

MINUTES OF MEETING
INDIGO COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Indigo Community Development District was held Wednesday, November 17 , 2010 at 1:00 p.m. at the Holiday Inn Daytona Beach LPGA Blvd., Board Room, 137 Automall Circle, Daytona Beach, Florida 32124.

Present and constituting a quorum were:

Robert Welsh	Chairman
Ed Bertsch	Vice Chairman
John Zemball	Supervisor
John McCarthy	Supervisor
Tom Leek	Supervisor (by phone)

Also present were:

Jim Perry	District Manager
Lynn Small	District Counsel
Jonathan Johnson	Hopping Green & Sams
Kurt von der Osten	Field Operations Manager
Ron MacLemore	City of Daytona Beach
Jamie Rountree	Rountree

FIRST ORDER OF BUSINESS

Roll Call

Mr. Perry called the meeting to order at 1:00 p.m.

SECOND ORDER OF BUSINESS

Organizational Matters

A. Oath of Office for Newly Elected Supervisors

Mr. Perry administered an oath of office to Mr. Bertsch, Mr. Welsh and Mr. McCarthy.

Mr. MacLemore stated we have been working with your staff trying to deal with the issue of the sidewalk maintenance. We have spent a lot of time trying to understand this better. I know you found the best arborist in the United States. He gave us some information that was valuable to us. We had a firm go out and take the arborist report and say based on what he has told us what would this look like 10 years from now and 20 years from now based on growth patterns. The problem is on one side we have a beautiful future in terms of the canopy of trees in the neighborhood but we also did a graphic presentation of what happens to the root system as

each tree gets older. This is reality and this is what is going to happen. The problem here is I don't know why but we see over and over that Developer's will put the wrong type of wrong choice of a tree into an area. This is probably the most difficult one that I have seen and I have been doing this for over 40 years now. There is a major root system growing out of this tree and they uplift the sidewalks. They grow out and push out the curbing and then they grow underneath the road and then you will start seeing the cracking of the road. The trees will end up dying or they will continue to push their way thru the infrastructure. We are beginning to see issues with the curb now and we are also starting to see indications of the root system underneath the road. What complicates this because they were planted so close together is you start getting a matting of the roots between the trees and also there are utility lines and irrigation lines underneath there. At this point we don't really have a good solution. What we are thinking of doing is we are going to go back to the arborist, so we can further study what our alternatives are. One alternative would be to take out the sidewalk.

Mr. Welsh asked why didn't the City say something?

Mr. MacLemore responded I don't know. I wasn't here. I'm sure that it was looked at.

Mr. Welsh asked if a new development was going in and you are in your present position and they submitted the plan and it was like this what would you say?

Mr. MacLemore responded I would say absolutely not, unless they were private streets. Phase one is clarifying what our options are and phase two would be to take some kind of definitive course of action.

Mr. Welsh stated whatever result you take it is temporary.

Mr. MacLemore stated I would like to better understand that because I don't think just ripping trees out is the alternative we want. I thought about taking the sidewalk out and using a soft surface that can move up and down with the trees but even with that, there is going to be some fairly extensive program with root pruning.

Mr. Rountree stated along that curb is also where the irrigation is.

Mr. Welsh stated the shade area is also going to have the black mold growing on the sidewalks and on the street worse than it is now.

Mr. MacLemore stated I wish I was coming to you today with a solution but we are just not there yet. The frequency of trip hazards are quite intense. There seems to be the need for an interim measure to fix the current trip hazards. There is liability on your side and ours.

Mr. Bertsch asked is there is an optional tree?

Mr. MacLemore responded there are optional trees. The thing is how would you replace them and get the others in. Most people now if they have a live oak in their backyard and will cut it down they will grind it down to the surface but they are not going to take the root system out.

Mr. Bertsch asked is it necessary to remove the whole root system? Why not put a root killer in there?

Mr. MacLemore responded if you go back and read the arborists report you will see a number of maintenance items to try to deal with this issue and some may work and some may not work. What we do know is the future is certain. It is going to require more maintenance effort.

Ms. Small stated it is certainly going to be an ongoing maintenance for the District and the City, no matter what path we take. One of the City employees is currently obtaining a proposal to see how much it will cost to grind down what we can grind down. Some of it I believe will have to be replaced because they are considered steps. The District and the City have participated in three or four meetings now discussing this issue. It is an open and obvious issue. We are both aware of it. There is liability on both sides. What we will do is at the December meeting we will probably have a proposal for the board to review to consider a cost share with the City to temporarily grind down the sidewalks, while we are working on the long term project.

