

MINUTES OF MEETING  
INDIGO COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Indigo Community Development District was held Wednesday, January 26, 2011 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
Steve Winchester	Consolidated Tomoka

**FIRST ORDER OF BUSINESS**

**Roll Call**

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

**SECOND ORDER OF BUSINESS**

**Approval of the Minutes of the December 15, 2010 Meeting**

Mr. Perry stated included in your agenda package is a copy of the minutes of the December 15, 2010 meeting. Are there any additions, corrections or deletions?

Mr. Leek responded on page seven in the first full paragraph I think what I meant to say in the last sentence was we should think about this in terms of being the last concession we make to Coastoak with no real significant benefit to the CDD. Then on page 10 in the third full paragraph in the next to the last sentence the word "access" should be "assess."

On MOTION by Mr. McCarthy seconded by Mr. Leek with all in favor the Minutes of the December 15, 2010 Meeting were approved as amended.
---

**THIRD ORDER OF BUSINESS**

**Update on Coastoak Group Assessment  
Payment Fiscal Year 2010**

Mr. Perry stated Coastoak did make their payment for fiscal year 2010. We haven't received any other payments though for fiscal year 2011. I had a discussion with Pete Boudreaux and another principal of Coastoak about two weeks ago. The discussion was about what they are doing in the future in regards to their properties. They had mentioned to me that they are probably going to be listing their properties for sale.

Mr. McCarthy asked so they are going to sell their properties to another entity without having paid off their assessments?

Mr. Perry responded I would expect if they sell them through the short sale process, where they may be able to work something out with the bondholders to take a reduction on the debt on those lands. I don't know though. The District's position is you have O&M on those and we are not reducing the O&M. The bondholders have flexibility.

Mr. McCarthy asked is there anything that we can go on record to get a lien on them?

Mr. Perry responded they already have a lien. Any prudent buyer of those properties will contact the District and ask what the outstanding O&M assessments that are due on them.

Mr. Leek asked so that really means that they have no intention of doing any development there?

Mr. Perry responded that is my take.

Mr. McCarthy stated but they are going to have to sell them in bulk.

Mr. Perry stated no. There are parcels that they have paid on.

Mr. McCarthy asked so it is still feasible that we could foreclose on it ourselves?

Mr. Perry responded yes, in conjunction with the bondholders. The District does have the option of pursuing that foreclosure itself but there are a lot of issues with doing that. It is in the best interest of the District to work with the bondholders for them to foreclose with the District in tandem.

Ms. Small stated it helps to think of it as two separate liens. You have the debt lien and then you have the O&M lien. Obviously, the debt is much more. If we were just to foreclose the O&M without the support of the bondholders, the debt would still be there, so you would have a piece of land with a bunch of debt on it.

Mr. Zemball asked it wouldn't be forgiven?

Ms. Small responded not if you don't foreclose it.

Mr. Zemball asked what about if we foreclosed it without being involved?

Ms. Small responded we can't foreclosure on debt without the bondholders consent. We can only foreclose the O&M.

Mr. Leek asked do you have any future meetings planned?

Mr. Perry responded no. I haven't spoken to them since.

Mr. Leek stated and they are not represented at this meeting for the first time.

**FOURTH ORDER OF BUSINESS                      Other Business**

There being none, the next item followed.

**FIFTH ORDER OF BUSINESS                      Staff Reports**

**A. Attorney**

Ms. Small stated for the board's signature I have the agreement between Renar and DR Horton and Renar HOA. It is fully signed apart from Mr. Welsh's signature. You have already approved this in form. I also got an email from counsel for DR Horton that they have estimates ready and they are ready to start work. I had a conversation with the City of Daytona Beach and we are still talking about the sidewalks, so there is going to be some more discussion regarding the sidewalks coming up. I think it was just because of the holidays why they dropped the ball on it. I think there is going to be some kind of temporary solution for the board's consideration. At a prior meeting some discussion was had about an interlocal agreement between the City and the District for delegating to the District authority to remove signage in the right-of-way that is owned by the City. Ben and I had a couple conversations and unfortunately we just can't get there with the authority for the District. There are some constitutional issues involved and the City is just not comfortable delegating that authority and the District would probably not be comfortable accepting it either. There is a master signage agreement that is between Indigo Development and the HOAs that enforce certain signage requirements in the right-of-way, which these signs are probably in violation of, so they would have the authority to remove the signs but unfortunately the City doesn't want to send people out to remove the signs and the District doesn't have the authority to. I handed that off to Kurt, so hopefully he has some possible solutions that we can discuss under his report.

Mr. Zemball asked did you say that Indigo or Consolidated had permission if it violates the sign agreement?

