

**PELICAN MARSH COMMUNITY DEVELOPMENT DISTRICT
REGULAR BOARD OF SUPERVISORS MEETING
November 19, 2014**

The Board of Supervisors of the Pelican Marsh Community Development District met on Wednesday, November 19, 2014, at 9:00 a.m. at the Pelican Marsh Foundation Building.

APPEARANCES:

Frank Garofalo, Chairman
Robert Smith, Vice-Chairman (Via Speakerphone)
Gordon Walker, Supervisor
Sally Dupler, Supervisor

ALSO PRESENT

W. Neil Dorrill, Dorrill Management Group
Dave Robson, District Engineer
Anthony Pires, District Counsel
John Vanover, Operations Manager
James Calamari, Access Control

ROLL CALL

Chairman Garofalo, Mr. Walker and Mrs. Dupler were noted to be in attendance with Mr. Smith appearing via speakerphone.

APPROVAL OF AGENDA

Chairman Garofalo noted that the agenda was revised, as Mr. Pires recommended that the status of the Vanderbilt Beach Road fence be taken out of the closed door meeting. Mr. Pires added that the reasoning for this was that there is no pending litigation, and the issue is still in the resolution process. **On a MOTION by Gordon Walker and a second by Robert Smith, the revised Agenda was then unanimously approved by the Board.**

SWEARING IN OF ELECTED SUPERVISORS

Mr. Dorrill administered the oath to the supervisors to serve as elected supervisors of the Pelican Marsh CDD for another term.

ELECTION OF OFFICERS

Chairman Garofalo indicated that he is a proponent of job rotation, and if anyone wished to serve as chairman they would have his full support.

At this point a MOTION was made by Gordon Walker and seconded by Sally Dupler to approve Mr. Smith's attendance via speakerphone and full participation in the meeting due to exceptional circumstances.

A MOTION was then made by Robert Smith and seconded by Sally Dupler to appoint Frank Garofalo to serve as Chairman for another term. The Motion passed unanimously.

A MOTION was then made by Chairman Garofalo and seconded by Gordon Walker to appoint Robert Smith as Vice-Chairman for another term. The Motion passed unanimously.

A MOTION was then made by Robert Smith and seconded by Gordon Walker to appoint Neil Dorrill as Secretary for another term. The Motion passed unanimously.

The Board members briefly discussed the statutory requirements as they relate to Mr. Walker serving as a temporary treasurer until a new Board member was chosen who may be more qualified. Mr. Pires advised that once a new member is selected by the Board, they would be able to elect him or her to that position if they chose to, and allow Mr. Walker to step down.

A MOTION was then made by Robert Smith and seconded by Sally Dupler to appoint Gordon Walker as Treasurer. The Motion passed unanimously.

The Board agreed that they would make the selection of the new Board member in January of 2015, and Mr. Pires added that he will be making a call to the appropriate office in Tallahassee to insure that the statutory scheme of 190 applies in this case. He will advise the Board at the

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December meeting of the results of his call.

The Chairman noted that as Mr. Walker will be gone in December and unable to attend the meeting by speakerphone, that it will be critical to have the three remaining Board members present, otherwise the meeting cannot be held.

APPROVAL OF MINUTES OF OCTOBER 15, 2014 MEETING

On Page 1, the spelling of the starred name at the bottom of the page is Carafa.

On Page 3, the letters NDM should read NDN in the sixth line.

On Page 4, in the last line of the first paragraph, the word “up” should be inserted after the word “gone”

On Page 7, on the third line and fourth line from the bottom, the meeting is the Hearing Examiner’s meeting, and Mr. Robson rather than Mr. Dorrill will be attending that meeting.

On Page 8, the letters “PDI” in the 6th and 15th lines should be changed to read “insubstantial change”.

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

FINANCIALS

The preliminary year ending September 30 financials were presented to the Board, and the audit will begin within a couple of weeks at Dorrill Management’s office.

The balance sheet showed \$1,082,000 at year end in cash, with a few due-froms, bringing that total to \$1,140,000 against \$19,000 in payables.

The income statement showed the year ending non-ad valorem assessment revenues at \$3,277,000 against a year-to-date budget of \$3,400,000. Those revenues were 96 percent of budget, and while \$114,000 was budgeted for discounts, \$123,000 in discounts were actually taken, but the overall difference was only approximately \$9,000. Mr. Dorrill added that \$9,000

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within budget on a \$3,400,000 budget was excellent forecasting on the part of the Board. On the expense side of the income statement, speaking to Mr. Smith's question the previous month, the \$476 year-to-date adjustment was a misclassification on supervisors' fees. There were some miscellaneous landscaping charges that had accrued, and staff has already made the correction, which will be shown on the final year end financials.

