

MINUTES OF MEETING
BAYTREE
COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Baytree Community Development District was held Wednesday, November 16, 2016 at 10:00 a.m. at the Baytree National Golf Links Meeting Room, 8207 National Drive, Melbourne, Florida.

Present and constituting a quorum were:

Nancy O'Hare	Chairman
Carol Witcher	Vice Chairman
Maria Hernandez	Supervisor
Melvin Mills	Supervisor
Edward Rizzotti	Supervisor

Also present were:

Jason Showe	District Manager
Michael Pawelczyk	District Counsel
Melissa DeFrancesco	District Engineer
Alan Scheerer	Field Operations Manager
Kim Rezanka	Special Counsel
Several Residents	

FIRST ORDER OF BUSINESS

Roll Call

Ms. O'Hare called the meeting to order.

Mr. Showe called the roll.

SECOND ORDER OF BUSINESS

Public Comment Period

Mr. Feucht: In the effort to clean out the Brazilian Peppers that are in the preserve areas what is left is ugly looking. I'm wondering if there could be steps made where that could be improved because it still looks chopped up. They are doing something further up at Old Tramway and I understand they are just Brazilian Pepper trees but if there could be some trimming or something to be done that doesn't make it look so chopped up.

Mr. Mills: It was very wet there when they cut those out and they couldn't get in very well. There are plantings that are going to go there but he did not want to plant them when it was

so hot in fear of that the plants would die. It was cleared out and predicated upon the fact that it was going to be landscaped.

Mr. Showe: When those are removed it takes so much of the vegetation and it gives it a crazy look. Normally within three or four months it fills itself in and those plants come back to life.

Mr. Mills: If you come up Baytree Drive right where you get to the pump house, on the left hand side there is a transformer and we removed a lot of the bottle brushes that were hiding the transformer. They were torn out and there is new plantings going in there also.

Ms. Witcher: How much are we allowed to go into the wetlands to put anything in there?

Mr. Showe: We can't go into the conservation area and the plantings that Mel was talking about will be towards the front by the sidewalk.

THIRD ORDER OF BUSINESS

Discussion of SCCU Appeal

Ms. Rezanka: As several of you already know, yesterday the County Commission actually approved the findings of fact denying the appeal that Baytree CDD made against the Space Coast Credit Union. I was able to speak and get in a few more points that I was denied to get in at the November 1, 2016 meeting. I asked them to make a few changes to the final order because they had paraphrased the Binding Development Plan so it wasn't accurate. They did make a couple of changes and it was signed yesterday so it starts the 30 days to appeal of that Resolution from the County Commission. If you want to appeal that Resolution it is by what they call Petition for Writ of Certiorari. I have actually done that before with The Daily Bread and it is basically where the County misinterpreted it's own code and the impact of the Binding Development Plan but it also has an issue of fact component. It is a Petition for Writ of Cert; you do a brief of up to 50 pages; you go through all of the evidence that was presented and the legal arguments and you file it. The court then orders the other side to respond and then you get to respond to them. This whole process takes about six to nine months and it is technically a de novo review of everything that the County Commission saw. Since there is a fact component I am a little concerned that the Circuit Court will defer even though the buffer is clearly not solid. It is a complicated issue and depends on the Judge that you draw and it is a three Judge panel on the Circuit Court. I am not confident that you will win but I think it is a 50/50 chance. I just don't know because this is a unique issue and the Judges are not used to

this type of stuff. If you get Criminal Court Judges you will never win but if you get Judge Dugan who knows property you might win and he is the one who wrote The Daily Bread opinion. The cost of that is anywhere from \$15,000 to \$20,000 and it takes about six to nine months so it is a quicker process than most lawsuits. The second option is to sue Space Coast Credit Union directly for breach of contract but you do not have to do that now because you have a five year limitation to do that from the time they breach, which in my opinion is January 30th of this year. That is a better option if you really wanted to get results because then the Judge has all of the facts, everyone can come testify, and the Judge can go out and look at it. You could in theory have a jury but I doubt you would get one and I don't think you need it. This is a two to three year process and is much more expensive and it also depends on what the other side does. You have written discovery, depositions, motions, and hearings so it could be anywhere from \$35,000 to \$70,000. Again, you do not have to do this now but those are the two options as I see it. If you went right now you probably have a chance at winning against Space Coast Credit Union but you may have a buffer in two to three years.

