

LELY COMMUNITY DEVELOPMENT DISTRICT
NAPLES, FLORIDA
Board of Supervisors Workshop
SEPTEMBER 19, 2018

A workshop of the Supervisors of Lely Community Development District was held on Wednesday, September 19,, 2018 at 1:00 p.m. at the LCDD Maintenance Building.

SUPERVISORS PRESENT: William Lee, Chairman
Gerry Campkin, Vice Chairman
Kenneth Drum, Secretary
Harold Ousley, Treasurer

ALSO PRESENT: Neil Dorrill, Manager, Dorrill Management Group
Kevin Carter, Operations Manager
Tony Pires, District Counsel
Freddie Bowers, Director of Community Patrol

WORKSHOP: RULES OF PROCEDURE

Mr. Pires handed out copies of the Rules of Procedure to the Board members, noting that he had extra copies for anyone who was interested. This information is a blend of rules and procedures of other CDDs Mr. Pires represents, as well as updates and information from other Districts as well.

There is a process for developing these rules and adopting them, and this workshop is an important step. Once the Board is comfortable with a draft set, at a regular session Mr. Pires and Mr. Dorrill will be authorized to advertize a notice of rule development, and thereafter a notice of a public hearing to adopt the rules.

In response to Mr. Lee's question as to whether the State has any guidelines relative to this, Mr. Pires indicated that they do not, but to the extent that there are statutory provisions that may apply, they cannot be contradicted. By way of example, as far as purchasing, the Statute covering CDDs Indicates that you must utilize competitive solicitation processes for certain expenditures.

There are some expanded issues, such as a protest policy when a vendor is unhappy. which is not part of the Statutes. Issues such as this will be part of the rules that the Board ultimately

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decides to adopt.

The rules begin with the introduction, and also includes the terms of office, vacancies and so on, much of which tracks the Statute. The quorum issue is discussed, and the authority for certain items is noted as far as the applicable Statute.

The Board's right as a governmental body to appoint committees was noted, and the record book expands on the Statute a bit. Meetings were discussed along with the authority for it.

Included as well was Competitive Solicitation, no Contact or Communication, which is something the Board can include if they wish to. This came from an event that occurred several years ago in another district when a Board member was unilaterally soliciting bids for a project. Public Information and Records tracks the Statute, and Public Meetings and Workshops tracks the Statute as well, but there is some additional language in this that is not contained in the Statute.

The Conduct of Meetings does not adopt Robert's Rules of Order. The Board can adopt or modify those rules. Most Boards do a blend of those rules, or casually follow them, Meeting Protocol is separate, such as how long people get to speak, and those rules would be adopted by resolution. The expansion of Public comment will be under Meeting Protocol, and is the product of some legislation that took place several years ago in Florida where a mechanism has to be provided to allow people to speak at meetings. This includes anyone, not just residents.

Mr. Dorrill takes care of the minutes.

Emergency meetings were addressed, how they are called, and the fact that any action taken in them must be ratified at an open, regular meeting.

Participation by teleconference or videoconference was covered , noting that a Board member can participate in the meeting this way due to exceptional circumstances.

The Consultant Competitive Negotiation Act applies to only the professionals listed, which included architecture, landscape architecture, engineering, land surveying and mapping services. There is a separate process as noted in the Statutes for hiring any of these professionals.

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Contracting for Maintenance Services requires a competitive solicitation process if the threshold of \$195,000 is exceeded. Up until that amount is reached, the competitive process is not required, but can be done if that is the Board's policy.

The Prequalification Process is when there are, perhaps, unique circumstances that require an expert in a particular field. For example, when a top-of-the-line version of a product is desired and only certain vendors carry it and know how to install it.

It is important to note that normally when the Board requests bids, it is usually awarded to the lowest, most responsive, responsible and best bidder proposal. This is at the sole discretion of the Board, however.

It is also noted that except in the services outlined in previous sections, they are not subject to the competitive solicitation process unless required by law, or unless the Board directs that particular services should be competitively solicited.

The \$195,000 threshold shows up once again under Purchase of Goods, Supplies and Materials.

Public construction Work Projects was noted as there is a difference between construction and repair, and the differences in those processes were outlined. However, the threshold for electrical work is \$75,000, anything over that must go through the competitive process. Mr. Pires noted at this point that the Legislature still requires posting the bidding information in the newspaper as well as on line services.

The Global Bidder Proposal Protest Process was the next item, which allows a bidder to file a notice that they were not happy with the notice of award, and they must follow protest process within a certain window of time.

