

**MINUTES OF MEETING  
STONEBROOK WEST  
COMMUNITY DEVELOPMENT DISTRICT**

The regular meeting of the Board of Supervisors of the Stoneybrook West Community Development District was held on Wednesday, February 29, 2012 at 5:45 p.m. at the Town Center, 1201 Black Lake Boulevard, Winter Garden, Florida.

Present were:

George Morgan  
Hector Clemente  
Sandra Stern

Chairman  
Vice Chairman  
Assistant Secretary

Also present were:

Gary L. Moyer  
Travis Rentz  
Dave Kelly  
Randy Miller  
Several Residents

Moyer Management Group  
Attorney  
Engineer  
Community Manager

**FIRST ORDER OF BUSINESS**

**Roll Call**

Mr. Moyer called the meeting to order and stated the record will reflect Supervisors Morgan, Clemente and Stern are present which constitutes a quorum so we can proceed with the agenda.

**SECOND ORDER OF BUSINESS**

**Approval of the Minutes of the November 30, 2011 Meeting**

Mr. Moyer stated each Board member received a copy of the minutes of the November 30, 2011 meeting and requested any additions, corrections or deletions.

Mr. Morgan stated on page 5 in the third paragraph the word *some* should be *sum*.

Mr. Clemente stated also on page 5, in the middle paragraph \$156,000 should be \$136,000.

Mr. Moyer asked subject to those changes is there a motion to approve the minutes?

On MOTION by Mr. Morgan seconded by Ms. Stern with all in favor the minutes of the November 30, 2011 meeting were approved as amended.
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**THIRD ORDER OF BUSINESS**

**Status Report – Permitting**

Mr. Moyer stated Mr. Kelly has a report which I distributed. Dave do you want to review what took place on this inspection?

Mr. Kelly stated this was a site inspection I and another professional engineer from the firm conducted. We walked the site and prepared a summary of major items discovered and a potential course of action. These are all Stoneybrook Venture and Lennar permits.

Mr. Clemente stated on page 9 of our minutes I asked and was very specific that I wanted to participate in this process. I asked you to notify me when the inspection was to be held and I was not.

Mr. Kelly responded this was not the St. Johns River Water Management District inspection. This was our inspection and is why I did not notify you. Based on our inspection the largest item was the clearing of the conservation area behind the lots along Black Lake Boulevard; those along the conservation easement near the buffer. I called the environmentalist and asked if he was aware of this issue and he said no. So this is probably our biggest issue right now. In my opinion we have to notify the district and put this on the record. This is quite a large issue and you can tell by the vegetation they came back and re -cleared it.

Mr. Clemente asked how far does the homeowner's property go?

Mr. Kelly responded the way it is platted they do not own any of it.

Mr. Clemente stated typically St. Johns does not want you to disturb any of that. They put up a white post sign behind your house.

Mr. Kelly stated they actually put out some of the signs and there is a photo of them in the report.

Mr. Miller stated we had two pools installed in that area so people are pulling in and out of there on a regular basis.

Mr. Morgan asked what is your recommendation?

Mr. Kelly responded we will notify the district this has occurred and see what actions they want to take. I do not know if you or anyone else wants to notify the residents but I would probably let St. Johns come out and look at that particular area. We have an obligation to notify the district to be in compliance before they witness this.

Mr. Moyer asked who is the beneficiary of the conservation easement?

Mr. Rentz responded St. Johns would be the beneficiary.

Mr. Moyer stated the reason I ask is obviously we do not have enforcement power. We cannot go out there and write citations and demands but St. Johns can.

Mr. Morgan asked if they become aware and they do just that; who do they issue the summons to?

Mr. Clemente responded it goes to Stoneybrook West Joint Venture.

Mr. Moyer stated I assume Dave you are looking for some direction from the Board as it relates to whether we put Lennar or Stoneybrook Joint Venture on notice of your findings and look for them to do the remedial actions. If we do that, and I have to think it is a logical thing to do, and send a cover letter to them we need to make clear this is not necessarily the final conclusive action item list. This is only what you found but if St. Johns comes out and finds 23 pages more of what has to be done we are not relieving them of that obligation. I do not want them coming back to the Board saying *you told us what to do and now we are done*.

