

**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 on Wednesday, July 9, 2008, 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:

Randy Holihan	Vice Chairman
Ron Cumello	Assistant Secretary
Dr. Harold G. Banks	Assistant Secretary
James Shelton	Assistant Secretary

Also present were:

Gary L. Moyer	Manager: Moyer Management Group
Scott Clark	Attorney: Clark & Albaugh
Barry Roy	Engineer: Bowyer-Singleton
Lee Smith	Holland & Knight
Gary van der Laan	Leland Management
Chris Worth	Resident

FIRST ORDER OF BUSINESS

Roll Call

Mr. Moyer called the meeting to order and stated all Supervisors were present with the exception of Mr. Rose and Dr. Banks.

SECOND ORDER OF BUSINESS

Approval of the Minutes of the June 11, 2008 Meeting

Mr. Moyer stated each Board member received a copy of the minutes of the June 11, 2008 meeting and requested any additions, corrections or deletions.

Mr. Cumello stated on page four, in the seventh line from the top, I asked why the supervisors were on the payroll. I do not recall saying this, but I do not see anyone else saying this.

Mr. Moyer asked do you mind taking ownership of this statement?

Mr. Cumello responded no.

Mr. van der Laan stated Mr. John Dougherty from Servello & Son was not present.

Mr. Cumello stated on page 12, where I responded “CDDs do not favor the residents, the word “community” should be “developer”. At the top of page 15, “Newland Homes” should be “Newland Communities”.

On MOTION by Mr. Shelton seconded by Mr. Holihan with all in favor the minutes of the June 9, 2008 meeting were approved as amended.

THIRD ORDER OF BUSINESS

Manager’s Report

A. Financial Statements

Mr. Moyer stated the financial statements were provided to the Board. In regards to the special assessments through the end of May, we were \$120,000 under-funded meaning residents had not paid their tax bills. We received an update yesterday from the Tax Collector who informed us they will be issuing a check to us for \$141,148. This means we are 99 percent collected on our assessments. This is good news.

Mr. Cumello asked does this cover both the maintenance and bond assessment?

Mr. Moyer responded yes.

Mr. Cumello stated we are dealing with somewhere around \$240,000 between the two. Correct?

Mr. Moyer responded according to the Balance Sheet, the total outstanding on the bonds is slightly over \$8,000 for the 2007 A-1 and A-2 and are under-funded for the General Fund. For the most part, we expect funds to trickle in the next couple of weeks. However, I feel much better about where we are now than last month.

Mr. Cumello asked is this because they sold the tax certificates?

Mr. Moyer responded yes.

B. Invoice Approval #96

Mr. Moyer stated Invoice Approval #96 was provided to the Board. Under the Bank Reconciliation, there are literally pages of checks the District has written to a variety of individuals.

The record will reflect Dr. Banks joined the meeting.

Mr. Moyer stated the reason for this is when we certified our non-ad valorem assessment roll after we refinanced the bonds last year, the Tax Collector never updated the file and sent out

what was levied the year before. This means we over assessed and are rebating to all the people who paid too much. This is why we have all of those listings.

Mr. Cumello asked is it alphabetical?

Mr. Moyer responded yes.

Mr. Cumello stated the reason why I am asking is because I received a check. I was curious to know if the amount of the check was 100% or if we have more checks coming.

Mr. Moyer stated you received a check. You are probably on a previous check run. This is the latest one. I will check on this.

On MOTION by Mr. Holihan seconded by Mr. Shelton with all in favor the financial statements for May 31, 2008 and Invoice Approval #96 in the amount of \$96,292.57 were approved.

C. Questions and Comments on the Proposed Fiscal Year 2009 Budget

Mr. Moyer stated I presented a budget to the Board reflecting the revisions made from the last meeting. This is in preparation for your August public hearing on the budget adoption. Mr. van der Laan, did you have a chance to go through this?

Mr. van der Laan responded yes.

Mr. Holihan asked what is the *Miscellaneous Assessment Collection Fee*?

Mr. Moyer responded this is the amount going to the Property Appraiser to prepare the Assessment Roll.

