

VIERA EAST COMMUNITY DEVELOPMENT DISTRICT  
Board Meeting on 05/27/2020

2 ++ CONFIDENTIAL ++

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VIERA EAST COMMUNITY DEVELOPMENT DISTRICT

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CLOSED ATTORNEY-CLIENT SESSION

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May 27, 2020

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MULTI-PURPOSE ROOM  
FAITH LUTHERAN CHURCH  
5550 Faith Drive  
Viera, Florida 32955

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Margaret Eddy Sheffield, Court Reporter  
Notary Public, State of Florida at Large

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MEETING ATTENDEES

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BOARD MEMBERS PRESENT

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Paul McCarthy, Chair

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David Bedwell, Vice Chair

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William "Bill" Oakley, Secretary

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Melinda Thomsen, Assistant Secretary

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Jo Walsh, Treasurer

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District Manager Jason Stowe

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Outside Counsel Jack C. McElroy

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Outside Counsel Brett R. Renton

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1 VIERA, FLORIDA; May 27, 2020

2 WHEREUPON:

3 MR. RENTON: We'll go on the record.

4 Okay. Hi, everybody, again. Brett Renton,  
5 one of the litigators you've retained in regards  
6 to this lawsuit.

7 We've just entered into the attorney-client  
8 session also known as a shade session. This  
9 meeting takes place out of the sunshine.

10 I know we've talked about these before, but  
11 I just want to cover very briefly the ground  
12 rules.

13 Again, whatever's said in this room must  
14 remain private; meaning don't disclose it  
15 outside. You're not allowed to have  
16 conversations with one another because of the  
17 Sunshine law about what happens in here unless  
18 we're in here.

19 Two, the session must remain on topic. So  
20 that is what's going on. And that's the  
21 settlement agreement, specifically, that the  
22 other side has proposed regarding the  
23 litigation.

24 Three, you cannot take any formal action  
25 here. There's an ability to adjourn and go back

1     onto the record where the public would be  
2     invited back. At that time you could make any  
3     motions.

4             So the purpose here is to give us  
5     direction, talk with one another, figure out how  
6     you want to handle things or what you want to do  
7     and then proceed from there.

8             And fourth, please note everything that we  
9     say is being taken down by the court reporter.  
10    That will be kept private until such time as the  
11    litigation has concluded. At that point it'll  
12    be available for anybody who makes a public  
13    records request to go ahead and obtain the  
14    transcript of those items.

15            Does anybody have any questions on that?

16            BOARD MEMBERS: (No response.)

17            MR. RENTON: Okay. I'm assuming not.  
18            Jack?

19            MR. McELROY: Okay. I'm going to take this  
20    off so you can hear me better. I'm going to  
21    stay back here in the corner.

22            Can everybody hear me all right?

23            BOARD MEMBERS (in unison): Yes.

24            MR. McELROY: All right. As you know, we  
25    were successful in the first lawsuit that was

1 filed against us. We obtained summary judgment.  
2 And that summary judgment was not appealed. So  
3 that case is completely over.

4 The second case remaining remains pending  
5 and we have been engaged in settlement  
6 negotiations with that party.

7 We attempted to have that case transferred  
8 over to the judge who entered the summary  
9 judgment. Unfortunately, that judge was out at  
10 the time. There was a replacement judge who  
11 heard that motion to transfer and kind of punted  
12 on it a little bit. And he said: Well, let's  
13 go back to Judge Paulk and see if he wants it.

14 But Judge Paulk's hearing calendar was so  
15 booked. And the judge that the case was  
16 assigned to; his hearing calendar was relatively  
17 open. So we decided to stick with that hearing  
18 calendar.

19 We were engaged in discovery. We were  
20 engaged in settlement negotiations. We've gone  
21 back and forth on those. And what you have in  
22 front of you is the result of where we're at.  
23 That is in my opinion and Brett's opinion the  
24 best that we're going to get out of the OSM  
25 claim.

1           And so I think that on an individual basis  
2   you've heard of these terms. They're not a  
3   surprise to you. I'll let Brett walk you  
4   through each of the individual items in the  
5   settlement agreement. And then if you have any  
6   questions for me or for Brett we'll be happy to  
7   answer those.

8           MR. RENTON: Sure.

9           So we've been negotiating with them in  
10   terms of a high-rise bullet point issue. They  
11   are requiring a three million dollar reduction  
12   in the project funds that you spend.

13          So your Table 1 of the engineering report  
14   listed \$9,022,585. That would need to be  
15   rationed down to \$6,022,585.

16          They have mandated that through reduction  
17   that three million dollars cannot come out of  
18   those particular items ...

19          MR. BEDWELL: The golf --

20          MR. RENTON: Yeah. Other recreational  
21   facilities. They want them out of the  
22   clubhouse. They want them out of the golf  
23   course.

24          It took some negotiation to get to the  
25   point where they -- really what we came to is

1     you'll leave the other recreational facilities  
2     alone. That's the dog park, the picnic tables  
3     and the other items. If you choose to pull  
4     those down or those items drop, that doesn't  
5     come out of the three million. That's just  
6     extra bond decreases that would go in above and  
7     beyond. Right?

8             So the three million dollar decrease has to  
9     come out of the golf course, the clubhouse.

10            There are three categories at the end of  
11    the table. That is leases. So you had a lease  
12    that was going to be for certain equipment that  
13    you have that the Viera East CDD handles; some  
14    of which are for golf courses. Some are cherry  
15    pickers for getting the really high trees, to  
16    trim off.

17            You guys currently lease a lot of that  
18    equipment. This is going to allow you to  
19    purchase the items that make sense. That money  
20    can be reduced and pulled out of that section.  
21    Tim has looked at it and given his  
22    recommendation about some amounts that can come  
23    out to meet this, if necessary.