Ms. Small responded all signs require permits. There is no real authority for any party to remove the signs, except to enforce that agreement.

Mr. Leek asked so assuming Coastoak Group is the master developer and they are in charge of the signs?

Ms. Small responded regardless of who is the master developer, which I really don't know what that term means but from my perspective that agreement hasn't been assigned to subsequent parties. I don't think it is an agreement that would run with the land. It is something that would probably need to be assigned. I think the easiest way, instead of going through a Developer would probably have the HOA try to enforce it. Then we can make our request to the City to have them enforce the agreement.

Mr. Welsh stated if they want to put a sign up then they pay the permit fee. If they didn't pay the permit fee then it is City's responsibility to pull the sign.

Ms. Small stated that is correct.

Mr. Zemball asked or whoever the third party is could pull the signs?

Mr. Welsh responded that is grand theft.

Mr. Zemball stated there are three parties involved; the city, the HOA and the landowner.

Mr. Leek asked do we have a big problem with a lot of those kinds of signs?

Mr. Welsh responded yes.

Ms. Small stated District's don't really deal with this issue. It is more the HOAs that do through their covenants and restrictions. In the CDD that I live in, the HOA will impose fines if you post anything you are not supposed to. Signs are heavily regulated.

Mr. McCarthy asked in your District, does the District own the land?

Ms. Small responded I think the City owns the right-of-way.

Mr. Bertsch stated you are only allowed to have two garage sales a year for each resident, which is reasonable because it cuts out people having businesses.

## **B. Engineer**

There being none, the next item followed.

## **C. Manager**

Mr. Perry stated I had a request to talk about our landscaping. Our landscaping contract is up in October this year. As you recall, three years ago we went through an RFP process in regards to landscaping. Kurt has the documents from the last process we went through, including the maps. We will probably have to update the maps a little bit. What I have just provided for you is the evaluation criteria that was just used for Capital Region CDD. They just went through the process of RFP on their landscaping. Their contract is about an \$850,000 annual landscaping contract. I think what we want to do is to set up the criteria and start the RFPs probably mid to late summer. Then we rank them and negotiate a contract a month or so prior to the expiration of the current one. Not to say anything bad about Rountree but in other Districts we have seen if we get too far ahead of the renewal process or the RFP process the contractor that is currently doing the service and they are not chosen then there could be service issues with them in that interim period. One of the things that was very important to Capital Region was number six, which is geographical location. When we went through this before there was a lot of discussion about geographic location but I don't believe you assigned any points to any one for that. Capital Region wanted to make sure they had someone who could respond in a timely manner and provide the services that were needed, so they assigned five points for those that had office headquarters in certain counties. We are pretty far ahead of the game but I just wanted to hand this out. The points can be any spread that you want but these are typically what are assigned for personnel, experience, scope of work, financial capability and price.

Mr. Leek asked was our contract with Rountree a three year contract?

Mr. Perry responded it was a one year contract with two-one year renewal options. The other thing, at the last meeting there was discussion again about lighting. I have contacted the one leasing company and I have been playing tag with them but I'm sure they will still be interested in doing that. It is a capital lease and they were five year terms. The only problem that I saw is the interest rate was over 10%. I have made contact with a local bank but I haven't gotten any further than just talking with them. They are interested in doing business with Districts, so that may be another avenue.

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

Mr. von der Osten stated I have spoken with several different offices at the State level regarding the conservation easement. The agency overseeing this now is Fish & Wildlife Commission. I spoke with the supervisor in Tallahassee and I'm playing phone tag with the office in Gainesville. They said it was possible to meet and review the site and review the permit conditions. I also received a copy of the gopher/tortoise permit. Steve Winchester, who is here today with Indigo Development delivered that. Nobody could seem to locate the original document that started all of this.

Mr. Leek asked what do you need a permit for?

Mr. von der Osten responded it is our relocation permit. If you are developing land, where gopher/tortoises are you have to have one.

Mr. Leek asked has anyone here ever seen one?

Ms. Small responded yes.

Mr. Leek asked in LPGA?

Mr. Perry responded I did but that was year's ago before it was developed.

Mr. Steve Winchester stated most of the time it is not just the removal permit. It is also to maintain the environment for them and that is where the burning and the clearing comes into play. Most of them have removable requirements if you decide to develop a certain part then you have to meet this criteria. It is not solely a removal permit. It is also environmental maintenance.

Mr. von der Osten stated and this is what this permit describes in great detail.

Mr. Welsh asked how much is a permit?

Mr. Steve Winchester responded I think it says every three years you have to do either a burn or a clearing and that is just to make sure that the tortoise can get from point A to point B.

