The Preserve At The Ranch, LLC

April 6, 2011

To ICRSD Residents

Re: ICR Sanitary District Moratorium and The Preserve At The Ranch

With lots of stories circulating, we welcome the opportunity to clarify some of the background and the facts as they effect the Preserve at the Ranch, and the ICR Sanitary District's (the "District") issuance of a Sewer Hookup Moratorium (the "Moratorium"). First let me say that The Preserve commends the Recall Committees for taking an interest in your community and attempting to bring some business and professional standards to the conduct of the ICRSD Board, as it is sorely needed. The Preserve has been drawn into this Moratorium dispute by the Board without any cause on our part whatsoever and has been harmed very significantly.

Here are some points to consider:

The Preserve At The Ranch Is Not and Never Has Had Any Obligation to Construct Any New Sewer Plant Facilities

It is amazing to us that anyone who represents they know anything about this issue could assert that the Preserve has some obligation to build sewer plant facilities. It is a complete and utter falsehood. The only obligation the Preserve has is to facilitate the collection of a sewer development fee (currently $3,000) upon the sale of lots and have that money deposited into the escrow account. We have faithfully complied with this only obligation.

In addition to fulfilling our obligation to collect sewer development fees, and with unconditional written promises from the District of service and an expectation the District would honor their promises, the Preserve expended many millions of dollars developing the Preserve and then the Preserve has given to the District and the District has fully accepted from the Preserve over $225,000 in sewer line infrastructure improvements.

After having accepted these many hundreds of thousands of dollars from us, they refuse to perform their expected and required duties.

The District Has Unilaterally Breached Their Written Agreements To Provide Sewer Service Because of A Contract Dispute With Other Developers.

In a document called a Sewer Service Agreement, the District unconditionally warranted to Yavapai County that it would serve all of the lots in the Preserve and then maintain and operate the plant and associated collection system. There was no condition attached to that commitment that would allow the Board to arbitrarily withhold service if they had a dispute with other developers.

The unconditional promise by the District to serve, is the backbone of the development process. The developer relies 100% on these Sewer Service Agreements when it invests millions of dollars, the County relies 100% on them when it issues its subdivision approvals

and the ultimate buyer of the lots rely 100% on them to build their homes knowing there will be service.

Dayne Taylor has stated under oath in depositions that the unconditional Sewer Service Agreement the District executed were signed by prior Boards, and that the current Board believed there was no authorization for those signatures. Further, he stated that the term unconditional didn't really mean "unconditional." When asked about the unconditional Sewer Service Agreement Mr. Taylor personally signed for the Preserve, Mr. Taylor said he wouldn't have signed the agreement if he had known then what he knows now. None of this was ever disclosed to the Preserve, even as late as May 2008 when this current Board willingly accepted nearly a quarter of a million dollars of our sewer infrastructure, fully paid for by the Preserve.

The District has been empowered to operate a viable system for all; Inscription Canyon Ranch, Talking Rock, Whispering Canyon and the Preserve. Period, that is the end of story. In addition, the District has statutory rights to raise and spend money in order to build new facilities to this end, if need be. They are morally, ethically and in a fiduciary capacity, mandated to plan for future expansion of the District regardless of whether they are owed money or have a dispute with any particular member of the District.

The commitment to unconditionally provide sewer service is a backstop to insure performance; because it is not uncommon for municipalities everywhere in this country to at some time or another have a contract dispute with a particular developer in its service area. The municipal powers are there to insure uninterrupted service, in the event other development agreements go awry.

The District Board Failed to Fulfill Their Duties and Unilaterally Abdicated Their Role as A Governing Body

When the Preserve first became aware of the Moratorium it was on the very day after the Board conducted a vote to approve the Moratorium, December 9, 2009. There were no prior public hearings, no public notice of the impending vote, just a stealth reference in the meeting agenda to Resolution 2009-1. The public notice we received of that meeting gave no disclosure as to the draconian measure the District was proposing to impose as it stealthy read:

"(4) New Business (f.) Resolution No. 2009-01 discussion and possible action".