Mr. Cumello asked in regards to the current budget, do we anticipate having any carry over?

Mr. Moyer responded the current budget is balanced and we will not have any carry forward in this upcoming budget. We anticipate starting the fiscal year with a balance of \$106,000, but this money will be re-allocated into various line items in accordance with our discussions last month.

Mr. Cumello asked are you anticipating revenue for the fiscal year 2009 budget to balance the 2009 budget?

Mr. Moyer responded yes, but we will not have to raise assessments. We are levying exactly the same amount as last year.

Mr. Holihan stated the Board had a conversation last month about the reserves. At this point it looks like the reserves are \$21,000 less than the reserves for 2008. Was it prudent for us to replace the items those reserves were set aside for?

Mr. Moyer responded no. It was based on a Reserve Study, which identified and recommended certain funding levels. This is what this study reflects. Mr. Worth brought to my attention the resurfacing of Chickasaw and which roads were the District's responsibility and which were the City/County's responsibility. Our Reserve Study identified the roads we needed to set aside monies for. However, if they are truly City owned roads, the City should be responsible for the maintenance. You are all paying taxes to Orange County and the City of Orlando and they should be providing services to you. Therefore, for the purpose of this budget discussion, we can leave the reserve where it is, but if our Reserve Study is over-stated because we are setting aside monies for road resurfacing, we need to address this at one of these meetings. I need Mr. Roy to walk us through this and I was hoping he would be here today to say these were all City roads. Are the roads in Gentry private or owned by the CDD?

Mr. van der Laan responded the only CDD owned roads are in Gentry Park.

Mr. Cumello stated and the POA south of Lee Vista.

Mr. van der Laan stated Mr. Cumello is referring to the commercial road south of Lee Vista.

Mr. Moyer stated I need to re-circulate the Reserve Study to the Board, because if this is the case, we are probably over-funding reserves, although, we are only putting \$80,000 in the budget. The question is whether we are putting enough money into reserves.

Mr. Cumello stated I recall there being a four percent escalator each year based on the way the Reserve Study was set up.

Mr. Holihan stated a four percent escalator when you have rising oil prices, is fairly low. When you look at the impact oil has on the suppliers, you start to question whether or not we have enough money in reserves. The best thing to do is to re-circulate the Reserve Study. I want to make sure if we are approving this budget, we are comfortable with the amount in the reserves. This is always a sensitive item with the general public.

Mr. Cumello stated I believe we discussed when we were going to bring back the Advisors to take a look at updating the reserves. It may be another year from now. This is the opportunity to adjust the reserves based on actual costs.

Mr. van der Laan stated part of the issue ties back to the report we will be receiving from Mr. Roy regarding what the CDD funds were used for. I recall when this Reserve Study was done there were questions on what we were reserving for and whether or not it was for property owned by the CDD. I do not believe Chickasaw was factored in, but we can certainly take a look at it.

Mr. Holihan stated if we are banking on the City or County to cover some of those costs, it would be prudent for one of you to confirm with the City and County that they are going to do this and see where it is on their maintenance schedule.

Mr. Moyer stated maybe Mr. Worth can give you an update because he has been actively involved in this process.

Mr. Holihan stated their maintenance schedule will impact it. What you do not want is to have this on their schedule for 10 years out if it needs to be done in five years.

Mr. Cumello stated as a member of the Transportation Committee, I can tell you the five year plan does not include Chickasaw.

Mr. Worth stated I am a resident of Newport and I have been having continued communication with the City on the state of Chickasaw north of Lee Vista Boulevard through the Newport Subdivision; but not on the roads inside the subdivision. An Engineer came out and said the road was in dire need of repair. My concern as a resident is the CDD documents state the CDD fees cover road repair and maintenance. I informed the City not only am I paying taxes, but I am paying an assessment to the CDD for roads and I wanted to know if there was any way we could expedite getting this onto a plan. This means we need to talk to Mr. Moyer about what monies are going to be accumulated and if the residents are being assessed for road repair and maintenance as well as the groundwater running off of those roads. I also wanted to know whether the CDD could influence the City. This is why I am here today. Mr. Shelton lives on Melrose and goes down this road every day. You can see the potholes and severe cracking. It is unlike any other section of road within Vista Lakes.