Mr. McCarthy asked is the forestry service involved in the burning process?

Mr. Steve Winchester responded no. You have to have a licensed person to do the burning.

Mr. Zemball asked did you find out when the last burn was?

Mr. von der Osten responded it was a long time ago in 2004.

Mr. Welsh asked is that a capital expenditure?

Mr. Perry responded it is not a capital expenditure.

Mr. Welsh asked we also had to use money out of the reserves for Coastoak, correct?

Mr. Perry responded correct.

Mr. Welsh asked so our reserve is down from where it should be?

Mr. Perry responded correct.

Mr. Welsh asked and this will also come out of reserves?

Mr. Perry responded correct but we also anticipated for this year that Coastoak would not pay, so we increased our assessments.

Mr. Zemball asked so Coastoak doesn't have any partial parcels paid for their assessments?

Mr. Perry responded for 2010 the assessments that were levied and the properties that they deemed were economically feasible, they have paid all the assessments on. For 2011, their payment plan was just like any resident here, which has the 4%, 3%, 2% and 1% discount through March. The District will receive a 4% premium if they pay on March 31<sup>st</sup> on the lands that they do pay, so there will be somewhat of a bonus to the District if you want to look at it that way.

Mr. von der Osten stated I have a proposal from Rountree on Tournament Drive for the Washingtonian Palms for trimming the frowns. They put together a proposal for de-booting the trees, which is removing all the old frowns. As they get old they start to fall off. It is not a yearly item.

Mr. Zemball asked is this a safety issue?

Mr. von der Osten responded I think it is just aesthetics.

Mr. Bertsch asked they boot the whole three though?

Mr. von der Osten responded they go up underneath, where they actually start to sculpt the tree. It is a lot of work.

Mr. Perry stated the Washingtonians are done a little differently. They usually go up about 10 or 12 feet.

On MOTION by Mr. Welsh seconded by Mr. Bertsch with all in favor the Proposal from Rountree totaling \$1,892 for Booting the Washingtonian Palms was approved.

Mr. von der Osten state we did recently renew the Aquatics System contract for lake management. There was an add on last year. They wanted to make sure that they are authorized

to continue with the addition of two lakes. One is the lake we discovered in the corner behind those houses and the other is that small retention area. The monthly charge is \$56.

On MOTION by Mr. Leek seconded by Mr. Bertsch with all in favor the Proposal from Aquatic Systems, Inc. for 2 Additional Lakes was approved.

Mr. Leek asked is that the same company the golf course is using?

Mr. von der Osten responded I don't believe that is who they are using.

Mr. Zemball asked did you ever find anything else about the City of Daytona Beach cost share agreement on the lakes?

Mr. von der Osten responded I will have to follow up with them again.

**SIXTH ORDER OF BUSINESS**

**Supervisor's Request and Audience Comments**

Mr. Bertsch asked the power line work that they are doing, do we have to get on top of them to clean that up?

Mr. von der Osten responded yes.

Mr. Bertsch asked how do we stay on top of whoever is doing that pipe work to put back the grass on Champions?

Mr. von der Osten responded the City will have direct contact with the general contractor. Part of their contract is to clean up and then grade, sod and seed.

**SEVENTH ORDER OF BUSINESS**

**Approval of Check Register**

Mr. Perry stated included in your agenda package is the check register that totals \$224,166.54. The amount is a little higher than most months but there is approximately \$63,000 out of that total, which will go from the general fund to the debt service fund. We have a listing of what the checks are for. The items are normal and customary.

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



**EIGHTH ORDER OF BUSINESS****Financial Statements as of December 31, 2010**

Mr. Perry stated included in your agenda package are the financial statements as of December 31, 2010. In regards to our cash position at year end we will probably end up with about \$600,000 that is assuming that Coastoak pays the same that they paid last year for those specific lots.

Mr. Welsh asked on short sales when they are sold at auctions, they do have to pay the O&M back to the CDD?

Mr. Perry responded the District is not going to forgive the O&M.

Mr. Welsh asked what does the City do if they are not paying their taxes? Who comes first the City and then us?

Mr. Perry responded we are coequal with the City. Districts are completely different than the HOA. We will eventually collect those assessments. After the general fund, we do have the debt service fund for the 99A, 99C and the 2005 series bonds. We have a capital projects fund, where we have \$7.2M still sitting. With that much money sitting there in the 2005 bonds, some of those lands that are deemed non developable more than likely those funds will be applied against those bonds and their assessments will go down dramatically on that bond issue. We have collected 68% on the tax roll as of January 7<sup>th</sup>. That is about average for this District. It might be two or three percent lower than what we have had in the past years but it is not unusual. We will get a pretty good amount in, in February and March.

