

**MINUTES OF MEETING  
CLEARWATER CAY  
COMMUNITY DEVELOPMENT DISTRICT**

The meeting of the Board of Supervisors of the Clearwater Cay Community Development District was held on Wednesday November 14, 2018 at 5:00 p.m. at the Main Library located at 100 N. Osceola Avenue, Clearwater, FL 33755

Present and constituting a quorum were:

Michael Herd	Assistant Secretary
Alan Glidden	Vice Chair
Jeff Wilson	Assistant Secretary
Jerry Lancaster	Assistant Secretary
Joel Mies	Assistant Secretary

Also present were:

Hank Fishkind	Fishkind & Associates, Inc.
Bruce Barns	Bruce Barnes P.A.
Robert Johnson	Gray Robinson
Residents	

***The following is a summary of the discussions and actions taken at the November 14, 2018 Clearwater Cay Community Development District meeting.***

**FIRST ORDER OF BUSINESS**

**Call to Order and Roll Call**

The meeting was called to order at 5:00 p.m.

**SECOND ORDER OF BUSINESS**

**Public Comment Period**

Dr. Fishkind opened the floor for public comments following which Don Dwyer spoke as follows:

- First, Mr. Dwyer asked about a new members package for Mr. Herd. Dr. Fishkind stated that he did not know if he had one with him but would get it to Mr. Herd tomorrow.

- Mr. Dwyer then went on to state at last month's meeting, Fishkind & Associates, Inc. resigned as the management company for the district. With that said, he asked why Dr. Fishkind had the authority to run tonight's meeting since there was no action taken at last month's meeting to continue the services of Fishkind & Associates. Dr. Fishkind's response was that he resigned pending new management appointment and that they would go month-to-month until that occurred. Mr. Dwyer went on to state that before the Board agrees to accept the Minutes of last month's meeting, that there appeared to be a glaring oversight in that when Dr. Fishkind concluded the company's resignation, he specifically stated "I am willing to stay on, on a month to month basis to assist in a smooth transition with the new management company in exchange for a release." Note was made, however, in that public meeting last month, there was no action taken for continuation of the service nor was there any official action taken to provide immunity and strangely tonight, we find those issues before the outgoing board for a vote. Mr. Dwyer again asked, "when did the sitting Board members authorize any of this, I now have to ask Mr. Glidden as the Vice Chair currently seated." Mr. Glidden answered that it was his understanding that the Board allowed this at the last meeting. Mr. Dwyer asked when that was done. As a part of his discussion, Mr. Dwyer asked the members to consider the following: "Are you knowingly and willingly protecting Fishkind & Associates, Inc., from illegal activity that may have taken place since 2005?" His last comment was, "I don't understand why any of you believe that it's proper for you to take any action tonight other than installing Mr. Herd as we have just done. All other business should be postponed until the new Board members are seated on November 20, which is next week; why the urgency. I find it absurd that we would have a lame duck board that would even consider the business contained in tonight's Agenda."
- Mr. Accetta then commented that it saddened him to see all the efforts and hard work that Dr. Fishkind and his company did be presented in such a light that is insulting and that he is insulted on Dr. Fishkind's behalf.

