

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

The regular meeting of the Lely Community Development District Board of Directors was held on Wednesday, February 21, 2018 at 1:50 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
Freddy Bowers, Operations Manager

INVOCATION/PLEDGE OF ALLEGIANCE

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

PUBLIC COMMENT

Mrs. Bulazik asked if the traffic situation was going to be addressed, and was advised that in the event it is not discussed during the meeting, she will have the opportunity to bring it up again under public comment towards the end of the meeting.

Mr. Haines from the Ole community where he sits on the Board thanked the CDD Board for the expenditure of \$16,000 on traffic sign posts which are presently being installed. He hoped that they would make a difference in safety and traffic calming.

Traffic calming is an important subject to the 1,100 families who live along Celeste Drive, and they are very interested in the Celeste Drive re-landscaping as well, which traffic calming is an important component of. He felt that Royal Palms would be a reasonable replacement for the Queen Palms that once lined Celeste, and would hope that some consideration is given to Royal Palms as a replacement.

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ROLL CALL/APPROVAL OF AGENDA

All four Board members were in attendance,

Items 7A, Pot Holes and 7B, Feasibility of the Master HOA becoming part of the CDD were added, which Mr. Pires noted that to his understanding the boundaries of the Master are much bigger than those of the CDD, and additionally, the governmental functions of the District and consideration of private covenant contractual would need consideration. As long as the District has requisite interest in an easement, for example, or fee simple ownership of land, or a bill of sale for improvements, then that could be the District's obligation. Mr. Ousley asked Mr. Pires to also do some research on the ambiguity in the law that would allow for an HOA to leave the Master and join the CDD, and Mr. Pires noted that there are some unique provisions in Chapter 190 regarding this, where certain criteria would have to be achieved in order to do that.

Mr. Pires will research this issue and discuss it with Mr. Dorrill and Mr. Carter and bring some initial thoughts back to the Board. It will be noted on the March agenda.

Mr. Ousley suggested that Mr. Drum be made the traffic liaison to deal with the County and homeowners, and Mr. Lee asked that if land is added to a CDD if you would need to go back through the rule making process, and Mr. Pires indicated that there is a statute that indicates that, but he will check that as well. (Comments by Mr. Lee inaudible.) Mr. Drum added that initially Lely Development ran Lely with their appointed Board members. Once ad valorem taxes began to be collected when the population grew after a certain period of time, it was turned over to the CDD. Due to legitimate concerns on the part of the residents, Lely Development made Grand Lely more or less the dividing line, and any land north of that was not in the CDD.

Additionally, the following items were added to the agenda: 7C, Rentals in Lely; 7D, Sunshine Law application when someone is serving on both the CDD and an HOA Board; 7E, FEMA eligibility for HOA debris removal; 7F, Signage on Grand Lely and Lely Resort Boulevard; 7G, Workshops, and 7H, Master Association Landscaping.

With those additions, the Agenda was unanimously approved on a MOTION by Mr. Ousley and a second by Mr. Campkin.

Mr. Pires added that once an item is added to the agenda, and to the extent that they become action items, the Board would need to open the floor for comments from the residents.

APPROVAL OF JANUARY, 2018 WORKSHOP AND REGULAR MEETING MINUTES

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

As it relates to the regular meeting minutes, on Page 1 under Public Comment, the first starred speaker was Mrs. Bulazik. The second starred name should be changed to “A resident” in two spots. On page 11, the starred name is Mrs. Glasman.

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

MANAGER’S REPORT

A. January Community Patrol

The Sheriff’s Department made 59 stops over the course of the month of January, resulting in 27 citations which included a wide range of issues including no headlights, speeding, license violations, and stop sign running. There were no criminal arrests as a result of those stops. The Community Patrol within the CDD had 58 reported incidents during the course of the month, from lost dogs to alligator sightings, loitering and nine trespass violations related to fishing. Only one of these violations involved a resident, so there continue to be non-residents fishing in the lakes. There was also some vandalism and 16 safety related issues involving gates of a mechanical or access management nature. There were also seven suspicious incidents and some traffic assists for disabled vehicles, the Fire Department or EMS. Mr. Dorrill noted that January was a very busy month.

