

**MINUTES OF MEETING  
XENTURY CITY  
COMMUNITY DEVELOPMENT DISTRICT**

A meeting of the Board of Supervisors of the Xentury City Community Development District was held Monday, July 16, 2018 and called to order at 10:50 a.m. in the Emerald 4 Meeting Room at the Gaylord Palms Resort & Convention Center, located at 6000 West Osceola Parkway, Kissimmee, Florida.

Present and constituting a quorum were:

Owen Beitsch	Chairman
Chris Liew	Assistant Secretary
Timothy Baker	Assistant Secretary
Kenneth Smith	Assistant Secretary

Also present were:

Gary Moyer	District Manager
Scott Clark	District Attorney
John Florio	District Engineer
Nick Pope	Xentury City Development Co.
Dimitri Toumazos	Xentury City Development Co.

**FIRST ORDER OF BUSINESS**

**Roll Call**

Mr. Moyer called the meeting to order.

Mr. Moyer stated the record shall reflect that we have Supervisors Beitsch and Baker present. Mr. Persons communicated yesterday he would not be able to attend the meeting. Mr. Clark has previously opined that since we only have three members of this Board, a quorum would be two members, and we have held meetings with two members in the past, so we have a quorum.

**SECOND ORDER OF BUSINESS**

**Public Comment**

Mr. Moyer stated since Mr. Liew and Mr. Smith are with us, we have a public comment period on all of our agendas. We are a unit of local government of the State of Florida, and as such, the legislature has passed certain rules and regulations in which governments have to give the public the opportunity to speak on any agenda item or any other item they would like. We

always put this at the beginning of the agenda, and we also have an audience comments section at the end of the agenda as well.

Mr. Beitsch stated I would like to make a public comment for the benefit of the record. In the package, the meeting itself was officially noticed and advertised. I am assuming the updated or corrected room in which we are in was properly noticed and I just think we should make note of that for the record.

### **THIRD ORDER OF BUSINESS**

#### **Organizational Matters**

#### **A. Appointment of Supervisors to Fill the Unexpired Terms of Office – Seat 2 (11/2018) and Seat 5 (11/2018)**

Mr. Moyer stated we currently have two vacancies on the Board. It is Seats 1 and 5. For Seat 1, the term of office expires in November of this year and Seat 5 expires in November 2020. When there are vacancies on the Board, the remaining Board members can appoint replacements to serve the unexpired terms of office, and so at this point it would be appropriate for our two Board members to discuss the appointments.

Mr. Beitsch stated I understand that we have Mr. Smith and Mr. Liew as possible candidates to complete these terms either un-appointed or incomplete. I think one of the Seats had been held for some period of time to be represented by Gaylord itself, and for various policy reasons the Board decided that we should go with these two Seats with active members. I do not know if we need to discuss your credentials on the record, Mr. Smith, a former County Commissioner. Mr. Liew is associated with World Gateway, and at least from what I know of them personally or professionally, they would make excellent Board members.

Mr. Baker stated I do not know Mr. Smith or Mr. Liew either, but I did read the meeting minutes which I was not in attendance and it appears they both bring a unique skill set. Both have development experience similar, so I would be in favor of these two nominees.

Mr. Beitsch asked do our procedures require that we actually take a vote, and pass a resolution for both of them separately or together?

Mr. Moyer responded we need to appoint to each one of those Seats since there are two terms of office which expire at different times.

Mr. Pope stated I just wanted to point out that the agenda says they both expire at the same time which may not be accurate.

Mr. Moyer stated my District organization page says that 5 is in 2020.

Mr. Beitsch stated I know you have had some conversation with the landowners.

Mr. Moyer stated Mr. Pope points out that Seat 5 was 2018 and Seat 2 is 2018 as well.

Mr. Beitsch stated it does not matter. In that case, a unified, single resolution would be sufficient.

Mr. Beitsch stated I do not know if it is appropriate for the Chair to introduce a motion. Would you like to move?

Mr. Baker MOVED to appoint Mr. Ken Smith and Mr. Chris Liew to fill the vacant Seats on the Board, and Mr. Beitsch seconded the motion.

Mr. Clark stated just for the sake of the recorder, perhaps we should designate which one is filling which Seat even though they are the same.

Mr. Baker stated the agenda says 1 and we are reading 2, so which is it?

Mr. Moyer responded it is 2.

Mr. Baker asked Seat 2 and Seat 5?

Mr. Moyer responded that is correct.

Mr. Baker asked is there a preference?

Mr. Beitsch responded they both expire at the same time. Is that coincidental or is there something else?

