

**CITY OF KUNA
SPECIAL CITY COUNCIL MEETING
MINUTES
OCTOBER 9, 2007**

KUNA CITY HALL COUNCIL CHAMBER, 763 W. AVALON

NOTE: These minutes are an unofficial record of this City Council meeting until reviewed; corrected if deemed appropriate, and formally approved by the Kuna City Council at a subsequent Council meeting.

Mayor Dowdy called the City Council Special Meeting to order 9:00 a.m.

PRESENT: Mayor Dowdy; Council President Lang; Councilwoman Stroebel and Councilman Cardoza.

ALSO PRESENT: City Attorney Randy Grove; Planning Director Steve Hasson; Planning Technician Tracy Rushlow and Larry Rupp and Justin Walker of Keller & Associates.

Moved by C/Lang, seconded by C/Stroebel and carried 3-0 to amend the agenda by adding the following:

AGENDA ITEM 3: AUTHORIZE THE MAYOR TO SIGN A 404 PERMIT FOR CANAL CROSSINGS ALONG INDIAN CREEK PIPELINE AND TEN MILE FORCE MAINS.

AGENDA ITEM 4: AUTHORIZE THE MAYOR TO SIGN AN AGREEMENT WITH OSPREY RIDGE PARTNERS FOR FUNDING A 30% EXPANSION OF CAPACITY IN CONSTRUCTION OF THE WASTEWATER TREATMENT PLANT.

3. AUTHORIZE THE MAYOR TO SIGN A 404 PERMIT FOR CANAL CROSSINGS ALONG INDIAN CREEK PIPELINE AND TEN MILE FORCE MAINS.

Justin Walker reported that construction of the Indian Creek pipeline, the effluent pipeline from the WWTP, will include 4 canal crossings. Crossing US-owned water requires a permit from the US Corps of Engineers called a 404 Permit. The Danskin lift station force main will also require a 404 Permit. He requested the authorizing for the Mayor to sign the 4 when the application and drawings are ready.

C/Lang moved, seconded by C/Stroebel to authorize the Mayor to sign the 404 permits for the canal crossing along Indian Creek and Ten Mile force mains as per Justin/ Keller Engineers for the canal crossings. Motion carried 3-0.

4. AUTHORIZE THE MAYOR TO SIGN AN AGREEMENT WITH OSPREY RIDGE PARTNERS FOR FUNDING A 30% EXPANSION OF CAPACITY IN CONSTRUCTION OF THE WASTEWATER TREATMENT PLANT.

CA/Grove explained that the current agreement contains significant changes from the version presented at the last council meeting. Most notably, changes in section 6 referring to a reserved number of connections in Kuna's wastewater treatment system are not in the current agreement but may be in the final version. Other language changes in section 8 regarding the

process of getting zoning approval for applications made to the City have been clarified. He stated that he was satisfied with this agreement in that it protects the City's interest and allows some flexibility for both the City and Osprey as far as their proposed development.

C/Stroebel stated that under section 7, the agreement indicates that the City agrees to consent to annexation of the land. She stated that she wanted to make sure the agreement indicates the City is not going to do that but that we agree to review and follow the public process.

P&Z Director/Hasson responded that, just because an agency annexes the land, it does not mean that it approves the contemplated land uses. The City would still have a control in place indicating that we have annexed the land because it represents a good investment but there still is a public process including a rezone and a subdivision process. The City still has the control and the public still has its due process.

With regard to annexation fees, C/Stroebel noted that the City is proposing to waive the annexation fees for Osprey. She asked if the City had also waived annexation fees for the LID participants and what was the total cost for the waivers?

P&Z Director/Hasson explained that the fees were waived for the LID members who annexed and that the total cost was a couple of thousand dollars.

C/Cardoza asked the City Attorney to explain paragraph 5 especially the sewer interceptor fees. How far does the sewer interceptor and related fees extend away from the treatment plant? He stated that he was concerned that other fees would be a cost against the \$1,000,000 fees which would leave the door wide open to include other fees. Though we were just increasing the capacity to 13,000 from 10,000. What would the fees accomplish?