Mr. Shelton asked why is the CDD concerned about Chickasaw? Is it because of the property beside it?

Mr. Worth responded I am talking about the road itself.

Mr. Shelton asked what does the CDD have to do with a City road?

Mr. Worth responded this is what I am trying to understand. Within the CDD documents, it states the CDD is responsible and collects fees for maintenance of infrastructure and roads within its purview. Is this correct?

Mr. Moyer responded as Mr. van der Laan indicated, it is for specific roads not all roads. Just roads under the ownership of the District, which is limited.

Mr. Worth stated obviously it is not clearly spelled out.

Mr. Moyer asked are you getting this information off the website?

Mr. Worth responded yes.

Mr. Moyer stated then we need to update it.

Mr. Worth stated if it is just Gentry Park's roads, it needs to be listed. It generically states monies are being collected for this purpose and includes maintenance and drainage from the original construction. Mr. van der Laan said those roads were constructed by the CDD and are part of the bond. Those roads were actually constructed by the CDD and conveyed over to the City.

Mr. Cumello stated I do not think Chickasaw was constructed by the CDD. Lee Vista was not because there was a debt service on Lee Vista according to the plats. I think Chickasaw is also a city road. The City has a \$1 million plan for road improvements. They may be currently doing maintenance, but this is not in the plan to do a major overhaul.

Mr. Worth stated this is what I am trying to encourage. There are many assumptions I am asking the CDD to investigate, such as whether or not the CDD was responsible for the contract for this stretch of road, who the contractor was, what this contract consisted of and whether this contractor has an obligation to repair and maintain a road less than five or six years old. The City Engineer said the product used is inferior and the road is in dire need of resurfacing. They are trying to put this road onto a schedule. Any resident would probably have this exact same opinion of what the CDD is collecting monies for. My point is if I am paying the City for this road and paying the CDD for road repairs and maintenance, there needs to be an understanding of how we can get the road repaired together.

Mr. Moyer stated I will look at the website. Mr. Cumello, Mr. Shelton, Mr. Holihan and Dr. Banks have a good understanding and can probably give you specific answers to your questions. However, the real answer needs to be provided by our District Engineer. Since he is not here today, I will be happy to provide this to him and get specific answers back to you.

Mr. Worth stated in speaking with Mr. van der Laan, we came to the conclusion that the residents should keep pursuing the City to take responsibility for getting the schedule. I will call every week when the potholes appear. They just resurfaced two last week.

Mr. van der Laan stated I have some good contacts with the City and County, which I can provide to you regarding the drainage repair they are undertaking at the Champlain entrance. I contacted them about the potholes and within two to three days, they were out there patching them. This may be a route we can pursue. The more responses the better.

Mr. Worth stated absolutely. I am approaching the Board to see if anyone has any influence with the City.

Mr. Moyer stated Mr. van der Laan can handle this.

Mr. van der Laan stated I suggest we put the CDD Maintenance Responsibility Map on the website, which clearly defines all the areas the CDD is responsible for. I do not believe it is on the website.

Mr. Cumello stated in going back to the Reserve Study discussion, I do not recall there being any roads on the study except for Gentry Park and POA roads. All of the other roads were behind the gated communities, which are being repaired and maintained with HOA reserves.

Mr. Moyer stated we will re-circulate the Reserve Study and have further discussion at next month's meeting.

Mr. Worth stated thanks for listening to me.

Mr. Cumello stated if we know the individuals at the City who are responsible for the roads, let's contact them.

Mr. Worth stated I have some good contacts with regards to the maintenance and they have been quick in addressing concerns and scheduling repairs. I just do not want them to do patch work. It is a nasty road to drive on.

Mr. Cumello stated Lee Vista is just as bad west of Narcoossee.

Mr. Worth stated not even close. I drive on the road every day. The cracking is there, but we are also talking about severe ripples in the concrete as well as undulations.

