

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 Tuesday, May 7, 2019 at 9:30 a.m. at Mosaics, 388 Village Drive, Poinciana, Florida.

Present and constituting a quorum were:

Charles W. 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
Sarah Sandy	District Counsel
Kathy Leo	District Engineer
Clayton Smith	Field Manager
Pete Deglomine	Clarke Environmental
Robert Zimbardi	Poinciana CDD Board Member
Residents	

*The following is a summary of the discussions and actions taken at the May 7, 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 all Board Members introduced themselves. A quorum was established.

**SECOND ORDER OF BUSINESS**

**Pledge of Allegiance**

The Pledge of Allegiance was recited.

**THIRD ORDER OF BUSINESS**

**Public Comment Period on Agenda Items**

There being none, the next item followed.

**FOURTH ORDER OF BUSINESS****Approval of Minutes of the March 19, 2019 Meeting**

Mr. LaRue requested revised minutes, due to the misinterpretation of Board Members voices and content errors and suggested videotaping at each meeting or having a court reporter. Mr. LaRue stated on Page 6, the paragraph at the bottom did not make sense. The sentence at the top of Page 7 that says, "The resident was dealing with this issue for five years and Mr. Case asked why," was Mr. LaRue. On Page 8, the aerator and the two ponds stocked with fish were in the Poinciana CDD.

Ms. Sandy provided comments from Mr. Eckert. On Page 2, under the Fifth Order of Business, in the first paragraph, "favorable" should be "not favorable," in the following paragraph, there should be a period after "trade secret" and the second to last sentence should say, "Mr. Eckert and his firm were monitoring the legislation and any changes to the rules." On Page 3, the second bullet should say, "affected the Poinciana West CDD." On Page 7, the Clarke representative. recalled someone from Villa Park Road calling on a regular basis and on the top of Page 9, Mr. Eckert stated, "Clarke's contract was generally based."

Ms. Gregory suggested Supervisors identify themselves, clarify between the Poinciana CDD and the Poinciana West CDD and hiring a court reporter to provide verbatim minutes. Mr. Case acknowledged he was not recognizing individuals that were speaking per Robert's Rules of Order. Mr. Flint stated the Board had the option for verbatim minutes. Mr. Case noted summary minutes did not expose the CDD to legal issues versus verbatim minutes, which could be subpoenaed, was not willing to spend money for a court reporter and agreed with Mr. LaRue on having more clarity.

Mr. LaRue proposed videotaping all meetings so residents had a chance to see the full accurate meeting at a small expense. Ms. Gregory suggested utilizing Channel 732. Ms. Sandy noted ADA compliance issues and having closed captioning when meetings were videotaped. After Mr. Flint stated that it was not a District channel, Ms. Sandy pointed out that ADA regulations may not apply to that channel. She indicated that even if the CDD was not videotaping meetings, if the District's website linked to a video on another website, the link was subject to the ADA requirements. Ms. Gregory suggested a livestream on Channel 732. Mr. Vento stated the District did not have the capability of livestreaming and felt the minutes should reflect the actions taken, not individual discussions. Mr. Case requested tabling the March

minutes, authorizing Mr. Flint get an evaluation of what it would cost for a court reporter versus videotaping for the next meeting and provide revised March minutes at the next meeting.

On MOTION by Mr. LaRue seconded by Mr. Vento with all in favor tabling the approval of the minutes of the March 19, 2019 meeting until the next meeting was approved.

## **FIFTH ORDER OF BUSINESS**

### **Review and Acceptance of Fiscal Year 2018 Draft Audit Report**

Mr. Flint stated the District was required to have an independent audit performed and the Board chose Berger, Toombs, Elam, Gaines and Frank through the competitive selection process. It was a clean audit with no prior or current year findings or recommendations as the District complied with the criteria provided by the Auditor General of the State of Florida.