Mr. Smith asked about the \$1,800 paid out under the Board of Supervisors fees, and Mr. Dorrill noted that it was paid out, the difference being the untimely death of Mr. Fitzgerald, and the correction has been made to that amount as well.

Total operating expenses for the year, which speaks to the staff's ability to control costs, was \$2,960,000 against a budget of \$3,074,000, which is \$114,000 under budget on the expense side. Year-to-date capital spending was \$271,000 against a budget of \$283,000, which was a difference of \$13,000 under budget on capital. The total of all expenses including the reserves and the various cost share agreements at Tiburon was \$3,256,000 against a total budget of \$3,571,000. The final total including the associated contingencies was approximately \$300,000 under budget.

Mr. Dorrill noted that it was a particularly good job on Mr. Vanover's part in understanding and controlling his expenses while still providing a very high level of service.

Mr. Smith asked about the extra money spent this year for auditing fees, and if they would be budgeted for again in 2015. Mr. Dorrill indicated that they would not, that in 2014 there was some additional, one time event work required by the auditor.

Mr. Smith also asked about the \$104,000 under field management services which was \$2,500 to the good, and under landscaping there was \$1,600 to the good. He wondered how that had worked out as that is a line item with the most employees. Chairman Garofalo answered that one of the reasons was that they lost several employees, and there was a lag before they were replaced. Mr. Dorrill was not sure what that signified and will check it for Mr. Smith. Mr. Smith added that on Page 6 it showed access control under budget as well, and he did not

want the employees to somehow be underpaid. The Chairman reminded Mr. Smith that all these numbers are rounded up, which may be a small part of this issue. There also may be some residual carry over on wages year after year. In response to Mr. Smith's concern, Mr. Dorrill indicated that he was quite sure that the employees are getting what the District agreed to pay them.

Chairman Garofalo also noted that it was not too long ago that the District had a long list of liabilities, which have all disappeared at this point, and what is shown are standard items for the most part. He felt that the balance sheet was in very good shape, and he complemented the entire staff on their performance. Mr. Walker felt that this was an important sentiment that should be made in the form of a motion, and the Board agreed. **The Chairman expressed appreciation for the excellent work the staff had performed this year which gave the District a very good balance sheet, and this was seconded by Robert Smith and unanimously approved by the Board.**

On a MOTION by Robert Smith and a second by Gordon Walker, the financials were then unanimously accepted.

MANAGER'S REPORT

A . Open Supervisor Position

Mr. Dorrill advised the Board that six people have expressed an interest in serving, and a summary of these people was provided to the Board members along with their resumes and/or background information. As Mr. Walker will be out of town in December, the Board agreed that these candidates would be invited to the January meeting to introduce themselves and be prepared to answer questions on their background and interest in serving.

The Chairman felt that it was important to have these people attend the next couple of meetings so the Board members will have an opportunity to get to know them. All of them

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were present at the meeting, and Mr. Walker indicated that he felt they were very lucky to have such well qualified people applying for the position on the Board.

Mr. Smith suggested that there should be a deadline for applications, and the Chairman indicated that the original request was for applications to be received by the November meeting. Mr. Dorrill indicated that extending that deadline would be at the Board's discretion, and while not necessary, it can be done.

Mr. Pires indicated that the statute states that if no elector qualifies for a seat to be filled, and there is a vacancy, that the seat shall be declared by the Board effective on the second Tuesday following the election. He suggested that the Board should have a formal motion to declare that seat vacant effective as of November 18.

On a MOTION by Gordon Walker and a second by Sally Dupler, the Board agreed that the seat was vacant effective November the 18th, 2014.

After a brief discussion the Board members agreed that there was no need to extend the deadline for filing for the position, as there were six very good candidates who had already applied. No motion was needed for this decision.

The Chairman asked Mr. * ** Zoester a question about his resume being submitted at the request of Joe Paternoster, and Mr. Zoester indicated that this gentleman was the president of the Escada HOA, and Mr. Zoester sits on that Board. He was asked by the president of the HOA to apply for the position on the CDD Board, and he agreed to do so.

