

**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 Thursday, September 1, 2011, at 9:00 a.m., at the office of Charlotte Engineering and Surveying, 1700 El Jobean Road, Port Charlotte, Florida 33948.

Present and constituting a quorum were:

Matt Morris	Chairman
Neale Montgomery	Vice Chairperson
Richard Brylanski	Assistant Secretary
Mark Gillis	Assistant Secretary

Also present were:

James Ward	District Manager
Joe Menen	District Engineer
Scott Clark	District Counsel (Telephonic)
Bill Riley	CAS Asset Management

General Audience were:

Ceil Fillenworth	Resident
Tom Fillenworth	Resident
Bill Karlen	Resident
Kathy Karlen	Resident
Derek Rooney	Charlotte County, Asst. County Attorney

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Ward called the meeting to order at 9:43 a.m. and noted, upon roll call, all members of the Board were present.

SECOND ORDER OF BUSINESS

Board Administration

Consideration of Minutes

A. May 5, 2011

Mr. Ward stated you've all been previously distributed a copy. If there are any additions, corrections and deletions, it would be appropriate at this time to so indicate; otherwise, a motion for their approval would be in order.

Ms. Montgomery stated I think if you look at page three, chiefly where Mr. Riggs is speaking, that whole page doesn't seem to read right, like there's words that are missing, and the punctuation doesn't seem right. I mean that whole page seems choppy, and Mr. Riggs should look at some of those things, because it's not right. I'm guessing what happens when you tape it and he's on the phone, it's tough and I think you miss words. I would recommend we defer this and give him an opportunity to look at what he said and correct it, rather than us try to recollect what he said.

Mr. Ward stated it's a difficult transcription. I'll send him the audio file and printed minutes and let him correct it. So we'll just defer that until your next meeting.

THIRD ORDER OF BUSINESS**PUBLIC HEARING**

Mr. Ward stated item three and the primary purpose of your meeting today is to consider two public hearings. The first is the public hearing for the adoption of your Fiscal Year 2012 Budget. The second public hearing is related to the imposition of the assessments, the adoption of the assessment roll, and the adoption of the methodology related to the District's General Fund.

a) Fiscal Year 2012 Budget

Mr. Ward stated there have been really no changes that have been to the budget since you approved it after the May meeting. The one minor change I believe we had was we included about a \$10,000 contingency line item in the budget. I won't go through this in detail with you again, unless you have some desire for me to. The last page of the budget, which is page 13, is really the summary section of what the assessment levels would be for Fiscal Year 2012 for all of the units in Tern Bay, including those that are subject to the foreclosure action of the District. It's roughly \$242.65 a unit a year, plus \$75.92 a unit for those units that are in foreclosure, for a total of \$318.57 a unit.

The debt service has changed slightly from what you have seen in years past. It is consistent with what, however, you did see at your May Board meeting. There are two assessments or debt service, one for the Series A bonds and one for the Series B bonds. The Series B bonds are all of the properties that are subject to the foreclosure action. The total General Fund assessment is \$604,180, and the Debt Service Fund assessment is \$3,435,518.

I. Public Comment and Testimony

Mr. Ward stated Mr. Chairman, it would be appropriate to open it up to any public comment or testimony at this point.

Mr. Morris stated we can go ahead and do that.

Mr. Ward asked is there any member of the public who has any questions or comments related to the Fiscal Year 2012 Budget? Hearing none, a motion to close your public hearing would be in order.

<p>On MOTION by Mr. Morris and seconded by Ms. Montgomery with all in favor, the public hearing was closed</p>

II. Board Comment and Consideration

Mr. Ward asked are there any comments from the Board related to the Fiscal Year 2012 Budget.

Ms. Montgomery stated yes, I know you probably explained it before and I just don't remember. The Fiscal Year 2011 Budget had only \$1,250 for insurance and now it's \$15,000.

Mr. Ward stated yes, the old Rizzetta budget had it in two different line items.

Ms. Montgomery stated okay, that's the one, alright.

Mr. Ward asked any other questions from the Board and received nothing further.

III. Consideration of Resolution 2011-8 adopting the annual appropriation and Budget for Fiscal Year 2012

Mr. Ward stated the resolution for you today is Resolution 2011-8, which is the annual appropriation resolution of the Tern Bay Community Development District relating to the annual appropriations and adopting the budget for the fiscal year, beginning October 1, 2011, and ending on September 30, 2012, providing for severability, providing for conflict and providing for an effective date. That resolution is in order and recommended for your consideration.

Mr. Gillis stated I have one minor typo on page two, section two, total of General Fund \$604.

Mr. Ward stated that's a good catch.

Ms. Montgomery stated yes.

Mr. Ward stated a period instead of a comma. Any further comments?

On MOTION by Ms. Montgomery and seconded by Mr. Gillis with all in favor, Resolution 2011-8 was approved as amended.

b) Fiscal Year 2012 imposing special assessments, adopting an assessment roll and approving the General Fund Special Assessment Methodology

Mr. Ward stated item 3b imposes the special assessments, adopts the assessment roll and approves the General Fund methodology, all of which are attachments to the resolution, the same as what you have seen in the past. I did include in this particular package, as a part of the methodology, the actual assessment roll is Table 1, which has all of the folio numbers, owners' names and whether they're on roll or off roll, and what the assessment rates are for each specific piece of property in the District. Most importantly, the number of residential units assigned to the property, and then it totals out to what your Fiscal Year 2012 Budget is. It's a new table that you have in here for this year.

I. Public Comment and Testimony

Mr. Ward stated, Mr. Chairman, it would be appropriate to go ahead and open it up at this point for any public comment or testimony.

