

**THE MINUTES OF MEETING
TERN BAY COMMUNITY DEVELOPMENT DISTRICT**

The Regular Board Meeting of the Tern Bay Community Development District's Board of Supervisors was held on **Tuesday, September 8, 2015, at 9:00 a.m.**, at the **Offices of Berntsson, Ittersagen, Gunderson & Wideikis, LLP, 18401 Murdock Circle, Suite C, Port Charlotte, Florida 33948.**

Present and constituting a quorum were:

Neale Montgomery	Chairperson
Mark Gillis	Assistant Secretary
Mike Dady	Assistant Secretary

Also present were:

James Ward	District Manager
Scott Clark	District Counsel

Audience:

Ceil Fillenworth	Bill Karlen
Tom Fillenworth	Kathy Karlen

1. Call to Order & Roll Call

Mr. Ward called the meeting to order at 9:20 a.m., and roll call determined that all members of the Board were present with the exception of Supervisor Brylanski and Supervisor Card.

2. Consideration of Minutes: May 12, 2015

Mr. Dady commented that he had made a suggestion previously that the Minutes were looked at in terms of substantive comment rather than a verbatim format. Mr. Ward stated he would take care of it.

On Motion was made by Mr. Dady and seconded by Mr. Gillis to accept the Meeting Minutes of May 12, 2015, and with all in favor the motion was approved.

3 Consideration of Request for Proposals from Auditing Firms to perform Audits for the District for the period of September 30, 2013 through September 30, 2017 (a five year audit period).

Mr. Ward stated that this item was re-bid and that two different firms than the ones who originally responded to it submitted responses this time: McDirmit Davis and Berger Toombs, both of which are good firms. He stated that he provided in the package a summary analysis of the fee schedule over the five year period. Ms. Montgomery stated that it looks like Berger Toombs has greater CDD experience and more experience in this area. Discussion ensued regarding the two firms' qualifications and their responses to the RFP.

On Motion was made by Mr. Dady and seconded by Ms. Montgomery, to accept the Audit Services Proposal from Berger, Toombs, Elam, Gaines & Frank, and with all in favor the motion was approved.

4 Public Hearings

a) Fiscal Year 2016 Budget

I. Public Comment and Testimony

On Motion was made by Ms. Montgomery and seconded by Mr. Gillis to open the Public Hearing, and with all in favor was approved.

Mr. Ward explained that this is the time for the public to present questions or comments regarding the budget. An audience member asked what amount of operating funds remain, with the monies being diminished this year. Mr. Ward stated that the overall cash position of the District as of the end of next year goes down to roughly \$670,000, but the budget as currently prepared does not include any of the operating expenses of a special purpose entity (SPE). He stated that if those numbers are paid from bond funds, which they generally are, the District will probably run out of money during the next fiscal year.

On Motion was made by Ms. Montgomery and seconded by Mr. Gillis to close the Public Hearing, and with all in favor was approved.

II. Board Comment and Consideration

Ms. Montgomery raised a question about the general engineering services, asking if it gets paid on a monthly basis regardless of work or does it get paid on time and materials. Mr. Ward stated that it gets paid on time and materials. Ms. Montgomery stated that since the governor declared a state of emergency there is another free time extension that can be requested, and suggested that the District ask for that additional time. Mr. Clark stated that the request has been made.

Mr. Dady commented that he feels perhaps the Ryan Golf proposed settlement should come back into the general fund CDD budget to set the record correctly on an accounting basis. He stated that if it was a construction account change order that is

now going to be paid, it could be paid from the construction account. Mr. Ward stated that normally he would put it in the budget because he does a requisition with the trustee for all of the operating expenses that run through the District's general fund. It was agreed that the Ryan Golf litigation line item (approximately \$175,000) be included in the 2016 budget.

- III. Consideration of Resolution 2015-4, adopting the Annual Appropriation and Budget for the Fiscal Year 2016.

On Motion was made by Mr. Gillis and seconded by Ms. Montgomery to accept Resolution 2015-4 with the addition of the Ryan Golf litigation line item, and with all in favor the motion was approved.

- b) **Fiscal Year 2016 Imposing Special Assessments; Adopting An Assessment Roll and Approving the General Fund Special Assessment Methodology**

- I. Public Comment and Testimony

On Motion was made by Ms. Montgomery and seconded by Mr. Gillis to open the Public Hearing, and with all in favor was approved.

There was no public comment.

On Motion was made by Ms. Montgomery and seconded by Mr. Dady to close the Public Hearing, and with all in favor the motion was approved.

- II. Board Comment and Consideration

It was agreed that the attachments to the resolution would reflect the approximately \$175,000 in the budget for the Ryan Golf litigation.

- III. Consideration of Resolution 2015-5 Imposing Special Assessments, Adopting an Assessment Roll, and Approving the General Fund Special Assessment Methodology.

On Motion was made by Mr. Gillis and seconded by Ms. Montgomery to approve Resolution 2015-5 as described above with the \$175,000 Ryan Golf line item to be reflected therein, and with all in favor the motion was approved.