B. County Stormwater Utility

Mr. Dorrill provided a copy of the agenda item from the previous Tuesday’s meeting. Commissioner Fiala has scheduled a community meeting at Lely later in February where she will be speaking about her thoughts and concerns about implementation of this charge. From a staff perspective, Mr. Dorrill noted that they want to make sure that while the Commission is moving forward with a new tax on stormwater issues, that a good argument be made that the residents of Lely are already paying stormwater costs at a higher level than other areas in the County.

As the stormwater system in Lely is very sophisticated and benefits all the roads within the District that are public, there is a mechanism within the County’s proposal where the Lely CDD would be eligible for a 50 percent discount as they own, operate and maintain large segments

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of this stormwater drainage system. Staff will continue to pay attention to this issue, and as Mr. Dorrill mentioned the previous month, he urged those present to send Commissioner Fiala an email promoting the fact that the residents of the Lely CDD feel that they are entitled to some sort of credit offsetting this stormwater utility.

Mr. Lee indicated that on Monday, February 26, at 6:00 p.m. Commissioner Fiala would be at the Player's Club with the people involved with this issue to give a slide presentation and answer questions. He urged everyone who could to attend.

Mr. Drum noted that they have a capital reserve for the stormwater and sewage system, and he asked what would happen to the money, no matter what the County charged, that the District is holding in reserve. Would it go into other reserve accounts, and if they paid 50 percent, does that mean that the County was giving a warranty on the system. Mr. Lee noted that it was his understanding that it was only for the maintenance of the system, including the cleanup of basins and culverts. (Inaudible section.) The District spends about \$106,000 a year maintaining the system that they have, (inaudible). He added that the County would be embarking on a seven to ten year project to catch up to where they should be.

Mr. Dorrill added that the hard assets that the District currently owns that are within public drainage easements, including the culvert pipe, the catch basins and the inlets will continue to be the property of the District that they will maintain. There are some separate drainage easements that are associated with the roadside drainage, but once it hits the catch basin it becomes the District's responsibility from lake to lake, until it hits the weir at US 41 and goes under the road, and collects in the upper reaches of Rookery Bay. Until then it is owned and maintained by the District. Mr. Dorrill further explained that in theory the reason the District is entitled to the credit is because they are doing all of that, but it is the County's position that they still need to pay their fair share contribution in support of certain drainage responsibilities. The Commission has adopted the staff's recommendation, but it has not yet been implemented. Mr. Pires noted that they would have to have an assessment methodology, as they call it a stormwater utility tax, but it is really a special assessment. This goes to Mr. Dorrill's argument that communities like Lely should be given an exemption or a credit, as they maintain their backbone water management system and use very little of the County's stormwater management system.

Mr. Dorrill advised that they will continue to monitor these events and keep the Board updated on them.

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C. Master HOA Contract Payment

There has been some dispute with Stock Development through the Master HOA regarding the first quarter of CSA payment for the new areas of maintenance that the CDD has just assumed. Stock is regarding this 90 day period starting last October as the fourth quarter. This issue has been resolved, and a check for about \$25,000 has been received from Stock for that time period.

(Mr. Lee's comments were inaudible.) Mr. Dorrill noted that they are not FEMA eligible for landscaping, and Mr. Lee felt that the Master HOA should be charged for reimbursement to the District for bringing the new area up to where it should have been when the District took it over. Mr. Dorrill agreed, noting that there was a detailed punch list that was prepared in advance of the takeover on October 1, so there was a general acknowledgement of the pre-contract condition. The presodding efforts have just begun, and once money is spent on the landscaping, this will be addressed with the Master.