Mr. Miller asked what is the incentive for Lennar to do anything? We are ten years into the project and what presumably should have been turned over a year ago. They are not moving on anything they are concerned about on multiple levels so how are we going to get them to do something.

Mr. Clemente stated another issue for the Board regarding turning over of the roads, etc. is there are fines associated with that. It is under their name and if there are any fines associated with this they are still liable and we are talking about big environmental fines.

Mr. Miller stated I appreciate that but from a record standpoint they have known about the fines or should have known about them for years and yet there has been no action.

Mr. Clemente stated in 2008 there was a fast transfer and the developer washed his hands and turned it over to the CDD and that was one of the discussions we had; we never accepted it.

Mr. Morgan asked was Lennar informed at that time?

Mr. Clemente responded we had meetings with the residents and to my knowledge they were.

Mr. Miller stated that was at the time of transitioning the Board from developer to homeowner. Three or four members were voted onto the CDD Board at that particular time and the Board voted by majority, which was the new members as opposed to the old members, not to accept any permits without being properly turned over.

Mr. Clemente stated I requested a letter be written by our legal counsel saying it was not accepted at that time.

Mr. Morgan asked are you sure it was requested?

Mr. Clemente responded yes.

Mr. Miller stated we have been sitting on these permits four or five years with the understanding Lennar Joint Venture understands the possibility of the CDD complying or not complying and they still have not taken any action to address this issue. So my point is what is the squeeze, or how can we get them to make this happen because this report is something we can copy and say *these are the initial findings*.

Mr. Morgan stated the only thing to say which may create some reaction on their part is that we are aware of some issues and we are obligated to inform SJRWMD so it does not matter if it is convenient, we are advising them before we do so and if they are to take any action or respond please let us know. I suggest this be in writing to them.

Mr. Rentz stated they are holding the permits and I assume we are not going to take responsibility of these issues or correct them so you have contingent liability on the permit. I would assume at some time you would accept the permits for the storm water management system.

Mr. Miller stated I understand the legalities and liabilities and are under the assumption Lennar and Stoneybrook Joint Venture have known about the possibility of their liability; but again this would be an assumption. I do not know if anything else can be done. My assumption from a community standpoint and the CDD maintenance is I cannot do anything without some sort of assumption of responsibilities to maintain all of these areas.

Mr. Rentz asked have there been meetings with the district to talk about turnover so someone else can operate them? Is there any discussion about who is willing to take on responsibility of providing some type of maintenance?

Mr. Morgan asked does anyone here foresee any action they have taken which exonerates them for the upgrade or completion of the system to a satisfactory state so they can be transferred? Does anyone know of any action to make this work?

Mr. Clemente stated I have personally seen letters from St. Johns Water Management District when I was there making copies and before I came on the CDD Board. I saw letters of

violation with St. Johns Water Management District naming certain violations associated with the ponds.

Mr. Morgan asked has any action occurred as a result of that?

Mr. Clemente responded I am not aware of any action resolving this because I have not seen any follow-up letters. I personally am afraid St. Johns and Stoneybrook Joint Venture are going to try to put it on us and there was a letter to that affect from Mr. Beeman who was the president of the HOA at the time. He signed a letter on December 8<sup>th</sup> which I shared with the Board and said *I am sending it over to the CDD can we discuss the legality* and I believe legal said it was not binding and there was no follow up and that is what I remember.

Mr. Morgan stated that is a legal question and if we should get an opinion it is not our obligation. It has been my understanding for some time these are their permits. The sub-question is have they been informed in writing of that. I would suggest we send a letter and maybe include in the letter as well saying, *here is a report we are obligated to notify St. Johns, this is your responsibility and we wanted you to be aware. Please take action as soon as possible and advise*, so they know right away to notify St. Johns.

Mr. Moyer asked do you want to make that a motion Mr. Morgan?

