

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, March 22, 2012 at 5:35 p.m.** at the MiraBay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33752.

Present and constituting a quorum were:

Ed Stone	<b>Board Supervisor, Chairman</b>
Rip Ripley	<b>Board Supervisor, Vice Chairman</b>
Julie Guill	<b>Board Supervisor, Assistant Secretary</b>
Paul Stumpf	<b>Board Supervisor, Assistant Secretary</b>
Tom Hatcher	<b>Board Supervisor, Assistant Secretary</b>

Also present were:

Scott Brizendine	<b>District Manager, Rizzetta &amp; Company, Inc.</b>
Jere Earlywine	<b>District Counsel, Hopping, Green &amp; Sams, P.A.</b>
Jamie Scarola	<b>District Engineer, Scarola &amp; Assoc. Engineering</b>
Alex Murphy	<b>Club Manager</b>
Kristy Owens	<b>District Coordinator</b>
Ed Norstrem	<b>Mirabay Dragonboat Club</b>
Audience	

TENTH ORDER OF BUSINESS

Staff Reports

A. District Counsel

**Mr. Earlywine:** The other item that I have has to do with the letter I issued last week, which I think a lot of you are interested in. I got a call late last week that there was some construction work going on in connection to the benches. There was a sidewalk pad installed and one of the benches was moved. In response to that, because there was no authorization in place to have that work done by Sea Crest, no authorization from this Board. I issued a cease and desist letter, so that we could leave in place the status quo and bring the issue for you all to consider. That is not to say the work could not be done, there probably is a way to get that done. But what I would like to see in terms of these types of projects is something similar to what was done with the process with Newland where for example with the monument signs that we did. You know, they came to the Board, they asked for authorization to do the work, we put in place an agreement. They got the necessary regulatory approvals and that sort of thing. I think that helps minimize

liability and and makes it clear who's responsibility is what and makes sure that all parties are in agreement on what's going forward. So, it's not to say that we can't do it, but I think that the way it was done in this case did not really work from my perspective. And with that being said, I'm interested in hearing what you all think should be done going forward with those benches.

**Ms. Guill:** Well, Jere if I can. I think that everybody on this Board would like to see Sea Crest keep the benches if we can. This is not, this has become not a matter of benches, it's become a matter of process, or lack of process in this situation. I have prepared a motion I'd like to read. I have a copy for all you guys and I'll read it into the record and then we'll go from there.

**Audience Member:** Speak up a little bit please, Julie.

**Ms. Guill:** Sure, Bob sorry. Policy

I motion, that in order to allow the benches to stay in place, we would allow Sea Crest the Sea Crest HOA 10 days to acquire all permits and or exemptions, including but not limited to the Hillsborough County Public Works Department and to the satisfaction of the District Manager, District Engineer, District Counsel and Board liaison. Furthermore, to retain their own Engineer who will sign off and certify that the moved bench meets 2012 ADA guidelines, also to the satisfaction of the above. Sea Crest HOA should also be responsible for District expenses associated with drafting a license agreement between that entity and the Harbor Bay CDD. This would all be at their expense, not the District's. Furthermore, they should agree to reimburse the District for any and all legal expenses associated with the unauthorized construction and placement of this bench and resulting ramifications. If these conditions are not met by the end of this period, we authorize the District Manager to have all nine benches removed and placed in Sea Crest common area as Mr. Brizendine, District Manager, had previously directed. That's my motion.

**Mr. Brizendine:** So we have a motion by Julie. Do we have a second?

**Mr. Ripley:** Second.

**Mr. Brizendine:** Second by Rip. I want to open this up for discussion.

**Mr. Stumpf:** I guess first of all I would have liked to have seen this in advance as I thought was agreed upon that anything that was going to be given to the Board would be given to the Board 72 hours in advance. The second thing is I don't understand why this has to be so restrictive and unless Jere you read, unless you wrote this up and feel that all this is needed. Unless the consultant, who is a professional at this, contends that we needed to get permits or they needed to get permits or whatever to do all this. It was my understanding that there were no permits needed. Why do we have to put that in there? Uh I'm not sure that there

is any satisfaction of the District Manager, District Manager, District Engineer, and District Counsel. But unless I'm mistaken the Board ADA liaison was given no authority or decision making in there, so I don't know why it really has to meet that qualification. So I guess I'm asking you. That this seems to be very much overkill versus is there just something that needs to be put in place due to the fact that back in I think 2007 the attorney that we had on staff and the sitting Board failed to put a contract in place like you are working on for the Dragon Boat thing. Am I over simplifying it?

