

**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, September 10, 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:

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

Also present were:

Gary L. Moyer	Manager: Moyer Management Group
Barry Roy	Engineer: Bowyer-Singleton
Lee Smith	Holland & Knight
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. Shelton.

**SECOND ORDER OF BUSINESS**

**Approval of the Minutes of the August 13, 2008 Meeting**

Mr. Moyer stated each Board member received a copy of the minutes of the August 13, 2008 meeting and requested any additions, corrections or deletions.

Mr. Cumello stated under the first order of business, the minutes reflected all supervisors were present with the exception of Dr. Banks; however Dr. Banks was actually in attendance. On Page 10, where I said "The letter says they discovered nine human fossils", I was actually referring to two types of letters the Army Corp. of Engineers proposed, one saying they found a substance and the other saying they did not find anything.

On MOTION by Dr. Banks seconded by Mr. Holihan with all in favor the minutes of the August 13, 2008 meeting were approved as amended.
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**THIRD ORDER OF BUSINESS**

**Manager's Report**

**A. Financial Statements**

Mr. Moyer stated the financial statements for the period ending July 31, 2008 were provided to the Board in the agenda package. We received \$27,000 more in various forms of revenue than we budgeted, our expenditures are under budget and our Fund Balance at the end of July 31 was \$421,000. It looks like we are right on target with what we anticipated when the Board adopted the budget last month. If you have any questions, we will try to answer them.

Mr. Cumello asked does our fiscal year end on September 30?

Mr. Moyer responded yes.

**B. Invoice Approval #98**

Mr. Moyer stated Invoice Approval #98 was provided to the Board.

Mr. Rose stated there is an invoice for Servello & Sons in the amount of \$28,656.26, which was paid last month. We do not want to have to pay them twice. I confirmed this is the same invoice number.

Mr. Moyer stated I will have the Accountant make this correction. Thank you for pointing this out.

On MOTION by Mr. Cumello seconded by Mr. Holihan with all in favor the financial statements for July 31, 2008 and Invoice Approval #98 were approved.
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**C. Discussion of Action Item List**

Mr. Moyer stated I provided a revised action item list to the Board. Many of the items were follow-up items Mr. Barry Roy completed such as the Maintenance Map, which was circulated to the Board.

**Ownership of Passaic Parkway**

Mr. Moyer stated Mr. Roy showed Passaic Parkway being dedicated to the Community Association.

Mr. Cumello asked what was the ownership based on the County website showing Passaic Parkway being owned by Mockingbird?

Mr. Holihan responded it is owned by the City of Orlando.

Mr. Cumello stated I need to go back and check the County's website. There are five different plats. This is one of many.

Mr. Holihan stated it was transferred by Warranty Deed, which I have a copy of.

Mr. Cumello stated the problem I have is the County has not recorded deeds correctly in many cases and we had to go back and re-do the deeds. Is the Warranty Deed executed?

Mr. Holihan responded it was executed and recorded and has the OR book and page.

Dr. Banks asked was the Warranty Deed transferred to the HOA?

Mr. Holihan responded it was transferred from Terrabrook Vista Lakes LP to Mockingbird Orlando LLC.

Mr. Cumello stated Terrabrook is the developer.

Dr. Banks stated the City of Orlando thinks they own it.

Mr. Holihan stated Mockingbird may own it, but they may have given a perpetual easement to the City for maintenance. Who maintains Passaic Parkway?

Dr. Banks stated the entrance to our property is on the back side.

Mr. Holihan stated the legal shows Lot 65 and a portion of Lot 64.

Mr. Moyer stated the Vista Lakes Community Association is a part of this. What I referenced was the private roadway tract from Passaic Parkway to and beyond the security gate.

Mr. Cumello stated this particular Warranty Deed should not include this tract by definition because it is owned by Mockingbird. Is there another deed covering this tract?

