

TURNBULL CREEK  
COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Turnbull Creek Community Development District was held Tuesday, November 13, 2018 at 6:00 p.m. at the Murabella Amenity Center, 101 Positano Avenue, St. Augustine, Florida.

Present and constituting a quorum were:

Brian J. Wing	Chairman
Lee Clabots	Vice Chairman
Chuck Labanowski	Supervisor
Wil Simmons	Supervisor
Aage G. Schroder, III	Supervisor

Also Present were:

Ernesto Torres	District Manager
Jennifer Kilinski	District Counsel
Mike Yuro	District Engineer
Mark Insel	Vesta/Amenity Services Group
Dan Fagen	Vesta/Amenity Services Group
Lourens Erasmus	Vesta/Amenity Services Group
Michael Johnson	Duval Landscape Maintenance
Chris Railing	Future Horizon
Andy Howard	Ancient City
8 residents	

The following is a summary of the actions taken at the November 13, 2018 meeting. A copy of the proceedings can be obtained by contacting the District Manager.

**FIRST ORDER OF BUSINESS**

**Roll Call**

Mr. Torres called the meeting to order at 6:00 p.m. and called the roll.

Mr. Wing stated we want to recognize that this is Aage Schroder's last meeting. Aage has served on this board for at least eight years and served two years as chairman and we want to recognize his service to the residents of our community and acknowledge his hard work and leadership over that time. We will miss you.

Mr. Schroder stated I have learned a lot and it has been an interesting job with tough decisions to be made and I have confidence that the board will make good decisions in the future.

Mr. Wing presented Mr. Schroder with a plaque in appreciation of his service.

**SECOND ORDER OF BUSINESS**

**Audience Comments**

There being none, the next item followed.

**THIRD ORDER OF BUSINESS**

**Staff Reports (Part 1)**

**A. Landscape Manager (Presenter: Duval Landscape)**

Mr. Johnson gave an overview of the work accomplished since the last meeting.

**B. Engineer (Presenter: Mike Yuro)**

**1. Report**

**2. Discussion of 312 N. Bellagio Pond Bank**

Mr. Yuro stated the homeowner at 312 N. Bellagio complained about the pond bank behind their home, it is the end of a pond and several houses are around the corner of the pond. There was not the classic erosion we see, however, what was obvious was the entire pond bank on the inside corner of the pond was poor material. While we were there Lourens was walking out there and was going 8"-12" deep in the mud on the pond bank. My opinion is that there is poor soil in that pond bank that is just holding water and is like a mud bath almost just underneath the grass.

Mr. Wing asked what is the extent?

Mr. Yuro responded it would be 60-70 feet around that corner and come down to the water's edge and that would be at least a couple of feet of material to excavate and put in clean material.

On MOTION by Mr. Clabots seconded by Mr. Labanowski with all in favor the engineer was directed to get estimates for the repair of the pond bank behind 312 N. Bellagio and place it on the priority list of pond banks to be repaired.

**3. Discussion of 1925 and 1929 Amalfi Court**

Mr. Yuro stated we have issues with the pond bank in three areas, on either side of 1929 there is erosion and appears to be more of the classic type erosion washing out from the top and it

is getting bigger and creating a channel. There is a drain pipe just inside the homeowner's fence. It could be a yard drain, it could connect to the gutters but it is the kind of 4" pipe that goes under the ground and turns up and it is designed that the water runs and then it comes up and gives a more gentle discharge but on the downstream side of that is where we are having the erosion issue. On the other side between the houses is a much bigger erosion issue that already has a several foot drop in it. That one appears to be like it is starting from underneath. I would put this on the list of the next to be repaired because of the size of the hole. In the past that type of failure has been an indication that an underdrain is necessary to collect that water underneath the ground and get it to the ponds to keep this from happening and is probably what I would recommend.

Mr. Simmons stated I want to make sure we address the cause and not just the symptom.

Mr. Yuro stated if you can determine the cause but here you have fairly poor soils that is contributing to a lot of the issues, it doesn't mean it is the cause of all of them. In this particular area it is not obvious to me why it is happening.

Mr. Wing stated there are two issues, one you don't know the cause but the other appears to be a pipe put in by a homeowner.

