

HERITAGE HARBOUR SOUTH COMMUNITY DEVELOPMENT DISTRICT

REVISED SPECIAL MEETING AGENDA

Wednesday, April 24, 2024, at 5:00 p.m.

**Meeting to be held at: Stoneybrook
Recreation Center 200 Golden Harbour
Trail Bradenton, FL 34212**



2654 Cypress Ridge Blvd. Suite101
Wesley Chapel, FL 33544
(813) 652-2454

Heritage Harbour South Development District

Board of Supervisors

Philip Frankel, Chair
Robin Spencer, Vice Chair
Mike Neville, Assistant Secretary
Eric Hallberg, Assistant Secretary
Darnell Bacon, Assistant Secretary

Staff:

Jennifer Goldyn, Regional Director
Kristee Cole, District Manager
Andrew Cohen, District Counsel
Rick Schappacher, District Engineer

Revised Special Meeting Agenda Wednesday, April 24, 2024 – 5:00 p.m.

1. **Call to Order and Roll Call**
2. **Audience Comments**
3. **Business Administration**
 - A. Discussion regarding the Master Association Memo Page 3
 - B. Discussion regarding lake concerns at Cape Harbour Loop Page 5
 - C. Discussion regarding the Maintenance of the Preserve at Lighthouse Drive Page 5
 - D. Discussion regarding the Cal-Ripken Agreement..... Page 6
 - E. Discussion regarding the traffic light at Grand Harbour Parkway
 - F. Discussion regarding Lighthouse Drive traffic concerns
 - G. Discussion regarding Port Harbour street lighting
 - H. Discussion regarding the responsibility of road maintenance throughout the community
 - I. Discussion regarding playground replacement
 - J. Discussion regarding parking throughout the community
4. **Audience Comments**
5. **Supervisor Requests**
6. **Adjournment**

The next meeting is scheduled for Tuesday, May 7, 2024, at 5:00 p.m.

District Office:

313 Campus Street
Celebration FL 34747
407-566-1935

<https://www.heritageharboursouthcdd.org/>

Meeting Location:

Stoneybrook Recreation Center
200 Golden Harbour Trail
Bradenton, FL 34212



PERSSON, COHEN, MOONEY, FERNANDEZ & JACKSON, P.A.
ATTORNEYS AND COUNSELORS AT LAW

David P. Persson**

Andrew H. Cohen

Kelly M. Fernandez*

Maggie D. Mooney*

R. David Jackson*

Daniel P. Lewis

* Board Certified City, County and Local Government Law

** Of Counsel

Telephone (941) 306-4730

Facsimile (941) 306-4832

Email: acohen@flgovlaw.com

Reply to: Lakewood Ranch

MEMORANDUM

TO: Chairman Frankel and Board of Supervisors of Heritage Harbour South CDD

FROM: Andrew H. Cohen, Esq.

DATE: April 15, 2024

RE: Heritage Harbour Master Association, Inc.
Duty to Replace CDD Common Area Infrastructure

The Heritage Harbour South Community Development District (“District”) requested guidance as to whether the Heritage Harbour Master Association, Inc. (“HHMA”) has a duty to *replace* common area infrastructure owned by the District but being overseen, maintained and administered by the HHMA pursuant to agreement between the parties. In preparation for this memorandum, I reviewed the two agreements between the District and HHMA encompassing general infrastructure management and management of the Central Park amenities in the community. Further, I reviewed the governing documents of the HHMA and the most recent Funding Reserve Analysis of the HHMA dated September 6, 2022. From my review, it is clear that the HHMA has the duty not only to maintain and repair the District infrastructure it has contracted with the District to administer but also to replace any damaged infrastructure under the HHMA’s control

Pursuant to an agreement dated February 15, 2021, the HHMA contracted with the District for the overseeing of certain District Facilities (as defined in the foregoing agreement). Pursuant to a separate agreement in October, 2021, the HHMA contracted with the District to further oversee additional

Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

Venice
236 Pedro Street
Venice, Florida 34285

District infrastructure and amenities part of the Central Park area in the community including but not limited to baseball fields, a lighthouse, soccer fields and a playground area.

The Declaration of Covenants, Conditions and Restrictions for the HHMA (“Declaration”) contemplates the HHMA overseeing certain CDD owned amenities and allows for the contracting as referenced above.

