

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
GENERAL BUSINESS / AGENDA ITEM #8b**

SUBJECT: Plantation Bay Status Report

DATE OF MEETING: May 20, 2019

Plantation Bay Background: Plantation Bay Water and Wastewater Plants are located on the south side of Old Dixie Highway, west of Interstate 95, in unincorporated Flagler County near Old Dixie Park. The utility serves the Plantation Bay DRI (Development of Regional Impact) that straddles Flagler and Volusia Counties and several smaller areas adjacent to the development. The development itself contains a total of 3,673 acres (5.74 square miles) of which 2,574 acres (70%) are located within Flagler County. The Plantation Bay DRI was approved in September 1985. In its current iteration, the DRI is approved for a maximum of 5,000 dwelling units and a maximum of 90,000 square feet of commercial that will likely be developed as retail/shopping center and office uses.

Plantation Bay Timeline:

December 10, 1984 – Falcon Development of Flagler County, Inc. filed an application for a Development of Regional Impact for what is now Plantation Bay.

1985 – Ecocen Corporation, Falcon Development of Flagler County, and Marco Polo Association, Inc., signed a state development order, or Development of Regional Impact (DRI), that gave Flagler County the right to acquire the utility at a lower cost than the \$5.5 million eventually paid in 2013:

- “In order to avoid unduly delaying the approval of this project and to assure that its approval is consistent with the Flagler County Comprehensive Plan and the Regional Planning Council’s report and recommendations, the County finds that this project’s capital facilities needs will be satisfied by the following:

“The Applicant shall construct at its own financial responsibility the following capital facilities at no cost to the County:

- a surface water management system
- major arterial roads
- internal potable water distribution and fire hydrant system
- wastewater collection, treatment, and disposal system

“In the event the Applicant constructs the capital facilities in this paragraph, the Applicant may recover its capital costs through user contributions in aid of construction and or user rates.

“The applicant or its successor in interest shall transfer or cause to be transferred the water and wastewater facilities (plants and lines) to Flagler County or a statutorily recognized governmental entity, upon written request, at the actual value less consumer capital contributions made by the consumers in the form of contributions in aid of construction, connection fees or otherwise.

“The acquiring entity shall not be responsible for acquisition expenses or condemnation fees.

“In each instance where the Applicant is responsible for the ongoing maintenance of the capital facilities described in this section, the Applicant may transfer any and all of its responsibilities to improve and maintain such capital facilities to an appropriate private or

governmental entity, acceptable to the County, which has been created to perform such responsibilities.”

1985 – Plantation Bay utility constructed by Ecocen Corp.

1991/1992 – DRI interests transfer from Ecocen to Intervest at Plantation Bay/ICI Homes.

1999 – Florida Governmental Utilities Authority (FGUA) was created by four counties (Brevard, Lee, Polk and Sarasota) to acquire, improve, and operate water and wastewater facilities. The Legislature provided it authority to create utilities for local governments around the state.

2004/2005 – Two failed negotiations by County Administrator David Haas, who now works for ICI Homes, to transfer the utility to Flagler County.

2006/2007 – Two failed negotiation by County Administrator Doug Wright to transfer the utility to Flagler County.

2007 – Utility Settlement Agreement – general to all utilities within Flagler County – stipulated that such systems be environmentally sound and financially feasible that was later incorporated by reference to the 2010-2035 Flagler Comprehensive Plan.

2010 – Flagler County Strategic Plan states: “Now, or in the future, support the acquisition of the Plantation Bay Plant by the FGUA (Florida Governmental Utilities Authority) or other governmental entity and appoint a County representative to serve on the FGUA Board. Avoid County acquisition of this facility now or for the foreseeable immediate future.”

June 2011 – County officials asked the Florida Governmental Utilities Authority to assess Plantation Bay Utility in accordance with the DRI and Flagler County Comprehensive Plan. The county had received numerous complaints from residents about the system. Through the Florida Public Service Commission’s counsel, residents defeated a rate increase request made by ICI, because it was deferring maintenance to the system, and taking in too much profit.

