

# MINUTES OF SPECIAL MEETING CELEBRATION COMMUNITY DEVELOPMENT DISTRICT

A special meeting of the Board of Supervisors of the Celebration Community Development District was held Tuesday, November 10, 2009, at 9:00 A.M. at 851 Celebration Avenue, Celebration, Florida.

Present from the Board were:

Cliff Akey	Chairman
Paul Collins	Vice Chairman
Tom Sunnarborg	Secretary
Lee Moore ( <i>by phone</i> )	Treasurer

Also present were:

Gary Moyer	Manager: Moyer Management Group
Jason Merritt	Attorney: Shuffield Lowman
Mark Vincutonis	Engineer: Hanson Walter
Brenda Burgess	Moyer Management Group
Brian Smith	Severn Trent Services
Residents and members of the public	

*This is not a certified or verbatim transcript but rather represents the context and summary of the workshop.*

## **FIRST ORDER OF BUSINESS**

### **Call to Order**

Mr. Akey called the meeting to order at 9:00 A.M.

## **SECOND ORDER OF BUSINESS**

### **Roll Call**

Mr. Moyer called the roll and indicated a quorum was present for the meeting.

## **THIRD ORDER OF BUSINESS**

### **Discussion of Roadway Turnover to Osceola County**

Mr. Moyer stated the primary purpose of today's meeting is to bring to a conclusion the roadway turnover still under the District's ownership. Staff has been undertaking efforts since 1999 in trying to turnover these roads to the County. There have been numerous iterations. The punchlists were completed in the past and additional items are added when we go back to make the attempt to turn over the roadways to the County. We thought we had a good handle on it two years ago, but for whatever reasons, they never made it to the County Commission for approval. Through the efforts of our Engineer and Mr. Akey, they went back to the County and we are now being requested to repair additional items on Celebration Boulevard and Acadia, which are beyond what was originally identified two years ago. The proposal today is for the District to pay a fixed

amount of money as outlined in the Engineer's letter, that we all feel is fair and representative of where we were two years ago. To the degree the County wants to undertake additional work, primarily on Celebration Boulevard, they will do that from County funds. As outlined in the Hanson Walter letter, it is difficult to come up with an estimate because we do not know the condition of the base and the sub base, and the amount of work necessary to be done. In their professional opinion, this is a fair settlement. I looked at where the funding would come from. Acadia was constructed from the 1997 bonds, and there is \$157,000 in the bond construction account. Celebration Boulevard was built from the 1994 bonds, the 1997 bonds, the 1999 bonds and the 2002 bonds. At least half of the portion we are talking about, from Waterside Drive to World Drive, was funded from the 1997 bonds for two lanes. The other two lanes were constructed from the 1999 bond with the majority from the 2002 bonds. There are funds available in various construction accounts that I verified this morning by looking at the financial statements. We can perform the work without using any reserve funds, and that is an appropriate use of those funds, given the fact that under the Trust Indenture, we can construct and reconstruct, as necessary, infrastructure improvements. This clearly falls within the definition of reconstruction and would be done by dedicating monies to the County under their commitment to accept the roads. Mr. Akey, Mr. Vincutonis and Mr. Smith have done the groundwork in getting us to this point.

Mr. Sunnarborg stated you used the phrase '*settlement agreement*'. Is this just an estimate or will it be an agreement that we give them this much money and they will deliver a final product?

Mr. Akey stated it is an agreement. I met with Mr. Michael Freilinger, Commissioner Michael Harford and others at the County to discuss this issue. I asked Mr. Vincutonis to meet with them to come up with a number. They had a number before we started, which was about \$360,000.

Mr. Moore asked is this a negotiation?

