

**MINUTES OF MEETING
VERANDAH WEST
COMMUNITY DEVELOPMENT DISTRICT**

A Public Hearing and Regular Meeting of the Verandah West Community Development District's Board of Supervisors were held on **Wednesday, August 12, 2015 at 1:30 p.m.**, at the **Verandah Sales Office, 11571 Verandah Blvd., Ft. Myers, Florida 33905.**

Present and constituting a quorum were:

Jeffrey Jordan	Chair
Susie McIntyre	Vice Chair
Donald Newman	Assistant Secretary
Douglas Sinnard	Assistant Secretary
Paul Zampiceni	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Alyssa Cameron	Hopping Green & Sams

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 1:37 p.m., and noted, for the record, that all Supervisors were present, in person.

SECOND ORDER OF BUSINESS

Public Comments [3 minutes per person]

There being no public comments, the next item followed.

THIRD ORDER OF BUSINESS

**Public Hearing to Hear Comments and
Objections on Adoption of Fiscal Year
2015/2016 Budget**

A. Proof of Publication

Mr. Adams presented the proof of publication for today's Public Hearing and Regular Meeting.

B. Consideration of Resolution 2015-5, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2015, and Ending September 30, 2016

Mr. Adams presented Resolution 2015-5 for the Board's consideration. He explained that this resolution relates to the adoption of the annual budget for Fiscal Year 2016, which begins on October 1, 2015 and ends on September 30, 2016.

Mr. Adams reviewed the proposed budget, which was an exhibit to the resolution, and noted no changes since the initial presentation, at the May meeting. He reported slight reductions in the "General" fund budget, under "Professional & admin" expenditures, resulting in a reduction of approximately \$2, in the Fiscal Year 2016 assessment levels from Fiscal Year 2016, both on roll and off roll.

Mr. Adams indicated that the "Debt Service" budget is based on the "Amortization Schedules", which are part of the Supplemental Trust Indentures, dictating the amount of principal and interest due each year. He explained that, as the assessments are spread over the various product types, assessment levels remain stagnant; the shift is between principal and interest, which, like a mortgage, is interest-heavy on the front end and then shifted towards principal, in order to keep the annual payment the same year-over-year.

On MOTION by Mr. Jordan and seconded by Mr. Newman, with all in favor, the Public Hearing was opened.

Mr. Adams noted, for the record, that no members of the public were present.

On MOTION by Mr. Jordan and seconded by Ms. McIntyre, with all in favor, the Public Hearing was closed.

****Ms. McIntyre briefly left the meeting.****

On MOTION by Mr. Newman and seconded by Mr. Zampiceni, with all in favor, Resolution 2015-5, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2015, and Ending September 30, 2016, was adopted. (Motion passed 4-0)

FOURTH ORDER OF BUSINESS

Consideration of Resolution 2015-6, Making a Determination of Benefit; Imposing Special Assessments, Including But Not Limited to Penalties and Interest Thereon; Certifying an Assessment Roll; Providing for Amendments to the Assessment Roll

Mr. Adams presented Resolution 2015-6 for the Board’s consideration. He explained that this resolution authorizes the levying of assessments on the benefitted units, consistent with the assessment levels set forth in the adopted budget, based on the product types. Mr. Adams indicated that this resolution also directs Staff to provide the lien roll, for the on-roll assessments, to the Tax Collector’s office, for placement on the property tax bills, and authorizes direct collection of off roll assessments, in a manner consistent with collection of the on roll assessments and the timing of the collection, for operations and maintenance (O&M) and debt service assessments.

****Ms. McIntyre returned to the meeting.****

On MOTION by Mr. Jordan and seconded by Mr. Newman, with all in favor, Resolution 2015-6, Making a Determination of Benefit; Imposing Special Assessments, Including But Not Limited to Penalties and Interest Thereon; Certifying an Assessment Roll; Providing for Amendments to the Assessment Roll, was adopted.

FIFTH ORDER OF BUSINESS

Update/Discussion: 3371 Cypress Marsh Drive Conservation Area Restoration and Cost Recovery Efforts

Mr. Adams recalled that, earlier this year, the former owner of 3371 Cypress Marsh Drive, the Mahles’, “de-vegetated” the conservation area, behind their property, to create a view of the golf course. At the May meeting, he reported that the Board approved a Habitat Restoration Plan (HRP), which the District Engineer’s on-staff Ecologist prepared; an impact of this size required self-reporting to the Southwest Florida Water Management District (SWFWMD).

