

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

A Public Hearing and Regular Meeting of the Mediterra South Community Development District's Board of Supervisors was held on **Thursday, August 29, 2013 at 11:30 a.m.**, in the **Bella Vita Room at the Mediterra Sports Club, 15735 Corso Mediterra Circle, Naples, Florida 34110.**

**Present and constituting a quorum were:**

Kenneth Nails	Chair
Kenneth Tarr ( <i>via telephone</i> )	Vice Chair
Bill Rowe	Assistant Secretary
Michael Bishko ( <i>via telephone</i> )	Assistant Secretary
Dallas Luby	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Jonathan Johnson ( <i>via telephone</i> )	District Counsel
Ken Saffier	Hopping Green & Sams
Andrew Tilton	District Engineer

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Nails called the meeting to order at 11:33 a.m., and noted, for the record, that Supervisors Nails, Rowe and Luby were present, in person. Supervisors Tarr and Bishko were attending via telephone.

**SECOND ORDER OF BUSINESS**

**Affidavit of Publication**

Mr. Nails presented the affidavit of publication for today's Public Hearing and Regular Meeting.

**THIRD ORDER OF BUSINESS**

**Public Hearing to Consider Resolution 2013-7, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2013, and Ending September 30, 2014**

***\*\*\*Mr. Nails opened the Public Hearing.\*\*\****

Mr. Adams indicated that the Board reviewed the proposed budget at their May meeting. Mr. Adams advised that this budget is consistent with the budget presented at the last meeting. He recalled that, on the operating side, since the last meeting, the trustee fees were reduced from \$25,000 to \$10,000. Mr. Tarr asked about the impact of the reduction. Mr. Adams indicated that the new amount reflects a \$10,000 reduction for Mediterra South and \$5,000 for Mediterra North. In response Mr. Tarr's question, Mr. Adams clarified that the overall reduction was \$15,000, with \$10,000 assignable to Mediterra South and \$5,000 to Mediterra North.

Mr. Adams indicated that the assessment is reduced from \$504.67 to \$504.50, per unit. He discussed the Board's desire to maintain assessments at the same level, year over year, continue aggressively funding the lake planting program and restore unbudgeted funds expended during Fiscal Year 2013 for the interconnecting pipe review and cleaning work.

Mr. Tarr referred to Mr. Adams' statement, in the May 15, 2013 minutes, that the arbitrage rebate calculation is not done annually; however, \$7,200 is shown for the combined Districts for both Fiscal Years 2013 and 2014. He feels that this is inconsistent with what Mr. Adams stated or, the minutes are incorrect. Mr. Adams advised that the minutes are correct; he misspoke when he made the statement. Mr. Adams confirmed that arbitrage is calculated annually.

Mr. Tarr asked the names of the dissemination agent and the arbitrage rebate calculation agent. Mr. Adams indicated that Wrathell, Hunt and Associates, LLC, is the dissemination agent and the arbitrage rebate calculation is performed by the District's auditor, Grau & Associates. Mr. Tarr noted the importance of these items and recalled previously asking for certification to the Board that these items were completed by the entities that are responsible for performing the work. Mr. Tarr contended that, while the Board believes the work was completed, they have never been presented with facts attesting to or substantial representation that it was done. Mr. Adams stated that he can provide the Board with copies of the reports. Mr. Tarr asked what was actually done. Mr. Adams indicated that he will send the latest reports to the Board, under

separate cover, following today's meeting. Mr. Nails asked when the reports are completed. Mr. Adams was unsure of the month when the reports were last completed. Mr. Tarr stated, for the record, going forward, the Board will be able to include that they received notification that the work was completed in a timely manner. Mr. Adams replied affirmatively.

No members of the public spoke.

Mr. Nails presented Resolution 2013-7 for the Board's consideration.

In response to Mr. Johnson's request, Mr. Adams confirmed that the proposed budget was posted on the website and provided to the county, as required.

**On MOTION by Mr. Luby and seconded by Mr. Rowe, with all in favor, Resolution 2013-7, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2013, and Ending September 30, 2014, was adopted.**

**FOURTH ORDER OF BUSINESS**

**Consideration of Resolution 2013-8, Making a Determination of Benefit; Imposing Special Assessments; Providing for the Collection and Enforcement of Special Assessments, Including But Not Limited to Penalties and Interest Thereon; Certifying an Assessment Roll; Providing for Amendments to the Assessment Roll**

Mr. Nails presented Resolution 2013-8 for the Board's consideration.

**On MOTION by Mr. Luby and seconded by Mr. Rowe, with all in favor, Resolution 2013-8, Making a Determination of Benefit; Imposing Special Assessments; Providing for the Collection and Enforcement of Special Assessments, Including But Not Limited to Penalties and Interest Thereon; Certifying an Assessment Roll; Providing for Amendments to the Assessment Roll, was adopted.**

**FIFTH ORDER OF BUSINESS**

**Review of Lake Interconnect Pipes and Control Structure Inspection and Cleaning Report from M.R.I. UnderWater Specialists, Inc.**

Ms. Crismond reviewed the report and indicated that pipes with 25% or greater blockage were cleaned. She referred to a few typographical errors in the report and clarified that Lake 5-1 was cleaned, the Lake 32-1 broken headwall pipe was repaired and Lake 73-1 was cleaned.