Mr. Akey stated yes. To Mr. Freilinger's credit and the others, they were very apologetic for delays on their side. We discussed the number and that was nothing close to the number I came up with. Mr. Freilinger reiterated it several times, and I felt he was very genuine and wants to be fair. We got down to \$140,000 from their \$360,000. I was actually down to about \$90,000, but I am not an expert in roadway repair. We arrived at a number and I asked Mr. Vincutonis and Mr. Larry Walter to meet with them, which they

did. I discussed this with Commissioner Harford about making sure the County was in sync with this issue. He said if this Board will approve the \$140,000, they are amenable to the agreement. Last week Commissioner Harford was here at a town meeting, and he and I discussed it prior to that meeting and he confirmed we are all in sync, but we need to finalize the number and move on.

Mr. Sunnarborg stated there was not much discussion. It was just a statement that we have reached an agreement, matter of factly. I do not think many people in the audience were aware of who owned the roads, and it did not matter to those in the audience.

Mr. Akey stated generally the assumption is the CDD owns the roads. We, as the CDD, have been chasing the County on this turnover for these last two roads. Based on my conversations with Mr. Freilinger and Commissioner Harford, once this Board approves this, the County is in sync and good to go.

Mr. Sunnarborg stated I think this is fantastic, and it is excellent work by everyone. Will there be a contract that we need to sign? Will we send them a check for \$140,000 with a contract, or is it hard to estimate so we will send them \$140,000 with a reconciliation at the end depending on how much base needs to be repaired?

Mr. Akey stated I am hearing from the rest of the Supervisors that this Board is agreeable to \$140,000 and then they take the roads. Then we need to finalize the rest of the agreement. We will have Ms. Jo Thacker and our Attorney look at the agreement. We will pay the \$140,000 to have the roadways repaired and then it goes to the Board of County Commissioners for approval and the roads are then turned over to the County.

Mr. Moyer stated it is not a situation where they will come back and say it cost twice as much to perform the repairs so we need to pay another \$140,000. This is a one-time payment of \$140,000 as I understand it.

Mr. Akey stated that is correct and that was the intent. Commissioner Harford wants to resolve this as soon as possible.

Mr. Collins asked will the County perform the work?

Mr. Vincutonis stated yes.

Mr. Collins stated the cost is unknown, so it could be \$50,000 or \$500,000.

Mr. Vincutonis stated I do not think the cost will get that low. It could be slightly less than \$140,000, but I think this is pretty close to the minimum we would pay. It is difficult to estimate without doing any soil testing.

Mr. Collins stated I would ask for two things. One, we will pay a maximum of \$140,000. If it costs them \$50,000, then that is all we pay.

Mr. Akey stated that seems fair.

Mr. Collins stated two, I would like to give them a timeline for it to be complete. We have been waiting on this for a very long time, and I would like to put a deadline to have it completed within three months. I think those are fair and reasonable requests.

Mr. Akey stated I agree. If it costs them less than \$144,000, the difference comes back to us. I am asking the Board to consider paying up to \$144,000, but we will not pay more than what the actual cost is and will work with the County to reach a timetable within the next seven days and bring that timetable to next week's meeting.

<p>Mr. Sunnarborg MOVED to approve the Settlement Agreement related to turnover of the roadways for \$144,000, with the stipulation that if the actual cost is less than this amount, the difference is refunded to the District, and the turnover is complete within a predetermined timetable and Mr. Collins seconded the motion.</p>
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Mr. Moore stated I appreciate all the work that has gone into this since our last discussion. Thanks to everyone.

Mr. Sunnarborg asked is there any way we can get them to include the striping on Celebration Avenue as an addendum to this?

Mr. Akey stated that was on my list. Commissioner Harford and I discussed this, and I stressed to him that I never said to them to stripe it as a safety issue. I said to stripe it as a consistency throughout the roadways and he agreed that it is an inconsistency, regardless of the safety issue. We both want it done and he asked if the CDD would help pay for it. If we are agreeable to pay \$4,500, then we could include it in the motion and pay them for both in one check and have them stripe the roads. I spoke to a lot of people, and some vehicles speed incredibly fast on that roadway. We are still working on no parking on the one side of the roadway. At first the County said it was not needed, so at least now they agree it needs to get done and the County wants to do it, but they want us to fund part of the \$8,700.