Ms. Hernandez: They said at the meeting the bamboo they put in he testified when laying down it was 25 feet high but when they put it up it fell down. Did that actually meet the criteria?

Ms. Rezanka: Their landscape architect said what they put in was only 20 feet so there is a discrepancy right there and because they told you all it was going to be 26 feet of trees and they put in 20 foot trees that is an issue that I think is substantial and I think the court would look at. Jason Bartlett is not a landscape architect and I don't think he has any ability to testify.

Ms. Hernandez: It was interesting that he brought it up at this last meeting and didn't bring it up before.

Ms. Rezanka: That was because I brought up the distinction between the heights yesterday, which I wasn't able to do on November 1st because they wouldn't let me do a rebuttal.

Ms. DeFrancesco: Ultimately it is a performance issue because the Binding Development Plan has a performance component that didn't specify a height. To me that is a specification for performance and I don't care how tall it is if it still doesn't perform then it doesn't meet the specifications.

Mr. Bosseler: I'm not sure if you can get the gentleman's testimony but I went and counted the trees along there and we only have 60 bamboo. I'm not positive, but I think he said they increased it to 80.

Ms. Rezanka: Susan Halls said it was 60 and she is the landscape architect so she is the one who testified because I went back and listened.

Mr. Bosseler: Can you pull up his testimony?

Ms. Rezanka: You will have to if you go with either option you would get the transcripts. You can watch the video but I do not remember him saying that but I do not consider him an expert.

Resident: Can you reveal how much we have spent so far on lawyer fees?

Mr. Showe: To the best of my ability it is approximately \$53,000 and that is in Special Counsel, Engineer, and Counsel. I tell you approximately because some of the invoices that we get from those services, for example the engineer she may come out and do four hours onsite looking at that issue and other issues. I did my best ability to look at it in gage and I would say approximately \$53,000 and that is over 2015 and 2016.

Resident: That wasn't all regarding the buffer that was also regarding the monument up front.

Mr. Showe: That is the total cost of getting to where we are now and dealing with the Binding Development Plan.

Ms. O'Hare: All of that is included in the Binding Development Plan.

Ms. Rezanka: Does that also include the Interlocal Agreement?

Mr. Showe: It may include some of your time on that, yes. I did the best I could without getting additional charges for having those Special people.

Ms. Hernandez: Did we get the Right-Of-Way out front?

Ms. Rezanka: We are still working on it but we are very close. I will be getting you all a draft within the next couple of days because we had to retype the whole agreement. It is close and they did not put the 30-day termination in the last one.

Mr. Mills: Did you put the design in there for Kingswood that we had that lady do for us?

Mr. Showe: That is not included in there.

Ms. O'Hare: Mel we cannot hear you.

Mr. Mills: The woman who designed the landscape that is going to be planted on Kingswood Way her fees are not included in that number. I think her fees were around \$5,000 or \$6,000.

Mr. Showe: I don't think it was that much but I would have to look.

Ms. Hernandez: Did you get any other recommendations or did you just go to one vendor?

Mr. Mills: We went to two vendors and there was a \$30,000 difference between the two.

Mr. Showe: We had the plan drawn up and had two different vendors bidding and Tropic-Care was significantly less. It is about \$5,400 and the Board approved a not to exceed amount of \$5,500.

Ms. Hernandez: If we appeal it, it is going to be that much plus we still have to do our own. Kim, may I ask you a question? Is there any other way that we can approach the SCCU or do something to penalize them for misleading us besides going to court? Or is that our only remedy?