CA/Grove responded that the City hasn't currently adopted the proposed interceptor line fees. The \$1.285 million would pay for 306 sewer connections.

M/Dowdy proposed that the wording stated that it is a prepayment for sewer connections at \$4,200 per connection and remove the language about "Sewer Connections are defined as," etc.

C/Cardoza agreed with M/Dowdy's suggestion.

CA/Grove repeated "strike all the language in the parenthesis with remainder of the sentence in paragraph 5 and rewrite it as "prepayment of sewer connections at \$4,200 per sewer connection."

C/Cardoza stated that he would also like to have the last sentence stricken from paragraph 5 "As Osprey Ridge shall be entitled to transfer, pledge or sell said sewer connections without restriction, pass through its cost to purchasers and be directly compensated directly by those purchasers for the Sewer Connections." In addition, he would like to see an addendum to give first rights of sale to LID members to Osprey Ridge. It does not say that they cannot sell them on the open market.

CA/Grove stated that he had discussed the matter with Mr. Schild and had reviewed the Code. He explained that it would not be a good policy because the City really has control on how it allocates sewer and if that control is delegated to another entity, it would give the City less control than it should have. He clarified that he was not saying that the LID members shouldn't have the right or opportunity to sell them if they have buyers, but to give the right of refusal to certain people, the City would lose control of the ability to allocate its sewer facilities. LID members, by agreement, agreed to fund the expansion of the sewer treatment facility and in exchange, were given a reserved capacity and guaranteed a certain number of sewer connections. He expressed concern that, in the future, if the slow down in housing sales becomes prolonged and someone proposes a development needing 200-300 connections and members of the LID are given first refusal, there may be 50 connections or 1,000 connections available and at that point, how would the City determine who gets to sell the connections they don't want. Osprey has to have a certain number of connections but they do not have any approved development plans and, therefore, cannot designate specific pieces of property those connections would go to. When someone comes in for a building permit on those properties they can designate that this connection goes to that piece of property, it's not like they are going to sell them on the open market. It would be the same as in the LID. Like Applewood. The difference is that Osprey has prepaid for those connections, where the LID has not been not prepaid. Language can be added saying that they cannot sell them on the open market.

M/Dowdy explained that the City needs to make sure that it doesn't treat different people differently. The City is contemplating the ability of allowing the people who are in the LID to sell their connections in the LID in an unrestricted manor to properties that are outside of the LID. It is important to make sure that the City is not restricting one group and telling the other group that they can sell to who ever they want to. Strike that language about "without restrictions" and replace it with "anyone who has guaranteed connections within the plant to sell those connections to anyone within the City limits."

In response to C/Cardoza, Justin Walker explained that the \$3.5 million needed to expand the sewer treatment facility up to the 13,000 connections. The proposed contract would pay \$158,000 for the engineer's redesign study and the remaining \$1,127,706 would pay for concrete work for the expansion. The amount of \$1,285,706 is what is needed now and is what Osprey is willing to put up without being annexed into the City. It is a risk on their part and the remainder will be in a separate contract when they are annexed into the City and it is pledged.

M/Dowdy further explained that Osprey is willing to pay \$1,285,706 today without an annexation route for expansion of the sewer treatment plant. The agreement can be modified requiring that, upon annexation, they will commit the remainder of the \$3.5 million. Osprey is reluctant at this time to commit the entire \$3.5 million without an annexation route because if the annexation route falls through, they will not need the connections. That is why they would like to sell those connections to other land owners if possible. If they cannot annex and build those projects, they want to be able to recoup some of that money. Their intention is to go forward today with the annexation and commit the \$1,285,706 and when the annexation route goes through, then they will commit the remainder of the money.