Mr. Sunnarborg stated I do not want to cloud this Settlement Agreement with another issue.

Mr. Akey stated I think we should keep the issues separate for now and we can add an action item to next week's agenda for the striping for \$4,500.

Upon VOICE VOTE, with all in favor, unanimous approval was given to the above motion.
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**FOURTH ORDER OF BUSINESS**

**Radar Speed Signs**

Mr. Akey stated Mr. Smith and Joe Bitar will have a conference call at 1:00 p.m. on the speed signs. There will be four and the County is purchasing two. Mr. Sunnarborg is welcome to attend the call instead of me, but we need to be sure we order four consistent signs. He will discuss the details.

Mr. Sunnarborg stated I do not need to be on the call. Have we nailed down the locations?

Mr. Akey stated the primary locations are on Waterside Drive from Celebration Boulevard, and Celebration Avenue across the bridge. We also discussed the type of poles they are mounted on and whether or not they can be moved. If we can move them, we can put one at the entrance to Artisan Park and at the daycare in North Village. The two primary locations would be permanent.

Mr. Sunnarborg stated if it is not practical to move them, then we need to discuss two other permanent locations.

Mr. Smith stated I think we can figure out a way to move them. We can put a sleeve in the ground and slide them on the sleeve and put them in a utility box with a lock and we can move them around pretty easily.

Mr. Akey stated after he talks with Mr. Bitar, we will have him put those details in writing and have him bring that back to next week's meeting.

Mr. Sunnarborg asked have you figured out how you want to provide power?

Mr. Smith stated he is talking about getting solar panels, which is fine.

Mr. Sunnarborg stated I think it is a good idea but I am concerned with what it will look like and I would like to see it.

Mr. Akey stated that will be a topic on the conference call. The County may buy all four because of pricing, and it may not be the same model as we have previously seen. I want to get the model numbers so we can look them up before we order them. We should see the picture of the model one more time just before the County orders them.

Mr. Sunnarborg stated we have seen that picture. If it is a stand-alone pole with the solar collector, that is one thing. If it is attached to an existing pole that has power and we are using solar just for this, I cannot imagine how it will look.

**FIFTH ORDER OF BUSINESS**

**Other Roadway Issues**

Mr. Akey stated the other place we have a roadway issue is World Drive at Celebration Boulevard where all of the potholes are on World Drive. I called the State multiple times to repair the road over the past couple years. Every time I call, the conversations start with them saying it is not their road. Then they claim they cannot find the location, and it is very frustrating. I sent a letter to their Engineer requesting a meeting with their Engineer. I told him that I do not want to have to start over and I want to look at a long-term solution to repairing the roadway. They just put down some hot patch and six months later, it is a mess. They have now agreed it needs a long-term approach.

Mr. Sunnarborg stated I appreciate you doing all this work on the roadways.

Mr. Akey stated on the corner of Celebration Avenue and Celebration Place, they have a few more punchlist items and all signage will be removed in the next couple weeks.

**SIXTH ORDER OF BUSINESS**

**Sidewalk Closure for the Catholic Church**

Mr. Smith stated the church requested three weeks to complete the work in front of the Catholic Church. They are installing a drain and changing the elevation of the sidewalk. The sidewalk is closed and they wanted three weeks, but if they get done sooner than that, it will be opened back up. They seem to be moving fairly quickly. They agreed to have a flagman at the crosswalk, and they will replace the entire section of sidewalk for about 30 feet left of the left driveway almost to the next driveway. They applied for a Use Permit, and Mr. Akey and I met with them. I think they can get it done faster than three weeks.

Mr. Sunnarborg stated I heard the church will be open by Christmas.