Mr. Moyer asked are there any other budget items?

Mr. Cumello responded yes. We are receiving comments from residents about dead plants in the berm and dead trees. Last year we took some reserves and replaced some of the

dead material on Lee Vista Boulevard. Do we have any estimate in this new budget of how much replacement we will be able to do?

Mr. van der Laan responded we increased this line item from \$30,000 to \$45,000 in the 2009 budget. With the replanting already approved, but was put on hold due to the irrigation issues, most of the work will be completed this month and we will have expended the 2008 monies by the end of July. However, of the \$45,000, we were estimating approximately \$30,000 to do the bulk of replanting of trees and shrubs from the 2004/2005 storms, leaving \$12,000 to \$15,000 for the year for regular replacements, which I felt was sufficient.

Mr. Cumello asked how does this compare dollar wise to what we spent for the last replanting?

Mr. van der Laan asked are you referring to the replanting we did nine months ago down Lee Vista?

Mr. Cumello responded yes.

Mr. van der Laan responded only \$14,000 was spent for this initial round of replanting.

Mr. Cumello asked are we doubling the amount of money we would have available for replanting?

Mr. van der Laan responded correct.

Mr. Cumello asked do we have a meeting scheduled for the public?

Mr. Moyer responded yes, at your next regularly scheduled meeting

Mr. Cumello asked will it be held here or a larger venue?

Mr. van der Laan responded I scheduled us for a larger room, which can hold about 50 people.

Mr. Moyer stated there will be enough room. Unlike what we did last year, because we are not raising assessments, we did not have to individually send letters to everybody. A notice will be placed in the newspaper.

Mr. van der Laan stated our larger room will suffice.

Mr. Cumello stated last time we had a five minute meeting with no public.

D. Discussion of Action Item List

Mr. Moyer stated the action item list was included in your agenda package. The report on the tax certificate sale is completed.

Mr. Moyer noted the action item list was included in the agenda package and highlighted the following:

- *Report on Tax Certificate Sale Process:* Completed.
- *Engineer's Report from Bond Issue:* Provided to the Board. Identifies the projects undertaken amounting to the \$14 million.

Mr. Cumello asked how do we account for the contracts adding up to \$14 million?

Mr. Moyer responded we are going to have to get Mr. Roy involved in regards to the preparation of plans for the various projects and bids obtained by the District. It will take some time to do this and some cost will be incurred by Bowyer-Singleton to participate in this activity.

Mr. Cumello asked should we obtain an estimate from them first?

Mr. Moyer responded I think so.

Mr. Clark stated the other side to this is to take an analysis of your bond requisitions by contract or category.

Mr. Cumello stated there was an issue under the 2002 bond where the District had run out of money constructing Warwick and Avon. Newland told us they were spending their own money to finish those neighborhoods. I assume we will not see this money.

Mr. Moyer stated there are two ways this could have happened. If it were under a contract the District entered into, there may be funding coming from Newland we can track. However, if it was a separate/defined project the District was not involved in and they just did it as part of the improvement plan, than we would not be able to track it as they would have just done it.

Mr. Cumello stated I am curious about how this happened. You have the funding and the bonds to do what the CDD was required to do and at some point they said there was no more money left.

Mr. Moyer stated in most cases, when we sell bonds, in order to put to rest the issue bondholders have if there is not enough money to complete the project, the District and Developer enter into a Completion Agreement. The bondholders' security is the completed project. It does not do them any good to have a half completed project. Even if we liened it, there would not be someone coming in to buy property under the lien that is not completed, so we make the developer enter into a Completion Agreement, which obligates them to the degree we do not have the money to complete the project. I cannot tell you with certainty because I have

not looked through these records for some time. However, I suspect we had a Completion Agreement with Newland.

Mr. Clark stated I think you can make the argument that work completed under the Completion Agreement was District work or related to District work and may be subject to the Public Records Law.

