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# **University Park Recreation District**

**Consideration of Minutes  
of the Board of Supervisors' Workshop  
March 28, 2019**

## **MINUTES OF MEETING**

**UNIVERSITY PARK RECREATION DISTRICT  
SPECIAL BOARD OF SUPERVISORS MEETING  
Thursday, March 28, 2019 at 2:00 p.m.  
University Park Country Club, Lakeside Room,  
7671 The Park Blvd.,  
University Park, Florida 34201**

Board Members present at roll call:

Lisabeth Bertsch	Board Member
Steve Ludmerer	Board Member
Nancy Kopnisky	Board Member
Michael Smith	Board Member
Bob Wood	Board Member

Also, Present:

Hank Fishkind	PFM	
Carol Harris	PFM	
Mark Barnebey	Blalock Walters Law Firm	
Matt Lapointe	Blalock Walters Law Firm	
Alan Mishlove	PFM	(via phone)
Steve Davis	Resident	(via phone)

### **FIRST ORDER OF BUSINESS**

### **Call to Order and Roll Call**

The meeting was called to order at 2:00 p.m. Those in attendance are outlined above.

### **SECOND ORDER OF BUSINESS**

### **Public Comment Period**

A resident asked about the status of the litigation. Mr. Smith explained that there is a session directly after this meeting called a shade session. He explained the purpose and the rules for a shade session. The Board may consider a motion regarding the lawsuit only. He provided an update on the litigation.

A Homeowner asked about the restraining order. Ms. Barnebey stated that the Judge ruled and denied the temporary injunction. The Judge did not think there was a likelihood of succeeding on a permanent injunction but he had not yet heard all the evidence. The lawsuit is moving forward on those two issues. Mr. Barnebey is trying to work out an amicable agreement.

A resident asked if the Plaintiff is seeking monetary damages. Mr. Barnebey replied no, he wants to eliminate the District and stop the referendum. He has issues with the purchase of the County Club and with the District itself.

A resident asked if the 80% of residents that were in support of the referendum play any part in the litigation. The District should not spend time for a small percentage of the population. Mr. Barnebey replied it plays a part in issues associated with the lawsuit but it does not prohibit, limit, or eliminate the lawsuit. If the sides cannot reach a resolution that all parties can agree upon, the litigation will proceed. There is a due process for litigation and if that process continues there will be substantial costs associated with it for all parties involved.

A resident asked if the sellers could walk away and sell to someone else. Mr. Barnebey clarified that he cannot speak for the sellers but they have been cordial and accommodating with the District. They have devoted effort, time, energy, and resources to facilitate this contract which needs to be executed by June 13, 2019. Every month after is a \$46,000.00 penalty cost put in place when the District renegotiated the extension of the contract which was originally expected to close on February 28, 2019. The cost will accelerate with the lawsuit and the potential penalty cost.

A resident asked Dr. Fishkind if there is a specific date that the contract terminates if it is not executed. Dr. Fishkind responded no. Mr. Barnebey stated that the Club owners are operating in good faith.

Mr. Smith stated it is clear that the Club owners want to liquidate and sell. If it is clear that the District cannot close on the deal the owners may make a decision to execute whatever action is in their best interest. Right now the District is ok and the Club owners have been helpful and have a good working relationship and agreement.

A resident asked what the Plaintiff is alleging that the District did wrong. He also asked about the cost. Mr. Barnebey responded that the Plaintiff claimed everything has not been done properly. The cost of the litigation will be spread among the residents including the Plaintiff.

There were no other public comments.

### **THIRD ORDER OF BUSINESS**

#### **Review of Sunshine Laws**

- a) What are Creative Ideas and strategies for improving the functioning of the RD Board based upon other governmental entities**
- b) Ad Hoc/ Formal Committees- Sunshine Requirements**

Mr. Barnebey explained communication of District business cannot occur between Board members outside of a publically noticed meeting. District staff cannot act as a conduit between Board Members and this also applies to the public. He provided an extensive overview of the Sunshine Law.

Board members expressed interest in forming committees. Mr. Barnebey explained formal committees are bound by Sunshine law requirements.

Mr. Ludmerer discussed formal committees and ad hoc committees. Mr. Smith discussed his proposal regarding establishing functional areas and having a Board Member take on each.

Ms. Bertsch requested a weekly status report from District staff to the Board Members.

Ms. Kopnisky discussed the importance of communication.

Mr. Wood stated the reason for the discussion is to get a better understanding for what the Sunshine Law allows and disallows the Board to do. He asked Mr. Barnebey explain the Sunshine Laws that allow the Board to do what they can to and communication between the Board and the public.

Mr. Barnebey discussed Mr. Smith's proposal. He stated the courts have constructed Sunshine laws strictly against government closing and he described the penalties for violating the sunshine laws which can include invalidating Board actions, and criminal and civil penalties. He stated if Board Members have conversations with each other outside a Board meeting they should let him know, it can be misconstrued by the public that they are violating Sunshine laws even if they are not. He listed Trailer Estates as an example where a lawsuit was filed when two Board members were seen having a conversation with each other outside a meeting. The Board Members won the litigation but it did not stop a lawsuit from being filed. He requested the Board members report to him when they are talking to each other outside the meeting so that they can protect themselves from potential litigation regarding Sunshine Law violations.

Mr. Ludmerer discussed Lakewood Ranch who compiles items to send to the District manager so that they can consolidate the information and return it to the Board. Ms. Bertsch previously proposed a status report. Dr. Fishkind requested the Board members send information to him so that he can compile information and distribute it as a status report to the Board. It would contain only information and not the thoughts or mention of Board Members.

Mr. Wood and Mr. Smith discussed the possibility of a liaison for each functional area. Mr. Wood discussed the roles that could be assigned to the various Board members. The Board discussed the Auditor Selection Committee which is a formal committee comprised of Board members.

Ms. Bertsch stated liaisons could gather information for their assigned functional area and deliver the information to Dr. Fishkind. He will consolidate the information and distribute it to the Board without attributing ideas to any Board members as part of an ongoing weekly communication. Dr. Fishkind suggested creating a weekly status report for the Board and newsletter for the residents. The weekly status could be an appendix to the newsletter. It would be posted to the website and emailed to residents who have opted in. Mr. Smith said there is some information the Board may want to get out to the residents and some information that they may not want to distribute. Dr. Fishkind stated it is still public information but it does not need to be broadcasted.

Mr. Whyte was asked about volunteer work study groups that are done with residents and the HOA. Mr. Whyte explained how work study group work in the HOA. He discussed the difference between a work study group and a committee.

Mr. Barnebey stated the Recreation District is more restricted than the HOA. He explained that resident volunteers can assist. Mr. Smith asked if forming a committee would impose Sunshine Law restrictions vs. a work group. Mr. Barnebey stated that a work group would be makeup of volunteers who are not overseen by a Member of the Board. Mr. Smith asked if a Board Member could attend and Mr. Barnebey said yes. Mr. Wood said that there is untapped talent in the community. Mr. Barnebey said assisting and volunteering should not be a problem. Where it becomes in issue is where someone might report in the paper that people are trying to [inaudible]. He does not think that is the intention.

Ms. Bertsch discussed Transitions. Mr. Barnebey stated if the CDD used Transitions it creates a public record issue. The District has no control over what goes in Transitions. Information communicated to the Board and it has been published in Transitions but it is voluntary; the District is not making Transitions publish information. He has no problem if the information gets in Transitions via voluntary means. It can become an issue if the District says Transitions is doing the work for the District and it would become a public record issue. Mr. Smith and Mr. Barnebey discussed information getting into Transitions. If Ms. Bertsch is the liaison for public relations she can ask for information to be put in

Transitions but they do not have to do it. Ms. Harris commented on Transitions. She stated information such as agendas and important dates are carbon copied to several people and Transitions personnel typically contact her and ask her for clarification for input but she cannot ask them to publish anything for her nor can they give her the distribution list because it is illegal.

Board Members commented on the importance with communication with the public. Mr. Whyte commented that Transitions has the right to include things the Board may not be comfortable with. Mr. Barnebey said the District cannot tell the Transitions personnel what not to put in Transitions.

Dr. Fishkind stated in a perfect world it would be great to have one newsletter. He noted one of the allegations in the lawsuit is that the HOA and the District are one in the same and it is a puppet game from Neal. He asked the Board to be sensitive to that allegation and suggested the District produce a separate newsletter. The District should be cognizant of Transitions and mentioned that they could direct residents to Transitions for more information. He stated he will work with Ms. Bertsch as the liaison and the District newsletter to residents would be separate from the weekly status report being sent to the Board Members. The resident newsletter would be placed on the website as well.

Mr. Smith asked why the District cannot get everyone's email address. Dr. Fishkind stated that by State Law they can only distribute to individuals who have opted in to receive email notifications. The Board discussed creative ways for every resident to opt in. Ms. Bertsch suggested the District could ask Transitions personnel if they would be willing to add a section that states there is a District newsletter that appears on the RD website and residents may be interested and then include a link. Mr. Whyte commented the HOA is not permitted to share their email list under Statute and asked why the District can't get the Club's email list. Dr. Fishkind stated even if the District did get that list they still could not send the email without each person opting in to receive it from the District. Dr. Fishkind stated the Club could send an email for residents to opt in to the District email list.

