

ORIGINAL

OPEN MEETING AGENDA ITEM



0000090122

57

ARIZONA CORPORATION COMMISSION
Commission's Docket Control
1200 West Washington Street
Phoenix, Arizona, 85007-2927

Docket No's: WS-04047A-07-0700 and WS-04047A-07-0708
FISHER'S LANDING WATER AND SEWER WORKS, LLC.

Subject: Exception to the OCRB valuation listed at Item #39 in the Recommendation by
Administrative Law Judge Sarah N. Hapring, dated October 24, 2008.

Item's not presented with Fisher's Landing Water and Sewer Works, LLC, (the
Company), financial information is the value of leasing 20 acres of private land upon
which the waste water evaporating pools are located. The lease agreement for the 20
acres requires lease payments of \$6,666.00 per month or \$79,992.00 on an annual basis.
A copy of the lease agreement is attached, exhibit #1.

The above mentioned 20 acres is owned by Northwest Development Company, a
California Corporation, who purchased the property from Don & Roberta J Fisher and
A.W. Ferguson and Louise H. Ferguson Trust, dated 8-1-2004 on September 2, 2004 for
\$900,000.00. Pages from the web site of the Yuma County Assessors' office that reflect
the ownership and the purchase price, are attached, exhibits #2 and #3.

Northwest Development Company is owned by Greg Brown who along with his wife
Donna own a 75% ownership in Fishers Landing, Inc., (a 98.99% owner of Fishers
Landing Water and Sewer Works, LLC).

The reason the lease did not come to the attention of the Commission Staff is because the
Company has not had the capital or net income, (Water and Waste Water combined), to
make the payments and also provide for working capital and expansion of the plant to
handle more volume and storage capacity. Mr. Brown's company, Northwest
Development Company, has not required current lease payments but has not forgiven the
Company for lease payments past due because of the lack of capital.

We respectively believe that the OCRD of the Waste Water portion of the Company
should include the capitalized cost of the lease payments or the value of the 20 acres, and
accordingly taken into consideration in setting the new rates.

Don Fisher
Don Fisher, Partner, Fishers Landing Water
and Sewer Works, LLC

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL
Date 10/20/08

2008 OCT 31 P 2:08

RECEIVED

Arizona Corporation Commission

DOCKETED

OCT 2 2008

DOCKETED BY

LEASE

This Lease is made and entered into on 8-31-04, 2004, by and between Fisher's Landing Water and Sewer Works, LLC, an Arizona limited liability company (hereinafter "Lessee"), and Northwest Development Company, Inc., a California corporation (hereinafter "Lessor"), with reference to the following facts:

RECITALS

A. This Lease is made and entered into pursuant to a Master Agreement for Purchase and Sale of Fisher's Landing and Sewer Plant, and for Leaseback, by and between Northwest Development Company, Gregory M. Brown, Donna C. Brown, Donald Fisher, Roberta Fisher, Albert W. Ferguson, and Louise Ferguson, Fisher's Landing, Inc., an Arizona corporation, and Fisher's Landing Water and Sewer Works, LLC.

B. Under the Master Agreement, Lessor agreed to acquire from Donald Fisher, Roberta Fisher, Albert W. Ferguson and Louise Ferguson that certain 20 acre tract of land upon which Lessee currently operates sewer ponds. As part of the Master Agreement, Lessee agreed to leaseback the property from Lessor upon the terms and conditions more fully provided herein.

C. Lessee is now and has been occupying the Premises and operating sewer and water treatment facilities thereon, including but not limited to sewer ponds, pursuant to an assignment of an existing lease between Fisher's Landing, Inc., and Lessor's predecessor's in title, the Fishers and the Fergusons. This lease is intended to supersede all prior leases.

NOW, THEREFORE, the parties hereto agree as follows:

1. Lessor, for and in consideration of the rent to be paid by Lessee and of the covenants and provisions to be kept and performed by Lessee under the terms of this lease, hereby leases to Lessee, and Lessee agrees to lease from Lessor, the property described in Exhibit A attached hereto, consisting of approximately 20 acres. Said property is improved with sewer ponds and related facilities, hereinafter "the Improvements". The term "Premises" as used in this Lease shall mean both the property and the Improvements.

2. Original Term. This Lease shall be for a period of ten years, commencing upon close of escrow for the purchase of the Premises by Lessor ("Escrow") and ending ten years after such close of Escrow, unless terminated earlier pursuant to the provisions of this Lease.