Mr. Yuro stated I struggle to point a finger at a resident in that particular case and the reason is all these lots are designed to slope towards the lot line and generally towards the pond. If that pipe wasn't there the water would probably still be getting there. In the first case the erosion is happening right after the location of the pipe discharge. It leads me to conclude that it is likely connected.

Mr. Erasmus stated those two spots were washed out about a year and a half to two years ago. One was so bad the mowers couldn't go around. When the gentleman put his pool in we put more dirt in those holes so that the mowers can continue to use that side of the bank. That issue is not brand new, it has happened in the past. Last time we put in dirt and compacted it as hard as we could with manual labor. The drain is a yard drain sitting close to his pool area. I think when they built the pool they changed the elevation in the backyard, the water was damming between him and his neighbor and the way to get rid of that water I guess was to put in a yard drain.

Mr. Wing stated we don't know if there was any HOA requests or approvals.

Mr. Labanowski stated the HOA is involved with this, the pipe was put in without approval from the ARC so the HOA is involved asking the homeowner to put in a request for that line.

More than likely the HOA will have them remove that pipe so it flows to the front and not the back and that might take care of one issue.

Mr. Schroder stated regardless of what the HOA does if it impacts the CDD property that is our issue and we need to make sure that whatever gets approved they return that back to the proper elevation and sheet flow to the extent possible.

Mr. Wing asked when the HOA gets requests for drainage issues do they consult with the CDD?

Mr. Labanowski stated normally Lourens will say we have an issue with drainage and so forth and if he says they put a pipe in and neighbors said a pipe was put in, it was not put in with approval and it was brought up at the architectural review meeting. They will have to show where it is coming from and where it is going and the HOA will more than likely have them send it to the street and close this line down.

Mr. Wing asked who is going to be responsible for the repair?

Mr. Labanowski stated probably the CDD is going to have to come back and say this is the definite cause, but the board has no way to fine a homeowner. How do you get restitution from the homeowner?

Ms. Kilinski stated it would be the same as you would do with any contractor who would do damage to the district, you would send a demand notice and you could recover fees that way. We have had that in other districts on other pond issues and generally they are pretty agreeable once you sit down and talk about what the legal fees might be, in other words make that recovery especially when you have evidence of impact to the district's improvements.

Mr. Usilton stated I live next door to the homeowner you are talking about and that hole that is back there is not caused by that pipe because that pipe was put in when he put in the pool. That hole was already there but then it was filled in and it immediately rained and washed it away and Lourens came back and put in more dirt. It is still caved in but it was not caused by that pipe.

Mr. Clabots stated I would like Mike to pinpoint as best he can the cause of these issues.

### **C. Future Horizons**

Mr. Torres stated Chris is here to discuss item 11 on the agenda, which is discussion of pond spraying. This came up at the last meeting and you asked Chris to come to see what direction from the board if any from previous guidance we have given with regard to treating the ponds.

Mr. Railing stated I believe you have questions about the guidelines that were taken on last year for water management about the buffers and vegetation buffers. A lot of folks are not happy seeing all the emerging vegetation out of the ponds but falls within the guidelines of what the water management district likes to see but is not the vegetation we want to see in those buffers.

The FWC would like to see more native vegetation in the littoral shelves and buffer zones but they are not aggressive in growth and typically have to be started in an artificial pond like this. We need a decision on what you want to do as far as the littoral zones and buffers, leave the guidelines in place, go back to the old system of eradication or start shifting to more native vegetation and try to stay with the guidelines, which long term is the better option but we have a lot of acreage that would have to be planted artificially initially to get them started. There would be some cost involved in putting in native vegetation. Not only putting in native vegetation but getting rid of a lot of the alligator weed before the plants go in. I will maintain the ponds to whatever you decide on this issue. Any vascular plant growth in the ponds is better than none at all. Aeration is the only thing that has worked to increase microbial action, increase oxygen level and keep organics from building up that will help with the midges. It is an expensive option and would have to be done in stages and set aside X amount of dollars per year for X amount of water bodies and move through the development.

The board directed Mr. Railing to obtain proposals for native vegetation and sub-surface aerators for the next meeting and staff was directed to include in the newsletter a reminder to not over fertilize, don't blow grass clippings into the street even if they are not on a pond.