Mr. Luby noted clusters of problem areas and questioned if the stream flows in that direction and is causing blockage. Mr. Adams recalled discussion with M.R.I. UnderWater Specialists, Inc. (M.R.I.), during a field visit, regarding clusters at the perimeter of the community and it was suspected that the system was used as part of a dewatering effort; the boxes were cleaned but the pipes were not cleaned. Mr. Adams described the dewatering process and confirmed the belief that dewatering took place during the construction phase.

Mr. Tarr asked the final cost for this work. Mr. Adams indicated that the inspection was \$6,000 and the cleaning cost was \$34,000 or \$35,000. Mr. Tarr recalled discussion regarding proceeding with pipes that had debris but were not cleaned and asked if there was a recommendation for follow up inspections. Mr. Adams indicated that the pipes will be monitored and inspected on a three (3) to five (5)-year cycle. Mr. Adams explained that, post construction, the debris level will be less and there will be less opportunity for blockage. Mr. Tarr asked if the drain boxes, in the street, are the District's responsibility. Mr. Adams confirmed that the District is not responsible for those; the District is responsible for the lakes, wetland conservation lands, interconnecting pipes between those facilities and control structures, which were acquired through the bond program. Mr. Adams explained that roadway catch basins and pipe from those catch basins to the lakes are generally not the District's unless they serve a dual purpose as an interconnecting pipe crossing a road between two (2) lakes and a catch basin was put on it. Mr. Tarr stated that he informally emailed the MCA and they understand that, although the District completed the pipe cleaning, it has nothing to do with what is under the MCA or individual HOAs; meaning, if there is a blockage and flooding issue relating to drain boxes and related piping, it has nothing to do with the District. Mr. Adams concurred; the responsibility would be with the roadway owner, whether it is the MCA or an HOA.

Mr. Nails recalled observing trucks with hoses in the drains in a few neighborhoods, which he believes must be related to cleaning them. Mr. Tarr indicated that it is a function of proactive HOAs. Mr. Tarr stated that he advised the MCA to convey the information to the HOA presidents because he feels that most do not understand the HOA's responsibility for the catch basins and drains; they assume that everything is the District's responsibility.

Mr. Tilton stated that the "Gator Pole" notation, for Lake 71-2, should probably be "Gator Hole".

**SIXTH ORDER OF BUSINESS**

**Presentation of Annual Quality Assurance Audit - Lake Maintenance**

Ms. Crismond presented the Annual Quality Assurance Audit related to lake maintenance. She noted much improvement since the audit last year. Ms. Crismond recalled that there were numerous erosion problems in the past. She reported that nearly all of the erosion issues were resolved; a few erosion issues are related to the golf course. Ms. Crismond provided the golf course superintendent with the report and the contractor's information so that the golf course can resolve their issues. She recalled a few resident-related erosion issues that must be addressed; the others, from prior years were resolved. Ms. Crismond will contact the residents.

Mr. Nails questioned if those residents refused to address the erosion issues on their property. Ms. Crismond replied no and stated that some residents tried to repair the problem but did not do it correctly; there might have been one (1) new resident issue.

Ms. Crismond identified ten (10) lakes where maintenance personnel were dumping grass clippings into the lakes. Ms. Crismond spoke to the golf course manager, who acknowledged the problem and is cooperating. Mr. Nails asked Ms. Crismond if she actually observed the grass being dumped into the lakes. Ms. Crismond replied affirmatively.

Mr. Tarr indicated that he sent Collier County Ordinance 118-56 to Mr. Adams, for inclusion in the minutes, which states that it is a code violation each time it occurred and the penalty is up to \$500 per incident and/or 60 days imprisonment. Mr. Tarr believes that this is a serious matter, given the number of times that it occurred. He feels that, as a governmental entity and knowing that the ordinance was violated, the District must inform the The Club President and General Manager, in writing, of what Staff observed and advising them to cease and desist. Mr. Tarr stated that it is not the District's job to police the situation; the only

alternative is to report it so the county can take necessary action, although, he does not think that is necessary. He voiced his opinion that the District cannot sit by when such an egregious violation of a county ordinance is occurring, without taking steps to ensure that it never happens again.

Mr. Nails did not agree with Mr. Tarr's suggestion; he feels that Ms. Crismond spoke to the golf course manager, who understands the issue and is working to rectify it. If the situation were to happen again, Mr. Nails indicated that he would favor sending a letter but, for now, he feels it is not necessary.

Mr. Tarr stated that, as an attorney, Mr. Nails should know that oral representations mean nothing. Mr. Tarr asked Mr. Johnson's opinion. Mr. Johnson advised that, if the Board has a concern and is in agreement, rather than taking any direct action, the District could notify Collier County, which would be the most cost-effective course of action. Mr. Tarr noted that Mr. Johnson's recommendation is "raising it to a level"; he only wanted to make sure that the District obtains The Club's agreement, in writing, so, if it happens again, the District has a document from The Club confirming that the violation occurred and they will take appropriate action so that it does not happen again. Mr. Tarr reiterated that an oral representation means nothing. Mr. Nails voiced his opinion that, sometimes, formal action is taken but sometimes it is not. Mr. Rowe was not sure the District should take formal action but feels that they should ensure that The Club knows; he would support a document of some form. Mr. Luby voiced his opinion that the issue is resolved but, if it happens again, that is another matter.

