

**MINUTES OF MEETING
WILDBLUE
COMMUNITY DEVELOPMENT DISTRICT**

The Board of Supervisors of the WildBlue Community Development District held a Regular Meeting on March 7, 2024 at 10:00 a.m., at the Community Center (Card Room), 18721 WildBlue Blvd., Fort Myers, Florida 33913.

Present were:

Christopher Hasty	Chair
Barry Ernst	Vice Chair
Aaron Milosevic	Assistant Secretary
David Myers	Assistant Secretary

Also present:

Chuck Adams	District Manager
Wes Haber (via telephone)	District Counsel
Carl Barraco	District Engineer
Rob Price	Lee County DOT

Residents present:

Terry Kurth	Richard Gurley	Kristi Houston	John “Jack” Dolen	Roseanne Duffy
Bill Magerry	Rick Bennington	John Buckholtz	Robert Finklestein	

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 10:00 a.m.

Supervisors Hasty, Ernst, Milosevic and Myers were present. One seat was vacant.

SECOND ORDER OF BUSINESS

Public Comments: Agenda Items (3 Minutes Per Speaker)

Resident Christy Houston recalled that, at the previous meeting, the estimated cost for erosion repairs was roughly \$750,000. She asked how much of that amount is a builder responsibility and how the CDD is being reimbursed. Mr. Adams stated the change order was submitted with the additional areas for an additional \$150,000, totaling \$400,000, from the CDD perspective. The initial anticipation was to use surplus funds but, at some point, advanced funding must be facilitated either through a Developer Funding Agreement or with a private entity such as a bank. This item will be discussed later in the meeting. Asked what the builders

are paying for, Mr. Adams stated the builders will be pursuing the items that they are responsible for.

Resident Roseanne Duffy stated she has yet to receive a detailed schedule from Karen about what is going on, as stated in the minutes. Mr. Adams stated Karen received the request as part of a set of plans posted on the website and Ms. Duffy was included in the email distribution. Asked if residents can be given a list of addresses instead of a map, Mr. Adams stated he would ask the District Engineer.

Resident John Buckholtz stated the area on the map that is being worked on is Phase 3, and it is slightly off schedule. Mr. Adams stated the contractor is ahead of schedule, according to Mr. Crocker. Mr. Buckholtz reported that several residents contacted him about a dump truck that rolled up on their front lawn yesterday and dropped an entire load of sand between the houses. Mr. Adams noted a communication earlier in the week from Crocker Development indicating that they were going to be utilizing drainage easements between certain addresses; those addresses were forwarded to Karen for her to notify homeowners that they will be utilizing the easements between the homes. Mr. Adams will confirm Karen's email address and make sure she is receiving the communications from CDD Staff.

Resident Jack Dolen asked if a recap of Agenda Item #3 can be communicated by email or in writing, so he has an idea of what might exist beyond just an oral discussion.

Resident Robert Finklestein stated his neighbor across the street had an erosion problem and was told that the homeowner is responsible for addressing erosion in their own backyard. He asked if that is that correct. Mr. Adams explained that, in the summer of 2021, the CDD identified it had a number of erosion issues along the stormwater ponds, which are the little ponds and not the large recreational pond. At that time, the CDD was working with the builders Stock, Pulte and Lennar and the District Engineer to determine the best way to proceed with the repairs and to remediate it in such a way that it will not re-occur. Pulte and Stock elected, on a go-forward basis, to install coco-mat at the lot lines as a deterrent to further erosion. The CDD and Lennar chose a spreader, generally towards the base of the slope heading towards the pond, to essentially capture that flow that is running across the surface, slow it and spread it out as it enters the pond, so there is no localized scouring. It was decided that, going forward, any home that was closed on prior to September 1, 2021, would be a CDD responsibility and that is starting to get done with Crocker Development. After September 1, 2021, the builders would employ whichever option they chose with the new homes. The CDD is

currently proceeding with its project. Asked about repercussions if the builder is not doing what it is supposed to, Mr. Adams stated there is a standard one-year warranty; Owners who have been in their homes for less than one year should contact their builder immediately. He recommended waiting 30 days for the communication to be absorbed and for them to determine how they are going to proceed.

THIRD ORDER OF BUSINESS

Discussion with Rob Price – Lee County DOT

This item was deferred until Mr. Price arrives at the meeting.

