

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, February 18, 2010 at 5:35 p.m.** at 700 Manns Harbor Drive, Apollo Beach, Florida 33752.

Present and constituting a quorum were:

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

Also present were:

Jonathan Miller	District Manager, Rizzetta & Company, Inc.
John Toborg	Operations Manager, Rizzetta & Company, Inc.
Robert Cox	Director of Financial Consulting Services, Rizzetta & Company, Inc.
Jamie Scarola	District Engineer, Scarola Associates
Erika Johnson	Representative, WTS International
Karla Gibson	Representative, WTS International
Debra Dremann	Representative, Newland Communities
Ben Gelston	Representative, Newland Communities
Mercedes Tutich	Representative, Newland Communities
Biff Craine	District Counsel, Bricklemyer, Smolker, Bolves
Audience	

FIRST ORDER OF BUSINESS

Call to Order

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

SECOND ORDER OF BUSINESS

Consideration of Minutes of the Board of Supervisors' Meeting held on January 7, 2010

On a motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board approved the Minutes of the Board of Supervisors' Meeting held on January 7, 2010 as presented for Harbor Bay Community Development District.

THIRD ORDER OF BUSINESS

**Consideration of Operations and
Maintenance Expenditures for January
and February 2010**

Mr. Miller stated that the January 2010 expenditures for the District totaled \$273,730.10. He asked if there were any questions. Ms. Ackerman questioned the bills regarding the bond refinancing. She also questioned why the flood insurance premium was higher for gate one than gate two. Mr. Miller stated he would need to look into the matter. He asked Mr. Scarola if he had any insight on the difference. Mr. Scarola stated that gate one may have more electrical than mechanical components. Ms. Ackerman then questioned the payment to Mr. Kim. She stated that it had never been approved. Mr. Miller stated that it was to be reimbursed by Newland and that they were paying for those expenditures.

Mr. Ripley suggested for the sake of revenues that Board members submit questions in writing to be returned at the next meeting. He suggested that questions could be submitted ahead of time. He also suggested that the O&M be distributed as a separate email attachment.

Mr. Miller asked if this was the general consensus of the Board. All Agreed. Mr. Miller proceeded to review the January Mirabay expenditures totaling \$55,917.89.

Ms. Ackerman questioned the Sprint bill under the CDD and enterprise fund. Mr. Miller explained that a portion of the bill was related to Bob, which was allocated to the general ledger. He stated that the balance was allocated to the enterprise fund. Ms. Ackerman stated she would like to see a serious effort put forth to change that plan. Ms. Ackerman then inquired regarding the SunTrust bank statements. She stated that the District was consistently incurring an imprinted check/deposit fee. She asked why there were two to three fees on each statement as well as an account analyses fee on every statement.

Mr. Miller stated that the District had a commercial grade checking account and that there were fees associated with that. He stated he could have the accounting staff provide a detail explanation.

Ms. Ackerman stated she would like to know what those fees were for and potentially move else where.

Mr. Ripley reiterated his suggestion for requests and questions to be submitted in writing.

Mr. Miller stated that the February 2010 expenditures totaled \$216,360.61. He asked if there were any questions regarding those expenditures. He reported that the palm tree replacement of \$3,600 was to replace the palm tree that had died. He also stated that the \$48,000 expense was derived from the balance due to the District insurance carrier as previously arranged.

Mr. Miller stated that the February Mirabay expenditures totaled \$42,329.62. He asked if there were any questions.

Ms. Ackerman stated that the first WTS expense looked wrong. Mr. Miller stated that he thought the mileage was for there and back.

Ms. Johnson stated she could answer her question since it was with WTS. She stated that the costs were split and that the amount needed to be corrected.

On a motion by Mr. Jones, seconded by Mr. Stone, with all in favor, the Board approved the Operation and Maintenance Expenditures for January (\$273,730.10) and February (\$216,360.61) 2010 for the District and for January (\$55,917.89) and February (\$43,329.62) 2010 for the Mirabay Clubhouse for Harbor Bay Community Development District.

