

**PELICAN MARSH COMMUNITY DEVELOPMENT DISTRICT
REGULAR BOARD OF SUPERVISORS MEETING
MARCH 16, 2016**

The Board of Supervisors of the Pelican Marsh Community Development District met on Wednesday, March 16, 2016 at 9:00 a.m. at the Tiburon Health Club, Naples, Florida.

APPEARANCES:

Frank Garofalo, Chairman

Robert Smith, Vice-Chairman

Don Pomerantz, Treasurer

Gordon Walker

Sally Dupler

ALSO PRESENT:

W. Neil Dorrill, Dorrill Management Group

David Robson, Johnson Engineering

Tony Pires, Board Counsel

James Calamari, Access Control

ROLL CALL

The meeting was called to order by Chairman Garofalo, with all supervisors as listed above in attendance.

PUBLIC COMMENT

No public comment was received at this time.

APPROVAL OF AGENDA

With the addition of item 5C, Auxiliary Parking, the **Agenda was unanimously approved on a MOTION by Gordon Walker and a second by Sally Dupler.**

APPROVAL OF MINUTES OF FEBRUARY 17, 2015 MEETING

On Page 2, on the 7th line from the top, Chairman Garofalo clarified that the District would consider only the same type of fence if it were replaced.

On Page 5 under the Manager’s Report, the words “depreciation schedule” should read “guideline for asset replacements”.

On Page 6, at the beginning of the 7th line, the word “purchase” should read “issue”.

Additionally, in the same line, the word “that” is repeated, one “that” should be removed.

In the 8th line, a comma should be inserted after the word “pipes”.

On a MOTION by Robert Smith and a second by Gordon Walker, the minutes were then unanimously approved as corrected.

FINANCIALS

The month ending January Financials through four months showed the revenue report beginning to level out, and year-to-date it is approximately \$100,000 over the prior year.

Taking the discounts into consideration, this will have some consequences as reported previously.

The balance sheet showed the designated cash for the contingency fund in accordance with the Board’s directive, which is in addition to the cash flow through the first four months. Total cash on hand at the end of January was \$3,400,000 against \$94,000 in payables. Chairman Garofalo felt that on the fund balance, the second designated fund balance should show the \$850,000 cash flow.

The income statement showed that \$139,000 was taken in during the month of January, the majority of which was money received late in December and not deposited until the first week of January. Total revenues at the end of the first four months were close to \$3,100,000 on the revenue side, or \$34,000 over budget.

Expenses showed that an additional pay period occurred, and some of the personnel wage items are now more in line with what the year-to-date budget forecast was. Total expenses for

all cost centers through the first four months were \$1,200,000, or \$66,000 under budget.

Mr. Pires noted that his extraordinary expenses that took place had not yet occurred as of this financial report, which is why there was no notation of them.

On a MOTION by Robert Smith and a second by Gordon Walker, the Board unanimously accepted the financials as presented.

MANAGER'S REPORT

A Tiburon WCI Sales Center Property

This property, north of Marsala, was in the process of being annexed and rezoned for transfer to the CDD. Apparently there has been some significant opposition from the Marsala residents, and the conveyance has been temporarily halted by WCI on the advice of their attorney, as they will need to have ownership of this property in the event the dispute cannot be resolved.

In the interim, the CDD continues to cut the grass on this property, which is only once or twice a month this time of year, but they should receive compensation for this.

Mr. Dorrill will be talking with Mr. Caldwell to establish a simple agreement for a contribution towards the maintenance, as this issue will probably not be resolved until July.

Mr. Vanover is working with some of the residents at Tiburon in furtherance of their flag pole project, which will require an appropriate institutional type pole and some uplighting. If any problems with WCI are encountered, Mr. Dorrill will advise the Board.

Mr. Pires indicated that his only comment would be that in order for the public funds to be expended on private property, the District has to have the requisite interest in the property, otherwise it does not follow the Florida Constitution that prohibits the expenditure of public funds for private purposes. As the District does utilize this property for staging and parking, he suggested that the Board authorize WCI and the Manager to sign a simple letter agreement wherein the District can continue to utilize those facilities for staging and parking in exchange for cutting the grass.

Chairman Garofalo expressed his concern about liability, and Mr. Pires noted that while the potential for liability is always there, his concern was really that the funds were being spent in accordance with the Florida Constitution. He suggested that the way to do that was to have the District have an interest in that parcel by virtue of the license agreement.

On a MOTION by Gordon Walker and a second by Mr. Lee, the Board unanimously approved a license agreement letter between the parties that continued mowing of the area by the District would be compensation for the District's ability to continue to use it for staging and parking.

The Chairman indicated that he and Mr. Vanover had visited the site to determine where the flag pole could be placed, and because the property belongs to WCI, they suggested that a better location would be on the east end of the median coming off of Airport, across from the west end of the fountain, which is CDD property. However, it was unclear to Chairman Garofalo if Tiburon was going to pay for the flag pole, and Mrs. Dupler assured him that this was the case. He was also not sure that there was electricity there, and Mr. Dorrill indicated that there was a circuit panel there to feed the bubbler in the lake. This will be explored by Staff, and the Master HOA will be approached for funding on this project as well.