Mr. Adams advised that the HRP was implemented last month and the Baseline Monitoring Report has since been completed, which is the start of the five-year annual

monitoring requirements mandates by the SFWMD; a copy of the report was provided to the Board. He pointed out continuing dialogue with the Mahles' and their attorney. Mr. Adams recalled that, at the last meeting, the Board authorized the District Manager and Chair to work with District Counsel to pursue recovery of funds from the Mahles' to offset the restoration cost; there has been initial resistance however the Mahles' did make a settlement offer, earlier this week.

Ms. Cameron advised that the monitoring and expenses associated with restoring the conservation area was estimated at \$18,000; a demand letter was sent to the Mahles', with a copy to their attorney, who advised that the Mahles' were willing to settle for \$500. Ms. Cameron requested direction from the Board, as there was a vast difference between \$500 and \$18,000; however, after further analyzing the situation, it was determined that the only method of recouping the \$18,000 was to file a complaint, a form of which was provided to the Board. Upon approval by the Board, Ms. Cameron will file the complaint and provide a copy to the Mahles'. She pointed out the costs associated with pursuing litigation on this matter.

Mr. Jordan asked if the prevailing party recoups their costs, under Florida law. Mr. Adams indicated that the District does not have the opportunity to recoup legal fees, if the District prevailed. Ms. Cameron will verify with her litigation partners but her understanding was that attorneys' fees can be requested and it was the judge's discretion whether to award fees.

Mr. Sinnard asked if the \$18,000 will be used solely for litigation costs or if some money would remain. Ms. Cameron reiterated that it is up to the courts to decide. Mr. Sinnard wondered what the bottom line would be, in terms of paying more attorneys' fees plus all of the repairs; as a resident, he would incur part of those costs.

In response to Mr. Jordan's question, Ms. Cameron indicated that the CDD does not have the ability to place a lien on the property. Mr. Adams recalled that District Counsel strongly advised against imposing a lien because it could place the District in a liable position of interfering with the Mahles' ability to sell the property.

Mr. Jordan voiced concern regarding how the District can prevent other residents from clearing conservation areas, if the District cannot impose a lien and only make a demand and relying on the responsible party to have the "good conscience" to pay.

Mr. Adams advised that these are small claims and the cost to run it through the system, with no guarantee, in the hopes of recovering, typically exceeds the claims. Additionally, the

District runs the risk of not prevailing or partially prevailing. He pointed out that this case was frustrating because the Mahles' clearly entered environmentally sensitive property that was not their own.

Mr. Sinnard questioned the legality of the District to recoup costs from the Mahles'. Mr. Adams indicated that the District incurs the cost to run through the process to force them to pay. Ms. Cameron pointed out that the cost to file a lawsuit was cost prohibitive when recovering legal costs.

Mr. Sinnard indicated that the Board's position was whether to accept \$500 versus \$18,000 minus attorney's fees. Mr. Adams recommended that the Board reject the \$500 offer.

Ms. McIntyre recalled that, when she originally showed the house, as a real estate agent, there was no view of the golf course and surmised that the Mahles' real estate agent advised them to cut the vegetation. Ms. McIntyre suggested sending a letter to the Mahles' real estate agent, advising them of the District's policy regarding conservation areas. Ms. Crismond disagreed, as the Mahles' real estate agent could accuse the District of harassment, since their involvement could not be proven.

Ms. McIntyre suggested imposing a lien on the new owner. Mr. Adams pointed out that the new owner's Realtor contacted the District questioning the new owner's liability; they were put on notice that the District was pursuing the recovery of expenses. Ms. McIntyre did not want to set a precedent that clearing vegetation from a conservation area was permitted. Mr. Newman voiced concern about the amount of money spent by the District to set a precedent.

Mr. Adams recommended countering the Mahles' offer by accepting \$10,000.

Mr. Jordan agreed with the \$10,000 counteroffer, as it shows that the Board is willing to compromise.

Mr. Adams requested that the Board authorize Staff and the Chair to negotiate a counter offer with the Mahles', between \$15,000 and \$5,000, and advising the Mahles' that for \$500, the Board will file a complaint.