#### **FOURTH ORDER OF BUSINESS**

#### **Consideration to Extend Ancient City Soccer Agreement (Presenter: Ernesto Torres)**

Mr. Torres stated Mr. Howard from Ancient City is here to ask the board for an extension into next season.

Mr. Howard stated thank you for the opportunity to set up the trial, from our perspective it was very successful. The only negative we had under my management was we had an illegal car parked at Pescara with one of the parents parking on the grass verge by the side of the car park. We had a complaint and I offer sincere apologies I do try to observe that closely but in this case I didn't spot that one car. Other than that we didn't have a parking issue. We would like your consideration in our use of the area through the 2019 season. We would like to ask for consideration to try to prune the general playing surface during the season and to bring in two

porta-potties to the car park area at Ancient City Soccer's expense that will be maintained on a weekly basis and will be removed at the end of the season. We would like to be able to use the Murabella field at the far end if we have an uptick in demand to run the older age group on Saturday morning for one or two games while Pescara is being used for the younger age group. We would work closely with Mark to make sure we didn't get in anyone's way. We would like to be able to enter into the mymirabella.com to have visibility of the Ancient City Soccer offering. For the longer term view we would like to ask for consideration of the ground on Messina Drive that joins Porta Rose Circle and skirts the soccer field at the northeast end to provide the field with more usable parking space and use the field for more than just soccer.

Mr. Wing stated I did see a lot of positive comments from kids and parents.

Mr. Clabots stated parking is an issue, I have seen cars parked in the handicap spots without a handicap sticker on them and I have seen people parking SUVs on the corner and making the corners hard to navigate. There was a truck parked on the pond bank. I think you are going to have to pay more attention to parking.

Mr. Simmons asked Mark, what is your take because I know you want to use the amenity field for all the kids. What is the current status? Is the field to capacity or do we have room?

Mr. Insel stated it all depends on how many teams and how many people are coming in. We have our amenity soccer; our contract gives us the sole rights for programming events. We have amenity flag and amenity soccer and it is twice a year for both. They use those fields they take up minimal space and have no needs like this. We have an amenity soccer league that plays out there not to mention residents if you want to go out there. It is similar to the swim team we do this and the rest of the residents would lose their opportunity to use it. It is not packed all the time.

Mr. Fagan stated over the years we have grown our youth program and our sweet spot is the recreation. Whereas CAA and Ancient City is more competitive, but we have 33 teams over 300 youths from 5 – 14 residents who use that field for that purpose. A number of years ago we did practices here and did games at Heritage Landing because we have had issues with the turf so many years ago the board said you can't use the field because of the turf so they are paying \$5 additional to play games at Heritage Landing. We have over 300 residents using that field for practices, you have the need and I wouldn't want it to impede the program that is already successful here.

Mr. Wing stated the only conflict might be resident groups or men's soccer and my guess it is something that can be worked out.

Mr. Simmons stated if the space is there and not being utilized we should accommodate them.

Mr. Labanowski stated you may have an issue with the porta-potties because there are kids out here who tip them over and that would create an issue. Also we have to worry about the residents during the hot season that smell the porta-potties.

Mr. Torres stated we experienced the manual liability forms, and it was somewhat challenging. I would ask if there is any way that the process be automated?

Mr. Howard stated yes in our administration process we don't have that demand but we can build it into our software program so a World Golf Village resident applying to play they can get that form as part of the check-out process.

Mr. Torres asked can you tell me the 2019 season dates?

Mr. Howard stated I don't have the date yet but we would start toward the end of February/early March and to through to mid-May and then late August to early November but I will confirm that dates within the next seven days.

Mr. Erasmus stated from November to early March the landscapers only mow once a month and any request for additional mowing would be an additional expense.

Ms. Kilinski stated we will need to supplement the license agreement with some of these other considerations but that can be done by an addendum to the existing contract.

On MOTION by Mr. Wing seconded by Mr. Clabots with all in favor the agreement with Ancient City Soccer was approved through 2019 season; spring (February – May) and Fall (August – November) pending coordination with legal counsel, Vesta staff and Lourens.