In response to Mr. Ousley's comment, Mr. Dorrill indicated that going forward the Master only has three areas that they are responsible for: a limited number of community identification signs, all of the Christmas decorations at the entrances, and and owning and maintaining some of the conservation areas. Their two big expenses are Holiday lighting and keeping some of the conservation areas free of exotics.

Mr. Ousley advised that the lights on Collier Boulevard are weak, and Mr. Dorrill indicated that they would look into that.

D. Celeste Road Sign Renovations

The upgrade and addition to the traffic safety signs at Ole have been completed, as the County also had concerns that many of them had lost their night time reflectivity. The CDD owns and maintains these expensive ornamental metal poles, and the first of them were done the previous week. A copy of the complete plan was included for the Board members in their back up material for both the new installation done by the Ole community and those owned by the District. Going forward, some of the sign standards have changed since the original signs were installed, and the poles will be higher for safety purposes.

ATTORNEY'S REPORT

A. Responsibility for Fallen Trees

Mr. Pires had a telephone conference recently with counsel for different HOAs in the District to discuss the issue of who is responsible to remove fallen trees. The CDD and the developer

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have different positions, and Mr. Pires noted that in his opinion the District may have a drainage easement, but to the extent that the fallen trees do not interfere with the District's facilities, it is not the District's responsibility.

A resident asked about a very large oak tree that had fallen on Bronco Court during the storm that has roots that project way out, and she wondered whose responsibility this was. Mr. Pires indicated that the two areas under discussion were Pinnacle Cove and Bronco Court, and he reiterated that if the tree does not interfere with the District's facilities, then it is not their responsibility, but that of the landowners, who in this case is apparently Mr. Boff.

Mr. Pires had nothing else to report, and advised the Board that he is getting up to speed. The Board welcomed him, and Mr. Ousley noted that the Board had made an excellent selection for District counsel.

** There may be a skip in the tape, some Supervisor requests were not mentioned.

SUPERVISORS' REQUESTS

B. Renting in Lely

Mr. Campkin asked if Mr. Pires would look into the issue of renting in Lely, and whether a document he recently received from Mr. Pires, Ordinance 92-015, which was created when Lely was created, has any force or effect. Mr. Pires indicated that it is a Lely PUD document, and had advised him that this is a problem that affects the entire Lely Community, and Mr. Campkin noted that if the document is true, then any renting in Lely is not allowed.

Mr. Pires indicated that recognizing that a number of associations within the District may have this issue; generally the CDD does not have any zoning, land use or building permit authority. Based upon Mr. Pires' experience in dealing with County staff, it is his understanding and subject to confirmation in a written, formal interpretation from the County, that the County Attorney's office looks at a list of permitted uses in a zoning district, and if a use is not listed, generally it is prohibited.

Looking at the Lely PUD document, which is the governing zoning document for Lely as amended, it may be most appropriate for a particular association to make a request for interpretation from the County, and this is something Mr. Pires will discuss further with Mr. Dorrill. What an association wishes to do is something that should be very carefully

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considered. Mr. Drum asked if this would supersede the covenants, as his association has rentals in their covenants. Mr. Pires indicated that it does not, as covenants are a contractual matter among all the property owners, and you have the ability to enforce your covenants. That is one aspect that can be done, to amend the covenants and restrictions, whatever the zoning requirements may be. In other words, the covenants are not trumped by the County's zoning ordinance, which is geared towards public health, safety and welfare. Deed restrictions are usually geared towards the preservation of values, esthetics, community interests and commonality.

Mr. Drum noted that he agreed with Mr. Campkin that it should be looked at, as there are a number of different covenants. Mr. Pires suggested that he could have an initial discussion with County staff and report back to the Board on whether or not anyone wishes to proceed further.

Mrs. Bulazik indicated that they had looked at this issue over a year ago when it first appeared in the paper, and their HOA also discussed it and had some discussions with the County. The County staff advised them that they were very busy, and only followed up if someone complained about a renter. She will forward those email to Mr. Pires for some background information before he approaches the County.

Mr. Campkin added that they did discuss this two years ago, and the County Attorney at that time gave a formal opinion that was in the newspaper that renting was not permitted. Mrs. Fiala was then approached and discussed it with the County, who said yes, no, maybe, when they saw how much revenue they would lose if they stopped renting. At that point the whole thing went away.

Mr. Pires explained the process, noting that if a formal opinion is given on an issue and if someone does not like it, it can be appealed to the County Commission who can confirm the decision, reject it or modify it. If no one appeals that decision, it is final and applies from that day forward. He will look at the earlier decision from the County Attorney's office. In response to a question from Peggy ***Steinbarker, Mr. Pires indicated that the LCDD has no jurisdiction over renting.

Mr. Drum noted that in some of the rentals the County tax is not being paid, and wondered if anything could be done about that. Mr. Pires indicated that there are a number of different lawsuits presently ongoing in the state, including this county where Airbandb is being sued by the tax collector on this issue. Mr. Drum added in addition to Airbandb, many people set up shop on the internet and rent places themselves, along with places that are rented from Europe, for example, and none of those renters are paying taxes. Mr. Pires noted that results

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from these lawsuits may not be seen for years.

C. Sunshine Laws

Mr. Campkin asked about the law restricting what two Board members can do as it relates to discussions outside of an advertised meeting. He noted that in Lely there are occasions when a CDD Board member also sits on his or her HOA Board, where issues brought up there will probably be discussed at the CDD meeting at some point. He asked Mr. Pires if there was any way around this issue that would allow himself and another CDD Board member to attend another meeting together.

Mr. Pires answered that there was not, and as he mentioned during his interview process, he takes a very conservative approach to the Sunshine Law, as the penalties can be civil in nature where there could be a fine, or criminal in nature. He added that the news media love to take pictures of a public official standing in front of the judge being charged with a Sunshine Law violation, and they have also helped fund an organization called The First Amendment Foundation that focuses on the Public Records and Sunshine Laws in Florida.

Mr. Pires noted for those present that the Sunshine Law indicates that a meeting can be either by phone, text, email, in person or together. The requirements are that there be reasonable notice, that it be open to the public, and that minutes be taken. At times there have been situations when two board members wish to attend a town hall meeting, for instance, and if there is no interaction, that would be permitted.

Mr. Campkin advised that there were two instances coming up, one being Commissioner Fiala's meeting, and he is sure many Board members would like to attend that. Mr. Dorrill indicated that she is going to be making a presentation on the Stormwater Utilities, and Mr. Pires indicated that if they are sitting in the audience listening with no interaction among them, he suggested that they post a notice on the District website and District office noting that one or more Board members may be in attendance at this open public forum, but will not be participating or engage in any conversation or communication. It is not required to be put in the newspaper.

Mr. Campkin indicated that the Master Association affects everyone, and usually some Board members attend that meeting. Mr. Pires noted that in that case it is a public meeting with public notice, he suggested that a simple notice in the paper that two or more Board members of the Lely CDD would be attending the annual meeting or budget meeting of the Master HOA where they may participate by asking questions, and minutes of any participation by Board members will be maintained. The key is that it is accessible and open to the public.

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He added that in some cases where it is a situation where many people will attend, that it has to be held in a forum that will seat many people to allow for the participation of the public. As it relates to the upcoming meeting with Commissioner Fiala, Mr. Dorrill will upload that information to the website, and Mr. Pires suggested that no participation of Board members take place at that meeting.

Mr. Dorrill asked that information on all town hall and other open forum meetings where two or more Board members plan to attend be sent to him in advance so the appropriate notice can be given. Mr. Pires added that the minutes do not have to be expansive, but can be summary minutes only.

Mr. Campkin also noted the ongoing meetings concerning traffic accidents, and a committee has been set up involving representatives from the State and the County, the police, and some Board members to address the issue and to determine what can be done about it. These meetings are held every three months or so, and two Board members Lely are attending them. Mr. Pires indicated that they would have to be publicly accessible, and noticed.

