

**MINUTES OF MEETING  
MOODY RIVER ESTATES  
COMMUNITY DEVELOPMENT DISTRICT**

A Regular Meeting of the Moody River Estates Community Development District's Board of Supervisors was held on **Thursday, April 24, 2014**, at 1:00 p.m. in the **Clubhouse at Moody River Estates, 3050 Moody River Blvd., North Fort Myers, Florida 33903**.

**Present and constituting a quorum were:**

|                |                     |
|----------------|---------------------|
| Ilse Mayer     | Chair               |
| Jeff Berry     | Assistant Secretary |
| Terry Pye      | Assistant Secretary |
| Frank Reynolds | Assistant Secretary |

**Also present were:**

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|                                      |                            |
|--------------------------------------|----------------------------|
| Cleo Crismond                        | Assistant Regional Manager |
| Chuck Bowen ( <i>via telephone</i> ) | District Counsel           |
| Wes Kayne                            | District Engineer          |
| Tony Grau ( <i>via telephone</i> )   | Grau & Associates          |
| John Teckorius                       | Resident                   |
| Leo Foley                            | Resident                   |
| Sylvia Shore                         | Resident                   |
| Tom Ward                             | Resident                   |
| Bob Soulak                           | Resident                   |
| Bob Vance                            | Resident                   |
| Other Residents                      |                            |

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order at 1:03 p.m., and noted, for the record, that Supervisors Mayer, Berry, Pye and Reynolds were present, in person. Supervisor Shea was not present.

**SECOND ORDER OF BUSINESS**

**Public Comments (*agenda items*)**

Mr. Adams asked if there were public comments on agenda items.

Mr. John Teckorius, a resident, noted that “Easements” is plural on Agenda Item 6. It was his understanding that D.R. Horton requested one easement, near the school, and asked if there is more than one. Mr. Adams confirmed that there is only one easement and apologized for the error.

Mr. Adams announced that, following the Sixth Order of Business, the Board will consider a replat of Tracts B and D.

**THIRD ORDER OF BUSINESS**

**Presentation of Audited Financial Report for Fiscal Year Ended September 30, 2013, Prepared by Grau & Associates**

This item was presented after the Sixth Order of Business.

**FOURTH ORDER OF BUSINESS**

**Consideration of Resolution 2014-5, Accepting the Audited Financial Report for the Fiscal Year Ended September 30, 2013**

This item was considered after the Sixth Order of Business.

**FIFTH ORDER OF BUSINESS**

**Discussion: Past Due Assessments on Single-Family Parcels and Multi-Family Parcel**

Mr. Adams indicated that this agenda item is the result of a resident’s question during the previous meeting. He explained that Staff was unable to obtain an outline of the single-family lots, from Lee County, for today’s meeting. Information was received for the multi-family tract, currently held by Mood Development (Mood). One of two parcels, with a strap number ending in “44”, has unpaid taxes for the past three years. The tax certificates for each of the three years were “stricken to the county” and will proceed to tax deed sales.

Mr. Adams clarified that, prior to the three years, both parcels were successfully sold at tax certificate sales; therefore, the District received revenue from that particular sale. As of today, the taxes on the parcel ending in “44” have not been paid.

Mr. Leo Foley, a resident, recalled that, at the prior meeting, Mr. Mike Geml, a resident, presented a spreadsheet reflecting the taxes on that property.

Mr. Foley distributed a spreadsheet that he received from Lee County, reflecting the unpaid taxes on that property. He noted that the right-hand column depicts the years that Mood did not pay taxes to the county and, as a result, the District's assessments were not paid. Mr. Foley clarified that Mood owes \$162,000 in unpaid taxes; therefore, Mr. Adams' prior statement that they "owe a few years" is inaccurate, as their delinquency dates back to 2007.

Mr. Adams pointed out that tax certificate sales were successful in 2007, 2008 and 2009. He clarified that the tax certificate for the parcel ending in "44" was not sold; therefore, those tax certificates were "stricken" to the county.

Mr. Foley asked when the District will receive its money and questioned whether the District has attorneys to pursue these funds. Mr. Adams advised that the District does not pursue the county for delinquent taxes. Mr. Foley explained that there is an apiary on the property; as a result, the owner pays agricultural taxes, which are "peanuts". Mr. Foley contended that District residents will be left to "hold the bag" and questioned why the District has not taken action.

Mr. Adams explained that, when assessments are on roll, the District's remedy is a tax certificate sale, followed by a tax deed sale, if the tax certificates are not sold. He indicated that the Board can authorize the removal of that tax bill from on-roll to off-roll status and proceed with foreclosure, which is a more direct remedy, with approval from the bondholders. Mr. Adams noted that the bondholders have a far greater interest in the debt service payments than the operations and maintenance (O&M) assessment.

Mr. Adams indicated that the property can be moved to off-roll status and the Board can adopt a payment schedule. The District can proceed with foreclosure if the owner does not comply with the terms of the payment schedule. Mr. Adams pointed out that costs will be incurred if the District forecloses.