Ms. Rezanka: At this point I think that is your only remedy. You still have up to five years from January 30th. I think the County Commission was wrong and I think they have been wrong but at some point you have to figure out what is best for you and how much longer do you want to drag this out?

Ms. Witcher: They also could put up the last building and it could be even worse and it would be within the five years so that way we would have a better saying.

Mr. Mills: It is my personal opinion that we do not pursue this any further. We could take the \$35,000 extra that we have here and put it into more landscaping if need be. The reason the CDD got involved to begin with was because of the monument. Now it really is a BCA issue and not a CDD issue. If the BCA were to fight it then I would say we pass what we've gotten and let them move forward if they want to do that. The CDD territory stopped when the monument was done, approved, and the roadwork was done.

Ms. Hernandez: We had an agreement with them so as far as I'm concerned that puts a certain amount of responsibility on them because they agreed and did not meet the terms of their agreement.

Resident: It is not the BCA's land the CDD maintains it.

Ms. O'Hare: Your complaint is not against the land it is against the joining property owner and the buffer that the joining property owner is to be putting on their property. It has nothing to do with the fact that the CDD owns the property south of that.

Ms. Schoonmaker: You are suggesting that the Homeowners Association sue Space Coast Credit Union on what grounds?

Ms. O'Hare: This is a Community Development District our responsibilities are only to maintain and operate the infrastructure. We are not the Homeowners Association and yes we did pursue this part on behalf of the residents in Baytree. We got involved in it mostly because of the Right-Of-Way and them wanting to remove our monument.

Ms. Schoonmaker: I would disagree with that since I was here from the beginning. We started out with the monument and the buildings that they were building and it was a double fold. If you go back to your minutes you will find that. I am appalled that you guys are making that suggestion but we have spent enough money on this issue and we have lost. There is no guarantee that another \$50,000 is going to get us anything. I would just let the issue drop because none of us agree on it.

Ms. O'Hare: This landscape plan that was presented at the last meeting did meet the satisfaction of the residents that were most directly affected on Kingswood. That is the plan that is going to be implemented and it will be but on our property.

Mr. Mills: The sad part is Sandy when we needed people from Kingswood to show up at the hearing only one person from Kingswood was there and it was Richard Bosseler. Nobody else showed up and no one from the BCA was there other than Al and he is a VM for Chatsworth. No one else was there. The fact is Sandy, we needed support and we didn't have it.

Ms. Schoonmaker: For the defense of myself and the rest of us, 9:00 a.m. on a Tuesday morning is a very difficult time for most people to meet. If they were in the evening you probably would've had more people. It is an unfortunate time of the day for a lot of people and I think that you have to give them some leeway because of that.

Ms. Hernandez: How high are the plants? We had a list of the type of foliage that would go in but I didn't see the height.

Mr. Mills: There are oak trees that are being cut down and we have to comply with the County so I think they are 25 foot oak trees.

Mr. Showe: I don't think they are quiet that tall. All of the trees in the original plan are 10 to 12 feet clear trunk, which means from ground to the top it is going to be 10 to 12 feet. We are trying to plant them closer to the road so there is more of a masking affect because there is going to be a distance between the plants and the building. I will tell you there is going to probably be larger plants going in than this because in order to comply with the tree removal permit 17 of the 22 trees we had planted in here have to be larger than what was originally planned. He is going to make those in order to comply with that so they will be a little larger but that is realistically what we are looking at it.

Ms. Hernandez: Is there any way to plan to have something taller?

Ms. Witcher: Because of the height of the trees that we are taking out they are going to be higher than the minimum that we are talking about.

Mr. Mills: Plus we are moving them up higher on the bank so they will be higher. We are also planting magnolias, which will fill in and when they fill in you know what a mature magnolia will look like.

Ms. Hernandez: Do you have any sketches?