- Nancy Thibodeau then commented that she found Mr. Accetta's comments offensive due to the facts of what is trying to be accomplished moving forward. She questioned the tax statements with the feeling that \$1500 was going to be assessed for all homeowners but when she received hers, it was more and wanted to know why.
- Bruce Barnes stated that on November 20, Don Dwyer and Pat O'Malley will assume their roles as CDD Board Members, which is mandatory in the statute. This being just a few days from the 20<sup>th</sup> when there will be two new board members, he wanted to know whose idea it was to jam this agenda with various items including discussion about the release agreement that Dr. Fishkind wants, revised budget items, etc., again asking whose idea it was to load this agenda up knowing there will be two new board members in under a week? The record reflects that no one responded to that very direct question. He went on to state that this entire board meeting should be continued until the 20<sup>th</sup> or after when the new board members take their seats. The people spoke. No one ran against these gentlemen. Mr. Herd had very little resistance and yet somehow there is a rush to get all this through now. Regarding the release of Fishkind & Associates, Mr. Barnes asked if anyone knew why he wanted to be released from liability with again no answer given. Mr. Barnes asked if any board member authorized Gray Robinson to run up attorney's fees drafting a release agreement in favor of Fishkind & Associates, Inc. Once again, there was no answer. Mr. Barnes asked about line items within the budget which were on the agenda for amendment having to do with legal fees with again no answer.
- Mr. Bill Bailey responded stating that when questions are presented during these meetings, no answers are given. He advised that the residents are at the meetings to get answers, but no one ever answers stating he wants some answers!
- Mr. Settles agreed with Mr. Bailey in that there were never answers to any of their questions asked. He further stated that he had concerns about the legal fees, which just keep going up and asked that this stop now.

- Mr. Patrick O'Malley advised he had two questions, one asking Dr. Fishkind to answer the questions he has been asked and second if the decision items on the Agenda will be tabled until the new Board members are seated on the 20<sup>th</sup>.
- Mr. Dan Tsinokas was present via telephone and stated there was no reason to rush any decisions of today's Agenda, and that the new board members should make the decisions at the next meeting.

### **THIRD ORDER OF BUSINESS**

#### **Consideration of the Minutes of the October 17, 2018 Board of Supervisors Meeting**

The minutes of the October 17, 2018 meeting were presented.

On MOTION by Supervisor Lancaster seconded by Vice Chair Glidden with all in favor, the regular meeting Minutes of October 17, 2018 were approved as presented.

### **FOURTH ORDER OF BUSINESS**

#### **Consideration of Resolution 2019-01, Canvassing and Certifying the Results of the Landowners' Election**

Resolution 2019-01 was presented.

On MOTION by Vice Chair Glidden seconded by Supervisor Wilson with all in favor, Resolution 2019-01 was adopted.

### **FIFTH ORDER OF BUSINESS**

#### **Consideration of Resolution 2019-02, Election of Officers**

Resolution 2019-02 was presented

On MOTION by Supervisor Lancaster seconded by Supervisor Wilson with all in favor, retaining the current slate of officers minus Chair Accetta until next meeting was approved.

### **SIXTH ORDER OF BUSINESS**

#### **Discussion of Status of District Litigation**

Extensive discussion ensued by Mr. Robert Johnson about this matter.

**SEVENTH ORDER OF BUSINESS**

**Consideration of Resolution 2019-03,  
Amending the Fiscal Year 2017-18  
Budget**

Resolution 2019-03 was presented.

On MOTION by Supervisor Lancaster seconded by Vice Chair Glidden with all in favor, Resolution 2019-03 was adopted.

**EIGHTH ORDER OF BUSINESS**

**Consideration of District Management  
Proposals**

Proposal for consideration of district management proposals was presented.

On MOTION by Supervisor Herd seconded by Vice Chair Glidden with all in favor, the Consideration of District Management Proposals was tabled until next meeting.

**NINTH ORDER OF BUSINESS**

**Consideration of Fiscal Year 2017  
Draft Audit**

Fiscal year 2017 draft audit was presented.

On MOTION by Supervisor Herd seconded by Supervisor Wilson with all in favor, Consideration of FY 2017 Draft Audit was tabled until next meeting.

**TENTH ORDER OF BUSINESS**

**Consideration of Fiscal Year 2018  
Audit Engagement Letter**

Fiscal Year 2018 Audit Engagement Letter was presented.

On MOTION by Supervisor Lancaster seconded by Vice Chair Glidden with all in favor, Consideration of FY 2018 Audit Engagement Letter was tabled until next meeting.

