

INDIGO
COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Indigo Community Development District was held Wednesday, March 23, 2022 at 1:00 p.m. at the Fairfield by Marriott Daytona Beach, 1820 Checkered Flag Boulevard, Daytona Beach, Florida.

Present and constituting a quorum were:

John McCarthy	Chairman
Mark McCommon	Vice Chairman
Kevin Kilian	Assistant Secretary
Ken Workowski	Assistant Secretary
Robert Welsh	Assistant Secretary (by phone)

Also Present were:

James Perry	District Manager
Katie Buchanan	District Counsel
Kurt von der Osten	Field Operations Manager
Jamie Rountree	Team Rountree
Ken Artin	Bryant Miller Olive

FIRST ORDER OF BUSINESS

Roll Call

Mr. Perry called the meeting to order.

SECOND ORDER OF BUSINESS

Public Comments

There being none, the next item followed.

THIRD ORDER OF BUSINESS

Approval of the Minutes of the January 26, 2022 Meeting

On MOTION by Mr. McCarthy seconded by Mr. Kilian with all in favor the minutes of the January 26, 2022 meeting were approved as presented.

FOURTH ORDER OF BUSINESS

Consideration of Reducing/Waiving Delinquent Assessments for Parcel SW-8A, and Parcel NW 29 in Connection with the

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Payment in Full of Outstanding Principal and Interest Assessments

Mr. Perry stated item four is consideration of reducing/waiving delinquent assessments for Parcel SW-8A and Parcel NW-29 in connection with the payment in full of outstanding principal and interest assessments. Included in your agenda package was correspondence on this.

Mr. Artin stated several years ago the district undertook the process of cleaning up its books, starting the foreclosure action against all delinquent landowners. We have slowly one by one brought to the board different settlement agreements and some of those settlement agreements that have been approved have resulted in home builders buying that land and homes going up. The first example is Lennar building.

Today you have two property owners, one of which has been fighting the foreclosure and if these two settlement offers are favorably considered today, one of the big benefits that it brings is at this point in time is, the only remaining landowners that are delinquent are people walking away from their parcels. Doug Smith will have no opposition to get whatever he needs to finalize the foreclosure, take title to that land, and basically sell it to home builders. The reason we have been bringing these settlements piecemeal over the last couple years and if you look at the maps that were attached to my letter, you will see that all these lands that have been subject to settlement were supposed to be developed as one giant parcel. Once they started going into foreclosure, parcel by parcel they got sold off for tax certificates and tax deeds, you will see every parcel now has to be developed as a standalone, meaning roads have to be brought into that parcel, stormwater has to be retained on that parcel and it is pretty ad hoc as far as each of these parcels. Early on the bondholders were very cognizant of that fact and development plans were drawn up and if a parcel couldn't support 90-units because now we have stormwater, roads and parks, the number of units were adjusted, the bondholders took that into consideration, they knocked off some of the early settlement agreements, they knocked off half of the accrued and unpaid interest that was due on the bonds. Those settlement agreements worked well. The bondholders have gotten much more aggressive. There is no dealing with them right now. In fact, when we showed them the maps for these two landowners they basically said, we don't care; they pay them off in full or we take the land. All consideration for any sort of equitable settlement of the amounts is just not possible at this time. Both landowners said fine, enough is enough let's get out of foreclosure. One property owner, Galileo, will be selling that almost immediately to a home builder, EBP Properties will be holding on to it for future development. Since these two landowners have taken title to their land

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about five-years ago the O&M assessments due to this board has been paid and they have been paid at the higher unit counts. Nobody has questioned it to be honest they didn't know anything about the prior assessments and everything, they just paid their tax bill. At this point in time given the inability to get any sort of concessions from the bondholders with respect to the settlement the question today is both landowners said, we will pay off 100% of the debt assessment at the old unit counts, pay off all the accrued interest, all they are asking the board to do is waive the penalties that you are allowed and in prior settlements have been waived and the O&M assessments that accrued to these parcels from almost five years prior to them taking ownership be waived. It is not a lot of money in either case and what they are asking is given the fact that for the last 5-7 years they have been paying at the higher unit counts that be taken into consideration in the waiver of the very old O&M assessments. If both proposals are accepted these will be the last landowners that will stand in your way of basically refunding your debt, which I think is the biggest benefit in getting rid of the 1999s accrued interest at 7%, the 2005s are at 5 ¾% with a little work with GMS we can get the assessment book back in order according to the new unit counts. Of course, these parcels won't have any debt assessments, they are paying them off in full. I think the district will be able to undertake a successful refunding of their outstanding bonds and slash the interest rates that are currently there and benefit all the homeowners within the district. I think it is a win/win for the district, for the homeowners and for these two landowners.

