

**MINUTES OF MEETING  
XENTURY CITY  
COMMUNITY DEVELOPMENT DISTRICT**

A meeting of the Board of Supervisors of the Xentury City Community Development District was held Wednesday, June 17, 2015 at 11:00 a.m. in the Sales Boardroom, Gaylord Palms Resort & Convention Center, 6000 West Osceola Parkway, Kissimmee, Florida.

Present and constituting a quorum were:

Steven Ivins  
Owen Beitsch  
Todd Persons

Chairman  
Vice Chairman  
Assistant Secretary

Also present were:

Gary Moyer  
Leigh Ann Buzyniski  
Dimitri Toumazos

District Manager  
District Counsel  
Xentury City Development Company

**FIRST ORDER OF BUSINESS**

**Roll Call**

Mr. Moyer called the meeting to order.

Mr. Moyer stated the record will reflect we have Mr. Beitsch, Mr. Persons and Mr. Ivins present, which constitutes a quorum of the Board. Mr. Baker is not with us at roll call.

**SECOND ORDER OF BUSINESS**

**Public Comment**

There being no comments, the next order of business followed.

**THIRD ORDER OF BUSINESS**

**Organizational Matters**

**A. Consideration of Resolution 2015-01 Canvassing and Certifying the Results of the Landowners Election**

Mr. Moyer stated on November 4, 2014, we had a Landowners Election as required by Statute, at which time Mr. Persons received 340 votes, Mr. Baker received 340 votes and we have a vacant seat for which we did not have a candidate, and 300 were cast. This may sound strange to everyone on why we would be casting votes for a vacant seat, but under the law the two people who receive the most number of votes serve for a four year term and the third one serves for a two year term, so this was our way of determining who got the four year term and who got the two year term, so when we finally fill the vacant seat in the future, we will know the expiration of the

term of office. This Resolution is much like a canvassing Resolution any county commission will adopt after general elections. This just memorializes what took place at the landowners election. I will entertain any questions, but if not, a motion to adopt the Resolution is in order.

There being no further discussion,

On MOTION by Mr. Ivins seconded by Mr. Beitsch with all in favor, Resolution 2015-01 Canvassing and Certifying the Results of the Landowners Election of Supervisors Held Pursuant to Section 190.006(2), Florida Statutes, was adopted.

**B. Oath of Office for Newly Elected Supervisors**

Mr. Moyer stated I will have to do the Oath of Office for Mr. Baker when we have our next meeting, but Mr. Persons if you would please raise your right hand, I will read you the Oath of Office.

*Mr. Moyer being a Notary Public of the State of Florida administered the Oath of Office to Mr. Todd Persons, a copy of the signed Oath is attached hereto and made a part of the public record.*

**C. Appointment of Supervisor to Fill an Unexpired Term of Office (11/2016)**

Mr. Moyer stated it is fine if someone has a nomination, but if we are not ready to do this, we will just carry it over to future agendas.

Mr. Ivins stated there are no nominations.

**D. Oath of Office for Newly Elected Supervisor**

This item was tabled.

**E. Election of Officers – Resolution 2015-02**

Mr. Moyer stated the last item I have for you deals with the election of Officers. Mr. Ivins is currently our Chairman. Mr. Beitsch is the Vice Chairman. The other Board members are Assistant Secretaries and I am your Secretary. Mr. Bob Koncar, who works for Severn Trent, is the Treasurer. If it is your desire to keep the same officer structure, you can do so with a simple motion. If you want to go through them one at a time and change places, we can do that too.

There being no further discussion,

On MOTION by Mr. Persons seconded by Mr. Beitsch with all in favor, Resolution 2015-02 Designating Officers of the District to retain the current officer structure, with Mr. Steven Ivins to remain as Chairman, Mr. Own Beitsch to remain as Vice Chairman; Mr. Todd Persons and Mr. Timothy Baker to remain as Assistant Secretaries, Mr. Gary Moyer to remain as Secretary, Mr. Robert Koncar to remain as Treasurer and Mr. Stephen Bloom to remain as Assistant Treasurer, was adopted.

**FOURTH ORDER OF BUSINESS****Minutes****A. Approval of the Minutes of the August 12, 2014 Meeting****B. Acceptance of the Minutes of the November 4, 2014 Landowners Meeting**

Mr. Moyer stated each Board member received a copy of the Minutes of the August 12, 2014 Meeting and the Minutes of the November 4, 2014 Landowners Meeting, and requested any additions, corrections or deletions.