24            The contingency fund was 250,000. That  
25    would be decreased down a little bit more

1 assuming you'd be okay with it. And that would  
2 be acceptable under the terms of the settlement.

3 And then there was a lease that you were  
4 going to be paying off for some Rain Bird  
5 system. That would just have to remain and not  
6 be paid off as part of this in order to ease --

7 MS. WALSH: (Speaking simultaneously.)

8 MR. RENTON: That's up to you.

9 You all as a board can decide where your  
10 projects -- you know, if you want to cut  
11 something out of one of the other projects and  
12 do something over here, you can slide around  
13 within these categories as you would see fit.

14 And that would have to come back before the  
15 board in a revised engineering report and get  
16 your approval necessary for the bonds as to how  
17 you want to proceed.

18 But at the end of the day your project fund  
19 will go from 9,022,585 down to 6,022,585.

20 MR. STOWE: If it helps, Brett, I do have  
21 that sheet.

22 MR. RENTON: Sure. If you want to pass it  
23 around.

24 This is a rough --

25 MR. STOWE: Right.



1 MR. RENTON: (Cont'd.) Outline that was  
2 done and to insure that it was even plausible.

3 MR. STOWE: Right.

4 MR. RENTON: Yes, sir.

5 MR. OAKLEY: Would the stuff at Woodside  
6 Park like the dog park and stuff like that, we  
7 can't touch any of that for anything. If we do  
8 cancel it, now we're reducing that six million  
9 dollars to less?

10 MR. RENTON: So you -- if you decide not to  
11 do the dog park --

12 MR. OAKLEY: Just take it out.

13 MR. RENTON: (Cont'd.) You can't use that  
14 reduction towards your three million you have to  
15 give back.

16 So you can't cut out a dog park, all of  
17 Woodside Park, everything you wanted, to take  
18 out about 250,000. They're saying that's not  
19 good enough. You can't refuse that and throw  
20 that into the golf course.

21 MR. OAKLEY: Right.

22 MR. RENTON: Their big objection is they  
23 don't think they should pay for the golf course  
24 or the restaurant at all as a commercial  
25 developer because it is not a benefit to them

1 from a recreation side.

2 We can argue 'til we're blue in the face on  
3 that point. We're happy to proceed to court to  
4 prove it; that they're obligated to, to a judge.

5 But this is as I think Jack said -- and I  
6 absolutely agree with him -- this is as best --  
7 and this is version nine of this agreement. We  
8 have battled and battled and battled to get all  
9 of these points down.

10 You know, this is as good of a deal as they  
11 would possibly be willing to take to settle. So  
12 the question is, you know, that's what we're  
13 here to present to you. We're ethically  
14 obligated to present formal settlements that  
15 have come in. So that's what we're putting  
16 before you.

17 There is one exemption to this. They do  
18 not -- so then as we've talked about the  
19 clubhouse itself.

20 As part of this the clubhouse footprint  
21 could not be expanded to have any additional  
22 square footage added onto it at all. With one  
23 exception. The rest rooms.

24 If you expanded outward on the rest rooms  
25 to increase their size you could do so up to

1     whatever amount that you wanted to spend to  
2     increase them to whatever size.

3             However, they have included a clause that  
4     says if you move the rest rooms, get them out of  
5     an area, et cetera, you cannot use the former  
6     square footage space for anything other than  
7     rest rooms.

8             So you can't remove that from the  
9     restaurant, build a separate facility somewhere  
10    else and then turn them into restaurant space.  
11    Right?

12            So they've put that restriction in here.  
13    You could, however, blow out a wall in the back,  
14    extend them out however you wanted to make them  
15    larger. And that's not been --

16            MR. OAKLEY: You couldn't use that area,  
17    the rest room space, for a janitor's closet.

18            MR. RENTON: I would argue that that would  
19    be a rest room facility because the janitor's  
20    closet is going to be servicing that rest room.

21            MR. OAKLEY: But you're using the area in  
22    the rest room for, you know, something other  
23    than a rest room.

24            MS. WALSH: I think what --

25            MR. RENTON: I think I can get him to

1 agree. If that is a concern of yours, I think  
2 that we could probably make it more clear and  
3 add this into this agreement that it could have  
4 what I call a utility closet slash janitorial  
5 closet in that former rest room space as long as  
6 it's not to be used for the restaurant.

7 MS. WALSH: Well --

8 MR. RENTON: If it was going to be used for  
9 the, you know, purpose of Viera East CDD, that's  
10 --

11 MR. OAKLEY: So I can't put a room in there  
12 and use the room in the restaurant. I got it.

13 MS. WALSH: And not only if we push out the  
14 footprint, if we don't push out the footprint  
15 then that should not have --

16 MR. RENTON: That's correct. That's  
17 correct.

18 MR. OAKLEY: We're not pushing out the  
19 footprint.

20 MS. WALSH: Exactly. So that doesn't even  
21 come into play.

22 MS. THOMSEN: So when we say footprint  
23 you're not including the anterior breezeway.

24 MS. WALSH: Under truss. Right? Isn't  
25 that under truss?

1 MR. BEDWELL: Expanding the clubhouse  
2 interior wall; can you do that?

3 MR. RENTON: Internal to the buildings  
4 themselves you can move walls wherever you want.

5 MR. BEDWELL: Oh. I know. He's expanding  
6 the footage.

7 MR. RENTON: I don't believe he will be  
8 able to enclose the breezeways --

9 MR. OAKLEY: Okay.

10 MR. RENTON: (Cont'd.) Under this deal. I  
11 do not --

12 MS. THOMSEN: Well, even for anything other  
13 than a restaurant which is his big --

14 MR. OAKLEY: No. He said --

15 MS. WALSH: Well, that doesn't make -- I  
16 mean footprint is -- to me, a footprint is -- I  
17 mean that's all paved. That's all under truss.

