

# MINUTES OF MEETING HARMONY COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Harmony Community Development District was held Thursday, September 30, 2010, at 9:00 a.m. at 7251 Five Oaks Drive, Harmony, Florida.

Present and constituting a quorum were:

Robert D. Evans	Chairman
Nancy Snyder	Vice Chairman
Steve Berube	Supervisor
Kerul Kassel ( <i>by phone</i> )	Supervisor
Mark LeMenager	Supervisor

Also present were:

Gary L. Moyer	Manager: Moyer Management Group
Tim Qualls	Attorney: Young vanAssenderp, P.A.
Broc Althafer	Engineer: Woolpert
Thomas Belieff	Dockmaster
Brenda Burgess	Moyer Management Group
Greg Golgowski	Harmony Development Company
Todd Haskett	Harmony Development Company
Pete Lucadano	Luke Brothers
Larry Medlin	Bio-Tech Consulting
Jason Shafer	Luke Brothers
Shad Tome	Harmony Development Company
Residents and members of the public	

## FIRST ORDER OF BUSINESS

### Roll Call

Mr. Evans called the meeting to order at 9:00 a.m.

Mr. Evans called the roll and stated a quorum was present for the meeting.

## SECOND ORDER OF BUSINESS

### Approval of the Minutes of the August 26, 2010, Regular Meeting

Mr. Evans reviewed the minutes of the August 26, 2010, regular meeting, and asked for any additions, correction, or deletions.

Mr. Berube stated page 4, the end of the first paragraph should read “by \$15,000 per year.”

On MOTION by Mr. LeMenager, seconded by Ms. Snyder, with all in favor, approval was given to the minutes of the August 26, 2010, regular meeting, as amended.
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**THIRD ORDER OF BUSINESS**

**Subcontractor Reports**

**A. Landscaping – Luke Brothers**

**i. Monthly Highlight Report**

Mr. Shafer reviewed the monthly landscaping report as contained in the agenda package and is available for public review in the District Office during normal business hours.

Mr. Shafer stated September was a difficult month with no rain, extremely dry conditions, and high temperatures along with some irrigation problems. Toho Water Authority turned the water off out here at one point, and we had ten main line leaks this month compared to about one leak average per month. We have two leaks to repair today, so we have been spending a lot of time repairing irrigation leaks this month.

Mr. Evans asked is that due to the water shut off or deterioration of the system or something else?

Mr. Shafer stated when Toho lost their lift station, we lost pressure out here. When they turned the water back on, they did not call us to let us know. We could have opened some valves to let some of the air out, but I am not sure if that had a bearing on the leaks or not. When the pipes fill back up, the water slams into them, and when the air pressure is greater than the water pressure, you can blow a pipe.

Mr. Evans stated we do not have thrust blocks on a lot of the irrigation system.

Mr. Haskett stated we do in certain areas. Most of the time, it is in the neck of the T where it is coming off a 4-inch main to a 2-inch line, and that is where they have been breaking.

Mr. Berube stated the good news is, according to Toho Water Authority, they are not going to shut off the water anymore.

Mr. Shafer stated that is good news. We were finding leaks faster than we could fix them.

Mr. LeMenager asked can we send them a bill? I am being totally serious. I do not expect them to pay it. It is like my attitude toward the property appraiser. They will never act this time, but if you go down and get in their face, they will act next time. Maybe we let them know they cost us a lot of money, send them a bill, and let them discuss it at their Board meeting. They will not pay it but it will be on their mind.

Ms. Snyder stated I had it happen at one of my houses and they came out at night and fixed it right away. Are they still turning the water off?

Mr. Shafer stated no, it was just that one instance. This community is so big and there are miles of pipe underground that it made a big impact.

Ms. Snyder stated I could not get the sprinklers to come on one night when I was testing it at one of my houses.

Mr. Berube stated because of all the rain, the sensor might have turned off the timer.

Ms. Snyder stated my irrigation technician looked at it and he figured the water supply was turned off.

Mr. Berube stated Toho told me that they were not going to turn off the water anymore.

Ms. Snyder asked have you contacted Toho about these problems? We called and they repaired mine, so instead of us bearing the cost, I wonder if they would have fixed them. For my residential home, they came over right away and fixed it.

Mr. Shafer stated no, I did not.

Mr. Haskett stated we have not had conversations with them about the line breaks, only about shutting the water off. My concern is, will they approve it. We can send them a bill and tell them they broke our pipes, and see where it goes from there, but actually proving that they caused the problems might be hard to do.

Ms. Snyder stated they did not have a problem when I called them about a residence. It was the same issue, the water pressure broke a pipe in the ground going into the pump, and they replaced the whole thing.

Mr. Haskett asked did that occur before your meter?

Ms. Snyder stated yes.

Mr. Haskett stated if it is after the meter, it is our responsibility or the home owner's responsibility. If it is before the meter, it is their responsibility. That is the big difference.

Mr. Evans asked what are we going to do with the contract?

Mr. Moyer stated I emailed a letter to the Board that I received from Mr. Lucadano.

Mr. Lucadano stated Mr. Moyer and I had some conversations, and after having those conversations, I had some time to reflect and review. If we are going to amend the scope of the contract and take a piece out, it made sense to reflect that financially, which is what I am proposing in this revised letter that I just distributed to the Board.

Mr. LeMenager stated you revised item 3, which I did not understand at first.

Mr. Lucadano stated I clarified it a little and I provided for a two-year extension.

Mr. Evans stated in essence, the base fee will stay the same with the exception of eliminating the specific scope of the trash removal, which results in an overall reduction of the base contract amount that is reflected on the revised letter, and you are asking for a two-year extension instead of one-year extension.