Ms. Sandy referred to a comment on Page 28, stating the reserve accounts were funded in amounts equal to 50% of the maximum debt service for the Series 2017-1 and Series 2017-2 bonds and requested the Board accept the audit subject to this comment. Mr. Flint noted the comment was already incorporated. Mr. Case pointed out the change in net position was positive and the final determination by the auditor said the Poinciana West CDD complied in all material respects so the District was in complete compliance. Mr. LaRue asked if the final version would have the actual date. Mr. Flint stated it was a draft in case the Board had any questions. The date would be inserted the draft stamp removed once the Board accepted it.

Mr. Vento asked if the District should have an investment policy as the auditor stated on Page 25. Mr. Flint confirmed the District had a basic investment policy as part of the Florida Statutes, limiting the types of investments, but the District had the option of adopting a formal investment policy. Mr. Flint would have the auditor clarify this. Mr. Vento questioned the statement by the auditor on Page 30 where they did not identify any deficiencies in internal control considered to be material weaknesses, but material weaknesses may exist that have not been identified. Mr. Flint stated it was a disclaimer. The auditor tested it and did not find anything, but it was possible there was something they have not found. Mr. LaRue asked Mr. Flint to provide a spreadsheet on the capital assets. Mr. Flint stated there was a three-ring binder full of details on what was acquired when the District issued bonds in 2007 and certain assets the District acquired from Avatar. The auditor tracked the District Engineer's estimate of what the District acquired and the depreciation. It was not an active capital asset list.

On MOTION by Ms. Bzdweka seconded by Mr. LaRue with all in favor accepting the Fiscal Year 2018 draft Audit Report and authorizing transmittal to the State of Florida, was approved.

## **SIXTH ORDER OF BUSINESS**

### **Consideration of Resolution 2019-05 Approving the Proposed Fiscal Year 2020 Budget and Setting a Public Hearing**

Mr. Flint stated the District was required by June 15<sup>th</sup> of each year to approve the Proposed Budget and set the date, place and time of the public hearing for final consideration. Exhibit A was the Proposed Budget and the suggested date of the public hearing was August 21, 2019, at 9:30 a.m., in the Starlight Ballroom. The budget was not a binding document and changes could be made up to and at the public hearing; however, if the Board wanted to increase the per unit assessment, there were additional noticing requirements. The budget was in draft form and assumed the following:

- \$73,591 in Carry Forward.
- Decrease in Administrative Costs from \$175,000 to \$174,000.
- Field Services remaining the same.
- Landscape Maintenance and Lake Maintenance increasing slightly due to the conveyance of two ponds to the District by the developer.

Mr. LaRue questioned the location of the ponds. Mr. Smith referred to Ponds 19A and 19B in the northeast corner. Mr. Case pointed out no additional assessments for the upcoming year and questioned the revenue from the additional homes. Mr. Flint explained the parcel was on the tax roll and whether or not there was a home on the lot, the assessments were paid and the District was collecting for it. There was no difference in an assessment for an undeveloped lot and developed lot.

Ms. Gregory questioned the following:

- Why Attorney's Fees could not be reduced from \$50,000 since we are now meeting every other month? Mr. Flint projected \$40,000 for the current year, but the Board had the discretion to reduce it.
- Why there was a 30% increase in legal advertising, since there were less meetings? Mr. Flint explained they were looking at the actuals for the current year and the projected amount for last year. This year there were public hearings for the amenity acquisition.

- Why Office Supplies increased another 30%? Mr. Flint responded it depends on copy charges and bank fees, which were trending higher than what was budgeted, previously, based on the budget adopted prior to GMS becoming manager.
- Why has Aquatic Midge Management gone done? Mr. Flint stated the contractual obligation was \$22,000 and it was reduced from \$32,000 to \$30,000. It was an allowance for additional midge issues.

On MOTION by Ms. Bzdweka seconded by Mr. Vento with all in favor Resolution 2019-05 Approving the Proposed Fiscal Year 2020 Budget and Setting the Public Hearing for August 21, 2019 at 9:30 a.m. in the Starlight Ballroom, 384 Village Drive, Poinciana, Florida 34759, was adopted.

