
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 the Harbor Bay Community Development District was held on **Thursday, July 23rd 2009 at 6:35 p.m.**, at the Mira Bay Clubhouse, 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:

Tina Wells	District Manager, Rizzetta & Company, Inc.
Eric Dailey	Associate Director of District Management Services, Rizzetta & Company, Inc.
Biff Craine	District Counsel, Bricklemyer Smolker & Bolves
Jaime Scarola	District Engineer, Scarola Associates Engineer
Scott Smith	Community Association Manager, Rizzetta & Company, Inc.
Karla Gibson	Representative, WTS Representative
Debra Dremann	Vice President & General Manager, Newland Communities
Audience	

FIRST ORDER OF BUSINESS

Call to Order

Ms. Wells 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 June 25,
2009**

Ms. Wells distributed amended minutes to the Board prior to approval.

<p>On a Motion by Mr. Stone, seconded by Ms. Ackerman, with all in favor, the Board approved the Minutes of the Board of Supervisors' Meeting held on June 25, 2009 for Harbor Bay Community Development District.</p>
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THIRD ORDER OF BUSINESS

Consideration of Operation and Maintenance Expenditures for July 2009

Ms. Ackerman stated that she would like the record to state that the June Financial Statements were incorrectly reflecting items and that they were neither accruals nor actuals.

On a Motion by Mr. Ripley, seconded by Mr. Hatcher, with all in favor, the Board approved the Operation and Maintenance Expenditures for July, 2009 totaling \$126,455.47 for Harbor Bay Community Development District.

FOURTH ORDER OF BUSINESS

Consideration of the Proposal for Palm Tree Replacement at the End of Bay Estates

The Board requested three proposals for the next meeting and decided to table this item.

FIFTH ORDER OF BUSINESS

Presentation of WTS May, 2009 Client Report

For informational purposes, Ms. Gibson reviewed the layout of the monthly reports for the Board.

SIXTH ORDER OF BUSINESS

Presentation of the ENTRIX Florida's Water Way Memo

For informational purposes, Mr. Scarola reviewed the Memo from Entrix regarding Florida's Waterways

SEVENTH ORDER OF BUSINESS

Presentation Regarding Fall Promotional Events

Ms. Dremann presented the Memo from Newland Communities requesting the Board's approval to hold special events in the Fall to be funded by the Developer and held on District property.

On a Motion by Mr. Stone, seconded by Mr. Ripley, with all in favor, the Board approved Newland Communities request to hold Fall Promotional Events on District Property, as discussed, for Harbor Bay Community Development District.

EIGHTH ORDER OF BUSINESS

Discussion Regarding Basketball Court Lighting Proposal Letter

Ms. Dremann stated that the Developer would agree to advance the District their portion of the off roll assessments early for the purpose of installing the Basketball Court Lighting. The Board decided to table acceptance of the funds for that purpose until the final budget is adopted.

NINTH ORDER OF BUSINESS

Discussion Regarding Financials

Ms. Wells stated that going forward the financials will be included in the agendas.

Ms Wells also stated that she would look into the Sea Wall Legal bills to have them reflect actual amounts and not accrual, as requested earlier by Ms. Ackerman.

TENTH ORDER OF BUSIENSS

**Public Hearing on Fiscal Year 2009/2010
Final Budget**

On a Motion by Mr. Stone, seconded by Ms. Ackerman, with all in favor, the Board opened the Public Hearing on the Final Budget for Fiscal Year 2009/2010 for Harbor Bay Community Development District.

Ms. Wells reviewed the proposed Budget for the Board and audience. The Board stated that they would like to hear Public Comments and Testimony before they commented or discussed their thoughts. The Board requested that each Audience member state their name, their concern, and how they would propose to address or solve the problem or concern.

1. Ronnie Simms stated that he would like to save money and would like to see that the Board is doing all they can to do so.
2. Mark Sampeti stated that there needs to be better communication and explanation to the residents. He stated that the Landowner letter in June did not mention the Debt Service Assessments and residents were under the impression that they were only paying \$2,000 – \$3,000 when in actuality, the amount is closer to \$4,000. He asked for more information to be available to residents sooner and requested that Agenda Board packages be available to residents before the meetings. He stated that residents cannot attend every meeting to remain informed.
3. Craig Dawson, an Isle Bay resident, stated that he feels that the Sea Wall litigation is the main problem totaling \$262,000 for 2010. He stated that he would like to hold off on any expenditures, considering that home sale amounts have decreased by 40% from last year. He stated that he would like to see a budget proposal spending the same amount of money and that the District needs to find \$262,000 in the budget to keep the increase at zero for 2010. He stated that the CDD fee increase is not reasonable in this economy.
4. Jin Wang stated that he would like a better explanation of the Budget increase and the major contributors to the 11% increase in the O&M Budget.
5. Caroline Ward thanked the Board for holding the Budget meetings and attending because the residents do not have time to do so. She stated that in a bad economy with 10% unemployment, less equity in the homes, and Hillsborough County unemployment at 11%, that the Board should look at cutting services instead of increasing the Budget.

