

MINUTES OF MEETING  
POINCIANA WEST  
COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Poinciana West Community Development District was held on Wednesday, January 16, 2019 at 9:30 a.m. in the Starlite Ballroom, 384 Village Drive, Poinciana, Florida.

Present and constituting a quorum were:

Charles Case	Chairman
Leonard Vento	Vice Chairman
Shirley Bzdweka	Assistant Secretary
Peggy Gregory	Assistant Secretary
Roy LaRue	Assistant Secretary

Also, present were:

George Flint	District Manager
Michael Eckert	District Counsel
Jan Carpenter	Special Counsel
Kathy Leo	District Engineer
Alan Scheerer	Field Manager
Clayton Smith	Assistant Field Manager
Kathy Fox	Clarke Environmental
Residents	

*The following is a summary of the discussions and actions taken at the January 16, 2019 Poinciana West Community Development District's Board of Supervisors Meeting.*

**FIRST ORDER OF BUSINESS**

**Roll Call**

Mr. Case called the meeting to order and called the roll. A quorum was established.

**SECOND ORDER OF BUSINESS**

**Pledge of Allegiance**

The Pledge of Allegiance was recited by members of the Board and staff.

**THIRD ORDER OF BUSINESS**

**Public Comment Period on Agenda Items**

Mr. Case asked for public comments on agenda items only and asked the public to keep comments to three minutes.

Norm Gundel, 419 Fountain Valley Lane, noted he is the Corporate Director of the Save Solivita Amenities Funding. He spoke to agenda item 7A. He stated two residents prevailed in the bond validation lawsuits and asked the court to order the CDD to pay their out of pocket expenses of approximately \$54,000. He noted it includes \$29,000 for an actual appraisal and the appraiser's testimony and deposition in the trial. It also includes approximately \$9,000 in court recorder fees and \$17,000 in other out of pocket expenses. The amount is reasonable and less than 5% of the 1.2 million in legal fees authorized by the CDD. He noted that the rules are very specific of about what expenses prevailing parties can recover. Mr. Gundel questioned whether the residents can recover their out of pocket expenses for both lawsuits. He pointed out that there is no on point precedent and there is no earlier decision where the supreme court connected two lawsuits by saying the issues appeal from the first lawsuit could only be decided on appeal from the second lawsuit. He mentioned a court ordered payment that is paid by Poinciana CDD will be lawsuit expenses covered by the funding agreement between Poinciana and Avatar. The residents' expenses arose before the October 29<sup>th</sup> termination date of the funding agreement. But other legal fees the CDD would incur now would arise after that termination date. Of Course, Poinciana West is not a party to the funding agreement. The resident noted if Poinciana pays and is reimbursed under the funding agreement, West may incur no expense. Poinciana has the benefit of the funding agreement, West does not. Let Poinciana take the lead. He stated the CDD should not incur legal expenses not covered by the funding agreement.

**FOURTH ORDER OF BUSINESS****Approval of Minutes of the November 28, 2018 Meeting**

Mr. Case asked for amendments, changes, corrections, or deletions to the minutes. A change was asked to be made on page 8, "Mr. Vento requested their meeting to come before the other CDD meeting because their meetings are much briefer." He noted it should say "our" meetings are much briefer instead.

On MOTION by Ms. Bzdweka, seconded by Mr. Vento, with all in favor, the minutes of the November 28, 2018 Board of Supervisors meeting, were approved as presented.

**FIFTH ORDER OF BUSINESS****Consideration of Non-Ad Valorem Assessment Administration Agreement with the Polk County Property Appraiser**

Mr. Flint noted this is an agreement the Board enters into annually in order to use the uniform collection method to collect assessments. The District is required to enter into agreements with the Property Appraiser and Tax Collector. The max fees they can charge are set by statute. The fee that is proposed is actually lower than the max fee they are entitled to charge. It is 1% of the amount of assessments that are contained on the trim notice.

On MOTION by Mr. Vento, seconded by Ms. Gregory, with all in favor, the Non-Ad Valorem Assessment Administration Agreement with the Polk County Property Appraiser, was approved.