Ms. Buchanan asked do you remember what the interest rate when we did Lennar's? It would probably be potentially more favorable.

Mr. Artin stated given the short duration we have seen some refundings of sub 4 and your 1999s don't have that many years left and the 2005s are six years more than that. What you are looking at is going to be a very efficient bank loan to pay off those bonds.

Ms. Buchanan stated if we were to refund the bonds unless you wanted to do something differently, similar to refinancing your home take out equity and use that for improvements, it would probably reduce everyone's assessments, which I anticipate you would want to do.

Mr. McCommon stated if the bondholders foreclose are they responsible for the fees?

Ms. Buchanan stated we negotiate that every time. In this instance they have paid some and not paid others.

Mr. McCommon stated so we negotiated with the bondholders that if they foreclose, we would be somewhere around where we are.

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Ms. Buchanan stated we are in foreclosure already.

Mr. McCommon stated is whoever takes over the property responsible for the delinquent fees?

Ms. Buchanan asked when you say delinquent fees you mean?

Mr. McCommon stated everything owed to us.

Mr. Buchanan stated yes, they will be responsible for O&M going forward.

Mr. Artin stated what happens in foreclosure and we have dealt with this in other districts is once foreclosure is complete and you take title to the land, under your master trust indenture you then sell it and if you get 50¢ on the dollar that is all the bondholders are entitled to. They get however much you have realized. The negotiation is how much of those net proceeds you get to offset the cost of that foreclosure but their collateral changes from an assessment on the dirt to the proceeds from a foreclosure sale. It may or may not realize enough to pay off the debt, O&M and legal fees.

Ms. Buchanan stated I don't think O&M was included in this one.

Mr. Artin stated you are right because O&M has been levied on the tax bill and both taxpayers have been paying O&M with their taxes.

Mr. McCommon asked are these properties already approved for development?

Mr. Artin responded no. They are zoned but they have to go through permitting. The wetlands haven't been delineated. If you remember the first settlement the reason, we got such favorable terms from the bondholders is because that landowner actually had engineering done, wetland lines delineated, and you knew half the land in that one big parcel was dry and you wrote off the assessments on SW-7. It takes that kind of background information to actually go in for the bondholders. These two parcels are individuals, they are not major land developers and they haven't taken it to that degree at this point.

Mr. Workowski asked what is the dollar amount of the fees we are being asked to waive?

Mr. Artin stated in relation to the bonds for the first parcel of SW-8A the penalties associated with that is \$195,000 for the bondholders that we are asking you to write off. That is the penalties; they are going to pay the principal and accrued interest.

Mr. McCommon stated but the bondholders make that decision not us.

Mr. Artin stated no, that is you. The bondholders leave that up to the district, as they should.

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Mr. McCommon asked what about the O&M?

Mr. Perry stated is \$30,000 for one parcel. Both parcels are the same so each parcel is \$30,000 of which almost \$18,000 is penalties, so the real O&M is \$12,000 for each parcel. For Parcel NW-29 the penalties associated with that are \$339,000.

Mr. Artin stated that is the statutory 1%.

Mr. McCommon stated I'm trying to recollect what we did in the past, but I don't recall us every completely waiving both penalties and O&M on any of the properties. That's why I'm asking the question. In addition, I know there is a map in here but where exactly are these parcels located? Are they on LPGA?

Mr. von der Osten outlined the location of both parcels.

Mr. Perry stated in prior settlements if I recall correctly, on some of those the bondholders took a haircut regarding the debt and interest.