Mr. Morris stated we can open up the hearing.

Mr. Ward asked any members of the public who have any comments with respect to the assessments, the assessment roll, or the methodology that we use to determine the assessments? Hearing none, a motion to close the public hearing would be in order.

On MOTION by Mr. Morris and seconded by Ms. Montgomery with all in favor, the public hearing was closed.

II. Board Comment and Consideration

Mr. Ward asked any comments or questions from the Board?

Mr. Brylanski stated none.

III. Consideration of Resolution 2011-9 imposing special assessments, adopting an assessment roll and approving the General Fund Special Assessment Methodology

Mr. Ward stated the resolution for your consideration today is Resolution 2011-9, which is a resolution of the Board of Supervisors of the Tern Bay Community Development District imposing the special assessments, certifying an assessment roll, and approving the General Fund special assessment methodology, providing a severability clause, providing for conflict, and providing for an effective date. That resolution is in order and recommended for your consideration.

On MOTION by Mr. Morris and seconded by Ms. Montgomery with all in favor, Resolution 2011-9 was approved.

IV. Consideration of Resolution 2011-10 establishing an operation and maintenance cap for notice purposes only

Mr. Ward stated the final resolution is a resolution that establishes an operations and maintenance cap for notice purposes only. All this really does is establish a cap, such that if we go over that cap rate, the District will then mail first class mailed notice out to all property owners within the District. As long as we stay under that cap, then we will not have to do those mailed notices for Tern Bay. For this project, we also put these on the TRIM notice, so residents already get the same information that they're getting in the mailed notice provisionally. It does prevent some administrative cost related to this issue.

The exhibit to the resolution has the cap rates for all units and for the assessment units, \$266.91 for all units, and \$83.51 for the foreclosure units. The number, there's no magic to it. It's ten percent over the Fiscal Year 2012 per unit rate. It's relatively consistent with what other Districts do across the state. If you have any questions, I'll be glad to answer them for you; otherwise, the resolution is recommended for your consideration.

On MOTION by Mr. Brylanski and seconded by Mr. Gillis with all in favor, Resolution 2011-10 was approved.

FOURTH ORDER OF BUSINESS

Consideration of Resolution 2011-11 designating the dates, time and location for regular meetings of the Board of Supervisors of the District

Mr. Ward stated Resolution 2011-11 designates your dates, times and locations for your Fiscal Year 2012 meetings. I put a schedule in the agenda, and I see we're going to need to make one change to it. What I've tried to do is do this every few months in order to make sure we have a meeting, and then I will actually have items on the agenda for you to consider during the next Fiscal Year. I had forgotten when I did this resolution that we do have a landowners meeting in November of this year, so what I would suggest we do is probably get rid of October and December, and then just insert the November meeting in there. Excuse me, leave October and then delete December and make that a November meeting. That will also be the first Thursday of the month; it's going to be November 3.

Ms. Montgomery asked so now once we have these in here, we can't cancel these, like sometimes we've cancelled some of our meetings. So once we put these in a resolution, we have to have them?

Mr. Ward stated we don't have to have them. We can cancel them, but I did this based upon when I think I'll have items on the agenda for you, so if we don't have something, we may cancel it, but this is pretty much going to be the schedule, I think.

Ms. Montgomery stated in that case, I make a motion to approve Resolution 2011-11 with an amendment, deleting the December 1, 2011, meeting, and inserting in its place the November 3, 2011, meeting.

Mr. Gillis asked should we have a meeting on July 5, right after July 4?

Mr. Ward stated not if you're away. Why don't we just go ahead and take that out of here. Actually, it's the one meeting that I did not think we would need. So let's just take it out of here.

Ms. Montgomery stated I'll amend my motion to delete the July 5, 2012 date.

On MOTION by Ms. Montgomery and seconded by Mr. Morris with all in favor, Resolution 2011-11 was approved as amended.

FIFTH ORDER OF BUSINESS**Staff Reports****A. District Counsel - Scott Clark**

Mr. Clark stated I've got a list of things to go through, so let me run through them. Most of these will be familiar topics, but I wanted to update you, and then there is this one request regarding Ryan Golf that I wanted to discuss in detail. Regarding the foreclosure, we're now a year into our holding period with the bondholder and as far as scheduling a foreclosure sale, moving the property to an SPE and the things we discussed before. I reached out earlier in the week to Oppenheimer, the lead bondholder, to try to see if they had some direction and to suggest that the Board wanted something other than a holding pattern or there's some discussion about where we're going. I have not received a response to that at this point as of the meeting this morning. I'll continue to push that issue, because I'd like to know more than we do now by the time we next meet.

I will tell you that I have seen increased activity in bondholders' selling their bonds here recently; that seems to be a strategy they're embracing on a lot of these deals, and trying to find someone who'll come in and pay them decent value on their bonds, so that they can just walk away and let someone else take a shot at the land. I don't know that that's what will happen in Tern Bay. I think the market conditions suggest that it would be hard for them to get good money for their bonds right now, so I'm not predicting that that will happen, just making that comment. So I'll update the Board in the future as soon as I have anything. If I have some significant news in the interim, I'll send an email and get a report out to you before next meeting.

On the Tarpon matter, the Board will recall that you authorized me, at least a couple meetings ago, to do what was necessary to clear up the title to the parcels that were sold by tax deed wrongfully that are owned by the District. I'm happy to report that it looks like the Property Appraiser and Tax Collector's Office in Charlotte County are cooperating with us and will be issuing a report shortly, backing off the assessments that they levied against parcels owned by the District, and canceling tax certificates that are there. The tax deed in question has already been cancelled by Tarpon itself, because they didn't like the situation that they found themselves in, so we hope to have that matter resolved.