Mr. MacLemore stated also keep in mind, as these trees get larger their diameter keeps getting bigger.

Ms. Small stated I think what is important for the board to know is the City and the District are looking at this in a cooperative effort because while the City is responsible to maintain the roads and the sidewalks, the District is responsible for the landscape, so we are responsible for the trees, so root growth is a landscape maintenance obligation and it is impacting the sidewalks.

FOURTH ORDER OF BUSINESS

Ratification of Jubilee HOA Landscaping Agreement

Mr. Perry stated included in your agenda package is a copy of the Jubilee HOA landscaping agreement.

On MOTION by Mr. McCarthy seconded by Mr. Bertsch with all in favor the Jubilee HOA Landscaping Agreement was ratified.

SECOND ORDER OF BUSINESS Organizational Matters

B. Consideration of Resolution 2011-01, Election of Officers

Mr. Perry stated any time we have the swearing in of new supervisors we include an election of officers resolution. Currently, Mr. Welsh is Chairman, Mr. Bertsch is Vice Chairman, I am Treasurer and Secretary, Ms. Powers is Assistant Treasurer, Mr. Lovera is Assistant Treasurer, Mr. Leek, Mr. McCarthy and Mr. Zemball are Assistant Secretaries.

On MOTION by Mr. McCarthy seconded by Mr. Bertsch with all in favor Resolution 2011-01 Election of Officers Keeping the Same Slate of Officers was approved.

THIRD ORDER OF BUSINESS Approval of the Minutes of the October 27, 2010 Meeting

Mr. Perry stated included in your agenda package is a copy of the minutes of the October 27, 2010 meeting. Are there any additions, corrections or deletions?

Mr. McCarthy responded on page 12 where I spoke the word "City" should be "CDD." On page 13 in the second paragraph I think it should start off with "On other matters."

On MOTION by Mr. McCarthy seconded by Mr. Welsh with all in favor the Minutes of the October 27, 2010 Meeting were approved as revised.

FIFTH ORDER OF BUSINESS Other Business

There being none, the next item followed.

SIXTH ORDER OF BUSINESS Staff Reports

A. Attorney

Ms. Small stated I spoke with Renar's counsel on the way here and I have a voicemail from him stating that they will sign the agreement as presented. Earlier they had some issues with the permit cost but apparently he was able to solve that, so they are ready to sign. I will forward the agreement to Doyle tomorrow and he said he will get it signed and send it back to me next week. It looks like we will have the retaining wall repaired by DR Horton. I will call DR Horton's counsel after the meeting today to give him an update, as well. We should be moving forward with that. I envision everyone signing the agreement, DR Horton starting the

repairs and then us working that permit issue out. If we would keep waiting for that I think the process would just be delayed even more. I spoke to Doyle today and said the biggest issue is getting Renar to cooperate with respect to that permit and he said they were willing to cooperate because it was in their best interest to get the permit transferred to someone else, as well. It looks like they have heard our plea for help. I wanted Mr. MacLemore to come and talk to you today, so the board would be up to speed with what Kurt, I and Jim have been working on, as far as the sidewalk issue. I realize that the prospect of expending funds to do a temporary solution for the sidewalks is a little daunting but unfortunately we have had so many meetings on this issue that it is a liability for the District and we want to get some sort of temporary solution out there. I hope that at the December meeting I will have a figure for you. I believe some of the sidewalks need to be replaced because they are so high.

Mr. Perry stated to give the board some perimeters on cost I know they are preliminary but it will probably be around \$30,000 to \$40,000 range.

Mr. Welsh asked before we do that repair, do we have to have it power washed again?

Mr. von der Osten responded no.

Mr. McCarthy asked does the City have any responsibility with keeping the sidewalks clean?

Mr. von der Osten responded no.

Mr. McCarthy asked how about if they are slippery?

Ms. Small responded if it was a safety issue I guess you could argue that. I could talk to Ben, the City Attorney about the mold issue. Are there mold spots?

Mr. McCarthy responded yes. They are all over the place.

Ms. Small stated at the last meeting you gave me a letter from Indigo Development regarding conservation area and our office is still looking into that. We are going back to the minutes around 2004 to kind of see what the background was for that conveyance. We have researched the public records and we can't quite determine the land that was conveyed.

Mr. von der Osten stated I have maps here.

Ms. Small stated I think what will be better for the board is to determine the back ground information on why it was conveyed and hopefully there is something in the minutes.

Mr. von der Osten stated I think we will spend thousands of dollars trying to figure this out on our own. Why can't Indigo, who sent us this letter come in here and give us their version?

