

MINUTES OF MEETING

Each person who decides to appeal any decision made by the Board with respect to any matter considered at the meeting is advised that the person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which such appeal is to be based.

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of Harbor Bay Community Development District was held on **Thursday, January 26, 2012 at 5:52 p.m.** at the MiraBay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33752.

Present and constituting a quorum were:

Ed Stone	Board Supervisor, Chairman
Rip Ripley	Board Supervisor, Vice Chairman
Julie Guill	Board Supervisor, Assistant Secretary
Paul Stumpf	Board Supervisor, Assistant Secretary

Also present were:

Scott Brizendine	District Manager, Rizzetta & Company, Inc.
Jere Earlywine	District Counsel, Hopping, Green & Sams, P.A.
Jamie Scarola	District Engineer, Scarola & Assoc. Engineering
Kristy Owens	District Coordinator <i>(joined the meeting in progress)</i>
Len Berkstresser	Apollo Beach Channel Dredging Organizer <i>(joined the meeting in Progress)</i>
Audience	

FIRST ORDER OF BUSINESS

Call to Order

Mr. Brizendine called the meeting to order and conducted roll call. He stated that the Shade Session scheduled for this evening has been cancelled and that the individual scheduled to do a presentation on the channel dredging has not arrived yet, so he would be moving forward on the agenda while they wait for his arrival.

SECOND ORDER OF BUSINESS

Audience Comments on Agenda Items

There were no audience comments put forward on agenda items.

THIRD ORDER OF BUSINESS

Consideration of Minutes from Board Supervisors' Workshop Held on November 14, 2011

Mr. Brizendine stated that a correction has been made on the second page of the minutes; it now reads \$50K to \$60K.

On a Motion by Mr. Stone, seconded by Ms. Guill, with all in favor, the Board of Supervisors approved the minutes from the Board of Supervisors' Workshop held on November 14, 2011 as amended for Harbor Bay Community Development District.

FOURTH ORDER OF BUSINESS

Consideration of the Minutes of the Audit Committee Meeting held on December 15, 2011

On a Motion by Mr. Stumpf, seconded by Mr. Ripley, with all in favor, the Board of Supervisors approved the minutes of the Audit Committee meeting held on December 15, 2011 as presented for Harbor Bay Community Development District.

FIFTH ORDER OF BUSINESS

Consideration of the Minutes of the Board of Supervisor's Meeting held on December 15, 2011

Mr. Brizendine stated that he distributed revised copies of the minutes to reflect the change requested by Mr. Stumpf. He asked if there were any comments regarding the change that was made. There were none.

Mr. Scarola asked that the first paragraph of the Engineer's Report reflect that the statements made reflect what was written in the RGA Report and not his own personal opinions on the status of the ADA compliance matters. Mr. Brizendine stated that he would make the requested change.

On a Motion by Mr. Stone, seconded by Mr. Stumpf, with all in favor, the Board of Supervisors approved the minutes of the Board of Supervisors' meeting held on December 15, 2011 as amended for Harbor Bay Community Development District.

SIXTH ORDER OF BUSINESS

Consideration of Operation and Maintenance Expenditures for December 2011

Mr. Brizendine confirmed that the two coding corrections requested by Mr. Stumpf have been corrected.

On a Motion by Mr. Stumpf, seconded by Mr. Ripley, with all in favor, the Board of Supervisors approved the Operation and Maintenance Expenditures paid during the period of December 1-31, 2011 (\$257,352.54) for Harbor Bay Community Development District.

(Mr. Berkstresser joined the meeting in progress)

SEVENTH ORDER OF BUSINESS

**Consideration of Operations and
Maintenance Expenditures for November
2011 – Mira Bay Amenity Center**

Mr. Stumpf expressed concern with the processing of invoices over the \$5,000 limit (totaling \$33,711) without any formal presentation being made to the Board even though the funding had been approved as part of the budget process. It was stated that this concern would be addressed later in the meeting.

