

**MINUTES OF MEETING
PALM BAY
COMMUNITY DEVELOPMENT DISTRICT**

The Board of Supervisors of the Palm Bay Community Development District held a Regular Meeting on October 14, 2021, at 9:00 a.m., at the Courtyard by Marriott Tampa/Oldsmar, 4014 Tampa Road, Oldsmar, Florida 34677.

Present were:

Rob Bergman	Chair
Joe Aschenbrenner	Vice Chair
Win Williamson	Assistant Secretary
Speros Margetis (via telephone)	Assistant Secretary

Also present, were:

Chuck Adams	District Manager
Dana Collier (via telephone)	District Counsel
Dave Raucher	HOA Board Member and Resident

Also present, via Zoom were:

Anthony Dewanni (via Zoom)	HOA Board Member and Resident
Jeff Lynn	Resident
Dan Greenberg	Resident
Wendy Popielarcheck	Resident
Michelle Reiss	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 9:04 a.m. Supervisors Aschenbrenner, Bergman and Williamson were present in person. Supervisor Margetis was attending via telephone. One seat was vacant.

▪ **Chair's Opening Comments**

This item was an addition to the agenda.

Mr. Bergman welcomed the residents to the meeting and stated he hoped attendance would increase now that Zoom attendance is available, as the Board wants to hear resident

opinions, so the Board can make decisions that are best for the community. He wanted to address certain items, such as residents sending emails around the community attacking, slandering and falsely accusing Board Members that, without facts and looking into it, cannot be tolerated.

Mr. Bergman presented the following accusations that were made against the Board:

➤ CDD Election: Requested facts from the accuser regarding an accusation of a Board Member cheating and “rigging” the election.

Response: Resident Jeff Lynn stated that he said the reason why they were beat was that Board Members who previously expressed no desire to run again, collected proxy votes; no cheating was involved.

Mr. Bergman stated proxy voting is 100% legal and typical, as most homeowners do not vote or are not able to attend meetings.

➤ “Kickbacks” from Envera: Requested facts from the accuser regarding the accusation of Board Members taking “kickbacks” from Envera, the company that handles gate access and camera monitoring of the CDD’s assets.

A Board Member recalled Mr. Lynn asking Mr. Adams about this.

Response: Mr. Lynn stated that he asked Mr. Adams if they receive a referral bonus for referring Envera to other CDDs. After researching and finding that the Whitehall and Envera corporate offices are near each other and several CDDs engaged Envera without suggesting other companies.

Discussion ensued regarding the minutes recorded that the accusations were directed against two Board Members, not Mr. Adams, and the verbiage “kickback” was used. The Sunshine Law and constraints on Board Members responding to emails or discussing matters outside a CDD meeting was also discussed. It was noted that meeting minutes are posted on the CDD website and recordings are available, upon request. Mr. Adams stated, for the record, that it is as illegal for him or any Board Member to receive a kickback.

Mr. Bergman and Mr. Lynn apologized for the tone in the meetings and in the emails to Board Members.

➤ Board Members Choosing Contractors for Personal Gain, Financial or Other: Mr. Bergman stated that the CDD has engaged multiple contractors over the years. He encouraged residents to ask questions, comment and attend meetings; however, he took issue with accusations with facts not in evidence against Board Members who should not have to deal with this.

Mr. Aschenbrenner referred to Lines 125 through 131 of the September 9, 2021 meeting minutes and asked that the minutes be corrected to reflect that he was addressing Mr. Jenn Gano about leasing his boat slip to a non-resident. He apologized to Mr. Lynn for assuming it was him and for the accusatory tone and he also sent a text and email about the mistake. Mr. Lynn apologized to Mr. Aschenbrenner for the way he spoke to him after the meeting. His intent was not to accuse anyone; they just do not agree with the restrictions on file and are worried about why the CDD is stepping in for the Boat Club Association's (BCA) lack of oversight because the BCA did not assess sufficiently. Mr. Lynn stated that he knows the CDD's legal opinion would be discussed. Mr. Lynn stated that they too have legal reviews and the rumor of proceeding with litigation was false.

The following matters were addressed;

➤ The CDD engaged different contractors for various CDD projects and the only reason Mr. Matt Brown was engaged for a particular project was because he has reasonable prices being a small business owner and performs good work; there was no personal relationship with the contractor.

➤ Article 6, Section 15: Mr. Aschenbrenner offered to discuss historical data about the marina with Mr. Lynn and other homeowners outside of a CDD meeting. He noted that the CDD has monitored the situation over several years, tried unsuccessfully to make the BCA make the repairs and assess the slip owners and tried not to raise assessments over the last seven years. However, per Article 6, Section 15, the CDD, at any point, can take it over if it is not managed property, as it owns Tract B. The issues are not just the gangway but also the walkway behind the homeowners' property and the boat ramp itself.

➤ CDD Assessments: The five-year note would fund several CDD projects and, once paid off, the CDD might be able to lower assessments. Discussion ensued regarding the high costs of

issuance for issuing bonds and reducing costs by conveying assets to the HOA and dissolving the CDD, based on a belief that several costs are redundant.

➤ Boat Club Restrictions: In Mr. Lynn's opinion, the Board's decision conflicts with the BCA restrictions filed with the County. Mr. Bergman explained that the CDD's prior District Counsel identified that the CDD owns Tract B and is responsible for the center gangway and noted that the seawall is tied together with the BCA.

Ms. Collier, read a portion of a memorandum from the CDD's former District Counsel, Ms. Slater, which came to the following conclusion:

"That the gangway portion of the boat slip is owned by the CDD because it was placed upon CDD owned property. The CDD owns Tract B that is platted in the subdivision, and as with any other improvement that is placed upon property if there is not an underlying lease or something like that, that allowed someone else to build an improvement upon property, the improvement is placed upon the real property becomes part of the bundle of the sticks that are owned by the owner of the property and therefore is the responsibility of the owner of the property."

Ms. Collier stated that this was the simplest way to put Ms. Slater's conclusion from the January, 2019 "Maintenance of Common Area and Boat Slip Improvements Located on Tract B" by the CDD, Memorandum, which resulted after reviewing all the issues related to ownership and maintenance of the area, the BCA, the CDD, etc. The CDD is the landowner of Tract B upon which the main gangway is located and would be able to repair that area without enforcing deed restrictions to repair the rest of the area, such as the individual boat slips. The memorandum is available as a public record.

In response to a question, Ms. Collier confirmed that, among other documents reviewed, it included the 1993 Palm Bay's 48-page Declaration of Restrictions and Protective Covenants relating to the Palm Bay at Bayside Homeowners Association. The Board would not proceed with paying for another independent legal review from District Counsel. The Memorandum and CDD files of which Ms. Slater based her opinion, which included the Palm Bay Boat Club Association Restriction documents, would be sent to Mr. Lynn. Discussion ensued regarding whether the opinion was also based on the 1993 or 1996 documents.

Resident and HOA Board Member Anthony Dewanni asked why 86 homeowners were paying for the repairs and improvements for the private property of 14 people and what the BCA fees were being used for and asked for the details regarding slip availability. Mr. Dewanni was directed to contact Mr. Greg Frolick, who runs the BCA, for these answers because the CDD does not have access to information regarding what the BCA spends its funds on. Based on his belief that all CDD Board Members are members of the BCA and could request the information, Mr. Dewanni asked if any of them requested the information from the BCA. Mr. Margetis stated that the BCA collected funds to pay for the electrical and plumbing for the portion of the fingers that they own that are on deeded property and for electrical and plumbing out to the deeded property. Mr. Dewanni reiterated his question of why the “entire community” is being assessed for the benefit of just 14 owners. Mr. Margetis stated that there are 15 slips and, according to legal counsel, the common property is the CDD’s responsibility, which was the basis of the decision.

Ms. Collier stated that she could provide the folio numbers and anyone can go online and see the property that is owned by the CDD.

Mr. Lynn referred to Pages 46 and 47 of the Deed Restriction documents, which he believed outlined the “boardwalk” and that it should have been conveyed. In his opinion, the fact that the CDD did not convey it or it was not conveyed is not the homeowners’ responsibility, because it was supposed to be an automatic conveyance once the Developer sold the last slip. He felt that it is ridiculous that they now have to cover this because, in his words, “the CDD didn’t do their job years ago to convey this over to the BCA.” Mr. Adams stated that it was not the CDD that was to convey it; it was built by the Developer so the Developer would have been the one to convey it. He explained that one cannot operate on intent, the CDD can only operate on facts and what actually happened. Mr. Lynn talked about what was “supposed to” happen. Mr. Adams stated that the “supposed to” did not happen and voiced his opinion that “supposed to” will not help in terms of a liability claim. Mr. Lynn felt that the Board and Staff are reading the Deed Restrictions the same as he is. Mr. Adams encouraged Mr. Lynn to read the opinion memorandum from former District Counsel and all

supporting documents that were reviewed in terms of reaching the opinion, which should shed a different view or legal reading of the documents.