Mr. Artin stated all prior settlements the penalties were waived and in the early days they were taking concessions and the best one we were able to cut with the bondholders was a 50% haircut. The first two where we actually had engineering, they agreed to reduce unit counts to what could be developed that was assessed in full and the 50% haircut in interest that was due. You had some real equitable settlements from the bondholders recognizing what could be built on those parcels. All that is gone, there is no talking to them anymore, they believe that it is what it is, and they have to pay.

Mr. Perry stated in regard to O&M, if I recall correctly because there were so many more units involved, I think the O&M numbers were in the couple hundred-thousand-dollar range.

Mr. McCommon stated we made a big change in it, but what we are being asked today is to waive it completely. The penalty part I might be interested in, but I don't know if I'm convinced to waive it completely.

Mr. Artin stated the reason we went in for that waiver and it is not so much if the bondholders grab all the cash, you should suffer, it is that they have religiously paid at the higher unit counts for so many years if you were to basically give them a concession reduce those unit counts all those excess units it might come very close to making you whole if the units had been reduced from the day they acquired the property. We are asking for a waiver, but they have been paying at the higher unit counts since they took ownership.

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Mr. Perry stated the only other thing I would offer in regard to this is the consideration you need to make with regards to refinancing the bonds. \$12,000 for each parcel or \$24,000 we probably get in the 4% or lower range and you will get that savings in probably one year.

Mr. Artini stated you can stop paying litigation fees. Doug Smith can wrap this up now, he has been waiting for EBP to get a new litigator to resume the action because their last counsel resigned. All of that just goes away and he is ready to wrap things up.

Mr. McCommon asked how much of the legal costs have we absorbed? Most of that is on the bondholders, is it not?

Ms. Buchanan stated it is something that should we refinance, we would address it with a cap.

Mr. Artin stated once the foreclosure is done all the land that is owned by Hayward Properties will be your land to sell. You will be able to sell it. I would argue you could net the cost of the foreclosure from your sale proceeds and all the bondholders get is what is left. You will have a source of payment with respect to recover legal fees in that regard.

Mr. McCommon stated we have two things to decide, one is the penalties on the debt and then the O&M.

Ms. Buchanan stated I think we have been consistent in waiving penalties in every settlement agreement you have had so far because as you note here, they exponentially increase and they are very high at this point.

Mr. McCarthy stated there is absolutely no impact to the current residents so no matter what our decision today is the current residents will not have to pay anything.

Mr. McCommon stated right, it just changes our balance sheet.

Mr. McCarthy stated let's move forward with it.

On MOTION by Mr. McCarthy seconded by Mr. Kilian with all in favor the two proposals for waiving penalties on debt and O&M assessments and waiving past due assessments for parcels SW-8A and NW-29 for the years 2010 and 2011 was approved.

FIFTH ORDER OF BUSINESS

Acceptance of the Audit Committees Recommendation

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On MOTION by Mr. Workowski seconded by Mr. McCarthy with all in favor the recommendation of the audit committee of the selection criteria was accepted and staff was authorized to publish an RFP for audit services.

SIXTH ORDER OF BUSINESS

Consideration of Resolution 2022-02 Designating a Registered Agent and Registered Office

On MOTION by Mr. McCarthy seconded by Mr. McCommon with all in favor Resolution 2022-02 designating Katie Buchanan of Kutak Rock LLP as the registered agent and her office address as the District’s registered office was approved.

SEVENTH 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 – Update on Replacement of Pavers at LPGA Entrance

Mr. von der Osten stated the city is reconstructing the weir and they sent a memo forwarding the bill to the city for the total expense.

I had a conversation with FDOT regarding the widening of the boulevard and there was a letter that went out updating what is going on. Basically, it is announcing that it got funded and have begun the PD&E study, and the date listed was fall 2021. It was funded, then to being the initial design spring 2022. Both are underway, the design is also just getting started then you look further into the future right of way acquisition is not funded. I spoke with the project manager of the FDOT on this and while they put that in this letter what is actually happening is PD&E and design are being conducted concurrently. They realized this is an immediate need out here so right

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now it is entering the design phase and they are targeting an August meeting to present it to the public. I explained the CDD is the most impacted group, and he is more than willing to update us with progress plans and not wait until August. It is so early he doesn't have anything to present to us.

