

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

A Continued Meeting of the Moody River Estates Community Development District's Board of Supervisors was held on **Wednesday, October 31, 2012 at 1:00 p.m.**, at the **Candlewood Suites, 3626 Colonial Court, Fort Myers, Florida 33913.**

**Present and constituting a quorum were:**

Ilse Mayer	Chair
Kathy Shea	Vice Chair
Terry Pye	Assistant Secretary
Ron Mazuk	Assistant Secretary
Jeff Berry	Assistant Secretary

**Also present were:**

Cleo Crismond	Assistant Regional Manager
Mike Eckert	District Counsel

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Ms. Crismond called the meeting to order at 1:04 p.m., and noted, for the record, that all Supervisors were present, in person.

**SECOND ORDER OF BUSINESS**

**Update/Approval of Mediation Settlement Agreement with Mood Development**

Mr. Eckert discussed the mediation regarding the litigation on the Moody East property, which is owned by Mood Development Corporation (Mood). He recalled that three (3) suits were filed against the District, challenging that the Moody East parcel does not lie within the boundaries of the District and, therefore, the District has no authority to levy assessments against Moody East. Assuming that the CDD could assess them, the second contention was that the assessments were not fairly allocated in proportion to the benefit, which is a requirement of Florida Law. Mr. Eckert advised that a mediation session was held and a tentative agreement was brought before the Board and approved. The agreement indicated that more work had to be

completed before reaching a final resolution. Mr. Eckert stated that Staff is proposing the agreement to the Board as a final resolution to this matter.

Mr. Eckert noted that Paragraph 2, on Page 2, favorably resolves the issue of whether the Moody East property lies within the CDD. It also resolves the assertion that the CDD does not have the authority to assess the property. With regard to the restriction on use, Mr. Eckert noted that Mood claimed that they were not building the 200+ units on this property that were originally envisioned by the first developer. The District's perspective was to assess based on the number of units that were communicated, until there was an indication that the number of units is lower. The restriction on use states that Mood cannot build more than 14 single-family units, on the single-family property, or more than 55 units, on the multi-family property. Once the document is recorded, the District will assess based on that number of units. The net effect is that Mood will pay a lower share of O&M than they previously paid; however, they are restricted to a fixed number of units.

Mr. Eckert pointed out that, in order to lift the restriction of use, Mood would have to pay the District the amount of money that would have been assessed over that period of time, based on the total number of units actually built.

Mr. Eckert stated that Mood wanted the language referring to a non-profit charitable entity included in the agreement. Paragraph 4 states that if Mood presents a revised development plan, the District will approve it, provided that they pay the "true up" payment referred to previously.

Mr. Eckert noted that Mood Development must pay any outstanding assessments on the single-family parcel within five (5) business days. Since they have not decided what to do with the multi-family parcel, they may let it go through the tax certificate process. Mr. Eckert also indicated that, if tax certificates are selling on the multi-family piece, the District may not receive payment on that piece until June.

Mr. Mazuk inquired about the rectangle in the top left corner of Exhibit C. Mr. Eckert stated that the diagram is intended to depict the uses for the various parcels. He pointed out that the boat ramp issue is not resolved with this agreement, as the District is not party to that litigation.

With regard to Paragraph 6, Mr. Eckert explained that, during the mediation, District Counsel agreed to work with Mood to ensure that the O&M assessment is fair and reasonable.

He pointed out that Mood has only been paying part of the District's administrative expenses; they have not paid for lake maintenance because there are no lakes serving the area that the District maintains. It was also determined that Mood will not receive a benefit from two (2) budget line items, engineering and legal litigation. Mr. Eckert stated that, once the legal litigation is resolved, the budget line item will go away, which more than makes up for the loss of revenue from the Moody East parcel. This is advantageous to the existing residents because the budget will be lower.

In response to a statement by Mr. Mazuk, Mr. Eckert clarified that the only thing that the District must do, as a result of the settlement, is to revisit the O&M assessment being charged on the Moody East parcel. The District will charge them for fewer units, as well as admin, minus engineering and legal litigation.

Mr. Mazuk inquired about the status of the litigation involving the boat ramp. Mr. Eckert advised that he heard the issue is on appeal and he was not aware of any decisions by an appellate court. Ms. Mayer noted the importance of the boat ramp remaining within the CDD.

Mr. Eckert reviewed the remainder of the agreement. He pointed out that Mood, their successors and assigns, agree to pay all of the O&M assessments, as long as they are done in accordance with Exhibit B of the agreement. Paragraph 11 provides that, within seven (7) days of paying the assessments on the single-family parcel current, the District will move for a joint dismissal of the litigation with prejudice. In addition, each party will bear its own costs and attorneys fees incurred in the litigation. Mr. Eckert indicated that Mood wanted to make it clear that they are not waiving any claims they have against Colonial Homes, Meritage or any of their affiliates.

Mr. Eckert stated that the District is agreeing to rescind the restrictive covenant part of this document, in the event that a court orders it; however, Mood must pay all pending tax bills for any of the property, pay all O&M and debt assessments current, pay all of the assessments that could have been levied based on the 200 units that they were assessed for this year and pay the District back for attorneys' fees and litigation costs, which were estimated at \$150,000. Mood must also hold harmless and indemnify the District regarding the termination and restriction of use or cancellation of this agreement and they must be current in all of their obligations.

**On MOTION by Ms. Mayer and seconded by Mr. Pye, with all in favor, the Mediation Settlement Agreement with Mood Development, as presented, was approved.**

**THIRD ORDER OF BUSINESS**

**Landowners' Meeting - November 7, 2012**

Ms. Crismond advised that the Landowners' Meeting will be held on November 7, 2012.

**FOURTH ORDER OF BUSINESS**

**NEXT REGULAR MEETING DATE:  
January 17, 2013 at 1:00 P.M.**

Ms. Crismond indicated that the next regular meeting date is January 17, 2013 at 1:00 p.m.

**FIFTH ORDER OF BUSINESS**

**Audience Comments**

There being no audience comments, the next item followed.

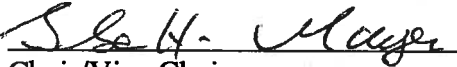
**SIXTH ORDER OF BUSINESS**

**Adjournment**

There being nothing further to discuss, the meeting adjourned.

**On MOTION by Mr. Mazuk and seconded by Mr. Berry, with all in favor, the meeting adjourned at 1:31 p.m.**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair