

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

The emergency meeting of the Board of Supervisors of the Clearwater Cay Community Development District was held on Thursday January 24, 2019 at 5:30 p.m. at the Grand Venezia Baywatch Clubhouse, 2704 Via Murano, Clearwater, Florida 33764

Present and constituting a quorum were:

Don Dwyer	Chair
Pat O'Malley	Vice Chair
Michael Herd	Treasurer
Jeff Wilson	Assistant Secretary
Alan Glidden	Assistant Secretary

Also present were:

Cal Teague	District Manager
Don Molloy, Esq	Attorney
Mark Lawson	Attorney
Residents	

***The following is a summary of the discussions and actions taken at the January 24, 2019 Clearwater Cay Community Development District meeting.***

**FIRST ORDER OF BUSINESS**

**Call to Order and Roll Call**

The meeting was called to order and Chair Dwyer called the roll. All were present for today's meeting. Also present were Attorney Don Malloy and Attorney Mark Lawson.

**SECOND ORDER OF BUSINESS**

**Approval of the Agenda**

The Agenda was presented and after moving item 7 A up to Item 5 with everything else moving down one on the Agenda as well as the addition of Item 9 C Field Report being added, the Agenda was approved as amended.

On MOTION by Supervisor Herd seconded by Vice Chair O'Malley with all in favor, the Agenda was approved as amended.

### **THIRD ORDER OF BUSINESS**

#### **Audience Comments on Agenda Items**

- Attorney Bruce Barnes was present on behalf of the Grand Venezia Condo Association with the question of whether or not the outstanding invoices of Fishkind & Associates and Gray/Robinson should be paid. He went on to cite Florida Statute 12.313 as the backup for the question.
- He also stated that he wanted to encourage this Board not to enforce the assessments that were the product of the June 2018 report, which was put out by Fishkind & Associates and adopted.

### **FOURTH ORDER OF BUSINESS**

#### **Approval of Meeting Minutes**

#### **A. Regular Meeting Minutes from December 19, 2018**

The Regular Meeting Minutes from December 19, 2018 were presented.

On MOTION by Vice Chair O'Malley seconded by Supervisor Herd with all in favor, the Regular Meeting Minutes of December 19, 2018 were approved as presented.

### **FIFTH ORDER OF BUSINESS**

#### **Discussion/Review of 2018 Assessment Methodology**

Chair Dwyer updated the Board regarding the history of the 2018 Assessment Methodology advising that the outcome raised serious questions related to the legitimacy and enforceability of the assessments. As a result, this Board opted to have an independent review of the Assessment Methodology conducted by Attorney Mark Lawson and his colleagues. Attorney Lawson then presented his analysis. After extensive discussion, and the Board's acknowledgement that they had reviewed the document in full, the following actions were taken:

- Resolution 2019-09 was presented which stated that the District is dissatisfied with the non-ad valorem assessment methodology as, among other things, irregular, defective as well as not consistent with the direction from the circuit court, directing and authorizing the District Manager and counsel for the District

to take certain actions in connection therewith providing for conflicts and severability and providing for an effective date.

On MOTION by Vice Chair O'Malley seconded by Supervisor Herd with Supervisors Glidden and Wilson voting Nay, Resolution 2019-09 was adopted as stated above.

- Work Order 2019-2 was presented for Attorney Lawson's continued review of this issue. He will attempt to find an alternative methodology that will be to the Boards' satisfaction at an amount not to exceed \$35,000. District Manager Teague pointed out that any adjustments will occur in next year's tax rolls.

On MOTION by Vice Chair O'Malley seconded by Supervisor Herd with all in favor, Work Order 2019-2 for an amount not to exceed \$35,000 was approved.

## **SIXTH ORDER OF BUSINESS**

### **Review of Engineering Services Proposals**

The District Manager presented the RFQs, which were received summarizing two firm's qualifications and after extensive discussion, it was agreed that Christopher Dausch of DGI will serve on an hourly basis as the District's Engineer.

On MOTION by Supervisor Herd seconded by Vice Chair O'Malley with all in favor, the RFQ received from Christopher Dausch of DGI to serve as the District's Engineer was approved.

## **SEVENTH ORDER OF BUSINESS**

### **Old Business**

#### **A. Outstanding Fishkind Bills**

Chair Dwyer advised that there is an outstanding payment request from Fishkind & Associates for \$30,000. Chair Dwyer asked that the record reflect the following with regard to the letter received from Hank Fishkind, PhD.

- "Pursuant to our District Management Advisory Services Agreement, Fishkind & Associates, Inc., is tendering our resignation and giving you our 30-day termination notice. I thank you for our work together over the past 12 years. I

will be able to assist your new District Manager with the transition. Regards, Hank Fishkind, PhD.” He went on to state that their official last day was therefore October 21, 2018. However, on October 17, Fishkind attended and ran the District meeting. In that meeting, he stated he was resigning but that he would stay on, on a month-to-month basis and would reduce his outstanding bill “if” the District agreed to a mutual release. Again, the record is to reflect that in this meeting, there was no vote or action taken to continue the services of Fishkind & Associates beyond the termination date of October 21. Then on November 14, Fishkind showed up again to run the District meeting. In that meeting, Chair Dwyer personally challenged Fishkind’s authority to run that meeting. He indicated that the Board had agreed to retain him. Again, I challenged his claim, but he continued to run the meeting. As the meeting progressed, Fishkind produced a mutual release document and called for the vote of the Board to approve the release. The outgoing lame duck Board approved that document. Following the meeting of the 14<sup>th</sup> on November 20, Fishkind submitted to Al Glidden by way of email, a letter indicating his willingness to discount his bill by \$7,452.14 leaving a balance of \$30,000. Chair Dwyer stated that his assessment and recommendations regarding the payments is as follows:

- Fishkind & Associates submitted their resignation letter on September 21. The letter clearly stated that they were giving 30 days-notice. Therefore, unless the Board voted to extend Fishkind’s Service Agreement, all services would have ended on October 21, 2018. Chair Dwyer stated his position on the matter as Fishkind knew he was not legally authorized to chair the meeting of November 14, where his lawsuit waiver was presented, approved and signed and for this reason, Chair Dwyer recommended voting “Not to Pay” any of Fishkind’s invoices beyond that date.

On MOTION by Supervisor Glidden seconded by Supervisor Wilson with Vice Chair O’Malley and Supervisor Herd voting Nay, not paying any invoices past the date of October 21, 2018 was approved.
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Chair Dwyer also recommended opposing payment of the following invoices as well:

- 22947 - \$17,600.00 For 2018 Assessment Methodology (Now being challenged).

On MOTION by Vice Chair O'Malley seconded by Supervisor Herd with Supervisors Glidden and Wilson voting Nay, payment of invoice #22947 in the amount of \$17,600 was denied.

- 23703 - \$ 2,904.15 This is the other invoice denied because termination had been given on September 21, 2018, and the November billing was without a valid contract.
- 23272 - \$ 7,500.00 2019 Tax Roll Services. These fees will have to be paid again at the conclusion of the new assessment process that is about to be undertaken. District Manager Teague reported that these services were rendered and should be paid.
- August #156, September #332 and October #503 Maintenance Invoices.

On MOTION by Supervisor Glidden seconded by Supervisor Wilson with Vice Chair O'Malley and Supervisor Herd voting Nay payment of the above invoices was denied at this time, asking Fishkind to either come before the Board for discussion of these invoices or give him the opportunity to void the invoices was approved.

**B. Fishkind Mutual General & Covenant Not to Sue**

This Item was tabled.

On MOTION by Vice Chair O'Malley and Supervisor Glidden with all in favor, tabling this item to a later date was approved.

**C. Outstanding Legal Bills**

This too was tabled until the information requested by Chair Dwyer has been received. Chair Dwyer asked that the record reflect that to date, none of the items have been received, nor has there been any communication with Gray/Robinson. Therefore, it was Chair Dwyer's recommendation that since the items requested are the property of the District, and since there is an outstanding request for payment, that the District will vote not to pay the outstanding Gray/Robinson invoices at this time. Copies of emails from the firm of Supervisor Glidden will also be requested.

On MOTION by Chair Dwyer seconded by Supervisor Herd with all in favor, tabling of this item for now to advise Gray/Robinson of the Boards' position to not pay these invoices until the request of December 1 for data is acknowledged and material provided was approved.

**D. Lighting and Landscaping at the Entrance of Community Update**

- Vice Chair O'Malley updated the Board advising that other than a few electrical issues which were resolved, this project was successfully completed.
- Supervisor Herd took this opportunity to recognize Chair Dwyer for the time and effort he has spent over the last 30 days or so toward making things better within the community. He went on stating that this current CDD Board has done more for the community over the last 30 days than the previous CDD Boards in a decade.

**E. Report on Grand Venezia Roadway Flooding**

Chair Dwyer updated the Board reporting that there has been an investigation into the flooding encountered on Via Capri during heavy rains. He stated that since April, his garage has had up to two feet of water in it on three different occasions and that it was determined by the Community Engineer, the County and the South Florida Water Management District that Fournoy Company connected their main property drain into the southernmost drain, which the wrong drain as documented by the permit and that they will be required to correct this issue per City, County and State requirements. Chair Dwyer advised that he will be in contact with the County to request that this be



considered a priority so it does not again become a problem during the upcoming rainy season.

## **EIGHTH ORDER OF BUSINESS**

### **New Business**

#### **A. Discussion/Review of 2018 Assessment Methodology**

- Chair Dwyer reported that there is currently an infrastructure agreement between Grand Venezia and the District regarding the maintenance and management of all the land within its gates. The community is solely responsible for all the maintenance and management. He further reported that this agreement tends to fall short of the maintenance needs for the Grand Venezia Community, said agreement not being customary for a CDD. He requested that the District invalidate the 2014 Management and Maintenance Agreement and that the District uphold its responsibility for the maintenance of District property within the gates of Grand Venezia. Therefore, the \$78,000 allotment will not be provided to the community, but instead the District will assume the responsibility, oversight and management along with the liability that it already has, to oversee the common element areas within the community.

