

MINUTES OF MEETING
POINCIANA
COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Poinciana Community Development District was held on Wednesday, April 17, 2019 at 11:25 a.m. in the Starlight Ballroom, 384 Village Drive, Poinciana, Florida.

Present and constituting a quorum were:

Lita Epstein	Chairman
Michael Luddy	Vice Chairman
Robert Zimbardi	Assistant Secretary
Tony Reed	Assistant Secretary
Elizabeth Lambrides	Assistant Secretary

Also, present were:

George Flint	District Manager
Jan Carpenter	District Counsel
Kathy Leo	District Engineer
Clayton Smith	Assistant Field Manager
Johnathan Stimler	LSEB
Clarke Representative	
Residents	

The following is a summary of the discussions and actions taken at the April 17, 2019 Poinciana Community Development District's Board of Supervisors Meeting.

FIRST ORDER OF BUSINESS

Roll Call

Ms. Epstein called the meeting to order and all Board Members identified themselves. A quorum was established.

SECOND ORDER OF BUSINESS

Pledge of Allegiance

The Pledge of Allegiance was recited.

An agenda item was added to discuss a settlement proposal. Consideration of settlement offer by Bush Ross added as Item 4a with Public Comment to follow.

On MOTION by Ms. Epstein seconded by Mr. Luddy with all in favor, adding agenda Item 4A Consideration of Settlement Offer by Bush Ross, was approved.

THIRD ORDER OF BUSINESS

Public Comment Period on Agenda Items

Mr. Flint recognized the additional item that was added to the agenda and noted the public could comment on it later in the meeting as well.

Donavan Brown, 687 Glendora Road, stated he was told about the added agenda item this morning. He requested to have the agenda amended again and recommended having a public comment session after the added agenda item. Ms. Epstein asked for any objections. The Board decided to open public comment after the discussion on the added agenda item 4A.

Martin Kessler, 759 Largo Pass, apologized for his hearing impairment and stated many times when people talk, he only hears mumbling. If people would be a little more conscience about speaking clearly, he would appreciate it. If not, maybe there is some type of device that he could get to be able to help him hear better. He asked if the earlier meeting was private. Ms. Epstein explained it was a meeting to discuss legal strategy which is allowed by CDD law to be held privately. The meeting will become public record after litigation is complete. Mr. Kessler asked what the meeting was about.

Ms. Epstein replied that it was about legal strategies related to the current court case. Mr. Kessler asked if it would be discussed today. Ms. Epstein stated it was just added to the agenda and if people want to comment before it is voted on by the Board, they will be able to comment after it is discussed on the agenda. There will be a discussion about what was decided and then if people want to comment before the vote, they will be able to comment.

FOURTH ORDER OF BUSINESS

Approval of Minutes of the March 20, 2019 Meeting

Ms. Epstein presented the minutes of the March 20, 2019 meeting and asked for any changes, comments, or deletions. Mr. Reed asked about page 2 and 3. Fishkind proposed \$12,500 but the motion was for \$12,000. Mr. Flint stated the agreement was for \$12,000 and nothing needed to be amended. Mr. Flint clarified that the motion is how the agreement was drafted.

Page 5 under Engineer, third paragraph "Mr. Luddy noted and asked Mr. Flint to provide the latest drawings" that should be Mr. Reed. In the next paragraph, Mr. Luddy was also

indicated as having addressed the line items billed by Mr. Anthony and that should be Mr. Reed instead.

Mr. Zimbardi requested changes on the very first page under Third Order of Business, at the bottom it should say Norm Gundel. Page 7 at the top “Mr. Zimbardi questioned the attorney invoices” it should be Mr. Reed not Mr. Zimbardi.

Ms. Carpenter noted on page 4 the first paragraph where she spoke “the individual resident can’t be addressed by *her* ethically” The attorney can’t speak with a resident who is represented by Counsel. She asked that they add the words “addressed by her.”

On MOTION by Mr. Reed seconded by Ms. Lambrides with all in favor, the minutes of the March 20, 2019 meeting, were approved, as amended.