On MOTION by Mr. Morgan seconded by Ms. Stern with all in favor to send a letter to Lennar/Stoneybrook Joint Venture with site inspection report stating CDD is obligated to notify St. Johns Water Management District and this is their responsibility and please act as soon as possible was approved.
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Mr. Morgan stated I think it should come from counsel.

Mr. Clemente asked will you please check if Lennar did a letter to that affect.

Mr. Rentz stated we will locate that and include it within the correspondence to the district with the report. The Board is aware this may require some communication as well from our firm and Mr. Kelly to make sure we receive the information we need for our letter regarding the violation report.

Mr. Morgan stated *these are our findings*; they can interpret them any way they want.

Mr. Miller stated and just so you know the HOA is willing to allow access to vendors to clean up.

Mr. Clemente asked is it possible to send a notice to the homeowners informing them the signs behind their houses are not to be moved?

Mr. Miller stated I think it would be better for the letter to come from the CDD versus the HOA.

Mr. Moyer asked can you send out a newsletter?

Mr. Miller responded I can, but I do not know how effective it will be.

Mr. Morgan asked Hector, what is your objective?

Mr. Clemente responded I learned from experience. When I first moved here I cleared the brush up to the white sign and received a nasty letter from St. Johns threatening me with a fine of up to \$1,000 per day. They came and checked and the issue went away; but I do know if you remove a sign they will threaten you with a fine of up to \$5,000 per day.

Mr. Rentz stated as it relates to the HOA most of your declarations usually have some provision of what you can and cannot do with regard to the conservation area.

Mr. Miller stated I will check.

Mr. Rentz stated it may not be what you can or not do but I have seen where it allows the HOA to enforce it and fine a homeowner for going into a conservation area.

Mr. Clemente stated but I think it is an issue for St. Johns Water Management.

Ms. Stern stated it is an issue to our homeowners.

Mr. Clemente stated yes, but inform them they are in violation and they may be notified by St. Johns Water Management District.

Mr. Morgan stated that should be clear.

Mr. Miller stated I am not adverse to notifying homeowners regarding restrictions.

Mr. Rentz stated they are going to say we saw them do it.

Mr. Miller stated you are right. If it comes across as a violation letter for responsibility they will say; *we did not do it, prove that we did.*

Mr. Morgan stated I understand but we can say these are the rules and do not violate them and we know what the current conditions are.

- FOURTH ORDER OF BUSINESS**
- A. Financial Statements**
- B. Check Registers**

**District Manager's Report**

Mr. Moyer stated the first item is the financial report and it is noted in the financial statements we have collected 92% of our assessments as of January 31<sup>st</sup>. Last year at the same time we were 86% so we are ahead of where we were a year ago. On the expense side we were \$3,500 under on the administrative portion and the balance of our budget is to be distributed to the HOA. We are \$13,000 under in that category so overall we are in great shape. We also have the check register which was provided to the Board. If you have questions I will try to answer them, otherwise, I ask for a motion approving the financial statements.

Mr. Clemente asked what is \$4,840 shown as an Interfund Transfer-In on page 5?

Mr. Moyer responded it is money which came out of the remaining funds we were receiving out of the Construction Trust Fund as part of the refunding bonds that were transferred into the General Fund.

Mr. Morgan asked have those been expended?

Mr. Moyer responded no, they were in the fund balance.

Mr. Morgan stated all of the items on the check register will be included in the financials as part of your comments.

On MOTION by Mr. Morgan seconded by Mr. Clemente with all in favor the financials for the period ending January 31, 2012 were accepted and the check register for the period November 1, 2011 to January 31, 2012 was approved.

**C. Approval of Requisition No. 103**

Mr. Moyer stated under approval of requisitions I have two for the Board; Requisition No. 103 in the amount of \$610 to McIntosh and Requisition No. 104, which I just received and brought with me, in the amount of \$146.25. This is for work they have done on the permit issues.

Mr. Morgan asked are they budgeted?

Mr. Moyer responded they are part of the capital expenditures that come from the money which came from the bond issue construction account.

Mr. Morgan asked so they have been approved in that regard?

Mr. Moyer stated yes.

