

INDIGO
COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Indigo Community Development District was held Wednesday, October 2, 2018 at 11:00 a.m. in the Holiday Inn Daytona Beach LPGA Boulevard, Ballroom, 137 Automall Circle, Daytona Beach, Florida.

Present and constituting a quorum were:

Thomas G. Leek	Chairman
Robert E. Welsh	Vice Chairman
John McCarthy	Assistant Secretary
Donald Parks	Assistant Secretary
Mark McCommon	Assistant secretary

Also Present were:

James Perry	District Manager
Katie Buchanan	District Counsel
Kurt von der Osten	Field Operations Manager
Jayne Rountree	Team Rountree
Jamie Rountree	Team Rountree
Ken Artin	Bryant Miller Olive
George Leone	American SW 30/32 Investments LLC
Andre Vidrene	American SW 30/32 Investments LLC

FIRST ORDER OF BUSINESS

Roll Call

Mr. Perry called the meeting to order at 11:00 a.m. and called the roll.

SECOND ORDER OF BUSINESS

Audience Comments

There being none, the next item followed.

THIRD ORDER OF BUSINESS

**Approval of the Minutes of the August 22,
2018 Meeting**

Mr. Leek stated on page 10 there is a statement that was attributed to me but that is not what I said and we can leave it I don't think it is material. I don't advocate us having final approval on their sign. I think we should get a look at their final design but not necessarily approval.

Mr. McCarthy stated I thought it was our sign. I think we should have final approval on our sign.

Mr. McCommon stated we wanted to see the final proof before production and it wasn't what we saw that day. It was a mockup of a couple different designs.

Mr. Perry asked do you have that with you today?

Mr. von der Osten responded no, the last update I have is it is in design revision.

Mr. Leek stated let's add that to the old business portion of the agenda and we can clarify what it is.

On MOTION by Mr. Parks seconded by Mr. McCarthy with all in favor the minutes of the August 22, 2018 meeting were approved as presented.
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FOURTH ORDER OF BUSINESS

Consideration of Settlement Proposal Related to Parcels SW 30 and 32

Ms. Buchanan stated if the board is open to it I suggest we turn it over to the landowner and their lawyer to explain the proposed terms of the deal.

Mr. Artin stated I represent American Southwest 30, LLC, the new landowners and I have been working with Jim and Katie and the district. There have been a number of landowners, a number of settlement offers and today both George Leone and Andre Vidrene, who are the principals in the company are here to answer questions. One of the things we have to do is we have to clean up house and that involves addressing the concerns with respect to the number of units on the two parcels and he owes the back taxes dealing with past due O&M going forward. The settlement agreement was prepared between the district, landowner, the bond trustee. The bond trustee actually represents the bondholders and we have been working closely with representatives of the bondholders, Lerner Advisors. I have worked on a number of workouts around the state, I have worked with them a number of times and the bondholders brought them in to look at the deals from a real estate standpoint for fairness and one thing you will find is that Oppenheimer, Wells Fargo are not real estate developers so they have to rely on somebody and they brought in Lerner Advisors as a third party.

From your standpoint the settlement agreement addresses two issues; one is in the past you have levied O&M assessments on the parcels and the conversation today is primarily going to be with respect to SW30. Parcel 4 or Parcel 32, based on estoppel letters we have gotten from

