

MINUTES OF MEETING  
INDIGO COMMUNITY DEVELOPMENT DISTRICT

A regular meeting of the Board of Supervisors of the Indigo Community Development District was held on Wednesday, January 25, 2012 at 1:00 p.m. at the Holiday Inn Daytona Beach LPGA Blvd., Boardroom, 137 Automall Circle, Daytona Beach, Florida 32124.

Present and constituting a quorum were:

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

Also present were:

Jim Perry	District Manager
Jonathan Johnson	District Counsel
Kurt von der Osten	Field Operations Manager
Ashley Noonan	Hayman Woods (by phone)
Andrew Norgart	KB Homes
Greg Fitzpatrick	Jubilee HOA
1 Resident	

**FIRST ORDER OF BUSINESS**

**Introduction**

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

**SECOND ORDER OF BUSINESS**

**Approval of Minutes of the December 7, 2011 Meeting**

Mr. Perry stated included in your agenda package is a copy of the minutes of the December 7, 2011 meeting.

On MOTION by Mr. Welsh seconded by Mr. Bertsch with all in favor the Minutes of the December 7, 2011 Meeting were approved.
---

*Mr. von der Osten joined the meeting.*

**THIRD ORDER OF BUSINESS****Update on Delinquent Assessment Properties**

Mr. Johnson stated we did receive trustee's consent to send a letter to the Bresinger parcel owners relating to both their notice of the assessments, as well as the ability to have a window to bring those current. If that letter has not gone yet, it should go in the next day or so. We have also been in conversation with Hayman Woods regarding the parcels that they own. As of this morning or late last night, they have transmitted a broad offer to provide two of the parcels, NW11 and NW12, by way of a deed in lieu to an entity that would be acceptable to the District and to the bondholders. We have transmitted that to the bondholders counsel at Greenberg Traurig for their review and consideration. I think their initial reaction today was to try to get a quick evaluation and get a handle on what those properties would be worth and what the ultimate values associated with them would be. We have also pulled the tax bills associated with those parcels and understanding that if anyone takes those, whether it is the District, the trustee or an entity that we might create, then that entity must pay the taxes on those properties. I think they were in the \$140,000 to \$145,000 range collectively.

Mr. Perry stated but that also includes our O&M assessments.

Mr. Johnson stated exactly. They are still continuing to evaluate the third parcel. They have not said that they are willing to provide that by a way of a deed in lieu but they have also said that they are not foreclosing that possibility down the road. They are still continuing to do some due diligence and evaluation of that parcel itself. Our recommendation to you is that it is a little premature to do anything formal by way of a response of that offering until we understand what funding would be coming from the bondholders associated with the retention of those parcels. I am hopeful we will continue to move ahead very quickly having that offer on the table.

Mr. Leek asked the impact to the CDD is what if we take ownership of those properties?

Mr. Perry responded you don't wipe out the debt associated with those lands that the bondholders have.

Mr. Johnson stated in all likelihood, if we were to move ahead with the deed in lieu we would probably not title them in the name of the CDD. To the extent that the bondholders are making funds available to manage those properties that may include payment of some portion of O&M. I don't want to preclude that. That would be an open issue that we would want to

negotiate with them. Certainly, someone is going to have to be liable for those taxes and we know we haven't currently budgeted for that.

Mr. Leek asked would the funding for the second entity come from O&M assessments?

Mr. Johnson responded we would probably look for that to come from the bondholders.

Mr. Leek asked who would be the owners of the deed?

Mr. Johnson responded it would be an entity created to hold it, which would be governed either by this District or the trustee. We have the authorization to send the Bresinger letter and we are moving ahead and doing that. As far as Consolidated Tomoka, I know they have represented that they would be prepared to turn over some parcels, as well.

Mr. McCarthy asked are we going to talk about the resort parcel?

Mr. Perry responded that is the Bresinger parcel. We are sending them a letter with a short window that says here are the total assessments. We have the trustee's consent, so if you wish to bring it current and pay on an ongoing basis then you have this window to do so and if not then you will face additional foreclosure.

Mr. Perry stated if I recall correctly, the time for them to bring those assessments current was about a 15 day window. Once that window expires, we will inform the board as to whether there was a payment of those or not.

**FOURTH ORDER OF BUSINESS**

**Update on Stormwater Lake Conveyance**

Mr. Johnson stated I have put phone calls in Doyle Tumbleson, the attorney who drafted the documents and handled those recordings for Renar. I have not had a response back from him, in terms of what they propose for their next steps. As you know we have recorded back those lakes to them, so they are no longer in our title.