In Section 1.9 of the Declaration, “Common Areas” is defined and there is provision made for certain classes of Common Areas including “Maintenance Common Areas” defined as follows:

being property within or without The Lands which is not owned by the Association but is nevertheless to be maintained or administered by it pursuant to an easement, license **or agreement** with a Neighborhood Association, **the CDD**, the County or any other person or entity, which maintenance/administration affords benefits to the Members (emphasis added).

Section 4.2 of the Declaration provides in pertinent part that:

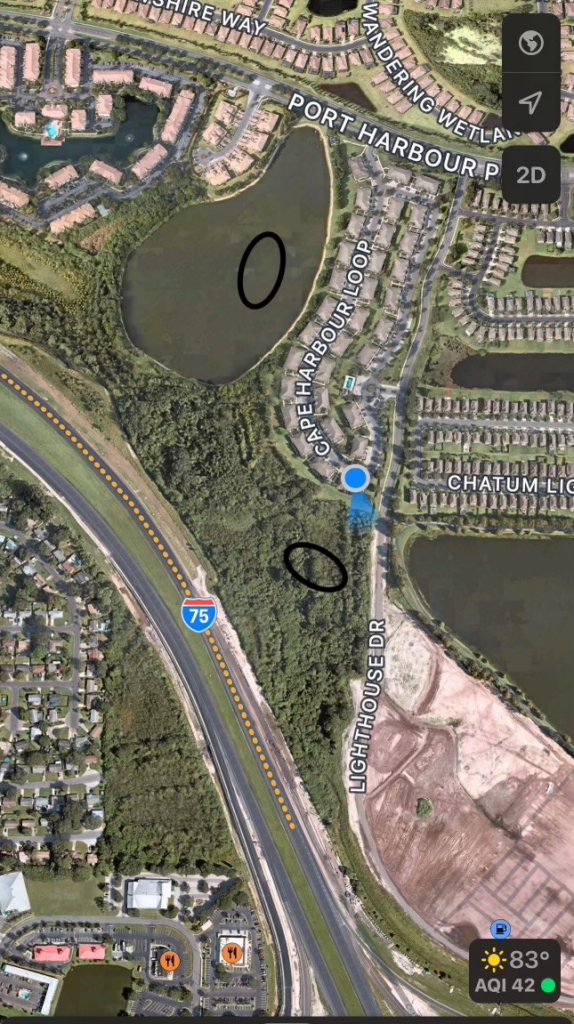
the Association shall at all times maintain in good repair and manage, operate and insure and shall **replace** as often as necessary, the Common Areas, and to the extent not otherwise provided for, the paving, drainage structures, landscaping, improvements and other structures ... situated on the Common Areas, if any, all such work to be done is ordered by the Board of Directors of the Association (emphasis added).

The Articles of Incorporation of the HHMA provide in Article II that the HHMA shall have the power “to own, lease, maintain, repair, **replace** or operate the Common Areas.” In the Funding Reserve Analysis contracted for by the HHMA and dated September 6, 2022, there are multiple references to “replacement” including “playground replacement” with funding of \$235,000.00.

In sum, the HHMA has contracted with the District to administer various areas of the District’s infrastructure as the HHMA is empowered to do under the Declaration. Upon contracting to perform such work, the District owned areas (and the infrastructure located thereon) became Maintenance Common Areas. Pursuant to the Declaration, including Section 4.2, the administration of the Maintenance Common Areas includes “replacement.” The HHMA has evidenced its acceptance of the “replacement” responsibility by including such obligations in its Funding Reserve Analysis and in fact budgeting for such “replacement” of District administered areas as was relayed to the District in a recent meeting.

As always, please feel free to contact me with any follow-up questions.

Cc: Jennifer Goldyn, District Manager



SHIRE WAY

WANDERING WETLANDS

PORT HARBOUR P

CAPE HARBOUR LOOP

CHATUM LIC

LIGHTHOUSE DR

75



2D

 83°
 AQI 42 

There is a document titled

“HERITAGE HARBOUR MASTER HOME OWNERS ASSOCIATION, INC.
INDEPENDENT CONTRACTOR AGREEMENT”

that appears to be signed by Michael Fisher, as President of “**Heritage Harbour Master Association, Inc.**”, and Patrick Nicholls, as President of “**Heritage Harbour Baseball.**”

I will refer to that document as the “INDEPENDENT CONTRACTOR AGREEMENT.”

There is an attachment which includes within “Fall 2022 Board of Directors Contact Information” a reference to Patrick Nicholls as the President of **some entity.**

There is an entity registered with the Florida Division of Corporations, **Heritage Harbour Baseball, Inc.**, with an address of **700 River Heritage** Harbour Boulevard, Bradenton, Florida 34212, with the following officers and directors listed for 2024, 2023, 2022, 2021, 2020...