Mr. Pope responded that will change in November when they get reelected. I would ask Mr. Smith. You were District Commissioner 3, weren't you?

Mr. Smith responded no, I was 4.

Mr. Pope stated Either 5 or 2 would be new territory for you.

Mr. Baker MOVED to approve Mr. Ken Smith for Seat 1 and Mr. Chris Liew for Seat 5, and Mr. Beitsch seconded the motion.

There being no further discussion,

On VOICE vote with all in favor, the prior motion was approved.

**B. Oath of Office for Newly Elected Supervisors**

Mr. Moyer stated for the record, I am a notary of the State, and as such, I can administer Oaths of Office.

*Mr. Moyer being a Notary Public of the State of Florida, administered the Oath of Office to Mr. Smith and Mr. Liew; copies of the signed Oaths are attached hereto and made a part of the public record.*

Mr. Moyer stated I am going to give each of you gentlemen a form that I would like you to fill out which tells us how to contact you. I also have for you a manual dealing with the Sunshine Law. Perhaps Mr. Clark can take a minute and run through the public record law and Sunshine Law.

Mr. Clark stated you will recall a thing or two about this, but there are really significant laws you are subject to as a Board Supervisor. One is the Public Officers Code of Ethics, which is in Chapter 112 of the Florida Statutes. It has the items you would expect, prohibitions against self-dealing and you cannot vote on something which has a financial impact for you. The second is the public records law, which says that everything that is the business of the Community Development District is a public record. Public records are ordinarily kept by Mr. Moyer's office and that is where they are best kept, but if you have public records that you keep, such as the agenda packages, and someone requests of you to see it, you are subject to that. For that reason, I recommend that you do not keep your own set of public records, just rely on the custodian. Your emails relating to CDD business are public records. Mr. Moyer, I do not know if we have established an email address for the Supervisors in this District.

Mr. Moyer stated probably not.

Mr. Clark stated that is something I usually encourage, and we can do it if the Board wants to do, but just be aware that your emails relating to District business are subject to someone asking to see them. Lastly, and probably a mistake to be made is with the Sunshine Law. The Sunshine Law requires simply that all business of the District be conducted in a noticed meeting where minutes are kept, such as the ones we have here. You cannot talk to each other outside of the meeting for the purpose of doing business. You can socialize, you can play golf and you do not have to cross to the other side of the street when you see another Supervisor coming, but the business of the District has to be conducted at a noticed Board meeting. I try to keep current on these items. If you have questions, please feel free to call me. I will get your information and

send you mine and if anything comes up, let me know. The Attorney General also publishes something called the Sunshine Law manual. It is wonderful, actually too long and too good, but it answers a lot of questions.

Mr. Liew asked should I use my personal email here?

Mr. Pope asked do you have another one?

Mr. Liew responded I can create one, if that is the right thing to do.

Mr. Moyer stated for the most part, the only thing you will be receiving from me are these booklets and we have the public record on that, so that I think would be probably fine. Go ahead and use your own email, but for the public, what we will put on the website for public purposes will go through a District email.

Mr. Pope stated I have a question in that regard. Suppose I want to email any of the Board members to discuss a potential project the CDD may undertake. Does that become a public document?

Mr. Moyer responded it does.

Mr. Pope stated it would seem to me that if everyone had an email that was separate from either their personal or business email to make it easy to segregate, that is probably not a bad thing. It is probably a good thing actually. How do we do that?

Mr. Smith responded I think we need to do that. I am now a member of a Planning and Zoning Board, and I do not have a separate email address and I was concerned about that. I do not want to combine another set of public documents with the other set of public documents, so I definitely want to make sure we do that. I was going to make a motion.

Mr. Toumazos stated I think we can have our IT people create email addresses for the Board.

Mr. Pope stated if that is OK from your perspective, Mr. Moyer.

Mr. Moyer stated yes. Mr. Clark will probably comment on certain recommended changes that are now being pursued by various law firms regarding ADA compliance on websites.

Mr. Clark stated I will comment on that.

### **C. Designation of Officers – Resolution 2018-01**

Mr. Moyer stated whenever new members come on the Board, we go through the process of identifying the officer structure. Mr. Beitsch is our Chairman, we do not have a Vice Chairman, although we are permitted to have a Vice Chairman, and I serve in the capacity of Secretary and

Treasurer, primarily because that is what I do. I keep the minutes, I process checks and items of that nature, and all the other Board members are Assistant Secretaries. If you want to keep the same organizational structure and just our two new Board members as Assistant Secretaries, you can do that by one motion. If you want to go through every single one of those like a new Chairman and whatever else you would like, we can do it one at a time.

Mr. Beitsch stated I think we should leave that to our new members to see what their pleasure is. The Chair comes with major responsibilities as you can see.

Mr. Smith stated my experience at being Chairman is I do not know if this will hold true here, but when there is a Chairman of the County Commissioners, all the newspapers want to talk to the Chairman.

Mr. Moyer stated we have been fortunate not to have all that.

Mr. Beitsch stated I would be delighted to continue as Chair.

There being no further discussion,

On MOTION by Mr. Smith, seconded by Mr. Baker, with all in favor, Resolution 2018-01, Designating Officers of the District, with the same officer structure and including Mr. Kenneth Smith and Mr. Chris Liew to serve as Assistant Secretaries, was adopted.

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

#### **Approval of the Minutes of the September 25, 2017 Meeting**

Mr. Moyer stated each Board member received a copy of the Minutes of the September 25, 2017 Meeting, and requested any additions, corrections or deletions.

Mr. Beitsch stated I have a question about the minutes. It seems insignificant, but I do not know when I became Chair, I am listed here as Vice Chair and I do not know if the record reflects this.

Mr. Moyer stated you would have been made Chair when Mr. Ivins left. I do not recall a set of minutes which actually reflect that.

Mr. Pope stated I have one thing that is a formality, but I have to mention it. Page 8, 18<sup>th</sup> and 20<sup>th</sup> lines, unless we renamed Aeromovel, I would hate for someone to pick these up and read them and say we do not even have the name of our own company.

Mr. Moyer stated enter it into the record because obviously the girl that did this does not know the name.

Mr. Pope stated A-e-r-o-m-o-v-e-l. On Page 10, the second line is the word *Aeromobile*, which has to be spelled correctly, and this is you speaking, and the ending of that sentence did not quite fit to me when you gave Orange County Aeromovel.

Mr. Beitsch asked where are we?

Mr. Pope responded Page 10, second line from the top.

Mr. Baker stated it does not read properly, there is no question about it.

Mr. Moyer stated we will change that.

Mr. Clark stated on Page 8 in the middle, I do not believe it was me speaking.

Mr. Moyer asked Mr. Florio, was that you?

Mr. Florio responded it was probably me.

There being no further additions, corrections or deletions,

On MOTION by Mr. Smith, seconded by Mr. Beitsch, with all in favor, the Minutes of the September 25, 2017 Meeting were approved as amended.

## **FIFTH ORDER OF BUSINESS**

### **Presentation of Fiscal Year 2019 Budget**

#### **A. Fiscal Year 2019 Budget**

Mr. Moyer stated the primary purpose of today's meeting is to commence our budget process. Under Chapter 190, the enabling legislation for Community Development Districts, it is really a two-step process. The first is that management presents to the Board the proposed budget for the coming Fiscal Year. We then Once the Board looks at that, I will ask you to adopt a Resolution that approves the budget, and that requires that I send it to the County 60 days before we come back and I ask the Board to adopt it. So, at this meeting we are asking for approval. In 60 plus days I will get you all back together again and we will go through the adoption process. The budget has been for all practical purposes, the same for this District for a number of years. The budget identified what we anticipate the expenditures to be, but it really is not an authorization to spend. If something happens during the year that would exceed the budget, we come back to the Board and ask for a budget amendment. We would also then be required to amend our Funding Agreement with the developer, but again, we are looking at an annual budget of \$25,079, which covers the necessary meetings we have and the various professionals that provide service to the District.

Mr. Baker asked now that we have a full complement of five Supervisors, is \$2,000 sufficient to cover the meeting fees for all meetings? How many meetings a year do we have?

Mr. Moyer responded it is \$200 per meeting, so every meeting we have is \$1,000 and we generally have two or three meetings per year.

Mr. Baker stated this covers two.

Mr. Moyer stated if you look further in the agenda, we will look at the financials, but I think out of \$18,000 that is the prorated budget, I think we have only spent \$14,000, as long as we do not exceed \$25,000 we are good and if we do exceed it, we have to come back and amend it.

Mr. Smith stated yes, I do notice, of course, and you explained that the liability is up a certain percentage, or at least we anticipate it. \$4,736 sounds like a specific quote. I do not doubt the number, I am just surprised at the number. What is forcing these numbers up? What kind of bad things are occurring that we are concerned with the liability upward?

Mr. Moyer responded we talked about that before and since we do not own any real assets which are available to the public, our exposure is pretty low. Probably a good part of that is Directors and Officers Liability Insurance under the general liability policy, but that number generally is on the low side for Community Development Districts.

Mr. Smith stated I want to make sure we are all protected here.

Mr. Toumazos stated there are certain parcels owned by the CDD that are recorded such as the stormwater ponds, which are owned by the District.

Mr. Moyer stated that would be picked up under liability.

Mr. Pope stated basically we covered a general liability insurance package that includes the ponds and the sidewalks that we still control because of the access points. Remember, we only platted the backs of the curbs and most of it is a D&O general liability insurance.

Mr. Toumazos stated my comment was a reaction to Mr. Moyer's statement that we have no assets, which we do.

**B. Consideration of Resolution 2018-02 Approving the Budget and Setting a Public Hearing**

Mr. Moyer stated if there is no further discussion, I look for a motion to adopt Resolution 2018-02 and one of the things we need to do is talk about when we want our next meeting. Like I said, it needs to be at least 70 days from now, which would give me the opportunity to get the budget to the County. We are currently in the middle of July, sometime in late September would



probably be the appropriate time to have a meeting. I know it is a long time in advance. If you know what your calendars are, fine, but we would like to put a time and date in there.

Mr. Smith stated I know I am going to be on a river cruise the last week of September, first week in October.

Mr. Moyer stated we should meet before the last week in September.

Mr. Liew stated I will probably be away the first two weeks of September.

Mr. Baker stated I will be gone from the 12<sup>th</sup> to the 21<sup>st</sup>.

Mr. Clark stated we should get this done before September is out because our Fiscal Year starts October 1<sup>st</sup>.

Mr. Toumazos asked how is the first week of September?

Mr. Moyer responded we do not get 60 days.

Mr. Pope stated Mr. Toumazos, we have got Aeromovel making a presentation in late October, I think the 28<sup>th</sup>.

Mr. Toumazos stated I thought it was earlier than that, but OK.

Mr. Pope stated let us look.

Mr. Baker asked where is that?

Mr. Pope responded it is going to be here in town. It is Thursday, August 30<sup>th</sup>.

Mr. Pope asked what is your 61 days?

Mr. Moyer stated it would be September 17<sup>th</sup>, 18<sup>th</sup> or 19<sup>th</sup>.

Mr. Toumazos stated you cannot do it any sooner than those three days.

Mr. Pope asked we cannot do it any later than the end of September?

Mr. Moyer responded correct.

Mr. Pope asked Mr. Clark, can we do it in October?

Mr. Clark responded in a District this size and this scale, I am not going to panic. It means technically that we go part of our Fiscal Year without a budget, but we may do so without needing to spend money.

Mr. Beitsch stated if that is the case, it seems to me to make a motion to adjust would be appropriate so that we do not have that problem. Can we make an amendment now or a motion now to carry over the issue and then postpone the actual event until October?

Mr. Clark responded it circumvents the process for us now to try to adopt a budget that reaches into the next Fiscal Year. I would rather adopt a late budget than do that. Again, nothing has to be paid early in October, so it is not going to create a crisis. It is just an anomaly.

Mr. Florio stated perhaps we adopt the funding agreement effective October 1. That will show the developer is willing to fund the bills the District will see in the first couple of weeks in October. Then we will hold the budget adoption.

Mr. Clark stated that would be smart. That is what I was trying to achieve, so that is a better way of doing it.

Mr. Moyer asked what is good in October for everyone?

Mr. Pope asked how about the second week of October?

Mr. Toumazos responded that sounds good.

*The record shall reflect the Board is in favor of October 11, 2018 as a good date for the Budget Public Hearing.*

Mr. Moyer asked what is a convenient time for everyone?

Mr. Beitsch responded this time is wonderful.

Mr. Moyer we have a date and a time and the location will be here in a designated room once we make the reservation. Is there a motion for 2018-02?

On MOTION by Mr. Liew, seconded by Mr. Beitsch, with all in favor, Resolution 2018-02, Approving the Budget for Fiscal Year 2019 and Setting a Public Hearing Thereon Pursuant to Florida Law, to be held Thursday, October 11, 2018 at 10:30 a.m., at the Gaylord Palms Resort & Convention Center, located at 6000 West Osceola Parkway, Kissimmee, Florida 34746, was adopted.
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Mr. Clark stated let us go back to Mr. Florio's comment. There is a Developer Funding Agreement currently which I believe extends to September 30, 2018, and we would plan to renew that or enter into a new one, but since we are bridging into another Fiscal Year, I would recommend that we extend the current Developer Funding Agreement to October 31, 2018.

