

MINUTES OF MEETING

CLEARWATER CAY

COMMUNITY DEVELOPMENT DISTRICT

Board of Supervisors Meeting

Wednesday, October 17, 2018 at 5:00 pm

Main Library, 100 N. Osceola Avenue,

Clearwater, FL 33755

Present and constituting a quorum:

Nino Accetta	Chairman
Alan Glidden	Vice-Chair
Jeff Wilson	Assistant Secretary
Jerry Lancaster	Assistant Secretary
Joel Mies	Assistant Secretary

Also present were:

Hank Fishkind	Fishkind & Associates, Inc.
Robert Johnson	Gray Robinson
Bruce Barnes	Bruce Barnes P.A.
Debbie Taylor	Bruce Barnes P.A.
Don Dwyer	GVCOA
Ann Cameron	GVCOA
Craig Smestad, MD	GVCOA
Stacey Smestad	GVCOA
Ronald Schulte	GVCOA
Christopher Brzezinski	GVCOA

FIRST ORDER OF BUSINESS

Call to Order and Roll Call

The Clearwater Cay Community Development District Board of Supervisors' Meeting was called to order at approximately 5:00 p.m. Roll was called. The persons in attendance are outlined above.

SECOND ORDER OF BUSINESS

Public Comment Period

Mr. Dwyer commented that he noticed that the Board is going to go into an Executive Session under the Organizational Matters for today's meeting. He asked if the Board is going to do that in the middle of the meeting or towards the end of the meeting because he wants to know whether or not he should stay. Dr. Fishkind asked Mr. Johnson when he would like to plan on doing the Executive Session. Mr. Johnson stated that he planned on holding the Attorney-Client Executive

Session after the consideration of the minutes and then after that hold the Executive Session. He stated that his belief is that it will take approximately 30 minutes and then release the Court Reporter because the District is paying her by the hour. Mr. Dwyer asked if the District Counsel and the Board will reconvene in a public session. Mr. Johnson replied that is correct.

There were no other public comments.

THIRD ORDER OF BUSINESS

Consideration of the Minutes of the September 19, 2018 Board of Supervisors' Meeting

The Board reviewed the minutes from the September 19, 2018 Board of Supervisors' Meeting.

On MOTION by Mr. Accetta, seconded by Mr. Lancaster, with all in favor, the Board approved the minutes of the September 19, 2018 Board of Supervisors' Meeting.

FOURTH ORDER OF BUSINESS

Attorney-Client Executive Session

Dr. Fishkind stated that District staff was going into their private Attorney-Client Executive Session and asked the members of the public to leave until the meeting reconvened.

Mr. Johnson stated that District staff is going to have this Executive Session and it will probably last about 30 minutes. Those in attendance at the Executive Session will be Dr. Fishkind, Mr. Wilson, Mr. Glidden, Mr. Mies, Mr. Lancaster, Mr. Accetta, Mr. Johnson and the Court Reporter. Mr. Johnson explained that the Court Reporter will be transcribing what occurs during that Executive Session. The Police Officer was asked to leave the room as well during this Executive Session.

The Board of Supervisors Meeting reconvened.

FIFTH ORDER OF BUSINESS

Discussion of Status of District Litigation

Mr. Johnson asked Dr. Fishkind if District staff should ask for a vote on the matters that were discussed during the Executive Session. Dr. Fishkind responded yes and asked Mr. Johnson to give the Board some guidance.

Mr. Johnson stated that the issue is on pursuing the motion for Attorney's fees and costs under Florida Statute 57.105 in the GVCOA vs. Clearwater Cay Case 16-15.84. Mr. Johnson is requesting authority from the Board to move forward with scheduling a hearing on the motion for Attorney's fees and costs.

On MOTION by Mr. Accetta, seconded by Mr. Lancaster, with all in favor, the Board approved granting authority to Mr. Johnson to file for a hearing on the motion for Attorney's fees and costs.

Mr. Johnson stated that that he sent to Mr. Barnes in the mandamus action, a motion for Attorney's fees and costs under Florida Statute Section 57.105 but it has not yet been filed. Mr. Johnson is seeking the authority to file that and then move forward with setting that request for hearing.

On MOTION by Mr. Accetta, seconded by Mr. Wilson, with all in favor, the Board approved Mr. Johnson's request to file a motion for Attorney's fees and move forward with that request for hearing.

