

TURNBULL CREEK  
COMMUNITY DEVELOPMENT DISTRICT

The regular meeting of the Board of Supervisors of the Turnbull Creek Community Development District was held Tuesday, March 8, 2022 at 6:30 p.m. at the Murabella Amenity Center, 101 Positano Avenue, St. Augustine, Florida.

Present and constituting a quorum were:

Chris DelBene	Chairman
Diana Jordan-Burks	Vice Chairperson by telephone
Brian J. Wing	Supervisor
Chuck Labanowski	Supervisor
Jeremy Vencil	Supervisor

Also Present were:

Jim Oliver	District Manager
Jennifer Kilinski	District Counsel
Steve Collins	District Engineer
Jim Schieszer	Operations Manager
Erick Hutchinson	Amenity Manager
Josh Fletcher	Trimac Outdoor

The following is a summary of the actions taken at the March 8, 2022 meeting. An audio copy of the proceedings can be obtained by contacting the District Manager.

**FIRST ORDER OF BUSINESS**

**Roll Call**

Mr. Oliver called the meeting to order at 6:30 p.m. and called the roll.

**SECOND ORDER OF BUSINESS**

**Public Comments**

Mr. Dickenson stated my wife and I are in favor of implementing security cameras.

Mr. Oliver stated Florida Statutes dictates that discussion of security matters should be considered exempt and confidential. For tonight's meeting, although we will certainly take public comments regarding security cameras, we will move this item to the end of the agenda so that after consideration of the consent agenda, we will excuse the audience and the board will have a

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confidential session regarding security matters. Any decisions by the Board will be after we resume the regular meeting and members of the public may rejoin the meeting at that time.

Mr. Jacobs stated we had complaints from some homeowners of not being able to get up to the amenities recently when there were quite a few games going up here and they were under the impression that these were not local teams from within the community. I want to know if that was the case.

Mr. DelBene stated it was Ancient City Soccer and it was both residents and whoever else made up the team.

Mr. Jacobs stated last month someone sprayed the berm to kill the weeds behind me and whatever they sprayed didn't work. Last time they put down pine straw and the tractor trailer was out here, but they never did our area, the back section of Cascadia on the berm. I went out and bought 20 bales and put it down and it was not enough so next time I would appreciate it if someone came down the berm at Cascadia and put some pine straw down.

A number of trees are dying and a number of the hollies have a disease and need to be treated. There are three behind my house and I have been treating them but it is not just me. We have bare spots and we have a new company that took over not long ago and I have seen them working, but we really need to get down some new sod. The homeowners are getting letters about their lawns and people complain about the CDD property not looking very nice.

**THIRD ORDER OF BUSINESS**

**Consideration of Resolution 2022-04 Election of Officers**

Mr. Oliver stated next is consideration of Resolution 2022-04 election of officers. As I understand it this district elects officers on an annual basis.

Mr. Wing nominated Diana Jordan-Burks as chairperson and there being no second the motion died for lack of a second.

On MOTION by Mr. Labanowski seconded by Mr. Vencil with four in favor and Mr. Wing opposed Chris DelBene was elected chair.

On MOTION by Mr. Wing seconded by Mr. DelBene with four in favor and Mr. Vencil opposed Diana Jordan-Burks was elected vice chair.

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Mr. Oliver stated also on the same resolution, Ernesto is shown as secretary and treasurer and he is no longer with the district. He should be removed from those positions. I ask in the interim that you add my name to serve as secretary and treasurer so that I can execute documents on behalf of the district.

On MOTION by Mr. Wing seconded by Mr. DelBene with all in favor James Oliver was elected secretary and treasurer.

Mr. Labanowski asked what period of time are we talking about?

Mr. Oliver stated that will hinge somewhat on an agenda item to be discussed later in the meeting, the RFP for district management. I'm happy to serve in that position, but if the board selects a new management company the incoming firm will designate someone else in that position.

#### **FOURTH ORDER OF BUSINESS**

#### **Staff Reports**

##### **A. Landscape Manager (Presenter: Trimac)**

###### **1. Inspection Checklist**

Mr. Schieszer gave an overview of the work accomplished and landscape enhancements completed since the last meeting and the work to be done within the next few weeks.

##### **B. Engineer (Presenter: JMT)**

Mr. Collins stated we have been working on encroachments into the district's easements.