The Board briefly discussed the fact that there are small meetings held that are not open to the public, such as this traffic accident group, and in those cases one CDD Board member can attend, but two cannot. A resident indicated that they had gone to a meeting that they were told was open and were turned away as it was not open to the public, but there were two LCDD Board members there.

Mr. Dorrill indicated that he has never met Mrs. Glasman, but he would like to, as he understands that she is a proponent of Lely Resort. He added that he would be happy to explain to her that on those occasions when she desires participation from the CDD, there are two options. It needs to be a meeting that is noticed and open to the public at a facility that can accommodate as many people as may attend, or it needs to involve only a single member of the LCDD Board. If at some point the group came to the LCDD Board and asked them to take a position on a particular issue, for instance, that particular intersection where the LCDD operates and maintains all of the landscaping assets within that intersection, and someone files a complaint with the ethics commission, that will be a violation and will be very public.

Mr. Pires added that one of the other remedies under the Sunshine Law is if a Board member engages in curative acts, and action or decisions are based on that, they could be rendered void if they were done in situation that violates the Sunshine Law.

In summary, Mr. Dorrill noted that he would take all appropriate steps necessary to notice Commissioner Fiala's upcoming Stormwater Utility meeting. He will also make it a point to introduce himself to Mrs. Glasman to advise her of the requirements for LCDD participation.

E. Workshops

Mr. Lee asked if a letter had been sent out advising of upcoming workshops, and Mr. Dorrill indicated that normally they have two spring workshops, one with the Sheriff and the other is the kickoff of the tentative budget. He will check with Dee in his office to make sure those notices have been sent. Mr. Lee added that normally a workshop on Transportation and one on hurricane preparedness is held, and a workshop with the Supervisor of Elections, Jennifer Edwards, is scheduled for July.

F. Signage at Grand Lely

Mr. Drum indicated that some of the signs along that roadway are leaning one way or another from the hurricane, and asked if some of the boutique signs have been ordered. Mr. Carter noted that Lykens Signs is working on the new posts, and the signs have been completed on Celeste Drive and they are in the process of completing the rest of them. There are also some crooked signs over by the Players Club, and Mr. Carter has spoken to Stock Development about them on more than one occasion. There are several other areas where the signs need attention, and Mr. Carter indicated that the sign companies are all really behind, but they will get done.

Mr. Ousley then reiterated that the feasibility of the merger between the HOA and the CDD will be looked into, and Mr. Pires indicated that he will send the Board a memo outlining the issues associated with it.

G. Bulldozing of Island between McDonalds and Chase

Mr. Ousley asked when this bulldozing was going to take place, and Mr. Lee noted that it will be addressed at the Workshop in April. The last he heard was that it would be sometime in 2019.

**** Mr. Lee's comments as well as audience comments were inaudible.****

FINANCIALS

The first quarter financials showed that at the end of December there was \$3,200,000 in cash on hand, with \$1,266,000 of that in the restricted capital reserve. Payables stood at \$135,000. During the month of December \$451,000 in non ad valorem assessments were received which was a record for that month. That brought the receipts up to \$1,865,000 during the first three

months of the fiscal year, almost 90 percent of the annual revenue.

The CSA Payment of \$226,000 was received as well as the \$25,000 for new maintenance as was previously discussed.

Only one cost center, street lighting, was over budget by \$60. This was related to some repairs.

Total operating expenditures were \$150,000 under budget on the expense side through the first three months, which takes into account all the up front and seasonal expenses.

On a MOTION by Mr. Ousley and a second by Mr. Drum, the Financials were then unanimously accepted by the Board.

MISCELLANEOUS CORRESPONDENCE

A. Selection of Supervisor

Mr. Dorrill asked the Board if they wished to give him any direction in this regard, noting as well that Mr. Kuznar was present. The Board members agreed that they would allow Mr. Kuznar to speak to them at this time.