ATTORNEY'S REPORT

A. Status of Vanderbilt Beach Road Fence

Mr. Pires advised the Board that he, the Chairman and Mr. Dorrill had a conflict assessment meeting with the County staff in October. The discussions held were good ones and the meeting was continued until November 30. Mr. Pires will advise the County Manager by letter

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of this meeting and the fact that it will be continued to the end of the month. Mr. Pires added the meeting was very cordial and cooperative, and the County seemed more receptive to trying to resolve the issue.

Without going into detail, the Chairman advised those present that there were three sections that were in question. The fence is the main issue, but south of the fence between the fence and Pine Ridge it is CDD property that is maintained by Mr. Vanover. On the north side of the fence the property belongs to the County, and Mr. Vanover maintains that as well. The District and the County are working on a comprehensive agreement that will include and resolve all three of the issues.

The County agreed to get some quotes and prices on the various ideas discussed, and they indicated that they wished to meet with the CDD again. If the Chairman, Mr. Pires and Mr. Dorrill agree with the proposal, they will return to the Board for their approval before any action is taken. Mr. Pires clarified that under the Statutory scheme, if the conflict assessment meeting as continued reaches a tentative resolution among the participants, those tentative resolutions need to be brought back to the governing bodies, and the action taken has to be at the public meetings of those bodies. The public then will have the opportunity to give their opinions if they wish to.

Chairman Garofalo hoped that the maintenance of the County property will be taken over by the County, but when the final paperwork is presented by the County, they hopefully will be able to work through all the issues, and the Board will be kept advised.

B. Closed Door Session

Mr. Pires reminded the Board that the advertized Closed Door Session would be held following the meeting, and retained counsel for the insurance carrier will be in attendance. For the benefit of those present, Mr. Dorrill advised that under Florida law, the public is not eligible to

sit in on discussions with the attorney regarding litigation, and only the Board members, Mr. Pires and Mr. Dorrill can attend. This litigation regarding access control was brought against the District by a resident in the Tiburon community. A verbatim transcript is required, and is available at the conclusion of the litigation. To the extent that the Board has any follow-up direction to the staff, the meeting will reconvene after the Session. and go back into regular session.

ENGINEER'S REPORT

A. Request from SFWMD to Muirfield and Watercrest HOAs

Mr. Robson advised that he had communicated with Bill Marino from Muirfield and Jeff Randall from Watercrest relative to letters they had received from the South Florida Water Management District requesting them to become co-permittees. The lakes within those communities are master stormwater related, and the transfer of the permit to the Pelican Marsh CDD left out roadway inlets and pipes to the lakes and they are asking those above mentioned communities to become co-permittees with the CDD, and to indicate that those other features of the stormwater system are taken care of.

Mr. Robson clarified to Mr. Marino and Mr. Randall what parts they would be responsible for versus what the CDD is responsible for, and asked Mr. Randall to contact the SFWMD office in West Palm Beach to clarify the documents that he needs to submit.

B. Troon Lakes

Mr. Mintz contacted Mr. Robson to ask what it would take to get the CDD to be a co-permittee. In late 2013 they had received the transfer request document from the SFWMD. It was executed by their HOA president and they became the permittee. They wanted to explore what documents would be needed to have those lakes that are part of the master stormwater

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System be shared as co-permittees by the CDD and Troon Lakes.

Mr. Pires provided him with a document that is a WCI dedication to the Pelican Marsh CDD for those lake tracts, so in fact the CDD does have an equal interest in those master stormwater lakes. If authorized by the Board to do so, Mr. Robson will contact Sandra Gonzales at the South Florida Water Management District office and clarify what documents they require from the CDD for the Pelican Marsh District to become a co-permittee. Mr. Robson believes that technically that is the right approach, as the CDD clearly has legal rights to maintain and operate Lakes 44 and 46.

In response to the Chairman's question, Mr. Robson indicated that the CDD will be responsible to maintain the lakes and the lakes' interconnects, which is what the District does already.

Mr. Gorran asked that if the lakes in Watercrest and Muirfield are CDD lakes and not owned by those two neighborhoods, why then would they be co-permittees to something they don't own. Mr. Robson advised that the other portion of those stormwater systems, the roadway inlets and the pipes that carry the water from the road to the lake are not part of the CDD's legal right to operate. The Chairman added that is consistent with all private communities, in that they maintain the inlets and outlets.