Mr. Cumello stated my concern is there was work supposedly done and I think part of the work was a masonry wall built between Warwick and the Mockingbird property on the eastern boundary, which is now CDD property. If the work was done by Newland and paid for by Newland, does ownership of the masonry wall transfer over to the CDD? We had a similar type of project on the western side where the developer for Vista Palms built a masonry wall on CDD property and we were questioning whether or not ownership was transferred over to the CDD. The reserve is now our problem even though we did not pay for the original construction. It is not clear if work was done by someone else, whether or not there was a transfer of ownership and whether or not we understand what happened and how this was closed.

Mr. Clark stated usually your plats are going to drive ownership and maintenance responsibilities. If a wall is built within a plat, it is going to be on a tract. The cities or counties are usually good about requiring a note for maintenance responsibilities. Another source is the recorded declarations, whether or not they establish maintenance responsibilities. However, things get left out whereby things do not get transferred or considered.

Mr. van der Laan stated I question this because within the past three months, we have run into at least two to three instances where things purchased by the CDD were built on either HOA property or other owner's property and no Easement or Maintenance Agreements were ever put into place. If we have not tracked these down, it is very possible it was never done.

Mr. Cumello stated I think if you go back through the records, there was an action item on the western wall, which was built by Vista Palm Retail, represented by Mr. Rob Yeager. After they built the wall, it was supposedly transferred over. I do not know whether or not the transfer was completed on the easement because it is CDD property. They were effectively giving us the wall. I am not sure about the Warwick wall as it was a Mockingbird issue because in the original development of Vista Palm, the plan was to knock down all the trees and build houses back to back from Vista Park to Vista Lakes. This is the reason why the wall was supposedly built. If I recall correctly, the wall was funded by Newland Communities, but it is

situated on CDD property. I think we are going to find a great many of these issues were passed by the Engineer and the paperwork may not have been completed.

Mr. Moyer stated we will obtain a proposal from Bowyer-Singleton and bring it back to the Board.

E. Consideration of an Engagement Letter with Grau & Associates to Perform the Audit for Fiscal Year 2008

Mr. Moyer stated a copy of the Engagement Letter was provided to the Board in the agenda package. The fee is exactly what we budgeted at a not to exceed amount of \$9,300. This is a standard form Engagement Letter for this type of service.

On MOTION by Dr. Banks seconded by Mr. Cumello with all in favor Engagement Letter with Grau & Associates to Perform the Audit for Fiscal Year 2008 was approved.

F. Consideration of Resolution Designating Scott D. Clark as District's Registered Agent

Mr. Moyer stated Resolution 2008-7 appointing Mr. Clark as the Registered Agent and his business address as the District's Registered Office.

Mr. Clark asked is Akerman, Senterfitt the current Registered Agent?

Mr. Moyer responded yes.

Mr. Clark stated my address likely may change and I am considering different options for office locations. I will probably know something more in the next 30 days. Instead of having the Board consider this item twice, I request deferring this matter until the next meeting.

FOURTH ORDER OF BUSINESS

Attorney's Report

Mr. Clark stated I had a couple of items to follow up on after the last meeting. The first item was for me to write a letter to Akerman, Senterfitt requesting transfer of the files. I have to go to Mr. Mike Williams office for another matter later today and will bring up this matter to him. I will continue following up on this matter.

I took some time to familiarize myself with the Pinecastle Jeep Range matter. However, I wanted to discuss some follow-up items in connection to this. It is important for us to establish records on who did what. The big issue we may have in the future is the liability for the dirt transferred from one site to the other and we need to know who did this, where the dirt was sent, who the contractor was and whether it was work we did as a District or the developer did. Just be prepared for those issues, if and when they come up.

We should also consider whether we should engage with the Army Corp. of Engineer to start an inspection of District owned properties like they are doing in other locations. They sent some emails and are asking people on their website to enter into a Right of Entry Form. I am not pleased with their forms since it commits you until forever to come onto your property and has vaguely worded language about storing equipment on your property. Therefore, I do not suggest we sign their form and invite them in.

Mr. Moyer stated we have already done this. We used their form, but we modified it. Did you receive a copy?

Mr. Clark responded no.