Mr. Lucadano stated we are asking for a 24-month extension upon the expiration of our existing period, beginning tomorrow. Regarding the \$24,518.40 reduction, I took the line item in the contract that specifically addressed the debris removal. The reason the amount in the letter does not account for the full amount is because when I arrived at the number for our bid, I also incorporated dumpster usage and policing in that figure. So I extrapolated the fees that we are spending on our dumpster and everything else should rightly go back to the District.

Mr. Berube stated I understand about the dumpster, but that is not called out separately by contract. If we remove litter and trash for 2011 and 2012, the 2011 cost is \$31,493 and the 2012 cost is \$32,438, which totals \$63,900 and that is the value of litter and trash for two years. The 3% increase would have been \$14,800 for 2011 and \$15,200 for 2012, for a total of \$30,000 for an increase. If we take away the increase, we have a negative of \$33,000.

Mr. LeMenager stated that does not sound right.

Mr. Berube stated I may have said it wrong, but the value of the increase by Luke Brothers eliminating their 3% annual increase, that is worth \$30,000. That is a savings of \$30,000. The savings of removing the litter and trash for two years is \$63,000.

Mr. LeMenager stated over the two years, they are reducing their price by \$49,000, so that plus the \$30,000 increase they are eliminating is \$79,000. That is what he is saying in item 2, that they will take this out of the contract and we will give that to the assistant field manager.

Mr. Berube stated that is correct. By contract, the value of removing litter and trash is \$63,900 for two years.

Mr. Evans stated he had the dumpster included in that \$30,000 but he is still keeping the dumpster.

Mr. Berube stated the new deal is we will receive \$49,000 versus \$63,000. That means we are paying \$14,000 for a dumpster for two years.

Mr. LeMenager stated I do not know what a dumpster costs.

Mr. Evans stated he is also waiving the 3% increase. When you factor that in and when you add all these up, we will come out ahead.

Mr. LeMenager stated I read this as he is waiving the 3% increase to get a 60-day termination notice instead of a 30-day notice. That seems like a very fair compromise to me.

Mr. Lucadano stated the investment that has to be made so that we can maintain the project properly and so that we do not have shortfalls, in reality, 30 days is the value of one month of the agreement but it provides a huge intangible value to us that there is security of having additional time to wrap things up.

Mr. Evans stated I see it as a positive thing and an economic advantage. We can renew the existing contract, we can let it terminate and let the grass grow until we get someone else to do that, or we can go with the revision that is offered in this proposal for the next two years.

Ms. Kassel stated I thought he said the contract will remain the same with no increase but they are removing the cost for trash removal from their contract.

Mr. Evans stated that is correct.

Ms. Kassel asked we do not have to pay anything extra for use of the dumpster and disposal of the trash that the assistant dockmaster collects, and all they want is an extra 30-day notice?

Mr. Evans stated there are several things taking place. They are removing the scope for trash pickup. Within that scope that they originally bid were a couple components. One was the dumpster and things they will do to utilize that dumpster under their normal scope of work, and all the other trash pickup. They just eliminated a portion of that scope that was included in that line item, which reduced it by \$24,000 but they are keeping the dumpster. The District is taking on that scope through the assistant dockmaster.

Ms. Kassel asked is the assistant going to be able to use their dumpster for trash disposal?

Mr. Lucadano stated yes, they can.

Mr. Berube stated we gain the savings of not paying for a separate dumpster.

Mr. Evans stated that is correct. He is waiving the 3% increase but he wants an extension to a two-year contract.

Ms. Kassel asked is that at the same rate with no increase and with the removal of \$24,000 for litter and trash?

Mr. Evans stated that is correct. The third component is, instead of a 30-day notice to terminate, he is asking for a 60-day termination notice so that he can make the appropriate business decisions for a restructuring, should that event occur.

Mr. Moyer stated in some respects, 60 days is a benefit to the District.

Mr. Evans stated that is correct; it gives us more time if that occurs to take action to replace them if we need to. It works both ways.

Ms. Snyder stated item 1 says he is waiving the annual 3% increase for 2011, not for 2012, but he is asking for a contract extension through 2012.

Mr. Lucadano stated I apologize that is not clear but what I meant to state is that we will keep the prices static through the two-year extension. I will waive it for both years. I presume the District will prepare a special addendum to incorporate all these changes.

Mr. Moyer stated yes, we will provide that to you.

Mr. Berube stated when you do all the math, they are not eliminating the total cost of litter and trash removal at \$24,518. There still is a component for additional costs that they are not completely eliminating, specifically the dumpster and some ancillary costs.

Mr. Lucadano stated that is correct.

Mr. Berube stated we are not gaining the full savings that we anticipated on our prior approval for the assistant field manager. Luke Brothers is retaining some money on that item.

Mr. Lucadano stated that is correct.

Mr. LeMenager stated our costs are not as high either because we can use their dumpster.

Ms. Kassel stated I do not know that we accounted for those costs in the estimate for the assistant dockmaster.

Mr. Berube stated yes, we did.

Mr. Moyer stated the only reason we break even in the first year is because we are buying equipment. Clearly, we are ahead after we purchase the equipment.

Mr. Berube stated that is correct. I just want everyone to be clear that there is a tradeoff where we are spending a little more money than we anticipated, but I think it is a fair trade. In our current contract, we effectively have a zero-day cancellation clause, not

30 days; it is cancelled at will. Going to a 60-day termination probably does not matter because we cannot terminate and hire another company within that time anyway. I have varying concerns about some things with Luke Brothers, but this is a much better proposal than the initial proposal.

On MOTION by Ms. Kassel, seconded by Ms. Snyder, with all in favor, approval was given to the revised proposal for Luke Brothers dated September 29, 2010, as discussed.

Mr. Haskett asked what will the effective date be for the change in scope? We still need to hire staff.

Mr. Evans stated I will let you all work that out.

