CITY OF APOPKA

Minutes of the workshop City Council meeting held on June 06, 2018, at 4:03 p.m., in the City of Apopka Council Chambers.

PRESENT:	Mayor Bryan Nelson Commissioner Doug Bankson Commissioner Kyle Becker Commissioner Alice Nolan Commissioner Alexander Smith City Attorney Cliff Shepard City Administrator Edward Bass
PRESS PRESENT:	Teresa Sargeant - The Apopka Chief Reggie Connell, The Apopka Voice

DISCUSSION

1. Establishment of a Community Development District (CDD) for the New Errol Development - Signature H

Jim Hitt, Community Development Director, said a Community Development District is a district governed by Florida Statute Chapter 190. He read the following statement into the record:

> This is something being proposed by Signature H, and there is still a lot of research that needs to be done and legal opinions drawn by our own attorney as to whether giving municipal power to an independent group is good or not. The Florida Statute Chapter 190 is quite extensive. Anything coming before Council to allow this CDD power to be conveyed has to be done at a normal council meeting where open, public questions and answers are completed. At this time I believe will generate a lot of questions as to the process, powers, financing, organization and history with how this can and will actually work. We are aware of CDD's, but they are described as; Community Development District is a local special purpose government framework authorized by Chapter 190 of the Florida Statutes, as amended, and is an alternative to municipal incorporation for managing and financing infrastructure required to support development of a community.

Mr. Hitt said the applicant is New Errol and he pointed out that in the Florida Statute it does talk about submitting a fee to the county, in this case it would be to the city. Our current fee structure does not have a fee application for a Community Development District. He stated some of those have been charging up to $15,000 for an application to process. He reiterated it is not in the current city code to charge for doing something like this and the code would need to be amended if going forward with a CDD in Apopka.

Mayor Nelson said he asked the applicant to reach out to all of the Commissioners to make sure that they had an opportunity to ask preliminary questions prior to this presentation.

Helmut Wyzisk, III, said he was here representing New Errol today and with him is Bob Carmichael of Developer Capital, and Russell Edghill from Fishkind & Associations. He stated they were here to talk about setting up a CDD in New Errol and he wanted to make very clear that they are talking about setting up a boundary that is representative of the same boundary they had approved in their concept plan. This is not something that would incorporate existing Errol Estates therefore, any assessments would not be applicable to residents in current Errol Estates. This is about the future of New Errol and future residents and the horizontal infrastructure within New Errol. He introduced Russell Edghill who will be presenting and stated the he and Bob Carmichael are present to answer any questions following the presentation.

Russell Edghill, Fishkind & Associates, provided a presentation on a CDD that he views as a special purpose form of local government. He said a CDD functions much like a local government from Sunshine Law perspective, apart from the fact that a CDD will not have land zoning powers or policing powers. He stated the Florida Statutes designed a CDD in the early 1980's as a mechanism to support economic development throughout the state. He said he would like to illuminate that much of the major and successful real estate development projects in the State of Florida have utilized this mechanism to predominantly finance horizontal improvements such as roads, bridges, water and sewer systems, any critical infrastructure need that supports the vitality of the project. He stated they are before the City Council as the acreage in question is less than 2,500 requiring an approval process by this local government body. Mr. Edghill continued to go through the presentation, of which a copy is filed with these minutes.

Commissioner Becker said his first reaction is to ask why it is needed. During public comment at the last public meeting, there was a lot of reference to financing that was already in place, one of which was infrastructure. He asked why they are coming back using this alternative form of financing rather than the letters of intent that were described previously.

Mr. Edghill said the developer has assembled a team to advance their vision to develop infrastructure for residential mixed-use and in the process of embarking on exploring different iterations of how best to do this.

Commissioner Becker asked if it was correct that the primary purpose of the CDD in addition of infrastructure was to build some of the amenities as well.

Mr. Edghill said they envision the name of being New Errol Community Development District and this will strictly build dollars that will be raised via the bond issuance process that strictly will be used for horizontal improvements. The developer plans on financing the golf course with their own dollars. He said with the CDD, the proceeds from the bond issue, if financing a project with district debt, it has to serve a general public purpose and accessible to the public.

Commissioner Becker inquired what the benefit would be to the resident purchasing a home in the district. He also asked how they arrived at the $840 annual assessment that was in The Apopka Voice article.

Mr. Edghill said the $840 quoted was a rough estimate of how much the developer envisions passing on to the ultimate end user. The developers will absorb the remaining portion. He stated a lot of this is done on a per acre basis for equitable allocation of cost.

Commissioner Becker asked the City Attorney from a trustee relationship if the rules were statutorily driven or established at the creation of the CDD.

City Attorney Shepard said the statute prescribes how you create the CDD and a trustee has his own statute, but the CDD lays out the process in which you create the fund and administer the fund, similar to the CRA. He stated that three fourths of CDD's were created between 2006 and 2008. He said this was something that will take a lot more investigation than a work session in his opinion, particularly given the lack of understanding of those who will be saddled with this burden. He pointed out this was not mentioned in any of the prior meetings.