There being no further discussion,

On MOTION by Mr. Beitsch, seconded by Mr. Liew, with all in favor, the current Developer Funding Agreement set to expire on September 30, 2018, shall be extended October 31, 2018, to cover any potential budget shortfalls.

**SIXTH ORDER OF BUSINESS**

**Manager's Report**

**A. Approval of Financial Statements**

Mr. Moyer stated the financial report, as I mentioned is part of the budget presentation. Our prorated budget through June 30<sup>th</sup> which is  $\frac{3}{4}$  of our Fiscal Year, is \$18,758, and we have currently expended \$13,704. We are approximately \$5,000 under budget.

**B. Approval of Check Register and Invoices**

**C. Approval of Funding Requests 136 Through 147**

Mr. Moyer stated the next item I have for the Board are the check registers and invoices which have been processed that are part of that 150 pages, and if the Board is OK with those invoices, I would look for a motion to approve them.

Mr. Smith asked is it necessary to publish the public notice in more than one newspaper?

Mr. Moyer responded no.

Mr. Clark stated it should be in a newspaper of general circulation in the County.

Mr. Moyer stated we usually try to do that in the Osceola Gazette only because it is about a third or a quarter of what the Orlando Sentinel charges.

Mr. Smith stated I highly approve that. It is just a general publication.

Mr. Moyer stated yes. I actually think we can do the check register, invoices and funding requests which are listed there because the funding requests are tied directly to the invoices. Therefore, a motion to approve item 6B and 6C would be in order.

There being no further discussion,

On MOTION by Mr. Smith, seconded by Mr. Baker, with all in favor, the check register, invoices and Funding Requests 136 through 147, were approved.

**D. Report on Number of Registered Voters (0)**

Mr. Moyer stated every year at this time we request from the Supervisor of Elections the number of registered voters in the District. We receive that information, and currently there are zero and the story behind that, when Chapter 190 was adopted, it was felt there had to be a point in time where the developer relinquished control of a Community Development District, and what

they came up with was for Districts of our size, six years and 250 registered voters. This District is well past six years, so we met that threshold, but every year we monitor the number of registered voters. When we get to 250, if we ever get to 250, it will flip over into being a registered voter, qualified elector election rather than a landowners' election.

Mr. Clark stated that is someone registered in Osceola County to vote, who lives in the District. It is going to be a while.

**E. Landowners' Meeting Information, Proxy, Ballot and Sample Agenda**

Mr. Moyer stated this item has information on our landowners' meeting, which will be held in November. We provided information in the agenda booklet for landowners who may be interested in participating in the landowners' meeting, and at that time they would nominate for the position of Supervisors for the three that come up in this cycle. That information has been provided. The one thing I will ask the Board to do is to consider some day in November that the landowners' meeting can take place. Generally, Board members do not attend landowners' meetings. Only the landowner does that. I usually work with Mr. Toumazos to come up with that date. What I would ask is to approve the forms in the agenda package and then delegate to the Manager what date that will occur after I have a chance to get with Mr. Toumazos and talk about a good date for him.

Mr. Toumazos asked can we do that over lunch?

Mr. Moyer responded yes, we can do that.

Mr. Toumazos stated all the Board members could be invited.

Mr. Moyer stated they can do that, yes sir.

Mr. Toumazos stated they are not obligated to attend.

Mr. Moyer asked is there a motion to approve the notice of the landowners' meeting and the materials in your agenda package?

Mr. Beitsch MOVED to approve the landowners' meeting information, proxy, ballot and sample agenda; and Mr. Baker seconded the motion.
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Mr. Beitsch stated I have a question about this. Is the landowners' meeting agenda more of a form or it is close to the agenda?

Mr. Moyer responded that is the standard form for a landowners' election.

Mr. Beitsch stated my question specifically is the landowners' group elects its own Chair. It is not me.

Mr. Moyer stated it is those landowners who are assembled.

There being no further discussion,

On VOICE vote with all in favor, the prior motion was approved.
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**F. Website Compliance**

Mr. Moyer stated I am going to have Mr. Clark discuss this item. There are now proposed ADA requirements originally presented by the Obama Administration which technically are just hanging out there because the Trump Administration has not pursued what those rules will be and that is pretty much everything I know about this. I am certain Mr. Clark knows more than I do.