18 So I don't know why we would be prevented  
19 from enclosing anything or opening anything  
20 under truss.

21 MR. RENTON: You can't use the bond funds  
22 to do so.

23 MS. WALSH: Okay.

24 MR. RENTON: So if this board wants to  
25 develop some other fund that would go -- use

1     golf course revenues that you expect to increase  
2     as a result of this and start saving that money,  
3     after five or six years you can use that funds  
4     however you'd like.

5             This goes only -- as to these funds, this  
6     is only as to these bonds.

7             MR. OAKLEY: Let me ask. I'll play the  
8     devil's advocate here since I'm always ...

9             MR. RENTON: Sure.

10            MR. OAKLEY: If the rest room area was  
11     expanded like I have it; you've seen the  
12     drawing. All right. And I've included an area  
13     in there for Terry for the restaurant for an  
14     office and restaurant storage space. Not  
15     increasing the restaurant serving area or  
16     anything. It gets her out of the electric room.  
17     That would not be allowed. Correct?

18            MR. RENTON: If -- and forgive me. I  
19     haven't looked at your plan design.

20            As this was being drafted -- so as this was  
21     being drafted internal you could have moved that  
22     kitchen out into the dining room if you wanted.  
23     You can rearrange the interior walls of the  
24     building as long as it cannibalizes other square  
25     feet that she would have in the building.

1 MR. OAKLEY: Cannibalize the square feet  
2 that was originally the restaurant.

3 MR. RENTON: That couldn't happen.

4 MR. OAKLEY: Yeah.

5 MR. RENTON: So the rest room -- fine with  
6 a rest room area.

7 MR. OAKLEY: Now, this is what I'm trying  
8 to get across. So the bond couldn't pay for it  
9 but could Terry pay for it?

10 MR. RENTON: That's, in fact, what -- no.  
11 They've argued a number of times is that the  
12 restaurateur or the restaurateur, whoever has  
13 that, should be paying for all of this.

14 MR. OAKLEY: All right.

15 MR. RENTON: But at the same time that's  
16 not the bond proceeds.

17 This is restricting what you're using the  
18 six million dollars twenty-two thousand five --

19 MR. OAKLEY: Right.

20 If you want to just take a quick look.

21 MR. RENTON: Sure.

22 MR. OAKLEY: This is the current rest room  
23 down here.

24 MR. RENTON: All right.

25 MR. OAKLEY: This is a wall. Solid here.

1           This is the area in here. This is the  
2   janitor's closet. This is where the men's  
3   existing rest room is. Here. We'd been pushing  
4   that over to, you know, accessing that area.

5           MR. RENTON: Right. They've said no.

6           MR. OAKLEY: But if he paid for it?

7           MR. RENTON: If she decided to pay for the  
8   ...

9           MS. WALSH: Expansion?

10          MR. RENTON: Expansion. Then that's not  
11   the bond proceeds.

12          MR. WALSH: Right.

13          MR. OAKLEY: But she's using part of the  
14   rest room --

15          MR. RENTON: Let me do it this way.

16          You're using -- right? You're using bond  
17   proceeds to build the new rest room.

18          MR. OAKLEY: Right.

19          MR. RENTON: So that means the old rest  
20   room space cannot be vacated to use for --

21          MR. OAKLEY: On these plans that are --

22          MR. RENTON: That's exactly what he's  
23   trying --

24          So the point of this language is to  
25   restrict that proposal, is to say no.



1 MR. OAKLEY: So anything we want to do like  
2 enclosing the breezeways, we can't.

3 MR. RENTON: You would be adding square  
4 footage, internal square footage to the facility  
5 to increase the footprint.

6 MR. OAKLEY: Yeah. And increasing Jenn's  
7 office.

8 MR. McELROY: I don't think enclosing the  
9 breezeway increases the footprint. The  
10 breezeway's under roof.

11 MR. OAKLEY: Right.

12 MR. McELROY: I think that is part of the  
13 footprint. You absolutely cannot -- if you  
14 expand the rest rooms, you cannot use the former  
15 rest room area as anything other than a rest  
16 room, though.

17 The agreement is clear on that point. And  
18 that was a point that Jack Spira specifically  
19 negotiated, had and insisted it be in this  
20 agreement.

21 As far as the breezeways go, I don't see a  
22 problem with enclosing the breezeways.

23 MR. OAKLEY: You got a copy of the plan?

24 MR. STOWE: I have a copy of the plans and  
25 a copy of the agreement.

1 MS. THOMSEN: Yeah.

2 MR. OAKLEY: Oh. Okay.

3 MS. THOMSEN: If we could get agreement  
4 that the breezeway is not expanding the  
5 footprint --

6 MR. McELROY: Yeah. We can get --

7 MS. WALSH: I mean that's all on slab.

8 MR. RENTON: If that is the only thing  
9 about this agreement this board is free to  
10 accept the settlement agreement we come out of  
11 here with the condition that you be allowed to  
12 enclose the breezeways.

13 And we will go back to him --

14 MS. THOMSEN: And hope --

15 MR. RENTON: (Cont'd.) Making it  
16 abundantly clear in this document that you have  
17 that right.

18 And if that's the case and he says no then  
19 you got a no. But if she says yes, then you've  
20 got your acceptance and you've got a settlement.

