

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, February 24, 2011 at 5:30 p.m.** at 700 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
Tom Hatcher	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 Associates Eng.
John Toborg	Field Operations Mgr., Rizzetta & Company, Inc.
Kristy Owens	District Coordinator
Karla Gibson	MiraBay Club Manager
Audience	

FIRST ORDER OF BUSINESS

Call to Order

Mr. Brizendine called the meeting to order and conducted roll call.

SECOND ORDER OF BUSINESS

Consideration of the Minutes of the Board of Supervisors' Meeting held on January 27, 2011

Mr. Brizendine and Staff responded to Board questions regarding the minutes. Mr. Brizendine stated that the necessary corrections would be made as noted.

On a Motion by Mr. Stumpf, seconded by Mr. Stone, with all in favor, the Board approved the Minutes of the Board Supervisors' Meeting held on January 27, 2011 as amended for Harbor Bay Community Development District.

THIRD ORDER OF BUSINESS

**Consideration of Operation and
Maintenance Expenditures for February
2011**

Mr. Brizendine stated that a minor change has been made to the total in the amount of \$125 as the Hawkins invoice has been re-classified to the Mira Bay Amenity Center. He confirmed that he would be responding directly to Mr. Stumpf regarding the remainder of his questions. There were no Board questions put forward.

On a Motion by Mr. Ripley, seconded by Mr. Hatcher, with all in favor, the Board approved the Operation and Maintenance Expenditures for February 2011 (\$186,772.54) for Harbor Bay Community Development District.

FOURTH ORDER OF BUSINESS

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

Mr. Brizendine stated that the total of these expenses was increased by \$125 as a result of the re-classification of the Hawkins invoice. There were no Board questions put forward.

On a Motion by Ms. Guill, seconded by Mr. Stone, with all in favor, the Board approved the Operation and Maintenance Expenditures for February 2011 (\$58,909.66) for the Mira Bay Amenity Center, for Harbor Bay Community Development District.

FIFTH ORDER OF BUSINESS

**Update of CDD/Sea Crest HOA Landscape
Breakout Issue**

Mr. Brizendine stated that, after further discussions with Mr. Kim and Mr. Haag, a verbal agreement has been reached with Lee Te Kim and Greenbriar whereby \$3,500 worth of landscape maintenance – specifically, mowing the Bahia portion of the Sea Crest pond banks – would be removed from Mr. Kim's contract and added to Greenbriar's contract with the HOA. So, we would need a separate contract for that work with Greenbriar.

In addition to that settlement agreement, there is a second item that the Board needs to consider as well – the maintenance of the CDD areas within Sea Crest (other than the pond banks). These areas are currently being maintained by Greenbriar, but through a contract with the HOA. Recent title work has shown that these areas are in fact owned by the CDD, and the CDD needs to enter into a contract for that work. Mr. Brizendine explained that he has met with representatives from the HOA and asked whether the HOA would accept conveyance of these parcels, but the HOA declined that offer. Mr. Brizendine stated that he had obtained a proposal from Greenbriar to maintain those areas, at a price of approximately \$16,000.

A brief discussion ensued regarding the draft Settlement Agreement. Mr. Earlywine recommended that the Board authorize District Staff to prepare a draft Settlement Agreement, together with a \$3,500 contract with Greenbriar for the Bahia pond bank mowing (which contract would be an exhibit to the Settlement Agreement), based on the terms that Scott expressed, and bring that back to the Board for final approval at the next meeting.

On a Motion by Mr. Stone, seconded by Mr. Ripley, with all in favor, the Board authorized District Staff to prepare a draft Settlement Agreement, together with a \$3,500 contract with Greenbriar for the Bahia pond bank mowing (which contract would be an exhibit to the Settlement Agreement), based on the terms that Mr. Brizendine expressed, and bring that back to the Board for final approval at the next meeting for the Harbor Bay Community Development District.

No action was taken at that time regarding the maintenance of the remaining CDD areas within Sea Crest (i.e., the areas other than the pond banks).

SIXTH ORDER OF BUSINESS

Update on Mulch Installation

Mr. Brizendine provided a brief synopsis of discussions relating to the mulch installation and events leading up to obtaining a legal opinion regarding the current contract with Lee Te Kim. A brief discussion ensued regarding the District's ability to bid out the mulch installation rather than merely accepting the pricing from Lee Te Kim. It was stated that the legal opinion of Counsel was that the District's contract with Lee Te Kim includes pricing for two mulching installations a year and according to the contract the District is obligated to utilize Mr. Kim's services for at least two mulch installations annually, unless it wants to go through the process of terminating the contract. The Board stated that future contracts should include the option to obtain competitive pricing and to ensure that quality of the mulch installed matches existing mulch and is disease free.

