
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 meeting of the Board of Supervisors of the Harbor Bay Community Development District was held on **Thursday, November 24, 2009 at 10:30 a.m.**, at the Mira Bay Clubhouse in the Lagoon Room, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33572.

Present and constituting a quorum were:

Laura Ackerman	Board Supervisor, Vice Chairman
Ed Stone	Board Supervisor, Assistant Secretary
Tom Hatcher	Board Supervisor, Assistant Secretary
Rip Ripley	Board Supervisor, Assistant Secretary

Also present were:

Jonathan Miller	District Manager, Rizzetta & Company, Inc.
John Toborg	Operations Manager, Rizzetta & Company, Inc.
Scott Smith	Community Association Manager, Rizzetta & Company, Inc.
A. Montes de Oca	Administrative Assistant, Rizzetta & Company, Inc.
Biff Craine	District Counsel, Bricklemyer Smolker & Bolves
Jamie Scarola	District Engineer, Scarola Associates
Mercedes Tutich	Representative, Newland Communities
Justin Rowan	Representative, Prager, Sealy & Company
Karla Gibson	Representative, WTS

Audience

FIRST ORDER OF BUSINESS

Call to Order

Mr. Miller called the meeting to order and read the roll call.

SECOND ORDER OF BUSINESS

**Consideration of the Minutes of the Board
of Supervisors' Meeting held on October
22, 2009**

<p>On a Motion by Ms. Ackerman, seconded by Mr. Stone, with all in favor, the Board approved the Minutes of the Board of Supervisors' Meeting held on October 22, 2009 as presented for Harbor Bay Community Development District.</p>
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THIRD ORDER OF BUSINESS

Consideration of Operation and Maintenance Expenditures for Harbor Bay Community Development for November 2009

Mr. Ripley noted that the Ballenger invoices did not include explanations as previously requested. Mr. Smith stated that he had spoken with Ballenger and that going forward; all future invoices would include explanations. Mr. Ripley asked whether the source of the \$40,000 difference in TECO invoices had been determined. Mr. Miller explained that the TECO spreadsheet was a pending action item and that it would take considerable time to enter all historical information.

Mr. Miller reviewed the District's gas and utility expenses and any changes from the prior month. Mr. Ripley stated that the District's long-term goal was to compare current numbers to the previous year's numbers. Mr. Miller asked if there were any additional questions or concerns related to expenditures.

On a Motion by Mr. Hatcher, seconded by Mr. Stone, with all in favor, the Board approved the Operation and Maintenance expenditures for November 2009 (\$152,833.03) for Harbor Bay Community Development District.

FOURTH ORDER OF BUSINESS

Consideration of Operation and Maintenance Expenditures for Mira Bay Amenity Center for November 2009

Mr. Miller asked if there were any questions related to the November Mira Bay Amenity Center expenditures. Mr. Ripley expressed his concern regarding the current computer maintenance provider driving from Largo to provide services. Mr. Miller stated that he would obtain a proposal from Atlas Professional Services to present to the Board. Mr. Ripley also suggested that if computer training was needed, the library could be used for applications such as Excel.

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board approved the Operation and Maintenance expenditures for the Mira Bay Amenity Center for November 2009 (\$21,554.32) for Harbor Bay Community Development District.

FIFTH ORDER OF BUSINESS

Discussion and Consideration Regarding Refunding of Series 2001B Capital Improvement Revenue Bonds

Mr. Miller stated that a change in the agenda was necessary to discuss the Refunding of the Series 2001B Capital Improvement Revenue Bonds. He gave the floor to Justin Rowan, representative from Prager, Sealy, & Company to explain further. Mr. Rowan explained that he represented the District's Investment Banker, whose job was to monitor any refunding, refinancing, or restructuring opportunities. He stated that Terrabrook had requested District Staff to restructure the B Bonds. He explained that these Bonds were never assumed or associated with retail buyers or residents of the community as they were prepaid by the Landowner or Developer. He stated that the Landowner and Developer had requested the outstanding amount of the Bonds be restructured to

extend the maturity by seven years. He stated that the Refunding Bonds would have no impact on current and future residents and that the debt would still be the responsibility of the Landowner. Mr. Rowan further explained that the Developer was willing to pay the cost of issuance associated with the restructuring themselves, therefore the District would not incur any additional expenses. He stated that the cost of issuance would either be an upfront payment at the time of issuance or it would be factored as an increase to the assessments. Mr. Rowan explained that the Board's approval as well as the current Bond Holder's consent would be required. Discussion ensued.