3. Holding Over. In the event Lessee holds over and continues in possession of the Premises after expiration of the Original Term, Lessee's continued occupancy of the Premises shall be considered a month-to-month tenancy subject to all the terms and conditions of this Lease.

4. Rent. Lessee agrees to pay to Lessor a fixed rental of \$80,000 per year for the use and occupancy of the Premises, payable in monthly installments of \$6,666 per month, payable on the first

day of each and every month commencing on the first day of the next calendar month following the month in which Escrow closes, at the office of Lessor at 3511 Camino Del Rio South, Suite 408, San Diego, CA 92108, or at any other place or places as Lessor may from time to time designate by written notice delivered to Lessee. The rent for the partial calendar months occurring at the commencement and termination of the term of this Lease shall be pro rated accordingly.

5. Permitted Use. During the term of this Lease, the Premises shall be used for the exclusive purpose of operating and conducting sewer and/or water treatment operations, and for uses normally incident to that purpose, and for no other purpose. Lessee shall not use or permit the Premises to be used for any other purpose, without the prior written consent of Lessor.

6. Waste or Nuisance. Lessee shall not commit or permit the commission by others of any waste on the Premises; Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance on the Premises; and Lessee shall not use or permit the use of the Premises for any unlawful purpose.

7. Compliance with Law. Lessee shall, at Lessee's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state, and county or municipal, including those requiring capital improvements to the Premises, including, but not limited to, any additional water and/or sewer treatment or conveyance facilities.

8. Payment of Utilities. Lessee shall pay, and hold Lessor and the property of Lessor free and harmless from, all charges for the furnishing of gas, water, sewer, electricity, telephone service, garbage pickup and disposal, and other public utilities to the Premises during the term of this Lease. All such charges shall be paid by Lessee directly to the provider of the service and shall be paid as they become due and payable but in any event before delinquency.

9. Miscellaneous Taxes. Lessee shall pay before they become delinquent all taxes, assessments, and other charges levied or imposed by any governmental entity on the Premises, including, without limitation, any and all sewer and water treatment and conveyance facilities.

10. Real Property Taxes. All real property taxes and assessments levied or assessed against the Premises by any governmental entity, including any special assessments imposed on or against the Premises for the construction or improvement of public works in, on, or about the Premises, shall be paid, before they become delinquent, by Lessee.

11. Condition of Premises. Lessee is now and has been in possession of the Premises under prior leases, and has operated sewer treatment facilities thereon, and acknowledges that it alone is responsible and liable for the condition of the Premises, including, but not limited to, the presence of sewer sludge and other by products of it's operations. Lessee therefore accepts the Premises, as well as the Improvements located on the Premises, in their present condition and represents and warrants to Lessor that the Premises and Improvements are in good, clean, safe, and tenantable condition as of the date of this Lease. Lessee further agrees with and represents to Lessor that the Premises have been inspected by Lessee, that it has received assurances acceptable to Lessee

by means independent of Lessor or any agent of Lessor of the truth of all facts material to this Lease, and that the Premises are being leased by Lessee as a result of its own inspection and investigation and not as a result of any representations made by Lessor or any agent of lessor except those expressly set forth in this Lease.

12. Maintenance by Lessee. Lessee shall, at its own cost and expense, keep and maintain all portions of the Premises and all improvements located on the Premises in good order and repair and in as safe and clean a condition as they were prior to commencement of Lessee's operations, reasonable wear and tear excepted. Lessee's obligation to repair shall specifically include, without limitation, all sewer and/or water treatment facilities, conveyance facilities, and related improvements incidental thereto, and timely clean up of any sewer sludge and/or other by products or waste resulting from or related to its operation and use of the facilities, whether occurring before or after commencement of this Lease.

13. Alterations and Liens. Lessee shall not make or permit any other person to make any alterations to the Premises or to any Improvements on the Premises without the prior written consent of Lessor. Lessor shall not unreasonably withhold this consent. Lessee shall keep the Premises free and clear from any and all liens, claims, demands for work performed, materials furnished, or operations conducted on the Premises at the instance or request of Lessee. Furthermore, any and all alterations, additions, improvements, and fixtures made or placed in or on the Premises by Lessee or any other person shall, on expiration or earlier termination of this Lease, become the property of Lessor and remain on the Premises, unless, within ninety days after lease expiration or termination, Lessor gives Lessee written notice that the Improvements are to be removed, in which event the improvements shall be deemed the property of Lessee and Lessee shall cause such improvements to be removed at it's own expense as and when reasonably directed by Lessor.