21 But if you as the board vote on that you'll  
22 have that as the conclusion moving forward.

23 MR. BEDWELL: What do we accomplish if we  
24 just enclose the breezeway?

25 MR. McELROY: What do you accomplish if you

1 do --

2 MS. THOMSEN: We expand it.

3 MS. WALSH: We get more space.

4 MR. BEDWELL: You can't move that wall. I  
5 thought that he -- there was a plan to move one  
6 wall out --

7 MS. THOMSEN: Right.

8 MR. BEDWELL: (Cont'd.) To gain more  
9 square footage.

10 MR. McELROY: Do you plan to add that extra  
11 space to the restaurant?

12 MR. OAKLEY: No.

13 MR. BEDWELL: No.

14 MR. McELROY: That's all going to be used  
15 for the pro shop?

16 MR. McCARTHY: Pro shop --

17 MS. WALSH: And the office space.

18 BOARD MEMBERS: (Speaking simultaneously.)

19 MR. OAKLEY: For CDD offices.

20 MR. McELROY: Okay.

21 MR. OAKLEY: And a little bit that was  
22 going to be used for storage for the pro shop  
23 and pro shop office.

24 MR. McELROY: Yeah. So we -- if that's  
25 something that you want to do, you want to

1 change this in that way, you can approve it with  
2 those changes.

3 And we can go back to opposing counsel and  
4 say: The board has approved but with these  
5 specific changes.

6 And he can just say yes or no. Right? If  
7 he says no, then --

8 MS. WALSH: We have --

9 MR. McELROY: (Cont'd.) We've got one of  
10 two things. You've got -- you don't have a  
11 settlement or -- and you go forward with  
12 litigation. Or you can come back and decide  
13 again are you going to accept him saying no and  
14 you're going to accept this as is.

15 MR. BEDWELL: What's the time frame of  
16 that?

17 MR. RENTON: You could set a special  
18 meeting if you wanted to within the proper  
19 notice.

20 So seven days?

21 MS. WALSH: 30 days.

22 MR. STOWE: No. I mean you probably need  
23 -- I mean they got a workshop in ...

24 MS. THOMSEN: June 10th.

25 MR. STOWE: June 10th.

1 MR. RENTON: Well, you could call a special  
2 called meeting. I just don't know what your  
3 governing documents --

4 MR. STOWE: Well, it takes at least 10 days  
5 to get the ad in --

6 MR. RENTON: Right.

7 MR. STOWE: (Cont'd.) Between the time we  
8 send it until it gets in the paper for the  
9 seven-day official notice.

10 MS. THOMSEN: So a public hearing again?

11 MR. RENTON: It wouldn't be a public  
12 hearing.

13 MR. STOWE: No.

14 MR. RENTON: It would just be that you're  
15 going to have a special called board meeting.  
16 You'd open up a meeting, you'd go into a shade  
17 session, have a discussion and then a vote on it  
18 out of the shade session if there's anything  
19 more to discuss.

20 MS. THOMSEN: Between you going back to  
21 them.

22 MR. RENTON: Correct.

23 MS. THOMSEN: Okay.

24 MR. BEDWELL: Tim can't be in here. But he  
25 identified \$580,000 worth of improvements. One

1 of them being the rest room and 250,000 pro shop  
2 remodeling. On and on and on.

3 He's not enclosing the breezeways. But  
4 he's spending 580,000. Which is okay. That's  
5 short of the -- short of this guy looking at it  
6 and agreeing to it, right?

7 MR. STOWE: Well --

8 MR. RENTON: Well, he hasn't looked at  
9 that. But based on this documentation --

10 MR. STOWE: Right.

11 MR. RENTON: (Cont'd.) And restriction,  
12 Tim did that work.

13 MR. STOWE: Right.

14 MR. BEDWELL: And Tim did this to reduce so  
15 we could do other things up here at the golf  
16 course.

17 MR. RENTON: That is correct.

18 MS. WALSH: Correct.

19 MR. STOWE: Because part of the agreement  
20 is that we had to make -- of the three million  
21 we reduced, 80 percent of that had to come from  
22 golf course and clubhouse.

23 MR. BEDWELL: Yeah.

24 MR. STOWE: So, you know, given that, we  
25 had Tim kind of prioritize those projects.

1           One thing we did do is moved some money  
2   back into that bunker liner --

3           MS. THOMSEN:   Yes.

4           MR. BEDWELL:   Do the bunker liner.

5           MR. OAKLEY:   But at the same time that  
6   original one that Tim did he removed a lot of  
7   stuff from Woodside Park --

8           MR. STOWE:   Correct.

9           MR. OAKLEY:   (Cont'd.)   Which we can't do.  
10   So you're going to have to make up a couple of  
11   hundred thousand someplace not on the golf  
12   course.

13          MS. WALSH:   Well, that's already happened  
14   in this area.

15          MR. BEDWELL:   (Speaking simultaneously.)

16          MR. MCCARTHY:   Here's the other thing.

17          One of the things we've got to be concerned  
18   about is that if we start delaying this, it goes  
19   on and on --

20          MS. THOMSEN:   Right.

21          MR. MCCARTHY:   That's going to cause us  
22   some serious problems.   We've got bulkheads that  
23   are getting ready to collapse.

24          I'm not an engineer.   We've got some real  
25   serious issues there.

1           With the sprinklers; the sprinkler system  
2   is a mess. And we're really going to pay a  
3   price all of a sudden if we throw this back to  
4   this gentleman and all of a sudden he says no  
5   and he starts to -- and we keep going and  
6   going.

7           A bird in the hand is worth two in the  
8   bush.

9           MS. WALSH: Exactly.

10          MS. THOMSEN: I hear you.

11          MS. WALSH: The only thing that -- the only  
12   thing that I would ask Mr. Spira is what he  
13   actually means by footprint.