Mr. Lynn stated that the only document he cares about now is the Boat Club Restrictions and, in his opinion, whatever else Mr. Adams wants him to review is of no concern to him, regarding litigation. He expressed his confidence that what is being done is in violation. He stated that the Board was asked to vote to go forward with an independent review. Mr. Adams stated that the CDD already obtained an independent legal review; the legal opinion was from General Counsel, not Management. Mr. Lynn further discussed the possibility of litigation and potential questions that would be posed to the Board Members, if litigation commences. Regarding the legal opinion obtained by the CDD, Mr. Lynn asked if it was done in relation to defining who owns the docks and along the seawall. Mr. Adams stated that was part of it; it was an all-encompassing review with a portion being specific to the gangway. Mr. Lynn asked if this project was in mind or discussed during that review. Mr. Adams replied affirmatively. It was basically what pushed this issue; the fact that the gangway dock was deteriorating and dilapidated and determining who is responsible for it.

Mr. Lynn recalled past repairs to the gangway boardwalk and asked who repaired those and paid for the repairs. Mr. Adams stated he did not know who funded the repairs but knew it was not the CDD. Mr. Lynn continued discussing the circumstances of the prior repair work.

Mr. Aschenbrenner recalled that, at the April 9, 2020 meeting, District Counsel stated that she researched the CDD and the BCA and walked Tract B and the CDD property. He noted that another issue is the walkways around the houses is in disrepair and hanging over Tract B and on CDD property. The CDD gave rights to the HOA to enforce Neighborhood Covenants because the CDD is not allowed to do so; therefore, the HOA has the power it needs to tell people to keep their docks up-to-date. The bigger problem is, if individual dock owners, with their walkways surrounding the perimeter of Tract B, who is responsible for that, in addition to the boat slips along the back with a walkway along all of those, so it is a large problem that everyone, as a community needs to come together to solve.

Mr. Bergman noted that this has been going on for a long time and it was only once the CDD obtained the legal opinion that the CDD found out that the CDD owns it, is supposed to

manage it and is liable for it. Mr. Aschenbrenner noted that a survey was obtained to determine if residential properties go into Tract B and it was determined that they do not; they stop at the seawall which, in some cases, are a few inches over CDD property, which begs the question of who is responsible for upkeep of the seawall. The Board is trying its best, such that every homeowner on the marina will get a Consent to Use Agreement and they will be responsible for the upkeep.

Resident Wendy Popielarcheck recalled in response to her 2018 emails about ownership of the docks that Mr. Adams conveyed that the CDD only owns from the launch to the lift, Folio Number #005755-6124 in question and that the CDD pays taxes on this property, which is the slip for getting into the boat launch. Also Mr. Greg Frolick contacted her this week and stated that he was responsible for the maintenance a couple of years ago and proposed installing a locked gate. Mr. Bergman believed that the email conversations Ms. Popielarcheck referred to were before the CDD obtained the legal opinion.

Discussion ensued regarding the areas referenced by Ms. Popielarcheck.

Ms. Popielarcheck stated the Hillsboro County Appraiser's Office conveyed to her the following:

➤ Within the documents for the BCA, which is another governing body within this community, the dock is listed as an ingress/egress, a legal access to personal property and that the actual ownership of those docks that are in the marina are deeded properties; they can only build or extend on a property deeded to you.

Mr. Margetis left the meeting at 10:00 a.m.

➤ Taxes were dispersed equally and have all been paid by each individual dock slip owner.

Mr. Adams stated that the CDD paid taxes on Tract B, outside of the individual deeded properties that overlay within the outer boundaries of Tract B.

Mr. Bergman stated that, if it were discovered that the CDD does not own the property, he would have no problem reevaluating this matter but, from all the documents involved, Legal Counsel determined that the CDD owns it. He discussed the need to protect the CDD and its assets and pointed out that, if someone sues the CDD, they are not technically suing the Board; they are, in essence, suing the entire CDD.

Ms. Collier stated that she emailed the Board Members the January 2019 Memorandum, which was after the emails Ms. Popielarcheck discussed, along with the deed to the property when it was conveyed by the Developer to the CDD including Tract B, the BCA Declarations and Covenants and the Easement for the Palm Bay Boat Club from 1996, that were used as the bases of the opinion. Mr. Adams stated that he emailed the items he sent to Mr. Lynn and the Board, which included Ms. Slater's memorandum and the documents footnoted in the it.

Mr. Raucher asked Ms. Collier if the CDD can assess the dock owners for the cost to repair the ingress/egress property that leads out to their slips. Ms. Collier stated that the CDD cannot levy a sub-assessment but the CDD has other options. Mr. Aschenbrenner encouraged everyone to look at Article 6 Section 15 of the Declaration documents, which he referenced earlier, about the CDD at any point can assume the responsibilities of the BCA and assess costs but that is not the desire of the CDD. He suggested tabling this item as the issue is not just the gangway, it also includes the walkway behind the homeowner properties, etc.

Mr. Aschenbrenner stated that, if the CDD truly owns the gangway, for the benefit of the community, the plan was that the last gangway would be extended by 6' so it can be used, if needed, as the CDD owns it; they were not installing another slip.

Discussion ensued regarding the legal opinion, affected homeowners that do not benefit from the dock, etc. The CDD being open to maintaining the docks behind residences was discussed, along with liability, the condition of the seawalls and activities in the middle dock.

The Board agreed to table this item to survey homeowners to determine the best approach, including whether to make the docks public or private and if the CDD should pursue the option to assess the slip owners for repairs, while they resolve ownership of the marina.

Mr. Lynn stated expressed his opinion that homeowners do not want the beach and other assets, compared to the issue with the dock, and that homeowners believe the BCA owns the docks and are standing firm with the argument that, although legally the CDD owns the dock on paper, it should have been conveyed to the BCA. Mr. Lynn stated his intent to contact the Tax Appraiser to see if he can show those restrictions and have them conveyed.

A question was raised regarding what happens if the BCA does not follow through and the dock is in disrepair. Mr. Adams stated the CDD would then have the option to shut it down or perform the repairs and assess the members of the BCA. The goal is to get all affected homeowners who refused to execute the Consent to Use of Easement Agreement, which states the owner is responsible for maintaining the seawall and indemnifies the CDD from any liability, to execute it, as only three were recorded with the County.

Mr. Adams would work with the HOA on the survey that will also include a notice about looking for candidates to fill Seat 4, which is vacant.

SECOND ORDER OF BUSINESS

Public Comments: Agenda Items

This item was presented in conjunction with the Chair’s Opening Comments.

THIRD ORDER OF BUSINESS

Consider Appointment of Qualified Elector to Fill Unexpired Term of Seat 4

This item was deferred to the next meeting.

FOURTH ORDER OF BUSINESS

Administration of Oath of Office to Newly Appointed Supervisor *(the following will be provided in a separate package)*

- A. Guide to Sunshine Amendment and Code of Ethics for Public Officers and Employees**
- B. Membership, Obligations and Responsibilities**
- C. Financial Disclosure Forms**
 - I. Form 1: Statement of Financial Interests**
 - II. Form 1X: Amendment to Form 1, Statement of Financial Interests**
 - III. Form 1F: Final Statement of Financial Interests**
- D. Form 8B – Memorandum of Voting Conflict**

These items were deferred to the next meeting.

FIFTH ORDER OF BUSINESS

**Consideration of Resolution 2022-01,
Designating Certain Officers of the District,
and Providing for an Effective Date**

This item was deferred to the next meeting.

SIXTH ORDER OF BUSINESS

**Continued Discussion: Capital
Improvement Program and Closing Loan
with FineMark National Bank & Trust**

Regarding the items comprising the Capital Improvement Program (CIP), Mr. Bergman asked if the assessments were finalized and if the CDD could reduce the loan amount with FineMark National Bank & Trust (FineMark).

Mr. Adams stated that once the Fiscal Year 2022 budget was adopted, the lien roll for assessments was transmitted to the County Tax Collector and the tax bill would be sent the first week of November. He stated that FineMark approved a \$200,000 loan and he had the loan documents, Resolution and opinion letter from the District Counsel ready to close on the loan. As this was being deferred, Mr. Adams did not foresee getting a lower amount approved or updating the documents.

This item was deferred to the next meeting.

SEVENTH ORDER OF BUSINESS

**Acceptance of Unaudited Financial
Statements as of August 31, 2021**

Mr. Adams presented the Unaudited Financial Statements as of August 31, 2021.

The financials were accepted.