**FIFTH ORDER OF BUSINESS**

**Ratification of Agreement with Dual Asphalt  
(Presenter: Ernesto Torres)**

Mr. Torres stated this is a placeholder because we have not received Duval Asphalt signed agreement at this point. At the last meeting we had a sinkhole in the soccer field we were going to address and we had approval not to exceed \$10,000. Lourens received three bids and we also consulted with Mike Yuro during the process and we selected the lowest bidder that was Florida Carter and upon receiving our agreement they amended the agreement with a pen throughout

basically did not want to warranty their work. At that point we pursued Duval Asphalt and that is where we are at this point. As soon as we receive our agreement back we will be under contract.

Mr. Labanowski stated if they can't get started right away we need to put up a more permanent barrier to keep someone from falling in the hole.

## **SIXTH ORDER OF BUSINESS**

### **Consideration of Proposal for Website Compliance (Presenter: Ernesto Torres)**

#### **A. VGlobal Tech**

#### **B. Unicorn Web Development, LLC**

Mr. Torres stated at the last meeting I brought the VGlobal Tech proposal in the amount of a one-time fee of \$1,750 to bring the website into compliance and you requested I obtain more bids. We have provided the Unicorn proposal and that is a one-time fee of \$2,495.

Ms. Kilinski stated federal regulations were promulgated in 2015/2016 for ADA compliance for websites for Title 1, title 2 and Title 3 entities. Those rules were put on the shelf with the new administration so there are not any federal rules that exist on ADA compliance for technology. There was a rash of lawsuits starting on the west coast that had different outcomes in terms of what ADA accessibility requires. About eight months ago South Florida got brought into several lawsuits and those were settled. Your district was included in the settlement agreement, any district we represented was included by that particular plaintiff by that particular lawyer. It never got to court, there has not been a determination on what ADA compliant is but what we are hearing and what some courts have ruled in other states is that those rules should have been passed and ADA compliance is required in technology. Special districts are a Title 2 entity, similar to cities and counties and because we are hearing about more lawsuits coming out with new plaintiffs, we are recommending every district as is your insurance company for coverage to go ahead and start making moves towards making these all ADA compliant. VGlobal Tech is doing a number of the websites. Part of the advantage of using VGlobal Tech we have already negotiated a master services agreement for all the districts that are already on board with VGlobal Tech. It is a fairly complicated agreement because we are making sure that all the ADA regulations now and going forward are included within those parameters.

Mr. Torres stated in this community you have two websites, the CDD website where we post the agenda packages, budget, audits and then you have murrabella.com that we post our



community events. What is not clear right now if those websites also have to be converted. There can be more changes to follow but we will be in line with the set up for this one.

On MOTION by Mr. Wing seconded by Mr. Simmons with four in favor and Mr. Schroder opposed the agreement with VGlobal Tech in the amount of \$1,750 was approved.

Mr. DelBene stated the Department of Justice recently removed their recommendation for ADA compliance for Title 2. What exactly is being updated from a compliance standpoint since there is no federal or state standard for ADA compliance under Title 2?

Ms. Kilinski stated not only have we done a ton of research regarding the issue but there is also an 11<sup>th</sup> circuit opinion stating that Title 2 entities are required to bring technology into ADA compliance. It has been all over the news, which is what really spurred this first-year lawyer to get his aunt to file lawsuits all over the state to make a few million dollars pretty quickly and again it is public entities. Unfortunately, our insurance carrier has provided that every district that it covers needs to come into compliance within 18 months or they are considering not covering the district in the event of a lawsuit. It is not something we are really exercising as an option. There are things that people are doing that would be less and we will bring back in January rules of procedure that pertain to a definition of what meeting materials is. You may see less information on the district's website, only what is required by Chapter 189 so you are not having to deal with voluminous documents and conversion to ADA but I don't think there is an option if you were to have a lawsuit to not at least start looking at making those changes.

Mr. DelBene stated this is insulating us from potential lawsuits but also putting us in compliance with our insurance carrier who said if you don't do this we are not going to defend.

Ms. Kilinski stated right.

Mr. DelBene asked what is being added or subtracted?