Mr. Beitsch asked who among us was actually present at the Landowners Meeting in November? The question is not about the appropriateness of the meeting, but who was really entitled at that point.

Mr. Ivins stated I got the vote.

Mr. Beitsch stated I do not know who actually approves those Minutes. That is the question I have.

Upon further discussion,

On MOTION by Mr. Ivins seconded by Mr. Beitsch with all in favor, the Minutes of the August 12, 2014 Meeting were approved and the Minutes of the November 4, 2014 Landowners Meeting were accepted.

**FIFTH ORDER OF BUSINESS****Presentation of Fiscal Year 2016 Budget****A. Fiscal Year 2016 Budget**

Mr. Moyer stated this meeting commences our budget process. You gentlemen have been through this with me numerous times before. Chapter 190 provides that we present a budget to the Board, and if it is suitable, this Board approves the budget and sets a Public Hearing. We need to discuss a date which needs to be at least 65 or 70 days from now because we have to provide this to the county for their review for 60 days, and at that Public Hearing taking comments into

consideration, the Board will be asked to adopt the budget. I differentiate *approve*, which is what you are doing today, from *adopt*, and we are just really starting that process, so since this is June 17<sup>th</sup>, it should be scheduled sometime after August 20<sup>th</sup>. Does anyone know what their calendars are this far out?

Mr. Persons responded my schedule in August is pretty empty.

Mr. Ivins asked is it the day or the date which is important?

Mr. Moyer responded it is just enough to have 60 days, and we will get this to the county within the next couple of days, which is why I just came up with the 20<sup>th</sup>. You may want to schedule it the week of the 24<sup>th</sup>.

Mr. Beitsch stated the week of the 24<sup>th</sup> may be better for me because school starts for me the week of the 17<sup>th</sup>.

Mr. Moyer stated the 26<sup>th</sup> is a Wednesday.

Mr. Persons stated that is perfectly good for me.

**B. Consideration of Resolution 2015-03 Approving the Budget and Setting a Public Hearing**

Mr. Moyer stated in terms of presenting the budget to the Board, it is really the same budget we have been operating under for a number of years. We usually bring the budget in under what was budgeted and we anticipate doing that again this year. Therefore, if everyone agrees to continue operating the way we have been in the past, a motion for Resolution 2015-03 approving the budget and setting the Public Hearing for August 26, 2015 at 11:00 a.m. at this location would be in order.

There being no further discussion,

On MOTION by Mr. Beitsch seconded by Mr. Persons with all in favor, Resolution 2015-03 Approving the Budget for Fiscal Year 2016 and Setting a Public Hearing Thereon Pursuant to Florida Law to be held Wednesday, August 26, 2015 at 11:00 a.m. at the Gaylord Palms Resort and Convention Center, 6000 West Osceola Parkway, Kissimmee, Florida, was adopted.

**SIXTH ORDER OF BUSINESS**

**Manager's Report**

**A. Financial Statements, Funding Requests and Check Register**

Mr. Moyer stated the next item I have for you are the financial statements. There is not a lot of financial activity and we are under budget. Our prorated budget is \$16,539 and we have

spent \$11,720. We also have some invoices and other information for you as part of this section of your agenda. If you are in agreement, I would ask for a motion approving the financial statements, funding requests and check register.

There being no further discussion,

On MOTION by Mr. Beitsch seconded by Mr. Persons with all in favor, the Financial Statements, Funding Requests and Check Register were approved.

**B. Report on Number of Registered Voters (0)**

Mr. Moyer stated we are required to present this report annually in order for us to monitor whether we have 250 registered voters. If we did, at that time, we would convert from landowners elections to a General Election format in which the residents would vote for Supervisors, and as you can see, we have no registered voters. We get this information from the Supervisor of Elections.

**SEVENTH ORDER OF BUSINESS**

**Attorney's Report**

**EIGHTH ORDER OF BUSINESS**

**Engineer's Report**

**A. Discussion of Public Facilities Report**

Ms. Buzyniski stated we have the Public Facilities Report, which is due for the District office first. This is more in the nature of an inquiry as to where that stands and I do not believe the District Engineer is here today.

