

**LELY COMMUNITY DEVELOPMENT DISTRICT
NAPLES, FLORIDA
REGULAR MEETING OF THE BOARD OF SUPERVISORS
March 21, 2018**

The regular meeting of the Lely Community Development District Board of Directors was held on Wednesday, March 21, 2018 at 1:35 p.m. at the LCDD Maintenance Building.

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

ALSO PRESENT: Neil Dorrill, Dorrill Management Group, Assistant Secretary
Kevin Carter, Dorrill Management Group
Tony Pires, District Counsel (Via Speakerphone)
Freddy Bowers, Operations Manager
Nathan Phillips, Auditor

INVOCATION/PLEDGE OF ALLEGIANCE

Mr. Dorrill offered an invocation, and the Pledge of Allegiance was recited in unison by the Board.

PUBLIC COMMENT

ROLL CALL/APPROVAL OF AGENDA

All Members present, Mr. Pires was recognized as participating by phone. **Motion was made by Mr. Drum, second by Mr. Campkin with the following additions:**

Item 7a involving irrigation agreements requested by Mr. Drum. Item 7b Code Enforcement activities by Mr. Drum. Item 7c involving Master Association Annual meeting by Mr. Campkin

APPROVAL OF MARCH MINUTES

On a MOTION by Mr. Ousley and a second by Mr. Campkin, the workshop minutes were unanimously approved by the Board.

On a MOTION by Mr. Ousley and a second by Mr. Campkin, the regular meeting minutes were unanimously approved as corrected by the Board.

MANAGER'S REPORT

A. Audit Presentation

Mr. Phillips gave a brief synopsis of what the audit entailed, and advised that it was performed subject to generally accepted auditing principals and government auditing standards as of September 30, 2017. Certain things are required by the Auditor General to be presented as per the statutes, which are disclosed in the audit as well.

Balances in cash accounts are confirmed with the financial institution, and expenses are verified as being spent appropriately and pursuant to the Florida Statutes regarding CDDs. Opinions are given from this information, which noted that everything is fairly stated in accordance with those auditing principals and government standards as of the time frame noted, and the Lely District has what is called a clean opinion or unmodified opinion, as it has historically.

There is one new item which is a true-up of the depreciation of two items from the GASB34 reports several years ago. This does not affect the Districts P and L Statement but is more of a balance sheet event.

The Management Discussion Analysis which was prepared by Dorrill Management was read and collaborated with the auditing numbers, and there is also reference to internal controls and logs that the Auditor General requires as well as the auditing standards.

The Statement of Net Position was included, showing total assets of slightly over \$12,000,000 as of September 30, 2017. \$10,000,000 of that was the infrastructure, fixed assets. Total cash as of that time was \$1,700,000. The cash position is less than it was the previous year due to the settlement of the lawsuit at \$962,500.

The District remains in a good cash position, and the liabilities were less than they were the previous year. Legal fees were released and put into the Other Income category. Page 10 of

the report showed that total expenses were \$3,728,000 versus the money coming in at \$2,800,000, which is mainly because of the settlement. If the \$962,500 is taken out and the expenses from the previous two years were compared, the expenses went up by less than 1 percent. This is remarkable considering the hurricane costs were \$60,000 at the time of the audit, and the chemical expenses were over budget.

Revenues were in line with budget expectations, at roughly \$2,854,000. Payroll is down due to a diminished staff. The general fund was the only thing on the Fund Statement, with assets of roughly \$1,600,000, which is what was expected, outside of the lawsuit settlement.

The Pension Fund continues to stay on the books at \$4,000, and it will eventually become a *** property which is being handled by Dorrill Management.

The footnotes are shown that have applied over the years, and the breakdown of the budget process was also shown. All laws and regulations were complied with.

Investments were also shown, and the Auditor General requires that an opinion be given that shows that all the public money was invested in proper funds pursuant to the Florida Statutes, which was complied with.

The capitalization policies were shown and were fairly presented.

Risk Management policies were shown which were consistent.

The reconciliation between the two types of statements, cash and accrual, was shown.