Mr. Akey stated I would like to see the sidewalk finished by Thanksgiving. The flagman will not stop traffic, but he will walk across the road with kids. That intersection has always made me nervous. When we put up the speed signs, I will tell the Sheriff's department that we need to see some enforcement since we are spending \$15,000 on

signs. The signs cannot be the only solution. Mr. Smith will monitor the sidewalk and they know when school hours are and they have a flagman there every day.

Mr. Smith stated I meet with them every morning.

## **SEVENTH ORDER OF BUSINESS**

### **Update on Public Records Request**

Mr. Merritt stated as you are all aware, the District received a public records request and Ms. Burgess has been working with you to gather any documents you may have for the news rack issue. I was in contact yesterday with Mr. Rick Mitchell, the Attorney for the vendor who has that contract, and we are working on details to provide those documents. We had some preliminary discussions of what his client is looking for and what we are looking for. We reiterated our point of view that we think these signs are in an unacceptable location. He will communicate that to this client.

Mr. Sunnarborg asked have you and Ms. Carpenter been reviewing the materials to establish not just our aesthetic point of view but the contractual and legal point of view?

Mr. Merritt stated we have taken a close look at the Interlocal Agreement among Osceola County, RCID, Enterprise CDD and Celebration CDD, as well as the cost-share agreement with RCID, Enterprise CDD, and Celebration CDD. In my review, there is an ongoing maintenance obligation that this CDD has to reimburse for various improvements within the U.S. 192 BeautiVacation District. The original intent was that the *quid pro quo* to exclude Celebration CDD and Enterprise CDD in the special assessment District was for the two CDDs to perform certain maintenance obligations. We have a good argument to say that due to our ongoing maintenance obligations, we have a right to participate in these conversations with respect to the U.S. 192 improvements within our area.

Mr. Sunnarborg stated I think this is a key point for us all to be aware of. I have said many times that the Celebration CDD does not have any jurisdiction in this area, but we are asking nicely on behalf of the community. We pay to maintain the frontage, which is *quid pro quo* for other commercial ventures in this Special Taxing District that pay to the BeautiVacation District. We pay a maintenance obligation, so we are being taxed and, therefore, we have a right to say something. The Celebration CDD is well beyond the boundary of the Special Taxing District, but because of the Interlocal Agreement and the Cost-Sharing Agreement, that is how they get our money. We have a right to speak up.

Mr. Collins asked are we responsible for the median as well, or just up to the road?

Mr. Smith stated we had maintenance responsibility of the median, but their landscaper started maintaining the median. We let them do it, and we keep an eye on it. If they choose not to, we maintain it as needed.

Mr. Collins stated I think that may be a counter argument as it is part of the BeautiVacation District and we are paying to maintain it.

Mr. Sunnarborg stated there is very little in the median, but the bulk of the BeautiVacation investment is the bus stops, the sidewalks, the landscape in the right-of-way and now these signs.

Mr. Collins stated there is a fair amount of landscape in the medians and upkeep that is required. If we are paying for that, it strengthens our argument.

Mr. Smith stated most of the work is from the edge of pavement all the way back to the right-of-way line on the frontage.

Mr. Moyer stated we had expenditures last year for maintenance of U.S 192. It is a line item in your budget.

Mr. Sunnarborg stated one other thing I want this Board to know is at our last Board meeting, I said my next step, which you all endorsed, was to meet with Mr. Fazie Khan, the County Controller whose department this issue belongs to. We were set to meet, and then we received this public records notice. I asked for a deferral of that meeting. Ms. Carpenter and Mr. Moyer advised me to hold off for now until all of the documents can be reviewed. I will take Ms. Carpenter's legal advice on whether or not I should proceed and in the meantime, I am on hold for these follow up meetings.

Mr. Akey stated we cut the grass on U.S. 192 from the back of the road into Celebration. Who cuts the grass on the median?

Mr. Smith stated we have an obligation to do it, but their contractor has been cutting it. We perform maintenance work from the pavement to the right-of-way.