She suggested not heating the pool in the winter, possibly cutting the Outfitters if it's not bringing in a profit, cutting one of the two Guard Shacks and entering through one entry way, or cutting the Greeters. She proposed creating a task force to distribute information to the residents so that they can assist in the solution.

6. Dallas Hartman stated that with home values down 40-50% in value, he does not agree with and an annual increase in CDD fees of 8-9%. He also stated that he does not agree with \$38,000 being allotted to Sea Wall maintenance only. He feels maintenance is the District's responsibility in the first place and that the money should be set aside for other reserves such as additional law suits from possible resident injury due to the Sea Wall. He requested a line item breakdown of the \$750,000 in Legal fees that he feels are very high.
7. Cliff McIntosh stated that the Board should keep the Budget where it is and cut services for 12-24 months to make up for it. He stated that he feels the Landowner notices were very confusing as they only addressed the Operation & Maintenance portion of the District fees. He stated that if the straight forward increase amount of 8-9% was communicated in a clearer way to the residents, more feedback would have been provided prior to the meeting.
8. John Yamshak stated that the Board should provide a timeline for an ending date for the Legal bills as well as a performance update from Counsel.
9. Bill Kirchhofer stated that the size of the increase is too much. He passed around a petition with over 300 signatures against the District fee increase and stated that he hopes that the Board will listen to the residents. He stated that only one person declined to sign the petition. He stated that at the HOA meeting it was brought up that out of 683 residents, 107 homes are in foreclosure, abatement, or contract pending. He thanked the Board for their accessibility and efforts. He stated that additional Budget cuts need to be made. Mr. Kirchhofer read the petition for the Board. He stated that he received over 50 emails from working residents to represent their interests. He asked the Board to communicate what the residents would lose if the Budget did not increase.
10. Paul Stumpf stated that he would have liked an email informing residents that a new Budget was posted online. He also requested documented savings on insurance from the transition of the amenities from the HOA Budget to the CDD Budget. He expressed that increasing the Amenities Budget is not necessary. Mr. Stumpf provided a comparison of prior fiscal year Budgets beginning with 2007-2008 and suggested keeping the Amenities the same as the current year at \$645,000.

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11. Rick Terrell suggested bidding out the U.S. Securities contract if the Board is trying to save money. He referenced Ms. Ackerman's bid out of the \$5,000 for the Palm Tree on Bali Bay.
 12. Joe McNeil stated that he thinks that instead of the Board cutting services and expenses, they should concentrate on bidding more services out and more importantly getting more value for the money such as mulch and hand watering. Mr. McNeil also suggested asking for a 10% reduction across the Board for all services. He had questions regarding line item #95, hand-watering, and what happens when the funding runs out.
 13. Rae Yingling stated that she was not aware that the fiscal year runs from October 1st to September 30th and would like additional explanation on the Budget such as listing the fiscal year clearly for the residents. She requested clarification on the fountain line item regarding was actually spent vs. the proposed amount. She also asked for clarification on the Legal advertising line item and property taxes. She had questions regarding the Greeter staff as well. Ms. Yingling asked for a line for line breakdown of what was budgeted for last year, what was actually spent this year, and then the budgeted amounts for this year.
 14. Marty, a resident, requested the basketball court lights be cut for 3.5 hrs at night, and that the off duty Deputy be cut or reduce the hours to save \$70,000.
 15. Richard Horn requested the off Duty Deputies be cut and asked for clarification on what they actually do. He also requested that the Outfitters be cut.
 16. Marc Eichenholtz stated that anything over a certain amount should be bid out. He asked when Mr. Kim's contract had last been bid out and why it was not bid out this year. Mr. Stone stated that it had a renewal contract provision but it also has a 30 day termination notice. Mr. Eichenholtz stated that the Landscape Contract should be bid out and had questions about bidding out the Legal Services as well.
 17. Matt Booth stated that he would like to know if the Board has had a financial analysis of the bonds. He asked what the District is doing in order to reduce the Legal fees, perhaps bidding the work out.
 18. Tom McKeeny stated that he's seen movement of different funds but would like to see where and how much has the Board has cut.
 19. Joe Montello stated that the residents cannot afford an 8-9% budget increase. He also had questions regarding the legality of the Sea Wall such as who is liable and the liability of the holes in the Sea Wall. Mr. Craine provided clarification on the Budget amounts that reflect year to date billed amounts

from inspection by District Engineer and District Counsel responding to resident phone calls regarding the Sea Wall movement.