Commissioner Nolan said 40% of the CDD's created to this point are filing bankruptcy, with more to follow. She asked what their safety measures were to make sure they don't fall into the same trend of bankruptcy.

Mr. Edghill said location as very important and a small component is lodging, and merit of assisted living, championship golf course and a meeting place with the manageable aspect of residential homes.

Commissioner Nolan said if this goes through, she would ask they would be transparent and have the monthly fee and assessment fees in a full page rather than a small paragraph so that the buyer will know what they are getting in to.

Commissioner Bankson said he would strongly agree with this transparency.

Mr. Wyzisk said they were all in agreement with this and they do not want to deceive their homeowners who will be their ambassadors and golfers. He said you want to make sure they know what they are getting in to and that they can afford to live there. He declared they are comfortable in making sure this is a full page document.

Mayor Nelson said if they do a full disclosure, what happens to the second owners of the property.

City Attorney Shepard said Florida is a seller beware state, which means the seller has to disclose anything that can materially affect value, including outstanding special assessments for HOA's, or in this case CDD assessments going forward. These do affect the value of the property and any appraiser would need that information to properly calculate this into the value of the home. He stated it will be disclosed in one way or the other but the real question is if it will be understood. He stated this is an important consideration when you are talking about assessments at the level they will ultimately be talking about.

Commissioner Bankson said he would like additional information as far as when were these formed, how many have been since 2008 and have the number of how many are in default. He said if this is a commonly used and understood tool, why it wasn't brought up while they were going through the process.

Mr. Wyzisk said the project was not contingent on this, as much as they want this and would better the project, it is not a deal breaker. He stated bringing in up prior, he did not think it was part of the subject matter. They were there for entitlements, and although financing did come up and was addressed, they had not gone as far into this to explore it. He said they were moving forward with this idea at this point. He asked Bob Carmichael to address options.

Bob Carmichael with Developer Capital said the question came up as to why they did not bring CDD up before. He stated this is and what they will be financing under this is no different than if they do an infrastructure loan. He said in this particular structure, they are looking at approximately one-third of the amount of the infrastructure being applied against the homes. He stated the developer has the right and the ability to pay down the entire capital portion of the CDD if that is what they want to do, which leaves residents with an assessment no greater than an HOA. He said they were in a rising interest rate environment and they will see a slow down at some point. He declared that any project which is failing, if it was financed correctly, that being the CDD only funded, and financing only infrastructure, it was not the CDD, but the project itself that failed. He said there was nothing going into the CDD that wouldn't happen with a traditional bank loan. He reiterated the developer has the right to reduce the entire portion of the capital so the payment is equivalent to an HOA fee. He suggested this should provide more comfort to the City because there is a draw schedule, an independent inspector that makes sure the amount of improvements are consistent with that schedule.

Commissioner Smith said his initial question was if this project would go forward even if the CDD was not approved and the answer was yes. He has heard a couple of times that if going with the CDD that the City would have no liability and asked what liability the City would have if not approving the CDD.

Mr. Carmichael responded there was no difference and there would be no liability. He stated this was more secure than a bank loan.

Commissioner Becker expressed a legal concern with regards to the PUD Master Plan, Developer's Agreement, and asked what powers a CDD Board would have with regards to agreements already in place such as these.

City Attorney Shepard said the developer is still bound to the Development Agreement. He stated typically there was full disclosure and the CDD was in the Development Agreement. He said they did this with full disclosure as the developer owned all of the property. Here that is not the case. He stated the question that was glossed over is the issue of why didn't this come up before now. He said there were multiple homeowner workshops, there were public meetings with 400 plus people in attendance, and none of them indicated they knew of an additional assessment to pay for infrastructure. He declared that this is not transparency. He affirmed the Development Agreement is a document that binds them to do certain things within the project. It doesn't change because the fund certain aspects privately or through a CDD. He said their documents would be subject to public record, but there is a balance. He said there has been 168 defaults on CDD bonds since 2008 in the amount of $5.2 billion of bond defaults. He affirmed this is information Council should be provided. He said it is a possibility that it could work, but there needs to be a lot of research and additional information before you should approve. He pointed out that in a traditional infrastructure loan Signature H pays the loan on their credit. They are telling you it will be more stable if relying on the taxpayers and this is not what Council was sold.

Mr. Wyzisk said they would not be asking existing residents to pay into this. New Errol is separate and the new residents are the only ones receiving an assessment.

City Attorney Shepard said that is how it should be and he stated if there was any idea that this would take over the HOA fee, it will not.

Mr. Edghill said when they submit a petition in which they would write a check for $15,000, it would include a metes and bounds which will clearly define the line area in question. He reiterated the existing residents are not part of the proposed CDD and cannot be assessed. The assessment is designed strictly to spur new development. He stated the assessment is tied to the land.

ADJOURNMENT – There being no further business the meeting adjourned at 5:31 p.m.

____
Bryan Nelson, Mayor

ATTEST;

____
Linda F. Goff, City Clerk