

**MINUTES OF MEETING
BUCKEYE PARK
COMMUNITY DEVELOPMENT DISTRICT**

The Regular Meeting of the Board of Supervisors of the Buckeye Park Community Development District was held on Tuesday, February 8, 2022, at 1:00 p.m., at the Holiday Inn Express & Suites Bradenton East Lakewood Ranch, 5464 Lena Rd, Bradenton, FL 34211.

Present and constituting a quorum:

Richard Fischer	Chairperson
Gary Kompothecras	Vice Chairperson
Anthony Sansone	Assistant Secretary
Robert Bishop	Assistant Secretary

Also present were:

James P. Ward	District Manager
Scott Steady	District Attorney
Jay Gaines	Berger, Toombs, Elam, Gaines & Frank

Audience:

All resident's names were not included with the minutes. If a resident did not identify themselves or the audio file did not pick up the name, the name was not recorded in these minutes.

PORTIONS OF THIS MEETING WERE TRANSCRIBED VERBATIM. ALL VERBATIM PORTIONS WERE TRANSCRIBED IN *ITALICS*.

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

District Manager James P. Ward called the meeting to order at approximately 1:00 p.m. He conducted roll call; all Members of the Board were present, constituting a quorum. He noted Supervisor Bishop was attending via audio.

SECOND ORDER OF BUSINESS

Consideration of Resignation

Appointment of Individual to fill Seat 4 of the Board of Supervisors of the Buckeye Park Community Development District

- I. Appointment of Individual to fill Seat 4, whose term is set to expire November 2024**
- II. Oath of Office**
- III. Guide to the Sunshine Law and Code of Ethics for Public Employees**
- IV. Form 1 – Statement of Financial Interests**

Mr. Ward noted the open seat could be filled by simple motion and second.

On MOTION made by Mr. Richard Fischer, seconded by Mr. Gary Kompothecras, and with all in favor, Mr. Vincent Payne was appointed to fill Seat 4 with a term ending November 2022.

Mr. Ward: I will send him the Oath after the meeting, and we can swear him in at the next Board Meeting.

THIRD ORDER OF BUSINESS

Consideration of Resolution 2022-2

Consideration of Resolution 2022-1, Re-Designation of the Officers of the District

Mr. Ward explained the Officers could be redesignated with Mr. Payne included if Mr. Payne was added as an Assistant Secretary; the other Officers would remain the same. He asked if there were any questions; hearing none, he called for a motion.

On MOTION made by Mr. Richard Fischer, seconded by Mr. Gary Kompothecras, and with all in favor, Resolution 2022-2 was adopted, and the Chair was authorized to sign.

FOURTH ORDER OF BUSINESS

Consideration of Resolution 2022-3

Consideration of Resolution 2022-3, approving the proposed budget for Fiscal Year 2023 and setting a Public Hearing for Tuesday, April 12, 2022, at 1:00 p.m. at the Holiday Inn Express & Suites Bradenton East Lakewood Ranch, 5464 Lena Rd, Bradenton, FL 34211

Mr. Ward: Resolution 2022-3 was the resolution regarding your Fiscal Year 2023 budget.

Mr. Fischer: This has 2023, but we just talked about adopting 2022.

Mr. Ward: 2022 is the fiscal year we are in. October 2021 through September 2022. This budget would start October of 2022 and end September 30 of 2023. The process of the statute is, you hear a budget that I prepare for you and present to you. You approve it solely for the purpose of setting the public hearing. The public hearing is scheduled for Tuesday April 12, at 1:00 p.m. here at the Holiday Inn. When you get to that hearing you will be asked to adopt the budget. That means you set in place whatever is in this Budget and the assessment rates that are contemplated as a result of the prep of this budget.

Mr. Fischer: So, do we adopt, or do we approve?

Mr. Ward: Today we are approving, and then in April, we will adopt it. So, you can change it between now and then, you just can't go over what's in here today.

Mr. Scott Steady: Jim, did the Board hear that you can't go above it? Do we have enough room there that you are not worried about it? Because you can go down. I just want to make sure.

