

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

The Public Hearing and Regular Meeting of the Moody River Estates Community Development District's Board of Supervisors was held on **Thursday, August 20, 2009** at **1:00 p.m.**, at the **Candlewood Suites, 3626 Colonial Court, Fort Myers, Florida 33913.**

Present and constituting a quorum were:

Ilse Mayer	Chairperson
Kathy Shea	Vice Chairperson
Matt Harrell (via telephone)	Assistant Secretary
Terry Pye	Assistant Secretary
Jeff Berry	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Mike Eckert	District Counsel
Michael Szymonowicz (via telephone)	WHHA
Mark Ebelini	Mood Development Corporation
Heath Gelman	Resident
Art Haran	Resident
Kevin Donnelly	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 1:12 p.m., and called the roll.

SECOND ORDER OF BUSINESS

Affidavit of Publication for August 20, 2009 Public Hearing and Regular Meeting

Mr. Adams presented the Affidavit of Publication for the Public Hearing and Regular Meeting, as properly advertised.

THIRD ORDER OF BUSINESS

Ratification of Resolution 2009-2, Approving the District's Proposed Budget for Fiscal Year 2010 and Setting a Public Hearing; Change in Meeting Location

Mr. Adams explained that the resolution originally setting the Budget Public Hearing listed the address of Heidt and Associates as the meeting location. Subsequent to adoption of that resolution, Heidt and Associates resigned as District Engineer. Since we were noticed between meetings, Staff found a new location to today's meeting and properly advertised this new location as the Public Hearing and Regular Meeting place in the mailed and published notices. He stated the resolution presented by District Counsel ratifies the District Manager's actions in changing today's meeting location, due to circumstance beyond District's control.

Mr. Eckert indicated Resolution 2009-2 is the resolution that actually set the Public Hearing location for the office of Heidt and Associates. He advised he brought a resolution which ratifies the District Manager's actions in noticing it at the correct location. He stated what is in the Agenda package is what was originally approved.

Mr. Adams reiterated it was properly advertised and properly noticed for this location.

On MOTION by Mr. Pye and seconded by Ms. Shea, with all in favor of adopting Resolution 2009-2, Amending Resolution 2009-02 to Reset the Location of the Public Hearing on the Proposed Budget for Fiscal Year 2009-2010, as Provided by District Counsel.

FOURTH ORDER OF BUSINESS

Public Hearing to Consider Resolution 2009-3, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2009, and Ending September 30, 2010

Mr. Adams stated the Proposed Budget for the Public Hearing is included in the Agenda package. Mr. Szymonowicz was available, via telephone, for any questions or concerns regarding the proposed/revised special assessments.

On MOTION by Ms. Mayer and seconded by Ms. Shea, with all in favor of Opening the Public Hearings Relating to the Annual Appropriations, Adopting the Fiscal Year 2010 Budget.

Mr. Adams reviewed the Proposed Budget; keeping Legal fees and Management fees the same, with a reduction in the Contingency line item. He noted the plants around the lakes are thriving and they have not needed to be supplemented. The total assessment for the operating side is a reduction of \$6,000, which equates to a reduction of per unit assessments to \$293.18. The Debt Service is based upon product type. With regard to the Debt Service assessments, he stated that letters explaining the required adjustments were mailed to all property owners.

Mr. Szymonowicz discussed the adjustment in the Debt Service portion of the Budget; due to Fiscal Year 2007 and Fiscal Year 2008 assessments being under-assessed, resulting in a one (1) time increase in assessments; the second adjustment is due to the revised supplemental methodology for the east and west portion of the District. They will share the payment of the annual Debt Service and the District Engineer determined that, even without improvements on-site, the owners are receiving benefits. He stated some homeowners will see a decreased assessment and others will see an increased assessment. Starting Fiscal Year 2011, all property owners will be paying lower assessments than the Fiscal Year 2010 assessments.

