

**MINUTES OF MEETING
STONEBROOK
COMMUNITY DEVELOPMENT DISTRICT**

A Regular Meeting of the Stoneybrook Community Development District's Board of Supervisors was held on **Tuesday, October 27, 2009 at 9:15 a.m.**, at the **Stoneybrook Community Center, 11800 Stoneybrook Golf Boulevard, Estero, Florida 33928.**

Present and constituting a quorum were:

Ron Ritschel	Chair
Chris Brady	Vice Chair
Kris Davis	Assistant Secretary
Ed Harland	Assistant Secretary
James Boesch	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant District Manager
Dan Cox	District Counsel
Dave Robson	District Engineer
Matt Nieder	Golf Course Superintendent
Bruce Harwood	PGA Head Golf Professional
Andy Whirl	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Ms. Crismond called the meeting to order at 9:20 a.m., and noted, for the record, all Supervisors were present at Roll Call.

Mr. Ritschel indicated the Agenda items would be presented out of order.

*****The Engineer's Report was presented at this time.*****

Mr. Ritschel indicated Johnson Engineering was asked to update the Water Usage Report. He noted, in the original study, the usage percentages were never scientifically confirmed; they were S&S Golf Management's estimates. Mr. Ritschel introduced Dave Robson, of Johnson Engineering.

Mr. Robson distributed copies of Johnson Engineering's October, 2009 Irrigation Usage Review, explained the data gathering process and presented the findings. He noted there is some

loss of water. He indicated the new recommended effluent meter allocations are 46% residential, 40% golf course and 14% common areas. He stated these percentages may shift 10% to 15% in either direction to balance itself out over time. It was noted that the amount for residential usage decreased significantly since the prior study and this may be related to metering of usage and to current water usage restrictions; the figure could increase, if the restrictions are lifted.

Mr. Ritschel recalled a few months ago, the high users were down to two (2); however, there was a leap in high users in August and September. He concluded that the fact the District is only using two-thirds (2/3) of the water it used five (5) or six (6) years ago is a positive. He explained the process of arriving at the usage amounts.

Mr. Nieder asked if the meter height is too big for the meter to measure the flow. Mr. Robson stated it is not too big; the meter is sized precisely for the pump station and explained the meter system and range. Mr. Nieder asked how the percentage of losses from the irrigation lake will be monitored. Mr. Robson indicated that is reflected in the 10% directed to Lee County and will probably remain steady, if nothing in the overall system changes.

SECOND ORDER OF BUSINESS**Consideration of Award of Contract for
Landscape Maintenance**

******This item, previously the Fourth Order of Business, was discussed out of order.******

Ms. Crismond indicated Staff recently requested bids for the District's landscape maintenance program. Eight (8) companies requested packages and attended the mandatory pre-bid meeting, with six (6) companies submitting bids. The companies submitting bids included Pinnacle, Tru Green, Luke Brothers, Crawford, Pelican (current contractor) and Mainscape.

Ms. Crismond stated two (2) companies, TruGreen and Luke Brothers, are considered to be highly qualified and capable of meeting the scope of services required under the contract. Pelican Lawn, Crawford, Mainscape and Pinnacle were deemed non-responsive, as outlined in the attached bid analysis.

Ms. Crismond indicated, as stated in the District's Rules, the lowest, most responsive, responsible and best bid, or the proposal most advantageous to the District, as appropriate, shall be accepted. "Lowest, most responsive, responsible and best bid or proposal" means, in the sole discretion of the Board, the lowest cost bid or proposal that is: (A) submitted by a competent, responsible person or firm capable and qualified in all respects to perform fully the contract

requirements and with the integrity and reliability to assure full performance and timely completion; and (B) most responsive to the invitation to bid or request for proposals, as determined by the Board. Minor variations in the bid may be waived by the Board. Bids and proposals may not be modified after opening.

Ms. Crismond directed the Board to the bid analysis and indicated that Staff reviewed the bids to ensure the bids were submitted, as outlined in the bid specifications. Ms. Crismond reviewed the deficiencies of the bidders deemed non-responsive, as detailed on the bid analysis.

Ms. Crismond indicated, for Fiscal Year 2009, the District has a budgeted \$185,000 “other contractual” line item, which is intended to cover the costs of this landscape maintenance contract.

