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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

CASE NO.: 2019-CA-001894

CITY OF FRUITLAND PARK,
Plaintiff,

vs.

T.D. BURKE,
Defendant.

_____ /

FRUITLAND PARK CITY COMMISSION

SHADE MEETING ATTORNEY/CLIENT

HELD BEFORE: CHRISTOPHER CHESHIRE, MAYOR
JOHN L. GUNTER, JUNIOR, VICE MAYOR
CHRISTOPHER BELL, COMMISSIONER
PATRICK DeGRAVE, COMMISSIONER
JOHN MOBILIAN, COMMISSIONER

October 8, 2020
7:20 P.M. - 7:47 P.M.

FRUITLAND PARK CITY HALL COMMISSION CHAMBERS
506 West Berckman Street
Fruitland Park, Florida 34731

Reported By:
Evelyn Andrews, RPR, RMR
Notary Public, State of Florida

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APPEARANCES:

On Behalf of the City of Fruitland Park:

ANITA R. GERACI-CARVER, ESQUIRE
LAW OFFICE OF ANITA R. GERACI-CARVER, PA
1560 Bloxam Avenue
Clermont, Florida 34711

ALSO PRESENT:

GARY LA VENIA, CITY MANAGER

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P R O C E E D I N G S

- - - - -

1
2
3 THE MAYOR: I'd like to call to order this
4 Fruitland Park City Commissioner Attorney/Client
5 session. The date is October 28 -- October 8, 2020.
6 The time is 7:20 p.m. The session will last
7 approximately a half an hour.

8 Names of people in attendance: Mayor
9 Christopher Cheshire; Vice Mayor John L. Gunter,
10 Junior; Commissioner Christopher Bell; Commissioner
11 Patrick DeGrave; Commissioner John Mobilian; City
12 Manager Gary La Venia; City Attorney Anita Geraci --
13 can't even say your name tonight.

14 MS. GERACI-CARVER: Geraci.

15 THE MAYOR: Geraci-Carver. Thank you. And
16 Ms. Evelyn Andrews, certified court reporter also
17 from Jasko Court Reporting, who shall record the
18 time and termination of the session, all discussions
19 and proceedings that occur, the names of all persons
20 present at the time and during the session and the
21 names of all persons speaking.

22 City of Fruitland Park versus T.D. Burke case,
23 an attorney/client closed session meeting on the
24 City of Fruitland Park versus T.D. Burke, Case
25 Number 2019-CA-001894 to discuss settlement

1 negotiations and obtain direction.

2 The entire session should be recorded by a
3 certified court reporter. The reporter shall record
4 the times of commencement and termination of the
5 session, all discussions and proceedings, the names
6 and persons present at the time, the names of the
7 person speaking. No portion of this session shall
8 be off the record. The court reporter's notes shall
9 be fully transcribed and filed with the City of
10 Fruitland Park City Clerk within a reasonable amount
11 of time.

12 Only persons listed above are allowed to be
13 present. The remaining individuals are not
14 called -- not called are asked to be excused from
15 the meeting room at this time.

16 This meeting is not open to the public, Florida
17 Statutes 286.011(8), attorney/client session.

18 (Whereupon, Ms. Coulson left the room.)

19 THE MAYOR: Anita.

20 MS. GERACI-CARVER: Thank you. So the
21 T.D. Burke case, as you know, we had filed suit
22 against them when the business owner was in business
23 and there was a restaurant operating on the
24 property. After we filed the litigation, he closed
25 the restaurant, sold the equipment that was inside

1 and is no longer in operation and it's not occupied.

2 They filed a motion for summary judgment and
3 the court denied it. And so they have now requested
4 that we settle the case. And the proposal that
5 Mr. Burke has made through his attorney is that both
6 parties essentially walk away from the case, that
7 both parties sign a mutual release, each side pays
8 their own attorney's fees and costs and he will sign
9 an agreement where he agrees to hook up to the
10 City's water and pay the fees whether he goes back
11 into business or whether the next owner or user
12 needs to connect to the water. And they are asking
13 the City to file a dismissal of the action with
14 prejudice, meaning you can't refile it.

