

Minutes of Meeting
Durbin Crossing
Community Development District

The regular meeting of the Board of Supervisors of the Durbin Crossing Community Development District was held Monday, March 27, 2023 at 6:00 p.m. at the Durbin South Amenity Center, 145 South Durbin Parkway, Jacksonville, Florida.

Present and constituting a quorum were:

Peter E. Pollicino	Chairman
Sarah Gabel Hall	Supervisor
Jason Harrah	Supervisor
William Clarke	Supervisor
Shalene B. Estes	Supervisor

Also present were:

Daniel Laughlin	District Manager
Mike Eckert	District Counsel by telephone
Matthew Davis	Counsel
Dan Fagen	Vesta/Amenity Services Group
Danelle DeMarco	Vesta/Amenity Services Group
Zach Davidson	Vesta/Amenity Services Group
Blake Dougherty	Yellowstone

The following is a summary of the discussions and actions taken at the March 27, 2023 meeting.

FIRST ORDER OF BUSINESS

Pledge of Allegiance

Mr. Laughlin called the meeting to order and led the pledge of allegiance.

The board and staff observed a moment of silence in memory of Nancy Griffin.

SECOND ORDER OF BUSINESS

Roll Call

Mr. Laughlin called the roll.

THIRD ORDER OF BUSINESS

Audience Comments

There being none, the next item followed.

FOURTH ORDER OF BUSINESS**Approval of Consent Agenda**

- A. Approval of Minutes of the February 27, 2023 Meeting**
- B. Balance Sheet and Statement of Revenues and Expenses**
- C. Assessment Receipt Schedule**
- D. Check Register**

On MOTION by Mr. Harrah seconded by Ms. Estes with all in favor the consent agenda items were approved.

FIFTH ORDER OF BUSINESS**Discussion of Pool Repairs**

Mr. Davis stated last December we retained Bret Newkirk, a litigation consultant he is an engineer out of Jacksonville. He inspected the pool in early December and it was his opinion that Epic did not install the marcite at the required thickness. He had taken some samples and they didn't meet the required thickness. He also thought it was possible that they did not install the bonding agent that the manufacturer recommends, he couldn't say for certain. We think we have a decent argument, there is no sure thing in litigation, that Epic breached the obligations under the contract. Certainly, when they were notified, I understand they did come back and do some patches, but in the July/August 2022 timeframe they were notified of additional delamination issues and they did not come back out. We argue that is a violation of the warranty obligation under the contract. Florida Law requires you to send a statutorily required notice of a construction defect before you can commence litigation against anyone. We did that in December. Epic never responded; they did eventually reach out through their insurance carrier. They were asking for more information and in my opinion, they were trying to stall and drag their feet. Vesta and the district manager solicited proposals and received two qualified proposals, one from Crown Pools another from Pinch A Penny and since then Epic has retained an attorney. I suspect it is through their insurance carrier, but I don't know that for sure. They conducted an inspection last Tuesday and I have tried to reach their counsel since then to see if they are willing to make any kind of repairs or make a monetary offer and haven't heard anything back. At this point understanding that it is important to get the pools looking good and back up and running before the summer, my recommendation will be to go forward with the repair work. I have worked with Mr. Eckert in the

past in the contract that we used here and I know he has used with other districts as what is a termination for convenience provision so if we were to go forward with Crown or Pinch A Penny, I recommend signing a contract with termination of convenience provision, that way if Epic does come back and say we would like to repair the pool at no cost or make some kind of offer to us we can then get out of the contract with whomever else and give Epic the option to get involved. Given their continued reluctance or refusal to get involved and enter into good faith negotiations and understanding the desire to get the pool ready to go, I think the district needs to move forward with the repairs and then if we want to, we can commence litigation against Epic. I would certainly try to work it out with their counsel and keep trying to reach them but given that we already have a contract that was signed in 2017 Florida has a four-year statute of limitations on issues that pertain to construction, five years for breach of contract. I would argue that this didn't begin to run until 2022 but we have to be cognizant of the statute of limitations. There really would be no sense in waiting around if we wanted to file suit because we have an idea of what our damages are going to be and that really is the cost that we have in these proposals. In sum, I think we should go forward with the repairs, Epic has not stepped up and agreed to do it and we can then decide either now or next month or in the future whether we want to formally pursue litigation against Epic.

Supervisor Hall joined the meeting during this item.

Mr. Davidson reviewed the proposals from Crown Pools for the south pool in the amount of \$370,275 and the north pool in the amount of \$142,580 for a total of \$449,855 and Pinch A Penny for the south pool in the amount of \$318,400 and for the north pool \$139,300 for a total of \$456,700. The differences between them is \$6,835. My recommendation is Pinch A Penny, their communication has been very responsive.

Ms. Hall stated I have experience with Crown Pools and would like to see commercial pools done by Pinch A Penny before we award the contract.

Mr. Davidson stated they have done commercial pools and I will get a list for you. The south coping needs to be done, it is hollowing out in a lot of spots, we did a lot of repairs last year and when the vendors walked it, they advised us to do south and the all in price for Pinch A Penny for south is \$345,250 and north \$155,250 including the coping and lights. The grand total is \$500,545.

After further discussion the board took the following action.

On MOTION by Mr. Harrah seconded by Ms. Estes with all in favor the proposals from Pinch A Penny for the North and South Pools were approved subject to the 30-day price being held in an amount not to exceed \$505,000, that includes the coping and lighting, etc. pending Sarah's review of any commercial type products being completed.

