

INDIGO
COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Indigo Community Development District was held Wednesday, September 22, 2021 at 1:00 p.m. in the Holiday Inn Daytona Beach LPGA Boulevard, Ballroom, 137 Automall Circle, Daytona Beach, Florida.

Present and constituting a quorum were:

John McCarthy	Chairman
Mark McCommon	Vice Chairman
Robert E. Welsh	Assistant Secretary
Kevin Kilian	Assistant Secretary
Ken Workowski	Assistant Secretary

Also Present were:

James Perry	District Manager
Katie Buchanan	District Counsel
Mark Stehli	District Engineer by telephone
Kurt von der Osten	Field Operations Manager
Jamie Rountree	Team Rountree
Ken Artin	Bond Counsel
Lo Etienne	Bond Counsel
Sara Zare	MBS Capital Markets LLC by telephone
Andre Vidrine	Integrated Development by telephone

FIRST ORDER OF BUSINESS

Roll Call

Mr. Perry called the meeting to order at 100 p.m. and called the roll.

SECOND ORDER OF BUSINESS

Public Comments

There being none, the next item followed.

THIRD ORDER OF BUSINESS

Consideration of Financing Matters

A. Phase A1

- 1. Supplemental Assessment Resolution 2021-07**
- 2. Acquisition Agreement**

September 22, 2021

Indigo Community Development District

- 3. Completion Agreement**
- 4. Collateral Assignment and Assumption Agreement**
- 5. True-Up Agreement**
- 6. Declaration of Consent**

Mr. Perry stated under Tab III/A/1 is the supplemental assessment resolution 2021-07. This is a standard form resolution regarding the 2021 Bonds. Attached to the resolution are several documents including the engineer's report for the Phase A1 Section, supplemental assessment methodology and exhibits for the maturity of the bonds, amortization schedule, sources and uses, annual debt service payment. As you will recall we started the bond process for the A1 bonds several months ago and the bonds will be applied against 195 single-family units. We had a master methodology that was done a little over a year ago, which considered financing all of the construction improvements and it had a high bond amount, then based upon the pricing and assessment levels set for these lots you will see under the assessment methodology report the assessment amounts for each of the different type of lots, a 49-foot product and 50-59-foot lot product and those assessments come in at \$727 on a net annual basis to \$908 on the larger lots. The average coupon interest rate is 3.69% for these bonds and they are structured like your other bonds, a 30-year bonds.

On MOTION by Mr. Welsh seconded by Mr. McCarthy with all in favor Resolution 2021-07 was approved.
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Ms. Buchanan stated I will go through the agreements. These are documents we ask all the developers or landowners who issue bonds to sign. They help us bridge the gap between the amount of bonds that are issued and the amount of assessments that are issued and the total project that is going to be required. They dictate how we make sure that the project is complete and that the assessments are sufficient to pay the district's debt service on the bonds.

The first agreement is the acquisition agreement between Lennar Homes and Indigo CDD and it dictates how the district is going to acquire infrastructure improvements and work product from Lennar. Lennar is putting the improvements in the ground compared to having the district contract for the work. This explains that we are going to accept the conveyances on an as is basis, but we are going to get work product releases and assignments of warranties from the engineers and contractors so if there is a problem, we have the ability to enforce those issues. It also clarifies

September 22, 2021

Indigo Community Development District

that the real property is going to be conveyed to the district at no cost, that is not going to be part of the bond proceeds and it details how the taxes are supposed to be allocated at the time of conveyance. It also requires that we have an engineer's certificate for the district to ensure that the improvements are of the quality and type and nature that we expect them to be. It is essentially an agreement where we agree to issue bonds, you agree to build the improvements and then we will use the bond proceeds to buy the improvements subject to the procedures and process in the acquisition agreement.