A resident questioned the difference in assessment rates. Mr. Eckert stated the difference in assessments is tied to the payment history of the property. He discussed the process of the land going from a single, unplatted lot, with one (1) tax identification number to multiple, platted lots, with different tax identification numbers. In previous years the owner, Colonial Homes, was under-billed by \$25,000 and paid that sum to the District; Meritage was under-billed by about \$49,000 on property they owned between 2006 and 2009. Meritage has not responded, as far as their willingness to pay off the debt, rather than passing the bill on to the current homeowners. He explained the previous assessments were lower than what should have been assessed and the one (1) time assessment makes up the difference in assessments. Mr. Eckert explained Moody East is included in the District, which consists of two (2) parcels. The original plan was to issue two (2) series of bonds to pay for infrastructure; one (1) series was for the Moody East parcel and the other series was for the remainder of the Moody parcels. The Moody East parcels were not purchased by Meritage Homes and the owner, Mood Development Corporation (Mood), raised objection to the District's allocation of benefits to Mood; thus, the second bond series was not completed and the District was not granted easements or contractual rights to the land. At such time, the Engineer determined the benefit received from the infrastructure related to the first bond issue; the Engineer determined there was approximately

\$200,000 worth of benefit that Moody East received. The Board adopted a Supplemental Methodology Report to modify the certified amount for collection. He stated the principle balance due from the Moody East parcels is currently approximately \$165,000.

Mr. Szymonowicz stated the last day to certify the assessment roll is September 15, 2009; he requested that all pay-offs be received by September 15, 2009.

Mr. Heath Gelman questioned the sprinkler system. Mr. Adams stated that is a Homeowner's Association item. The CDD is responsible for lakes, preserve maintenance and fountain maintenance.

Mr. Art Haran, 12871 Seaside Key Court, questioned whether the CDD expires. Mr. Eckert explained that the CDD exists until the Bonds are completely paid off, which is approximately 30 years from the issuance of the Bonds, and the District does not have any maintenance responsibility. Moody River CDD turned over the water and sewer system to Lee County; however, the District is responsible for maintaining the local stormwater management system. He stated the CDD can give such responsibility to another governing body. The homeowner questioned who owned empty lots. Mr. Eckert referred the resident to the County's website to find the property owners.

Kevin Donnelly, 13007 Moody River Parkway, questioned the relationship of the District to the Moody East parcels. Mr. Eckert stated two (2) parcels are part of the District and they do not pay an assessment for maintenance, but they pay a debt assessment and a portion of the administrative costs.

Mark Ebelini, an attorney representing Mood Development Corporation, stated the following: *"Good afternoon. My name is Mark Ebelini. Uh, I represent uh, Mood Development Corporation and Mood Development Corporation is the owner of property on the East side of uh, of Moody Road and a slight correction, there's – there's two (2) tax parcel numbers, but not all of the uh, one of the tax parcel numbers actually in the District is, so a portion of the two (2) tax parcel numbers and a portion of the overall property that Mood owns east of - of Moody Road.*

Uh, as we asserted previously, at previous Board meetings, I don't think that uh, the present uh, Commissioners are - were – were there at the time – maybe one (1) or two (2), uh, we do not agree that we are properly a part of the District. Uh, we don't believe that the District uh, was uh, was properly included our property and, in fact, uh, uh, we don't think the proper

disclosure was made when the Bonds were issued; that Meritage did not own the property that Mood presently owns, that it was uh, it was titled in the name of Mood Development Corporation and uh, Mood never knew that it's property was subject to a District; in fact, was given representations to the contrary. Uh, important to – to point that out.

While uh, the District has expressed disagreement with our position about whether Mood's property is properly a part of this District, uh, we recognize that it has revised the Methodology in recognition of the simple fact that the infrastructure that was supposed to go on the East side never was constructed. So now, what we have seen is uh, an attempt to uh, find a – a method of assessing Mood's property based on some offsite improvements, which uh, you know, are opined to have created some benefit to – to Mood Development Corporation and uh, you know, we – we've heard the same thing.

There is a lift station that's within the uh, uh, I believe it's a central portion of Moody River Estates uh, that the District Engineer, in this revised Methodology, states uh, quoted, 'to accommodate a portion of the future anticipated needs of the East section.' Well, the statement is inaccurate because uh, Mood's property, uh, as I said, has been assessed uh, and has been assessed on the basis of 204 uh, multi-family units. Well, the property is actually approved for up to 200 multi-family units and that is the approval that the County has given; we have environmental approvals for uh, a – a Marina, as well; a private Marina within that property, but the lift station has not been designed to accommodate uh, that development. Uh, it simply is not. Hydraulic calculations submitted to the County, by the District Engineer, does not contain the capacity to serve Mood's property and so the lift station is not going to be adequate, so, you know, you receive a benefit, but you receive a benefit for a lift station that may have to be either replaced or modified.

