

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

The regular meeting of the Board of Supervisors of the Xentury City Community Development District was held Monday, August 12, 2013, at 11:00 A.M. at the Gaylord Palms Resort & Convention Center, St. George Boardroom, 6000 West Osceola Parkway, Kissimmee, Florida.

Present and constituting a quorum were:

Steven R. Ivins
Owen M. Beitsch, Ph.D.
Todd Persons
Timothy R. Baker

Chairman
Vice Chairman
Assistant Secretary
Assistant Secretary (by phone)

Also present were:

Gary L. Moyer
Scott Clark
John Florio
Dimitri Toumazos

District Manager
District Attorney
Engineer (by phone)
Xentury Development Company

FIRST ORDER OF BUSINESS

Roll Call

Mr. Moyer called the meeting to order and called the roll.

SECOND ORDER OF BUSINESS

**Organizational Matters – Oath of Office
for Owen Beitsch**

Mr. Moyer being a Notary Public of the State of Florida administered the oath of office to Mr. Beitsch, which will be a part of the public record for this meeting.

Mr. Moyer stated since you are already a Supervisor, I am sure you filed Form 1, Statement of Financial Interests.

Mr. Beitsch stated I filed it.

THIRD ORDER OF BUSINESS

**Approval of the Minutes of the May 31,
2013 Meeting**

Mr. Moyer stated each Board member received a copy of the minutes of the May 13, 2013 meeting and requested any additions, corrections or deletions.

Mr. Florio stated on Page 5, where Mr. Ivins questioned whether we could de-annex property out of the CDD, the word “because” should be “if”.

On MOTION by Mr. Persons seconded by Mr. Ivins with all in favor, the minutes of the May 13, 2013 meeting were approved.

FOURTH ORDER OF BUSINESS

**Public Hearing for the Adoption of the
Fiscal Year 2014 Budget**

A. Fiscal Year 2014 Budget

Mr. Moyer stated the primary purpose of our meeting today is to hold the public hearing for the adoption of the fiscal year 2013 budget, which begins on October 1 and concludes on September 30, 2014. This Board approved the budget on May 31 for setting this public hearing. I made a brief presentation, the synopsis of which is this is exactly the same budget we have been operating under for a number of years. We do not usually expend all of the monies we identify in this budget. The budget is not an authorization to spend, but an estimate of the work program the District will undertake in fiscal year 2014.

This meeting was noticed as a public hearing. We will open the meeting at this time to take any comments on the proposed budget.

Mr. Moyer stated the record will reflect there was no public comment.

Mr. Ivins stated I noticed a huge insurance increase.

Mr. Moyer stated we insure general liability insurance through a Florida Municipal Trust. Based on their claims history, they adjust their premiums. We have been lucky in the past that the premiums have been as low as they have been. Since we have such a limited scope and exposure, we anticipated this line item to increase. However, I cannot guarantee this will be the premium as it may still be between the range of \$3,000 to \$4,000. For budget purposes, we anticipated an increase.

Mr. Ivins asked are there many claims?

Mr. Moyer responded you have to remember we had several bond defaults. I think our group in total has been signaled out as a high-risk group, at least until we get through some of these foreclosures.

Mr. Ivins stated I am guessing this is why there is an increase in legal services because we are a high-risk group.

Mr. Beitsch asked is there any sense that there are some impacts given the IRS movement into the Villages?

Mr. Moyer responded in our case, this is not applicable because we have not issued any bonds.

B. Consideration of Resolution 2013-4 Adopting the Budget

Mr. Moyer stated since there are no other comments, I would ask the Board to consider Resolution 2013-4 Relating to the Annual Appropriations of the District and Adopting the Budget for the Fiscal Year Beginning October 1, 2013 and Ending September 30, 2014, and Referencing the Maintenance and Benefit Special Assessments to be Levied by the District for said Fiscal Year. We will fill in the amount for the General Fund that was shown in your budget. The Resolution will formally adopt this budget.

On MOTION by Mr. Ivins seconded by Dr. Beitsch with all in favor Resolution 2013-4 A Resolution of the Xentury City Community Development District Relating to the Annual Appropriations of the District and Adopting the Budget for the Fiscal Year Beginning October 1, 2013 and Ending September 30, 2014, and Referencing the Maintenance and Benefit Special Assessments to be Levied by the District for said Fiscal Year was approved.

C. Approval of Developer Funding Agreement

Mr. Moyer stated the next item is the Developer Funding Agreement in which Xentury City Development Company, L.C. agrees to fund the District's expenditures incurred during the fiscal year.

Mr. Ivins stated Xentury City Development Company is not a corporation but an L.C. The proper name is Xentury City Development Company, L.C.

On MOTION by Mr. Persons seconded by Mr. Ivins with all in favor the Developer Funding Agreement for fiscal year 2014 was approved as corrected.

FIFTH ORDER OF BUSINESS

Manager's Report

A. Financial Statements & Funding Requests

Mr. Moyer stated the Financial Statements dated June 30, 2013 are well within budget for the first nine months of the year.

B. Check Register

Mr. Moyer stated the check register was included in your agenda package. If you had the opportunity to review them, a motion to approve would be in order.

On MOTION by Mr. Persons seconded by Mr. Baker with all in favor the check register for the period May 1, 2013 through June 30, 2013 in the amount of \$2,153.41 was approved.