**NINTH ORDER OF BUSINESS****Next Scheduled Meeting – 2/23/11 at 1:00 p.m. @ Holiday Inn**

Mr. Perry stated the next scheduled meeting is February 23, 2011 at 1:00 p.m. at this location.

Mr. Leek stated you said something about the \$7M that is in reserves now will be used to pay off those bonds.

Mr. Perry stated yes. The current bonds for the 2005 issue is approximately \$14M. There is almost \$7M sitting out there in construction. What has happened at other District is they have excess construction funds, which that \$7M is construction and is then used to redeem bonds. When you redeem that \$7M in bonds, you know only have \$7M worth of debt related to

all those lands that you originally had \$14M in debt on. Your debt assessments should almost drop in half.

Mr. Leek asked which parties would have to agree that the construction that was scheduled to be done with those funds does not have to be done?

Mr. Perry responded it doesn't say that the construction doesn't have to be done. It just says at this time it is not going to be done. In order to finish development of the plan that you have, that construction will have to be done in the future. In the future, the landowners will either self finance it, issue another bond issue or some other type of capital.

Mr. Leek asked if it costs \$7M to build the infrastructure to complete the project today it is going to cost \$7M or more in the future. If you don't do that construction and you essentially give that money back to the bondholders then another funding mechanism will have to be used to complete the project.

Mr. Perry stated that is correct.

Mr. Leek stated that doesn't make a lot of sense to me to think that the project will ever be completed without the funds in reserve. Who would have to agree that the project is complete, so that those funds could be released?

Mr. Perry responded this board would have to do that because the bonds are issued by the District.

Ms. Small stated then we would need to do an amendment to the indenture and a revised engineer's report. We would need to do a lot to get to that point.

Mr. Leek asked so what would the advantage to the board be to do that?

Mr. Perry responded the advantage to the board is on those lands that have that full assessment if you reduce that carry cost greatly those lands might not be developable today but might be developable in the future.

Mr. Leek asked but their intention then would not be to not complete the construction that is covered by that \$7M reserve?

Mr. Perry responded well, you wouldn't build it today to begin with because there is no absorption right now.

Mr. Leek asked let's say that would happen and the carry costs would be reduced and we would be able to sell, would Coastoak Group be required to finish the project as it was originally designed even though the \$7M that is reserved wouldn't no longer be there?

Mr. Perry responded I'm not sure. There is a completion agreement tied to those bonds.

Mr. Leek stated I don't think it is imminent but at some point we need to know.

Ms. Small stated this is just speculation because this is just what we have seen in other Districts but when there is a lot of money in the construction fund and nothing is happening and the land is sitting there going through default, the bondholders just eventually try to make it as marketable as possible.

Mr. Perry stated you have to do a new assessment methodology because not only does it reduce the assessments on the undeveloped tracts but also the assessments on the developed tracts too.

Mr. Leek asked and that is just the south, right?

Mr. Perry responded correct.

Mr. McCarthy asked this \$7M is in the bank somewhere?

Mr. Perry responded yes. It is with the trustee.

Mr. McCarthy asked the properties are going to be owned by someone, so how does that impact the \$7M?

Mr. Perry responded that \$7M is earmarked for construction based upon the engineering plans related to that bond issue.

Mr. McCarthy asked does the bond issue say that we have to spend that within a certain amount of time?

Ms. Small responded I don't believe anything in the trust indenture requires a certain time line.

Mr. Perry stated there is one thing. There are some tax issues. You can't just hold onto them indefinitely. There has to be activity in a three year time period.

Mr. von der Osten asked could this board decide to build that road and put it out to bid?

Mr. Perry responded I think you could.

Mr. McCarthy stated and eventually it is going to have to be done. What is the economic connection between that \$7M and that piece of property out there?

Ms. Small responded it wouldn't be for the benefit of Coastoak or any landowner that is defaulting. It would be for the bondholders to improve the debt that is associated with that property, so they could market it.

Mr. Leek stated what might be interesting to see in our next meeting is what that plan is. I hear about this road. It would be nice to know what that \$7M is supposed to do.

Mr. Perry stated we will add that to the next agenda.

Mr. Zemball asked so the road would make it more marketable to construct? Kind of because you have the infrastructure in to connect LPGA and International through the neighborhood but it kind of land locks you to the road.

**TENTH ORDER OF BUSINESS**

**Adjournment**

On MOTION by Mr. Zemball seconded by Mr. Leek with all in favor the meeting was adjourned.

  
Secretary/Assistant Secretary

  
Chairperson/Vice Chairman