Mr. Ward: I added the aquatic weed control for \$12,000 dollars and I added a contingency of \$12,000 dollars, so it's puffed up a lot. The aquatic weed control number came from John Foley, the engineer,

who used to do this project. Then I just added a contingency line item of \$12,500 which gives you room to play next year if something comes up.

Mr. Fischer: So, between now and months from now, we will all have time to go over and make comments on this. Where is the line item for the aquatic?

Mr. Ward: If you look on page 1, at the very bottom you will see stormwater management, aquatic weed control, in the far right column is \$12,000, and then on page 2, you will see the contingency line item, it says \$12,500.

Mr. Fischer: So that contingency, is it a contingency for the aquatic or a contingency for everything?

Mr. Ward: It's a contingency for everything.

Mr. Sansone: Is that different than the one that went in the email?

Mr. Ward: Actually, it is. Sorry about that. I changed it after I sent it. I decided it needed a little cleaning.

Discussion ensued regarding the differences between the emailed budget and the budget in the Agenda; and how to appropriately make comments on the budget following today's meeting.

Mr. Ward asked for any comments or questions regarding the budget to be directed to himself; he would make any requested changes and send out a separate proposed budget to the other Board Members. He reminded the Board, once the budget was approved today, it could not be changed to exceed the proposed budget amount. He noted \$115,000 dollars was total expenditures. He stated if there were any thought about going above this number, now was the time to discuss it.

Mr. Fischer indicated he did not feel any need to go above \$115,000 dollars, but he did see ways in which to reduce the budget. *One proposal, for the easement the County wants for the force main, is maybe we will give it to you, but you start paying your fair share. Right now, they are not because they are claiming governmental exemption. We can say, you pay your fees like everybody else, and then maybe we will let you have the easement.*

Mr. Ward: As long as we are going to stay underneath the budget we are in good shape. If you think you might need it, we can add another something to it. We can always go down at the public hearing, we just cannot go over this number.

Discussion ensued regarding the budget and whether it needed to be increased.

Mr. Ward: John Foley mentioned to my team that the lakes are in pretty bad shape, and it may require some money to do that. There is no money in here for that. This is just your normal maintenance kind of thing. He said the lake banks were not in the best shape.

Mr. Fischer attempted to call Mr. John Foley to ask about the condition of the lake banks.

Mr. Ward: Do you want to put a placeholder in here for maybe \$15,000 dollars.

Mr. Fischer: If there is a cave in of the banks or anything like that, it could easily go more than \$10,000 dollars. I've been around the banks and the banks looked okay to me. Maybe we put in \$10,000 dollars and then between now and the meeting we can figure out whether we are going to need that or not. If it happens to be more, we can just spread the work out over a couple of years.

Mr. Ward indicated he would adjust the Budget to include an extra \$10,000 dollars in the stormwater management system section. *By the time we get to the public hearing we will know whether we can go down from there.*

Mr. Fischer indicated he would walk the lakes with Mr. Foley and hopefully the \$10,000 dollars could be removed from the budget.

On MOTION made by Mr. Richard Fischer, seconded by Mr. Gary Kompothecras, and with all in favor, Resolution 2022-3 was adopted, and the Chair was authorized to sign.

FIFTH ORDER OF BUSINESS

Consideration of Minutes

January 11, 2022 - Regular Meeting

Mr. Ward asked if there were any corrections, additions, or deletions for the Minutes; hearing none, he called for a motion.

On MOTION made by Mr. Richard Fischer, seconded by Mr. Gary Kompothecras, and with all in favor, the January 11, 2022, Regular Meeting Minutes were approved.

SIXTH ORDER OF BUSINESS

Consideration of Amendment

Consideration of amendment to Engineering Services Agreement, dated February 8, 2022, between the District and Foley and Kolarik

Mr. Ward: This is the firm the District originally retained for the work on Buckeye Park. Obviously with the foreclosure they were working for the District, including the time that I have been here. So, after the last meeting, when I found this agreement – retaining a District Engineer in this business requires an arduous process of competitive proposals, so, what we simply did was amend their existing agreement, added some new provisions in the statutes since this was originally done in 2007 or 2006, and then added a current fee schedule. The way this will work is, this is a standard agreement, when we authorize something by hand, we can either do it by a separate scope of service, as work authorization, or I can just authorize things on an hourly basis.