Jim's office, there is only about \$9,500 in past due O&M you will notice in the settlement agreement it is going to be paid so there is no issue there. The real issue is the O&M from years past. You will note that in the estoppel letters we received from the district O&M has varied over the years. Very early on there was about a \$5,000 assessment for O&M against parcel 30 then it spiked and years 12, 13, and 14 about \$149,000 and currently it is about \$70,000. The settlement offer is to make good with the current budget for O&M on SW30 and going forward based on the final unit count and as you know you have a two-tier structure. Until the land is platted based on the number of units the O&M assessment is \$104. Once it is platted all homeowners pay the same and that number is \$383. Once they are platted there are no concessions being asked we are going to pay just like any other homeowner. Going back to the early years the settlement agreement is asking for basically the waiver of the past due amounts and it amounts to about \$450,000 of past due O&M. One thing to keep in mind since you put the O&M on the tax rolls and you have been collecting O&M, you have been collecting on the higher unit count, which has been 681 and we are going to talk about that going forward. Based on what we know now and what we are going to be getting into we think the unit counts are going to be substantially below 681. If you take into account the fact that the assessments that you have been paid over the most current years have actually been based on the higher number, waiving the old \$149,000 number for the three years may not be that much of a sting given the fact that you have been collecting currently at a higher rate, but again that is what we are here today to talk about. We can't really talk about the past due amounts until you know what the bondholders are thinking with respect to future unit counts. We started negotiating with the bondholders as far as how much debt the two parcels can sustain. The amount of debt that a parcel can sustain is based on its unit count. Again, Parcel 4 is 64 units and the wild card is the unit count on SW30. Interestingly enough, no wetland delineation has ever been made on SW30. Nobody has ever attempted to walk the lines, no Army Corp has been asked to delineate the wetlands, the American Southwest 30 group has retained the consultants to actually get that process done. Our best guess right now with some preliminary walk through by our consultants, not the feds, we think that there is a development plan that would allow about 300 units on SW30. The bondholders, with the help of Lerner Advisors, believe if you increase the density and put in a more dense unit count the number could get as high as 400. The settlement agreement before you is we are going to concede to the higher unit count of 400 in order to get a

deal done to get the land under development, homes being built and roads being installed. In fact, if you look at the development plan of this particular project, one of the big features is the road that goes through SW30 and hooks up to the Dunn Avenue Extension and that is going to be a major east/west connector for the development. Going back to the unit count, one important feature about SW30 is the units that come off of the road and go north under the power line and there are units on the left and lower on the right hand side the power easement. That land is not accessible, it all wet and the amount you would have to spend to build a road up to those lots is prohibitive. You would never build homes up in the area. That is probably the number one reason the unit count is coming down substantially. These are not with any wetland delineation lines this is a best guess as far as the unit count but the density in the lower section would be where all the units are located when they get built on this property. We think the unit count is somewhere around 300 the bondholders are pushing for 400. We are willing to take that risk in fact what they are asking us to do is to commit to a true-up agreement, which is basically if we lose more units to the Army Corps or wetland delineation we take it on the chin and basically pay off anything less than the 400 units that we are going to be obligated to plat. Until we get platted there will be paid \$104 per unit, once we get the wetlands delineation process done and roads being built, units being developed all these platted lots go to the higher number, the 384 with respect to your O&M assessments.

The settlement agreement has gone to the bondholders they have sent it to Lerner and asked them for a fairness opinion on it and we are mildly enthusiastic that it is going to come back and they are going to stay around the 400 number based on the fact that Lerner was suggesting to us that the number is more appropriate at the 400 level than the 300. Hopefully, that is what they are going to be telling the bondholders for the unit count for SW30.

Ms. Buchanan stated to clean up the debt side, because I think that is more of a bondholder concern than a board concern, are we correct and understand that the reduction in units will have a correlating reduction in debt that the district has to repay, we are not going to have to reallocate this debt on some other property, correct?

Mr. Artin stated no, you are right. In 2014 when the 681 units were piled onto SW 30 that much debt was piled onto SW30 so when the bondholders agree to reduce it to the 400 units they are taking a write-off on their debt. This isn't moving anymore, this is it, they want to see this land developed.

Ms. Buchanan asked are there any questions on the debt side of things?

Mr. Leek asked have the bondholders agreed at this point?

Mr. Artin responded they are reviewing the settlement agreement. The last communication I had was they are still going back and forth with Lerner Advisors and we expect to hear back from them in the next week or so. We put no deadline on them we just want to be able to give everybody an appropriate amount of time to make their decisions.

Mr. Leek stated I suggest that anything we do today should be subject to and follow what the bondholders do. We can agree to something in principle.