Mr. Perry responded we can ask them to do that at the next meeting.

Ms. Small asked in 2004 was it a Developer board?

Mr. Perry responded it was. There were no residents on the board at that time.

Ms. Small stated assuming it is a valid conveyance that the board accepted the conveyance, which most times it is then is it worth spending District money to look into this issue?

Mr. Welsh responded we can't do it.

Mr. von der Osten stated I would like someone to tell us which conditions pertain to this strip.

Mr. Welsh stated to me, maybe we just let it go and nobody says anything.

Mr. Perry stated you have a document that was addressed to the board and it informs you of what they perceive to be our obligations now. I can ask them to be present at the next meeting and give a presentation as to what exactly they believe this board is now responsible for and some of the history and background of it. I will put it on the agenda and ask them to come.

Ms. Small stated and we need to know where do the obligations that they are stating in the letter come from. If it is just a condition of the permit then maybe we can get a permit modification. I think that trying to argue whether or not we own this land or anything like that is probably a mute issue.

Mr. Zemball joined the meeting.

Mr. McCarthy asked are you going to talk to the DRI?

Ms. Small responded yes. I met with the City Clerk two weeks ago and we are still looking at this issue. They have applied to rescind the DRI. The only information I can give you is the City is still looking into it. They responded with a letter stating that the application wasn't complete. We haven't heard anything from Indigo Development as to a response to that. I did speak with the City Manager when I was in their offices to get some more development orders and what I was told was the City of Ponte Vedra has never had this issue where they were requested to rescind the DRI, so this is a case of first impression for them. It will be interested to see how they respond to it. On our end we have had a land use attorney at our firm looking into

this issue. She has told me that regardless of whether or not the DRI is rescinded the development orders that were issued by HOA or Opal Hill, etc. that each of them have their own development agreement. The obligations in the development agreements are still going to apply, regardless of whether the DRI is rescinded, so in a sense it is not really that we are concerned about rescinding the DRI because in all likelihood if it is rescinded there is nothing that we are going to be able to do about it but what we can do is uphold the obligations that were given in those development agreements. What our firm is doing is looking at the development agreements to see all the improvement obligations because those are still going to hold. While the rescinding of the DRI may impact the District to some extent I think the more important thing to focus on is the development agreements because those won't be changed regardless of whether or not the City rescinds the DRI. I think there are completion obligations that they need to maintain and the City Clerk did mention that but I don't know what extent that is. You also asked me to approach the City regarding our I95 maintenance obligations. The City Attorney and myself have reviewed the grants that DOT gave to the City regarding the landscaping of I95 interchange. Those obligations stay for an infinite amount of time. What Ben and I had discussed is writing to DOT and asking them to modify the maintenance service level that is required based on the grants that were given to the City. We are confident that they will be amenable to it because the reason why we are trying to cut back services is a financial fiscal issue. Ben has indicated to me that he doesn't foresee a problem with that. I think another motion would be appropriate from the board authorizing District staff confirming or reconfirming that you would like to cut back services at the I95 interchange and authorizing District staff to work with the City Attorney to get those service levels cut back.

Mr. McCarthy asked, "Jamie, can you two get together and work on things that we can reduce prices on?"

Ms. Small responded yes.

Mr. Zemball asked what were some examples?

Mr. Rountree responded it would be reducing the size of the bunkers and eliminating some of the outer crop that we have. Those are all man hours. The one thing about the overpass is we get help from the City on the mowing part but that is the part that costs the least amount of money. It is the detail stuff, like the tree trimming three times a year and trimming the core grass four times a year and the bunkers being raked once a month and weed control. We go thru

approximately 140 gallons of Round-Up a year on the overpass itself. You spend mulch applications around the trees. You spend weed applications around the trees.

On MOTION by Mr. McCarthy seconded by Mr. Bertsch with all in favor to Reduce the Level of Service to I95 Interchange & Authorizing District Staff to work with the City Attorney to get those services cut back was approved.

Ms. Small stated I am working Ben to get the agreement together for the removal of the signs in the right-of-way.

Mr. von der Osten stated in last week's meeting with Mr. MacLemore and Ben Gross I brought up the item we have been discussing about removing the signs in the City right-of-way. The HOA doesn't really have the ability to go in and remove them. The discussion involved the CDD was responsible for all the maintenance in the right-of-way. The City has the authority to remove signs in the public right-of-way but it is questionable whether the CDD does. In casual discussion they were agreeable to executing a document that would allow the CDD to also have authority. If they have model home signs that is in conformance with the master signage plan then it is allowed.

