

MINUTES OF MEETING  
WESTSIDE COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Westside Community Development District was held Tuesday, January 10, 2017 at 11:00 a.m. at the offices of Hanson Walter & Associates, 8 Broadway Avenue, Suite 104, Kissimmee, Florida.

Present and constituting a quorum were:

Drew Abel	Chairman
Keith Trace	Vice Chairman
Mike Dady	Assistant Secretary
Scott Stewart	Assistant Secretary

Also present were:

Jason Showe	District Manager
Jan Carpenter	District Counsel
Santiago Machado	District Engineer
Alan Scheerer	Field Manager

**FIRST ORDER OF BUSINESS**

**Roll Call**

Mr. Showe called the meeting to order.

**SECOND ORDER OF BUSINESS**

**Public Comment Period**

There being none, the next item followed.

**THIRD ORDER OF BUSINESS**

**Approval of the Minutes of the November 1, 2016 Board of Supervisors Meeting and Acceptance of the Minutes of the November 1, 2016 Landowner Meeting**

On MOTION by Mr. Dady seconded by Mr. Abel with all in favor the minutes of the November 1, 2016 board meeting were approved and the November 1, 2016 landowner meeting minutes were accepted.

**FOURTH ORDER OF BUSINESS****Consideration of Mediation Agreement/Settlement with Osceola County and Jr. Davis**

Ms. Carpenter stated I think you are all familiar with this, it was the lawsuit that RES filed against Jr. Davis that Jr. Davis brought Westside Community Development District in for completion of a portion of Westside Boulevard. The District settled previously with Jr. Davis in the RES case they did however retain a construction lien on a small portion of Westside Boulevard. Jr. Davis made a demand on the County and the County came to the District, asked the District to contribute money towards it, the District refused. The District asked for a pre-suit mediation, which the District agreed to participate in prior to filing a lawsuit in which they agreed they would go after the District for a portion. Although as we discussed previously we do not feel there is any valid legal claims we went through the mediation, George Flint attended on behalf of the District in December. The parties came to a mediated settlement agreement, which I gave you a copy of, the County is to pay in the settlement \$625,000 and would get an assignment of the judgment to be able to take the property in full so Westside Boulevard the County would have ownership. The agreement we came to was a \$75,000 settlement, \$50,000 payable November 15, 2019, \$25,000 payable November 15, 2020. The dates are set because in our previous settlement agreement the District has two more payments due to Jr. Davis Company on November 15, 2017 and 2018 and this would continue those payments so there wouldn't be anything additional out of the residents' pockets or any payment that would cause any disruption to anybody or any increase in assessments. It seemed the best way to be able to contribute something in lieu of having to pay legal fees now, which might cause a jump in the budget.

The County also asked that we and this was not part of the settlement but that the District give the rights of ways to the County and the SPE tried to get all the rest of the rights of ways so we can get Westside Phase 2 turned over to the County. Because the District agreed to this mediated settlement agreement just as another aside last night the County agreed to pay their portion via consent agenda with no comment. Getting this done would be subject to the District approving.

Mr. Stewart stated someone would have to be paid to fight it.

Ms. Carpenter stated it would probably cost more to fight it, although there really isn't a legal basis. We are not quite sure why the County agreed to pay this.

Mr. Dady asked what is the legal concept of double jeopardy here if we had a settlement agreement in force and effect still making payments on and now the same party seemly comes at us again?

Mr. Stewart stated I thought in the agreement we had some indemnification from them.

Ms. Carpenter stated we do we have a full indemnification for any third party other than the County. If the County came after us there was a settlement up to \$75,000. Our legal fees if this actually went forward and had to litigate them and everybody, would probably be in excess of the \$150,000. Your comment is good, Mike, yes you can't bring the same cases but the actual other case was the RES case where they were claiming under the contract so it was a slightly different claim. This is pure construction lien and they are claiming an eminent domain case that this is a taking of land, which again is pretty hard in our mind to take from a legal basis.

Mr. Dady stated break it down a little bit. Jr. Davis entity claimed a taking from the County, the County then made claims against the CDD that we somehow were culpable.

Ms. Carpenter stated they made claims that the CDD is in their mind obligated to complete and turn over Westside Boulevard Phase 2, which we had contested from the beginning. The District has no obligation that was all Maesbury's obligation of the development order. Basing it on the interlocal where the District said they had an intent to complete the roads they felt that was a legal and binding contract, which we dispute.

Mr. Stewart asked did we acquiesce to this because it is less money than to litigate?

Ms. Carpenter stated it is cheaper than to litigate. There really is no good legal basis and the County in our mind did not put forth any good legal basis.

