

MINUTES OF MEETING VIERA STEWARDSHIP DISTRICT

The regular meeting of the Board of Supervisors of the Viera Stewardship District was held Tuesday, September 13, 2011, 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
Jennifer Kilinski (<i>by phone</i>)	Attorney: Hopping, Green & Sams
Paul Martell	Treasurer

FIRST ORDER OF BUSINESS

Roll Call

Mr. Decator called the meeting to order at 4:00 p.m.

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

SECOND ORDER OF BUSINESS

Administrative Matters

A. Consideration of Resolution 2011-03 Related to Officer Structure

Mr. Moyer read Resolution 2011-03 by title into the record.

Mr. Moyer stated this Resolution memorializes the officer structure of the Board based upon the landowners election and the resulting actions of the Board at the previous meeting.

On MOTION by Mr. Tomczak, seconded by Mr. Leffler, with all in favor, approval was given to Resolution 2011-03 related to officer structure.
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B. Consideration of Resolution 2011-04 Related to Bank Account Signatures

Mr. Moyer read Resolution 2011-04 by title into the record.

Mr. Moyer stated based on our conversation with Mr. Johnson at our last meeting, he recommended that we setup an account and have the District start paying its own bills that will be funded by The Viera Company. That funding will be deposited into the District's checking account, and then we will write checks for the invoices that the District receives and approves. In consultation with the Treasurer, we selected SunTrust. SunTrust is located next door to my office building. There really is no leverage to this

account where we can do anything with it because it is just an in-and-out account essentially.

Mr. Decator asked does this require that a single signature of these four people is sufficient?

Mr. Moyer stated that is correct. As a practical matter, the invoices will be approved by this Board. They will come before you at these meetings. As long as we are in the same operating mode that we are currently, where you really only have two vendors—my firm and Hopping Green & Sams—once you approve those invoices, in all likelihood, I will sign those checks.

On MOTION by Mr. Leffler, seconded by Ms. Gainey, with all in favor, approval was given to Resolution 2011-04 related to bank account signatures.

THIRD ORDER OF BUSINESS

Approval of the Minutes of the June 9, 2011, Meeting

Mr. Moyer reviewed the minutes as presented to the Board and requested additions, corrections or deletion.

Mr. Decator stated I have no corrections but I have two questions. The minutes reference the attachment of the Development Order that was approved by Brevard County. I provided that to Mr. Moyer's office. Those Resolutions for the Viera expansion should be attached to these minutes. I want to follow up on the issue of orientation packages that were referenced, for the benefit of Mr. Leffler as our newest Supervisor. I think it is a good idea for all Supervisors. I would like to refresh my recollection of some things. Were those sent out?

Mr. Leffler stated I did receive mine.

Mr. Moyer stated we can make sure one is also sent to Mr. Decator.

Mr. Decator stated I would appreciate it. That would be helpful.

On MOTION by Mr. Tomczak, seconded by Mr. Leffler, with all in favor, approval was given to the minutes of the June 9, 2011, meeting, as amended.

FOURTH ORDER OF BUSINESS

**Public Hearing for the Fiscal Year 2012
Budget**

A. Fiscal Year 2012 Budget

Mr. Moyer stated the Board approved the budget at your meeting in June. I differentiate the words “approve” and “adopt,” which I will ask the Board to adopt this budget today after the public hearing. The budget is in the same form as it has been in previous years. It anticipates administrative costs that are typical for an ongoing operating District. We are not to that point yet. As you are all aware, our expenses have been minimal for these meetings, essentially just the costs of advertising the meetings and some legal fees. It is not very much money and we do not anticipate spending the amounts of money shown in the budget, which totals \$109,375. In all likelihood, we will not expend this amount of money unless something happens where there is development activity within the District.

Mr. Decator stated I will open the public hearing.

Mr. Decator stated for the record, there are no members of the public in attendance, and I will close the public hearing.