FOURTH ORDER OF BUSINESS

Update: Lake Bank Erosion Repair Project

Resident John Buckholtz asked for an enlarged printout of the maps. Mr. Adams stated that he will confer with Karen.

Resident Terry Kurth asked for clarification of when residents can ask about the wall and other items on the agenda. Mr. Adams stated, generally, public comments are taken near the beginning of meetings and again during discussions on certain agenda items.

Resident Richard Gurley recalled that, at a previous meeting, the CDD recommended that the homeowners with drainage problems install pipes and asked for an explanation. Mr. Adams stated the Board and Staff highly recommend capturing the water off the lot and, if there are downspouts from a gutter system, capturing it directly from those downspouts, running it through a pipe down to the water's edge into the lake, to remove the volume. Asked if a drawing of that approach can be sent to residents, Mr. Adams stated the drawing is on the website.

Resident Bill Magerry discussed an erosion issue at his home, his experience with coco-mats and downspout piping. He asked who is responsible for cleaning the lake banks that have construction debris, etc. Mr. Adams stated, as the water levels are currently at their lowest, the CDD will typically engage a lake maintenance contractor to do a thorough clean up. Asked about the CDD installing plants along the water's edge, Mr. Adams stated the lakes were certified and beneficial aquatic plants, called littorals, were planted. The littorals come and go as the water levels fluctuate with the rainy and the dry seasons and, because of that, there is

not a continuous ribbon around the pond like with other projects. Mr. Hasty stated those plants are primarily for water quality.

Mr. Kurth stated it has been almost 18 months since the wall was damaged from Hurricane Ian and, although the CDD hired a Consultant Engineer, the analysis was not accurate. He voiced his appreciation for the discussions with the Chair, months ago regarding the report, setting a timetable for engineering, selection and design options. Per the latest conversations with Mr. Hasty, the work can commence by June, which is two to three months behind the original schedule. Mr. Kurth expressed his hope that the CDD, in the interim, has been having conversations with Lennar, who, in his opinion, should concurrently be having discussions with its subcontractors, insurance carriers, development partners, Stock, Pulte, WCI, etc. Ultimately, he thinks all costs should be split. In his opinion, in June, when the agreed upon fix to the seawall is determined, there should be discussions about who should pay. He thinks homeowners feel very strongly that they are the victims of poor design and construction and they should not be assessed for the repairs. He disclosed that, given that the statute of limitations might put homeowners at risk, the homeowners recently filed a lawsuit against the CDD, the Developer and the Developer's partners and subcontractors. He stated that, if all the repairs are made and the question of payment is resolved, then the suit against the CDD would be dropped and, hopefully, dropped for all parties, if an agreement is made. Mr. Kurth stated he appreciates the Board Members for taking his calls. He voiced his opinion that sharing in the costs for the repairs is a non-starter for homeowners.

- **Discussion with Rob Price – Lee County DOT**

This item, previously the Third Oder of Business, was presented out of order.

Mr. Barraco introduced Mr. Robert Price, the current Deputy Director of the DOT.

- **Potential Ingress/Egress Traffic Flow Requirements for Commercial Parcel at South Entrance**

- **Alico and Corkscrew Road Widening Projects Update**

Mr. Price provided the following updates:

- Regarding the Corkscrew Road project, the current contractor is less than satisfactory but was engaged because the County is required to hire the lowest responsive bidder.
- The project is nearing completion as the contract is due to expire at the end of March, but, realistically, Mr. Price felt that project completion and the punchlist items will be

addressed by the end of April. Final paving is set for March 10th, which will allow a return to full configuration of traffic on Corkscrew Road by March 30th.

- The second phase of Corkscrew Road commenced in February; the contract was awarded in December and a notice to proceed was recently issued. The project is in the mobilization stage, wherein the area is being cleared and grubbed to move the project further east from Bella Terra to Alico. It is a two-year contract, with a completion date of February 2026.
- The Alico Road project is 90% designed for the four-lane road from Airport Hall Road East to Green Meadow. The Section 404 permit from the Department of Environmental Protection (DEP) is pending because of an ongoing legal issue between the State and the Federal Government.
- Due to the time limits on the Alico Project, the County recently submitted an alternative application to the U.S. Army Corps of Engineer (USACE), as they ensured that they will prioritize the County's infrastructure projects over Mr. Barraco's development projects. County officials hope to receive the permit by October, which would facilitate going out to bid to start construction on Phase 1 of the Alico Connector Project by late 2024 or early 2025.
- The County is negotiating with Lennar to acquire right-of-way (ROW) along the frontage of WildBlue at the intersection. Negotiations are not going well from the County's perspective.