Mr. Foley asserted that "this has been going on since 2007" and asked why action has not been taken. Mr. Adams advised that the District decided not to take that route. Mr. Foley questioned whether that is a Board decision and noted that Mr. Adams is not a Board Member. Mr. Adams explained that, during the recession, the county was not having much success with tax certificate sales on large parcels. There is hope that the improved economy will encourage investors to purchase tax certificates.

Mr. Adams indicated that the county will undergo another tax certificate sale in June and they will place two advertisements in May. If the tax certificates do not sell, the District will

have the opportunity to move the parcel off roll, prior to filing the lien roll as part of the Fiscal Year 2015 budget process. He reiterated that the Board can adopt a payment schedule and foreclose, if the terms are not complied with.

Mr. Adams advised that the District will own the parcel, in lieu of the outstanding assessments, subsequent to the foreclosure. The District can sell the parcel and will be obligated to pay the outstanding debt service assessments to the bondholders; in this particular market, the amount can be short of what the outstanding debt service assessment is. Mr. Adams explained that, for this reason, the contract with the bondholders stipulates that they must agree to the foreclosure process. He noted that it is not a simple process

In response to a Board Member's question, Mr. Adams advised that a motion is premature, at this time. He reiterated that the Board will deliberate during the budget process and observe the outcome of the current tax certificate sale, which will occur in approximately 90 days. ~~Mr. Adams confirmed that the Board can take further action, during the Budget Public Hearing, if the tax certificates remain unsold,~~

Mr. Bowen acknowledged that Mr. Adams explained the process well and he had nothing to add.

Mr. Berry asked Mr. Foley if the discussion clarified the calculations of the overdue assessments. Mr. Foley explained that the spreadsheet, which he obtained from the county, depicts the assessments due to the District, only; there are other taxes owed to the county.

Mr. Adams noted that Mr. Foley was not aware that the District received proceeds for the 2007, 2008 and 2009 tax certificate sales; therefore, the actual amount due to the District is approximately \$67,000, for a combination of O&M and debt service assessments. The District is not owed \$162,000, as Mr. Foley mentioned earlier.

Mr. Reynolds speculated that the Master Association is owed assessments. Mr. Adams stated that it is possible.

A resident asked if the amount that was discussed is owed to the District or for taxes. Mr. Adams stated that the amount is for assessments owed to the District. He reiterated his prior explanation of the outcome of the prior certificate sales and the amounts due to the District.

Mr. Berry asked if the Board will be in a better position to discuss the tax certificate sale at the July meeting.

Mr. Adams conveyed that the District will have the results of the tax certificate sale in July. He reiterated that the county is required to run two advertisements in May and the sale will occur in June; therefore, the Board can deliberate and determine how to proceed with the parcel at the July meeting.

Mr. Adams reminded the Board that the foreclosure process requires the bondholders' consent, as this action would accelerate the outstanding debt service assessment and, the potential that they would not receive the full amount due if the revenue from the foreclosure sale does not offset the assessments. Mr. Adams pointed out that the good news is that the District's lien is equal to other property taxes and superior to a mortgage. Any "leftover" proceeds are disseminated to the "bottomfeeders".

Mr. Berry noted that legal fees can be excessive and asked if they will be recuperated.

Mr. Adams advised that the legal fees are part of the consideration with the bondholders. ~~If they are interested, a remedial account, funded from the trust estate, can be established to~~ offset legal fees. Mr. Adams indicated that he will try to protect the District's general fund; however, the bondholders may ask the District to contribute.

In response to a question, Mr. Adams confirmed that the property owner holds title to his property subsequent to a tax certificate sale and has two years to bring the taxes current before it will be sold at a tax deed sale.

Mr. Bowen asked if anyone has applied to purchase the tax deed. Mr. Adams indicated that the information is not currently reflected on the county's website. Mr. Adams recalled that the gentleman who purchased the tax certificates called him, the prior year, and was not pleased that he was "upside down" because of the legal actions that the District had undertaken.

**SIXTH ORDER OF BUSINESS**

**Consideration of D.R. Horton Easements**

Mr. Adams advised that the Board will be considering a construction and maintenance easement agreement, in favor of D.R. Horton, for Tract C Unit 5. He clarified that the easement will allow D.R. Horton to construct a fence on the boundary line between the single-family homes and the school.

Mr. Reynolds advised that he will abstain from the vote, due to a conflict of interest. He disseminated a handout referred to as the "fencing plan". Mr. Reynolds indicated that the intent is to fence the southern property and noted that there are a few areas that have not been finalized.

Mr. Reynolds explained that the fencing plan proposes the installation of approximately 234' of chain link fencing on Skyline Road. On Page 1, he referred to the proposed planting, including large shade trees and colorful plants on the outside of the fence, between the fence and the sidewalk.

Mr. Reynolds reported that the entrance gates to the CDD south have been installed and an aluminum rail will be mounted between the columns. Mr. Reynolds explained that the entrance will be re-landscaped to match the theme and colors of the new plantings adjacent to the proposed fencing.

Mr. Reynolds referred to the fencing plan and noted that the fence will travel the distance of 1,282' from north to south, also known as the eastern side of the CDD south. On Page 3, he noted that the same planting plan is proposed "all the way down to the south".