Mr. Holihan responded according to the plat, Tract E is a private roadway tract to be dedicated to and maintained by the Vista Lakes Community Association. It was not in fact dedicated. If I am reading this correctly, Tract E is still part of the Community Association while Tract J is a landscape/future development tract owned and maintained by Terrabrook Vista Lakes GP LLC. This tract was deeded to Mockingbird Orlando.

Dr. Banks asked when was this done?

Mr. Holihan responded this was recorded on December 29, 2006. The actual date of the deed was December 14, 2006.

Dr. Banks stated this was around the time I was trying to negotiate with them.

Mr. Holihan stated the name on the cover of the plat is Terrabrook Vista Lakes GP LLC. Is Terrabrook Vista Lakes LP the same as Terrabrook Vista Lakes GP LLC.?

Mr. Smith responded I do not know why it says GP LLC. I think this is the management entity for Vista Lakes.

Mr. Holihan stated but ultimately it is the same entity.

Mr. Smith stated correct.

Mr. Holihan stated we may have a scribner's error in the cover sheet of the plat.

Mr. Smith stated the City of Orlando was looking for the Passaic Parkway area as a right-of-way for future road improvements. They did not want to take ownership because they did not want to have to make payment. As a result, we conveyed those tracts to Mockingbird LLC. who was compiling various rights-of-way for the City of Orlando. When we conveyed it, we restricted it only for public right-of-way use so they can never use it for anything else. We recorded an access and utility easement in favor of the Community Association, the CDD and all the lands in the CDD for pedestrian and vehicular access over those tracts and utilities to the extent necessary. In the easement, we agreed the CDD would have the right to continue maintaining this area until it was dedicated to the City in the standards of the Vista Lakes CDD and Mockingbird would reimburse the CDD on a quarterly basis. It sounds like you have not received this reimbursement.

Mr. Moyer stated correct.

Dr. Banks stated we are about to start building and our entrance goes across where the new road would have been.

Mr. Holihan stated this is Tract N.

Dr. Banks stated it is opposite the entrance to Warwick.

Mr. Smith stated I brought a copy of the recorded easement to the meeting.

Dr. Banks stated the City is about to release the permit to do this.

Mr. Smith stated the easement is in favor of all the lands within the CDD and to the benefit of the CDD and the Community Association.

Dr. Banks stated I know the CDD owns Tract H. I think the fence should be on this tract so we can just cut the grass and be done with it.

Mr. Smith stated the thought was the City was going to take it eventually and this way it allowed the CDD to continue maintaining it at the standard they wanted at no cost until this occurred, whether this occurs in a year or in a couple of years. The City in the meantime, is getting the benefit of cost free maintenance for this area.

Dr. Banks asked are they going to take the buffer as well?

Mr. Cumello responded Mr. Roy said there is a pipe under there.

Dr. Banks stated there is a pipe going down 10 to 14 feet. I tried to convince Terrabrook to deed this to us, but they told me they do not have it anymore.

Mr. Holihan asked is it a labeled tract?

Dr. Banks responded yes, Tract H. It makes sense for us to cut the grass and maintain it because it does not look like we are going to get anything from Mockingbird. They will not even talk to us or anyone else for that matter.

Mr. Rose asked by "us" do you mean the CDD?

Dr. Banks responded no, the church.

Mr. Rose asked then why are we even discussing this?

Dr. Banks responded because the tract belongs to the CDD. At the last meeting, we talked about putting a fence along this area.

Mr. Cumello stated the County website says this tract is owned by Mockingbird. Even though there was the intent it was going to be transferred to the HOA, it obviously remained with Mockingbird.

Mr. Rose asked are we supposed to receive reimbursement?

Mr. Cumello responded it sounds like it. We need to review the agreement.

Mr. Holihan stated you need to bill Mockingbird.

Mr. van der Laan stated for clarification, we are talking about Passaic Parkway or Tract N and Tract J, which are reimbursable.

Mr. Smith stated we have the legal description showing Tracts N and J and a portion of Tract E, which comprises the Passaic 120 foot right-of-way.