## **SIXTH ORDER OF BUSINESS**

### **Discussion of the Solivita Theater**

Terry Roderick, 164 Torino Lane, discussed the presentation that was made last month to the Poinciana CDD and he thanked everyone for the opportunity to come and make comments. He stated that he and his wife serve as ambassadors to residents coming to the community. He noted that unfortunately now many of the prospective residents have heard about the division within the community over the post-sale of the amenities and they have voiced concerns about the division. Several communities in the area have also heard about those issues and have it as a marketing tool to lure people to their communities. He is asking everyone to move forward for what is in the best interest for the entire community.

Mr. Roderick pointed out that many residents are interested in moving forward with investigating a proposal to build a new theater. He noted there are 3 or 4 priorities that must be addressed first.

- Current buildings, facilities and grounds must be taken care of. A healthy reserve fund will be needed
- Must be fiscally responsible and carefully monitor how funds are allocated
- It is critical to keep the community moving forward in a vibrant alive matter and welcoming those who choose to move here
- There is a lack of space for events and activities in the growing community

Mr. Roderick stated he has a hope that the two CDD Boards will come together with the help of Taylor Morrison to setup an exploratory committee, develop a business plan, and move forward with building the theater. He noted a theater can be built that enhances the lifestyle of all, brings everyone together, can be self-supporting, and increase the value of homes. He ended by offering his help in any way possible.

Dick LaCapria, 572 Glendora Road, stated that he has been a resident since 2001. He stated that he and Mr. Roderick were asked to present because they have been involved in trying to build a theater since 2007. In 2012 he joined some others and made field trips, visiting Poinciana High School and Cocoa Beach, they met with architects, met with people from the County, got figures for what the costs were for annual maintenance so they could put a presentation together. The timing was wrong then because that is when the market tanked. He complimented Norm Gundel noting he led the opposition of the amenities sale and stated it was professional, concise and well researched. Mr. LaCapria stated the past is the past and the decision has been made by Taylor Morrison to put aside the amenities sale. He encouraged going forward with the theater. He suggested the CDD get involved and they could get an exploratory committee, made up of residents, that will look into a way to get the theater built. He stated with the talent that lives in Solivita anything can be accomplished if everyone takes a positive direction. He explained the benefits of having a new theater in the community then asked if the Board would consider partnering with Poinciana CDD to put together an exploratory committee.

Mr. Case brought the subject to the Board Members. He noted for three years efforts have been made to try and get a theater and for three years they have been trying to get a theater built at no additional cost to the residents. Mr. Case stated the original 500 seat theater was around \$7,000,000. There was some Board discussion on if this figure was right.

The Board pointed out that the problem is not opposition to building the theater, it is how it is going to get paid for. The concern is about putting a committee together and the problems it causes. There doesn't need to be another \$1,000,000 in attorney fees, which is why they were told to go slow in terms of the exploratory process.

Mr. Flint pointed out the problems of creating new boards. Mr. Flint noted there is an exception to the Sunshine Law for pure fact-finding committee, but he stated in his 20 years working for CDD's he has never seen a committee be able to confine themselves to fact-finding. They always will eliminate choices and options. He advised they operate under The Sunshine Law which means meetings would need to be publicly noticed, minutes must be taken, and the members on the Board can't have conversation with each other outside of the meeting. If a committee is appointed, it must be understood that they have to operate under those guidelines.

Supervisor Vento spoke to Mr. LaCapria stating he totally agrees with everything he is saying. The resident noted there is no doubt the community needs a theater, but the biggest concern is tying it to the CDD's. If Taylor Morrison is interested in sitting down at the table with

a group of residents that would be the way to go and not tie it to the CDD. When the CDD gets involved there is an unstated item that says the CDD is the in-effect financier, in the future. There should be a totally separate resident committee that works with Taylor Morrison to come up with a plan. When groups get involved you have politics, impressions, and all kinds of baggage. If it is truly being investigated from the ground up it shouldn't be connected to an institution here except for the resident group and the developer.

Ms. Gregory commented in support of the theater stressing that they have a long way to go. Her concern is everyone is extremely excited about having a theater and everybody was extremely excited about the amenities deal until they found out they were going to have to pay something for it. She stated it would be beneficial to do a complete in-depth survey of every house that is in the community before they start spending any money.

Ms. Bzdweka mentioned when a survey is put together it is important to make sure enough results come back that are representative of the community.

