

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

A Public Hearing and Regular Meeting of the Moody River Estates Community Development District's Board of Supervisors was held on **Thursday, August 21, 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:**

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Chuck Bowen	District Counsel
Wes Kayne	District Engineer
Charlie Huether	Mood Development Corporation
John Teckorius	Resident
Residents	

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order at 1:02 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*)**

There being no public comments on agenda items, the next item followed.

**THIRD ORDER OF BUSINESS**

**Acceptance of Resignation of Kathy Shea**

Mr. Adams presented Supervisor Shea’s resignation letter dated August 13, 2014.

**On MOTION by Mr. Pye and seconded by Ms. Mayer, with all in favor, the resignation of Ms. Kathy Shea, dated August 13, 2014, was accepted.**

**A. Discussion/Consideration of Appointment to Fill Unexpired Term of Office of SEAT 5; Term Expires November, 2014**

Mr. Adams advised that Ms. Shea’s term of office expires in November, 2014 and the Board has the opportunity to appoint someone for the remainder of the term. He explained that Seat 5 was up for General Election but no one qualified; therefore, it is currently vacant.

There being no nominations, the item was deferred.

- **Administration of Oath of Office (*the following to be provided in separate package*)**
  - ✓ **Guide to Sunshine Amendment and Code of Ethics for Public Officers and Employees**
  - ✓ **Membership, Obligations and Responsibilities**
  - ✓ **Financial Disclosure Forms**
    - **Form 1: Statement of Financial Interests**
    - **Form 1X: Amendment to Form 1, Statement of Financial Interests**
    - **Form 1F: Final Statement of Financial Interests**
  - ✓ **Form 8B Memorandum of Voting Conflict**

This item was deferred.

- **Consideration of Resolution 2014-\_\_\_, Electing Officers of the District**

This item was deferred.

**FOURTH ORDER OF BUSINESS**

**Public Hearing to Hear Comments and Objections on Adoption of Fiscal Year 2014/2015 Budget**

**A. Affidavit of Publication**

Mr. Adams presented the affidavit of publication for today’s public hearing and regular meeting.

**B. Consideration of Resolution 2014-8, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2014, and Ending September 30, 2015**

Mr. Adams presented Resolution 2014-8 for the Board's consideration.

Mr. Adams distributed a revised budget and called attention to the highlighted revised line items. He advised that the adjustments are immaterial, with regard to the residential units or the non east parcel units. The revisions to the budget were the result of discussions with the owner of the east parcel who raised a concern over the level of the assessment increase, year over year, from Fiscal Year 2014 to Fiscal Year 2015.

Mr. Adams explained that the Fiscal Year 2014 assessment was approximately \$116 per unit, for the east parcel. The east parcel assessment level was increased to \$142, as reflected in the proposed Fiscal Year 2015 budget located in the agenda but was revised to \$131 per unit, subsequent to the conversations with the parcel owner.

Mr. Adams recalled that, prior to the settlement agreement with Mood Development Corporation (Mood Development), the east parcel units were assessed "strictly" for all professional and administrative fees. Subsequent to the settlement agreement, the same held true, with the exceptions that the District would exempt them from paying legal litigation and engineering fees. Mr. Adams clarified that the litigation fees became obsolete, once the case was settled. Exemption from engineering fees was justified, as the east parcel is not connected to the District's stormwater systems; therefore, any work performed by the District Engineer, related to stormwater, did not benefit the east parcel. Mr. Adams noted that Mood Development must install their own stormwater system if they develop the east parcel. Mr. Adams indicated that these terms were included in the settlement agreement and previously approved by the Board and court.

Mr. Adams advised that the east parcel assessments will increase, year over year, with the adjustments. On Page 2 of the revised proposed Fiscal Year 2015 budget, he noted that the District utilized \$22,710 of fund balance to reduce assessments in Fiscal Year 2014, maintaining the same level, year over year. Although the reduction was focused on the non Mood Development units, they benefited from a reduced assessment of \$116.24. The reduction in the "total water management" expenditures from \$145,000 in Fiscal Year 2014 ,to \$124,000, in Fiscal Year 2015, reduced expenses for non Mood Development units even further, providing

less supplemental revenue benefit to the Mood Development parcel units and triggering an assessment increase.

Mr. Adams noted that the single-family, per-unit assessment is slightly higher than the rate proposed in the budget. The proposed budget, in the agenda, reflected that \$4,000 of fund balance would be utilized to maintain the same assessment levels and the revised proposed budget reflects that the amount will include an additional \$750, for a total use of fund balance of \$4,750.

