

OSM-1, LLC vs VIERA EAST CDD
Meeting on 01/08/2020

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VIERA EAST COMMUNITY DEVELOPMENT DISTRICT
CLOSED ATTORNEY-CLIENT SESSION
OSM-1, LLC v. VIERA EAST CDD

January 8, 2020

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

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

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MEETING ATTENDEES

BOARD MEMBERS PRESENT

Paul McCarthy, Chair

David Bedwell, Vice Chair

William "Bill" Oakley, Secretary

Melinda Thomsen, Assistant Secretary

Jo Walsh, Treasurer

District Manager Jason Stowe

Outside Counsel Jack C. McElroy

1 VIERA, FLORIDA; January 8, 2020

2 WHEREUPON:

3 MR. MCCARTHY: We are now going into
4 attorney-client session to discuss litigation
5 titled OSM-1, LLC versus Viera East Community
6 Development District. Case number
7 05-2019-CA-057538.

8 It is estimated the attorney-client session
9 will last 30 minutes.

10 The attorney-client session will be
11 attended by Paul McCarthy, Dave Bedwell, William
12 Oakley, Jo Walsh, Melinda Thomsen, Jason Showe
13 and Jack McElroy and a court reporter pursuant
14 to Section 286.001(8) of Florida Statutes.

15 All others shall be excluded. Upon
16 conclusion of the attorney-client session we'll
17 reopen the public meeting and I will announce
18 the termination of the attorney-client
19 session.

20 MR. SHOWE: Recorder's off.

21 MR. McELROY: Again, for the record, my
22 name's Jack McElroy.

23 I don't have to read the script again.
24 This is -- you remember your instructions
25 regarding the shade session instructions that I

1 gave you 30 minutes ago.

2 Does everyone remember that?

3 BOARD MEMBERS (in unison): Yes.

4 MR. McELROY: Yes?

5 All right. Okay. As to the OSM case.

6 Jack Spira. As everyone knows, Mr. Spira is --
7 is an attorney, long-time attorney here in
8 Brevard County. He owns the company OSM-1,
9 LLC. And he filed a second lawsuit which is
10 pending here in Brevard County in Circuit Court
11 but is here in front of a different judge down
12 here in Viera, not up in -- not up in
13 Titusville.

14 For various reasons we decided not to
15 consolidate those two cases. And we've -- you
16 know, we decided just to -- strategically it
17 made more sense because of the case that we've
18 got going on and where it's at and how far along
19 it is up in Titusville to let that case continue
20 on its own and let's get that case resolved.

21 It will be helpful to us -- if summary
22 judgment's entered on the 7th it would help us
23 in this OSM case. So we want to do that.

24 Mr. Spira is -- you know, the complaint
25 that was drafted was a better-drafted complaint

1 than the --

2 MS. WALSH: Yes.

3 MR. McELROY: (Cont'd.) First case.

4 He -- and -- and he has -- you know, you --
5 you heard his story at the public meeting as to
6 why he thinks he has a claim.

7 We still believe that you -- again, it
8 comes down to did you have substantial,
9 competent evidence to support your decision on
10 the -- both the benefit and the methodology. I
11 believe you still do. So we're -- we're still
12 comfortable with your case.

13 His big issue is the clubhouse. He is --
14 because he believes -- it's his theory of his
15 case that what you're doing is you're
16 subsidizing a restaurant with the -- the
17 improved -- the planned improvements to the
18 clubhouse and that that restaurant is going to
19 be a competitor to him -- competitor to him.

20 He owns commercial property and contends --
21 and I guess it's going to be a -- a shopping
22 center I believe. And one of the tenants would
23 be a restaurant.

24 And so he's saying: What you're doing is
25 you're --

1 His claim is: You are -- you're
2 subsidizing what will be a competitor to one of
3 my tenants and you're using my money to do it.