Mr. Reynolds advised that a constraint to the fencing plan is a FPL utility easement, as well as a school board easement to the east of the proposed north/south fencing location, on District property. He indicated that, with the proposed planting of large shade trees, it might be difficult to obtain an additional easement for this area; therefore, D.R. Horton is proposing to install the fence on the District's easement line with gate access for lake maintenance to the two lakes. This will provide the District with the least intrusive access to the lakes. Mr. Reynolds pointed out that the District has drainage easements from the lots to the lakes, which are secondary. It will be beneficial to have gate access in the fence line, as well.

Mr. Reynolds advised that Mr. Bowen drafted a construction and maintenance easement agreement, between the District and D.R. Horton, for the Board's consideration. The agreement will eventually be transferred from Dr. Horton to its assignee, the Master Association. He explained that the easement is for maintenance of the fence and the landscaping, in perpetuity. The Master Association will be responsible for removing and replacing the fencing and irrigation that may hamper repairs to the drainage easement or piping.

Mr. Reynolds advised that, currently, two lakes in close proximity to the elementary school are a liability that D.R. Horton does not want to engage in.

Ms. Sylvia Shore, a resident, reported a cattle fence, accumulation of garbage and fallen signage abutting Skyline Road and asked who is responsible for maintaining the area. Ms. Shore noted that an area around the corner is very well maintained with a beautiful fence.

Mr. Reynolds informed Ms. Shore that the fence is a “cattle fence” because the land is a preserve and must stay in its existing condition; only exotics are allowed to be removed. He reported that a registered Indian mound is located on the property; therefore, everything on that land is controlled by governmental regulations. Mr. Reynolds indicated that the District can investigate viable options that are available through the permits.

Discussion ensued regarding the exact location of the fence.

Ms. Shore voiced her opinion that it would be best to remove the fence and clean up the area. Mr. Reynolds advised that he inspected the integrity of the fence and, “it is there and whether it stops anybody that’s another question”. He indicated that the District should investigate who is responsible for maintenance of the fence.

Ms. Shore asked if advising the District is sufficient, or, are there additional steps she should take. Mr. Adams confirmed that advising the District is sufficient and Staff will inspect the area after the meeting.

In response to Mr. Bowen’s inquiry, Mr. Adams confirmed that the area discussed by Ms. Shore does not pertain to the easements.

Mr. Bowen explained that the easement agreement stipulates that the grantee, either the Master Association or the developer, will be responsible for removing items and making repairs related to drainage or the fence. He noted that the intention is for the fence to be as minimally disruptive as possible.

Mr. Bowen pointed out that the District is being asked to convey property rights and this should be taken into consideration. The agreement contains a provision that the District has the opportunity to approve the transfer from the developer to the Master Association.

Mr. Adams advised that the agreement is in order and recommended for the Board’s approval, by motion.

A resident expressed his appreciation that Mr. Reynolds is aware of the liability and is installing the fence. Mr. Reynolds confirmed that the resident is referring to a section of property that will require 480’ of fencing. He advised that the developer reached out to the school board for permission to tie into their fence. In response to a question, Mr. Reynolds advised that the 1,282’ chain link fence will be a 6’ high; a 4’ high fence will be installed on Skyline Road. He noted that the 6’ high fence will be more difficult to climb.

**On MOTION by Mr. Pye and seconded by Ms. Mayer, with Mr. Pye, Ms. Mayer and Mr. Berry in favor and Mr. Reynolds abstaining, the Construction and Maintenance Grant of Easements to D.R. Horton, was approved. (Motion passed 3-0)**

▪ **Consideration: Replat of Tracts B and D**

*\*\*\*This item was an addition to the agenda.\*\*\**

Mr. Adams advised that the Board will consider two replats in Unit 4.

Mr. Reynolds explained that Tract B has changed from the original multi-family plan. D.R. Horton decided to install 15 single-family lots on Silver Thorn Loop. Mr. Reynolds indicated that the new proposal follows the original road between the multi-family and single-family roads on Silver Thorn Loop.

Mr. Reynolds summarized that the direction of the new tract will be exactly as it was originally intended, for the most part. The tract will provide access to the 15 single-family lots. He noted that, in order to fit the utilities on Tract A-1, the easements pertaining to the county, District and D.R. Horton will overlap.

Mr. Reynolds indicated that D.R. Horton granted access to the overlying ingress/egress for Tract A-2 by means of the drainage and lake maintenance easements.

Mr. Adams confirmed that District Counsel, the District Engineer and Management have reviewed the document and several revisions were recommended; minor changes are still pending. He noted that, subsequent to the Board's approval, the document will be transmitted to Lee County for their review and approval.

Mr. Bowen clarified that the "minor tweaks" are wording revisions in one of the dedications. He noted that the verbiage was approved but there was not enough time to print and transmit the final version to the Board. Mr. Bowen stated that the Board can approve the replat, subject to the changes.

Speaking as a developer, Mr. Reynolds stated that the District gained an asset by employing Hopping, Green & Sams, specifically, Mr. Bowen. Mr. Reynolds acknowledged that both Mr. Bowen and Mr. Barraco are "pretty tough reviewers when it comes to plats". He noted that the legality of the dedications was reviewed intensely; certain items will remain in perpetuity, if not caught.



Mr. Reynolds advised that the final revisions were made prior to today's meeting and stated that the document is not "in hand" but it is ready to go.