December 2011 – The Florida Governmental Utilities Authority produced a report that listed significant owner liabilities including Occupational and Safety Hazards Act violations. The Authority estimated then that \$3.9 million in improvements were needed. The Authority noted that the problems existed because of ICI’s deferred maintenance of the system. The FGUA recommended to the County that no more than \$1 million be offered to ICI for the utility.

January 2013 – The Flagler County Board of County Commissioners reached consensus for former County Administrator Craig Coffey to create a partnership with the City of Bunnell to acquire the Plantation Bay Utility System from Mori Hosseini.

- County Attorney Al Hadeed addressed the DRI signed in 1985 noting: Flagler County has a strong case under the DRI Development order adopted by the State of Florida. He pointed out that under the DRI, the county would not be liable for acquisition expenses or condemnation fees. ICI claimed it would prevail in such a suit. Hadeed advised the Board that a lawsuit would be time consuming, costly, and would require hiring utility experts for the case.
- Coffey explained the sale price was \$5.5 million (down from \$9 million initially sought by the seller) and “future credits” would be used to “buy down that price.”
 - Instead, the signed contract provides the seller “additional compensation” of 150 prepaid single-family residential connection impact fees – just shy of \$700,000 in

value. It also set caps for up to 400 additional connections on the impact fee costs – after the first 150 were used – at \$4,500 for five years after closing on the sale (until September 2019), and \$6,000 for the next five years for up to 400 additional connections. Current impact fees for a standard size household connection are a total of \$4,655 (water: \$2,146 and sewer: \$2,509).

- Also listed as a “material inducement to Seller” is a guarantee that the purchaser “shall provide water service to the Service Territory in the ordinary course of business,” and the “Seller or its designee shall be permitted to enforce this service obligation through the remedy of specific performance and all other legal remedies available.”

January/February 2013 – Wade Trim, Inc. prepared and presented “Plantation Bay Utility Condition Assessment,” a 41-page document that included recommend projects.

- “Based on the information reviewed, analyses performed, and assumptions made, the following principle conclusions were drawn with respect to the Plantation Bay Utility system:
 - Two repetitive [sic] administrative orders have been issued against the wastewater plant for not providing the [sic] continuous monitoring. In addition redundant treatment processes and a redundant effluent disposal site is required by the orders to remain in compliance. As of the writing of this report, there appears to have been no action on the part of existing owner to address the orders and time schedule provided by the FDEP in the Administrative Orders. Wade Trim is aware of a draft FDEP consent order identifying penalties and legal action. It is recommended that the consent projects identified in this report commence immediately to bring the wastewater facility into compliance.
 - The water and wastewater facilities have been in service approximately 28 years with many major components nearing their useful life. Visual inspection of various treatment structures identified serious corrosion and lack of maintenance. It is recommended that critical equipment identified in this report be replaced or refurbished in a timely manner as shown on the project schedule.
 - Half of the installed well fields are unusable due to high color in Wells 3 and 4. The combined water volume supplied by Wells 1 and 2 are not capable of meeting the existing treatment capacity of the water treatment plant. It is recommended that a study of the water supply wells be conducted to either improve the water quality produced from Wells 3 and 4 and install additional wells. As new developments are platted and the Plantation Bay population increases, this effort will help the Utility to stay ahead of future water demands.
 - Currently one operator is responsible for the maintenance and oversight of the water treatment plant, wastewater treatment plant, and sanitary sewer lift stations. As plant demands reach 300,000 gallons per day, staffing needs will increase in accordance with permitting rules. The Utility owner needs to be aware and plan for the required increased staffing.

Recommended improvements related to needed capital improvement projects were presented in Section 4. The improvements include items to resolve non-compliance issues at the wastewater facility and to improve the condition of the various unit processes throughout the Utility for efficient and effective operation.”

February 2013 – Four-hour joint meeting between the City of Bunnell and the Flagler County Board of County Commissioners.

February 2013 – Back to back Public Hearings after joint meeting

- Bunnell: Called to order at 9:58 p.m. to take action on the acquisition of the Plantation Bay Utility, which was approved 4 to 1 with Commissioner John Rogers dissenting.
- Flagler County: Called to order at 10:20 p.m. to take action on the acquisition of the Plantation Bay Utility, which was approved 4 to 1 with Commissioner George Hanns dissenting. Just prior, the Board of County Commissioners voted unanimously that buying the utility was within public interest.

