MINUTES OF MEETING

Each person who decides to appeal any decision made by the Board with respect to any matter considered at the meeting is advised that person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which such appeal is to be based.

HARBOR BAY
COMMUNITY DEVELOPMENT DISTRICT

The Special Meeting of the Board of Supervisors of the Harbor Bay Community Development District was held on Tuesday, April 7, 2020 at 6:00 p.m. via telephonic conference call.

Present and constituting a quorum were:

- Dan Leventry, Board Supervisor, Chairman
- Steve Lockom, Board Supervisor, Vice Chairman
- Paul Curley, Board Supervisor, Assistant Secretary
- Ryan Wick, Board Supervisor, Assistant Secretary
- Michael Maurer, Board Supervisor, Assistant Secretary

Also present were:

- Patricia Thibault, District Manager, DPFG Management & Consulting
- Ken Joines, District Manager, DPFG Management & Consulting
- Margaret Alfano, General Manager, Vesta Property Services
- Doug Ivester, Operations Manager, Vesta Property Services
- Julie Cortina, Regional Manager, Vesta Property Services
- Holly Faldetta, Lifestyle Manager, Vesta Property Services
- Roy Deary, Vesta Property Services
- Sarah Sandy, District Counsel, Hopping Green & Sams
- Mike Eckert, Hopping Green & Sams
- Greg Woodcock, District Engineer, Cardno
- Chris Gamache, Cardno
- Matt Davis, Mills Paskert Divers Legal

Audience

FIRST ORDER OF BUSINESS – Call to Order/Roll Call

The meeting was called to order and roll call was performed, confirming that a quorum was present.

SECOND ORDER OF BUSINESS – Audience Comments on Agenda Items

There being none, the next item followed.

THIRD ORDER OF BUSINESS – Business Items

A. Exhibit 1: Health, Safety, & Welfare of Our Community

Ms. Alfano gave an overview of a memo that had been distributed to all supervisors and Board staff regarding short-term, mid-term, and long-term goals for Vesta.

          ➢ Essential Personnel Update

Ms. Alfano noted that essential personnel were working on-site daily, and that Vesta was utilizing staff on property as much as possible, particularly with cleaning and sanitizing.
Ms. Alfano additionally stated that training with Square had been delayed as a result of the outbreak.

B. Exhibit 2: Discussion on Seawall Damage at 611 Pinckney

Mr. Davis noted that a representative from Smart Communications had contacted the District providing notice of receipt of the cease & desist letter. Mr. Davis stated that confirmation had been received that the Smart Communication’s retaining wall that had been built within the District easement had been removed, and advised that further litigation was not needed, as this was the desired result. Mr. Lockom agreed with Mr. Davis’s statements and stated that if further action was needed, Mr. Davis could remain involved.

Mr. Leventry noted that the Board had previously discussed pursuing the engineering costs from Smart Communication, and opined that the costs to attain the proposed $5,000 would be greater than $5,000, recommending against the action.

C. Exhibit 3: Upland Claims Revised Settlement Agreement

Mr. Davis distributed the settlement agreement with final language, giving an overview of the revisions. The overview primarily focused on paragraph 3A, regarding homeowner claim filings against the contractor related to the new seawall being installed, for the period of contractual warranty.

Mr. Leventry made a motion to approve the revised language, with Mr. Curley seconding. During the motion’s discussion, Mr. Curley requested confirmation as to whether the revised language reaffirmed previous District liability rather than expanding it, and Mr. Davis stated that this was so.

During the motion’s discussion, Mr. Maurer asked about the long-term implications of a future seawall failure. Mr. Davis discussed potential actions.

On a motion by Mr. Leventry, seconded by Mr. Curley, with all in favor, the Board approved the upland claims revised settlement agreement for the Harbor Bay Community Development District.

Mr. Leventry opted to start an open discussion with the Supervisors on the ongoing crisis, and gave an overview of actions and directions taken by him and the Board staff. Mr. Leventry stated that as the situation developed in March, he was in daily contact with Ms. Thibault, Ms. Sandy, and Mr. Eckert for updates from county, state, and federal government, making the decision to close amenities following guidance from emergency management personnel. Mr. Leventry additionally noted a request for info from District counsel on the legality of gate closures to mitigate car traffic, which they stated would not be feasible at present.