Mr. Adams confirmed that Staff has reviewed the plats and all of the District's original access and property control rights were preserved. The replat allows for some expansion for utility runs and realignment.

Ms. Mayer asked if the replat will only affect the utility runs. Referring to a map, she asked if the lake maintenance easement will be reduced from 20' to 15' and noted that certain areas reflect 20'. Mr. Reynolds clarified that it will be 20', in certain areas, and 15' in others. Ms. Mayer indicated that the map does not reflect 15', only 20' and 27'. Mr. Reynolds was uncertain where the 15' reference was made. Ms. Mayer noted that the permit documents reflect 15'. Mr. Reynolds indicated that it was always a 20' lake maintenance easement (LME) and they are preparing a variance to keep it similar to the rest of the LMEs and not a separate dedicated tract.

Mr. Reynolds indicated that he will research the 15' easement; generally, 15' easements are only allowed with special conditions. Mr. Reynolds confirmed that he did not request a 15' easement.

It was noted that South Florida Water Management District (SFWMD) approved the LME the prior week.

Mr. Reynolds indicated that the plat trumps everything. He advised that he will investigate whether there is a scrivener's error on the permit. Mr. Reynolds stated that he is certain that Lee County will not accept anything less than a 20' maintenance easement.

***\*\*\*Mr. Grau joined the meeting, telephonically.\*\*\****

Mr. Reynolds reiterated that he will review the permit and recognized that the plat will not change because of the permit. Ms. Mayer noted that Mr. Reynolds paid \$1,500 for a permit that may not be accurate. Mr. Reynolds advised that the error would have been caught during the Lee County review process.

From the District's perspective, Mr. Adams indicated that Staff navigates the lakes via ATVs and buggies and assured that 20' is far more space than necessary. Mr. Adams indicated that he has not witnessed any LMEs approved for anything less than 15'; 15' easements are approved only in special conditions. He noted that districts generally use the initial 10'.

Ms. Mayer noted that the District is located in a flood zone and expressed concern with heavy downpours.

Mr. Reynolds perceived that there may be confusion with the various easements. He acknowledged that Tract D has a 20' easement; however, 15' easements were included for access to the LMEs, separate of the 15' drainage easements. He advised that the permit documents will be reviewed again.

Mr. Bowen asked Mr. Reynolds if he was in possession of the resolution.

Mr. Adams advised that it is Resolution 2014-7.

Mr. Bowen advised that the plats are in line for approval by Lee County but it is possible that they can recommend additional amendments; therefore, the resolution will authorize the Chair to approve any final changes, requested by Lee County. He noted that final adoption of the resolution will occur when final approval is received from Lee County.

Mr. Adams advised that the resolution will consider both replats and asked Mr. Reynolds to present the replat for Tract D, prior to the Board's consideration of the resolution.

Mr. Reynolds explained that Tract D is another revision to Unit 4, from multi-family to 12 single-family lots. Changes will occur in the engineering of the utilities and everything "is pretty much established". The additional items included, as a result of comments received from District Staff, are accesses at the north of the hammerhead and the LME's on the east and west, coming off the hammerhead.

Mr. Reynolds stated that there is a 7.5' drainage easement on each side, for a total of 15' for access to the west shore of Tract D.

Mr. Reynolds indicated that new assessments will be calculated for the newly platted parcels. Mr. Adams indicated that the product type will be changed on the debt service side; the differential of the new product type and number of units, the old product type and number units and the net difference in the principal applied on that property must be addressed. If the amount is short, the developer will end up paying a true-up and, if it is over, the differential will be spread.

Mr. Pye asked how many multi-family units were planned on Tract B. Mr. Reynolds stated that he could not recall the exact number. Mr. Teckorius advised that, to the best of his knowledge, the parcel was undeveloped land and an exact number was not assigned. Mr. Adams concurred with Mr. Reynolds that 24 multi-family units were assigned to Tract D. Ms. Mayer

recalled that there were plats assigned many years ago. Mr. Bowen noted that all of the documents that he reviewed stated “future development”. Mr. Reynolds agreed and noted that the information would have been reflected on the MCP.

Discussion ensued regarding the platting for the parcel across the street.

With regard to Tract D, Mr. Adams explained that the District will not experience an impact on the debt service side; the capital assessment will not change. The District will notice an impact on the reduction to 12 units paying O&M. Fewer units will pay the assessment; therefore, each unit will pay a little extra.

Discussion ensued regarding the true-up agreement.

Mr. Bob Soulak, a resident, asked for the exact locations of Tracts B and D. Mr. Reynolds clarified that Tract B is on the northern side of Silver Thorn Loop, closer to Hancock Bridge Parkway. Tract D is the existing south road that contains a previously developed hammerhead.

Mr. Adams advised that the Board can approve “immaterial” revisions by Lee County; any major changes will be presented to the Board.

**On MOTION by Mr. Pye and seconded by Mr. Berry, with all in favor, Resolution 2014-7, approving the Replats and Dedications to Tracts B and D, in substantive form, subject to revisions by Staff and immaterial revisions by Lee County, was adopted.**

▪ **Presentation of Audited Financial Report for Fiscal Year Ended September 30, 2013, Prepared by Grau & Associates**

*\*\*\*This item previously the Third Order of Business was presented out of order.\*\*\**

Mr. Tony Grau, of Grau & Associates, presented the Audited Financial Report for the fiscal year ended September 30, 2013.

