

MINUTES OF MEETING
INDIGO COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Indigo Community Development District was held Wednesday, December 15, 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

Also present were:

Jim Perry	District Manager
Lynn Small	District Counsel
Kurt von der Osten	Field Operations Manager
Jamie Rountree	Rountree
Pete Boudreau	Coast oak Group, LLC
Bill McMunn	Consolidated Tomoka
Gary Moothart	Consolidated Tomoka
6 Residents	

FIRST ORDER OF BUSINESS

Roll Call

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

FIFTH ORDER OF BUSINESS

Review of Permit Requirements on District Lands for Consolidated Tomoka Permit

Mr. Perry stated at the last meeting the board had requested that someone from Consolidated Tomoka be present at today's meeting.

Mr. Bill McMunn stated I am with Indigo Development. The areas you see marked in yellow are part of the easements that the District has. Those particular easements are subject to fish and game easement. They were potentially areas for gopher tortoise habitation. Gopher tortoises need to be able to crawl in the palmettos and if this gets too thick they are unable to travel thru there. I may have started this by noticing that it hadn't been done for awhile. I think

we sent a letter to remind you all that you need to do burns. Right now, it is way to dry to do it. I think you will run into a problem if you don't do it because it has been awhile and then it will become much harder and more expensive if you wait too long. You may not be able to do a controlled burn if you wait too long. There is mechanical harvesting that can be done to cut around it. FP&L came in and sprayed under the power line. They usually mow that every two years.

Mr. Zemball asked do you happen to recall the three year cycle period when it was due and how far past due we are?

Mr. Bill McMunn responded I think it has been at least six years.

Mr. Perry stated the District obtained the land in 2004 and he has given us some other documents that note the conservation easement and specify the berms to be every two to three years. These are additional documents that I don't think the board has gotten. We will scan them and send them to you.

Mr. Bill McMunn stated burning is very inexpensive. You just have to be careful to do it at the right time. You may get to the point if you don't do it that you will not be able to do it the inexpensive way. You might to look at doing some mechanical at the entrance road. You could mechanically mow some and leave a little bit of a buffer, so when they do burn it won't come out into street.

Mr. Leek asked, "Kurt, do you have any idea of what the cost might be?"

Mr. von der Osten responded no. "Bill, what is in yellow, is that all District land?"

Mr. Bill McMunn responded no. What I put in yellow is just the area that is subject to this permit requirement.

Mr. von der Osten asked is that your property east of the river?

Mr. Bill McMunn responded no. I think the forestry department would be happy to come over and talk to you about it.

Mr. Leek asked do we agree that this is our responsibility?

Ms. Small responded it looks like a valid conveyance to me.

Mr. McCarthy asked but we don't know if this whole area is inhabited by tourtoises?

Mr. Bill McMunn responded right but that doesn't matter. It is in a conservation easement with the State.

Mr. McCarthy asked so control burns are required because it is a conservation area and not just because of tortoises?

Mr. Bill McMunn responded no. It is because of tortoises.

Mr. McCarthy asked so the whole area from the north to the south has been designated a tortoises conservation area?

Mr. Bill McMunn responded yes. I has the potential for tortoise habitat.

Mr. McCarthy asked what if we could prove that tortoises aren't there in certain areas to the fish and wildlife?

Mr. Bill McMunn responded it would take years and so much money. I don't think that is the way to go.

Mr. Welsh asked do you think it would be expensive to run mechanical equipment in there?

Mr. Rountree responded you are asking me a question that I am not technically qualified to answer because I don't run that type of equipment. Nothing that Rountree currently owns could do that.

Mr. Bill McMunn stated we do have equipment to do that. We mowed under the power lines across from Promenade and we also went out over the bridges on the second golf course and we had a clearing piece of equipment for three days and I'm guessing if you rented that equipment it would cost \$200 to \$300 an hour.

Von der Osten asked were these permits transferred from Indigo to the CDD?

Mr. Perry responded there are provisions in there that it runs with the land.

Mr. Welsh asked when we ask a person to come in from the forestry department, do we have to pay them to?

Mr. Bill McMunn responded no. They will meet with your CDD staff and give you some advice on different areas.

Mr. Leek stated so we want Kurt to start investigating it.

SECOND ORDER OF BUSINESS

Approval of the Minutes of the November 17, 2010 Meeting

Mr. Perry stated included in your agenda package is a copy of the minutes of the November 17, 2010 meeting. Are there any additions, corrections or deletions?