14          MS. THOMSEN: Yeah.

15          MS. WALSH: Unless he's specified that to  
16   you.

17          MR. RENTON: He -- I could tell you he has  
18   told us --

19          And correct me if you think this is a  
20   little too far.

21          He doesn't want you to do anything to add  
22   any space to the clubhouse whatsoever.

23          BOARD MEMBERS: (Speaking simultaneously.)

24          MR. RENTON: He doesn't want --

25          MS. WALSH: (Speaking simultaneously.)



1 MR. RENTON: He doesn't want even to  
2 remodel on the interior. He wants it to stay as  
3 old and outdated so there's no competition for  
4 his commercial property where he's built a nice  
5 restaurant or something else.

6 BOARD MEMBERS: (Speaking simultaneously.)

7 MS. WALSH: His big bugaboo was a  
8 restaurant, not a pro shop per se. His problem  
9 is the restaurant because he feels that it's a  
10 noncompete issue.

11 MR. RENTON: There's a big restaurant  
12 component to it. And there's also several of  
13 his clients. Because they're a group.

14 MS. WALSH: Right.

15 MR. RENTON: As a corporation they all have  
16 certain goals internally. And he has shared  
17 with me that has a wide dissent on this  
18 agreement. Some that don't think they should  
19 settle at all. Some I think could be mere  
20 puffery. I pass it on for what it's worth.

21 MS. WALSH: Right.

22 MR. RENTON: That's where negotiating these  
23 things has been a little shifting in sand at  
24 times as to what is the most important component  
25 to him.

1           He has spoke, saying a golf course serves a  
2   commercial purpose to a facility like his and  
3   how -- and it's nothing more than a drain of  
4   resources and he shouldn't pay for any of it  
5   which is why they're challenging a lawsuit.

6           So --

7           BOARD MEMBERS: (Speaking simultaneously.)

8           MS. WALSH: So then why didn't he buy the  
9   property?

10          MR. McELROY: You know what? I want to  
11   just say something about that. You're  
12   absolutely right.

13          And if you want to continue litigating this  
14   case I think you'd win. I think you'd probably  
15   win in summary judgment. You know, you were all  
16   at the last hearing. You saw Judge Paulk. He's  
17   found that there was substantial competent  
18   evidence to support your decision. And I think  
19   Judge Dugan will do the same thing.

20          However, that's not guaranteed. And even  
21   if Judge Dugan gives you a summary judgment,  
22   Spira in all likelihood will appeal. Because he  
23   knows what he has to do to start to run out the  
24   clock and get a new order here and have a new  
25   board come in and say: No. We don't want to do

1     this anymore.

2             MS. WALSH:   Right.

3             MR. McELROY:   That's what he -- that's the  
4     game.   And he can play that game because that  
5     appeal will last past November.

6             MR. BEDWELL:   Yeah.

7             MR. McELROY:   So you got to keep that in  
8     mind.   And all -- as the Chairman said it right;  
9     you know, a bird in the hand is worth two in the  
10    bush.

11            This isn't the greatest deal in the world.  
12    But it gives you still six million dollars in  
13    bonding towards the golf course assuming nobody  
14    else comes in and sues you.

15            MS. WALSH:   Right.

16            MR. McELROY:   You know, that -- somebody  
17    else can come in and sue you tomorrow if they  
18    wanted to.   Unfortunately.

19            But there's a provision in here that says  
20    this stuff only goes through in the event that  
21    the bonds actually get issued.

22            So you have two set of plans.   This is a  
23    good deal, this is -- as far as the residents,  
24    the complaints -- the complaints that residents  
25    made as to how much is being spent, this

1 addresses those things. It reduces it by three  
2 million dollars.

3 So, you know, you can sell this as you've  
4 bent over backwards to try to save the members  
5 of the district money, you didn't want to  
6 continue to, you know, spend attorney's fees,  
7 incur attorney's fees to keep fighting this.

8 The golf course is imperative that these  
9 things get done and get done as soon as  
10 possible. And then that's what -- that's the  
11 reason why you settled this.

12 There is -- Brett's got a couple of other  
13 things to go through. One of them is the  
14 reimbursement of costs to the other side, 27,200  
15 which is less than what they've actually  
16 incurred.

17 But that was something that they absolutely  
18 insisted upon. If you got -- that only gets  
19 paid, though, if the bonds actually get issued.

20 Brett, what were the other key points?

21 MR. RENTON: You've got a restriction on  
22 further issuance.

23 MR. BEDWELL: That's not a problem.

24 MR. RENTON: You can't -- you can't make --

25 MS. THOMSEN: For five years.

1 MR. RENTON: (Cont'd.) This deal and then  
2 turn around and then go and issue new bonds  
3 tomorrow to do all of the items that were --

4 MS. THOMSEN: But that's for five years.

5 MR. RENTON: It is a five-year restriction  
6 date as to doing those projects that are  
7 specifically you decide to cut out of this bond  
8 issuance.

9 MR. McELROY: And I would say this on that  
10 provision. If I were them I absolutely would  
11 have insisted upon that provision so you don't  
12 circle back around --

13 MS. THOMSEN: Sure.

14 MR. BEDWELL: My question for Jason.

15 MR. STOWE: Sure.

16 MR. BEDWELL: This -- you use the word  
17 special assessment.

18 MR. STOWE: Uh-huh.

19 MR. BEDWELL: In the next five years if we  
20 start not being able to fund the general fund  
21 with what we assessed the general fund for --

22 MR. STOWE: Uh-huh.

23 MR. BEDWELL: (Cont'd.) This permits us to  
24 --

25 MR. STOWE: No. Actually, you know, this

1 is one of the things Brett and I discussed when  
2 we first saw all the versions of this is that  
3 you cannot special assess for these projects  
4 that you've cut.