We did not have to file a lawsuit, at least yet. There's a procedure where we have to petition with the Property Appraiser's Office; we did that; they've been working on it, and I

hope by the next meeting I'll be able to report to you that that matter has been resolved and we can move on from it.

Going back to the foreclosure case, and it's kind of a mix of foreclosure and tax deed issues. I believe I discussed a meeting or two ago that we had had a request from one gentleman who acquired six of the platted lots, that he wanted to bring his lots current and reinstate. I think the tenor of the discussion, although I don't remember that a decision was made, was that the Board did not think that it was a benefit to have scattered lots be pulled out and in separate ownership, so we haven't really done anything to strike a deal, allowing this owner to reinstate.

Nevertheless, he and his attorney have pushed me on the issue some more; they've been fairly persistent about it. I now need to give them an official answer. Now if we choose to allow them to reinstate, the bondholders will have to consent to that. In usual fashion, I haven't gotten a response to my request to the bondholder, whether they were interested in doing that. I talked to Warren Bloom about it; I've gotten kind of a sense that maybe they don't care that much, but they haven't really agreed to the request. My sense was that this Board probably would not agree to the request.

Now if they want to come in with a check and make full payment of back O&M and debt service, we can't keep them from doing that, but they would have to pay the debt service assessments off in full on those lots if we don't grant them a reinstatement. I need to give them a formal answer, and I want the Board to give me direction on that.

Ms. Montgomery stated one of the questions I just asked Jim was where are these lots located, and he pointed to an area where I don't believe there's any other development. I mean if they were already in the area where they have residents and they were platted lots, maybe that would be different. But you never know if you're going to want to maintain that development form in the future, and if you've got some guy with six lots, you're probably not going to be able to do that.

Mr. Clark stated that was the discussion that I remember from the Board before, that it may hinder the marketability to have scattered lots, kind of infill lots within the single-family area.

Ms. Montgomery stated yes, and I know that in Lee County, Lennar bought like 185 in what was a defunct subdivision, and the five or six, they were owned by other people, was

somewhat of an impediment for a variety of reasons. I mean they ended up moving forward, but it just made it more challenging, so I don't know why we'd want to make it more challenging.

Mr. Clark stated we're not bound to do that. As I said, if they want to come in with full payment, we will have to accept it, but we don't have to accept anything less than that.

Ms. Montgomery stated I make a motion that we not negotiate with them and only move forward if they pay the full fee, because I don't see an advantage to the CDD or the future community.

<p>On MOTION by Ms. Montgomery and seconded by Mr. Gillis with all in favor, not to negotiate with the owner of the six lots identified above was approved.</p>
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Mr. Clark stated, Jim, I will get with you after the meeting and get updated complete payoff numbers, and I'll send them a letter advising them of the Board's action. The last thing that I wanted to do was to talk about the Ryan Golf litigation; there have been some developments and a request that I need to make in connection with that. We could not get our motion for summary judgment in this matter in late June; we'd been working toward that for a while, and we got it scheduled and brought that before the Court. Our argument on the summary judgment was based on the fact that the District, for its part of that contract, had received an invoice reciting that it was for final payment, then paid the amount in that invoice. We argued that we had made the final payment, and there was not a legal argument that the District was required to pay more than that final payment.

They were able to raise enough questions about that to get the judge not to grant that argument. The questions are basically related to some communication and some comments in the Board meetings that occurred after that final invoice, where they were trying to submit a supplemental invoice, and the Board initially took an action, approving payment of it. Then, after further review, decided it was not appropriate to pay it. All of this happened in a confusing time period where the developer was disappearing from the scene, and new Board members were coming on.

The upshot of that is that it appears now that the case will have to go to trial to resolve factual issues about whether monies were still owed by the CDD on its part of the

contract. The Ryan Golf attorney has requested that the District agree to mediate the matter before trying to go to trial, and the Court has not ordered that at this point, but it likely will order it, and I think it's to our benefit to agree to try a mediation of this, and see if it can be resolved without the expense and the trouble and the uncertainty of taking it to a trial.

To do that, I think you and the Manager and I need to have an attorney/client session or what's sometimes called a shade meeting. The Sunshine Law allows us, when we have existing litigation, to meet off the record in front of a court reporter and discuss strategy issues relating to litigation and mediation and things like that. I think it would be to our benefit for me to be able to go into more detail than I am going right now in the public setting, and explain the positions, the documentation that we've looked at and some of the other matters on this.

The law requires that if I want to do that at a meeting such as this, I make an official request that we conduct a shade meeting, and then we would give a special notice of that and have that meeting in the future. Jim and I talked about this, and I suspect that was the primary reason that he put the October 6 entry on the calendar, anticipating that I would drive down and we would have an attorney/client session and talk about this litigation a little bit more. So I've made that request at this point. I'll answer any other questions regarding my presentation, but I would like to go into more detail in a shade meeting on the litigation.

Ms. Montgomery asked do you need us to do anything? I mean, as I understand the law, sometimes later those minutes have to be made public and that will happen, right?

Mr. Clark stated, yes, there's a court reporter who will transcribe the shade meeting, and when the litigation is resolved, then that transcript becomes a part of the public record. But it's entitled to keep us from being at the disadvantage where we would have to have a discussion about strategy and about my assessment of the case, and then have our opponent be able to write a letter to the District and say, please give me a copy of the minutes or the tape.

I would request a motion doing two things. Let me break them up. First of all, I would request that the Board authorize the advertisement of the shade meeting on the October 6 date, if that time is convenient.

On MOTION by Ms. Montgomery and seconded by Mr. Gillis with all in favor, to authorize the setting of a shade meeting on October 6, 2011, date was approved.