Mr. Pete Boudreau stated as Jim has mentioned the intent to pay the 2010 past due assessments on these parcels and that payment is subject to the waiver of late fees. If the fees aren't waived then I would have to take that back to our principles. If accepted by the board we would make that payment by the end of the year, which would be \$75,000 O&M and then \$315,000 in debt service assessments.

Mr. Leek asked so you are saying that a condition of paying the \$75,000 in assessments for O&M is the waiver of the \$6,000 in late fees?

Mr. Pete Boudreau responded I'm saying to make a timely payment by the end of the year that would be the case. Anything else other than that I would have to take back to our principles of our company for their approval.

Mr. Leek asked so you are saying a condition for paying the \$75,000 in assessments this year is to waive the \$6,000?

Mr. Pete Boudreau responded correct.

Mr. Leek asked and if the \$6,000 isn't waived in this meeting then you are going to go back to your principles and determine what action to take then?

Mr. Pete Boudreau responded correct.

Mr. McCarthy asked and this is only on a specific piece of property?

Mr. Perry responded that is correct.

Mr. Leek asked do we have a commitment that you will continue to pay the O&M assessments on those parcels in future years?

Mr. Pete Boudreau responded what I can commit to right now is that we can commit to the UTC portion of the parcels but beyond that we have to see how our discussions go. We are working with them on a resolution and that resolution, in addition to other factors, will determine what we can pay going forward.

Mr. Leek asked so the answer to my question is no?

Mr. Pete Boudreau responded I can't commit right now. What I can commit to is we will pay the UTC portion of that parcel going forward.

Mr. Leek asked and by UTC portion you mean what?

Mr. Perry responded if you recall, the SW30 parcel is one parcel and there are components in that one parcel that are UTC numbered. Of those UTC parcels that were in the

SW30 they have made the determination it is economically feasible to develop, so they are not going to pay all the lands that were in that SW30.

Mr. Leek asked what UTC percentage represents what of the O&M for that area?

Mr. Perry responded I believe it is about 25% to 30%.

Mr. Leek asked so we are talking about how many dollars in O&M assessments based on our current rate?

Mr. Pete Boudreau responded approximately \$50,000 for 2011.

Mr. Perry stated the total would be about \$180,000 to \$200,000 in total assessments.

Mr. Leek stated but they are only agreeing to pay \$50,000.

Mr. Perry stated this will bring their payment in full for fiscal year 2010.

Mr. Leek asked what do you think your principles would consider in terms of making a longer term agreement for that? You have determined that it is economically feasible to develop, which would probably indicate that the O&M should be paid going forward.

Mr. Pete Boudreau responded anything beyond that requires an agreement with the bondholders.

Mr. Leek asked what is the advantage to you for bringing that proposal to us now? You are saying you would pay \$75,000 if we waive the late charges and if we don't are you saying you are not going to pay the \$75,000?

Mr. Pete Boudreau responded no. We are not saying that. I would have to go back to our principles and get approval to do that.

Mr. Leek asked what is in it for Coastoak to do this?

Mr. Pete Boudreau responded this is all part of the agreement with the bondholders.

Mr. Leek stated but the bondholders don't have anything to do with the O&M.

Mr. Pete Boudreau stated openly they do if they agree to the debt service portion then it does impact the overall O&M.

Mr. Leek asked how does it impact the O&M?

Mr. Zemball responded because it would be foreclosed on if the O&M is not paid.

Mr. Leek asked so how does that affect the O&M?

Mr. Pete Boudreau responded I think what we are saying is we are willing to make this current based on our discussions with the bondholders. Our ultimate goal is we bring this entire thing to a resolution, so this is our first step in getting this resolved. You have to understand that

we are in discussions with bondholders and I can't share all the specifics of those discussions yet.

Mr. Leek stated but what you have to understand is that we have a fiduciary responsibility to operate this District and you owe a lot of money to the District in operating funds and you continue to indicate that you are not going to pay them and that is a completely separate issue from the negotiations you are having with the bondholders and how much you owe them in debt. We should think about this in terms of being the last concession we make to Coastoak with no real significant benefit to the CDD.

Mr. Zemball stated I agree.