Mr. Moyer stated I will provide you with a copy of the Right of Entry form we filled out. At the very least, we added the language that they need to abide by all the permits we are subject to when they are on that property and other revisions Ms. Buzyniski made.

Mr. Cumello stated they are on CDD property today working between Odyssey Middle School and Tivoli Gardens. They informed us last night they were focusing their efforts there because there was an issue.

Mr. Clark asked did you attend their meeting last night?

Mr. Cumello responded Dr. Banks and I attended. They told us where they are looking and this is one of the areas, which is CDD related. The concern we always had is with the permits we have with the SJRWMD as they intend to cut three to four feet through conservation areas so they can scan a few feet on each side of the cut through. We always questioned whether they were allowed to do this under the permit. I guess we reinforced this with them.

Mr. Moyer stated we wrote them a separate letter and added this language in the last Right of Entry Agreement. It is in the body of the agreement.

Mr. Clark stated I can only imagine the argument between those two entities.

Mr. Cumello stated it was a big issue last night from residents outside of Vista Lakes where they were pushing the fact of them being in the conservation areas because adults and kids were going into the conservation areas. It is a big concern of the community.

Mr. Clark stated you might be ahead of me on some of these matters. I think we need to quickly identify the contracts entered into and completed work and consider the liability issues because those are the areas where you may be very likely to get into some litigation, whether we

target something and file it or we become the defendant and have to bring contractors, developers or other parties into it.

Mr. Cumello stated one of the issues we heard last night over and over was this concept of what they are calling a "Clearance Letter", which they are re-naming a "Results Letter". In this letter, they are informing property owners (regardless of whether they are HOA, CDD or Commercial) that they will inspect the property and tell you whether or not they found something. However, by no way are they guaranteeing anything.

Mr. Clark stated they have a standard paragraph, which appears on every page of their website or documentation.

Mr. Cumello stated there was a great deal of discussion last night from the residents wondering what this meant for them as far as selling their property or installing a fence or pool. It is not clear from the Army Corp. of Engineers what their position is on these properties once they inspect them, what they are going to tell the residents and what this "Results Letter" means. We had discussion about the property owner forever having a liability issue because you cannot guarantee you can clear their property in any way.

Dr. Banks stated we are going in that direction with the city. They accepted this letter and released the property so we can build. They will be releasing our permits in August. However, the Army Corp. of Engineers are only registering down 4' and once we dig 4' trenches, if we need to go deeper, they will come in and re-check the next 4'. This is going to be an interesting endeavor.

Mr. Cumello stated we do not know all of the facts and what the issues are or what the liabilities are going to be in the future.

Mr. Clark stated it was clear to me from discussions regarding the various Geotechnical Reports and the fact there were questions posed to the Army Corp. of Engineers in the 1980's and again 1994 and there were a series of reports issued in 1998/1999 indicating there definitely were issues. When I hear people say "We had no idea", this is not going to stand up at all. There definitely were issues, which you can see if you look at it. These developers or their predecessors made some requests resulting in some of these reports.

Dr. Banks stated I had conversations with some of my older members and they said they used to play in these areas and knew there were always waste materials there because they found

it in the Mockingbird area. I do not understand why we are so surprised if people who have lived here for years always knew it was there. I think this is interesting.

Mr. Clark stated I think in the meantime, we should be gathering information and educating ourselves.

Mr. Cumello stated the Board has been continually asking the following questions:

- Where do we need to go?
- What do we need to do?
- How can we protect the residents from any future liability?
- Are there any issues under Chapter 190 relating to how a CDD was set up based on this issue?
- What are the statute of limitations?
 - *Mr. Clark noted the statute of limitations are generally going to be four to five years from the date the event occurred or the date the material was discovered or should have been discovered. In this case, you are going to follow the Discovery Rule so can determine your statute of limitations by going back chronologically to when materials started showing up at the school and then proceeding four to five years based on the cause of action.*

Mr. Cumello stated based on what Ms. Buzyniski advised us, she felt when the Army Corp. of Engineers had given notice to the CDD, this was the date certain, but it could have been before that.