## **SEVENTH ORDER OF BUSINESS**

### **Discussion of Defendant's Proposed Settlement on Motion in Tax Costs**

Ms. Sandy reported the District received a settlement offer of \$15,967.85 on the Motion to Tax Costs. In return, the residents would sign a release for the remaining balance, which the Defendants could attempt to recover solely from the Poinciana CDD. The Poinciana CDD received a similar offer and counteroffered \$12,000. The offer was good for 30 days from April 15<sup>th</sup>, which was May 15<sup>th</sup>. Attorney fees were estimated between \$7,500 and \$10,000 and the current amount spent was \$8,400. Discussion ensued and the Board addressed the following:

- Ms. Gregory assumed that once the costs from court reporters and depositions was added to the legal fees that it would be almost the exact same amount as the proposed settlement.
- Ms. Gregory stated she had received an email prepared by Mike Eckert stating upon consultation with the Chairman, the firm agreed to a not-to-exceed amount of \$10,000 in hourly fees to defend this matter. Ms. Gregory requested a formal agreement in writing. Ms. Sandy stated she would speak to Mr. Eckert.
- Mr. LaRue felt that the District received bad legal advice, wanted accountability and proposed a cap on legal expenses of \$10,000 and if the other party received a judgment higher than \$2,000, the Poinciana West CDD attorneys should pay the difference. Ms. Sandy indicated her firm provided a legal opinion following the current law, but could not guarantee a judge's decision and would not provide the Poinciana West CDD with a guarantee for amounts awarded by a judge.

- Ms. Gregory voiced concern about the District being charged \$325 per hour for 12 hours for research and 10.6 hours to prepare an opposition to the motion on cost recovery from an associate versus Mr. Eckert who received \$310 per hour.
- Mr. Case suggested budgeting more money for Attorney fees in case the District was responsible for paying \$15,000 or more. He is opposed to paying the money requested in the settlement. If Board Members did not like the advice of District Counsel, they should seek the advice of other District Counsel, but other firms were more expensive.
- Mr. Case asked if it was a problem if any Board Members were involved with or supported the opposing attorney for the case against the CDD. Ms. Sandy wanted to review the ethical code before rendering an opinion as this was a specific situation.
- Mr. LaRue questioned what would be accomplished if the Court requires us to pay the settlement of \$15,000 and also pay the attorneys \$10,000, when the District could have spent less than \$16,000. It was not a good use of public funds and suggested placing a cap on the payment.
- Mr. Vento noted the following options:
  1. The District paying \$15,967
  2. Negotiating or making a counter offer
  3. Not paying anything and relying on the judge's decision
- Mr. Case recalled the Board agreed to pay \$2,000 to settle, but they never responded. Ms. Gregory asked why Ms. Carpenter submitted an offer of \$12,000 on behalf of Poinciana CDD, if it was not a good idea. Mr. Case stated the decision was made by the Poinciana CDD Board at a closed session and he was not privy to their discussions. Mr. Vento wondered why there was an offer to settle out of court for \$15,967.85 versus \$54,000 if the residents felt they truly believe they were owed the money.

On MOTION by Mr. LaRue seconded by Ms. Gregory with Mr. LaRue and Ms. Gregory in favor and Mr. Case, Ms. Bzdweka and Mr. Vento dissenting, offering \$5,000 to settle on the motion to tax costs was not approved. (Motion Failed 2-3)

Mr. Case was against spending resident's money on anything the District was not required to do and estimated they would only have to spend another \$1,500. Ms. Sandy asked whether the Board wanted to accept the settlement offer.

On MOTION by Ms. Bzdweka seconded by Mr. Vento with Mr. Case, Ms. Bzdweka and Mr. Vento in favor and Mr. LaRue and Ms. Gregory dissenting, rejecting the offer of \$15,967.85 to settle on the motion to tax costs was approved. (Motion Passed 3-2)

Mr. LaRue MOVED to limit legal fees to \$10,000. The motion died for lack of a second.