Mr. Curley asked about the rationale for the District counsel’s recommendation for the closure of amenities on March 16, stating that this recommendation exceeded the scope of the state and county level executive orders. Mr. Curley clarified that this question was not intended to call the action into question but rather to provide guidance for an informed reopening decision. Mr. Eckert stated that he believed their firm had provided this advice to a number of district and energy management companies on March 16, based on what they felt were best practices to reduce close contact transmission. Mr. Eckert noted that some communities had been able to continue to run amenities such as golf courses, due to their ability to retain recommended social distancing, but that the nature of Harbor Bay amenities, along with communications with insurers, made the recommendation for closure necessary. Mr. Curley recommended that, for amenity reopening procedures, the District should adhere to Hillsborough County recommendations and state guidelines where necessary.
Mr. Curley asked about opening the café for delivery in the future, suggesting that this potentially begin after April 30, and specifically inquired about what sources District counsel would consult with beyond Hillsborough and the state. Mr. Eckert acknowledged that he was not in contact with medical experts about the advice to the District, and restated recommendations from the provided memorandum to follow the county in terms of when they begin reopening facilities. Mr. Eckert advised that Departments of Health existed for county and state levels, so complying with their orders would protect the district in terms of liability.

Mr. Curley asked about the status and responsibility of decisions made regarding staffing, particularly personnel allowed to work and plans for paying employees. Mr. Deary advised that Vesta had not withheld or reduced compensation to any employees on-site at MiraBay. Ms. Alfano added that staff members at high risk had been tasked with at-home duties for Vesta, with all other employees continuing to work on property. Mr. Curley asked whether Vesta had consulted the Board regarding this decision, and Mr. Deary clarified that the continued compensation was a company-wide decision communicated through writing internally.

Mr. Curley advised that the Board should consider payments currently being made to Vesta, and asked for clarification as to whether the Coronavirus Aid, Relief, and Economic Security (CARES) Act applied to the District. Mr. Eckert noted that the CARES Act applied specifically to companies with direct employees, which did not describe the District, but that the office was evaluating whether there were any situations with exceptions.

Acknowledging that the CARES Act did apply to Vesta, Mr. Curley asked whether the company was looking to request relief through the Act, which Mr. Deary confirmed. Mr. Deary clarified that while Vesta was not eligible for a number of the main benefits due to being larger than 500 employees, they would be seeking tax credits, a short term compensation plan, and potentially unemployment insurance as part of a multi-pronged approach in order to cover a portion of the company, and therefore District costs for employee compensation. Mr. Curley asked whether Vesta would be putting forward a proposal for the Board meeting scheduled for April 16, which Mr. Deary confirmed, as under a separate cover.

Mr. Lockom requested clarification as to whether the Chair was responsible for the decision-making process regarding amenity closure, and Mr. Eckert stated that the decision on amenity closure was the District Manager’s responsibility as part of public works, per Chapter 190. Mr. Lockom suggested that, as the Board was not all involved with the decision, waiting for a Board meeting to reopen amenities would not be necessary, as this could also be made at the individual’s discretion.

Mr. Maurer asked whether payments to employees made by Vesta were being funded through income received from the District, which Mr. Deary confirmed. Mr. Maurer asked if there was any reason why employee work might stop. Mr. Deary stated that no decision has been made, though the company has been considering plans should facilities remain closed through the month of May, referring back to previous statements on unemployment insurance for employees with reduced hours. Mr. Maurer questioned whether unemployment insurance remained in effect if workers were still technically employed. Mr. Deary noted that discussions on insurance details, while relevant, were likely premature as he anticipated the submitted proposal to primarily stem off of the short term compensation plan. Mr. Maurer requested that keeping employees working remain a priority as long as Vesta was receiving the same income from the District, and Mr. Deary clarified that the unemployment measures would not necessarily be enacted at the very beginning of May.

Mr. Wick opined that the discussion on how Vesta handles staff and salaries was beyond the scope of the Board and the contract with the vendor.
Mr. Curley agreed with Mr. Lockom’s statement on the procedure to reopen amenities, though opined that the Board should be involved in determining what factors play into making the decision to reopen. Mr. Curley recommended that the amenity reopening should broadly be linked to recommendations from Hillsborough County regarding their amenities, making reference to the memorandum distributed by Mr. Eckert. Mr. Deary expressed agreement that emergency management guidance from Hillsborough County should be followed. Mr. Curley questioned this, noting discrepancies with early closures of community tennis and basketball courts, as well as differing café and pool operations, with the guidance on what is permitted by the county.

Mr. Lockom advised that District Counsel had expressed concerns regarding liability associated with keeping amenities open. Mr. Lockom suggested that the District adhere to the strictest guidelines between statewide, county, and Apollo Beach-specific advisories to mitigate liability in the future. Mr. Curley clarified that the purpose of the points on the closure of amenities was not to call the decision into question, but rather to better determine what will inform the amenity reopening.

Mr. Leventry agreed with the recommendation from Mr. Lockom to adopt the safest guidelines, noting a fairly significant senior community within the District.

