

MINUTES OF MEETING  
BAYTREE  
COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Baytree Community Development District was held Wednesday, October 5, 2016 at 1:30 p.m. at the Baytree National Golf Links Meeting Room, 8207 National Drive, Melbourne, Florida.

Present and constituting a quorum were:

Nancy O'Hare	Chairman
Carol Witcher	Vice Chairman
Maria Hernandez	Supervisor

Also present were:

Jason Showe	District Manager
Michael Pawelczyk	District Counsel by phone
Melissa DeFrancesco	District Engineer
Alan Scheerer	Field Operations Manager
Brian White	Field Operations
Kim Rezanka	Special Counsel by phone
Several Residents	

**FIRST ORDER OF BUSINESS**

**Roll Call**

Ms. O'Hare called the meeting to order.

Mr. Showe called the roll.

All in attendance recited the pledge of allegiance.

**SECOND ORDER OF BUSINESS**

**Discussion of SCCU Landscaping with  
Special Counsel**

Ms. Rezanka: There are two items and the Right-Of-Way Agreement I believe is referred to some people as a license, but I submitted that a number of weeks ago to the County and it has been sent to a different Assistant County Attorney Diane Yaun. She emailed me last week and said that she was working on it and it's the same with Public Works. They have not gotten back to me with any comments and I met with Mr. Smith last Tuesday he said that it wasn't fair and they should just agree to that. I told him that the County wants a 30-day Termination Agreement

for any reason and that is not going to protect Baytree CDD. He is going to try to work with the County Attorney's Office to get them to agree with our agreement. He was going to touch base with the County and that has not yet been set for hearing and I will check back next week. We need to get that set on the agenda so that the County Commission can at least look at the Right-Of-Way Agreement. The appeal regarding the Natural Resources determination that the landscape buffer was compliant with the Binding Development Agreement that appeal is set for October 18, 2016. I haven't even been notified officially and I guess Nancy found that in the public legal notices yesterday in the paper. I called yesterday but did not get a return phone call from the County Attorney's office. It was set by Natural Resources and is set for Tuesday, October 18<sup>th</sup> at 9:00 a.m. I don't know how many people from Baytree CDD would be available but it would be great to have support there. We have identified Mel Mills, Jason Showe, and Wilson McBernie as witnesses and so I will be talking with each of them prior to the 18<sup>th</sup> as to what their testimony is. I reached out to Phil Nohr and let him know that this was going on and he contacted Space Coast Credit Union. He has been advised not to be involved but their general contractor, Jason Bartlett, is handling the appeal matter. I need to contact him if we have anything that we want to try and negotiate before the appeal. As I mentioned in the previous meeting, the County Commission if they determine that it is not a solid landscape buffer they are likely going to require them to take out that fence and put in a solid fence of either PVC, wood, or masonry. I know that is not really what the residents want but that may be what happens if we don't come up with a different option. One of the things too is Baytree CDD okay with that? If the County Commission agrees with us then that is likely what they will require unless we reach an agreement with Space Coast Credit Union otherwise. I don't have any consensus on what the residents want.

Ms. O'Hare: I don't either Kim, but I think we need to get some input from the residents in Kingswood.

Resident: We are here from Kingswood. Are you talking about the alternative to leaving the fence the way it is and what would be acceptable?

Ms. O'Hare: If the County requires that the fence come out and agrees with us that it is not solid, then they may require the ultimate type of dividing barrier being a PVC, wood, or masonry.

Resident: We still want the view blocked as they had agreed and fill the back with the proper type of trees.

Ms. Witcher: We are going to have to have some kind of fence. What type of fence would you prefer if you do not want the ones with the slats in it?

Resident: We need to talk it over.

Ms. Witcher: We have to give her some direction. We don't want to delay it any longer.

Resident: Can the residents get back to you at the meeting on October 20<sup>th</sup>?

Ms. O'Hare: This appeal is going to be on the County Commission calendar on the 18<sup>th</sup> and after the fact for the residents to get together is not going to give Kim the direction she needs in order to argue the appeal.