The completion agreement, in this instance because Lennar has tightly structured this deal there is not going to a lot of project left that the district is going to have to pay for, for the existing contracts. What the completion agreement does is require Lennar to finalize any of the project costs that are in the Phase A1 CIP. Anything that is necessary to develop the Phase A1 portion of the community is going to be either paid for by Lennar to complete or hired by Lennar to complete. The district does not have the obligation to fund any of the project except for the amount of the bond proceeds that are available to put towards it. All the other completion obligations lies with Lennar and could be pursued under this agreement by the district. In its most simplistic form that is the purpose of the completion agreement. We don't get to arbitrarily change the scope of the Phase A1 project, we all agreed to what it is so we can't add additional improvements to it, that wouldn't be fair to Lennar. Collateral Assignment and Assumption is a little bit less intuitive, but essentially this ensures the district has the ability to assume and take control over all the permits and other entitlements necessary to development the property. If the district has to foreclose the special assessments, we get title to the property, but the reality is the dirt itself isn't that valuable unless you have all the other tools that are necessary to develop it. This collateral assignment ensures that these things are automatically conveyed to the district in the event of a default by the landowner. It doesn't apply and ceases to apply once the property is conveyed over to an end user. It is not going to impact a person who lives there. If Lennar defaults on its requirement to pay the assessments, then we would have to pursue the foreclosure and we would also be able to rely on this for the plans, covenants, permit approvals, impact fees, all of the other intangible things that go along with the development of the property. This assigns them in advance, and it sort of lies silently unless there is a default. If there is no default, we never have to act on it, but in the event there is a default we already have this worked out.

Mr. McCommon asked the land doesn't go to the bondholders; it goes to the district?

September 22, 2021

Indigo Community Development District

Ms. Buchanan stated correct and in the event the district takes title to it the bondholder directs us on what to do with it. Ultimately, the bondholders do direct the proceedings, but the district is the one on the ground that manages it, similar to the way we are currently in foreclosure with some of the defaulted parcels that existed previously. Subsection 9 on page 6 does indicate that this agreement is being entered into on behalf of the trustee who is standing in the shoes of the bondholders and acting on their behalf. This is what dictates that we are going to act under their agreement, or we can assign it to them if we are not capable of doing it ourselves.

Next is the true-up agreement and this takes the information that is incorporated in the supplemental assessment methodology the specific number of units and the total amount of debt allocated to the property and it describes the way that the district ensures that it is going to collect enough money to make its debt service payments. Lennar is committed to construct 195 units. If they chose to only put in 100 units and were assessed at the levels adopted in the supplemental assessment methodology, we wouldn't have enough money to pay our debt service. There is path forward for the district to then fix that problem. What we do here is say, Lennar if you hit a snag in your development plans and you lose five units, Lennar is going to be obligated to pay to the district out of pocket, we don't reallocate assessments, we don't find another source of money for those assessments, Lennar has to true-up the number of units they have and cut us a check for the difference in that debt service.

Mr. McCommon asked during buildout does Lennar pay the assessment on that?

Mr. Buchanan stated the developer is going to carry the debt service until it is sold to an end user. I think there is a capitalized interest period.

Mr. Perry stated yes, November 2022.

Ms. Buchanan stated that means they have built into the structure of the bonds a ramp up period so that gives the developer an opportunity to try to sell lots, but the first principal payment on the bonds isn't due until May 2023. It also has other belt and suspender assurances; they waive certain prepayment rights by statute because it helps us keep our lien book intact and they commit to providing us with the plat so that we can review the plat to ensure that they have the right number of units they are going to put in place. They have a provision that says if they convey the property to someone else, this agreement runs with the land so it will be recorded and it is going to be picked up by any successive homeowner, not counting an end user, but if they were to sell it to a homebuilder this would also drive through.