Mr. Price responded to questions regarding phasing of the Alico Road Widening project, if the County owes the contractor, charging the contractor liquidated damages, the current retainage on the roadway project, the number of change orders, the approximate price increase from the original contract amount due to the change orders, if the County has legal authority to establish a pre-bid qualification process, establishing a list of qualified contractors, if the County can install a turn arrow at the front gate and if a traffic signal can be installed on Corkscrew while Lennar is still in control.

Regarding payment for the traffic signal, Mr. Price stated the WildBlue CDD needs to contribute its share towards the traffic signal. He stated, if the CDD works together with its residents to figure out a way to fund its portion for the signal, the traffic signal could be installed within the year. The intersection has a full median and, if a safety issue occurs because of the lack of a traffic signal, the County will close the median. In his opinion, it behooves everyone to get the traffic signal funded and built. The warrants are based on outbound left-hand turns.

Regarding how trucks can enter and exit the commercial parcel without a traffic signal, Mr. Barraco stated it is a bigger issue than he thought and, since the CDD roadway will connect Alico and Corkscrew, he can try to facilitate discussions with Mr. John Asher. Typically, a traffic signal must satisfy several different warrants and studies, so the signal must be warranted before it can be installed.

Discussion ensued regarding the Alico Road widening project, a signalization agreement, fair-share agreements, conservation easement on Corkscrew, the County’s position on traffic signals, ROW acquisition, safety concerns, acceleration and deceleration lanes, turn lanes, frontage on Corkscrew Road and a drainage issue on the north side of Corkscrew.

A resident asked if the CDD will help with the traffic signal. Mr. Adams stated the CDD will be looking to coordinate with the Developer as they have a stake in it.

FIFTH ORDER OF BUSINESS

**Continued Discussion/Update:
Construction Litigation Regarding
Retaining Wall Repairs**

Mr. Adams stated, as was alluded to earlier, the CDD was served with a legal complaint regarding the retaining walls and, as such, the Board and Staff are limited as to what can be discussed. He asked Mr. Haber to provide an update, from a legal perspective.

Mr. Haber reported the following:

- The CDD retained Construction/Litigation Counsel David Gurli and his associate Mr. Chris Fiori. They have been diligently reviewing CDD documents, minutes, documents on the website and documents that they received.
- As mentioned at a prior meeting, no lawyer will give an opinion that makes guarantees but, based on everything they reviewed, they believe the damage would be a latent defect; thus, the deadline and four-year statute of limitations to bring a claim would start on the date of the storm.
- A lawsuit was filed, and the CDD was advised by Litigation Counsel that there is a year of time where additional parties can be added to the lawsuit, if there are any.
- Any details regarding the litigation should not be addressed or discussed during a regular CDD Board meeting.
- The law contemplates a shade session, which is a meeting attended by only the Board, the District Manager, District Counsel, any specially-engaged litigation Counsel and a Court

Reporter. At a shade session, every word is recorded by the Court Reporter and a verbatim transcript is produced after the meeting; the document is then kept confidential until the litigation is resolved and, upon the resolution of the litigation, it becomes a public record.

➤ Procedurally, a shade session needs to take place within a regularly scheduled meeting. It also requires District Counsel to request that a shade session be scheduled because Litigation Counsel requests the Board’s input on outstanding litigation.

➤ Mr. Gurli’s office is interested in having a shade session, so this update should reflect, for purposes of meeting the statutory requirements, Counsel’s request that the Board, at some point in the future, convene a shade session for the purpose of getting advice related to the litigation, within the parameters contemplated by law.

➤ At this time, the date of the shade session does not need to be specified but the law requires the shade session to be noticed, in the same formality as a regular meeting being scheduled.

➤ In reference to the scheduling of the shade session, Staff must work with the Board to find availability. It is possible that the shade session could be scheduled for the April meeting. If the Board would like to hold the shade session sooner than April, a special meeting can be scheduled.

