

**MINUTES OF MEETING  
VISTA LAKES  
COMMUNITY DEVELOPMENT DISTRICT**

The regular meeting of the Board of Supervisors of the Vista Lakes Community Development District was held Wednesday, February 11, 2009, at 10:00 a.m. at the offices of Leland Management, 5955 T.G. Lee Boulevard, Suite 300, Conference Room 3002, Orlando, Florida.

Present and constituting a quorum were:

John Rose	Chairman
Dr. Harold G. Banks	Assistant Secretary
Ron Cumello	Assistant Secretary

Also present were:

Gary L. Moyer	Manager: Moyer Management Group
Scott Clark	Attorney
Barry Roy	Engineer: Bowyer-Singleton
Gary van der Laan	Leland Management

**FIRST ORDER OF BUSINESS**

**Roll Call**

Mr. Moyer called the meeting to order and stated all Supervisors were present with the exception of Mr. Holihan and Mr. Shelton.

**SECOND ORDER OF BUSINESS**

**Organizational Matters**

**A. Oath of Office for Mr. Jim Shelton**

**B. Consideration of Resolution 2009-1, Election of Officers**

Mr. Moyer stated we will table these items to the next meeting as Mr. Shelton is not present.

Mr. Rose asked is Mr. Shelton coming back? I believe he missed three or four meetings.

Mr. Moyer stated I think this is the second meeting he missed; the last one and this one.

Mr. Cumello stated he is on vacation.

Mr. Moyer stated Mr. Holihan expressed an interest to continue serving on the Board, but as I explained last month, he has a conflict with another public Board that he serves on. Mr. Cumello is out of town a great deal of time, but he is in town for these meetings. I do not know if there is another day of the week when he is available.

Mr. Cumello stated I have some flexibility during the second week of the month.

Dr. Banks stated Thursday morning works well for me.

Mr. Cumello stated I am fine with Thursday morning.

Mr. Clark stated Mr. Moyer and I occasionally have a Mount Dora meeting on the second Thursday.

Mr. Moyer stated it would probably be easier to move Mount Dora.

Mr. Rose stated Thursday mornings are alright with me.

Mr. Moyer stated with Board consensus, we will send out a revised notice changing future meetings from the second Wednesday to the second Thursday. Next month we will be meeting at the Vista Lakes Community Center.

**THIRD ORDER OF BUSINESS**

**Approval of the Minutes of the January 14, 2009 Meeting**

Mr. Moyer stated each Board member received a copy of the minutes of the January 14, 2009 meeting and requested any additions, corrections or deletions.

On page 11, where Dr. Banks responded "*no one signed them*", I believe this was said by Mr. Moyer.

On MOTION by Dr. Banks seconded by Mr. Cumello with all in favor the minutes of the January 14, 2009 meeting were approved as amended.
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**FOURTH ORDER OF BUSINESS**

**Manager's Report**

**A. Financial Statements**

Mr. Moyer stated through December 31, 2008 we collected 78 percent of our assessments. This is in line with what we normally receive during this time frame. There are no unusual expenses. The administrative expenses were slightly over budget, primarily due to the collection fees. When you pro-rate the budget, it is \$10,000 to the negative, however, this will equalize itself as you go forward.

**B. Invoice Approval #103**

Mr. Moyer stated Invoice Approval #103 was provided to the Board.

Mr. Cumello asked have we seen any impact from the new electricity rates? I noticed the amounts on the bills seem to be high, but I did not perform a month-to-month comparison.

Mr. Moyer responded I will have our accountant put a comparison together for you.

Mr. Rose stated we have not felt the impact yet, but we will next month. This is what we usually run on a monthly basis.

Mr. Cumello asked did we get clarification on the invoice from the Vista Lakes Community Association where one of their employees was paid twice?

Mr. van der Laan responded this was related to the insurance for one of the maintenance workers. It turned out that the payroll service had been under billing during the course of the year and at the end of the year, they realized there was a shortfall. They made up this shortfall in one month, which is the portion you saw on the invoice.

Mr. Rose asked is this a new employee?