FOURTH ORDER OF BUSINESS

Presentation of Community Management Proposal by the MiraBay HOA

Mrs. Dremann thanked the Board for allowing her to speak. She explained that due to the loss of Mr. Smith, both the CDD and HOA boards were looking for separate contracts to replace his position. She stated that a proposal from Rizzetta & Company, Inc. had been accepted to separate that management. She presented the proposal for the new role of Resident Services Specialist. She provided various reasons they felt the Resident Services Specialist role was beneficial and necessary to the community as a whole. Some examples provided included the current absence of an on site office presence, resident confusion over the difference of District and HOA management responsibilities, and having a single point of contact for all things MiraBay. She explained that the proposed job description included meeting with residents regarding problems, concerns, and suggestions and coordinating requests with both the HOA and CDD. Also, the position would review outstanding resident requests and develop a daily tracking system for all resident contacts as well as other duties. She explained that monthly responsibilities would include the preparation of activity reports and attending meetings. She stated there were two proposals. The first proposal was to open the new position with the Management Company for a 90-day trial period with the contract to be shared by both the District and the HOA. She stated that the second proposal was to expand the District's on site support ten hours, to be compensated by the Master HOA. She stated that there would be no increase in the District budget and requested that the Board choose one of the proposals with the contract to be approved at the March meeting, interviews to commence in April, and the new position to be implemented by May 1, 2010.

Mr. Jones inquired whether the 90-day trial period may dilute the pool of applicants and deter good candidates.

Mrs. Dremann stated that she had received strong feedback at the HOA meeting to include this term. She stated that they wanted to make sure it was working before they hired full time.

Discussion ensued. Mr. Ripley stated he would like to see the trial position be given to Kristy. He explained that her hours would be increased from 30 to 40 hours per week and that the position would be funded entirely by the District. He stated that the position would possess no authority and would be responsible for managing information only.

Mr. Miller stated that he would present the proposal to the staff and see if they were willing to do that. Further consideration of the item was tabled.

FIFTH ORDER OF BUSINESS

Discussion of Series 2001B Bond Refunding

Mr. Craine stated that the purpose of Resolution 2010-04 was to refund the series 2001 B Bonds, and extend the maturity date. He stated that key features were that it was being done completely transparent to the District and that the District would incur any costs in refinancing that debt. He stated that all associated costs would be borne by the developer. He stated that the debt would be extended to May 1, 2017.

Mr. Cox introduced himself to the Board and audience. He stated that the terms were still in negotiation and would be discussed in detail at the public hearing on April 22, 2010. He stated that at that point an interest rate had not been set, but for the purposes of the report, the target rate was 7.5%. He stated that all the impacted lands were owned by the developer or builders. He stated that the assessments on tax bills would not be affected. He stated that there were 554 units that were still encumbered by the B Bonds.

Mr. Ripley asked for confirmation that the developer was absorbing the increase in cost and that no homeowner would see a change.

Mr. Cox stated that was correct and asked if there were any other questions. There were none. Discussion ensued.

Mr. Jones asked if the bonds were typically paid off when the developer sold the lots and asked for confirmation that they were not assigned to the homeowners.

Mr. Craine stated that those bonds were not typically assigned unless the homeowner had agreed to accept it.

On a motion by Mr. Hatcher, seconded by Mr. Ripley, with all in favor, the Board approved Resolution 2010-04 as presented for Harbor Bay Community Development District.

On a motion by Ms. Ackerman, seconded by Mr. Stone, with all in favor, the Board approved Resolution 2010-05 as presented for Harbor Bay Community Development District.

Mr. Cox left the meeting in progress.

SIXTH ORDER OF BUSINESS

Proposed Restorations & Furniture Replacement

Mr. Gelston addressed the Board regarding the proposed restorations and furniture

replacements for the Lagoon Room and around the MiraBay club. He explained that approval of a License Agreement to perform the work was being sought as well. He requested that all furniture to be replaced be removed from the premises and or sold.