**Mr. Scarola:** Well Let me just add one thing before you guys have your discussion.

**Mr. Stumpf:** Okay

**Mr. Scarola:** An engineering piece of input. Paul, if I my understanding it correct that bench was placed in a right-of-way and that sort of throws it into a different category at that point. Because public right-of-way is a safety concern and there are a lot of standards that apply to it. Hillsborough County is the primary reviewing authority. They typically refer to DOT standards for health, safety, and welfare issues with placement of any objects into a right-of-way.

**Mr. Stumpf:** Okay I was not aware of that.

**Mr. Scarola:** Typically in governments they issue what's called a right-of-way use permit. Now, we are in a bit of an odd situation because we are a CDD and we own the right-of-way. But we are still regulated by Hillsborough County for works and frankly anything we do needs to meet DOT standards. So the issue is, is there a permit required. The County may say no, but they probably will want some type of review, but I can't speak for them. So at a bare minimum, I'm not sure how it got there, but it needs to be reviewed for safety purposes for issues like clear recovery. And Julie in reading this the only thing I would add to it is where the reference to retaining their engineer who will sign about meeting the ADA guidelines. I think I would add the words and Clear Recovery Standards for Traffic and Pedestrian Safety. When an engineer thinks of right-of-way, those are the concerns that come up. It's not like putting something in a park area for instance.

**Mr. Stumpf:** No it makes sense. It makes sense what you are saying.

**Ms. Guill:** Clear Recovery Standards for what?

**Mr. Scarola:** for Traffic and Pedestrian Safety.

**Ms. Guill:** Thank you.

**Mr. Stumpf:** I'm confused are there nine benches or eight? I thought there were eight.

**Mr. Stone:** If one of the benches is not in compliance than none of them are in compliance.

**Mr. Stumpf:** No, no, the question is that all nine be removed. I'm sorry, to this, this seems like a very vindictive type motion. That makes it sounds like there, as though there was planned unauthorized construction. Whether it was or not, I don't know if we really know at this point. As Jamie said we might not need a permit or whatever. You know, it is what it is. I guess that's my discussion.

**Mr. Stone:** I think the real question is not necessarily about the number of benches, where the benches are or anything else. It's about not following due process.

**Mr. Stumpf:** No, my point was that if there are eight benches this just needs to be changed to eight.

**Mr. Stone:** The main concern is that the bench was put was transferred into CDD property. We'll just leave it out of Hillsborough County and out of that. It went into CDD property. No one asked.

**Mr. Stumpf:** Which I think it was on CDD property. Wasn't it?

**Mr. Stone:** Pardon

**Mr. Stumpf:** It wasn't in CDD property to begin with?

**Mr. Stone:** Someone went on CDD Property and removed property from CDD property and then went and performed construction on CDD property without proper authorization from anyone on the CDD Board.

**Mr. Stumpf:** No.

**Mr. Stone:** And the only people who have that responsibility to do that construction would be Scott or myself. That is the only people that can by our statutes give authorization or by a vote of the Board and that never happened. It happened over a one day period. Drawings were made, phone calls were made and it was very clearly sated that they were able to do this in one day.

**Mr. Stumpf:** Do we know why we got to this point? I mean this coordinated effort I thought started almost six or eight months ago. Was it that discussions with the HOA and they said I'm sorry, go fly a kite, I don't want to talk with you? Or was something dropped here? Because that is procedural as well, if you want to talk procedural.

**Mr. Stone:** We can talk about the procedures, but the discussion right now is number one: Is that bench there legally? That's a yes or no question. Is it there legally?

**Mr. Stumpf:** And how did it go there? When the direction for the last how many months was to get ADA compliant within all of Mirabay.

**Mr. Stone:** But

**Mr. Stumpf:** That's what I thought the point was was to get at least one bench. Maybe I missed the point, maybe the directive was let's see if we can get rid of all the benches, but I thought the directive was let's get one minimum bench per the ADA

**Mr. Stone:** Paul, I don't think that there is anyone either sitting on the Board or sitting in the audience that wants to see those benches removed. Period.

**Mr. Stumpf:** Excellent. Then why do we have to put that in there?

**Mr. Stone:** I do believe. I think from my personal stand point I love them. My grandkids go over there and play on them. I don't care about that. The thing is that I took an oath when I took this seat as did every one of these member of the Board to uphold the statutes that we are governed by and those statues were not followed. It has nothing to do with when it happened, why it happened, you know, who loaded the gun. There is a bench there that is illegal and it needs to come out. Period. There is no other question.

