

**MINUTES OF MEETING
MEDITERRA SOUTH
COMMUNITY DEVELOPMENT DISTRICT**

A Regular Meeting of the Mediterra South Community Development District's Board of Supervisors was held on **Wednesday, October 19, 2011 at 11:30 a.m.**, at **The Club at Mediterra, 15755 Corso Mediterra Circle, Naples, Florida 34110.**

Present and constituting a quorum were:

Kenneth Nails	Chair
Frank Godshall	Vice Chair
Kenneth Tarr	Assistant Secretary
Bill Rowe	Assistant Secretary
Dallas Luby	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Lynn Scruggs (via telephone)	District Counsel
Dave Robson	District Engineer
Cathy Swift	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Nails called the meeting to order at 11:30 a.m., and noted, for the record, that Supervisors Nails, Godshall, Rowe, Tarr and Luby were present, in person.

SECOND ORDER OF BUSINESS

Administrative Items

a. Consideration of August 17, 2011 Public Hearing and Regular Meeting Minutes

Mr. Nails presented the August 17, 2011 Public Hearing and Regular Meeting Minutes and asked for any additions, deletions or corrections.

Mr. Godshall referred to District Counsel's comments on Page 2, between Lines 48 and 54, specifically the last sentence stating "should the need arise, the Board should ask for a motion authorizing a Board Member from each District to meet". He questioned if that comment means a member of Mediterra North cannot meet with a member of Mediterra South unless there

is a motion previously made. Ms. Small indicated not necessarily, they can meet for coffee; however, if the intent is to meet to discuss District business, it is better for the record to have the District authorize it and it also helps avoid multiple supervisors trying to contact Mediterra North.

The following changes were made:

Line 203: Change “South” to “North”

Line 205: Change “North” to “South”

On MOTION by Mr. Godshall and seconded by Mr. Rowe, with all in favor, the August 17, 2011 Public Hearing and Regular Meeting Minutes, as amended, were approved.

THIRD ORDER OF BUSINESS

Other Business

a. Consideration of Award of Contract: Lake & Wetland Maintenance

Mr. Adams presented the Lake & Wetland Maintenance memorandum. He indicated that (3) contractors submitted bids. Aquagenix and LakeMasters are large enough local companies with good reputations, who have the ability to operate and maintain the District’s lake and wetland system, under the contract specification.

Mr. Adams noted Collier Environmental is a relative newcomer and is a subsidiary of the Collier Group with agricultural holdings and a few high-end communities. Management feels they do not have the experience or expertise for a high-end lake and wetland maintenance program. They lack equipment and necessary manpower for this job. Additionally, their bid is significantly higher than the other contractors and exceeds the District’s budget amount for this item.

Mr. Adams indicated LakeMasters has maintained the District’s lakes for the past ten (10) years, with minimal concerns. They recently severed all ties with EarthBalance and no longer utilize their services for wetland maintenance but, since opening a wetland division, LakeMasters has employed key personnel formerly employed by EarthBalance who have been working within the Mediterra wetlands for numerous years.

Mr. Adams explained that, historically, Aquagenix had managed the wetland work within the company; however, they indicated they intend to utilize EarthBalance as their wetland

subcontractor. He advised that Aquagenix is qualified and has the ability to manage the District's system.

Mr. Adams pointed out that the Aquagenix bid is 23% lower than LakeMasters.

Mr. Godshall questioned the fact that Aquagenix did not submit all of the required information or proof of suitable financial backing status to meet the obligations, as outlined, and incidental to the work. Mr. Adams confirmed those items were requirements of the bid specifications but, while the District went through the sealed bid process, the value of the contract did not require it. For this reason, the Board has the opportunity to review the bids in a little different light than it would have to under the sealed bid process. The sealed bid process requires that the Board use the lowest responsive and responsible bidder.

Mr. Adams indicated the Board may choose to consider these simply as bid submittals, since the sealed bid process was not required, as the cost threshold was not exceeded. If they consider them as bids, the Board can overlook shortages in the provided information, such as the case of Aquagenix's failure to provide the required information. He assured the Board that Aquagenix and EarthBalance are major players in the state and have suitable financial backing, resources, experience and expertise to perform under the contract.

Mr. Nails asked if they can renegotiate with LakeMasters. Mr. Adams advised that the Board could enter a motion to reject all bids and authorize Staff to negotiate with the current contractor. In response to a question, Mr. Adams indicated the termination clause of the new contract is 30 days, with or without cause.

Mr. Tarr asked if the Board was aware, in the past, that the contractor was using a subcontractor. Mr. Adams replied affirmatively. In response to Mr. Tarr's question, Mr. Adams confirmed the key personnel previously employed by EarthBalance, working on Mediterra South's wetlands, are currently employed by LakeMasters.

Mr. Adams explained that the proposals reflect the contract for both Districts but the Mediterra South portion is 70% and the contractors were instructed to price each lake as a standalone, in case the Districts select different contractors.

Mr. Tarr referred to a resident with a complaint about a lake and asked if her complaint impacts the Board's selection. He voiced his opinion that someone failed to perform.

Mr. Adams indicated he is not aware of the nature of the complaint; he only received an email with some pictures. He stated he had difficulty seeing the issue and felt it might be more a

matter of educating the resident. Mr. Adams confirmed his opinion that the system current provider has maintained the system consistently to the specifications.

Mr. Godshall questioned the impact of the District going to LakeMasters and negotiating a lower price and whether it discourages contractors from bidding in the future. Mr. Adams felt obtaining proposals, from time to time, keeps everyone honest. This is a one (1)-year contract with a second year option. Mr. Adams did not think it would hurt the District, as there is a high level of interest from contractors to get into this type of community. Mr. Godshall reiterated his opinion that contractors will not bother to bid, if they know they have no chance of getting the project, even if they are the lowest bidder.

Regarding process, Mr. Adams recommended that the Board reject all of the bids and authorize Staff to negotiate with LakeMasters for a price not-to-exceed Aquagenix's proposal. If this does not work, Staff could be authorized to enter into a contract with Aquagenix.

The Board voiced confidence in the current contractor and discussed negotiating for a lower price but not necessarily as low as the Aquagenix price.

On MOTION by Mr. Godshall and seconded by Mr. Rowe, with all in favor, rejection of all bids was approved.

Mr. Adams confirmed the District will only pay its prorated share of the total contract price and Mediterra North is not obligated to select the same contractor.

On MOTION by Mr. Luby and seconded by Mr. Godshall, with all in favor, authorizing Staff to negotiate with LakeMasters for a total contract price not-to-exceed \$133,000, and, if not successful, to accept the Aquagenix bid, at a price of \$120,074.88, was approved.

b. Continued Discussion: Lake 20 Encroachment

Mr. Adams reviewed the pictures of the residence on Lake 20, which includes a resident-installed putting green and a temporary fence, which are encroaching on the lake bank. Mr. Robson felt the encroachment is about 15 feet. Mr. Adams summarized this amounts to a

landscaping encroachment; it is a raised turf area, which does not impede the District's day-to-day maintenance operations of the area.

Mr. Adams indicated the Board can choose to allow it to remain or require it to be removed. He felt it does not set precedence and these matters must be addressed on a case-by-case basis. Mr. Adams felt the Board could require the owner to enter into a "consent to use" agreement. Mr. Tarr asked if the resident obtained permission from the Mediterra HOA. Mr. Adams was not sure but clarified that the District does not govern that matter. Mr. Tarr stressed his opinion that the resident should have obtained HOA permission prior to installing the putting green and questioned why the Board would allow it to remain, as the resident has broken the rules twice. Mr. Adams stated the Board would allow it, contingent upon the resident showing he has all of the necessary approvals. Mr. Godshall recommended writing a letter notifying the resident that he is in violation but allowing it to remain, based on the provisions of the "consent to use" agreement. Mr. Tarr stressed his opposition to allowing this and his feeling that the Board is being blackmailed into giving permission; the resident did it and the Board does not want to be tough on him. Mr. Rowe felt the resident, likely, does not know he did anything wrong. Mr. Tarr argued that ignorance is no excuse. Mr. Tarr felt the resident is using the District's property in a way that other taxpayers are not; the District is allowing one (1) resident free use of its property.

Ms. Small advised that the Board has limited but specific powers and, to the extent it is bothered by an encroachment into its boundaries. The only question to be considered is whether the encroachment affects the benefit received among all of the residents, that would impact the assessments; if there is no affect or detriment, there should be no further concern. Mr. Adams explained the approach of a "consent to use" agreement. Mr. Godshall asked if the District could require a fee from the resident. Mr. Adams replied affirmatively but an appraisal would be necessary to determine the benefit.

In response to Mr. Tarr's question, Mr. Adams indicated the agreement will state that the agreement in no way precludes other required approvals or permits from other entities. Mr. Tarr noted his intention to vote against allowing the encroachment, as he feels "the lake banks should be maintained as lake banks, as the original intent was of why the CDD and the lakes were created". Mr. Tarr asked that the record reflect his strong opposition.

On MOTION by Mr. Luby and seconded by Mr. Rowe, with Mr. Nails and Mr. Godshall in favor and Mr. Tarr dissenting, notifying the homeowner of the encroachment violation but giving CDD consent for it to remain, subject to proof of proper permits allowing it, entering into a consent to use agreement with the District, recording of the agreement, with the recording costs paid by the resident and authorizing the Chair to execute the agreement, was approved. (Motion passed 4-1)

c. Continued Discussion: Nature Trail

Mr. Adams recalled previous discussion about a nature trail within Mediterra Circle, which is the preserve area. He noted Mediterra North feels this should be a MCA project, as MCA is charged with the amenities and providing them. Mr. Adams indicated Ms. Holm-Sheeley approached her Board and confirmed general support for the project; however, there are details to be ironed out, prior to them giving their endorsement. Mr. Adams stated this leaves the Board where they started and advised that they probably need to draw out a rough plan for a nature trail, then obtain an engineering cost opinion, in order to continue working with the MCA towards completion of the project. Mr. Adams confirmed the initial costs will be the District's, as Mediterra North does not wish to participate and the MCA is not currently prepared to support it, without further details.

As a homeowner, Mr. Luby voiced his support for the project but, as a Board Member, he questioned how it benefits the CDD. Mr. Adams reminded the Board that they have the ability to provide recreational services to the community.

Mr. Robson discussed the permit transfers for the conservation areas, topographical information of the areas, suggestions for the trail and the difficulty of boardwalks cutting through the wetland portion. Mr. Robson indicated the Board needs to determine if it wants wetland viewing from the trail, as it will impact the permit. Mr. Nails asked the cost, should sufficient topographical maps not be available. Mr. Robson estimated \$3,000 to \$5,000. Discussion ensued regarding the type of trail, where to build it and who should be responsible. Mr. Adams felt development of a nature trail to be used only during the dry season makes economic sense, as it would be less expensive and that is the time of year with the most residents, so it would have the most usage at that time.

On MOTION by Mr. Nails and seconded by Mr. Luby, with all in favor, encouraging the MCA to continue pursuing the possibility of a nature trail and allowing use of CDD property for it, if the MCA determines a nature trail is appropriate, was approved.

FOURTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

****This item, previously the Fifth Order of Business was presented out of order.****

In response to a question, Mr. Adams reported that the MCA monitored deer activity and it was determined that the number of deer is not excessive; therefore, removal of deer is not warranted.

▪ **Refinancing Discussion**

****This item was an addition to the Agenda.****

Mr. Nails reported that Mr. Teich is pursuing several unnamed banks and he thought there may be the opportunity for a 20-year corporate loan from the banks to the golf club, if they put the golf club and its facilities up as collateral. Regarding the bonds, Mr. Adams indicated nothing has improved but Mr. Abrams, from Mediterra North, has been pursuing private placement options with several banks. Florida National Bank appears to be showing the most interest and a term sheet may be received within the next week. Mr. Adams stated, from the public issuance side, the bond market is still in the tank and they are not going to get a good deal, especially until such time as the concentration of risk, with The Club can be resolved.

On MOTION by Mr. Godshall and seconded by Mr. Luby, with all in favor, authorizing Mr. Luby to work with Mr. Abrams, of Mediterra North, or a representative of that Board, in pursuing the refinancing issue and options, was approved.

▪ **Resident Cathy Swift Lake Bank Issue**

****This item was an addition to the Agenda.****

Mr. Adams presented pictures provided by Ms. Cathy Swift, a resident. The photos relate to plantings installed adjacent to Ms. Swift's property.

Ms. Swift referred to a picture showing how the water treatment workers have treated her lake. She indicated the issue was prior to the new plantings being installed. She indicated she couldn't sell her property because of the appearance of the lake. Ms. Swift voiced her concern that her property will no longer be a water lot, if muck continues to accumulate. She requested that the area be maintained up to the standards of other backyards.

Mr. Adams referred to the photos and explained which one reflects an acceptable standard and which is not acceptable.

Mr. Tarr stated it was not his understanding that filling the lakes with grasses was what the CDD was planning to do. Mr. Adams indicated this is the aquascaping program. Mr. Tarr indicated it was described to him that nice plants would be installed along the lake perimeters. Ms. Crismond indicated this year, and for the next couple of years, this will impact the lake bank levels because the lakes are low in the summer. She indicated additional spike rush is no longer on the plant pallet, although it is a beneficial plant. Mr. Adams clarified that, even though spike rush is not currently being planted, it will continue to reproduce and it will be allowed to do so. Mr. Tarr was troubled that people have paid a lot of money for their property and are now looking at "weeds", which impacts the resale value of his once \$2 million home. Mr. Tarr felt the lakes should not be filled with things that obstruct the water view. Mr. Adams explained the growth and purpose of beneficial plants. Ms. Swift reiterated her opinion that the plants are taking away her water view. Mr. Adams confirmed Management will monitor the area with the lake and wetland contractor.

In response to a question, Mr. Adams indicated he is still working with Ms. Crismond on the lake bank erosion repair proposals; the first proposals were high, so he wants additional time before presenting them for consideration.

FIFTH ORDER OF BUSINESS

Staff Reports

******This item, previously the Fourth Order of Business, was presented out of order.******

a. Attorney

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

b. Engineer

Mr. Robson had nothing additional to report.

Mr. Tarr referred to vines growing on CDD property and asked the District's policy on vine removal. Mr. Adams indicated any invasive vines, within the preserve areas, are the contractor's responsibility, on a semiannual basis. Ms. Crismond reported the vines are to be reviewed on Monday, with the scheduled event next month.

c. Manager

i. Unaudited Financial Statements as of August 31, 2011

Mr. Nails presented the Unaudited Financial Statements as of August 31, 2011.

ii. NEXT MEETING DATE: January 18, 2012 at 11:30 A.M.

Mr. Nails indicated the next meeting is January 18, 2012.

SIXTH ORDER OF BUSINESS

Adjournment

There being no further business, the meeting adjourned.

**On MOTION by Mr. Rowe and seconded by Mr. Godshall,
with all in favor, the meeting adjourned at 1:25 p.m.**


Secretary/Assistant Secretary


Chair/Vice Chair