September 22, 2021

Indigo Community Development District

The last one is the declaration of consent and this is what we use to have the developer affirmatively acknowledge that the district was established properly, that the assessments were properly levied and that they waive the prepayment rights and they also waive certain rights of affirmed defenses that we have seen over the years of foreclosures so this is an eyes wide open document, meaning that the developer agrees to accept and pay the assessments necessary to secure the bonds understanding that we are not going to fight about these things down the line, you have already given up this right and consented to these things for this issuance.

Those are what we call developer agreements and are designed to fill in the holes of the worst case scenario that could happen and if we don't have money for the project there is the completion agreement, if we don't have enough units to pay the debt service, there is the true-up agreement, if we take the land and don't have development rights there is the collateral assignment. They just help us feel comfortable and help the bondholders feel comfortable that in the event of a problem these things we can rely on.

Mr. McCommon asked were all these things in place at the time of the previous default?

Ms. Buchanan stated no they were not, we have over 20-years of experience between then and now. The collateral assignment was a big deal because we did learn some hard lessons where we foreclosed, the special assessments got the real property, but they continued to fight about the entitlements and development rights.

What will happen today is that Lo and Ken have brought all the bond documents that they are going to need to be signed in connection with the funding, which I think is going to happen on Friday. The chairman is going to sit down with us after the meeting and go through and sign the documents, the development agreement is here to sign, and Lennar's lawyer is working on getting signature copies on his side as well. What we hope to do is have all these documents executed, in place in a very tidy folder so that when Friday rolls around the bonds will be sold and funded and then at your next meeting, I would expect Lennar is going to come talk to us about turning over the improvements.

Mr. Welsh asked if a homeowner decides to buy two lots and build one house he gets assessed on both lots, am I correct?

Ms. Buchanan responded correct on the debt.

Mr. Perry asked, Mark, can you provide the status of the improvements?

September 22, 2021

Indigo Community Development District

Mr. Stehli stated we had a meeting this morning with the developer and went through that. The entire site has been mass graded, all the ponds have been excavated, the water system they are applying for a certification of the northern portion of the development following up with the southern portion water system certification in the upcoming months. Storm sewer system is almost complete in the northern portion and the sanitary sewer system is completed in the northern portion of the development, and the reclaimed system is completed in the northern portion of the development. In the southern portion, storm is about 90% complete, sewer is about 90% complete and water and reclaimed are around 60% to 70% complete. We have about 40% of the curbing in through the development and probably road base down in 10% of the development. It is moving forward and over the next couple of months we will be pulling together our certification packages to close out the project.

Ms. Buchanan stated maybe you and I should talk offline because we want to make sure that we don't turn over anything that needs to run to the district to ensure that we have sufficient funding. I think we are going to be fine because the stormwater system itself is over \$3 million, which is a good amount of the bonds we are issuing, but I just want to make sure we don't lose the opportunity to capture costs. I think we have an open issue on the table with the developer agreements and if it is okay, we will circle back to your engineer's agreement and what I sent the email about earlier.

Mr. Stehli stated that will be fine.

Ms. Buchanan asked does anyone have any questions on the developer agreements, bond issuance or the project itself?

There being none,

<p>On MOTION by Mr. McCarthy seconded by Mr. McCommon with all in favor the acquisition agreement, completion agreement, collateral assignment and assumption agreement, true-up agreement and declaration of consent were approved.</p>
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Ms. Buchanan stated there is an engineer's agreement relating to the Phase A1 services. What we would hope that Mark would agree to do on behalf of his firm is issue to the district a certificate from the district's engineer in connection with closing and his engineer's report. This is what we contemplated if you will recall a long time ago. This bond issuance sort of went it fits

September 22, 2021

Indigo Community Development District

and starts, it took a long time to get this one off the ground and we realized that we had never actually executed the agreement to put Mark's firm under contract with the CDD. We would like to have the board authorize this agreement so that Mark can have it executed on his behalf. It is our standard engineering agreement with the understanding that what he would do is have work authorizations for the scope of work that he needed to do in connection with Phase A1. It does include the authorization of the money he would be due for the work he has done in connection with A1 including the preparation of the report, the certificate and other things that have been completed by his firm. Because we realized this hole in our process very recently, Mark hasn't had a chance to go through it in great depth, which is why I would request that it be in substantial form. I don't think it will take long because he has seen and used this form before.