On MOTION by Mr. Morgan seconded by Ms. Stern with all in favor Requisitions No. 103 and No. 104 to Donald W. McIntosh Associates, Inc. were approved.

**D. Tree Removal in Conservation Area**

Mr. Moyer stated item D is one we have discussed before and Randy can update us on the status of the tree removal.

Mr. Miller stated it is still there; Lennar refuses to respond. They did have an expert landscaper who told them it was fine. The HOA requested that statement be placed in writing and we have heard nothing from Lennar. I have a quote to remove the tree to a stump for \$1,000 and can proceed if that is a cost the Board wants to incur.

Mr. Moyer stated I am assuming there is a homeowner or more than one homeowner affected by this tree.

Mr. Miller stated there is one homeowner affected and they are unaware of the tree being in the condition it is.

Mr. Moyer stated and we are saying there is a possibility in a storm the tree could fall on a house.

Mr. Miller stated that is what my expert is saying. The tree was severely damaged and the trunk of the tree has been split. One of the anchoring limbs has been cut completely off so the tree itself is now leaning towards one side. So what now holds the tree in the ground is essentially gone from what we would call the northwest side of the tree and in addition there is a very large split where a crane or some other equipment smacked into it. According to my expert the tree will take up to a year or two to die and in the interim if we get a hurricane there is a possibility the tree will come down.

Mr. Clemente asked will the City of Winter Garden issue any violation if you call them?

Mr. Miller responded they might. I am sure they would come out and charge us for it. I do not know what it would cost but I can give them a call.

Mr. Morgan asked whose property is it on?

Mr. Miller responded it is by the edge of the conservation area.

Mr. Morgan asked so is this permitted or non-permitted?

Mr. Miller responded it would probably be a permit or a renewal.

Mr. Morgan asked is it our permit?



Mr. Kelly responded it is St. Johns modification with Stoneybrook.

Ms. Stern stated it is essentially the same.

Mr. Clemente stated it is in the conservation area and St. Johns will be very interested in what happens to that tree. I took down a tree on my property which was going to be dropped into the reserve and had to get permission from St. Johns before the tree could be taken down and this was in 2004 before the hurricane.

Mr. Morgan asked Randy, do you believe the \$1,000 should be paid and the tree removed?

Mr. Miller responded in my professional opinion and based on the information received from our landscape professional, yes the tree should be removed. My concern is by the time the CDD meets again we will be into hurricane season.

Ms. Stern asked are we responsible for damage if it falls on a house?

Mr. Miller responded this is my primary concern now that we know about it and it is an issue.

Mr. Moyer stated I will refer to Dave. I do not mean to belabor this discussion but in some of the other conservation areas within communities I manage, like Celebration, if there is a dead tree in a conservation area you do not touch it.

Mr. Kelly stated I am not sure if this is in the conservation area or in the work area. I imagine we have the right to remove it.

Mr. Morgan asked does the HOA approve and was this submitted to them? Do they want to pay the \$1,000 to get this done?

Mr. Miller responded I have been asked to submit it to you; it is budgeted for.

Mr. Morgan stated Randy, are you saying the HOA is fine with doing this and is saying the CDD has the funds. I am sure they are having no problem suggesting we have the funds.

Mr. Miller stated no, they are not suggesting the funds come from the CDD. They are basically asking permission to spend money on an item which would fall outside the normal scope of what we requested from the CDD on a regular basis. Does that make better sense?

Mr. Clemente stated I think the real issue is the damage was not caused by the HOA or the CDD. It was caused by a contractor who was doing work for Lennar and the discussion we had was the contractor should be held liable.

Mr. Morgan stated whatever the cause it is Lennar's permit so they should be responsible.

Mr. Miller stated we can put in a caveat to say *if this one particular item is not addressed within 30 calendar days then we will absorb the cost and expect reimbursement of the same*. My mind set is if they do not act or respond on this, which I hope that they do, I do not want to have something happen in May and a homeowner loses a house over a tree which could have been taken care of for \$1,000.

Mr. Morgan stated if you want a motion stating the CDD approves the HOA taking whatever action it deems appropriate with regard to this tree, they have our full approval to do so.