Mr. van der Laan responded no. This employee has been employed for several years, but apparently the rate on the insurance had changed early in 2008 and they had not made the adjustment in payroll deductions.

Mr. Rose asked did they do this for all of the other employees?

Mr. Cumello responded there is only one other employee.

Mr. van der Laan stated the other employee started in 2008.

On MOTION by Mr. Cumello seconded by Mr. Rose with all in favor the financial statements for the period ending December 31, 2008 and Invoice Approval #103 dated February 2, 2009 in the amount of \$79,354.60 were approved.
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### **C. Discussion of Action Item List**

Mr. Moyer stated I provided an action item list to the Board. Some of these items are ongoing. In regards to the one foot strip adjacent to the wall that we discussed last month, according to the minutes of a meeting held one year ago, the Board decided to handle the requests from people not connected to the wall through the HOA and had them sign a Joinder and Consent for the easement. The residents already connected to the wall, refused to sign these documents because they were not released by the Army Corps of Engineers and did not want to have any responsibility for that one foot strip until the Army Corps of Engineers released the property. There was also pending litigation with Morrison. I asked Mr. van der Laan, whether any of those situations had changed and apparently the Army Corps of Engineers is not issuing any more individual releases.

Mr. Cumello stated I believe they have given releases to the homeowners in Warwick.

Mr. van der Laan stated but that would not have included the strip of CDD property.

Mr. Cumello stated they would have looked at whoever owned the plot. Maybe the action item should reflect no further action until we get the CDD property released from the Army Corps of Engineers.

Mr. Moyer stated we will put this on the action item list for next month. In the meantime, I will send a letter to the Army Corps of Engineers.

Mr. Cumello stated we were talking at the last meeting about sending a reminder letter to the residents.

Mr. Moyer stated correct.

Mr. Cumello stated I pulled what was filed with the County and found a letter signed by Mr. Rose. There was an attachment, which was the Consent Agreement each individual had to sign. Are we saying we want to hold off on sending reminder letters?

Mr. Moyer responded it is up to the Board.

Mr. Cumello asked did Mr. Clark have a chance to review the Consent Agreement?

Mr. Clark responded I did not think the Board wanted me to do anything after the last meeting.

Mr. Moyer stated I was going to write the letter.

Mr. Cumello stated I think we should still write the letter to keep them on notice.

Mr. Moyer asked can I have a copy of the Consent Agreement?

Mr. Cumello responded I just printed it out this morning.

Mr. Moyer stated Mr. van der Laan had several items to follow up on.

Mr. van der Laan stated we already discussed number 3. I sent a copy of the Maintenance Agreement with Sullivan Properties to Mr. Clark's office. This was for Passaic Parkway. I reported on number 7 in my management report. I met with the lake maintenance and landscape maintenance companies regarding the algae in the water.

Mr. Cumello asked do they have a solution to the algae problem?

Mr. van der Laan responded no. The suspicion at this point is that the algae was caused by fertilizer flowing into the lake. The Vista Lakes CDD side does not get fertilized as there is Bahia grass. We suspect they are putting fertilizer down on the Central Park side because they have St. Augustine that runs down to the water's edge. When they put the fertilizer down, it runs into the water. The lake maintenance company is going to try some different treatments to try to

counteract the fertilizer. We contacted Central Park and they do their maintenance in-house, which also leads me to suspect we might have a fertilizer problem. We made them aware of the problem. Currently there is no algae in the water. It was probably a combination of the weather and the lake maintenance company treating for it. However, there is no assurance that it will come back. Servello & Son, the landscape company for the CDD is allowing a slight buffer of grass to grow 12 inches from the water on all CDD property, to keep anything from flowing out. This is only on CDD property and will not affect the Central Park side, which they suspect the problem is coming from. I had the fountain company come out to check the aerator and it is moving the volume of water it is supposed to in order to keep the oxygen moving through there. It is working at the capacity it is supposed to and is functioning. They checked it and we are waiting to see if the changes have taken affect.

Dr. Banks stated at the end of Mockingbird and Passaic Parkway, there is a triangle that belongs to Mockingbird, which is not being mowed. I wonder how this should be handled.