Mr. Dady stated in Tampa a motorcycle hit my wife's car as she was turning into a shopping center there was damage to the rear of the car and that fellow sued us for \$200,000 for medical damage. First calling my wife and saying it can all go away if she meets him at a bank teller an gives him \$4,500. I immediately called the police and called my insurance company whereby he then went to 1-800-call-Gary and we were hit with a lawsuit, which I was so furious because the damage to the rear panel of the car is obvious the motorcycle failed to yield, hit our car and yet because of whatever the insurance company made a judgment call and said it could have been both party's fault and they settled for \$100,000. To me this is nothing more than the example of the insurance company in settling for expediency.

How do we take this arrangement because I agree the attorney fees just like the insurance case would far surpass the damages but how do we get to where we are not admitting or denying any guilt?

Ms. Carpenter stated a settlement does that.

Mr. Dady asked doesn't it say that the County put forth claims against the District and the District has agreed as compensation for mutual release of other obligations.

Ms. Carpenter stated it is mutually releasing that there are no more claims, no one has admitted anything else. Nothing is construed against the parties nobody has admitted anything. It is not admissible in any subsequent proceeding. That is the whole purpose of a settlement nobody has admitted anything.

Mr. Dady stated the County is somewhat penalizing us demanding the District fulfill an obligation for additional rights of ways that they are saying is somehow tied to this now and by the way you are also going to give us these rights of ways. We were always going to give them the rights of ways.

Ms. Carpenter stated I agree but from day one we have had a difficult time of trying to formalize why the County has put us in this position and why with the legal basis the way it is why we got to this point.

Mr. Dady stated I would say that this agreement needs to include a formal statement that the County officially recognizes the acceptance of Westside Boulevard.

Ms. Carpenter stated we can't, the mediation settlement has to be prepared and finalized at the mediation, which is why it is in such a rough form. We can't leave mediation without it being done.

Mr. Stewart asked is this binding, there is not something coming back again and again?

Ms. Carpenter stated yes this is binding as to Westside Boulevard. Jr. Davis is done in that sense, they have done nothing else but there is the other road that Lennar finished up north the Funie Steed Road as part of this same.

Mr. Stewart asked are we subject to participating in that as well?

Ms. Carpenter stated if the County brings the same argument, yes. They had Lennar finish the portion they needed to finish for their development. The County Attorney commented the County is not taking care of the road and I said here is the letter that shows the County is and we are off the hook and he was not aware of that. My thought is we get with the County and say

we approved this, however, we will give you the deeds on the condition you get this on the agenda for the County to formally accept so it is done.

Mr. Dady stated I would support this with such a condition because the whole basis is the bondholders expended moneys.

Mr. Stewart stated we don't have a way to put that condition on the County.

Mr. Dady stated then we cannot accept this agreement.

Ms. Carpenter stated we can turn over the deeds, the deeds are not a part of this agreement so we can agree to turn over the deeds with the condition that they formally accept the roads.

Mr. Stewart stated if we don't approve this right now we turn into the cog holding up, the County approved it, the mediation has already settled it.

Mr. Dady stated we appointed George to represent us and in fact I would say this does not fully represent us because the whole multi-year case with Jr. Davis was we felt bad for him behind the scenes were helping him against the developer and we all had business dealings with him with other projects and besides the fact that he is a swell guy we needed the road open and there was always a sense that yes I'm going to get what I can get out of the courts and District you are playing fair. A settlement agreement arose, moneys were spent, bondholders expended several hundred thousand dollars on associated cases to facilitate settlement and I thought we were done and now this has come back again. It is still expedient I believe to consider this agreement but the end game is to make sure no one down the road has a problem with Westside Boulevard or Funie Steed or any of the other roads in the District that could put a halt to certificates of occupancy or building permits or other jeopardy by the County. That is the end game even as good a job as this was done.

Ms. Carpenter stated we agree the constraint we have is a letter we have for the mediation and the demand was only this particular liens that Jr. Davis had. He does have a lien on another portion of Funie Steed Road.

Mr. Trace stated which this does not settle.

Ms. Carpenter stated no.

Mr. Stewart asked is this a done deal or is it here in front of us to approve?

Ms. Carpenter stated if we don't have it then Jr. Davis will close the road or the County will bring us in on some kind of eminent domain action then the lawsuits will start. It is a little bit of a forced deal.

Mr. Stewart asked is this here for us to approve?

Ms. Carpenter stated yes, this is here for you to approve. This was the mediation with the best result and it was subject to the County and to the Board approving it. As lawyers on the case the legal basis for this is very weak we were somewhat surprised the County agreed to their portion of it; however, the amount of money is less than it would cost if this goes to litigation.

Mr. Stewart asked if we were to win would you be reimbursed for your legal fees?

Ms. Carpenter responded likely not.

Mr. Stewart stated then it would be more money upfront right now as opposed to the dates in the schedule.