On MOTION by Mr. Leek seconded by Mr. Zemball with Mr. Bertsch voting aye & Mr. Welsh & Mr. McCarthy voting nay to Waive of 2010 Penalties and Interest for Specific Coastoak Properties motion was approved, subject to receipt of the balance due within the next 10 days.

SIXTH ORDER OF BUSINESS

Discussion of LED Landscaping Uplighting

Mr. Perry stated if we recall last month Supervisor McCarthy had asked that this item be added to the agenda.

Mr. McCarthy stated I have the proposals in front of me and I will just take the highest amount, which is \$239,788. Does everyone want to pursue this? Does anyone not want to pursue this? Can we not use bond money to fund this?

Mr. Perry responded that is correct. We cannot use bond money. Right now you have two options; there is a group that specializes in this and I have been talking to a couple local banks in regards to other Districts and smaller capital projects and there might be an opportunity to do that locally. Historically, it has been very difficult for local banks to do a loan in this nature because of the way the Districts are structured. I can reach out to the leasing company again and I can also touch base with the local bank. It doesn't hurt to have those conversations now and see if they are even interested. At some point and time this District is probably going to do this project, so it doesn't hurt to investigate this now.

Mr. McCarthy stated Kurt has been talking to Florida Power & Light about the street lighting we are paying for on the south end.

Mr. von der Osten stated I have had three different conversations with them and they will not sell those light fixtures to the District. The only option would be for them to remove them and for the District to put up their own lights.

Mr. Leek asked why would they not sell them?

Mr. Perry responded I don't think that all options have been pursued yet. We have other Districts that have lights that have a capital lease that have an option to buy on them. They are regulated by the Public Service Commission. If we can't get the right answer from them then we will have to go to the State route to force them.

Mr. Leek stated I think this is something we definitely want to do but I think our timing right now is not good. I think we should defer it a couple months.

Mr. Bertsch stated I was involved in the lighting business and I used to compete against companies that we would go into an office building and we would furnish retrofit or new energy saving light fixtures and supply them free and they would cut a deal that a certain percentage of the savings that the company would get from changing the lighting that would be their fee.

Mr. Leek stated I would like to see the cost benefit of the three year payback.

Mr. McCarthy stated I would still like Jim to pursue the local financing part of it.

SEVENTH ORDER OF BUSINESS Other Business

There being none, the next item followed.

EIGHTH ORDER OF BUSINESS Staff Reports

A. Attorney

Ms. Small stated the agreement with Jubilee HOA was signed. We have the original. The agreement for the damaged retaining wall has not been executed fully yet. I did hear back from DR Horton's counsel this morning that he is sending me the signature page on behalf of DR Horton to me today. I haven't gotten any indication from Renar that it is not being signed. I hope to have a fully executed agreement for the board to review at the January meeting. There are three City of Daytona Beach items that we are still working on. I have been having trouble getting in touch with the City on them. I am in communication with the City Attorney on an agreement with the City for removal of those signs that we discussed.

Mr. Leek asked which signs were those?

Mr. von der Osten responded yard sale signs, etc. that are placed on CDD property. When they are placed on CDD property, the CDD representative is authorized to remove them, since we have to maintain the area.

Ms. Small stated they have the authority to remove them, so they are going to delegate the authority to remove them to the CDD. There is also a letter to DOT that Ben and I are drafting and I received some cost saving measures from Jamie Rountree. We are sending that to get an adjustment on the maintenance level of service on the I95 interchange. I expect that back for the January meeting, as well. On the interim sidewalk solution, they have not approved an interim expenditure for the grinding of the sidewalks but I imagine it is just because it is the end of the year. I talked to Ben and they are trying to approve a \$15,000 expenditure to assist with the grinding of the sidewalks.

Mr. Leek asked in that agreement we would be agreeing to pay half of the cost to grind down the sidewalks?

Ms. Small responded I don't think I have approached the board yet for authorization or a motion to enter into that agreement.

Mr. Leek asked but that would be the proposal that we would pay part of it?

Ms. Small responded I think that their idea.

Mr. Leek asked and why would we do that?

Ms. Small responded going through the sidewalk process the City is obligated to maintain the roads and the sidewalks. The District is obligated to maintain the landscaping for the District. Because the sidewalks are caused by the root of the tree, which the CDD is obligated to maintain, we have sort of approached it as a cooperative problem amongst the City and the CDD because we are responsible for the tree, which is causing the sidewalk to lift.