A. Consideration of the Settlement Offer by Bush Ross

Ms. Carpenter stated that Chapter 286 of the Florida Statutes allows a closed session to discuss settlement proposals, litigation strategies, and costs. The meeting was properly advertised and the persons who participated in the meeting were identified in the published meeting notice. The Board was there, George Flint with GMS, Ms. Carpenter, and Jon Stimler an attorney from her office. A court reporter is required legally to be present and take a verbatim transcript. That will be taken from the court reporter, but it will not be made public until a future time pursuant to the statutes. The Board discussed a number of items one was a settlement proposal which was received by the District in the last day or so. The Board wants to make a motion to address that settlement.

Mr. Reed stated he is the one that wants to make the motion to propose a settlement for closure of this item. It is contingent to research by the attorney, but he recommended \$12,000. Ms. Carpenter stated the \$12,000 was to make a settlement as opposed to spending the time on legal fees of about \$10,000. Plus the \$2,000 which looked like they would be attributable, to be good costs, payable to the residents of the litigation. She verified that the full claim amount for cost that they put in the motion is about \$54,000. Interest would run from the date of the filing of the Notice of Voluntary Dismissal. A settlement offer came in and that offer is what is being discussed.

Ms. Epstein clarified in the settlement they were asking for \$38,000. Taking this to an initial hearing, with all the research that needs to be done and time for the hearing and everything else just to get to that point, is \$10,000. The CDD is liable for \$2,000 of that \$54,000. Rather than take the risk that could go further than just the initial trial and investigation of \$10,000 it could cost even more than that and have the possibility of still losing in court. It was decided to do a settlement for the \$12,000 since that's the amount that is going to be spent either way.

Mr. Zimbardi noted that Counsel feels like we are not liable for that. Ms. Epstein explained the CDD is going to have to spend up to \$10,000 and possibly even more. Mr. Zimbardi stated they are only obligated for \$2,000 and they have already incurred legal fees of \$4,500. Therefore, they are at \$6,000 total right now. He asked if the offer was \$12,000 to put it to bed. Ms. Epstein replied yes, and then there is no risk of additional legal fees or the risk of losing in the court.

Ms. Lambrides stated regardless of whether they win or lose, their attorney has estimated that it will cost up to \$10,000 to take this to court. She noted they are trying to settle this so they can move forward at a reasonable cost, rather than spend \$10,000 on legal fees to fight something that they may not win. It is her opinion that they should attempt to settle for \$12,000 and put the thing to bed.

Ms. Carpenter gave background for residents attending the meeting that were not aware of the topic being discussed. She explained at the first validation case, one of the issues went to appeal. During that time period a second validation case was filed, and it changed the one issued that had not been successful in the first case. The first validation case ended when the Supreme Court came back and said they were not going to hear it because you have new case and it's no longer an issue. The second validation case was going forward, and Taylor Morrison acquired the assets in the District and decided they did not want to go forward with the asset purchase that had previously been funded by AV Homes. They terminated the funding agreement and the District filed a voluntary dismissal. Pursuant to rules of civil procedure a motion to tax costs, which are the costs of litigation (not attorney's fees), those costs are payable to a party in certain situations. The motion must be filed 30 days after the case ends. This was filed within 30 days after the voluntary dismissal of the second case. In previous meetings they discussed that it looked like about \$2,000 of the total costs (\$54,000) that were being requested were attributable to the second case, the 2017 final case. The motion for taxing costs was filed within 30 days of

that 2nd case so it appears legally that the residents are owed that \$2,000 because those costs look like good costs and they look like they were properly filed within the 30 days. The other \$52,000 in costs were attributable to the first case. This motion was not filed within 30 days of the completion of that case, which the rules require. The District has received no support from the other side as to why that hard deadline was not met. The District previously agreed to offer \$2,000 to at least resolve the 2017 and that was not accepted. The District now is looking at going forward to defend against the motion to tax cost because it was not timely filed, at least in the first case.

Ms. Carpenter noted in the closed proceedings the Board asked about litigation strategy research. Counsel came up with an estimate of up to \$10,000 to provide the research, the motion, submit an order, and go to court to have the hearing on the motion. The Board came up with a settlement proposal to spend the money on a settlement proposal rather than spending it on legal fees. They are offering \$10,000 plus the \$2,000 that is probably not contestable, in response to the settlement offer that was received and hopefully end this. Poinciana West will make their own decisions at their next meeting.