Ms. Kilinski stated staff has been working on a few things. One is the survey that we got back a few weeks ago regarding 1888 and 1893 South Cappero Drive as well as an aerial of the property of other potential problem areas so we had more of a holistic review of what we are dealing with as it relates to impervious encroachments into district easements and district property. We are not necessarily talking about fences, we are talking about brick pavers, pools, lanai's that sort of thing. Briefly, the two that you authorized a survey for, the survey demonstrated for 1888 that there is a brick patio as well as planters that encroach not only into district easements but also into district property. After talking to JMT as well as the onsite contractor, the middle patio is causing ongoing erosion issues and causing impairments to the district's stormwater facilities so

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that patio needs to come out. Also that patio needs to come out because your contractor can't finalize stabilization of the pond bank without that patio being reduced. Before Ernesto left he had engaged with the resident and we are waiting on two different proposals, one was for removal of the center patio, which was \$1,700 from the contractor, the resident requested that we ask a contractor how much it would be to do that work while he is mobilized. The other was for removal of all the impediments into district property. We need the patio removed but the board may also direct us to say we want everything removed that is in district easement and on district property because they were not authorized to be constructed there, and that estimate for that was \$2,678.

The other one also has impervious areas into the district's easement. They are not currently causing ongoing erosion issues or impairments to the district's property, but clearly they are within the easement area without authority.

We also identified seven other properties that appear to have improvement encroachments. Those are subject to survey, but based on JMT's aerials, it looks like these seven homes also have impervious improvements that are also within stormwater easements.

There were twelve other properties with home structures that encroach onto drainage easements between houses.

We wanted to bring this all to you for two reasons. We have the immediate issue of the patio and we need to have that removed, the contractor has told Steven that if we don't get it removed pretty quickly he is going to have to demobilize and charge us a remobilization fee. He is waiting for that removal in order to complete the project. That is mission critical.

Mr. DelBene asked along with your recommendation why are we not also sending this same letter to the HOA, which would have approved these plans and making sure that if the homeowner balks, the HOA is responsible as well. This is a pool, patio, deck, planters that all should have been approved by the HOA.

Ms. Kilinski stated any time we have an easement access issue that is also an architectural control potential dispute, we would send a letter.

Mr. DelBene stated I want to make sure the HOA gets a copy of the letter as well as a copy of the bill in the event the homeowner balks.

Ms. Kilinski stated what we need from the board tonight is a couple things. One, is for the purposes of the 1888 South Capper Drive when we presented the revised proposal to the homeowner they requested the district share in the cost of removal of the improvements. Keep in

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mind the survey was \$1,500 and the board directed us to ask the homeowners to share in the cost of that survey if there were impairments so that is \$750 for each of these homeowners. What I provided to you is a draft of the letter and draft of the encroachment agreement and we are recommending for purposes of 1888 to ask them for reimbursement for half the survey, ask them to pay the cost to remove the patio within a specified timeframe and giving them an encroachment agreement that would than allow them to keep the other improvements on district property with an encroachment agreement that says you are on notice, it is recorded against the property you can keep those improvements there but if there is an ongoing issue that presents itself that impairs the district's stormwater facilities you agree to remove the improvements or the District is permitted access to remove the improvements at their cost.

Mr. DelBene asked does anyone have any objections to the encroachment agreement, to the encroachment letter, to the encroachment plan for the \$750 the letter to the homeowner, them paying all the costs of removal of those items as well as sending the letter to the HOA to make sure it is on record?

There was no objection from the board.

Ms. Burks asked when you send the letter to the HOA are you holding them responsible for approving that structure?

Ms. Kilinski stated the point of doing that is to notify the HOA of the ongoing issue and that they are on notice that there are encroachments into the property and the district is holding anybody responsible for unauthorized structures in the District property and easements but the district. We didn't bless it, it is in our easement, we didn't grant access. We have this issue in other districts and we have always told residents to the extent the resident has an application that shows the HOA approved it or you find out that they did, the resident should look to the HOA, not the District, for the costs associated therewith. We need to be made whole, we need to have the impairments remedied so that we can have erosion control for the benefit of the entire community and if you want to get reimbursed for the amount you are incurring to remove those improvements, then seek redress with the HOA.