Mr. Leek asked but we have no legal liability or obligation to pay for any of the grinding or any maintenance of the sidewalks?

Ms. Small responded we have no financial obligation but do we have liability is why we are moving forward in this because I do believe to some extent we are liable.

Mr. Leek asked to what extent are we liable? If someone trips and falls what is the likelihood that we would be found liable in a lawsuit?

Ms. Small responded I don't make a practice of giving legal opinions on the record but I can tell you with my gut and about 150% certainty that we would be found liable because we

have had numerous meetings with the City, where we have acknowledged this problem and we have acknowledged our duty to maintain those roots.

Mr. Leek asked who has acknowledged that?

Ms. Small responded the CDD. We have an obligation to maintain the roots and because we have noticed the sidewalk issue.

Mr. Leek stated two weeks ago I was in Columbus, Ohio and I walked through a number of old neighborhoods there and a couple years ago I was in Savannah and I did the same thing. Every one of those Cities in areas where I walked have big oak trees that are heaving up sidewalks and curbs. It would be interesting to know how many trip and fall lawsuits they have had and what the cost of that was. To me, as a business person I think you asses risk and then you determine what you do about that risk. I don't want to spend a bunch of CDD money to prevent us from being sued when we are going to be sued anyway if someone trips and falls. The risk, to me, seems to be much less than the cost.

Mr. Welsh asked who owns the trees?

Mr. Perry responded the District.

Mr. Welsh asked who owns the sidewalks?

Mr. Leek responded the City. If the City owns the sidewalks then they have a decision they could ultimately make. They can either remove the sidewalks or put down whatever they want or they can maintain them. If they choose to maintain them then we have the option to assist in that maintenance. Don't we already have liability insurance?

Mr. Perry responded we do.

Mr. Leek stated if somebody falls they are going to go to the City first. The City has a whole lot more money than we do.

B. Engineer

There being none, the next item followed.

C. Manager

Mr. Perry stated you do not have the November financials in your agenda package. We will have them next month. We didn't have time to turn them around.

D. Field Operations Manager

Mr. von der Osten stated regarding the Opal Hill retaining wall, that issue was before the City's special magistrate yesterday, as far as zoning and maintenance violation. It was heard and the magistrate was not that interested in delaying action. I anticipate an agreement between the parties to have it repaired. He ruled that DR Horton would have until February 2nd to comply to repair the wall and if not, then there are fines up to \$1,000 per day.

Mr. Zemball asked how will they be notified of the ruling on this?

Mr. von der Osten responded the City will forward the ruling.

Mr. McCarthy stated what will happen is at the next meeting if it is not completed they will fine them and then it will go forward from there. They could ignore the whole process and \$100,000 later come forward and beg mercy and they will throw it out. Eventually it will be repaired but it will be through the legal process.

Mr. von der Osten stated we have been preparing the repair detail regarding the stormwater repairs. I spoke with the City Monday and they have not yet visited the site to determine if they share responsibility for the two repairs.

Mr. Welsh stated I called the City and I talked to some people about the lakes that are down so much and I found out that they take the recycled water and they dump that water into the Halifax River that they don't use. I understand we have two inch pipes and we have valves. So can we take some of that recycled water and dump it in to the ponds to build the ponds back up with water? I talked to John and they use recycled water in the some of the lakes on the golf course.

Mr. von der Osten responded I believe they have two storage ponds and they use those lakes to irrigate the golf course. I would certainly say you would have to bring in DEP. Typically, the lakes have to be specially lined.

Mr. Zemball stated St. Johns doesn't allow it anymore. They used to but they no longer do.

Mr. Welsh stated on the oak trees that drop the acorns on the sidewalks, it gets to be a problem for people walking and riding bikes.

Mr. Rountree stated right now we try to blow them off the sidewalks as much as possible and they ultimately go down the storm drain or into the turf. The only way you would get them off other than that you could use a vacuum.

Mr. Welsh asked what would that cost?

Mr. Rountree responded you are probably looking at probably a couple thousand dollars more.

NINTH ORDER OF BUSINESS

Supervisor's Request and Audience Comments

Mr. Leek stated I noticed in the Jubilee hedge solution we were billed for 100 plants and I would just like to know if that is what got installed in that area because at the same time a number of plants were installed on the south side of Tournament Drive.

Mr. von der Osten responded I will do a plant count.