B. Fountain Installation on Lake 28

A proposal was received from a resident who would like to install an architectural fountain in Lake 28 behind their home. An aerial was shown to the Board members to show the location, and the resident will be responsible for the installation as well as the electricity as they will have the service come off of their connection.

While there is no policy in place for these types of fountains, Mr. Dorrill indicated that there are some of this type at Pelican Bay and Lely Resort, under similar arrangements. Staff would recommend approval, and Mrs. Sullivan from Augusta assured those present that she would be funding this installation and the electricity.

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Mr. Robson indicated that he wished to check the old ownership records to see what the legal status was on Lake 28 as well as the easement and (inaudible). Additionally, if it is an easement reservation with the golf course, would they need to be involved in the decision.

Mr. Pires suggested that if the District considers it part of its drainage easement, it would be one of the structures for the drainage. Mr. Pires then asked if the Sullivans were donating it to the District, or whether they would retain ownership and be responsible for it, as that would make a difference as to what type of documentation would be necessary.

There are several fountains that belong to the individual HOAs, and they maintain them. Mr. Gorran suggested that the CDD ought to have a policy on these types of things, as there could then be many different people wanting to put fountains in lakes.

Chairman Garofalo agreed, noting that he did not believe that there was anything in writing on this issue. This fountain will be on the Boulevard, and while the Chairman had no objection to the fountain, but agreed with Mr. Gorran that something needed to be in writing that would state the District's policy. Mr. Pires felt comfortable that since the District has a drainage easement over that lake, it can provide for that to be installed.

Mr. Lee asked if the Sullivans' HOA had been asked about this, and while they have not, Mr. Dorrill indicated that would probably not be necessary as the location is outside of the legal description of the HOA. The question was raised as to who the fountain would belong to if the Sullivans decided to move, and Mr. Dorrill indicated that it was personal property, not the District's, and he did not feel that they should be responsible for these types of things.

However, staff is recommending approval, and it was not felt that it conflicted with the golf experience just to the south of it. The lake has riprap on three sides and does not appear to have an algae problem, but Mr. Dorrill agreed that they should draft a policy and bring it back to the Board for approval.

Mr. Pires has a template that can be used for a license agreement that gives them the ability to have the fountain in the lake and provides indemnification for any fountain related injury.

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Mr. Dorrill did not feel it was necessary to wait on approval for the fountain, as Mr. Pires had a license agreement template, and if the Sullivans can agree to all the policy points that will be set up, which will include sole ownership and responsibility for installation, electric and maintenance, then they could move forward with it.

In response to Chairman Garofalo's question as to whether the golf course should be asked to sign off on this, Mr. Pires indicated that it was not necessary, as this was part of the CDD's water management facility, and in that regard, he would not like to set a precedent of having to go to the golf course every time a change or alteration was made. In Mr. Pires' opinion, they have a drainage easement and a lake easement and that gives the District the ability to install this type of facility, which can be considered part of the drainage system.

In response to Mr. Lee's question about this setting a precedent, Mr. Dorrill indicated that there are similar fountains in the community, but this is the first time a proposal was presented to the Board for their approval, while the people installing the other fountains did not seek their approval.

In response to Mr. Walker's question, Mr. Pires noted that a subsequent owner does not necessarily inherit the fountain obligation.

Jeffrey ***Bale of Watercrest suggested that if the unit is sold, in order to absolve the CDD of responsibility, whatever agreement is entered into with the Sullivans for the fountain should be recorded against the property with regard to maintenance and responsibility, and this would show up on their title policy when they sell. This would protect the CDD in the future.

Chairman Garofalo suggested that it be put in the agreement that if a subsequent owner did not want the fountain, the CDD would have the right to remove it.

Mr. Pires felt that the agreement could just say it terminates upon the sale of the property, and it would be the responsibility of the homeowner to remove it. He also noted that a license agreement does not get recorded in the State of Florida, nor does it provide an interest in real property. Once again, Mr. Pires suggested to the Board that it be a license agreement solely

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between the Sullivans and the District, which terminates when the District wishes. If a new owner wants to keep the fountain, they can approach the Board.

Mr. ***Bale asked how the new owner would know about this arrangement if it is not recorded against the property. Mr. Pires noted that this information is not the District's obligation to pass on, and recording it could provide arguably an interest in the District's property, but this was at the Board's discretion as to what they wished to do.

Mr. Smith felt that the Club should still have a say in this decision, and Chairman Garofalo had a concern about its maintenance if a new owner did not care what happened to it.

Mrs. Sullivan added that there was another gentleman who added a fountain to a lake in Bay Colony, and Mr. Dorrill noted once more that there are several fountains in lakes in the District that were installed without first seeking the Board's approval.

After further discussion and more opinions being offered, the idea was again discussed to have the agreement regarding the fountain be recorded, and Mr. Pires once again felt that this should not be done as the license agreement is merely an opportunity to utilize someone else's property without having any real interest in it.