In response to Ms. McIntyre's question, Ms. Cameron indicated that one possibility was for the Mahles' to be held responsible for paying all legal fees. Mr. Adams advised that this can be included in the complaint.

On MOTION by Mr. Zampiceni seconded by Mr. Sinnard, with all in favor, authorization for the District Manager and Chair to negotiate a counter offer between \$15,000 and \$5,000, with the former owner of 3371 Cypress Marsh Drive, for the restoration cost of the conservation area behind the property, and including this item on the next agenda for discussion, if no agreement was reached, was approved.

SIXTH ORDER OF BUSINESS

Consideration of Resolution 2015-7, Adopting the Annual Meeting Schedule for Fiscal Year 2015/2016

Mr. Adams presented Resolution 2015-7 for the Board’s consideration. He noted that the schedule was the same as prior years, which is the second Wednesday, at 1:30 p.m., in October, 2015, and in January, May and August, 2016. Mr. Adams pointed out that May is the draft budget presentation and August is the final budget adoption.

Mr. Adams advised that meetings can be cancelled and special meetings scheduled, in between meetings, at the will of the Board.

On MOTION by Mr. Zampiceni and seconded by Ms. McIntyre, with all in favor, Resolution 2015-7, Adopting the Annual Meeting Schedule for Fiscal Year 2015/2016, and authorizing Staff to advertise, accordingly, was adopted.

SEVENTH ORDER OF BUSINESS

Approval of May 13, 2015 Regular Meeting Minutes

Mr. Adams presented the May 13, 2015 Regular Meeting Minutes and asked for any additions, deletions or corrections.

On MOTION by Mr. Jordan and seconded by Mr. Newman, with all in favor, the May 13, 2015 Regular Meeting Minutes, as presented, were approved.

EIGHTH ORDER OF BUSINESS

Other Business

Mr. Adams presented a request from the owners of 13060 River Bluff Drive for the Board’s consideration. He indicated that Mr. and Mrs. Edmonds are requesting permission from the District to access the easement across the conservation area to construct a walkway and observation tower along the Orange River.

Mr. Adams reported that there are three communities along the Orange River; one has 12 units, the second has eight units and the third has nine units. He noted that all units within these communities were permitted access for a boardwalk and observation tower, with the exception of the Edmonds property, which would appear to be due to a scrivener’s error. Mr. Adams pointed out that Mr. and Mrs. Edmonds want the same opportunity and benefit as other adjacent property owners.

Mr. Adams reviewed the location map and drawings from the contractor, Stokes Marine, and the District Engineer, and all were in agreement that this appeared to be a simple scrivener’s error. The SFWMD sent an email informally approving this request, from a materials and size basis, as the 258-square-foot dock was under the 260-square-foot limitation set by Lee County.

Mr. Adams requested approval from the Board to correct the scrivener’s error, by authorizing District Staff to work with the SFWMD, Lee County and the contractor on the permitting process. He advised that the CDD’s approval was not final, as the owners must secure the permit from Lee County and the SFWMD, although verbal approval was provided by the SFWMD. Mr. Adams indicated that the District would execute the consent in the permit application, allowing for the construction and upon receipt of the permit, an easement will be prepared and recorded.

On MOTION by Mr. Sinnard and seconded by Mr. Jordan, with all in favor, authorization for District Staff to work with the Southwest Florida Water Management District, Lee County and the contractor on the permitting of a walkway and observation tower along Orange River, was approved.

NINTH ORDER OF BUSINESS

Staff Reports

A. Attorney

There being no report, the next item followed.

B. Engineer

There being no report, the next item followed.

C. Manager

i. Approval of Unaudited Financial Statements as of June 30, 2015

Mr. Adams presented the Unaudited Financial Statements as of June 30, 2015.

TENTH ORDER OF BUSINESS

Supervisors' Requests

There being no Supervisors' requests, the next item followed.

ELEVENTH ORDER OF BUSINESS

Adjournment


There being no further business to discuss, the meeting adjourned.

**On MOTION by Mr. Jordan and seconded by Mr. Sinnard,
with all in favor, the meeting adjourned at 2:07 p.m.**

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



Secretary/Assistant Secretary



Chair/Vice Chair