B. Consideration of Resolution 2011-05, Adopting the Budget for Fiscal Year 2012

Mr. Moyer read Resolution 2011-05 by title into the record.

Mr. Moyer stated the blanks will be filled in with the amount of \$109,375.

On MOTION by Mr. Leffler, seconded by Ms. Gainey, with all in favor, approval was given to Resolution 2011-05 adopting the budget for fiscal year 2012.

C. Consideration of the Developer Funding Agreement for Fiscal Year 2012

Mr. Moyer reviewed the developer funding agreement for fiscal year 2012, which is in substantially the same form as the agreement used in previous fiscal years. Rather than putting the assessment on the non-ad valorem portion of the real estate tax bills, it is typical for Districts in our part of the life cycle to fund these minimal operating expenses by developer contribution. The attorney has provided this agreement for the Board’s consideration.

Ms. Kilinski stated this draft is in the same format as the agreement the Board approved last year. However, in discussions with the developer leading up to this meeting, we are going to recommend that the form of this be altered, recognizing that this District has not had any problems with funding and recognizing that there are some issues

that exist to make this District unique. We feel comfortable altering this agreement, particularly Section 2 where it provides for a continuing lien on the property. We recommend that we change this language to allow for an escrow for a certain amount of money to be put in the District's new checking account that will be established that will provide and secure funding for the budget. We will also provide language that any liens will not be filed pursuant to this agreement and having a lien up front. The reason we are recommending these changes as compared to the funding agreements in 2008 and 2009 is because we have not had any issues with funding. It is the obligation of District's legal counsel to be sure we have security for the funding for the budget that the Board has approved. If the Board is comfortable, I will ask that the Board approve this agreement in substantial form and authorize the Chairman to execute the final document subject to legal counsel's final review.

Mr. Engwall asked what is the size of the recommended escrow?

Ms. Kilinski stated I would estimate it is perhaps 25% of the budget you just approved. The issue is that we do not really have actual numbers to use. If we can look at the amount that has actually been expended over the last few years, if that is a lesser amount than 25% of the budget, I think that will be sufficient. The budget that we have been operating under these past years has an extra amount, and I think we are comfortable recommending that the Board approve that amount of money.

Mr. Decator stated as Mr. Moyer has already commented, the District in its current status is largely dormant and really has only two vendors: the manager and legal counsel. We already recognize that this budget does not represent the expected expenditures for the District, but they represent actual operating expenditures, assuming the District were to start operating this fiscal year, which is unlikely at this point. Hopefully the escrow amount will be less than 25% of the total budget amount.

Mr. Martell asked can we factor in the previous year's spending so it is closer?

Mr. Decator stated yes, I think there should be a historical aspect, looking back at what the typical expenditures of this District have been since its inception.

Ms. Kilinski stated I can appreciate that, and I think that is something we can be comfortable with to incorporate into the agreement. This budget you just adopted assumes expenditures that would be recognized if development activity were to start in

this fiscal year, which I understand is unlikely. I think we would feel comfortable with an escrow amount equal to the average of the past couple years of expenditures.

Mr. Moyer stated the funding request that we will present to the Board later today is \$1,325. Most of that is for Florida Today advertising. I do not know what Hopping Green has charged, but it would be for time spent preparing for and attending these meetings. I suspect if you made it \$5,000 or \$7,500, that should be enough to get us through the current mode of operations that we are experiencing.

Mr. Martell stated we probably need some sort of minimum balance in order to avoid bank charges.

Mr. Decator stated let me review the changes we discussed to this agreement. I will ask for a motion approving this agreement in substantial form, subject to modifications to the section dealing with liens, so that rather than having a continuing lien, we will substitute that with an escrow approach, funded by the developer. Once this funding agreement has been revised by counsel, if it is acceptable to the Chairman, the Chairman will be authorized to execute the revised funding agreement.