On a Motion by Mr. Stone, seconded by Mr. Ripley, with all in favor, the Board approved District Staff to move forward with the Restructuring of the Series 2001B Capital Improvement Revenue Bonds as discussed for Harbor Bay Community Development District.

Mr. Rowan left the meeting in progress.

SIXTH ORDER OF BUSINESS

**Review of Unaudited Financial Statements,
October 2009**

Mr. Miller reviewed the District's unaudited financials for the month ended October 31, 2009. He stated that the District's current accounts receivable balance was \$3,045,387, the current cash and investment balance was \$383,748, and the District's reserves were \$0. He explained that the District's average monthly expenditures totaled \$229,300 and that there were sufficient funds to sustain operations through calendar year-end. District Management addressed questions from the Board. No action was taken.

SEVENTH ORDER OF BUSINESS

**Discussion and Consideration of District
Counsel Invoices, Seawall Litigation**

On a Motion by Mr. Stone, seconded by Mr. Ripley, with all in favor, the Board authorized the release of funds to District Counsel in the amount of \$100,000 for Harbor Bay Community Development District.

Mr. Ripley made a motion to transfer the balance of funds remaining in the budgetary general ledger code for District Counsel Services dealing with the Seawall Litigation to the budgetary general ledger code for the District's capital reserves after paying out the total balance of funds due and payable to District Counsel for such services.

On a Motion by Mr. Ripley, seconded by Mr. Hatcher, with all in favor, the Board authorized the transfer of the remaining funds in the budgetary general ledger code for District Counsel Services dealing with the Seawall Litigation to the budgetary general ledger code for the District's capital reserves after paying out the total balance of funds due and payable to District Counsel for such services for Harbor Bay Community Development District.

EIGHTH ORDER OF BUSINESS

**Discussion and Consideration of Arbitrage
Rebate Report, August 15, 2009**

Mr. Miller explained that the purpose of the report was to ensure that interest earnings did not exceed the amount indicated in the bond covenants. Mr. Miller asked if there were any

questions. There were none.

On a Motion by Ms. Ackerman, seconded by Mr. Hatcher, with all in favor, the Board approved the Arbitrage Rebate Report for the period ended August 15, 2009 as presented for Harbor Bay Community Development District.

NINTH ORDER OF BUSINESS

Discussion Regarding Outfitters' Business Plan

Mr. Stone explained that the Outfitters were currently trying to secure their suppliers. Discussion ensued. An initial motion was made by Mr. Ripley, seconded by Ms. Ackerman to consider the Outfitters as an amenity center, not a profit center, with operational hours determined by its utilization, which were proposed to be closed Monday, Tuesday, and Wednesday, with retail and boat services available upon request and open for boat and retail services Thursday- Sunday. Discussion ensued. The motion failed. The Board continued to discuss the schedule of operations and decided to table this item.

A motion was made to consider the Outfitters as an amenity for the utilization of Harbor Bay and not as District property to be maintained based on its utilization and to authorize District Staff to commemorate this decision via resolution to be presented at the next regularly scheduled meeting.

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board approved to consider the Outfitters as an Amenity and not a profit center and authorized District Staff to prepare a resolution as discussed to be presented at the next regularly scheduled meeting for Harbor Bay Community Development District.

Ms. Ackerman requested that the Outfitters utilization data be presented at the next meeting for review.

