

**MINUTES OF MEETING
LAKE POWELL RESIDENTIAL GOLF
COMMUNITY DEVELOPMENT DISTRICT**

The Board of Supervisors of the Lake Powell Residential Golf Community Development District held a Regular Meeting on October 2, 2023 at 2:00 P.M. (Central Time), at Shark's Tooth Clubhouse, 2003 Wild Heron Way, Panama City Beach, Florida 32413.

Present were:

David Holt	Chair
David Dean	Vice Chair
Jerry Robinson	Assistant Secretary
Thomas Balduf	Assistant Secretary
Frank Self	Assistant Secretary

Also present were:

Jamie Sanchez	District Manager
Cindy Cerbone	Wrathell, Hunt and Associates, LLC (WHA)
Mike Burke	District Counsel
Robert Carroll	District Engineer
Bethany Womack	Ecologist/District Operations Manager
Sherri Mallory	Resident/POA Treasurer

Residents present were:

Garry Fischer	Paul Levick	T. B. Patterson	Kenneth Black	Steven Undercoffer
Jennifer Ross	Terry Olson	Jim Henderson	Chris Brown	Patti Undercoffer
Kevin Dupont	Tom Kerins	Diane Allewelt	Kelly Fredrickson	

**DUE TO TECHNICAL DIFFICULTIES, THE AUDIO AT THE START
OF THE MEETING WAS NOT CAPTURED.**

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Ms. Sanchez called the meeting to order at 2:02 p.m. All Supervisors were present.

SECOND ORDER OF BUSINESS

Public Comments

TRANSCRIPTION FROM AUDIO COMMENCED

The following excerpts from the Memorandum from Andrew H. Cohen, Esquire, to the Board regarding Public/Private Roadways and Gated Access, were read into the record by resident Sherri Mallory, as follows:

“The District also has the power to plan, construct and maintain additional systems for security, including but not limited to guardhouses, fences and gates, electronic intrusion tactic systems.” Florida Statutes 190.012(2)(d).

“Bay County consented to the District’s use of special powers as allowed by Chapter 190 F.S. including: security, including, but not limited to guardhouses, fences and gates. The District has a manned gatehouse.” Pages 3 and 4.

“Such opinion has been interpreted to allow gatehouses and restrictions which “control” access but do not deny “access”.” Page 3 under “Public Roads.”

“If public access is causing safety issues such as cut through traffic or speeding, the District can install traffic calming devices such as speed tables or other deterrents to enhance the safety of the roadways.” Page 6.

Ms. Mallory voiced her opinion that there are no citations of case law authority set forth in this opinion letter and the law is not clear; it is grey. She discussed the post orders that should be included in the CDD and POA’s controls for safety and what she perceives as St. Joe’s disrespect towards the POA’s private owners by using Wild Heron Way (WHW) as a shortcut to access its construction site for the second golf course. Ms. Mallory stated it was recorded that residents in St. Joe’s other communities would not allow that on their roadways. In her opinion, the key issues are that there is no court precedent and Wild Heron presents a unique situation; there is no public amenity or public destination; the public purpose is protection of Lake Powell. She reiterated her belief that this is a safety matter and urged the CDD to evaluate its post orders and to coordinate with the POA and St. Joe to settle the matter.

Resident Terry Olson voiced his agreement with Ms. Mallory’s comments that safety for the community and doing what can be done legally to ensure that the CDD and POA control public access is critical. He expressed his concerns about security, denying access, post orders, future developments in the area and the back gate. He suggested entering into a cost-share Agreement with St. Joe to fund CDD and POA needs and manage the back gate. He encouraged the Board to approach this issue with a collaborative spirit and negotiate to maintain access control of the back gate and prevent Wild Heron Way from becoming a public through fare.

Resident Tom Kerins voiced his opinion that the community would not exist without a golf course and that the negotiation process the CDD, POA and St. Joe are using is not working so all three entities must utilize a different process to work together to reach a consensus.

A Board Member asked where the letter referenced by Ms. Mallory came from. Mr. Burke stated the letter was from Bond Counsel regarding the status of the bonds. In response to the comment that Bond Counsel's letter contains comments that distinctly counter a letter from the CDD's outside Counsel, Mr. Burke stated the letters are distinguishable. Ms. Cerbone stated Bond Counsel's letter is directly about the taxability or non-taxability of the bonds in relation to the roads whereas outside Counsel's comments focus on whether access can be restricted. She suggested that Mr. Burke address the letter from outside Counsel and then address the letter from Bond Counsel. The HOA previously sent an e-blast to all homeowners/residents in the community, attaching today's agenda, including outside Counsel's letter.

Asked to comment on some of the points that Ms. Mallory broached, Mr. Burke explained that Bond Counsel Peter Dame's letter essentially states that the District and Wild Heron Way, in particular, was funded by tax-exempt bonds. The Developer received a lower interest rate and was not taxed, the bondholders purchased tax-exempt bonds in the amount of \$22 million. There is a covenant between the CDD and the federal government through the IRS and with the bondholders that essentially states, if the CDD takes advantage of tax-exempt bonds to construct a road, it must agree to keep the road public, at least for the life of the bonds. Once the bonds are satisfied, the roadway, particularly Wild Heron Way in this instance, could be changed to a private road. If the CDD breaks the covenant and restricts access, it will cost the CDD millions of dollars. Mr. Burke stated that is the distinction and Mr. Cohen states that Wild Heron Way is a public road not only because the bonds were issued but it is also a public road because the CDD is a public entity, similar to the City and the County. Regarding security measures, such as guardhouses, fences and gates, incoming individuals can be stopped at the gate to obtain their information but they cannot be denied access into the community and Wild Heron Way.

Discussion ensued regarding the legality of denying access to inebriated individuals or those who do not produce identification, if Wild Heron Way is an arterial or collector road, if restrictions can be placed on certain vehicles such as tractor trailers, camera footage, documenting damages, golf course construction and a failure to communicate with St. Joe.

Ms. Sanchez recalled that, at the last meeting, the Board requested a second opinion regarding the CDD's ability to restrict and deny access on public CDD roads and if a fence can be installed to control access. Mr. Burke provided the following update:

- He spoke with Mr. Joe Brown, the attorney for St. Joe, who convinced the Board to obtain the second opinion from Mr. Cohen.
- Mr. Brown suggested that the CDD, POA and St. Joe coordinate and resolve the issues, with or without the assistance of a mediator, and reach an agreement that is beneficial to all.
- The three entities could reach a consensus to construct an access point at the back gate or the guardhouse could be funded by the POA and manned by someone who could be trusted to grant or deny access.
- Ultimately, Mr. Brown will make a decision for his client and the CDD will have to consider any proposed agreement in a public forum.

Mr. Dean stated that the CDD and POA Boards are not anti-St. Joe but both have a fiduciary duty to protect the interests of members of the community. He believes all three entities must be in concurrence and it is a workable solution. He asked the following questions:

Mr. Dean: Is it true that the CDD can build/operate guardhouses, fences, gates, patrol vehicles, towing etc., for the security and safety of members of the District?

Mr. Burke: In my legal opinion, yes.

Mr. Dean: Is it true that the CDD can adopt rules necessary for the District to enforce certain deed restrictions, declarations, covenants, pertaining to the use and operations of real property within the District?

Mr. Burke: That is granted in statute and I do not recall...that was after Wild Heron or Lake Powell CDD was enacted and I am not certain that was a power that was granted. The answer to that is that Community Development Districts can, if they are granted that authority.

Mr. Dean: Is it true that the CDD can do on non-CDD owned roads when there is an agreement between the CDD and the POA?

Mr. Burke: To provide security?

Ms. Cerbone: Provide any type of service?

Mr. Dean: Anything.

Ms. Cerbone: You said “do the POA”, I am not sure what that means.

Mr. Dean: Chapter 190.1012(4)(a)(1) says....

Mr. Burke: You could enter into agreements with the POA....