15 So we, Gary and I spoke about it. And I also
16 had the opportunity to speak with Duane Booth of
17 Halff-BESH, your engineer, to talk about some of the
18 provisions since it's not in operation.

19 One of the things that -- well, I should tell
20 you that at this point in the case, you have in cost
21 and fees approximately \$7500.00 that you've expended
22 in this case.

23 They were required within six months of the
24 City giving them notice that water and sewer was
25 available to connect to the system and to also

1 install a fire hydrant. And they did not respond to
2 the City's letters that we sent. Dale went and
3 actually visited the restaurant to try and talk to
4 Mr. Burke, and he wouldn't talk to him or he wasn't
5 there, and never got back in touch. But there was
6 no communication, which is what led the City
7 Commission to say we needed to file suit to enforce
8 the development agreement contract.

9 I talked to Duane about connection to the
10 system and he said, since it is not occupied,
11 there's no reason from an engineering standpoint
12 relating to your water and sewer that would
13 necessitate them connecting at this time. Certainly
14 they would have to connect before anyone else
15 occupies the property.

16 They're currently using a septic system. So we
17 talked about requiring them, if you were inclined to
18 settle the case, to require him to decommission the
19 septic system. The cost of that is approximately
20 1500 to \$1800.00. And what that would mean is, when
21 somebody else went in to use the property, if they
22 went to the Department of Health to be able to
23 install a new septic system, the Department of
24 Health would require a letter that there's no
25 availability of sewer from the City. Obviously, we

1 would not provide that letter, so the Department of
2 Health would not allow for a septic system to be
3 reinstalled. That would force the people to come to
4 the City and connect.

5 We talked about whether or not it was prudent
6 to require them to at least install the fire hydrant
7 because there is water available. And right now the
8 only means of fire protection is whatever the trucks
9 for the fire department can haul and he was required
10 to have his swimming pool available for water to be
11 drawn out of.

12 I talked to Duane about what the cost of that
13 would be just so we would have some idea of what you
14 would be requesting of them, and there's two points
15 that they could connect. One will be directional
16 drill under the road. Another is just running it
17 from a further point away. And the cost to run the
18 lines and the fire hydrant assembly would cost in
19 the range of 23,000 to 28, 29,000. So that's the
20 cost of that.

21 Really, the protection is for the property
22 owner, but I think it would be prudent if you don't
23 require them to install the fire hydrant that we at
24 least get some release from them indicating that
25 they understand that there's not fire protection

1 there, they've chosen not to put the fire hydrant in
2 at this time, and, you know, we may not be able to
3 save the building if it were to catch fire.

4 Let me make sure I covered every point.

5 So that is, the offer they've made is
6 essentially status quo, putting us, you, back in the
7 exact same position you were in prior to filing the
8 lawsuit, which means they don't connect. You've
9 expended fees for the litigation that you wouldn't
10 have had to have, and they'll just connect in the
11 future, and they'll sign an agreement to that
12 effect. It gets recorded in the public records, and
13 so anyone who buys the property would see that they
14 have that obligation.

15 I think that Gary and I in our discussions, we
16 recognize that it, you know, maybe it's not
17 necessary for them to connect at this point. There
18 are mechanisms in place that would trigger the new
19 person, new tenant, new owner having to come in and
20 connect. But we do recommend if you are inclined to
21 settle that you require them to abandon the septic
22 system prior to the litigation being resolved or
23 dismissed, and that you seek to recover your
24 attorney's fees and costs.