Mr. Wood commented that 80% of the residents have said that they want and expect the Board to get this done and the only way the Board can maintain 80% and more by providing timely, content specific information about what is happening. The Plaintiff in the litigation is able to take his position to the population of the District and has the ability to communicate more quickly than the Board. The Board needs to figure out how to quickly and effectively communicate with the public.

Mr. Whyte asked if each member of the Board could form an ad Hoc Group to support them as an individual in doing their specific activity by reaching out to the community. Mr. Barnebey stated there is an AGO on this that says that the Board members cannot do that without an attorney. If they have a specific committee they cannot do it. Ms. Bertsch asked if a Board Member can get three members of the public together to discuss something.

Mr. Barnebey stated if the residents want to get together and discuss it and come to a Board member he thinks it is fine. It is the Board members role in it and how much the resident is doing on their own.

Mr. Wood stated if the Board wishes to appoint a member as a functional head of a piece of this business they can do that but how that person choses to conduct their business outside of this meeting not on an official committee but on an advisory basis with a number of residents is permitted. The question becomes what happens to the information coming out of those discussions and how the individual Board member handles them. They can funnel the information to Dr. Fishkind and he can do assimilate the information and disseminate it broadly to the community. Mr. Ludmerer clarified that Dr. Fishkind can disseminate the info to the Board. Ms. Harris reiterated what Mr. Wood summarized. Mr. Barnebey stated that Dr. Fishkind can send out information saying the accountants have brought information to him and then state it or that residents have brought the following information that the Board may want to consider.

Mr. Wood said the Board will adopt Mr. Smith's proposal and talk about the specifics of the functional areas he discussed. Mr. Barnebey stated the Board will need to do that at their meeting on April 12, 2019 not today because this a special meeting and it cannot be added to this agenda. The Board can suggest what the categories can be.

Mr. Ludmerer asked if these are to be formal assignments or are they individual adopted roles. Mr. Barnebey answered they can go either way and in Trailer Estates the roles are assigned by the Chair every year.

Mr. Wood asked if the Board should be asking for public comment at the workshops. Mr. Barnebey stated the Board does not have to let public comment be heard at all at the workshops. Before the Board takes action on a matter they have to allow public comment which is why there is a public comment section at the beginning of the meeting.

**FOURTH ORDER OF BUSINESS**

**District Finances**

- a) Status of Short Term Loan**
- b) Payment Authorization Approval Process**

Mr. Ludmerer explained that the following need to be discussed today;

1. The status of the Short term Loan
2. Prompt Payment Process Presentation
3. Mr. Ludmerer's follow up comments

Dr. Fishkind explained the Board has already approved the short term loan if it conforms to the same terms and conditions as the previous one that was approved. The term sheet

was signed. The bank was supposed to have the documents. The bank still does not have the documents and the bank explained they had a turnover in their counsel and promised to have all the documents the beginning part of next week. They promised to follow exactly the documents that the District had from Florida Community Bank. Should they adhere to those it is a fixed rate of 4.5% for 13 months which is the same term so the Chair can sign it. District staff is trying to make preparations to close this next week. Neal has done everything they were asked to do. Mr. Ludmerer asked if Neal verbally affirmed the 4.5%. Mr. Fishkind replied that they formally approved it as a fixed amount.

Dr. Fishkind explained and presented the Prompt Payment requirements. He noted he and Mr. Barnebey have been withholding the issuance of their invoices to avoid a prompt payment violation from the District. He discussed the operating loan closed. District staff has worked closely with Mr. Ludmerer on this process. He suggested the Board to appoint someone and Mr. Ludmerer volunteered to do that as Treasurer and would be an appropriate person if the Board wants to designate him. Dr. Fishkind hopes the loan will close and at the next meeting the District will start to pay the bills.

Mr. Smith asked about Mr. Barnebey's legal bills and the pending legal bills for litigation. Dr. Fishkind replied the litigation bills would come out of the bond deal. The District did not receive formal engagement letters and must deal with that before the Board can consider paying the invoices. Mr. Barnebey stated the litigation related to the Charter and the current litigation is not something that should wait until the Bond validation. Dr. Fishkind stated Mr. Smith's question is related to a one-time expense that is properly allocable to the capital raise. It is an attack against the capital raise. Mr. Smith asked where the funds will come from. Dr. Fishkind stated they will come from the short term loan and if it is extinguished the District can seek another loan.

Mr. Ludmerer's concern was a separation of accountability. He suggested the budgeted O & M expenses can be paid if they are within budget with follow on Board ratification out of the District Manager's office. Dr. Fishkind stated he wants either he or the Board approved that and he stated that District staff does not write any checks that the Board does not authorize them to write. District staff has no budgetary authority beyond what the Board authorizes.

Mr. Ludmerer stated if the expenses are outside the budget he wants approval from one or more Board Members and then a ratification once per month. Prior to each ratification he would like a comparison of O & M budget year to date vs. year expectancy at each meeting.

Mr. Ludmerer discussed one time invoices. He stated they should be Ok'd by the District Manager's office and reviewed by the appointed Board Members until the District gets through closing and ownership of the enterprise. The budget should be compared year to

date and expectancy at each Board of Supervisors' meeting. He suggested revision of the onetime budget at the next meeting.

Mr. Ludmerer discussed the litigation expenses. He previously raised issues with Dr. Fishkind about the District management invoice and he asked to better understand the hourly rates for litigation activities performed by the District. He thinks the District needs expenses year to date and expectancy budgets. He stated it will give the Board a feel for whether the District will need additional short term financing, or an O & M assessment, and allow the District to move forward.

Mr. Wood agreed the projected anticipated cost regarding litigation is important. Mr. Ludmerer stated that the District might be close to being \$100,000.00 into litigation. Dr. Fishkind suggested this is a great foundation for District staff to write a budget policy and bring it back to the Board for formal approval.

Mr. Smith suggested suspending the workshop because they have the shade session scheduled for 3:30 p.m. so they don't impinge upon people's time and come back at the need to finish up workshop related items.

#### **FIFTH ORDER OF BUSINESS**

#### **UPCC Acquisition Related Items**

- a) Status of Underwriter**
- b) Status of Mutual Co-Op Agreement**
- c) Status of Due Diligence on P/S Agreement**
- d) Focus of Liquor License (UPCC LLC?) is this being pursued**
- e) Talked to association about the UPCC LLC doing liquor license vs the RD. Will they do that?**
- f) Preliminary designation of Oversight Director for UPCC LLC**
- g) Prospects for Bond Validation and long term loan**
- h) Timeline of future events. RD**

Mr. Wood asked Mr. Lapointe from Blalock Walters Law Firm to give the Board an overview of the acquisition related items. He met with Mr. Ludmerer recently and they reviewed the due diligence items that have been produced. He stated nothing in the due diligence raises any red flags or gives them any concern about the purchase. There is an open question that he will follow up with Counsel for the HOA regarding the issue of the

liquor license for the Club. The question is whether the liquor license should be held by UPRD or UPCC LLC. UPCC LLC is the management company that will be managing the food services and other items of the Club. Mr. Lapointe thinks it is best to have the license held by UPCC LLC. Mr. Barnebey stated that District Counsels have contacts HOA Counsel and are awaiting their response. Mr. Lapointe stated HOA Counsel has not decided if that makes the most sense or not.

Mr. Ludmerer discussed the status of the Underwriter. Dr. Fishkind replied that the District has a Bond Underwriter but there is nothing for them to do until the District gets the bond validated. The Underwriter is MBS. Mr. Smith asked the current rate. Dr. Fishkind replied his plan is to get the bonds rated and insured and if they can do that, if the District issued the bonds today it would be 3.5%.

Mr. Wood said at the next workshop one of the things to discuss is the frequency of the workshop. What is the process and procedure? How they can be done efficiently and cost effectively and to do them frequently.

Ms. Bertsch asked to speak about the website. Dr. Fishkind stated there is workshop scheduled for April 5, 2019. Ms. Bertsch said she had a couple meetings on the website and they went over the ease of use today and it is not very easy to use. The difficulty in making the kind of changes the Board would like to see is they must comply with the ADA because the District is a government entity. She went through the details at that meeting of what would make it a better and more easy to use web design. The person she met with seemed to understand and she asked him to come back with a cost estimate for what that would take. Ms. Harris noted that she has not received anything and she will follow up. Ms. Bertsch noted the Board will have to look at the budget.

A resident asked for a copy of the complaint and he said he is not on the Plaintiffs email list and he would like to be sent a copy of the recent email.

**SIXTH ORDER OF BUSINESS**

**Adjournment**

The workshop was adjourned.

  
Secretary / Assistant Secretary

  
Chairman / Vice Chairman