Ms. Kilinski stated it is not adding. There are two different buckets of ADA compliance that pertains to website. One, is what you think of sort of the skeleton of the website it's font, characters and if you have pictures they have to have descriptive terms associated with them so if I'm blind and have it going through a reader it is telling me in the right order what the website entails. Even takes into account the way your text reads, not left and right but up and down. There is a skeleton of the website they build on ADA compliant format they can also be updated as

regulations may come into fruition in a couple years. The second is the documents that get uploaded for our website will have to be in PDF/A format, again what that means if I were to take an agenda package and put it in my reader it will read it to me. Those are the two structural changes to the website to make it ADA compliant.

## **SEVENTH ORDER OF BUSINESS**

### **Discussion of HOA Contributions (Presenter: Ernesto Torres)**

Mr. Simmons stated I'm concerned about what was said at the last HOA meeting. At one time they had \$100,000 for the CDD, \$100,000 for themselves. They detailed what they have spent and done for us. They are proposing to increase their fees by \$30. I want to know how much money is left there but the implication is that the HOA fee is going up because of the money that they have to given to the CDD. We bent over backwards to make sure the CDD fees stayed the same and I don't think it is fair for them to come in and raise their fee and attribute it to us. Whatever funds they have for us they should give it to us, we are a separate entity and we should be able to manage this. All of us sitting here have the ability to manage that. If not then keep the money and don't raise the fees.

Mr. Clabots stated as the then treasurer of the HOA we crafted that design. It was \$100,000 HOA would keep for its purposes and \$100,000 for investment and up to \$100,000 to provide moneys for worthwhile projects in the Murabella Community that the HOA might spend money on. It was not designed to say CDD here is \$100,000, it was designed to say, are there projects that are worth spending that money on such as covers for the playground equipment and things like that. If the HOA suggested that they are going to raise fees because they are giving us that money I don't know where that comes from, I think that is a misrepresentation of the original intent of that motion by the HOA board. I don't know where it comes from.

Mr. Labanowski stated the main reason for the increase is because over the past four years we have had \$9,000 deficit spending every year. Disregard the \$100,000 that is set aside and the savings, disregard the \$100,000 that has been set aside for possible community improvements. We have been \$9,000 deficit spending and that is the reason for the increase. Also we have other issues with the property management company and that will probably be changing. If it was said that the increase is due to the CDD that was mistaken.

Mr. Abush stated I am on the HOA board and I was one of the people that made that statement and the reason that statement was made is the way the budget was presented to up by

the management company. It included a line item that was over \$11,000 that contributed to the deficit and that \$11,000 was a contribution the HOA was going to make to the CDD to support different events that were going to be run here. If you looked at the way the budget was constructed and presented to us \$11,000 over 1,000 homes is at least a \$10 increase for everybody in the HOA. All I tried to say is that is where that money is going to go based on the budget that was put together. \$10 of the \$30 increase was money that was going to go to the CDD. The additional moneys we put in there is that now that we are built out we are not building our funds we are depleting our funds every year in the HOA. This \$100,000 or whatever the number is, is going to eventually deplete to zero because when you are running negative that is what happens. The president of the HOA didn't like the fact that we were running negative every month so he said we should contribute and not run negative every month and account for different things that happen. One of the reasons was because we didn't want to continue to take money out of our savings.

Mr. Simmons stated I have no problem with that, the only things I'm saying is if you have a deficit that says you can't afford to take on more responsibility, but you can't say that contributing to the CDD is justification of the increase.

Mr. Clabots stated I have always believed that the HOA should pay for community activities. The CDD picked it up because the HOA wasn't up and running at the time but the activities and events for the community are really an HOA function. The way the HOA amassed \$300,000 is that every home that got completed here a portion of your settlement went over to the HOA. Since all the homes are built the HOA is not going to get that income. I agree with Wil you can choose to overspend your budget every year and you can take it out of these funds and that is your choice as a board. If you don't want to take it out of those funds then you need to increase the HOA fees to the residents that live here, but it has nothing to do with what the HOA contributes to the CDD for events. I thought the HOA should pay for them and manage the events because I don't think that is CDD business. We haven't changed that structure but that contribution to events is the HOA's responsibility and any implication that the fees have to go up because the CDD needs money or isn't doing its job isn't right.

A resident stated I don't see how the HOA can manage the events because they are tied in with Vesta and Vesta is tied into the CDD.