On a motion by Ms. Ackerman, seconded by Mr. Stone, with all in favor, the Board approved the proposed restorations and furniture replacements and the corresponding License Agreement as presented for Harbor Bay Community Development District.

SEVENTH ORDER OF BUSINESS

Rip Rap Repair Agreement

Mr. Miller stated that the next item to be considered was the scope of work related to the rock replacement and raising of the top elevation of certain portions of the rip rap wall around the Mirabay Lagoon.

Mr. Scarola distributed copies of a map pertaining to the scope of work. He stated that early last year it was requested that he look at the rip rap. He stated that he looked at areas that needed to be done which were outlined on the map. He stated that area number three found on the bottom right of the plan was the largest site. He stated that he was concerned with trying to protect the District in project managing the repairs. He stated that it would be best to have Mr. Kim repair the wall since he put it in.

Mr. Jones asked if the District could take on liability for managing a project that Newland Communities was funding

Mr. Scarola stated yes, there was liability associated with project managing the building.

Mr. Craine stated that it would be a one-time repair with no continuing responsibility for the District. He stated the District did not want to incur on going responsibilities. He explained that there would be a lag of reimbursement of funds and that the District would be required to obtain releases for work as it went along. He stated that after releases were obtained, they would get reimbursed from the Developer over a twenty-one day period.

Mr. Scarola stated that it was that area of oversight that worried him. He stated that project involved more liability.

Ms. Ackerman inquired about the forms residents would need to complete. She stated she had a problem with the CDD paying the bill. Discussion ensued.

It was moved by Mr. Stone and seconded by Mr. Ripley to table the item. Two were opposed, Mr. Jones and Mr. Hatcher, the motion carried.

On a motion by Mr. Stone, seconded by Mr. Ripley, with three in favor, and two opposed (Mr. Jones and Mr. Hatcher), the Board approved to table the consideration for Harbor Bay Community Development District.

EIGHTH ORDER OF BUSINESS

Staff Report: Operations Manager

Mr. Toborg addressed the Board and stated that a copy of the field inspection report had been previously sent. He stated that the report had been generated by three site visits. He stated that some items which required a decision were:

1. The berms at the front entrance. He stated that the junipers had died and proposals for redesign and costs were needed.
2. The village entrance columns. He stated that the sign panels were aged and that he would like to bring a proposal with actual village names. He stated the architectural foam banding was in rough shape as well. He stated he would like to bring back proposals to mend the foam banding and base as well as for painting. He suggested that beds be placed around the repaired columns to limit future damage to the bases.
3. He stated that the palms were in rough shape and had been communicating with Mr. Kim to have them replaced. He recommended that tissues samples be taken to ensure good palms and that every effort be taken to prevent disease.

Discussion ensued. Mr. Toborg stated that even with preventative measures taken, there was no guarantee the palms would be safe.

Mr. Toborg presented Addendum #3 containing all questions from bidders. It was the consensus of the Board to issue addendum Number #5.

Mr. Toborg left the meeting in progress.

NINTH ORDER OF BUSINESS

Outfitters Facility Plan of Action

Erika Johnson addressed the Board and thanked them for allowing her to present. She stated that she would be presenting an update on where they were on the Outfitters plan of action. She stated it was not a business plan because it was an amenity. She also thanked Newland who was funding the project. She reviewed various goals and plans to make the Outfitters a viable entity and provide a variety of programs and services.

TENTH ORDER OF BUSINESS

Staff Report: Jamie Scarola

Mr. Miller stated that the District had a budget of \$40,000 for the repairs of weep holes and that \$25,000 had been used thus far. Mr. Scarola stated there was a great deal of sediment behind the wall.

He wanted to inform the Board that Seacrest contacted him and that they were having erosion issues. He stated that he went out and looked at them with Julie. He stated that they both agreed there was nothing they would do about it.

Mr. Scarola left the meeting in progress.

ELEVENTH ORDER OF BUSINESS

Review of District Financials

Mr. Miller stated that the District's financials would be fine-tuned as time progressed. He reviewed the District's financial highlights.