In other words, there is no identification of Patrick Nicholls as the President or any of the other people on the “Fall 2022 Board of Directors Contact Information” as having any involvement with **Heritage Harbour Baseball, Inc.**

Officer/Director Detail

Name & Address

Title President, Director

HANSON, MARK
8374 MARKET STREET, #177
BRADENTON, FL 34202

Title VP, Director

DUMER, MICHAEL
8374 MARKET STREET, #177
BRADENTON, FL 34202

It would appear to me that no attorney was involved in the preparation of the “INDEPENDENT CONTRACTOR AGREEMENT.”

There is an Exhibit A to the “INDEPENDENT CONTRACTOR AGREEMENT” that references “Cal Ripken” multiple times in connection with various responsibilities.

There is a Certificate of Liability Insurance dated 1/31/2020 where the INSURED is identified as

“MANATEE BABE RUTH LEAGUE

DBA: Heritage Harbour Baseball

6110 Blue Runner Court

Lakewood Ranch, FL 34202”

There is no fictitious name registered (and never has been) with the Florida Division of Corporation for anyone to operate as “Heritage Harbour Baseball”

[6110 Blue Runner Court](#) is Stephen Rumrill’s house a few houses from my house. There is an e-mail from Stephen Rumrill to Lee Weiss dated February 19, 2021 that represents he is the President of some entity.

Lee Weiss

From: Stephen Rumrill <Stephen_Rumrill@Progressive.com>
Sent: Friday, February 19, 2021 1:09 AM
To: Lee Weiss
Subject: RE: [External] Field Question

Hello Lee,

Here you go...Have a good weekend.

====

Steve Rumrill	President	stephen_Rumrill@Progressive.com>
Jason Geiger	Treasurer	ljgeiger5@verizon.net>
David Culver		david@culvertransit.com
Matt McGinnis	Secretary	25lakehouse@gmail.com
Kevin Crane		klcrane00@gmail.com
Pat Grant		pgrant@bbiteam.com
Pat Nicholls		patnicholls01@gmail.com
Jason Smith		jrs45@live.com

Stephen Rumrill
813-318-1101

There is a Certificate of Liability Insurance dated 2/4/2022 where the INSURED is identified as

“MANATEE BABE RUTH LEAGUE

DBA: Manatee Cal Ripken Babe Ruth

11562 Echo Lake Circle

Bradenton, FL 34211”

There is no fictitious name registered (and never has been) with the Florida Division of Corporation for anyone to operate as “Manatee Cal Ripken Babe Ruth”

There simply is no such address as 11562 Echo Lake Circle, Bradenton, FL 34211. Instead, it is an apartment complex off of Lakewood Ranch Boulevard (Echo Lakes Apartments) where each apartment is designated by apartment number, example 11562 Echo Lake Circle, Bradenton, FL 34211 Unit 101.

At this point, I have no idea who “**Heritage Harbour Master Association, Inc.**” allegedly contracted with in the “INDEPENDENT CONTRACTOR AGREEMENT.”

I also have no idea how **some entity** is subleasing the baseball fields (“Cal Ripken is subleasing to high schools baseball teams”) because no entity has a lease in the first place (unless there is a document I have not been provided).

The good news is that while the “INDEPENDENT CONTRACTOR AGREEMENT” purports to run for a period of five (5) years from March 1, 2022, it can be terminated by “**Heritage Harbour Master Association, Inc.**” with or without cause, upon delivery of notice... written or oral, effective upon delivery of notice.”

If you may recall from my e-mail dated February 28, 2024, HHMA and South CDD entered into the **Central Park Agreement** dated October 1, 2021 with a term of 3 years thereby allowing HHMA to operate items 1-13 below **and enter into contracts and charge others to use the baseball fields (or other facilities)**. The **Central Park Agreement** automatically renews for successive one-year periods unless a notice of termination is provided by May 30 for a termination effective September 30.