Mr. Artin stated the bondholders are deferring to you and it is absolutely your decision on the past due O&M. That decision does need to be made by the board and as far as the unit count goes I agree, I need both the board and bondholders to be in sync but as Katie pointed out when they agree to the unit count they are taking a haircut on the debt assessments and you will be getting the O&M based on the new unit count. We are not asking for any adjustment for this year's O&M, which you set in the last couple of meetings and you will collect based on the higher unit counts.

Ms. Buchanan stated I think what you are saying is that any approval you give will be contingent on approval by the bondholders. You are not going to waive anything unless the deal goes through.

Mr. Artin stated it is a settlement agreement and everybody has to be in agreement.

Mr. McCommon there is \$450,000 past due.

Mr. Perry stated plus interest on that.

Mr. McCommon stated in our last settlement agreement we agreed to waive interest and penalties, but we received the past due amount. We are being asked to waive the past due amount completely. I understand we received funds from the tax purchases but I'm not in agreement to waive 100% of the past due.

Mr. Artin stated one thing to keep in mind is I represented Cardinal and the 11 parcels they own, there is a big difference between what they were looking at with respect to how to develop the 11 parcels that they acquired through the tax deed, this site given the wetness of it the cost to develop it is extremely high. In addition to this there is \$192,000 of back taxes that have to be paid, there is no transportation impact benefit, we have to pay those mitigation fees, which are \$3,000 per lot so what we are trying to do is put together a package, dismissing the

past sins everybody knows the history on these lots and what we are trying to do is get to the point where homes can be built and these parcels get developed once and for all. They have sat way too long.

Mr. Leek stated on the revenue side Katie and I have had a number of conversations over the past week or so and when you look at the 681 units we are currently billing at \$104 when you plat 381 or whatever the number is and increase that per unit assessment we actually gain more revenue than we are getting now.

Mr. McCommon asked are we increasing the assessment?

Mr. Perry stated no, there is no platting right now.

Mr. McCommon asked is it something above the \$104?

Mr. Artin stated the minute we plat you go to \$384.

Mr. Leek asked when do you plan to plat?

Mr. Artin responded as soon as the wetlands are delineated. The Army Corps is four or five weeks out, they have to walk the lines. We are in the process of getting everything to the point of development we are not buying and holding this dirt.

Mr. Leek stated the net revenue to us is going to be greater than it is today even though it is not going to be as high as we would have expected. Leaving the past due aside for the moment, going forward the additional revenue to the district is going to be much better than it is today.

Mr. McCarthy stated right now we don't really have any expense for those areas so down the road it won't be total revenue.

Mr. Leek stated I'm not talking net, just revenue.

Mr. Welsh stated I'm not in total agreement on the past due.

Mr. McCarthy asked how many years does that encompass?

Mr. Perry responded fiscal year 2012 it was \$149,000, the same for fiscal year 2013 and in fiscal year 2014 it went down to \$148,000. Those are the three major years.

Mr. McCarthy stated that was after we changed it.

Mr. Perry responded no, in fiscal year 2011 they were assessed \$5,500 and at that time there was a minimal amount of units that were assigned to that area. Then we undertook the review with ETM and house review and went to an acreage basis because we knew there were

substantially more units than a dozen or whatever the number was in 2011. For 2012 and 2013 it was done on an acreage basis until the report was issued in 2014 then we went on a unit basis.

Mr. Leek asked how much is the difference between the acreage basis and unit basis?

Mr. Perry responded it went from \$148,000 down to \$87,000.

Mr. Leek stated there are two ways to look at it, one way is our acreage assessment was too high, which it appears it was once we got the study and one way to look at it is maybe we over billed for those years by the difference, if you want to look at it that way, it is not that way on the books.

Mr. McCarthy stated in the interest of this property the incentive for place and time, development is pretty high here. I don't particularly like giving up \$50,000 but in the interest of moving it along maybe compromise on the \$400,000.

Mr. Leek stated it seems like it would be an attractive offer. I don't think there is much difference if we give them those adjustments we just discussed.

Mr. Perry stated what I did and this is pretty rough but I looked at the years that were unpaid and adjusted them for the 464 units saying if you had built them at that time how much over assessed were you and then I did the same for years 15 through 19 to show what was assessments on those parcels and what the over collections would have been and I came up with a delta of about \$240,000 or so and does not include interest or anything. That would say that over the course since 2012 until now based upon what the assessments should have been and what your clients paid there is about a \$240,000 delta. I didn't take adjustments for the interest that we received on the tax certificates, that is another factor.