**FIFTH ORDER OF BUSINESS**

**Other Business**

There being none, the next item followed.

**SIXTH ORDER OF BUSINESS**

**Staff Reports**

**A. Attorney – Governor Executive Order #12-10**

Mr. Johnson stated included in your agenda package is the Governor's Executive Order #12-10. The Governor is proposing a comprehensive State wide study of every special District

in the State of which there are between 1,600 and 1,700. It is proposed to be a three year process. There will be approximately three State employees, who will be tasked with conducting that review. You will see they are primarily concerned with issues such as, wasteful spending and efficient uses of resources. They are starting the process with the port and the airport and other transportation related District's now. They will probably not get to CDDs until late 2013 or early 2014. Reading through the terms of the executive order, I think entities with large staff, pensions and other kinds of resources are going to be under a greater degree of scrutiny. At this time it is purely informational.

We have received correspondence from counsel for the owners of the SW29 parcel, the Grand Champion 2, LLC, KB Homes Jax, LLC and Kargar Construction. It is questioning the allocation of assessments on those parcels and looking for the District to do something in response to some alternative methodologies that their consultant has reviewed and proposed. We have talked with their consultant a couple of times. I am in the process of putting together a response to them. We can take no action without bond holder consent anyway. At this point and time, we are not recommending that you take specific action. We will provide copies of that to you, so you can see the response that we have made.

Mr. Welsh asked is this new format going to cost us more in legal fees?

Mr. Johnson responded we are not proposing that you change a format. What format do you mean?

Mr. Welsh responded I mean this new thing the Governor is putting through. Is that going to cost us more legal fees to implement these?

Mr. Johnson responded no. At this point and time, they are not proposing anything specific. In 2014 they may come up with specific recommendations but I don't think they would be the kind of things that would result in legal costs, as much as accounting or audit issues.

Mr. Perry stated in regards to the attorney letter that Mr. Johnson mentioned on the KB and Kargar parcels, if you remember this was discussed briefly with the board back around June and then again in September. It is related to the south assessment area only.

**B. Engineer**

There being none, the next item followed.

**C. Manager**

Mr. Perry stated you have a copy of requisition number 155. This will be paid out of the 1999C bonds. It is to Hopping Green & Sams for \$2,485.50. It is related to the lakes and the turnover of the stormwater lakes to the CDD. As discussed previously, we have gone through a number of the bond issues and the engineer reports and we believe that some of these lakes or stormwater systems will come back to the District.

On MOTION by Mr. Leek seconded by Mr. Bertsch with all in favor Requisition No. 155 to Hopping Green & Sams totaling \$2,485.50 was approved.
---

Mr. Perry stated we are working with counsel, in regards to updating those letters about the delinquencies.

#### **D. Field Operations Manager**

Mr. von der Osten stated landscaping of the roundabout on Grand Champion in south is proceeding. We have had some sign replacements. Greg Fitzpatrick, with Jubilee HOA is here. He has inquired as to sidewalk maintenance in the community and also the addition of some no fishing and no trespassing signs at lakes.

Mr. Perry stated first, it sounds like the first would be for the board to authorize the placement of those signs.

Mr. von der Osten stated yes. There is a sign just at the entrance on Champion Drive and two along Tournament.

Mr. Leek stated I would say go ahead and do it.

Mr. McCarthy asked have we taken any action, other than just talking to the City Manager or whoever is responsible for sidewalks in the City?

Mr. von der Osten responded I believe Lynn sent a letter to the City regarding the sidewalks.

Mr. Johnson stated that is correct. I believe she also had some conversations with the City Attorney's office, as well.

Mr. McCarthy asked is there any avenue that we could take legal wise to the City?

Mr. Johnson responded if you were inclined to spend the dollars it is possible that a mandamus action could be filed. When you start talking about litigation, you are talking about a

lot of money. To the extent, that we could politically elevate the question a little bit better to get out of being mired then that might be a more cost effective and viable solution.

Mr. McCarthy asked so that is like the five of us showing up at a City Council meeting?

Mr. Johnson responded or getting a meeting with the City Manager or Councilman or Commissioner.

Mr. McCarthy stated my take on the whole thing is the City signed off on this in the beginning. They knew what was going to happen. They knew that oak trees were being planted. Then the infrastructure was turned over the City, so they have the legal responsibility to do whatever needs to be done. We can go ahead and pressure wash it ourselves and pay the taxes to the City for not doing it.