Mr. Case recalled attorney fees were capped at \$10,000 by the attorney. Mr. LaRue requested this in writing. Ms. Gregory asked if any amounts were outstanding from the amenity acquisition as the District paid Hopping, Green & Sams over \$1.2 million in legal fees. Mr. Flint stated the only outstanding issues pertained to the Taylor Morrison funding agreement.

## **EIGHTH ORDER OF BUSINESS**

### **Staff Reports**

#### **A. Attorney**

Ms. Sandy asked if the Board wanted to renew the Floralawn and VGlobalTech, which expire on October 31<sup>st</sup> and on August 21, 2019 respectively.

Ms. Gregory asked if there was any additional work on the website from VGlobalTech. Mr. Flint stated their proposal had an initial set up in the first year and an ongoing maintenance component. The Board only approved the initial set up fee; however, there may be some future costs because there is going to be an ongoing obligation to continue auditing these websites to ensure they were ADA compliant. Mr. Case asked who would continue to update the website. Mr. Flint stated it was being done in-house. Mr. Vento requested the current contract with Floralawn. Mr. Flint stated he would include in the next agenda package.

Ms. Sandy reported the legislative session ended this past week and the Rules of Procedure would be updated in August in accordance with any statutory changes as the last update was in 2013. The Board must go through the rulemaking process to adopt the rules.

#### **B. Engineer**



Ms. Leo provided the pond map for Poinciana and Poinciana West, which was posted on Poincianawestcdd.org. Mr. LaRue asked if there was further information on the naming of the ponds. Ms. Leo drafted the exhibit, but stopped to handle other pressing matters. Mr. LaRue noted for example, no one knew where Pond 10 was, but they would know if it was identified as the pond on Solivita Boulevard and Vestrella Drive.

**C. District Manager**

**i. Approval of Check Register**

Mr. Flint presented a revised Check Register from March 11, 2019 through April 30, 2019 in the amount of \$69,783, which included Check #1548 for Hopping, Green & Sams, which was held pending resolution to the Taylor Morrison funding issue. There were additional checks from Hopping, Green & Sams that would not be released until there was resolution by Taylor Morrison.

On MOTION by Ms. Bzdweka seconded by Mr. Vento with all in favor the Check Register for March 11, 2019 through April 30, 2019 was approved.

**ii. Balance Sheet and Income Statement**

Mr. Flint presented the Unaudited Financial Statements through March 31, 2019, indicating that the District was almost 100% collected on Operations and Maintenance (O&M) assessments. Actual expenses were \$40,000 under the prorated expenses for the General Fund.

On MOTION by Ms. Bzdweka seconded by Mr. Vento with all in favor the Financial Statements through March 31, 2019 were approved.

**iii. Presentation of Number of Registered Voters – 2,343**

Mr. Flint reported that the District was required each year to publicly announce the number of registered voters as of April 15. According to the Polk County Supervisor of Elections, there were 2,343 registered voters. No action was required by the Board.

**D. Field Manager**

**i. Field Manager's Report**



Mr. Smith presented the Field Manager's Report, which was included in the agenda package. He advised Floralawn did some brush clearing on Ponds 1, 2 and 4A at no cost to the District. He would obtain a quote for future brush clearings. Mr. LaRue requested at the last meeting, a standard operating procedure and requirements for maintaining the dry ponds. Mr. Smith was still working on it since they now had the costs Floralawn would be charging, which he would explain to residents in *The Reflections* newsletter.

- **Proposal from All Terrain Tractor Service, Inc. for Various Stormwater Pond Repairs**

Mr. Smith presented a proposal from All Terrain Tractor Service, Inc. (All Terrain) to provide the labor and equipment to complete the January items in the Engineer's Report in the amount of \$23,324. It includes backfilling two mitered end sections (MES) in Pond 16 and other incidentals. That is the best course of action as draining the entire pond and backfilling with dirt and sod, would be more labor intensive. They would use rip rap to fill the ground at the current level.

