

**MINUTES OF THE JOINT EMERALD COAST UTILITIES AUTHORITY BOARD AND
THE CITY OF PENSACOLA COUNCIL MEETING HELD WEDNESDAY, JANUARY
22, 2014 AT 5:15 P.M. IN THE ECUA BOARD ROOM AT 9255 STURDEVANT
STREET, ELLYSON INDUSTRIAL PARK, PENSACOLA, FL**

ECUA Board members present: Larry Walker, Chairman
Vicki Campbell, Vice Chairman
Lois Benson
Elvin McCorvey
Dale Perkins

ECUA Counsel present: Bradley S. Odom

City Council members present: Jewel Cannada-Wynn, Chairperson
Charles Bare
Larry Johnson
Sherri Myers
Andy Terhaar
Gerald Wingate
P.C. Wu (arrived at 6:05 p.m.)

City Council members absent: Megan Pratt
Brian Spencer

City Counsel present: James Messer
Ed Steinmeyer

Others present: Stephen E. Sorrell, Executive Director
Colleen Castille, City Administrator
Greg Donovan, Airport Director

ITEM 1 – CALL TO ORDER

Chairman Walker called the special joint meeting of the Emerald Coast Utilities Authority Board and the City of Pensacola Council to order at approximately 5:13 p.m.

ITEM 2 – INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Perkins provided the invocation and led the Pledge of Allegiance.

ITEM 3 – ADOPTION OF AGENDA

A motion was made, and seconded, to adopt the agenda as presented. Motion carried 11-0.

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ITEM 4 – OWNERSHIP OF THE AIRPORT NORTH AND HAGLER WELLS

Mr. Odom provided an overview of ECUA's position relative to the ownership of the Airport North and Hagler wells, displaying documents (1981 City transfer agreement, 1981 deed and bill of sale, and original well details from 1976-Airport and 1958-Hagler) substantiating ECUA's position.

Mr. Sorrell provided an overview of the use and need of the wells, stating the two wells are critical to provide water and fire protection to the City of Pensacola.

Mr. Steinmeyer provided an overview of why the joint meeting was needed and why the City feels the properties in question are not owned by ECUA and explained the requirements of the FAA regarding Airport property, stating the City did not have the authority to deed these properties to ECUA in 1981. Mr. Steinmeyer stated that the City has offered to lease these properties to ECUA at the same terms and conditions that ECUA currently has with the Airport with regard to the Spanish Trail well.

Ms. Cannada-Wynn asked if there is any documentation that shows an exemption to these two wells as being leased. Mr. Steinmeyer responded that there is not.

Chairman Walker commented that he thinks Mr. Steinmeyer was just asked if there was anything from 1981 that shows that the two wells were not included in the global deed of the entire system – is there something from 1981?

Mr. Steinmeyer responded right, you have the general transfer agreement in 1981 and subsequent to that, you have hundreds of individual specific deeds, easements, access agreements – that kind of thing. So, essentially there was an agreement we are going to transfer the water system from the City to ECUA. Then it was a matter of going through each parcel, each access drive, each well, basically to provide the specific legal documentation to transfer the title. That was done on many, many sites. The only documentation we have is the access agreement and the notes that that was all that was going to be forthcoming.

Chairman Walker inquired of Mr. Steinmeyer if the transfer of various individual properties occur in 1981 on the date of the agreement or at very different dates later on through the years? Mr. Steinmeyer responded it was subsequent, and he believes some of those transactions carried into '82, '83, '84, but he believes it was all done by the '84 timeframe.

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Chairman Walker inquired how could the City enter into an agreement in 1981 conveying all assets of its water system without that being a legally binding conveyance. Mr. Steinmeyer responded that the transfer agreement is what he would call an agreement to agree.

Chairman Walker again asked of Mr. Steinmeyer, what does all assets conveyed of the water system being conveyed to ECUA in 1981, what does that mean if we have to do it piecemeal thereafter? Mr. Steinmeyer responded that he sort of likens it to a contract for a deed.

Mr. Bare stated that it is pretty clear that the transfer agreement includes all property was transferred, including the two wells in question, and this property is owned by ECUA and he favors the grant of the deed. Further, to set up a lease for property ECUA owns is not the right thing to do and he is definitely on the side of ECUA in the particular ownership of this property.

Ms. Campbell commented that the deed was recorded in 1981, right. There is a deed and Bill of Sale in the official records of Escambia County that says it conveys everything, but there is nothing saying anything different, in the official records, inquiring of Mr. Steinmeyer if this was correct.

Mr. Steinmeyer responded that he has not seen that document before today and they have requested all the documents. Further, he will say that the document does not convey specific properties.

Ms. Campbell replied no it conveys all. Mr. Steinmeyer responded right but it does not convey specific. There is not description of what is conveyed.

Ms. Campbell stated that she owns a title company and they have done deeds where they have deeded everything somebody owns before and it's covered everything they own. Also, Ms. Campbell inquired of Mr. Steinmeyer if it is correct that he is saying a lease would be at the same terms as we are paying for the other [Spanish Trail] well. Mr. Steinmeyer responded that is correct, and Ms. Campbell responded that they are, therefore, wanting ECUA to pay for this again.