Mr. Kessler asked where did the \$10,000 figure come from, and the \$12,000. He asked where Mike Eckert was, and Ms. Epstein stated Mr. Eckert was not their attorney anymore. It was clarified that Ms. Carpenter is now the attorney. Mr. Kessler stated he thought the issue of legal fees had been settled. Ms. Carpenter stated this is not for legal fees, this is a motion to tax costs. Ms. Carpenter stated the District was not a part of any settlement for legal fees with the residents. She noted this is a different issue, and the validation case is over. Ms. Carpenter noted this has nothing to do with legal fees, and nothing to do with who paid the legal fees for the residents. This was a filed motion against the District for the costs of the residents during that litigation. Ms. Epstein noted that Bush Ross (attorneys for the residents) filed the tax costs resolution. Mr. Kessler stated that motion was filed by the attorneys for the plaintiffs and that was settled at the court. Ms. Carpenter replied no, there has not been a hearing on it. Mr. Kessler said he must be mistaken. He thought he was at a meeting where it was settled once before. Ms. Carpenter stated again that this was not resolved, this is an ongoing case.

Al Effrat, 288 Addison Drive, thanked everyone for addressing his out of order question earlier. He asked, if they are paying an attorney and the attorney gives them advice, why the Board would they not accept the advice that they are paying for. He stated it sounded to him like

they are afraid. The Board believes, because they have been told by the attorney, that the \$2,000 is legitimate. The attorney believes that they would win the suit for the \$58,000 and the Board wouldn't have to pay that. He stated the Board is afraid that they are going to lose the suit, so they look like they are willing to cave into blackmail. He stated he would rather the Board be paying the attorneys than giving money away.

Donavan Brown, 687 Glendora Road, asked Ms. Carpenter for clarification on the statute of limitations. He asked why the second fit into the statute of limitations, but the first did not. Ms. Carpenter answered that it is a matter of the dates. The requirement to file a motion to tax cost is it must be filed within 30 days of the judgement or the voluntary dismissal of the case. The motion was filed at the end of the 30 days of the second case. It wasn't filed at the end of the first case. Mr. Brown stated he does not understand the definition of a motion to tax cost. Ms. Carpenter let John Stimler answer since he is the litigator.

Mr. Stimler explained in civil litigation you will typically incur attorney's fees, if you have an attorney, and you also incur court costs. This is costs. This isn't dealing with attorney's fees that the residents incurred or the District incurred. This relates to costs that are hard costs such as having a court reporter transcribe proceedings, serving subpoenas, transcribing depositions, expert witness, etc. These are hard costs that were incurred by a litigant. Under the Florida Rules of Civil Procedure, you have to move within 30 days of the end of that case. Once the case is over it is a hard and fast deadline you move to tax your costs. Meaning you move for the court to allow you to present your costs and have the court say yes this is good, this is not allowed, and then enter a judgement for those costs that you have incurred.

Mr. Brown asked, regarding the second case, was there a motion before the judge to be able to recover those costs and the judge approved it. Mr. Stimler replied that the first part of the statement is correct. There was a timely motion to tax costs filed in the second case in the time period in which it was required to be filed. However, in that motion they are seeking to recover their costs from both cases. Further discussion and explanation of the motion to tax costs ensued between Mr. Brown and Mr. Stimler.

Mr. Brown stated he thinks it is a very arguable case. His opinion is the CDD and Counsel needs to stand up and their rights need to be protected. Ms. Epstein noted they have already spent \$4,500 and they know it is going to be up to \$10,000 to go to this next hearing. Ms.

Epstein stated that sometimes it is better to settle a case, even if it is more than you should pay than to take the risk of having to spend another \$40,000 to \$50,000.

Mr. Brown stated that with her attitude she is putting the residents at risk. Not just at risk but demanding that the residents pay something that shouldn't have to be paid. He stated that is why there is a court system to fight and have rights.

Bill Land, 188 Torino Lane, asked Counsel what the probability of losing was. Ms. Carpenter stated it was discussed in detail during their earlier session and she wasn't going to go into details. She feels strongly that the law is in their favor but couldn't get into the details of the litigation strategy. Mr. Stimler reiterated nothing is guaranteed and the point is, even if there is a very high likelihood of success, it doesn't mean you won't have to spend the money to show that and conclude it completely.