**On MOTION by Ms. Mayer and seconded by Mr. Berry, with all in favor, the Public Hearing was opened.**

Mr. John Teckorius, a resident, recalled Mr. Adams' prior statement regarding the lack of a stormwater management system in the east parcel. He indicated that all of the lakes in Moody Central drain out of the last lake, cross the road through the east parcel and spill into the outfall.

Mr. Adams stated that the process benefits residents of the central parcel, not the east parcel. He reiterated that the east parcel must develop its own stormwater retention system; the parcel owner may decide to tie into the District's outfall or be forced by the South Florida Water Management District (SFWMD) to tie into it, rather than having an additional outfall. At this time, the east parcel does not benefit from the District's stormwater system.

Mr. Reynolds asked if the proposal for the bilateral movement for the District to join the county was included in the current plans or if the situation would be reassessed. Mr. Kayne did not have that information, at this time. Mr. Reynolds believed that they may have been covered in the original permit. Mr. Adams indicated that it only applies to the MS4 stormwater system already in existence; in this particular case, if the system is not established, it does not fall under the National Pollutant Discharge Elimination System (NPDES). Mr. Adams clarified that a construction NPDES may require a different application.

**On MOTION by Ms. Mayer and seconded by Mr. Reynolds, with all in favor, the Public Hearing was closed.**

**On MOTION by Ms. Mayer and seconded by Mr. Reynolds, with all in favor, Resolution 2014-8, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2014, and Ending September 30, 2015, was adopted.**

**FIFTH ORDER OF BUSINESS**

**Consideration of Resolution 2014-9, Making a Determination of Benefit; Imposing Special Assessments; Providing for the Collection and Enforcement of Special Assessments, Including But Not Limited to Penalties and Interest Thereon; Certifying an Assessment Roll; Providing for Amendments to the Assessment Roll**

Mr. Adams presented Resolution 2014-9 for the Board’s consideration. He explained that this resolution is commonly known as the assessment levying resolution, which makes certain findings with regard to benefit and imposes a special assessment in an amount consistent with the adopted budget. The resolution directs Staff to transmit the final lien roll to the tax collector’s office and allows for direct billing of the properties on a specific schedule.

**On MOTION by Mr. Pye and seconded by Mr. Berry, with all in favor, Resolution 2014-9, Making a Determination of Benefit; Imposing Special Assessments; Providing for the Collection and Enforcement of Special Assessments, Including But Not Limited to Penalties and Interest Thereon; Certifying an Assessment Roll; Providing for Amendments to the Assessment Roll, was adopted.**

**SIXTH ORDER OF BUSINESS**

**Consideration of Resolution 2014-10, Declaring a Vacancy in Seat 5 of the Board of Supervisors Pursuant to Section 190.006(3)(B), Florida Statutes**

Mr. Adams presented Resolution 2014-10 for the Board’s consideration. He explained that the statute provides that it is the Board’s responsibility to fill the vacancy within 90 days of the seat becoming vacant.

**On MOTION by Ms. Mayer and seconded by Mr. Berry, with all in favor, Resolution 2014-10, Declaring a Vacancy in Seat 5 of the Board of Supervisors Pursuant to Section 190.006(3)(B), Florida Statutes, was adopted.**

**SEVENTH ORDER OF BUSINESS**

**Discussion/Consideration: LakeMasters Aquatic Weed Control, Inc. Work Order for Debris/Trash Removal**

Mr. Adams advised that LakeMasters Aquatic Weed Control, Inc., (LakeMasters) was asked to remove debris/trash left behind by contractors. He indicated that the debris can enter the lakes and wetlands from adjacent job sites; therefore, it must be cleaned up. This exercise is included in the semiannual wetland maintenance events; however, the cost was \$500 for an unscheduled cleanup. Staff will ask D.R. Horton to “police” their contractors so that the District is not faced with this expense, in the future.

**EIGHTH ORDER OF BUSINESS**

**Approval of June 5, 2014 Special Meeting Minutes**

Mr. Adams presented the June 5, 2014 Special Meeting Minutes and asked for any additions, deletions or corrections.

**On MOTION by Mr. Reynolds and seconded by Mr. Berry, with all in favor, the June 5, 2014 Special Meeting Minutes, as presented, were approved.**

**NINTH ORDER OF BUSINESS**

**Other Business**

There being no other business, the next item followed.

**TENTH ORDER OF BUSINESS**

**Staff Reports**

**A. Attorney**

There being no report, the next item followed.

**B. Engineer**

Mr. Kayne recalled the MS4 permitting discussion at the last meeting. He indicated that the state and Lee County approved the District’s participation as a co-permittee and Staff can now consider working on the applications.