On MOTION by Mr. Engwall, seconded by Mr. Leffler, with all in favor, approval was given to the developer funding agreement for fiscal year 2012, in substantial form, with modifications to Section 2 related to a continuing lien and substituting an escrow amount, subject to final review by legal counsel and the Chairman, and to authorize the Chairman to sign the final revised funding agreement.

Ms. Kilinski stated I expect that I will have the revised agreement to the Chairman in the next couple days.

FIFTH ORDER OF BUSINESS

Public Hearing to Adopt the Administrative Rules of Procedure and Consideration of Resolution 2011-06 Adopting the Rules of Procedure

Mr. Moyer stated this meeting has been advertised for rule adoption as required by Chapter 120, Florida Statutes. Mr. Decator had some concerns and comments that he discussed with Mr. Johnson, which I believe has been resolved. These rules track a lot of the Florida Statutes that govern the activities of the District. They outline the way this District is organized and has a lot of material on competitive bidding. These are your operating rules for the District on administrative matters.

Mr. Decator stated I will open the public hearing.

Mr. Decator stated all of my questions were previously addressed in a memorandum that was prepared by the District's legal counsel in November 2010. The only item from the last meeting when we discussed these rules was amending the bonding requirement for the Treasurer and the Secretary. The language that was to be substituted basically said that those officers would not need to be bonded until bonds are issued by the District. In reviewing these revised rules, I do see that revision on page 4. Is this the current version of the rules that we are considering for adoption today?

Ms. Kilinski stated yes.

Mr. Decator stated with that change, I have no further comments and no objections to the proposed rules of procedure.

Mr. Decator stated for the record, there are no members of the public in attendance, and I will close the public hearing.

Ms. Kilinski stated Resolution 2011-06 that is referenced on the agenda was sent to you separately by email and was not included in your agenda package.

Mr. Moyer read Resolution 2011-06 by title into the record.

On MOTION by Ms. Gainey, seconded by Mr. Leffler, with all in favor, approval was given to Resolution 2011-06 adopting the administrative rules of procedure.

SIXTH ORDER OF BUSINESS

Staff Reports

A. Manager

i. Funding Request #1

Mr. Moyer stated my firm has paid certain invoices on the District's behalf, totaling \$1,325.49, primarily for legal advertising.

On MOTION by Mr. Leffler, seconded by Mr. Tomczak, with all in favor, approval was given to funding request #1, in the amount of \$1,325.49.

Mr. Leffler asked what other liabilities might we incur?

Mr. Moyer stated I am not aware that we have received anything from Hopping Green & Sams to cover their legal expenses, and if they submit anything in the future, that will be included on funding request #2. As part of this approval, we paid the

Department of Community Affairs \$175 to keep the District in compliance with the special District office, which is an annual expense. I am not aware of anything else.

ii. Appointment of Audit Committee

Mr. Decator stated something new this year will be the audit. It is my understanding that the auditor will be auditing fiscal year 2012 financial statements, and that expense will occur in fiscal year 2013.

Mr. Martell stated the auditors will probably need to be comfortable with the balance forwards, so they will probably have to do some work to try to figure out what the pre-2012 information will be.

Mr. Decator stated we budgeted \$5,000 for that work. Given the simplicity of the District's accounts at this stage, hopefully it will be some number less than that.

Mr. Moyer stated you are correct that the Board needs to appoint an audit committee, which we recommend be constituted of you Board members rather than a separate committee. You will serve in a separate capacity as audit committee members. I will provide at a future meeting the criteria that we will use to select the auditor. There are four or five basic items for you to consider.

Mr. Martell stated I noticed that is also included in the rules of procedure outlining that process.

Ms. Kilinski stated if the Board will make that audit committee appointment today, then at your next meeting, the committee can consider the evaluation criteria, the notice for the RFP, and the instructions that we need to provide to proposers. Staff will then issue the RFP so that at your next meeting, you can consider and evaluate the proposals. The first year the auditor will be auditing will be the fiscal year 2012 financial statements and the costs will be incurred in fiscal year 2013. The rules of procedure you just adopted outline the criteria for you to consider.