Mr. Lucadano stated I have no problem with Mr. Haskett notifying us with a 30-day notice to help you out, and we will change billing to reflect that.

Mr. Moyer stated that will be fine.

Mr. Qualls asked may I work with Mr. Lucadano directly on the addendum?

Mr. Lucadano stated yes.

Mr. Evans stated we also received an oak tree structural pruning proposal.

Ms. Kassel stated there is no indication as to which trees other than oak trees. It does not give us a count or let us know what is excluded. Is it just the oaks along certain streets? There are also elms, sycamores and other trees along some of the streets.

Mr. LeMenager asked is this something we asked them to quote on?

Mr. Haskett stated no, they took the opportunity to bid on that service since we have arborist services budgeted every year. The scope of services is a little vague and needs to be better defined.

Mr. Lucadano stated we are trying to establish parameters of what the District wants to accomplish with your arbor care program versus what we would recommend. This is an amalgamation of sorts of those two things. Mr. Haskett explained what has been done in the past, and we discussed what I would suggest with respect to performing structural crown thinning, which is a process where we remove crossing limbs. It is also removing limbs that are competing with the central lead to where we can restore proper branching. Some of the trees were nursery grown but they may not be growing in an outward fashion. This process will also include crown cleaning, which is removing any dead wood

or limbs or anything that can detract from the health of the tree. There are potential contributing issues with the diseased trees that the State has not been able to diagnose that affected the trees earlier this year. One thing I noticed, as an arborist and working throughout the State with this disease, is when the crown is properly thinned and pruned, it reduces the risk of progression of the disease and it improves airflow, which is very important. If we sustain tropical force winds, with the canopies as dense as they are, the trees can get an umbrella effect. That will happen if a tree does not have enough air flowing through the canopy. We will thin the canopy so that air can flow through the tree and not pull it up out of the ground. We understand the description is vague, but there is no existing tree inventory. I wanted to give a basic explanation of what we are proposing to prune. We are not limiting it to any specific trees but it is mostly the hardwoods on the property, especially the oaks, that require a significant amount of pruning. I have no problem within our scope of work in performing additional pruning of the oaks, sycamores, and elms, but the sycamores and elms do not have near the need of pruning as the oaks.

Mr. Berube asked is this every tree on every street or just the main boulevards?

Mr. Lucadano stated it is the latter; every foot of green space that we currently maintain for the District was accounted for in the proposal, so just the main streets.

Mr. Evans stated there is a timing for this; obviously there is a better season for the pruning to take place. When is that window?

Mr. Lucadano stated since we have more of a tropical climate, we have more of an option and there is not a window you cannot do the pruning. Fall is a great time to do the pruning, when the sap and seeds are in the system which helps with callouses healing over the tree cuts. I would like to do the project in October.

Mr. Berube asked did we not do every tree in the project a year or two ago?

Mr. Haskett stated we phased it into two separate years. The main boulevards on Luke Brothers's proposal were the first phase that A Cut Above pruned. The second year, they did some of the neighborhood streets as well as the parks and along U.S. 192. The cost was \$17,000 the first year and \$6,000 to \$8,000 the second year.

Mr. LeMenager stated the idea was that A Cut Above will be coming back every year with a proposal.

Mr. Haskett stated that is correct.

Mr. LeMenager asked are they on the list to do anymore work for next fiscal year?

Mr. Haskett stated they would be asked to propose the next phase. How it was setup initially, certain streets are pruned this year and left alone the following year.

Mr. LeMenager stated I am happy with our current provider for that particular function.

Ms. Kassel stated I am not happy with A Cut Above. They were supposed to do crown thinning and I do not think they did. The trees look just as umbrella-like as they did before they trimmed them.

Mr. Lucadano stated at no cost to the District, we removed all the dead wood on these trees, and we applied proper pruning methods to all the trees that were affected by this disease. By our proper pruning, we were able to save a number of trees that were in a state of decline, upon my diagnosis. We fronted a lot of those services to the District at no charge, and I would ask for the opportunity to let us continue to do what we started.

Mr. LeMenager stated right now in the current contract, Luke Brothers is supposed to be taking care of trees up to 10 feet. Two months ago, we asked why the job was not being done and why Schoolhouse Road was still not done. The answer was they would be getting to it. Two months later, it is still not done. I appreciate that you have good professional staff with knowledge of how to treat trees, but I question whether or not that gets to the workers whom you have assigned to do the work.

Mr. Lucadano stated in the scope of contractual work, we are working up to an established height limit. The concern I have about a lot of these trees is they were elevated improperly, where the lower limbs were cut in half. As a result of that, they emit a sucker growth and improper branching habits on these trees. That is why we had the issue this summer of constantly having to elevate trees. I have grounds maintenance employees doing arbor care work. To perform the proper arbor care work, I need authorization to get up into those canopies to do proper lateral pruning back to the central lead. That kind of pruning is not included in our existing scope of work. I instructed Mr. Shafer to go light on those trees because I do not want to perform improper pruning that had been done in the past by previous maintenance companies. I do not want to insult anyone because I do not know what they did, but I know what I see as an arborist. If you approve the proposal, not only will I correct what I see but I will also change the branching of the trees to grow in an upward fashion and we will perform proper

maintenance going forward, versus improper maintenance. I have not been comfortable with the elevation of what this scope of services is asking us to do. It is improper pruning for the oaks and it makes the trees susceptible to a variety of problems. If you will let me prune these trees properly, you will see the difference.

Mr. Berube stated your crews have been pruning the trees here for 16 months. Has anyone heard these concerns about tree pruning before?

Mr. Haskett stated not necessarily. I understand his concerns.

Mr. Berube stated I hear what he is saying, but all of a sudden, we get a surprise where they cannot trim the trees where some of them have canopies that are literally touching the ground.