#### **Proposal to Perform Review of Bond Expenditures**

Mr. Moyer stated the proposal was circulated to the Board in the agenda package. It is on a time and materials basis in accordance with the rate schedule with an estimated budget of \$16,500. This was based on Mr. Cumello's request to review all the construction drawings and plans to make sure the dollar amount the CDD spent ties to the amount shown.

Mr. Cumello stated it is a formal audit of the \$14 million the CDD paid for. We had a problem over the past two to three years of understanding who paid for what between the developer, the CDD and the HOA. It has never been made clear.

Dr. Banks asked do we have the money in the budget?

Mr. Moyer responded no. We would have to allocate money from the Fund Balance.

Dr. Banks stated I do not recall segregating out any money in the anticipation of doing it.

Mr. Holihan stated when we approved the budget for 2009 last month, we discussed having a carry over from 2008 of \$60,000.

Mr. Moyer stated there is going to be a fair amount of money from the carry forward.

Mr. Rose stated Mr. Roy is not going to do an official audit.

Mr. Moyer stated in my opinion, they are probably best suited to do this because they prepared the plans and know what was and was not done and who did the work.

Mr. Cumello asked does the Board have an opinion on the audit prepared by Bowyer Singleton to account for the \$14 million?

Dr. Banks responded this is probably something we can do.

Mr. Rose stated I do not think it is worth the money.

Mr. Holihan stated I am not sure we need to spend the money for it.

Mr. Rose stated I cannot support this until I understand where we are getting the money from.

Mr. Holihan stated we need to table this matter until the value of this work is ready to be discussed. We may get a reconciliation showing this, but then are we going to go back to the developer?

Mr. Cumello responded there is value to it.

#### **Transects at the Conservation Area**

Mr. Moyer stated Mr. Cumello and Mr. Clark worked on this matter.

Mr. Cumello stated I tried to understand the position of SJRWMD and have detailed information on the nine completed transects between the portion of the conservation area Tivoli Gardens owns and the CDD conservation area. The Army Corp. of Engineers went back to SJRWMD and were non-committal on whether or not this was appropriate to do. Mr. Clark went to SJRWMD and asked the same question, but they were non-committal on whether or not they will agree. There is still no closure with SJRWMD on whether or not it is appropriate for the Army Corp. of Engineers to do the transects since the CDD holds the permit and would not be held liable for any damage done to the conservation areas. The Army Corp. of Engineers will not be doing any further work since there is too much water in these conservation areas. However, they were willing to look into the value of opening these transects. The District needs to understand whether or not the Army Corp of Engineers should be doing this work and whether

SJRWMD will be coming to us for any damage incurred by the Army Corp. of Engineers. If they find any substances they will cut more transects and continue cutting transects going out 200 feet.

Mr. Moyer stated Mr. Clark said in a letter to the Board, "The Attorneys from the Army Corp. of Engineers had some issues with our right of entry form."

Mr. Cumello stated this is a different issue, which we will talk about later. The Army Corp. of Engineers agreed in this particular case, after talking with me, Mr. Clark and Tivoli Gardens, to re-plant those transects and close off public access. They will be paying to close those transects off.

Mr. Holihan asked are you saying they will re-plant at both entrances or re-plant all the way through the transect?

Mr. Cumello responded I believe it is only at the entrance.

Mr. Holihan asked can anyone go out to those transects?

Mr. Cumello responded yes. The issue is whether or not they should even be cutting transects. They are looking into this as well as the City of Orlando, who is a party to this discussion. I am not sure what the County's position was at the last meeting, but the City thinks this needs to be looked into in terms of whether or not there is a good reason to open up these transects, but they cannot guarantee they will find anything.

Mr. Holihan stated if I heard you correctly, the urgency of this is going away due to the amount of water in the conservation areas, but I suggest Mr. Clark continue pressing forward to get an answer during the downtime when they are not needing those transects. Right now, we have set ourselves up for exposure. If SJRWMD wants to come back and put pressure on us to do something, they technically have the right to do so. Our only obligation or retaliation is to try to take on the Army Corp. of Engineers for damages, but I guarantee you we will lose.

Mr. Cumello stated I agree. I met with Mr. Clark yesterday and he has the task of pressing the Army Corp. of Engineers and SJRWMD on their position as well as the possibility of sending them a formal letter as we need to understand what SJRWMD's position is before allowing the Army Corp. of Engineers to do anything.

Mr. Holihan stated I think you have to draw the line and put everyone on notice that the District will not let anyone do anything else until this matter is resolved.

Mr. Cumello stated I believe the *right of entry* is for eight lots, but they said they are not going to do anything for the next couple of months as this is currently an open issue.

Mr. Holihan asked can you revoke this *right of entry*?

Mr. Moyer responded the *right of entry* says they will not do anything in violation of the St. Johns permit. Like you said, this is all well and good, but if they do it, the question is what recourse do we have against them.

Mr. Cumello stated this is currently an open issue and we do not have any closure as the decision has to be made by either SJRWMD or the Army Corp. of Engineers. The other issue was the right to erect a fence on the tract between Dr. Banks' property and the Mockingbird property in the form of a Lease Agreement. Mr. Clark modified a particular sentence in this agreement because they were asking for the right to erect the fence and for the CDD to maintain it and have the responsibility forever to keep the fence there. Mr. Clark rewrote the agreement to say "*We do not agree to those terms and conditions as a chain link fence does not meet the community standards and if we were ever to agree to install fencing on any of our property, it would have to meet the community standards.*" They rejected the change and verbally told us they were looking for us to take over responsibility for the fence and the liability associated with anyone accessing the fence. Of course, this is exactly what we do not want to do. Mr. Clark told me yesterday the Attorneys for the Army Corp. of Engineers were coming back with new language, which he has not seen yet. What they basically want to do is to have the fence run from the masonry wall in Warwick to across the street and tie into the Mockingbird property up Tract H. Eventually they would run a fence east towards the school. In any case, the whole area east of Tract H would be fenced off. They cannot obtain a Lease Agreement from Mockingbird so they are trying to put the fence on CDD property. I do not know how they are going to handle the issue on Lee Vista in terms of whether they have to go to the city to erect a fence. We talked to the Army Corp. of Engineers about not accepting their language because of the liability associated with it and if the CDD was to agree to fencing, they would have to meet community standards.

*There was consensus from the Board.*

#### **Bedford Lake Potential Liability**

Mr. Moyer stated Mr. Roy informed me Chickasaw Trail was constructed according to the plans and DOT specifications. There are two issues. The first issue is cars going into the pond and the other was the deterioration of the asphalt surface on Chickasaw Trail.



Mr. Rose asked was he supposed to come back with recommendations for blocking access?

Mr. Moyer responded yes. He provided five alternatives to the Board ranging from \$24,000 to \$80,000.

Mr. Holihan stated he is recommending a four foot high chain link fence. We just said we do not want a chain link fence. We can have a PVC rail fence, like we currently have.

Mr. van der Laan stated we have two types of fences. We know the three cars dumped there were done on purpose and were not accidents. Is the idea to stop people from dumping their cars in there or to stop vehicular access?

Mr. Rose responded my thought was to prevent someone from parking there.

Mr. van der Laan stated next year 17 Oak Trees are scheduled to be planted once we get into the new budget year, to replace the ones blown down by hurricanes. This will help stop accidents, but not someone who wants to drive their car around or in between the trees.

Mr. Rose stated it is probably good enough.

Mr. Holihan stated I am not sure that we need to spend CDD money to stop thieves from dumping their cars into the lake.

Mr. Rose stated the only issue I had was an image of cars being dumped in Vista Lakes.

Mr. Holihan stated I agree. I think we should wait until the trees are planted. Maybe we can spread the trees out or plant additional ones.

Mr. Rose stated that's fine. I am actually surprised a landscaping alternative was not included in the list of recommendations.