**ELEVENTH ORDER OF BUSINESS**

**Consideration of Mutual General  
Release & Covenant Not to Sue**

Mutual General Release & Covenant Not to Sue was presented. After extensive discussion, the Board decided to accept the Mutual General Release and Covenant Not to Sue. There was, however, discussion of this item being tabled until next meeting as a good faith gesture for the new incoming Board.

On MOTION by Supervisor Lancaster seconded by Vice Chair Glidden with four (4) in favor and one (1) Nay vote, the Mutual General Release & Covenant Not to Sue was approved.

**TWELFTH ORDER OF BUSINESS**

**Consideration of Payment  
Authorization No. 130 & 131**

Payment authorizations 130 and 131 were presented.

On MOTION by Supervisor Lancaster seconded by Supervisor Wilson with all in favor, payment of authorization No. 130 & 131 was approved.

**THIRTEENTH ORDER OF BUSINESS**

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

This was provided for informational purposes only.

**FOURTEENTH ORDER OF BUSINESS**

**Staff Reports**

**A. Attorney**

There being nothing further to report, the next item followed.

**B. Manager**

- Meeting was rescheduled to November 28, 2018 at 5:00 p.m.

On MOTION by Vice Chair Glidden seconded by Supervisor Wilson with all in favor, movement of the next meeting to November 28, 2018 at 5:00 p.m. was approved.

**FIFTEENTH ORDER OF BUSINESS**

**Supervisor Requests and/or Audience  
Comments**

Dr. Fishkind took this opportunity to go through items, which had been questioned at today's meeting as follows:

- Dr. Fishkind summarized items listed on tax statements.
- Delay of meeting was addressed, which the Board had decided not to do.
- In answering the question regarding Agendas, he advised that Agendas are developed by him with the help of the Chair.

- Per the question of who authorized Gray Robinson to draft the Agreement? It was the Board. They are the CDD's attorneys and naturally would be the ones to draft the agreement.
- For the revised budget, Mr. Barnes asked about legal fees, which he felt had already been covered.
- Legal and trustee fees were questioned and addressed. He advised that the legal fees are driven by the litigation and not controlled by the Board.
- Mr. Barnes stated that this CDD Board even with objection, just approved the Agreement essentially releasing Fishkind & Associates from liability. Comment was made that at the last meeting, the Board approved the fees incurred by Ray Robinson in preparation of this agreement protecting Fishkind & Associates. He felt that approval was not given and that there was no discussion whatsoever that landowners' dollars would be deployed to that law firm to help exultate the district manager for his actions asking that the record reflect this. He stated that on top of this the Board just approved said Agreement with no material component/no material term to the agreement. He stated that in conjunction with it all, Dr. Fishkind even offered at last meeting (bringing it up again at this meeting) to hat in exchange for the release from liability, that his firm would discount the legal fees. There was no dollar amount of this discount ever given, i.e., exactly how much would be discounted from the legal fees. Question was raised as to whether this Agreement could be revoked with answer being that this would require legal counsel's opinion.
- Discussion continued over the size of the legal fees, which Dr. Fishkind explained were driven by the litigation, and that the Board does not control over this.
- Mr. Barnes went on to dispute that comment by Dr. Fishkind that the Board had no control over legal fees incurred stating that was absolutely, not true. He advised that the CDD Board has total control over the fees incurred by its counsel while defending a lawsuit.
- Resident Nancy Thibodeau felt that her question had not been answered regarding the non-ad valorem tax and continued to feel that inaccurate



information had been presented. She continued to ask why there was no breakdown of the non-ad valorem tax on the tax bills? Dr. Fishkind's answer was that he had answered her question the best he could.

**SIXTEENTH ORDER OF BUSINESS**

**Adjournment**

There being no further Orders of Business, and

On MOTION by Supervisor Lancaster seconded by Vice Chair Glidden with all in favor, the November 14, 2018 meeting was adjourned.

  
Secretary/Assistant Secretary

  
Chair/Vice Chair