Mr. Nails asked Mr. Tarr if he is satisfied.

Mr. Tarr stated that he does not like verbal promises; the District is a quasi-governmental entity and Staff is aware of a code violation, which carries very strict penalties. He added that this was an ongoing situation that occurred in 11 lakes and he feels that the District cannot rest on The Club's promise that it will not happen again; in order to protect itself and adhere to the Collier County Ordinance, the District Manager should send a letter to The Club indicating what was observed and advising that it should never happen again. Mr. Tarr does not believe that the District needs to involve Collier County now but it needs to ensure that the Board Members did their job to supervise the matter and ensure that it does not happen again.

Mr. Tarr made a motion authorizing the District Manager to send a letter to The Club describing what was observed and confirming that the District was told that it would never

happen again. The motion died due to lack of a second. Mr. Tarr asked that the minutes clearly state what he proposed and that it was not supported, along with including the Collier County Ordinance within the meeting minutes. Mr. Adams indicated that he received the ordinance that morning and it will be attached to the minutes.

**\*\*\* Collier County Ordinance “Chapter 118 – Solid Waste, Article III. Litter Control” is attached, as an exhibit to these minutes.\*\*\***

Ms. Crismond reiterated that the report was forwarded to the golf club superintendent.

Ms. Crismond advised that 182,000 littoral plants will be planted in October, at a cost of \$69,000.

Mr. Rowe reported that, through yesterday, 65.55” of rain was received, year-to-date, compared to 47.45” last year. The District is currently within 7.5” of the total rainfall received during all of last year. Mr. Rowe described the equipment he uses to measure rainfall.

**SEVENTH ORDER OF BUSINESS**

**Continued Discussion: Landscape Maintenance of CDD Owned Lake Banks**

Mr. Nails recalled that this matter arose, at the last meeting, when the MCA was of the belief that it has no responsibility for berms around certain lakes. He noted that, at the last meeting, the Board asked for assurance that the areas are CDD owned property, prior to taking action requiring it to be maintained.

Mr. Adams indicated that he researched the county and District records and confirmed that the areas listed, by the MCA, are properties owned by the District and are generally included within the lake tracts and run alongside the road right-of-way, which is the area of responsibility at which the MCA is indicating that they will stop maintaining. He advised that the District must consider maintaining the continuation of the area from that point, to the lake. Mr. Adams confirmed that the District owns the areas. Mr. Adams voiced his opinion that it is unfortunate that the District is being hit with this expense, considering that both entities serve the same group of people; essentially, the MCA wants the District to now pay them for the service of maintaining the area, in spite of having maintained them over the years. Regarding the price, Mr. Adams stated that the MCA is requesting \$6,135 per year to maintain the area, which is reasonable, compared to hiring a contractor to complete the work.

Mr. Tarr noted that the minutes from the last meeting indicate that District Counsel would be asked to research whether the CDD is under the Design and Review Committee (DRC) guidelines, along with individual homeowners, because some lake banks are adjacent to preserve areas and some are planted berms, specifically for shielding purposes. He stated that, like other areas, the homeowner must maintain the area to a set standard; the question was whether the CDD was operating under a similar standard. Mr. Tarr asked District Counsel to comment.

Mr. Johnson advised that case law indicates that the District would not be subject to the MCA's standards. He noted that he did not receive the ownership documents from Mr. Adams in order to review the deeded title to determine whether they contain something that would more specifically bind the District, beyond the general covenants of MCA. While the District is likely not bound, Mr. Johnson stated that he will confirm it, once the documents are received and he can review them.

Mr. Tarr stated that the Medici lake bank is the most troubling because it had weird ownership changes. He feels that most of the others were straightforward, from Long Bay Partners to the CDD. Mr. Nails asked if Mr. Tarr is suggesting that the MCA still owns that property, not the CDD. Mr. Tarr clarified that the lake bank was originally a walking path, which was eventually altered and two (2) berms were built: Medici and Bello Lago. Mr. Tarr explained that, when Long Bay Partners transferred the property to Landmark Development Group, the MCA asked Landmark to give the lake bank back to them. Once the MCA took the lake bank, it was turned over to the CDD. Mr. Tarr stated that the issue is that it was a formally planted lake bank. Mr. Nails asked if Mr. Tarr is suggesting that, due to its history, this particular lake bank should be subject to the DRC's requirements, as opposed to the other lake banks. Mr. Tarr stated that he knows, for fact, that this lake bank is not a natural lake bank. Mr. Nails pointed out that it is because someone planted it. Mr. Tarr reiterated that the lake bank has a weird history and is a buffer, not a natural preserve.

Mr. Luby asked Mr. Tarr what he is trying to accomplish, such that a lot of legal time is being spent on something that does not seem very significant. Mr. Tarr voiced his opinion that the matter is significant to the Medici HOA, who already spent money to weed, fertilize and pine straw the area; in the past, if plants died, the MCA would replace them. Mr. Tarr stated that the lake bank is not a preserve. Mr. Rowe indicated that the lake bank was replanted on the Corso Mediterra side. Mr. Tarr pointed out that the MCA is not considered an owner; every owner,



meaning an HOA or individual owner, is required to maintain their property to the high water mark.