TENTH ORDER OF BUSINESS

Discussion and Consideration of Low-Volume Irrigation Design and Retrofit Proposal

Mr. Miller explained that the proposal had been sought from Ballenger as they had done the majority of the current irrigation installation and had prepared its original designs. Discussion ensued. It was the consensus of the Board to ask Mr. Kim to provide hand watering services for the District at no additional costs. No Board action was taken.

ELEVENTH ORDER OF BUSINESS

Discussion Regarding Draft Landscape and Irrigation Maintenance Services RFP

Mr. Miller explained the RFP process to the Board. Mr. Toborg explained that the bid was broken down into five parts. He recommended that professionals come in and obtain soil samples to determine the specific fertilizer prescriptions for the District's various areas. He stated that this would allow the District to directly purchase the fertilizer and have more control. Mr. Ripley stated that he wanted to ensure the District would not be liable if the prescription was wrong. Mr. Toborg

stated that they could amend the bid form. Discussion ensued.

A motion was made to set the Landscape and Irrigation Maintenance Services RFP workshop on December 8, 2009 at 5:30 p.m. and to publish the draft RFP documents on the District's website.

On a Motion by Mr. Hatcher, seconded by Ms. Ackerman, with all in favor, the Board approved to set the public workshop on the Landscape and Irrigation Maintenance Services RFP on December 8, 2009 at 5:30 p.m. and to publish the draft RFP documents on the District's website for Harbor Bay Community Development District.

Mr. Stone left the meeting in progress.

TWELFTH ORDER OF BUSINESS

Discussion Regarding Removal of Pedal Boats

Mr. Miller explained that the Pedal Boats had become obsolete. Ms. Gibson reviewed the photos as presented in the agenda. She explained that there had been some incidents where residents were taking them out and couldn't get them back in. She requested that the District take them out of service. Discussion ensued. It was the consensus of the Board to have them donated.

On a Motion by Mr. Ripley, seconded by Ms. Ackerman, with all in favor, the Board approved to acknowledge the pedal boats as an exhausted asset and try to donate them for Harbor Bay Community Development District.

THIRTEENTH ORDER OF BUSINESS

Discussion Regarding Terminal Tackle/Fishing Inventory at the Outfitters

Ms. Gibson stated that she was seeking the Board's consent to employ a deep discount on the inventory that was not able to be sold. She explained that at present the inventory was half-priced and not moving. She explained that the removal of the inventory would allow them to make room for other inventory. She proposed a deep discount sale to see what the District could recover.

On a Motion by Mr. Ripley, seconded by Mr. Hatcher, with all in favor, the Board authorized District Staff to employ a deep discount on inventory as discussed for Harbor Bay Community Development District.

FOURTEENTH ORDER OF BUSINESS

Staff Report

District Counsel

1. Mr. Craine provided an update regarding the Seawall Litigation. He stated that there would be a Case Management meeting tomorrow. His memorandum has been attached as Exhibit A to the minutes.
2. Mr. Craine provided an update regarding the Forbearance agreement with First National

Bank of Central Florida. He stated that there were renewed efforts to remarket Parcel 22.

3. Mr. Craine stated that he had completed the draft legal suit and was preparing to send a new demand letter for the playground.

District Engineer

1. Mr. Scarola stated that the Parcel 21/23 matter had been resolved. He had received commitment from the developer to provide an onsite means to prevent erosion.

2. Mr. Scarola stated that there was one outstanding certificate being performed by the Engineer. He stated that inventory would be up to-date and that they would know in the future what certificates are needed.

Mr. Scarola left the meeting in progress.

District Manager

1. Mr. Miller stated that the transfer of the gem car had been completed.
2. Mr. Miller stated that the watering variance had been submitted to SWFWMD.
3. Mr. Miller stated that the next regularly scheduled meeting would be held on December 17, 2009.
4. Mr. Miller noted that the District's electrical usage report was pending.
5. Mr. Miller announced that Mr. Smith had submitted his resignation and that he would remain as the District's Operations Manager through the end of January.