**Mr. Stumpf:** We don't know that it needs to come out.

**Ms. Guill:** The motion is to get the

**Audience member:** Is it ADA compliant or what?

**Mr. Stumpf:** We don't know that it needs to come out. Right Ed?

**Mr. Stone:** We don't know that's why they've got the period of time.

**Mr. Stumpf:** Because it is ADA compliant.

**Mr. Stone:** If it is. We don't know that.

**Mr. Stumpf:** I do know that it is unless the consultant that we talked to

**Ms. Guill:** Paul did you authorize this work?

**Mr. Stone:** No, but unless the consultant

**Ms. Guill:** What did you have to do with this?

**Mr. Stumpf:** Unless the consultant wrote up his, wrote up his What do you call that?

**Mr. Stone:** Who? Who on this Board authorized them to do the work?

**Mr. Stumpf:** I don't know. I didn't. I didn't.

**Ms. Guill:** You weren't involved?

**Mr. Stumpf:** Pardon me.

**Ms. Guill:** You weren't involved?

**Mr. Stumpf:** Oh I'm not saying I wasn't involved. I'm involved with the community anytime somebody calls me. But I have no authority. Not one Board member other than Ed in certain situations has authority without coming before the Board. I am aware of that.

**Ms. Guill:** I will amend my motion to include Jamie's and Clear Recovery Standards for Traffic and Pedestrian Safety. I will change the number of benches from nine to eight. And then does Rip need to do something?

**Mr. Ripley:** I will amend my second.

**Mr. Stumpf:** I have one question. Can we just take off "if these conditions are not met" to not make this such a harassing type of motion. Obviously if they are not met at a later time we can definitely come before the Board and make a motion and say now they need to be removed because the 10 days has passed and permits were needed and they weren't acquired. Communication seems to be going on to where now it is all known what is being asked of them.

**Ms. Guill:** I am not willing to take that part out of the motion. That was done with consulting District Counsel and District Engineer to protect the District from liability. So no, I will not take that part out of the motion.

**Mr. Stone.** Okie doke

**Mr. Stone:** Without that. Without that there's no teeth in it all. The bench can be there twenty days and

**Mr. Stumpf:** Well whatever, the Board can come back at the next meeting and say

**Mr. Stone:** at the next meeting.

**Mr. Stumpf:** Now we want it removed.

**Mr. Stone:** Now what we've done is set a precedent that the bench can be there. Ask for forgiveness rather than permission. And that is not what we signed up for.

**Mr. Brizendine:** With the Board's permission, I'd just like to comment on one item, which is a minor item, but in terms of the quantity of benches since it is somewhat of an unknown on the quantity. Can't we just remove the quantity and just simply say all benches that have been placed on CDD property?

**Ms. Guill:** Good Idea yes.

**Mr. Stumpf:** Okay.

**Mr. Ripley:** I accept that as the second.

**Mr. Brizendine:** Julie did you amend your motion?

**Ms. Guill:** Yes I did.

**Mr. Brizendine.** I'm sorry I didn't hear you. Any further discussion?

**Mr. Ripley:** I would just hope we learn from this.

**Mr. Brizendine:** With no further discussion, All those in favor. (I) All those opposed. (Naye) The motion carries four to one.

On a Motion by Ms. Guill, seconded by Mr. Ripley, with four in favor and one against (Paul Stumpf), the Board of Supervisors mandated that the following conditions be met in order for the Seacrest HOA to be granted authority from the Harbor Bay Community Development District for the benches to remain in place: The Seacrest HOA has 10 days to acquire all permits and or exemptions, including but not limited to the Hillsborough County Public Works Department and to the satisfaction of the District Manager, District Engineer, District Counsel, and Board ADA liaison. Furthermore, to retain their own engineer who will sign off on and certify that the moved bench meets 2012 ADA guidelines and Clear Recovery Standards for Traffic and Pedestrian Safety, also to the satisfaction of the above. Seacrest HOA should also be responsible for District expenses associated with drafting a license agreement between the entity and the Harbor Bay CDD. This would all be at their expense, not the District's. Furthermore, they should agree to reimburse the District for any and all legal expenses associated with the unauthorized construction and placement of this bench and the resulting ramifications. If these conditions are not met by the end of this period, we authorize the District Manager to have all benches removed and placed in a Sea Crest common area as Mr. Brizendine, District Manager, had previously directed.

**Mr. Stumpf:** Before we leave this, I didn't get an answer. Was there a reason the Board didn't get this in advance?

**Mr. Brizendine:** I don't know, I just received it myself, Paul.

**Mr. Stumpf:** Okay.