

Intelligence Report April 2014

We thought that with the election behind us we could sneak out to the back yard with a cool beverage in hand and enjoy the warm weather. No such luck. There are just too many things going on, and we are back at the laptop to bring you up to date. We apologize for the length of this report.

The Story gets more interesting

Yes. One more update on the huge Atlantic Crossing project. In January, the Harbor House Homeowners Association filed a lawsuit against the DeSantis development team with a very interesting argument.

Let's back up a bit. In February 2009, Mr. Michael Weiner appeared before the City Commission on behalf of the DeSantis development team and asked that the City abandon and give ownership to the developers of NE 7th Avenue between Atlantic Avenue and NE 1st Street, as well as the alleys on the site in order to accommodate the new buildings planned. In return, Mr. Weiner said the developers would give the City two permanent public easements to provide a new east-west road connecting northbound Federal Highway and a new NE 7th Avenue which was to be located to the east of the existing one. He spent a great deal of time during his presentation pointing out the need "to preserve the grid system" and to provide above-ground road access from Federal Highway through the middle of the project.

In his presentation to the Commission, he stated, "We should bring to your attention the new street we call Atlantic Court. That's the one that is midway through the project running east and west. You'll notice it runs parallel to Atlantic Avenue. You'll notice it's a fully functioning right of way. It allows relief around Atlantic Avenue. It also works in conjunction with a deceleration lane along Federal Highway. Now it's a fully functioning intersection that actually acts for the first time as a true reliever around the Atlantic Avenue intersection."

He continued, "We (the developer) are giving you the improvement of Atlantic Court and a way around the intersection of Atlantic and Federal Highway." And he went on to state, "as well, we have the positive staff report with respect to both the abandonment and the new roadway. And in speaking with Dick Hasko and other people in the Engineering Department, they really felt that it was superior for the City to be able to own an easement over the rights to own fee simple. They could get everything that equals a public street. You now have 500 pages of documents (submitted by the developer) to be certain that you (the City) equal a public street."

The City accepted the developer's request. The City abandoned its control of NE 7th Avenue and the alleys, and in return was granted a public easement for a new road and a relocated NE 7th Avenue. To perfect the transfer, the developer filed a new plat of the property with the County in May 2011 showing the new public roads. That plat is still on file and is still in effect.

This has created a small problem. Some of the recently approved Atlantic Crossing project sits squarely on top of the public easements. There is no above-ground road connecting Federal Highway and NE 7th Avenue as shown on the plat. There is no relocation of NE 7th Avenue as shown on the plat. Instead, the easements meant for the public are to be covered by new buildings.

It gives a new meaning to the term: public-private partnership.

The lawsuit seeks to overturn the City approvals. It is filed in the 15th Judicial Circuit in West Palm Beach, and is awaiting a review.

There are many questions that we would like to ask. You may have your own.

- Was there no one in the City who remembered that the City had public easements on the property?
- The plats were never shown to the Planning and Zoning Board or to the Site Plan Review and Appearance Board during their review of the project. The easements were never discussed. Why?
- The developer was the one who requested the public easements and was the one who filed the new plat with the County. Could he have “forgotten” that he had given public easements for new roads?
- Surely Mr. Weiner remembered. He frequently – and loudly – proclaims his interest in fairness. Why was he silent?

And also: Mr. Weiner’s arguments for the new east-west road were exactly what the residents argued in January of this year. You may recall that a group of residents paid for an independent traffic study, which was presented to the City Commission. Commissioners Jacquet, Frankel and Gray concluded that there would be no traffic problems and there was no need for a new east-west road. Yet the traffic study made exactly the same points that Mr. Weiner did when he represented the developer initially. Perhaps the residents could have saved their money and replayed Mr. Weiner’s presentation instead.

The developer has filed a “motion to strike” the lawsuit, but does not dispute the facts. And the fact is that the City has gifted Atlantic Crossing nearly an acre of public land for a promise of new above-ground access roads. Atlantic Crossing kept the public land and ignored the promise.

Stay tuned....

New Assistant City Manager

Recently, City Manager Louis Chapman announced the hiring of Francine Ramaglia as Assistant City Manager. She comes from the town of Wellington, where she has served in a similar capacity. Mr. Chapman feels she has the skill sets that will make her a good addition to the staff at City Hall.