Mr. Wing stated the HOA can coordinate with Vesta for using the facilities.

**EIGHTH ORDER OF BUSINESS**

**Consideration of Resolution 2019-01 Election of Officers (Presenter: Ernesto Torres)**

On MOTION by Mr. Labanowski seconded by Mr. Wing with all in favor Resolution 2019-01 adding Ariel Lovera as an assistant secretary was approved.

**NINTH ORDER OF BUSINESS**

**Consideration of Resolution 2019-02 Authorizing and Approving Change of Designated Registered Agent and Registered Office (Presenter: Jennifer Kilinski)**

On MOTION by Mr. Wing seconded by Mr. Labanowski with all in favor Resolution 2019-02 designating Jennifer Kilinski as registered agent was approved.

**TENTH ORDER OF BUSINESS**

**Consideration of Resolution 2019-03 Amending the Fiscal Year 2018 Capital Reserve Budget (Presenter: Ernesto Torres)**

Mr. Torres stated Resolution 2019-03 will transfer funds into the capital reserves, for FY18 we need to add \$115,000 to cover the expenses in capital reserves.

Mr. Schroder stated I would ask that “are” be changed to “is” in section one.

On MOTION by Mr. Simmons seconded by Mr. Labanowski with all in favor Resolution 2019-03 was approved as amended.

**ELEVENTH ORDER OF BUSINESS**

**Discussion of Pond Spraying (Presenter: Ernesto Torres)**

This item taken earlier in the meeting.

**TWLEFTH ORDER OF BUSINESS**

**Staff Reports (Part 2)**

**A. Attorney (Presenter: Jennifer Kilinski)**

There being none, the next item followed.

**B. Manager – (Presenter: Ernesto Torres)**

There being none, the next item followed.

**C. Operations Manager (ASG) (Presenter: Lourens Erasmus)**

**1. Report**

A copy of the field operations report was included in the agenda package.

**2. Consideration of Proposals for Pool Furniture**

Mr. Erasmus stated the cheapest option is to have the pool furniture refurbished and in the reserve study there is money to do it. This company has done work for us in other CDDs and they do quality work.

On MOTION by Mr. Wing seconded by Mr. Clabots with all in favor the proposal from Coastal Carolina Supply in the amount of \$21,596 to refurbish the pool furniture was approved.

**3. Consideration of Fitness Room Equipment/Flooring**

Staff will prioritize replacement of the fitness equipment and bring the recommendation to the next meeting.

**D. Amenity Center Update (Presenter: Mark Insel)**

**1. Report**

A copy of the amenity center management report was included in the agenda package.

**THIRTEENTH ORDER OF BUSINESS      Approval of Consent Agenda (Presenter: Ernesto Torres)**

- A. Approval of Minutes of the September 11, 2018 Meeting**
- B. Balance Sheet as of September 30, 2018 and Statement of Revenues & Expenditures for the Period Ending September 30, 2018; Month-to-Month Income Statement; Assessment Receipt Schedule**
- C. Approval of Check Register**

On MOTION by Mr. Simmons seconded by Mr. Labanowski with all in favor the consent agenda items were approved.

**FOURTEENTH ORDER OF BUSINESS      Other Business**

There being none, the next item followed.

**FIFTEENTH ORDER OF BUSINESS      Supervisor's Requests and Audience Comments**

Mr. Schroder stated I have enjoyed my time on the board, I appreciate the plaque and will be in the audience in the future.

A resident asked do we cut the crape myrtles in January? Not only will they bloom better but it will make the neighborhood look better.

Mr. Wing stated they are supposed to be cut back.

Mr. Erasmus stated they normally don't cut the crape myrtles back, they lift them up from the ground when they start leaning down.

Mr. Wing stated ask them what they would charge to trim them back.

**SIXTEENTH ORDER OF BUSINESS      Next Scheduled Meeting – January 8, 2019 at 6:00 p.m.**

Mr. Wing stated our next meeting is January 8, 2019.

On MOTION by Mr. Simmons seconded by Mr. Clabots with all in favor the meeting adjourned at 8:27 p.m.

  
Secretary/Assistant Secretary

  
Chairman/Vice Chairman