Mr. Fischer: This does not – let's say he doesn't do anything; he doesn't get a check for \$2,500 dollars per month or something like that does he?

Mr. Ward: No. That does not happen. Only if we authorize work.

Mr. Fischer asked for a copy of the agreement.

Mr. Ward complied. *If you want, we can hold this until April, but I would suggest you approve it, and if we want to amend it later, we can do it again.*

On MOTION made by Mr. Richard Fischer, seconded by Mr. Gary Kompothecras, and with all in favor, the Amendment to the Engineering Services Agreement, dated February 8, 2022, between the District and Foley and Kolarik was approved.

SEVENTH ORDER OF BUSINESS

Consideration of Audited Financial Statements

Consideration and the acceptance of the Audited Financial Statements for the Fiscal Year ended September 30, 2021

Mr. Ward introduced Mr. Jay Gaines.

Mr. Jay Gaines with Berger, Toombs, Elam, Gaines & Frank indicated he would review the Audited Financial Statements for the Fiscal Year ended September 30, 2021. *On page 2 is our opinions, and we have several opinions. Because you had a bond default, you formed an SPE, which is standard in these cases, and because we did not get access to some of the records of the discretely presented SPE, we are disclaiming an opinion on the SPE. SPE is Special Purpose Entity. It is an entity that was created when the bonds defaulted and it's the District, the Trustee, and the bondholders, the three principals in this SPE. Then we issued a qualified opinion on the financial statements as a whole because of the disclaimer on the SPE and finally we issued an unmodified opinion on the governmental funds which are how you operate on a daily basis.*

Mr. Fischer: Are you talking about operations and maintenance? Because the other part of it is now gone, correct?

Mr. Sansone: So, in other words, you can't tell us if they took money, or where it went? But the important stuff that went with the government, that was done right? Is that what you're saying?

Mr. Fischer: The governmental funds, which is what you operate on, they are unmodified and staid and materially correct.

Mr. Ward: The bills are paid by the Trustee that come from the SPE. They go directly from the SPE to the Trustee to pay the bills. It's not like they are not accounted for. The issue is that the Trustee doesn't always send me those bills, so your auditor gave you a qualified opinion because I don't necessarily have all of those invoices, but they are paid at the direction of the Trustee.

Mr. Fischer: Why would the Trustee not copy you on everything?

Mr. Ward: We have requested, in 2020 and 2021, and they are now complying with that request, so we have covered the base with respect to that issue. You will not have this problem going forward. The Trustee is U.S. Trust (U.S. Bank). It's appointed by the trust agreement when your bonds were issued. He explained in default deals the invoices and records were not always shared.

Discussion ensued regarding the Trustee and obtaining the necessary records. An (indecipherable) question was asked.

Mr. Ward: In a default position, you never know. It's like \$10,000 to \$15,000 dollars in a default position. Normally, this bond issue, which I've already requested a new Trustee, should go down to maybe \$3,000 dollars a year. After we've come out of (indecipherable). This is not a personal trust issue; it is a whole different environment.

Discussion continued regarding bond Trustees.

Mr. Ward: In fiscal year 2022 we are coming out of this default, so you have one more audit as of 09/30/2022, I don't know what he's going to find. We will just have to figure that out. Going into 2023, when we pull out of default in a couple of months, this will never be an issue again for us.

Mr. Gaines continued his review of the audited financial statements. He reported on page 10 was the statement of net position showing total assets of \$9.9 million dollars and current liabilities of \$9.3 million dollars. *The two big numbers there are the matured bonds payable, and the matured interest payable, and what that means is those are bonds and interest payments which were not made timely.*

Discussion ensued regarding the bonds, the bond payments, and which property owners still owed bond payments.

Mr. Ward: Your bond issue is going to go down to \$1.66 million after we re-amortize these bonds for lots 1 and 2. All you pay is operations and maintenance.