Mr. Grau explained that the Independent Auditor’s Report, located on Pages 1 and 2, reflects a clean opinion, with respect to the financial statements. He clarified that the financial statements are a fair representation according to generally accepted accounting principles (GAAP).

Mr. Grau referred to “Emphasis of Matter(s)”, on Page 2, and advised that new accounting standards were adopted, which impacted the reporting. A change was made in the

terminology, amending “Statement of Net Asset” to “Statement of Net Position”. The other change deals primarily with the write-off of bond issuance costs, where they are no longer included as assets.

Mr. Grau referred to the Management’s Discussion and Analysis, on Pages 3 through 6. He indicated that a condensed “Statement of Net Position”, also referred to as a balance sheet, on Page 5, reflects assets, liabilities and the deficit net position, probably due to previous conveyances of fixed assets.

With regard to “Changes in Net Position”, or income statement, on the bottom of Page 5, Mr. Grau noted an increase of \$124,000 for this period. He stated that the statements are full accrual and include depreciation expense on fixed assets.

Mr. Grau advised that the Balance Sheet contains long-term debt and fixed assets, as opposed to the fund financial statements, which are modified accruals.

~~Mr. Grau indicated that the Fund Financial Statement, located on Page 9, depicts the~~ District’s individual funds, on a modified accrual basis. He pointed out that there was only \$291 in “Capital projects” and expressed his belief that the account might be eliminated, at some point. The money in the “Debt Service Fund” is restricted to debt service.

Mr. Grau stated that a portion of the \$111,000, in the “General” fund balance is assigned for subsequent year expenditures. This means that, when the budget was prepared, it was projected that the District would use some of the fund balance for next year’s operations; that may or may not occur, depending on the actual results.

Mr. Grau referred to the income statement, on Page 11, and noted that “Assessments” are the District’s main source of revenue.

Mr. Grau explained that the footnotes, on Page 15, explain the “New Accounting Standards Adopted”, why they were adopted and the impact that they have on the District. Page 19 includes the details of the District’s fixed assets.

Referring to Page 21, “Note 9 – Litigation and Claims”, Mr. Grau explained that the matter was resolved and will not be included in next year’s audited financials.

Mr. Grau indicated that the “Report on Internal Control Over Financial Reporting and on Compliance” is a requirement of government auditing standards. The “Management Letter” on Page 26, is required by the Auditor General. He summarized that there are no findings for the year.

- **Consideration of Resolution 2014-5, Accepting the Audited Financial Report for the Fiscal Year Ended September 30, 2013**

*\*\*\*This item previously the Fourth Order of Business was presented out of order.\*\*\**

Mr. Adams presented Resolution 2014-5 for the Board’s consideration.

**On MOTION by Ms. Mayer and seconded by Mr. Reynolds, with all in favor, Resolution 2014-5, Accepting the Audited Financial Report for the Fiscal Year Ended September 30, 2013, was adopted.**

*\*\*\*Mr. Grau left the meeting.\*\*\**

**SEVENTH ORDER OF BUSINESS**

**Notice of General Election: November 4, 2014 [Seats 1 & 5]**

Mr. Adams explained that the District is beyond the landowner’s election process; every election going forward will be a general election.

Mr. Adams announced that Seats 1 and 5 will be up for election at the November 4, 2014 general election.

Mr. Adams noted that today’s disclosure is in compliance with the statutory requirements of a public announcement during a public meeting. Interested candidates must be qualified electors, registered in Lee County and living within the boundaries of the District. The candidate is not required to be a property owner.

- **Candidate Qualifying Period: Noon, June 16, 2014 – Noon, June 20, 2014**
  - **Candidates May Pre-Qualify Beginning June 2, 2014**

Mr. Adams stated that the formal candidate-qualifying period is noon, June 16, 2014 through noon, June 20, 2014; pre-qualifying begins June 2, 2014 at the Supervisor of Elections Office or [www.LeeElections.com](http://www.LeeElections.com).

- **Consideration of Resolution 2014-6, Placing Special District Candidates on General Election Ballot**

In response to Mr. Pye’s question, Mr. Adams advised that Seats 1 and 5 are currently held by Ms. Ilse Mayer and Ms. Kathy Shea, respectively. The three other seats will be up for general election in two years.

Mr. Pye asked if the District pays for its share of the election. Mr. Adams said that it does not. As a resident of Lee County, a candidate already pays into the general government; therefore, the candidate has already paid for the operation of the Supervisor of Elections Office.

Mr. Adams presented Resolution 2014-6 for the Board's consideration.

**On MOTION by Ms. Mayer and seconded by Mr. Reynolds, with all in favor, Resolution 2014-6, Placing Special District Candidates on General Election Ballot, was adopted.**

**EIGHTH ORDER OF BUSINESS**

**Discussion/Consideration: Coach Homes IV At Moody River Estates Condominium Association, Inc., Request to Float Two Bird Perches in Pond Bounded by Sea Haven Ct, Sea Trawler Bend and Moody Road**

Ms. Crismond reported that a resident advised her that birds rest on the fountain platforms during the day, when the fountains are turned off and indicated that another resident inquired about the possibility of installing bird perches. She advised the resident that the condominium association (CA) will be responsible for the maintenance. She instructed the resident to discuss the matter with the CA and to submit a formal request for discussion at a District Board Meeting.