Mr. Leek stated it sounds like we would be forgiving \$250,000 of past due O&M. Had we had the same numbers we had today we would be forfeiting \$250,000.

Mr. Artin stated based on the 464.

Mr. McCarthy stated roughly between \$200,000 and \$250,000.

Mr. Leek stated I think we kind of set the precedent in the past of waiving the penalties and interest and I think we would all be willing to do that again. The question becomes do we want to waive the \$200,000+ from days gone by and let this thing get started and get the neighborhood built back up or do we want additional funds towards that or all of that or what.

Mr. McCommon stated I see both sides and I'm concerned that we are setting a precedent if we were to accept nothing that we have other lots that are also still for sale and are we going to say no to them when they make the same request.

Mr. Leek stated I think the logic is we had a significant adjustment in the number of units.

Mr. McCommon stated even if you make an adjustment it is still a substantial amount of money and whatever the true number happens to be when we are likely to have someone coming to us for NW 21 or whatever else is still out there it is going to be public record that we agreed to waive it. My concern is we got a full settlement offer from the prior sales, I'm willing to concede that there may have been an error and the number should be \$450,000 it should be \$175,000 or whatever. I'm struggling to accept nothing. I would like to see the lots developed and this moving forward, but we might want to look at what else we could potentially be giving up with future purchases. We are talking about \$200,000 but we might be talking about a lot more with other parcels.

Mr. McCarthy asked how many other parcels potentially do we have for sale?

Mr. McCommon stated NW 21, that is the clubhouse and there are a couple smaller parcels.

Mr. Artin stated these are the key parcels with respect to the road that has to be built out. That is one big feature unfortunately it is a very expensive feature. What is the cost per foot on that road?

Mr. Leone responded I saw a projection that is a \$4 million road.

Mr. McCommon stated who is paying for that besides the owner?

Mr. Leone stated we are dedicating that to the county. I am trying to create a situation that is a win/win for everybody. I understand the precedent you don't want to set and I think there is a way with the history this has had and how there maybe was justification at the time but we can't quite figure out what that was and there is some sort of rebalancing that needs to be made on the unit counts. Potentially there is an avenue for us to go that direction where you are not setting a precedent and we can look at the history and say if this plan was implemented back then what would that look like and also we are trying to figure out a way where you are not in a situation where you are re-budgeting because your revenue goes down but the revenue will continue to go up because we are going to get this project developed, we are going to get it

platted. What I'm hearing is maybe we can put something forward to you that helps you with the situation.

Mr. McCommon stated I am willing to concede that \$450,000 is not the right number but I don't see myself agreeing to waive it in full. I prefer we receive some count from you about what you are willing to offer and outside that I am comfortable with everything else.

Mr. McCarthy asked can you go back and rethink it and relook at it and recalculate it and come back with an offer?

Mr. Perry stated I will share with them my spreadsheet on this, which basically takes it back to 464 units and if that is what we assessed each year it would have been this amount and this is what they have already paid and netted it out.

Mr. Welsh asked can you get back to us by the 24th?

Mr. Leone stated we don't want to drag it out.

Ms. Buchanan stated you don't want to wait that long.

Mr. Artin stated as soon as we hear from the bondholders we want to make a deal.

Ms. Buchanan stated we can do a two week continuance. Perhaps we pick a continued meeting date between now and our next regular board meeting and if we don't have numbers in place we can cancel that meeting.

Mr. von der Osten stated you might want to consider you are not looking at a percentage on each parcel if you reduce these 25% the next parcel is going to ask to be reduced 25%. I think it is totally dependent on the Army Corps and wetland lines of what can go in those parcels and that is going to be what ultimately drives your decision on any reduction. It can vary parcel to parcel.

Mr. Leek stated that is our logic. We are not really setting a precedent unless the precedent is get the Army Corps to review your property.