Mr. Akey stated the median is actually owned by the State.

## **EIGHTH ORDER OF BUSINESS**

### **Conveyance of Stetson Parking Lot**

Mr. Merritt stated I thought we were getting this wrapped up, and that is still the case. When I made the comment at the last meeting, all of the documentation I received at that point led me to believe the parking lot was part of a larger parcel. The importance of that is the ongoing assessment obligation associated with that parcel and whether or not the

conveyance of the parking lot would have any affect on the operations and maintenance and debt assessments. I found information that this parcel is separately assessed. By conveying the parcel to the CDD, Carlyle will be relieved of any assessment obligation, and that obligation would come to the District. The debt assessment is \$5,000 and the maintenance assessment is \$3,200 each year. If we move forward this year, Carlyle has asked these costs to be prorated, which will be nominal from the District's perspective, but we would have an ongoing debt assessment that would be due on this parcel that would need to be paid.

Mr. Sunnarborg stated if they own it, we have an easement and they continue to pay the assessments. If we own it, we do not pay ourselves.

Mr. Merritt stated the debt assessment will still need to be paid. Just because you own it does not extinguish the payment, and it will have to be paid from CDD funds. That will be part of your budget process.

Mr. Akey stated I did not realize if we took that parcel, we would have to pay the assessments.

Mr. Collins stated I did not, either.

Mr. Akey stated we have someone clean it anyway so my thought was to have it conveyed to the District. But now that we are losing revenue, I am not sure I would like to take the lot.

Mr. Moyer stated Mr. Carlson brought that to the attention of the Board, and I suggest you defer any action so he can weigh in on this issue.

## **NINTH ORDER OF BUSINESS**

### **Supervisor Requests and Comments**

Mr. Sunnarborg stated we discussed last month about doing a shortcut to find all of The Celebration Company (TCC) ongoing developer rights and we concluded not to go overboard. The one thing I am keen to understand, sooner than later, is where their rights are to signage in our rights-of-way. I would like to make that an action item to find where it is, what document it is in, what the conditions are, and what the time limit is.

Mr. Collins asked do you mean signs in general?

Mr. Sunnarborg stated there are two I can think of. The signs, up until fairly recently, said *New Home Sales*. They are gone now, but this was a right TCC had that they turned over to St. Joe to lead people to their model homes in Artisan Park. Now that they are sold, they voluntarily pulled them out, but the right still exists. The second existing

example is all of the monument signs with the slats directing people to the hotel and downtown and so forth. Those are owned by TCC, but they are on our property. I do not think they should be removed, but I think we should maintain them and decide what should be included on the signs. What I am more concerned about is when and if Island Village starts. It is TCC's intent to use our existing rights-of-way to direct people to Island Village. I want to know if there are any limitations on what they can or cannot do. I am not concerned about TCC because in their 15-year history, they have never done anything that is awful. What typically happens in real estate development is as you get to the end, there is usually a bulk sale of property to someone else and the original developer goes away. I am concerned about their successor. If their successor acquires their right to signage in the right-of-way, like St. Joe acquired, they could do something hideous. I want to understand where it is in the contract or other document, what they can do, when it ends and whether we have to approve anything so we can be aware before anything happens.

Mr. Akey stated I agree that we should figure it out sooner.

Mr. Sunnarborg stated there is a long list of hundreds of documents to find all of the developer rights. I am primarily concerned with this one.

Mr. Akey asked did we resolve the New Home Sales signs and slots with Mr. Parker?

Mr. Smith stated I took a picture of all the signs with New Home Sales and I gave Mr. Parker the locations and pictures of them. I am waiting to hear from Mr. Parker to see what else we might want to put on there. We encouraged them to put the high school on there. We have some changes to be made, and they did not have a problem, but we have to determine what to put on the signs.