Mr. Randall from Watercrest then indicated that he had been working with Mr. Robson and Mr. Vanover and had spoken with Mrs. Gonzales from the South Florida Water Management District. He was advised the previous day by Mrs. Gonzales that the documents he had submitted had been accepted, and the only outstanding item was that Mr. Randall sign the permit to request the operational transfer of the lakes to the Pelican Marsh CDD, which he indicated that he would do within the next day or two. He then noted that as it relates to Watercrest, they have done what they need to do for the operational transfer.

Chairman Garofalo asked if Lake 20 in Clermont was the last lake that did not have an operational agreement, and Mr. Robson advised that he would have to make sure of the

application number the lake was built under in order to answer that question. Mr. Pires noted that he believed that application related to Pelican Marsh Boulevard construction. The Chairman indicated that he brought that up because Mr. Vanover had been approached by Clermont, which wanted to make sure that they were on the Board's list for lake embankment repair, and they were advised that the District does not have access to that lake, and therefore cannot fix it. He added that this may be their incentive to get access for the CDD.

SUPERVISORS REQUESTS

A. Speakerphone Attendance at Meetings

Mr. Walker advised the Board that he found out that the Foundation had recently had a monthly meeting where a Board member had attended via speakerphone from China. He suspected that there was a very inexpensive mechanism to contact a person, and suggested that there may be a less expensive way for the Board of the CDD to have members join in the meeting on a speakerphone, and felt that a Board member should ask the Foundation how they arranged it. Mr. Pires suggested that an alternate approach may be if the absent member is calling in, the cell phone coverage can be modified to accommodate that. It was also suggested that an international card may be available, and Mr. Vanover will look into that on Mr. Walker's cell phone provider.

B. Seville Fountain

Mr. Walker noted that the fountain at Seville on the west end has been inoperative for quite some time, and Mr. Vanover advised him that this 20 year old fountain had its motor go out, and the new one should arrive by the first week in December. Mr. Dorrill noted that the fountain in front of the Ritz was also out this morning, and Mr. Vanover indicated that they had to let a component dry out, and it should be up and running at this point.

C. Ventura Fence Update

Chairman Garofalo indicated that they have been advised that the Board at Ventura is finalizing their letter to their residents for them to select what kind of fence they want. If they want to take the entire fence down, Mr. Vanover thinks that he can do it in the April time frame.

PUBLIC COMMENT

There were no comments received from the public at this point.

RECESS

With the information that the next meeting would be held on December 17, Mr. Dorrill asked for a motion to recess for the Executive Session.

On a MOTION by Gordon Walker and a second by Sally Dupler, the regular meeting was then recessed at 9:56 a.m.

RECONVENING

The meeting was then reopened, and Chairman Garofalo read the following into the record:

“At this time we are going to commence the attorney/client session between the Pelican Marsh Community Development District Board of Supervisors and our attorneys. The session will be closed to members of the public under Section 286.011(8) of the Sunshine Law. A government body may meet in private with its chief executive officer and its attorneys to discuss certain matters relating to pending litigation.

The subject matter of the attorney/client session must be confined to settlement negotiations or strategy sessions related to litigation expenditures concerning pending litigation in which the District is presently a party, Style: *** Horgate Prats and Lisa Prats vs. Tiburon Estates Homeowners Association et. al, Collier County Circuit Court Case 2014-CA-2090, 20th Judicial Circuit, Collier County, Florida.

The Session will be recorded by a certified court reporter, who is directed to record the times of commencement and termination of the session, the names of all persons speaking and all discussions and proceedings. Upon conclusion of this litigation a transcript of the session will be made a part of the public record. The estimated time of the session is approximately one and one half hours.

The following persons will attend the closed session: Neil Dorrill, Chief Executive Officer, Anthony Pires, District Counsel, Zachary Corbin, Special Counsel, Supervisor Garofalo, Supervisor Dupler and Supervisor Walker.

Let the record reflect that pursuant to the requirements of the Sunshine Law, notice has been given of the time and date of today's closed session as well as the names of the participants as evidenced by a copy of the notice published on November 12th, 2014, in the Naples Daily News. The time is now 10:01."

The door was then posted, and the closed door session commenced.

The Closed Door Session was then held.

RESUMING OF OPEN SESSION AND ADJOURNMENT

The open session of the meeting then resumed, and the Chairman noted once again that a sealed record of the proceedings will be submitted to the Clerk, and will be made part of the public record at the conclusion of the litigation.

An attempt was made to contact Robert Smith on both his home and cell phones but he was unable to be reached. Mr. Pires indicated that no direction was needed or being asked for in open session.

On a MOTION by Gordon Walker and a second by Sally Dupler, the meeting was then adjourned.