5 So you've cut three million -- what he  
6 doesn't want you to do is cut three million  
7 dollars out then raise O and M next year --

8 MR. BEDWELL: (Speaking simultaneously.)

9 MR. STOWE: (Cont'd.) To still do the same  
10 projects. If we had --

11 MR. BEDWELL: We could increase the  
12 assessment if we need more money in the general  
13 fund.

14 MR. STOWE: As long as it's not related to  
15 doing these projects.

16 MR. BEDWELL: Golf course only.

17 MR. STOWE: We've also, you know, kind of  
18 discussed that should you -- I mean there were  
19 some projects that we cut out of here that are,  
20 you know, 25,000, 30,000 that should the golf  
21 course provide enough revenue, you know, we  
22 could show hey, this is golf course revenue that  
23 we're doing this project with.

24 MS. WALSH: Right.

25 MR. STOWE: We feel comfortable that we can

1 do that even with this.

2 MS. WALSH: Okay.

3 MR. STOWE: And just as a procedure, for  
4 the five years, in practical terms there's two  
5 things you need to know.

6 You likely wouldn't issue bonds again  
7 within five years anyway.

8 MR. BEDWELL: No.

9 MR. STOWE: And because of, you know, the  
10 current cap you have you'd only be able to issue  
11 another maybe three million.

12 It's probably not even worth the cost  
13 unless you really wanted to go through the whole  
14 process again.

15 So I don't know that -- the five years  
16 really isn't a challenge. And I think you've  
17 worded that section to give you guys some  
18 flexibility.

19 MR. BEDWELL: No. I --

20 MR. STOWE: As long as you're not doing  
21 these projects --

22 MR. BEDWELL: That's where you got the  
23 \$379,679. If we had to increase for some reason  
24 --

25 MR. STOWE: Yeah.

1 MR. BEDWELL: Other than the golf course.

2 MR. STOWE: Yeah.

3 MR. RENTON: And we've also built in, you  
4 know, that you reserve the right gosh forbid  
5 there'd be some natural disaster or something  
6 that comes along you can then do whatever  
7 assessments you need.

8 MS. THOMSEN: Thank you.

9 MR. BEDWELL: Have you seen this list that  
10 Tim did?

11 MR. RENTON: I have. Yes.

12 MR. BEDWELL: And this satisfies the  
13 agreement funding all the other activities?

14 MR. RENTON: It -- depending on which draft  
15 version that is.

16 I was going to say, I know we went through  
17 multiple --

18 MR. STOWE: Yeah. This is the same one I  
19 sent you yesterday.

20 MR. RENTON: Okay.

21 MR. BEDWELL: He prioritized in the golf  
22 course what was most important.

23 MR. RENTON: And I would tell you, the  
24 reason I caveat that, there was at one point a  
25 deck that was proposed to be added on the



1 outside of the restaurant --

2 MR. BEDWELL: Right.

3 MR. RENTON: I did not believe that was  
4 going to be acceptable because it was a little  
5 too cute to say that you're not adding on space  
6 but you're really putting in a deck and you can  
7 put chairs and --

8 MR. BEDWELL: Tim canceled that.

9 MR. RENTON: I understand.

10 So that's where -- that was the hesitation  
11 as to what we were talking about.

12 MR. BEDWELL: All right.

13 MR. RENTON: So restriction on further  
14 entrances, reimbursement of costs.

15 What he will do is he will sign -- this is  
16 all contingent, right? all on you getting the  
17 bonds out.

18 MS. WALSH: Right.

19 MR. RENTON: So if the bonds are actually  
20 issued he gets his 47,000 and change. You get  
21 the case fully dismissed which allows your folks  
22 to use the fact they're holding that dismissal.  
23 It'll be held by an escrow agent. Holding that  
24 dismissal in hand. So to say that the case is  
25 over.

1           And one of the nice parts of this to the  
2   extent you can say that is it's finality.  
3   Right? It's not a final judgment that you then  
4   have to wait 30 days to see if there's an appeal  
5   or anything else.

6           He's done and there's a release.

7           MS. THOMSEN: Is that without prejudice or  
8   with prejudice?

9           MR. RENTON: It's with prejudice meaning it  
10   can never being sued upon again by him.

11          MR. McELROY: Brett, have we heard back  
12   from Rhonda on whether or not having that  
13   dismissal in hand in escrow is going to allow  
14   the bonds to be insured?

15          MR. RENTON: She did not confirm. She said  
16   there's a fighting chance. So she's been trying  
17   to make sure and see.

18          But until she gets them rated again it's  
19   the best position we can get into without  
20   risking some of the proceeds --

21          MS. THOMSEN: So now are we -- are you all  
22   in agreement don't go back to them and ask them  
23   for their definition of the footprint is as far  
24   as the interior section of the breezeway?

25          I mean, to me, they're really tying our

1 hands. And I'm trying to accept it. But I am  
2 having difficulty.

3 MR. McELROY: I don't think -- if Tim's  
4 proposal -- what Tim's come up with doesn't  
5 include the enclosure of the breezeway.

6 MR. BEDWELL: It's not in the --

7 MS. THOMSEN: Okay.

8 MR. BEDWELL: Tim --

9 MS. THOMSEN: I'm overruled by --

10 BOARD MEMBERS: (Speaking simultaneously.)

11 MR. RENTON: And my understanding of Tim's  
12 comment on the issue is putting the money into  
13 the golf course could potentially raise your  
14 revenue stream.