Ms. Crismond indicated, based upon review of all proposals and the attached submittal analysis sheet, it is Staff’s recommendation that the Board deem that the TruGreen bid is from a competent, responsible firm, capable and qualified in all respects to perform fully the contract requirements and with the integrity and reliability to assure full performance and timely completion; deem that the TruGreen bid is most advantageous to the District and award the contract to TruGreen for a first year price of \$187,049, with a second year option of \$199,997. As is typical with the District’s contracts, this is a one (1) year contract with a second year option, at the sole discretion of the District.

Mr. Ritschel asked if a breakdown could be given if additional mulching and/or pine straw are desired. Ms. Crismond replied affirmatively, it could be determined based on how the bids were done. Mr. Adams added the TruGreen price includes one (1) mulching and the budget also has a separate line item of about \$20,000 or \$25,000 that deals with mulch. Mr. Adams concluded, with this, a second mulching is already covered in the budget. Brief discussion continued regarding the mulching part of the bid specifications and the mulching covered in the budget.

Mr. Whirl indicated the Master Board’s current contract is for fertilizing four (4) times per year, but the bid is for three (3) times per year and asked if three (3) times will be good enough. Mr. Adams replied affirmatively, by using the right types of fertilizer; adding, with the new Lee County Fertilizer Ordinance, the ability to apply four (4) times a year is being lost because it does not allow for fertilization in the summer. Regarding pesticides, concern was voiced that the bid package only said “as needed” and, if it is not done and there is damage, who

will be responsible. Mr. Adams indicated it is a performance based contract, so the contractor is responsible.

Discussion continued regarding landscape supervision and the \$15,000 annual fee and what the \$25,000 contingency line item would be used for. Mr. Whirl indicated the contract has two (2) palm tree trimmings per year, but the District only has one (1) and asked why it was reduced to once per year. Mr. Adams and Mr. Ritschel clarified that, like the mulching, palm tree trimming is in the bid specifications once and a separate line item in the budget, which allows for two (2) trimmings per year.

Regarding the irrigation system, a question was raised and Mr. Adams noted the landscape contractor is only paid extra when there is damage or something outside the regular routine scope of work; regular routine replacement of sprinkler heads and repairs are included in the contract. Brief discussion ensued regarding the irrigation system. Mr. Adams stated, if additional work is needed, the District will request the contractor's rates and, depending on the rates, the District may use the landscape contractor or may bring in a different irrigation company.

Mr. Boesch asked how the other bidders are notified. Ms. Crismond said they receive a memo from the District and their bid surety is returned. Mr. Adams indicated the Board will be asked to award the contract and, upon successful execution of the contract, the bidders that were not selected will be notified, along with bid sureties being returned.

A Board Member noted there were six (6) bids with varied costs. He indicated the Qualifications of Bidders section asked for Collier County occupational licenses and asked if this was a problem, as the District is in Lee County. He was concerned a bidder may come back on the District because of that. Ms. Crismond stated that is a non-issue.

A Board Member asked if there would be an issue, as TruGreen, the contractor being recommended, did not provide the required inventory list of equipment, which was a bid specification. Mr. Adams stated it is Management's recommendation that the District waive that irregularity and award the contract to TruGreen, noting they have sufficient equipment. Ms. Crismond added, she visited their facility and contacted their references.

Mr. Ritschel asked Mr. Nieder about his impression of TruGreen's facility. Mr. Nieder stated it is basically an office space with a tiny mechanics shop and the equipment was stored

outside. He concluded he was not impressed with TruGreen’s facility, compared to Crawford’s facility.

Mr. Ritschel asked Mr. Adams if the recommendation was influenced by bids that did not fall within the District’s budget. Mr. Adams replied affirmatively, noting that is part of the decision. Mr. Adams stated he appreciates the concern about TruGreen’s facility, but he is more concerned about the delivery of service. He suggested, if anyone has questions about TruGreen’s ability to deliver the service, they should drive around the Fiddler’s Creek property, noting the Fiddler’s Creek landscape program is at, or above, the level of service and expectations of the Stoneybrook community.

Mr. Ritschel asked about the cancellation clause for a nonperforming contractor. Mr. Adams stated the District can cancel with 30 days notice, with or without cause.

Mr. Whirl indicated the current landscaping company has done a good job and he asked the Board to consider that and not just eliminate them because they questioned or left out some items.