Mr. van der Laan stated I can speak to Sullivan Properties, the Management Company.

Dr. Banks stated when their building is completed, we are going to do that, but right now, it does not look nice.

Mr. van der Laan asked do you want me to make that offer to them for you?

Dr. Banks responded yes.

Mr. Moyer stated I do not know if Mr. Clark wants to report on the SJWMD letter he received.

Mr. Clark stated I will take this under my report.

Mr. Moyer asked are there any other questions under the action items? Not hearing any,

## **FIFTH ORDER OF BUSINESS**

### **Attorney's Report**

Mr. Clark stated I reported at the last meeting that we were still waiting on the letter from St. Johns River Water Management District. However, when I went back to my office, the letter had finally arrived. I am satisfied with the letter for our purposes as the Water Management District clearly gives permission to the Army Corps of Engineers to undertake certain activities in the District conservation areas. They looked at the specific proposals with the Army Corps of Engineers and said they could access those areas as it did not raise any permitting issues. However, they required the Army Corps of Engineers to restore the property to its natural grade after they complete their work, although there is no requirement for re-plantings. I think the

effect of the letter would be to waive any claim that they may have to come back to us and ask us to do more plantings. They have indicated this is a health, safety and welfare issue and understand it needs to go forward. The issues I had in my mind about inter-agency conflict and any finger pointing that might occur as a result of this are now resolved. There was another meeting on January 27, which Mr. Cumello attended and he may want to comment on. I read the PowerPoint presentation they provided and it looked like more of the same. They submitted some dates on when they plan to conclude their on-site work, which is scheduled for June of 2009. They will tentatively start writing their reports in 2010.

Mr. Cumello stated we generally have these meetings every two months. The Army Corps of Engineers gives a status report to the Restoration Advisory Board and any members of the public who attend. The review is fairly high level from the standpoint of where they were in getting Access Agreements from property owners. There are still several hundred agreements missing and if they do not receive an Access Agreement for these properties, their plan is to pass them over. They discussed a lot about the work they had to do in these conservation areas and the fact they received this letter and were waiting for the dry season or for the conservation areas to dry up before going back in there. There was no discussion on what happens after they cut all of these transects as far as whether or not they were going to block them off.

As we discussed before, they found material in one of our conservation areas and have left it there. They are waiting for the dry season to go back in there. Their plan is to complete this round of their investigation by the Spring in the form of a feasibility study, and start writing a recommendation on what to do next. They will lay out the plan and whether they need more funding to do additional research. We discussed many issues at these meetings, but there are some that still need to be addressed. This is a slow process and there is very little information coming out of the Army Corps of Engineers. They will be publishing a report in the next month, encompassing several hundred pages on the time critical activity they did back in 2007, which was Odyssey Middle School, Warwick, Tivoli Gardens and a small portion of Mockingbird. This will show what they found on those properties. We asked them where they were on their soil and water testing. They claim to have taken a number of samples, but they are not giving any results on what they found.

I was approached by a high school student two to three months ago who wanted to do a project on Mercury contamination. He did his testing in Vista Lake, which surrounds Warwick

and Carlisle and used some control sites outside of Vista Lakes on Goldenrod. His approach was to capture Crayfish, dissect them and send them to a lab to see what the level of Mercury was. He said the right approach was to use Bass, but they are harder to catch. He published a report and provided me with a copy. He worked with the Florida Department of Environmental Protection (FDEP) in their Melbourne lab. He came back with inconclusive results, but there was a high amount of Mercury in the Crayfish in this lake as well as the lake on Goldenrod by Wal-Mart, which is just south of the toxic yard that the Army Corps of Engineers found. I forwarded this information to the Army Corps of Engineers and to FDEP and asked them what they wanted to do as far as their investigation. There could be an issue of Mercury if his tests are valid.

Dr. Banks asked which lake on Goldenrod?

Mr. Cumello responded I think this was the lake closest to Wal-Mart. We provided this information to the Army Corps of Engineers and they have responded. They forwarded the report to their contractor to see if they intend to do this type of testing. I do not know whether or not the test is valid because this is a high school student, but he had the assistance of FDEP.