Mr. Bertsch asked what about the signs from the people that are no longer developing in LPGA?

Mr. von der Osten responded Woodside has removed all their signs but one that is behind your house, which I called them on.

Mr. Bertsch stated then you have Renar signs.

Mr. von der Osten stated Renar is still active. They have a model home.

Mr. Perry stated it appears that we might be able to have an agreement with the City to allow us to remove the signs, so if we do have it prior to our next meeting we would ask that the board consider authorizing the Chair to sign that agreement.

On MOTION by Mr. Zemball seconded by Mr. McCarthy with all in favor Authorizing Chairman to Sign the Agreement between the City and the CDD to Remove the Signage was approved.

B. Engineer – Consideration of Requisition No. 160 for Series 2005A Bond

Mr. Perry stated included in your agenda package is requisition number 160. If you recall, at the last meeting we didn't have all the detail for this. The total of this requisition is \$2,522.40.

On MOTION by Mr. McCarthy seconded by Mr. Welsh with all in favor Requisition No. 160 was approved.

C. Manager

Mr. Perry stated sorry for the confusion in regards to our meeting site. We had some issues with the agreement. We were able to get those all worked out. Nina Crabtree is the Sales Manager. We will also include on our website just a little blurb about them allowing us to use the facilities for free. Our bond calls happen twice a year on May 1st and November 1st. On our November 1st bond call we made the call without any issue on the 1999A bonds. We did not have enough revenue in the 1999C bond account, so we had to utilize funds in the reserve account of approximately \$200,000 to make that bond call. It was also the same with the 2005 bonds. We had to take approximately \$310,000 from the reserve account for that. The bondholders are all aware of that. There was notice in regards to that. I have talked with four or five different ones to bring them up to date.

D. Field Operations Manager

Mr. von der Osten stated we have no proposals for landscaping today. Mulching our right-of-ways and trees that we were discussing earlier we will begin later this month. You were all aware of the vandalism of the lighting on Tournament and Champions. They have been repaired. The cost of those repairs was approximately \$1,430. Will you check into the deductible on that?

Mr. Perry responded we will check into that.

Mr. von der Osten stated all the timers on the lights have been changed for daylight savings time. At the I95 interchange plant removal has been completed. We are still waiting for the sod to come in. The survey work took place last week on the stormwater structure repairs on lake number one and lake number three. I have also discussed with the City of Daytona Beach to see if it could be a City repair or a cost share. I think we might be in good position there to have

City cooperation with those repairs. Have there been revisions to the agreement since it was originally presented to Renar?

Ms. Small responded yes. They requested it.

Mr. von der Osten asked are there long term obligations in that agreement with the District?

Ms. Small responded I will quickly summarize the agreement and if the board would like me to resend the final version I can do that after the meeting. It is a four party agreement. It is with the HOA because they own the land via error by plat. It is with the CDD, who wants to ultimately maintain the retaining wall. It is with Renar, who has the obligation as far as the permit and then DR Horton, who actually built the retaining wall and is agreeing to repair it. DR Horton will repair the retaining wall. I can't recall from memory if the HOA is supposed to properly deed it to us or if we need to cure the prior incorrect plat. I think what we want to do is have Renar properly deed it to the HOA and the HOA will grant the CDD an easement and the CDD will have the obligation to maintain the retaining wall once it is repaired. There is an obligation on Renar's part to transfer the permit.

Mr. Zemball asked so right now it is still owned by Renar?

Ms. Small responded there is argument that the HOA owns it. There is argument by Renar that it was never properly deeded to the HOA. I think the owner of record is Renar Development.

Mr. von der Osten stated this document is going to clean up a lot of grey areas. You are asking for an absolute answer, which you will not get right now. This document will take care of that. DR Horton is saying they conveyed it via plat to the association. The association and Renar are saying they did not.

Mr. Zemball asked as far as Volusia County Property Appraiser, it is owned by?

Mr. von der Osten responded DR Horton.

Mr. Zemball asked and the permit for that?

Ms. Small responded it is in Renar's name. Renar's counsel has said because the HOA never signed that plat that it is not properly conveyed. When we met with him at his office he pulled out a map showing where there is an issue with the property owner of that house. He even had an argument that he owned the retaining wall. It is not very clear but hopefully this agreement will clear it up.

Mr. Zemball stated I am just interested because the proper sequence of the permit transfer is going to have to be fine tuned because if someone doesn't own it they can't transfer it. The permit owner is Renar and if they will just accept that the plat is good and say it has been quit claim deeded to them then they can transfer an easement and permit to the CDD or do they want it to go to the HOA?