Mr. Nails suggested that the District is a quasi-governmental entity and, presumably, not subject to various association requirements. Mr. Tarr argued that the District is a landowner. Mr. Nails stated, regardless, the District is separate and the requirements cannot be imposed upon the District. Mr. Tarr contended that someone must read the history and determine what obligations the District assumed when it acquired the land. In Mr. Tarr's opinion, the CDD accepted that land and whatever was required.

Mr. Nails asked Mr. Johnson to obtain the documents from Mr. Adams and review all of the berms, particularly, the berm in Medici, and report his findings at the next meeting. Mr. Luby asked that Mr. Johnson advise of the cost to conduct this study. Mr. Tarr indicated that he thought Mr. Johnson was to have completed this review for this meeting. Mr. Luby noted that the CDD will be charged for Mr. Johnson's time to review this matter and questioned if the District will spend more in legal fees reviewing it than the MCA's proposed maintenance fee. Mr. Adams noted that the cost consideration is one of the reasons he took the review task on, himself; however, if the Board wishes, Mr. Johnson can review it.

Mr. Luby reiterated his concern that the District will incur a lot of legal costs for something that, in the grand scheme, is not that important. Mr. Nails stated that, if everyone agrees that the District owns the berms, except the Medici berm, the question is whether the Medici berm is different and must be maintained to a different standard than the other berms. Mr. Tarr indicated that the Medici HOA board raised this issue to him. For the record, Mr. Tarr voiced his feeling that maintenance was an obligation of the MCA and he believes it is wrong that the MCA suddenly abdicated.

Mr. Nails pointed out that the MCA notified the District that they will not maintain it and the District confirmed that they own the property; therefore, the District appears to have an obligation to maintain the area. The only question raised by Mr. Tarr is whether the Medici portion must be maintained to a different standard than the other areas, due to the chain of ownership. Mr. Tarr stated that because of what occurred with Medici and what the property was, it is not like other lake banks. Mr. Tarr noted that there could be similar situations; however, he did not research all of the lake banks.

Mr. Tarr discussed other lake banks that the MCA owns and is maintaining. He voiced his opinion that the MCA is trying to wiggle out of something it has been doing. Mr. Tarr feels that the District never should have accepted the property; it had nothing to do with the lakes.

Mr. Nails pointed out that the District is beyond the question of whether it should or should not have accepted the property; the question is whether the District accepts responsibility to maintain and, if so, should the Medici property be treated differently than the others.

Mr. Tarr disagreed. He feels that the question is whether the District wishes to accept the MCA's proposal and pay them to maintain the area. The issue relates to the ownership history of Medici, so that the District can inform the Medici HOA that, based on the record, the District is not required to do anything specific with that lake bank, compared to the other lake banks that the District is maintaining. Mr. Tarr feels that it is a simple matter for Mr. Johnson to review.

Mr. Luby voiced his opinion that this seems to be "much ado about nothing"; the CDD will maintain the areas. Mr. Luby voiced his understanding that the proposal presented is for the MCA to maintain the properties at a cost of \$6,135 per year; he feels that it is reasonable.

**On MOTION by Mr. Luby and seconded by Mr. Rowe, with all in favor, the offer from the MCA for \$6,135 for landscape maintenance of CDD owned lake banks, was approved.**

Mr. Tarr recalled discussion, at the last meeting, regarding dying plants on the Medici lake bank and the question of what the CDD would do about it. Mr. Tarr reiterated that the property was not a clean transfer and raised the question again, regarding the District's responsibility in maintaining it, as it is a planted area; not a natural area, like the others.

Mr. Nails stated that the question is whether the District is subject to the DRC's requirements of the MCA and, if not, it is not necessary for the District to do anything different than what it does in other areas.

Mr. Tarr contended that, when the District acquired the Medici property, it agreed to something, in terms of ongoing care. Mr. Nails was not sure that Mr. Tarr's comment is accurate and questioned whether the District agreed to maintain it in the same manner. Mr. Tarr contended that Mr. Nails was not on the Board at the time Bonita Bay Group controlled the CDD and The Club. Mr. Nails asked if Mr. Tarr wants District Counsel to review Medici, to ensure that there is no requirement for the District to maintain it differently than the other preserves.

Mr. Tarr replied affirmatively; if District Counsel finds that the level of maintenance is not the same as for other preserves, the District Manager must notify the Medici HOA.

Regarding whether the District should have District Counsel review this matter, Mr. Luby voiced his belief that it is a cost benefit issue and he does not know what the cost would be. Mr. Adams feels that it involves a quick review of readily available documents; review should not take more than a couple of hours. Mr. Nails indicated that the District is trying to respond to a neighborhood that is taking a different position and this will enable the District to notify the HOA of District Counsel's findings. The Board agreed to authorize District Counsel review the documents and provide an opinion.

**EIGHTH ORDER OF BUSINESS****Update: Activities Related to Potential Misuse of CDD Bond Funds for Construction of Irrigation Facilities**

Mr. Nails recalled meeting with the MCA, at a workshop, and discussing this matter, at the last meeting. He explained that, in the interim, Mediterra North appropriated funds to conduct a review of the invoices and determine if they contain irrigation construction costs. Mr. Nails noted that, while funds were appropriated, Mediterra North has done nothing to pursue and complete the review. He indicated that the head of the MCA contacted him regarding the District's intention to meet with a former Bonita Bay Group (Bonita Bay) employee to determine what occurred. The MCA requested that the District delay their meeting, as they are in discussions to settle with Bonita Bay and did not want other issues to cause problems. Mr. Nails advised the gentleman that the Board already made its decision and the District Manager was to have met prior to today's meeting; however, per his request, Mr. Adams delayed his meeting.