Resident: You have three choices of PVC, wood, or masonry.

Resident: What about concrete?

Ms. Witcher: Concrete is the consensus.

Resident: It would be a stucco wall that would look decent.

Ms. O'Hare: If you are doing stucco there is maintenance to that.

Resident: What I am saying is not just the concrete block.

Resident: Wood rots and we do not want vinyl in our subdivision. Neither of those would meet the standards of the architectural committee guidelines.

Mr. Showe: Also an item to consider is we do have a quote for \$52,000 and if you are comfortable with that then another approach we could ask for is we can get the \$52,000 and leave the fence there. It is up to you guys.

Resident: She is saying that the County is going to make them take it down.

Mr. Showe: That is if it comes down and the requirement is they need a new fence.

Resident: They think the County is going to make them take it down.

Ms. Rezanka: If there is a solution that we want to propose to Space Coast Credit Union before the 18<sup>th</sup> we could come to an agreement with Space Coast Credit Union and withdraw the appeal. That is what I was trying to say. If you go forward with the appeal you go to court and you do not know what the Judge is going to do. If you can settle it with the opponent prior to court that would be better. I don't know if that is acceptable to ask them for \$52,000 and then they can leave whatever they've done. Do you just want to go forward and make the County hold their feet to the fire and tell them they are out of compliance of zoning? Then we may get a

concrete stucco wall but they could allow them to put in a wooden fence or PVC fence. We can ask for the concrete stucco fence especially if they respond to the design requirements but there is no guarantee that the County will require that.

Ms. Hernandez: We could also get some other estimates on the landscaping as well.

Mr. Sorter: I am right on the corner where all of that happens and I think that we would be happy as an alternative for Space Coast to add money to the fund for the bushes to go on our side to help meet this because we want to get to resolution of this. I can tell you as the residents that live right there by it we are tired of this. The agreement that they also have is that they will do maintenance over there and there is zero maintenance being done to it. There is kudzu vine growing up over all of their trees, which is going to kill them. They haven't trimmed over there, mowed, or done anything over there since they put them in. There are several issues going on that they are not compliant with. All we want is to make it look good so that we aren't looking at a prison from behind.

Mr. Showe: For the residents that are most effected, what is your option #1? Is your option that they can leave the green fence and we get \$52,000, which is what the new landscaping plan that Mel proposed is? That is \$52,600 so they can give us \$53,000 instead of \$30,000 and leave the fence as it is or the next option is something else. If we can go to them with something in advance of the meeting we may not have to go through the whole process.

Ms. Hernandez: What about their side? If they are not maintaining now and they never maintained the one before and let it go then we need to have some assurance that they are going to maintain what they have and that it meets the criteria that was set up to begin with. It has not been met at this point.

Ms. Witcher: Kim, would you like to do it in two separate phases?

Ms. Rezanka: I don't understand what you mean.

Ms. Witcher: We are worried about the fence and changing the fence, increasing the amount of money, and we are also worried about their non-compliance with the maintenance.

Ms. Rezanka: We have not raised the failure to maintain issue we have just been dealing with the buffer not being solid. The maintenance and trimming is a code enforcement issue and I agree. Just because we make an agreement with Space Coast Credit Union doesn't mean that we are not reporting to code enforcement about their maintenance issue. I can address that with

Space Coast Credit Union if my direction is to go to them and ask them for \$53,000 and we will drop the appeal.

Mr. Showe: If we do ask them then maybe we can ask for some additional time because we are asking for additional funds because they haven't completed their obligation. Part of that one-year time frame wouldn't have started until we got the \$53,000 in hand or the amount we decide.

Ms. Rezanka: If this is the agreement with Space Coast Credit Union then they will give you a check within the next month. The idea is we will drop the appeal and you will get a check for \$53,000 and we can show them what we plan to do.

Mr. Showe: That estimate does not have a contingency and that is probably something that we need to add.

