe they should play that tape on Friday. Why are they going to sit around for three hours and try to remember what was said? Just push the button and let them hear what they said; and then ask them why they aren't living up to what they shook hands on?

Commissioner Becht said the reason he would prefer not to do that is, in private conversations with Councilman Jack Kelly, he told him he has no interest in annexing the Flatwoods property. Mayor Christensen has said the same thing. Councilwoman Bartz has told him the same thing, that she is not interested in doing that. One of the reasons that was articulated by one or more of the three of them is Midway Road, that they did not want to be solely responsible for the cost of improving Midway Road as an entrance to PSL or as an entrance to Fort Pierce. They figured if they annexed on both sides of it, they were going to get stuck with all the costs of improving it. Also in conversation with Councilwoman Berger, after he had explained some of the points about why PSL cannot come across it, he told her this is all about utilities, that PSL is being played as a pawn in a game, because the developer wants PSL to annex this and then fight for utilities for them. She did not like that idea. So the reason not to play the tape for them at their meeting on Friday would be, when and if PSL is holding a hearing for

annexing north of Midway Road, that is when he would play it for them. It is an ace in the hole. He would play it at a time when all the residents in Port St. Lucie could hear it on TV, hear where the PSL Commissioners had said they were not going to do it.

Mayor Pro Tem Sessions asked hasn't PSL been very aggressive in terms of trying to annex in as close as they possibly can to Midway Road?

City Attorney Schwerer said Port St. Lucie is contiguous to the Flatwoods development on the south side of Midway Road.

Commissioner Becht said the question is, is PSL being aggressive? He does not think they are being aggressive, he thinks they are being receptive. There is a consensus amongst the development community that they don't want to try to permit something through the County. So what has happened is, there is an aggressive move by the development community to try to get next to either the city limits of Port St. Lucie or Fort Pierce. Hence, the move this City has been making for the past two years to try to get out where they can get some of these major big blocks of property come in as a cohesive planned community that integrates well into their community. But Port St. Lucie has Don Cooper, who is now leaving. Lets not miss the opportunity that might mean. No one in PSL sneezed without checking with Don Cooper. Even the PSL Council members will say they can't do anything without talking to Don Cooper. That is how much control that man has. Mr. Cooper had a vision of expanding PSL that has materialized over 20 years. He thinks there are some that are regretting what that vision has meant in terms of what has happened to their tax base and the cost of providing services to the expanded territory, etc. But the question was, is PSL aggressively pursuing annexation? He would tell him, PSL has been receptive to it. The development community is running to PSL because they can't get something permitted through County staff; and even if they could, they would have a tough time getting three votes out of the five County Commissioners, because two of them are pretty much anti-development at this point in time. In fairness to the County, that has helped the City of Fort Pierce. The property in the County, because it couldn't be developed, has helped push the development inside the City of Fort Pierce and inside the City of Port St. Lucie.

Commissioner Schwerer said PSL is annexing all the way out in the area of McCarty Road, Range Line Road, out west. They don't have all the parcels in that area, but they have parcels bordering Midway Road and in the south.

Commissioner Becht said PSL is out to Range Line Road, way west, with their city limits. All Fort Pierce is trying to do is protect this portion of their flank; so if PSL goes north, they go north further west of here.

City Manager Recor said PSL has made several attempts to get out of the meeting on Friday. Also, our City Attorney has contacted PSL's Attorney to discuss the two expectations, the goals they have coming out of that meeting. Since that rises to the level

of a policy decision, Roger Orr couldn't speak for the Council.

Commissioner Becht asked has Mr. Orr explained why PSL wants to get out of the meeting? Two of the PSL Council members have been in the hospital recently.

City Manager Recor said the first attempt was, he questioned whether they needed the meeting because Flatwoods Development did not come back to PSL within the 30 day time frame, it appears to be off the table, so why do they need to talk? But this issue is much bigger than Flatwoods Development. The second attempt was, Mayor Christensen is not going to be able to attend the meeting and City Manager Cooper may not be at the meeting. This meeting was scheduled more than a month ago, so they are pressing on. If PSL does not have those two people, there may be some reluctance by the PSL Council members to make any decisions on Friday. But at least Fort Pierce will have made their position and argument known.