Mr. Adams explained that the lakes are drainage, storm retention ponds and are not intended for recreational wildlife use, which can result in degradation of the water quality. He is not sure if the District wants to be in a position to attract wildlife to this pond but, ultimately, it is the Board's decision. If the Board decides to allow the bird perches, Mr. Adams suggested an agreement between the District and the CA, with indemnification, hold harmless and insurance verbiage, to allow the CA to install and maintain the perches.

Mr. Adams advised that Staff does not recommend approval of the installation of bird perches, as there are too many liabilities involved with this decision. He noted that the CA has the option to install hard bird perches, above the water line, on their property.

Mr. Tom Ward, a resident, advised that he is a board member of Coach Homes IV. He explained that several residents inquired about the bird perches and noted that it would be at the expense of the CA.

Mr. Reynolds asked if the District stocks the pond. Ms. Crismond indicated that the District only stocked Lake 9. Mr. Adams advised that all the lakes are interconnected.

Mr. Reynolds pointed out that bird perches will attract additional birds and deplete the fish stock at a faster rate. He stated that bird perches are inexpensive and questioned the amount of legal fees involved in preparation of the agreement. Mr. Adams advised that it will take several hours, at \$200 to \$300 per hour.

Ms. Mayer indicated that the pond adjacent to her home does not contain a fountain and the birds congregate on the shore. She does not see the advantage of bird perches.

Mr. Pye stated that he does not have a problem either way, as long as someone else pays the legal expenses.

Discussion ensued regarding the costs of installing and maintaining a fountain.

Mr. Berry pointed out that the PVC pipes require periodic maintenance.

~~Mr. Berry reiterated his prior statement and affirmed that he does not want the District to~~  
incur additional legal fees.

Mr. Reynolds suggested asking the CA to pay the District's legal costs.

Mr. Adams asked Mr. Ward to submit a letter of commitment to the District confirming that the CA is willing to incur the legal expenses. Mr. Adams advised that he will obtain an estimate of the legal fees from District Counsel.

Mr. Berry asked if further discussions will be held at the July meeting. Mr. Adams advised that it might be discussed during the May meeting.

Mr. Adams asked Mr. Ward to prepare a proposed installation and maintenance plan, in addition to the letter of commitment. Mr. Ward thanked the Board.

Mr. Adams requested a motion approving the bird perches, contingent upon the CA paying the legal fees involved.

**On MOTION by Mr. Berry and seconded by Ms. Mayer, with all in favor, Coach Homes IV At Moody River Estates Condominium Association, Inc.'s, Request to Float Two Bird Perches in Pond Bounded by Sea Haven Ct., Sea Trawler Bend and Moody Road, contingent upon Coach Homes IV At Moody River Estates Condominium Association, Inc.'s, consent to pay the Legal Fees associated with preparing the legal documents, was approved.**

**NINTH ORDER OF BUSINESS**

**Approval of Minutes**

**A. January 16, 2014 Public Hearing and Regular Meeting**

Mr. Adams presented the January 16, 2014 Public Hearing and Regular Meeting Minutes and asked for any additions, deletions or corrections.

**On MOTION by Mr. Reynolds and seconded by Ms. Mayer, with all in favor, the January 16, 2014 Public Hearing and Regular Meeting Minutes, as presented, were approved.**

**B. January 30, 2014 Audit Committee Meeting**

Mr. Adams presented the January 30, 2014 Audit Committee Meeting Minutes and asked for any additions, deletions or corrections.

**On MOTION by Ms. Mayer and seconded by Mr. Reynolds, with all in favor, the January 30, 2014 Audit Committee Meeting Minutes, as presented, were approved.**

**C. January 30, 2014 Special Meeting**

Mr. Adams presented the January 30, 2014 Special Meeting Minutes and asked for any additions, deletions or corrections.

**On MOTION by Mr. Reynolds and seconded by Ms. Mayer, with all in favor, the January 30, 2014 Special Meeting Minutes, as presented, were approved.**

**TENTH ORDER OF BUSINESS**

**Other Business**

Mr. Reynolds recalled that an eagle established its primary nest within the District and it was determined that the eagle built a second or alternate nest positioned approximately 150' to the northwest of its existing nest. The nest falls within the District's LME and he is not sure what Florida Fish and Wildlife's (FFW) determination will be.

Mr. Reynolds pointed out that the tree containing the nest should be protected and questioned whether the tree will need a separate easement.



In response to Mr. Adams' question, Mr. Reynolds confirmed that the tree is located in a LME, behind Lot 40. Mr. Adams noted that the tree is within the easement and within the property line of Lot 40. Mr. Reynolds concurred.