Ms. DeFrancesco: I would add 10% to start with.

Ms. Witcher: Is that okay, Kim?

Ms. Rezanka: I didn't hear that, I'm sorry.

Mr. Showe: Our District Engineer is recommending to add 10% to that quote as a contingency if we are going to make the request to make sure that we are fully covered.

Ms. DeFrancesco: Standard construction estimates will have a contingency on them anyway.

Mr. Showe: I think \$58,000 as an approximate covers that 10%. Is that something that the residents are comfortable with?

Residents: Yes.

Ms. O'Hare: I think something else that you have to look at too is if we put in \$50,000 worth of landscaping on our side, you are probably not going to see very much of what they don't maintain on their side.

Mr. Showe: I think that issue from their perspective goes away. You can obviously still call code enforcement but if we aren't looking at it then I think that goes away.

Mr. Bosseler: The other issue is the standing water. Now since it has started raining we have had standing water there every day since September 1<sup>st</sup> and it doesn't go away. It is probably 200 yards long and maybe 20 to 30 yards wide because whatever you see on our side of the fence it equals that on their side of the fence. They did a lousy job of grading it. Whether that is for Kim or the Engineer we have got to fight that battle too.

Ms. DeFrancesco: We were looking at some options for repairing that and it is difficult because that is the lowest point of the property line. We have to meet an existing elevation at that fence somehow. We can look at trying to fill in some of those areas as one option and we were also trying to see if we could put some yard drains in there and connect them to one of the existing storm manholes. We need to look at some of the modeling for the storm water system to see if that is going to help.

Mr. Bosseler: They need to pay for it because we didn't have this problem before.

Ms. DeFrancesco: I know that there used to be some standing water.

Ms. Bosseler: Yes after it rained and it stood there for two or three days and then it was gone but nothing like this.

Ms. DeFrancesco: I think part of it is that there was a wetland over there that stored some of that and that wetland may have been lower in some places than what the property line is. The worst of it went into that piece of the wetland versus sitting at the property line and now there is no wetland.

Mr. Bosseler: Do we bring in dirt and put it along the fence on our side?

Ms. DeFrancesco: That is what we have looked at doing and you still have to meet the elevation of the fence because the fence is already there. You can't fill onto their property but we can fill a portion of that. We have to get that approved by the County and they will look at it to make sure that you aren't changing any drainage patterns. Everything goes to that wetland and it is not a paved area.

Ms. O'Hare: Can there be a condition on this masonry wall that is going to be negotiated by you? As far as a condition built into that of Space Coast correcting the drainage problem where the wall would be installed because that is what Mr. Bosseler was just talking about. Right now it is a chain link fence and you can see the water.

Ms. DeFrancesco: You do not want a masonry wall sitting in that water with stucco on it because then it wouldn't have stucco on it very long.

Ms. Rezanka: I thought the masonry wall would be elevated because of the water issue. It is going to be up to the County Commission if we go through with the appeal to say whether they put in a concrete wall, wood fence, or PVC fence. The code doesn't require a masonry wall it could be a masonry wall or wood fence. There is no guarantee that the County Commission would require that because concrete walls are usually more expensive than PVC or wood. I

don't know anything about the drainage and I heard the Engineer speaking but I do not know where they are. That is not part of the appeal issue and that is somewhat of a separate issue. They have to fix the drainage problems that they caused but I don't know where we are with that.

Ms. Witcher: If they come down with the stucco fence, can we at that time say that we want to make sure that it doesn't impede the drainage or do we do it ahead of time?

Ms. Rezanka: I will raise the drainage issue at the appeal but I am saying that the County Commission won't at that point talk about the drainage because that is not a part of the appeal. That is done through a different department of the County and the County would have to require them to do that through code enforcement.

Mr. Showe: The drainage wasn't in the median so it is technically not part of it.

Ms. Rezanka: You can't impact other peoples property by law. It needs to be fixed but last time I raised that issue I was told that they were working on that with the District Engineer.