He requested an estimate of hourly rate by District Counsel. Mr. Craine stated that depending on the Attorney, the range is between \$250-325 per hour.

20. A resident of Isle Bay Drive asked if the District fees can be frozen at a set amount based on a set income total and not to increase the Budget beyond that amount.
21. Marsha, a resident, asked with regard to the Sea Wall, if someone is injured, who is responsible due to the easement in place.
22. A resident asked if there is any cost savings by refinancing the bonds. Mr. Dailey explained that due to the current market conditions, refinancing is not a feasible option at this point in time as well as taking the current build out of the District into account.

The Board addressed the Public's comments and questions and determined that another budget workshop be held to educate the residents before finalizing the budget as presented. The Board decided to continue the Public Hearing so that another workshop can be held.

On a Motion by Mr. Stone, seconded by Mr. Hatcher, with all in favor, the Board continued the Public Hearing on the Final Budget for Fiscal Year 2009/2010 to Thursday, August 27, 2009 at 6:30 p.m. to be held at Mira Bay Clubhouse, the Lagoon Room, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33572 for Harbor Bay Community Development District.

**1. Consideration of Resolution 2009-08,
Adopting Fiscal Year 2009/2010 Final
Budget**

The Board decided to table this item until the August meeting.

ELEVENTH ORDER OF BUSINESS

Public Hearing on Levying Assessments

On a Motion by Mr. Stone, seconded by Ms. Ackerman, with all in favor, the Board opened the Public Hearing on Levying Assessments for Harbor Bay Community Development District.

On a Motion by Mr. Stone, seconded by Mr. Hatcher, with all in favor, the Board continued the Public Hearing on Levying Assessments to Thursday, August 27, 2009 at 6:30 p.m. to be held at Mira Bay Clubhouse, the Lagoon Room, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33572 for Harbor Bay Community Development District.

TWELFTH ORDER OF BUSINESS

**Consideration of Resolution 2009-09,
Imposing Special Assessments and
certifying an Assessment Roll**

The Board decided to table this item to the August meeting.

Ms. Wells asked for a motion to authorize staff to advertise for the upcoming budget workshop.

On a Motion by Ms. Ackerman, seconded by Mr. Stone, with all in favor, the Board authorized staff to advertise for a budget workshop to be held on Monday, August 17, 2009 at 6:00 p.m. at the at Mira Bay Clubhouse, the Lagoon Room, located at 107 Manns Harbor Drive, Apollo Beach, Florida 33572 for Harbor Bay Community Development District.

THIRTEENTH ORDER OF BUSINESS

Staff Reports

A. District Counsel

1. Mr. Craine reported for the Board that First National Bank has not made its last two payments for Debt service and Operation and Maintenance and requested that the Board authorize District Counsel to take necessary steps to collect these payments

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board authorized District Counsel to collect the two payments for Debt service and Operation and Maintenance from First National Bank for Harbor Bay Community Development District.

2. Mr. Craine provided an update on the Sea Wall Litigation and requested the attached memo he presented to be attached to the minutes of the meeting.
3. Mr. Craine stated that WTS has had a claim by a resident who was injured on the tennis court. He stated that the claim has been rejected by WTS and that they do not anticipate that the resident will file a claim against the District. He stated that he wanted to make the Board aware of the issue.

B. District Engineer

1. Update Regarding Rip Rap Maintenance Plan

Mr. Scarola presented his update and findings with regards to the Rip Rap maintenance. He stated that his opinion has changed since the last update as shown in his reports dated May 15, 2009; June 22, 2009; and July 23, 2009 and that he has left the changes visible. He stated that with regards to residential lots that require repair the District would now work with the Developer and District Counsel to memorialize the Developer's agreed final work.

On a Motion by Mr. Stone, seconded by Ms. Ackerman, with all in favor, the Board agreed that Newland will fund the common area Rip Rap repairs for the miscellaneous lots for Harbor Bay Community Development District.

2. Update Regarding Retention Pond Inspection on Sea Turtle

Mr. Scarola stated that Mr. Smith had informed him that the retention pond on Sea Turtle was draining rapidly. Mr. Scarola stated that upon his first inspection, the water level was fine but upon his second inspection, he noticed that it was draining too fast and the water level was low. Mr. Scarola observed that there was a control structure leak. He stated that the cost to replace the structure would be very expensive. Ms. Scarola stated that he had obtained a proposal from Hecker construction to patch the leak with a three year repair guarantee. He discussed that the guarantee may not signify much if the structure leaks in a different place.

On a Motion by Mr. Stone, seconded by Mr. Ripley, with all in favor, the Board approved the proposal from Hecker Construction to patch the retention pond control structure leak in the amount of \$1,200 for Harbor Bay Community Development District.

C. Operations Manager

Mr. Smith reported for the Board that the Shade sails at the playground around the pool area had two posts that were sinking.