Mr. Kessler asked for the case number because he thought this had been settled. Ms. Carpenter stated she would be happy to give him a copy of the motion. Mr. Stimler advised him to look up the docket on the website for Polk County court for the given case number it will show on January 2, 2019 the motion in question was filed.

Steve Mizel, 117 Torino Lane, stated he is not in favor of defending at any cost. He was an entrepreneur and had a frivolous lawsuit against him and it was in his best business interest to settle the case even though he was right. He supports settlement and, in his opinion, he would like to see the previous CDD members pay the cost.

Jeffery Nunes, 507 Palermo Blvd., stated he has no clue what is going on. How it started, when it started, who started it, etc. He asked what happened to get this case going. Ms. Carpenter summarized the motion for Mr. Nunes.

Charlie Case, 642 Tapatio Lane, stated that each Board Member is a steward of residents' money and it has to be very carefully spent. He noted they have had two attorneys, one for this Board and one for the other Board, that say legally there is not responsibility for the first case that's attached to the second. Both attorneys have said clearly that it is not our responsibility to reimburse that to this firm. The \$2,000 is quite clear both attorneys unanimously said, yes. He stated he would be very careful about spending that kind of money when there have been two attorneys very clear point of view on it. He noted they pay the attorneys a lot of money, they deserve it, and they give good advice. He asked the Board to consider the precedence they may set going down the road and suggested they pay attention to what the attorney's advice is.

Gary Sylvester, 690 Volterra Blvd, questioned why it was a CDD issue. Everything relating to the purchase was supposedly being funded by AV Homes. He asked why it was a CDD issue and not an issue of basic contract where they would reimburse the CDD for all legal issues involved in the purchase price.

Ms. Carpenter noted that the funding agreement was a contractual agreement between the District and AV Homes. Taylor Morrison is the successor to AV Homes. They terminated their contract by letter last fall. It is questionable whether they would be responsible for these fees and that also points out to the problematic timing of the filing of fees. If this has been filed under the first case, it might have fallen under that agreement. At this point Taylor Morrison is taking the position they do not pay those fees because this has come up past the time they terminated the agreement. I am not going to say anything else because that issue is still hanging with Taylor Morrison. Ms. Epstein noted there is no provision in the funding agreement to give coverage after Taylor Morrison pulled out. Taylor Morrison ended the funding agreement on the day they pulled out. Ms. Carpenter stated they terminated the funding agreement but again no details can be discussed. Mr. Sylvester's opinion is to challenge the fact that all of this incurred during the funding process. Ms. Carpenter agreed.

Mr. Sylvester asked why isn't the Poinciana West CDD a part of the decision process. Ms. Carpenter stated the motion is filed against both CDDs. Any judgment would have joint liability, which means either CDD would be liable for the entire amount. So, if one didn't pay the other would be responsible for paying the entire amount. A settlement offer came in, in the last 48 hours. Which is why this wasn't on the agenda because it just came in and the settlement offer made separate offers to Poinciana and Poinciana West. So, each now has to consider this settlement offer.

Charles Ramsbacher, 630 Ball Terra Blvd., stated if you schedule a meeting for 11:00 you should not wait until 11:25 to start the meeting. He asked why they would settle when there are other attorneys who have said they think they can win this case. He asked if they did go to court and won, could they ask for our costs back. Mr. Stimler stated that is not correct. To recover your attorney's fees, in most states, it is called the American Rule and you have to have a specific basis to entitle you to recover your own attorney's fees in a case. Either it comes from contract, you agree if there is any dispute over this that the winning part will recover their fees, or the other basis would be Statute. There is really neither in this instance as to this defendant's

motion to tax costs. In Mr. Stimler's opinion there is not a specific entitlement way to get back your fees.

