

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

December 17, 2009 - Minutes of Meeting

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RECEIVED

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.

JAN 25 2010

HARBOR BAY
COMMUNITY DEVELOPMENT DISTRICT

The meeting of the Board of Supervisors of the Harbor Bay Community Development District was held on **Thursday, December 17, 2009 at 9:31 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:

Scott Jones	Board Supervisor, Chairman
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
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 November
24, 2009**

Ms. Ackerman stated that on page six of the minutes, a correction needed to be made to list "Exhibit C" instead of "Exhibit B." In addition she stated that a failed motion regarding the Outfitters needed to be added.

On a Motion by Ms. Ackerman, seconded by Mr. Stone, with all in favor, the Board approved to table the Consideration of the Minutes of the Board of Supervisors' Meeting held on November 24, 2009 as presented for Harbor Bay Community Development District.

THIRD ORDER OF BUSINESS

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

Mr. Miller presented the operation and maintenance expenditures for the month of December 2009 and asked if there were any questions or concerns. Ms. Ackerman questioned the hand watering bill from Mr. Kim. Mr. Miller stated that he had authorization for any watering done. Ms. Ackerman questioned the number of billable hours accumulated and the number of people utilized to execute the watering. She also noted that she felt it rained quite a bit in October. Mr. Ripley noted that he thought the special watering request was done in September. Mr. Miller stated that he would request a break down from Mr. Kim. He also noted that he had not heard back from Mr. Kim regarding the request to supply hand watering for free.

Mr. Ripley asked whether the billable amounts pertaining to the seawall litigation from Scarola & Associates were being accumulated. Mr. Scarola stated that he would include the accumulated amount at the bottom of all future invoices.

Mr. Miller asked if there were any other comments or concerns. There were none.

On a Motion by Mr. Jones, seconded by Mr. Stone, with all in favor, the Board approved the Operation and Maintenance expenditures for December 2009 (\$257,535.79) for Harbor Bay Community Development District.

FOURTH ORDER OF BUSINESS

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

Mr. Miller asked if there were any questions related to the December 2009 Mira Bay Amenity Center expenditures. Mr. Ripley recommended that the coolers have vacuum maintenance once a month. Discussion ensued regarding the credit card convenience fee for filing. Ms. Ackerman questioned whether people could pay an additional fee to have their credit card on file. Mr. Craine stated that he didn't see any problem with implementing the additional fee. Ms. Gibson stated that people were more inclined to make purchases with the convenience in place. Discussion ensued. Ms. Gibson noted that new software was to be installed which would allow charges to be made to a FedEx account number. Mr. Miller stated that he would speak with WTS. He asked if there were any other questions or concerns. There were none.

On a Motion by Ms. Ackerman, seconded by Mr. Hatcher, with all in favor, the Board approved the Operation and Maintenance expenditures for the Mira Bay Amenity Center for December 2009 (\$94,736.90) for Harbor Bay Community Development District.

FIFTH ORDER OF BUSINESS

**Discussion Regarding Changes to Draft
Landscape Maintenance Services RFP**

Mr. Miller noted that he would like to change the order of the agenda to accommodate Mr. Toborg. The floor was opened for Mr. Toborg to provide his presentation regarding changes to the Landscape Maintenance Services RFP. Mr. Toborg addressed the Board and first presented an e-mail he received from Scott Zakany regarding his maintenance recommendations. He explained that Mr. Zakany had suggested separating the maintenance of the Bermuda grass from the rest of the RFP.

Mr. Toborg proceeded to review all highlighted changes as presented to the Board per the previous meeting and workshop discussions. Ms. Ackerman noted that the revised RFP included the Board's previous comments and looked good. Discussion ensued regarding various aspects of the RFP. It was the consensus of the Board to keep the RFP for maintenance, irrigation and the Bermuda grass under one contract. Mr. Miller stated that a final draft would be presented at the next meeting to be held on January 7, 2010.

Mr. Toborg left the meeting in progress.

SIXTH ORDER OF BUSINESS

**Consideration of Resolution 2010-03,
Declaring Outfitters Facility a District
Amenity**

Mr. Miller asked if there were any questions regarding the Resolution 2010-03. In light of his absence at the previous meeting, Mr. Jones requested an explanation as to why the resolution came about. Mr. Ripley explained that the District needed to recognize the Outfitters as an amenity center for use by the community and not a profit center.

On a Motion by Mr. Stone, seconded by Mr. Ripley, with all in favor, the Board approved Resolution 2010-03, Declaring Outfitters Facility a District Amenity for Harbor Bay Community Development District.

SEVENTH ORDER OF BUSINESS

**Discussion and Consideration of Outfitters
Business Plan Presentation by Ed Stone,
Ben Gelston, and Jim Powell**

Mr. Miller stated that the Outfitters business plan was not ready to present to the Board. Ms. Ackerman stated that this item had been pending for months and asked why it wasn't ready. Mr. Miller explained that he reviewed the information provided with Ms. Gibson and that upon their review, he felt the information was unacceptable to present to the Board. Ms. Gibson was asked if she had any comments. She stated that as requested, she looked at total sales and total boat usage. She stated that the Outfitters was not a profit-maker and that in a closed community there was no traffic back there. She noted that the daily traffic was very small. Ms. Gibson stated that since the last meeting she had looked at operations and ways to cut costs. By cutting back on hours of operations and staffing levels, Ms. Gibson proposed to reduce total operating costs by \$21,389.00. It was the consensus of the Board to allow audience comments.