Now, another thing to point out is that there is uh, as I said, the lift station and a sewer line in Moody Central, but there's also a sewer line that was already existing to serve this area that was on Hancock Ridge Parkway. There is a County owned, uh, station there and uh, we could connect to that. Uh, so it was there before Moody River Estates was developed. Another thing to – to point out is that the lift station and – and sewer line is property of Lee County; Lee County Utilities. They own it. The District doesn't own it. The District doesn't operate it. You know, you might go by there, you know, when you are walking around or whatever, and you will see a – a little electric meter that – the District does not pay that electric bill. The electric bill is

paid by Lee County. The area is the responsibility and maintenance of Lee County and so uh, there is no property owned by the District that Mood benefits from, if you even assume that there's some benefit from that facility which, as I said, is not the only line available for Mood's property and, in fact, does not have the capacity to serve the permitted uses on – on Mood's property.

Uh, further, uh, uh, it's interesting that the uh, special assessment uh, has been stated in this Methodology Report of uh, \$204,000 and, you know, Mr. Eckert did clarify, I guess it was – you said it was \$245,000 as financed, you know, when you add the finance fees. Well, to date, the District has already assessed Mood's property for uh, \$212,555, assessed on the tax bill, so we wouldn't expect that we would be paying a heck of a lot more; not for 30 years. Uh, if, in fact, there is even a valid inclusion of this property in the District and assuming there is any benefit as a result of that - of that lift station. And uh, I understand and I appreciate Mr. Eckert's uh, clarification that we are not paying for operation of something that the District doesn't operate, but still, we object to enforce the administration; no offense to the parties here who are doing their job for uh, properties which simply are not the responsibility of Mood Development Corporation. You - you - you're administering the facilities that were built and that are a connection with the residential development, which has all taken place on the West side of Moody Road. Uh, so uh, basically, our point is that we're not properly included in this District and uh, no infrastructure that was originally to benefit Mood Development properties, specifically benefit Mood Development property, was ever constructed and there has just been an attempt now to say, 'Well, there's something there you can use so we're gonna assess you for that.' We don't think that's proper; we don't think it's fair, and we've asked uh, in the past for uh, uh, the District uh, Attorney and uh, of course, subject to, of course, the Board of Commissioner's approval, to remove Mood from the District, uh, and uh, that was what we think is would be the fair outcome, and of course, we would want the rescission of the presently assessed amounts that have accrued, which I said was about \$212,000; a little excess of that.

Uh, advisedly, we acknowledge that this is not a – a situation, a Mood situation, that was created by this Board. Uh, you weren't there. Uh, this was- this was a situation, frankly, which was, uh, uh, created by the developers, uh, Colonial and Meritage and they knew about it and didn't disclose to – to Mood and uh, it's, as I said, the situation is in response to uh, or the result of uh, failure of those parties to live up to their contractual agreements and representations and

uh, but we're here on behalf of Mood now, with the situation the way it is, asking that uh, uh, again, the uh, Mood Development property be removed from the District and we oppose any future assessments and that really reflects – we go back to this uh, uh, present uh, uh, Assessment Methodology; we just don't think that Mood's property should be in here, uh, being the last line, indicated on the uh, page 7 of the uh, Fiscal Proposed Budget of uh, multi-family East, and that's the property uh, that identifies Mood's property. Thank you."

Mr. Eckert asked, *"What is – what is the basis upon which you contend that the property that's contained in Moody East is not a part – is not validly a part of the District?"*

Mr. Ebelini responded, *"Well, you know, you, of course, have had the benefit of – of being deposed in the – in a companion lawsuit."*

Mr. Eckert stated, *"The benefit of being deposed. I have never heard that before."*

Mr. Ebelini stated, *"Well, in that you had – you were exposed, if you will, to some of the issues regarding the legal description and – and various other disclosures and statements signed by the Chairman of the Board of the District, who happened to be first the employee of Colonial and then, uh, Meritage and without going through the particulars of that, because it may have to be resulted uh, and decided by a Court, in future litigation. There are various statements in there that are patently false and there is a person with full knowledge and, you know, basically, you – your assessment – you know, the big bond book, which most of the members are probably familiar with; there are a lot of things in there that are inaccurate, as a result of the failure to disclose that Mood and uh, that uh, Mood actually owned a parcel in that uh, uh, in this proposed development area."*

Mr. Eckert asked, *"Are, are – do you contend that Mood owned the parcel at the time the District was created?"*

Mr. Ebelini responded, *"Uh, we're saying that at the time the obligations – that the District uh, uh, uh, imposed upon the properties, uh, Mood's interest was there and well known, and uh, you know, as I said, we will have to sort this out through litigation, if we have to, but we come here with the uh, intention, number one, of informing you that, you know, that's the tack we will take, but the other thing is to state that, even if you have a Methodology attempting to assess Mood for facilities that's not on Mood's property, based on a apparent 'you might need it some day' uh, basis, we don't even think that's accurate because we don't think that the method's*

proper, based on the County's own disclosure to us as to what the capacity of those facilities are and that's about all I really want to, you know..."