SIXTH ORDER OF BUSINESS

Consideration of Temporary Construction Consent and Easement Agreement

Mr. Johnson explained that this is an Easement Agreement that is being proposed by Harbourside to build certain covered parking. Mr. Glidden stated that they are replacing covered parking that was knocked down during the hurricane and adding additional covered parking.

Mr. Johnson stated that the concern is that the District wants to ensure that this is not going to change the use which is a public use. He noted that the Bondholders have requested that the District seek guidance from the District's Tax Counsel, Denise Ganz, to render some opinion as to whether or not this request would violate the private use. Mr. Johnson requested that this item be tabled until the District can get an opinion from Ms. Ganz as to whether or not this will be some sort of a private use.

A discussion took place regarding the current parking use. Dr. Fishkind stated that the Board could approve this pending Bond Counsel opinion.

On MOTION by Mr. Lancaster, seconded by Mr. Glidden, with all in favor, the Board approved the Temporary Construction Easement pending approval by Tax Counsel, Denise Ganz.

SEVENTH ORDER OF BUSINESS

Consideration of Payment Authorization No. 129

The Board reviewed Payment Authorization No. 129. Mr. Accetta stated that there are duplicate requests for \$885.00 that he saw online but he was not sure if it was an error. Dr. Fishkind replied that he thinks it is just an error because he does not see it today.

On MOTION by Mr. Lancaster, seconded by Mr. Accetta with all in favor, the Board approved Payment Authorization No. 129.

EIGHTH ORDER OF BUSINESS

Review of Statements of the District's Financial Position and Budget-to-Actual

The Board reviewed the District's financials. Dr. Fishkind explained that the District is right on budget based upon the approvals. He noted that at this point in time the District has no cash because the new funds have not come in through the Property Tax Assessor and because the District had extraordinary bills last year, the District does not have a balance forward. No action is needed on the part of the Board.

Mr. Accetta stated that the District had a correction that was required on the last entry. Mr. Lancaster stated that he thinks that it has been corrected. Dr. Fishkind also thought it was corrected but asked Mr. Accetta to bring it to his attention and he will be happy to look at it and take care of it.

NINTH ORDER OF BUSINESS

Staff Reports

Attorney – No Report

District Manager – Dr. Fishkind explained that he has tendered his resignation as Manager of the District. He stated that it has been a pleasure to work on this District and he has enjoyed working with everyone. Dr. Fishkind mentioned that he told Mr. Accetta that he is willing to stay on to make sure that the District gets a smooth transition and he will stay on month to month as long as the Chair and the Board would like him to do so. Dr. Fishkind asked the Board to direct him to solicit proposals for a new District Manager. District staff will send out requests for proposals and bring those back to the next meeting. Mr. Accetta expressed his gratefulness for Dr. Fishkind to be willing to stay on during the transition. Mr. Accetta explained that Dr. Fishkind and his

company have more than done their job to help the Board to understand all of the legal requests and address them accordingly. Mr. Accetta requested that Dr. Fishkind assist the Board in getting at least three proposals for District Management companies that he believes would be a good fit. Mr. Accetta asked if there were District Management companies locally. Dr. Fishkind responded that there are management companies in this area and District staff will solicit them and others and bring the proposals back to the Board at the next meeting.

Dr. Fishkind stated that his company has outstanding bills and they are willing to discount those for the Board and he proposed that a mutual release be drawn up by Counsel to be considered at the next meeting. Mr. Accetta stated for the record that Fishkind & Associates, Inc.'s resignation was totally voluntary and it had nothing to do with the Court Case and what is going on in the District at this time.

TENTH ORDER OF BUSINESS

Supervisor Requests and/or Audience Comments

Mr. Lancaster stated that he has lived in Grand Venezia for nine years and paid taxes like everyone else and lives next door to Mr. Dwyer. He stated that there was discussion regarding someone cutting Mr. Dwyer's roof and he took no part in that. Mr. Lancaster stated that he has served on this Board for nine years and joined the Board the same time as Mr. Accetta to find out why Grand Venezia was paying the fees that it was paying. He stated that looking at the documentation he is convinced that legally the Grand Venezia has an obligation to pay the taxes whether the residents like it or not. He understands that some people disagree but he also sees that the District has gone through two mediations and that is why he thinks it is ridiculous to sit down with Grand Venezia and negotiate anymore. He stated there have been multiple mediations with a professional mediator and a trial that Grand Venezia lost and it still has the same assessments and the District is not dissolved. He quoted the Judge's ruling that the 2015 assessment was arbitrary and he warned Mr. Barnes that a reassessment could result in a higher assessment. Mr. Lancaster stated that it did not sound to him that an arbitrary amount was illegal. Mr. Barnes stated that is what the law says. Dr. Fishkind asked Mr. Barnes to allow Mr. Lancaster to finish. Mr. Lancaster quoted Judge Juroka that he does not see going back to the trustee issue that he has at any way at this point impaired any of the bonds or adjusted any of the debt upward or downward, not extend the terms of the bonds or bond payment, and finally the Judge said that he wants something shown to the Plaintiffs in a proper fashion through the District's regular annual process for this is how they arrive at an assessment that is not arbitrary. Mr. Lancaster stated that he thinks that has been done. He stated that everything is in place, Grand Venezia lost, and everyone is paying the fees. Mr. Lancaster stated that while Mr. Barnes has professionally represented Grand Venezia, he thinks it is disingenuous to say that he wants to hold a seminar telling the District's Board Members how they should agree with his point of view when District Counsel is telling the Board otherwise.