Mr. Nails feels that this is not the time for discussion or conclusion because Mediterra North has not completed their review and the MCA is still in negotiations with Bonita Bay; the Board does not need to make a decision regarding litigation, at this time. He suggested that the District hold off, for now.

Mr. Luby indicated that he would like Mediterra South to proceed with a forensic audit, as early indications are that \$460,000 was spent on irrigation equipment. He noted that the District does not own any irrigation facilities; therefore, it would never have spent the money. Mr. Luby wants to understand exactly what was spent. He feels that it was not an honest mistake

by Bonita Bay; it was malice of forethought and standard operating procedure. Mr. Luby recommended that, if the forensic audit is completed and evidence is found, the District should contact other CDDs that were controlled by Bonita Bay and suggest that those CDDs conduct forensic audits. If other CDDs find misuse of CDD funds, the CDDs can come together to discuss the feasibility of pursuing a joint lawsuit. Mr. Luby feels that, currently, this Board could be criticized for doing nothing and not performing its fiduciary duty. He questioned the Board's concern about grass in the lakes but lack of concern regarding misuse of at least \$500,000.

Mr. Nails indicated that a reason that the Board chose to delay was because District Counsel advised that the costs to pursue would probably cost as much, or more, to recover the funds.

Mr. Tarr recalled that, at the last meeting, Mr. Adams discussed the distribution process of how the money was paid. He noted that process was administrative and never placed control in the hands of the Bonita Bay Group CDD members.

Mr. Adams explained that the engineer who provided the engineering certification, on behalf of the District, has since passed away. Regarding the billing process, Mr. Adams advised that Bonita Bay Group assembled invoice packages requesting reimbursement; the invoice packet was certified by their engineer and the District Engineer, followed by review by an attorney for various matters. In this District, the requisitions were submitted to the trustee for release of money from the construction fund. In this case, it was an administrative process. The requisitions did not come before the Board; the District Manager, at the time, signed off on the requisitions once the District Engineer and District Counsel certifications were received. Mr. Adams felt this process is important to point out because people continue alleging that Bonita Bay, as the developer and control of the Board, was self serving; however, the requisitions were not run through the Board.

Mr. Luby contended that the fact remains that the District was charged a minimum of \$460,000 for irrigation facilities but the CDD does not have any irrigation facilities. Mr. Adams advised that those are potential costs; those costs must be evaluated to confirm if they were truly irrigation related. Mr. Luby believes that a forensic audit is necessary to determine whether there was fraud and to convince other CDDs of potential problems. Mr. Luby reiterated that, if

fraud occurred, the CDDs can join together in a lawsuit. Mr. Luby stressed that the District was charged for irrigation items and it does not have any.

Mr. Nails pointed out that the assumption is that “irrigation” relates to irrigation facilities; however, at the last meeting, the Board discussed the possibility that irrigation pipes were damaged or had to be relocated in the course of building roads, etc. Mr. Tarr stated that the golf courses were built prior to many neighborhoods and, consequently, the drainpipes between the interconnecting lakes may have cut through irrigation pipes that were installed by Bonita Bay. Mr. Tarr questioned how a neighborhood could be built and the lakes interconnected, when the drainpipes are adjacent to golf courses. Mr. Tarr suggested that Mr. Adams discuss this with Mr. Barraco, with Bonita Bay

Mr. Luby did not agree with speaking with Mr. Barraco, at the moment, because, if Mr. Barraco is still employed by Bonita Bay, he will likely not “remember” anything and will not say anything that would cause him to be fired. In response to Mr. Tarr’s question, Mr. Luby reiterated that he believes the District should conduct a forensic audit.

Mr. Nails pointed out that a forensic audit will alert Bonita Bay to what the District is reviewing, which is why the MCA asked the District to hold off; the MCA did not want the District’s actions to affect their negotiations.

Mr. Luby voiced his deep concern that, if the District does not do something, such as a forensic audit, the Board is vulnerable to criticism. Mr. Nails asked Mr. Luby if he wants a forensic audit now, despite the MCA’s request that the District hold off. Mr. Luby stated that he is not asking for the forensic audit tomorrow but he does not want it to be taken off the table; he is concerned because the Board should show more fiduciary responsibility. Mr. Luby suggested that, if the District has proof of misuse of funds, other CDDs will likely have the same issues.

Mr. Nails recalled the statute of limitations impediments that District Counsel discussed, at the last meeting. The District would need to overcome significant impediments.

Regarding the statute of repose, Mr. Kent Saffir, of Hopping Green & Sams, advised that the 12 year time limit is in March, 2014; after that date, the District will be forever barred from bringing suit. The four (4)-year statute of limitations applies within the 12 years; if the fraud is discovered, anytime within the 12 years, the four (4)-year statute of limitations begins to run. Mr. Saffir advised that, in his opinion, the four (4)-year statute of limitations began running a few months ago, when the issues first arose. He recalled mentioning, at the last meeting, that

Bonita Bay will argue that the Board should have known eight (8) years ago. Mr. Saffir reminded the Board that it would be very costly to litigate this matter and a difficult case. He advised that, if the Board decides to perform a forensic audit or take action, it should be mindful that, after March, 2014, the District will be forever barred from bringing suit.