➤ All shade session attendees must appear in person.

Discussion ensued regarding how the shade session would be executed, when to schedule the shade session, attendee availability and noticing provisions.

Mr. Haber will contact Litigation Counsel regarding his availability. Mr. Adams will check Supervisor availability and coordinate schedules with Mr. Haber.

SIXTH ORDER OF BUSINESS

Acceptance of Unaudited Financial Statements as of January 31, 2024

Mr. Adams presented the Unaudited Financial Statements as of January 31, 2024.

The financials were accepted.

SEVENTH ORDER OF BUSINESS

Approval of February 1, 2024 Regular Meeting Minutes

Mr. Adams presented the February 1, 2024 Regular Meeting Minutes.

The following change was made:

Line 188: Change “roofing” to “site development”

On MOTION by Mr. Ernst and seconded by Mr. Meyers, with all in favor, the February 1, 2024 Regular Meeting Minutes, as amended, were approved.

EIGHTH ORDER OF BUSINESS

Staff Reports

- A. District Counsel: Kutak Rock LLP**
- B. District Engineer: Barraco and Associates, Inc.**

There were no reports from District Counsel or the District Engineer.

Mr. Dolen asked if the CDD has legal authority to withhold approval for utilization of the driveway that is into the commercial property until the commercial property acquires an adequate ingress and egress, which he believes they can do through negotiating and acquiring property from Grandezza and paying for a proper deceleration lane to provide access directly off Corkscrew or they can pay the County for condemnation so that they can acquire the property, construct a proper entrance into the commercial property and off Corkscrew. In his opinion, the current situation is unsafe, as traffic enters into a residential development to make turns in and out of a commercial development into the adjoining public road. Mr. Haber stated he will have to investigate and provide a response with respect to the extent to which the CDD has rights to object or prevent that from occurring.

Mr. Hasty directed Mr. Barraco to recommend an experienced land use attorney to District Counsel and directed Mr. Haber to confer with said attorney and provide a legal opinion of what the CDD has the authority to do.

Discussion ensued regarding traffic ingress and egress patterns, a preserve parcel, the Developer, purchasing off-site property, the homeowner litigation action against the CDD for the traffic light, property owner rights and safety concerns.

Resident Kristi Houston asked if the intention is still to have design clearance next month. Mr. Barraco stated the contractor was on-site yesterday and the field work is complete. Mr. Barraco will ask when the options will be available for the CDD and report his findings.

A resident asked if the Board reviewed a previously forwarded schedule with seven questions. This is an effort to help the CDD stay on schedule and get the project into the budget as, in their opinion, there is an urgency to have the walls analyzed, cast out, decided upon and ready to bid. Mr. Hasty stated, conceptually speaking, the approach is for the Board to know

the exact fix before setting the budget; the budget can be set based on estimates or best-case analysis. Mr. Adams stated the project could be financed having a capitalized interest period. Mr. Hasty stated the plan is to have the CDD set so that the funds are available to commence the work as soon as the funds become available, while concurrently seeking reimbursements from any and every available source.

Discussion ensued regarding finalizing the budget, meeting the schedule, circulating a Request for Proposals (RFP), bid timing, pre-qualification process, evaluation criteria, choosing a contractor, designs for the two lakes and cost-sharing between WildBlue and Vista Blue.

Asked if there is an advantage for combining two bids, Mr. Adams replied affirmatively.

C. District Manager: Wrathell, Hunt and Associates, LLC

- **NEXT MEETING DATE: April 4, 2024 at 10:00 AM**
 - **QUORUM CHECK**

NINTH ORDER OF BUSINESS

Board Members’ Comments/Requests

There were no Board Members’ comments or requests.

TENTH ORDER OF BUSINESS

Public Comments Non-Agenda Items (3 Minutes Per Speaker)

Asked about Lennar contributing funds to the CDD, Mr. Hasty stated that was agreed upon several months ago. He assured the Developer that the funds would be to acquire ROW needed by the County that can be funneled back to the CDD to offset costs for the improvements; the Developer is amenable.

A resident asked the Board and Staff to identify themselves.

ELEVENTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. Ernst and seconded by Mr. Myers, with all in favor, the meeting adjourned at 12:08 a.m.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]


Secretary/Assistant Secretary


Chair/Vice Chair