Mr. McCommon stated it says the fees are \$25,000 plus potential other work.

Ms. Buchanan stated the other work will likely come into play when it is time to convey improvements over to the CDD and that would also be paid out of the bond proceeds. When we have to prepare the bill of sale, he has to certify that the improvements were completed, that is really the only thing that we would expect him to have to do for the district.

Mark, have I said anything that causes you concern or anything you need to address?

Mr. Stehli stated no, I did have a chance to go over the agreement and it does look similar to other CDD documents we have seen. I don't see an issue at this point.

On MOTION by Mr. McCarthy seconded by Mr. Welsh with all in favor the engineering agreement and associated work authorization with Poulos & Bennett for Phase A1 services was approved in substantial form.

B. Phase B1 and C1

Mr. Perry stated this is repeating the process similar what we have just done. You have in front of you a master assessment methodology for Phase B1 and C1. This is for an additional 405 lots, and this is the first step in the process. You have a master methodology report, and we will come back to the board with the supplemental that will be based upon the pricing of the bonds and it should look somewhat similar to what you had here previously. Your supplemental will be a lot lower numbers than the ones in the master. There are several documents we look to the board to approve, the first is an engineering services agreement for the B1 and C1 area.

September 22, 2021

Indigo Community Development District

1. Engineering Services Agreement with Poulos & Bennett

On MOTION by Mr. McCarthy seconded by Mr. Welsh with all in favor the engineering services agreement with Poulos & Bennett for Phase B1 and C1 was approved.

2. Funding Agreement

Mr. Perry stated next is the funding agreement and this is a standard form agreement very similar to what you previously approved for the 2021 Bonds.

Ms. Buchanan stated it is intended to ensure that the landowner bears the risk and cost of the bond issuance, not your O&M budget.

On MOTION by Mr. Kilian seconded by Mr. McCommon with all in favor the bond team funding agreement between the district and Lennar Homes was approved.

Mr. McCommon asked what is the timing expected from Lennar’s point of view?

Ms. Zare stated the preliminary is around May 2022 for the second phase.

3. Engineer’s Report

Mr. Perry stated you have a copy of the engineer’s report in the agenda packet dated June 24, 2021. There are quite a few different line items in the report for improvements, including roadways, underground, electrical, streetlighting, landscaping, stormwater facilities, utilities, water sewer, reclaimed.

Mr. Welsh asked are they going to put a stoplight in?

Mr. Perry stated that was a discussion at the last meeting, I don’t believe that is included in this report. Andre, do you have an update on a traffic light?

Mr. Vidrine stated we have been in touch with the City of Daytona Beach and FDOT multiple times and the complexity was that FDOT was trying to get the mast arm for the future expansion of International Speedway Parkway, which was really complex. They agreed to do what they originally agreed to do, and they are going to do the original design. The city is formalizing all of the details on the work and now that Lennar knows what size mast arm they need they are

September 22, 2021

Indigo Community Development District

able to move forward. I do know that there will be a bond in place for this as well. They have way too much money in the ground to not do that and when it is bonded it is guaranteed to get built. The light is going to get built it is a matter of when it is operational and now that FDOT has backed off they can wrap up design and order the mast arm. The exact installation would probably be a Lennar question.

Mr. Perry asked did I hear you correctly that no C.O.s would be issued until the light was completed?

Mr. Vidrine stated complete or bonded. The other reason it was complicated, and I need to get details on this, but as I understand it there is another benefit for the entrance area there is going to be a crosswalk installed and some sidewalk. That was not a cheap endeavor. I don't have the details on that.

Mr. Perry stated in the engineer's report the total improvements for the project is a little over \$15 million and those numbers flow through to the assessment methodology report.