Mr. Clark stated this could be your final closing date for you to start counting years. However, some can argue it was before that. You can get into a trap because you are arguing that the developer should have known for a long time, which implies we should have known. Certainly the developer should have known first because this was before the Board existed. However, I am still struggling with trying to quantify how this CDD is damaged. Clearly residents were damaged and have causes of action and some of them are pursuing this. The CDD clearly has a cause of action as to its own property. It gets to be difficult to measure the damage occurring when you have an affected conservation area or passive recreation area. When you pay \$500,000 for a house and the market value is \$300,000, then you have a measure of damages. However, this is not to say you cannot do it, but it is more difficult. You clearly have a cause of action equal to anything someone else chases you for. You have a cause of action for indemnity

or contribution against whatever parties you think are responsible and should have kept it from happening. I suspect the bondholders have a cause of action, which may be better than the District's if their collateral has been impaired, but if the assessments continue to be paid and they receive their payment, maybe they will not have much damage. They get paid before all the mortgages and will probably not suffer the damages that individuals and mortgage holders suffer.

Mr. Cumello stated what I personally am concerned with from a CDD standpoint is if the CDD has to dredge a lake in the future in common areas or replace the water management system in an area. We talked about the Reserve Study and the replacement of roads. If those roads or the infrastructure is within the Pinecastle area, what is our liability going forward when we bring contractors in to dig 8' to 10' and tell them we do not know what is down there?

Mr. Clark responded it is potentially significant. Maybe as part of how you measure the damage to the CDD is by putting additional reserves into place to protect you from future issues.

Mr. Cumello stated I always said publicly the residents or the property owners should not be paying for this cost. We need to protect the property owners because we did not create this problem and simply inherited it. I think we need to understand this as property owners. I can see this problem in the future.

Mr. Shelton stated we need reserves for future suits. If someone is digging in the woods and they hit something, they are going to come back and sue the CDD. Where do those funds come from?

Mr. Clark responded this is what bothers me the most.

Mr. Moyer stated the question is whether we post or not post. If we post, we need to determine how to do this and how many feet apart.

Mr. Cumello stated Ms. Buzyniski stated we are under a *Notice of a Dangerous Condition*. Effectively, if we do something in these conservation areas, we are liable at this point in time.

Mr. Clark stated we probably need there to be standard language for every contract we enter into. Chances are, someone is going to read this and increase their price.

Mr. Holihan asked did we have anything like this when we entered into the new Servello contract?

Mr. van der Laan responded we advised them of the situation, but we have also specifically not done any re-planting or ground work within the Pinecastle Range.

Mr. Holihan asked did we advise them in writing like an acknowledgement?

Mr. van der Laan responded yes.

Mr. Cumello stated my understanding is this still does not give us relief on liability. Correct?

Mr. Clark responded not absolutely, but I think it helps.

Mr. Moyer stated the reality on liability is we have Liability Insurance and as a unit of local government we have certain sovereign immunity as granted by the state, which limits our exposure to \$100,000 per claim and \$200,000 per occurrence.

Mr. Clark stated this is probably an area I need to spend some extra time on, but I do not think this goes away. There are some waivers, which can get some people around this. However, I do not think this is one of those situations.

Mr. Shelton stated the limit is set at a comfortable level and protects us. However, as Mr. Cumello keeps pointing out, it also scares the residents.

Mr. Moyer stated it affects the person who goes in there and gets hurt.

Mr. Shelton stated exactly.

Mr. Cumello stated the other issue we are still struggling with is the language saying the government can come back for the cleanup costs. We asked the Army Corp. of Engineers several times about this. Is there any intent by the government to come back to the property owners for the cleanup costs? However, the law is the law and we asked Ms. Buzyniski to look into the law because there are cases where the government has come back and asked for the cleanup costs. Effectively, we have given the Army Corp. of Engineers access to CDD property and there is no waiver saying they will never come up and charge us for the work they completed. We need to understand what our liability is there too.

Mr. Shelton stated there is the same problem with the homeowners.

Mr. Cumello stated this was brought to our attention from the Orange County Public Schools because they had an employee who received a bill on a farm they own for cleanup costs amounting to \$300,000, even though they did not cause the problem. The way the law is written from the way we understand it is the current property owner is responsible under CERLA.