Mr. Barnes addressed Mr. Lancaster and stated that someday when he is off the Board, he will be happy to sit down with him and walk him through all of this. Mr. Barnes stated that this is a situation that Mr. Lancaster has not been able to avail himself of from day one and he stated that contrary to what Mr. Lancaster believes, what he has been told by District Counsel is wrong and that is why the parties went to trial. Mr. Barnes stated that contrary to what Mr. Lancaster may think the CDD did, in fact, lose a part of the trail and that is why these reassessments were ordered. Mr. Barnes stated that the District and the GVCOA is in round two right now. He stated that he would be happy to sit down and walk anybody through all of that.

Mr. Barnes stated that in terms of the mediation, this matter has not settled because of differences with the CDD and the GVCOA. The matter has not settled because of the conduct with Oppenheimer. He stated that Mr. Johnson has gone on record saying that if the Grand Venezia and Oppenheimer want to get together and rework these assessments, they can do that. Mr. Barnes stated that it is up to Oppenheimer whether Oppenheimer is willing to come to the table in good faith. Mr. Barnes asked the Board to keep in mind that the next challenge, Dr. Fishkind is not going to be around for which he finds interesting.

Mr. Barnes addressed Mr. Mies and stated that today is the 33rd Anniversary of when he was sworn in to practice law in this State. He stated that never in his career has he had any opposing counsel pursue a motion for sanctions against him personally. He stated that the District Attorneys have filed three against him personally. Mr. Barnes stated that he has represented reputable firms throughout his career and he has never had anyone accuse him of filing a motion that was not based in fact or based in law or a combination thereof until now. Mr. Barnes stated that Gray Robinson helped create this District, perpetuate this District, along with Dr. Fishkind. He stated that the two Principles who created this non-functioning District that has never built one penny of infrastructure, David Clark and David Schwartz, are serving 40-year prison sentences in federal prison because of the massive scam that started in Clearwater in 2004-2005 but he is being accused of filing frivolous matters by the same law firm whose clients are sitting in federal prison. Mr. Barnes stated that he welcomes the opportunity to educate Flornoy about this CDD and where Flornoy's dollars have gone. He stated that this should have been avoided could have been avoided, and Gray Robinson could have incurred minimal attorney's fees. He asked the District to let him fight this out with Oppenheimer like he asked them to do. He stated that when Mr. Mies is off this Board or Flornoy would like to have a meeting with him, he would welcome that. Mr. Barnes stated that he offered to go to Columbus to meet with the General Counsel.

Mr. Mies asked why that was directed at him. Mr. Barnes responded that he wanted Mr. Mies to understand that what he has heard and was told that Flornoy has to pay, is wrong. He stated that Mr. Mies has been sold a bill of goods as a CDD Board Member but he has been kept in the dark on purpose. Mr. Barnes ensured Mr. Mies that there will be a changing of the guard here and he hopes Flornoy will work with him for the benefit of everybody. Mr. Barnes stated that this also includes Oppenheimer because most of the debt allocated from the bond deal was to the commercial property and the bad guys immediately defaulted on it. Mr. Barnes stated that there are two parties that have benefited from this CDD, Gray Robinson and Fishkind & Associates. He stated that everyone else has taken their lumps including the landowners. Dr. Fishkind informed

Mr. Barnes that he was reaching the end of his time limit. Mr. Barnes thanked the Board and stated that he would welcome the opportunity to meet with them.

Mr. Brzezinski bought two units at Grand Venezia last year. He stated that he takes no side. He asked District staff why is he paying the District \$2,500.00 in taxes and explain what he is getting for his money.