Mr. Clark stated the second part of the question would be whether the Board wants to go ahead and authorize me to move to set up a mediation; we could defer that decision till after the shade meeting. The mediation can't occur before the shade meeting, because I'll need to get some direction from the Board at that time, and the Board will need to designate a representative to attend the mediation. But if you feel it's a good idea, and I think it is, it will authorize me to go ahead and establish it, then I could get the gears rolling on that.

On MOTION by Ms. Montgomery and seconded by Mr. Morris with all in favor, authorizing Scott Clark to pursue setting up mediation in the abovementioned matter was approved.

Ms. Montgomery stated after we know more, because now I think we're kind of closed on what the issues are, we can probably better decide who ought to go with you.

Mr. Clark stated I was going to suggest that; I think at the shade meeting we can appoint our representative to attend the mediation.

Mr. Ward asked anything else, Scott?

Mr. Clark stated that is everything I have.

Ms. Montgomery stated I have one thing for you to think about, and I think we talked about it last time, and that's House Bill 7207 four-year extension. Did we file or are we filing?

Mr. Ward stated we're going to get to that when I get to my stuff.

Ms. Montgomery stated okay.

Mr. Ward stated because I have some ideas. Any other questions for Scott? Any questions for Scott from the audience?

Mr. Karlen stated Scott, I have a couple, because I've covered quite a bit of the territory. One, there was going to be an email going out for the bond sale. That's kind of a big deal to us, because right now we have some sense of normalcy, in that Oppenheimer is

the main bondholder. If that changes, that would be a big point to us as homeowners, and I was wondering if we could get a copy of that email that there was going to be a change in bondholder or landownership.

Mr. Clark stated I'm not suggesting that that's happening right now in this District, and there are not specific emails that I'm referring to. I talk with a lot of people in the CDD foreclosure business; we compare notes a lot, other attorneys, other managers. I also have some clients who are in the market for CDD bonds, so I kind of know what they're going through. Right now, I just made a general statement that the atmosphere has changed somewhat; whereas, a year ago I wasn't hearing very much at all about bonds being sold, now, probably a couple times a month, I hear that there's a District that's in a default situation and bonds have been sold and bondholders are changing.

Right now that's just general market information; I have nothing more specific to tell you about it.

Mr. Karlen stated right, it sounds like though if it comes up, you're going to notify the Board of an email, and I just wondered if we can get it.

Mr. Clark stated if I acquire any information that there's been a sale of the bonds or a potential sale of the bonds, of course I'll do that right away.

Mr. Ward stated it's also important to recognize we don't get notification of that. If you buy and sell your bonds, it doesn't mean we get notified of it. We would only know that sort of secondarily if it happens.

Mr. Clark stated we almost certainly would not have any advance notice, but we would find out after the fact.

Mr. Karlen stated you mentioned that the tax appraiser had taken care of some of the business that you had hanging out on some of the properties. If I'm not mistaken, I thought you'd mentioned Tarpon IV in there. I didn't catch the clarity of that. Is Tarpon IV still involved; is some of their land in question with the tax situation?

Mr. Clark stated yes, let me elaborate. Tarpon IV bought most of the property that was sold by tax deed. They also bought something that's called Tract C, which is all of the unplatted future development area, and that Tract C included two parcels of land that the District owns. Those parcels were lumped into a big tract by mistake, and everybody at this point has realized that a mistake was made, and Tarpon filed an action and got their tax

deed on Tract C eliminated, so they no longer hold title to that, but they do have unpaid taxes that are still held by them. They have tax certificates on Tract C that are held by them.

We complained that Tract C included lands the District owned that never should have been assessed as District lands in a public purpose; they're not subject to the payment of taxes. There simply was an error going way back to 2006 in the Property Appraiser's records on that. So we filed a petition with the Property Appraiser, laid out our title work and our examination, and why we thought the District's parcel should not have been assessed.

They indicated by telephone and email at this point that they've agreed with us, and they're working on their final written findings in response to that petition, but that they will be amending their tax records going back to 2006, so that the District lands are not subject to any taxes, either current or delinquent. That still leaves the bondholders with the issue of the Tarpon IV taxes. On that Tract C, there were probably about \$900,000 in unpaid taxes going way back; that money will still be owed, and whoever acquires title to the unplatted areas is going to have to deal with that, whether that be the bondholder, the SBE, if it's put into that or someone else who wants to acquire the property. It's not really the CDD's problem unless it's put into the SBE; in that situation, we'll insist that the bondholders provide a mechanism to pay the taxes.

Mr. Karlen stated you mentioned Ryan Golf and getting together as a mediation. I'm assuming mediation would mean some sort of settlement outside of court. My question would be, if there was a settlement, and that's the big "if", where would the money come to pay Ryan Golf?

Mr. Clark stated I would ask that any monies to pay a settlement be disbursed from the construction funds that are held by the trustee.

Mr. Karlen stated so the bondholders would be picking it up.

Mr. Clark stated because if, anything, it's paid; it represents construction work that's already been done. It would be appropriate for them to pay that. Now if they won't do that, then there won't be a settlement, and that's something I'll have to discuss with them before we have a mediation.

Mr. Karlen stated asked if it goes to court or whatever, is there a possibility that if there is a settlement or a decree of money owed to Ryan Golf, would that be then parceled out to the landowners?

Mr. Clark stated if Ryan Golf prevailed in court, they can't have a judgment against the District, being an exempt governmental entity, so what they would have to do is to try to get the Court to order that an assessment be levied in the District to pay that. That gets into some very sticky issues about who could be assessed; can lands that are current on their assessment be assessed for a debt that you've already paid by paying your assessments. I'd make the argument not, in that, the issue would really be between them and the bondholders over the monies that are sitting in the account.