Mr. Leek stated I agree with you. It is a City responsibility. We don't have the money to do it.

Mr. McCarthy stated then maybe we should have a meeting with our commissioner and bring him up to speed.

Mr. von der Osten stated if you recall, the public works director did attend a board meeting. He gave a presentation on the sidewalks and the oak trees and he gave a 10 and 20 year outlook with the them. It was left to where the City was going to work with some long term plan or solution jointly with the District but I haven't heard anything back from the City.

Mr. Leek stated we have had this discussion many times. It is the City's responsibility. Maybe the trees belong to us but with their approval they were placed where they are.

Mr. McCarthy asked do we need some kind of formal meeting?

Mr. Johnson responded if you have two or more supervisors, who are going to go meet with your local council member then the Attorney General's office has issued an opinion saying that meeting should be noticed in an abundance of caution. If only one of you go to meet with the commissioner then you are fine without noticing it.

Mr. Leek stated I will volunteer to call Rob today.

Mr. McCarthy stated then if you could get in touch with Jim and he can coordinate a meeting amongst all of us and do a formal meeting.

Mr. Leek stated that would be fine.

Mr. Perry stated when you speak to him see if we can meet at the City. I just need to know where we are going to meet, so we can advertise it.

Mr. Leek stated the I saw him yesterday and he believes there are a lot of people, who are complaining about the CDD assessments in his District. He was asking me about it yesterday.

Mr. Perry stated when we have that meeting with him I can bring some documents, so he is educated.

Mr. Leek stated one of the things I promised him I would do is talk him through our budget and a comparison of the last few years with the reduction we have in expenses. It is a revenue problem.

### **SEVENTH ORDER OF BUSINESS**                      **Supervisor's Request and Audience**

Mr. Bertsch stated in Renar, we have installed the no fishing signs. We have had a lot of individuals out of the community driving into LPGA and fishing. It is a security problem too. I notice a lot of communities have no soliciting at the entryways. Do we have any kind of a legal problem with putting something like that up? We have people coming into the community at 9:00 p.m. and they are ringing doorbells and they are soliciting. Their copout to it is that you don't have any signs posted.

Mr. Johnson responded in order for you to actually get police support, you are generally going to have to have a sign posted. In terms of posting it, I think we could post it on CDD property. I don't think there is going to be a problem doing that. The other solution is to have your HOA do it. We may be able to post it at the entrances.

Mr. Bertsch stated I had called the police on a few individuals that were fishing because they refused to leave and when the police came they said they would have an easier time enforcing it if we had signs up, so that is why we pushed to get the signs.

Mr. Johnson stated I want to double check the agreements that we have in place before we go spend money on it.

Mr. Bertsch asked can you let us know?

Mr. Johnson responded absolutely.

Mr. Greg Fitzpatrick stated it is my understanding from the Daytona Policy Department that the City of Daytona has an ordinance that soliciting is not allowed anywhere in the City. I have called several times and had good response. I have given license numbers and they have responded. At one point I was told that signs are not necessary for the fact that it is a Daytona Beach ordinance.

Mr. Johnson stated if that is the case that would be a great answer.

Mr. Greg Fitzpatrick asked where does the liability fall if someone gets hurt on the sidewalks?

Mr. Leek responded the City won't say it is not theirs because it is theirs legally. But that doesn't mean that we wouldn't get sued to.

Mr. Greg Fitzpatrick stated we are in the process of bringing our community up to snuff and one of the things that is on our list of things to do is our sidewalks. When it comes to street signs, how is that we pay taxes to have street signs maintained? Who is supposed to maintain the signs?

Mr. von der Osten responded as far as the CDD area goes if it is an upgraded type sign that would be the responsibility of the CDD. If it was installed by a neighborhood Developer then it would be an HOA responsibility.

Mr. Greg Fitzpatrick stated when I did call the City and told them exactly what you said those signs are not our standard signs. Where does it say that we maintain them? The City maintains street signs throughout the City. Who is going to maintain our retention ponds?

Mr. von der Osten responded I can't speak for the HOA agreements. There are interlocal agreements with the CDD and the City that do cover some of your signage questions.

Mr. Greg Fitzpatrick asked is there a document that says, since LPGA wanted that, that the City says okay you can do it?

Mr. von der Osten asked regarding the HOA or the CDD?

Mr. Greg Fitzpatrick asked where is the agreement that says that the Indigo CDD is going to do this and the City is going to do that.

Mr. Johnson stated there are several agreements on different subjects that spell it out.