14. Inspection by Lessor. Lessee shall permit Lessor or Lessor's agents, representatives, or employees to enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether Lessee is complying with the terms of this Lease, for the purpose of doing other lawful acts that may be necessary to protect Lessor's interest in the Premises, or for the purpose of performing Lessor's duties under this Lease.

15. Surrender of Premises. On expiration or earlier termination of this Lease, Lessee shall promptly surrender and deliver the Premises to Lessor, in as good condition as prior to the commencement of Lessee's operations, excluding reasonable wear and tear.

16. Hold Harmless. Lessee agrees to protect, indemnify, and save Lessor harmless from and against any and all liability to third parties resulting from Lessee's occupation and use of the Premises, whether occurring before or after commencement of this Lease, specifically including, without limitation, any claim, liability, loss, or damage arising by reason of death or injury to any person; any work performed on the Premises or materials furnished to the Premises at the instance or request of Lessee or any agent or employee of Lessee; and Lessee's failure to perform any provision of this Lease or to comply with any requirement of law or any requirement imposed on

Lessor or the leased Premises by any duly authorized governmental agency or political subdivision.

17. Insurance. Lessee shall, at its own cost and expense, procure and maintain during the entire term of this Lease public liability insurance and property damage insurance issued by an insurance company acceptable to Lessor and insuring Lessor against loss or liability caused by or connected with Lessee's occupation and use of the Premises under this Lease in amounts not less than \$1,000,000 for injury to or death of any person, and aggregate limits of \$2,000,000 for injury to or death of two or more persons as a result of any one accident or incident; and \$1,000,000 for damage to or destruction of any property of others.

18. Fire and Extended Coverage Insurance. Lessee shall, during the term of this Lease, procure, carry, and pay for fire and extended coverage insurance, insuring all Improvements on the Premises for full replacement value. The policy shall name Lessor as an additional insured and shall be issued by a responsible insurance company authorized to do business in Arizona.

19. Cancellation Requirements. Each of the insurance policies shall be in a form reasonably satisfactory to Lessor and shall carry an endorsement that, before changing or cancelling any policy, the issuing insurance company shall give Lessor at least thirty days prior written notice. Duplicate originals or certificates of all such insurance policies shall be delivered to Lessor.

20. Destruction of Premises. If at any time during the original term of this Lease, the Improvements on the Premises are damaged or destroyed by any cause, Lessee shall promptly repair, rebuild, or restore the Improvements to substantially the same condition as the Improvements were in at the time delivered to Tenant at the commencement of this Lease.

21. Condemnation. If at any time during the term of this Lease, title and possession of all of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity, this Lease shall terminate as of 12:01 a.m. of the date actual physical possession of the Premises is taken by the agency or entity exercising the power of eminent domain, and both Lessor and Lessee shall thereafter be released from all obligations under this Lease, except those described at Section Number 22.

22. Condemnation Award. If at any time during the term of this Lease, title and/or possession of all or any portion of the premises is taken under the power of eminent domain by any public or quasi-public agency or entity, the compensation or damages for the taking shall be awarded to and be the sole property of Lessor. Lessee hereby waives any and all rights to share in any damages or award.

23. No Assignment or Encumbrance. Lessee shall not encumber, assign, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the Improvements that may now or hereafter be constructed or installed on the Premises without first obtaining the express written consent of Lessor. Lessee shall not sublet the Premises or any part of the Premises without the prior written consent of Lessor. A consent by Lessor to one assignment,

one subletting, or one occupation of the Premises by another person shall not be deemed to be a consent to any subsequent assignment, subletting, or occupation of the Premises by another person. Any encumbrance, assignment, transfer, or subletting without the prior written consent of Lessor, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Lessor, terminate this Lease.

24. Default. Any failure by Tenant to perform any of its covenants or agreements under this Lease shall be a material default and breach of this Lease.

25. Option to Terminate for Breach. In the event of any default or breach by Lessee under this Lease, in addition to any other remedies available to Lessor at law or in equity, Lessor shall have the right to terminate this Lease and all rights of Lessee hereunder by giving written notice of the termination. No act of Lessor shall be construed as terminating this Lease except written notice given by Lessor to Lessee advising Lessee that Lessor elects to terminate the Lease. In the event that Lessor elects to terminate this Lease, Lessor may recover from Tenant all damages and remedies, including unpaid rent to the end of the Lease, allowed in law or in equity.