April 2013 – Interlocal agreement signed by the City of Bunnell and Flagler County.

August 28, 2013 – City of Bunnell closes on the purchase of the Plantation Bay Utility.

- The utility was purchased “as is.”
- This includes the FDEP Consent Order.
- Flagler County’s involvement with the utility was through an interlocal agreement with the City of Bunnell.
- Funding: \$5,682,833 at 2.37% for 30 years

October 23, 2013 – Wastewater Treatment Plant Transfer of Permit signed over from Plantation Bay Utility to the City of Bunnell.

June 6, 2014 – FDEP State Revolving Fund loan of \$383,999 for Phase 1 design of rehabilitation and upgrades (specifics noted in the following entries) to be repaid over 20 years.

July 17, 2014 – **ATS Land Surveying LLC & Environmental Services, Inc.** Design & Permitting Support Services for Proposed Utility Improvements on a portion of the Plantation Bay Utility Plant Site consisting of Topographic, Wetland Limits and Seasonal High Water Elevation Survey and Environmental Services for U.S. Army Corps of Engineers and St. Johns River Water Management District/Florida Department of Environmental Protection Jurisdictional Wetland Delineations, Agency Verification and preparation of State Revolving Fund (SRF) Loan Application Environmental Documentation **\$17,785.00**

September 2, 2014 – **McKim & Creed, Inc.** Partial Project Scope to address a portion of Consent Order Issues; Perform Facility Planning, Develop State Revolving Fund (SRF) Planning Document, Perform Preliminary Engineering, Permitting (FDEP, County Site Plan), Geotechnical Investigation and Reject Storage Design **\$185,080.00**

November 2014 – County Administrator Craig Coffey meets with Plantation Bay residents and tells them Flagler County is “divorcing” the City of Bunnell as soon as the books for the utility are in order. Bunnell had been responsible for the day-to-day operations of the utility and the billing.

February 2015 – Capital Improvement report compiled and includes information about test results of the four (4) wells concluding all but one (1) are poor or marginal because of organics. Engineering and Hydro Geologist determined rehabilitation “may” be possible and “may” improve water quality. The lime softening water treatment process cannot remove all organics and must be treated with chlorine – which creates other undesirable byproducts. System flushing underway and continuing to keep water lines cleaner and improve water quality.

October 1, 2015 – Flagler County fully acquires the utility from Bunnell that serves Plantation Bay residents.

May 16, 2016 – **McKim & Creed, Inc.** Expanded Project Scope, in coordination with Kimley-Horn Associates, Inc., to address all Consent Order Issues; Update the SRF Planning Document, Revise Reject Storage Collection and Pumping System, Design Master Pump

Station, Bid Alternates (1.0 MG & 0.5 MG Size using both Steel and Concrete Material) for Reject Water Storage Tank, Influent Screening System, Modification of the Chlorine Contact Tank, Permitting (FDEP, County Site Plan) and Prepare Construction Documents **\$107,635.00**

July 1, 2016 -- \$2 million Florida Department of Environmental Protection grant for design, permitting and construction of potable water improvements.

July 18, 2016 – **Kimley-Horn Associates, Inc.** Expanded Project Scope, in coordination with McKim & Creed, Inc., to address “Process Design” Modifications providing for a new Wastewater Treatment Facility, Centrifugal Blowers, Sand Filter, Yard Piping, Motor Control Center Building Expansion, Electrical Equipment, Emergency Generator, Permitting Support (FDEP, County Site Plan) and Construction Document Preparation; Bid Administration Assistance; SRF Loan Assistance; St. Johns River Water Management District Cost-Share Funding Assistance and meet Class 1 Reliability requirements in accordance with the Consent Order **\$251,500.00**

2017 – Flagler County initially prepared construction plans and specifications to address the FDEP Consent Order requirements in 2017. The project was to be funded by the FDEP State Revolving Fund (SRF) program.

March 29, 2017 – Invitation to bid advertised.