Operations Manager

1. Mr. Smith addressed the Board and provided updates regarding various issues. No Board action was taken.

Mira Bay Clubhouse Manager

1. Ms. Gibson stated that one treadmill was down and that a replacement had been ordered.
2. Ms. Gibson stated that the Breezeway freezer had broken and that they would look into a replacement in the future.
3. Ms. Gibson provided updates regarding various District events, Holiday Schedules and new programs.

FIFTEENTH ORDER OF BUSINESS

**Supervisor Requests and Audience
Comments**

Supervisor Requests and Comments

1. Mr. Hatcher requested that a draft of the minutes be posted on the District's website and suggested that a notice be posted on the bulletin board informing residents that they are available.

2. Mr. Hatcher read a letter to the Board, which has been attached as Exhibit B to the minutes.
3. Mr. Ripley addressed the status of the previous directives that had been given to Ms. Gibson related to implementing cost-saving changes.

On a Motion by Ms. Ackerman, seconded by Mr. Ripley, with all in favor, the Board authorized Ms. Gibson to implement cost-saving changes as she sees fit for Harbor Bay Community Development District.

4. Mr. Ripley addressed the District Manager regarding rumors pertaining to an increase in fees between the current and previous fiscal years for District Management Services. Mr. Miller presented a schedule comparing the current total District Management fees to the previous year's contract price. A schedule of the comparison has been attached as Exhibit C to the minutes.

Audience Requests and Comments

1. Resident, Ken, noted that the Board was starting to function well. He stated that the information located at the Mira Bay entrance sign was not being maintained. He also suggested that the Board utilize the audience's opinion more often to assist in the decision-making process. He felt that this would allow the District to deal with items more efficiently rather than tabling them.
2. Resident, John, wished Mr. Smith the best in his future endeavors. He expressed his concern regarding the legal fees and services pertaining to the Seawall Litigation. He felt that the Board needed to better manage District Counsel.
3. Mr. McNeil addressed the Board regarding the Seawall Litigation fees and the potential issues in award and recovery of such fees. He suggested that the Board consider hiring a third party to audit the Seawall Litigation bills to-date and verify their necessity. He also requested that the Board replace District Counsel with an attorney from a firm other than Brickelmyer, Smolker, and Bolves.

SIXTEENTH ORDER OF BUSINESS

Adjournment

On a Motion by Mr. Ripley, seconded by Mr. Hatcher, with all in favor, the Board adjourned the Board of Supervisors' Meeting at 1:50 p.m. for Harbor Bay Community Development District.


Secretary / Assistant Secretary

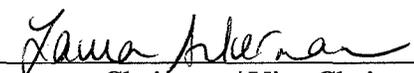

Chairman / Vice Chairman

EXHIBIT A

BRICKLEMYER SMOLKER & BOLVES, P.A.

ATTORNEYS & COUNSELORS AT LAW

MEMORANDUM

To: Harbor Bay Community Development District Board of Supervisors

From: Bricklemyer, Smolker & Bolves P.A.

Date: 23 November 2009

Subject: Seawall Litigation Update
BSB No. 22717

As this is a public document, specific details of studies, tests, and legal strategies are not contained in this update. Public discussion of the progress of the litigation must be limited to that information contained in documents provided to the court and obtainable to the defendants. Rather than rely on oral reports at Board meetings, it has been determined that written monthly updates of information to be placed in the public record would be appropriate, subject to the same confidentiality limitations discussed herein.

Harbor Bay initially filed this action (Case No. 07CA-015263) against Woodruff & Sons, Inc ("Woodruff"), Custom Docks By Seamaster ("Seamaster"), Dansco Engineering, P.A. ("Dansco"), Sam Greenberg, P.A. ("Greenberg"), Reuben Clarson Consulting, Inc. ("Clarson Consulting"), and Reuben Clarson, P.E. ("Clarson") on November 9, 2007. Shortly thereafter, we amended the complaint to include St. Paul Fire and Marine Insurance Company, ("St. Paul") as surety for Woodruff. After review of initial discovery, Harbor Bay again amended its complaint to include a products liability claim against the seawall sheet manufacturer, Materials International, Inc. ("Materials") on September 19, 2008.