Mr. Karlen stated that's one for the homeowners to think about.

Mr. Clark stated I understand your concern, and these are some of the outer limits of CDD law that people are talking about now that really haven't been done before. But that's my position, that there was money levied and set aside, and that the bondholders would not be in a position to keep us from having that money to settle the debt.

Mr. Karlen stated the last thing I had was you mentioned about six lots and the guy who is determined to bring his tax debt up to speed so that he can have those six lots. Again, and I know I've gone over this each time we have a meeting. The bottom line is I'm concerned that, number one, that would be the spark to the fire, that would be the first step in other entities, including Tarpon, using that as the door to go in and say, we'll just pay our back taxes and now we own the property.

The other thing would be that we had a whole court fight over this. I mean I don't know if millions were spent, but many, many hundreds of thousands were spent in fighting this, and saying that if anybody comes in, they have to pay all the taxes due from day one to the very, very end of our assessments with the bondholders. Now we're talking about, after having won that case, turning around and giving six properties the advantage of coming in and just paying their taxes up to date. It seems like, why did we go to court to fight that whole thing, set a precedent, get everything all lined up, only to give up that advantage to six lot holders.

Mr. Clark stated yes, I think the Board heard that discussion when you brought it up before and has agreed with you.

Mr. Ward asked any other questions from the public and received none.

B. District Engineer

Mr. Menen stated I'll just update the Board on some outstanding issues with the Water Management District. There were two issues, one of them being the wetland monitoring report, per the permit conditions. There was supposed to be yearly monitoring reports of the wetlands; the CDD had retained Earth Balance to take care of that, and they just recently got a letter from SWFWMD saying that resolved that issue, and that there's one more year to that monitoring reports, and we should be good after that.

Ms. Montgomery stated hang on, I saw somewhere in there where we have exotics, but we're good only because the exotics so far are under the level. I mean do we feel like they're not going to grow up and we're soon we're going to have issues next year?

Mr. Menen stated there could be issues. We'll have to deal with that next year when we renew the monitoring report.

Mr. Riley stated you'll find in your letter it's not to be touched for this year until they come back and take a look at it.

Ms. Montgomery stated so there's not something we should be doing in the interim.

Mr. Riley stated no, you're not supposed to touch anything now. When they give that for the final year, it's supposed to be left in its natural state.

Mr. Menen stated the other issue is in regards to water use and the meter readings. Bill, I'm going to let you take care of that one.

Mr. Riley stated SWFWMD had given us an extension till July 2011. I requested another extension, but it's taking a little while to run through the channels. In the mean time, I took the readings, I'll record them as needed until they make a decision about giving the extension while we're out there. We'll just send in what's required for the permit for the water use.

Mr. Ward asked anything else?

Mr. Menen stated that's it.

C. District Manager**I. Field Management Report**

Mr. Ward stated I have a couple of items for you. I'm going to cut in front Bill for a second or two. As I've taken over the managerial role of this District and I've been learning

a lot with respect to all of these permits and the development order and these DRI obligations, and what we're doing and what we're not doing, I've become increasingly concerned about what we're not doing, not having really anyone on board with us that I can point to and say, "Do you know where we are with this?" Or "Can you do reports for us periodically with respect to the DRI obligations, the DO obligations." All of these permits that are out there that have to be monitored and maintained throughout the years.

This project has now gone to the point that some of these permits may have been expired at this point, and what are the changes going on at the regulatory levels that we need to take into consideration. What I have done is I called Matt a couple of days ago and asked him if he would mind stepping down from the Board, because I think it's important that we bring on someone who has sufficient knowledge in this area to be able to handle the high review of all of these permits and all of these obligations that we need to track on a yearly basis.

What I really don't want is something to happen to that DRI or that development order that would harm the future development of this project.

Ms. Montgomery stated it just so happens the County is here and have questions about the development agreement, and we're bumping up against that expiration, so it's probably a timely discussion.

Mr. Ward stated my thought is that, if the Board is in agreement, we'll have Matt step down from the Board; his term expires in November anyway, so it's not that big of an issue, and I'd like to retain him, and I'll bring a contract probably back to you in October, to be our point man for all of these permits that we have in this project, and let him, on a periodic basis, report back to all of you with respect to what those obligations are or not. I don't keep track of this stuff; this is not my thing, but we track of it almost by you get a letter from somebody: you didn't do this three months ago. I don't particularly like running a District that way. I'm more proactive in the approach that we have as to having someone on board who can be that way for this District as an important role for us in the coming year.

Ms. Montgomery stated the House Bill 7207 four-year extension, we have to have that letter in, saying we're using it by the end of the year. We need to do that, because those four years don't count towards substantial deviation, so it's important to use or get those four years, so that needs to get done. I guess I have a question; how does Matt

interface with the CDD engineer or how is that going to work? Is there going to be an overlap?

Mr. Ward stated there's not going to be an overlap. My thought is that Matt is going to run that portion of the program and whatever assets he needs, whether it's Bill or Joe or even myself. That those resources are available to him to utilize, but I think we just need someone who has an intimate knowledge of the development side of this business and not necessarily what I have, which is the CDD side of this business, who can really run a team of consultants, whether it's just Joe Menen or Earth Balance or whatever the other half a dozen people that I know have worked with on this project, I really don't have much knowledge about.

The goal really is to just put someone over all of that team and make sure that the development itself stays in place and intact and working, such that, when this project sells, that we'll know what's going on physically with this project.