Mr. Evans stated I hear it differently. I hear what he is saying, that he can perform that scope exactly the way he is asked to do it, but there may be repercussions because we have two different service providers working on the same trees. One impacts the other and there is an overlap. It is better to have one person who deals with the pruning of the entire tree because one affects the other.

Mr. Lucadano stated that is correct. If pruned properly, the elevations will not be the issue that they have been in the past. I can solve the elevation problems by hacking the canopies back, but that is not proper pruning. That is why we have gone very light on the elevations. We have done it where we have had to. It is not that we were not able to, but proper branching and structural crown thinning will promote upward growth of the tree versus a lateral or downward path that a lot of these oaks have right now. I believe we showed the difference at my cost when we brought in our arbor crew who trimmed all the diseased trees at no charge. They are a different crew and a trained crew who knows how to properly prune trees.

Mr. Berube stated we are currently paying \$6,000 per year for pruning, and now we are being asked to provide a special pruning project.

Ms. Kassel stated their contract provides for them pruning below 10 feet. What this proposal discusses, much of it is over 10 feet.

Mr. Lucadano stated the proposal is for everything above 10 feet, but it will address the structural elevations included in the contract to get them in a proper growth pattern. Most of the work will be above 10 feet with the proposal you are discussing. To clarify, the limbs that are pruned for elevation is what we are being asked to prune now, but those

limbs are over 10 feet above the ground. All we are doing is chopping the base of those limbs to elevate them, and that is not proper pruning. I think we have an opportunity to promote the growth habit and the health of these trees. I believe the conditions that affected the trees earlier this year had something to do with the necessity of the pruning rotation that I am proposing.

Ms. Kassel asked how many trees does this scope cover?

Mr. Berube stated 1,061.

Mr. Haskett stated included in the budget this next fiscal year is \$15,000 for arborist tree services, regardless of who it is. Mr. Lucadano brings up a lot of good points about the canopies and different methods of pruning that A Cut Above has not been doing. Ms. Kassel noticed a few items that could be corrected. I suggest we give Mr. Lucadano the opportunity to do the same or better service that we have been getting, since it is in the budget.

Mr. LeMenager stated my concern is that we received a surprise proposal to change suppliers and we do not give our current supplier an opportunity to respond. I do not object to one company doing the work, but I object to changing suppliers without giving our current supplier a chance to make their comments. I have said often enough that we should not have surprises at these meetings. This is a bit of a surprise. If this is the right thing to do, that is fine. The trees make the first impressions of the community. If this is what we want to do, let us give the current supplier a chance to respond. I thought we had a multi-year plan with them, but now I am hearing they did not do a very good job. This is the first time I am hearing that.

Ms. Snyder stated we did not know until now that this will be a better job for what the tree needs.

Mr. LeMenager stated of course a contractor is going to say that; it is marketing.

Ms. Kassel stated the only reason I would be interested in getting a quote from A Cut Above is for a comparative price purpose rather than for quality of service. We had them here more than once. They are very nice when they attend the meetings and they were very neat about their work, but I do not think they were very effective at the things they promised to do. If we receive a proposal from them, I would not want to hire them because they have not been very effective.

Ms. Snyder stated two years ago, A Cut Above charged us \$2,000 more than this proposal.

Ms. Kassel stated I am not sure if it was for the same scope of work.

Mr. Berube stated I think it was for a larger scope. To clarify the scope of work, you are going to take everything up to 10 feet and shape the entire canopy. There are a number of oaks in the community.

Mr. Lucadano stated you do not shape an oak tree. That is improper pruning. I do not know if that has happened in the past.

Mr. Berube stated this proposal will go up to 10 feet and you will do what is needed within the canopy to be a healthy growing tree.

Mr. Lucadano stated yes.

Mr. Berube stated there are a number of oaks that have spikes at the top that appear to be dead wood.

Mr. Lucadano stated that will be performed by crown cleaning, as well as any fractured limbs and other areas of dead wood. That will all come out.

Mr. Berube asked once this occurs if we accept this proposal, then the pruning portion of your contract will continue to maintain this?

Mr. Lucadano stated yes.

Mr. Berube asked in a year, you will not bring a proposal to do this again for \$15,000?

Mr. Lucadano stated no.

Mr. Berube asked is this a one-time work effort?

Mr. Lucadano stated it is not a one-time work effort, but it will not need to be done in a year. A properly crowned, thinned and pruned hardwood tree can last two or three years.

Mr. Berube stated I want to clarify that the \$6,000 pruning portion of your contract will provide maintenance for what this proposal is going to do and the 10-foot height of canopies that we are looking for should be maintained on an ongoing basis going forward.

Mr. Lucadano stated that is correct because then it becomes true maintenance where it has not been that in the past. We have been rectifying the growth pattern of the tree. Now we can just take care of sucker growth off the base or the central limb. I respect your

comments and I want to defend one thing that we spent a lot of my time on related to the diseased trees. I completely respect the District's right to get multiple proposals; that is good business. I respect loyalty, too, but the reality is, you have a major problem that was taking over very expensive trees, one at a time. Your other contractor was not around when work had to be done to these trees. That was performed at our cost and on our time based on our agricultural analysis, and I hope you would recognize that.

Mr. Berube stated I still think Luke Brothers had some culpability on the live oaks, which are turning brown again. After hearing what you said this morning, I think your proposal makes sense. I agree with Mr. LeMenager that this is a lot of money to spend at one time without getting a competitive bid. However, I think it makes sense that we have one supplier maintaining our biggest asset and one person to go to when something goes wrong.

Mr. LeMenager stated I agree with that aspect.

Mr. Berube stated we have taken some things away from Luke Brothers and I am leaning toward accepting their proposal based on having one contractor maintain the trees.