Ms. Gregory questioned why a company like All Terrain would charge \$23,324 and why the proposal was from January. Mr. Flint indicated the Field Manager's Report was dated January 16<sup>th</sup>. Ms. Gregory felt that the proposal was basic and wanted to see a general proposal with photos, scope of work, intent and timeframes with start and finish dates. Mr. LaRue requested competitive bids. Mr. Flint clarified the proposal was dated March 26<sup>th</sup> and was referencing Ms. Leo's report of January 16, 2018, which had pictures. Ms. Leo confirmed the report was completed by Atkins in 2018. Ms. Gregory asked if anything changed since then. Mr. Flint explained all stormwater structures in the District were inspected and there was an annual report with pictures identifying issues that needed to be identified. The repairs were prioritized and the only ones remaining were in the All Terrain proposal. All Terrain was a small site contractor and it was hard to find contractors to handle small repairs as most were doing land development work. Mr. Smith had other contractors come out, but they did not bid on the work. One contractor bid some items, but Mr. Smith did not trust them to provide quality work versus All Terrain, which understood the project. Mr. LaRue requested Mr. Smith include the background of companies submitting proposals.

Ms. Leo advised it was the right time to complete these projects, due to current water levels and suggested the Board approve a not-to-exceed amount and authorize Mr. Smith to

negotiate with All Terrain or work with another qualified contractor. Waiting until August to complete the job, would be more of a challenge due to higher water levels. Mr. LaRue pointed out this item was discussed for a year and a half and all of a sudden it was an emergency. Ms. Leo stated they were working on the to-do list and were hoping to time this with the Poinciana CDD for economies of scale. Mr. Case requested a recommendation from Ms. Leo. Ms. Leo recommended the Board approve a not-to-exceed amount and allow Mr. Smith to spend more energy on it. Discussion ensued.

On MOTION by Ms. Bzdewka seconded by Mr. Vento with Mr. Case, Ms. Bzdewka and Vento in favor and Mr. LaRue and Ms. Gregory dissenting, the the stormwater repairs identified in the All Terrain Tractor Service, Inc. proposal were approved in an amount not-to-exceed \$23,324, subject to the Field Manager obtaining additional quotes and authority to the Chair to select a final proposal was approved. (Motion Approved 3-2)

Mr. Case requested staff diligence in looking at other contractors quickly. Mr. Flint asked what Board Member would be authorized to make the final decision. Mr. Case volunteered. Ms. Bzdewka thanked Mr. Smith for doing a good job to address the items. Mr. Vento asked if Pond 16 was completed. Mr. Smith clarified some items were dealt with, such as removing vegetation from the control structure. Ms. Bzdewka reported empty mulch bags at the edges of the pond. If it happened again, Mr. Smith would speak to Clarke and Floralawn.

- **Proposal from Floralawn to Perform Line Trimming of Dry Ponds**

Mr. Smith presented a proposal from Floralawn to trim the dry ponds as needed at the request of the Board and concerns from homeowners. Discussion ensued and the Board addressed the following:

- Ms. Gregory asked if Floralawn was removing what was actually in the lake. Mr. Smith replied their contractual duties were to bush hog and there was an additional charge to weed whack by foot. She asked if Floralawn was charging \$350 for Ponds 3, 4, 5 and 6 only. Mr. Smith understood it was \$350 per occurrence for ALL ponds. Ms. Gregory questioned who would determine if the ponds needed to be trimmed. Mr. Smith stated he and Floralawn would decide.