Mr. Clark stated in a continuing testament to the fact there are too many lawyers, there is a new area of litigation involving Community Development Districts. The litigation itself is not new. It has been going on for a while with hotels and retailers, but a number of years ago they started the regulatory process to require that places of public accommodation and local governments have their websites be compliant with certain standards for visually-impaired people, and what that involves essentially is turning your text files on the website into a format where people using software specially designed for them can make the text be read to them and while it sounds simple, it is a tedious process to make your website do that. The regulations that would apply to us have been stalled, and the reason they are currently stalled is because you may recall that the Trump Administration adopted a policy that for every new regulation, two old regulations had to be abolished. When that happened, many agencies including the Department of Justice which does this said we are not sure what we want to get rid of, so we are going to put all the new things on hold. We do not know what they are going to come out with. There are some proposals that would perhaps exempt small governmental entities like ourselves from those who are not in compliance. What has happened is, notwithstanding that, lawyers in South Florida have begun to sue Community Development Districts and they are kind of working their way up the state as they tend to do, and what they are seeking is an injunction requiring compliance with that, which seems simple enough, but then there are always attorney fees that get attached, and you are under the ADA, and so you can go into court and say yes, we absolutely agree. We will comply and they say fine, here is an order and here is your bill for \$50,000 in attorney's fees. That is the dilemma

we face. Some defendant Districts have responded by saying there are no regulations enforced and we are not required to do it until there are actual regulations, and I think that is a true position. I think that is what the law says. However, it has been ruled against at the trial level in at least one instance I know of, and in the retail setting, retailers have been litigating this for a while because if your Lucky brand jeans is one, some of the other big retailers, such as Dick's Sporting Goods had one where they are litigating this because they are big targets and so the dilemma we have is do we have to move forward and spend money on this even though it may not happen? My advice right now is to not do nothing. I think just to say we should wait and see what happens makes us a target and if we are sued, it is a bad position to be in where we say we are not going to do anything until you make us.

Mr. Toumazos stated before you enter something into the record, that as the regulations become apparent, then we will comply. Is that any insulation?

Mr. Clark responded what I am recommending is that the Board direct its manager to investigate and bring back some proposed solutions, and step one I think is hiring a consultant and I know different District Managers have been talking with different consultants and the prices vary quite a bit, but it would be prudent to have someone look at our website and say here is what you need to do. We must have a website. The obvious answer would be let us just not have a website. It is too expensive now, but we must have a website. We must have certain things on there and most CDD's have a lot more than certain things on there, and unfortunately, what I am telling them is that your website is wonderful and it is a great public tool to get information to people, but you cannot afford to do it anymore. You may have to go back to the minimum and those who are reaching out to the Department of Justice are saying this, for small governmental entities, if you are a county you can afford to have a staff of people and comply with it, but if you are us and we spend \$300 to \$400 per year on the website, that is just not going to get it, but there is a lot of discussion in the CDD community. I know all the District Managers that I work with are looking for solutions and trying to figure out what they cost, so what would be prudent, I think, is to direct your Manager to come back at your next meeting with proposals on how to comply with this.

Mr. Toumazos stated maybe there is no way to answer this because the regulations are not in effect, but the intent of the proposed rule is to enable people with visual impairment to hear rather than see what is on your website. One wonders how they deal with pictures.

Mr. Clark stated I can answer that.

Mr. Toumazos stated I will be interested in the answer, but what I am wondering and you also said that someone, and I am not sure whether it is the District or the individual trying to hear what is on the website, has to have software which would translate words into sound. We know that telephone companies do the reverse because you get written messages of people now speaking. You get both the message itself and the words that it translates to, so do we know whose responsibility that is?

Mr. Clark responded it is the responsibility of the disabled person to have computer software that can translate these things into an audio file, but in order for them to do that, we have to post our files in a certain manner. It does not work with the PDF files that we ordinarily use, and I do not understand all of the technology.

Mr. Beitsch stated actually that was going to be the question I was going to ask, maybe by asking our representative to investigate, you are saying that all the information contained herein were posted, including the check register, do we even know the limits of that?

Mr. Clark responded this is why it is so difficult. We are required to post an agenda seven days before every meeting on the website with copies of all back-up materials, and so that is going to have to be posted in a format other than PDF and there is, as I understand it, software tools that make that conversion and then post the file, and then I guess if someone wants to listen to 300 pages of invoices, that is OK, but there is the difficulty. If you get an invoice from a third-party vendor, you have to convert it.

Mr. Beitsch stated I am getting at sort of what it is like.

Mr. Pope stated it makes absolutely no sense.

Mr. Smith asked have you represented other Districts that have implemented this?

Mr. Clark responded I do, and generally what they have done so far is engaged a consultant to come back and recommend what they need to do to comply. All of this is very new for us. It has happened over the last three months. People are scrambling. As always when these things happen, there are consultants popping up out of the woodwork saying hire me I can fix this. You have to figure out who is real and who is hanging on to something good.