Ms. DeFrancesco: We are taking a look at it but there is definitely a lot of standing water. If we are talking about potential for a different fence that is something that they need to take into consideration before they even choose the type of fence to put in there.

Ms. Witcher: If they end up putting a fence in there instead of a masonry wall, we have architectural standard here in Baytree and wood fences are prohibited. How would that be allowed?

Ms. Rezanka: They are not in the Baytree CDD.

Mr. Showe: It would be on their property.

Ms. Rezanka: I will make the comment that wood fences are not permitted to set a point of view.

Mr. Showe: Is the preference of the residents to ask for the \$58,000 for landscaping first?

Residents: Yes.

Mr. Showe: Do you need direction for that from the Board for that to be in preference before you approach Space Coast Credit Union, Kim?

Ms. Rezanka: Michael do they need to vote on that?

Mr. Pawelczyk: No I think direction is fine.

Ms. Rezanka: When you get a chance can you resend me that?

Mr. Showe: I will get it to you.

Ms. Rezanka: I will send a letter to the contractor saying in order to resolve this appeal issue this is what we will accept.

Mr. Showe: Including a 10% contingency.

Ms. Rezanka: I don't really want to bring in the drainage because that is not the problem.

Mr. Showe: It really isn't a piece of the BDP it is a part of County Code.

Ms. Rezanka: Hopefully we will find out the status of the agreement next week. The residents are more than welcome to come to the public hearing and speak on the 18<sup>th</sup>, especially the ones that live along that road.

Mr. Showe: Kim was just noting that it is a public hearing on the 18<sup>th</sup> so if we do not resolve it then you guys are more than welcome to come and speak to give Baytree's side of it as well.

Resident: If they accept or decline let us know.

Ms. Hernandez: The more people that attend would be better.

Ms. Rezanka: If you want to bring pictures from your point of view that would be great. You can bring up the standing water too because it is a public hearing. I will do my best to get the letter out Monday morning.

Ms. O'Hare: Thank you.

**THIRD ORDER OF BUSINESS**

**Community Updates**

**C. Security**

This item will be covered at the continued meeting on October 20, 2016.

**B. BCA**

This item will be covered at the continued meeting on October 20, 2016.

**FOURTH ORDER OF BUSINESS**

**Approval of the Minutes of the August 3, 2016 Board Of Supervisors Meeting and Acceptance of the Minutes of the August 3, 2016 Meeting**

This item will be covered at the continued meeting on October 20, 2016.



**FIFTH ORDER OF BUSINESS**

**New Business**

This item will be covered at the continued meeting on October 20, 2016.

**SIXTH ORDER OF BUSINESS**

**CDD Action Items/Staff Reports**

**A. CDD Actions Items**

This item will be covered at the continued meeting on October 20, 2016.

**B. Additional Staff Reports**

**i. Attorney**

This item will be covered at the continued meeting on October 20, 2016.

**ii. Engineer**

This item will be covered at the continued meeting on October 20, 2016.

**iii. District Manager's Report**

**1. Field Manager's Report**

Mr. Scheerer: Mike with ECOR has addressed all of the outfall structures. There was one structure that had a tree in the outfall area and that tree was cut down and removed. ECOR has ensured us that all of the outfall structures for all of the ponds in Baytree are free and clear as of Tuesday, October 4<sup>th</sup>. We've also notified our pool provider and he is going to lower the water in the pool by 4 to 8 inches. We are going to chlorinate the water up to 8 ppm and we do not want to get over 10 ppm and this will help ensure that the water is clear as long as the pumps are flowing and we do not lose electricity. The pool will be addressed and I have two additional staff members on their way from Orlando now. We are going to remove the awnings from the tennis court, secure any loose equipment from behind the pool house, take the pool furniture and put them in the bathrooms, and try to pick up anything that is loose and laying around. We are going to secure the globe lights as best we can if we lose a couple of the globe lights then we lose them and we can always pick more up from Florida Bulb and Ballast. We are going to take the flags down today and store them at the guardhouse. One of the biggest questions that we have received from security is at what point tomorrow can we discharge security staff for their safety with an understanding that the gates will be left unattended and open?