Mr. DelBene stated the only thing I don't see in the letter is a timeframe and I know time is of the essence here. For the 1888 within a week we are going to be delayed, if they have to remobilize that is not something we need to incur. The letter needs to include that they need to secure a contractor to perform the work prior to the contractor moving away from our project or

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our contractor will do it by X date and that date needs to come from the contractor. If they don't have it done by that date the contractor can step in and do the work.

Ms. Kilinski stated the problem is exactly that part. I think the "or" has to be we are going to seek an injunction and hold you responsible for any mobilization and attorneys' fees associated with seeking that injunction. Because there is some case law regarding that issue, the idea is that we want a court to tell us we have the right to go and remove that because it is impacting our infrastructure. We want to put the District in the best position by securing an injunction that has a court behind our removal if they do not comply with the letter request.

Mr. Wing stated I would still like to see some stronger language for even the other homeowners that are going to get a letter that says, you have things in the easements and we are not going to make you take it out right now but if there is an issue with erosion, etc. you are going to be responsible. In the past when we did pond bank repairs and there were issues that looked like it was the homeowners' issues the engineer's said he can't be 100% certain. I don't want to have to go through litigation. If it is clearly in the easement it is not supposed to be there I would like them to take responsibility for that.

Mr. DelBene asked are you talking about the 7-12 properties or the two properties?

Mr. Wing stated 7-12.

Mr. DelBene asked are we sending them those letters without confirming with surveys?

Ms. Kilinski stated that is the other decision for this Board. The other part of the decision is exactly that so for 1888 we have clear direction about how you want us to approach that. 1893 the question is we have a survey, there are impairments not causing ongoing erosion control issues right now. Our recommendation is because of the types of improvements that are there and the length of time they have been there that you do the same thing, offer them an encroachment agreement in consideration of keeping it there and what Supervisor Wing just said, if anything happens you are going to be responsible for repairing it and not litigate it.

Mr. Wing stated we have been pretty tough so far not filling into easements and I don't want this board to be accused of having a double standard.

Mr. DelBene asked since two surveys was \$1,500 how much is it for the 19 properties?

Mr. Collins stated probably comparable.

Ms. Kilinski stated we could still send a letter and say, we believe that you have an encroachment, here is the agreement you are going to sign. If we do a survey we are going to

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charge the cost back to the homeowners if there is an encroachment, which we believe strongly that there is. You could still approach it that way because we are not asking them to remove anything if that is the direction of the board. Once we ask them to remove something I would get a survey. This has nothing to do with fences, which is a whole other issue we haven't even gotten into that analysis yet. This is all pools, pavers, impervious improvements.

Mr. DelBene stated because we haven't confirmed it with the survey we are not on notice that they are encroaching on our easement, correct for the seven homes.

Ms. Kilinski stated I would argue we are on notice because we have an aerial.

Mr. DelBene stated for any property that you believe we are on notice for, the safest option is to send those letters.

Ms. Kilinski stated the only thing these notices will do is you are going to record an encroachment agreement on the property so a future homeowner is on notice.

Mr. DelBene stated the last paragraph about the information being helpful, you might want to bold that and highlight your contact information because I think we are going to have 19 homeowners calling you, if you have questions or concerns regarding this agreement please contact us at this number.

Ms. Kilinski stated we have this coming from the district manager, that is still my preferred route except in the case for saying we are getting an injunction that will come from our office.

Mr. Oliver stated we will send the first one the next one comes from the attorney.

On MOTION by Mr. Wing seconded by Mr. Vencil with all in favor the form of letter and encroachment agreement as revised with stronger language was approved.

Mr. Collins stated I have been coordinating with the contractor. Some people were concerned that there is a drop off to the construction they are doing right now. The contractor told me that since they did not ask anybody to remove their fences to access the easement they had to build a roadway first. They are planning to do the remainder of the grading when they have the erosion control product in place. A photo of the erosion control product is in your agenda and it is not exactly as I explained to you before when I said we were trying to get geomat, this is geogrid however it is what they included in their proposal and I think it is still going to be a functional stabilization, it is still going to be protected from UV being underneath the sod and should last

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many years. When we got the quote from Boudreaux I was surprised how low it was in that the price for pond bank repair we find it usually in range of \$55 to \$60 per linear foot and that is just for pond bank repair and sod. The cost they gave us is about \$44 per linear foot and you are getting the geogrid product as well, which cost them about \$20,000. They told me the other product would cost \$110,000 prior to their mark up and labor, in other words it would more than double the price of the entire project. It will be trenched in and the sod is rolled sod and has some plastic reinforcement as well. I still think it will provide a functional solution. It is not that you are not getting anything that you paid for because what they are providing is what they proposed.