4 And so I'm having -- and I'm having -- you
5 know, my tenant is -- I'm going to get -- I'm
6 going to get less rent because you've got that
7 competitor who's being subsidized. And,
8 therefore, I'm paying for it on -- on both ends.
9 I'm -- I'm paying for it in my assessments that
10 I'm paying. And I'm paying for it in the amount
11 of rent I'm able to obtain because of what he --
12 he says is unfair competition.

13 So I do believe that -- that the offer of
14 reducing money in the clubhouse; I think that
15 that's something that he's going to be willing
16 to talk about to settle the case.

17 So we could -- we may be able to get this
18 case settled with OSM in those discussions even
19 if we can't settle it with -- with the other
20 plaintiffs. We can at least get rid of one of
21 these.

22 He has -- he's -- he's active in the
23 litigation. Unlike the other side, he has
24 demanded discovery. He has documents and he's
25 scheduled Dr. Fishkind's deposition for the 14th

1 which is next week.

2 And we'll have to see how Dr. Fishkind does
3 at his deposition. But I've seen him -- I've
4 seen and heard of his reputation in depositions
5 before. He's -- he's pretty good about -- he's
6 very good at being able to answer questions and
7 parry any attacks that attorneys make on him.
8 So I'm not -- not too worried about that.

9 That litigation; what we would do is we'd
10 probably set that one for summary judgment.

11 The thing about -- the other reason why we
12 wanted to keep the two cases separate is because
13 the judge down here has a much more open
14 calendar. We can get -- we can get hearings in
15 front of this judge easier than we could in
16 front of Judge Paulk.

17 If he -- we consolidate those cases it
18 would have slowed down the case up in
19 Titusville. And getting hearings were -- it was
20 going to be further out before we could get
21 hearings because of his calendar. So that's
22 another reason why we wanted to keep those two
23 cases separate.

24 But we would -- we anticipate that we would
25 have -- if we're not able to settle that we'll

1 have a motion for summary judgment teed up. And
2 -- well, we'll have the motion for summary
3 judgment ready to have for hearing in --
4 sometime in late February, early March.

5 So we don't need to go into the settlement
6 because the settlement discussions with him
7 would be the same as the settlement discussions
8 with the others.

9 MR. BEDWELL: So you could go ahead and
10 proceed with that. With him.

11 MR. McELROY: Yes. Yeah. I mean I -- I'm
12 going to proceed with it with both of them --

13 MR. BEDWELL: Yeah. I know.

14 MR. McELROY: Try and resolve it, yes.

15 MR. BEDWELL: But he might --

16 MR. McELROY: Okay. Any questions about
17 the OSM litigation or --

18 MS. WALSH: Are -- are we hoping that once
19 we get it to summary judgment if it's in our
20 favor that this will -- will cause OSM want to
21 take a step back? Or ...

22 MR. McELROY: Well, we can have the
23 settlement negotiations with him now. If he has
24 -- and I will -- as part of those settlement
25 negotiations I want to know what Jack is going

1 to say about the case at the hearing on the
2 motion to continue.

3 I'll make sure he's aware of this. And he
4 knows. He's -- again, been a practicing lawyer
5 for quite some time. He knows that if summary
6 judgment's granted in that case that his chances
7 of winning go down.

8 MS. WALSH: Right.

9 MR. McELROY: So, you know, I could make --
10 I could make -- have some negotiations with him
11 now and we wouldn't settle. And then it would
12 -- after Judge Paulk rules, if Judge Paulk rules
13 in our favor and gives us summary judgment then
14 Spira can always come back to me and say: Yeah.
15 I'm willing to settle on those grounds now.

16 And then -- and I don't think -- I don't
17 think that's going to change your calculus.

18 MR. BEDWELL: No.

19 MR. McELROY: I think you're still willing
20 to --

21 MR. BEDWELL: Yeah.

22 MR. McELROY: (Speaking simultaneously.)
23 Settlement -- even if you win at summary
24 judgment you're willing -- you're still willing
25 to do that settlement to not have the ordeal and

1 to not have this case -- other case pending.