Dr. Fishkind asked if there were any more questions. Hearing none, he closed the public comment period.

Dr. Fishkind explained that the residents are being assessed for the improvements that the District completed. He noted that he and Mr. Barnes have a disagreement about what those are. Dr. Fishkind stated that the District's position as upheld by the Court is that the benefits flow from the redevelopment of the front part of the property that took out a nuisance that was depressing the property value and that the District took the balance of the money that was not spent for the balance of the improvement plan and refunded the bonds. Dr. Fishkind explained that the residents are paying for that and for the other benefits that the District provides in terms of taking over some of the items that were previously in the HOA that property taxes were paid for. He explained that when those items came over to the District the property taxes were no longer assessed on those properties. Dr. Fishkind explained that the CDD is a unit of local government and so there is also some Operations and Maintenance expenses that comes with it.

Mr. Accetta explained that quite some time ago the community only had 70 residents out of 333 units. Those 70 residents were paying for the maintenance of the 333 units. The rest of the units were bank owned. When he joined the CDD nine years ago, he came with a mission to see what he could give back to the community because the CDD at the time had been legally formed. He stated that the Board was able to come up with certain procedures with the help of Dr. Fishkind's organization that allowed everyone in the community to share equally in the maintenance of those properties by the CDD taking on the responsibility of those maintenance fees. Mr. Accetta explained that instead of 60-70 unit owners paying for 333 units they ended up coming up with a process where the District taxed for the maintenance and this way the banks could not get away with not paying for it. He stated that to this day that is part of the fee. Mr. Accetta stated that it is no longer relevant because 90% of the units are full and the benefit is that the COA does not insure those tax expenses.

Mr. Brzezinski asked if the commercial property shares the bond repayment with the rest of the community. Dr. Fishkind explained that they share the Operations and Maintenance expense and that the Bond repayment was extinguished by the sale of the property. Mr. Brzezinski stated that the commercial property is not paying what the rest of the residents pay. District staff attempted to explain that everybody pays their portion of the Operations and Maintenance expense. Mr. Accetta stated that the commercial property in the front pays 60% of the total and the other building pays 15%. Mr. Brzezinski stated that at some point his portion should be smaller because the other properties are paying for it. Dr. Fishkind responded that his portion of the Operations and Maintenance expenses is already smaller. Mr. Brzezinski asked what the difference is. Dr. Fishkind

stated that they are paying more than 40% and Mr. Brzezinski's bill would be 60% higher. Mr. Brzezinski stated that Dr. Fishkind is talking about what ifs. Dr. Fishkind stated that that he is not talking about what ifs, he is talking about what is. Mr. Brzezinski stated that he is being assessed tax on something and he is asking if everyone on the part of the property that was sold is going to share in this assessment or not. Dr. Fishkind replied that they are sharing in the Operations and Maintenance assessment. Mr. Brzezinski argued that they are not sharing in it and accused Dr. Fishkind of not giving him a clear answer. Mr. Accetta started to explain the bonds. Dr. Fishkind requested that the conversation stop and stated that on behalf of the Board he will write Mr. Brzezinski a note. Mr. Brzezinski stated that he is asking for clear answers and staff is not giving him any.

Mr. Mies stated that the Operations and Maintenance budget for 2018 is \$495,000.00 and Flournoy pays 60% of that. Mr. Lancaster stated that the GVCOA pays roughly 25% of that amount. Mr. Mies explained that there is also a bond side so there are two different sides. He stated that District staff is trying to explain the Operations and Maintenance side to Mr. Brzezinski.

Mr. Brzezinski asked about the bonds. Mr. Accetta stated that if the bond were \$40,000,000.00 the GVCOA is paying only \$5,000,000.00 of that \$40,000,000.00. Mr. Brzezinski asked who said that this other part of the property is not going to pay any money for the bond. Dr. Fishkind stated that is not what happened and asked Mr. Brzezinski to stop arguing. Mr. Brzezinski stated that it is his money. Mr. Mies said that he understands and we can discuss this in an adult fashion and we don't have to argue.

Dr. Fishkind asked if there were any other public comments. Mr. Brzezinski continued to yell at District staff for not providing him answers.

ELEVENTH ORDER OF BUSINESS

Adjournment

There were no additional agenda items, questions, or comments so a motion to adjourn was suggested.

On MOTION by Mr. Accetta seconded by Mr. Lancaster, with all in favor, the October 17, 2018 Clearwater Cay CDD Board Meeting was adjourned.


Secretary/Assistant Secretary


Chairman/Vice-Chairman