15 MS. WALSH: Right.

16 MR. RENTON: Cut your maintenance costs.  
17 And this hits the major programs that will be  
18 your defining features to help in his opinion go  
19 forward with those other items which if you get  
20 an increased revenue stream you can use those  
21 monies, right? to help pay for some of the  
22 projects that were done or, you know, develop a  
23 fund to put some of that money aside to use for  
24 whatever purposes as you pull it together.

25 MR. BEDWELL: Now, Jason, if we make money

1 in the golf course and we put it in the capital  
2 reserve --

3 MR. STOWE: Uh-huh.

4 MR. BEDWELL: (Cont'd.) We can use the  
5 money out of the capital reserve to do these  
6 things.

7 MR. RENTON: Correct.

8 MR. BEDWELL: We don't have to create  
9 another capital reserve if it's funded by the  
10 golf course.

11 MR. RENTON: As long as it's not the bond  
12 proceeds. That's the key.

13 MS. WALSH: That doesn't mean in a separate  
14 account. There's not going to be a commingling  
15 of that money if we get the bonds, correct?

16 MR. STOWE: Correct.

17 MR. OAKLEY: And this for now what Tim put  
18 out, there's a hundred thousand dollars for  
19 remodel dining area and bar.

20 Is that out?

21 MR. RENTON: No.

22 MR. STOWE: Remodeling is fine. As long as  
23 you're not increasing the size of the dining  
24 area. As long as you're not increasing the  
25 size. Remodeling they seem to be okay.

1 MR. RENTON: So picture this room, kind of  
2 the nursery.

3 MR. OAKLEY: Okay.

4 MR. RENTON: If you took the wall out,  
5 that's fine. Right? You could expand the area  
6 by removing that wall. It doesn't change the  
7 overall square footage. Is --

8 MS. THOMSEN: Well, that's my --

9 MR. RENTON: But adding the breezeway in  
10 nets you an additional however many square foot  
11 now enclosed space.

12 MR. OAKLEY: But the breezeway is not part  
13 of the restaurant.

14 MR. RENTON: I understand. And so that  
15 would be the clarification. We'd probably have  
16 to put some restrictions on it that none of the  
17 breezeway space could possibly be used for it.

18 MR. McELROY: You know what, we don't have  
19 to change --

20 MS. WALSH: I would --

21 MR. McELROY: If you want to do that here's  
22 what I suggest you do. You just go back and you  
23 say -- you know, if you look at that agreement  
24 as it is now, the breezeway isn't critical to  
25 you.

1 But you want to know, okay, if I decide I  
2 did want to enclose the breezeway can I get a  
3 clarification that that's included in the  
4 footprint?

5 MS. WALSH: Right.

6 MR. RENTON: Yes. We could certainly do  
7 that. We can ask Jack Spira. Just say: Send  
8 us an E-mail confirming that when we say the  
9 footprint won't be expanded. Enclosing the  
10 breezeways does not expand the footprint.

11 MS. THOMSEN: Or as long as we stay away  
12 from the restaurant.

13 MR. McELROY: That's right. That's right.  
14 You can do that; get clarification without --

15 But I wouldn't -- I wouldn't risk --

16 MS. WALSH: No.

17 MR. McELROY: If you're inclined to go  
18 along with this agreement, I wouldn't risk the  
19 agreement going away by moving -- punting, you  
20 know --

21 MS. THOMSEN: Right.

22 MR. McELROY: (Cont'd.) Weeks down the  
23 road to wait to get that clarification.

24 MR. McCARTHY: I strongly urge the board to  
25 accept this agreement as it is now. Jack and

1 Brett have done an excellent job for the  
2 company.

3 With everything that's going on, I think  
4 it's a good settlement and we need to go  
5 forward.

6 MS. WALSH: Right.

7 MR. McCARTHY: Put this behind us. Please  
8 don't drag it out.

9 MS. WALSH: Plus, I'd like to get some  
10 contracts on --

11 MR. McCARTHY: We've got some critical  
12 things going on. That's my feeling. Now we can  
13 discuss that at the next meeting with Tim?

14 MR. STOWE: Yes. Yeah.

15 MR. McELROY: And you've got -- Brett, is  
16 there --

17 There's going to be a new engineer's  
18 report, right?

19 MR. RENTON: As part of it you'll have to  
20 work up the exact project approval for what has  
21 to be done. I know Jason had started putting  
22 together; that's what that draft form --

23 MR. STOWE: Right.

24 MR. RENTON: (Cont'd.) From Tim is based  
25 upon.

1           You as a board will have to approve that.

2    There's some bond check the box type things --

3           MS. THOMSEN:   Right.

4           MR. RENTON:   (Cont'd.)   What the bond folks  
5    require as to how to change them.

6           Your attorneys involved in the bond  
7    transaction were looking at whether or not you  
8    need a resolution change or some kind of little  
9    thing.

10          But no -- no more public hearings, no more  
11    any of that.   Just slight revisions as to  
12    getting this accomplished.

13          MR. McELROY:   When will that approval of  
14    the new engineer's report take place?

15          MR. STOWE:    Here's --

16          MR. McELROY:   And it also -- it needs to  
17    make -- you need to make sure that if only --

18          MR. RENTON:   It's a condition.

19          MR. STOWE:    Yeah.   I've got the language  
20    that Steve sent.   And my plan was to get the  
21    board amenable to going over after the shade  
22    session we have and approve a settlement then we  
23    would approve a revised engineer's report dated  
24    today in substantive form with this project  
25    plan.



1           That would allow then the bond folks to be  
2   able to go and size the bonds. Because they'll  
3   have an approved project list.

4           Then they can start working on that and the  
5   new assessment methodology. And I've got  
6   Steve's clarification that if it's approved in  
7   substantive form and the bonds do not close,  
8   this approval is null and void and you can go  
9   back to the original engineer's report that was  
10   approved prior.