2 MS. WALSH: Right.

3 MR. BEDWELL: Yeah.

4 MR. McELROY: Okay.

5 Any questions? Comments? Suggestions?

6 MR. BEDWELL: No.

7 MR. SHOWE: Is there any action you think
8 the board needs to take outside of the shade
9 session to formalize --

10 MR. McELROY: Yes. We'd go outside the
11 shade session. We don't have to -- you don't
12 have to formalize what you've just -- you've
13 just given me -- all you've done is given me
14 authority to talk.

15 The only thing we need to do once we go
16 outside the shade session is set new shade
17 sessions.

18 MR. STOWE: Okay.

19 MR. McELROY: Okay?

20 MR. OAKLEY: The only -- the only question
21 that I have I think, Jack, is when you're
22 negotiating a settlement with these folks you
23 said you're not going to start with a nine.

24 Where are you going to start? Any idea?

25 MR. McELROY: I think that I'd probably

1 start with knocking --

2 MS. WALSH: Half.

3 MR. McELROY: (Cont'd.) A million off.

4 MR. OAKLEY: Because any -- anything -- as
5 Jo pointed out, anything that, you know, we can
6 get. Because we don't know what the other
7 things are going to come up with --

8 MR. McELROY: Sure.

9 MR. OAKLEY: (Cont'd.) As far as
10 expenditures and stuff. And we don't want to
11 cut ourselves short if we don't have to.

12 MS. WALSH: Yeah. Those bathrooms alone
13 are going to cost us a fortune.

14 MR. OAKLEY: Yeah.

15 MR. McELROY: So -- yes. I think I'd start
16 -- I think I'd start at cutting off -- you know,
17 reducing it by a million.

18 MR. OAKLEY: Okay.

19 MR. McELROY: And then knowing that I could
20 get up to -- to two million if I need to.

21 MS. THOMSEN: So in your estimation from
22 what you read on Spira's paper, if he was again
23 -- not against the existence of the restaurant,
24 even though it's been here for years.

25 MR. McELROY: I -- I think that this --

1 this is based more on Brett's discussions with
2 Spira. Because Brett has talked to him a couple
3 of times about getting discovery scheduled and a
4 summary judgment.

5 And in those discussions that Brett has had
6 with him he has talked to him: What's your --
7 You know: What's your big hang-up on this.

8 MS. THOMSEN: Uh-huh.

9 MR. McELROY: What's the big problem.

10 And he has gotten the impression that the
11 big problem -- and -- and based on his comments
12 that he had at the public hearing -- his big
13 problem, his big hang-up is doing what he
14 considers to be a Taj Mahal fix for this
15 clubhouse that's going to benefit a
16 competitor.

17 MS. THOMSEN: So the -- it seems logical to
18 you to cut down the amount. And that makes him
19 feel better about his competition?

20 MR. McELROY: Yes.

21 MS. THOMSEN: Okay.

22 MS. WALSH: His restaurant will be
23 bigger.

24 MR. OAKLEY: Yeah. And if our restaurant
25 -- Jack, if our restaurant stayed exactly at the

1 same physical size as it is right now it really
2 shouldn't be that much of a competition to him.

3 I mean I've drawn up some internal changes
4 which --

5 MR. McELROY: Okay. So that's the other
6 thing that we can -- that I can say to him.
7 That the restaurant will stay the same size it
8 is -- as it is now.