Dr. Banks stated I suggest we table this matter for now.

#### **Drainage Connection Checklist**

Mr. Moyer stated staff needs Mr. Roy's checklist to attach to the application form we will require from people requesting discharge into our drainage system.

#### **FOURTH ORDER OF BUSINESS**

#### **Attorney's Report**

Mr. Moyer stated Mr. Clark submitted a letter to the Board since he was unable to attend this meeting. His only issue dealt with Pinecastle Jeep Range, which Mr. Cumello already discussed. Is there anything else we need to discuss?

Mr. Cumello responded no.

Mr. Rose stated the cost for the Attorney to attend this meeting is \$1,000. Do we want to continue having him not attend meetings?

Mr. Cumello responded I spoke to Mr. Clark yesterday and he did not see a need to be here for every meeting. He is currently working on some issues for us.

Mr. Holihan stated the last bill from Mr. Clark was \$620.

Mr. Rose stated the cost for review and everything else was closer to \$1,000.

Mr. Holihan stated if we do not need him here, we should ask him not to attend.

**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 the monthly Activity and Agronomist Reports were provided in the Board's agenda package. I have nothing new to add other than the meeting scheduled with SJRWMD regarding our irrigation reduction and changes to our water system was cancelled. It was supposed to be held the week Tropical Storm Fay was due to arrive and has not been rescheduled. I will be meeting with representatives of SJRWMD as well as your landscape company and the Agronomist within the next two weeks. The one action item I had was to request the City of Orlando to repair the sidewalk along Chickasaw. We had an issue with the irrigation box, which needed to be repaired before I was able to contact the City. This has been done and we backfilled the area. It does not appear the irrigation issue is what caused the problem with the sidewalk so I contacted Public Works and they are scheduled to come out on September 20.

Mr. Cumello asked with the amount of rainfall we had over the past month, are you hearing anything from the County or City regarding water restrictions or if they changed their position?

Mr. van der Laan responded I have not heard about them changing their position. This would certainly make sense, but the additional restrictions were slated for next year. I imagine the surplus will be gone by then. The problem is more in the capacity of the Tanks and the amount of water they are able to hold. From what I understand, Orange County reached

maximum capacity on their tanks within the first day. They actually had to release water into the conservation areas because their tanks were over filled. All of the surplus water is not going to do us any good as far as their ability to store the water.

Mr. Cumello stated my understanding was they wanted to take the reclaimed water and send it into the conservation areas to replenish them. Instead of making it available for irrigation, they should replenish the St. Johns River basin. There is plenty of water out there today.

Mr. van der Laan stated there are going to be further restrictions next year. The problem we have been running into every summer is the capacity of their tanks. They are simply running out of water on a daily basis and then getting refilled by the City of Orlando. This was going to be an additional restriction because they were then going to start pumping additional water out into the conservation area. Clearly they will not need to do this for some time, but I do not think this is going to solve our problem next summer.

Mr. Cumello asked do we still need to look for alternatives for irrigation next summer?

Mr. van der Laan responded yes. This is what I want to meet with SJRWMD about regarding the use of the reclaimed pipe system and either tying it to a well system or into lake pumps and a further reduction of the amount of water we pump. I actually obtained some numbers on the amount of water we use so we can put a realistic number together to reach this 20 percent reduction.

Mr. Moyer stated my only warning to you is once you reduce, they are going to hold you to those reductions.

Mr. van der Laan stated that is a good point and this is why I not only want to reduce the amount of usage, but also find an alternative water source for reclaimed water such as through wells or lake water to supplement the reclaimed water system.

Mr. Moyer stated their reward for good stewardship is to penalize you.

**SEVENTH ORDER OF BUSINESS**

**Supervisors' Requests**

There not being any, the next item followed.

**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 Mr. Cumello seconded by Mr. Rose with all in favor, the meeting was adjourned.

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Gary L. Moyer  
Secretary

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John Rose  
Chairman