Mr. Gillis stated I think everybody has expressed concerns for a long time about the validity of the permits and the development orders and stuff, so I think it's important. Where in the budget is this going to be paid?

Mr. Ward stated I knew were going to ask that question. It's not in the budget at the moment, but I need to work out a contract with Matt, and then, to the extent we need a budget amendment, I'll amend the budget; it won't amend the assessment rates. We'll amend the budget. It will come from additional funds that the bondholders have on hand for us. I think between the budget line items we have and what his contract will be, we may be good for next year, because we've got a ton of money plugged in litigation and legal fees, which we traditionally have not needed.

Ms. Montgomery stated yes, that \$125,000 seems kind of high.

Mr. Ward stated yes, I think we should be okay on a budget perspective but, if not, I know of ways, in order to get it funded through the bondholders that won't affect anything on a going forward basis.

Mr. Clark stated I suspect we could get bondholder funding if we need to do that.

Ms. Montgomery stated yes, and the value of the assets of the bondholders is an issue as those permits expire, so I think, for them, keeping them alive and maintaining as much value as possible seems like a good idea.

Mr. Ward stated, if the Board is okay with that, I won't have Matt do it today, but I'll have him just step down at the next meeting.

Ms. Montgomery asked at the end?

Mr. Ward stated no.

Ms. Montgomery stated because I thought we were going to have the special meeting next time.

Mr. Ward stated, oh, good point. I think it's probably better than that, Matt, if you want you can step down today.

Mr. Morris stated okay.

Mr. Ward stated then what we'll do October, because now we're down to three, I'll make sure we have a replacement for Matt. We'll put him or her on the Board at that point. They'll be a little new to go into a shade session, but that's what it will have to be at that point in time.

Mr. Clark stated there's actually a procedural difficulty with that, because we have to have that meeting; we have to advertise exactly who's going to be in the shade meeting, like name and not by slot.

Mr. Morris asked should we do the shade meeting before the regular meeting?

Mr. Ward asked do you know what the advertising requirement is on the attorney/client session?

Mr. Clark stated it's the same timeframe as a regular meeting.

Mr. Ward asked so it's seven days in advance?

Mr. Clark stated yes, there are just some special language that we put into it.

Mr. Brylanski asked can the meeting be both a shade meeting and regular meeting?

Mr. Ward stated yes, it will be, but I think what Scott is saying is the ad that I do for the shade meeting, I have to have an individual's name in the ad, which means we have to have a meeting before the shade meeting.

Ms. Montgomery stated the new person wouldn't be on yet.

Mr. Ward stated no, they would once they swear them in.

Ms. Montgomery stated yes, but they wouldn't be able to advertise.

Mr. Clark stated right, we can't advertise a new person who's not been sworn yet.

Mr. Ward stated so we're scheduled for October 6, so what we could do is – today is the first.

Mr. Clark stated we can have the shade meeting and address that issue afterward. Do you want to do it that way?

Mr. Ward stated open the meeting, go into shade, and then bring the person on board afterwards?

Mr. Clark stated yes, then we can come back into the general meeting and deal with that. There's something not terribly logical about having a supervisor in a shade meeting who then resigns as a part of the Board, but I'm not sure how else to handle it.

Mr. Ward stated Matt doesn't actually have to go into the shade meeting if he doesn't want to.

Mr. Clark stated no, he doesn't.

Mr. Ward stated right, and we'll have the three of you, which should be sufficient. We'll do it that way. Matt, you can either resign today or you can give me a letter and say, I resign effective tomorrow; it doesn't really matter.

Mr. Morris stated that's fine, I'll send you a letter.

Mr. Ward stated then what we'll do is we'll do the shade meeting; we'll open the meeting on October 6, we'll go into the shade piece of it. When we end that, we'll go back to regular general session, and then we'll appoint someone to fill that unexpired term, if we need to. As I said, the meeting is in November, so we may not even need to deal with it until the November meeting. Is that reasonable, Scott?

Mr. Clark stated that's reasonable.

Mr. Ward stated sounds good.

Ms. Montgomery asked do you need a motion from us on that?

Mr. Ward stated I don't need a motion. I have consensus and authorization from you to proceed in that fashion, and we'll do that and have something available for you in October.

Mr. Ward called on Mr. Riley to make his presentation.

Mr. Riley stated since our last meeting, the property is coming along; our landscaping has improved, good to see some rain, Valley Crest replacing sod on the boulevards, removed some trees that died, had to be replaced. Mowing has gone well, we've done some mowing,

bush hogging on the right of way along the pond-developed lots, the direct frontage, keeps it managed. We just completed mowing cattails around some of the lakes near the homes, of our residents, and where Lennar is renting out their homes, the coach homes and their single-family homes. The place was completely weeded this week. Lennar has continued to rent out their homes, and I believe that's where single-family homes are rented and some of their coach homes, which they're trying to fill them all up.

We spoke about the water use permit. I've been doing readings while we're trying to get the extension on that, then the condition of the wetlands, we won't have to do anything this year, which is a good thing. We really haven't had any trespass or vandalism issues that either the residents or the sheriffs, or anything of any major consequence have reported to me. There are some things in the budget for this year; we have to maintain the pump stations, and the bridges need some work as far as cleaning and sealing the deck. They don't get much traffic, but the wood is wearing just from weather, so to keep them in good order without having to get in much expense later on replacing decking.

We always have continuous issues with the gates, people either cutting the chains or the locks, whether it be utility departments or county or just whoever. Nothing has really happened back there, but that seems to be pretty much a reoccurrence. We continue to, either myself or some of the people who work for us, monitor the storm water system, make sure drains are clear, after rain and go out and check them. Tom, one of the homeowners, had some – this lake was draining slowly because of the wetlands and vegetation choking out some of the flow ways, so we cleared some of that and will continue especially in the rainy season, we monitor that pretty closely, because we've been getting quite a bit of rain on the property. All the lakes are full and everything else seems to be in pretty good condition. That's about it.