Ms. Estes stated I came up with a different total with the lights.

On MOTION by Mr. Harrah seconded by Ms. Estes with all in favor the prior motion was amended to include a not to exceed amount of \$525,000.

Mr. Davis stated you are going forward with the repairs. Do you want me to get a response from Epic and hold off on litigation for now?

Mr. Pollicino stated hold off on litigation for now, as soon as we get an executed contract, we will share that with you and you can share that with them so they know what they are looking at.

Mr. Harrah stated we prepare for bringing to the board a motion to move forward with litigation against Epic at the April meeting making the assumption that Pinch A Penny contract is executed and making the assumption that you did one last ditch effort with Epic to see if they want to have a discussion, if not bring it to the April board and we will make an approval to move forward with litigation.

Mr. Pollicino stated I think that window passed.

Mr. Harrah asked do you feel like you want to reach out to them again or are you done?

Mr. Davis stated I definitely think I should reach out to them because as soon as you file suit then everybody lawyers up, costs increase, and they may dig in. Move forward with the repairs.

SIXTH ORDER OF BUSINESS

Discussion of North Amenity Center Fencing Proposal

This item was tabled.

SEVENTH ORDER OF BUSINESS**Discussion of the Fiscal Year 2024 Budget**

Mr. Laughlin stated we need to approve a budget by June to set the high-water mark and adopt it in August at which time you can lower the assessment, but you cannot increase it. We have factored in 3% to 5% increases we have been seeing across the board from almost all the vendors, we have tried to estimate what we think the costs are going to be. We can discuss the capital reserve, last year we put in \$54,000 and with all the discussions and the work we are looking at we are putting in \$100,000 as a placeholder. At this time, we are looking at roughly 4.57% increase. We need to get more numbers in and have a discussion at the next meeting.

Mr. Fagen stated we haven't submitted revised numbers as far as the budget is concerned, so use last year's numbers for FY24.

EIGHTH ORDER OF BUSINESS**Staff Reports****A. Landscape Maintenance Team - Report**

Mr. Dougherty gave an overview of the March report, a copy of which was included in the agenda package.

Mr. Davidson stated you have a proposal from Yellowstone for north sod fill ins from where we stopped at North Durbin going to Veterans. We didn't propose the entrance as we felt that is the next spot where we will do Phase 2 of the conversion. We could fill it in but if we went to St. Augustine in six months it would be a waste of funds.

Mr. Harrah stated we need to put the next phase in the budget.

Mr. Laughlin stated I added the \$50,000 to the capital. I just need the number before we approve the budget in May.

On MOTION by Mr. Harrah seconded by Mr. Pollicino with all in favor the proposal from Yellowstone for sod patching from Sanctuary to Veterans in the amount of \$16,974.33 was approved.
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B. District Counsel

Mr. Eckert stated we anticipate having a suspension hearing in April for the damage done to the field. We don't anticipate a property damage reimbursement but there may be an administrative reimbursement that the board would consider under their new policy.

C. District Engineer

There being none, the next item followed.

D. District Manager

There being none, the next item followed.

E. General Manager - Report

Mr. Fagen stated the report is in the agenda package. Please read Margaret’s heartfelt message regarding our loss of Nancy and thank you for your support, the community’s support is what makes Durbin special.

Ms. Hall asked can we look into doing something for Nancy such as plant a tree with a plaque or bench to keep her memory alive?

Mr. Davidson stated we are in discussions with Yellowstone about possibly planting a tree and they are willing to work with us.

Ms. DeMarco stated as much as I would like that because she deserves it, are we on a slippery slope with the year we had with the Bailey family and trying to keep clear lines of the benches and flowers?

F. Operations Manager - Report

Mr. Davidson gave an overview of the field operation manager’s report then presented proposals for the community park monument repairs.

On MOTION by Mr. Clarke seconded by Mr. Harrah with all in favor the proposal from Four Seasons to remove the park monument and replace with a tree in the amount of \$3,250 was approved.

G. Amenity Manager – Report

Ms. DeMarco gave an overview of the amenity manager’s report, a copy of which was included in the agenda package.

NINTH ORDER OF BUSINESS

Supervisor’s Requests and Audience Comments

Mr. Clarke stated my wife had an interaction with Sheriff Hargrove and he is quite aware of the stuff the community went through and he offered to speak to the community. He has spoken at a couple other CDDs. I told her I would pass it along; I'm not sure we need it.

Mr. Gruber asked with the closing of the pool, will we be able to do swim team at north while the pool is closed?

Mr. Clarke stated I would like confirmation on the timeline. We just need to let the swim team know in enough time.

Ms. Demarco stated north would not be option for swim team.

TENTH ORDER OF BUSINESS

Discussion Regarding Security Matters

This item was tabled.

ELVENTH ORDER OF BUSINESS

Next Scheduled Meeting – April 24, 2023 @ 6:00 p.m. at the Durbin South Amenity Center

Mr. Laughlin stated the next meeting will be held April 24, 2023 at 6:00 p.m. in the same location.

On MOTION by Ms. Estes seconded by Ms. Hall with all in favor the meeting adjourned at 7:32 p.m.

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Daniel Laughlin
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Secretary/Assistant Secretary

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Chairman/Vice Chairman