Chairman Walker inquired of Mr. Steinmeyer if in 1958 and 1976 were these sites a part of the Airport property or were they adjacent pieces of property. Mr. Steinmeyer stated that it was his understanding that both of these parcels were part of Airport property beginning in the 1940's.

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Ms. Myers stated that she believe ECUA owns these wells and that the transfer meant to convey ownership to ECUA and that belief is further substantiated since ECUA has had exclusive control of the property for over 30 years, thus ECUA felt they owned it and the City felt that ECUA owned it.

Ms. Benson stated that she believes ECUA owns those properties. Further, their role as policy makers, they all have a vested interest in providing good, quality potable water to the citizens of the City of Pensacola and they are in this together. However, she is very concerned about the impact of this dispute on ECUA's ability to deliver that with the upcoming peak season. Ms. Benson stated that while we may wrangle in court, we all need to give some direction to say let's move forward with our ability to provide this water so the service will be uninterrupted as we enter the summer.

Mr. Terhaar also indicated that he believes that ECUA owns the property, and lacking a deed another way needs to be found to convey ownership to ECUA and perhaps an easement is way to accomplish this.

Mr. Bare stated that he would like to know what rules were in place regarding the FAA in 1981.

Mr. Donovan provided an overview of the requirements of the airport with regard to the proximity to the well(s) and the taxiway areas, as well as current FAA rules.

Ms. Campbell inquired of Mr. Donovan if he was familiar with the history of the airport and Mr. Donovan responded that he is. Further, Ms. Campbell asked if he had a picture of the footprint of the airport in 1981? Mr. Donovan stated that he does not have specific shot from that time; however, the footprint of what he was presenting was about the same.

Ms. Myers commented to Mr. Donovan that he stated that the FAA requires that it be leased or sold based on the fair market value of it – is that right? Mr. Donovan responded yes, that is a Federal standard that it be leased at fair market value. Ms. Myers further inquired if there had been a determination as to what is the fair market value of those two wells? Mr. Donovan responded there had not been.

In response to a question from Ms. Myers regarding the role of the FAA, Mr. Steinmeyer stated that the FAA would have to be involved in any lawsuit relative to this issue.

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Chairman Walker suggested that ECUA is not concerned whether the City can give ECUA a deed now or not. ECUA's position is that it did so back in 1981, and if it is now prohibited by FAA from carrying through with the obligation that it established in 1981, then the City would be responsible for compensating ECUA for the loss of the property.

Mr. Odom stated that in Section 2 of the agreement says that the City warrants that it has the ability to convey this system and all of its system to ECUA. That is a representation that the City's counsel at the time, 1981, made and the City gave ECUA a warranty that that was the case.

It was explained that the next step towards resolving this issue would be that the issue go to mediation.

A motion was made by Mr. Bare, seconded by Ms. Benson, to send this issue to the next step of mediation. Motion carried unanimously.

Mr. Perkins commented that it's pretty obvious that the property in question has been conveyed to ECUA. That's a pretty strong case for ECUA. Further, he is a City taxpayer and he does not want to end up in a lawsuit and spend his taxes fighting over the issue. Also, regarding the runways, the one referred to is not the main runway. Mr. Perkins also commented that the fact that the Spanish Trail well property has a lease on it and has been leased for quite a few years now, I think is a major weakness in the City's case. If that has a lease on it, and you are supposed to get fair market value on what you own, why do these other properties not have a lease on them after 32 years? And, if they were supposed to have a lease on them, do we open ourselves as a City taxpayer to fines from the FAA and the recovery of those fair market values. That seems like a risk to me. Further, he does not think the FAA has a big dog in the hunt and he does not think they really care either way and thus he feels we would not be facing a big challenge from them unless the City teamed up with them and wanted to present a big challenge. Also, Mr. Perkins stated that he does not think that going to court and fighting each other and spending our ratepayers' money against each other is the way to go.

Chairman Walker stated that he would urge the City Council members to take charge of this issue on their end and bring this matter to some kind of happy conclusion with ECUA. The further it goes in arbitration and the process, the more likely it is to wind up in court. Also, if it winds up in court, he predicts the court would rule that the City of Pensacola was instructed, was ordered by the State Legislature in 1981, to convey all assets of the water system to ECUA and the City was obligated to do that. Further, he feels that the

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courts would rule that if the City cannot give ECUA clear title to the properties,
then the City would have to compensate ECUA.

ITEM 5 – OPEN FORUM

There were no comments from the audience.

ITEM 6 – ADJOURNMENT

There being no further business to come before the joint meeting of
the Emerald Coast Utilities Authority Board and the City of Pensacola Council,
Chairman Walker declared the meeting adjourned at approximately 6:48 p.m.

Respectfully submitted,



Stephen E. Sorrell
Executive Director

APPROVED BY THE ECUA BOARD
IN REGULAR SESSION ON 03/27/14.

- (X) Without corrections/amendments.
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