On a Motion by Mr. Stone, seconded by Ms. Guill, with four in favor and one against (Paul Stumpf) the Board of Supervisors approved the Operation and Maintenance Expenditures paid during the period of December 1-31, 2011 (\$72,941.40) for the Mira Bay Amenity Center, for Harbor Bay Community Development District.

EIGHTH ORDER OF BUSINESS

**Presentation Regarding Apollo Beach
Channel Dredging**

Mr. Scarola introduced Mr. Berkstresser, stating that he is the president of the group leading efforts to have the channels dredged in Apollo Beach. Mr. Berkstresser provided a brief synopsis of how he came to be involved in the project, how the project and current channel conditions are impacting property values in the area, and where the group is in regards to funding the project. He stated that there are portions of the channel where the water depth is as shallow as 3 to 3 ½ feet in the winter, which makes it very difficult to gain access to the bay through this channel. The goal of the project is to create a 7 ½ foot deep trench that is 30' by 40' and possibly 50' wide depending on the amount of sediment that is removed as the permit allows for the removal of 11,000-12,000 cubic yards of sediment. Mr. Berkstresser emphasized that having access to the bay impacts property values in the area as many people are drawn to the area because of the desire to access the bay with their boats. Unfortunately, this ability has and is continuing to diminish. He opined that this could affect property values in the area.

Mr. Berkstresser explained that the cost to complete the project is estimated at \$250,000 if he is able to biggy back off another dredging project currently in progress in the area and does not have to pay the additional mobilization fees of approximately \$60,000 to get the equipment into the channel. He stated that he currently has a window of opportunity to do so of about six weeks, has the necessary permitting, and has received contributions of \$85,000. He also stated that he is talking with the Parks and Recreation Department regarding the possibility of using the sediment from the project on the North end to replenish the beach, which would save additional money for removing the sediment to the southern site.

Mr. Berkstresser asked for a commitment from the District to provide \$50,000 of the remaining balance so that he can get the project started. He stated that the permits expire in 2012, but he is confident that he would be able to get them extended if need be. Mr. Berkstresser responded to questions regarding where the dredging would end in Biscayne Canal, stating that there is another permit that overlaps the one that his group has and he would be going up as far as he could based on the amount of sediment they are permitted to remove. Mr. Berkstresser stated that the Group is working on Phase II to keep the lanes clear after the initial project is completed.

Ms. Guill sought District Counsel opinion regarding whether the District can use District funds for this purpose and Mr. Earlywine indicated that he had not completed his research on the matter but it may be possible to do the funding under an interlocal agreement. However, the District has to be able to show that the assessments benefit all of the property owners that are being assessed. He stated that it might be easier to go through the HOA given the time restraints, but would continue to research the issue if the District wanted him to. It was stated that the cost to provide the requested donation would be slightly more than \$28.00 per household. A brief discussion ensued regarding other projects that the District is working on and other possible options the District might have to help the group. A recommendation was made that the Evergreen Fund be approached to inquire if they might be interested in funding the donation, given that they are the individuals who would benefit most from the project as boat owners.

The Board thanked Mr. Berkstresser for his time, but took no action on the matter at this time. Mr. Brizendine stated that he would provide the Board with Mr. Berkstresser's contact information, so they could discuss the matter further with him should they desire to do so.

NINTH ORDER OF BUSINESS

**Consideration of any Matters Relating to
Litigation**

Mr. Earlywine presented a proposal from the Brickleyer firm to retain them to address any resident inquiries or claims regarding the seawall litigation. He stated that the proposal is in keeping with their current contract rate of \$250.00 and hour. Following a brief discussion regarding the need for such a retainer, the Board decided to approve the proposal.

On a Motion by Mr. Ripley, seconded by Mr. Stumpf, with all in favor, the Board of Supervisors approved the proposal from the Brickleyer firm to address resident inquiries relating to the seawall litigation for Harbor Bay Community Development District.