26. Continuation After Breach. If Lessee breaches this Lease and abandons the Premises before the natural expiration of the term of the Lease, Lessor may continue this Lease in effect by not terminating Lessee's right to possession of the Premises, in which event Lessor shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover the rent specified in this Lease as it becomes due under this Lease.

27. Reletting After Breach. In the event Lessee breaches this Lease, Lessor may enter on and relet the Premises or any part of the Premises to a third party or third parties for any term, at any rental, and on any other terms and conditions that Lessor, in its sole discretion, may deem advisable, and shall have the right to make alterations and repairs to the Premises. Lessee shall be liable for all of Lessor's costs in reletting, including, but not limited to, repair and renovation costs required for the reletting. In the event Lessor relets the premises, Lessee shall pay all rent due under and at the time specified in this Lease, less any amount or amounts actually received by Lessor from the reletting.

28. Remedies Cumulative. The remedies hereinabove granted to Lessor shall not be exclusive, but shall be cumulative and in addition to all remedies now or hereafter allowed by law or provided in this Lease.

29. Arbitration. The parties hereto agree to submit any dispute or controversy hereunder to binding arbitration. The parties recognize and agree that by agreeing to binding arbitration they are giving up the right to trial by court or jury.

30. Attorney's Fees. In any dispute or controversy resulting in arbitration or any other

action or proceeding hereunder, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.

31. Binding on Heirs and Successors. This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Lessor and Lessee, but nothing in this section shall be construed as a consent to Lessor to any assignment of this Lease or any interest therein by Lessee, except as provided hereinabove.

Executed on August 31 2004 Yuma, Arizona, California.

Dated: 8-31-2004

Lessor

By: 

Gregory M. Brown President Northwest Developmental Co. Inc. a California corporation

Dated: 8-31-2004

Lessee

By: 

Gregory M. Brown President of Fisher's Landings Inc. Member Fisher's Landings Water and Sewer Works, LLC



Account Detail

General Information (as of 10:33 am, October 30, 2008)

Account: R0032063 Tax District: 0111
 Parcel: 1410702002028 Mill Levy: 10.774*
 Account Type: Status: A

* This Mill Levy is from the most recent tax roll. It may change on future tax rolls.

- New Search
- Assessment History
- Tax Totals
- Characteristics
- Sales History
- Tax Details
- Photo
- Sketch
- Tax Authorities

Owner Information

Owner Name: NORTHWEST DEVELOPMENT COMPANY
 Address: C/O FISHERS LANDING WATER-SEWER WORKS
 STAR RT 4 BOX 45
 YUMA, AZ 85364

Legal Description

SECT,TWN,RNG:20-05S-21W DESC: PT SEC 20 BEG AT SW COR SEC 20 TH N ON W SEC LINE 1199.64' TH NELY 2400.40' TO TRUE POB TH NW 600' TH NE 1452' TH SE 600' TH SW 1452' TO POB STATE PATENT 53-98722-01 ACCOUNT IS FOR MAP PURPOSES ONLY. DO NOT POST VALUES TO THIS ACCOUNT. PROPERTY ASSESSED UNDER ACCOUNT U-54.

Situs (Site Location)

YUMA 85365

2009 Assessment Information

	Actual Value	Assessed Value	Acres	Square Feet	Taxable Value
Land	700,000	154,000	20	0	
Improvements	0	0	0	0	
Exempt	0	0	0	0	
Total	700,000	154,000	20.00	0	154,000



Sales History

General Information (as of 10:33 am, October 30, 2008)

Account: R0032063 Tax District: 0111
 Parcel: 1410702002028 Account: N/A
 Type:

- New Search
- Profile
- Assessment History
- Characteristics
- Tax Details
- Tax Totals
- Photo
- Sketch
- Tax Authorities

History

Sale Date	Type	Reception	Book	Page	Grantor	Grantee	Amount
09/02/2004	3	2004032182	N/A	N/A	FISHER DON & ROBERTA J UND 1/2 INT JT	NORTHWEST DEVELOPMENT COMPANY	N/A
09/02/2004	3	2004032182	N/A	N/A	FERGUSON A W & LOUISE H TRUST 8-1-84 &	NORTHWEST DEVELOPMENT COMPANY	900,000
05/22/1997	6	1997013389	N/A	N/A	N/A	N/A	N/A

Client: Yuma County
 Title: ASSESSOR
 Connected As: Patrick HARVEY