On MOTION by Vice Chair O'Malley seconded by Supervisor Herd with all in favor, termination of the 2014 Management and Maintenance Agreement was approved.
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#### **B. Community Upgrades**

##### **i. Common Parking Lot Inside Grand Venezia**

Chair Dwyer reported that he met with the contractor over a sealer issue where he attempted to explain what exactly happened, but he was unable to give an answer. Chair Dwyer felt that it was not cleaned and prepped properly, which is the reason for the problems. He further advised that he was going to try to have the contractor come back to reseal some of the areas at no charge, which will determine whether or not the District works with this contractor in the future.

**C. Tampa Bay Access**

Chair Dwyer reported that he met with the environmental specialist of Pinellas County along with a representative of Alexander's Maintenance regarding the mangroves and access to the bay. He further advised that the issue with the mangroves is that they have not been properly maintained for many years. The existing permit allows for the mangroves to be cut to a height of 6'. The problem now is that some of the mangroves are as high as 9 and 10' from the surface. He was trying to get permission for these to be cut to 6' but was advised that this was not a possibility. Through the process of discussion, the environmental specialist agreed to give the District a Spring cut of 7', which means that all the mangroves that are in the permissible area to be cut are going to be cut to 7'. Then on top of the 7' is another 12' which is called canopy window which is permitted to be opened up. In addition to the Spring cut, he also authorized a Fall cut to take the mangroves to 6'. The specialist informed Chair Dwyer that once the mangroves are at the 6' level, it is the District's responsibility to keep these routinely maintained. With regard to access to Tampa Bay, apparently there is an easement document pertaining to the property that goes along with the permit for the mangroves, which no one is able to find. Chair Dwyer reported that that easement will determine whether or not the District can put in a ramp in front of Building 9 that would provide access to the mangrove so that kayaks, etc. can be launched safely and successfully. He further advised that if it is not restricted by the easement, a permit would not even be needed to put a ramp into the mangrove because it is not in the water but if there is a desire for access to the water in front of that area, i.e., the sandbar, that would require a dock permit that an engineer would have to create to specifications, which would have to be submitted to the City of Clearwater and then to Pinellas County for approval. The specialist advised that he had no issue with either as long as it was not barred by the easement agreement and of course nothing will be done until authorized by the Board in concert with City, County, State and Federal laws.

**TENTH ORDER OF BUSINESS****Manager's Report****A. Update on Transition**

The District Manager advised that the transition is going smoothly, but there are still some difficulties accessing some of the documents needed for completion of the financials.



**B. Financial Statements for Period Ending December 31, 2018**

As above, based on the difficulties encountered accessing data from the Bond Trustee, the financials were not ready, however, the bills are being paid as well as assessments being collected.

**C. Review of Maintenance Inspection Report**

The report was distributed and identified tasks will be placed on a list for completion over the next six (6) months.

**TENTH ORDER OF BUSINESS**

**Attorney's Report**

**A. Litigation Attorney**

The Board named WGK as Litigation Attorneys for the Grand Venezia lawsuit.

On MOTION by Vice Chair Malloy seconded by Supervisor Herd with all in favor, the appointment of WGK as Litigation Attorneys for the Grand Venezia lawsuit was approved.

**ELEVENTH ORDER OF BUSINESS**

**Supervisor's Requests and/or Comments**

- Supervisor Glidden asked if Grand Venezia has been paid the \$78,000 from assessments. He was told "No."
- Supervisor Wilson asked what could be done to reduce speeds. The Board requested that staff present information on traffic calming devices at the next meeting.

**TWELFTH ORDER OF BUSINESS**

**Audience Comments**

Chair Dwyer took this opportunity to explain the process followed for audience comments.

- Wayne Chase commented on the speed control devices in front of Stop Signs.
- Mike McManus thanked the new CDD Board for the change in attitude.
- Dan Settles expressed his support for Chair Dwyer running the meetings and not the District Manager.
- Ramon Rodrigues expressed displeasure that the kayak launch had been taken away.
- Nancy Thibodeau commented on the kayaks and thanked the new Board of Supervisors.


- Bill Bailey also voiced his satisfaction with the new CDD Board.
- Joel Mies commented that he was unaware of the drainage issues.
- Another resident comment questioned the impact of the new assessment methodology.
- Bruce Barnes gave his opinion on the lawsuit and the impact of new assessment methodology.
- Dan Settles also had question about the debt.

**THIRTEENTH ORDER OF BUSINESS      Adjournment**

There being no further Orders of Business and,

On MOTION by Supervisor Herd seconded by Supervisor Wilson with all in favor, the meeting was adjourned at 7:55 p.m.

  
Secretary/Assistant Secretary

  
Chair/Vice Chair