Mr. Eckert stated, "It's interesting because I met with your clients and a lawyer from your office and – and your clients said, 'We may receive some benefit, but we don't receive the full amount that you're getting and so I dispute the benefit allocation', and now you're coming in and saying, 'We get zero benefit', so that acknowledgement by your client, quite frankly, it – it makes the whole statement, as far as that we get zero benefit, which is what I hear you coming and saying today, is that correct – zero benefit from anything the District has done."

Mr. Ebelini stated, "Well, and we are not properly part of the District, so any perceived benefit."

Mr. Eckert stated, "Well, I - you haven't provided me any new information. I have looked at who owned the property at the time the District was established and who provided the consent; it was not your client. If you had a contractual arrangement with other people at that time that it would or would not be within the District, that's not this Board's issue to resolve."

Mr. Ebelini stated, "Look what Mr., you know, you can go ahead and go back and look at what Mr. Persichilli signed on behalf of uh, his employers and uh, you know, evaluate those statements with what you know now about uh, Mood's ownership of the property and – and - and I think you n- you may need to make the evaluation that way."

Mr. Eckert stated, "Yeah. If..."

Mr. Ebelini stated, "One other statement."

Mr. Eckert stated, "Sure. Go ahead."

Mr. Ebelini stated, "I did not make a statement. I was not privy to the conversations. Our client has maintained that it was not – and you have, probably have access to information that we have provided. Our client's position has always been that we are not a proper part of this District; uh, George Knott and - and I appeared at the office of Heidt Engineering, probably about two (2) years ago, and notified uh, the District of uh, Mood's position and Mood's position hasn't changed. Uh, there was a meeting, which may have been in the realm of attempt to resolve this matter, and uh, but \$204,000 of assess- assessment and, of course, presently, \$212,000 already uh, billed against the property is not the resolution that is going to uh, you know, resolve uh, Mood's position."

Mr. Eckert stated, “And um, I- I’ll just tell the Board that I do not uh, based on w- all the documents I reviewed and, you know, my historical knowledge, I do not agree with many of the statements that uh, Mr. Ebelini has made here – here today. I have seen no information that would provide me to um, be concerned that the owner of the property, at the time the District was created, did not consent to the establishment of the District. If there is any evidence that somebody wants to bring forward to me, I would be happy to look at that, but that’s the key issue on whether or not the District is properly included within the District. Um, if there are contractual arrangements between developers, land bankers, people like that, where the District is not a party to those contractual arrangements and somebody has breached those agreements, that’s not the responsibility of this Board to step in and do anything about, at this point in time. Um, I think what you’ve heard is a threat that uh, at least the land banker is going to go ahead and – and sue the District, at some point in time. We’ve done everything we can, in good faith, to make sure that our assessments are fairly allocated, and uh, should that come about, then – then we’ll have to deal with it when – when it – when it comes about, but there’s nothing else I can tell the Board that there is for me to investigate, unless somebody has new documentation that shows that the owner of that land didn’t consent to it being within the District, so um, I can’t recommend to you, at this point, that you take any action to take that land out of the District. I also, uh, currently there is bond debt on that land, which means that we would be uh, taking away some of the security of the bondholders, uh, which I certainly wouldn’t recommend and um, the benefit allocation that our District Engineer said that they get the benefit from those sewer improvements of \$205,000, or whatever, uh, what they are asking is that – they are saying, ‘We get no benefit and you ought to put that on the backs of the people who are in the existing District uh, that’s not Moody East’, and I can’t support that either. So uh, with that said, I would ask if there is any more, uh, public comments that anybody has? If not, let’s uh, move on to the resolutions.”

Mr. Adams presented Resolution 2009-3 for the Board’s consideration.

On MOTION by Ms. Mayer and seconded by Mr. Berry, with all in favor of approving Resolution 2009-3, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2009, and Ending September 30, 2010, as presented.

FIFTH ORDER OF BUSINESS

Consideration of Resolution 2009-4, Imposing Special Assessments and Certifying an Assessment Roll; Providing for a Severability Clause; and Providing an Effective Date

Mr. Adams presented Resolution 2009-4 for the Board's consideration.