Exhibit A Facilities

For areas outside of Stoneybrook and Lighthouse Cove:

1. Lake # 48 Pier/Dock
2. Lighthouse
3. Gazebos
4. Lighting
5. Playground
6. Concession Stand
7. Pavillion
8. Soccer Field Restroom
9. Monuments
10. Baseball field fencing and stands
11. Baseball field Infield/outfield
12. Soccer Field Goals
13. Parking Lots (3)

My recommendation is that HHMA decides if it wants to enter into a contract and charge others to use the baseball fields. If so, its needs to identify the specific person (or persons) or entity (or entities) that will be and that any entity be properly registered with the Division of Corporations. HHMA would then want a written agreement memorializing the terms and conditions of such use. I expect Exhibit A to the “INDEPENDENT CONTRACTOR AGREEMENT” would be a starting point.

Soon, I would expect that HHMA will want to terminate the “INDEPENDENT CONTRACTOR AGREEMENT.” I would say immediately but that could create a problem, diplomatically, if ongoing leagues. At the very least, someone should obtain a current Certificate of Liability Insurance for whatever entity is operating out of the fields.

Paul E. Olah, Jr., Esq.

Law Offices of Wells | Olah | Cochran
[3277 Fruitville Road, Bldg B](#)
[Sarasota, FL 34237](#)
Telephone (941) 366-9191
Facsimile (941) 366-9292

polah@kevinwells.com

RECEIVED
SEP 26 2023
BY:

HERITAGE HARBOUR MASTER HOME OWNERS ASSOCIATION, INC

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT, made this, 1st day March 2022 ("Effective Date") by and between Heritage Harbour Master Association, Florida not-for-profit corporation, (hereinafter referred to "Association"), and Heritage Harbour Baseball (hereinafter referred to as "Independent Contractor").

WHEREAS, Association is a residential community located in Manatee County, Florida; and

WHEREAS, Independent Contractor desires to perform services for the benefit of Association and its members as an Independent Contractor, and

WHEREAS, Association desires to retain the services of Independent Contractor.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, and other good and valuable consideration, the receipt and adequacy of which is acknowledged, Association and Independent Contractor, agreeing to be legally bound, agree as follows:

ARTICLE I
OBLIGATIONS OF ASSOCIATION

- 1.1 **FACILITIES.** Association agrees to provide Independent Contractor with facilities, specifically the Heritage Harbour Baseball Fields and concession stand area, to enable Independent Contractor to perform the services contemplated by this Agreement.
- 1.2 **COOPERATION.** Association agrees to allow Independent Contractor in promoting the use of such facilities and to cooperate with Independent Contractor.
- 1.3 **COMPENSATION.** Association has no obligation to compensate the Independent Contractor for services performed. Compensation shall be collected by Independent Contractor directly from participants as contemplated by this Agreement.

ARTICLE II
OBLIGATIONS OF INDEPENDENT CONTRACTOR

- 2.1 **SERVICE TO BE PERFORMED.** Independent Contractor agrees to conduct their business as a baseball league in a reputable manner and in conformance with all laws, rules, regulations and codes of ethics that are binding upon or applicable to Independent Contractor. Independent Contractor further agrees to be properly attired while conducting business and to present themselves in a

fashion consistent with their occupation at all times. All services to be offered must have prior approval of the Association.

- 2.2 PRIVATE FACILITY.** Independent Contractor understands that the Association's facilities are for the exclusive use of residents and accompanied guests of the Association. Independent Contractor represents to the Association that they will not permit persons other than residents and accompanied guests of the Association to participate in services offered. Additionally, Independent Contractor represents to the Association that they will not market any of their services in connection with this Agreement to persons who are not members of the Association.
- 2.3 LICENSE.** Independent Contractor represents to Association that they will maintain throughout the term of this Agreement any and all licenses that may be required- by any° professional, self-regulatory or governmental entity or body with respect to the services to be performed by Independent Contractor pursuant to this Agreement. Evidence of the foregoing shall be given to Association at time of execution of this Agreement and at any time upon request of the Association.
- 2.4 INSURANCE.** Independent Contractor represents to Association that they will maintain throughout the term of this Agreement general liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. The Association shall be named as an additional insured. Evidence of the foregoing shall be given to Association at time of execution of this Agreement and at any time upon request of the Association. Heritage Harbour Master Association & The Heritage Harbour South Community Development district will be listed upon this policy as a certificate holder.
- 2.5 TAXES.** Independent Contactor agrees to pay all taxes applicable to any compensation paid to Independent Contractor under this Agreement. Association nor its members or employees shall withhold nor pay any amount of federal, state, local or municipal income tax, social security tax, and unemployment or workers' compensation tax. Independent Contractor hereby acknowledges his personal income liability for the self-employment imposed by Section 1401 of the U.S. Internal Revenue Code, and the payment, when applicable, of estimated quarterly taxes and the filing, when applicable, of quarterly U.S. Internal Revenue Service Forms 1040-ES, Declaration of Estimated Tax by Individuals. Upon request by Association, Independent Contractor will provide documentation evidencing compliance with all self-employment laws in regard to amounts received under this Agreement. Independent Contractor agrees to accept exclusive liability for any taxes and penalties relating to the payment of fees for services rendered to Independent Contractor pursuant to this Agreement, and to reimburse and indemnify Independent Contractor for any such taxes or penalties if Independent Contractor is compelled to pay them. Independent Contractor agrees to comply with all tax laws and IRS regulations