Mr. Dean: You could enter into agreements with the POA and for service on non-CDD roads?

Mr. Burke: We have done that with the security agreement and those types of things.

Mr. Dean: Is it true that the CDD and the POA can have an agreement to the operations of the gates and guards as set forth in the mutually-approved post orders?

Mr. Burke: Yes.

Mr. Dean: Are the post orders equivalent to rules and regulations as contemplated by Florida Law and incorporated in the Master Service Agreement that the CDD has with its present security company, Tricorps?

Mr. Burke: Ours are not consistent with rules and regulations because the Board did not adopt them through the rulemaking process.

Mr. Dean: And would it be true that the CDD can enforce part of the DCR, in particular, Part 8.157 of the Wild Heron DCRs?

Mr. Burke: I have to go look to see if the CDD has the ability to do that.

Mr. Dean: The answer to that, if you look, is yes, we can. Having said that, based on what we can do, I will make a motion to schedule a workshop and move that we direct the District Manager and District Counsel to formulate a proposal where the CDD, the Wild Heron POA and St. Joe jointly hire and fund roving patrol security to augment the existing security concerns of the District.

Ms. Cerbone stated the two motions need to be bifurcated.

The Board and Staff discussed the wording of the two motions, whether to hold a public workshop or a public hearing, Chapter 120 requirements, the rulemaking process, changing/ revising the current post orders, the POA, the CDD Board’s quorum, the security contract with Tricorps and whether to invite St. Joe to the workshop.

On MOTION by Mr. Dean and seconded by Mr. Self, with Mr. Dean and Mr. Self in favor and Mr. Holt, Mr. Balduf and Mr. Robinson dissenting, scheduling a public workshop with the POA to discuss post orders and the rulemaking process and to allow for public input as provided by Chapter 120 F.S., was not approved. (Motion failed 2-3)

Ms. Cerbone stated the Board could direct District Management to formally contact and ask POA staff to forward any recommended updates/changes to the post orders and present them for Board for review and feedback at a publicly-noticed meeting.

Mr. Dean directed the District Manager and District Counsel to formulate a proposal whereby the CDD, POA and St. Joe jointly hire and fund roving patrols security to augment the existing security services to assist/expedite front gate entry during rush hour, conduct security patrols for the safety and security of the CDD including all roadways, buildings and private amenities and to assist in traffic control, as specified and set forth in the post orders. Ms. Cerbone stated the CDD cannot fund a rover if they go on a private road or St. Joe property, which is private, so it would have to be a cost-share arrangement. She asked Mr. Dean to hold his motion until the Sixth Order of Business.

FOURTH ORDER OF BUSINESS

Discussion: Current Agreement for Security Services Management and Associated Post Orders

This item was discussed during the Third Order of Business.

FIFTH ORDER OF BUSINESS

Update: District Engineer's Report to Support Creating an O&M Methodology

Ms. Cerbone recalled discussions at the last meeting regarding St. Joe's contribution or lack thereof of the public roadways and other services throughout the CDD. One of the ideas mentioned was to have the District Engineer produce a Supplemental Engineer's Report stating that St. Joe, as a property owner within the boundaries of the CDD, by expanding its operation with the adjacent property, which is currently occurring, and determine if that would impact St. Joe's usage of the CDD improvements and, if so, how, when and how much. This would, in turn, allow Management's office to determine if there are enough facts to create an O&M Methodology to change how much St. Joe is paying in O&M from its current debt payment. Ms. Cerbone outlined the steps that would need to be taken to change the O&M assessments. A Board Member stated additional information is needed from St. Joe with regard to the overall picture, what the exposure is and St. Joe's intentions for the back gate.