Mr. Welsh asked are the costs based on 2021 costs?

Mr. Perry responded it is based on current cost estimates.

Mr. Welsh asked as inflation increases, does that change?

Mr. Perry responded I can't speak for the engineer, but I think most of the project costs are not a long time period out. He might have a small inflationary factor in there.

Ms. Buchanan stated they built in contingency of 10% and then remember they have to complete the project no matter what it ends up costing.

On MOTION by Mr. McCarthy seconded by Mr. Workowski with all in favor the engineer's report was approved.

4. Assessment Methodology Report

Mr. Perry stated you have the assessment methodology report for the master special assessments for Phases B1 and C1 for the 405 lots that are planned. This methodology contemplates that all the construction costs will be financed by a bond. We don't expect that to be the final assessment methodology. This is the same format you have seen before.

On MOTION by Mr. Welsh seconded by Mr. Workowski with all in favor the assessment methodology report was approved.

September 22, 2021

Indigo Community Development District

5. Resolution 2021-08 Declaring Special Assessments

Ms. Buchanan stated there are a couple blanks in the resolution and if you go to Table 2 of the assessment methodology, we can fill them in together. The total cost of the improvements is going to be under sources and uses and what we anticipate to be the construction fund of \$15,265.729 and that ties off to the amount included in the engineer’s report. That is not the only thing that bond proceeds pay for so what Jim has also grossed it up to include debt service reserve fund requirements, the interest reserve requirements, the cost of issuance to get the total amount of bond proceeds, which the assessments would offset to be more like \$20,030,000. Those are the two numbers we will fill in those blanks in the assessment resolution. These are the maximums we anticipate bringing down.

On MOTION by Mr. Welsh seconded by Mr. McCarthy with all in favor Resolution 2021-08 was approved.

6. Resolution 2021-09 Setting a Public Hearing for the Purpose of Imposing Special Assessments

Mr. Perry stated Resolution 2021-09 sets the public hearing for the purpose of imposing special assessments.

Ms. Buchanan stated given the timing for these bonds, my suggestion is the next regularly scheduled meeting that gives us more than 30-days to notice. I don’t think we need a special meeting for this.

Ms. Zare stated I agree with that.

On MOTION by Mr. Workowski seconded by Mr. McCarthy with all in favor Resolution 2021-09 setting the public hearing for November 17, 2021 was approved.

FOURTH ORDER OF BUSINESS

Approval of the Minutes of the August 25, 2021 Meeting

On MOTION by Mr. McCarthy seconded by Mr. Welsh with all in favor the minutes of the August 25, 2021 meeting were approved as presented.

September 22, 2021

Indigo Community Development District

FIFTH ORDER OF BUSINESS

Staff Reports

A. District Counsel

There being none, the next item followed.

B. District Engineer

There being none, the next item followed.

C. District Manager

There being none, the next item followed.

D. Field Operational Manager

Mr. von der Osten stated other than the basic things we have going on out there in maintenance, I had a chance to speak with the city regarding an update on the repaving projects. It is basically complete, punch out is complete per the city. The remaining item is the thermal plastic, and the bids came in so high they sent that entire contract back out to bid. I brought up the subject of pavers at the entrance and currently they only plan to level it out, raising the potholes, pulling the pavers, do sub-base right on the spot and they budgeted approximately \$10,000 for that repair. I inquired about their other bids and why they totally dropped replacing those during this project and they had two options bid. One was a thermoplastic system stamped to look like a brick pattern or any pattern you would like. The cost of that came in at the \$250,000 range. It came out slightly less to totally remove the pavers, rebuild the base and put in new pavers, about \$20,000 less at \$230,000. Those were both scrapped in lieu of basic repairs.

Mr. McCarthy asked when do they anticipate doing that?

Mr. von der Osten stated there is no anticipated time.