As of the end of September, our discovery requests have netted in a review and indexing of over 50,000 documents. On behalf of the District, we have retained two expert witnesses who have closely reviewed all the available documents and are prepared to testify. The first expert, Mr. James Hirst, P.E. is a professional engineer specializing in marine structures. The second expert, Mr. Matthew Michalak, is an experienced seawall contractor/ manager. Under direction from our experts we have conducted limited soils testing and reached an initial determination that the wall was both inadequately engineered and improperly constructed. These results were then provided to the opposing parties, together with an estimate of remedial damages for curing the problems. We are currently formulating a possible scope of work to provide further investigations deemed important to the preparation and review of engineering solutions.

We have prevented all attempts to dismiss the complaint. We have also forced the defendants to make claims with their insurance carriers. Unfortunately several defendants, Reuben Clarson being the most significant, have alleged that they do not

have insurance and are operating under very limited budgets. However, Woodruff, Materials and Seamaster all have insurance carriers as co-counsel. Similarly, St. Paul, as a surety already is an underwriter for work and has the largest policy of approximately \$13mil. Furthermore, Woodruff, our main defendant has admitted to us that they have had several meetings with their carrier's decision-makers at their headquarters and assure us that they are taking this matter with utmost seriousness.

On April 28 and 29, 2009, we began mediation conferences in an effort to find an agreed remedial action and settle the case. As many of you know, discussions and statements made at mediation are confidential and cannot be used at trial. The mediation period is still open and the case has been extended in an effort to have the parties continue to explore settlement. Since our last update, the Judge has granted the Defendants' motion to extend the continued mediation period another 90 days, pushing all dates back at least three months.

We continue to push away from having to discuss whether there is a problem with the seawall but are focusing discussions on what to do about the problem. Once we determine an appropriate approach to fixing the problem, then we can focus on who is ultimately responsible. More immediately, we have been able to shift the thinking and open the door for all the parties to start focusing on both immediate fixes for areas deemed critical as well as other permanent modifications. Our experts have had an opportunity to lay out their findings to all the parties and hear from the defendant's lead expert. As such, all the parties have agreed to provide ample time for all the parties' experts to compile additional information, determine what testing would be needed to provide a fix, and propose a unified plan for testing.

Concurrently, the parties have agreed to start deposing key parties and individuals including the designer of the seawall and the geotechnical engineer responsible for the soils conditions. Depositions are set to begin around the middle of December and early 2010.

Our goal in resolving the litigation remains the same as it was when we were directed to file the litigation – secure for the community a seawall that will meet the original requirement to have an effective lifespan of 50 years, recover for the district the costs of dealing with the seawall problem and the attorney's fees spent to compel the defendants to correct the problem.

*****IMPORTANT NOTICE*****

Within the next couple of months, we will start conducting soils sampling and testing at different areas of the community. These tests will be conducted on the land side as well as on the canals via a barge. The contractors responsible for this testing have been instructed to work as expeditiously as possible and with minimal intrusiveness to the residents as well as the community. However, please note that the contractor will be operating a barge in certain canals which may temporarily limit boat traffic. Similarly, the contractor may need to conduct work on or near homesites adjacent to canals. The community will be notified prior to the start of testing.

EXHIBIT B

I ran on the following platform:

Dedicated to the Preservation & Continued Improvement of Our MiraBay Lifestyle – while working hard to control cost!

Keeping that in mind I found the drafting of the 2010 budget extremely difficult. I as an elected representative did not want to raise CDD fees. An increase impacts on my personal expenses as well as any resident or owner in this community.