District Counsel stated that he could provide a formal letter on the legal opinion, should the Board desire one for the record. However, the Board did not request such a letter.

SEVENTH ORDER OF BUSINESS

Consideration of Hand Watering Policy

Mr. Brizendine stated that a draft policy for hand watering procedures was prepared to ensure that the regulations set forth by SWFWMD in the District's watering variance are strictly adhered to. Mr. Toborg reviewed the policy, focusing on the pricing and procedures. He stated that the contractor must obtain approval prior to any hand watering and confirmed that the hourly pricing for both watering with a garden hose or truck includes water, employees, travel, insurance, etc. Mr. Toborg also stated that he is recommending that the District install its own rain sensors so that it can monitor the need for hand watering and that he is exploring the possibility of establishing a filling station at one of the pump sites to reduce travel costs. A brief discussion ensued regarding the ET variance and areas within the District that do not have irrigation systems in place and those that generally need supplemental watering. It was noted that areas with drip tubing and micro systems are not restricted.

A request was made that the word specific be added to the sentence referencing that the work order request include a separate site plan noting those areas that are in need of hand watering. The Board also requested information be provided to them regarding rain sensors.

On a Motion by Mr. Stumpf, seconded by Mr. Hatcher, with all in favor, the Board approved the hand watering guidelines policy as discussed for Harbor Bay Community Development District.

EIGHTH ORDER OF BUSINESS

**Consideration of Resolution 2011-02,
Appointing a New Assistant**

Mr. Brizendine presented resolution 2011-02, stating that Stacey Thomas, who was appointed the Assistant Treasurer by a previous resolution, is no longer employed by Rizzetta and Company. He stated that Shawn Wildermuth has filled this position and as such should be appointed to the Assistant Treasurer position. Mr. Brizendine stated that Bill Rizzetta would remain as the Treasurer for the District.

On a Motion by Ms. Guill, seconded by Mr. Stumpf, with all in favor, the Board approved Resolution 2011-02, appointing Shawn Wildermuth as Assistant Treasurer for Harbor Bay Community Development District.

NINTH ORDER OF BUSINESS

**Consideration of Resolution 2011-03,
Setting a Public Hearing on Rules of
Procedure**

Mr. Earlywine briefly reviewed the revisions to the Rules of Procedure being recommended by District Counsel to ensure that they reflect current statutes. He highlighted changes in bid thresholds and bid protest procedures. He explained that approval of the rules requires holding a public hearing with advertising requirements that mandate a 29 and 28 day notice of the meeting. Mr. Brizendine recommended that the Board consider holding the public hearing on April 28, 2011 during its regularly scheduled meeting.

On a Motion by Mr. Ripley, seconded by Ms. Guill, with all in favor, the Board approved Resolution 2011-03, setting the public hearing on Adopting Rules of Procedure on April 28, 2011 at the MiraBay Clubhouse, locate at 107 Manns Harbor Drive, Apollo Beach, FL 33572 for Harbor Bay Community Development District.

TENTH ORDER OF BUSINESS

**Review of Rizzetta and Company's Scope
of Services**

Mr. Brizendine provided a brief overview of the scope of services by category for Rizzetta and Company, stating that the main function is to ensure that the District remains in compliance with Federal and State statutory requirements.

Mr. Brizendine responded to Board questions regarding the scope of service and stated that Rizzetta is certainly flexible in terms of complying with the wishes of the Board for additional services. A brief discussion ensued regarding pricing for the contract being part of the annual budgeting process.

ELEVENTH ORDER OF BUSINESS Staff Reports

A. District Counselor – Jere Earlywine

Mr. Earlywine briefly reviewed a letter sent to Rizzetta regarding the latest ADA requirements that go into effect as of March 15, with a compliance deadline (generally speaking) of March 15, 2012. He explained that some of the existing facilities may be exempt, but certain types, such as swimming pools, boat ramps, etc. will need to be updated. Mr. Earlywine stated that he asked the District Engineer to look into the matter.

Mr. Scarola opinioned that the new guidelines will likely impact many facilities throughout the District and recommended that the District consider hiring an ADA specialist to determine exactly what needs to be addressed by the District.

A brief discussion ensued regarding the need to determine the costs to bring the District up to ADA guidelines for next year's budget.

On a Motion by Mr. Ripley, seconded by Mr. Hatcher, with all in favor, the Board authorized District Engineer to obtain proposals for an ADA Specialist to complete an inspection for Harbor Bay Community Development District.