Mr. McCommon stated I think the question was, were we willing to contribute to the fix so we could conceivably pay to get that fixed in a more timely manner.

Mr. von der Osten stated I did ask what their thoughts were on some type of cost share agreement with the district. Certainly, that was not dismissed but it is a topic that will likely have to go before the commission. It was originally constructed by the CDD and dedicated to the city.

September 22, 2021

Indigo Community Development District

Mr. McCommon asked do they have any inkling as to how effective the fix would be, if they fixed the potholes and leveled them out again? Is it something that is going to last a while or do we just not know?

Mr. von der Osten stated a year or two years.

Mr. McCommon asked is that because when it was originally put in it wasn't done properly?

Mr. von der Osten stated they were installed and potentially the sub-base was not totally correct and then you developed the entire community on top of those pavers. It is a matter of wear and tear and who knows what the water table is like up there.

Mr. McCommon stated I wasn't present for the last meeting and know there was discussion about it. Because there is no estimated date of when the city would take care of this, I'm concerned it will continue to deteriorate and at the same time our residents suffer for that. Can we go back to the city, I'm not sure about the right amount of dollars we would be willing to allocate to do some repairs, \$10,000 as an example, and just do the work instead of waiting for the city to do some of this. Realizing at the same time it is potentially lasting a year or two from now.

Mr. von der Osten stated maybe I misspoke. The repairs are coming up shortly and completed in approximately 60 days.

Mr. McCommon stated two meetings ago when they had finished the paving, Ken had brought up and some of us had also seen the one manhole cover area that was very uneven. Has that been fixed?

Mr. Workowski stated yes.

Mr. von der Osten stated the only other item I have been approached with was there was a drainage issue, a stormwater system on Catriona. I visited and spoke with the engineer and sent everything I found out and observed to Renar. It appears the lake possibly has sediment from the construction on that road and has reduced capacity and they would have to go in a and clean it out and restore it to its former capacity.

SIXTH ORDER OF BUSINESS

Supervisors Requests and Public Comments

There being none, the next item followed.

SEVENTH ORDER OF BUSINESS

Approval of Check Register

September 22, 2021

Indigo Community Development District

On MOTION by Mr. McCarthy seconded by Mr. McCommon with all in favor the check register was approved.

EIGHTH ORDER OF BUSINESS

Financial Statements as of August 31, 2021

A copy of the financials was included in the agenda package.

TENTH ORDER OF BUSINESS

Next Scheduled Meeting – Wednesday, October 17, 2021 at 1:00 p.m. @ Holiday Inn

Mr. Perry stated the next scheduled meeting is October 17, 2021 at 1:00 p.m. in the same location and November 17th we will have the public hearing. I know we skip some meetings and maybe we will skip October if we don't have anything that needs to come before the board, but we will let you know.

Mr. McCommon asked what is the status of the settlement agreement with the bondholders and so forth?

Mr. Artin stated the Thoroughbred Classic purchase of the corner lots at International Speedway Boulevard and LPGA closed earlier this week and that payment went through at closing and it should be with the bond trustee as we speak. The INA settlement agreement was signed by the bondholders on September 20th and the landowner has 30-days to pay and we spoke with Mr. Fosler yesterday and their payment is due on or about October 19th.

Mr. McCommon stated there was part of a payment coming to us as well.

Mr. Artin stated yes, that is what I was just sharing with Katie, your settlement on your O&M side was \$97,000.

Mr. McCommon stated by the time the next meeting comes around we will have received that.

Mr. Artin stated yes.

Mr. McCommon stated that is something we hadn't budgeted for.

Mr. Perry stated that is correct.

On MOTION by Mr. Welsh seconded by Mr. Workowski with all in favor the meeting adjourned at 1:55 p.m.

September 22, 2021

Indigo Community Development District

DocuSigned by:
Jim Perry
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Secretary/Assistant Secretary

DocuSigned by:
John McCarthey
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Chairman/Vice Chairman