The breakdown of capital assets was included, which showed the total assets of roughly \$200,000 that have been acquired, with about \$100,000 being disposed of. Depreciation is running at about \$530,000, which shows that the District is a little over 50 percent depreciation of the total assets.

The money for those who have accrued sick leave and are entitled to it was shown as well as the breakdown in the fund balance which is pursuant to the budget.

The Comprehensive Service Agreement was included, which indicated that \$906,000 was received. The note that the District has with Lely Master Association and Stock Development was also included. Mr. Phillips went beyond the balance sheet to see if anything else was included other than what was delineated, and the landscape responsibility in conjunction with that settlement was noted.

Mr. Phillips indicated to Mr. Dorrill that one thing that has to be done as noted on Page 17 was things that were not noted and not expected, so expenses exceeded the appropriated budget.

An amended budget will have to be adopted in that regard.

The Government Auditing Standards report on Internal Controls showed no issues that needed to be brought to the District's attention, and all laws and regulations have been complied with that insure that the money being spent follows the protocol in the Florida Statutes.

The Auditor General's requirement that the money was being put in banks that are required by the Statutes was being followed, and all other things that the Attorney General would want to

know were also delineated and included in the audit. There was no abuse, fraud, illegal acts or a deterioration of the District's financial position to report.

Mr. Drum noted that on a day to day basis they operate on a cash budget, and the annual report is done on an accrual basis. Mr. Drum asked what in Mr. Phillips' judgment has changed since GASB, and if they are getting away from the accrual part of it. He noted that they have

set up a capital replacement fund based on useful life for things such as storm sewers. It has not been funded the way it should be, which means that the cash position is going to rise every year. Mr. Phillips indicated that you let it rise, and then you can assign the residual equity of that balance to projects such as the storm sewers. As it relates to GASB, things are still the same, and when you take the cash basis versus accrual basis, there is not much difference. The difference is when you do, for instance, capital outlay, it is an expense on a cash basis, but with accrual, it is put on the balance sheet. Those variances are out there, but the distinction of revenue expenses, apart from capital, are consistent.

The horses are not being depreciated; they are called inexhaustible assets, with a life beyond 100 years. The \$1,700,000 would be used to maintain all the common areas and all those infrastructure assets that will have to be replaced over time. If enough cash is not available, bonds will have to be used to fund the replacement or care of those types of assets. Mr. Phillips felt that the Board was being proactive by looking at the cash flow into the capital account, but the question is whether those assets will last as long as projected, and will enough money be available when it is needed.

Mr. Dorrill indicated that they should last another 20 years, and that they have had their engineer check on them, and will do more monitoring later this spring.

On a MOTION by Mr. Drum and a second by Mr. Campkin, the Audit was unanimously accepted by the Board, and the necessary budget amendment as alluded to in the audit was unanimously approved as well.

Mr. Phillips was thanked for his appearance, and Mr. Pires indicated that he would provide Mr. Phillips with the legal update letter.

B. February Community Patrol and Community Report

The Sheriff's Report showed a total of 45 traffic stops with five citations and no arrests during the course of February. A wide variety of incidents occurred from trespassing to loitering and suspicious activity to vandalism, property damage and community assists as well as Fire and Sheriff's Department assists. It is expected that these numbers will increase in March as the season starts.

C. Update on 2018 Newsletter

The printer's proof of the newsletter has been received, and Dee Emerson at Dorrill Management was credited by Mr. Dorrill for the job she did in putting it together. The Board agreed that it was an excellent job.

D. Administrative Rules of Procedure

Mr. Dorrill has been working with Mr. Pires on a couple of issues in the written rules of procedure. In many cases these rules are created when the District is established, in this case back to 1992. No direct evidence of a codified set of administrative rules has been located, but a copy of what is in place for Pelican Marsh has been provided to the Board.

A detailed set of personnel rules and regulations does exist, with drug free workplace and testing requirements as well.