Ms. Lambrides reiterated the fact that the Board went through all of the facts of this case very carefully. That is why the meeting started late, and she apologized. She noted they started at 10:00 a.m. this morning and it took them until 11:20 a.m. to go through this very carefully. From a business standpoint, they felt that rather than put Solivitas at risk to pay the entire \$54,000 they would offer them the amount that we are guaranteed to have to pay just to get to a judge to make a decision. From here to that point, for them to walk into the court room their attorneys are estimating that they will be out, in addition to the \$4,500 we are already out, another \$12,000. So we made a very logical decision that if we can offer them \$12,000 and settle it and they walk away, that will mean we won't have to go to court and incur those costs and then possibly more.

On MOTION by Mr. Reed seconded by Ms. Lambrides, with Mr. Luddy and Ms. Epstein in favor, and Mr. Zimbardi opposing, the Settlement Offer by Bush Ross, was approved 4-1.

FIFTH ORDER OF BUSINESS

Consideration of Resolution 2019-07 Designating Registered Agent & Office

Mr. Flint stated this was a cleanup item from the change in District Counsel. Mike Eckert and his office were previously designated as the registered agent and this resolution would change it to Jan Carpenter and her office in Orlando. He noted the primary reason for having a registered agent is usually lawsuit correspondence or correspondence from the State of Florida.

On MOTION by Mr. Reed seconded by Mr. Luddy all in favor Resolution 2019-07 Designating Registered Agent & Office to Jan Carpenter at Latham, Shuker, Eden & Beaudine, LLP, was approved.

SIXTH ORDER OF BUSINESS

Ratification of Second Amendment to Agreement with GMS-CF, LLC

Mr. Flint explained Jan had prepared this in response to the action. This is ratifying the action the Board took at the last meeting to authorize the District Manager to prepare the Assessment Methodology related to looking at the allocation of assessments on their remaining undeveloped property. Previously there was a Bond Assessment Methodology cost of \$15,000.

She added it will be done in conjunction with the bond issue. She has added Assessment Methodology without bonds at \$12,000 which is what the Board approved at the last meeting.

On MOTION by Mr. Zimbardi seconded by Ms. Lambrides with all in favor, the Second Amendment to Agreement with GMS-CF, LLC, was ratified.

SEVENTH ORDER OF BUSINESS

Staff Reports

A. Attorney

Ms. Carpenter had nothing further for the Board.

B. Engineer

Ms. Leo provided two exhibits at the last meeting for copies of the final layout. She pointed out that it seems like every time they plat them there is something new discovered. Ms. Leo noted they reached out to Taylor Morrison to find out what ponds would come online in the next couple of years so they could start budgeting for that.

C. District Manager

i. Approval of Check Register

Mr. Flint presented the Check Register from March 12, 2019 through April 9, 2019 for the General Fund and payroll in the amount of \$55,780.26. There is at least one transfer to the Trustee for Debt Service of \$15,985. The other bills are for landscape, pond maintenance, District Counsel, and some FedEx charges.

On MOTION by Mr. Reed seconded by Ms. Lambrides with all in favor the Check Register totaling \$55,780.26, was approved.

ii. Balance Sheet and Income Statement

Mr. Flint presented the unaudited financial statements through March 31, 2019. Under the General Fund statement of revenue and expenditures \$452,000 of the \$466,000 has been collected certified to the Tax Collector. That means there are some unpaid tax bills out. Typically, you see that revenue at the latest in June. Some might be paid late, and some might go to tax certificate sale. The District has always been 100% collected and it isn't suspected to be any different this year.

Mr. Flint reviewed the total expenditures for admin and field. The actuals are \$291,800 against a prorated budget of \$340,383. On a prorated basis, they are over in legal expenses and that has been discussed in the past. The CDD is still under the annual adopted budget. Information technology is over and that has to do with the ADA compliance agreement that the Board approved. They are also slightly over in postage, but most line items are in good shape.

Mr. Reed stated he appreciates the review of the financial conditions. One of the things he wants to watch for is last year at the end of the year there was about 10-12 items that exceeded 100% of their budgets. He would appreciate this year that they keep that under control.

On MOTION by Mr. Zimbardi seconded by Mr. Luddy with all in favor, the Balance Sheet and Income Statements was accepted.

D. Field Manager

Mr. Smith presented the Field Manager's Report. The pipes had general area maintenance (wiping them down and visual inspection). They are in good working condition at this time. He has been working on getting C-10 cleared. It is also an action item on the Engineer's list that will be completed very soon.