Ms. Carpenter stated yes. At this point it will not be an increase in the budget, it is somewhat minimal as it is spread over five years.

Mr. Showe stated the budget does consider that payment already in it so your assessments are predicated on that payment.

Mr. Stewart asked is there a conversation needed with the bondholders?

Ms. Carpenter stated Mike is the one discussing with the bondholders.

Mr. Dady stated we are still making payments on the past settlement agreement, which the bondholders approved. The question I put forth again is are we satisfied as a Board that we are not subject to yet another shakedown.

Mr. Stewart stated that is the thing that doesn't feel good is the fact that they have something else hanging out there.

Ms. Carpenter stated it does feel a little bit like a shakedown but the important thing for this is to get Westside Boulevard done and turned over because the rest of Westside Boulevard, the CDD or SPE has title to and we can get deeds executed. If we cooperate we can give those deeds to the County and say we are off the hook.

Mr. Dady stated restate what you feel you can do for us as a Board on getting a formal acceptance from the County as part and parcel of the secondary action of the deeding of the rights of ways and so forth. In other words this is signed we understand George did the best he could do.

Ms. Carpenter stated the County will get this last piece of road, which we were not able to obtain from Maesbury because it is full of liens, the problem is it has to go through a foreclosure to get rid of the liens.

Mr. Dady asked what if they are unsuccessful in enabling that action?

Ms. Carpenter asked if they can't get the property?

Mr. Dady stated yes, at last count there were 143 different liens on various entities.

Ms. Carpenter stated the \$2.9 million construction lien is superior to all them and it will wipe out all those liens and no one is going to pay \$2.9 million so probably the most expedient way to get that road cleared.

Mr. Dady stated my question to put this to bed at least from my point of view, what secondary action do you suggest.

Ms. Carpenter stated tell the County that we accepted this; however, the Board states that we need their assurances we can't condition it but we need their assurances that they will accept the rest of the road and take our deeds and put the acceptance on the next available agenda without making the District jump through any hoops.

Mr. Stewart stated that didn't come up at all in the mediation I assume.

Ms. Carpenter stated it did, apparently the County Attorney started bringing up all kinds of things about liens and why didn't we have deeds and he said we put it in our mediation statement and I said that doesn't come to us it only goes to the mediator. He didn't know the mediation was only mediating the claim that the parties were aware of. They are certainly aware I want to get this turned over.

Mr. Trace stated there is still a Funie Steed issue.

Ms. Carpenter stated there may be a Funie Steed issue the County agreed that Lennar built the portion they built and there has never been any claim, any comment. I don't know how much is not built that was part of that original deal with Maesbury.

Mr. Trace stated there is a certain time to file liens and whatnot. Is that passed is that kind of a done deal?

Ms. Carpenter stated no, Jr. still has a lien on one portion but I'm not sure where it is. Do you know Santiago?

Mr. Machado stated yes, Funie Steed was constructed and is completed.

Mr. Stewart asked has it been accepted?

Mr. Machado stated it has been accepted.

Ms. Carpenter asked how could it have been accepted if there was a lien on it?

Mr. Machado stated maybe minus that.

Ms. Carpenter stated I was invited to the grand opening that is why I know it was accepted. That is why I was surprised this came up as a comment. If it is completed and County staff has well undertaken measures that whoever is developing it would finish the development obligations of the D.O. as you would expect as Mattamy has any Phase 3 obligations that Maesbury had been under so from a likelihood I don't know but it could come back because even though it has been accepted there apparently still is a lien up there.

Mr. Machado stated the road was constructed per the approved plans.

Mr. Stewart asked what is the disposition on the rest, this satisfies a part of the \$2.9 million lien or it's done?

Ms. Carpenter stated this is done. They will turn over the judgment for the \$2.9 million plus whatever to the County and the County will take the property. This puts to bed in our mind and we will certainly press to put to bed the entire Phase 2 Westside Boulevard issue. I wish I could say with certainty it put to bed everything with the County but given the legal basis it has been hard for us to determine what the County is thinking.

Mr. Dady stated restate for me again the appropriate motion that would tie the best efforts and assurances of the County to accept the Westside Boulevard for maintenance and traveling public use.

Ms. Carpenter stated I think there are really two motions. The first would be to approve the settlement to resolve any issues with the County and Jr. Davis as to Westside Boulevard roadway and the second would be to deliver to the County that the Board approved this and will deliver the deeds they requested for the balance of Westside Boulevard on the understanding the County will accept the road and put to bed Westside Boulevard and any other claims they could have for Maesbury's obligations under the D.O. which we don't think they have but they seem to think they have. The District took title by eminent domain and we have never given them a deed. We will not turn the deeds over until we are told this will be placed in writing on an agenda for acceptance. We do have to have the SPE, which is bondholder driven and they will not sign.



