

MINUTES OF MEETING  
SAMPSON CREEK COMMUNITY DEVELOPMENT DISTRICT

A special meeting of the Board of Supervisors of the Sampson Creek Community Development District was held on Thursday, May 15, 2014 at 6:00 p.m. at the Swim Club Meeting Room, 219 St. Johns Golf Drive, St. Augustine, Florida.

Present and constituting a quorum were:

Mike Veazey	Chairman
Tracy Hayes	Supervisor
Bob Sevestre	Supervisor
Paul Armstrong	Supervisor

Also present were:

Jim Oliver	District Manager
Wes Haber	District Counsel
Mike Yuro	District Engineer
Jill Flores	Art of Living Director
Pam Watt	SJG&CC HOA
Jane Hammond	Comcast
Liam McKenna	Comcast

**FIRST ORDER OF BUSINESS**                      **Roll Call**  
Mr. Oliver called the meeting to order at 6:00 p.m.

**SECOND ORDER OF BUSINESS**                      **Public Comment**  
There being none, the next item followed.

**THIRD ORDER OF BUSINESS**                      **Discussion of the Proposed Comcast Agreement**

Mr. Haber stated by way of background, at your last meeting in your agenda package, you had a copy of an agreement that the CDD was a party to together with the HOA and Comcast and an exhibit to that agreement, which was an easement from the District to Comcast. The board approved those documents in substantial form and authorized Bob for final review and approval of both. Subsequent to that meeting and in connection with suggestions on my part, Comcast came back to the CDD to say "look, we don't need you, CDD, to be party to the

agreement anymore, we are comfortable with you only granting us an easement," which, from my perspective, simplified the transaction and made sense because we don't have any real business with Comcast. The only reason we are doing anything with Comcast is because we own the property where they need to install their improvements. My office and Comcast went back and forth, primarily Jane and I. Jane would submit my comments to Comcast legal counsel for review. I sent out an email that included four documents, all different versions of the easement. The first was Comcast original easement, the second was my changes to that, the third, identified as C, are Comcast subsequent revisions in light of my first recommended changes, and then D are my changes to what Comcast ultimately sent. I think I mentioned in my email Comcast has said they are done negotiating, so my D that went back to Comcast is not acceptable to Comcast nor are they willing to negotiate any further, as far as I understand, the easement documents. So where we are with respect to the negotiation of the easement between the District and Comcast is document C in the package I sent you via email and the package you have in front of you. I spoke to Bob about this. The document you have in front of you isn't the perfect document that I would say "yes, you are fully protected, move forward with this, and I feel secure that you have nothing to worry about." In my experience, we have had some success in negotiating that document. For example, when we negotiated with St. John's County with respect to construction of the pond, we explained to St. John's County that we don't have anything to gain from this, you are widening your road, you need to expand our pond. We want as much protection as we can get. Frankly they were very willing to work with us, and a lot of the language that I tried to insert into this easement with Comcast came from the easement we have with St. John's County because it is highly protective language. I did not have the same level of success with Comcast. As part of my recommendation I wasn't comfortable with Bob signing a document that I couldn't say fully protected the District. The purpose of today's meeting is I would like to go over with you sort of my concerns with the easement. They did make some changes, and it is not a horrible document. The way I viewed this transaction, and I think the way I explained it to the Board when we first did it, is because we don't really have the business relationship with Comcast, and it is not our deal, we are just a property owner, we should be fully protected. They are just going on our property to install improvements, we want to be fully protected and that our improvements located on the property will be protected, and that they will return the property to the shape it is in. Their representations in the easement

fulfill that to some degree, not to the degree I would have liked. In addition to that, because we don't have the full degree, both Bob and District Engineer Mike Yuro met with Leo, who is also with Comcast, to get an explanation of their methods and means as to how they will install the improvements. If we had a better understanding of how that installation would take place, then you would have more of a peace of mind that maybe because you don't have the Rolls Royce language in the easement, you at least will understand how it is being installed, and you may not be as concerned. The other part of this meeting is for you as a board to get an understanding from Mike in his capacity as Engineer, and obviously we have the Comcast representatives here as well to explain that to you and see if you can get comfortable knowing that what we had in Version C is where we are as far as the language. Would you prefer to start with the language and some of the things that stick out at me as cause of concern or would you want to hear more about methods of construction, and then we could go to the document, I'm fine either way.