Mr. Adams requested clarification regarding the activities that will occur as part of this application. Mr. Kayne indicated that the new application will be a report of the current NPDES system and outline different areas of the NPDES structures, which will facilitate the approval of the application.

Mr. Adams recalled that the MS4 permitting was discussed during the preliminary budget deliberations. At that time, Mr. Barraco presented an estimate of the costs associated with this project, including an initial expenditure of \$2,500. Mr. Adams indicated that the “Engineering” expenditure was increased from \$5,000, in the prior year, to \$10,000, to address this specific item.

**On MOTION by Ms. Mayer and seconded by Mr. Berry, with all in favor, the Barraco & Associates proposal to prepare and submit the application for the District’s participation, as a co-permittee with Lee County, in the MS4 NPDES program, in the amount of \$2,500, was approved.**

**C. Manager**

**i. Approval of Unaudited Financial Statements as of June 30, 2014**

Mr. Adams presented the Unaudited Financial Statements as of June 30, 2014. On Page 2, he noted that “Revenues” were at 101% and “Expenditures” were at 76%.

With regard to the “Debt Service Fund”, Mr. Adams noted that “Principal” and “Interest” payments were made. He pointed out that a \$291 balance remained in the “Capital outlay” fund; the account will be closed during the transfer of the operating permit for the stormwater system.

**ii. Consideration of Fiscal Year 2015 Proposed Meeting Schedule**

Mr. Adams presented the Fiscal Year 2015 Proposed Meeting Schedule for the Board’s consideration. He noted that meetings will be held the third Thursday of October, January, March, May, June and August at 1:00 p.m., at this location.

**On MOTION by Mr. Pye and seconded by Mr. Berry, with all in favor, the Fiscal Year 2015 Proposed Meeting Schedule, as presented, and directing Staff to advertise, accordingly, were approved.**

**ELEVENTH ORDER OF BUSINESS****Public Comments (*non-agenda items*)**

Mr. Charlie Huether, of Mood Development, indicated that he would like to discuss the attorney fees issue and the CDD, as it relates to the outfall. With regard to litigation, Mr. Huether indicated that he considers Mood Development and the District non adversarial parties, working together since the settlement agreement. Mr. Huether advised that Mood Development accepts the court's findings, the working relationship with the CDD and the settlement. He expressed hope that everyone can continue to work together.

Mr. Huether stated that they were forced to read the meeting minutes that were available online, subsequent to receiving the demand for legal fees, and his concern was that adversities still exist. Respectfully, he questioned the Boards diligence in addressing some of those concerns dating back to October, 2013. He noted that the minutes reflected questions and answers regarding how the attorney's fees were to be applied, including an extensive explanation from District Counsel advising that the multi-family units were not going to be pursued, for financial concerns.

Mr. Huether indicated that, prior to signing the settlement agreement, Mood Development was forthright with the attorneys to try and salvage whatever they could, which is what the settlement agreement did for them. He noted that Mood Development agreed on "some numbers" and to pay some fees. Mr. Huether indicated that they prepaid all of the assessments on the single-family homes, although he did not believe that the settlement agreement mandated that they pay all of it but they did. He clarified that all of the assessments were paid approximately two to three days after the settlement agreement was executed and the entire debt was paid the following year.

Mr. Huether affirmed that, as far as Mood Development is concerned, they should only be liable for the single-family section, as it is the only representation that they have an interest in. He confirmed that they are current on their assessments and would like to work with the District, in good faith, to keep it that way.



With regard to the outfall, Mr. Huether explained that a pipe was installed that outfalls through the Moody River Estates single-family property; the pipe follows the roadway on the edge of the property. He pointed out that the boat ramp, currently under construction, as part of the settlement agreement, is not on District property. Mr. Huether indicated that they reached out to Meritage Homes and the HOA and offered to provide them with whatever easement they needed, free of charge.

Mr. Huether advised that a permit with SFWMD is pending, which will allow the pipe to remain where it is now, with the intention that Meritage Homes will reroute that pipe to the boat ramp, in 2015. He indicated that the court deemed the boat ramp as the District's perpetual easement. Mr. Huether noted that this is a potential adversarial situation and expressed hope that it could be resolved amicably, even if they have to "chip in some money". He expressed a preference to resolve this matter via an agreement or to install a junction box and avoid any type of litigation.

Mr. Huether asked that the Board invite him to future Board meetings to respond to any questions or concerns from residents or Board Members. He expressed regret for not attending prior meetings, as that may have avoided misunderstandings and the \$126,000 demand for the District's attorney's fees. Mr. Huether recalled the October 31, 2012 meeting where District Counsel, Mr. Mike Eckert, discussed Mood Development's intentions with the multi-family circle. Mr. Eckert advised the Board that the District would not receive reimbursement for attorney's fees, unless the court ordered Mood Development to pay. On November 21, 2012, two weeks after the settlement agreement was recorded, the court denied the District's request for attorney's fees. He noted that, one week after that decision, Mood Development lost the appeal.

Mr. Huether questioned the reason for the demand for attorney's fees with Mr. Eckert's detailed explanation on October 31, 2012, advising that the District was not entitled to attorney's fees. He had copies of the meeting minutes if the Board wished to review them.

Mr. Huether referred to Pages 12 and 13, of the May 16, 2013 minutes, and quoted "Mr. Geml stated that the settlement agreement required Mood Development Corporation to reimburse the CDD \$150,000 for legal fees and court costs... Mr. Eckert indicated that he will review the agreement and asked Mr. Geml to contact him." He noted that this discussion was exactly one year prior to Mood Development receiving the demand letter.

Mr. Huether pointed out that a similar discussion was recorded in the April 24, 2014 meeting minutes. A resident expressed his concern about money owed to the District. Mr. Huether questioned why the resident was not informed that Mr. Eckert reviewed the settlement agreement subsequent to Mr. Geml's concern. Mr. Huether surmised that Mr. Eckert's opinion was documented.

Mr. Huether stated that, if the Board believed that the District was owed \$126,000 in May 2013, it was their fiduciary duty to pursue the funds. He referred to the June, 2014 meeting minutes and noted Mr. Adams' statement that "the District is to receive approximately \$126,000 in reimbursed legal fees".

Mr. Huether opined that the minutes reflect "how can we nail Mood". He noted that many answers to the questions, in the minutes, are "inaccurate", "upside down" and "erroneous".

Mr. Adams clarified that there was no follow-up report to the Board, with regard to Mr. Eckert's response to Mr. Geml. He indicated that he continued to "let the issue sit", as he wanted the year-end 2013 audit completed and any accruals and journal entry adjustments finalized. Mr. Adams stated that the auditor agreed that the settlement allowed for the District's reimbursement of attorney's fees. He indicated that Mr. Eckert is on sabbatical and Mr. Huether's emails and comments clarified any misunderstandings with regard to the settlement agreement.

Mr. Adams acknowledged that rescission did not occur; therefore, the District is not entitled to attorney's fees. As far as he is concerned, this is a dead issue; moving forward, residents who inquire about the attorney's fees will be advised that the District is not entitled to those fees. Mr. Adams confirmed that the note in the audit regarding the attorney's fees owed to the District will be removed.

Mr. Adams stated that, all he can do, at this point, is express his apologies to Mr. Huether.

Mr. Huether reiterated his previous points as to why the fees were not owed to the District.

In response to Mr. Bowen's comment, Mr. Adams indicated that the funds were not relied upon. If and when the funds were received, the District would have used the money to open a designated reserve, use a portion to reduce assessments or remain in fund balance.

Ms. Mayer thanked Mr. Huether for attending today’s meeting. She noted that this discussion was been very helpful.

Mr. Berry thanked Mr. Huether for attending today’s meeting and encouraged him to attend as many meetings as possible. He noted that Mr. Huether represents many units in the CDD and his opinion will assist the Board in making clearer decisions.

With regard to Mr. Huether’s prior comment regarding the outfall, Mr. Kayne did not believe that the HOA is a co-permittee. He confirmed that the correct entity is the CDD and the outfall structure is owned by the CDD. Mr. Kayne stated that the District has authority to “push” Meritage to go in for a “minor” on this development order. Discussion ensued regarding a possible location for the junction box.

Mr. Kayne indicated that Mr. Huether can tie in to the junction box. Mr. Huether stated that it is not necessary, at this time, as on-site retention might be installed.

Mr. Kayne and Mr. Huether reviewed Mood Development’s site plans.

Mr. Adams indicated that Mr. Kayne will research the permit situation and provide a full report and recommendation at the October meeting.

A resident thanked Mr. Huether for his comments. In response to the resident’s question, Mr. Huether clarified the parties mentioned in the settlement agreement.

**TWELFTH ORDER OF BUSINESS**

**Supervisors’ Requests**

There being no Supervisors’ requests, the next item followed

**THIRTEENTH ORDER OF BUSINESS**

**Adjournment**

There being nothing further to discuss, the meeting adjourned.

**On MOTION by Mr. Pye and seconded by Mr. Reynolds, with all in favor, the meeting adjourned at 2:15 p.m.**

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

  
Secretary/Assistant Secretary

  
Chair/Vice Chair