## **SEVENTH ORDER OF BUSINESS**

### **Staff Reports**

#### **A. Attorney**

Mr. Eckert discussed the motion to tax costs that was filed at the beginning of the month in relation to the bond validation case. The motion seeks approximately \$54,000 in cost against the Districts. It has been reviewed and advice has been provided to the Board Members. In summary, district counsel's research indicates no more than \$2,000 should be recoverable in this case, for the reasons that have been explained to the Board Members. He stated they don't believe the other \$52,000 is recoverable or should be awarded by the court, but noted the court will make whatever decision it wants. As the district's counsel, the plan is to dispute the motion to protect the finances of the District, unless the Board directs otherwise. His recommendation is if they want to offer anything to settle it would be not-to-exceed of \$2,000, otherwise, an opposition would be filed to the motion.

Mr. LaRue strongly disagreed. He stated he thinks the Board represents the residents and if you look at what the residents have done, they saved the Board over \$50,000,000 that would have gone straight to the developer's pockets. He asked Mr. Eckert who he was representing.

Mr. Eckert stated that he represents the Poinciana West CDD Board of Supervisors. He noted it is within his role as Counsel for the District in the validation cases to give the Board advice upon which you can make a business decision. He noted it is up to this Board whether to follow his advice, or not follow.

Mr. LaRue stated that it is his opinion that they again have an attorney who is representing the developer and the developer doesn't want this paid out. In his opinion, he thinks the residents are entitled to the \$54,000 and he thinks they are entitled to that. Mr. Case and Mr. LaRue engaged in a lengthy discussion about legal advice from Mr. Eckert.

Mr. Case stated their attorney Mike Eckert has represented them for 6 years and he couldn't be more satisfied. His legal advice has been right on. His negotiations with this have been right on and saved millions of dollars in reduction of price.

Ms. Bzdweka agreed with Mr. Case and noted she was not going to vote yes to pay \$52,000.

Mr. LaRue stated with the \$50,000,000 we saved not going through with this deal we can afford to pay the \$54,000.

Ms. Bzdweka asked if it is possible to put a motion on the floor to vote contingent on the judge's response.

Mr. Eckert recommended a motion that would offer a settlement of up to \$2,000 and they would talk to Counsel for the Poinciana CDD to see if they are going to participate in that. Then it would be that we would then dispute the rest with the court and judge and unless you appeal that decision you would be stuck with whatever the judge says you are required to pay.

Ms. Bzdweka asked if there is no offer to split the cost in terms of settlement with Poinciana and if the intent is to pursue this further, what is the estimate the maximum amount of legal costs there would be to pursue this on behalf of West?

Mr. Eckert anticipated his best estimate to be, assuming no appeals, would be around \$7,500 and as high as \$10,000.

Ms. Gregory asked for more specifics on the \$17,000 that is for other out-of-pocket expenses and discussion ensued regarding that topic.

On MOTION by Ms. Bzdweka, seconded by Mr. Vento, with 3 in favor and 2 (Mr. LaRue and Ms. Gregory) opposing, the motion to offer to settle the motion for costs for up to \$2,000, and if not accepted, to oppose the motion, , was approved.
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**B. Engineer**

Ms. Leo addressed some of the pond problems now that the water levels are lower. The focus over the next couple of months will be the dry ponds.

**C. District Manager**

**i. Approval of the Check Register**

Mr. Flint presented the check register for November 20<sup>th</sup> through January 7<sup>th</sup>, totaling \$981,388.75, and the detailed summary was located behind it. He pointed out the vast majority is moving the Debt Service Assessment revenue from the General Fund to the Debt Service Fund to the Trustee. It is just moving the Debt Service Assessment money to the Trustee that is collected on the tax bills.

Ms. Gregory asked Mr. Eckert about the charge of \$7,706 for his attendance at the November meeting. Mr. Eckert answered that is the monthly invoice related to all the General Counsel services, not just attendance at one meeting. Ms. Gregory discussed the amount budgeted for legal fees and noted it is 281 miles for Mr. Eckert to come to Poinciana. Mr. Eckert answered that was correct and that they try to combine trips. He explained he usually has about 10-12 meetings and the mileage is split between the Districts. If there is a meeting that is out of cycle or a special meeting, then the travel expenses are higher. He also noted that the travel time is also split.