Mr. Miller stated either that or a caveat if not done within 30 days we will do it. I want to give Lennar the chance to respond to your official letter and then in 30 days give me authorization if it is not taken care of to move forward.

Mr. Morgan stated if the HOA believes action should be taken, they have our full support to do so. The HOA makes the call.

Mr. Morgan MOVED to approve the HOA taking whatever action it deems appropriate with regard to removal of the damaged tree and Ms. Stern seconded the motion.

Mr. Clemente stated I am not in favor and think Lennar should pay for the damage they caused.

Mr. Morgan stated if the HOA in their wisdom believes they should take the option to spend \$1,000 I will not argue.

On VOICE VOTE with Mr. Morgan and Ms. Stern voting aye and Mr. Clemente voting nay the prior motion was approved.

Mr. Miller stated with the caveat a request from the HOA is to add this as a line item to that and give them 30 calendar days to respond.

Mr. Morgan asked are you saying to this report?

Mr. Miller responded yes.

Mr. Morgan asked why this more than anything else? Do you think this is a much more significant situation than any other finding?

Mr. Miller stated no. In the report I think the most pressing issue is the replacement of the drainage. We will afford Lennar the final opportunity to address it in an official capacity coming from the CDD's attorney attached with the engineers report and give them a set date and time to address it. If this issue is not addressed the HOA can step in and cut the tree down. This way Lennar cannot say we did not have time.

Ms. Stern asked is there any responsibility on the homeowner?

Mr. Miller responded I doubt it. It was Lennar or Lennar's contractor, because they did the damage. It is not on the homeowner's property and St. Johns is going to be the monitor. Unless it is going to create an immediate danger or it is already at a 45 degree angle they are going to say we do not want a homeowner to touch it.

Ms. Stern stated if a tree falls on their house they are going to come after the HOA.

Mr. Miller stated presumably I would give my contact information.

Mr. Morgan stated I was thinking of it in another way. If I am the homeowner and can spend \$1,000 now to ensure I will not have a \$50,000 loss, I as the homeowner also have an interest.

Ms. Stern stated it is a large tree which can fall on a house and ultimately Lennar has to pay, but we also have some sort of obligation.

Mr. Miller stated the advice I received was as long as it was cut down by hurricane season it should not be a big issue. This is my concern because the next CDD meeting falls within that timeframe. It is my feeling Lennar should step up to the plate and address these issues.

Mr. Clemente stated if I was the homeowner I would go to St. Johns Water Management District and say *come take a look at this tree* and they are going to go back to whomever has the permit and say *do something about it*.

Mr. Morgan asked did we conclude we were going to report all of this to St. Johns or not?

Mr. Moyer responded we did not. The idea was to make the report available to Lennar to make restoration before St. Johns comes out.

Mr. Morgan stated or before we notify St. Johns.

Mr. Moyer stated Randy is going to put them on notice about the removal of the vegetation.

Mr. Clemente stated I think a letter needs to come from counsel. We should not be the messenger.

Mr. Rentz stated the Board did not address how much time you want to give Lennar to evaluate the issues and correct it.

Mr. Morgan stated 30 days because they are all equally important.

**E. Consideration of Resolution 2012-2 Confirming the District's Use of the Orange County Supervisor of Elections to Continue Conducting the District's Election of Supervisors in Conjunction with the General Election**

Mr. Moyer stated we will move on to consideration of Resolution 2012-2. This is a simple resolution asking the Supervisor of Elections to conduct our election in November. There are two terms of office that are up; Mr. Morgan's and Ms. Stern's. This basically tells them we would like them to conduct that election. It is more procedural than substance. Is there a motion to approved Resolution 2012-2?

On MOTION by Mr. Clemente seconded by Ms. Stern with all in favor Resolution 2012-2 confirming the District's Use of the Orange County Supervisor of Elections to continue conducting the District's election of Supervisors in conjunction with the general election was adopted.

Mr. Morgan asked will you advise what we need to do?

Mr. Moyer responded yes at the next meeting I will have an outline of qualification period and what you need to do.