Mr. Labanowski stated they quoted St. Augustine sod but they are putting in Bahia and we should see a lesser price for that.

Mr. Collins stated I will talk to them about that.

Mr. Schieszer asked are they going to put in the entire area they are covering because they are putting very little dirt because it is not necessary. Will they put sod on that?

Mr. Collins stated it is my understanding that anything they are disturbing they have to resod.

Mr. Labanowski outlined some areas of concern with storm drains and sediment going into those drains on South Sorrento, Amalfi and South Cappero.

Mr. Collins stated they should have cleared out the dirt but you want that, they put Geotech style fabric on top of the drains to stop the mud. They should come in and clean it out after a rain event.

Mr. DelBene stated if there are hiccups on the project someone needs to relay that to the chair and the board separately. We need to get an estimated completion date and if there are any delays and how far it pushes that date.

Mr. Collins stated I just texted him and he said it should be finished before the end of the month pending the issues with the patio.

## **FIFTH ORDER OF BUSINESS**

### **Consideration of Resolution 2022-05 Instructing St. Johns County Supervisor of Elections to Conduct the General Election**

Mr. Oliver stated next is Resolution 2022-05 instructs the supervisor of elections to conduct the general election. They conduct it every two years.

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On MOTION by Mr. Wing seconded by Mr. DelBene with all in favor Resolution 2022-05 was approved.

## **SIXTH ORDER OF BUSINESS**

### **Consideration of Amendment to Vesta Agreement for the Use of District Basketball & Soccer Facilities Regarding Insurance Coverage**

Ms. Kilinski stated district staff got a request from Vesta, the original agreements for these amenity operations is for abuse and molestation insurance coverage of \$5 million coverage. Their insurance carrier is requesting us to reduce that to \$2 million per occurrence and \$3 million aggregate. I'm perfectly comfortable given the scope of their services here, they are also required to adhere to our youth policy guidelines, require background checks for all volunteers and onsite personnel for all their amenity operations to reduce that amount.

Mr. DelBene stated if Ancient City has no problem with getting \$5 million in insurance coverage then Vesta shouldn't either. Ms. Kilinski stated Vesta is the only one with insurance coverages at this level, which has been in place since they were on site. She explained it carried through Vesta's amenity management contract scope.

Mr. Labanowski moved to table this item.

Ms. Kilinski stated later in the agenda they want to extend their soccer season and if we are tabling this we wouldn't enter into a contract with them for a season that is starting if they don't have the right coverage. If they don't have the same coverage limits is there a different direction from the board between now and the next board meeting to allow the soccer program or do you just want to table their permission to use the field until we get this cleaned up?

On MOTION by Mr. Vencil seconded by Mr. Labanowski with all in favor the request for an amendment to the agreement with Vesta for a reduction in insurance coverage was denied.

## **SEVENTH ORDER OF BUSINESS**

### **Discussion of RFQ for District Management Services**

Ms. Kilinski stated a couple supervisors asked that this item be added to the agenda. To give you background, you have rules of procedure that provides the way the district bids certain

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projects, contracts and the like. District management is not one of those that you have to formally bid but our normal course of business if that is the desire of the board to go through a formal bid where you have presenters come and have the proposals.

Mr. Vencil stated the alternative to that is an extension of the agreement at the existing rates or what percentage increase?

Ms. Kilinski stated I don't think there was a proposal. The contract is with GMS.

Mr. Vencil stated so it is not expiring?

Ms. Kilinski stated no, it is like our contract, it is a continuing services agreement that you have the right to terminate with 60-days notice.

Mr. Wing stated we have not bid this particular contract in a number of years. We have bid attorneys, engineers, landscapers, I think it is time to ask for bids, ask for qualifications.

Ms. Kilinski stated GMS has been here since the district was established. You went out in 2017 and got proposals and authorized moving forward with GMS. We had updated the agreement, I just can't find that it was ever executed, it is the same scope of services, the same price. They have been here since 2005.

Ms. Burkes stated I would like to go out and see what is out there.

Mr. DelBene stated I was speaking to Charles at Sweetwater Creek and when this question came up regarding the RFQ did GMS provide their community a roughly 18% discount on their services?

Mr. Oliver stated I offered a fee reduction to that board, yes.

Mr. DelBene asked was it your intention to offer that to this board?

Mr. Oliver responded we will review the request for proposals document when received from counsel and make a decision how GMS is going to respond to the request.

Mr. DelBene stated you had a contract with Sweetwater Creek and when they decided to discuss an RFQ, you offered them 18% cut on the current contract.

Mr. Oliver stated I didn't state the fee reduction as a percentage, but as a specific dollar amount. The 18% may or may not be accurate. That is not my calculation.

Mr. DelBene asked why is that not on the table for us?

Mr. Oliver stated you are already discussing go out for proposals. It was your decision to add it to the agenda. We are going to let the proposals come in and you can evaluate the proposals

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and determine whether or not you want to retain our contract or go with a new management firm. I'm not going to negotiate against GMS tonight. I prefer to allow the process to move forward.

On MOTION by Mr. Wing seconded by Mr. DelBene with all in favor staff was authorized to start the RFQ process for district management services.

Mr. Wing asked what is the timeline for that?

Ms. Kilinski stated we will make them due well in advance of your next board meeting, just to get feedback from the board how you want it handled. We usually run through our office any proposals we receive and how you want the presentations conducted. Do you want to have a time for presentation and questions? Then 10 minutes for presentations and a limited questions and answers.

Mr. Oliver stated you will probably want to make a selection at your next meeting because you have budget season coming up. You may want to have a special meeting sooner than May. You have two big items on the table right now with pond bank erosion repairs and encroachments matter. With all these letters going out to residents, you can respond to these matters sooner rather than put them off for two months. You can handle this RFP for management services sooner, also if you select a new management firm, they will have the ability to go through the budget process with you.

Ms. Kilinski stated you could meet April 12<sup>th</sup> and that would be on your regular schedule.

Mr. DelBene asked is this published in the paper?

Mr. Kilinski stated I wouldn't for this service, we know all the district management companies that exist, there are not a lot of them and we will reach out to them individually and solicit proposals.

On MOTION by Mr. Labanowski seconded by Mr. Vencil with all in favor a special meeting was scheduled for April 12, 2022 at 6:30 p.m. in the same location.

Mr. Wing stated I ask that you send us each a list of the companies you are sending it out to.

Ms. Kilinski stated sure.

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**EIGHTH ORDER OF BUSINESS****Staff Reports (Part 2)****A. Attorney - (Presenter: Jennifer Kilinski)**

Mr. Labanowski asked in regard to property that Flagler has, how hard would it be for them to give us property?

Ms. Kilinski stated Mr. Labanowski is referring to the entry monumentation may or may not be on district property it may be on Flagler property. We will try to confirm that.

Mr. Labanowski stated there is another piece of property that we maintain and that is the pond bank right here, the very end of the pond bank on Murabella Parkway. We have been maintaining that forever, it goes up to the third oak tree going east and goes at an angle to the corner and right in the middle of the firehouse driveway. I'm wondering if we could talk to them as well about maybe donating it. I understand they may have needed it when they were building the facility but they may be able to turn that over.

Ms. Kilinski stated it would be shocking if we built improvements on somebody else's property, but given our experience with the light pole and the county building improvements on district property, nothing would surprise me. Let us confirm the property ownership. We can also add that to the April agenda for an update and what your options may be, even an easement would be our recommendation on the big one.

**B. Manager - (Presenter: Jim Oliver)**

There being none, the next item followed.

**C. Operation Manager – (Presenter: James Schieszer)****1. Memorandum**

Mr. Schieszer gave an overview of the field manager's report, copy of which was included in the agenda package.

Staff will get an estimate for pine straw for the back berm and budget for that area in the future and identify all areas that get mulch and pine straw.

**D. Amenity Center Update (Presenter: Erick Hutchinson)****1. Memorandum**

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Mr. Hutchinson gave an overview of the amenity center report, copy of which was included in the agenda.

## **2. Fireplace Proposal**

No action taken on this item.

## **3. Karate Program**

Mr. Chomic stated we started a martial arts studio and are looking for a venue to open here in the Murabella area. I talked to Erick about giving back 10% of the income and I think that is fair. We proposed to start April 11 at 5:00 p.m. and set up the classroom from 5:30 to 8:00 p.m. and from 8:00 to 8:30 I would clean up. He said the Gift of Dance is leaving May 26<sup>th</sup> from 6:30 to 8:30 and that venue would be open as well and I would like to take that day as well. It will be Monday, Tuesday, Wednesday from 5:00 p.m. to 8:00 p.m. set up from 4:30 to 5 and from 8 to 8:30 we will clean up.

Ms. Kilinski stated we have our typical license agreement that we draft that requires waivers and acknowledgement that you are participating in an exercise type activity.

On MOTION by Mr. Vencil seconded by Mr. Wing with all in favor the request for a karate program two nights a week was approved for a period of six months that could be extended upon evaluation.

## **Proposal for Summer Camp**

Coach Frank stated I have my license and certifications and I provide after school daycare, spring camp, summer camp. I'm running a summer camp in Heritage Landing where I reside. I would like to provide a summer camp here, Monday to Thursday 8:00 a.m. to 3:00 p.m. and work around schedules you already have. We are looking at 30 kids and offer only to Murabella families for a certain amount of time. We could advertise to get people to sign up for four weeks and the first two weeks would be only Murabella. My niche is youth sports, learning sports, tennis, basketball, soccer, flag football and we would like to utilize one of those spaces on a scheduled basis so it doesn't interfere with residents. I have special equipment that only uses half a tennis court, one side of a basketball court. The kids would have to bring their own snacks, a four-week period from June 6<sup>th</sup> to July 1<sup>st</sup>.

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Mr. Hutchinson stated the concerns are the parking situation, during inclement weather coming inside could interfere with another program. I do have concerns, but at the same time my obligation is if something is presented to me to let you know what is going on.

Mr. Vencil stated June and July it is going to rain and there will be times when this space might be free, there are going to be times it is not free and it is raining. Is the contingency plan to use the covered space outside?

Mr. Hutchinson stated if we get thunder or lightning it is shut down.

Mr. Vencil stated after two or three days of rain the outdoor facilities are unusable.

The board rejected the proposed summer camp.

### **Fighting Turtles**

Ms. Buchanan stated we have had this program agreement every year. We have had similar discussions regarding this agreement every year. I want your feedback on requested contract changes because some are larger deviations from what we require in other vendor contracts. We have had a discussion about the number of lanes left open for resident swim when the Fighting Turtles are using the space and two years ago we had one lane use then more than a couple residents doing lap swimming and we allowed for a second lane. Last year we added the two lanes all the time being open and the swim team indicated that very rarely got used and they are requesting that we have one lane open at all time for residents and if there are additional lap swimmers they will collapse and allow for two lanes. The second one was remission of revenue. Last year we had a discussion going into the swim team season them being alarmed about the 10% of gross revenue. We talked about that and waived it and you said next time put it in the agreement so it is in the agreement but they are asking because of their revenue shortfall that you consider waiving the revenue requirement. The last part is the team size. We vacillated between 90 cap during Covid to 125 to 150 over the years.

The board discussed the size of the swim team, the number of lap lanes open to residents and the 10% revenue sharing, parking, number of participants, 150 is fine, 10% shared revenue on registration fees.

<p>On MOTION by Mr. Labanowski seconded by Mr. Wing with all in favor the agreement with the Fighting Turtles was approved for the swim season that includes a 10% revenue sharing on registration fees,</p>
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maximum 150 participants, two lanes open at all times to residents and if no one is using the second lane the swim team can use that lane.

### **Gift of Dance Proposal, Line Dancing**

Mr. Hutchinson stated this is the same owner as Gift of Dance and she is trying to expand what she does and is asking Tuesdays from 9 a.m. to 10 a.m. starting April 5, 2022. It will be open to all ages, \$10 per class

On MOTION by Mr. Labanowski seconded by Mr. Wing with all in favor the request to have a line dancing class was approved.

### **4. Amenity Athletic Winter Flag Football, Spring Soccer, Spring Basketball, Summer Flag Football, Fall Soccer, Fall Basketball, Winter Flag Football (2023)**

Mr. Hutchinson stated my understanding is we have denied amenity soccer because they are not willing to do the \$5 million in insurance. They are basically trying to take over our community with every type of sport. The proposal is for winter and fall, flag football, basketball and soccer.

Mr. Vencil stated they have already taken registrations and they will pay the insurance. I cannot see a situation where they balk. They came to us to see if they could get a deal and we said no and they are going to pay for the \$5 million coverage.

Mr. Wing stated let's approve the spring ones they have already started registering people, the soccer, basketball contingent upon they put their insurance back to where it was. We can table the rest because there is no hurry on those until we know what they are going to pay the insurance for.

On MOTION by Mr. Wing seconded by Mr. Labanowski with all in favor the proposal for soccer and basketball programs for spring and summer flag football were approved subject to the insurance being \$5 million.

Mr. Labanowski asked has anyone talked to Flagler about overflow parking and if not I suggest we do that.

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Mr. DelBene stated the schedule for Ancient City Soccer doesn't make sense to have all teams practicing at the same time.

Mr. Hutchinson stated I thought it was going to be staggered and that is why we have a meeting set up.

Mr. DelBene stated they were parked by the mail kiosks and no one was managing the parking that is in their agreement and unless they feel like breaching their agreement we can shut them down for the year.

## **5. Alpha Dog Proposal**

This item tabled.

### **NINTH ORDER OF BUSINESS**

### **Public Comments and Supervisors Requests**

Mr. Dickinson stated I want to comment on the report the engineer gave about the pond banks. I heard a lot of comments from the board, Chuck mentioned about the pond banks and rain and dirt falling into the pond. We live on the pond and that is what we see. Dirt is going into the pond after it rains. I'm also seeing how it is fixed, and refixed and I don't know how that fits into the timeline but that is what we see happening. Since the beginning of the project I wondered why it wasn't done in sections. Did the contractor hire a contract manager to oversee all of this? The other concern is the change in material, from geoweb to grid webbing and he said it should function. Who is going to be accountable if this doesn't work? Is the grid webbing going to do the same job as the geoweb was supposed to do? I would have liked to ask him questions directly and I can't speak directly to who I want to.

Mr. DelBene stated I understand your concern. The reason the meeting is set up this way is because if we had it open comment after every agenda item we would have a six hour meeting. The engineer is paid by the hour and that is why he leaves after his report. I looked up geogrid and geoweb while he was discussing it and it is used for erosion control purposes on steep slopes. At no time did they mention geogrid and we rely on our engineer for his expert opinion. We need to go back through the minutes and the engineering firm has to be held accountable if that project fails.

Ms. Kilinski stated the substantial and final completion for this project are required for payment of the remaining 50%, paid as 30% and then 20% and one of the things we may want to

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recommend is have an engineer's certificate that certifies the district got what it bargained for and also the project is going to meet the expectations and parameters of the contract. I have to think how to draft that and whether or not they would sign it or not but that is something to ask Steve about. You haven't paid for what you thought you were getting, but you would have maybe made a different decision had you known you were getting an inferior product. At this late in the budgeting cycle if it is going to another \$150,000 you don't really have a great option available to you. According to Steven, the plans call for what you thought you were getting but the contractor's bid had what we didn't think we were getting and he didn't realize the disconnect between those two things until now.

Mr. DelBene asked since we just found about this tonight, can we have the engineer for our April meeting? In the meantime we all want to know if they will warrant the product for longer. We are going to have additional questions to make sure the geogrid is compatible with the fill that was already bid. We have additional questions for the engineer and if the contractor can be here that day, that would be great too.

Mr. Schieszer stated there was a disconnect between the two because when I told him what we received he said it is going to be an inch thick geogrid. That is what he expected.

Mr. Wing stated if the specs said Geotech and the contractor came back with geogrid, I assume the engineer reviewed that bid.

Ms. Kilinski stated as I understand it, it was in the bid specs, it is what JMT bid out. He admitted he just missed it in the contractors response. If you want to get the right materials in there, there is a cost differential that per JMT is quite high. We haven't paid for anything we haven't gotten but it is not what the District thought the project was going to include. To ensure the project is done right at this point in my mind, given the uncertainty, the Board could consider retaining another engineer just to review the project. Clearly there are communication gaps in contract administration issues but having somebody from this point forward to ensure the fill is of the grade it is going to be and the project meets industry standards, and do not get me wrong Steve has been awesome to work with and responsive to questions, if I'm looking out for the district we may be at the point of having an independent engineer come in and say here is your project, here is the grid/stabilization materials, here are the problems, let me see what this contractor is doing to make sure that you are getting the straight answer. I have been here for five years and all I have heard is the extensive erosion control issues. Having an independent engineer come in and tell

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you what the situation is even if it is a few extra thousand dollars would be something that I recommend at this point.

