

**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 Thursday, November 12, 2009, at 10:00 a.m. at the Vista Lakes Clubhouse, 8841 Lee Vista Boulevard, Orlando, Florida.

Present and constituting a quorum were:

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

Also present were:

Gary L. Moyer	Manager: Moyer Management Group
Scott Clark	Attorney
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.

SECOND ORDER OF BUSINESS

Approval of the Minutes of the August 13, 2009 Meeting

Mr. Moyer stated each Board member received a copy of the minutes of the August 13, 2009 meeting and requested any additions, corrections or deletions.

Mr. Shelton stated on Page 3, in the first motion box, “*Ms. Rose*” should be “*Mr. Rose*”. On Page 16, there are several instances of “*Mr. Lee*”, which should be “*Mr. Smith*”.

Mr. Smith stated on Page 9, “*Newman*” should be “*Newland*”.

On MOTION by Mr. Shelton seconded by Mr. Holihan with all in favor the minutes of the August 13, 2009 meeting were approved as amended.

THIRD ORDER OF BUSINESS

Manager's Report

A. July, August and September Financial Statements

Mr. Moyer stated the July and August financials were provided to you in prior status reports and the September financials were included in your agenda package. Our fiscal year ended on September 30 and some adjustments will be made to the financials for invoices we received in October. This gives you a good idea on where we are going to be at the end of our fiscal year. As you can see, we actually collected slightly more in revenue than we anticipated; about \$12,000. Mr. van der Laan and the Board did a good job of staying within budget on all major categories, such that we were able to add \$162,000 to the Fund Balance, some of which we are going to use in this fiscal year. We are right on schedule. When we presented the budget to you, we anticipated spending \$1,139,000 and we actually spent \$50,000 less. We had a good year from a fiscal management point of view.

B. Check Registers

Mr. Cumello asked why does the amount of the check register change from month to month. Is there anything unusual?

Mr. Moyer responded it probably has to do with the timing of the receipt of the invoices. I have not looked at it, but I would be happy to do so.

Mr. Cumello stated the August check register was \$153,000 compared to \$87,000 in September.

Mr. Moyer stated I will get the reason for this.

Mr. Cumello asked what are we paying to an engineering firm, BSA.

Mr. Moyer responded that is Boywer, Singleton.

On MOTION by Dr. Banks seconded by Mr. Holihan with all in favor the financial statements for the period ending July 31, 2009, August 31, 2009 and September 30, 2009 were approved.
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C. Consideration of Engagement Letter with Grau & Associates to Perform the Audit for Fiscal Year 2009

Mr. Moyer stated a copy of the Engagement Letter was provided to the Board in the agenda package. The fee is \$9,300, which is what we budgeted in the fiscal year 2010 budget.

Mr. Holihan asked what was the fee last year?

Mr. Moyer responded \$9,300.

Mr. Shelton stated the letter says “Not to exceed \$9,300”. Does this mean it will not exceed this amount?

Mr. Moyer responded it is pretty much going to be \$9,300.

On MOTION by Mr. Holihan seconded by Mr. Shelton with all in favor Engagement Letter with Grau & Associates to Perform the Audit for Fiscal Year 2009 was approved.

D. Discussion of Action Item List

Mr. Moyer stated the action item list was provided to the Board. Mr. Roy, Mr. Clark and I met in the intervening period in regards to the conveyance of properties to various HOA’s and the City. Mr. Roy had done a lot of the work in terms of tracking the expenses by the contracts we entered into, which Mr. Roy provided to me and I forwarded to the Board. In your agenda package is a summary of the detailed work and identifying contracts by units, which was broken out into various components such as water, sewer, curbs, roads; everything the District constructed and where those assets lie. Approximately \$16,000,000 worth of construction was undertaken, but \$11,000,000 was conveyed to other agencies. The District retains ownership of \$4,600,000.

The concern all of us had was if our net asset value was less than our liabilities, it triggered an occurrence under Florida Law called a financial emergency where we are placed on a list that is provided to the Governor. Mr. Clark can tell you once you get on that list, it is virtually impossible to get off of it, even if you correct everything that caused the financial emergency. I received a memo from the Auditors, which I circulated to the Board indicating if it is on the Balance Sheet as a District wide asset and we conveyed property to other entities as noted on the financial statements; it is not a financial emergency. The memo further says if we had a problem within a fund in terms of the Debt Service Fund or the General Fund and there is a deficit, it triggers a financial emergency. However, we are not subject to this because our Debt Service and General Fund Accounts are fully funded. We actually collected \$12,000 more than we budgeted last year. From that perspective, there will not be any trigger of a financial emergency. All this means is the Board can adjust our assets to reflect what we actually own and the Auditors can address this as part of the Audit. That is my recommendation rather than recapturing the assets we previously conveyed. For example, if we own the base and they own

the asphalt, it generally leads to confusion as to who is responsible for it. Mr. Roy did a great job in pulling all of this together.

Mr. Roy stated there may be additional items that I did not have in my files. This is a quick summary of what was spent, dedicated and what still remains.

Mr. Cumello asked will the Audit show \$4,600,000 in assets and not \$17,700,000.

Mr. Moyer responded yes.

Mr. Cumello asked what will the note say?

Mr. Moyer responded the note will explain the difference between the \$17,700,000 and the \$4,600,000 that was dedicated to other entities.

Mr. Clark stated the only question that came up when we discussed this was the extent to which publicly funded roadways were conveyed to the HOA. I struggled with this somewhat because it is a publicly funded roadway. I would have more concern if we as a District Board had made those conveyances and we did something we did not have the power to do. We did not make those conveyances; they were made by the developer. It is not totally clear to me from the reporting, the extent we may have separated the top coat from the base and who paid for what. This was something discussed at our meeting that we were not clear on. I do not think that we should go back and try to recapture those assets as this decision was made by others and given to us. I also do not think we are in jeopardy based on the comments from the Auditor that something bad will happen to us as a result of doing this. It is an anomaly in the way things were done. On the other hand, if the Board decides to recapture those roadways", consequences will flow from that, the least of which is that roadways you have in gated communities are going to need to have gates removed and be subject to public use rights, which ultimately leads to lawsuits. I do not want to see this happen and I do not think it needs to happen. I do not think this Board is complicit in creating the anomaly because they were done by others and you are called upon to manage what you have and what was given to you. What started all of this was the accounting not being in accord with reality. The action proposed is to fix this and make the accounting consistent with what we actually have. I think your best course of action is to recognize that perhaps you would have done things differently if you were asked to make this decision, but you were not asked. That is the way things stand at this time, but they are improving.

Mr. Roy stated when Mr. Clark, Mr. Moyer and I met, I had a different version of this document so I broke out the curb, base and asphalt. On sheet three of the summary, I showed the curb sub-grade base as a CDD asset. What I show as not being paid with CDD funds was the asphalt. That was my understanding of how this was originally set up.

Mr. Clark stated that is how it was set up. Because the asphalt top coat was not paid for with CDD funds, it created a road that could be privately used and gated.

Mr. Roy stated as well as everything else associated with the drainage system.

Mr. Cumello stated this list says that Vista Lakes is a public agency with \$10,800,000 in assets. How much of this money are we going to see? I assume only a small portion went to the HOA. N-1, N-2 and N-3 are shown as City streets.

Mr. Roy stated that first sheet should be specific to Orange County or the City of Orlando. The sanitary, water and the reuse are owned by Orange County, while the storm, curb, road and asphalt are owned by the City. The City also owns the streets and drainage while the County owns the utilities. Basically the utilities went to the City and the roads went to the County.

Mr. Cumello asked did all of the costs associated with N-1, which is \$600,000, go to the County or City?

Mr. Roy responded yes.

Mr. Cumello asked is the CDD allowed to float a bond and transfer it over to another government agency?

Mr. Clark responded yes.

Mr. Moyer stated it happens all the time. One of the reasons that is in the District's interest is to avoid the maintenance cost of the infrastructure.

Mr. Cumello stated but the residents are paying for the bond so it is a disadvantage to the residents. If we did not have a CDD, we would not be paying this money.

Mr. Moyer stated I understand.

Mr. Cumello stated that is a fact. It is the foundation of the entire CDD. We are stuck with \$30,000,000.

Mr. Clark stated in theory, by using bond financing, the price of the product is less the amount financed with the bond financing that was left with the residents as opposed to financing

with a mortgage that has to be paid back to the bank. Whether this actually works out in the marketplace, I leave to your own conclusions, but that is the theory behind this.

Mr. Cumello asked from my viewpoint, how do we document this in the records for the CDD so we have some document reflecting the decision made by the Board?