Mr. Flint: We do have security here the Manager is here.

Mr. Scheerer: Brian White is one of our field guys and he is a local resident. We will look at some point when the guardhouses are closed to come and remove the barrier gate arms. That is a direct recommendation from ACT and we do not want them snapping off so we will store those in the guardhouse since the guardhouse will be closed. The question lingering now is at what point tomorrow for security do you feel it would be safe for your employees to get out of here?

Resident: The gatehouse is closing at 3:00 p.m. Depending on the winds and rain that we have it could be Saturday morning before they come back on property.

Mr. Scheerer: We were thinking maybe 6:00 a.m. or 7:00 a.m. on Saturday morning.

Resident: I think she comes in at 7:00 a.m.

Mr. Scheerer: Okay so at 7:00 a.m. and either Brian or myself will be here and we will put the gate arms back up. We will do an Assessment on the community as quickly as it is safe and we feel that we can get through the roads and not put ourselves in jeopardy. I don't know how the road conditions are going to be but we have an idea of what to expect here at Baytree. We know that there are certain areas here that hold water. Please do not go through any of the roadways with standing water or make an alternative plan to get yourself in and out of the community. We also talked with TropiCare and everybody knows that as soon as it is safe for any of the contractors to come out on the property they will be here.

Resident: I am going to send something out to the Kingswood people. Do we want them to call those people or give them a number to call your Management Company directly about trees and such?

Mr. Scheerer: They need to call the GMS office directly.

Resident: Can you give me a number?

Mr. Scheerer: 407-841-5524

Resident: I will send this out when I go home.

Mr. Scheerer: At the end of the voicemail if we are not in the office there is a phone number that is attached to my phone. If someone calls and gets the voicemail it will say in the event of an emergency call this number and that is my number. I will be the one to reach out and keep Jason informed. Jason will inform the Board and I will inform any concerns with staff.

Resident: They also should leave a message.

Mr. Scheerer: Understand that if they leave a message there isn't going to be anyone there.

Ms. Witcher: If it is a cellphone and there is no tower then you could have no phone.

Mr. Scheerer: Just call the emergency number if it is an emergency and we will get ahold of whoever we need to get ahold of and hopefully the cell towers are working. We will get the message out as quickly as possible. Dave lives here with TropiCare and if there is a tree down he is committed to us. He will get his staff available as quickly as it is safe and that goes for all of Management Company, the residents, staff members, contractors, and us. If we need to be out here Saturday Brian will be the first person I send and I will get out here as quickly as I can.

Ms. Hernandez: In past hurricanes I would mention that TropiCare did an outstanding job with getting the trees out of the streets. They cleared the streets very fast.

Mr. Scheerer: It is all common sense and who knows what it will look like after the storm. Do not be in a hurry or be in demand. We are all going to get here as quickly as we safely can and that is all I can tell you. I am not going to put any of my staff in jeopardy and we obviously do not want you all in jeopardy either. We will address it and we will not ignore anyone. We will get back with you as quickly as possible and we will make every effort to get here as quickly as possible once the storm passes.

Resident: Has ECOR examined all of the drains?

Mr. Scheerer: The outfall structures not the drains. When you look at a pond there is a box at the end and the box takes the water to the next place. They have said to us in writing is that they have looked at all of the structures and those structures as of yesterday are free and clear of debris. That doesn't mean that when a 140-mile an hour wind rolls through here and knocks down a few trees and blocks an outfall structure.

Resident: If you walk around Kingswood the water is already at the top of the drains and I understand water seeks its own level. What do I say to these people that it is already clogged up.

Mr. Scheerer: It is not clogged up.

Ms. DeFrancesco: It has reached its level with the wetland and the ponds and that is where it is. When you start getting above that level of the rear crest and the lakes and the wetlands you have more volume to fill up. I would imagine that we are going to have street flooding.