Mr. LeMenager asked did I understand correctly that we are not talking about your current maintenance crews doing this work? We are talking about specialized people doing this work?

Mr. Lucadano stated yes. The crews we have on site are not trained or equipped to do this type of work.

Mr. LeMenager stated that is a concern that I have.

Mr. Berube stated based on what you just said, starting November, mulching on this property should begin again. Last year's experience led to a disaster. Will your current crews do mulching or will that be a separate crew?

Mr. Lucadano stated there is seasonality of work in the landscaping industry, and that is how it should be. The crews who are here should be part of the mulching process. How the project will be managed, how the material will be ordered, how the project will be accounted for, all those things needed to change. We kept our contract when it came to mulch installation; there is no time limit to completing the work. We did not necessarily do anything wrong, but I agree with you that it was poorly done and it took too much time to review the work to check the areas that were not done. I completely agree with

you, and Mr. Shafer and I have a plan for the work effort. We will use onsite staff to perform that work, but it will be done in an organized and professional manner.

Mr. LeMenager asked are we going to take into account the University of Florida's advice that we over mulched the tree rings. That was part of their report. I appreciate that we are looking to install more mulch, but experts told us we over mulched and that contributed to the problems with the trees. Let us not put down a lot of mulch to make it look good. While it may look pretty, it is not necessarily healthy for the trees.

Mr. Golgowski stated that is correct.

Ms. Snyder asked what about the trees on the other streets?

Mr. Haskett stated they can come up with a proposal for the following year. It is not in the budget to do all the trees in one year. This year he can do the main roadways and next year do the side streets and some of the smaller park areas.

Mr. Berube stated we have \$30,000 in the budget that was estimated for the irrigation project, which we have not designated elsewhere. If the trees need help, we could have the money if we do not spend it somewhere else.

On MOTION by Ms. Kassel, seconded by Ms. Snyder, with all in favor, approval was given to the proposal from Luke Brothers for structural tree pruning along the main boulevards in the amount of \$15,000.
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#### **B. Aquatic Plant Maintenance – Bio-Tech Consulting**

Mr. Medlin reviewed the monthly aquatic maintenance report as contained in the agenda package and is available for public review in the District Office during normal business hours.

Mr. Medlin stated we will be performing two treatments to the ponds this month, the first was on the 9<sup>th</sup> and the second will be today. I do not see anything significant out of the ordinary. I had a look around this morning and things are looking pretty good.

Mr. Evans asked what is triggering the algae blooms? Is it the heat?

Mr. Medlin stated there are so many different things that can contribute, including water chemistry, heat, sunlight, and decaying vegetation. It is a combination of a lot of things.

Mr. Evans asked is one a lack of rain where you do not get as much water flushed through the stormwater ponds where you have diminished circulation and it gets more stagnant?

Mr. Medlin stated some ponds need the rain. Sometimes the algae problems fix themselves and some ponds seem to get more algae when the water level drops. Each pond is so different where the water level may drop and one will not get algae but another one will. I have not been able to determine a formula for each pond yet.

Mr. Berube stated part of what we included in the aquatic weed control RFP was that we need to remain green and Florida Friendly. Is it safe to presume that the major treatment you do to the ponds is chemical based?

Mr. Medlin stated yes.

Mr. Berube stated I presume these chemicals are environmentally friendly.

Mr. Medlin stated they have all been tested, approved and registered for use in water. That is why we really have only 10 to 12 different chemicals. It is very expensive to go through that process since they have to test them on animals, fish and humans, to make sure that the label rates that we use to treat the plants does not harm any fish, birds, animals or humans.

Mr. Berube asked what would these ponds look like if no treatments occurred? Can you speculate on what we would see?

Mr. Medlin stated spikerush would probably dominate most of the ponds, at least a 10-foot to 20-foot outer ring with algae covering that. There would also probably be a lot of cattails growing in the planted areas; they like to spread quickly. If you drive along U.S. 192 and see stormwater ponds that look like they have not been maintained and are filled with cattails and plants under the water and algae on top, that is probably a good idea of what these ponds will look like.

Mr. Berube asked beyond the aesthetic negative of that condition, is there a negative?

Mr. Medlin stated they are designed as stormwater retention ponds. In order to function, they are supposed to hold a certain volume of water and move throughout the stormwater system. With all the extra vegetation, you start to lose that function. Orange County is cracking down on these smaller ponds in industrial areas that have just been let go, and they now have to clean them up.

### **C. Dockmaster/Field Manager**

Mr. Belieff reviewed the monthly boat report as contained in the agenda package and is available for public review in the District Office during normal business hours.

Mr. Belieff stated residents are very happy with the two new kayaks. We installed two new motors, one for the large pontoon and one for the bass boat. Last month's fishing event had a large turnout, about 27 people.

Mr. Berube stated regarding the two motor replacements, both of them had parts needed that would nearly exceed the cost of replacing the motors. We analyzed that and talked with Mr. Moyer, who agreed with me that it would be more advantageous to replace the motors. Both of those motors are significantly updated from prior versions, which results in longer battery life. We also noticed a pattern of the same failures within the motors, so we are implementing different maintenance programs that Mr. Belieff and I put together that will avoid a couple of the failures that we had which proved to be fairly expensive. It is minimal maintenance, greasing a couple bearings to keep corrosion from occurring and keeping fishing line from getting behind the props.

Mr. LeMenager asked what happened to the sailboat?

Mr. Belieff stated since it has been having so much use lately, there was some minor damage to be repaired, but it will be running soon. We are trying to avoid spending money, but it will be available soon.

## **SIXTH ORDER OF BUSINESS**

### **District Manager's Report**

#### **A. Financial Statements**

Mr. Moyer reviewed the financial statements, included in the agenda package and available for public review in the District Office during normal business hours.

Mr. LeMenager asked on assessment collection page, what are the penalties?

Mr. Moyer stated if you do not pay your real estate taxes within the prescribed period, which is by March 31, if you pay after that point, the balance accrues penalties. You can take discounts if you pay prior to March, but if you pay after that date or if it goes to tax certificate sales, there are penalties that are assessed.

#### **B. Invoice Approval #125 and Check Run Summary**

Mr. Moyer reviewed the invoices and check summary, which are included in the agenda package and available for public review in the District Office during normal business hours, and requested approval.

Mr. Moyer stated this request includes an additional invoice from Hydrocom Technologies in the amount of \$501.25. There was also a request from Woolpert for the issuance of a check relative to Toho Water Authority in the amount of \$1,510.20 dealing

with inspection of the waterline extension. The Woolpert invoice will be paid from the capital fund.

On MOTION by Ms. Snyder, seconded by Mr. LeMenager, with all in favor, approval was given to the invoices as presented, including the two additions from Hydrocom Technologies and Woolpert, as discussed.

### **C. Public Comments/Complaints**

Mr. Moyer reviewed the complaint log as contained in the agenda package and is available for public review in the District Office during normal business hours.

## **FIFTH ORDER OF BUSINESS**

### **Staff Reports**

#### **A. Attorney**

Mr. Qualls stated in reviewing the minutes, there were some things I was asked to research. The first was, a question came up about the responsibility for maintaining the area between the platted lot boundary and the street. Mr. Evans was correct that the responsibility falls to the home owners. Page 22 of the Harmony Residential Properties Declarations of Covenants and Restrictions, it says that each owner shall also maintain, mow, irrigate, replace sod and prune all landscaping lying within the right-of-way adjacent to public streets and alleys between the unit tract and lot boundary and the curb or the edge of the public street. The second thing was a question from Mr. LeMenager about the right to fine a resident or go after the home owner to have them replace the tree because they killed it. Our strong advice is, we advise against doing that. A CDD is a special-purpose local government, the special purpose being the maintenance of infrastructure. It is not a general-purpose local government with full police or enforcement powers. You can adopt rules to try to make that happen, but we advise to seek an Attorney General opinion before doing so, to get some idea if such a measure will be upheld.

Mr. LeMenager stated I understand and it is useful information.

Mr. Qualls stated there was a voluminous public records request made to the District. I want to commend the District manager and the Supervisors who may have been involved in that for going by the book. We spent quite a bit of time researching the exact specifics. This was a very voluminous public records request, and Florida has one of the broadest public records law in the entire nation. Public records are just that, they are available to the public. When a request is so extensive that it will require the extensive

use of clerical work or supervisory assistance, there are measures that are put in place to make sure that the request is paid for by the requestor. I sent a couple memorandums to the Board by email related to that issue. I want to commend everyone for following the letter and the spirit of the law when in receipt of those public records requests.

Mr. LeMenager stated I want to make sure that we document the cost of that and make it public knowledge as to how much this request costs the residents.

Mr. Qualls stated that is an excellent idea. A letter was sent from the general custodian of the records, who is your District manager, to the requestor. The rule is that when extensive clerical or supervisory labor is involved, those are costs to the District and the District will have to pay for the actual cost of coming up with those records. While the public records law is very broad, there is also a requirement that records have to be reviewed to make sure there is no exempt material within those records that cannot be provided. There are not a lot of exemptions, but they are important because the District could be subject to a lawsuit if you were to turn over something that was exempt. The cost includes the time it takes to review those records, and the time it takes to compile the records. A letter was sent to the requestor. The District responded promptly and in good faith and said that if the District is going to compile all of those records, then the actual cost to be charged to the requestor will be a good faith estimate, and it was set forth in the letter. Because the law is clear that payment has to be paid before the records are received, the requestor now knows what it will cost to compile those records. If the requestor wants those records, he will pay the District for that work of compiling them and reviewing all of those records.

Mr. LeMenager stated I want to be sure that we document the cost of someone asking for everything ever done in the entire history of the CDD since the last general election and that they understand that the public are the ones who pay for that.

Mr. Berube stated there is a legal bill for that, also, or several of them.

Mr. LeMenager stated that is correct. I want to make sure that all the bills are clearly spelled out and that we clearly put that on the record.

Mr. Berube stated I do not think Mr. Moyer's company gives us an extra bill for their work on this request, but I am not sure that is necessarily right, either. I am sure in Mr. Moyer's office has spent time on this also.

Mr. Moyer stated we spent a lot of time researching the number of items that will have to be provided. The cost Mr. Qualls refers to deals with, on a going-forward basis, to go through 44,000 emails to determine if something needs to be redacted because it is exempt and would expose the District to possible legal action if it is not redacted. That is really what the number provided to the requestor was. All the work done prior to that is basically part of our contract and was absorbed by us. Mr. Qualls's work was not part of the number and there will be legal expenses that this Board will pay for this request.

Ms. Snyder stated already I think everyone should know what that cost is and that it is due to this request.

Mr. Qualls stated that is all part of being a local government. None of those costs are to dissuade anyone from making a public records request. Those records are available to the public. The point is, there is a cost associated with those, and the law is clear that a local government may be reimbursed for the actual costs it takes when the extensive use of labor or supervisory assistance is required. We have researched this in great detail and that is the law. At some point, when the District is in the frame of mind to adopt rules for any number of things, I think it would be good to have a rule setting out the procedure that the District will follow when there is such a public records request. For instance, it will define what "extensive" is in that rule. It will set forth the actual cost. Even though it is general law, it would be good to amend your current policies to include these types of things. Rules will have to be amended at some point, and at that time, this would be a good thing to do, in addition to whatever other rule may be amended or updated.