25 THE MAYOR: And we also make them sign

1 something saying they know that they have no fire
2 protection there --

3 MS. GERACI-CARVER: Correct.

4 THE MAYOR: -- in addition.

5 MS. GERACI-CARVER: Yes. Yes.

6 THE MAYOR: Questions?

7 MS. GERACI-CARVER: So I just would want to
8 point out to everyone, because I haven't been in a
9 closed session with all of you before, but anything
10 that we talk about has to be related to this case.
11 And it will become a public record once the
12 litigation is over. So I would just caution you
13 about any comments that you may make will become a
14 public record in the future.

15 THE MAYOR: Questions?

16 MS. GERACI-CARVER: I'm happy to answer any
17 questions.

18 VICE MAYOR GUNTER: What was the total amount
19 originally for him to hook up?

20 MS. GERACI-CARVER: There was an estimate
21 prepared by the engineer. The impact fees were
22 \$40,700.00.

23 VICE MAYOR GUNTER: Is that just water or is
24 that both water and sewer?

25 MS. GERACI-CARVER: That's water and

1 wastewater.

2 COMMISSIONER BELL: Does that include the fire
3 hydrant?

4 MS. GERACI-CARVER: The fire hydrant was on top
5 of that. Duane told me the fire hydrant assembly is
6 about \$7500.00. So once the water line was run,
7 then it'd just be the additional 7500.

8 And I thought we had the estimate for running
9 the lines, but perhaps we didn't. We may have --
10 it looks like we only sent him what the cost was to
11 connect. And they would have to hire their own
12 engineer to draw up the plans. And they would have
13 to have a private lift station for the sewer
14 connection.

15 COMMISSIONER DeGRAVE: How is that building
16 getting their potable water?

17 MS. GERACI-CARVER: They have private wells on
18 the property.

19 COMMISSIONER DeGRAVE: Okay. You had mentioned
20 abandoning and obliterating the septic system.

21 MS. GERACI-CARVER: Correct.

22 COMMISSIONER DeGRAVE: We didn't continue the
23 discussion, but I would also put in there, capping
24 those wells, however many wells there may be, with
25 something like bentonite or comparable so that

1 they're not going to be used again.

2 COMMISSIONER BELL: There might be a problem
3 with that is if they're being used for irrigation.

4 MS. GERACI-CARVER: And I believe, actually now
5 that you mention that, I didn't -- did you mention
6 to me, Gary, or did Duane, that someone's property,
7 there's a nursery behind it and they use those, some
8 of the wells, at least, for irrigation purposes?

9 COMMISSIONER MOBILIAN: I think that's Bart's
10 Nursery. It's a tree farm back in there.

11 MR. LA VENIA: It's Goney's Nursery. He leases
12 the property from either Mr. -- I'm not quite sure
13 if that's part and parcel of Tim Burke's property,
14 which is in the City, or be part and parcel of
15 T.C. Burke's property, which is in the county. But
16 Goney's does have a nursery there

17 THE MAYOR: And, Patrick, you want the wells
18 capped so they can't use the well water, only run
19 water?

20 COMMISSIONER DeGRAVE: At least for the
21 building, you know. Disconnecting is one thing but
22 disconnecting usually means reconnecting is just as
23 easy. So if there's a well that is dedicated to the
24 building, it should be capped.

25 COMMISSIONER BELL: Yeah, but I kind of got the

1 feeling it's probably --

2 COMMISSIONER DeGRAVE: Shared.

3 COMMISSIONER BELL: -- shared.

4 THE MAYOR: Anita, if we continue forward with
5 the case, what is your prediction or summary of what
6 would happen if we do not settle with him at this
7 point?

8 MS. GERACI-CARVER: She mentioned that they
9 would file a counterclaim against the City, and
10 she -- it sounded like it was going to be
11 attributing his closing of the restaurant due to
12 actions of the City not having the services, the
13 sewer and the water service available sooner.

14 And I tried to better understand it. And
15 essentially was, it was explained that, well, he
16 couldn't have a dishwasher because there was no
17 potable water for that. And because of that, they
18 couldn't, I guess, keep up with the volume. So it
19 was not a very good answer, in my opinion, so I
20 don't know what it would entail, but that was kind
21 of the gist of it.

