
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, September 24, 2009 at 9:30 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:

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.
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
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' Continued Meeting held on August 27, 2009

On a Motion by Ms. Ackerman, seconded by Mr. Stone, with all in favor, the Board approved the Minutes of the Board of Supervisors' Continued Meeting held on August 27, 2009 as presented for Harbor Bay Community Development District.
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THIRD ORDER OF BUSINESS

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

It was noted that the lift station invoices should be turned over to Hillsborough County.

Mr. Ripley noted that there had been an increase in the utilities expense.

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board approved the Operation and Maintenance expenditures for September 2009 (\$136,003.51) for Harbor Bay Community Development District.

FOURTH ORDER OF BUSINESS

**Consideration of Operation and
Maintenance Expenditures for MiraBay
Club for September 2009**

The Board requested that all maintenance repairs are to have a descriptive work order attached to the invoices in the Board packages.

It was noted that long distance and 411 calls needed to be limited.

On a Motion by Mr. Ed Stone, seconded by Mr. Hatcher, with all in favor, the Board approved the Operation and Maintenance expenditures for the MiraBay Amenity Center for September 2009 (\$67,881.82) for Harbor Bay Community Development District.

FIFTH ORDER OF BUSINESS

**Consideration of Bricklemyer Smolker &
Bolves, P.A. Invoices #80501 and #80699 in
Reference to #22717 Construction/Design
Claims**

Mr. Miller presented invoices #80501 (\$29,860.38) and #80699 (\$26,354.79) to the Board. Discussion ensued. It was the consensus of the Board to approve payment in the amount of \$17,443.61.

On a Motion by Mr. Jones, seconded by Mr. Stone, with all in favor, the Board approved payment to Bricklemyer, Smolker & Bolves, P.A. in the amount of \$17,443.61 for Harbor Bay Community Development District.

SIXTH ORDER OF BUSINESS

**Discussion Regarding Future Legal Invoice
Payments and Procedure**

Mr. Miller discussed what the procedure for processing future legal invoices should be. The Board decided that all future legal invoices still needed to be reviewed by the Board until such time that additional funding can be obtained through assessment collection.

SEVENTH ORDER OF BUSINESS

**Discussion Regarding District Financials,
August 2009**

Mr. Miller reviewed the District's unaudited financials for the period ended August 31, 2009.

EIGHTH ORDER OF BUSINESS

**Continued Public Hearing on the Updated
Rules of Procedure**

On a Motion by Ms. Ackerman, seconded by Mr. Hatcher, with all in favor, the Board reopened the Public Hearing on the Updated Rules of Procedure for Harbor Bay Community Development District.

Mr. Miller opened the floor to public comments. There were none.

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board closed the Public Hearing on the Updated Rules of Procedure for Harbor Bay Community Development District.

NINTH ORDER OF BUSINESS

**Consideration of Resolution 2009-10,
Adopting Updated Rules of Procedure**

On a Motion by Mr. Stone, seconded by Ms. Ackerman, with all in favor, the Board approved Resolution 2009-10, Adopting Updated Rules of Procedure, which amends and/or supplements where specifically applicable, the District's existing Rules of Procedure for the Harbor Bay Community Development District.

TENTH ORDER OF BUSINESS

**Consideration of Resolution 2009-11,
Adopting FY 2009-2010 Meeting Schedule**

It was the consensus of the Board to schedule the District's fiscal year 2009/2010 meeting schedule as follows:

October 22, 2009 at 9:00 a.m.
November 24, 2009 at 9:00 a.m.
December 17, 2009 at 9:00 a.m.
January 7, 2010 at 6:30 p.m.
February 4, 2010 at 9:00 a.m.
March 4, 2010 at 9:00 a.m.
April 1, 2010 at 6:30 p.m.
May 6, 2010 at 9:00 a.m.
June 3, 2010 at 9:00 a.m.
July 1, 2010 at 6:30 p.m.
August 5, 2010 at 9:00 a.m.
September 2, 2010 at 9:00 a.m.

On a Motion by Mr. Stone, seconded by Ms. Ackerman, with all in favor, the Board approved Resolution 2009-11, holding Fiscal Year 2009/2010 meetings (as listed above) to be held at the MiraBay Clubhouse, located at 107 Manns Harbor Drive, Apollo Beach, Florida, 33752, for the Harbor Bay Community Development District.

ELEVENTH ORDER OF BUSINESS

**Consideration of Resolution 2009-12,
Redesignating Secretaries of the District**

On a Motion by Mr. Stone, seconded by Mr. Hatcher, with all in favor, the Board approved Resolution 2009-12, Redesignating Secretaries of the District for the Harbor Bay Community Development District.

TWELFTH ORDER OF BUSINESS

**Discussion and Consideration of District
Amenities Holiday Schedule**

Mr. Miller presented the proposed Holiday schedule for the MiraBay Club.

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board approved the Holiday schedule for the MiraBay Club for Harbor Bay Community Development District.

THIRTEENTH ORDER OF BUSINESS

Staff Reports

District Counsel

1. Mr. Craine passed out a written monthly update on the sea wall litigation. This memorandum has been attached as Exhibit "A."
2. Mr. Craine provided an update on the delinquent assessment collection. He stated that a settlement offer should be obtained from Central Florida Bank by the next meeting.

It was the consensus of the Board to authorize the Board Chairman to execute the settlement outside the Board of Supervisors' meeting.

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board authorized the Board Chairman to execute the settlement between the District and Central Florida Bank for Harbor Bay Community Development District.

District Engineer

1. Mr. Scarola provided an update to the Board regarding SWFWMD inspections.
2. He stated that the leak at Turtle Pond had been repaired by Hecker Construction and that the repair had a two-year warranty.
3. An update was provided regarding the playground sails.
4. Mr. Scarola addressed the lagoon rip rap and noted that he was working on generating an agreement for future maintenance activities.

5. An update regarding the weep holes was provided. It was noted that Hecker Construction was to make repairs.

Operations Manager

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

District Manager

1. A motion was made to approve Debit Cards for Mr. Smith and designated WTS representatives including: Christine Clements, Karla Gibson and Carol Dvorsky in amount of \$1,500 each.

On a Motion by Mr. Stone, seconded by Mr. Jones, with all in favor, the Board authorized debit cards in amount of \$1,500 each for Mr. Smith, Ms. Clements, Ms. Gibson, and Ms. Dvorsky for Harbor Bay Community Development District.

2. He reminded the Board that the next Board meeting will be held on October 22, 2009 at 9:00 a.m.

FOURTEENTH ORDER OF BUSINESS

**Supervisor Requests and Audience
Comments**

1. Mr. Ripley addressed the Board and requested to bid all major contracts for the District.

It was the consensus of the Board to move forward with the bid process for the District's Landscaping, Management, and Counsel Services.


2. Various audience comments were entertained by the Board. No Board action was taken.

FIFTEENTH ORDER OF BUSINESS

Adjournment

On a Motion by Mr. Stone, seconded by Mr. Jones, with all in favor, the Board adjourned the Board of Supervisors' Meeting at 12:17 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: 24 September 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, does 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.

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 September.

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.