Mr. Tarr asked how much a forensic audit would cost. Mr. Saffir believed the cost would be about \$20,000, or more.

**\*\*\*Supervisor Bishko joined the meeting, via telephone.\*\*\***

Discussion ensued regarding the statute of repose, the limited time remaining and whether any other CDDs are within the time limitations. Mr. Luby noted that his thought process only works if other CDDs, with a similar problem, can join; if the District is alone, the case is not as strong. Mr. Adams voiced his opinion that there is no way the District could organize with other CDDs to meet the March, 2014 deadline. Mr. Luby questioned if the District could contact both Brooks of Bonita Springs CDDs and Verandah East and West CDDs and suggest that they conduct an audit. Mr. Adams supposed that the District could but believes that the Verandah CDDs probably would not be interested but the Brooks CDDs might.

Mr. Luby stated that, if the District does not complete an audit and/or litigation, he wants the District's files to be very clear in delineating the thought process that all matters were considered. Mr. Luby does not want to be criticized, at a later date; the Board must detail why it decided not to pursue the matter.

Mr. Adams recalled that several members of the MCA, who were attorneys, spoke at the workshop and indicated that it did not make much financial sense to pursue the matter.

Mr. Nails stated that, if the District does not pursue litigation, it must make sure to document the file regarding the potential legal impediments and indicated that the Board made a business decision, based on the amount that could be recovered versus the cost of recovery, and not being able to prove that items labeled "irrigation" are related to actual irrigation. Mr. Nails voiced his opinion that anyone interviewed will not be able to confirm the "irrigation" costs, through a forensic audit.

Mr. Bishko asked if new evidence was presented. Mr. Adams replied no. Mr. Luby explained his position on the matter; the District paid for irrigation facilities but has none. Mr. Bishko clarified that the costs relate to irrigation pipe. Mr. Luby advised that the notes say "facilities". Mr. Adams confirmed that it relates to irrigation pipes and valves. Mr. Adams

indicated that he used the broad term, “irrigation facilities”, although there were no wells, pump houses, etc.; it was strictly pipes, fittings and valves.

Mr. Luby indicated that the District still does not own any of the pipes.

Mr. Tarr noted that there was a construction plan for all of the lakes, which had to be filed with SFWMD and approved. The golf course had a separate plan to handle all of the irrigation. He recalled that the golf course was built before many neighborhoods and asked if an engineer could evaluate the plans and make a judgment regarding whether the District’s pipes crossed the golf course’s pipes because, if they did not, the District would have a powerful piece of information to move forward with.

Mr. Tilton confirmed that the plans could be evaluated.

Mr. Nails asked if the invoices identify where the pipes were used. Mr. Adams indicated that the invoices provide general locations, such as unit or phase numbers, roads, etc.

Discussion ensued regarding whether the District owns any pipes other than concrete.

Regarding the areas involved, Mr. Adams indicated that it appears that Mediterra North is not affected.

Mr. Tarr reviewed a map and discussed CDD and golf course pipe locations and reiterated his suggestion that the District Engineer review the plans and make a determination.

Various discussions continued between multiple parties.

Discussion ensued regarding preparation of a legal memorandum detailing the reasons the Board did not pursue litigation and setting forth the pros and cons considered.

**On MOTION by Mr. Bishko and seconded by Mr. Rowe, with all in favor, authorizing District Counsel to prepare a legal memorandum of the issues impeding the District from continuing pursuit of recovering funds related to the potential misuse of CDD funds for irrigation facilities, was approved.**

**NINTH ORDER OF BUSINESS**

**Approval of May 15, 2013 Regular Meeting Minutes**

Mr. Nails presented the May 15, 2013 Regular Meeting Minutes and asked for any additions, deletions or corrections.

Mr. Tarr referred to Lines 131 and 132, stating “Mr. Adams indicated that Management’s fee for assessment roll preparation is comparable to AJC but he will revisit the matter”, and pointed out that, while there was no objection to the assessment roll preparation budget line item today, Mr. Adams should still provide the information to the Board. Mr. Adams indicated that he will provide the information at the October meeting.

The following changes were made:

Line 249: Change “to” to “beyond”

Line 346: Change “Mennagy’s” to “Medici’s”

Line 339: Change “\_\_\_\_\_” to “Bishko”

Line 327: Change “\_\_\_\_\_” to “Nails”

**On MOTION by Mr. Tarr and seconded by Mr. Nails, with all in favor, the May 15, 2013 Regular Meeting Minutes, as amended, were approved.**

**TENTH ORDER OF BUSINESS**

**Other Business**

- **Request for Fountains for Ponds by Club**

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

Mr. Nails presented a request from The Club for installation of fountains in two (2) ponds.

Mr. Rowe indicated that the fountains would be at The Club’s expense. The proposed locations are Lakes 11-B and 11-C. Mr. Rowe recommends that the Board approve the plan, conceptually. He discussed a fountain in another lake that has not worked for years and wondered if that fountain could be relocated.

Mr. Adams indicated that, typically, CDDs do not become involved with fountains unless it has fountains in central locations, along roadways, that provide a benefit to everyone in the community. He noted that fountains are usually viewed as an aesthetic benefit rather than a water quality improvement.