Mr. McCommon asked does the design include the bridge?

Mr. von der Osten responded yes. To update you on an ongoing issue with the I-95 interchange that we maintain, we have been experiencing a lot of issues with the contractor that have damaged the electrical, water, irrigation. We met onsite about a month ago with FDOT's prime contractor and the person who is managing the I-95 widening and interchange. We had good conversations regarding some recent damage on underground electrical lines as they perform their directional bores under the interstate. A lot of cooperation in having the contractor that did the damage pay for the repairs. We have also been working with their representatives also.

Also, we are going back underground with the new parcels being developed in the community next to the clubhouse. I met onsite with the site contractor, and I brought Courteaux Electric in because they need to perform underground borings. There are two entrances into that neighborhood, the main entrance already had curb cuts then there is another one down from that. You are paying for water and irrigation on the opposite side of the road. They will be cutting out the sidewalk and the sidewalk will be blocked for two weeks depending on how fast they can get that done. To go underneath we have all our electrical there, the city has theirs on the other side and that will be a disturbance. We have several more situations coming up when they develop the other parcels along International Golf Drive. We have had this issue for years out here locating our underground lines, electrical, etc. and we spend a lot of money each year searching and digging for these lines and the problem is the agency will not locate these for us they only locate FP&L, Bellsouth, Comcast type public utilities. Every time there is a break Courteaux spends hours digging and searching for these. I would like to ask the board if we could purchase a locater/tracker and it locates all the lines underground because once again even with these bores at the preserve we don't have locates and we are hoping to miss the line. The locating device is right at \$1,000 and I think it will pay for itself in a year to expedite repairs and cutting down on hours with Courteaux.

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On MOTION by Mr. Workowski seconded by Mr. Mr. Kilian with all in favor authorizing staff to purchase a locator/tracker in an estimated amount of \$1,000 was approved.

Mr. McCommon stated back to the overpass, it is looking a little rugged. What is our budget for maintenance on that area?

Mr. von der Osten stated we have the budget it is just a matter of when we want to spend the money with the work going on. We have performed several repairs. I will get in touch with FDOT and vendors to make sure it's not going to get torn right out.

The Five Sisters parcel behind Masters Glen between 1 and 2 that will become a construction road. I mentioned to the site manager this morning because I had a meeting with Masters Glen they are very concerned that they will use their neighborhood for construction traffic and it ties into Masters Glen. I talked to him and Masters Glen has asked me to talk to the city and the developer about making sure they have a designated construction entrance, which would probably be that road between no. 1 and no. 2, which is their main entrance anyway and to avoid traveling through a residential neighborhood.

Mr. McCommon asked do we anticipate them coming to us for a bond issuance?

Mr. Perry stated no.

Mr. McCommon stated if they pay for the development are we no longer able to assess them?

Mr. Perry stated we have bonds.

Mr. von der Osten stated they are paying for undeveloped and as soon as they build, they will be paying on developed, which means more revenue to the district.

Mr. Perry stated the 2009s they are all considered developed. They have the full load.

Mr. von der Osten stated we still have two problem lakes and Solitude is doing a water analysis to get Jubilee under control and the Centennial Lake now has a very bright color green algae on top and we are working on that also.

We sent a letter to a resident who over cleared in the back yard into CDD property.

EIGHTH ORDER OF BUSINESS

Supervisors Requests and Public Comments

There being none, the next item followed.

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NINTH ORDER OF BUSINESS

Approval of check Register

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

TENTH ORDER OF BUSINESS

Financial Statements as of February 28, 2022

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

ELEVENTH ORDER OF BUSINESS

Next Scheduled Meeting – May 25, 2022 at 1:00 p.m. @ Holiday Inn Daytona LPGA Boulevard, 137 Automall Circle, Daytona Beach, Florida

Due to a quorum issue on May 25th, the next meeting will be held May 18, 2022 at 1:00 p.m.

On MOTION by Mr. McCommon seconded by Mr. Kilian with all in favor the meeting adjourned at 1:53 p.m.

DocuSigned by:
Jim Perry
1471E54342174B3
Secretary/Assistant Secretary

DocuSigned by:
John McCarthy
DBE007244C3C478
Chairman/Vice Chairman