Mr. Gaines reported on page 11 was the statement of activities which showed \$1.125 million dollars in expenses and \$670,000 dollars in revenues, with a change in net position of \$454,000 dollars. He noted this was not unusual. He stated on page 12 the general fund and debt service fund showed approximately \$959,000 dollars in assets, \$8.7 million dollars in liabilities, and an unassigned fund balance of -\$7.8 million dollars. He reported on page 13 was the reconciliation from the total governmental fund balance to the deposition showing a difference of only \$400,000 dollars. He indicated on page 14 was the statement of revenues, expenditures, and changes in fund balance showing revenues of \$671,000 dollars, and total expenditures of \$1.2 million dollars. He noted there was a principal payment and interest payments which were due which caused the -\$500,000 dollars. He stated the fund balance decreased from -\$7.2 million dollars to -\$7.8 million dollars. He stated page 15 showed the net change in fund balance on page 15 of \$500,000 dollars with a depreciation of \$176,000 dollars. He stated page 16 was the budget versus actuals which showed a favorable variance for expenditures (which was good). He reported next were the notes of the audit.

Mr. Gaines: What is the public safety expenditure? On page 16.

Mr. Ward: It is the Manatee County Sherriff's Patrol fees. These are special calls to the deputy for off duty officers to come out and patrol.

Mr. Fischer: If you don't have somebody patrolling, every weekend will be a giant party. And we've had a problem, especially over on your lots, with motorcycles and four-wheeling and dirt bikes. They've got a whole track throughout your whole property.

Mr. Gaines stated on page 30 was the report on compliance and internal controls and on page 31 was a finding indicating the District was not in compliance with certain provisions of the bond indenture including those related to collecting assessments to provide payment of debt service, maintaining adequate debt service reserve accounts, and making semiannual debt service principal and interest payments. He read the District's response to the finding. He reported on page 32 through 34 was the management letter, required by the auditor general. He stated on page 33 under Specific Information, was specific information required by legislature to be included in the management letter. He noted this was a new requirement this year. He listed some of the specific information required by the legislature.

Mr. Fischer asked who the independent contractors were as noted in the audited financial statements.

Mr. Ward responded the independent contractors were himself, Scott Steady the attorney, and generally the Trustee was considered an independent contractor, so U.S. Bank.

Mr. Gaines reported page 35 reflected another statute requirement, a report on compliance with Section 218.415 of the Florida Statutes which dealt with investments; the District complied with this Statute. *The last thing we have to discuss is what I call "The Enron Letter" which is a letter that was required by the auditors to give to the Board after the Enron failure because the Board of Directors of Enron said, "The auditors never talked to us, we didn't know anything that was going on." So, now we are required to make certain disclosures to the Board. We have an engagement letter dated March 9, 2018 which describes the services we are providing. Management is responsible for the appropriateness of the accounting policy used by the District. There were no new accounting policies adopted, nor were there any changes of existing policy. We did not discuss with management any significant or unusual transactions. Any audit adjustments provided by management or communicated to management have been reported to, and agreed by, management. We did not encounter any immaterial uncorrected misstatements during the course of our audit. We had no disagreements with management over the application of accounting principles. We are not aware that management consulted with anybody else about any disagreements. There were no significant issues. We are required to disclose that the debt service fund had a deficit fund balance. We did not encounter any difficulties in dealing with management during the process. I'd like to make that a more positive statement; Jim and his crew were very helpful and cooperative and made the audit as efficient as possible. Management has signed certain written representations to us as part of the audit process. Those are the disclosures we are required to make. That ends my presentation.*

Mr. Fischer: I'd like to contact the contact person for the FedEx building and see if we can convince them to pay off their bonds and then we could just do away with the CDD altogether.

Discussion ensued regarding the tenants of lot 1 and lot 2; FedEx being the tenant of lot 2, the tenant of lot 1 claiming to have paid everything up front.

Mr. Ward: He told me he got it a long time ago, but basically what happened was, the prior owner, called Rosemont Holdings, never paid his debt service assessments or operating assessments, so he came to the District and said, "I want to get caught up on my debt service assessment," So, he paid all his debt service assessments up, and we entered into an agreement with him basically saying we would direct bill him for his debt service assessments. So, November 2020, we billed him. He didn't pay the bill. So, I looked for the lot and realized he sold the lot, and he didn't tell the new guy, so I did what's called an errors and corrections to the tax bill and I put the debt service assessment on the tax bill. The guy got the bill in March or April and called me up and said, "what is this?" The bill was \$200,000 dollars or so. I

put it on the bill, he paid the bill, but every once in a blue moon he calls me and says he wants to talk to the bond holders and get this reduced, and I'm like, you're talking to a hedge fund here, they are not going to write off whatever your debt service is on this lot. It's not going to happen. So, that's his moaning and groaning.