**F. Audit Report for Fiscal Year 2011**

Mr. Moyer stated the last item I have is the audit which is in your agenda package. I want to read into the record so anyone who reads the minutes understands. On the first page of the Independent Auditor's Report, the third paragraph they state, *In our opinion, the basic financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the District as of September 30, 2011*, that is referred to as a clean audit opinion.

Mr. Morgan stated unaudited.

Mr. Moyer stated yes unaudited which basically means the financial statements we provided the auditor as of that date did in fact show they represented our financial position at that time. The other reports I would like to highlight for the Board is in the very back of the audit they are required pursuant to the Rules of the Auditor General to look at internal control over financial reporting. In the third paragraph under that section they say; *We did not identify any deficiencies in internal control over financial reporting that we consider to be a material weaknesses, as defined above.*

On the next page they are also required to look at whether we are in compliance with ordinances, laws, covenants and things of that nature and there they say; *The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.*

The last item is the Management Letter and they state they had no recommendations relative to the preceding audit, which is this audit we are talking about, and they did not have any findings in the prior year audit as well. The last thing is they find we are not in a state of financial emergency. All of which is good news so I will ask your Chairman at the end of the meeting to sign what is called the Government Annual Financial Report that we send to the State and they put in their computer program along with all other governmental units in the State of Florida. So with that is there a motion to accept the audit?

On MOTION by Mr. Morgan seconded by Mr. Clemente with all in favor the Audit Report for Fiscal Year 2011 prepared by Berger, Toombs, Elam, Gaines & Frank was accepted.

#### **FIFTH ORDER OF BUSINESS**

#### **Attorney's Report**

Mr. Rentz stated for the record I am Travis Rentz and have nothing new to report. If you have any questions I will try to answer them.

#### **SIXTH ORDER OF BUSINESS**

#### **Engineer's Report**

Mr. Moyer asked Dave do you have any items to report?

Mr. Kelly responded as stated in the email copy from Randy the city has scheduled the work regarding the utility easement. They will be setting equipment and there will be dust from drilling and also some traffic issues.

Mr. Moyer stated based on this report the conclusion is obviously that the Board had a series of concerns which had to be met before the District approved the easement and those conditions were in fact met and the District did issue the easement and that is why they are preceding with the work.

Mr. Miller stated what they are doing is basically going into the village and digging into the existing reclaimed lines. It is going to be a mess and we are expecting two directional lanes and I am preparing for it.

Mr. Clemente asked are they traveling through the gates?

Mr. Miller responded they are coming in through both gates.

Mr. Kelly stated there should not be any disturbances with lots. There is an infrastructure trunk line system they are building in a different direction.

Mr. Miller stated it is a huge cost to the city and we are shocked they have moved on it. I will attend the Tuesday morning construction meetings and forward information to the Board.

**SEVENTH ORDER OF BUSINESS                      Supervisor's Requests**

Mr. Clemente stated for the next meeting Randy if you can give us an update on the situation with the bridge and the road. The latest information I have is a bus has been approved for transporting our children from here to the new school. I spoke with the county who said they are going to build the bridge but it is still two years out because this was not budgeted so soon.

Mr. Morgan stated Hector this is not a CDD item so feel free to contact Randy out of the meeting.

**EIGHTH ORDER OF BUSINESS                      Audience Comments**

Mr. Moyer asked are there any audience comments.

A resident asked when is the next meeting?

It was noted a meeting is scheduled for the fourth Wednesday in May.

Mr. Clemente questioned the engineer about the bridge.

Mr. Kelly stated I have no knowledge of where it is going to be built.

Mr. Clemente stated it is a common walk bridge to bring the children from one side to the other.

Mr. Miller stated the information is it is going to be a pedestrian walk.

Mr. Morgan stated if it impacts our permits they will have to contact us.


**NINTH ORDER OF BUSINESS**

**Adjournment**

There not being any further business,

On MOTION by Mr. Clemente seconded by Mr. Morgan with all in favor the meeting was adjourned.

  
Gary Moyer  
Secretary

  
George Morgan  
Chairman