Mr. Rowe confirmed that the proposed fountains are for purely aesthetic purposes.

In this case, Mr. Adams suggested that The Club enter into a “consent to use” agreement with the CDD, for the purposes of installing and maintaining the fountains. Mr. Adams believes



that Mr. Johnson can prepare this type of agreement. In response to a question, Mr. Adams indicated that the District would record the agreement with the county.

Mr. Tarr asked if the Board wants to give The Club the right to light the fountain at night. Mr. Adams replied affirmatively, stating that the agreement would be all-inclusive.

Mr. Tarr asked about including a float in the agreement. It was pointed out that the float has not been used in years.

**On MOTION by Mr. Rowe and seconded by Mr. Luby, with all in favor, preparation for the District to enter into an agreement with The Club at Mediterra to allow placement of fountains within the proposed two (2) lakes, along with a potential floating green, in the lake, and lighting the fountains, if desired, was approved.**

In response to a question, Mr. Adams advised that the District's lake maintenance contractor does fountain and aerator installation.

▪ **Deer Population Reduction**

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

Mr. Nails recalled that, two (2) years ago, the MCA audited the number of deer in the community and concluded that, at the time, the District was not overpopulated.

Mr. Adams reported that Fish and Wildlife Conservation Commission (FWCC) completed another audit, recently, and determined that the District's deer population is overpopulated by 16. The MCA wants to engage the FWCC auditor, as a private contractor, not a FWCC employee, to remove the deer. The MCA requested that the District approve and authorize the contractor to enter the CDD conservation lands for the purpose of reducing the deer population.

Regarding how the population is reduced, Mr. Adams advised that the deer are killed with a bow and arrow; the individual is not paid a fee; his "pay" is essentially the deer meat. Regarding potential liability, District Counsel recommends requiring a hold harmless and indemnification agreement with the individual, a certificate of insurance; furthermore, it is recommended that The Club also be required to enter into a hold harmless and indemnification agreement with the District.

Mr. Tarr questioned why the District cares how this is done, since the MCA is the party contracting with the individual. Mr. Adams agreed that the means and methods are not of District concern other than that it can bring about incredible liability, should something go wrong; therefore, the hold harmless and indemnification agreements from the individual and The Club are appropriate.

Mr. Bishko noted that this process can be emotional for some and suggested limiting the individual from placing his scaffolding within a certain number of feet from a residential lot.

Mr. Nails felt that the Board does not want to be involved in the specifications of the process.

**On MOTION by Mr. Bishko and seconded by Mr. Luby, with all in favor, authorizing District Counsel to prepare appropriate documents for indemnification and insurance to allow the MCA's request for an individual to enter the CDD Preserve for deer population reduction purposes, was approved.**

Mr. Nails indicated that Mr. Adams will be updating the newsletter, which is typically done after the budget adoption. He noted that Mr. Adams was asked to include information regarding the savings that will realized from the bond refinancing, the pipe clearing work, the water cleanliness and a warning to residents regarding the alligator issues.

Mr. Adams indicated that rain-to-date will be included.

Mr. Tarr asked to review the draft newsletter prior to distribution. Mr. Adams indicated that he will provide a draft to the Board for their review.

Mr. Bishko stated that, in reviewing the past meeting minutes, he found that a handful of items often require follow up. He suggested including an agenda item entitled "Closing Open Items From the Prior Meeting". Mr. Bishko feels that will enable the Board to know what is still open, without needing to review the minutes to determine what remains open. Items from the prior minutes, which he considers still open, include Mr. Adams reporting what his firm charges for assessment roll preparation, the report of the oxygen testing results that was to be provided to the Board and Mr. Johnson's review of the CDD's obligations regarding the lake banks and buffers as to what the District's obligation is with respect to replacing landscaping. Mr. Bishko explained that, while those items might be discussed in the meeting, he does not want to be

required to “dig through” the minutes each month to create a list of “open items”. To his list of “open items”, Mr. Bishko added that someone was to provide proposals for different plants that would better solve the erosion problem.

Mr. Bishko made a motion that an item be included on each agenda which lists the “open items” from the prior meeting. Mr. Adams indicated that his office will be happy to prepare an “Action Items List” and include it at the end of the minutes. Mr. Bishko was agreeable to Mr. Adams’ suggestion.

Mr. Tarr commended Ms. Crismond for an outstanding job on the lake audit.

Mr. Bishko asked Mr. Johnson to report his findings regarding whether the District is obligated to replace plants. Mr. Johnson noted that the subject was addressed earlier. Mr. Johnson stated that, in general, his legal opinion is that the District is not subject to the MCA guidelines; however, he has not received the real estate documents from Mr. Adams to determine whether there were commitments made or covenants recorded that would otherwise be binding upon the District.

Mr. Bishko asked if the oxygen testing results are consistently good. Mr. Adams indicated that the last tests were within the appropriate range. Mr. Adams reported that Lakes 1 and 20 had a dissolved oxygen level of 6 and Lake 13’s dissolved oxygen level was 7, in comparison to prior tests, where Lakes 1 and 20 were at 7 and Lake 13 was at 4. He explained that a dissolved oxygen level of 4 is low and below 4 increases the potential risk for a fish kill.