Mr. Nieder commented, TruGreen has the ability to maintain Fiddler’s Creek and he has the tools to ensure that they perform the work. He does not disagree with Management’s recommendation, but has concerns.

It was decided that Ms. Crismond, Mr. Nieder and a Board Member would schedule a visit and tour Fiddler’s Creek, prior to awarding the contract. Mr. Ritschel said he would like to visit. Ms. Crismond indicated she is there every Friday. Mr. Nieder indicated he does not need to visit Fiddler’s Creek, but he wants to review the bids. The Board decided that a member will visit on November 6th and move the decision to award to the November meeting.

On MOTION by Mr. Ritschel and seconded by Mr. Boesch, with all in favor of tabling a decision on Award of Contract for Landscape Maintenance, pending a trip to Fiddler’s Creek.

THIRD ORDER OF BUSINESS

Discussion/Consideration Existing Cart Lease with Yamaha and Proposals from E-Z-GO/ProLink

****This item, previously the Second Order of Business, was discussed out of order.****

Mr. Ritschel noted the District did not approach Yamaha for additional carts needed for next Saturday. He stated, they think the letter received was in response to Mr. Cox's previous letter. The Board discussed the return of broken Yamaha carts to the golf course and Yamaha sending staff to repair them. Additional discussion ensued regarding the comments and allegations contained in Yamaha's October 22nd letter to Mr. Cox.

Mr. Boesch iterated the importance of resolving this and not impacting or turning away customers; the golf course needs good, working carts. He suggested selecting the E-Z-GO carts.

Mr. Cox stated the District put Yamaha on notice and felt Yamaha's October 22nd letter was an attempt to create an argument against the District claiming damages for having to bring in carts for the tournament, given the timing of their letter and allegation that the District refused to accept the carts. Regarding writing another letter to Yamaha, Mr. Cox wondered what good it would do and indicated he believes the District should just move on the issue. He noted Yamaha would have to sue them in Orange County, California and it would be difficult for them to enforce any kind of judgment. Regarding a buyout of the contract, Mr. Cox stated, unless they are willing to let the District buy it out for \$10,000, there is no point.

When questioned, Mr. Cox indicated there are some issues with the E-Z-GO lease, but mostly it is okay. He did not like the mandatory arbitration provisions, waiving rights to seek damages, and governing law provisions. Mr. Cox will meet with Mr. Harwood to discuss his concerns and they will contact the lease company.

Mr. Harwood indicated ProLink was bought by GPS Industries and everything previously proposed is now null and void. He discussed his conversations with GPS Industries, possible movement of the ProLink screens to the new carts and etc. He indicated, the GPS Industries lease presented is for a five (5)-year lease term and he feels a one (1)-year lease would be higher. He indicated he would contact other companies. Mr. Harwood discussed the types of GPS systems that can be chosen.

Mr. Harwood noted, under the current agreement, if there is a problem, a service person comes out; under GPS's agreement, if they cannot fix the problem over the phone, there is a charge to have a technician come out.

A Board Member asked if GPS Industries might back off of the charge to move the current systems to the new carts. Mr. Harwood felt, if the District goes with the five (5)-year lease, they will.

Mr. Boesch discussed what to do with the Yamaha carts, once the E-Z-GO carts arrive; return them (ship them to Georgia) or store them onsite. Mr. Cox stated the Board should put Yamaha on notice that they are done with the carts and let them know, if they want to give them a buyout, they will consider it. Mr. Cox reviewed the legalities of the Yamaha lease and terms. Mr. Harwood asked what should be done with the GPS systems that are on the Yamaha carts.

Mr. Ritschel summarized, the District will send the Yamaha carts to Georgia, go forward with the E-Z-GO cart lease, resolve the GPS Industries lease and move the ProLink screens to the new carts. He noted there are 72 carts coming from E-Z-GO and ramp that amount up by another ten (10) to 12 carts in January. He stated, in the interim, the District stops making payments to Yamaha, ship the carts back and indicate they did not respond to the buyout request.

Mr. Brady suggested finding out where Yamaha wants the carts to go, rather than just shipping them to Georgia. It was determined, if necessary, the Yamaha carts could be stored onsite.

Mr. Cox indicated, as it will take a few weeks to get the new carts in and get the GPS systems moved, the District will need the Yamaha carts for most of November. He suggested making the November 1st payment, terminate the contract and return the carts December 1st. The Board discussed whether or not to pay the November 1st payment. Mr. Cox felt there may be some offsets that could be applied against the payment amount, but, as the carts will still be used most of November, a payment should be made.

On MOTION by Mr. Boesch and seconded by Mr. Brady, with all in favor of authorizing payment of the November 1st Yamaha lease payment, with offsets; notify Yamaha that, no later than November 30th, the carts are being returned and the District will make no further payments and asking Yamaha where the carts should be sent.

Mr. Harwood asked the Board if they are comfortable with the five (5)-year term of the GPS Industries lease. The Board agreed to a two (2)-year lease term and require acknowledgement that the systems will need to be swapped to additional carts in two (2) years. Additional discussion ensued regarding the details of the GPS system.

Mr. Cox reviewed his concerns with the lease agreement indicated, regarding choice of law provisions, he would like it to be Florida, but if they will not agree, the Board needs to

decide if that is significant enough to not enter into the agreement. He noted Textron Financial is independent of E-Z-GO and they will probably bear no responsibility for the equipment. He also discussed the indemnity clause.

On MOTION by Mr. Boesch and seconded by Mr. Davis, with all in favor approving the Textron Financial Lease Agreement for the lease of E-Z-GO carts, for a term of 24 months, pending District Counsel's final approval of the lease terms.

FOURTH ORDER OF BUSINESS

Discussion: Updated Irrigation Accounts Aging Report

******This item, previously the Third Order of Business, was discussed out of order.******

Mr. Adams presented the most recent Irrigation Accounts Aging Report and its findings. He noted currently, 106 customers are 61-90 days delinquent for a total of \$1,385.82; 135 customers are 90+ days delinquent for a total of \$6,321.95. Mr. Adams indicated he identified 67 delinquent accounts that still owe the \$35 deposit, which indicates to him they are either ignoring it or there are other problems, such as foreclosure. He stated, early on, the Board adopted a policy of leniency, but now it is appropriate for the Board to discuss the next steps and take action. Mr. Adams outlined the process that, after 60 days, the District has the right to provide a notice of shutoff, shutoff service if payment is not made within seven (7) days of delivery of notice and, if they have not attempted to rectify the situation within 30 days of shutoff, the District has the right to proceed with foreclosure. He estimated the whole process, assuming commencement on the 61st day through to filing a lien for foreclosure, would be about 120 days. He noted there may be negative effects if they turn off a meter and things are not maintained, it could be a detriment to the community. Mr. Adams confirmed if the property is sold or changes hands, the debt is transferred to the new owner.

Discussion ensued regarding how and from whom information on property owners is obtained. The District will work with the Master Association and HOA to match up list of property owners. Discussion ensued regarding the foreclosure properties.

Mr. Boesch asked if the District will continue watering on the foreclosure properties and pass the costs to the other residents. He noted the Master Association is paying for that and the

residents are paying. Mr. Adams indicated, if the holder of the foreclosed property is known, he prefers contacting them and if he ca not, those would become part of a bad debt line item addressed in a future updated rate study.

Mr. Adams recommended continuing the watering on the foreclosed homes, in conjunction with the Master Association’s approach to lawn maintenance, as it is a benefit to the community to maintain the appearance, and not shutting off the water on the foreclosed homes.

Discussion ensued regarding whether the District charges late penalties. Mr. Adams replied affirmatively. He indicated they have not come into play, but they will and there will also be shutoff and turn on fees applied, in addition to what is already outstanding, and interest will also be applied.

Mr. Adams asked for direction from the Board on how they want to proceed in terms of shutoffs. The Board discussed how to handle the foreclosure properties and the other delinquent customers. Regarding the foreclosed properties, Mr. Cox indicated the District cannot provide a free service. Mr. Adams suggested a running bill would be maintained.

On MOTION by Mr. Boesch and seconded by Mr. Harland, with all in favor authorizing Staff to proceed under the provisions of the District’s Irrigation Rule for the notice of shutoff for all properties that are delinquent by 60 days.

Mr. Adams will obtain information from the Master Association in an attempt to identify properties in foreclosure. Mr. Adams indicated door hangers will be used and, as appropriate and available, information will be given to mortgage holders.