Tim Gordon, 1209 Blackcat, stated that all he has are verbal conversations on the LID and that he hasn't seen a thing on what is being agreed to. Where is the assessment that the LID owners have to pay? He has put up \$13 million for connections and has collateralized three times. The Osprey contract seems to provide 1 to 1 where the LID members had 3 to 1. It appears as though Osprey has assurances that they can sell their connections. Yet, three years ago, the LID was brought up and back in April, LID owners were assured that there would be an agreement soon and yet to this date there is nothing. But if the market keeps deteriorating, there will be lots of connections available.

M/Dowdy pointed out that the LID owners are guaranteed that they can develop their properties and that connections will be available. This money is just for concrete work. It does not finish off the expansion and Osprey does not get the annexation route and they do not get any of those connections. The City still has 1,500 connections from the 10,000 connections. The LID has like 8,500.

Tim Gordon stated that the City doesn't pay for any of those connections so the LID owners have to compete with the City as well as Osprey. .

M/Dowdy reminded everyone that participation in the LID was voluntary.

Sam Johnson, 393 N. Blackcat, stated that he was appalled that the City is annexing with landowners saying they have agreed to the annex route. He has 150 EDUs which cost him \$630,000 and he felt that the City needs to be more accountable to take care of the LID members. If it wasn't for the LID members, the City would not have a new sewer treatment plant. The City made a deal of \$158,000 for engineering and how many EDUs in return for that? Osprey is not in City limits and the City should not be making deals with people who are not in the City. Is the general public going to know about this route?

M/Dowdy responded that the annexation route process for Osprey will be the same as that utilized by the LID members.

Jim Jewett, 1560 Carol St., Meridian, expressed concerns about problems like this coming up. He felt the City should finish out the LID and then if they want to make deals like this, go ahead, but the LID commitments will be done. There are still a lot of questions about what LID members do have. Since he didn't know the details of what the City is doing, he stated that he would like a lot more information before making any judgments. He asked the council to complete what has already been done based on what was published and what was presented. Another 3,000 connections certainly are not needed today and the 10,000 connections may not even be needed in the next 30 years. Even if someone is paying for the expansion, it is diluting the connections already there and it does not seem fair to the existing LID members.

Ray Schild, representing Osprey Ridge, stated that he would like to address some of the concerns or issues between the LID members and the City. In order for Osprey to annex in and develop, the City needs and wants the sewer plant expansion. The agreement does not guarantee anything and Osprey is not in competition with the LID owners. While developing the land, Osprey will need the opportunity to be able to sell connections to the builders who

pull building permits and there has to be a means to transfer that connection and be repaid for what has already been paid to the City. If we take out development loans we have to be able to pledge those as collateral. We are the only ones who have put up any money. The LID owners have pledged but not put up any money. Osprey tried to act in good faith and when learning that money was needed, we came forward. When we were told that the City needed \$158,000 to engineer the plant expansion, under our impression from talking to Justin Walker, we were led to understand that we not only funded the expansion but the funded the engineering for the 10,000 connections as well because all that existed before we presented the money was a preliminary plan for DEQ. Because the LID members had the total plant capacity reserved, we were told that there would not be any hookups remaining for Osprey. Osprey does not want to be in competition with the LID members, the people or Kuna or the City administration. If LID owners have the first right of refusal, it will be a losing proposition for Osprey since they would have to buy connections from them. They would control the sewer capacity which would put them in an unfair bargaining position. They have 8,500 connections tied up and since Osprey needs 3,500, Osprey would be held hostage. What these gentlemen are suggesting could be selling Osprey sewer hookups when the bank would not transfer the security from their land to our land and they would still be encumbered although we have the sewer hookups. If there are 5,000 connections from the LID that owners want to sell and Osprey only needs 2,000 what should Osprey do? Who do they buy from? Would there be a bidding war, or reverse auction? The proposed agreement is a contract to buy EDUs for what they cost today; prepaying for connections. Osprey does not want to commit \$3.5 million without some guarantees but we are willing to commit \$1.28 million without any guarantee and that is what we did. We believe in Kuna and want to help make Kuna a great City and we think that we can do this. Once the annexation path is established, Osprey will come up with the rest. He felt that shows more faith than anyone has in Kuna in a long time.