On a Motion by Ms. Ackerman, seconded by Mr. Stone, with all in favor, the Board authorized Mr. Smith to work with the District Engineer to determine the cause and provide a recommendation for repair for the Board for Harbor Bay Community Development District.

Mr. Smith stated that he met with Mr. Kim to address landscaping issues and will have updates for the Board at the next meeting.

Mr. Smith also stated that he followed up with Deputy Baker regarding the Off Duty Deputy scheduling of Mr. Travis Wright. He stated that at this time Mr. Wright was not available to be scheduled. Deputy Baker stated that she would ensure that the community would have coverage.

D. District Manager

Ms. Wells stated that beginning next month she will include an Action List in the agendas for the Board's reference as to what is occurring on a daily basis within the District.

Ms. Wells reminded the Board that the next Board meeting will be held on August 27, 2009 at the new time of 6:30 p.m. She also stated that there will be a Budget workshop on August 17, 2009 at 6:00 p.m.

FOURTEENTH ORDER OF BUSINESS

**Supervisor Requests and Audience
Comments**

Mr. Stone replied to an Audience member about a comment earlier regarding the cost of the pool heater. He stated that the cost is very minor due to the fact that it is a Geo Thermal System.

Mr. Hatcher reminded everyone that Gate 2 was not initially installed.

The Following Audience comments were discussed:

1. Mark, a resident thanked the Board. He stated that he understands it is not an easy job and feels that there is an incorrect perception and misinformation given to the residents. He expressed that everyone needs to do a better job at communicating.
2. Caroline, a resident thanked the Board. She stated that this meeting was enlightening and that she believes responsibility and accountability is important.
3. Cliff, a resident stated that this was a good meeting. He stated that at the workshop he would like to see a General Ledger to track the vendors. He commented on the Bali Bay Palm tree and empty lots.
4. John Yamshack, a resident thanked Newland Communities for the Rip Rap repair. He asked if an Engineer certified the wall.
5. Joe McNeil had questions regarding the Rip Rap Wall and whether or not it is covered by a warranty. Mr. Scarola, the District Engineer stated that Rip Rap is not an engineered wall and that it is considered landscaping.
6. Mark, a resident requested that Mr. Kim reduce his cost by \$150,000 and in addition, provide a tree for replacement for the Palm Tree at the end of Bay Estates
7. Paul Stumpf, a resident stated that there were several items that gains were made on in the meeting.

FIFTEENTH ORDER OF BUSINESS

Adjournment

On a Motion by Ms. Ackerman, seconded by Mr. Ripley, with all in favor, the Board adjourned the meeting at 10:45 p.m. for Harbor Bay Community Development District.


Secretary / Assistant Secretary


Chairman / Vice Chairman

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 July 2009

Subject: Case Synopsis
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.

Our discovery requests have netted in a review and indexing of over 45,000 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 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, 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 by agreement for 90 days for the parties to explore settlement.

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.

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.

**FREQUENTLY ASKED QUESTIONS AND ANSWERS
ABOUT THE MIRABAY SEAWALL
July 23, 2009**

1. What's the problem with the seawall?

When some areas of soil along the wall had eroded below the original design requirements were noticed, Newland Communities conducted an independent review of the seawall in summer of 2007. The initial indications from the analysis revealed that repairs may be required. At that point, Newland contacted the MiraBay Community Development District (CDD) and informed them, as the CDD was the entity that contracted for the design and construction of the seawall and is the owner of the seawall. The CDD has filed litigation against the parties responsible for the design, materials and construction of the seawall and is pushing for requiring remediation which will provide the community with a seawall which meets the original specifications and expected life as well as a recovery of fees and costs of the litigation.

2. What happens if there's a hurricane?

Of course, the appearance or stability of built structures in any community cannot be guaranteed in the event of a hurricane. No one can reasonably make such guarantee.

3. How much will it cost to fix the seawall? And when will it get fixed?

The CDD is taking the lead on pursuing a solution through litigation. It is the goal of the litigation to minimize costs, if any, to residents for the seawall remediation. As far as timing of repairs, the pending litigation involves multiple defendants and highly technical engineering issues. The case is being heard in the complex litigation section of circuit court and will take time due to these factors.

4. Can I still sell my house if I purchased a homesite on the canal?

Yes, but you should check with your broker and/or legal counsel as to what disclosures, if any would be required to potential purchasers.

5. Did Newland Communities know about this problem when they bought MiraBay?

No, Newland did not know. The seawall was built prior to 2003, when Newland became the developer of the community. The problems and the severity of those problems were not known until after that date.

6. Where can I get more information?

Inquiries about the seawall are being handled by the attorneys at Brickelmeyer, Smolker & Bolves, P.A. You can reach Biff Craine at 813-223-3888.