Mr. Wing stated I wouldn't want to spend any money, but I understand what you are saying. The bigger issue too is how soon could you get an engineer in? If it delays the project does that mean the contractor is going to charge us because he got stuck?

Mr. DelBene stated if it does delay the project that is not our expense.

Ms. Kilinski stated the alternative is if they are willing to sign something that certifies that it is going to last for 10, 15, 20 years then maybe you are okay, then we feel comfortable with that.

Mr. DelBene stated they already said it would be done in March so going into April we would have to tell them to stop working. In my opinion we go the certification route and if they say no to that then we tell them to stop working until we can get an independent analysis of the proposal that is in front of us with their geogrid versus what was presented to us as geoweb.

Ms. Kilinski stated ideally a board member would be appointed to work with us in drafting that certification. Again, this is very technical so the certification in my mind will have maybe offline consulting with the engineer to see if they can help us tee that up but it is the filler, it is the actual grid, it is the slope of the pond bank, making sure that whatever is being done here is going to last for the amount of time that was represented to the board. At the time we bid the project. We can go back to the minutes and recordings to make sure that we have that accurately reflected, but I would like to have a board member work with us on the certification.

Mr. DelBene asked do you mind if I do that one? The reason I am volunteering is because I signed that contract. I will contact them tomorrow for that certification because I don't want the engineer reaching out to them saying we got the go ahead and then rolling that out and then it doesn't meet expectations.

Ms. Burks asked how do we alleviate the situation because we paid the engineer to make the best decision for us and now if we have to get another engineer to look at this, I think that process was flawed. If we are paying them there should be recourse, they have to do what we are paying them to do.

Ms. Kilinski stated I think that is part of the certification process, if JMT is willing to put their company name on a certification that attests to the district that it is getting what it bargained for even though it is not the same type of geoweb that we anticipated getting. The second part of that is if they are not willing to sign a certification understanding why that is and then essentially

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engaging another engineer. What you are suggesting, which I don't disagree with but still processing all of the pros and cons to each approach is, can you go back to JMT and say because we are hiring an independent engineer, because we should have known about this three months ago our backs are against the wall you need to pay this cost. I think that is something we can talk about and ask for. I was shocked today when we realized there had been that disconnect. That is something we can put on the table for sure.

Mr. Vencil stated regarding parking, I don't if we can address the addition of parking in the community. We can't run our programs without a parking issue happening every time. In our current contracts that puts the burden on the organizations to figure out something else, but in practice it is going to put a lot of additional stress and complications on members of the community participating in the programs. I would like to see if additional parking can be created to alleviate this situation. It may be appropriating some of the Pescara area and expanding the parking.

Mr. Labanowski stated I would like to add a few items to the next regular agenda under "unfinished business", San Marino grass area, San Marino drainage, Pescara drainage, and West Positano mail kiosk drainage. I also recommend that Erick approach Flagler about overflow parking.

#### **TENTH ORDER OF BUSINESS**

**Approval of Consent Agenda (Presenter: Jim Oliver)**

- A. Approval of Minutes of the January 11, 2022 Meeting**
- B. Balance Sheet as of January 31, 2022 and Statement of Revenues & Expenditures for the Period Ending January 31, 2022, Month-to-Month Income Statement, Assessment Receipt Schedule**
- C. Approval of Check Register**

On MOTION by Mr. Wing seconded by Mr. DelBene with all in favor the consent agenda items were approved.

#### **ELEVENTH ORDER OF BUSINESS**

**Next Scheduled Meeting – May 10, 2022 at 6:30 p.m.**

The board took a short recess after which they reconvened and conducted a shade session dealing with security matters, took no action and directed staff to add the shade session for security matters to the end of the April 12, 2022 meeting.

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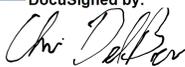
On MOTION by Mr. Vencil seconded by Mr. Labanowski with all in favor the meeting adjourned.

DocuSigned by:



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Secretary/Assistant Secretary

DocuSigned by:



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Chairman/Vice Chairman