Mr. Moyer responded at the end of our discussion, if the Board is in agreement, they could direct staff to make those adjustments to the assets. I will provide this to the Accountant to forward to the Auditor. It will not only be in our records, but in the Auditors records. When the Audit comes back to you in January or February, it will reflect these amendments and the notes will cover our discussion from today.

Mr. Clark stated we will ask the Auditors to send us drafts of their notes.

Mr. Cumello stated I would ask Mr. Roy to detail the amount of assets transferred to the HOA based on the decision we made today. I do not know what the HOA does with the new asset number.

Mr. Roy stated at the bottom of Page 3 of 3, below the general notes, it says "HOA asphalt and Amhurst improvements of \$487,000".

Mr. Cumello asked is that the total asset you believe was transferred over to the HOA?

Mr. Roy responded yes. The majority was asphalt.

Mr. Clark asked was that publicly paid asphalt?

Mr. Roy responded it should have been paid by the developer at the time.

Mr. Clark asked did you determine who actually paid for the asphalt?

Mr. Roy responded no. It was my understanding during the process of requisitioning, that the asphalt was always pulled out of the contractors pay application and the developer paid specifically for the asphalt.

Mr. Cumello stated from my review of the contracts turned over to the CDD, it was a mix between some of the contracts having asphalt and some not having asphalt. What we do not know is whether or not the developer sent the check back to the CDD to cover the cost of the asphalt. That information was not provided to us.

Mr. Roy stated CDD funds may have paid for the asphalt for a non-private subdivision. The asphalt for private roads should have been separate and paid by the developer. From the information I have, I cannot tell. That was the train of thought for the available funding.

Mr. Clark asked is this something the Board wants staff to track down?

Mr. Cumello responded I do not think that is necessary.

Mr. Holihan asked were the sub-grade and base considered drainage?

Mr. Roy responded yes, in the conveyance system for the stormwater. The sub-grade was needed to put the base and curb in and was considered to be a drainage conveyance system.

Mr. Cumello asked if the Board accepts this, do we have a new action item where we have to reserve for everything under the asphalt, which we probably do not reserve for?

Mr. Clark responded I think the next question after this action is whether to review how Reserve Studies have been set up and how it accounts for these assets and who is responsible for this separation? Do we want to enter into an Agreement with the HOA for them to take on this responsibility or do you want to have split responsibility for certain roads? This seems like a nightmare.

Mr. Cumello stated what we have right now is a split responsibility. That is how we have been operating, which is confusing. When we had a storm drain problem as you can see by the number of repairs, we turned to the CDD to make the repairs. If we have to replace asphalt, we will turn to the HOA. That is the baseline we use. The suggestion is how we finalize it.

Mr. Clark stated if that works, we will not have to write the checks. I do not want to unduly influence you, but it seems like at some point if you have a major failure with both systems, you will start pointing fingers. We should think now about what we are going to do when we reach that point and how we determine responsibility. The other question is the reserve.

Mr. Cumello stated we have some confusion because no CDD money was used to build Warwick so the roads were conveyed to the HOA and the CDD does not have any responsibility for the water management system. Do you have a different opinion?

Mr. Roy responded this table is set up like any other private community where the drainage system belongs to the CDD. I thought even though the developer paid for those improvements, they were dedicated to the CDD. I do not know for sure, but that is the assumption I used.

Mr. Clark stated according to our research, they piped all of the underground drainage and it belongs to the CDD.

Mr. Roy stated that is why I have it listed in the table as a CDD asset. The stormwater system and asphalt are an HOA asset.

Mr. Cumello stated I authorize staff to come up with a final opinion on how this should be done. The Audit is clear, but the question is about the assets.

Mr. Clark stated perhaps we should act separately, if the Audit is acceptable.

Mr. Moyer asked would the Association entertain a Bill of Sale for the sub-grade, base and curb and all of the maintenance responsibilities?

Mr. Cumello responded I do not think they would. The residents are paying one way or the other so it does not matter. The residents will fund all of it. Effectively, we have high maintenance costs for those roads. This will just drive it up even more.

Mr. Moyer stated that is correct.

Mr. Cumello stated I do not see the HOA making such a decision on behalf of the residents. The question people are going to have is whether or not they are going to get relief on the other side. The answer is no because they did not reserve for it.

Mr. Moyer stated that is correct.

Mr. Rose stated but you have the issue of this additional cost being spread out over the entire CDD as opposed to just the gated communities where it benefits.

Mr. Cumello stated I agree. If it was my decision, I would remove the gates and tell the City to have fun with it. That would take a lot of cost off of the residents.

Mr. Shelton stated I think for whatever reason there will be a high amount of resistance from some people.

Mr. Cumello stated this is just my opinion.

Mr. Rose stated that makes me even wonder whether you need to make sure the costs are allocated appropriately. If there is an additional cost to keep the community gated, the community should pay the additional costs. I know it is going to increase tremendously.

Mr. Clark stated the question you get into is whether you are talking about the base and sub-grade and whether the CDD should be maintaining this other than on public roads.

Mr. Rose stated we either have public or gated roads.

Mr. Clark stated so the only place we would maintain is in Gentry Park.

Mr. Rose stated yes.

Mr. Clark stated maybe it is specific to those.

Mr. Cumello stated I like your suggestion of having the Audit done first and then figuring out where we are.

Mr. Shelton asked are you saying there is no clear cut advantage to the CDD maintaining areas they do not own?

Mr. Moyer responded no, under any scenario, we would still retain the ownership and responsibility for the drainage pipes that innerconnect our lake system running through these subdivisions. The benefit to the District is if the HOA took on the maintenance responsibility in these individual areas we would not be arguing about what caused the hole in the road, whether it was a base or asphalt issue. It would all rest with the HOA. What Mr. Clark and everyone at this table agrees with is that it makes sense having one entity so we do not end up trying to make a determination on what part of the road failed and who was responsible. Mr. Cumello was very forthright in saying that it would be easy enough to put together a Bill of Sale for the cost of the curbing, base and sub-grade, based on Mr. Roy's work and submit a Bill of Sale to the Association. But in reality, if they are going to say "No, we are not going to take on that responsibility", then we are stuck where we are today and will continue to make the determination on whether the hole was caused by base or sub-grade or asphalt failure. We would just live with it.

Mr. Shelton stated even though as Mr. Cumello says, the residents are going to pay no matter what we do, it would certainly create much less controversy if the mechanism they paid for it is the way they do now through their CDD funds as opposed to giving a big boost to the HOA fund; unless there is a severe disadvantage in the CDD keeping it. I hear you saying it is a mess to determine who is responsible.

Mr. Moyer stated it is a cost to the District. We circulated a number of \$50,000 that this District has spent on roadway repairs in these areas based on our conclusion that it was base related. In the scheme of things, over a couple of years that is not a big number. It is something that we can budget for. Mr. Cumello is looking at whether we should put it in our Reserve Study and start establishing sinking funds for this purpose and we could certainly do that. We now know with certainty based on Mr. Roy's work how much all of this will cost. We do not have to go out and spend a great deal of money on a Reserve Study. We can just come up with a useful life, amortize it over a period of years and set aside a certain amount of funds so at the end of the period, you have monies to replace it if we need to.

Mr. Clark stated the interesting question will be if there is a catastrophic failure in one of the systems and we have to levy an assessment to pay for it. Then we are going to have a

discussion about who pays for it. I think the answer is going to be both communities have to pay the assessment.

Mr. Cumello asked can the CDD establish a special assessment?

Mr. Moyer responded yes.

Mr. Rose asked if we start saying we want to maintain the asset and reserving for the potential failure later on, do we still have to answer the same question?

Mr. Clark responded I think you should if in your next budget you say that you are setting aside a special reserve for the base in these neighborhoods. If you are properly analyzing the benefit, you should take those neighborhoods and add to their assessment their share of the reserve rather than spreading it over the entire District.

Mr. Rose stated that should be the case for any maintenance.

Mr. Clark stated it really should. When it just comes out of the General Fund Budget, it is more invisible because it is not a line item you have tagged. When you start making a reserve and set up a fund and pull expenses from that fund, you probably need to break out your assessments accordingly.

Mr. Roy stated I have not seen the final draft of the CDD Reserve Study and do not even have a draft of the HOA Reserve Study. But I know during all of the preparation, this specific issue was supposed to be addressed as far as where Reserve Funds were being set up. The roads, drainage, sub-grade and curbs for the private communities were intended to be set up under the CDD reserves and the asphalt was under the HOA. There was the intention of it, but I have not seen the final draft.

Mr. Cumello stated I am not saying you can use the HOA Reserve Study. We just have to reserve for it.

Mr. Clark asked do we have a copy of the CDD Reserve Study?

Mr. Moyer responded I will obtain an updated copy.

Mr. Cumello asked does the POA reserve for these problems?

Dr. Banks responded yes.

Mr. Cumello asked for the stormwater management system?

Dr. Banks responded we do not reserve for ones owned by the CDD.

Mr. Cumello stated I do not know whether Gentry Park reserves for anything.

Mr. Roy stated everything in Gentry Park belongs to the CDD.

Mr. Cumello stated then it should be in the CDD’s name.

Mr. Roy stated even the asphalt in Gentry Park belongs to the CDD.

Mr. Cumello stated if there is a problem on the POA property, which includes all of the commercial property in the Village and Gentry Park, all residents will pay for repairs.

Mr. Rose stated only those in CDD communities.

Mr. Cumello stated I still stand by my recommendation for staff to give an opinion on the Audit piece and deal with any other issues that we need to address.

Mr. Moyer stated fair enough.

On MOTION by Mr. Cumello seconded by Mr. Rose with all in favor staff was authorized to adjust the assets to reflect what the CDD actually owns and the Auditors will address this as part of the Audit.

FOURTH ORDER OF BUSINESS

Attorney’s Report

There not being any, the next item followed.

FIFTH ORDER OF BUSINESS

Engineer’s Report – Summary of Roadway Costs

Mr. Roy stated Mr. Moyer sent me a request by email to look at the entrance to Waverly/Carlisle by the gates where there was some undulation in the asphalt. I looked at this area and there is no underground drainage. That area was previously stripped of asphalt and repaved. The base deterioration was repaired at that time, but we are getting a continuing undulation of the asphalt at the gates leaving the community. My first inclination is that this was being caused by irrigation within the median getting trapped within the pavement structure between the base and the asphalt. All of the stopping and turning movement in that area caused a separation between the base and the asphalt and showed deterioration.

Mr. Cumello asked did vehicles such as cars and trucks force the asphalt to move?

Mr. Roy responded yes.

Mr. Cumello stated so this is going to be a continuous problem.

Mr. Roy stated if the bond is not 100% secure, it will shove and move. When the asphalt was removed before, the base failure in that area was minimal. We originally submitted a proposal to remove the entire base and redo it, but after the asphalt was removed, there was little evidence of base failure. Mr. Moyer asked me if this was a CDD issue and who was at fault. I

believe this was caused by the HOA irrigation of the median strip inside of the gates, which is owned by the HOA. We repaired the irrigation. What happened to the asphalt is the irrigation within that island was either excessive or the water being irrigated on the island was trapped within the pavement structure. Is that a CDD or HOA responsibility?

Mr. van der Laan responded we are changing the irrigation of that island to drip line to eliminate the flow out. Will it continue to get worse or has the damage already been done?

Mr. Roy responded once the asphalt is moving, it will create potholes in the asphalt. Eventually the road will have to be repaved. It will get worse because the asphalt will probably pop lose, but not if the irrigation is held to a minimum.

Mr. Cumello asked in your opinion, would pavers prevent this problem from occurring?

Mr. Roy responded yes.

Mr. Cumello stated where we have pavers on the outside, we do not see this problem.

Mr. Roy stated I looked inside of the drainage inlet in Waverly, but did not see any sediment in the pipes or anything entering the inlet itself. I also did not see any evidence of sinkholes. I saw that two strips of sod were put over the hole.

Mr. Holihan stated this is how it starts.

Mr. Roy stated it is not the CDD's responsibility to repair the inlet or storm pipe.

Mr. Cumello asked is there any new activity on Narcoossee that would impact our drainage as far as people tying in?

Mr. Roy responded not at this time.

SIXTH ORDER OF BUSINESS

Community Association Manager

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 provided a proposal for replacing the fountain at Vista Lake in Warwick. We have had issues with this fountain in the past and they believe that this time there was a lightening strike. I provided a proposal to repair the existing fountain for \$7,000. The reason for this price is the size of the fountain, which requires a 30 horsepower motor. This is one of the larger fountains that you can get and for the location, it is much more fountain than what we currently need. A couple of months ago, Mr. Rose had expressed concern over the cost to operate the fountain and spending \$1,800 a month for electricity. I took the opportunity to get

some proposals for reducing the size of the fountain. One was for a 10 horsepower motor and the other was for a 15 horsepower motor. The 10 horsepower motor would cut your monthly electric cost by two-thirds, so you would be spending \$600 per month instead of \$1,800. It would basically pay for itself within a year. The new fountains also come with a five year warranty. My recommendation would be to purchase one of the new fountains. I saw videos on both fountains and recommend the 10 horsepower motor. It also cuts the wattage down from 5,000 to 2,000 watts. The maintenance expenses will be greatly reduced by going from a 30 horsepower motor to a 10 horsepower motor.

Mr. Rose asked is it sufficient to do what it needs to do?

Mr. van der Laan responded the 30 horsepower motor was actually turned down as low as it could go on the water display, but regardless of how low you turn the jet, they are still running on a 30 horsepower motor. The 10 horsepower motor would actually put out the same display size of a height of 40 feet with a 20 foot spread, which is what you were getting from the existing fountain.

Mr. Rose stated I am concerned about the aeration.

Mr. van der Laan stated you will be moving the same amount of water with the 10 horsepower motor.

Mr. Rose asked do we have a budget for this?

Mr. van der Laan responded not exactly.

Mr. Cumello stated we have a \$100,000 carry over.

Mr. Moyer stated correct.

Mr. Holihan stated you have a decrease in the electrical cost for the same period. At the end of the year it all washes out.

On MOTION by Mr. Rose seconded by Mr. Holihan with all in favor the proposal for a new 10 horsepower motor fountain was approved.

SEVENTH ORDER OF BUSINESS

Supervisors' Requests

Mr. Moyer stated Mr. Rose has some good news.

Mr. Rose stated yes I do. We spoke several months ago about Progress Energy and the reimbursement of the street lights for the non-gated communities. We are moving forward on that. The City of Orlando has now agreed to reimburse us approximately half of the street light

costs and they actually took over ownership of the lights along Chickasaw and Lee Vista Boulevard. These days they are only doing reimbursements. They are writing up the draft of the new agreement and will forward it to Mr. Moyer. It will then be circulated by our Attorney. I would like permission to execute this agreement if everyone agrees. They did not give me a final figure, but it looks like we are going to get reimbursed approximately \$48,000. We will be able to request reimbursement for this entire year, so when we receive our December bills, Severn Trent will forward them to the City of Orlando within 30 days and then they will forward a check for \$48,000.

Mr. Cumello asked do they furnish a check or do they deduct the amount from our bill?

Mr. Rose responded we only send them \$1,400 a month. We want them to send us a check. Do we need a motion?

Mr. Moyer responded yes. The motion would be for the Board to authorize us to enter into the new agreement with the City of Orlando for reimbursement of the street lighting costs, subject to District Counsel's review.

On MOTION by Mr. Rose seconded by Dr. Banks with all in favor staff was authorized to enter into a new agreement with the City of Orlando for reimbursement of street lighting costs, subject to District Counsel's review.

Mr. Cumello asked is that for just Chickasaw and New Vista Boulevard?

Mr. Rose responded the current agreement we have is for the tall street lights on Chickasaw and New Vista Boulevard. The new agreement will cover the street lights in all non-gated communities; Avon, Newport, Colony. If it is by a public road, they are willing to reimburse us. The reason they are not paying the entire cost is because we have upgraded lighting.

Mr. Clark asked are they instigating a specific taxing unit to tax the residents such as for Newport? Normally the City would establish an MSTU for a specific community that would pay the costs of the operation for the lights.

Mr. Rose responded they have not discussed that with me. They said this is something they normally do. Apparently they just established a couple of non-gated communities that were perfectly fine with this. Maybe they will do this later on. We will make sure, if that is not the case.

Mr. Holihan asked where else are they getting the money?

Mr. Rose responded exactly. This brings up the same issue we discussed before, which is that we have non-gated communities that are not getting reimbursement for their street lights and the cost is being distributed to the CDD. Is this legal?

Mr. Clark responded in your budgeting process, you should try to allocate specific costs to specific communities where they are different from each other. I do not think you have to do it to the nickel to be legitimate, but if you can identify the cost, you should allocate them where they are being incurred.

Mr. Rose stated that would be easy enough to do.

Mr. Moyer stated I think so.

Mr. Rose stated perhaps this is something you could include with the street issue. They said the reason they are not reimbursing for the gated communities is because they do not maintain the streets.

Mr. Clark stated sometimes communities can get allocations that are over the top and actually cost more to administer than they are worth. In this case, you have one specific class of properties that is going to be treated differently and you may end up with three or four different issues, but they are all going to be for the same class of properties.

Mr. Moyer stated your budget will actually have a new set of line items dealing with just those communities and that will end up being the differential assessment. An additional assessment will be allocated to those communities. This is just part of the budget process.

Mr. Shelton asked is the mechanism of refunding to particular neighborhoods on the annual tax bill as an assessment?

Mr. Clark responded yes.

Mr. Shelton asked is this the same with the gated communities who pay for their own electricity and upkeep of the street lights?

Mr. Moyer responded they will in the future if that is what this Board chooses to do.

Mr. Shelton asked will it be reflected in the assessments?

Mr. Moyer responded yes.

Mr. Rose stated the only other question I had was on the outstanding checks. You indicated that we have been trying to contact some of these owners, but I was puzzled by the fact that we could not find 5/3 Bank, Harvard Federal Savings and Countrywide. It looks like many

of these companies have alternate addresses, according to the Property Appraiser's website and their owners are not living there. Is there any way that we can get an address to send these checks to?

Mr. Moyer responded yes.

Mr. Rose stated I called one owner, who told me he received a check, but it was lost in paperwork and he thought the check was no longer good. He is at the same exact address currently on file, which I suspect it has been on file from the very beginning because he told me that he has lived there forever. I am not sure how hard we are trying to locate these owners and maybe we need to try again, unless someone disagrees.

Mr. Moyer stated we can run them and send them out again as all of those checks at this point in time are stale. We can make sure the addresses correspond to the Property Appraiser's records. Then if any checks do not clear this time around, we have done our best to get these checks to their rightful owners.

Mr. Shelton stated in the HOA governing documents, there are some use restrictions that apply to CDD property, like areas around lakes. What legal ground is the HOA on mandating use restrictions on CDD property?

Mr. Clark asked are there any violations?

Mr. Shelton responded there have not been any issues.

Mr. Clark asked are there any Water Management District provisions?

Mr. Shelton responded the documents comply with SJWMD issues. There are no problems. I was just curious about what our legal standing is.

Mr. Clark stated if you want me to review the documents and comment on them, I could, but I am not sure I understand what they are there for or what the intent is.

Mr. Shelton stated the use restrictions cover several areas regarding things you can and cannot do in your home such as flying flags. There are other things about HOA common property such as playgrounds and hitting golf balls. I am not sure this requires any effort. I am just asking a question such as people being allowed to walk around lakes so long as they are on CDD areas. There are some restrictions. I do not see this as a problem and you can put it into the documents and if someone challenges it, we can deal with it at that time. I am just curious about what the Attorney has to say about the legal standing of it.

Mr. Clark stated you can impose them, but I doubt the CDD has the right to enforce them. The HOA can enforce whatever they put in their documents.

Mr. Shelton asked even though it is not on their property?

Mr. Clark responded if the developer imposed restrictions on that property before it was parceled out into different ownerships, then yes it would restrict those properties.

Mr. Shelton asked including CDD ownership?

Mr. Clark responded yes.

Mr. Moyer stated a case in point that we do not think of often, but on a regular subdivision road, probably 12 feet on either side of the curb is owned by the City or a government, but your restrictions say that you must maintain the property in front of your house to the road. Yes, your restrictions are applicable to public property as it relates to road rights-of-way and it would be similar in terms of us owning the slope from top of bank down to the water, but your restrictions say that the homeowner will maintain it. That is enforceable by the Association.

Mr. Shelton stated that is what the documents say, but not what we do. The CDD maintains it.

Mr. Roy stated I think in that case, you have a clear difference of a CDD maintaining CDD property. What is in the HOA documents, overlaps because it is maintained by the CDD, but it does not need to be.

Mr. Shelton asked in any case, are we going to jail because we are legally sound in the HOA enforcing use restrictions on property it does not own, which is specifically CDD property for the reasons you just mentioned?

Mr. Clark responded no. Those use restrictions can exist on CDD property if they were put into place at the beginning.

Mr. Shelton asked was it put into place in between the water's edge and Palmer's property?

Mr. Smith responded I think we submitted to the declaration based on the meets and bounds description. My guess is it probably is subject to the declarations.

Mr. Clark stated I am confident that you will not go to jail.

Mr. Holihan stated that would be like someone putting a sailboat on CDD property. If the CDD does not take action, the HOA can take action against the owner to remove the sailboat from the property. That is what it is intended for.

Mr. Shelton stated that sufficiently answers my question. I do not see the need to spend more time on this.

Mr. Cumello asked has there been any follow up to the resident in Pembroke damaging the conservation area by building a garden?

Mr. Moyer responded we turned this over to Code Enforcement after the last meeting. Mr. Holihan volunteered to contact them.

Mr. Holihan stated I provided this to staff and do not know what they did with it. I can find out.