Mr. Kuznar apologized for being unable to make the workshop, but he thanked the Board for the leeway to speak with them now, and also for the excellent work they had done over the years for the Lely CDD.

Mr. Kuznar has lived 23 years in Palomino Village, serving as the president four years. He attended Dale Carnegie courses and Cornell University in business economics. He graduated from the United States Staff College at Maxwell Air Force Base for the Civil Air Patrol and gained the rank of Lt. Colonel.

He was in the food manufacturing business in Pittsburg, Pennsylvania that was eventually bought out by Gordon and he worked for them for six years until he retired. He then decided to go back to work for a company called Mrs. Wise Noodles in Cleveland, Ohio. They were then bought out by Hershey Foods, and after four years he again retired. While working with them he was in charge of 17 states and \$22,000,000 worth of sales. He had a great sales force who worked with food brokers throughout those states. He noted that it was important how you worked with people and being fair in his career.

Mr. Kuznar worked eight years in the Marine Corps, and eventually learned to be a paratrooper. He continues to work with the Civil Air Patrol for the Department of Homeland Security. Their plane is kept at the Naples Airport in the Civil Air Patrol hanger that was hit pretty badly during Irma, and they will be out of commission for about two months.

Mr. Kuznar went to work part time for the Naples National Golf Club in Food and Beverage and security, and has provided transportation to people like Russ Limbaugh, among many others.

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He was married for 59 years, and his wife passed away three years ago. He has three children. It is his desire to fill Mr. Fisher's position, although he realized it will be tough to do, and he would enjoy working with the rest of the Board.

Mr. Ousley complemented Mr. Kuznar on his report and added that he respected the service he did for his country. He asked what administrative and political skills he could bring to the Board concerning landscape and traffic and balancing the budget. Mr. Kuznar felt it would take a lot of visibility and making requests and bringing ideas to the Board, and also how to spend the District's money wisely. (Inaudible section)

Mr. Drum asked if he was a full time resident and was advised that he was for the past 23 years, and would have no trouble attending meetings.

Mr. Lee and Mr. Campkin had no questions.

Mr. Kuznar was then thanked for attending.

Mr. Drum indicated that at the last meeting he mentioned that it was difficult to have a five member Board and have two, maybe three of them belonging to the same homeowners' association. He still feels that way, and that is why he would vote for Tom Kuznar. He was aware, however, that three votes would be needed out of the four Board members for one candidate, which he was not sure they would get.

Both Mr. Drum and Mr. Ousley belong to the same HOA, and in an election that does not seem to make a difference, and he has no problem with that. He did feel that this situation was quite different, and three Board members could pick someone who might possibly be from the same community.

What Mr. Drum was suggesting was that they wait until the upcoming election. The filing deadline is in June, and whoever wants to run must file then. The people running for election in November would be seated almost immediately, on the second Tuesday following the election. That way the voters can decide who will sit on the Board, although he felt that they were all qualified and he could vote for any one of them. For three Board members from the same HOA sitting on the Board, there could be a possibility of problems with the Sunshine Law in many different situations.

After a brief discussion, the Board members agreed, and **on a MOTION by Mr. Drum and a second by Mr. Ousley, the Board unanimously approved letting the appointment of a temporary seat on the Board ride until the November election when a new Board member can be elected by the residents.**

Mr. Dorrill noted that in this way if other people are interested in running for that position, they

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can file as well and get their name on the ballot.

PUBLIC COMMENTS

A resident asked if the Board had made any decisions on getting a new sound system, and Mr. Carter advised that they have decided on a system where each supervisor would have their own microphone, and are waiting for delivery.

ADJOURNMENT

With the reminder that the next meeting would be held on March 21 with a workshop scheduled at 1:00 with the meeting to follow at approximately 1:30.

On a MOTION by M r. Drum and a second by Mr. Campkin, the meeting was then adjourned.