Mr. Reynolds advised that a new Lee County Code stipulates that the "property line stops at the lake maintenance easement". The developer requested a variance to keep the property line under the old code; however, it was determined that the county will accept the enlargement of Open Space Tract F and lay a new easement that connects from the Open Space Tract F, around this tree and protecting it, in perpetuity, along with Open Space Tract F. Mr. Reynolds explained that the county preferred the latter idea, of laying an easement over the LME, as it will protect the tree, in perpetuity, if the LME is conveyed in the future.

In response to Mr. Berry's inquiry, Mr. Reynolds clarified that the easement will capture the tree itself. At this point, that nest is considered an alternate nest and FFW might not apply the same rules, as it does to the main nest. ~~Mr. Reynolds noted that they are still reviewing this matter.~~

Mr. Reynolds indicated that, from a developer's standpoint, the development of Tract F will be held up until FFW makes a determination. From the District's point of view, Mr. Reynolds advised that there may be the need for an easement lying over the tree, within the LME.

Mr. Berry asked about the purpose of Open Space Tract F. Mr. Reynolds believed that it had something to do with the flight pattern of the eagle; therefore, the space was left open and, as part of the eagle mitigation program, had always been identified as Open Space Tract F.

Mr. Berry asked what the ramifications will be to D.R. Horton in "moving Lot 40 and shifting Tract F over to include that area". Mr. Reynolds stated that he does not know and noted that discussions were held regarding "centering Tract F a little bit better". Mr. Reynolds indicated that there are quite a few trees located within Tract F. D.R. Horton obtained a survey of all the trees within Tract F, as they may, or may not, require that every tree over 12" in diameter be kept, separate of coercive sables; sables can be replanted on site.

Mr. Reynolds stated that, as a developer, they are waiting for FFW's determination. They are currently deliberating how to best envelop this tree and whether to apply restriction zones. It might be necessary for the District to engage the District Engineer and District Counsel

to prepare the legal description and easement, if it is determined that the overlying easement is necessary.

Mr. Adams stated that the only impact to the District is the LME; the District does not have any ownership or dedication responsibilities to Open Space Tract F. In response to Mr. Reynolds question, Mr. Adams advised that Open Space Tract F is dedicated to the association.

Mr. Teckorius asked if Open Space Tract F is owned by the association. Mr. Adams clarified that “dedication responsibility” does not necessarily mean ownership. Mr. Teckorius asked “who is supposed to watch that spot?”. Mr. Adams explained that the property is owned by D.R. Horton; the association has some dedicated interests in the parcel but the District has no dedicated interests in that parcel.

Mr. Teckorius asked if the developer could build homes in Open Space Tract F, if the alternate eagle’s nest was not there. Mr. Reynolds said no.

~~From the developer’s perspective, Mr. Reynolds indicated that he does not want any~~ detrimental effects to the eagle’s primary or alternate nests. The developer always understood the risks with the eagle and the undeveloped properties surrounding the nests. He clarified that this situation was not “sprung” on D.R. Horton; they have an eagle management plan in effect. In addition to that plan, the original developer had an eagle mitigation impact with the idea that construction will only occur outside of eagle nesting season, May 15 to October 1. They have the ability to proceed with construction inside the buildings but no outdoor construction. Mr. Reynolds reported that pools cannot be constructed within a 330’ radius of the eagle’s nest.

Mr. Reynolds indicated that the alternate eagle’s nest would have been more detrimental to D.R. Horton if it was detected after construction commenced.

Mr. Soulak recalled that Silver Thorn Loop and Sailway Street have been designated as eagle preserves and outdoor construction cannot occur from May 15 to October 1. He asked whether the rules apply to the construction on the extensions.

Mr. Reynolds affirmed that everyone must abide by the rules; there is a limited window for outdoor construction. Once the “shells” of the buildings are erected, construction can continue indoors. All the window and door openings must be covered and music cannot be played. Mr. Reynolds clarified that outdoor construction includes landscaping.

Mr. Reynolds advised that there are vehicle restrictions within the 330’ radius of the eagle’s nest. He noted that boats are not allowed in the lake within the 330’ radius. Mr.

Reynolds pointed out that Silver Thorn Loop has a restriction on street lights; they must be covered. He believes that is the reason that the original developer did not install street lights. D.R. Horton is researching street light options for that area.

**ELEVENTH ORDER OF BUSINESS**

**Staff Reports**

**A. Attorney**

Mr. Bowen asked Mr. Reynolds if there will be any alterations to the Tract B plat, with respect to the eagle’s nest.

Mr. Reynolds advised that, at this point, there are no alterations to the plat. The only deliberations have been regarding enveloping the tree itself with an easement, within the current lake easement.

Mr. Bowen asked Mr. Adams if the District is performing the lake maintenance in accordance with the eagle management plan. Mr. Adams replied affirmatively.

**i. MS4 Permitting and Regulation**

This item was deferred to the next meeting.

**B. Engineer**

There being no report the next item followed.

**C. Manager**

**i. Approval of Unaudited Financial Statements as of March 31, 2014**

Mr. Adams presented the Unaudited Financial Statements as of March 31, 2014. He pointed out that assessment levy collections were at 92%, as of the end of March. During April, an additional \$5,400 was received; therefore, the year-to-date total, on Page 2, increased from \$221,915 to \$227,315.

Mr. Adams noted that the District may be 100% collected, as the difference matches the O&M assessments that were not received on the parcel that was discussed earlier.