On MOTION by Mr. Dady seconded by Mr. Stewart with all in favor the settlement agreement to resolve any issues with the County and Jr. Davis as to Westside Boulevard was reluctantly accepted for the purposes of avoiding the cost of litigation.

Mr. Dady moved that the Westside CDD and Westside SPE will cooperate with the delivery of the right of way deeds promised to the County on the condition that the County expressly provide reasonable assurance that Westside Boulevard will be accepted for fulltime maintenance and ownership and Mr. Stewart seconded the motion.

Mr. Trace asked can you do that free of liens and encumbrances?

Mr. Dady stated thank you, good point. It should be free of liens.

Ms. Carpenter stated it should be free of liens but we don't want to have to do title work and jump through the other hoops.

Mr. Trace stated I want them to represent that it is free of any encumbrances, the County for them to accept it.

Mr. Dady stated because you have \$2.9 million.

Ms. Carpenter stated for anything they own, we will turn over for our portion but their portion. What about have staff approval of conditions? I don't want to put that as a condition because we had a really hard time getting title work on the road. That has been part of our issue in turning it over in the past. I think that is good, acceptance then the one thing I would like to add for acceptance and ownership and that we seek a release for Funie Steed Road.

On voice vote the motion passed as amended above dealing with the portion of the roadway being turned over free of liens, staff approval and acceptance and ownership of Funie Steed road.

**FIFTH ORDER OF BUSINESS**

**Staff Reports**

**A. Attorney**

There being none, the next item followed.

**B. Engineer**

Ms. Carpenter asked what is the status of utilities?

Mr. Machado stated TWA provided a list of items that need to be completed, which was the bond and the inspection. I provided that to Jason.

**C. Manager**

**i. Approval of Check Register**

Mr. Showe stated we have two check registers one is through November 29, 2016 for general fund checks 1145 through 1165 for \$114,517.58 and November payroll for \$368 for a total of \$114,886.15 and general fund checks through January 3, 2017, 1166 through 1178 for \$327,264.57.

On MOTION by Mr. Stewart seconded by Mr. Abel with all in favor the check register was approved.

**ii. Balance Sheet and Income Statement**

Mr. Showe stated next is the balance sheet and income statement. There is no action required by the Board on this item. Under the General Fund there is a field miscellaneous line for \$23,460 and that was the work we did on the force main. We anticipated that would be paid out of last fiscal year but we didn't get the invoice until after so it hit this fiscal year but there is carry forward to cover that. We have started to get the assessment revenues in.

**iii. Discussion of Direct Bill Status**

Mr. Showe stated everyone has paid on the Mattamy side I know we had some revisions and the direct bills went out late December so we haven't seen that payment yet. I have been told by Golden Cay that they have cut their check. The only one we are missing is Green Gate Lagoon and I will follow-up.

Mr. Dady asked who are they?

Mr. Showe stated they are a new owner and I have had conversations with their attorney about getting that paid.

Mr. Machado stated Green Gate Lagoon is the extra phase, Phase 2 South.

**SIXTH ORDER OF BUSINESS**

**Supervisor's Requests**

Mr. Dady stated I would like to see if you could keep an eye on the pipeline construction work. They are now dewatering and throughout the Westside Community the shallow dewatering and it primarily affects the SPE property but it does share a number of CDD conveyances on the small water outlets that will eventually be overflowing as they pump water in and out. Alan if you could do a drive by and I don't know if Santiago needs to look at the lakes that they are discharging into.

My second issue is that I would like the District Board to know that there is still an outstanding settlement issue with the Fuqua settlement dealing with a sliver of land that is supposed to be deeded for Sand Mine Road and we are working with their Engineer and Hanson, Walter to try to resolve it with the County. We believe we should be able to receive that strip but the Engineer for Mr. Fuqua wants us to provide certain historical backup so I don't know if that will require the CDD staff time or not.

Ms. Carpenter stated there is a drainage pond on their property they are supposed to grant an easement or give us the pond. We submitted something to their Counsel several times because our last correspondence was he was preparing his own form not our form and we had final forms. I talked to their Engineer a couple times and he was sort of surprised that they had dropped the ball.

Mr. Dady stated thank you very much.

Ms. Carpenter stated if they want to give us the road let's tell them if they want us to cooperate we need the pond.

Mr. Dady asked Santiago is that something you could put on your list?

Ms. Carpenter stated just remind them that it is in their interest to turn it over to us because the CDD can maintain it.

On MOTION by Mr. Abel seconded by Mr. Stewart with all in favor the meeting adjourned at 11:35 a.m.



Secretary/Assistant Secretary



Chairman/Vice-Chairman