Mr. Showe: There are a few on the website and I will send you what we have.

Ms. Hernandez: How high will the berm be?

Mr. Mills: There is no burn.

Ms. Witcher: We are trying to keep the water flow going into the wetlands.

Mr. Showe: We are planting it closer to the road so there will be that distance between the plants and the fence, which will give you more of a mask. I think the initial plan was to get this in and give it a few months to grow and if we need to come back and fill in then there will room on the backside of that plan. The intent was to go ahead and get this in place, get our \$30,000 back from Space Coast Credit Union, and then see where we are at once we hit growing season next year.

Ms. Witcher: Are we going to put the barrier in between the tree and the road so that the roots don't go into the road?

Mr. Showe: The trees are actually planted further back.

Ms. DeFrancesco: There are root barriers if you want to go that direction. I know we talked about the ones between the street and the sidewalk.

Mr. Mills: There is no sidewalk on that side.

Ms. DeFrancesco: Right and I think you are at least 6 to 8 feet back.

Ms. Witcher: It drives the roots down rather than coming across the top into the road.

Ms. DeFrancesco: We need to find out how much it would be because as they mature the oak trees will canopy over that road. It won't be as bad as the ones that are between the sidewalk and the curb right now because we have a significant number of trees that are less than a foot or two from the curb line and those are causing problems to the sidewalk.

Ms. Witcher: If we can put the barrier in now then that would stop problems later on.

Mr. Showe: I will ask him.

Ms. Hernandez: Have the people in Kingswood had the opportunity to review the plan? I would be interested to hear their comments on the plan.

Mr. Bosseler: I am very satisfied with the plan and people that have talked to me about the plan are satisfied too.

Mr. Mills: The plan will be implemented and completed before Christmas.

Mr. Showe: If you go over to that area now you will notice some of the grass is yellow and that is on purpose. It has already been sprayed because you have to kill the turf before you can go in with planting. If you go there now you can see where the beds are going to be defined as part of the plan.

Mr. Mills: He hopes to have the beds prepared before Thanksgiving, which I doubt because of all of the other work that is going on. He has guaranteed Art, Richard, and I that it would be completed before Christmas. It has already been approved and they are moving forward.

Mr. Jean: It has been awhile since I have viewed the area that we planted and after the storm I viewed it again and I could see that it looked a lot thinner. The hurricane blew away a lot of leaves and presumably next Spring's growing season will replace so many of those leaves plus additional growth that we will start seeing a closing in and give it another year or so you might find some pockets that you feel you could add in some bamboo. I personally am against spending more good money after bad and I would rather save that money to put towards whatever we can do for the plantings.

Mr. Breitner: I was with Mel and Richard when we met with the architecture team that is going to be putting in the plants. I think they've got a great plan and I think it is going to look wonderful. One of the major discrepancies of disagreeing with Space Coast Credit Union is

that you are not going to have a solid landscape buffer and of course their position is that it is not solid now but in a couple of years it is going to look great. Our position is that we don't know so finding out now that we have this five year window I completely support his suggestion that we wait because if we do not do something from a legal perspective in a year and a half to two years if it still looks terrible, then we have that as proof that what they did is not fulfilling what we expected it to do. Whereas if we try to do something now we are going to wind up in the same position that we are currently in of them saying we will fill it. I support the position to put up any of the legal activity for the time being especially with this window that we have.

Ms. Rezanka: That is a contract that has other things going on in it. It has maintenance obligation and new buildings going in. If that new building goes in and it is not screened you have five years in time from when the building goes in. You could actually sue on this for the next 25 years in theory but as the circumstance stands now you have five years from January 30th.

Ms. Witcher: Does that go to code enforcement?

Ms. Rezanka: It can go to code enforcement and the maintenance should go to code enforcement.

Ms. Hernandez: We really need to make a decision on whether we want to appeal or not to put that on record. Is there any other option Kim because it is very expensive? I'm not speaking for the Board because we haven't voted on it yet but it is a lot of money and it almost seems better to put that money into fixing it up.

