

MINUTES OF MEETING VIERA STEWARDSHIP DISTRICT

The regular meeting of the Board of Supervisors of the Viera Stewardship District was held Wednesday, August 22, 2012, at 4:00 p.m. at 7380 Murrell Road, Suite 201, Viera, Florida 32940.

Present and constituting a quorum were:

Jay A. Decator, III	Chairman
Mark Engwall (<i>by phone</i>)	Vice Chairman
Ann M. Gainey	Secretary
Chris Leffler	Supervisor
David Tomczak	Supervisor

Also present were:

Gary L. Moyer	Manager: Moyer Management Group
Cheryl Stuart (<i>by phone</i>)	Attorney: Hopping, Green & Sams
Paul Martell	Treasurer

FIRST ORDER OF BUSINESS

Call to Order and Roll Call

Mr. Decator called the meeting to order at 4:10 p.m.

Mr. Decator called the roll and stated a quorum was present for the meeting.

SECOND ORDER OF BUSINESS

Approval of the Minutes of the June 13, 2012, Regular Meeting

Mr. Decator reviewed the minutes as presented and requested additions, corrections or deletions.

On MOTION by Ms. Gainey, seconded by Mr. Leffler, with all in favor, unanimous approval was given to the minutes of the June 13, 2012, regular meeting.

THIRD ORDER OF BUSINESS

Public Hearing for the Adoption of the Fiscal Year 2013 Budget

A. Fiscal Year 2013 Budget

Mr. Moyer reviewed the budget for fiscal year 2013.

On MOTION by Mr. Leffler, seconded by Mr. Tomczak, with all in favor, unanimous approval was given to open the public hearing for adoption of the budget.

Mr. Decator stated there is one maintenance item related to the gopher tortoise recipient site. It is not intended to be a profit-making venture. It is meant to be a cost-

savings venture because it is only for the purpose of relocating Viera tortoises. The Viera Company is almost through that permitting process. There are some permitting issues, and I have discussed this with the District's legal counsel about helping to resolve questions that the Florida Fish and Wildlife Conservation Commission has about the propriety of the Viera Stewardship District managing the gopher tortoise recipient site. That is surprising to me because I cannot think of a better entity for the long-term management and funding than the Viera Stewardship District. One thing we want to be able to show the Conservation Commission is that the District is aware of this, the District is aware there is a maintenance requirement, and that the District needs to set aside the necessary dollars to fund that maintenance. This maintenance is anticipated to be \$15,000, which is for a full year of maintenance. Even if things progress smoothly with permitting, it will be somewhat less than that amount for fiscal year 2013. Maintenance includes removing invasive species, putting up fencing for the tortoises, and managing the habitat so that it is favorable to tortoises. It would include periodic prescribed burning. All of those activities are included in the budget line item for gopher tortoise recipient site maintenance.

B. Consideration of Resolution 2012-03, Adopting the Budget

Mr. Moyer read Resolution 2012-03 by title into the record.

Mr. Moyer stated we will complete the blank in the Resolution for the amount shown in the budget of \$72,236.

Ms. Stuart stated the budget draft I received shows developer contributions of \$73,536 but the total is \$72,236.

Mr. Moyer stated the first line should be \$72,236.

There was no public comment.

On MOTION by Mr. Engwall, seconded by Mr. Tomczak, with all in favor, unanimous approval was given to Resolution 2012-03 adopting the budget for fiscal year 2013.
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C. Consideration of the Developer Funding Agreement

Mr. Moyer reviewed the developer funding agreement.

Mr. Moyer stated this is in the same form that the Board has approved the past couple years and provides that the developer will fund the budget as needed.

Mr. Decator stated I understand this is identical to what the developer has executed in the past. The agreement has a requirement that the developer, in lieu of the continuing lien on the developer's property, places an amount on deposit with the District equal to one-quarter of the final adopted fiscal year 2013 budget. Is that amount statutory? Or is that something we can negotiate?

Mr. Moyer stated it is not statutory that I am aware of. It is an amount that would show a good-faith contribution that would give the District a level of comfort that it does not need to do this through an assessment or a lien on the property.