Mr. Martell stated if the committee considered this today, I would recommend that you choose their fees as a factor. I would also suggest the manager be authorized to conduct negotiations.

Mr. Decator asked is this appointment to the audit committee for a specific period of time? or is the term of service indefinite?

Ms. Kilinski stated the term of service is for the issuance of the RFP through to the approval of a final contract. The committee will review the evaluation criteria at one meeting, and at the following meeting, the committee will review the responses received

to the RFP and make a recommendation to the Board. At the conclusion of that process, for all practical purposes, the committee will dissolve. The term of engagement is generally three years, and at the end of those three years, presuming the Board has engaged the auditor for all three years, the Board will go through this process again of appointing an audit committee.

Mr. Decator stated the Treasurer is not a member of the Board. Should he be a member of the audit committee?

Mr. Martell stated I do not have to be a member of the committee. I can just share my opinion with you.

Mr. Moyer stated that is at the discretion of the Board.

Mr. Martell asked would I be subject to the Sunshine Laws if I were a committee member?

Mr. Moyer stated yes.

Mr. Martell stated if I am not a committee member, then I can have a freer discussion with Board members.

Mr. Moyer stated that is correct.

Ms. Kilinski stated a committee that is appointed by the Board is subject to Sunshine Laws. To the extent that you want the Treasurer to interact with a Board member on this issue, I suggest you do not appoint the Treasurer to the audit committee.

Mr. Leffler asked what will constitute a quorum if we do not include the Treasurer?

Mr. Decator stated a quorum is the same as for the Board itself.

Mr. Martell stated I would not be able to discuss this with Mr. Decator if I am a committee member, so I think it is better if I am not appointed to the committee.

Mr. Engwall asked should the term of service be from the time the RFP is issued or until the time that the auditor is actually selected?

Ms. Kilinski stated I do not think you need to specify a term on the appointment of the committee. If you desire to make that designation, I would simply say that the term of service is until the auditor selection process is complete. Sometimes you issue a notice of award to the auditor that you accept but for whatever reason, they might not accept that award. The audit committee might have to come back and look at the number-two or number-three ranked proposer. If that is the case, we will still need the audit committee.

Mr. Decator stated instead of tripping over the details, I suggest we just leave the term of service out of it. The motion will simply appoint the members of the Board as the members of the audit committee.

On MOTION by Mr. Engwall, seconded by Mr. Tomczak, with all in favor, approval was given to appoint the Board of Supervisors as the audit committee.

iii. Number of Registered Voters (10)

Mr. Moyer stated we received a letter from the Supervisor of Elections for Brevard County that there are 10 registered voters within the District.

Mr. Decator stated that is a high percentage of voters who currently live on the ranch.

Mr. Leffler stated it is for three households. Do we have the names associated with those registered voters?

Mr. Moyer stated no, just the number. I can get that information easily enough.

Mr. Decator stated the genesis of this inquiry is one member of this Board must be elected by the residents of the District, or the electors in the District, in the 2012 election cycle, which is November 2012.

Mr. Leffler stated I do know someone who might consider qualifying to run. They could determine among themselves who should be a candidate.

Mr. Decator stated anyone is welcome to qualify as a candidate. We need at least one person to step forward at that time.

Mr. Leffler stated I know someone who has volunteered to run.

iv. Meeting Schedule for Fiscal Year 2012

Mr. Moyer stated this notice advises the public that this Board does not have an established meeting schedule and we will advertise all future meetings as special meetings, as provided for pursuant to Chapter 189, Florida Statutes.

The Board agreed unanimously to authorize the manager to advertise the meeting schedule as presented.

B. Attorney

There being nothing to report, the next order of business followed.

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

Ann M. Gainey, Secretary

Jay A. Decator, III, Chairman