Additional discussion arose regarding various properties with high irrigation bills.

Mr. Davis suggested changing the process to notice those that are 90 days delinquent, rather than 60 days and made a motion to rescind the previous motion. Mr. Davis’ motion died due to lack of a second.

FIFTH ORDER OF BUSINESS

Approval of Minutes

- **September 15, 2009 Continued Public Hearing and Regular Meeting**

Ms. Crismond presented the September 15, 2009 Continued Public Hearing and Regular Meeting Minutes for the Board’s consideration. The following changes were noted:

- Line 25: Add "Ponchak" after Frank
- Line 26 and 48: Change "Marilyn Beker" to "Mary Lee Baker"
- Line 69: Add "Derby" after Dennis
- Line 182: Change "Stangle" to "Stengel"
- Change "Neider" to "Nieder" throughout the minutes.

On MOTION by Mr. Boesch and seconded by Mr. Brady, with all in favor of approving the September 15, 2009 Continued Public Hearing and Regular Meeting Minutes, as corrected.

- **September 22, 2009 Regular Meeting**

Ms. Crismond presented the September 22, 2009 Regular Meeting Minutes for the Board's consideration. The following changes were noted:

- Line 77: Change "shallots" to "salts"
- Line 125: Change "selling" to "returning"
- Change "Neider" to "Nieder" throughout the minutes.

On MOTION by Mr. Brady and seconded by Mr. Harland, with all in favor of September 22, 2009 Regular Meeting Minutes, as corrected.

- **September 29, 2009 Continued Meeting**

Ms. Crismond presented the September 29, 2009 Continued Meeting Minutes for the Board's consideration. The following changes were noted:

- Change "Neider" to "Nieder" throughout the minutes.

On MOTION by Mr. Brady and seconded by Mr. Harland, with all in favor September 29, 2009 Continued Meeting Minutes, as corrected.

SIXTH ORDER OF BUSINESS

Other Business

There being no Other Business, the next item followed.

SEVENTH ORDER OF BUSINESS

Committee Reports

There being no Committee Reports, the next item followed.

EIGHTH ORDER OF BUSINESS

Staff Reports

a. Attorney

This item was deferred.

b. Engineer

This item was addressed immediately following the First Order of Business.

c. Golf Superintendent

This item was deferred.

d. Golf Pro

This item was deferred.

e. Manager

i. Unaudited Financial Statements as of September 30, 2009

This item was deferred.

ii. Fiscal Year 2010 Meeting Schedule

- **NEXT MEETING DATE: November 17, 2009 at 9:15 A.M.**

NINTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

There were no Audience Comments.

In light of a scheduling conflict with Mr. Cox and the need to hold an Executive Session in November, the Board agreed to reschedule the November meeting from November 17th to November 19th.

Mr. Ritschel noted, with the Board's approval, he will speak with Mr. Jeff Pinder, of Wrathell, Hart, Hunt and Associates, LLC, regarding the cash flow and try to work some temporary monitoring of cash, until this matter can be discussed during Executive Session, at the November meeting.

Mr. Adams indicated, at the November meeting, Management will present the Board with the first set of golf financials prepared by WHHA. They will be in the governmental accounting

format and he will go through those with the Board and help transition them into the new format. This works to bring the financials into a format that is acceptable for auditing purposes and alleviates much of the extra work that was necessary.

Mr. Ritschel referred to the September 30th financial statements and asked about the amounts included for the golf course irrigation and thought there was a transfer to the irrigation fund. He indicated S&S Golf/Vision was prepared to make certain entries or adjustments to produce final financial statements. Mr. Adams indicated the information is now with Management and he recommended letting Mr. Pinder and Vision work out the issue.

TENTH ORDER OF BUSINESS

Executive Session

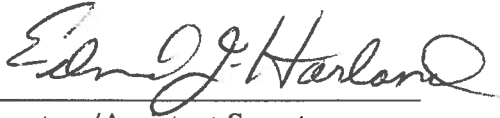
The Board decided to hold the Executive Session during the November meeting.

ELEVENTH ORDER OF BUSINESS

Adjournment

There being no further discussion, the meeting adjourned at 12:36 p.m.

On MOTION by Mr. Ritschel and seconded by Mr. Davis, with all in favor of adjournment.



Secretary/Assistant Secretary



Chair/Vice Chair