When hearing of the Moratorium, I immediately called both Gene Leasure and Dayne Taylor and was told they had a dispute with Talking Rock over promises to build a new MBR plant. Accepting that position on that day, I asked them both what their contingency plans were to keep the District operating and serving its customers. I was told by both of them they had absolutely no contingency plans. Rather they just decided to shut down the entire District in spite of the fact they had just told all of us in the District in a news letter in June 2009 that the plant was operating at 60% capacity.

With the passing of time, we now have learned the District had in an escrow account, over $500,000 of money collected from developer lot sales with which they could have drawn, and could still draw on today, to immediately expand the existing plant and prevent this Moratorium.

The District Used A Moratorium As A Debt Collection Scheme

The District has harmed the Preserve by using this Moratorium for other improper purposes as well, by expressly trying to collect debts which have nothing to do with sewer plant capacity. This was apparently such an important reason for the Moratorium that it was incorporated into the Resolution language itself stating:

"...that the Moratorium shall not be lifted no sooner than after all outstanding invoices have been paid in full by Old Capitol Investment, L.L.C. and any other developer-entity that owes monies to the District..."

The District Board Doesn't Even Know Why They Imposed This Moratorium

When the Moratorium was first imposed the reason given was that the plant inflows were more than the plant was designed for. This rational was quickly abandoned however as everyone knows that is not the case. Then the Board told us that there was a problem with the biological oxygen demand chemistry ("BOD"), but after a short visit by a Santec official who discovered operational problems, some which were corrected, all of a sudden the BOD is not the reason for the Moratorium. Now we hear of a fanciful theory propagated by their attorney (Doug Nelson) that a plant must be built with fully constructed usable capacity right now to serve every lot that has been sold, not built, but sold. So vacant lots, not connected to the sewer system have to have available plant capacity constructed right now.

The District Board Continues To Operate In Bad Faith

For nearly 4 months, the developers, with the Preserve taking an active and leading role, conducted extensive settlement discussions with Doug Nelson and Charlie Turney. The conclusion was a Memorandum of Understanding ("MOU") that was meant to be the cornerstone of a full scale resolution of this Moratorium. In public meetings the Board read, discussed and made changes line by line to the entire MOU and voted unanimously to approve it; only to then refuse to sign the MOU once out of their public meeting, in a monumental act of bad faith.

During those meetings, as we were trying to finalize interim sewer hookups, I told Doug Nelson how seriously harmed many of our lot owners were. His response was to laugh.

At a public meeting at the fire house to discuss the MOU, our attorney commented to the Board how harmful this Moratorium was to the developers; a board member's wife and others broke out in laughter.

Conclusion

We at the Preserve remain stunned and saddened by this ill conceived and unjustifiable Moratorium being inflicted upon innocent bystanders. Anyone who has done the least bit of investigation into this issue knows fully well that it is an absurd proposition and a horrible business decision during a devastating economic period to build a $4.0M MBR plant with an initial capacity of over 250,000 gpd, when the current flows into the existing plant are at a mere 35,000 gpd and there are little prospects that there will be any significant growth in the next few years.

A logical business decision appears to have been made in August 2009 by Talking Rock to use and expand the current plant which is designed and approved to be expanded in phases, up to a full build out of the entire district. What was not logical was a decision made behind closed doors by this current Board to not use existing monies provided by developer lot sales and expand the current plant.

Rather, this current "Board" has inflicted immense damage on us at the Preserve knowing full well that the Preserve is not a party to the contract dispute they have with other developers. All this so they can get an unnecessary new MBR plant paid for by Talking Rock.

As the developers of the Preserve, we are completely disenfranchised in this Recall Election. We own almost half of the remaining project, are affected by District decisions, but are prohibited from voting.

We sincerely hope the voters of this District do what it takes to bring about change and restore civility and reason to the District. We also hope that is done before this current Board completely destroys our project, and your neighborhoods using our and your money to pay attorneys to justify their past actions.

Kindest Regards,

JAMES T. HEITEL

The Preserve At The Ranch, LLC