Mr. Fischer: Is he in debt?

Mr. Sansone: Did he buy title insurance?

Mr. Ward: He did have title insurance on it, and I did suggest that he talk to the title company, and they called me once or twice about it, but I have no clue what – it was never disclosed to me what the title company disclosed to him. I never saw any of that.

Mr. Fischer: Were there any blemishes?

Mr. Ward: It is clear of record that there is a lien on this property. We haven't released the lien.

Mr. Fischer: Is that a foreclosable lien?

Mr. Ward: Of course.

Mr. Kompothecras: Then title insurance has to pay it.

Mr. Ward: I don't know what's in his title policy. I never saw that. So, it's on his tax bill. We are clean in this issue. Whatever he thinks is the problem, it's between him and his title company and the prior owner. We have no liability whatsoever because we have recorded it. I think with your lots we need to figure out what happened to them, but we have recorded releases of liens – all of your lots have releases of liens for the debt assessments.

Mr. Fischer: Will you let me know when you figure that out?

Mr. Ward: Yes, I will. Scott Steady and I are working on it, but he and I will work on that for you. He talked to me this morning and basically, we are going to do another release of lien. I've got to sign another release and we are going to file it for you. He asked if there were any questions; hearing none, he called for a motion.

On MOTION made by Mr. Richard Fischer, seconded by Mr. Gary Kompothecras, and with all in favor, the Audited Financial Statements were accepted for purposes of inclusion in the record.

EIGHTH ORDER OF BUSINESS

Staff Reports

I. District Attorney

Mr. Scott Steady: Just to make it clear, even if he defaults, it's only on that lot. We would foreclose that lot. It does not somehow move over to your lot. It's only on that lot.

Mr. Fischer: So, if this does not get straightened out the Board would foreclose on that lot and then sell it? My question is, what if it sells for less than what is owed. Does that deficit fall on the CDD?

Mr. Steady: No. It's the same as all the others. The bondholder gets what it would sell for. Their security was the lien on the property. That's all they get.

Mr. Fischer: Good. So, the Board does not have any liability?

Mr. Steady: No. But the one thing I want to make clear though is, number 1, we've got to keep putting the assessment on the tax roll. The good news is as long as there is a tax certificate market on that property, we don't have to foreclose, because somebody will buy the tax certificate. If there is a market out there, and I would imagine there would be, we are not going to have to foreclose, but you have a fiduciary duty to the bond holder to pursue a foreclosure if for some reason tax certificates weren't purchased. That's the only "cost" that would be spread to everybody, the cost of operating the District in pursuing a claim.

Mr. Fischer: Obviously, we would like, as buyers, owners, owning that lot, one way or another if it becomes available, or buying these certificates or whatever, we would be interested in that.

Mr. Steady: But Richard, as long as he's paying his taxes and his assessment, then we are good right? There is no issue.

Mr. Ward: I will know in November or December if he is paying. Because this year both lots 1 and 2 paid before the end of November.

Mr. Fischer: We are probably going to take an action to revitalize. There is an old HOA, or property owners' association, which is dormant at the present time, and because of some changes in zoning that we discussed, we are going to add some additional uses in a text amendment to the PDEZ ordinance. We need to revise that because in title it would show a conflict that says even though it's defunct or dormant, it's still of record.

Mr. Ward: Okay.

II. District Engineer

a) Stormwater reporting

No report.

III. District Manager

a) Financial Statement for the period ended January 31, 2021 (unaudited)

No report.

Mr. Ward asked if there were any Supervisor's requests; there were none. He asked if there were any audience members present in person, or via audio/video, with any questions or comments; there were none.

TENTH ORDER OF BUSINESS

Adjournment

Mr. Ward adjourned the meeting at approximately 2:00 p.m.

On MOTION made by Mr. Richard Fischer, seconded by Mr. Anthony Sansone, and with all in favor, the meeting was adjourned.

Buckeye Park Community Development District



James P. Ward, Secretary



Richard Fisher, Chairman