Mr. Moyer stated it is a short report since we really do not operate or maintain any public facilities at this point in time, so I will probably just write a letter to the county. I will talk to Mr. Florio about it to confirm this is the case, but I am not aware we are operating or maintaining infrastructure.

Mr. Toumazos stated we do have services, not that we are doing maintenance, but under our auspices, so to speak. The ponds are Xentury, but the streets are county and the utility is TOHO.

Mr. Ivins stated we own easements and we did not surrender those. The reason I do not think we did is because we were retaining the right for use as a right-of way. Is that infrastructure?

Mr. Moyer responded Mr. Ivins, I will contact you and Mr. Florio and have a conference call and maybe get Mr. Clark on the call as well in order to address these items.

**NINTH ORDER OF BUSINESS****Supervisor Requests**

Mr. Beitsch stated mine is a more informal question and I do like to get some information. About a year ago, the IRS issued a ruling to the Villages and I actually wrote an academic paper on that ruling and have not bothered to follow up on that and see if anything more has been done with it or if it has created problems for others and it is something I would like to know if you have some general knowledge about it.

Mr. Moyer stated where that stands, it is when that ruling first came out, the National Association of Bond Lawyers (NABL), prepared a good paper, weighed in on it, and stated that basically the IRS was trying to create law by Technical Advice Memorandums, which was inappropriate to do. If there is going to be a change in policy, there is a procedure. This was existing law for at least 100 years in the State of Florida and probably in many other locations throughout the country which use Special Tax Districts. That resulted in the Treasury Department indicating they would review that and issue guidance on the definition of a political subdivision and the components of the political subdivision. It had long been believed the political subdivision was defined by looking at the powers it had and whether it had sufficient sovereign powers of the state to be considered a government. Nowhere in previous IRS rulings was there any indication that those sovereign powers had to be the people who serve as Supervisors over those sovereign powers and had to be elected by the General Electors, and that is the issue because in a commercial District, as you are aware, there are usually no registered voters, and we continue with landowner votes and in the Villages case, the IRS took exception to that and said you are really not a government, we do not care how many powers you have, we do not care what you exercise, you guys are not elected by the general public, so therefore, by default you are not a government. Probably one year or more ago as I mentioned, Treasury indicated they would take that up as part of their study or whatever process they go through. A lot of that came about as I mentioned because of NABL's involvement. About a month ago there was the American Bar Association, a larger group than NABL, and basically prepared a similar paper to what the National Bond Lawyers did and said this is totally inappropriate. They cannot be doing this by issuing a Technical Advice Memorandum, and it is at a standoff. Having said that, one of the things the IRS was trying to get the District to do was to take out the bonds with taxable bonds. Interestingly enough, this was not financially feasible for a long time. They want money as well, but they said we are going to require you to refinance with taxable bonds. We just happened to slip into a window that was unbelievable

in terms of taxable rates being close to tax exempt rates. In fact, the taxable rates were under what the tax exempt rates were on the outstanding bonds. Therefore, we refinanced \$247 Million with taxable bonds and saved \$21 Million doing it. We currently have what is called the tail exposure because the IRS can go back three years.

Mr. Beitsch stated I thought the big deal was the previous exposure.

Mr. Moyer stated no, actually it is the forward exposure we get with the major lawsuits with bondholders, and that is what we wanted to avoid. We have already gone through one year, so there is no exposure going forward because they are taxable. They only go back three years and we have already gone through one year, so now they only go back two years and we told them we are not going to start writing checks. We will take it to Tax Court. This is going to be a protracted deal and we still have things to do in terms of going to the IRS Appeals. There is a department of the IRS called Appeals, and we have the right to take our issue to Appeals, but the IRS has not concluded their examination. They have not determined the bonds to be taxable.

Mr. Persons asked do you have the ability to go to tax court in addition to that afterwards?

Mr. Moyer responded yes. The District, interestingly enough, does not have the right to go to tax court.

Mr. Persons asked are they a taxable entity?

Mr. Moyer responded they are not a bondholder.

Mr. Beitsch stated they have the monies. We know all the District cares about is the money or not the money, but it is interesting their ability to issue this kind of debt seems to give them standing.

Mr. Moyer stated they are going to be the recipient of lawsuits if the bonds are declared taxable and the bondholders will probably file suit because they do not want to pay tax on those bonds.

