

FEBRUARY 9, 1999

The Board of County Commissioners, Manatee County, Florida, met in SPECIAL SESSION in the Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, Tuesday, February 9, 1999, at 9:06 a.m.

Present were Commissioners:

Stan Stephens, Chairman
 Gwendolyn Y. Brown, First Vice-Chairman (entered during meeting)
 Joe McClash, Second Vice-Chairman
 Jonathan Bruce, Third Vice-Chairman
 Patricia M. Glass
 Lari Ann Harris participated via telephone.
 Amy Stein (entered during meeting)

Also present were:

Ernie Padgett, County Administrator
 Teddy N. Williams, Jr., County Attorney
 Penny Mikulis, Deputy Clerk,
 representing R. B. Shore, Clerk of Circuit Court

LAWSUIT: WAL-MART STORES, INC.

James Minix, Assistant County Attorney, presented information on the lawsuit of Wal-Mart Stores, Inc. v. Manatee County CA-98-14524. The suit alleges the County failed to perform under a reimbursement agreement (10/15/96) regarding the construction and paving of S.R. 70 in front of the Wal-Mart Superstore.

He advised the proposed settlement is for \$1.5 million, plus \$7,500 in attorneys' fees and costs, on the condition a wire transfer is received by February 15, 1999. He recommended settlement based on the fact that should the Court determine Wal-Mart is entitled to past-due interest under the Florida Prompt Payment Act (beginning about June 15, 1998) interest due to date would be over \$110,000. He reported that Wal-Mart is averse to giving a general release and that he is preparing a limited release.

Teddy N. Williams, County Attorney, requested that, if approved, the settlement include two conditions: 1) the County Attorney's office approve the form of release to be signed by Wal-Mart; and 2) has the authority to approve the amount of the attorney fees, which are approximately \$7,500.

Motion

Motion was made by Mrs. Glass to approve the settlement offer as presented with the inclusion of the two conditions. Motion was seconded by Mr. Bruce.

(Enter Mrs. Stein)

Discussion: Initial approval/agreement with Wal-Mart regarding the improvements; reimbursement contract had \$1,597,481 cap.

(Enter Ms. Brown)

Mr. Minix explained that the initial offer by Wal-Mart was \$1,486,000 excluding past-due interest and attorneys' fees. He noted the problem with this offer was whether Wal-Mart had fully complied with Paragraph 8 of the agreement requiring detailed documentation of actual project costs including pay requests, etc., and other documentation deemed reasonably necessary by the County.

Discussion: Documented construction costs; first offer excluded interest and attorneys' fees; applying standards of responsible verification to other vendors; settling without verification, etc.

Ernie Padgett, County Administrator, noted that this case includes three elements: Project Management agrees that the work has been completed as specified; the total cost is approximately \$100,000 less than the total billings could have been; and there is documentation for Department of Transportation (DOT) reimbursement.

Mr. Williams reiterated that the \$1.4 million was never disputed, and it has never been disputed that the work was done. The \$86,000 was disputed only as to whether there was adequate documentation.

Mr. McClash requested that the settlement agreement provide language that if DOT requests further documentation, Wal-Mart will comply by supplying the reasonable documentation needed for DOT reimbursement.

Discussion: Providing a checklist of requirements for documentation; Paragraph 8 of contract; paying the undisputed \$1.4 million and dealing with the \$86,000 later; partial payments; whether contract matches County policy; whether County was able to pay the undisputed \$1.4 million to the vendor to cut off the claim.

The motion, with the additional language as discussed, carried 7 to 0.

MEETING

There being no further business, the meeting was adjourned.

Attest:

[Handwritten signature]
Clerk

APPROVED:

[Handwritten signature: Sean Stephen]
Chairman 4/6/99

Adj: 9:40 a.m.
/apm