Mr. Decator stated as this budget grows and we develop a track record, I wonder if it is really necessary to deposit 25% in advance. I presume this is something that the developer can work with staff about negotiating that amount to a lower amount.

Ms. Stuart stated the amount can be changed over time. Since this District is not yet very active, I would suggest that the expenses early in the fiscal year will perhaps be greater. A percentage may not be the right way to achieve this in any case in the future. The issue will be relative to when the insurance premium is due and if it is a lump sum, for example. Yes, this can be negotiated depending on the circumstances. Mr. Moyer is correct that we want to avoid going through a lien to secure the District's obligations. In order to adopt the budget, we need a secure revenue source, and this is the manner in which we identified the "security" on behalf of the District.

Mr. Decator stated that is something that I wanted to hear, that it is something we can work on in the future. I presume that this funding agreement, going back to the Florida Fish and Wildlife Conservation Commission issue and its concerns about the credibility of the Viera Stewardship District, will help that argument. We can show that the District has a budget, it is funded by the developer, and the developer has to fund 25% of it at the beginning of each fiscal year. As the years go by, we will also have a great track record. We will keep discussing this as we progress farther down the road.

Ms. Stuart stated that is correct.

On MOTION by Ms. Gainey, seconded by Mr. Tomczak, with all in favor, unanimous approval was given to the developer funding agreement for fiscal year 2013.
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On MOTION by Ms. Gainey, seconded by Mr. Tomczak, with all in favor, unanimous approval was given to close the public hearing.

FOURTH ORDER OF BUSINESS

**Consideration of Resolution 2012-04
Approving an Agreement and a Grant of
Access Easement with A. Duda & Sons**

Mr. Moyer read Resolution 2012-04 by title into the record.

Mr. Decator stated this is the companion agreement to the form of conservation easement that was recently approved by the Board, subject to final revisions and modifications as The Viera Company continues permitting through the regulatory agencies. We are not quite there yet. Several agencies are reviewing that conservation easement now. With respect to that, the recital of the Resolution that deals with recording of the conservation easement and granting the conservation easement, that has to be done so that it is future tense. It has not been recorded yet. It has not been finalized yet. As the Board will recall, the terms of the conservation easement were subject to final revision as agreed to by District legal counsel and counsel for the developer. That has not occurred yet, so in the seventh Whereas clause, we need to modify it to reflect that it will be recorded and will be granted.

Ms. Stuart stated we can delete the phrase “and recorded in the public records of Brevard County” so it will read, “by virtue of that certain Agreement and Grant of Conservation Easement and Affirmative Easements for Environmental Management and Administration previously approved by the Board in Resolution 2012-01.” I think that accomplishes what it needs to say.

Mr. Decator stated that will work. Will Mr. Moyer or Ms. Stuart make that modification to the Resolution?

Mr. Moyer stated I believe Ms. Stuart originated this Resolution.

Ms. Stuart stated I will make that change.

Mr. Decator stated I have spoken with the District’s legal counsel regarding the attached draft, which is the recent draft and reflects the attorney’s revisions. As I understand it, all of those revisions were acceptable to A. Duda & Sons, which entity will be granting this easement, except for two. I do not want to mislead the Board; they are not tweaks and they are not insignificant. They concern paragraph 6, which pertains to maintenance and repair costs. The version came back from District counsel suggesting that A. Duda & Sons be responsible for creating the easement, maintaining it, repairing it and keeping it in good shape. As I subsequently explained to District counsel, the ranch is not in the roadway business. Counsel for both parties will need to do

some work on paragraph 6. The second item is paragraph 10, which is the grantor's indemnification, which is A. Duda & Sons's indemnification of the Viera Stewardship District. As was explained to me, A. Duda & Sons is not in the business of granting indemnifications, either. Those are two provisions that will require more work. Having said that, I would like the Board to approve the form of easement, subject to further revisions as discussed, to the satisfaction of District counsel and counsel for A. Duda & Sons, that will authorize the Chairman to execute the easement once those mutually agreeable revisions are made. This will be critical because once the conservation easement to the District is recorded, the District needs to have access to that stage of the wilderness park. This easement will need to click in very quickly, and it would be nice to have that authorization up front, subject to approval by District counsel.