On MOTION by Mr. Pye and seconded by Ms. Mayer, with all in favor of adopting of Resolution 2009-4, Imposing Special Assessments and Certifying an Assessment Roll; Providing for a Severability Clause; and Providing an Effective Date.

Mr. Adams stated the budget process was concluded for Fiscal Year 2010.

On MOTION by Ms. Shea and seconded by Ms. Mayer, with all in favor of closing the Public Hearing portion of the meeting.

SIXTH ORDER OF BUSINESS

Authorization for Staff to Proceed with RFQ Process for District Engineering Services

Mr. Adams stated Heidt and Associates provided the District with a resignation letter. He stated the next step is to advertise an RFQ for Engineering Services.

On MOTION by Mr. Pye and seconded by Ms. Mayer, with all in favor of authorizing Staff to Proceed with the RFQ Process for District Engineering Services.

SEVENTH ORDER OF BUSINESS

Approval of May 21, 2009 Regular Meeting Minutes

This item was deferred to the next meeting.

EIGHTH ORDER OF BUSINESS

Other Business

Mr. Adams presented the Lake and Wetland Maintenance Contract for the Board's consideration. He stated two (2) firms responded; Entrix and Lake Masters. Lake Masters is the current provider. A reduction in the required maintenance activities was due to the maturity of the preserve areas and Lake Masters submitted a significantly lower bid. As Lake Masters provided satisfactory work for the District and was the lowest bidder, it was Staff's recommendation to approve award of the contract to Lake Masters in the amount of \$32,820 for the first year, with a second year option in the same amount.

On MOTION by Ms. Mayer and seconded by Ms. Shea, with all in favor of awarding the Lake and Wetland Maintenance Contract to Lake Masters in the amount of \$32,820 for the first year, with a second year option in the same amount.

NINTH ORDER OF BUSINESS

Staff Reports

a. Attorney

Mr. Eckert advised the Board of recent legislation signed by the Governor. He noted the District Manager is now subject to provisions in Chapter 112, Code of Ethics for Public Officers. Also, the competitive bidding threshold was raised from \$200,000 to \$300,000 and the electrical threshold went up from \$50,000 to \$75,000. The index that was used to adjust the amounts changed. There was a Bill, supported by the tax collectors, that allows County Tax Collectors to accept partial payments of taxes; however, should an amount go unpaid, the amount is still considered delinquent and the Tax Collector can not earmark payments. House Bill 821 made four (4) changes to Chapter 190; provided CDD's more power to enforce deed restrictions; increased the landowner control from six (6) years to ten (10) years for certain urban mixed-use CDDs; clarified processes for major boundary amendments and addressed the effect on a District when two (2) districts merge.

He stated he provided a six (6)-hour deposition regarding his knowledge of the Moody East Parcels and Mood Development Corporation.

b. Engineer

There being no report, the next item followed.

c. Manager

i. Unaudited Financial Statements as of June 30, 2009

Mr. Adams presented the Unaudited Financial Statements as of June 30, 2009. He noted the District is at 110% collection for the General Fund and 116% for the Debt Service Fund.

ii. Proposed Meeting Schedule for Fiscal Year 2010

Mr. Adams stated the meeting location will change to Candlewood Suites.

On MOTION by Mr. Berry and seconded by Ms. Mayer, with all in favor of adopting the Proposed Meeting Schedule for Fiscal Year 2010, as amended.

iii. NEXT MEETING DATE: September 17, 2009 at 1:00 P.M.

TENTH ORDER OF BUSINESS

Audience Requests

Comments/Supervisors'

An audience member questioned who is responsible for making up the monetary difference from the time Meritage was under-assessed. Mr. Eckert stated the assessments are not a personal obligation and, if the assessment is not paid, it becomes a lien against the land. Mr. Eckert stated the District is trying to make up for what happened the past few years; starting next year, the annual amount and the principal amount will decrease. He stated there is no personal obligation for Meritage to pay the money directly to the District. He encouraged homeowners to review their sales contract and contact their legal counsel.

ELEVENTH ORDER OF BUSINESS

Adjournment

There being no further business, all were in agreement with adjournment.

On MOTION by Ms. Mayer and seconded by Ms. Shea, with all in favor, the meeting adjourned at 2:18 p.m.

C. E. Adams
Secretary/Assistant Secretary

Ilse H. Meyer
Chairperson/Vice Chairperson