She arrives with a curious work history. In 2006, she accused City Council members in Wellington of violating the Florida Sunshine law, a misdemeanor. There was an investigation, but she presented no facts to back up her charge. The next year she filed a hostile work environment complaint against the Mayor, who she said was “out to get her” and who tried to get her fired. An investigation found no basis for that claim.

The City Manager acknowledged that he did not contact any of Ms. Ramaglia’s references, and had only a short conversation with her before announcing his decision.

Welcome aboard, Ms. Ramaglia.

When the adults leave the room

We have never come across a more baffling example of bad City management than what occurred at the March 18th, 2014 meeting of the City Commission. Therefore, the story is right up our alley.

It was the week of Spring break at our local schools, and Mayor Glickstein, Commissioner Petrolia and City Attorney Pyburn were all absent. It was the last meeting of Commissioner Gray after her defeat for reelection.

To prepare an agenda for a City Commission meeting, City procedure requires the City Manager to put together a draft and have it approved by the Mayor. Because of the planned absences of the March 18 meeting, and because it was the last meeting which Commissioner Gray would attend, the Mayor met with Mr. Chapman the week before the meeting. They reviewed the matters that would be on the agenda. Mayor Glickstein was concerned that with only Mr. Jacquet, Mr. Frankel and Ms. Grey attending, there was opportunity for mischief. He extracted a promise from the City Manager that no items that involved significant public money or land use would be added at the last minute.

His fear of mischief was well founded. Late Monday afternoon, the day before the meeting, with the Mayor and Commissioner Petrolia safely out of town, Mr. Chapman quietly added an item to revise the terms of the financial agreement the City has with the developer of the Auburn Trace -the low and mid-income project in the Southwest neighborhood.

Early Monday afternoon, Auburn Trace Ltd., developer and owner of the property, sent a short letter to the City requesting that the terms of the existing mortgage agreement be amended. The letter outlined some terms to be discussed, but offered little specific information.

Contrary to his promise to the Mayor, Mr. Chapman immediately put the matter on the agenda. He did not bother to contact the Mayor. The revised agenda was posted on the City website on Monday evening, setting the scene for an interesting meeting the next day. He later stated that he did so at the request of Commissioners Jacquet, Frankel and Gray.

At the meeting, a representative of Auburn Group outlined the proposal in general terms:

The City now has a second mortgage with an outstanding balance of \$4,135,341. The owner asked the City to give up the secured second mortgage position. In return, the developer offered a payment in December 2014 of \$1,050,000 for 7 years of prepaid interest. The new "soft loan" for \$4,135,341 would not be secured, and there would be no payment of principal for 7 years. The remaining balance would be paid at the discretion of the developer if any money were available beginning in 2022. The developer would pay all expenses, including his own fees, before paying the City.

In effect, the owner was asking the City to give up its security now for a payment of \$1,050,000 at the end of this year, and to agree to receive nothing more for 8 years, then to receive whatever the owner chooses to pay.

Let us look at the owner's track record.

- The developer has been in arrears to the City many times during the last 20 years. The project needs substantial renovation, but there are no reserves available.
- On March 18th, 2014 Auburn Trace, Ltd was delinquent on 2012 taxes in the amount of \$143,193. It was delinquent on 2013 taxes to the tune of \$123,505.
- On March 18, 2014 the 99% owner of Auburn Trace, Ltd., Mr. Thomas Hinnners, was in personal bankruptcy, owing \$137,000 in personal County property taxes. As part of the bankruptcy proceedings, it was revealed that Mr. Hinnners owes Auburn Trace Ltd. \$653,125 for money he removed from the company. In fact, the bankruptcy attorney listed 548 fraudulent transfers in court filings. The attorney states in a paragraph titled "Badges of Fraud": "Self-promotion aside, the affiliated companies comprising Auburn Communities specialize in exploiting various programs that provide tax credits, low interest financing and the like in support of affordable housing development. The ultimate goal of Auburn Communities is not altruism, but profit and indeed the companies sought at all times to maximize the income and perquisites of certain insiders – including Debtor and Defendant, Thomas Hinnners and his companies."

Wow!

At the meeting, Mr. Jack Warner, the new Finance Director for the City stated that the opinion of the staff of the Finance Department who had worked with Auburn Group over the years was, "No. No. Hell no. Get away from these people as fast as you can." He said that because he had only assumed the position a week before the meeting, his personal opinion was, "The proposal is ambiguous and not attractive to the City". He strongly recommended that the matter be postponed until a proper analysis could be done.

The Assistant City Attorney stated that there were insufficient details to go forward with any agreement and that a short letter without details was not a proper basis for any decision.