11          MS. WALSH: Yeah.

12          MR. BEDWELL: How soon can we get you the  
13   bond? What are we talking about?

14          MR. STOWE: I'd be looking at six weeks I  
15   think is the original estimate we had. From  
16   about the time we start looking at it they have  
17   to go ahead and --

18          MR. BEDWELL: So we gotta pray during the  
19   six weeks.

20          MS. WALSH: No. Once we get --

21          MR. BEDWELL: Is that right?

22          MS. WALSH: Once we get their signature --

23          MR. BEDWELL: No more lawsuits?

24          MS. WALSH: We don't have to worry about  
25   it.

1 MR. RENTON: They have confirmed in writing  
2 that this agreement will be executed by them if  
3 approved by you.

4 MS. WALSH: So once -- once we get that  
5 going then at the same time we're moving onto --

6 MR. OAKLEY: If we go ahead and approve  
7 this could you then after it's approved ask them  
8 if we enclose the breezeway whether that would  
9 be okay?

10 MS. THOMSEN: That's --

11 MR. RENTON: Yes.

12 Or you can go into the it's easier to ask  
13 for forgiveness than it is to ask for  
14 permission.

15 MS. WALSH: Yeah.

16 MR. BEDWELL: We want to go back into  
17 public. And the word's going to get out because  
18 we're settling this?

19 MR. RENTON: Yes.

20 MR. BEDWELL: So if somebody want to sue  
21 they know it's close to being settled. We can't  
22 keep this a secret.

23 MR. RENTON: Once this document is fully  
24 executed --

25 MR. BEDWELL: Yeah.

1 MS. WALSH: And then recorded.

2 MR. RENTON: Then it could become a matter  
3 of public record which would be subject to the  
4 request if somebody asked.

5 MR. BEDWELL: We publish the minutes.

6 MR. RENTON: This document needs to be  
7 recorded because it contains a release and  
8 there's restriction as to that property. So  
9 they can never challenge these bonds again if  
10 they sell them in the next three months, month,  
11 year, five years, whatever the number is.

12 They are -- the settlement is if you think  
13 of it with the property, not so much with the  
14 entity. So it forever concludes this property  
15 as to how to resolve it.

16 MR. OAKLEY: What we're doing if we approve  
17 this is we are not hindering future boards down  
18 the road anyplace in this document for anything  
19 they want to do after five years.

20 MR. RENTON: Correct. After five years.  
21 For five years you are restricting the projects  
22 as to issuing additional bonds and other items  
23 that you would be able to do.

24 MR. OAKLEY: But they could take it out of  
25 the general fund.

1 MR. RENTON: They could not special assess  
2 and they cannot issue bonds.

3 MR. STOWE: No special assessments.

4 So you could use current assessments. If  
5 there was a way that you could squeeze it in.

6 MR. OAKLEY: Right. That's what I said.  
7 We'd take it out of the general fund and  
8 wouldn't be special assessed. There wouldn't be  
9 a bond. But if there was money there --

10 MR. RENTON: Our recommendation would be --

11 MR. STOWE: Right.

12 MR. RENTON: (Cont'd.) Use the golf course  
13 revenue to complete whatever project you want.

14 MR. OAKLEY: All right.

15 MR. RENTON: If you avoid some of the other  
16 items --

17 MS. THOMSEN: At least for the next five  
18 years.

19 MR. RENTON: That's for five years. After  
20 five years all bets are off.

21 MS. THOMSEN: Okay.

22 MS. WALSH: Shall we vote?

23 MR. RENTON: Well, is there any -- you  
24 can't vote in here. We'll close and go back on.

25 But is there any other questions anybody

1 has --

2 MR. BEDWELL: No.

3 MR. RENTON: (Cont'd.) About this  
4 settlement or anything in it?

5 BOARD MEMBERS: (No response.)

6 MR. RENTON: Okay.

7 MR. McCARTHY: Any questions from the  
8 board?

9 BOARD MEMBERS: (No response.)

10 MR. RENTON: And it is purely contingent.  
11 If a new lawsuit comes in, then it's poof, we're  
12 back to where we were in the litigation and  
13 we'll continue on and proceed from there.

14 MR. OAKLEY: When go out of this shade  
15 session, we vote on this.

16 MR. RENTON: Correct. You would vote.

17 MS. WALSH: I'm going to vote like this  
18 (indicating).

19 MR. OAKLEY: And he's agreed already to  
20 sign it.

21 MR. RENTON: That is correct.

22 MR. McCARTHY: Okay. So we're going to  
23 close the attorney-client session.

24 MR. STOWE: We just need a motion to  
25 adjourn.

1 MS. WALSH: I make a motion to adjourn the  
2 shade session.

3 MR. RENTON: You can't make a motion in  
4 here.

5 MS. WALSH: All right.

6 MR. RENTON: That's okay.

7 So if there's no further questions from the  
8 attorney we'll go ahead and conclude now.

9 MR. McCARTHY: One thing before we close.  
10 I want to express your help and Brett's help  
11 with what you've done for the CDD board --

12 MS. WALSH: Yes.

13 MR. McCARTHY: All five of us really  
14 appreciate the hard work the two of you and your  
15 company did.

16 Thank you very much.

17 MR. RENTON: Thank you.

18 (Whereupon, the attorney-client session was  
19 concluded.)

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## CERTIFICATE OF REPORTER

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Dated this 11th day of June, 2020.

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Margaret Eddy Sheffield, Court Reporter

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**VIERA EAST COMMUNITY DEVELOPMENT DISTRICT**

**Confidential**

**Board Meeting on 05/27/2020**

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