- 1) An audience member inquired whether inventory which did not sell had been identified. Ms. Gibson stated that they had all inventory history which dated back six years.
- 2) Mr. McNeil commended Mr. Ripley for bringing the Outfitters to the Board's attention. He suggested that the business plan focus on price and competitors. He also suggested shifting the sales location.
- 3) Mr. Horn stated that he was an advocate of decreasing staff on Mondays, Tuesdays, and Wednesdays.
- 4) A resident addressed the Board regarding the point of sale for inventory. He recommended placing items where there was more traffic such as the weight room and restaurant.
- 5) Resident, Christy, addressed the Board and suggested that the Board consider staggering staff so that amenity services could still be available and workers could be called in to operate areas as needed.

Mr. Miller presented the motion to the Board to approve the revised amenity facility schedule as proposed and to authorize Ms. Gibson to change hours as she sees fit.

On a Motion by Ms. Ackerman, seconded by Mr. Hatcher, with all in favor, the Board approved the revised amenity facility schedule as proposed and authorized Ms. Gibson to change hours as she sees fit for Harbor Bay Community Development District.

EIGHTH ORDER OF BUSINESS

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

Mr. Miller presented the Unaudited Financial Statements for the month ended November 30, 2009. He reviewed various items and asked if there were any questions. There were none.

NINTH ORDER OF BUSINESS

Review of Historical Utilities Usage

Mr. Miller presented detailed charts of the District's electrical, gas, and water utility usage, and reviewed their trends. Discussion ensued. No Board action was taken.

Mr. Jones left the meeting in progress.

TENTH ORDER OF BUSINESS

**Discussion and Consideration of Atlas
Professional Services**

Mr. Miller reviewed the proposal from Atlas Professional Services and explained that the District's information technology systems needed to be revamped. Discussion ensued. No Board action was taken.

ELEVENTH ORDER OF BUSINESS

Asset Inventory Reports

Mr. Miller presented the District's asset inventory reports and noted that they were strictly for informational purposes. Mr. Ripley noted that capitalized cost of the assets should be listed on

the reports.

TWELFTH ORDER OF BUSINESS

**Discussion and Consideration of Ballenger
& Company's Proposal for Irrigation
Maintenance Services for FY 2009-2010**

Mr. Miller presented Ballenger's proposal to the Board and recommended that District Staff continue to work with Mark until the new landscape contract was implemented. No Board action was taken.

THIRTEENTH ORDER OF BUSINESS

**Discussion and Consideration Regarding
Community Garden**

It was recommended that a hold harmless agreement be obtained. It was also noted that insurance was needed. The Board decided to table this item.

FOURTEENTH ORDER OF BUSINESS

**Discussion and Consideration of Mira Bay
Homeowner's Association Correspondence,
dated 12/4/09**

Mr. Miller explained that access to District amenity centers could not be denied based on nonpayment of HOA assessments. He stated that the HOA entity did not have the authority to restrict access and that a letter would be sent to their office.

FIFTEENTH ORDER OF BUSINESS

Staff Report

District Engineer

1. Mr. Scarola stated that in times of rain, the number of seawall related maintenance reports increased. He noted that District Management's office had been responding to letters.

Mr. Scarola left the meeting in progress.

District Counsel

1. Mr. Craine provided an update regarding the Seawall Litigation. His memorandum containing those public updates has been attached as Exhibit A to the minutes.
2. Mr. Craine updated the Board regarding the settlement with CapSure, Inc. He stated that a second letter had been sent and that they had agreed to the terms as outlined. A motion was made to execute the settlement agreement.

On a Motion by Mr. Ripley, seconded by Mr. Hatcher, with all in favor, the Board authorized the Board Chairman to execute the settlement agreement as presented for Harbor Bay Community Development District.

3. Mr. Craine stated that he had sent the demand letter for the playground and had not heard back from them regarding the Sail. He stated after a certain period, a lawsuit could be filed.

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 the new aquatic program will build through the spring and was hopeful that it would bring in more money. She stated that in January, she would be coming to the Board to request funding for pool flags.
2. Ms. Gibson stated that the New Year's event would be cancelled as there were not enough registered participants for the event.

District Manager

1. Mr. Miller stated that the next regularly scheduled meeting would be held on January 7, 2009.
2. Mr. Miller noted that work on the District Sign was to start on January 4 and that it was a budgeted line item.

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board approved the installation of the District sign such that the installation does not damage any of the surrounding plants for Harbor Bay Community Development District.

SIXTEENTH ORDER OF BUSINESS

**Supervisor Requests and Audience
Comments**

Supervisor Requests and Comments

1. Mr. Stone stated that two kayaks had been donated to the District and requested they be accounted for.

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board approved the donation of two kayaks to the District for Harbor Bay Community Development District.

2. Mr. Ripley noted that Board of Supervisor meeting were important to the community and suggested the meeting times be changed to evenings. Mr. Miller stated that he would look at his schedule. The Board agreed to make a motion at the next meeting.

3. Ms. Ackerman stated that the bid for WTS needed to start.

Audience Requests and Comments

1. Resident, Ken, addressed the Board regarding the hand watering. He noted that due to high winds in the area, water tended to evaporate quickly. He indicated that this may be a large factor in the amount of watering needed. He also stated that he felt the community garden was a worthwhile venture. He stated he would like to see a presentation at the following month's meeting.
2. Mr. Griggs addressed the Board and stated that he felt the garden was a wonderful proposal. He suggested that the District have separate contracts for landscape and irrigation maintenance services.
3. Mr. McNeil addressed the Board and stated that he felt the hand watering was absurd. He stated that the District was bleeding money in this area and needed to take a closer look at how much was being spent in this area.

Ed Stone left the meeting in progress.

SEVENTEENTH ORDER OF BUSINESS

Adjournment

On a Motion by Ms. Ackerman, seconded by Mr. Ripley, with all in favor, the Board adjourned the Board of Supervisors' Meeting at 1:11 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: 17 December 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 January 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 which is anticipated to start after the holidays.