C. Consideration of FY 2014 Meeting Schedule

Mr. Moyer stated we are required to publish annually, one time, a listing of our meeting dates. We usually hold two meeting per year, one in May and one in August to consider the adoption of the budget. Special meetings can be called as needed as long as they are advertised seven days in advance of the meeting. If there is no objection, we will notice the meeting schedule as contained in your agenda package and discussed.

SIXTH ORDER OF BUSINESS

Attorney's Report

There not being any, the next item followed.

SEVENTH ORDER OF BUSINESS

Engineer's Report

There not being any, the next item followed.

EIGHTH ORDER OF BUSINESS

Supervisor Requests

Mr. Moyer stated that five and a half years ago the IRS took issue with the Village Center acquiring recreational amenities such as golf courses, clubhouses, recreational facilities and things of that nature through the issuance of tax-exempt bonds. The Village Center had been acquiring such facilities since 1996. The IRS came in in 1998 and did a similar audit, and in 2003, they issued a Letter of No Action concluding the bonds are still tax exempt. They came back in 2008 and said they wanted to do this again. In the normal course, you would think of Equitable Estoppel. If you already said it was not; and we have taken action in reliance on you saying so, we continued to buy amenities based on the 2003 Letter. The IRS did not care about that and for five and a half years, we have been going back and forth with the IRS.

There are a couple of issues that determine if an entity is a political subdivision. First, does the entity possess sufficient sovereign powers to be a government? Sovereign powers are eminent domain, police powers, and are the provided services public services. A series of revenue rulings going back years and years establishes the framework of what is a political

subdivision. You do not have to possess all the sovereign powers you only need to possess one of them with sufficient power to be considered a political subdivision. Second, they were considered private activity bonds, which by definition need to be used in the course of business. A hundred thousand retirees playing golf is not being used in the course of business. Third, the District that issued the bonds paid too much for the amenities. Since that was raised as an issue after three years, and after hiring a special appraiser working directly for the Treasury, they came back and said actually the value of what you bought when you consider the cash flow from the revenues that came with the recreational system, you paid \$47 million less than you could or should have. The valuation issue should be off the table. It is a frightening experience with the IRS. They do not care about laws or their past rulings; they make it up on the fly. They can go out, get another appraisal, and then tell the appraiser what they want the report to say to prove their case. As it stands today, the appraised value issue is off the table. We are now back to private activity which is clearly inapplicable, and political subdivision. What is interesting on political subdivision is we requested the Chief Counsel's Office of the IRS to do a Technical Advise Memorandum (TAM). We provided them with pages of law showing we were a political subdivision and did in fact have the sovereign power of eminent domain; police power in terms of adopting rules to regulate behavior of people who use our facilities; and provide a public service. A Supreme Court case on point (Tallaria Lakes, CA) was also presented that clearly says because of the way we elect Supervisors, on an acreage basis, even if there are only a few landowners, it is a valid way of electing people and you are a government. They came back in May and said if your Board is not elected by the public at large (qualified electors), you are not a government. This breaches years of history and Supreme Court Rulings and they did not even go to the issue whether we had sufficient sovereign powers or if it was private activities. They just said our threshold is you do not elect Supervisors in a general election therefore you are not a political subdivision. They have thrown so many entities under the bus with that ruling that those entities have gone to and complained to the Treasury. The Treasury is now formulating guidance which will tell the world what they think is a political subdivision. If the IRS TAM stands then the bonds and the Reedy Creek issues along with hundreds of other special purpose tax districts in the United States will be taxable.

Dr. Beitsch stated I read the ruling and it focused specifically on the election and the public. I thought Bond Counsel specifically said our situation should not be confused with The

Villages. However, this issue is of some considerable concern. It is my understanding the TAM's do not amount to a legal opinion but are inquiry specific.

Mr. Moyer stated the IRS argued that what they were doing did not set a precedent because it was directed at The Villages, but just about every bond counsel in the country, under the National Association of Bond Lawyers, read it and went to Treasury asking who are you kidding this is not precedential. It is in chaos right now. The issuer is not an affected party so they cannot sue the IRS but if the IRS determines these bonds are taxable, the bondholders will have to sue.

The IRS is saying, if the District transitions over time from developer controlled to resident controlled, based on qualified electors, they are leaving those alone. However, landowner elected Boards, in all cases, are involved in the initial bonds. Who is the beneficiary; of course, it is the developer, the landowner. The IRS is saying that is ok if six years down the road you turn it over. It does not make a lot of sense. If you wanted to get tax-exempt bonds for a parking garage, it would be difficult for Bond Counsel to give you an opinion because of the way this Board is constituted. We will keep you posted, from time to time, if anything happens, but I think it will go on for another couple of years.

Xentury City has sovereign powers and you can condemn property within the District or any place else outside the District with the County's consent. You also have police powers and you can adopt rules on the facilities you provide, how people access and pay for them and penalties for not paying. You have control.

Mr. Clark stated when you created the District you could have requested additional powers in your documents such as police and fire and you may or may not have been granted them.

Mr. Moyer stated you could not have a police department, but could have policing powers carried out by the Sheriffs' department or other forms of security. You could have your own fire department with an inter-local agreement.

NINTH ORDER OF BUSINESS

Audience Comments

There not being any, the next item followed.

TENTH ORDER OF BUSINESS


Adjournment

There being no further business,

On MOTION by Mr. Ivins seconded by Mr. Persons with all in favor, the meeting was adjourned.



Gary L. Moyer
Secretary



Steven R. Ivins
Chairman