Mr. Persons asked do the actions of the refinancing you went through into a taxable bond indenture set a precedent for other Districts?

Mr. Moyer responded I think they are going to, and yet it depends on what guidance and what rulings come out on what is a political subdivision. It certainly could have some far reaching ramifications.

Mr. Beitsch stated this is what my paper was about since nothing has happened, I threw a question mark out there and it has not been answered. It still is an interesting case in the sense that

we may *dodge bullets*, and *dodging bullets* does not amount to adjudication, so it makes the issue still hang out there possibly for others.

Mr. Moyer stated sure. Our friends down the road here have some exposure as well.

Mr. Persons stated I think what you said was the IRS said the Supervisors were not elected by the general public. How were they elected?

Mr. Moyer responded they were elected through the landowners election.

Mr. Persons stated there is still that much more land in the Villages and they out-vote the homeowners.

Mr. Moyer stated no, the Villages has three Town Centers. Each Town Center is its own Community Development District, which there will not be residents because it is all commercial and owned by the developer.

Mr. Beitsch stated my conclusion in my scholarly paper was the non-resident Districts have this cloud hanging over when they go to the non-taxable market. It seems it always gets resolved. At the time, Disney was getting ready to close, and I thought the numbers were approximately \$85 Million. They postponed their \$85 Million because they were looking to see where this was going. I assume they issued because they needed the money.

Mr. Persons stated the bond holders apparently are not overly concerned if they floated that issue.

Mr. Moyer stated it is interesting and now it has been going on for almost nine years.

Mr. Beitsch stated this is the reason I was surprised and I looked a little bit last week knowing we were coming here and I did not see anything and I am sure you know about it if I raise the question. That is one of the reasons we are here.

Mr. Moyer stated I know way too much about it I am afraid. It has been interesting and frustrating.

Mr. Persons asked what is the IRS after? You have a Community Development District which is commercial that you are restoring. Are they making money and that is what they want us to pay taxes on?

Mr. Ivins responded I am referring to taxable income on the interest.

Mr. Beitsch stated you have \$1 Million worth of debt and I guess that was the original amount.



Mr. Moyer stated some of that debt is pretty old. It was paid down and probably closer to \$400 Million.

Mr. Persons stated that is \$20 Million per year on tax revenue at 5%.

Mr. Ivins asked what do they do with the interest from the bonds?

Mr. Moyer responded they want to tax the bondholders.

Mr. Beitsch stated we are banking our tax free income only to discover we now owe 30 or 40 years on taxes. It is not a pretty picture.

Mr. Moyer stated going forward, instead of having a tax exempt rate which in theory should be lower than the taxable rate, the District would have to raise its assessments in order to pay the bonds which are now taxable at a higher rate. It was just a total anomaly that we ended up in a situation in which the taxable rate was below the tax exempt bond.

Mr. Ivins asked what about what it does to the yields to buy and sell the bonds?

Mr. Moyer responded remember the old bonds are not out there anymore. No one is selling the old bonds because we called all of the old bonds.

Mr. Persons stated as the Dean of Education at UCF once said in a Board meeting while I was working for the President of the University, this would be a great place to work if it weren't for these students and he was serious. He was frustrated about something.

Mr. Beitsch stated until a few years ago the faculty members at UCF had different classifications, and the faculty had a heavy teaching load, more so than the University of Florida because it is not considered a research university so they were supposed to be in a classroom teaching students. Now it is a research university and if you are doing a certain kind of research you are relieved of teaching responsibilities.

Mr. Persons asked did they declare themselves a research institution?

Mr. Beitsch responded you have to raise a certain amount of money and it has got to be in certain areas. If there is a prescription for doing it, it still has to be approved by the Governor, but once that happens the entire faculty student research changes significantly.

Mr. Moyer asked where do you teach?

Mr. Beitsch responded I teach at UCF.

Mr. Moyer asked do you teach Economics?

Mr. Beitsch responded yes.

**TENTH ORDER OF BUSINESS**

**Audience Comments**

There being no audience members present, the next order of business followed.

**ELEVENTH ORDER OF BUSINESS**

**Adjournment**

There being no further business,

On MOTION by Mr. Persons seconded by Mr. Ivins with all in favor, the meeting was adjourned at approximately 11:30 a.m.
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Gary L. Moyer  
Secretary

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Steven Ivins  
Chairman