Mr. Evans stated it is my understanding that the estimate that was provided to the requestor did not cover all the items that we probably incur. The actual costs would be much greater than that initial cost. To put it in perspective, it will probably be closer to \$8,000 to \$10,000 by the time you add all the different actual costs. For a records request of the magnitude that was requested, that person would have to submit a check for that amount, somewhere between \$8,000 and \$10,000, to cover all the costs associated before you begin to assimilate and prepare all these documents. Mr. Moyer's time is not included in that quote, which will be a substantial amount of time.

Mr. Moyer stated that is correct.

Mr. Evans stated Mr. Qualls's time was also not included in that quote, which I think will be reimbursable.

Mr. Qualls stated my time so far has been general research from a public records aspect. If I am asked to review documents, that is paid by the requestor. There is precedent in one case for charging \$35 to \$40 per hour for legal counsel to review documents to see if there is any legal reason that would necessitate the redaction of certain exempt information. That is all reimbursable. Section 119.074, Florida Statutes, says that the custodian of the records shall furnish a copy of the records upon payment of the fee prescribed by law. The law sets forth the cost of copies. The law sets forth that you can charge for the actual cost of extensive clerical and supervisory oversight. What the law does not set forth is what that cost might be and how the District will go about coming up with that cost. The District manager did a great job in providing that information. There is case law that says it is based on actual costs that it costs those staff members, salary and benefits, for staff to provide these records. I want to commend you again for the way that you handled that request.

Mr. Qualls stated one last thing, in the notes of the financial statement for the general fund revenues and expenditures, we have discussed this before. There is an item under expenditures for administrative miscellaneous assessment collection costs which is the invoice from Osceola County Board of County Commissioners for reimbursement. We have discussed the fact that the District has no privity of contract between the District and the Board of County Commissioners. Our fear is, if there was an audit, you could get the question why you are paying the Board of County Commissioners for what they are doing when there is no contract or authority to do so. We have met with the property appraiser several times, and I have set a meeting with the tax collector, the Honorable Patsy Heffner this morning. Ms. Heffner has spoken with the property appraiser and asked her to draft a letter to all the Districts saying that it is fine with the property appraiser that the Board of County Commissioners is charging for what the property appraiser is supposed to do. I do not know if the property appraiser will send that letter, but it has been contemplated and if that letter is sent, it will take care of this issue.

**B. Engineer**

Mr. Althafer stated we were asked to follow up with the Toho Water Authority on an easement they need over the watermain that was constructed earlier this year. We have followed up with them and we are in the process of providing them with everything they need to close out the project.

Mr. Evans asked is the check for the inspection the only thing outstanding?

Mr. Althafer stated yes.

**C. Developer**

Mr. Golgowski stated I distributed a spreadsheet prepared by the South Florida Water Management District. We submitted a grant application to the Water Management District for funding improvements to the irrigation system, specifically to add flow sensors and flow valves that will give us real-time information on the amount of water flowing through the irrigation lines. If there is excess water that is unexpected, such as a leak, it will identify that right away and shut that line down electronically so that the leak will stop and allow us to address it. Unfortunately, there was only \$300,000 available from the Water Management District and we did not receive the grant. We budgeted \$60,000 for this project and we expected a reimbursement of \$30,000, which remains in your budget. That money can still be used for the irrigation project, but you will be funding it 100%.

Mr. LeMenager stated Broward County won four of their projects, so their water system must be in awful shape.

Mr. Moyer stated Broward County has 29 municipalities; this is four of the 29.

Mr. Berube stated even if we saved 10% per month of our total dollars with this upgraded system, that is a lot of money. We spend \$8,000 or \$9,000 a month on water, with about \$1,000 of that being potable. If we save 10% of that, it will be \$800 or \$900 per month, so recouping a \$30,000 investment would take a long time 10% a month. Maybe it was not a bad thing that we did not receive the grant. The payback on this may have taken a long time.

Mr. Haskett stated the swing set was installed at Lakeshore Park, and it is getting a lot of use. We updated the diaphragm valves that make the water feature function, and it seems to be that we need to do this every three years. It cost about \$1,300, and considering the use of that water feature, it is a pretty low maintenance cost. I am also looking at total pool improvements for the Swim Club. The fiscal year 2011 anticipates replacing pool tiles, and I am getting some bids for paver improvements where they are sinking around the outer edge of the pool deck, as well as getting rid of the rocks. I will have that proposal next month.

Mr. Berube asked what is the status of the 100 trees that we purchased?

Mr. Golgowski stated we have not taken delivery of them yet. We are lining up crews to install them before we take delivery of them. We have them on hold but we have not purchased them yet.

Mr. Berube asked will we install all 100 of them immediately, or will we stockpile some of these? Has that plan been developed?

Mr. Golgowski stated we have identified locations for about half of them and we will hold onto the balance.

Mr. LeMenager stated I have a question regarding the large school bus that is permanently parked right in front of the entrance to Lakeshore Park. Is that parked on CDD land or on private land?

Mr. Tome stated that is part of the five-acre tract that we own. The border runs where the old basketball court is.

Mr. LeMenager asked why is it parked there? It has already been vandalized once.

Mr. Tome stated on weekends, they are now going to move it behind the community school. The School District requires if there is inclement weather, such as a tornado warning or something, the students have to be able to get on a bus to evacuate and get to a school that is built to withstand high winds. It is a State Statutory mandate that they do that.

Mr. LeMenager asked can they park it closer to the school?

Mr. Tome stated I can address that with them.

Mr. LeMenager stated we are trying to promote the lake, but the only thing you see is a huge bus blocking the view to the lake.

Mr. Tome stated I think they are parking it where it used to be when the annex school was there, so it is probably the same bus driver. Because it is being vandalized, on the weekends it will be moved behind the community school.

## **SIXTH ORDER OF BUSINESS**

### **Supervisor Requests**

Ms. Snyder stated I noticed on the comment log that there was a tree on Buttonbush and Catbrier, but it does not say that it is complete. It only says pending.