Contrary to what some individuals will tell you I took into consideration each and every recommendation that was submitted by them (the concerned citizen committee - more than 5 pages) as well as information from other residents. Some individuals, primarily the so called "Concerned Citizens Group" say the CDD Board didn't listen to the citizen committee in particular to their ill conceived, biased and totally non-scientific survey and based on that have threatened a recall election. I will not go into great detail as to why I consider the survey a non-representative sample and I encourage you to call me to discuss my position, but I will offer one example that invalidates the survey results.

MiraBay is a community or will become a community of 1739 homes/living units. It is advertised as a waterfront community with waterfront amenities. Only 750 homes in MiraBay have direct water access. Therefore 989 home/units are without water access. For those that live in the non-water access areas, (villas, town homes & off water homes) the Outfitters was designed to give those residents water access through the boat livery service, (free use of kayaks, canoes, sail boats etc.) To operate a livery service, I am told by law and for insurance reasons a licensed captain must be employed. In the Outfitters case, the captain salaries are the majority of the cost of operations. One of the reasons I dismissed the survey was because it appeared that no one from the off water properties participated in the survey. In addition, the survey simply had no answers or choices that were descriptive of the impact of closing the facility. Example: If a representative sample had been taken of the population most affected and had the questions addressed the impact of eliminating the amenity and what the cost saving would be per capita (\$23 per annum more or less) one could place some credence in the answer. Furthermore, no consideration was given to the fact that eliminating this amenity could possibly generate a law suit not only from citizens that purchased thinking they would have this amenity but also from builders who are building here because of the amenities offered. Finally for most of us here in MiraBay, our goal is to maintain what home values we have and see the community built and finished. If we start taking away amenities, it affects our home values and affects the opportunity for us to attract new builders and buyers to finish this community.

Finally, our form of government including the CDD is considered a Representative Democracy. CDD Board members are elected by the residents to represent the interest of the entire community not the interest of a selected few. Speaking for myself, I talk with residents regularly and research diligently the impact of a decision. On occasions, decisions on issues appear from a resident's point of view to be black and white. However, research into the impact of the decision may reveal an action that may be unpopular with a few but good for the community as a whole. My vote on the budget this year was exactly that. I would be happy to address this with anyone should you give me a call. It was a result of much more than refining line items to squeeze out a number that could not be realized in reality.

Our CDD Board of five members, as individuals, have differing thoughts and positions. That is what gives you, the community, the checks and balances that help make the system work for all. Our work is documented and in the open for all to see. You are encouraged to call any or all your representatives to express your opinions or to clarify why they voted one way or the other. When the CDD Board spends CDD money, they spend their money also.

EXHIBIT "C"

HARBOR BAY / MIRABAY

RIZZETTA & COMPANY, INC.

COMMUNITY DEVELOPMENT DISTRICT (CDD)

	<u>2009</u>	<u>2010</u>	<u>Variance</u>	<u>%</u>
Administrative	\$ 8,450.00	\$ 8,450.00	\$ -	0%
District Management	\$ 35,000.00	\$ 35,000.00	\$ -	0%
Accounting Services	\$ 9,900.00	\$ 9,900.00	\$ -	0%
Financial Consulting Services	\$ 19,700.00	\$ 19,700.00	\$ -	0%
	<u>\$ 73,050.00</u>	<u>\$ 73,050.00</u>	\$ -	0%

HOMEOWNERS ASSOCIATION (HOA)

	<u>2009</u>	<u>2010</u>		
Management Staffing	\$ 160,000.00	\$ 34,512.00	\$ 125,488.00	-78%
*Accounting Services	\$ 19,368.00	\$ 19,368.00	\$ -	0%
	<u>\$ 179,368.00</u>	<u>\$ 53,880.00</u>	<u>\$ 125,488.00</u>	<u>-70%</u>

AMENITIES MANAGEMENT

	<u>2009</u>	<u>2010</u>		
Management Services	\$ -	\$ 119,845.00	\$ (119,845.00)	
TOTALS:	\$ 252,418.00	\$ 246,775.00	\$ 5,643.00	-2%

**Based on \$2 per closed lot, total of 807 lots*