SIXTH ORDER OF BUSINESS

Discussion: Re-Engagement with St. Joe on Cost Share Agreement(s)

Mr. Burke stated he recently conferred with Mr. Brown regarding the cooperative status between the CDD and St. Joe and Mr. Brown suggested that members of the two entities discuss and resolve the issues in the best way possible. Mr. Burke recommended that the Board direct CDD and POA Staff to present a wish list of items that need to be discussed. The majority of that discussion should be between the POA and St. Joe and less with the CDD, which could assist with funding and facilitating the post orders for the front gate. Ultimately, he thinks the CDD and POA must report to the Board for feedback and further discussions. If the Board does not approve of what was discussed, it does not have to adopt it.

Discussion ensued regarding who will attend the meeting, how and when the wish lists will be compiled, the gate, the Florida Power & Light (FPL) easement, the POA, the CDD and St. Joe’s property rights.

Asked which entity owns 98 to Covington Bridge, Mr. Burke stated the CDD. Asked who owns the fence and the current back gate, Mr. Burke stated St. Joe. Asked about a title search for the back gate, Ms. Cerbone confirmed that the Board previously approved a title search but time constraints prevented Mr. Cohen from completing it. She stated he will do it if directed; she discussed costs, including a survey. Mr. Burke voiced his opinion that a title search and survey will be quite costly and not worth it.

On MOTION by Mr. Holt and seconded by Mr. Balduf, with all in favor, authorizing Mr. Burke to contact St. Joe’s Counsel and the POA’s Counsel to schedule a meeting to commence a discussion of this matter, was approved.

Resident Jennifer Ross asked the Board, when making its wish lists, to list items that are specific to the CDD and the POA will list items specific to the POA, and any POA-related items on the CDD Boards lists should be forwarded to Diane.

SEVENTH ORDER OF BUSINESS

District Engineer: Discussion Consideration/ Update

A. FDOT Compliance

Mr. Carroll stated he was not present at the last meeting and asked if this is about the bridge. Ms. Sanchez stated Mr. Robinson suggested upgrading the guardrails and Ms. Womack was to contact Mr. Carroll to see if the Florida Department of Transportation (FDOT) will support upgrading the guardrails.

Mr. Robinson directed Mr. Carroll to have the bridge sprayed with brown paint.

In response to Mr. Self’s question regarding roadway completion and boring samples, Mr. Carroll stated he will contact the vendor and have the samples delivered to the CDD.

Mr. Holt announced that the road work on Wild Heron Way is completed. He discussed sod replacement, the sprinklers, striping, asphalt and final costs.

EIGHTH ORDER OF BUSINESS

District Counsel: Discussion, Consideration, Update

- A. Stormwater Facility Management Services Agreement (CDD approved, awaiting POA approval)**
- B. POA Maintenance Agreement (CDD approved, awaiting POA approval)**
 - **Landscape Standards**
- C. Possible Land Swap with the POA for Gate Installation at Wild Heron Way and Pinfish**

Mr. Burke stated Items A, B, and C will be added to the wish lists for discussions with the POA and St. Joe.

Items 9A, B and C will remain on the agenda.

NINTH ORDER OF BUSINESS

District Ecologist: Discussion, Consideration, Update

- A. Conservation Easement Signage**

Ms. Womack stated she conferred with New Leaf Services about this item as well as a few others and Mr. Holt and will meet with the vendor beforehand to go over maps and point out the areas that need signage. The project can then proceed on a cost per day basis of \$5,400 for three days.

Discussion ensued regarding the project details, signage and a not-to-exceed amount.

On MOTION by Mr. Holt and seconded by Mr. Dean, with all in favor, the New Leaf Services proposal to install conservation easement signage, in a not-to-exceed amount of \$6,000, was approved.

B. DEP Conservation Easement Swap

Ms. Womack stated she recently received approval from the U.S. Army Corps of Engineers (USACE) and from the Department of Environmental Protection (DEP); both agencies agreed to accept the CDD's proposal for the conservation easement swap for the proposed lands. The CDD must provide a survey with a legal description of the lands it proposes to take out of conservation and a survey and legal description of the lands it proposes to put into conservation. Once the documents are submitted, the agencies will draft a document and provide it to the CDD. This matter must be discussed with the POA before proceeding, as Staff must also provide a deed and a title commitment for the conservation easement areas.