Mr. Greg Fitzpatrick stated and one of them is the maintenance of sidewalks, streets and signs and those are the ones I can't seem to find. Who is going to repair the sidewalk in our neighborhood?

Mr. von der Osten responded I would approach the City on that one.

Mr. Johnson stated if you will provide Jim with your contact information after the meeting, he can make arrangements to provide copies of the agreements for you.

Mr. Leek stated and if any of those aren't on the website, we probably need to get on there.



Mr. Perry stated they are probably not because there are a lot of old documents that are not on that site. We will pull those and I can send them to you electronically.

Mr. Greg Fitzpatrick asked where does the maintenance of retention ponds fall?

Mr. Perry responded as we discussed earlier there are a number of retention ponds in the District that are currently maintained by the CDD. There are other ponds that are maintained by the City. There is a mixed bag throughout the community. It really depends on the area in which you live. At our last meeting we went through a three ring binder dealing with the transfer that was re-conveyed back to the pond owner regarding a transfer of stormwater ponds to the CDD. I wish I could provide you with an easy to read document that spelled out everything for Indigo CDD in regards to stormwater but there really isn't one. Kurt has the same information that I have in regards to all of those ponds. We do have that information locally if you want to sit down with him and go through the notebook and the maps.

Mr. Greg Fitzpatrick stated we have one pond that is washing out under the culvert. It looks like something that needs attention.

*Mr. Zemball joined the meeting.*

Mr. Zemball stated I will be more than happy to look through those documents with Kurt.

Mr. Andrew Norgart stated I am with Grand Champion Two, LLC. We own most of the developed lots in southwest 29. We have been working to address the issue with how the debt assessments on our lots. It is incorrect. For several months we have been trying to communicate with the CDD and Hopping Green. I just want to make it clear that if we don't get a resolution our intention is to file a lawsuit. We have been pursuing some sort of response since we closed on the property in August. It has been incorrect since 2005. I would just urge a response from you guys before the end of the month. Our attorney is actually drafting the lawsuit as we speak.

Mr. Johnson stated we will get you a formal response but we are not offering a proposal. We are not recommending that the District take any action with respect to what you put on the table.

Mr. Leek asked are we talking about the debt assessment?

Mr. Andrew Norgart responded correct. Basically, we are being assessed for bonds that were never issued.

Mr. Johnson stated I will simply say we disagree with your characterization of it.

**EIGHTH ORDER OF BUSINESS**

**Approval of Check Register**

Mr. Perry stated included in your agenda package is the check register that totals \$140,462.72. The reason it is a little higher than normal is there are two payments to Rountree. They are for their monthly payments. They total a little over \$60,000.

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

**NINTH ORDER OF BUSINESS**

**Financial Statements as of December 31, 2011**

Mr. Perry stated included in your agenda package are the financial statements as of December 31, 2011. In regards to the 1999A bonds, you will see we made the payment in regards to our interest expense on November 1<sup>st</sup>. There is not an issue with that bond issue. The next one is the 1999C bonds. We did make our interest payment on November 1<sup>st</sup>; however, it looks like on May 1<sup>st</sup> we will not have adequate dollars to make in full the principal and interest expense payment and that would be exhausting the reserves. If that is the case then we would be in default on that bond issue. More than likely before that payment is made and we tap the reserves, we will be dealing with bond counsel on that. More than likely we won't pull the reserves down to zero. On the 2005 series bonds, we have the same issue. The interest expense payment was made for November 1<sup>st</sup>. The debt service payment for May 1<sup>st</sup> is approximately \$642,000. We only have \$337,000 in our revenue reserve account, so there are not adequate funds to make those payments. The capital project funds total approximately \$7.2M and the bulk of that is in the series 2005 bonds totaling \$6.8M. On the last page you have our tax collections. We are a little bit behind, where we were last year, in regards to our tax roll but not substantially. We expect a lot of the collections to come in at the end of April or May timeframe.

**TENTH ORDER OF BUSINESS**

**Next Scheduled Meeting – 3/28/12 at 1:00 p.m.  
@ Holiday Inn**


Mr. Welsh asked do you think we need a meeting in February to update the board on the bondholders and the foreclosures?

Mr. Perry responded yes. I was thinking maybe we should schedule a February meeting and then we can cancel the March meeting if we want to.

**ELEVENTH ORDER OF BUSINESS      Adjournment**

The meeting was continued to Wednesday, February 22, 2012 at 1:00 p.m. at this location.

  
Secretary / Assistant Secretary

  
Chairman / Vice Chairman