Mr. Roy asked is this also a retention pond?

Mr. Cumello responded yes. He tested six ponds, including the one by Lee Vista Square by the Lennar property on 417.

Mr. Roy asked did he test any lake that does not receive any stormwater runoff?

Mr. Cumello responded I do not know. It was just a piece of data as far as I was concerned. I provided this report to the Army Corps of Engineers to see if they could incorporate some type of testing and either validate it or dismiss it. They have been fairly quiet about what type of soil and water testing they intend to do and what their results were. I raised the issue on whether or not at some point we want to do our own testing on our lakes to protect ourselves as we have people who fish in these lakes. I do not know whether or not they eat the fish.

Dr. Banks stated they throw them back.

Mr. Clark stated it would be nice if the Army Corps of Engineers as part of their investigation would question whether or not there was a water quality problem.

Mr. Cumello stated I will forward the emails, the report from the high school student and the response from the Army Corps of Engineers to Mr. Moyer so he can provide them to the

Board. At the last meeting, we had a representative from the State Environmental Protection. We asked him when they were going to get involved and explain the process for all of this testing to the RAB and whether they were validating the results coming out of the Army Corps of Engineers. They agreed to bring someone to a future meeting to discuss how all of this works and what the standards are. It is not going to be at the next meeting because the Army Corps of Engineers has not provided any results on their soil and water testing. We discussed waiting until the following meeting so we have some actual numbers to look at. I propose we keep an open mind. If the Army Corps of Engineers comes back and does additional testing to validate or disprove what this testing shows, then so be it or we may be in a position where we may want to consider spending money to test the water quality.

Mr. Clark stated Mr. Moyer forwarded an Easement Agreement to me. I did not have the benefit of looking at a survey, but I did look at the legal. This is an easement in favor of the District and the developer and authorizes the construction of ingress/egress and utility improvements. It identifies the *Grantee* as the District and the developer so they can maintain those areas in a manner comparable to the rest of the community. If they do this, they can invoice the maintenance cost to the *Grantor*, which is Mockingbird Orlando, LLC. The question we were discussing was the level of maintenance.

Mr. van der Laan stated this came about because we had been requesting this reimbursement from Mockingbird for two to three months and had not received it. I just presented Mr. Moyer a check this morning that we received for the 2007 reimbursement from Mockingbird and they informed me the 2008 reimbursement was on its way. For 2009, they agreed to reimburse quarterly for the maintenance.

Mr. Clark stated apparently no action will be necessary at this point.

Mr. van der Laan stated the checks are coming in.

Dr. Banks stated now we have a problem with the County about meters and the area it takes to put those meters in. Our Attorney has re-written the agreement with them so they can only come in to install the meters. The number of easements over there have been incredible. The Electric Company, who has an easement across our property, wants another easement on the existing easement across the front of our property. This is the craziest thing I have ever seen.

Mr. Roy stated the strip of grass facing your property was intended to be part of this maintenance area to be reimbursed for. I believe it is being cut.



Mr. van der Laan stated the triangle at the end should also be cut.

Mr. Roy stated that is part of the reimbursement.

Mr. Clark asked do you have a legal description or drawing to attach to this agreement?

Mr. Roy responded yes.

**SIXTH ORDER OF BUSINESS**

**Engineer's Report**

Mr. Roy stated I received an email from Newland Communities regarding some watering issue notices they received.

Mr. Moyer stated I received one this morning.

Mr. Roy stated they are still sending them to the Colonial address.

Mr. Moyer stated we are going to contact them and inform them any future notices need to go directly to Mr. van der Laan.

Mr. Roy stated we could not tell from the pictures what was being watered.

Mr. van der Laan stated they were from December. It is going to be tough to find out if we had an issue.

Mr. Cumello asked what is the violation for?

Mr. Roy responded watering on an off day. We are only permitted to water two days a week.

Mr. van der Laan stated it may have been when Servello & Son was testing the system. They said someone needed to be present at the location we are testing for 10 minutes.