Ms. Stuart stated the Chairman is correct. He and I discussed some of these provisions yesterday and suggested perhaps allowing both parties to do their own maintenance as necessary in the maintenance context. I think that is what we are looking at. There is potentially a revision that will be agreeable as long as neither party has a greater burden than they otherwise would have. Regarding indemnification, I think we are both of a mind for both parties to rely on some kind of insurance coverage. We still need to work out the parameters of that, rather than just granting indemnification. That is the direction we are heading, to give the Board some kind of changes that we would make. Remember this is also a temporary easement. It will not be forever, and it is also a non-exclusive easement. The grantor still has the ability to grant other easements over this land, so we need to be protected that other parties do not have the right to be there. I am comfortable in the context that the Chairman described it. I will ask the Board for approval of the Resolution, which reflects approving the easement in substantial form with these changes as necessary.

On MOTION by Mr. Leffler, seconded by Mr. Tomczak, with all in favor, unanimous approval was given to Resolution 2012-04 approving an agreement and a grant of access easement with A. Duda & Sons, as discussed.

Mr. Decator asked will Ms. Stuart take care of making the change we discussed and forwarding it to Mr. Moyer to be signed?

Ms. Stuart stated the signatures are on the second page, so you can execute the second page today and we will substitute the first page. It will not change the pagination.

FIFTH ORDER OF BUSINESS

Audit Committee Report

A. Consideration of Rankings from Audit Committee

B. Authorization to Negotiate an Engagement Letter with the Number One-Ranked Auditing Firm

Mr. Moyer stated the audit committee met prior to this meeting, at which time we reviewed the proposals that were submitted by CPA and auditing firms to conduct the annual audit of the District for our fiscal year that will end September 30, 2012. Based upon the scoring criteria, the committee ranked Carr, Riggs & Ingram as #1, Grau & Associates as #2, and Berger Toombs et al. as #3. If the Board is in agreement, I will ask you to enter a motion accepting the audit committee ranking and to also authorize District staff to negotiate the standard-form engagement letter that will come back to the Board for approval.

Ms. Stuart asked will that letter come back to the Chairman to sign or to the Board? I am not sure when you will meet next.

Mr. Moyer stated the scope was so well defined in the RFP and these are standard-form engagement letters. It will outline what the auditor will perform and what District management's responsibility is in providing the auditor with the information necessary to do their work. The fee has already been established as part of their RFP, so Ms. Stuart's point is well taken. The Board could simply authorize the approval of the engagement letter subject to the Treasurer's review and approval and authorize the Chairman to execute it.

<p>On MOTION by Mr. Tomczak, seconded by Ms. Gainey, with all in favor, unanimous approval was given to accept the audit committee's ranking of auditing firms as follows: Carr, Riggs & Ingram as #1, Grau & Associates as #2, and Berger Toombs et al. as #3; and to authorize execution of the engagement letter subject to review and approval by the Treasurer.</p>
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SIXTH ORDER OF BUSINESS

Staff Reports

A. Manager

i. Financial Statements

Mr. Moyer reviewed the financial statements, which are included in the agenda package and available in the District Office for public review during normal business hours.

Mr. Moyer stated the only item that is not within budget is the legal advertising line item, which is over budget by \$262 because of some of the public hearings we had earlier this year and the notices that are required.

ii. Funding Request #3

Mr. Moyer reviewed the funding request, which is included in the agenda package and available in the District Office for public review during normal business hours.

Mr. Moyer stated I will distribute a revised funding request that reflects the additional escrow for the fiscal year 2013 budget that we discussed as part of the budget adoption process. This funding request is in the amount of \$21,105. It was the desire of the Board that we endeavor to get all of our payables paid prior to the end of the fiscal year, and we are still working on that, but that is the intent to get everyone paid. There might be a couple invoices that are received from the attorney and for additional Supervisor fees, but generally, we will have sufficient monies to pay those invoices.

Mr. Martell stated \$10,559 is the first entry that indicates it is for the additional escrow for the fiscal year 2013 budget, which reflects 25% of the total adopted budget, with the adjustment that we already paid \$7,500 in the previous funding request. When combined, both numbers represent 25% of the 2013 adopted budget.