Mr. Scheerer: In abundance of caution I contacted my pool contractor in Orlando and they have two 4 inch scratch pumps sitting there like we did in Balmoral Park and they have committed those pumps to Baytree. All we have to do is call them. We will do that as long as we have a place to discharge the water.

Resident: Can someone from this group give this information to be put out through Wayne Wilkerson?

Ms. O'Hare: We could do that, about the gates being open?

Resident: He could probably reach more people than I will about the gates, the standing water, and the reassurance that the lakes are draining as well as they possibly can.

Mr. Scheerer: We never said that. We just said that the outfall structures were free and clear of debris. Who knows what the impact will be and we do not know if it will create a more holding area than the wetland because it was always the wetland just outside of Kingswood. The wetland in Balmoral took all of the water out of here.

Ms. Witcher: Someone called me and said that someone died in the back and he wanted permission to have the estate sale in the back.

Mr. Showe: He called me as well and I directed him to BCA.

Ms. Witcher: I told him no so that is why he called you.

Resident: I had conversation with Mel and he was in complete agreement. We are going on a year and half now since we asked the residents if they wanted certain trees taken down and a lot of them have responded. Those trees are destroying the sidewalks terribly in many places. We think that we should take those trees down now and if we are going to replace some of them with trees along Kingswood that we do that now. I don't think that we should wait any longer.

Mr. Showe: I think at this stage if we didn't have an end date in mind I would go ahead and recommend that. At this stage we are going to have an answer from the County by the 18<sup>th</sup>.

Resident: You are going to have an answer from the County by the 18<sup>th</sup> but if things go the way they have gone for the past year and a half, you may have an answer but not a final agreement or resolution for another 6 to 8 months.

Mr. Showe: That is one of the items I think we will have to discuss on the 20<sup>th</sup>. At this stage without knowing it is just a little challenging. I understand that we have a lot of trees out there and I know Melissa and I have been talking about it.

Resident: In my opinion if we are going to put shrubbery there it would make more sense if we put oak trees in first and then fit the shrubbery in around them.

Ms. DeFrancesco: We wouldn't do that and it would all be a part of the same plan.

Mr. Showe: Planting trees without irrigation is going to be a challenge and I don't know if you can put the irrigation in, then the trees, and then the shrubs. We aren't going to push the issue today but with the County having that decision being made on the 18<sup>th</sup> at the latest I think we will know at that point on the 20<sup>th</sup> of which way we are going. Then the Board can make an appropriate determination on doing that.

Resident: Regardless of which way we go it is going on two years now.

Mr. Showe: The engineer and I talked and we have the permit essentially ready to go but we would use the same contractor we normally use.

Resident: At one of the meetings about 13 months ago someone said that we already had a contractor and everything was ready to go and all we had to do was make a phone call.

Mr. Showe: TropiCare will get that work done and obviously they may be a little backed up over the next few weeks anyways so by the time we get to the 18<sup>th</sup> it will be an appropriate time to make all of those decisions happen. It is on the action items list every single meeting so it is on the radar. We are just timing it with the Board's direction and with the Space Coast Credit Union issue.

## **SIXTH ORDER OF BUSINESS**

### **Treasurer's Report**

#### **A. Consideration of Check Register**

This item will be covered at the continued meeting on October 20, 2016.

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

This item will be covered at the continued meeting on October 20, 2016.

## **SEVENTH ORDER OF BUSINESS**

### **Supervisor's Request**

This item will be covered at the continued meeting on October 20, 2016.

## **EIGHTH ORDER OF BUSINESS**

### **Public Comment Period**

This item will be covered at the continued meeting on October 20, 2016.

**TENTH ORDER OF BUSINESS**

**Adjournment**

On MOTION by Ms. Witcher, seconded by Ms. Hernandez, with all in favor, the meeting was continued to Thursday, October 20, 2016 at 1:30 p.m. at the same location.



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Secretary/Assistant Secretary



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Chairman/Vice Chairman