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

Mr. Smith presented a proposal that was obtained. There is a checklist that goes through everything and a summary of the exact items that are talked about. There is also an All-Terrain quote at the very bottom of the agenda that lays out all of the numbers. D-6 has Erosion under the structure. The quote (D-6) to fix it was about \$7,800. It's an issue because of the holes, and pockets that form on the top of the culverts. He explained the process and also noted they have quoted items in case something was to get broken during the process. So, some costs might be cut off if they are not incurred. Mr. Flint noted before they are paid Kathy or someone from her office will inspect the work.

Mr. Reed stated he has been doing some review himself of the pond structures. He has some concerns that he wants to discuss with Kathy, he thinks there are some design issues. He believes some of the problems are the result of those design issues. In the process of repairs, it would be his expectation that the engineering department and the field department would work together to identify whether there was a deficiency in the original construction that may have

contributed to the situation. If that is the case, you would need to redesign and fix the improper installation. Mr. Smith agreed and stated that they work with Kathy very closely on those sorts of things.

Mr. Flint stated he has used this contractor for a fair amount of work in other Districts and they do good work. They are qualified. He reiterated for these smaller jobs it is very hard to get multiple quotes because the contractors are too busy, and they aren't going to do small work. Mr. Flint noted there are funds available, \$50,000. If the \$50,000 is exceeded the Board can amend the budget and if there is a high priority issue that needs to be addressed and can't wait until next fiscal year the funds are available to amend the budget. The Board discussed the priority of the other ponds that were on Clayton's list.

The Board agreed to hold off on E-31. The Board agreed to approve a not-to-exceed amount. Another quote is going to be obtained and then the Chair would make a determination based on the recommendation whether to go with All Terrain or the other contractor. The Board questioned if All Terrain had enough staff to do the work, and Mr. Smith stated they did. Ms. Epstein suggested preparing a budget amendment for the next agenda so they don't risk more damage in the next storm season. Mr. Flint suggested approving a not to exceed and getting a second quote. Mr. Smith noted they did receive a second quote, but he felt the company would not be able to handle the work. Mr. Luddy asked Clayton about hurricane preparedness, and Ms. Leo explained to the Board what they do to prepare for storm season. Ms. Epstein thanked Clayton for his work and for reporting.

On MOTION by Mr. Luddy seconded by Ms. Epstein with all in favor, the Proposal from All Terrain Tractor Service, Inc. For Various Stormwater Pond Repairs with an NTE of \$44,706, was approved.
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i. Customer Complaint Log

Mr. Smith presented the complaint log. Ms. Epstein asked how the ponds were in the Amalfi area. Mr. Smith noted he did not have any complaints from the Amalfi area, and he was out there once and the residents said they believed there had been a change. Mr. Smith stated he wasn't sure if it could be attributed to the aerators, Clarke's work to get everything done and spray, it could be a combination of factors. He noted it does appear to be working.

EIGHTH ORDER OF BUSINESS

Supervisor's Requests

There being none, the next item followed.

NINTH ORDER OF BUSINESS

Other Business

There being none, the next item followed.

TENTH ORDER OF BUSINESS

General Audience Comments

A resident apologized for having trouble following earlier in the meeting. He was having trouble understanding some of the legal discussion. Ms. Epstein stated it has been going on for two years and it is a complicated situation.

Jeffery Nunes, 507 Palermo Blvd., stated the view from their house in December was absolutely beautiful. It overlooks the pond, the golf course's second hole, the bridge, and it is absolutely beautiful. He noted that now the pond is down about 5-6 feet and he is very concerned about the algae that is on the top. He stated that it is a health issue, and there are tons of mosquitoes. If the algae is floating on the top he would like to know why it can't be removed? Ms. Epstein stated he should get with the Field Manager and he would take a look at his pond and see what could be done.

ELEVENTH ORDER OF BUSINESS

Next Meeting Date – May 15, 2019

The next meeting is scheduled to be held on May 15, 2019 at 11:00 a.m.

TWELTH ORDER OF BUSINESS

Adjournment

On MOTION by Ms. Lambrides seconded by Mr. Zimbardi with all in favor the meeting was adjourned.


Secretary / Assistant Secretary


Chairman / Vice Chairman