Mr. Earlywine stated that there is a mediation scheduled for January 29, 2012. Mr. Stone stated that Litigation Counsel did submit a motion for a continuance of the trial date based on inordinate amount of new information that has been distributed by the defense of late.

TENTH ORDER OF BUSINESS

Review of GPR Test Results

Mr. Scarola presented information regarding the recent pool issues and findings by HSA from the recent GPR testing. He displayed pictures of the pool pinpointing the areas that were found to be leaking and the temporary repairs that were made, as well as the condition of the marcite.

Mr. Scarola stated that based on the issues, the Board authorized additional ground penetrating radar testing be completed to determine if there are any structural concerns that the Board should be aware of. Mr. Scarola reviewed the rough draft of the GPR testing results provided by HSA, stating that the report indicates the existence of several anomalous reflections, which may or may not indicate major issues, but do warrant the need for further investigation. HSA is recommending that they perform four 4" borings to determine if there are voids underneath the pool or the anomalies are just dissimilar materials that were used during construction.

Mr. Scarola reviewed the proposal submitted by HSA to complete this testing at \$2,200 and a proposal from Pinellas Pool to fill in the holes at a cost of \$300. He recommended that the Board move forward with the testing and consider continuing this meeting for a couple of weeks to discuss the results to try and keep the time that the pool is closed to a minimum. Mr. Stone added that the night before the pool was drained the water level dropped six inches so there is the possibility that one of the temporary fixes did not hold. He reviewed the repairs that were completed to the construction joint in 2007 and noted that there have been several leaks since then. Mr. Stone recommended that the Board stop making band-aid repairs and spend the money to fix it properly. Ms. Guill inquired as to whether completing the four borings would be sufficient and Mr. Scarola recommended that the Board authorize up to \$3,200 **in case** the findings from the first four warrant additional borings be done. He responded to questions regarding the qualifications of HSA to complete the testing, stating that based on what he has seen thus far and their reputation in the community, he is confident that they are quite capable of doing the borings. A brief discussion ensued regarding how many more borings should be authorized, costs to refill the pool, Pinellas Pools' involvement in the process, and possible solutions should voids be found.

On a Motion by Ms. Guill, seconded by Mr. Stumpf, with all in favor, the Board of Supervisors approved a not-to-exceed amount of \$3,500 for additional testing on the pool for Harbor Bay Community Development District.

Mr. Brizendine confirmed that HSA could mobilize within five days of being noticed and indicated that they would be able to get a report back to the Board should it decide to continue the meeting for two weeks.

Audience comments were entertained regarding the possibility of damage being covered under a warranty, the possibility that the pictures are an oversimplification of the possible anomalies, questioning whether or not the pictures indicate a density or compaction issues, when the cracks occurred, whether the borings would weaken the structure of the pool, and whether the pool should be resurfaced, etc, while the pool is already drained. It was noted that Pinellas Pool has indicated that the borings would not impact the structure of the pool and the costs to resurface the pool, etc. are too cost prohibitive to be addressed at this time.

Recommendations were made that some borings be made in areas away from the cracks and spots where the anomalies were seen and that the pictorial history that was taken at the time the pool was constructed be reviewed before the borings are done. Mr. Scarola stated that he would review the recommendations with HSA prior to the testing.

ELEVENTH ORDER OF BUSINESS

Discussion Regarding Fund Disbursement Resolutions

Mr. Stumpf led discussions regarding amending Resolution 2004-05, which authorizes District Manager to approve non-recurring invoices up to \$5,000 and the Chairman and District Manager to approve any non-recurring invoices above \$5,000 with no spending cap. He stated that he would like to see a cap added to section 2 of the resolution and amend section 3 to state that any non-recurring expenses that are approved by the Chairman and District Manager be presented to the Board separately from other expenditures made during the month. He expressed concern with invoices (totaling \$33,711) being processed for the fitness center that were not brought before the Board for approval, even though some of the expenses were approved during the budget process.