(Mr. Scarola left the meeting.)

Mr. Earlywine stated that there have not been any legislative changes since Mr. Johnson spoke on the matter last month.

Mr. Earlywine responded to a question regarding the issue on the nuisance vegetation in Sea Crest and a discrepancy with land ownership and the permit, stating that he is still working on the matter. Mr. Brizendine stated that he spoke with Tom Briggs, who indicated that he would consult with his attorney regarding conveying the land to the District, but he does not have confirmation that this will occur.

B. Mira Bay Club Manager – Karla Gibson

Ms. Gibson informed the Board that the cardio vascular equipment, specifically the three ellipticals, in the fitness center are not of sufficient quality for the amount of use that they receive; thereby, resulting in frequent breakdowns.

Ms. Gibson recommended that the Board consider replacing the equipment with either Life Fit or Pre-core equipment at a cost of approximately \$5,000 for each piece of equipment. She will provide proposals for the next meeting.

Ms. Gibson expressed concern with alcohol use at the clubhouse that is being brought in by residents. She explained that this jeopardizes the District's beer and wine license.

Ms. Gibson stated that while she can request that residents abide by the existing rules there are no consequences in place for individuals violating policies. She recommended that the Board review the existing rules and establish consequences. A brief discussion ensued and a request made that Ms. Gibson provide her recommendations to the Board and District Counsel. Mr. Brizendine stated that he would forward the information on to the Board. Mr. Earlywine spoke regarding the procedures for making revisions to the rules and policies, explaining that if the changes reflect fee changes it would require holding a public hearing.

A brief discussion ensued regarding maintenance fees for equipment and whether the proposed equipment would include warranties.

C. Field Operations Manager – John Toborg

Mr. Toborg provided a brief update on the status of the request to provide the District with an inventory of the trees, stating that he has completed the list of the number of trees by species and he will be verifying the count and transferring the list to the map. He stated that the project should be completed by the next meeting. A brief discussion ensued regarding the possibility of using a GPS device to map the locations of the trees.

Mr. Toborg reviewed the proposal to remove the dead Medjool Palm in the pool area that requires the use of a 150 foot crane at a cost of \$6,480, the replacement of two matching Medjools at \$5,500 each, and the installation of Juniper and mulch for a total cost of \$17,660. He confirmed that the palms died due to T.P.P.D and not Ganaderma.

On a Motion by Mr. Ripley, seconded by Mr. Hatcher, with all in favor, the Board approved the proposal in the amount of \$17,600 to remove the dead Medjool Palm by the pool and replace two additional palms for Harbor Bay Community Development District.

Mr. Toborg informed the Board that he has requested another proposal to remove a Sylvester Palm that needs to be removed as soon as possible to prevent the spread of Ganaderma and for safety issues. Mr. Brizendine stated that this would typically fall into his category for approval as long as the cost falls under the \$5,000 threshold and he would speak with the Chairman should the proposal be for more than that.

Mr. Toborg asked if the Board felt comfortable with him handling the approval. The board indicated that it did

Mr. Toborg responded to a question from the Board regarding an area that was supposed to have been leveled off and new sod installed, stating that he spoke with Lee Te Kim about this matter earlier today and had given him five working days to complete the project.

D. District Coordinator- Kristy Owens

Mr. Brizendine informed the Board of an issue with the pool's circulation pump that resulted in the need to close the pool, as it can not generate the required 1100 gallons per minute. It was stated that there are also issues with the heater and a possible leak in the outflow pipes. It was also stated that the pits where the filters are were repaired on a temporary basis a few years ago and are going to need to be addressed shortly as well.

Additional discussions were held regarding estimated costs and the timing of repairs, as well as, the possibility of obtaining a standard motor rather than a customized one.

E. District Manager

Mr. Brizendine provided a brief review of the monthly Financial Status and Summary Report, stating that the District has collected approximately 94% of the assessments placed on the tax roll. He stated that currently the District is running over budget by \$85,000 due to sea wall litigation expenses. Mr. Brizendine stated that he would follow-up on the status of the delinquent off-roll assessments and the status of the \$25,000 payment due in March.

Mr. Brizendine stated that the Mirabay Club is in great shape and is currently running under budget.

Mr. Brizendine stated that he was contacted by Litigation Counsel regarding holding a shaded meeting on March 4th regarding an upcoming mediation hearing. He recommended continuing this meeting to that date at 9:00 a.m. He stated that he could also include the contract with Greenbriar on the agenda.