Mr. Ward asked any questions?

Ms. Montgomery stated yes. What about the wash outs that you referenced in the storm water pollution prevention plan?

Mr. Riley stated they've vegetated themselves over time. There's vegetation growing in there without going in there and re-establishing the grade and replanting all that area long the tree line, which would be a major undertaking all in that back phase.

Mr. Brylanski asked so you don't have bare soil anymore, now everything is covered with vegetation?

Mr. Riley stated it wouldn't meet the 70 percent coverage over the square foot area in areas, no; there's some areas that are more prone to wash out than others. But, over time, slowly vegetating itself, retaining, not growing much additional washing off of those areas that has already occurred.

Ms. Montgomery asked so those areas, Matt, in your new job, you'll take a look at and make sure we're not out of compliance, and if we are potentially out of compliance, make recommendations of how to get back in compliance?

Mr. Morris stated I will.

Mr. Ward asked any other questions for Bill from the Board? Questions from the audience for Bill?

II. Financial Statements for the period ending July 31, 2011

Mr. Ward stated the only thing I had for you in addition to that was your financial statements for the 31st of July. They've become relatively routine in their preparation at this point in time. There's nothing in here of any consequence to you that you need to be aware of. There's nothing financially that would come up in the ensuing two months. There weren't any major changes in the financial statements. If there are questions, I'd be glad to answer them for you.

Mr. Gillis asked where were we again?

Mr. Ward asked I'm sorry?

Mr. Gillis asked we're at 5(c)II?

Mr. Brylanski stated I think he is making a point that the financials say Heritage Harbour.

Mr. Ward stated 5(c)II. I was doing three agendas that day, so sorry about that. We'll send them out to you under a separate cover. I can only imagine what's in those packages. My apologies.

SIXTH ORDER OF BUSINESS

Supervisor Requests, Audience Comments

Mr. Ward asked is there anything from the Board? Anything from the audience?

Mr. Karlen stated I've got two points; one that you mentioned about the shade meeting and going in with one less member, and then these three members would have knowledge of the shade meeting, and you'd bring in a new member. Can these three people share the information of that shade meeting with that person?

Mr. Ward stated no, the Board cannot, but Scott and I can.

Mr. Karlen stated okay. I'm sorry, I know I've hammered this thing to death.

Mr. Ward asked did it die yet?

Mr. Karlen stated it hasn't quite died; it's very close to it. Scott mentioned that the Board is in agreement with this situation with the six properties and the landowner. Is that, in simple terms, saying that he is going to be denied the ability to pay his tax obligation and own the property?

Mr. Ward stated it means that we are going to refuse his offer as partial payment. As Scott indicated to you, he can pay off all of the back taxes, all of the back assessments, all of the back debt, and we can't refuse him from doing that.

Mr. Karlen asked that's going forward too?

Mr. Ward stated of course.

Mr. Karlen stated yes, he has to pay all in one lump sum.

Mr. Ward stated right, but we're going to refuse his offer for a partial payment.

Mr. Karlen stated thank you, I need that clarification for my own general peace of mind.

Mr. Ward asked is it dead now?

Mr. Karlen stated it's dead.

Mr. Ward asked any other audience questions?

Ms. Montgomery asked could you, just for the record, let us know what the expiration date is for the development agreement?

Mr. Rooney stated Derrick Rooney, Assistant Charlotte County Attorney. The expiration agreement for the DO has been extended back when Williams Parker was the law firm of record for the CDD. They extended it to January of 2015. But, as Ms. Montgomery pointed out, there is a new extension allowed under House Bill 7207 or 02, that states that

the DRI or including all extensions and build outs in underlying permits can be extended for a four-year period.

I believe the four-year period runs concurrently with that, so maybe you get an extra year. But it would allow you, if you submitted a written request to the permitting agency, to extend all the underlying permits that you have here because you're concerned about that. There is another deadline that's coming up in January of 2012, and that is the development agreement with Charlotte County, which the CDD has the option to participate in, but it was with Tern Bay, LLC. The issue on that is that is the mechanism for how they would deal with the transportation issues under the development order.

I'm not certain that is extendable without an agreement with the County, because it doesn't authorize any permitting by itself. What I will say is, at this point, in the long run, the CDD, whoever ends up being the major property owner and developer of the property is going to have to deal with the same issue that's been plaguing this project since it was Caliente Springs, which there's never been any work done to deal with the transportation. In a normal situation, if your development order expires, you go back to whenever the last time the development order had vested. When I went back as far back as '92, I could never find a place where it ever vested on transportation.

The County is in the process of doing the widening and upgrading Burnt Store Road. If we had the money, we'd do it all the way down to the Lee County line, which would fulfill the obligations of the DRI. Unfortunately, we don't have enough to get to the second phase, which includes Tern Bay. We are probably going to be sending out a request to the CDD and to any other property owners. If the County is trying to get grant funding from the feds to do that road, there may be a possibility, and if the bondholders are interested as well, for possibly for pennies on the dollar to chip in where the County has already mobilized and already doing the work, and already looking at the acquisition costs.

The current agreement says that Tern Bay's maximum exposure is \$5.6 million; it may be significantly less than that, and then the DRI would, all the requirements from in transportation would be vested, and the project made more marketable.

Ms. Montgomery stated yes; so, as I understand it, if the pipeline improvements provided for the development agreement and, a) if you let the development agreement expire, you have to renegotiate your proportionate share. I guess the second point is we

could get concurrency vested and be done with it for much less. We don't have the money, but it's something for the bondholders to think about.

