

MANATEE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT	Ralsun Corp. U.S. Bankruptcy Ct. Case # 97-02406-867 CAO File No. 1132-134D	TYPE AGENDA ITEM	Regular
DATE REQUESTED	July 28, 1998	DATE SUBMITTED/REVISED	July 24, 1998
BRIEFINGS?/WHO?	Yes	CONSEQUENCES IF DEFERRED	N/A
DEPARTMENT/DIVISION	County Attorney's Office	AUTHORIZED BY TITLE	Teddy N. Williams County Attorney <i>TNW 7/24/98</i>
CONTACT PERSON TELEPHONE/EXTENSION	Paul G. Bangel Senior Assistant County Attorney Ext. 3750	PRESENTER/TITLE TELEPHONE/EXTENSION	Paul G. Bangel Senior Assistant County Attorney Ext. 3750 <i>PGB 7/24/98</i>
ADMINISTRATIVE APPROVAL <i>TNW</i>			

ACTION DESIRED

INDICATE WHETHER ¹REPORT or ²DISCUSSION, ³FORM OF MOTION, or ⁴OTHER ACTION REQUIRED:

Accept Ralsun Corp.'s offer to compromise and settle Manatee County's claim in U.S. Bankruptcy Court Case No. 97-02406-867 for \$66,000.00, and authorize the County Attorney or his designee to execute any documents necessary to effectuate the settlement.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy.)

BACKGROUND/DISCUSSION

Attached are copies of three letters from Thomas H. Ostrander, Esquire, attorney for Ralsun Corp., offering to compromise and settle Manatee County's claim in the U.S. Bankruptcy Court for \$60,500.00. Informal negotiations to compromise for a higher amount have resulted in a verbal offer of \$66,000.00.

HAS COUNTY ATTORNEY REVIEW BEEN REQUESTED? Indicate "NO" or "YES" @ right. (If "NO," proceed to 1) below; and if "YES," proceed to 2) below)

N/A

1) IF "NO" TO ABOVE,

A) PLEASE EXPLAIN BELOW: (see also following section 1B) re: contract, agreement, lease, etc.:

County Attorney item.

B) IF A CONTRACT, AGREEMENT, LEASE OR OTHER DOCUMENT WAS PREVIOUSLY APPROVED, STATE YEAR OF LAST USE @ RIGHT:

N/A

2) IF "YES" TO FIRST QUESTION IN THIS SECTION,

A) HAS ENTIRE MATTER, OR ONLY A PORTION, BEEN REVIEWED? IF ONLY A PORTION, WHICH PORTION?

N/A

B) HAVE ALL COMMENTS/SUGGESTIONS RAISED BY COUNTY ATTORNEY BEEN ADDRESSED/INCORPORATED; IF NOT, PLEASE EXPLAIN. A COPY OF FINAL COUNTY ATTORNEY MEMO RE THIS MATTER MUST BE ATTACHED (If comments were verbal, so indicate.)

N/A

<p>ATTACHMENTS: (List in order as attached)</p> <p>Letters from Thomas H. Ostrander, Esquire dated April 10, 1998, June 11, 1998 (w/o att), and July 20, 1998</p>	<p>INSTRUCTIONS TO BOARD RECORDS:</p>
<p>COST</p>	<p>SOURCE (ACCT# & NAME)</p>
<p>COMMENTS</p>	<p>AMT./FREQ. OF RECURRING COSTS (ATTACH FISCAL IMPACT STATEMENT)</p>

THOMAS H. OSTRANDER, ATTORNEY AT LAW

456 12th Street West
Bradenton, FL 34205
(941) 746-7220
Fax: 747-1526

April 10, 1998

Paul G. Bangel
County Attorney's Office
P.O. Box 1000
Bradenton, FL 34206

Received By
Manatee County Attorney's
Office

Date 4/10/98
Time 8:59 am
 Rec'd By Mail
 Rec'd By Hand-Delivery
 Rec'd By Fax

Re: In re: Ralsun Corp.
Adversary Proceeding Case No.