Ms. Rezanka: I agree but there are no other options. I thought Commissioner Smith would stand up for you all and he didn't unfortunately.

Ms. Hernandez: I just feel like SCCU has led us on and did not do what they promised to do. They sat here and told us one thing and did another.

Mr. Showe: I think to Kim's point, and I completely agree with you, but we've gone to the County and explained that to them.

Ms. Hernandez: Is there any other option or anything that we can do?

Ms. Rezanka: You could sue them and immediately ask for mediation to try to get them to do something and not have to go through the whole process. In my opinion you are still wasting a good \$5,000 to \$10,000.

Mr. Mills: There are two separate issues here and one of them was the monument. Not that I am in favor of what Space Coast Credit Union is doing and I agree with everyone else but they did what was the heart of the beginning of it all and that was the monument. They saved the monument and they did a good job with the exit and entrance into Baytree. The other issue now that we have is not complying with their contract, which is not as monumental to the community as the monument was.

Ms. Hernandez: It is because it affects their property values.

Mr. Mills: I am not disagreeing with that but we have to look at how far are we going to put resources financially into this.

Ms. Hernandez: I agree with you and I don't agree that we move forward with it in \$50,000 worth of legal fees.

On MOTION by Mr. Mills, seconded by Ms. Witcher, with all in favor, that Baytree Community Development District is not to go any further with the appeal against Space Coast Credit Union.

FOURTH ORDER OF BUSINESS

Supervisor's Request

Mr. Mills: I would like for the VM's and their community to please express to your residents that when we pull out plants and if they are not put back right away it is because of weather conditions. We have a long-term plan that we are trying to make Baytree more beautiful than what it is currently and that is going to take time and one of the starts is going to be Kingswood. Richard, Art, and I have worked diligently on this plan and it is going to be beautiful when it is done and is going to be what Baytree is all about. Just get across to your residents that if they notice some areas that are bare it is only short lived.

Ms. Witcher: I would like the cost on the barriers before they start putting the trees in. Do we need to have a motion?

Mr. Showe: At this stage we have a not to exceed of \$55,000 and I will have to find out.

Ms. Witcher: I would like to prevent further expense down the road.

Ms. O'Hare: I didn't know there was something like that and I think it is a great idea.

Ms. Witcher: They can even use recycled plastic.

Mr. Showe: We will find out and if they are not too expensive and we can fit them in then we will for sure. We are going to be able to utilize some of the funds in the budget that

were set aside for the tree removal and for the sidewalk repairs as well. We are going to use some of that to offset the higher cost of the trees that we are getting.

Mr. Rizzotti: I agree with holding off and I think it is the right thing to do. If we would have gone and sued them we would've spent a lot of money and we would really be out of it.

Ms. Hernandez: I think we should put out some type of newsletter to the residents because we have a lot of new residents coming in so that they know to call the gate if someone is coming in. That would help to reduce the lines. Also we can let them know about the Supervisor position that is open.

Mr. Showe: We sent that out.

Ms. Hernandez: I know but I just thought if we did the newsletter we could add that in as well because we are going to do that at the next meeting, right?

Mr. Showe: Correct.

Ms. O'Hare: There is a BCA newsletter coming out and there is something in there.

Ms. Hernandez: If it comes out in that letter that is fine but it is something that we might want to consider doing.

Mr. Showe: I know in the past the Board has done an annual newsletter and sent it out to every home and I don't know that we got much of a response.

Ms. Hernandez: I used to do the one for BCA a few years back and I would be happy to do one for us with some interesting things in it especially since we have so many new people coming in so that they are aware of the difference between the CDD and the BCA and what we are doing. I think it would be good for informational purposes.

Ms. Witcher: How about the days of the garbage pickup for the new people so they do not put it out on the wrong day?

Ms. O'Hare: That is what the BCA should be doing.