Discussion ensued regarding the easement swap process, number of parcels in question, the surveyors, survey costs and a not to exceed amount. Ms. Womack will obtain proposals from Buchanan & Harper.

On MOTION by Mr. Balduf and seconded by Mr. Self, with all in favor, authorizing Ms. Womack to obtain quotes for surveys and allocating a not-to-exceed amount of \$15,000 for the surveys, was approved.

C. Speed Enforcement Device Proposals

Ms. Womack presented the Elan City Speed Enforcement Device Proposal.

Discussion ensued regarding the quote, whether to approve the purchase, flashing signs, device features, installation and the number of devices that will be ordered.

On MOTION by Mr. Dean and seconded by Mr. Holt, with Mr. Dean, Mr. Holt, Mr. Robinson and Mr. Self in favor and Mr. Balduf dissenting, authorizing Staff to obtain four units of speed enforcement devices for \$13,618, was approved. (Motion passed 4-1)

On MOTION by Mr. Balduf and seconded by Mr. Holt, with all in favor, allocating a not-to-exceed amount of \$10,000 for striping sidewalks, golf cart paths and a "Stop Ahead" pavement sign on Meadowlark and Wild Heron Way, was approved.

D. Stormwater Camera Inspection

Ms. Womack stated she previously submitted as-built drawings to Mr. Churchwell and will coordinate with Mr. Carroll on this and provide an update at the next meeting.

Discussion ensued regarding engaging another stormwater camera vendor, pond conservation area maintenance, tree trimming and not to exceed amounts.

On MOTION by Mr. Dean and seconded by Mr. Self, with all in favor, engaging New Leaf Services to cut down muscadine vines in a not-to-exceed amount of \$4,000, was approved.

On MOTION by Mr. Dean and seconded by Mr. Self, with all in favor, authorizing trimming of an oak tree in the conservation area and other trees covered by vines in the same area, in a not-to-exceed amount of \$2,000, was approved.

TENTH ORDER OF BUSINESS

Acceptance of Unaudited Financial Statements as of August 31, 2023

Ms. Sanchez presented the Unaudited Financial Statements as of August 31, 2023.

On MOTION by Mr. Dean and seconded by Mr. Holt, with all in favor, the Unaudited Financial Statements as of August 31, 2023, were accepted.

ELEVENTH ORDER OF BUSINESS

Approval of August 7, 2023 Public Hearing and Regular Meeting Minutes

Ms. Sanchez presented the August 7, 2023 Public Hearing and Regular Meeting Minutes.

On MOTION by Mr. Balduf and seconded by Mr. Holt, with all in favor, the August 7, 2023 Public Hearing and Regular Meeting Minutes, as presented, were approved.

TWELFTH ORDER OF BUSINESS

Staff Reports

- A. Ecologist/Operations: Cypress Environmental of Bay County, LLC**
- B. District Counsel: Burke Blue**

C. District Engineer: McNeil Carroll Engineering, Inc.

There were no reports from Staff.

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

- **Consideration of Meeting Location for February 5, 2024 Regular Meeting Through Remainder of Fiscal Year 2024**

Ms. Sanchez stated Sharks Tooth Clubhouse will be closing for renovations from January to September 2024 so it is necessary to consider other meeting locations for after the December meeting. Management’s office will research nearby locations and an update will be provided at the next meeting.

- **NEXT MEETING DATE: December 4, 2023 at 2:00 P.M. (Central Time)**
 - **QUORUM CHECK**

THIRTEENTH ORDER OF BUSINESS

Board Member Comments

There were no Board Member comments.

FOURTEENTH ORDER OF BUSINESS

Public Comment

Resident Chris Brown asked if the post orders restrict or deny access in Prospect Promenade at certain times of the day or week. A Board Member replied yes.


FIFTEENTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. Self and seconded by Mr. Dean, with all in favor, the meeting adjourned at 4:47 p.m., Central Time.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]


Secretary/Assistant Secretary

 AS CDD
Chair/Vice Chair CHAIRMAN