Mr. Stumpf stated that he is not concerned that there would be any issues with the current Board, but does want to see a system of checks and balances put in place. Mr. Earlywine stated that the District's resolution is consistent with what is used in many Districts, but it is entirely up to the Board if it would like to make changes. Opposing opinions were offered as to whether the current resolution is adequate as written. Concerns were also expressed by other Board members regarding limiting expenditures that might need to be made in emergency situations and spending the money to have District Counsel draft a revised resolution without just cause. Following a brief discussion, a recommendation was made that the cap be set at \$15,000. Mr. Stumpf indicated that he would be agreeable to including a clause authorizing emergency expenditures above the \$15,000 cap in the event of a natural disaster or some other type of emergency situation.

On a Motion by Mr. Stone, seconded by Mr. Ripley, with three in favor and one against (Julie Guill), the Board of Supervisors authorized District Counsel to draft a revised disbursement resolution for consideration at the next meeting as discussed for Harbor Bay Community Development District.

TWELFTH ORDER OF BUSINESS

Review of District's Cash Flow Analysis

Mr. Brizendine briefly reviewed the cash flow report for the Board, stating that the report reflects activity through December 31, 2012. He explained that the District levied \$3,449,547 and has collected \$1,973,351. The District has \$325,054 in the general fund account and \$1,037,889 in the investment account, with an accounts receivable balance of \$1,574,111. Mr. Brizendine stated that based on current spending trends the District can expect to have approximately \$499,091 remaining in the general fund account at the end of the fiscal year. However, this could change based on unforeseen expenses that could occur etc.

Mr. Brizendine stated that Crosland sold its property in Mirabay and the District received a check on January 24th in the amount of \$160,850.37 for past assessments, which brings the account current. He stated that he believes that the new owner is an investment firm out of New York. They still owe \$114,909.33 for the current year's assessments.

THIRTEENTH ORDER OF BUSINESS

Staff Reports

A. District Counsel

Mr. Earlywine stated that the O & E study and survey are in process and he expects to have the maps shortly. He stated that Newland has asked that the District split the costs of this project, which would be \$300 for the O & E Study and a not-to-exceed amount of \$750 for the survey. Mr. Scarola recommended that the District request the auto cad files if they are going to contribute to the funding. Mr. Earlywine stated that the study does not provide title insurance.

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board of Supervisors approved splitting the cost with Newland for the O & E study and survey of the District with a not-to-exceed amount of \$1,050 for Harbor Bay Community Development District.

Mr. Earlywine stated that he is in the process of reviewing the RFP and scope of services for landscaping services. He asked for direction from the Board regarding whether the Board would like him to make the changes and bring them back to the Board or discuss proposed changes prior to bringing the RFP back to the Board. Mr. Stone requested that the changes be discussed before hand and emphasized the need to make it as air tight as possible.

B. District Engineer

Mr. Scarola stated that he received the report from RGA this afternoon and has not had time to thoroughly review it. He suggested that RGA be asked to attend the continued meeting to discuss the report and their recommendations with the Board.

C. Mira Bay Club Manager – Karla Carusone

Mr. Brizendine stated that Ms. Carusone is out until the end of the month for family matters and Alex is filling in for her, but she was unable to attend tonight's meeting. He stated that things are in place for the Gasparilla event this weekend. The flooring and equipment that was ordered should be delivered in mid to late February.

Mr. Brizendine stated that Mr. Toborg would be ready to present the draft of the Scope of Services for the Landscape RFP at the February meeting. He stated that additional language will be added based on Supervisor comments.

D. District Coordinator- Kristy Owens

No report.

E. District Manager

Mr. Brizendine stated that the District has not received payment from Newland for reimbursement of the water bills at 813 Islebay in the amount of \$3,364.56, but has been told that the request for payment has been submitted to their accounting department. Mr. Brizendine stated that the water dept has been asked to close the account for 805 Islebay and the builder informed that they will need to open up an account if they want to operate the restrictor. He confirmed that he will be going back to the date the account was first opened when he submits the request for reimbursement to Newland. Mr. Ripley asked that the Builder at 813 Islebay be informed that he intends to close the water account for that restrictor as well.

