

TO: UP BOD
FROM: RICHARD WILBUR, LEGAL COMMITTEE
SUBJECT: MONTHLY REPORT OF THE LEGAL COMMITTEE
DATE: December 17, 2006

Negotiations with Mr. Neal on water and other issues slipped backwards because of his unwillingness to provide even the most basic financial data, all in his possession or under his control, to enable us to prepare a rational settlement proposal. Mr. Neal's notes on a meeting held on December 5 with Ric Romanoff, the other member of our negotiating team (I have been sick but on the mend), claim he "verified costs of \$341,842 for the Central Irrigation System" but he concluded by saying "he guesses \$380,000 to \$400,000". (That his "guess" is so much higher than his "verification" demonstrates our need for records). After at least four separate requests (two by personal letter and two in negotiations) for very basic documentation in support of his guesses, we were left with not one shred of paper nor any indication if or when he might provide some. We can't settle the homeowner's legitimate claims on the basis of Mr. Neal's guesses.

We have asked repeatedly for a list of the items on which the CDD spent the \$11.5 million it borrowed on our behalf, a hunk of which our homeowners will be paying until 2032, but we met a solid brick wall. We were asking for a simple update of a list of proposed expenditures that appeared *on one page* of both Mr. Neal's application to the County Council to establish a CDD and an engineering report several months later, items I asked for as long ago as March before this process even began. If you buy a new car and someone asks you what you paid and what your options cost, you would reach into the glove compartment and show him the statement from your dealer. Mr. Neal's task as to the updated one page list was about the same - he has it and could have produced it in a day or two but four separate requests proved futile. We did ask for some limited additional information on this subject but would have considered production of the one page list at least a beginning.

Accordingly, the Board has turned the matter over to our attorney, James Burgess of Burgess, Harrell, Mancuso, Olson and Colton, a Sarasota law firm. Mr. Burgess has twenty-seven years of experience, as a senior partner in another firm before starting his own superb firm fifteen years ago; he is the both the founding and senior partner of the firm. Mr. Burgess is intelligent, competent, experienced, with a gentle demeanor and a steel core. We have told Mr. Neal over and over again that we seek justice, the primary virtue in social life, and our high aspirations require ethical choices on our part. In that connection, Mr. Burgess is a respected past President of the Sarasota Bar Association, demonstrating the high regard the Sarasota Bar has for him, and he is also well known as a highly ethical lawyer. In a meeting this week, Mr. Burgess made it clear that no settlement is possible without the necessary data and it must be produced. Mr. Neal promised to provide some invoices this week and if they are complete and honest, we may be back on the settlement track again. But we emphasize that a litigation train is on a

parallel track and it is really Mr. Neal's choice which train he boards. Patience does not adequately describe the forbearance of your negotiators over the last three months.

There are several issues in controversy, known to our folks from last month's community briefing. Mr. Neal has at least one lawyer per issue with assorted other experts. Since we have not spent money on this controversy until very recently and are very well prepared, we have the resources and commitment to see this all the way to justice, hopefully on a settlement track, but more likely on a litigation track unless there is an about face in Mr. Neal's tactics. If he boards the litigation train, we will be coming to the homeowners in a community meeting for their approval to institute suit against Mr. Neal and his partners. In view of the overwhelming expressions of support at the meeting where we briefed our homeowners last month, we feel confident there will be solid support throughout the community for taking the necessary action to secure justice for our homeowners. We are quietly developing plans for teams to talk to homeowners individually and to fully and completely inform them why, if Mr. Neal boards the litigation train, continuing to pursue justice is clearly in the best interests of our community. An informative booklet will be prepared on the decision and hand delivered to each home; also there will be a separate mailing, follow up calls and telephone numbers homeowners can call to get specific answers to their questions quickly.

We also have a quarterly newsletter, a first rate product, delivered with your Herald Tribune as a service to subscribers, and we have the option of devoting most of one issue to the decision homeowners face as it is so critical to our investment and the future of our community. The timing depends on the exact date for the statute of limitations (tentatively looks like we need to file by April 11 now) but planning is well under way. We will be aiming for more than three out of four homeowners to support our recommendations if Mr. Neal chooses the litigation train; our optimism is thoroughly justified by expressions of support we received at the November Community Meeting.

The Legal Committee has been assisted in recent days by Bob Mulig, a retired member of the New York Bar, who has a range of experience, including litigation. Mr. Mulig finished the last fifteen years of his career with the New York State Public Service Commission (PSC), a neat set of skills and experience adapted to the potential needs of our case. Access to the PSC, normally the agency affording relief from exploitive water charges, is limited by a strange interpretation of a narrow bill passed by the legislature. In addition to litigating in the local court, we also have the option of filing a Declaratory Statement with the PSC seeking reconsideration of their ruling and may appeal an adverse ruling on their part to the Courts. And ultimately, we can seek relief with other communities from the legislature if necessary. We have been firmly committed to going it on our own, not sharing our legal research with others as we want to settle, and we thought Mr. Neal would realize that our case is more difficult for him to defend than the other cases

that might arise. (Just one of *many items*: the water annuity imposed on us has the only triple escalator in any of the documents of Neal Communities, raising prices on the basis of costly and potentially volatile potable water, a product forbidden in the Cooper Creek Development of Regional Impact (DRI) *since 1988*. In the short life of our community, this escalator has raised Mr. Neal's water fee a by one-third, to \$24.00 per month per home for the water in our ponds. It would be difficult to craft a more arbitrary and irrational provision.) Bob is experienced, smart and is as committed to securing justice for our community as the rest of your legal team. Like your Chairman, he is pretty much available full time and his charges, being zero, are \$275 an hour less than the going rate for someone as experienced. We request that he be confirmed as a full member of our Committee at this meeting, for his efforts are a big help as we continue to research options and add to the strength of our case.