However, the three Commissioners were clearly intent on pushing the matter forward while Mr. Glickstein and Ms. Petrolia were out of town and before Ms. Gray retired. After a long and somewhat tortured discussion, they all voted to accept the terms of outlined in the letter, with Auburn to submit a Memorandum of Understanding. Mr. Jacquet stated, "it looks like a good deal", and used his favorite expression, "a win-win".

A few days later, the Memorandum of Understanding was sent to the City. It included a couple of details that had not been mentioned on March 18th, 2014.

- The Memorandum of Understanding states that it is "a legally binding contract".
- Auburn Trace, Ltd. Is planning to sell the assets to an undescribed new entity called Village at the Park, with the City having no right of approval.
- The maturity date of the City's loan is extended by 9 years from 2022 to 2031. (It was previously extended by the City from 2004 to 2022)
- Auburn Trace and any new owner will have the right to remove and admit partners without the consent of the City.

Gee. Just a few small details. Shouldn't be a problem.

So the scene was set for the return of the missing Commissioners and the first meeting of Ms. Jordana Jarjura who replaced Ms. Gray. The agenda included an item to rescind the approval of the previous meeting.

At the meeting of April 1st, 2014 who should pop up to represent Auburn Trace, but our old friend Michael Weiner, assisted by Mr. Mack Bernard. (Yes, the same Michael Weiner discussed in our Atlantic Crossing story.) You may recall that Mr. Bernard was appointed to the City Commission several years ago, and left after a few months to run for the State legislature. While he was in a State office for one term, Mr. Jacquet was his paid assistant. Mr. Bernard served as Mr. Jacquet's campaign advisor in the recent election. All in all, a cozy group. The only one missing was Mr. Jacquet, who did not attend the meeting. We presume he had more pressing matters that night.

Your hard-working Editor was in the audience. Mr. Bernard led off with a superficial discussion of the proposal. He was followed by Mr. Weiner who argued that the Commission could not override the decision of March 18th for two reasons. First, he stated that Auburn Trace had paid the past-due 2012 real estate taxes that morning based on the reliance that the loan would be modified. Secondly, he opined that it is not "good government" for one Commission to overturn another. He said overturning the decision would create "government chaos. It is no way to conduct a government."

Several members of the public came forward to weigh in. Among them was Mr. Josh Smith, a prominent leader of the Northwest/Southwest community. He stated, "It was difficult to listen to the Commission (on March 18th) defying all aspects of logic. I can only hope I will never again witness such an abomination within these chambers. Don't deal with the Auburn group." Other members of the Northwest/Southwest community made similar comments.

In a forceful first appearance, Ms. Jarjura led the discussion. She said she would address "the gross and egregious procedural deviation that occurred on March 18." For about 15 minutes, she quizzed the Finance Director, the City Attorney, the City Manager and even the Mayor. She established that the City Manager had not followed three pages of Administrative Rules that govern the agenda and that govern review of the material by staff. She established that the addition of the Auburn matter to the agenda on March 18 was contrary to law, and that absence of staff oversight was improper. Although Ms. Jarjura was the shortest person in the room, she had the biggest men cowering.

She had brief comments with Mr. Frankel to her left. Concerning his role in the March 18 meeting, she scolded him, "Most people don't think the Commission should operate as: 'My parents are out of town, so I'm going to do whatever I want'".

Commissioner Jarjura concluded by addressing Mr. Weiner directly, challenging him to bring the matter to the courts if his client wished. Concerning his original arguments, she said, "Mr. Weiner I presume your client paid his taxes because it is required by law. It is also required by the terms of the loan documents. It is not in reliance on the meeting of March 18". To his other point, she looked at him and continued, "The March 18th meeting was anything but good government. I am offended by the 'good government' that occurred." At this point, Mr. Weiner was staring intently at his shoes.

The Mayor concluded the discussion by addressing City Manager Chapman. "The previous meeting was a low-water moment for the City Commission. It was a high-jacked agenda, an ambush. Mr. Chapman, you failed at your primary responsibility to the residents. You don't work for commissioners. You work for taxpayers. Cronyism and special interest dealings don't belong here. Your lack of leadership put this city at risk."

The vote to rescind the approval of the previous meeting was a quick 4 to 0, with Mr. Frankel shamed into voting to overturn his previous vote.

Finally

We agree with Commissioner Jarjura. The adults should be in charge. At long last, they are.