- Mr. Case noted the proposal was a result of their conversation in the field, including coming up with a methodology to keep it under control. Mr. Smith stated this was the final cost to have Floralawn perform the work.
- Mr. LaRue asked if 3, 4, 5 and 6 were actual ponds. Mr. Smith clarified the actual ponds were P3, P4, P5 and P6, which were dry ponds. Mr. LaRue requested the proposal include specific language to include the trimming of all four ponds. Mr. Smith would provide a revised proposal.
- Ms. Gregory asked if this event would be added to the negotiations for the next Floralawn contract. Ms. Sandy could change the scope of services. Mr. Case suggested having an addendum. Ms. Gregory wanted the contract to include trimming “as needed.” Mr. LaRue questioned how often it was needed. Mr. Smith anticipated most of the summer months, at least eight times per year.

On MOTION by Mr. Vento seconded by Ms. Bzdewka with all in favor the proposal for Floralawn to perform line trimming of all dry ponds in the amount of \$350 per occurrence was approved.

## **ii. Customer Complaint Log**

Mr. Smith presented the Customer Complaint Log. There were four complaints all for algae in Pond 21, which was treated. All ponds were treated every two weeks for algae and a courtesy spraying for midges. Mr. Flint noted many wetlands in this area. Mr. Smith would monitor the pond. Mr. LaRue stated Pond 6 was added to the control list; however, there were still midges. Mr. Flint indicated it was getting on the cycle with the larvicide and the larvae. Mr. Vento suggested using bats. Mr. Smith would research it. Mr. Case spoke to Clarke two to three weeks ago and read the reports from the County, State and University, all indicated you will never completely eliminate the midges. Pete Deglomine suggested aeration and fish, which was in Pond E3, their worst pond, which decreased the number of midges and complaints. Discussion ensued.

## **NINTH ORDER OF BUSINESS**

### **Supervisor's Requests**

Mr. LaRue voiced concern the CDD was spending good money after bad on attorney's fees and anticipated spending more than \$15,000. Mr. Case stated the District was following the legal requirements and recommendations and their exposure was minimal.

**TENTH ORDER OF BUSINESS****General Audience Comments**

Ms. Susan Godlewski (Irvine Ranch Road) suggested the new Board Members review prior agendas and minutes to familiarize themselves with the District. Mr. Terrance Guay (Bonita Canyon Drive) thanked the Board for their hard work and recommended the information provided to the Board include more detail, the budget and minutes be accurate and the purpose of the settlement was to prevent the District from spending extra money on something that could be settled. Ms. Karen Ewing (San Raphael) thanked the Board for taking a stand to settle for \$2,000. Ms. Patricia Schmid (San Raphael) requested additional proposals for the stormwater pond repairs so a decision could be made. Mr. Smith agreed getting additional bids would be the best course of action. A Resident from Bella Cortina requested the pond be cleaned up. Mr. Smith would look into it. Mr. Maneck Master (San Raphael) served on a Board in New Jersey and their meetings were videotaped and was in favor of spending additional money to meet ADA requirements so residents can be educated. Mr. Case reiterated Mr. Flint would provide cost estimates to the Board.

**ELEVENTH ORDER OF BUSINESS****Other Business**

There being none, the next item followed.

**TWELFTH ORDER OF BUSINESS****Next Meeting Date – June 19, 2019**

There was Board consensus to cancel the June 19, 2019 meeting, have the public hearing at the July 17, 2019 meeting, cancel the August meeting and discuss the September meeting date in July.

- **Consideration of Resolution 2019-05 Approving the Proposed Fiscal Year 2020 Budget and Setting a Public Hearing**

On MOTION by Ms. Gregory seconded by Mr. LaRue with all in favor amending the prior motion to adopt Resolution 2019-05 Approving the Proposed Fiscal Year 2020 Budget and Setting the Public Hearing for July 17, 2019 at 9:30 a.m. in the Starlight Ballroom, 384 Village Drive, Poinciana, Florida 34759, was adopted.

**THIRTEENTH ORDER OF BUSINESS****Adjournment**

On MOTION by Ms. Bzdweka seconded by Ms. Gregory with all in favor the meeting was adjourned.

  
Secretary/Assistant Secretary

  
Chairman/Vice Chairman