A request was made that the cash flow report be reinstated. Mr. Brizendine stated that he would provide that to the Board again next month. He also confirmed that the updated Greeter Policy has been approved. Ms. Owens will provide the Board with a copy of the policy.

TWELFTH ORDER OF BUSINESS

**Supervisor Requests & Audience
Comments**

Mr. Stumpf stated that at the last meeting the Board approved paying Lee Te Kim for the OTC injections and he felt that the Board may have been too hasty in making this decision, so he did some research into the matter. He provided an in depth presentation regarding his review of the contract with Lee Te Kim and his research on treating palms. He opined that based on his review of the contract and statements made by Mr. Kim in response to the August 2009 inspection report, the OTC injections are included in the scope of services for the landscaping contract. Mr. Stumpf also opined that based on his discussions with an arborist, his review of the report provided by the arborist hired by Lee Te Kim, his online research and visual inspections of the palms throughout the community, that it appears that the treatments completed prior to 2009 may not have been administered according to industry best practice standards. He reviewed his findings from the two websites recommended by the arborist he met with; the IFAS website from the University of Florida and the palmtreesaver.com website (the firm that holds the patent on the OTC injections). He stated that his research indicates that best practices call for injections to be made quarterly with only two injections to be made at one site, but there are not enough sites visible on the palms for this to have occurred. A lengthy discussion ensued regarding the scope of services included in the LTM contract and whether the District should be paying additional fees for the OTC treatments, issues with boring numerous holes in the palms, the number of palms that have died recently, and the best way to address the concerns put forward by Mr. Stumpf. The Board decided to discontinue treatments until a determination has been made regarding their inclusion in the contract and the procedures have been clarified.

On a Motion by Mr. Stumpf, seconded by Mr. Ripley, with all in favor, the Board authorized the Chairman and Field Operations Manager to meet with Lee Te Kim to clarify his understanding of the scope of service in the contract as it relates to treatment of disease for palms and to put Mr. Kim on notice that the current approval for injections has been put on hold for Harbor Bay Community Development District.

Mr. Stone expressed his concern with the level of vandalism that is occurring at the park and the need to be vigilant about keeping an eye on the area. The possibility of contacting the insurance company to cover the cost of repairs was put forward and Mr. Brizendine stated that he would explore that option for the District. He reminded the Board that the policy has a \$1,000 deductible. Mr. Stone indicated that he felt that the amount of damage that has occurred would be well over the deductible amount.

Audience Comments

Audience comments were entertained regarding the possibility of obtaining a sound system so that audience members can hear the discussions more clearly, providing the audience an opportunity to comment on agenda items prior to the meeting, the need to use caution and obtain a legal opinion before proceeding with the landscaping contract concerns, and the need for better communication with the residents regarding procedures and policies and decisions made by the Board at meetings.

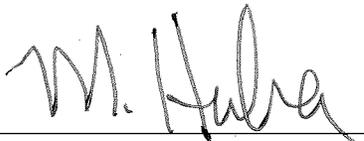
A resident of Sea Crest thanked the Board for resolving the landscaping issues and opined that the District should reimburse the HOA for prior mowing of CDD property. No official Board action was taken regarding any of the suggestions. District Counsel opined that it would be in the best interest of the District to have legal opinion on the Lee Te Kim contract provided to the Board on an individual basis rather than in a public forum.

THIRTEENTH ORDER OF BUSINESS

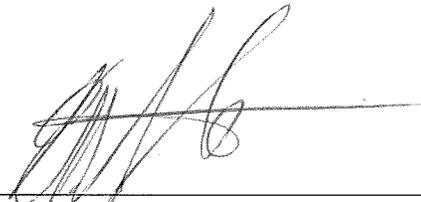
Continuance

Mr. Earlywine mentioned that Litigation Counsel has requested a shade meeting in order to seek guidance from the Board regarding settlement and litigation expenditures associated with the seawall litigation. The individuals that would be present at the shade meeting would include the District Manager, the five Board Supervisors, Litigation Counsel, District Counsel, and a Court Reporter. The shade meeting would be held at 9:00 a.m., at 700 Manns Harbor Drive, Apollo Beach, Florida 33752. Mr. Earlywine also described certain procedures relating to the shade meeting.

On a Motion by Mr. Stone, seconded by Mr. Stumpf, with all in favor, the Board continued the meeting at 9:30 p.m. until March 4, 2011 at 9:00 a.m., at 700 Manns Harbor Drive, Apollo Beach, Florida 33752, and authorized District Staff to provide notice in accordance with law for a shade meeting for the same time and location, for Harbor Bay Community Development District.



Secretary/Assistant Secretary



Chairman/ Vice Chairman