Mr. Veazey stated I would like to start with the method and then we might not be as concerned.

Mr. Sevestre stated one thing that I wanted to tell you is that I went down to King and Bear to see the installation that was going on down there, and I also spoke with one of the gentlemen at the King and Bear who was part of the negotiations for the installation of Comcast into their development. He told me they were very satisfied with the way the installation was going. He had received no complaints. None of the neighbors were upset with anything that was going on. I asked him who negotiated the contract, and he told me that a company called Fletcher Development Corporation was the one that negotiated the contract with Comcast.

Ms. Hammond responded no, they developed the original one. He must have been talking about the original one where it was with Bellsouth Entertainment, and then they walked away from it, Bellsouth did. It was the homeowner's association and Comcast that negotiated that agreement.

Mr. Sevestre stated the pictures that were on that PowerPoint presentation are exactly the way they are doing the installation, and it doesn't appear as if there was any problems at all that I can see from that particular installation, but I wasn't able to talk to anybody within the HOA who knew anything about the negotiations or the contract and coverage that they had.

Ms. Hammond stated other than referring to some covenants and restrictions, they didn't put any language into the easement at all because the language they were looking for was in the service agreement.

Ms. Hammond stated the service agreement covers damage, it has a paragraph about liens in it.

Mr. Sevestre stated that shows how they dig a trench, and then they check from one trench to the other. I couldn't find any place where they were doing any directional boring when I was down there.

Mr. McKenna stated typically they provide for the directional bore machine, and they will shoot through all the bores at one time, which are under the roads. It is called missile boring. They will dig a three-foot deep pit, we set the missile down in, and then they just push it down, and it chokes through, and then we pull the cable back through it. In an open area they may hand dig it, but they will put a tarp by it. They will cut the sod, set the sod aside, and then they will dig their trench up onto the tarp and bury the cable and fill it back in again, but the sod back, and compact everything down.

Mr. Yuro stated Wes obviously tried to add some language that more fully protected the CDD. Comcast took that out. One of the things that jumped out at me was Wes put in some language, if you look at this description it talks about if anything is damaged, they will make reasonable efforts within 60 days to repair it, and then they list a whole bunch of things including landscaping, trees, planting, ground cover, roadways, driveways, sidewalks. One of the things that concerns me is that stormwater is not on there. We have a lot of stormwater pipes. The CDD owns the stormwater pipes underground, we own the roadways, so to me, stormwater pipes is one of the things that could be damaged. Wes put it in his B version, and Version C it was back out again. So that was a red flag to me. As well as if they were going to open cut that would cause it to kill the trees. If they are going to open cut in clear areas, if they are going to bore underneath the tree that is going to minimize the damage potential, if they are going to bore under driveways and roadways, that certainly will minimize the damage potential. There is still potential for things to get hit. They are going to be required to call and locate utilities such as power and water and sewer and stuff, but that does not locate the storm drain. So again, one of the things I am concerned about is the storm drain. We talked about that in the field about being careful at these intersections. We are going to have pipe going in either direction. What they did

mention in the field is that they verbally told us if they damage anything like that, they will repair it. If they damage sidewalks, they will repair it. If they damage pipe, they are going to repair it. While storm drain is not in the written agreement, they verbally told us it will be repaired. The language here does say in the event of damage to the easement area or any improvements within the easement, and then it lists several of them, but I think it could be considered.

Ms. Hammond asked would a storm drain be considered an improvement?

Several responded yes, absolutely.

Mr. Haber stated if I were representing Comcast, I think there is contractual interpretation language that says when you list improvements, you go to the more specific language over the broad language, and that is what concerns me.

Mr. McKenna stated we do the repairs. If we go through a storm drain, it is there, it is visible, we can see it, and you can't really argue "oh no, we didn't do that." We know you didn't build your storm drain around our conduit going through the middle of it, so it is clear cut.

Mr. Yuro stated Wes and I would both feel more comfortable if it was in the detail language in the contract. The fact that it is not, we are getting verbal representation from Comcast that does make me feel better. They are saying they are going to fix it, and that is really all we are after. If they damage it, they are going to fix it. So that's why we felt it was necessary to call this meeting so the whole board could hear and get to a level of comfort to approve this.