22 Mention was also made of perhaps the father
23 would file a lawsuit against the City because they
24 felt as though the City was steering potential
25 buyers or developers away from the father's adjacent

1 property, and telling them that until T.D. Burke
2 connected to the system, the City would refuse any
3 development that came forward on the father's
4 property.

5 THE MAYOR: But besides that, what's the next
6 step we continue with this, do we wind up in a
7 court, do we wind up before a judge? What's our --

8 MS. GERACI-CARVER: Okay. So the next step
9 would be probably some discovery, you know, we would
10 take Mr. Burke's testimony. She may want to take
11 some depositions. And then once that is concluded,
12 it would be set for trial. It is a trial in front
13 of a judge, and the court would make a ruling.

14 THE MAYOR: How much in fees do you think would
15 we spend going to trial?

16 MS. GERACI-CARVER: I would estimate 15,000.

17 THE MAYOR: Another 15. And would you -- that
18 would be you taking --

19 MS. GERACI-CARVER: Yes.

20 COMMISSIONER BELL: Do we have code enforcement
21 fines on the property at this point?

22 MS. GERACI-CARVER: It was not a code violation
23 case.

24 COMMISSIONER BELL: Not a code violation?

25 MS. GERACI-CARVER: No.

1 COMMISSIONER DeGRAVE: So a year ago when this
2 started, roughly, we had a developer's -- we have a
3 Developer's Agreement that he signed that he would
4 hook up within six months of having sewer and water
5 available. Sewer and water is available, Gary. And
6 how long has it been available to him?

7 MR. LA VENIA: Oh, my goodness.

8 COMMISSIONER DeGRAVE: Roughly. More than a
9 year?

10 MR. LA VENIA: Oh, yes, more than a year.

11 COMMISSIONER DeGRAVE: More than five years?

12 MR. LA VENIA: Yeah, the water went in when we
13 built Pine Ridge and Pine Hills.

14 COMMISSIONER DeGRAVE: He's well exceeded the
15 six months.

16 MR. LA VENIA: Oh, yes, yeah.

17 COMMISSIONER DeGRAVE: A decision was made to
18 initiate litigation because he failed to honor a
19 contract he signed.

20 MR. LA VENIA: Correct.

21 COMMISSIONER DeGRAVE: The proposal, if I
22 understand it, is we all walk away, having spent
23 money, and puts us right back where we were, which
24 is not connecting, but now so the rationale is he's
25 not connecting because the business is closed.

1 So he wants to connect and pay when something
2 else goes on there, either that business reopens or
3 gets torn down, property gets developed, which seems
4 to make sense. However, he said he'll sign to
5 indicate that he'll do that. So my trust level is
6 very low because he's already signed something in
7 which he has not honored.

8 So my question is: If we move in a direction
9 to a resolution, how do we strengthen that to where
10 it actually happens?

11 MS. GERACI-CARVER: And I think the mechanisms
12 we talked about of making him decommission the
13 septic system so there can't be that connection, and
14 I think the idea of, you know, somehow permanently
15 disconnecting the wells from the building is really
16 the best mechanism. Because as you said, the trust
17 level is low and we don't want a situation where
18 they move someone in, or he moves back in, and he's
19 using those things and then we're forced to go to
20 court to --

21 COMMISSIONER DeGRAVE: Again.

22 MS. GERACI-CARVER: -- again to make him
23 connect. So those really are the best ways that we
24 could come up with in brainstorming with Gary and
25 Duane on how -- if you can't trust the word and the

1 document, what other things can we impose?