May 17, 2017 – Bids received. All bids exceeded the project budget, and after discussions with the FDEP were subsequently rejected on June 23, 2017.

- As a result, FDEP issued a Consent Order OGC File Number 17-0988 authorizing the Plantation Bay Wastewater Treatment Facility improvements to be “phased.”
- Flagler County modified the project scope to construct the project in two phases.
- Phase 1 was successfully bid within the FDEP State Revolving Fund (SRF) program limitations. This scope of work includes 1 MG (million gallon) reject concrete tank, master pump station piping, and other safety improvements.
- Construction of the Phase 2 improvements was placed on hold until sufficient funding became available.

July 2017 – FDEP State Revolving Fund loan of \$5.7 million to be repaid over 20 years for Phase 1 rehabilitation and upgrades.

September 5, 2017 – **McKim & Creed, Inc.** Value Engineering through “phasing” of Project Scope, in coordination with Kimley-Horn Associates, Inc., to Modify and Revise Construction Documents, Facilitate Influent Screening and Reject Storage Tank Bid Alternates, Provide Bid Administration Assistance and be within Construction Funding Limits **\$21,376.00**

September 5, 2017 – **Kimley-Horn Associates, Inc.** Value Engineering through “phasing” of Project Scope, in coordination with McKim & Creed, Inc., to Modify and Revise Construction Documents, through elimination of new Wastewater Treatment Facility, Centrifugal Blowers and associated Equipment; Revision to Electrical Design; Provide Bid Administration Assistance; SRF Application and Loan Document Update and be within Construction Funding Limits **\$24,960.00**

February 19, 2018 – St. Johns River Water Management grant of \$500,000 for Phase 1 wastewater treatment plant improvements.

April 2, 2018 – Board of County Commissioners approve moving forward with Phase 1 improvements. Construction activities are ongoing and planned for completion by August 1, 2019.

May 9, 2018 – **Kimley-Horn Associates, Inc.** Phase 1 Construction Engineering & Inspection Services, in combination with McKim & Creed, Inc., for Facilitating the Pre-Construction Conference and Progress/Coordination Meetings; Coordination of Construction Activities; Providing Clarifications and Interpretations to Contractor Questions; Review and Processing of Contractor Shop Drawings and Submittals; Provide Resident Project Representative (Inspector) to Visit Site, Observe Contractor's Work and Provide Recommendations Regarding Work Acceptability; Review Applications for Payment; Facilitate Project Substantial/Final Completion; Project Close-out and SRF Construction Loan, Davis Bacon Wage Monitoring and Reporting and SJRWMD Cost-Share Agreement Compliance and Reimbursement; and FDEP Permitting Compliance **\$262,610.00**

August 2018 – During construction of Phase 1, workers observed the existing treatment tank walls were weakening. Efforts remain underway to finish a temporary solution.

January 16, 2019 – An Invitation to Bid (ITB) was advertised in the *Flagler News Tribune* as well as publicly broadcast on www.publicpurchase.com. ITB 19-018B requested bids from vendors to furnish all plant, labor, materials, equipment and supervision for the installation of a 0.50 MGD expandable Reverse Osmosis (RO) water treatment facility. The work includes demolition of existing piping; installation of new yard piping, including connections to the existing water treatment plant and the wastewater treatment facility; construction of a booster pump station; construction of a sewage lift station; construction of a new Reverse Osmosis Building; furnishing and installing RO process equipment, including enhanced raw water pretreatment clarification, automated disinfection and chemical feed systems; removal and replacement of backwash pumps; site improvements; electrical and instrumentation upgrades/modifications, including a standby generator; and all other equipment and work required for a complete, tested and operational system at the Plantation Bay Utility Facility located at 1600 Old Dixie Highway.

February 4, 2019 – Board of County Commissioners request that the design work for Phase 2 be expedited. Phase 2 work includes: construction of a new 0.475 mgd treatment facility; replacement of the existing tank; and the installation of additional blowers, yard piping and electrical systems.

March 18, 2019 – Board of County Commissioners approve work authorization for Kimley-Horn Associates to provide the professional services for Phase 2 design.

DEPARTMENT CONTACT: Julie Murphy, Public Information Officer 313-4039