Mr. Beitsch asked are these consultants generally technology people or legal?

Mr. Clark responded they are technology people. The hope would be, the pipedream that sanity would prevail, but this is Washington and that someone would say for small governmental entities like ours, it is counterproductive, so what we are going to do is dumb down our website as

much as we can so we have to spend the least money to comply and that is actually a disturbance to the public.

Mr. Liew asked is it acceptable to offer where we can actually read out the contents of the text?

Mr. Toumazos responded I think there is a great business in this for all of us.

Mr. Liew stated the reason it came to my mind is not because it is a new idea, I was a tenant in a building in California, that is what they do.

Mr. Toumazos asked they read websites to people?

Mr. Liew responded not only websites, but whatever else, even translation from one language to another.

Mr. Florio stated bi-lingual is very popular. The other way and what it sounded like to me is someone is going to develop software that will convert the HDML work files into whatever format they need to upload, so you can take your whole book from a Word file and just literally uplink it to the web in the correct format. The key is selection of a unified format for all of the web pages.

Mr. Pope stated what if it is in PDF format, Mr. Florio?

Mr. Florio responded PDF is tough, but maybe an original is not available. Think about reading an OUC power bill to someone. What is that going to be?

Mr. Moyer asked what would be wrong if we put it on every agenda the basic material on the website, we just put it on a disk and someone can call us and we will send them the disk?

Mr. Pope asked they cannot read the disk, can they?

Mr. Clark responded that is a good interim step, but the problem is with the ADA regulation you are supposed to provide people access that is equivalent to the access that everyone else has and so the case law has said, if someone has to make a call and waiting to get it, then you are not really providing the experience. We can all sit around the table and question the wisdom of that, and we can hope that maybe they will delay implementation. A number of years ago, pool lifts was an issue that CDDs had to comply with, and because 10,000 governmental entities ordered a pool lift within the same two-week time period, no one could comply with it. There was a back-up and so the Department of Justice heard that and said we will delay implementation and they did that two or three times. It would be nice if they were willing to say we are not going to do this if they would delay implementation and give us more time to look at it. The retail world has been



doing this, hotels, anyone who does on-line booking, so the technology is out there, but making it make sense to someone like us with a small budget, it is different for Walmart to pay someone a couple million dollars to just run this program.

Mr. Beitsch asked what is your recommendation?

Mr. Clark responded my recommendation is that you ask your District Manager to investigate this and bring a report to your next meeting with recommendations about how to comply.

Mr. Beitsch stated I am going to agree with that because I do not see that we have any choice, but I will also tell you that as a person who litigated a Fair Housing lawsuit, which was technically a concern in terms of requirements that the offending party had to satisfy, I am just not sure that until the law is more involved that you are going to insulate yourself even by doing that. Fair Housing crusades are patently absurd and the law is involved with those. If this is what we need to do to at least inoculate ourselves, I just do not see how we can avoid it, but I am not convinced it is really an effective inoculation.

Mr. Pope stated the key to this in the old ADA world before I heard about this, they called them drive-by ADA violations because there is a guy in a wheelchair down in South Florida who has a buddy who is an attorney and they will drive up to your hotel and they will find a violation your parking space instead of being a two degree, is a 2.5-degree slope and you are in violation. The fact that you say you will fix it does not matter. You have to pay the attorney's fees.

Mr. Clark stated the fix is \$300, the attorney gets \$50,000.

Mr. Beitsch stated that is the Fair Housing solution.

Mr. Pope stated that is the problem with all of this.

Mr. Toumazos stated that occurred here at Gaylord.

Mr. Baker stated do you know how many of those I have run into in designing the stuff that I design? I have studied more than I care to about ADA compliance. I have met the guys at Access Now. I know the quadriplegic that runs that group.

Mr. Florio stated you do not even need to drive by. You just go on the website and say you are in violation.

Mr. Pope stated to your point, no amount of insulation can protect you from a lawsuit. If they are going to come, they are going to come. The idea is we can at least show we have tried to get ready.

Mr. Toumazos asked has your firm started research in this area?

Mr. Moyer responded they have.

Mr. Pope asked any clue as to the cost of actually complying?

Mr. Moyer responded I think they are pretty much in the early stages as Mr. Clark mentioned. It has not been around very long. I think they are trying to review and pick a consultant to tell us what we need to do.

Mr. Clark stated I have heard some numbers which are just untenable, of \$30,000 plus just to get it and it requires ongoing monitoring, I think in our industry we are kind of scratching our heads saying there has got to be something better than this.