Ms. Gregory asked more questions about his time charged and if there has ever been any discussion about him phoning or videoing in to eliminate the transportation costs? Chairman Case stated that he doesn't want him on a TV screen he wants him in person to answer questions and address the audience. Mr. Eckert explained he doesn't do videoing or phoning much because the audio is not clear. He is more than happy to call in if that is what the Board wants but he discussed the complications with audio.

Ms. Gregory then addressed the itemized bill and the 7 entries for records requests for public information. Some of them are costed out specifically asking for research. Others are bits and pieces of hours that have been put together.

Mr. Eckert noted this relates back to the issue of the ability to require the requestor to pay their past due bill before public records were provided. There were also multiple iterations of the same public records request. Normally George's office will handle it and will only contact legal if they have a question for something out of the ordinary. Ms. Gregory stated her concerns about charging that much money for public records requests.

Mr. Eckert addressed her concerns explaining that the particular issues in this case were public records request that were extremely broad. He explained there were a lot of moving parts in relation. He also noted that he is sensitive to the budget that the Board has and understand that November had a lot of activity because of the new Board coming on and dealing with those



issues. September bill was \$2,281, October was \$105, September was the \$7,706 mentioned and December was \$593. So right now, year to date is \$6,000 under budget for attorney's fees and for a monthly basis on average for the first 4 months were about \$1,500 under budget. Mr. Eckert anticipates the Board will be significantly under budget by the time year-end comes if the Board is going to stick to taking care of the storm water management ponds and meeting every 2 months. He stated he isn't insensitive to the budget considerations that are being raised but that was a unique circumstance given who was making the request, the nature of the request, and the ever-changing nature of the request. He mentioned again he is happy to answer any questions about billing.

Ms. Gregory thanked him for his explanation. She asked Mr. Flint if going forward she could have bills monthly for legal fees. Mr. Flint noted the request.

Discussion ensued regarding the bill from legal and time charged for meetings in November and December. Mr. Eckert stated he would get back to them on it, but meetings were moved around or cancelled during that time because of the holidays.

Mr. LaRue noted that the bigger issue is now there are 2 attorneys. Mr. LaRue questioned why should Mr. Eckert be present when there is a 2<sup>nd</sup> attorney that is already representing another Board, and in his opinion a lot of travel time can be saved.

Mr. Case stated there are 3 members that are satisfied with Counsel and 2 that aren't, so they will have to get used to it until the Board changes.

Ms. Bzdweka explained this has been voted on before and it was determined Counsel would be kept. It isn't productive for this discussion to be going around because it has already been resolved.

On MOTION by Mr. Vento, seconded by Ms. Bzdweka, with all in favor, the Check Register for November 20, 2018 through January 7, 2019, was approved.

## **ii. Balance Sheet and Income Statement**

Mr. Flint presented the unaudited financial statements through December 31<sup>st</sup>. He asked for questions and noted \$265,000 of the \$291,000 that have been certified for collection on the tax roll. Collections are going very well.

On MOTION by Ms. Bzdweka, seconded by Mr. Vento, with all in favor, the Balance Sheet and Income Statement, was approved.



**D. Field Manager****i. Field Manager's Report**

Mr. Smith presented the Field Manager's Report and some documentation based off Clarke's progress in the last month. He also presented a summary of the Engineer's report and how it will proceed. He stated that GMS went through and assessed many of the most important items on the Engineer's report that was provided and compiled a list to give out to contractors to start working. The goal is to get it done right, for the lowest possible cost. He stated they will be working with the Engineer to make sure everything is done appropriately in order to retain effectiveness of the storm water system. Clarke continues to treat all the ponds.

Mr. Case asked about pictures on page 3 and explanation of what they are showing. Mr. Smith explained the picture is of erosion and the idea is to prevent any further erosion. Mr. Flint explained the issue is the gap between the grass and the back of the concrete. There shouldn't be a gap there.

Mr. Flint explained once Mr. Smith gets bids, he will be bringing proposals asking the Board to consider those and approve those so work can be carried out. Mr. Smith stated he wanted to get multiple proposals so that there can be choices and it can be assessed who is the best contractor.