Chairman Garofalo suggested that the idea of recording the agreement be taken off the table, but asked if the agreement should say that subsequent owners are responsible for the fountain.

Mr. Pires indicated that if they wished to have that transfer of responsibility in the agreement, then it should also say that upon the sale of their property that the Sullivans notify the District, and the District would have the ability to agree to the assignment of the license agreement to the new buyer, or not. If the new owner does not wish to have the fountain, it can be removed by whoever is designated in the agreement to do so.

Mr. *** Bale asked Mr. Pires if it would be possible for a document to be filed, separate from the license agreement, that indicated that the seller must notify the subsequent owner, and also to record that against the property. Mr. Pires felt that it would be fine for the current owner to have the responsibility to notify any purchaser of the existence of the license

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agreement, but indicated again that he was not in favor of recording any notice. Chairman Garofalo then suggested that recording a document should be taken off the table.

Mr. Pires added that if the District wished to, they could require a deposit be made for the estimated cost of removal of the fountain as part of the license agreement.

Chairman Garofalo indicated that he was not concerned about the cost, but if the fountain fell into disrepair, then the District should have the right to remove and dispose of it. Mr. Pires agreed that this could be put into the license agreement, and he will bring the agreement to the next meeting for the Board's approval.

Mr. Smith wondered what fountain was going to be installed, and Mr. Lee again asked if the Augusta HOA had any voice in this at all, or could they override the Sullivans' decision to install a fountain, and was advised that they could not. The Chairman indicated that he and Mr. Vanover will talk to the president of the Augusta HOA and the golf club as a courtesy, and then move forward with the agreement that Mr. Pires will prepare.

C. Auxiliary Parking

Mr. Dorrill received an email from the County regarding the need for offsite beach parking during the peak season as their parking garage on Vanderbilt is not sufficient. They are interested in exploring the utilization of the offsite parking established by the CDD during the two recent golf tournaments which is underneath the FP&L transmission facilities at the intersection of Livingston and Vanderbilt Beach Drive. The County would be responsible to operate a shuttle to transport beach patrons from the offsite parking to the drop off point at the end of Vanderbilt Beach Road.

The site itself, that is owned by the District, has some limitations and is encumbered by the FP&L easement. The area is being bush hogged, and the people who put on the golf tournament spent a substantial amount of money on fill and lime rock to stabilize the area.

Mr. Dorrill indicated that he is not opposed to having a meeting with the County, or

accommodating the beach-going public, but he does have a number of questions. This project is intended for next year, so there is quite a bit of time to work on it, but he told the department head that he would bring it before the Board.

Chairman Garofalo indicated that he is not against it either, and felt that they should use the template that was used for the golf tournaments regarding the function and maintenance of the property and have the County pay for Mr. Pires' legal fees to draw up the document.

Mrs. Susan *** indicated that when the parking garage is full at Vanderbilt, it is almost impossible to get to the water on the small Vanderbilt beach, as it is so crowded. She added that Vanderbilt Beach is Tiburon's beach, and they have a bus that shuttles them down to it. There will be no overlap with the golf events and the beach parking.

As the Board agreed with the concept, Mr. Dorrill noted that they will develop a proposal and get back to the Board with it.

ATTORNEY'S REPORT

A. New Legislation

The Florida Legislature recently passed some legislation that affects the Board as they are management issues. The first requires additional language to be placed in contracts beginning in July of this year regarding public records retention.

The second bill also affects the District, as beginning October 1st of this year, at least seven days before each Board meeting or workshop, the agenda of the meeting or workshop, along with any meeting materials, must be available in electronic format to be posted on the website. This includes any booklet materials that are available. This will necessarily change the date of the executive meeting to accommodate the requirements of this new legislation.

Any budget amendments need to be posted on the website as well.

ENGINEER’S REPORT

A. South Florida Water Management Request

Mr. Vanover contacted Mr. Robson about a South Florida Water Management water use update, as they are asking for a ten year report on changes to the system. He advised Mr. Vanover to draw up a short report on the transfer of the pump station and the irrigation lake from the CDD to Collier County.

South Florida Water Management asks for this update on what has transpired in the last ten years on a regular basis.

B. Exit at Airport Road

Chairman Garofalo spoke to an issue that Mr. Smith had raised regarding the possible danger at the Airport gate. It is a single lane exit and there is a situation with the turn around with people coming in the gate. The Chairman and Mr. Vanover looked at it, and Mr. Robson and Mr. Calamari will look at it after the meeting and make some recommendations on the problem. Chairman Garofalo wanted the warnings to go to the vehicles that are turning around and not the vehicles exiting the gate. Mr. Smith added that he was very nearly hit by a car making a u-turn at the entrance when Mr. Smith was making a right out of the gate.

Mr. Robson advised that one of the countermeasures used in these situations is speed bumps, located where the person turning around is slowed down by the bump.

SUPERVISORS’ REQUESTS/PUBLIC COMMENT

There were no further requests from the Supervisors or the public.

ADJOURNMENT

The Board was advised that the next meeting would be held on April the 20th, and the **meeting was adjourned on a MOTION by Robert Smith and a second by Gordon Walker at 9:55 a.m.**