Mr. Pires has suggested that the Board take a look at some administrative rules, and one example may be the requested or scheduled use of the maintenance building facility. The room where the Board meets has become a very busy place for meetings, and Mr. Carter is devoting quite a bit of time setting up for meetings and making sure advance notice is given so no conflicts take place has become an increasing problem. With the Board's approval, staff will suggest some administrative procedures and bring them back for approval.

At the same time, Mr. Pires is doing some due diligence as it relates to the current legal description of the District. For some time everyone has been under the assumption that at the beginning the Lely Development Corporation for economic reasons decided not to include the entire District for the type of bond indebtedness and provisions going forward. Mr. Pires is doing some housekeeping work and looking at the history of the District, and will bring that back to the Board as well for its consideration.

Mr. Pires suggested that as it relates to the administrative rules, a workshop can be held for discussion of them. Once the Board comes to an agreement they can be released to the public, and an advertised notice of rule adoption can be set as well as a public hearing that the community can participate in and express their comments before the rules are adopted.

As it relates to the boundaries of the District, Mr. Pires was doing some research that Mr. Ousley had requested be done regarding merging, which led to other questions. Mr. Pires will be working on this question and will bring this information back to the Board for discussion at the next Board meeting. (inaudible section.)

E. Irrigation Pump/Motor Repair

The main motor in the irrigation system failed about a week previously, and Mr. Dorrill wanted to advise the Board that he had authorized its repair in advance of an emergency. Mr. Carter did a very good job of soliciting quotes for it. This is a 200 HP electric motor that helps drive the Lely irrigation system, and they are presently working on it. The original estimate was \$13,213 and when the final bill is received Mr. Dorrill will advise the Board.

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On a MOTION by Mr. Ousley and a second by Mr. Campkin, the Board unanimously approved Mr. Dorrill's actions to begin the repair of the main motor on the irrigation system for an amount of \$13,213.

F. New Landscape Area Improvements

Mr. Carter shared some of the recent landscape improvements to the new contract areas on Lely Cultural Boulevard with the Board. Mr. Dorrill felt that staff was doing a great job in these areas, especially related to the turf. Some pictures were shown to the Board members, which represented the type of work going forward. Mr. Lee indicated that he had heard nothing but positive comments from the residents.

G. Permit Transfers

These transfers relate to a number of older neighborhoods in the District, to certify to Hole, Montes' satisfaction that permits to make sure that the water management system that was constructed in those areas was in accordance with the original design plans, and then transferring the operating entity from the developer or sub developer to the CDD. Mr. Cole was also asked to prepare the transmittal letter and to do some spot checking of the overall catch basins in the inlets to make sure that the CDD was not inheriting any immediate maintenance issues.

Engineering inspectors came out and inspected the all three phases of the Majors, phase two of Mustang Island, Ascot and Palomino Village as part of some ongoing work. Some robotic video monitoring will also be done on the older stormwater facilities to see what the joints look like, whether there is any root intrusion, or any cracks that need to be repaired.

On a MOTION by Mr. Campkin and a second by Mr. Ousley the Chairman was unanimously authorized to sign the CDD engineer's Certificate of Completion to complete the permit transfers.

ATTORNEY'S REPORT

A. Encroachment Agreement

A request was received from a contractor to allow the placement of a standby generator partially within the District's easement. It was Mr. Pires' recommendation that a formal document, an encroachment agreement, be prepared if the Board is so inclined. A template has already been prepared for use in other districts, and can be completed once all the information is received from the owner. It would basically say that the generator pad would

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be allowed within a portion of the District's drainage easement. However, if it is ever in the way of the District's maintenance of the drainage facility, any portion of it, and it becomes necessary for the pad or generator to be moved which would require reconstruction or repair of it, then the District will notify the property owner, who will have the right to do that. If it is an emergency, the District can then remove it, and do what it needs to do to facilitate any repairs. In this case the owner will hold the District harmless for any damage resulting from the District exercising its rights under the agreement.

The form also includes the payment of \$1,000 to be held in escrow by the District in the event there are any costs in the future. Several of the other districts in the area, however, have done away with that requirement as there has not been a need for it thus far. (Inaudible section.) A sketch and description of the generator has been obtained, and Mr. Pires added that the County has been much more diligent about making sure that people are not infringing upon drainage easements before a permit will be issued. (Inaudible)

Mr. Carter added that he had walked the site, noting that it is basically a back yard that abuts the lake and will not affect the District in terms of maintenance. Mr. Lee added that there is no swale.

Mr. Drum asked why this was being done, noting that he had gotten a request from someone who wanted to build an eight foot wall on an easement on a 12 by 12 pad. He wondered if they were going to receive all kinds of requests from different communities asking for this type of encroachment agreement. Mr. Dorrill suggested that this would have to be a policy decision on the Board's part, but he did feel that there are some site specific issues, with this narrow lot to begin with.

Based on the configuration of the garage, he thought that the main electrical feed and the circuit panel were adjacent to this location on the right-hand side of the garage.

In the event this request is denied, they could move it to the other side of the driveway and jack and bore a service line underneath the driveway. This would create a bit of a financial burden for the owner, and Mr. Dorrill would also want to make sure that this is natural gas and not propane for the generator, and he was advised that it was natural gas.

Mr. Campkin noted that he still had a problem with this, feeling that once this door is opened, everyone will want to do it. Mrs. *** indicated that the generators have to follow Collier County rules, and they have to be X number of feet from the next door neighbor so the exhaust is not an issue with them. The requested spot may be the only place for this generator to be located.

Mr. Pires indicated that from a legal perspective the Board has no obligation to allow

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encroachment into the easement. Each request can be handled on an individual basis, but he understood Mr. Campkin's concern about opening this door, and this decision was solely at the Board's discretion. In response to Mr. Drum's question about the easement being the issue, Mr. Dorrill assured him that the District's easement was the only reason that it was before them today.

Mr. Drum asked whether a document such as the Board is contemplating drawing up would be necessary if the generator was placed in the side yard. Mr. Pires noted that if the side yard included an easement in favor of the District, then the approval of the District would be required. If there was no easement in that area, the District would not be involved, but otherwise the owner would have to comply with whatever the side yard setback in the PUD was, and then it would fall under code enforcement, and they would possibly need a variance. In response to Mr. Drum's question as to how many homes are adjacent to District easements, Mr. Dorrill indicated that there were thousands of them. They don't necessarily have a District drainage easement in every side yard, but there is in this particular one.

The Board was then advised that if they were not comfortable with the issue at this point and wanted to table it for one month in order to go look at the site, take some pictures if they wished to and get any other additional information they felt was necessary, that could do that. Mr. Drum wanted to know how many homes would possibly be affected if this was done, and Mr. Dorrill felt that due to the hurricane and the loss of power for great lengths of time, there may be many people who wish to install generators, and most of them would want to put it in the side yard because it would be adjacent to the stack and circuit breaker panel.

Mr. Pires added that they have seen these requests often related to pool and lanai enclosures, and a non disturbance agreement is signed and Mr. Pires' legal fees are also charged to the homeowner.

Mr. Campkin felt that Mr. Pires' agreements were very good, but he remained concerned about having a flood of requests come in for these easement encroachments. Mr. Dorrill indicated that a homeowner would need ARB approval from their sub's association, and the Board could say before you come to us for approval, make sure you get it from whatever association you belong to.

It was agreed that this request would be tabled for one month while the Board is provided with additional information, and it will be readdressed at the April meeting.

Mr. Pires added that while he does not envision this occurring, if Mr. Cole's engineering opinion was required, his fees would have to be paid by the homeowner as well.

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B. Short Term Rentals

Mr. Pires has some materials with him that he was going to hand out to the Board, but he did have a memorandum from the County Attorney in 2012 when the question arose about short term rentals. In essence it said that there are zoned districts, such as single family or multi-family dwellings, and within those is a list of permitted uses.

The County Attorney's opinion was that short term rentals were not listed, and therefore were not permitted. (inaudible section) Mr. Pires called and spoke to the County Attorney, Jeff Klatzkow, (This section was all inaudible)

An option was to make a request of County staff to give a formal interpretation of whether or not in a particular neighborhood short term rentals are permitted under their category.