Mr. Bishko referred to the lake maintenance audit and comments regarding Lake 16 and the resident at 15429 Milan Way attempting to repair but the pipe installed came loose and requires reinstallation. He advised that the resident at 15429 Milan Way is his brother and this is the first he heard of this issue; his brother recalled a lengthy conversation with Ms. Crismond where she indicated that there was nothing that he needed to do on his property.

Ms. Crismond indicated that he needs to do something now. Mr. Bishko pointed out that his brother’s neighbor, at 15433, made changes and suggested that Ms. Crismond should take another look at which home it is. Ms. Crismond agreed to review it again.

**ELEVENTH ORDER OF BUSINESS**

**Staff Reports**

**A. Attorney**

Mr. Johnson indicated that he will present documents, at the October meeting, regarding legislative changes related to how the District will conduct its future meetings.

Mr. Rowe asked if drafts of the lake fountain documents will be prepared. Mr. Adams replied affirmatively; Mr. Johnson will prepare a “consent to use” agreement.

**B. Engineer**

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

**C. Manager**

**i. Approval of Unaudited Financial Statements as of June 30, 2013**

Mr. Adams presented the Unaudited Financial Statements as of June 30, 2013. He reported that assessment collections were at 100%. Expenses were at 55%, which does not include the once-per-year lake planting project, which will occur in September and bring expenses in line with the budget.

**ii. Fiscal Year 2014 Proposed Meeting Schedule**

Mr. Nails presented the Fiscal Year 2014 Proposed Meeting Schedule for the Board’s consideration.

Mr. Adams indicated that the October 16, 2013, May 21, 2014 and August 20, 2014 meetings will be held in the Bella Vita Room at the Mediterra Sports Club, 15735 Corso Mediterra Circle. The January 15, 2014 meeting will be held at The Club at Mediterra, 15755 Corso Mediterra Circle.

**On MOTION by Mr. Rowe and seconded by Mr. Luby, with all in favor, the Fiscal Year 2014 Proposed Meeting Schedule, as amended, and directing Staff to advertise, accordingly, was approved.**

**TWELFTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors’**

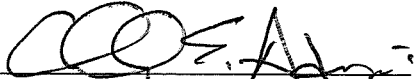
There being no audience comments or Supervisors’ requests, the next item followed.

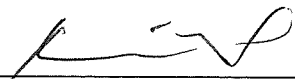
**THIRTEENTH ORDER OF BUSINESS**

**Adjournment**

There being no further business to discuss, the meeting adjourned.

**On MOTION by Mr. Luby and seconded by Mr. Rowe, with all in favor, the meeting adjourned at 1:30 p.m.**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair

***ACTION ITEMS:***

1. **ACTION ITEM:** Mr. Adams to provide copies of the latest dissemination and arbitrage rebate calculation reports to the Board, under separate cover, following today's, May 15, 2013, meeting.
2. **ACTION ITEM:** Regarding proceeding with cleaning pipes that had debris but were not cleaned Mr. Adams indicated that the pipes will be monitored and inspected on a three (3) to five (5)-year cycle.
3. **ACTION ITEM:** Ms. Crismond will contact the residents with erosion issues that must be addressed.
4. **AGENDA ITEMS:** Regarding grass clippings dumped into lakes, the minutes clearly state what Mr. Tarr proposed and that it was not supported. Additionally, per Mr. Tarr's request, Collier County Ordinance "Chapter 118 – Solid Waste, Article III. Litter Control" is attached, as an exhibit to these minutes.
5. **ACTION ITEM:** Mr. Johnson directed to obtain ownership documents from Mr. Adams and review all of the berms, particularly, the berm in Medici, and report his findings at the next meeting. Mr. Johnson to review Medici, to ensure that there is no requirement for the District to maintain it differently than the other preserves. If the level of maintenance is the same as for other preserves, the District Manager is to notify the Medici HOA. The Board authorized District Counsel review the documents and provide an opinion.
6. **ACTION ITEM:** Mr. Tilton to review and evaluate the construction plans for the lakes and the golf course construction plans and make a judgment regarding whether the District's pipes crossed the golf course's pipes.
7. **ACTION ITEM:** District Counsel to prepare a legal memorandum of the issues impeding the District from continuing pursuit of recovering funds related to the potential misuse of CDD funds for irrigation facilities, detailing the reasons the Board did not pursue litigation and setting forth the pros and cons considered by the Board.
8. **ACTION ITEM:** Mr. Adams to provide Management's fee for assessment roll preparation at the October meeting.
9. **ACTION ITEM:** District Counsel to prepare an agreement with The Club at Mediterra to allow placement of fountains within the proposed two (2) lakes, along with a potential floating green, in the lake, and lighting the fountains, if desired.
10. **ACTION ITEM:** District Counsel to prepare appropriate documents for indemnification and insurance to allow the MCA's request for an individual to enter the CDD Preserve for deer population reduction purposes.

- 11. ACTION ITEM:** Mr. Adams to provide the draft newsletter to the Board, for their review, prior to distribution.
- 12. ACTION ITEM:** Mr. Bishko requested that proposals for different plants that would better solve the erosion problem be presented.
- 13. ACTION ITEM:** Ms. Crismond directed, by Mr. Bishko, to review the lake bank erosion at his brother's home at 15429 Milan Way, as the lake maintenance audit comments are not correct.
- 14. ACTION ITEM:** Mr. Johnson to present documents, at the October meeting, regarding legislative changes related to how the District will conduct its future meetings.