Mr. Haber stated my job is to give you both sides. The reality is, if a pipe was broken and Comcast said "let's look at the easement, hey, it is not included," notwithstanding the oral representations, I have every reason to believe you, but notwithstanding the oral representations, I think in court they can say "Hey, those oral representations are meaningless when you have signed a written agreement," and if you look at the negotiations between the parties, you said you wanted those stormwater improvements in there, we removed them, you asked for them again, and we said no. So the negotiations, if I am a lawyer, I prefer Comcast's position over the District's position on that particular issue. I think it is a better argument. We have these representations, but I wouldn't be doing my job if I didn't make you aware of that. And there are a few other items, but that would be the first one I would hit is the exclusion because that is what the CDD owns is the stormwater improvement. That's our big thing in addition to the roads and the trees.

Mr. Veazey stated to me that is the most obvious potential to get damaged because it is underground. When you are boring underground nobody can see the end of the bit.

Mr. Hayes stated my question would be, like Mike said, you hit it but for storm you might not know that for three years. Are you going to come back in three years and fix it? Obviously something like that, we are going – it is obvious your cable is running through the storm, so we are going to know it is you guys.

Mr. McKenna responded the evidence typically explains it to you. There is a hole in the conduit, and there is our – even if we don't go through it, you can still see where we hit it. Typically going over the top, you can see where we hit it going over the top. It is evident, and we fix them. We have never had an issue. We either have our contractor pay for it or if they are no longer with us, we forward that straight on to our insurance company and say that needs to get fixed. We have never had an issue.

Mr. Veazey stated and that would basically be with the directional boring because directional boring is the only thing that could penetrate the concrete reinforced pipe.

Mr. McKenna stated that is irrelevant. If we did the damage, we will fix it. We could do it with a shovel or a pickax.

Ms. Hammond stated I am not out in the field, but I did have a situation where I was working on a renewal, and the property manager knew my name and phone number. When we did the upgrade, I think it was 10 or 12 years ago, at some point in time one of our cables ended up through their sewer lines, and they ended up with a sewer leak like 10 years later. As soon as they dug it up, they knew it was cable. It was big thick black coaxial. All I had to do was email the construction department. They were out that afternoon fixing it.

Mr. Hayes asked so why wouldn't you put it in the contract?

Ms. Hammond responded our legal department says that an easement is a property right, and when you start adding all this language to it, it no longer becomes an effective easement because it limits the rights, and that is the reason I have been given.

Mr. Haber stated she is right, it is a right in property, we are giving Comcast the right to access our property to install and maintain their improvements, and it is a limitation on their right because right now, it is an additional obligation attached to their right to access our property. Their legal department is doing a good job in getting them an agreement that doesn't limit their rights.

Mr. Veazey stated another concern is what is the plan under all our street trees? I know you mentioned that you are going to bore under them.

Mr. McKenna stated yes, that would be bore, there is no trenching with the direct line of a tree. They don't do any trenching.

Mr. Veazey asked how deep do you go on a missile bore?

Mr. McKenna stated I think we are at 24" – 24" or 36" – I would have to verify that.

Mr. Veazey stated obviously that is our main concern. If everything goes smooth, we are happy, but if someone's big oak tree dies, how do you replace a 10-year-old oak.

Ms. Hammond responded you won't be able to replace a 10-year-old oak.

Mr. Veazey but that is a concern for whoever lives there.

Ms. Hammond responded then how can you have a cable system installed?

Mr. Veazey responded that is why we want to make sure you are going underneath them and not trenching through them.

Mr. Hayes asked how long do you feel this process is going to go on? How long to knock out the whole thing?

Mr. McKenna responded I will say 75 days. We will probably get it done faster than that, but I just want to allow that.

Mr. Hayes asked you are taking it and going right to the house, replacing the Light Stream. I ask that because Light Stream Cable is about this far below the ground, and I have to jump on it anytime I have anybody working on my landscaping. They are not taking it out but they are going to go in and put their Comcast right up to the house?

Ms. Hammond responded yes. And your own boxes too.

Mr. Veazey stated everyone will have two pedestals in their yard now because Light Stream isn't removing.

Ms. Hammond responded I don't know anything about what Light Stream is doing, but we have to have a pedestal between every two houses.

Mr. Veazey stated every four houses there is the big large box, and then there is a pedestal every two houses for Lite Stream.

Mr. Hayes asked are they going to be next to each other?

Mr. McKenna responded if that is what you want, I can have them design it to where we drop the boxes in the same location as they are.