5. **Consideration Of Resolution 2015-6 Designating Dates, Time And Location For Regular Meetings Of The Board Of Supervisors Of The District.**

Mr. Ward reported that the dates, times and location of the Fiscal Year 2016 are scheduled the same as they are currently. Mr. Ward asked if the Board wanted to

discuss moving the start time back a half hour or an hour. Ms. Montgomery suggested 9:30 for start time.

On Motion was made by Mr. Dady and seconded by Mr. Gillis to approve Resolution 2015-6 with the 9:30 amended time of commencement as described above, and with all in favor the motion was approved.

6. Discussion of DRI/Development Order and Traffic Analysis

Mr. Ward stated that the DRI/Development Order and Traffic Analysis was a holdover from last month, and that he has nothing more to add regarding same. Mr. Clark reported that the traffic model has been re-run with favorable results and that meetings and contact have been initiated with the review agencies to reinvigorate and re-start the process. He reiterated that the extension was requested per Governor's order.

7. Staff Reports

a) District Attorney

Mr. Clark provided an update on the SPE site, stating that a lawsuit was filed approximately six weeks ago against the tax collector and a tax certificate holder. He explained that at issue is about \$1.2 million worth of taxes on Parcel A, and it is the District's position that those taxes have expired. He stated that the taxes should be eliminated if they are not lawfully imposed.

Mr. Clark stated that another issue is that when Jim got the materials from the Property Appraiser to work on the Tax Roll, it was discovered that the Property Appraiser had not moved over the parcels that were foreclosed on into the name of the SPE. They have contacted the Property Tax Appraiser and the Attorney, but the Circuit Court Judge says that they hold title, so the District is encouraging them to voluntarily correct that, and that issue will continue to be pushed.

Mr. Clark stated that there are outstanding tax certificates on the platted lots, and the District has been contacted by an individual named Mike Averbach who is requesting estoppel information on the capital debt. Mr. Averbach said that he's put together a group and is proceeding to a tax deed auction. Discussion ensued regarding same.

b) District Engineer

No report.

c) District Manager

Mr. Ward stated that he has nothing further to report.

8. Supervisor's Requests

Mr. Gillis asked for clarification regarding the CDD vs. the SPE. Mr. Ward explained that there is a finite set of funds in the District's accounts, and once those funds are exhausted there are no additional funds whatsoever for the District. Mr. Clark explained that the strategy of the SPE is to move the property off as quickly and sensibly as possible to another developer who would work with that. He noted that when that happens the District would most likely need and want to increase its budget and start providing more money for repair and future maintenance. Mr. Dady reported that efforts are underway to get another developer in.

Audience member Mr. Karlen stated that the homeowners have been waiting for seven to eight years, and asked what the District can do for the homeowners to assure that money will be available when repairs and maintenance issues arise. Mr. Ward explained that it has always been known that at some point that this day would come and, unfortunately, there is nothing really that can be done about it at this juncture. He said that the bondholder's retention of Lerner & Associates is favorable to try to get the project back on track, and the work that is being done in that regard is a good thing. He said the real estate market in Port Charlotte is tough, and everything is being done to reposition this project.

Mrs. Karlen inquired about the District going bankrupt. Mr. Dady stated that discussing bankruptcy is very premature and overly dramatic, explaining that the bondholders have a huge investment in this property and continue to be the largest taxpayer in the District deficit funding to see that things are turned around to the best ability possible. Mr. Dady reported that efforts are underway to do that. Mrs. Karlen stated that it is hard to feel hopeful because they are not part of the SPE and are not privy to what is happening. Mr. Ward agreed with Mr. Dady that it is premature to discuss that at this point in time. He stated that he feels the bondholders and Lerner are working extremely hard to try to solve a very difficult problem. Mrs. Karlen said it is scary for them because they are not informed as to the progress. Mr. Ward stated that it is most likely because a decision has not yet been made on how to resolve the problem. He stated that he recommends letting it play its course over the upcoming months.

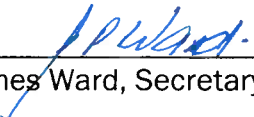
Mr. Karlen asked what the consequence is for the bondholders if a bankruptcy occurs. Mr. Clark explained that ultimately the bond holder becomes a property owner subject to taxes and assessments and other things. He stated that there are very few districts where bond holders lost the property because it just did not make sense any more, but this certainly, in his opinion, would not be one of them. He stated that this bondholder has a huge investment and that even though he had the right to sweep the monies, he has stayed involved and is spending money on a consultant to try to find a solution.

Mrs. Karlen inquired as to why Burnt Store Road has been staked out with orange tape. Mr. Karlen asked if there has been a decision made with the road builder. Mr. Ward stated that he would ask Mr. Riley and get an answer.


9. Adjournment

On Motion was made by Mr. Dady and seconded by Mr. Gillis to adjourn the meeting, and with all in favor was approved.

The meeting was adjourned at 10:15 a.m.



James Ward, Secretary



Neale Montgomery, Chairperson