Mr. Moyer stated that is correct.

On MOTION by Ms. Gainey, seconded by Mr. Tomczak, with all in favor, unanimous approval was given to funding request #3, as discussed.

iii. Meeting Schedule for Fiscal Year 2013

Mr. Moyer stated we meet on an as-needed basis, most of which is driven by the work that Mr. Decator is involved in with these easements that require a meeting to approve those types of things, or the adoption of our budget, which requires two meetings pursuant to the requirements of Chapter 189, Florida Statutes. What we publish in the newspaper is essentially a notice that indicates that we do not have a set meeting schedule and that prior to every meeting, we will advertise those meetings as special meetings. All of that is provided in Chapter 189, Florida Statutes.

On MOTION by Ms. Gainey, seconded by Mr. Tomczak, with all in favor, unanimous approval was given to the meeting schedule, as presented.

iv. Update on Election for Seat #2

Mr. Moyer stated we had some lengthy discussion at our June meeting about the requirement that we have a qualified elector be elected to this Board. No one qualified during the normal qualification period. This District's special act is written in such a

fashion that is not like most Community Development Districts, in which case if there is a vacancy, the remaining Board members can fill that vacancy through an appointment. In this case, we actually need to have a qualified elector who stands for election. We worked with Ms. Stuart and Ms. Kilinski to figure out a way of doing that by getting the Governor to call a special election and qualification period that was acceptable to the Brevard County Supervisor of Elections, so we will be having a special qualification period for any of our registered voters residing within the District to qualify, which is August 30 and 31.

Mr. Decator stated with respect to that qualification process, our resident is not accustomed to doing that. Is the District providing assistance to her in terms of information and how she goes about the process so that we make the deadline?

Mr. Moyer stated yes.

Mr. Decator stated the deadline is rather tight.

Mr. Moyer stated the qualification period begins at 8:00 a.m. on August 30 and ends at noon on August 31. My office is providing answers and directions to at least one of the people who has shown interest in qualifying, and we will continue to do that.

Ms. Stuart stated if more than one person happens to qualify, the special election will still be during the General Election on November 6. It is called a "special election," but it is going to be held at the same time as the General Election, if it needs to be held.

Mr. Moyer stated that is correct. If only one person qualifies, then that person will automatically be elected.

v. Resolution 2012-05 Amending the Budget for Fiscal Year 2012

Mr. Moyer read Resolution 2012-05 by title into the record.

Mr. Moyer stated this resolution will amend the fiscal year 2012 to cover what I indicated was an overage in the legal advertising budget line item and is really a housekeeping matter. Technically if you do not exceed your overall budget but just one line item, that is not critical, but in an abundance of caution, we are suggesting the Board approve this resolution to amend the budget to increase legal advertising such that it will provide sufficient funds to cover what we have experienced in legal advertising. We propose to add \$100 to legal advertising and \$200 to contingency.

Mr. Decator stated those additions result in a net zero change, so the total budget amount remains the same.

Mr. Moyer stated that is correct.

On MOTION by Mr. Tomczak, seconded by Mr. Leffler, with all in favor, unanimous approval was given to Resolution 2012-05 amending the budget for fiscal year 2012.

B. Attorney

Ms. Stuart stated Ms. Kilinski will be returning to the office on Monday. As part of her vacation in Vermont, she is receiving a national award in triathlons. She is a triathlete and is competing on behalf of the United States in a triathlon in London next summer, which includes a 40k bicycle ride, a 10k run, and a 1.5k swim.

Mr. Decator stated I appreciate the update. She must be very proud, and I am sure the firm is also proud of her.

SEVENTH ORDER OF BUSINESS

Other Business

There being none, the next order of business followed.

EIGHTH ORDER OF BUSINESS

Supervisor Requests and Comments

There being none, the next order of business followed.

NINTH ORDER OF BUSINESS

Audience Comments

There being none, the next order of business followed.

TENTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. Decator, seconded by Mr. Leffler, with all in favor, the meeting adjourned at 4:40 p.m.

Ann M. Gainey, Secretary

Jay A. Decator, III, Chairman