Dear Paul:

As you are aware, Ralsun Corp. filed for relief under Chapter 7 of the Bankruptcy Act earlier this year. The County is the single largest claimant.

Three weeks ago, you and I sat down and reviewed the claim of Manatee County. If you would briefly indulge me, I would like to summarize herein the position of Mr. Schappacher on behalf of Ralsun and propose a settlement with the County.

Mr. Schappacher, while entering into real estate contracts to sell lots in that particular area, agreed to provide a road for access to the lots which would meet the County's requirements. At the time of the sales of these lots, the County's only requirement was that the lots be accessible by "two wheel drive vehicles." To that end, Mr. Schappacher took certain steps to provide these roads. As you are aware, litigation ensued with a small number of the buyers of the lots in the area - specifically Calhoun, Kroft, Shea and Clark. These individuals filed lawsuits against Mr. Schappacher and Ralsun and ultimately a construction escrow agreement was entered into and a stipulation wherein Ralsun would place \$25,000.00 in escrow with attorney Kim Bald and pay a \$5,500.00 bond to the County.

The construction escrow agreement and stipulation were ultimately defaulted upon and no further action was taken by Ralsun to complete the project. Since then, the County has offered a variety of different packages to the residents in that area for them to choose the level of amenities they desire and a price for which each will pay. You have provided me with a copy of your claim which outlines the various proposals.

Mr. Schappacher, on behalf of Ralsun, has offered to settle with the County by paying to the County \$55,000.00 which was the original amount comprehended by all parties as being the "outside" number that it would take to provide these roads. Please bear in mind that Ralsun had earlier received an estimate

Paul G. Bangel
April 9, 1998
Page 2

that the roads comprehended by the County's requirements would cost \$2.00 per linear foot for a total of \$25,000.00.

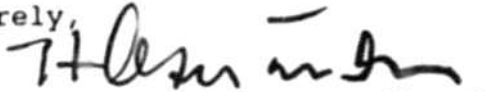
The County already has it in its possession \$5,500.00 for the earlier surety. Mr. Schappacher offers to pay to the County a total of \$55,000.00. Included in that amount is the \$5,500.00 already paid as a full and final resolution of this matter.

Please consider this matter and get back with me as we are desirous of resolving this matter as quickly as possible.

I have advised the attorneys for the United States Trustee of our meeting and of Ralsun's desire to settle directly with the County. They have no objection to you settling this matter in any way you desire as long as it is acceptable to you.

Please contact me if you have any questions or if you wish to discuss this with me further.

Sincerely,



Thomas H. Ostrander, Esq.



THO/jp

SIGNED IN MR. OSTRANDER'S
ABSENCE TO AVOID DELAY

THOMAS H. OSTRANDER, ATTORNEY AT LAW

456 12th Street West
Bradenton, FL 34205
(941) 746-7220
Fax: 747-1528

June 11, 1998

Paul G. Bangel
County Attorney's Office
P.O. Box 1000
Bradenton, FL 34206

Received
Manatee County
Date 6/11/98
Time 1:45 pm
 Rec'd By Mail
 Rec'd By _____
 Rec'd By _____

Re: In re: Ralsun, Inc.
United States Bankruptcy Court Case No. 97-02406-8G7

Dear Paul:

This letter is intended to firm up our previously made oral proposals to settle our claim with Manatee County. As you are aware, Ralsun, Inc. entered into a construction escrow agreement with a number of property owners in the Pomello Park area. The agreement is the basis of litigation engaged in by Calhoon, Crofts, Shea, et al. with Phyllis Schappacher as well as with Ralsun, Inc. The litigation concerns the roads in place in the development area as well as personal access by some of the litigants to roads other than those originally comprehended by the platted subdivision.

The position of Ralsun is that Ralsun has completed the tasks required by the County and in accord with the construction escrow agreement. Ralsun did approximately \$10,000-\$12,000 worth of road building in the affected area prior to its filing for relief under Chapter 7 of the United States Bankruptcy Code. Additionally, as I'm sure you are aware, Ralsun, Inc. deposited \$5,500.00 with Manatee County as a deposit against defects for work performed in this area.

Since the filing of the petition for relief, the County has filed a claim in the amount of approximately \$142,000.00. This claim represents ditch cleaning, road stabilizing, road crowning, delivery of shell, engineering costs, design work and other expenses.

As you and I had discussed during one of our earlier meetings, the bond agreement, attached hereto as Exhibit "A," represents that Ralsun, Inc. shall deposit with the County \$5,500.00 as a 10% deposit against the estimated costs of the construction of roads and improvements desired by the County in that area. Ralsun's position is that the County and all affected parties anticipated the expense of the developments to be \$55,000.00 and no more. The road requirements at the time of the sale of property was access to two-wheel-drive vehicles. There was no other standard to which Ralsun was required to adhere as to

Paul Bangel
June 11, 1998
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providing access to the landowners in the affected area.

After Ralsun filed its petition for bankruptcy relief, the County, in an effort to provide the services to the landowners, circulated a letter which advised the residents that the costs to the residents for road repairs, reconstruction, and cleaning of the ditches and culverts, would be between \$34,000.00 and \$66,000.00. That letter is dated April 7, 1997. This letter follows on the heels of the defect bond that I have attached as Exhibit "A."

The letter, Exhibit "B," apparently reflects the well founded, studied and legal position of the County as to the range of expense that would be underwritten by the residents to provide the services were not forthcoming from Ralsun Corp.

In July, 1997, the County filed a claim in the amount of \$142,000.00+.

The question that remains is: What was the difference between the County's requirements which anticipated \$55,000.00 in 1996 and the County's requirements pursuant to its claim filed in July 1997. This question becomes acutely important in light of the fact that no money other than the \$4,000.00 for the movement of shell has been expended at this time.

Ralsun Corp. is desirous of settling its claim with Manatee County. Ralsun Corp. is willing to pay the County \$55,000.00 in addition to the \$5,500.00 which has already been paid to the County, for a total of \$60,500.00. Should the County find this acceptable, we simply request the County assign Ralsun Corp. its claim that has been currently filed in bankruptcy, executed by the chairman of the commission or other appropriate party. The payment can be made to the County within 24 hours.

Should we fail to resolve this matter pursuant to the settlement offer, we will be left no choice but to litigate this matter in the Bankruptcy Court. As it currently stands, the County's claim is not corroborated by evidence and is not liquidated by judgment.

I look forward to hearing from you at your earliest convenience.

Sincerely,



Thomas H. Ostrander, Esq.

THO/jp

Encs.

BY HAND

pc: Larry Mau - 6/16/98

THOMAS H. OSTRANDER, ATTORNEY AT LAW

456 12th Street West
Bradenton, FL 34205
(941) 746-7220
Fax: 747-1526

July 20, 1998

Received By
Manatee County Attorney
Office

Date 7/22/98
Time 8:30 am
 Rec'd By Mail
 Rec'd By Hand-Delivery
 Rec'd By Fax

Paul G. Bangel
County Attorney's Office
P.O. Box 1000
Bradenton, FL 34206

Re: In re: Ralsun Corp.

Dear Paul:

I'm sorry it has taken so long to get back to you; however, I did get a chance to discuss the continuing negotiation developments with Mr. Schappacher. He has rejected the latest calculations.

Mr. Schappacher, again, offers the \$60,500.00 proposal. We are prepared to take this matter to trial to establish that the damages, if any, sustained by the County are not chargeable to Ralsun Corp. and in no event comprehend the amount of damages as of the date of the original right-of-way permit and the construction escrow agreement.

The settlement proposal made by Mr. Schappacher is an accommodation and represents the value to Mr. Schappacher for nuisance purposes.

Again I remind you that if we are required to try this matter in Bankruptcy Court, we are taking the position that there are no damages owed to the County at this time.

Thank you for your attention to this matter.

Sincerely,



Thomas H. Ostrander, Esq.

THO/jp