Mr. Veazey stated I think that would be preferred but I also think that whatever makes the most sense for you and the installation and the least damage, that should probably be more important than that. If you come to a situation where you have to bore more or there is potential of damage, I think we are better off going to where you think it should go.

Mr. Haber stated the reality is document C is where we are. The big one is what Mike and I already discussed. I am happy to go through some of the other points. Paul, for your benefit, the big point we have discussed as far as the actual terms of the easement is the fact that my original comments sought to have stormwater improvements included, and they were removed, and that is really, in addition to trees and streets, the big improvement that the CDD owns. To the extent that after I go through these, if you don't have any questions, we would be looking for two things – a motion to authorize execution of the easement. One other thing, I went and looked at the deeds granting the District the right of way from the original developer, St. Joe. Those deeds included a reservation to St. Joe for the exclusive right to install various things including cable. I have reached out to St. Joe, and their lawyer said they will likely be perfectly fine with giving us a quitclaim deed. In essence, that is a document that says "we are not making any representations that we actually own anything, but to the extent we do, you guys can have it." That way, our exclusive rights to install cable now belongs to you CDD so now you CDD can give that right to Comcast. I am working with lawyers to get that so I would also like you to adopt a motion to include acceptance of that quitclaim deed from St. Joe so we have all the rights we need, all the property rights we need in order to grant Comcast the rights they will need.

On MOTION by Mr. Hayes seconded by Mr. Armstrong with all in favor to authorize acceptance of quitclaim deed from St. Joe including any rights related to cable company selection and other matters was approved.

Mr. Haber stated having those rights, whether we do this or not, is probably a good thing to have. Quickly on the remainder of some of my issues on the easement, in the third paragraph, and I removed that, I don't understand the reference to located at 219 St. John's Golf Blvd. As I read it, that's the paragraph that is supposed to explain where the improvements are being installed, which is essentially in all the right-of-way, not a specific address. I don't know that I am too concerned about that, but it confuses me a bit. I think what we should do is just rely on



the legal description. Say you have an easement over the legal description, and there shouldn't be a specific address. The easement is going to go over all of the right-of-way in which they need to install the cable. I am hopeful that the roadways identified on the plat will be sufficient for creating that legal. We just name the roadways as referenced in the plat recorded at St. John's county or whatever. If there is property that is not specifically identified on the plat, then I assume Comcast would cover the expense of identifying that property. As I understand it, it is all right-of-way. In that last paragraph on that first page, you have the standard of their improvements limited to commercially reasonable. The standard that I set was a higher standard. Commercially reasonable essentially means the way similar trades would be required to fix those things. I had, I think, somewhat of a higher standard, but when you are talking about storm drain, as long as it is functioning, it is functioning. It is more of the trees. If you a kill a 10-year old tree, can they just put in a sapling. It depends on what the commercial standard is for cable companies making those types of repairs. The other thing that is mentioned in here is that Comcast, as well as its contractors, agents, and employees all have the right to do this work. They are limiting any fixing of any damage only done by Comcast. In the language I sent over, I thought they should fix not only the damage by Comcast but also Comcast's agents, employees, and contractors. In here it is only limited to Comcast. Presumably, if their sub does the damage, they will fix it, but arguably there is that disparate language. There is a 60-day timeframe in here, I had a 30-day timeframe. There is indemnity language in here. Indemnity essentially means if they cause damage or if something happens that results in a lawsuit or claim against the District, and if what happens is a result of something that Comcast did – if they dig a trench and someone trips over it and they want to now sue the District because it was on District property – Comcast would be obligated to indemnify us for that claim. If that person gets a judgment against the District, it will be Comcast's responsibility to pay for that judgment. In their language here, if you will look at the parenthetical in the last paragraph, it says "including reasonable attorney fees in the investigation but not defense of the claim." So what that means is if the District needs to hire a lawyer to defend the District in that lawsuit, my language had Comcast paying for the District's lawyer. That language excludes that, so the District would have to pay for its own lawyer. I think it obligates Comcast to pay for the judgment, not for the District's legal fees. You have legal counsel that has very reasonable rates, so that may not be a huge deal for you. There was language in here that said they won't allow any liens recorded