FOURTEENTH ORDER OF BUSINESS

**Supervisor Requests & Audience
Comments**

Mr. Ripley emphasized the need to ensure that the new owners of the Crosland properties plan construction based on the guidelines of the community. He expressed concern that the District might find buildings outside of the standards of the community if not addressed.

Ms. Guill requested that District Counsel research what the District can do in regards to the dredging project based on the legal restrictions that go along with public funding. A brief discussion ensued regarding ways that the Statutes might be interpreted to allow for such funding. Mr. Earlywine stated that it might be more cost efficient to speak with the HOA regarding the project as they are not limited in the same way that CDD's are. Mr. Stone stated that he was meeting with Mr. Griggs tomorrow and would address the issue with him at that time.

Audience Comments

A request were made that Board members speak up during the meeting or that a PA system be purchased so that those attending the meeting can hear the discussions. Another request was made that residents be informed of the status of the pool via newsletter or email blast. Mr. Stone stated that he was in the process of preparing an email blast to the residents regarding the pool situation.

Discussion was held regarding continued speeding on Mann's Harbor Drive and the need to have speed calming devices installed. The Board explained that they have looked into the process to have calming devices installed and it is a long, expensive process with no guarantees. The District has to pay for the traffic study and be able to show that a minimum of 85% of the traffic drives 37 mph or higher in the area where the calming device is being requested, it has to have the support of 75% of the residents in the community before it can make the request to the County. The County has final say in the matter and should the traffic study not meet the requirement, it would have to wait another three years before it would be eligible to try again. It was noted that while the Board has not ruled out the idea, it is not an expense that can be made at this time.

A question was raised regarding the timing for the next OTC Injections to the Palm Trees within Seacrest. It was stated that Greenbriar would be handling the injections on a quarterly basis. Mr. Brizendine stated that he would get with Mr. Toborg regarding this matter.

Concerns were expressed regarding the increased vandalism at the Tennis and Basketball Courts and whether it might be beneficial to install security cameras and more lighting in the area. It was stated that the Neighborhood Watch Program is up and running and experiencing good response times from law enforcement when the non-emergency dispatch number has been called. Residents were encouraged to get involved with the program. Ms. Owens confirmed that the door closures have been installed on the restroom doors at the courts.

Concern was also expressed with the expenditure of \$33,000 for the fitness center without authorization. It was noted that the Board had discussed the need for the new equipment and flooring on several occasions and included the expense in this fiscal year's budget, so it is not entirely accurate to say that the expenditure was not authorized. The Board did request that proposals be obtained to ensure best pricing. Mr. Stone stated that the expense was not authorized as the proposals did not come before the Board for final approval before the flooring and equipment was purchased.

A resident put in another request for lights on the Basketball Courts.

FIFTEENTH ORDER OF BUSINESS

Continuation

A brief discussion ensued regarding the availability of the Board to continue this meeting for two weeks. Mr. Earlywine advised the Board that advice was sought regarding the seawall litigation and asked that the Board consider authorizing Staff to advertise for a Shade meeting to be held in conjunction with the continued meeting. He stated that it should last approximately a half hour to an hour and noted that the meeting would be attended by Brian Bolves, Steve Medendorp, the Board Supervisors, Scott Brizendine, a court reporter, and district counsel. It was decided to hold the meeting at 1:30 p.m.

On a Motion by Mr. Stone, seconded by Ms. Guill, with all in favor, the Board continued the meeting until February 9, 2012 at 1:30 p.m. at the MiraBay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33752 and authorized District Staff to advertise a Shade Meeting for the same time and location for Harbor Bay Community Development District.


Secretary/Assistant Secretary
Chairman/Vice Chairman