2 COMMISSIONER DeGRAVE: So decommissioning the
3 septic?

4 MS. GERACI-CARVER: Yes.

5 COMMISSIONER DeGRAVE: Disconnecting and
6 hopefully capping the potable water source to the
7 building.

8 MS. GERACI-CARVER: Correct.

9 COMMISSIONER DeGRAVE: Paying attorney's fees
10 and signing a stipulation of the litigation, the
11 suit, that the triggering point will be either
12 reopening that business or development in any way of
13 the property or changing ownership. I mean, I
14 don't --

15 MS. GERACI-CARVER: Correct.

16 COMMISSIONER DeGRAVE: And that could be
17 recorded against the property. So any future buyer
18 with a title search will be able to determine that
19 there is an obligation against the property.

20 MS. GERACI-CARVER: Correct.

21 COMMISSIONER DeGRAVE: So that will be a
22 counter-proposal to what they've offered?

23 MS. GERACI-CARVER: Yes.

24 COMMISSIONER MOBILIAN: What about hooking up a
25 fire hydrant? They don't need that?

1 VICE MAYOR GUNTER: That would be 40,700 plus
2 the 23 to 29,000 when the property is sold to
3 somebody else, or if he decides to reopen the
4 restaurant or --

5 COMMISSIONER MOBILIAN: Right.

6 VICE MAYOR GUNTER: -- whatever.

7 THE MAYOR: And I think like Anita said, if you
8 don't have the fire hydrant, they can sign something
9 basically saying you don't have protection there --

10 VICE MAYOR GUNTER: Right.

11 THE MAYOR: -- we're not liable, our fire
12 department is not liable in case something happens
13 at your building. It's your --

14 VICE MAYOR GUNTER: Yeah, especially if you
15 don't -- excuse me. Especially if we're going to
16 cut the wells off --

17 THE MAYOR: Yeah.

18 VICE MAYOR GUNTER: -- cut the water supply off
19 to the building, we need something to release the
20 City from -- 'cause the next thing that happens, the
21 building might burn down.

22 MS. GERACI-CARVER: Well, and from the
23 agreement it appears that the only water source for
24 fire protection was going to be his swimming pool
25 and whatever the fire truck could hold. So I don't

1 think it was contemplated, I don't believe, that the
2 wells would be used, but.

3 COMMISSIONER DeGRAVE: That's what I remember
4 hearing from the fire chief. And then he was
5 reluctant to use that water because of contamination
6 and stagnation.

7 MR. LA VENIA: Uh-huh.

8 MS. GERACI-CARVER: Oh, it does require
9 unconditional use of the three wells on the
10 property. They have a combined output of 515
11 gallons per minute. So the wells were contemplated
12 I guess for use for fire protection in addition to
13 the pool.

14 COMMISSIONER DeGRAVE: So we're not going to
15 cap the wells but we can certainly require an
16 inspector to verify that the well feeding that
17 building has been disconnected.

18 MS. GERACI-CARVER: Correct.

19 VICE MAYOR GUNTER: Does that building have a
20 sprinkler system in it?

21 MR. LA VENIA: That I can't answer. I don't
22 know.

23 MS. GERACI-CARVER: I don't think so because it
24 didn't have anything to connect it to.

25 COMMISSIONER DeGRAVE: Gary, we have the

1 restaurant property fronting the highway. How much
2 property behind becomes developable at a sale? Is
3 he talking --

4 MR. LA VENIA: You mean with the restaurant
5 property?

6 COMMISSIONER DeGRAVE: Pardon me?

7 MR. LA VENIA: Associated with the restaurant
8 property?

9 COMMISSIONER DeGRAVE: Yes.

10 MR. LA VENIA: There's not a lot there to
11 develop. Most of the property is owned by Mr. T.C.
12 Burke, and it's in the county. It would have to be
13 annexed in. So it's sort of like -- it's almost
14 like, if you will, I describe as a flag lot because
15 it's bigger than that, but.

16 COMMISSIONER DeGRAVE: We could require the
17 disconnection of the shared well feeding that
18 building at the property line?

19 MR. LA VENIA: Uh-huh.

20 COMMISSIONER DeGRAVE: If you do it at the
21 building it's very easy to reconnect. If you do it
22 at the property line, it's much more difficult.