Mr. Adams stated that the agenda for the next meeting would include consideration of appointment of a qualified elector to fill Seat 4, the Capital Improvement Program and the loan with FineMark.

Mr. Aschenbrenner asked if the Fiscal Year 2022 budget was sufficient to proceed with the kayak launch project and defer other items, such as the gazebo, fire pit, etc. Conversation ensued regarding resident access difficulties due to the unfavorable condition of the seawall,

the Fiscal Year 2022 budget, an updated proposal, need for additional sand, permitting and fastening the structure to the existing structure.

On MOTION by Mr. Aschenbrenner and seconded by Mr. Bergman, with all in favor, installation of the kayak launch and two truck-loads of sand, in a not-to-exceed amount of \$11,000, was approved.

EIGHTH ORDER OF BUSINESS

Approval of September 9, 2021 Public Hearings and Regular Meeting Minutes

Mr. Adams presented the September 9, 2021 Public Hearings and Regular Meeting Minutes.

Mr. Aschenbrenner asked for the conversation on Lines 125 through 131, which he referenced earlier in the meeting, to be clarified. Mr. Adams stated that the minutes could not be changed, as they reflect what Mr. Aschenbrenner said during that meeting but his clarification today would be reflected in the minutes for today’s meeting, in the section when Mr. Aschenbrenner made the clarification.

Mr. Bergman stated that, as he attended the last meeting via telephone, he listened to the entire audio and noted he could be heard saying “I think I caught some of that.”. He asked for today’s minutes to reflect that he was not in agreement with all that was happening, as it was the first time he heard comments about a certain topic, and later in those minutes it reflected that that the Board agreed unanimously. Mr. Williamson stated that he did not agree or disagree about that topic either, as it was also was his first time hearing it.

On MOTION by Mr. Aschenbrenner and seconded by Mr. Williamson, with all in favor, the September 9, 2021 Public Hearings and Regular Meeting Minutes, as presented, subject to the explanation from Mr. Aschenbrenner regarding his comments on Lines 125 through 131 and Mr. Bergman and Mr. Williamson’s comments above being included in the October 14, 2021 Meeting Minutes, were approved.

NINTH ORDER OF BUSINESS

Staff Reports

A. District Counsel: *Straley Robin Vericker*

There was no report.

B. District Engineer: *Landmark Engineering & Surveying Corp.*

There was no report.

C. District Manager: *Wrathell, Hunt and Associates, LLC*

- **NEXT MEETING DATE: January 13, 2022 at 9:00 a.m.**
 - **QUORUM CHECK**

The next meeting would be held on January 13, 2022.

TENTH ORDER OF BUSINESS

Public Comments: Non-Agenda Items

There were no public comments.

ELEVENTH ORDER OF BUSINESS

Supervisors' Requests

It was reported that the front gate was working well. There were incidents of unauthorized users damaging the lift station; Mr. Raucher or Mr. Lynn were asked to mention it at the next HOA meeting. Discussion ensued regarding several matters that resulted in implementing the following actions:

- Access to the Envera cameras would be given to Mr. Raucher and another person to obtain video footage of future violations. Footage of the current incident would be provided to them, as well as Mr. Raucher forwarding it to the HOA Board.
- HOA Management would start sending violation letters to the homeowners.
- HOA Management would be asked to perform regular inspections at the Marina.
- Ask Baycut to clean up the moss from the trees at the beach, as any extra cost was expected to be nominal.
- Regarding a request for clarification of the statement “not a consent of use”, in the April 11, 2019 Meeting Minutes and the CDD owning the waterway but allows the HOA to enforce covenants”, Mr. Adams clarified that the plat has a dedication to the HOA; the CDD has ownership but there is a dedication of overlying easement to the HOA. It was noted the BCA

documents were outdated and that the CDD does not have land use authority and must rely on the HOA for the docks.

Mr. Bergman referred to Mr. Raymondo's idea at the last meeting to require boat lift users to execute a use and a liability waiver and wondered if the CDD needs to require executed waivers. Mr. Adams believed that it is not necessary because accidents were taken into consideration through the CDD's general liability coverage.

TWELFTH ORDER OF BUSINESS

Adjournment

There being nothing further to discuss, the meeting adjourned.

On MOTION by Mr. Williamson and seconded by Mr. Bergman, with all in favor, the meeting adjourned at 10:52 a.m.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]


Secretary/Assistant Secretary


Chair/Vice Chair