9 MR. OAKLEY: Right.

10 MR. McELROY: And it won't be --

11 Is it --

12 MR. OAKLEY: The footprint of the
13 restaurant --

14 MS. WALSH: Right. I'd like a little
15 outdoor space. But ...

16 MR. McCARTHY: And the other thing is is
17 that that money that's left over from that
18 estimate is not all going into the restaurant.
19 It's going to be spread out through the --

20 MR. BEDWELL: Yeah.

21 MR. McCARTHY: (Cont'd.) The pro shop and
22 --

23 MR. BEDWELL: Painting. New carpet.

24 MR. McCARTHY: Other things that Tim has in
25 mind. So that 700- or 900,000 --

1 MS. WALSH: Is not going --

2 MR. McCARTHY: (Cont'd.) That's left over
3 is not going into the restaurant. The 900,000
4 --

5 MR. McELROY: Yes. Those are -- those are
6 other -- yeah. That's -- so what we're going to
7 be doing -- and what I can tell him is that the
8 -- the vast majority of the money that'll be cut
9 is going to come out of our -- if you're --
10 we're at a million, I can tell him all the money
11 that we're going to cut out is coming out of the
12 food and beverage line item.

13 MR. McCARTHY: Yeah.

14 But Jo makes a good point. Because the
15 bathrooms are terrible. They're 27 years old.

16 MR. McELROY: Yeah. Uh-huh.

17 MR. McCARTHY: And you really don't want to
18 go in them.

19 MR. OAKLEY: You can tell him the majority
20 of the money is going to be spent on remodeling
21 the bathrooms and the CDD offices.

22 MR. STOWE: Yeah.

23 MR. BEDWELL: You'll see there was two big
24 expansions to the restaurant, Jack. The kitchen
25 and then a bigger dining area.

1 MR. OAKLEY: Plus an outside area.

2 MR. BEDWELL: Plus an outside area.

3 MS. THOMSEN: As long as we maintain that
4 the original redo was going to be under the same
5 roof. Is that not correct?

6 MR. BEDWELL: No. We were going --

7 MR. MCCARTHY: No. We were going to build
8 another building. There was two buildings on
9 the --

10 MS. THOMSEN: Where the oven -- where --
11 where the cook area is now going to be outside.
12 Remember? With the kitchen? The actual kitchen
13 was going to be outside? Or was it going to be
14 --

15 BOARD MEMBERS: (Speaking simultaneously.)

16 MR. BEDWELL: Yeah. Extended roofline for
17 the kitchen. Extended roofline for the deck.

18 MS. THOMSEN: I -- I didn't have that
19 understanding. So ...

20 MR. OAKLEY: What I'll do for you folks is
21 --

22 I've shown the drawings to Tim. I'll get
23 each one of you a set of the copies of what I've
24 done. And you can take them home and take a
25 look at them and peruse them around. I'll bring

1 them to the next meeting.

2 Is that okay, Jack, if we do that?

3 MR. McELROY: Yeah. That's part of the --
4 that'll be part of settlement negotiations.

5 MR. OAKLEY: Okay. And those are all open
6 to interpretation by the architect. So ...

7 MR. McELROY: Just don't have any
8 discussions before the next meeting.

9 MS. WALSH: Yup.

10 MR. McCARTHY: Okay. So we've given you
11 some options which is a good thing.

12 MR. McELROY: Yes.

13 MR. McCARTHY: And we can see where we go
14 from here.

15 And I would not like to see it last for
16 eight or nine months.

17 MS. WALSH: No.

18 MR. McCARTHY: Is my feeling.

19 So whatever we can do to ...

20 MR. McELROY: We'll -- we'll do our best --

21 MR. McCARTHY: Okay.

22 MR. McELROY: (Cont'd.) To make it go
23 away.

24 MR. McCARTHY: All right.

25 Any other questions for Jack?

1 BOARD MEMBERS: (No response.)

2 MR. McCARTHY: I think we're all set then.

3 MR. STOWE: We got to close this one? Or
4 do we --

5 MR. McELROY: Let's close the shade.

6 MR. STOWE: All right. The shade session
7 will be closed.

8 (Whereupon, the attorney-client session was
9 concluded.)

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CERTIFICATE OF REPORTER

I, Margaret Eddy Sheffield, Court Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that pages 3 through 17 is a true and correct record of my stenographic notes.

Dated this 17th day of January, 2020.



Margaret Eddy Sheffield, Court Reporter