Commissioner Coke said they can't make decisions on Friday anyway, everything has to go back to a public meeting.

City Manager Recor said one they are in the process, they will identify what the next step is.

Commissioner Becht asked what opportunity might be lost by canceling the meeting? He does not want to cancel the meeting because Mr. Thiess and the FPUA will have an opportunity to speak to whichever Port St. Lucie Council members and to whichever County Commissioners show up. He does not think they need to belabor the failings of the County's utility system; but Mr. Thiess has the ability to relay to those decision-makers correct information. His conversations with the five Port St. Lucie Council members led him to believe that they were not getting completely accurate information from either the developer or from their own utility staff. There is a goal, PSL Utilities wants to serve north of Midway Road for a lot of valid reasons, some of the same reasons why FPUA wants to serve it. The Developer wants it to be in Port St. Lucie for some of the same reasons. Jack and bore is a \$100,000 project as opposed to a \$5 million project. So they need to speak to the PSL Council members. If Don Cooper is not there, all the better, because then Mr. Cooper is not going to be able to contradict whatever Mr. Thiess tells the Council. When is Mr. Cooper resigning?

Commissioner Coke said January 8th.

Commissioner Becht said so they are really in a unique position, because Mr. Thiess is going to be the senior executive director in the County because of his mayoral position with St. Lucie Village and Mr. Recor will be the senior manager in the County come January. There are opportunities strategically with having that continuity that the County doesn't have, because Ms. Outlaw is new. Ms. Outlaw is a hardworking and good County Administrator, but she is going through a learning curve with trying to figure out what her five County Commissioners really want her to do. With Port St. Lucie losing Mr. Cooper, they are going to have to go through the same learning curve as well. So

Fort Pierce has an edge in the next two years.

Mr. Thiess said on the capacity issue, if FPUA makes that water connection at Midway Road and build the storage tank - which are the improvements they laid out for Flatwoods at \$2.5 million to \$3 million - they can supply at least 1,000 gpm at each connection point - 2,000 gallons per minute translates to 10,000 units. So just with the improvements to serve Flatwoods, FPUA would be in a position to serve - whether bulk or retail - 10,000 units in that triangle.

City Manager Schwerer said he is not sure that the Commission understands that the original Provinces Development has been downsized. It was residential and commercial components. There were two parts to it. They have changed their annexation application to Port St. Lucie to include only the commercial piece. So they downsized the size of the annexation and correspondingly substantially reduced the water demand, because it is commercial as opposed to including residential. That is what the cost is, not for residential. Commissioner Becht was in those meetings, so he was aware of that.

City Manager Recor said although they were told that the residential component could still be in play, it was not on the table on the development. They are talking about up to 2.5 million square feet of non-residential land use as well as a 200 room hotel.

Mayor Pro Tem Sessions asked they have an application for annexation in to Port St. Lucie?

City Attorney Schwerer said yes, which Fort Pierce was objecting to; but it was pulled.

Commissioner Becht said earlier Mr. Recor said it is more than 30 days stale. He does not know if, under Port St. Lucie code, that means it is dead.

City Manager Recor said that was the implication, that it was dead.

City Attorney Schwerer said he is not sure that is legally correct.

Commissioner Becht asked could he verify that with Mr. Orr?

City Manager Recor said he and the City Attorney have been down to the last three Port St. Lucie Council meetings. The meeting when they had to call in the police because the Port St. Lucie citizens were rioting over their budget, he and Mr. Schwerer were there.

Commissioner Coke said the initial round of their war with the County over annexations began with the Airport. They went through the process of negotiators, mediators, everything else. Eventually the County agreed to almost everything the City wanted based on the fact that their backs were against the wall and they could not supply water where they had agreed to, but

the FPUA could. That is when the City got all those concessions. She wants to remind everybody when they go into this, if it is urban, it should be part of the city. But if they don't agree to it now, eventually their backs are going to be up against that wall again. They know the County's utility can provide nothing. It is going to be up to the FPUA. That is the ace in Mr. Thiess's pocket and he is playing the hand on the City's behalf. So as much as he can grab, he needs to grab while he is playing from a position of strength.