Mr. Collins asked how much would that research cost? My impression about Disney is they set up their contracts to do whatever they want, and they set it up so that they have broad abilities. We have to deal with those broad abilities but they have been a very good, responsible developer. They can do what they want, and there is nothing we can do about it. If it does not cost us much money for that research, I am fine with it. My concern is we are spending money on Attorney and engineering fees that are way over budget. I am fine doing these things as long as it is not expensive.

Mr. Merritt stated I think we will find just what you have said. From the documents I have personally reviewed to this point, many of these rights are retained in the plats for the various phases of development, and they are retained property rights that have been

held onto by TCC. They can do many things with those; primarily, assign those to other entities. Because they are property rights, they do not burn off or expire. The idea of property ownership is you retain it in perpetuity until you transfer it to another party. That is a retained right that is an ongoing right and is either possessed by TCC or it is transferred to a third party as they wish. That third party could very well be the CDD. We can ask them if they would narrow it down to something we would be comfortable with so if it were transferred in the future, something hideous will not be put into our right-of-way.

Mr. Collins asked since they have finished development in the main village, can we ask them to transfer their rights to the CDD and let them keep it in the undeveloped area?

Mr. Sunnarborg stated that is exactly what we did with the CROA Charter. We asked them to assign a lot of those to CROA, which they did, with the exception of signage rights in Parcel B, which is all of the developed part of Celebration. They want to retain the right to advertise in CROA's common areas and parks for Island Village. They conceded a lot of things, and they will voluntarily declare the development and sale period over in Parcel B, but they asked for this one exception. The way the language is written now, it implies CROA owns the rights-of-way where they want to put these signs, but the CDD owns the rights-of-way. What the charter loosely identifies as common area in Parcel B is now limited to the CROA parks in Parcel B. I am asking about their ability to put up signs in the existing villages for Island Village or for anything else they own anywhere. What about the west side of I-4 and what if that turns into a timeshare village, and they are advertising in our rights-of-way for something we do not want to be associated with. They have the right to do that. TCC would probably not do it, but I believe their successor would. I do not want to spend much money, but I want to find out where it is so we can read it and understand it in order to deal with it intelligently when it comes up.

Mr. Collins asked will it be less than \$500?

Mr. Merritt stated a lot of the text is in the list of plats that were set forth in the memo we provided.

Mr. Moyer stated this is an item we visited a year or two ago. There is a document as part of the minutes that we read into the record. Let us see what we can pull for you, because I remembered seeing a document with those reservations. We may have it and Mr. Merritt may not have to do anything.

Mr. Merritt stated a lot of work has been done on this. I think it makes sense to look at this document again.

Mr. Sunnarborg stated there is no urgency on this and no need to spend much money. While we have TCC in a good mood, it might be the right time to ask, if there is something to ask.

Mr. Collins stated they have been very good to work with in my relationship with them.

Mr. Akey stated we may get some things now and others in five years or ten years.

Mr. Merritt stated from a point of view in having initial conversations with TCC, from everything I have seen, I think it is safe to assume they have very broad signage rights.

Mr. Sunnarborg stated I would like to see how it is phrased.

Mr. Merritt stated in the memorandum I prepared, I quoted their language verbatim from the plat language. It is very broad, essentially to put signs in the rights-of-way. It does not define what types of signs or for how long.

Mr. Sunnarborg stated that is what I am looking for, to see if it ever burns off, and if it does not, if it is even legal.

Mr. Sunnarborg asked could Mr. Smith update us on all the stormwater issues with RCID and the water quality tests at our next meeting?

Mr. Smith stated yes.

Mr. Collins stated we have a meeting scheduled on Monday with Mr. Moore, CROA and TCC regarding the civic corridor on November 16, and it has been advertised.

#### **FOURTH ORDER OF BUSINESS**

#### **Adjournment**

On MOTION by Mr. Sunnarborg, seconded by Mr. Collins, with all in favor, the meeting adjourned at 9:55 a.m.
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Tom Sunnarborg, Secretary

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Cliff Akey, Chairman