Mr. Wick noted that the memo from District Counsel provided explanations behind amenity closure, and questioned whether Mr. Curley’s line of questioning stemmed from a desire to discuss specific points on the document, or determine details beyond the scope of what had been written. Mr. Curley opined that the memo was not pertinent to what he was seeking to discuss, and that he was focused on matters around reopening.

Mr. Curley expressed concerns about the District maintaining a stricter policy than the surrounding area regarding amenity closures, noting that residents may go to fitness centers outside of the community, if the fitness center at MiraBay remains closed, thereby increasing the risk of transmission to the area. Mr. Eckert noted that this proposed scenario was based on the individual’s decision to go outside of the community, and stated that he was not particularly interested in assuming risk for the community itself as an alternative. Mr. Wick noted that differences in policies between the county and the state would likely continue, opining that opting for the strictest policies would be the safest choice.

Mr. Eckert noted that without a court judgement, he would opt for the most restrictive rule with any conflicts between state and county orders, additionally noting that he thought Apollo Beach had not been particularly active in issuing specific responses. Mr. Eckert observed that Hillsborough County was largely following state mandates, which in turn had previously adopted policies from Miami-Dade County, and as such did not anticipate significant deviations between each governing body’s recommendations.

Mr. Curley asked whether the items to be discussed at the meeting scheduled for April 16 would be a full agenda, or exclusive to health and welfare matters. Mr. Leventry stated that this was a discussion for management, but noted that past communications had indicated a full agenda, which Mr. Eckert concurred with.

Mr. Curley asked whether the gate closure item previously mentioned by Mr. Leventry would be discussed at this meeting, and Mr. Leventry clarified that under current guidance and executive orders from the state, the Board was not authorized to enact this. Mr. Eckert stated that this would be monitored and that the Board would be notified should any changes in this regard occur. Mr. Curley asked for clarification as to what these applicable changes would look like, specifically whether road closure directives would apply. Mr. Leventry suggested that an announcement of a more restrictive curfew system from the state would likely lead to the gate closure being enforceable. Mr. Maurer noted that a car had been stolen and some additional cars had been
broken into on the first night of the stay-at-home order. Mr. Maurer stated that MiraBay was a secure environment otherwise, and wished to defer to analysis from the staff prior to moving forward with actions involving gate security.

Mr. Curley requested confirmation from District Counsel that Mr. Leventry, as Chairman, would be able to call an emergency meeting for health and safety purposes at any time without need for prior notice. Mr. Eckert clarified that a newspaper notice was still required, but could be expedited for the purposes of an emergency meeting.

Mr. Maurer asked whether there was indication that any residents were having difficulties obtaining food, suggesting a café reopening in order to accommodate. Ms. Alfano stated that there had been no contact indicating this, and noted that Hillsborough County Public Schools was currently operating an initiative for the distribution of breakfast and lunch to children on each regularly scheduled school day, with a school bus stationed at the front of the community.

Ms. Thibault informed the Board that DPFG would continue to monitor Hillsborough County’s website, executive orders issued by the state, and any courses of action on the federal level. Ms. Thibault noted that the daily emails with updated statistics and news stories related to COVID-19 would continue, and that Supervisors would be contacted with any guidance from the county or the state related to openings.

Ms. Alfano stated that Vesta would continue working and communicating with residents through e-blasts and newsletters. Mr. Deary noted that Vesta was currently running food deliveries in three other communities, and would be open to discussion and providing further information in this regard. Mr. Curley asked whether plans to reopen the amenities would be considered as part of the meeting scheduled for April 16. Mr. Leventry stated that this would likely be the case for future meetings until amenities are reopened. Mr. Curley requested specific recommendations from staff, as well as a presentation on how delivery and takeout from the café would be handled, for the next meeting. Mr. Deary said that information would be provided, and Mr. Eckert advised that this would be acceptable from a liability insurance standpoint.

Mr. Curley noted the legal fees accrued by the District for the month, and expressed concerns regarding the writing of a contract addendum, as the Board had not yet agreed that one was necessary.

Mr. Woodcock informed the Board that Cardno’s work was continuing as normal, and inspections were still able to be performed as needed. Mr. Leventry noted that residents were requesting to move boats to the CDD docks as seawall construction and repairs were ongoing, and Mr. Woodcock stated that a relevant agenda item would be included. Ms. Alfano noted that discounts with the marina had been acquired and could be provided.

**FOURTH ORDER OF BUSINESS – Audience Comments**

There being none, the next item followed.

**FIFTH ORDER OF BUSINESS – Adjournment**

On a motion by Mr. Leventry, seconded by Mr. Lockom, with all in favor, the Board, at 7:17 p.m., adjourned the meeting for the Harbor Bay Community Development District.