Ms. Witcher: They are still doing it.

Mr. Bosseler: I encourage more communication and we have a new neighbor here today at the meeting. If we do more communication I would like to include that the Space Coast Credit Union is going to give us \$30,000. I don't want Kingswood Way and Kingswood neighborhood to think that all of the money is going to them. We have to include that the \$30,000 is being paid by Space Coast Credit Union and we also have to include that the replacement of the oak trees is

already in your budget and it is not going to effect anything. I would like any communication to be included.

Mr. Mills: Richard, Art, and I were down at his property line looking at the water situation. Dave Halley with Tropic-Care was with us and if you stand in his corner and look up the land goes up and down and the water is puddling there. Dave was going to have his land person go in and shoot it to find where the low areas are and give us a price on grading that whole thing down towards the wetland so that it all drains off. It can't drain off now because of where his property line is it is higher than where the puddles are. We are going to look at that and I mentioned to Melissa that maybe we could dig a trench by his corner and bury a pipe so that the water goes under instead of over his property. She said that we may have to get a permit on that but she has someone coming out anyway. I just wanted to let them know that we are going to try to resolve this water issue.

Ms. Witcher: This won't undermine his foundation or anything?

Mr. Mills: No.

Ms. Hernandez: Will the County need to approve that?

Mr. Showe: Yes and we are definitely going to go through all of the checks and balances we need.

Ms. DeFrancesco: Yes and we talked to them about just filling the area but if we put a pipe in then they would definitely have an interest in that.

Mr. Mills: Three of the trees will actually be on his property and he has consented to allow us to do that. That is very kind of him.

Ms. O'Hare: It was appalling not to have the number of people at that last meeting at the County Commission. There were 25 people there and only 5 people to speak and that doesn't make any impression on the County Commission. We have 461 homes in here and we couldn't even get 100 people there. I sent things out about going and I don't know how many emails were sent because we have no record of knowing. We really might have had a better reaction from the Commission had there been 100 to 200 people at that meeting and that was a tremendous disappointment to me.

Mr. Mills: It was to all of us.

Mr. Kane: If you want to get out information putting a sign saying to look on the website does nothing.

Ms. O'Hare: That wasn't the only thing done.

Mr. Kane: The email I got was one little sentence. You need to go out with a hard copy and tell the people what they need to do about what is happening to their property and the community. I walked Windsor when I was the VM four or five times and I would be glad to do it anytime because we have got to get the word out.

Resident: The very first Kingswood monument on the right the annuals there die, is there something wrong with the sprinkler system?

Mr. Showe: I am asking them what is going on. Some of those are failing at various monuments throughout the community.

Resident: That one does it every time.

Mr. Showe: I'm checking on that right now.

Mr. Mill: I talked to Dave and asked if he would look at the soil and send samples away so we can find out what is going on. It is throughout the community and if nothing else we can get some bags of miracle grow soil enhancement, till it up, and then plant. That is the cheapest way to do it.

Ms. Witcher: It is probably never fertilized, is it?

Mr. Showe: Yes they fertilize it. If it is a combination of sunlight and water and if it is too much sunlight at certain monuments it will kill it. I also want to remind the Board we are still having our December 7th meeting.

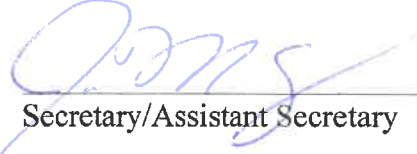
Mr. Jean: I want to commend the Board for all that you have done in support of the Kingswood neighborhood. It is quiet an investment and I think you have done your best.

Mr. Mills: I would like to thank Art and Richard for their presence in working through all of this landscaping. It has been a pleasure working with them.

FIFTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. Mills, seconded by Mr. Rizzotti, with all in favor, the meeting was adjourned at 10:43 a.m.


Secretary/Assistant Secretary


Chairman/Vice Chairman