Mr. Roy stated they are strict about someone actually being there.

Dr. Banks asked is it true even if you have cisterns, you can only water on two days?

Mr. Roy responded yes.

Mr. Cumello stated I noticed they are cutting another entranceway through the right-of-way at the Vista Palms retail site on Narcoossee and Lee Vista Boulevard. I was wondering if we had any issues with them cutting our irrigation lines. I know this is the City right-of-way, but generally they cause some damage.

Mr. Roy stated the last time they cut through, we were trying to get reimbursement for some of those repairs or have them do the repairs. There may be an issue there.

Mr. Cumello stated Mr. van der Laan needs to be aware that they have a bulldozer cutting through the road and we may lose our lines again. The action would be to bill them if there is any damage to our lines.

Mr. van der Laan stated I spoke to Sullivan Properties about this. I have a good relationship with them now that we are going through the Mockingbird reimbursement. I do not think we are going to have any problems with them. They have contracted with Servello & Son to do the irrigation repairs and should be aware of what is happening in that process.

Mr. Rose stated there are three trees blocking the entrance. I can see them either removing those trees or asking us to remove them. Can they just remove them without checking with us first?

Mr. Roy responded they can if they are within the easement. We had some Oak Trees along the right side of Narcoossee in front of CVS and when the County did some work there, they pulled all of them out. I contacted the County because we are going to have the same issue on the other side and in the center island with the Magnolias when they widen Narcoossee and told them to let us know when they are starting this work so we can remove them. They did not tell us before they removed the Oaks. They have the right to remove them, but if they let us know before they do so, we can move them ourselves.

Mr. Cumello stated we maintain the north and south side of Narcoossee. The right-of-way belongs to the City, but we maintain it. Is there any way we can deed it over to the other commercial entities and get rid of all the costs associated with it?

Mr. Rose responded we maintain between the road and sidewalk as well.

Mr. Cumello stated I am talking about from Pembroke and Waverly Lakes going west. There never used to be commercial development there but, there is commercial development now on both sides. Why should we have to pay for maintenance, landscaping, irrigation and fertilization for those commercial areas? We should ask the POAs to do all of this because this is their property and they are not part of the CDD.

Mr. Roy responded the original intention was to maintain the integrity of the landscaping all the way out to Narcoossee, because that was the entrance into Vista Lakes. However, like you are saying, it is all commercial now and they may choose to maintain it at its current standard. They can do whatever they want. It is City right-of-way and they have a Street Tree Ordinance. They can remove all of the landscaping and put in Bahia.

Mr. Cumello asked "*they*" being the City?

Mr. Roy responded yes. The City or the people taking over the maintenance may just let it all die because it is not theirs. We have to enter into an agreement. We cannot tell them it is

now theirs to maintain. The agreement would need to have a certain standard of maintenance. However, regardless of what the agreement says, you will end up getting what they give you.

Mr. Cumello asked should we make an attempt to go to these property owners and tell them we are paying for the maintenance and would like to have an agreement with them where either they contribute to the maintenance or take over the property and hold it to some standard?

Mr. Rose responded I think our first step should be to see if they are willing to share in the cost, because that is one of my concerns. They can say "*We can maintain however we want*". We should control the maintenance by coming up with a dollar amount to provide to them.

Mr. Cumello asked has this been done before?

Mr. Moyer responded if Mr. van der Laan can get Servello & Son to give us an idea of how much they plan on expending, then we will contact the parties. We will maintain control, but ask them to pay the cost and tell them they are getting the benefit of a good rate based upon a much larger area than they would get if they did it themselves.

Mr. van der Laan asked can we take the same approach with the owner of the north and south side of Narcoossee, but also the portion going down to Publix and the lake banks?

Mr. Cumello responded the lake banks are part of the CDD.

Dr. Banks asked do they pay the CDD?

Mr. Moyer responded yes. They receive a tax bill. You are referring to the areas that are not in the District.

Mr. Cumello stated I am referring to the area west of the two lakes where the fountain is. We should inform Sullivan about their property on the South side and whoever owns the strip mall to CVS on the north side that the community has been maintaining while they get the benefit.