Mr. McCarthy stated I have had several residents ask me a question that I really don't have an answer for. We are paying to maintain the interchange in coop with the City. People ask me why doesn't the Auto Mall pay into that and why the other businesses that benefit from that interchange don't pay into it to.

Mr. Moothart stated Indigo Development pays 50% of that bill and Indigo Development in turn charges off its 50%.

Mr. McCarthy asked so the Auto Mall and Vince Carter's are paying into it?

Mr. Moothart responded yes. It goes all the way down to the hospital and across the street from our office buildings.

Ms. Nancy Crick stated I am wondering why this meeting is at 1:00 p.m. in the middle of a work week. Can we request that something be sent to people because I had no clue until I came to the last meeting?

Ms. Sarah Coady stated that was one of the concerns that I had. The meeting is always at 1:00 p.m. I specifically took off work to be here today.

Mr. Welsh responded one of the problems we have is trying to find a place that is conducive for our meetings. Sometimes we have a lot of people and sometimes we don't. These are donated facilities and that is why we hold the meetings here and at the times we do. We found out that if we start having later meetings that these facilities are usually not available they are available the would cost us.

Ms. Sarah Coady stated Jubilee has their own meetings in the fire station.

Mr. Welsh stated the problem with having them at the fire station is if there is a fire they would close everything. I don't know if the police station would charge us for a meeting or not.

Mr. McCarthy stated they don't charge but they don't guarantee it.

Mr. Perry stated in regards to the noticing, it is required by statute. To do individual mailed notices is very costly. If we have an increase in assessments we are required by law to do that. In addition to that, this board has had workshops in the past when there is an increase in assessments.

Mr. Leek stated all the meetings dates and times are on the website.

Mr. Perry stated meeting in the afternoon is not unlike most governmental entities. Those type of entities if they have an issue that they believe is going to have a lot of concern then they will typically meet at night.

Ms. Sarah Coady stated I moved into LPGA to part of an association and I would like to be a part of it but if every meeting is at 1:00 p.m. on Wednesday afternoon then I will not be able to be a part of it.

Ms. Nancy Crick asked what is being done to keep the assessments from going up again next year? I see plants being pulled and replaced that are perfectly good plants.

Mr. Leek responded for this coming year's budget we cut over 10% from the actual operating budget but that was not enough to make up for the amount that Coastoak has refused to pay. The increase that you saw was directly due to the non payment by Coastoak because we had already cut 10% out of the budget. Coastoak's deficit is around 30% of our total budget.

Ms. Sarah Coady asked if you know that they have the ability to pay and they are just not paying then why would you waive your late fees?

Mr. Leek responded we only waived \$6,000 today and from a business perspective having the \$75,000 now is more important than trying to fight for \$6,000. There is a whole lot more money involved than just that and that only had to do with last year's assessments. We have a long way to go.

Mr. Welsh stated about meeting at the fire station, we cannot meet somewhere they cannot guarantee us would be available.

Mr. Rick Hernandez stated a couple year's ago at a CDD meeting we were told that the northern part of LPGA had nothing to do with the southern part, as far as assessments and maintenance. It was brought up to me recently that we are included in the whole section. Are we getting punished because that area has not been developed and will assessments continue?

Mr. Perry responded there are two components to your assessments; the first one is the operation and maintenance and you are correct, in that several year's ago there was a delineation between what was referred to as the north assessment area and the south assessment area. I believe it was like three year's ago that the board combined those areas in that methodology, so now it is all one assessment area for O&M. The second component of your assessments are for the bonds that have been issued. There are three issues of bonds. There is a 1999C bond, which everyone is attributable to that. There is a 1999A bond, which is Renar Golf Communities. They have an additional assessment for a bond that was issued for their community. Then there is the 2005 bonds, which are for the south area. Depending on where you live the assessment for those bonds could be different.

Mr. Rick Hernandez asked what if it had not been changed? Would our assessments have been a lot less?

Mr. Perry responded they would have been more.

Mr. Rountree stated in regards to the flowers that come out, they run their cycle. Those are annuals and they only last so long.

TENTH ORDER OF BUSINESS

Next Scheduled Meeting – 1/26/11 at 1:00 p.m. @ Holiday Inn

Mr. Perry stated the next scheduled meeting is January 26, 2011 at 1:00 p.m. at this location.

ELEVENTH ORDER OF BUSINESS

Adjournment

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


Secretary/Assistant Secretary


Chairperson/Vice Chairman