Commissioner Becht said the County played a card and history tells them now that it was an ill-advised move. The County sent the 5-year termination letter. It is complicated. The sum and substance of it, as he understands it, the County sent a letter saying they were not obligated to... He thinks the way it works is, the County was intending to build its own capacity to supply water. But they haven't even applied for a permit, and it would be two or three years before they could get a permit and something built. So the County doesn't have their own capacity in their retail service area but for FPUA. That is really significant. The County does not have the capacity, but for FPUA, to service their retail service area. The County sent that letter out with the intent of building capacity. But they haven't even started. He believes - and he thinks Mr. Schwerer and Mr. Koblegard concur - that the agreement as drafted prohibits the County from going to anybody else to get bulk service water. That is March 11, 2010, when that hammer falls. So FPUA is not obligated to provide the bulk water after that date; but the County is obligated to buy bulk water from FPUA for the retail service area. It gets kind of gnarly the more they get into it; but he thinks it benefits FPUA and hurts the County. What Commissioner Coke was describing earlier was Portofino. The County was about to get hit with a lawsuit by Portofino because they couldn't provide the water after they said they could provide water. The same thing is going to happen again. And when the County gets in that position, they will come in very conciliatory and say they can work this out.

Commissioner Coke said but six months later the County will say that is not why they signed the agreement, that wasn't the intent. She just wanted to remind Mr. Thiess that he has the ace in his pocket, so play it well.

Commissioner Becht said the beauty is, he thinks they are going to work together instead of against one another, when they go down and present a common face with Port St. Lucie and the County.

Mr. Thiess said yes, he thinks they are on the same page as far as the Midway Road thing. But as far as moving the Interlocal Agreement forward, moving the urban service line, that is something staff can't really do, that is going to have to happen at Commission level. They can have discussions at staff level, but the decisions are made at board level.

Mayor Pro Tem Sessions asked does he not think the FPUA Board would be in agreement with that?

Mr. Thiess said he does not think they would have any problem with it. They would much rather be the entire retail provider for Area B. Staffs can agree, but it wouldn't mean anything.

Commissioner Coke said but it is always nicer if staff comes back with a recommendation.

City Attorney Schwerer said there are two issues on the Agenda from Port St. Lucie that really aren't Fort Pierce's issues. One is, St. Lucie County's failure to serve the City of Port St. Lucie in proportion to the tax revenues generated for the County from within the City of Port St. Lucie. The other is, the future ownership of County roads and rights-of-way within annexation areas. That might relate to Midway Road as it applies to Fort Pierce being on the north side and Port St. Lucie being on the south side. He does not know what to expect there. Midway Road should remain in County ownership, not only the expense, but it is a major arterial road.

Commissioner Becht said the White City contingent has fought tooth and nail, and actually has members on the County Planning Board, that any time a project was proposed for White City, they really mustered the troops to come out to keep their village a nice quiet village. They also recognize that as soon as the road got improved in White City between U.S. #1 and 25th Street, that their efforts were going to be thwarted because the road had gotten improved. So in addition to the issues that confront them at Ten Mile Creek, the bridge and four-laning and other issues, the White City contingent has not been interested in seeing Midway Road improved from I-95 in; because they know that once that gets in, it is going to come through, and then their whole neighborhood is going to change. So leaving it a County road, they have had a great deal of influence with the County to date, and they will probably have some influence with the City Commission as they go forward. It is just another factor that needs to be weighed in. He has no desire to change it, it is a beautiful quaint village. But they really have held it back about 100 years and not done a whole lot with historic preservation or anything else.

City Attorney Schwerer said the cost estimates to do that road dwarf the City's budget.

Commissioner Coke said it is on the TPO Project List.

City Manager Recor said it occurred to him that the point Commissioner Becht made about the FPUA's retail service area equaling to the County's urban services boundary would address, as far as the City of Fort Pierce's Comprehensive Plan is concerned, the very same issue that PSL is dealing with, that this area is outside of their service area and it is not in their Comp Plan. In Fort Pierce's Comp Plan, they took this extra step in planning the FPUA's retail service area to identify future land use categories in a vision that may have been different than what the County did. This area is west of the retail service area, so they would need to do the same thing to avoid the same pitfall that they are pointing out with PSL.