C/Cardoza asked Mr. Schild if he was not aware that the LID owners wanted to sell their hookups prior to today. Two weeks ago, you were made aware that the LID wanted to sell their EDU units.

Mr. Schild responded that C/Cardoza and C/Stroebel mentioned something at the last meeting about the first right of refusal but Osprey was not aware of the facts around that and what they would like to see in our development. I did not object to that at the time but there did not seem a legal way for it to occur. If Osprey were to buy EDUs from the LID members, it would be paying it to them instead of the City and then the City would have to make up the \$1.3 million for the sewer expansion. He stated that he thought the whole idea was to work hand-in-hand with the City to help facilitate the plant expansion and that is what this agreement is designed to do. This goes back a year; it is not a new agreement.

Councilwoman Stroebel stated the agreement seems reasonable except for a few comments. She felt that if Osprey had EDU's, it should have the opportunity to sell them just as the LID members can. The agreement needs language stating that it is on a first come, first serve basis or that Osprey has the first right of refusal or a review process needs to be provided for. If LID members went bankrupt and there are 6,000 EDUs remaining with another 3,000 for Osprey, then the City would be responsible for extra hookups that cannot be utilized. Further,

she did not like the wording for Section 7 as she felt the public would be left out of the process.

Mr. Schild suggested that the City Attorney remove “without restriction” and add language that the EDUs can be sold, pledged, etc. according to then existing policy and ordinances. Further, he stated that he would be willing to have a sentence added indicating that the annexation will comply with all applicable state and local ordinances.

C/Lang suggested “Kuna will consider annexing the land.”

C/Stroebel agreed with C/Lang’s suggested wording and requested that “without restriction” be removed from No. 5. Add “according to City’s existing policies and ordinances.” No. 4 states that “Kuna agrees to construct the Siemens MBR sewer plant with a capacity of at least 13,000 EDUs;” however that is not this agreement.

Mr. Schild agreed that the statement in No. 4 should be stricken from the agreement.

In response to C/Cardoza, M/Dowdy stated that the plant was originally designed for 10,000 EDUs because it was limited by proprieties in the LID and the amount of funding the City could receive from those properties which \$30,000,000. When former Mayor Obray talked with Osprey Ridge and Keller, it was determined that the plant could be enlarged with an additional 3,000 EDUs for about \$3.5 million. The bid includes costs for the 13,000 EDU capacity which, at this point, only includes the tank abilities and upsizing the pumps.

City Attorney Grove summarized the changes in the agreement: Paragraph 4 - strike second sentence “Kuna agrees to construct the Siemens MBR Sewer Plant with capacity of at least 13,000 EDU’s;” paragraph 5 - strike (“Sewer connections are defined as including wastewater treatment fees and any sewer interceptor or other sewer related fees), which Osprey Ridge intends to use to service lots it develops and sells on the land. The following statement will be added to the end of paragraph 5 “Osprey Ridge shall be entitled to transfer, pledge, or sell said sewer connections without restrictions, pass through the cost to purchasers and be compensated directly by those purchasers for the sewer connections.” Strike “without restriction” and add language consistent with “sell, pledge, etc. consistent with the City’s adopted transfer policies and/or ordinances.” Change Paragraph 7 to “Kuna considers to annex the land into the City under the “A” or Agricultural designation when the land becomes contiguous.”

C/Lang moved, seconded by C/Stroebel to approve the Osprey Ridge Partner’s Agreement to upsize a 30% capacity expansion to the sewer plant as amended.