Ms. Leo stated there is contemplation if it should be visited in the spring, but GMS has been actively looking at the ponds and working through that list. There might be a review, but it might not be as comprehensive knowing that the list has been actively worked through.

Ms. Gregory asked a question about a 3-foot tree that has shown up in a ravine on the golf course (on the Poinciana side). Mr. Flint asked if it could be pointed out on the map, so they could give her a more educated answer. They would follow up on this.

**ii. Customer Complaint Log**

Mr. Flint presented the customer complaint log. He noted there had been no midge complaints this month. On January 7<sup>th</sup> there was one for Poinciana West and it was dealing with high grass.

Regarding a question about how the fish were doing, Mr. Flint stated to his knowledge they were stocked, and they are surviving.

**EIGHTH ORDER OF BUSINESS****Supervisor's Request**

Ms. Gregory asked Mr. Flint when the audit process is over, would a complete list of all the items be available just to make sure that Poinciana is not getting billed for Poinciana West and vice versa. Mr. Flint stated he could provide as much detail as needed but the cost is reflective of the fact that GMS provides all the information to them electronically through a server.

## **NINTH ORDER OF BUSINESS**

### **General Audience Comments**

A resident stated a comment about the theater regarding a comment Terry made about entertainers. There is a dire situation about entertainment coming in to the community. If you go into the back rooms and look at them from an entertainer's point of view you will find it is an incredibly drastic situation. He noted an entertainer, Rick Shephard and the Drifters, walked in and stated it was totally unacceptable. He noted it is imperative the facilities be updated.

Mr. Roderick stated he appreciates the support of everyone looking at a theater and how it can move forward. He addressed the idea of a group of residents establishing a committee, separate from the CDD. He likes the idea and asked for comments. He recognizes complications with the Sunshine Laws. He asked the Boards thoughts on a resident committee coming to the Board in 3-6 months and making a presentation of the general design, size, location, and a business plan on a new theater. Conversations would have to be conducted with Taylor Morrison for obvious reasons, they own the land, and need to be involved as much as possible. There shouldn't be even close to a 25% raise for yearly fees. A survey can be conducted, and facts gathered to make presentation. Once the presentation is made then it can be decided if you run with the idea or not. The litigation is creating an issue with Taylor Morrison on moving forward with anything. So, the sooner that can be resolved the better. He asked for the Board to honor the resident committee. He stated they have done a tremendous amount of work up to this point.

Amy LaRue, 211 San Vicente Lane, acknowledges that a vote was taken not to pay the \$54,000 legal bill but she strongly disagrees with the opinion. She stated supervisor Vento said you're paying a bill that the majority of the people are not willing to pay, for a small amount of people that put up that bill and that is why you have 2 new supervisors and 3 old ones on the Board. Just based on the Poinciana election you have 600 households (2 people per household) the total number that voted for the Supervisor for Ms. Gregory and Mr. LaRue is 1,176 and 1,156 so that is about 600 households. The one that voted for previous Supervisors was around 300 households or 600 people. The majority of the people put the 2 new Supervisors on this Board is because they disagree with your amenity's sale. Its price is too high and so they save us

\$50,000,000 but you can't pay the \$54,000. She stated that is totally unreasonable. You are wrong that the majority of people are not willing to pay that bill.

Mr. Case noted he never said they were not willing. He noted he said that we were taking all of the resident's money and paying a smaller group of residents.

A resident reminded the Board the amenities issue is over. It is done and they have all agreed to move on. The vote for the lawyer has already been made by the Board. It is done. It is over. It is wasting time reiterating and going back over the same issues.

**TENTH ORDER OF BUSINESS****Other Business**

There being none, the next item followed.

**ELEVENTH ORDER OF BUSINESS**

**Next Meeting Date – February 20, 2019 at 9:30 a.m.**

There is hopes of moving to meetings every other month, but the February meeting will be kept for now in case something comes up with litigation, but it can be canceled. And then the next meeting will be March 20, 2019.

**TWELTH ORDER OF BUSINESS****Adjournment**

On MOTION by Mr. Vento, seconded by and Ms. Gregory, with all in favor, the meeting was adjourned.

  
Secretary/Assistant Secretary

  
Chairman/Vice Chairman