Mr. Cumello asked did we send a letter to the homeowner?

Mr. Moyer responded yes.

Mr. Cumello stated we have a series of letters from the Army Corp. of Engineers. Should we respond in any way to what they sent to us? They just provided a draft copy of their remedial investigation, which is currently under review. I have a copy for the District Manager. Effectively it talks about how they performed the investigation and what they found. From a CDD standpoint, they performed soil, surface water and sediment testing on CDD property. The report shows that there is a problem with certain metals exceeding the State limits. We should be getting a report from the State next Tuesday to explain what this means. Those letters do not talk to any sampling of the soil or sediment. It only refers to what they did or did not find. I propose a review of whether or not it is appropriate to respond to the Army Corp. of Engineers when you combine the letters and their findings on the soil and water sampling.

Mr. Clark asked when do we meet again?

Mr. Moyer responded in February.

Mr. Cumello stated the final report should be out by then.

Mr. Clark asked is it in review for further action in February or is there specific action that the Board needs to take now?

Mr. Cumello responded the review would be to determine whether or not we should respond to others based on the letters and draft report.

Mr. Clark asked was their response that they did not think we looked at this?

Mr. Cumello responded I received no response.

Mr. Clark stated I am trying to decide how the Board is going to direct the response without knowing what the response is.

Mr. Cumello stated I do not want to make a decision until we look at all of the information. If you look at what they provided so far, they have the results of their soil and water testing on CDD property. According to the report, there is a problem with metals, which exceed the State limits, but it is not clear yet how far they exceed them. I have no idea whether it is a health hazard. They have a second report with many actions that they can recommend to the local government including deed restrictions, fencing, etc., which they plan to publish by next Spring. They could come recommend that certain areas be fenced off or recommend to the County or City that those properties can never be touched. They have a series of recommendations based on the risk analysis they performed. This is a draft report, which was provided to all stakeholders to come back with comments. Then they will generate a final report and recommendations to governments on what to do with those properties.

Mr. Clark stated without having another meeting until February, since you were designated by the Board as a liaison, the Board could delegate to you and me, the task of writing a response so long as it does not require the expenditure of money or commit the CDD to some type of action and is a response in the nature of a comment. However, if they want you to fence the property, it should come back to the Board because this deals with CDD property. You need to try to figure out whether or not this is something that you and I can handle before the next meeting or if it needs to come back to the Board.

Mr. Cumello stated I am comfortable with that. Once we have more information from the Army Corp. of Engineers, we can sit down and decide whether or not we want to respond to these letters and generate a response. I do not believe their response is going to be "We want them to fence off the property".

Mr. Clark stated I think their response is going to be in the nature of "We do not believe that you looked at this issue enough". I think this falls within the delegation the Board already made to you acting with Counsel to work with the Army Corp. of Engineers.

Mr. Cumello asked Mr. Roy, do you have the expertise to understand what these metal results are as far as risk?

Mr. Roy responded we do not have this expertise. However, we have access to that expertise as far as outside consultants. Their expertise would be based on what the State has established as guidelines.

Mr. Moyer asked is this something we can provide to the Orange County Health Department and ask for their guidance?

Mr. Cumello responded the State may already be doing that. The State is going to give a presentation on Tuesday evening. They have the task to explain what all of these mean. All of this information is starting to flow in regarding their testing and I am comfortable sitting down with Mr. Clark some time in the near future once we receive more information and understand what is in the report. A great deal of the report has to do with CDD property and we need to determine whether or not there is a response that needs to go back to the Board. One report says that Odyssey Middle School is going to remove all of their mobile classrooms and search under them over the holidays.

Dr. Banks stated let's hope that they do not find anything under any of the classrooms.

Mr. Cumello stated according to the soil testing, the Mockingbird property is a disaster. The readings are off the chart.

Mr. Shelton asked but the other side of the fence is not?

Mr. Cumello responded that is the issue. They obtained readings of 150 and there was nothing registering on the other side of the fence. I questioned that.

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. Holihan seconded by Dr. Banks with all in favor, the meeting was adjourned.

Gary L. Moyer
Secretary

John Rose
Chairman

NOTES FROM VISTA LAKES NOVEMBER 12, 2009 MEETING:

Accountant

1. Determine why the amount of the check register changes from month to month.
2. Resend outstanding checks after checking with the tax roll address.

Gary Moyer

1. Obtain an updated copy of the CDD Reserve Study.