regarding receipt of fees pursuant to this Agreement, and shall maintain all records required by the IRS relating to this engagement.

- 2.6 **INDEMNIFICATION.** Independent Contractor agrees to indemnify and hold Association, and its officers, members, directors, employees and agents thereof harmless from any and all liability and expense (including reasonable attorney's fees and expenses) for any loss, injury, property damage or other casualty to any entity, person, or property caused or occasioned by alleged or actual negligence, misrepresentation, omission, fraud, misfeasance, nonfeasance or malfeasance, (collectively hereinafter "Losses") by Independent Contractor.

ARTICLE III COMPENSATION

- 3.1 **COMPENSATION.** Independent Contractor shall collect compensation for services performed directly from participants. The Association has no responsibility to pay, because to be paid, or collect compensation owed to Independent Contractor. Independent Contractor shall receive no minimum salary, sick pay, vacation pay, health insurance, or other benefits.
- 3.2 **EXPENSES.** Association shall not reimburse or pay Independent Contractor for any expenses, including but not limited to, advertising, entertainment, license fees, office expenses, membership dues or transportation incurred by Independent Contractor without first obtaining written authorization from Association.

ARTICLE IV GENERAL PROVISIONS

- 4.1 **TERM.** The Term of this Agreement shall commence on the Effective Date and shall, subject to termination rights contained herein, expire after five (5) years. Either Association or Independent Contractor may terminate this Agreement, with or without cause, upon delivery of notice to the other. Termination of Independent Contractor by Association may be written or oral and termination shall be effective upon delivery of notice to Independent Contractor. Notice of termination by Independent Contractor to Association shall be in writing and shall be given not less than sixty (60) days prior to the effective date. All programs, forms, keys, manuals, signs, computer, computer software and other paraphernalia relative to the business of Association are property of Association, and shall be returned to Association, with no copies made by Independent Contractor, upon termination of this Agreement.
- 4.2 **INDEPENDENT CONTRACTOR.** It is intended that Independent Contractor shall be an independent contractor, and nothing herein contained or implied will at any time be so construed as to create the relationship of employer and employee, partnership, principal and agent, or joint adventurers between

Association and Independent Contractor. Independent Contractor shall, at times during the term of the Agreement, perform their duties and responsibilities without any supervision or control by Association.

- 4.3 **NON EXCLUSIVITY.** This Agreement is not exclusive. The Association reserves the right to contract with other parties to provide the same or similar services.
- 4.4 **AGREEMENT SUBJECT TO FLORIDA LAW.** The prevailing party in any litigation to enforce the terms of this Agreement shall be entitled to recover reasonable costs and expenses, including attorneys' fees at both the trial and appellate levels. Independent Contractor waives his right to a jury trial. This Agreement shall be governed by the laws of the State of Florida without reference to its principles of conflicts of law and venue shall be in Manatee County, Florida.
- 4.5 **ENTIRE UNDERSTANDING.** This Agreement and EXHIBIT A, covers the complete understanding between the parties and expressly rescinds any and all previous agreements and understandings. Except as otherwise provided in this Agreement, no modification hereof shall be effective unless made in writing and duly executed by both parties hereto. Any modifications made by agreement of both parties shall become part of this Agreement and shall supersede those provisions or conditions of the original Agreement so modified.
- 4.6 **SEVERABILITY.** If any one or more of the provisions contained in this Agreement is deemed invalid or unenforceable, the validity or enforceability of all other provisions of this Agreement shall not be affected.

IN WITNESS WHEREOF, the parties hereto signed the date first above written.

ASSOCIATION:

INDEPENDENT CONTRACTOR:

HERITAGE HARBOUR MASTER
HOMEOWNERS ASSOCIATION.
INC.

By: Michael Fisher

Michael Fisher
Print Name

President
Title

By: [Signature]

Patrick Nichols
Print Name

President
Title