Mr. Campkin asked if there is anything that the Board does on a regular basis that was not included in Mr. Pires' presentation, and conversely, is there anything mentioned by Mr. Pires that the Board has not been doing on a regular basis.

Mr. Dorrill indicated that as it relates to the bid process, they have not had a lot of big projects since the Maintenance Building was built. However, if one of the big electric motors at the irrigation station had to be replaced, that would probably have to go through the bidding process. However, the average contract at Lely is far less than the threshold.

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This practices outlined by Mr. Pires are consistent with what the District has been doing. Mr. Campkin asked if there was anything else that needed consideration, and Mr. Dorrill advised that they had separately adopted personnel rules and regulations that need to be reviewed, as it has been ten years since they were last looked at, and times have changed. Those will be provided to Mr. Pires, and they can be incorporated into the Administrative Rules or they can be updated and separately adopted.

Mr. Drum noted that the process makes more sense to him now that Mr. Pires laid it out, but he did have a few concerns. The first was the strict guidelines laid out for vendors in the rules. He is not sure that they have done this in the past as it relates to the surplus property sale. He wondered if a vendor could sue the Board if they did not follow the guidelines. He added that they have been getting along for 30 years without this, and wondered if it was necessary. Mr. Pires noted that there was a separate statutory scheme that covered surplus property sales, and was not included in what he provided to the Board.

With regard to the guidelines, in the absence of them, some vendor could claim that the Board was being arbitrary and capricious in its decision making. The legislation says in 190.033, related to maintenance services, that the District shall adopt rules, policies or procedures establishing competitive solicitation procedures for maintenance services. So in that regard there is a statutory obligation to do so.

Mr. Drum added that the Board put off electing a replacement for a vacant position on the Board for roughly four months, until the November elections. If they put 60 days into the rules, he wondered if they could be sued in that case. Mr. Pires noted that this particular issue was at the discretion of the Board, and there are no Statutory requirements. However, as the Statute says the Board has to fill a vacancy, someone could sue them, as the opportunity for litigation is always present. That portion of the rules could be totally deleted, as the language is not in the Statute, if there are concerns.

Mr. Drum then asked if the Board was giving up any of their discretionary prerogatives with these rules. Mr. Pires did not think that was the case, noting that they were outlining what their powers and authority is so that everyone knows.

Mr. Drum also noted that in Roberts Rules of Order the Chairman only votes as a tiebreaker. Mr. Pires advised him that this does not apply to CDDs, and by Florida Law every Board member is required to vote, unless they must abstain due to a conflict of interest. However, for example, the Charter of Everglades City states that the mayor cannot vote at all, and has veto power only. That is not the case for CDDs in Florida.

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Roberts Rules of Order has other problems that don't apply to CDDs, but Mr. Pires felt that ultimately it was up to the Board to consider whether they were surrendering power or clarifying for themselves and the community how the Board functions and operates. Mr. Drum noted that in a small group, they are less formal.

Mr. Campkin indicated that as there is authority for all of this, regardless of whether this is written down or not, the Statute stands, and anybody can see what, for instance, Chapters 190 or 286 requires, and act as they wish to. Mr. Pires noted that there are a number of Statutes that require certain things for CDDs, and there are certain rules included in his handout that the District is required to follow.

Mr. Pires added that he had a pared down version of the rules and regulations that is about half as long that he could provide to the Board to look at. He reiterated that he did not think that the Board was giving anything up.

Mr. Lee pointed out that they are taking something that they have had since the early '90s and bringing it up to date, and Mr. Dorrill noted that he supports this initiative. They will go back and revise and update the draft and bring it back to the Board at a future meeting.

Mr. Dorrill's only other question was in the event of a bid protest, it goes to the manager first, and an appeal then can be made to the Board. The way the procedure is written, it requires the Chairman to administer oaths to witnesses, and offer testimony and information to the Board to consider. As currently written, the Board must make a decision at that meeting, which Mr. Dorrill felt was complicated enough that the Board should not have to make a decision at the meeting. Mr. Pires will take a look at that.

Mr. Dorrill offered a hypothetical that after turnover, if the Board decided to take over all the preserves and bring them into compliance, it may cost a quarter of a million dollars, and would have to be bid. If there was a protest to the award, that could be a complicated scenario, and Mr. Dorrill wanted the Board and Mr. Pires to consider that, as unnecessary procedural hurdles would not be a good thing to create. Mr. Pires will look at this, and put together some meeting protocols as well, which are required by the Legislature.

Mr. Drum suggested that each item be addressed at a separate meeting, and in five or six months the Board will have agreed on all the items for the Rules and Regulations. A short break was then taken.