23 MR. LA VENIA: Uh-huh.

24 THE MAYOR: Anybody else?

25 COMMISSIONER DeGRAVE: Can you summarize where

1 we're at?

2 MS. GERACI-CARVER: So as I understand it, the
3 Commission would be willing to settle if the wells
4 are disconnected at the property line from the
5 building; that they sign a statement of no liability
6 for this on the City regarding the fire protection;
7 decommission the septic system; and Mr. Burke pay
8 the City's fees and costs; and sign another
9 agreement.

10 COMMISSIONER DeGRAVE: Will the judge dismiss
11 the suit based on a proposal signed by both sides,
12 correct?

13 MS. GERACI-CARVER: Yes. So it would be a
14 joint stipulation to dismiss under these terms.

15 COMMISSIONER DeGRAVE: So the joint stipulation
16 should indicate that connection will be triggered by
17 specific things, sell the property, reuse of the
18 property, reopening of the business, et cetera,
19 anything at all in changes. Because in my, my
20 perspective is, I'm willing to go along with the
21 negotiated settlement for no other reason than the
22 status has changed. He was in business when it
23 started, now he's out of business. As soon as
24 something triggers anything happens on that
25 property, that's the trigger point, he has to sign

1 and the judge has to accept that stipulation.

2 And who's the recorded owner of the property
3 now?

4 MS. GERACI-CARVER: At the time the lawsuit was
5 filed it was T.D. Burke.

6 COMMISSIONER DeGRAVE: The father.

7 MS. GERACI-CARVER: The son.

8 COMMISSIONER DeGRAVE: The son.

9 MS. GERACI-CARVER: Individually.

10 COMMISSIONER DeGRAVE: That's to sign the
11 stipulation there, correct?

12 MS. GERACI-CARVER: Correct.

13 COMMISSIONER DeGRAVE: I can go along with
14 that.

15 VICE MAYOR GUNTER: Sounds crazy, but I had the
16 same thing down here.

17 THE MAYOR: All right.

18 COMMISSIONER BELL: Okay.

19 THE MAYOR: All right.

20 MR. LA VENIA: Of course we reserve the right
21 to go back to court if he doesn't live up to the
22 tenants of the agreement.

23 COMMISSIONER DeGRAVE: So for guidance for you,
24 I'm very reluctant to -- I will be very reluctant to
25 move from that position.

1 THE MAYOR: Again, I think what Patrick said,
2 there's not much negotiation there. There's not,
3 you know. And his counterclaims are ridiculous. So
4 I really think --

5 COMMISSIONER DeGRAVE: I think that's
6 bolstering their position, it's shallow, but these
7 are very reasonable to protect our position. Any
8 movement from that is simply to erode our position.
9 I'm not going to be willing to do that.

10 MS. GERACI-CARVER: All right. I have my
11 direction. Thank you very much.

12 THE MAYOR: Anything else?

13 COMMISSIONER BELL: No.

14 THE MAYOR: Okay. We are adjourned.

15 COMMISSIONER DeGRAVE: Thank you for your work
16 on it.

17 THE MAYOR: We are adjourned.

18 (The shade meeting proceedings were concluded
19 at 7:47 p.m.)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA
4 COUNTY OF LAKE5 I, EVELYN M. ANDREWS, Registered Professional
6 Reporter, Registered Merit Reporter, Notary Public, State
7 of Florida, HEREBY CERTIFY THAT I was authorized to and
8 did stenographically report the foregoing proceedings;
9 and that the transcript, pages numbered 3 through 22, is
10 a true and accurate record of my stenographic notes.11 I FURTHER CERTIFY that I am not a relative, or
12 employee, or attorney, or counsel of any of the parties,
13 nor am I a relative or employee of any of the parties'
14 attorney or counsel connected with the action, nor am I
15 financially interested in the action.16
17 DATED this 23rd day of October, 2020.18
19
20 21 Evelyn M. Andrews, R.P.R., R.M.R.
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