



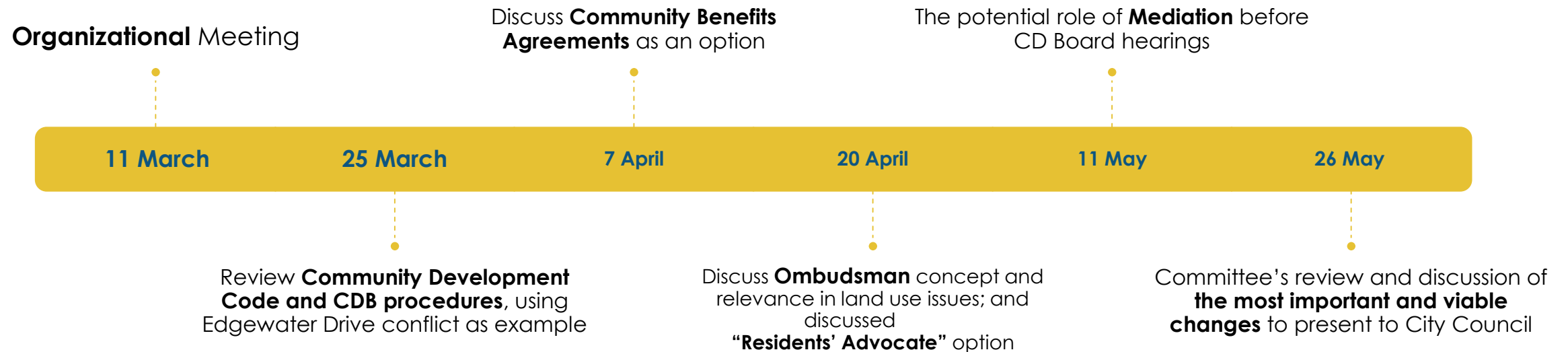
# Report from CNC Committee on Conflict Resolution

[FORMERLY KNOWN AS THE OMBUDSMAN COMMITTEE]

# Committee Membership

- ▶ **Included all the CNC officers**
  - ▶ JoAnna Siskin, President
  - ▶ Chris Michalek, Vice President
  - ▶ Shelley Kuroghlian, Treasurer
  - ▶ Annette Pardue, Secretary
- ▶ **And additional members** – Liz Drayer, Bill Jonson, Kelly Kelly, and David Lillesand

# Committee's 2021 Meetings and Topics



# Committee's Goal – level the playing field



Understand Clearwater's current  
Community Development process  
– the CD Code and  
Quasi-Judicial Procedures of the  
CD Board



Identify the basis for the  
perception that neighborhoods  
always lose battles with  
developers (300 S Duncan,  
Clearwater Point, and Edgewater  
Drive projects)



Study additional or alternative  
tools that would benefit the entire  
community – neighbors,  
developers and the city



Identify specific changes in CD  
Code to “level the playing” field

# Materials reviewed by the committee before each meeting

- Community Development Code
  - CDC Training Booklet 2004
  - CDC Training – 30' video - 2004
- New Citizens Guide to CDB Hearings
  - Bill Jonson's responsive comments on the guide
- Edgewater Drive matter
  - 383-page transcript
  - Appeal briefs
  - Hearing officer decision
  - Valor Capital website
  - Serena by the Sea website
- Community Benefits Agreements:
  - 2005 CBA Handbook
  - 2008 CBA Definitions
  - 2008 CBA Tools for Proactive Development
  - 2009 CBA Value for Developers
  - 2016 CBA Challenges in Negotiating CBAs
  - 2020 A tool for economic equity
  - 2021 News articles on St Pete CBA proposals
  - 2021 National CBA Law Center – opposes city ordinances

# Materials reviewed, continued

- Ombudsman materials
  - History, types and Use in Florida Government
  - State examples
  - Other City examples
  - Website review of city and state use
  - National Standards for Ombudsman
- Mediation of disputes
  - Introduction to Mediation Concept, distinction from arbitration
  - Typical mediation in Florida
  - Application to Edgewater Drive
  - Detailed review of Chapter 44, Florida States, on mediation
  - Florida Bar article on uses of mediation in Florida

# Comments on particular tools – useful or not useful?

- COMMUNITY BENEFITS AGREEMENTS
- OMBUDSMAN CONCEPT
- MEDIATION

# Community Benefits Agreements

- ▶ Appropriate for super-large projects – not for infill developments
- ▶ Requires voluntary participation by developer
- ▶ Participation occurs when there's a pre-existing balance of power – developer versus labor unions, large communities, and multiple zoning and land use proceedings where community agreement helps developer
- ▶ Results in a legal contract – the Agreement – with legally enforceable duties on both sides



# Ombudsman Concept

- ▶ A traditional Ombudsman is not an advocate for the complainant or the agencies that the Ombudsman has as his or her mission. An Ombudsman is a neutral, independent intermediary between the complainant and the agency, who investigates complaints and objectively determines if an agency acted in a mistaken, unfair, arbitrary or illegal manner.
- ▶ The Ombudsman may make findings and recommendations for corrective action, but has no power to enforce these recommendations or to compel an agency to take any particular action.
- ▶ Fundamentally, the only real power the Ombudsman has is the power to investigate. In CDB disputes, the neighbors need a trained and skilled advocate in land use matters.

# Residents' Advocate

- ▶ The problem with lack of access to lawyers and experts is not limited to land use issues. The courts are struggling to deal with unrepresented parties; often neither side has an attorney.
- ▶ To level the playing field in land use disputes, neighbor residents need access to skilled, trained advocates and funds to employ experts
- ▶ Community neighborhoods are not eligible for traditional legal aid
- ▶ Legal aid/legal services programs lack expertise in land use matters
- ▶ Florida Legal Services, Inc., could be an employer of trained, skilled advocates for neighborhoods, but non-profit funding from foundations and neutral organizations is doubtful

# Mediation

- ▶ Mediation is a useful tool to settle disputes out of court
- ▶ The Florida Supreme Court has licensed over 5,000 trained mediators
- ▶ Mediators are trained in conflict resolution and do not have to be experts in a particular subject matter since they make no decisions
- ▶ Mediation could be useful to either achieve agreement on all issues or reduce the number of disputed issues
- ▶ Mediation is confidential and results in a mediated agreement or declaration of impasse only
- ▶ However, successful mediation relies on parties having access to advice of counsel and experts prior to the mediation

# Committee's Recommendations

- ▶ After study, there was no particular tool or technique that would solve the problem of an unlevel playing field – neither the Ombudsman, Community Benefits Agreements, nor Mediation alone, would be appropriate
- ▶ A publicly funded, independent “Residents’ Advocate” is not currently feasible, and would not guarantee access to expert witnesses
- ▶ The Committee feels that adjustments to the current Community Development Board process could enhance the chances of fairer decision-making process

# Summary of Recommendations

- ▶ Pursue a CDB that is more diverse and balanced pursuant to CDC §5-202
- ▶ Add “environmentalist” to list of professionals to serve on Board
- ▶ Develop updated training materials for CDB members and city staff
- ▶ Require completion of CDB training before a member may sit and rule at a hearing
- ▶ Increase early and minimum notice times so neighbors can review developer's proposals in detail
- ▶ If a matter is disputed and not routine, hold CDB hearings at night for that matter
- ▶ Review the current code to create meaningful buffers to protect a neighborhood's character and safety,
- ▶ Enforce CDC's §1-103 purpose to “ensure development will not have a negative impact on the value of surrounding properties” and “minimize the conflicts among the uses of land and buildings”