TWELFTH ORDER OF BUSINESS

Review of Utility Expenses.

Mr. Miller provided a detailed review of the District's utility expenses for the month of January 2010. Ms Ackerman commented that the irrigation should be more consistent in relation to the sprinklers.

Mr. Jones stated that he loved the graphs, but asked if the Board was comfortable with not reviewing them in the Board meetings unless there were questions. The Board agreed.

THIRTEENTH ORDER OF BUSINESS

Draft Scope of Services for Amenity Management RFP

Mr. Miller addressed the Board regarding the draft scope of services. He stated that the purpose of the RFP was to obtain the most competitive price for the level of service that was desired in the community. He stated that provided in the agenda were two items, a general draft scope of services and the current contract with WTS. He stated that he was in need of clear direction on how the Board wanted to move forward. He stated that in order to change vendors, the District must notice the current contractor by March 1, 2010. Discussion ensued. It was the consensus of the Board to table the item until the next meeting.

FOURTEENTH ORDER OF BUSINESS

Renter Proximity Card & Barcode Fee Schedule

Mr. Miller addressed the Board regarding the proximity cards. He stated that they were very expensive with a cost of \$4,500 semi-annually to the District. He explained that renters obtained the cards at no cost. He stated that the proposal was being presented in order for the District to recoup its costs. He stated that the proposed fee for the cards was \$15, to be charged only to renters of the community. He stated that it was not something that needed to go before a public hearing.

Mr. Stone asked how the fee stacked up with actual costs to the District.

Mr. Miller stated that it was just under actual costs. Discussion ensued.

On a Motion by Mr. Ripley, seconded by Mr. Jones, with all in favor, the Board approved the Proximity Card and Barcode Fee schedule as presented for the Harbor Bay Community Development District.

FIFTEENTH ORDER OF BUSINESS

Revised Visitor Proximity Card Policy

Mr. Miller stated that this item was being placed on hold for further revisions.

The Board agreed to notify WTS that their contract would be canceled after June 30, 2010.

On a Motion by Ms. Ackerman, seconded by Mr. Ripley, with all in favor, the Board approved to notify WTS that their contract would be canceled after June 30, 2010 for the Harbor Bay Community Development District.

SIXTEENTH ORDER OF BUSINESS

Revised Visitor Proximity Card Policy

Mr. Craine addressed the Board and provided an update on the seawall litigation. His memorandum has been attached as Exhibit A to the minutes. He stated that the proceedings had moved forward with the depositions. He stated that the work previously authorized by HSA had come back with interesting results. He stated that there were multiple areas of unsuitable soil conditions. He stated that additional work would give further depths of identification of soils. He stated that the company would be mobilized on waterside and would like to give them the authorization while they were on the field.

On a Motion by Mr. Ripley, seconded by Mr. Stone, with all in favor, the Board approved to authorize the additional work needed as requested by District Counsel for the Harbor Bay Community Development District.

SEVENTEENTH ORDER OF BUSINESS

Adjournment

On a Motion by Mr. Jones, seconded by Mr. Stone, with four in favor, and one opposed (Ms. Ackerman), the Board continued the meeting to Friday, February 26, 2010, at 1:00 p.m. for the 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: 18 February 2010
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 started taking depositions of key parties, including that of Mortensen Engineers, Inc., as they served in the capacity as the geotechnical engineer before and during the construction of the community. In February, the deposition of the seawall designer, Reuben Clarson Consulting, Inc. will take place. Depositions are set to continue for one week each month until all key witnesses and parties have been deposed.

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.

*****NOTICE OF INTENT TO START SOILS TESTING*****

HSA Engineers & Scientist have been retained to begin start conducting soils sampling and testing at different areas of the community. Test has commenced and is anticipated to continue for the next three to four weeks. These tests will be conducted on the land side as well as on the canals via a barge. HSA Engineers & Scientists have been instructed to work as expeditiously as possible and with minimal intrusiveness to the residents as well as the community. However, please note the contractor may need to conduct work on or near homesites adjacent to canals.