

MINUTES OF MEETING
BARTRAM PARK COMMUNITY DEVELOPMENT DISTRICT

A special meeting of the Board of Supervisors of the Bartram Park Community Development District was held on Wednesday, March 27, 2019 at 11:00 a.m. at the Offices of England-Thims & Miller, Inc. 14775 Old St. Augustine Road, Jacksonville, Florida 32258.

Present and constituting a quorum were:

Trisston "Tim" Brown	Chairman
Patricia Evert	Supervisor
Don Smith	Supervisor

Also present were:

Jim Oliver	District Manager
Wes Haber	District Counsel (by phone)

FIRST ORDER OF BUSINESS

Roll Call

Mr. Oliver called the meeting to order at 11:00 a.m.

SECOND ORDER OF BUSINESS

Public Comment

There being none, the next item followed.

THIRD ORDER OF BUSINESS

**Discussion of Property Interest Exchange,
Construction & Joint Use Agreement**

FOURTH ORDER OF BUSINESS

**Consideration of First Addendum to
Property Interest Exchange, Construction,
Maintenance & Joint Use Agreement**

FIFTH ORDER OF BUSINESS

Consideration of Indemnification Agreement

Mr. Haber stated the Property Interest Exchange, Construction & Joint Use Agreement was provided just to provide background on what the board is considering today. The board will be considering an addendum to that agreement. The property interest agreement is an agreement between the Department of Transportation, the CDD and Bartram Commons Property Owners Association. The Bartram Commons Property Owners Association is the property owners association that was created for the Bartram Common Shopping Center, which is a shopping center that has not yet been developed but the POA for the shopping center has been created.

The property owners association and the Developer, the Department of Transportation and STANPAC have been working together and negotiating to try and figure out a way to get certain drainage easements that benefit the Department of Transportation, that benefit the POA and that also benefit the CDD for the benefit of all parties that will ultimately help facilitate the construction of a number of items, including the shopping center. The agreement requires the POA to do a number of things. It requires conveyance of certain real property interests. It also requires the POA to construct certain drainage improvements and it also requires the POA to maintain certain drainage improvements. When the Department of Transportation was made aware of the fact that the CDD exists and that the CDD also benefits from the drainage improvements, it requested that the CDD act as a guarantor on the POA's maintenance obligation. The original agreement specifies that the POA will construct the facilities and that the POA will maintain the facilities. The agreement further provides that, should the POA fail to maintain the facilities after the Department of Transportation requests the POA to undertake such maintenance, the DOT has the right to look to the CDD to pay for maintenance. That agreement was executed and entered into in 2017. The parties have continued to negotiate and there have apparently been some concerns raised by the DOT with respect to title to certain property that the POA was getting drainage easements over for the benefit of the DOT. The DOT has asked that the CDD and the POA to enter into this First Addendum to the Property Interest Exchange, Construction, Maintenance & Joint Use Agreement, which covers the DOT's concerns regarding the conveyance of the property. As it relates to the CDD, it asks that the CDD and the POA defend and indemnify the Department of Transportation and pay any claims that may arise to the extent that there are any issues with respect to the title to the real property over which certain drainage easements are being granted. The First Addendum also asks that the CDD guarantee any payment of sums due and owing the department from the POA to the extent that there are any issues for the DOT's access to the property. When I was approached about having this addendum to the Property Exchange Agreement approved, I asked if there was anything the POA was willing to do to support the CDD, so that way if a claim is made against the CDD, the CDD would then have a right to make a claim against the POA to indemnify it and to reimburse it. The purpose of the indemnification agreement is to cover the First Addendum. What I have asked the attorney for the POA to agree to, and the POA is willing to agree to, is to approve it subject to a revision that says to the extent that the DOT makes a claim against the CDD for

either the guarantee on the maintenance or the indemnification as for or the payment, that the District has the right to ask the POA to make the District whole for those payments. The POA is going to be an entity that will exist for that shopping center. It is an entity that has assessment authority. It is anticipated that the POA will fulfill all of its obligations. The attorney for the POA told me that the reason why the CDD is even involved in these agreements is because the DOT is very demanding and asks for the world and is often able to get it because they will not approve stuff unless they get everything they ask for. There is no specific concern that has been raised by the DOT as to having the CDD backstop these agreements because there is an issue with the POA. It is just that the DOT is asking for the world. With the indemnification agreement in place, I am comfortable with the CDD approving the First Addendum, knowing that we can then go to the POA to backstop any claim that the DOT may make against the CDD. As it has been explained to me, it is unlikely that there will be any claim made against the CDD, either under the existing agreement or the proposed addendum.

Ms. Evert asked what makes anyone think that the POA is someone that we can count on?

Mr. Haber responded you are correct to the extent that the POA becomes an entity that is unable to fulfill certain obligations, that would potentially be a problem for the CDD. I think that is a valid concern. That POA will have the ability to levy assessments against the property owner and that property is anticipated to be developed similar to the shopping center that exists. It is anticipated to be a large shopping center.

Ms. Evert asked what makes us think that going back to basics that any issues that may come up are not very realistic?

Mr. Haber responded that is based on the representations that were made to me by counsel for the POA. If the POA fulfills all of its obligations under the agreement then there is no claim made by the DOT against the CDD.

Mr. Brown stated Pat raises a good point. We would be very exposed if the POA doesn't fulfill their obligations. What is the potential liability? Are we talking about a retention pond or is it just a drainage ditch?

Mr. Haber responded I think it is a large drainage pond that will be located behind the shopping center and that obligation presently exists under the existing agreement. Typically

maintenance of a storm water pond largely goes to dealing with maintaining the water quality and sometimes vegetation.