Mr. Adams indicated that, due to the additional work involved with the surface water management permit transfer from construction phase to operational phase, “Engineering” is over budget. Mr. Adams confirmed that he received several notifications from the SFWMD accepting those transfers.

Mr. Adams advised that the lake bank erosion project, on Lake 5, was completed and the contractor was asked to return to redress two lakes, as well as Lake 5. He recalled that the initial

work was performed when the water was too high; therefore, additional work was necessary, in front of the tubes, to extend the slope down. SFWMD will inspect the lakes to deem the projects complete.

In response to Mr. Berry's question, Mr. Adams clarified that the District does not incur additional expenses on redresses.

Discussion ensued regarding the geotube process and costs.

In response to Mr. Reynolds' question, Mr. Adams advised that the geotubes have a 15-year warranty.

Mr. Berry advised that Juniper Landscaping (Juniper) tends to discard their debris and trash into the preserve. He asked if Staff can send them a "curt email". Mr. Adams indicated that he will notify the association, as Juniper is their contractor.

Mr. Reynolds reported that Lot 34 is building a new pool in their backyard and it might be encroaching on a preserve. He does not believe that it is a District preserve. Mr. Reynolds indicated that the homeowner will incur a fine. Mr. Adams noted that the property lines should have been picked up during permitting. Mr. Reynolds stated that the permit drawings reflect that the pool is 10' from the preserve; however, "it is barely an arm's length away".

Mr. Berry advised that Juniper is maintaining vegetation with the application of chemicals, in lieu of pruning. He asked whether the chemicals will seep into the District's water system.

Mr. Adams explained that it will depend on whether the chemicals are applied in compliance with a "label registered within the State of Florida" and he noted that the District does not have regulatory authority, in that aspect.

Mr. Adams reported that he received a letter from a law firm representing Coach Homes I, III and IV, as well as Carriage Homes I and II. The letter references maintenance of certain irrigation facilities that the associations claim are not maintained by Juniper. Their concern is the maintenance and repair of irrigation facilities within the common areas located in the referenced associations. The letter indicates that, per Section 5.6 of Moody River Estates Condominium Association, Inc.'s Declaration of Covenants, the District is responsible for the common areas.

Mr. Adams assumed that the letter is referring to small pieces of property on the end of the cul-de-sacs, which are assumed by the District. He will prepare a response to this letter

notifying their attorney that the District has a Facilities Maintenance Agreement with the association, where they are responsible for maintaining all of the District's facilities outside of the lakes and wetlands. The letter will be directed to the CA and their legal counsel and the Board will be copied.

**ii. NEXT MEETING: May 15, 2014 at 1:00 P.M.**

Mr. Adams reported that the next regularly scheduled meeting will be held on May 15, 2014 at 1:00 p.m., at this location. He advised that the proposed budget for Fiscal Year 2015 will be presented at the next meeting.

**TWELFTH ORDER OF BUSINESS**

**Public Comments (*non-agenda items*)**

Mr. Bob Vance, a resident, advised that he is a new owner within the District. He expressed concern regarding a \$3 million deficit on the annual audit. Mr. Adams asked if Mr. Vance was referring to an audit on the District's website. Mr. Vance explained that he received the financial in a PDF. Mr. Reynolds indicated that the bonds might be presented as a deficit on the financials. Mr. Adams explained that Mr. Vance was referring to the outstanding amount on the long term debt and they are future debt service assessment payments, which are the obligations to the outstanding bond.

Mr. Vance expressed confusion with "Total net position (deficit) \$(3,033,358)", on Page 7 of the audited financials.

Mr. Adams explained that the audit reflects the original value, the depreciation, the long-term outstanding repayment obligation and the current "net value". The District has many outstanding payments and the depreciation is bringing the value down as a negative number. Mr. Adams clarified that the situation will change as the District continues making payments, over the years.

Discussion ensued regarding depreciation.

In response to Mr. Vance's comment, Mr. Adams clarified that the physical infrastructure is depreciating; there is no depreciation on the land owned by the District.

Mr. Vance preferred to continue the discussion after the meeting. Mr. Adams advised that he would be more than happy to answer any questions.

A resident asked what the main function of the District is, how it is financed and how it ties in with the rest of the community. Mr. Adams recalled a long discussion/explanation

regarding the definition of a District and its functions, at a prior meeting. Mr. Adams advised the resident that he will direct him to the meeting minutes on the District's website.

Ms. Mayer advised that the District's website is [www.moodyrivercdd.net](http://www.moodyrivercdd.net) and the website provides a full explanation and definition of the District and its functions.

**THIRTEENTH ORDER OF BUSINESS                      Supervisors' Requests**

There being no Supervisors' Requests, the next item followed

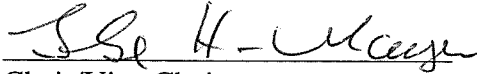
**FOURTEENTH ORDER OF BUSINESS                      Adjournment**

There being nothing further to discuss, the meeting adjourned.

**On MOTION by Mr. Reynolds and seconded by Ms. Mayer,  
with all in favor, the meeting adjourned at 2:45 p.m.**



Secretary/Assistant Secretary



Chair/Vice Chair