Motion carried by the following Roll Call vote:

AYES: Lang, Stroebel
NOES: Cardoza
ABSENT: None

WORKSHOP TO DISCUSS THE WWTP BID AWARD:

Justin Walker reported that his firm's commitment is to keep within the \$30,000,000 dollar budget. 70% of the project has been bid so the chance of it going over budget is lower today than when it was first projected. The City has entered into contracts for portions of the projects for engineering, force main and purchases for some equipment that totals about \$8,541,000. Necessary items for future costs are the Danskin sewer pressure line, Indian Creek pipeline, solids handling truck and bobcat, contingency and interim financing, which has adequate funds available. Outstanding costs come to about \$6.5 million. There are a few other items that need funding clarification--these components are not necessary to make the plant operational and could be funded out of the LID or City funds. If the City funded them, they would be eligible for reimbursement.

In response to C/Cardoza, Justin Walker explained that, after studies came in, they were able to go to a smaller pipe. Keller had planned a contingency for a 30" pipe but it was determined that a 24" pipe could be used which saved about \$400,000. The available \$14,387,000 is on the contingency that the City did not use LID funds to purchase the property, since the City purchased it before the LID, otherwise the City would have to lower that amount by \$650,000. Other potential funding sources include Osprey Ridge with \$1.128 million; the City could pledge \$2,000,000 budgeted for the WWTP and Greg Johnson from Spring Hill Subdivision gave a verbal commitment for \$150,000 with a 3/08 expiration for a lift station only with some conditions. This provides a potential fund of \$17,512,000. The WWTP bids ready for award have 3 funding options: In Option 1, Items 1-3 are necessary; In Option 2, Items 1-4 would be the best but the City would have to contribute and Option 3 contains Items 1-5. The spread sheet distributed to Council is broken down on with the Osprey Ridge commitment and without the Osprey Commitment. Items 1-3 are bid together and 4-5 are a separate bid with different vendors. Items 4-5 are eligible for reimbursement for the City if they choose to contribute to the funding. The current request is for award of the bid for Items 1-3 and Items 4-5 is a second contractor and a separate bid. The contract must be awarded within 60 days from the beginning of October.

Jim Jewett stated that, as the largest property owner of the LID, he objected to going forward. He felt that misrepresentations had been made and wished to go on record as officially objecting to going forward. He felt his values were being diluted and needed more information since things are being moved around and other people are being let in. Misrepresentation made by former staff. The direct concerns I had are being trampled on. The process is being trampled on. Need to look at what commitments that were made and what the LID owners should to expect out of this. He understood that the LID owners have indentured their property to the City to use the money to build the sewer plant and the owners trusted the Council to protect their interests even if it was made by previous Council.

C/Cardoza asked Mr. Jewett if he had received any documents regarding the wastewater treatment plant or equipment.

Jim Jewett stated that he had not. He entrusted the City with his property values. He asked for a public hearing for one more discussion of the matter.

Tim Gordon stated that there is no rush, that there are plenty of connections out there and this needs to be taken care of properly. The LID people have not come unless called. These negotiations have taken place without including the LID people. He believed that it needs to be a public hearing so that they can be there.

M/Dowdy suggested holding a public hearing on October 23 at 7:00 p.m. with an accounting from Keller Associates beginning when the LID was formed, the agreement made, the ordinance adopted and how we got to where we are and how the costs figure in. The accounting should be mailed to the LID holders so they have the information and can comment on it during the public hearing.

Tim Gordon suggested that a transfer of EDUs be included along with a third party outside accounting of what has taken place.

C/Cardoza asked if the bids come in lower than the original estimate, does the City have the right to spend the remaining money for additional wastewater treatment facilities. He was concerned that the City would be spending money that maybe should be returned to the LID.

CA/Grove explained that the accounting would only assess what is spent; it cannot assess the whole thing if the funds were not spent. He stated that he would like to see a draft of how the funding should work and what the City obligation is to the LID.

ADJOURNMENT: There being no further business to conduct, it was moved by Council President Lang, seconded by C/Cardoza to adjourn the Special Council Meeting at 11:27 a.m. Motion carried 3-0.

J. Scott Dowdy, Mayor

ATTEST:

Lynda Burgess, City Clerk

DATE APPROVED: NOVEMBER 20, 2007