against the property. That was removed. Presumably they are going to pay their subs, and their work is not going to result in an unpaid lien against the property. Frankly, if you have a contractor that is going to try and lien right-of-way, there is not much value to them. No one is selling a piece of right-of-way. That is not a huge issue for me, but it was language I included in there. Lastly, I had language in there that essentially if someone were to get injured, a District has sovereign immunity. I included language in here that said to the extent that somebody sues the District as a result of this process, we are still entitled to our sovereign immunity to limit the extent of our damages. Frankly, it was language that I think was beneficial to Comcast as well because if they are indemnifying us for those judgments, they want that same limitation. They excluded that language. We included it because folks do try to argue that you now have entered into an agreement where you have Comcast indemnifying you for certain damages, that sovereign immunity is no longer applicable. So not a huge deal because we do have the indemnity, but it is something I would prefer to see in this type of agreement.

Mr. Hayes asked can we add and reference that statute?

Mr. Haber responded as I understand it, there is no adding. Document C is where we are. There is no more negotiating. So the big one is the removal of the stormwater improvements. There is other stuff in here that in a perfect world I would like to see it in there, it is not, and I wanted to bring it to your attention.

Mr. Hayes asked Mike, the St. John's County permits, are they required to get a permit from St. John's County?

Mr. Yuro responded yes, the St. John's County permit has a two-page list, a bullet list of 20 or 30 items that basically says you will restore the area to the existing or better condition than when you found it. There are a lot of specific things, but it would be closer to what I think Wes was looking at getting the language in ours. It basically says you are going to restore everything in the area of the work to existing or better condition when you are done.

Mr. Hayes stated so in a way that should make us feel a little bit more comfortable also? If they are pulling a permit through St. John's County.

Mr. Haber responded I would have to look at the permit because that may apply only to...

Mr. McKenna stated we will pull a permit for whatever agency we have to pull permits for, but once we go in the property, I believe this is all private property, correct?

Mr. Haber stated it is not private because it is owned by the CDD, and the CDD is a unit of government, so it is publicly owned, but it is not county owned. We would be issuing the easement, but there are no permits we would issue. Whether you need a permit to install those improvements on our property, I don't know the answer to that.

Mr. Veazey stated I think they probably would.

Mr. McKenna stated that would be part of the agreement I believe.

Mr. Veazey stated they are going to need a permit from the county for sure to install along the county right-of-way. I would think the county would require a permit for installation. You have to get a permit to build a pool in your own backyard, so I would think the county would require a permit.

Mr. McKenna stated the county won't if it is private property.

Mr. Haber stated it is not state property, it is not county property, it is not private property either. It is CDD property, and the CDD is a unit of government. We don't call it private property, but it is not county or state property either.

Ms. Hammond stated if you want to discuss this without us here, we are happy to leave.

Mr. Veazey stated if the county is going to require a permit to install within our right-of-way, which I don't know the answer, but if they do, that gives us a lot better sense of security. The requirements of a county permit I think are more restrictive.

Mr. McKenna stated we hold our contractors to the same standard as the permit no matter where we work. We tell them you need to restore the right-of-way or whatever area you are working in to the same or better condition.

Ms. Hammond stated whether you guys vote to accept the easement the way it is or not, I have to resend this back through the approval process, so that is probably another 30 days.

Mr. Haber asked resend the easement back through the approval process or the agreement between the HOA and Comcast.

Ms. Hammond responded all of it.

Mr. Haber stated obviously we are not making any changes to the easement, that has been signed off on.

Ms. Hammond stated this has just been redlining between the legal department. Basically when I say it goes back through approval, it gets looked at by two people from every department at the region, at the division, and at the corporate levels. It is a lengthy process.

On MOTION by Mr. Armstrong seconded by Mr. Hayes with all in favor to authorize Version C of the revised Comcast agreement was approved.

**FOURTH ORDER OF BUSINESS                      Supervisors Requests**

There being none, the next item followed.

**FIFTH ORDER OF BUSINESS                      Audience Comments**

There being none, the next item followed.

**SIXTH ORDER OF BUSINESS                      Next Scheduled Meeting – May 28, 2014**

Mr. Oliver stated the next scheduled meeting is May 28, 2014 at 6:00 p.m.


**SEVENTH ORDER OF BUSINESS                      Adjournment**

On MOTION by Mr. Hayes seconded by Mr. Veazey with all in favor the meeting was adjourned.



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Secretary/Assistant Secretary



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Chairman/Vice Chairman