Mr. Ward stated yes, I think that's the reason we're going to bring Matt on board, so that we can have you all talk and see what we can come up with, because I clearly believe that nothing is going to happen in this project in the next couple of years. Whatever we can do to vest it at this point, and if it's pennies on the dollar, we'll certainly make sure that is a point that we propose to the bondholders.

Ms. Montgomery asked Lee County is doing some improvements aren't they working towards those?

Mr. Rooney stated yes, and, unfortunately, the way it's working out is there may actually be improvements done on the third phase, which is on the south side, and it would just be that gap in the middle that wouldn't be done. I think the way Charlotte County would like to do it, is they let you move south the whole way, and then have it finished by the time it gets to the Lee County stage, if that ever gets worked out. That's all dependent on grant funding, and I want to say, and I'm just spit balling this, but the number that we were short of is \$2 million, and that's assuming everything is approved. If not, there may be other sources the County comes up with.

Ms. Montgomery asked if you can't come next time, can you at least send us a letter or something to update us on where you are?

Mr. Rooney stated I'm planning on sending a letter to everyone, just because we don't have the contact with the bondholders and other people who might be able to chip in, but they're trying to drum up some interest.

Mr. Ward stated the best way is really is to work through the CDD, and either Scott or I probably have the strongest relationship with the bondholders, and then we can do our best to try to help, especially if we can put a game plan together.

Mr. Rooney stated if I need you to contact them, I'll leave a card so you guys can contact me and then we can work on that.

Mr. Ward stated thank you.

Mr. Gillis stated I think that's going to be a huge issue, and it's one that goes to the fundamental viability of the project, where there is the potential of having to spend a whole lot of money. I'm not sure what you get after you spend all that money, when you got a

project that's really not going anywhere, and when someone comes to buy this, they're probably going to make some significant changes, and go through whole substantial deviation on the DRI. I think this is going to take a whole lot of research and some real careful thought as to whether we want to spend any money on funding any kind of road improvement. I know that has significant implications on the DRI development order and the development agreement.

Ms. Montgomery stated I would hope, a) since you're an expert in that field that you would help, and b) maybe not tied to the current development parameters, but maybe to the current trips, so, yes, you can change the mix but not the external trips and you can still be vested for that number of external trips; would that be a better situation?

Mr. Gillis stated it could be, this is going to be a huge issue for you, Matt, and I think it's going to take some real strategizing on the Board's part to try to figure out what's best, because I see a potential of spending a whole lot of money and, at the end, not getting much, and basically being in the same position with a development that's just kind of stagnant right now. When the economy picks up, it may just be teetering along, and whoever comes in is going to want to make a significant change.

Mr. Ward asked what counts as a substantial deviation that would warrant an increased payment for transportation elements to the County?

Ms. Montgomery stated 380.06(19) 4b.

Mr. Ward stated I only do that with 190; you can do that with 380. I'm impressed.

Ms. Montgomery stated it's a 15 percent increase in that new external trip; it's an increase in units, and it has numbers and percentages for commercial, residential and stuff, so it's all set in the statutes. Which I think, though, if the county really needs the money and we're all going to really need the road, and I know Mark's the expert in traffic, but if there's a way to tie it to the net new external trips that we already have designated, then it seems like there should be a way to make it work for everybody. But Mark's right, we'll have to pay attention to the details, if that's something the bondholders want to do.

Mr. Ward stated yes, sir?

Mr. Rooney stated I'll chip in this one other bit, and it may be worthwhile for someone from the CDD to go to future Metropolitan Planning Organization meetings, because part of what's going on is the expansion of Burnt Store Road. New legislation takes away state

mandated concurrency, but there doesn't appear to be any intent from Charlotte County or Lee County to ever get rid of concurrency between the two. If the road is improved to a higher level of service, it's likely that the property would likely be vested to more trips than would be contemplated by even a higher commercial project.

What's going on now is, hopefully, Cape Coral is going to be approached as well, because they have been pushing for quite some time to have the additional access through Lee County to a proposed interchange or something near when they're backed up. That doesn't look like that's ever going to happen, so they're going to be looking more and more towards the access through Burnt Store Road up to Punta Gorda. It may be a situation where, yes, it's a lot more money to spend now, it may just be that much less money to spend now, because there are other governments and there's federal funding coming in that could improve it.

Otherwise, what's more likely to happen is if we see that there's going to be a gap, they'll just roll back on their funding, and we'll get to a situation which is whoever comes in as the developer will have to pay for it all themselves. There are other projects in Burnt Store, but nothing to the extent that's going to require a large input of money more than Tern Bay.

Mr. Ward stated, Matt, you got your work cut out for you.

Mr. Morris stated I do.

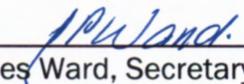
Mr. Ward asked any other questions or comments from the audience? From the Board? None was received.

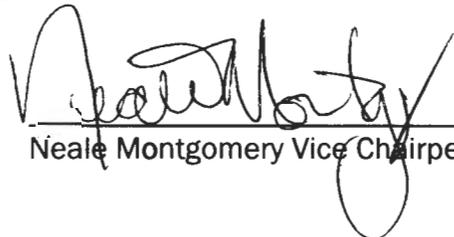
SEVENTH ORDER OF BUSINESS

Adjournment

Mr. Ward stated a motion to adjourn would be in order.

On MOTION by Ms. Montgomery and seconded by Mr. Gillis with all in favor, to adjourn the meeting at 10:50 a.m. was approved.


James Ward, Secretary


Neale Montgomery Vice Chairperson