Mr. von der Osten stated the overall development plan for the southwest ties into the existing development and if you want to look at the community cohesively there is some type of continuity in the development in the original road plans you might want to discuss this because the 2005 bonds while they do not include the southwest parcel did have a long term road network and some of it might have changed when the DRI was rescinded but part of the arterial roads extend through the southwest.

FIFTH ORDER OF BUSINESS

Consideration of Proposal from VGlobalTech for ADA Website Accessibility

Mr. Perry stated we have to adjust our websites for ADA compliance and we are doing this throughout the state. It is a one-time cost of \$2,250 and an annual cost of \$1,350.

On MOTION by Mr. Parks seconded by Mr. McCarthy with all in favor the proposal from VGlobalTech for ADA website accessibility was approved.

SIXTH ORDER OF BUSINESS

Staff Reports

A. Attorney

There being none, the next item followed.

B. Engineer

There being none, the next item followed.

C. Manager

There being none, the next item followed.

D. Field Operational Manager

Mr. von der Osten stated at two entrances, International Golf Drive and Champions we are having a lot of trouble electrically again. A lot of it has to do with switch panels, circuit panels and the existing lights. We never upgraded the lighting at the entrances, we did LED at the trees and landscaping all along the main roads. We currently have a mixture of lights, incandescent, halogen, quartz on those and many have failed, many don't even come on. That is causing problems throughout the system. We need to consider a full replacement of all the lights at the entrances, switch panels and breaker panels. They are filling with water, they are tripping the breakers for the fountains, for the other lights and has a ripple effect throughout the system. The proposal I currently have for fountains 1, 2, 3, 4, the fountains are numbered from the interstate down around the corner and each entry monument is also the same. To rebuild lights and panels it is between \$20,000 and \$25,000. I just want to make you aware that I will be coming back to the next meeting with more information.

Mr. Leek stated I think that is more what we meant and as far as what my comment was in the minutes I don't think I said we wanted approval because I never did but that is okay. Let these minutes reflect we would like review.

Mr. Perry stated to recap where we think we are today based upon the presentation and so forth I will provide them some worksheets, which will have the current one at 464 units and we will adjust it to 400 units so you will understand if we had restated the assessments over the last several years at those two levels what they would have been and what they currently pay and that delta would be the maximum you would forgive if you forgave anything. I will work with them to provide that to them and they can use that in their planning to provide the board an alternative payment.

Mr. McCommon asked since there is going to be another entrance are we going to need to put in walls and fountains and lighting?

Mr. Perry responded typically, they are going to do that and it will be turned over to the district or it will be run by the HOA.

Mr. von der Osten stated something to consider is that it matches the other three entrances.

Mr. Leek stated the folks that own the parcel closest to Champions, who is it?

Mr. von der Osten stated it is under several names but it is Cardinal, they own all the parcels in the 2005 bonds and 2009 bonds. The southwest quadrant bordered by the FP&L easement there was never any real research performed on that property. There is a lot of information and development plans on the yellow parcels.

Mr. Leek asked have you seen the development plans for that parcel that comes closes to Champions Drive?

Mr. von der Osten stated it was originally platted and engineered but the plat was not recorded it is fully engineered and probably \$500,000 spent on clearing and filling before the crash. The connector road is fully designed, engineered and approved by the city.

Mr. Leek asked do we know how close Cardinal is to developing that section?

Mr. von der Osten stated I do not.

Mr. Perry stated that road was extremely expensive.

Mr. von der Osten stated a huge portion of it was to be funded out of the 2005 bonds, which no longer exist.

Mr. Leek stated I'm interested in when they will be building in there and when that connection could be made between the north and south.

Mr. von der Osten stated I would think it is very far along development-wise, blow the dust off it.

ELEVENTH ORDER OF BUSINESS

**Next Scheduled Meeting – October 24, 2018
at 1:00 p.m. @ Holiday Inn**

On MOTION by Mr. McCarthy seconded by Mr. Welsh with all in favor the meeting was continued to Tuesday, October 9, 2018 at 1:00 p.m. in the same location.



Secretary/Assistant Secretary



Chairman/Vice Chairman