Mr. Clark asked was it a munitions cleanup?

Mr. Cumello responded both munitions and cleanup. This is also a future problem. When a builder or developer comes in, they have to research the superfund sites, but they do not

have to research the fudgesites under Florida Law. They can say, well I have researched the superfund sites and the law does not require me to look at the fudge sites.

Mr. Clark stated builders and developers do a number of things; one looks at a list of particular sites while another looks at a list of prior uses. I think the cop out is it was not record use but a lease and it was not transferred to the Army Corp. of Engineers. If you look at the records, you do not see this. However, it was well known.

Mr. Holihan stated the Environmental Report Mr. Moyer provided last week clearly defined the range and stated there was a potential problem.

Mr. Cumello asked did Mr. Clark receive a copy of this report?

Mr. Clark responded I have not seen it.

Mr. Cumello stated we are just trying to understand what the issues are and how to protect the residents.

Mr. Holihan stated I agree with the Board authorizing Mr. Clark to get up to speed on this matter as quick as you can and educate us on the steps we need to take as a Board to insure we are protecting the residents so we are doing the right thing.

Mr. Clark asked do we have a particular contact at the Army Corp. of Engineers?

Mr. Moyer responded yes.

Mr. Clark asked can you provide this information to me?

Mr. Moyer responded yes.

Mr. Clark stated I understand the Board's concerns more specifically and will focus more on those so I can be ready to update the Board further.

FIFTH ORDER OF BUSINESS

Engineer's Report

There not being any, the next item followed.

SIXTH ORDER OF BUSINESS

**Community Association Manager –
Agronomist Report**

A. Activity Report

B. Agronomist Report

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

Mr. Shelton asked did you look at the Chickasaw lake?

Mr. van der Laan responded Mr. Roy is supposed to look into this. I have not heard back from him.

Mr. Shelton stated the water is now turning green and there is still a tremendous amount of weeds on the streetscape.

Mr. Cumello stated I heard the County was going to impose new rules next year on the reclaimed water. Have you heard anything about this?

Mr. van der Laan responded yes. Orange County is going to start diverting more reclaimed water into wetlands and conservation areas, which will reduce what is available for irrigation. As you know, we are already running short on water and two months ago we did not have any water at all. Now we are on two day restrictions. This apparently is going to get worse in the next year, but as an alternative, I am talking with Mr. Roy and a couple of irrigation contractors about ways we can either pull water from our lakes and/or dig wells on the property to either supplement or completely replace our need for reclaimed water.

Mr. Cumello asked do you think we are going to get a ROM on the cost to either pull water from the lake or dig wells in the near future?

Mr. van der Laan asked what is a ROM?

Mr. Cumello responded ROM stands for Rough Order of Magnitude.

Mr. van der Laan asked is this the same as a price?

Mr. Cumello responded no. It is an uncommitted price.

Mr. van der Laan responded I expect to have something by the next meeting.

Mr. Holihan stated you cannot totally replace this system with the well. Is there an order we have to abide by under Orange County?

Mr. van der Laan responded this is what I was told by the irrigation companies and why I got Mr. Roy involved with this. Apparently there are certain requirements we have to meet for the use of reclaimed water, but given the changes Orange County will be implementing, we think it is clear we are not going to be able to get enough water to run our system.

Mr. Holihan asked when are these changes supposed to take place?

Mr. van der Laan responded in 2009.

SEVENTH ORDER OF BUSINESS

Supervisors' Requests

Mr. Shelton stated someone asked me when the CDD meetings were scheduled for and if they were open to the public. I went to the CDD website and I had to dig for this information.

Perhaps you can post something on the front page saying our meetings are open to the public and when they are scheduled for and where.

EIGHTH ORDER OF BUSINESS

Audience Comments

There not being any, the next item followed.

NINTH ORDER OF BUSINESS

Adjournment

There being no further business,

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

Gary L. Moyer
Secretary

Randy Holihan,
Vice Chairman