

The "Water Wars"

Ric Romanoff

When University Place was originally conceived, the master plan called for a centralized irrigation system (CIS) to utilize the network of lakes (storm water retention ponds) to collect the rain and store it for use on each of the lots to keep our home sites lush and green. After all, the storm water system of ponds, culverts, swales, etc. were needed to utilize the land that previously was swampland. Normally, when a developer builds a planned community like ours, he pays for the infrastructure and then is reimbursed for those costs through the price of the lots.

Enter the State of Florida, and the creation of Community Development Districts (CDDs), which created another level of local government, and which allowed the developers who created them to sell municipal bonds to fund the infrastructure, so they did not have to pay these development costs. These costs were passed on to the future lot owners in the form of taxes to repay the debt. The theory was that the lot costs would be less expensive; however, in practice this was an additional profit to the developer.

In University Place, the municipal bonds were used to create the storm water system, the roads, the perimeter fencing, some common grounds, and other infrastructure items. In our case, the developer also installed pumping systems on small parcels of land that were to be held *by him* forever. This formed the basis of a separate "utility company" that he would own that would sell to us homeowners the water used for irrigation. The early rates for this water use was relatively small, but the contracts escalated at turnover to the Homeowner's Association and then each year thereafter, to the point that we would be paying several millions of dollars over the years to the developer for use of the water that fell from the sky into the lakes/ponds that we owned, paid to maintain, and also paid to maintain the pump/irrigation system. The only expense that the developer's utility company would have had was to pay taxes on the income he derived and whatever administrative costs he would have in collecting and accounting for this windfall income stream.

As the homeowners began to populate the Board of Directors, and we learned of this "side deal" made by the developer, we felt that this was an inappropriate and unfair agreement and sought to rescind the deal.

A team of UPNA Board President Ric Romanoff and homeowner/retired Federal Judge Richard Wilbur was appointed to find the way to correct this situation. Over the course of approximately two years, the negotiating team had several meetings with the developer; the developer controlled the CDD, and several other entities, making it difficult to negotiate a way out of this agreement. Ultimately, a lawsuit was filed against the developer and during mediation, a settlement was arrived at. The mechanics of the settlement are very complex and are covered under a mutually agreed confidentiality clause in the settlement.

The net result was that the homeowners of University Place funded a buyout of the irrigation contract by raising additional debt. We were able to take advantage of lower interest rates and refinanced the CDD's municipal bonds to borrow an additional \$1,200,000 without raising our annual payments from the old bonds, which were retired. The homeowners then took early control of the CDD Board from the developer. The irrigation system was purchased from the developer by the HOA who immediately sold it to the CDD. The funds obtained in this sale were sufficient to fund the HOA reserves (which were nonexistent at turnover). The balance was used to fund the reserve accounts for the CDD. The net was to place both the HOA and the CDD in very strong financial positions and rid the community of the exorbitant future fees to the developer for the irrigation contract and water rights. Note that this water right deal had been used in 20 previous communities built by the developer. Our team was the first and only to win back the water rights within the community.

Subsequently, Pond 14 was named "Lake Richard Wilbur" in honor of his many hours of free legal service to the community. Without his work, this would never have happened.