Ms. Small responded right.

Mr. Zemball asked so the permit would have to go from Renar to the HOA to the CDD.

Mr. von der Osten asked is there an easement going to be on that homeowner's lot?

Ms. Small responded yes. We need an easement in order to maintain the retaining wall. Our position is that the retaining wall is not on the homeowner's property. Renar has stated that before. Our position is that it needs to be conveyed ultimately to the HOA properly and then the HOA is going to give us an easement to maintain that retaining wall.

Mr. von der Osten asked is the board agreeing to eventually accept all the lakes under the Renar permit?

Ms. Small responded this agreement does not in any way impact those lakes. This is just about that damaged retaining wall.

Mr. Zemball stated there is a separate agreement.

Ms. Small stated there is a separate agreement that has been out there about the lakes but it has sort of fell by the way side because we were focused on this issue.

SEVENTH ORDER OF BUSINESS

Supervisor's Request and Audience Comments

Mr. Bertsch stated I had a lengthy conversation last week with Mr. Motram with Renar. He called me because he was disturbed that I put he had washed his hands of the retaining wall in the newsletter. He didn't feel that was fair on my part. I asked him who's fault was it then? He said it is the attorney for the CDD. She is holding the whole thing up. I promised him I would bring that up at the meeting and see what everybody had to say. We have a bi-monthly newsletter in Opal Hill, so I will make sure the meeting change goes in there. The wall is going to get repaired but what about the pond that is in front of the wall? There is no pond there anymore. It is all filled in now. Is DR Horton going to excavate that?

Mr. von der Osten responded for the District to accept that wall it needs to be repaired per the engineer’s specifications and in order for the permit to be in compliance that lake would need to be cleaned properly.

Mr. Bertsch stated the weir looks like it needs repair, also.

Mr. von der Osten stated it would be part of the punch list for repairing the retaining wall.

EIGHTH ORDER OF BUSINESS

Approval of Check Register

Mr. Perry stated included in your agenda package is a check register. The total amount is \$95,190.69.

Mr. McCarthy asked to save on Fedex charges could you just send the supervisors a scanned copy of the agenda package?

Mr. Perry responded yes.

Mr. Zemball stated I would agree with that.

Mr. McCarthy asked on the Florida Power & Light checks I am assuming that the \$1,331 is for the south?

Mr. von der Osten responded that is typically for the street lights.

Mr. Perry stated that is for the lease expense.

Mr. von der Osten stated last week I spoke to FP&L’s representative for leasing and he said they will not sell those lights to the District. They will remove them and the District can purchase their own lights.

Mr. McCarthy asked can we add a discussion of the up lighting on the next agenda package?

Mr. Perry responded sure.

On MOTION by Mr. McCarthy seconded by Mr. Bertsch with all in favor the Check Register was approved.

NINTH ORDER OF BUSINESS

Financial Statements as of October 31, 2010

Mr. Perry stated included in your agenda package are the financial statements as of October 31, 2010.

Mr. Welsh asked do we keep taking reserve out for CoastOak?

Mr. Perry responded there are two kind of reserves. In regards to CoastOak they have been assessed in that maintenance assessment number. We are assuming that includes all the lands within the District and were properly assessed.

Mr. Welsh asked and that is just CoastOak, correct?

Mr. Perry responded no, that includes all the other landowners. We know that there were certain properties that they had not paid on in the past and we estimated that we would require additional working capital. If you look down under administrative that is related to the non payment of those CoastOak properties.

Mr. Welsh asked and that money is being taken out of our reserve, correct?

Mr. Perry responded correct.

Mr. Welsh asked how long will that continue to happen?

Mr. Perry responded if you look at your balance sheet we have about \$500,000 in cash and investments, so if you start with the \$500,000 we had at the beginning of the year I expect that we are going to expend this year about \$900,000 in cash. In addition to that, we are going to get about \$1M in assessments, so if that is correct at the end of this year in September we will still have about \$600,000 in cash.

Mr. Welsh asked but our reserve will keep diminishing?

Mr. Perry responded it potentially could but right now we are okay.

TENTH ORDER OF BUSINESS


Next Scheduled Meeting – 12/15/10 at 1:00 p.m. @ Holiday Inn


Mr. Perry stated the next scheduled meeting is on December 15, 2010 at 1:00 p.m. at Holiday Inn Daytona Beach LPGA Boulevard.

ELEVENTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. McCarthy seconded by Mr. Welsh with all in favor the meeting was adjourned.


 Secretary/Assistant Secretary


 12/11
 Chairperson/Vice Chairman