Mr. Brown stated so we are probably talking about a retention pond designed with an overflow. It will overflow and spill into Julington Creek. So if there is any fault found with flooding of that retention pond and given that area, you will likely have some type of bulkhead or retainer wall to keep the water in. I think the level of exposure short-term is low but long-term we could be looking at substantial cost if anything fails and is damaged there. The lake in our subdivision is designed very similar. Are we talking about liability if someone falls in and drowns?

Mr. Haber responded I don't think so. The CDD won't be the owner of it and the CDD has sovereign immunity, so I don't think we are looking at liability for injuries that occur. I don't think there is much liability for the District because we are not the defined maintenance entity for the facility. We are a guarantor of the POA's. We don't have an affirmative obligation to monitor and to maintain. Our sovereign immunity together with our limited involvement with the system itself I think protects us from claims related to damage or injuries as a result of a malfunction or someone falling in.

Ms. Evert asked was if the POA who originally initiated this or was it the DOT?

Mr. Haber responded I am not fully involved in what they are seeking to do for the development but the overall development of that area requires some exchange with DOT, so as part of those ongoing negotiations, the DOT said we will allow you to do this but we are going to enter into this agreement. I think the pushing for the CDD's involvement is 100% from the DOT. There is a similar type of agreement for the shopping center on the other side of the CDD, where whoever was at DOT at that time did not ask that the CDD be a party to it, so it is just between the POA and the DOT.

Mr. Brown asked is it possible that we could perform an amendment to have us not be a party? Can we seek to be removed?

Mr. Haber responded my guess is given that it is the DOT that is asking for the CDD to be part of the indemnification that the DOT would not want to amend the agreement to remove the CDD from its backstop obligation.

Ms. Evert asked are there any parameters at all that are palatable that would be able to describe what proper maintenance is?

Mr. Haber responded the agreement we have in place now has us under the maintenance obligation, so it is really this addendum and the addendum has to do with the title issue and the access to the property.

Mr. Oliver asked is ETM likely the engineer on this project?

Mr. Haber responded that would be my guess.

Mr. Brown stated this water would sit on 1.53 acres. Sixteen feet is the top of the water level in the pond but then they are designing to be able to hold up to 21.51 feet. FDOT is requiring a reserve capacity, as well. In other words, there is a lot of room for more water to come into this drainage system and still flow out.

Ms. Evert asked when there is extra room, does that require extra maintenance?

Mr. Brown responded they have a slope here of 4:1 grade. The maintenance would be keeping the grass cut and keeping the vegetation in place, so you won't get any erosion. If there was anything that would be maintained that would cost some money I think it would be this control structure here. Is this pond built already?

Mr. Haber responded I don't think so. I think there are portions of it constructed but I don't know the entire status of construction.

Mr. Brown stated I am looking at a satellite picture of it on my cell phone, so unless they are going to build something separate this exists already. I think our liability is relatively low, as far as something happening to the drainage system itself. So as far as someone falling in, we are indemnified from those types of claims?

Mr. Haber responded I didn't say the word indemnified, but I could certainly ask to include that in the indemnification agreement that we have with the POA for consideration. I think if someone fell in, a claim against the CDD is far removed in that the CDD is not going to be the owner nor is it the ultimate party responsible for maintenance. The likelihood for a large claim for an injury I think is relatively small given those factors.

Mr. Brown asked is there anyone you can reach out to to find out what the maintenance cost is?

Mr. Haber responded I would be happy to. At this point, it would be the estimated maintenance cost.

Mr. Brown asked what is your timeline?

Mr. Haber responded I am at your discretion, so I don't have any rush. I want you, as the board, to feel comfortable with what you are approving. I think any amount that you are paying that doesn't get reimbursed by the POA is more than what I would want the board to have to pay; hence, my request for the indemnification agreement and my hope is that the POA is an entity that will continue to fulfill its obligations. The obligations that you would be undertaking would be levied as an assessment and it would go across the entire CDD. I don't want to try and downplay any obligation. I realize any expense on part of the CDD is an expense, but my point is you have fairly wide large group of assessment payers that you would be splitting it amongst.

Ms. Evert asked is it too far of a stretch to say that we can sign this provided the POA is setting aside maintenance reserves?

Mr. Haber responded I can certainly ask about that. We can ask for them to provide what the estimated maintenance cost is and ask them what they intend to set aside for reserves. In the agreement between the District and the POA, we can say in addition to the indemnifications required in this agreement, the POA also agrees to set aside reserves for the maintenance of the drainage facility and will provide the District with an update on the amounts in the reserves on a regular basis. You could approve the First Addendum subject to the POA entering into the indemnification agreement in terms that are acceptable to Trisstn.

On MOTION by Ms. Evert seconded by Mr. Smith with all in favor the First Addendum to Property Interest Exchange, Construction, Maintenance & Joint Use Agreement was approved, subject to the POA entering into the Indemnification Agreement in Terms that are acceptable by Chairman & to review and approval of revised Indemnification Agreement.

SIXTH ORDER OF BUSINESS

Other Business

There being none, the next item followed.

SEVENTH ORDER OF BUSINESS

Next Scheduled Meeting – April 24, 2019 @ 11:00 a.m. at the Office of England, Thims & Miller located at 14775 Old St. Augustine Road, Jacksonville, FL 32258

Mr. Oliver stated the next scheduled meeting is April 24, 2019 at 11:00 a.m. at this location.

EIGHTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. Smith seconded by Ms. Evert with all in favor the Meeting was adjourned.



Secretary/Assistant Secretary



Chairman/Vice Chairman