Mr. Haskett stated I believe that is complete. We removed it and we are waiting for the replacement tree to arrive.

Mr. LeMenager stated I will not be here next month since I have a family reunion. This is my last meeting with Ms. Snyder, and I want to say how much I have enjoyed

serving on this body with Ms. Snyder. I always find her comments to be interesting and she gets to some of the details that some of us miss. Thank you very much for your service to the Board.

Ms. Kassel stated I have a request for the comment log. I think things are sometimes marked as addressed or complete. The CDD may have made a phone call to address it, but that does not mean it is actually completed.

Mr. Berube asked do you have something specific in mind?

Ms. Kassel stated my husband mentioned that one of the irrigation leaks was marked complete last month but it was still undone. One of the specific ones was about the gate in the large dog park. There was an issue once the new fence line was put in for the new trail that the drop fork was catching in the chain link. It was marked complete but the work was not actually done until much later. Thank you to Mr. Haskett for getting the hinge changed on the exterior gate on the large dog park on the east side. However, on the interior gate, all of the hinges need to be put on the left and the drop fork on the right to keep the drop fork from getting caught in the chain link.

Mr. Haskett stated I was not aware that the second gate did not get switched out.

Ms. Kassel stated that is an example of something that was marked complete but it actually has not gotten done. I understand Mr. Haskett is not employed directly by the CDD, but I do not know if there is a way of not marking it complete until Mr. Belieff or his assistant checks to make sure it is actually completed, unless the management company knows that it has been completed in physical reality.

Mr. Berube stated you are wanting a differentiation between someone knowing about the problem and it actually being fixed.

Ms. Kassel stated yes. Once someone has been notified, the CDD thinks it has been completed, whether it has been or not.

Mr. Berube stated we just want better follow up on the communication log.

Mr. LeMenager stated I think it might be a good idea to put up signs that there is a path there because I go for a walk in the morning and I do not think the students and staff at the school know it is complete and that there is a path for them. I do not think they are using it.

Mr. Tome stated there is some work yet to be done specifically on the Schoolhouse Road side to show that it is an entry. That is forthcoming.

Mr. Berube stated the new live oaks appear to be in some stage of growth other than green.

Mr. Haskett stated they have shocked a little, and that can be attributed to the dry weather, and we have had some high winds lately. I checked them this week and they seem to be thriving. They seem to have lost their dead leaves which is a good sign. We will continue to monitor them and any that decline or that are not in a good condition, we will ask them to be replaced.

**SEVENTH ORDER OF BUSINESS                      Audience Comments**

Mr. Mike Flaherty stated it was mentioned earlier about a penalty on the assessments.

Mr. Evans stated on your property tax bill, if you pay early, then you get a discount.

Mr. Flaherty asked when is there a penalty incurred?

Mr. LeMenager stated when home owners do not pay their assessments to the District.

Mr. Moyer stated that penalty is not paid by the District.

Mr. Flaherty asked how many times are you going to paint this building?

Mr. LeMenager stated this building is not CDD property.

Mr. Flaherty stated I heard that Luke Brothers will not be doing trash removal. What will be the price of that to the District?

Mr. Berube stated it is more than trash collection. We included hiring a new employee who will be a handyman to help cleanup the streets and the edges of lakes. The first year it is a net zero gain because we have to purchase equipment, but the second year, we will save about \$10,000 based on the change to the Luke Brothers contract and Jan Pro for cleaning the bathrooms and a few other changes. Plus we will have another person to backup Mr. Belieff and do miscellaneous work.

Mr. Flaherty stated Luke Brothers said it has been dry the last few months, but the grass is overgrown in the dog parks, and when you walk on the sidewalks, branches are hitting you in the head. When will this be taken care of?

Mr. Evans stated we discussed tree trimming during the tree issue. They were previously responsible only for up to 10 feet, and a lot of these limbs are higher than that.

Mr. Flaherty asked does it mean they are supposed to keep them trimmed 10 feet above the sidewalk?

Mr. LeMenager stated you can do what I do and keep some shears with you. I go around and if it hits me in the head, I trim them myself.

Mr. Flaherty stated that is a fine idea but I pay taxes and assessments, so it should not be my responsibility to take that action.

Mr. LeMenager stated it is not my responsibility, either, but I do it.

Mr. Berube stated to be clear, Luke Brothers is only responsible for the main boulevards this year.

Mr. Flaherty stated that is the area that I am talking about.

Mr. Berube stated you are correct that there are many low-hanging limbs, which is why we have this proposal. Based on what Mr. Lucadano told us today, that work should be complete by the end of October.

Mr. Flaherty asked what about the height of the grass in the dog parks?

Mr. Berube stated in the last couple weeks, I think they missed some areas. I do not know if there is a personnel problem. Mr. Haskett has probably noticed.

Mr. Haskett stated last week they skipped some of the maintenance areas to focus on U.S. 192 for weed pulling because the growth was not that great, but they are back on scheduled and they started mowing again this week.

Mr. Flaherty asked are there provisions in their contract when they miss these areas that there is some sort of financial responsibility? If they keep missing those areas, they will continue to do it unless there is some responsibility on their part.

Mr. Haskett stated that is taken care of. Have you filed your concerns with the District so that they are aware of it?

Mr. Flaherty stated I am doing that now.

Mr. LeMenager stated this is not the appropriate venue.

Mr. Haskett stated if you go to the website and communicate that directly to the District, it can be taken care of a lot faster, rather than waiting to bring it up at a CDD meeting.

**EIGHTH ORDER OF BUSINESS      Adjournment**

The meeting adjourned at 10:30 a.m.

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Gary L. Moyer, Secretary

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Robert D. Evans, Chairman