Mr. Rose stated we should send them an invoice.

Mr. Moyer stated we will try that.

Mr. Cumello asked who owns Vista Palms?

Mr. Roy responded Yeager owns the property. Sullivan is the management company.

Mr. van der Laan stated I will get a breakdown from Servello & Son and provide to Mr. Moyer.

Mr. Rose asked do we know how many POAs are involved?

Mr. Roy responded I believe only two are involved.

Mr. Rose stated the CVS is on one corner, then the gap and then the strip mall.

Mr. Cumello stated there may be three POAs.

Dr. Banks asked is the Vista Lakes POA already involved through their property taxes?

Mr. Roy responded that is what I was told.

Mr. Rose stated it was included in the allocation.

Mr. Cumello stated I believe the commercial properties are calculated based on square footage.

Mr. Rose stated correct.

Mr. Cumello asked are we paying for the electric for the lights on Lee Vista Boulevard?

Mr. Rose responded yes. We pay the City of Orlando \$18 per month per light because these are the shoebox lights instead of the ones they would have installed.

Mr. Cumello stated I would like to add the cost of electricity to this invoice. They need to know what the community is paying to keep the aesthetics. They may say no, but they need to understand. We will figure out what to do if they say no. Do we have to pay for the electricity forever? At some point can we tell the City we do not want them anymore?

Mr. Clark responded that is a function of the agreements. I will look at them if the Board wants me to.

Mr. Roy stated I believe a Municipal Service Taxing Unit was set up for the street lighting. The upgraded light fixtures are a portion of that fee. However, there is an electric fee that the District is paying for the frontage along Lee Vista Boulevard.

Mr. Cumello asked what about Chickasaw?

Mr. Clark responded you would think it was a benefit, except they could expand it to include those other properties as they develop.

Mr. Cumello stated this is a hidden tax to the community, because you can live in other communities where you do not pay for the street lighting because you have a CDD.

Mr. Moyer stated if they have street lighting, they may be in a Municipal Service Taxing Unit, which allocates the cost of the street lighting to the property owners. I am not sure whether general ad-valorem taxes pay for street lights.

Mr. Roy stated I believe this was set up as a Taxing District for that section of road.

Mr. Rose stated we pay for the neighborhoods as well.

Mr. Cumello stated I know. It is disgusting. I will personally go up to Tallahassee the next time someone wants to establish a CDD and explain why it does not benefit the public.

Mr. Moyer stated it depends on how you define “public”. Not to be argumentative, but the theory is that growth pays for growth and those costs do not fall on the people already living there. That is why we establish CDDs and these Municipal Service Taxing Units. It is mainly for the larger general public, although the people who live in these types of communities clearly pay more, especially if there are upgrades that are not standard that a municipality or County would pay for.

Mr. Cumello stated I was on the Ad Hoc Transportation Committee. You have impact fees, fair share allocations and CDDs. I just do not buy those arguments.

Mr. Clark stated there is a person at the City who runs the street lighting program. In my mind, the theory that supports that is the benefit. If other properties develop and start to receive the benefit, you can make a suggestion to the people who run that program that for your next year, they should take a look at the map and make it match the benefit. The reality of how things get created is not that simple, but if you can get someone’s attention, maybe you can get somewhere.

**SEVENTH ORDER OF BUSINESS**

**Community Association Manager –  
Agronomist Report**

- A. Activity Report**
- B. Agronomist Report**

Mr. van der Laan stated the monthly Activity and Agronomist Reports were provided in the Board’s agenda package. I have nothing further to report.

**EIGHTH ORDER OF BUSINESS**

**Supervisors’ Requests**

There not being any, the next item followed

**NINTH ORDER OF BUSINESS**

**Audience Comments**

There not being any, the next item followed

**TENTH ORDER OF BUSINESS**

**Adjournment**

There being no further business,

On MOTION by Mr. Rose seconded by Dr. Banks with all in favor, the meeting was adjourned.

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Gary L. Moyer  
Secretary

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John Rose  
Chairman