Mr. Klatzkow indicated that he had not changed his opinion since 2012, but that this may not be the most feasible way to approach this issue.

Additionally, anyone can go before the County Commission and have ten minutes to present their request and opinions, and petition the County to direct staff to take certain actions or to bring something back before the Commission with recommendations for further action or no action.

Mr. Campkin indicated that this was pretty much what they had been told in the past, and one way or another he wished that they could get an opinion that would stick. Mr. Pires then advised that the only way to get a definitive answer from County staff is to make a request for a formal interpretation.

FINANCIALS

The January 31 Financials were provided to the Board, and the balance sheet showed \$2,481,000 in cash in both the operating and reserve accounts. Under other assets the combined total fixed assets were a little more than \$10,000,000 related to infrastructure. Total assets of the District at the end of the first quarter were \$13,300,000 against \$86,000 in payables.

The income statement showed that almost \$92,000 was received during the month of January in non ad valorem tax assessments, the majority of which were late December payments that were posted the following month. Interest income at \$10,000 for the first quarter was substantially more than was originally forecast, due to a large cash balance on hand in addition to a better rate of return at the new bank. The annual budget forecast for the category was \$5,000.

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With the one exception of chemicals, all of the cost centers are under budget through the end of the first quarter by \$157,000 on the expense side.

Mr. Lee asked if the separate CSA agreement with the County School Board had been paid and was advised that it was. The other separate agreements include the one with the School Board for the elementary school that is part of the District, which the District provides the drainage outfall for. Other agreements are the Life Care and Market *** Communities that are CSA contributors. A third type of agreement exists with the Board of County Commissioners for the regional library, and the EOC. Irrigation water and the drainage facilities are provided to them and they are charged for that. No services are provided to Stock Plaza, and while they originally tapped into the District's water line, they have drilled their own well and now provide their own water. The new apartment complex on Rattlesnake Hammock Road does not contribute to the Master HOA, so they are not eligible for benefits from the CDD, unless they enter into one of these separate agreements where they are charged by the District separately.

Mr. Dorrill indicated that he had recently run into Keith Gelder of Stock Development and was advised that they are planning to turn the Master Association over during the middle of 2019. He asked if a workshop could be held with the Master HOA and the CDD Board to discuss parcels that the Board may have an interest in as a way of trying to consolidate a single entity for purposes of maintenance and operating costs. Mr. Dorrill felt that he would be interested in having the District provide water to Stock Plaza as well, as they have a shallow well that is causing quite a bit of iron staining.

Some new construction that is going up will be checked and monitored as well to make sure that they drill their own wells for irrigation water unless they are going to be paying into the CSA.

On a MOTION by Mr. Ousley and a second by Mr. Campkin the Financials were they unanimously accepted by the Board.

SUPERVISORS' REQUESTS

A. Master Association

Mr. Lee indicated that the Master Association will be meeting at the library the following Tuesday at 11:00 a.m., and potentially more than one Board member could be present. Additionally, Commissioner Fiala will be having a Town Hall meeting at the library that evening at 6:00, which Mr. Lee plans on attending. Mr. Dorrill reminded them that as long as they do not participate in any conversation that could potentially come before the CDD Board it will not be a problem.

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PUBLIC COMMENT

Mr. *** Fauchman noted that the bush that was causing a danger as a line-of-sight issue was taken out and he appreciated the Board doing this.

A resident of Falcons Glen indicated that her Board had just passed a short term rental agreement for seven days, which many homeowners were against, but a few new Board members made it happen.

A resident asked what had happened to the flag at 41, and Mr. Carter indicated that it had broken when it was being taken down and is being repaired.

ADJOURNMENT

With the reminder that the next meeting would be held on April 18 with a workshop scheduled at 1:00 with the meeting to follow at approximately 1:30. The workshop will be the Transportation Department, and they have been asked to comment on what is happening on Triangle Boulevard with the new hotel behind Kmart, and also the exit at the bank onto US 41.

On a MOTION by Mr. Campkin and a second by Mr. Ousley, the meeting was then adjourned at 2:40 p.m.