Mr. Moyer stated in the District management world there really are probably a half-dozen firms that are active in District management and in Inframark's case, they have about 85 or 90 clients. Even if it is \$30,000 and you divide it by 90, maybe that is how we get there. We just back bill to the Districts we represent.

Mr. Pope stated you wonder if in the interim you can offer a service if those same 90 people share the cost of someone like just what Mr. Liew had suggested that if you want to hear our website, dial this number and they will read it to you. This part of the drive-by ADA violations, he is not going to want to listen to your website. He is only doing it for the attorney's fees.

Mr. Liew asked would it be practical if we meet everyone who uses the service, knowing that actually no one is going to use the service that makes everyone equal, then the people who are not disabled? Another idea is there any requirement that the website has to be a website that has to be loaded onto a computer as opposed to just a device? Apple, for example, has a speech function.

Mr. Clark stated I never heard that question considered.

Mr. Liew stated perhaps this is something for Mr. Moyer to think about.

Mr. Toumazos stated we should talk. I am really interested in this.

Mr. Pope stated I am sure there are lots of other CDDs just as interested, but those are productive ideas that in the face of the lawsuit, and a reasonable judge ought to satisfy people when there are not any regulations that are in effect.

Mr. Clark stated the right answer should have been and maybe it will be on appeal, is that when the Department of Justice has not adopted regulations yet, it is not enforced.

Mr. Pope stated you should not be bound by it.

Mr. Clark stated the argument has been made and rejected at least out of the CDD context and several times in the retail context, but those cases are very recent. They have not gone up to the circuit court level to get any clarity on it.

Mr. Pope asked are they all in federal court?

Mr. Clark responded I have not seen any of these cases that are not in federal court. I say it has not gone up to the circuit, I would say the Ninth Circuit predictably has come down and said it does not matter, you have to comply anyway. It will need to go to some ordinary circuit courts.

Mr. Pope stated it is an interesting issue, but it is pitiful that you have to worry about this.

Mr. Smith asked does your current position cover that kind of a recommendation to look into all of this?

Mr. Moyer responded sure. I will be glad to do that.

Mr. Pope stated I think we should think about how Mr. Liew's ideas might be worked into a solution in the sense that if you have got 90 CDDs and everyone gets together behind something, it could make good interim sense and maybe they will chop this thing off at the neck in Washington someday. It is pitiful that you have to comply with something that is not in effect.

Mr. Toumazos asked does the service have the ability to distribute hard copy? For example, if we post up for the service, one agenda book, let us say everyone is available from the service, can Board members get hard copy of that from the service so that everyone in effect is getting the same treatment?

Mr. Clark responded I wonder if you can just do a re-direct so you can go on the website and that screen comes up if you are hearing impaired.

Mr. Pope stated this is for the visually-impaired.

Mr. Clark stated I do not know how you can get a button that you cannot see, but you put a speech prompt that says yes.

Mr. Baker stated visually impaired people have Braille keyboards and all kinds of ways they can type. It is nothing new. It is just hitting us.

Mr. Moyer stated I will get something back to you.

Mr. Toumazos stated that is really the interesting challenge of the week.

## **SEVENTH ORDER OF BUSINESS**

## **Attorney's Report**

There being no report, the next order of business followed.

**EIGHTH ORDER OF BUSINESS**

**Engineer's Report**

Mr. Florio stated I have been working with the developer on reviewing some calculations for the potential expansion of the property here at Gaylord.

Mr. Pope stated everyone knows the Gaylord is expanding. They are adding 300 rooms and I believe 40,000 square feet of meeting space that they have entered into an agreement with the County pursuant to which the County is giving them incentives to do that, but that will put 1,700 rooms here. It is going to be a big place.

**NINTH ORDER OF BUSINESS**

**Supervisor Requests**

Mr. Beitsch stated we need to formalize the request to look into emails and, of course, we need to make a motion to have you investigate or is that just a directive?

Mr. Clark responded I think you can just direct the manager to do that.

**TENTH ORDER OF BUSINESS**

**Audience Comments**

Hearing no comments from the audience, the next order of business followed.

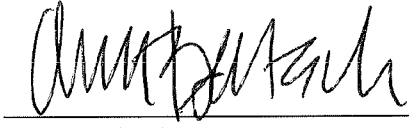
**ELEVENTH ORDER OF BUSINESS**

**Adjournment**

There being no further business,

On MOTION by Mr. Beitsch, seconded by Mr. Liew, with all in favor, the meeting was adjourned at approximately 11:40 a.m.
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Gary Moyer  
Secretary

  
Owen Beitsch  
Chairman