

To: Board of Directors, Pelican Bay Foundation

From: Bill Carpenter, Bob Uek, Mike Coyne, Henry Price, Jim Hoppensteadt, and Steve Feldhaus

Date: June 25, 2010

Re: County Request to Consider Formation of Independent District within Pelican Bay

Fred Coyle, Chairman of the Collier County Board of Commissioners, and Leo Ochs, Collier County Manager, have proposed that Pelican Bay consider the formation of an independent district to replace the Pelican Bay Services Division (PBSD), which is the Advisory Board for the Pelican Bay Municipal Services Taxing & Benefit Unit (MSTBU), which would also be replaced. Bill Carpenter, Chairperson of the Foundation, asked Vice Chairpersons Bob Uek and Mike Coyne, former Board member and Legal Committee member Henry Price, Foundation President Jim Hoppensteadt, and Foundation Secretary Steve Feldhaus to join with him to conduct an initial analysis of the proposal and to report back to the Board. Steve Feldhaus made an initial verbal report to the Board at its May Board meeting, and this report is designed to bring the Board up to date on the efforts and recommendation of this Ad Hoc Committee. For ease of reference, the proposed independent district is referred to as the PBID, for Pelican Bay Independent District.

What has occurred to date?

- Fred Coyle and Leo Ochs proposed the formation of the PBID.
- Foundation Chairperson Bill Carpenter formed an Ad Hoc Committee to evaluate the proposal and make a recommendation to the Foundation Board.
- The Ad Hoc Committee hired Ken van Assenderp, an attorney in Tallahassee who is one of Florida's most respected experts in the field of special districts. He also was involved in the formation of the original Pelican Bay Independent District in the 1970s.
- The Ad Hoc Committee had a number of meetings and conducted research on independent districts in Florida.
- Steve Feldhaus and Jim Hoppensteadt, as representatives of the Ad Hoc Committee, met on June 11 with County Attorney Jeff Klatzkow, PBSD Chairman Keith Dallas, and PBSD Administrator Neil Dorrill, to discuss the multiple issues involved with the possible formation of the PBID.
- The Ad Hoc Committee prepared and authorized the release to the Board of this interim report.

What would the purpose of the PBID be?

- The PBID would be a single purpose district, designed to maintain the infrastructure of Pelican Bay. The other basic services currently being provided by the County – fresh and effluent water, sewer, waste, schools, libraries, enforcement of building codes, police, fire, and emergency services – would continue to be provided by Collier County using Collier County infrastructure and would continue to be paid for with ad-valorem tax dollars levied by the County against Pelican Bay property.

What is involved in the process of creating the PBID?

- There are a lot of moving parts, involving the County, our legislative delegation, and our members.
- We would have to reach agreement with the County on the powers of the PBID and precisely what assets and liabilities would be transferred into it.
- We would have to obtain the support of our legislative delegation for legislation to create the PBID.
- We would have to obtain the support of a majority of registered voters. There is no actual requirement for such a straw vote, but as a practical matter our legislative delegation would not support the legislation unless they are sure that they are following the will of the electorate. A straw vote could be held prior to any legislation being introduced in Tallahassee, or the legislation could be drafted to be subject to a favorable election after passage of the legislation.
- We would probably also want to take the pulse of our membership on the issue, perhaps via a vote at an Annual Meeting of Pelican Bay members. This would ensure that all members, and not just registered voters, have an opportunity to have their voices heard on this important issue.

What are the pluses and minuses of the PBID?

Pluses:

- We would be able to elect our own governing Board, without the need for the results to be approved by the Board of County Commissioners (BCC) and without vacancies being filled by the BCC.
- The governing Board of the PBID would be able to make decisions regarding the matters within its jurisdiction without needing the approval of the BCC. We would no longer be under the budget control of the County.
- A locally controlled PBID Board may be able to provide services, systems, and facilities to Pelican Bay more cost efficiently, and at a higher quality, than the County has been able to provide.
- Generally, the PBID would fund its operations on the same basis as the MSTBU, that is, it would levy non ad-valorem assessments, on a unit basis. The Board of the PBID would also have the power to levy ad-valorem taxes to carry out special functions (that could also be a minus—see below). That power can be limited in the legislation to require, for example, the prior approval of the voters before any ad-valorem tax can be levied.
- Depending upon what concessions we are able to obtain from the County, we may be able to obtain title to all the property that was owned by the original PBID when it was taken over by the County in 1990, with the exception of the wells, water treatment facilities, etc, as well as the assets currently being used by the PBSB in Pelican Bay. This could include the 12 acre parcel by the golf course. It could also include all the easements that the original PBID obtained from WCI, such as the easement to construct and maintain the berm. Presumably, we would also obtain title to the roads and the right of ways on each side of the road, as well as the real estate at each entrance to Pelican Bay where our signage is currently located, since this is now owned by the County. It is even possible to speculate that we might be able to deal with Clam Bay issues in connection with our negotiations with the County over the formation of the PBID. We may even be able to resolve the issue of the County Ordinance regarding non-potable water.

We would also expect that the several million dollar capital surplus in the MSTBU would be transferred to the PBID.

- We would be in control of the roads of Pelican Bay. Presumably, that would make it more difficult for the County to do things like open up Crayton Road at Seagate, which has been previously proposed. We would also be able to resurface our roads more regularly than the County has been willing to do.
- We may be able to include powers in the PBID that would assist us in our efforts to control what we are calling redevelopment in Pelican Bay.
- We also can include powers in PBID legislation to make possible joint efforts that would not be possible for individual members or individual condominium associations to achieve. As an example, the PBID could issue bonds to finance individual installation of solar panels. The PBID could then assess individual owners or condominium associations who wish to participate for the amounts advanced to them, with the assessments being paid over 25 years out of electricity cost savings. The assessments would be used to repay the bonds. End result: a community with green, low cost solar electricity generation built at no net cost to its members.

Minuses

- BCC Chairman Fred Coyle has indicated that he is pursuing this proposal out of a belief that there is no reason for the County to be involved in the delivery of the services, systems, and facilities that Pelican Bay residents tax themselves to pay for (via the MSTBU). However, it is also likely that the formation of the PBID would involve the PBID taking on some responsibilities, such as maintaining the roads of Pelican Bay, that are not currently the responsibility of the PBSB. It is thus possible that it could cost us more to operate the PBID than we are currently taxing ourselves via the MSTBU to pay for the operation of the PBSB. How much more the cost would be needs to be determined, and we also need to determine whether we can negotiate a "rebate" of some of the taxes we pay to the County in order to reduce the costs we would be assuming.
- The PBID would have the power to levy non-ad-valorem assessments, just as are currently levied under the MSTBU. The county would also have the power to levy ad-valorem taxes on our property, but these taxes could only be to fulfill the purpose of the PBID, which would be to maintain the infrastructure of Pelican Bay. We can (and should) limit this power in the PBID's governing documents by requiring the approval of the electorate before such taxes can be levied.
- We would have to be a bit more careful than we perhaps are now in segregating what the PBID does with respect to its property and what it does with respect to Foundation property. There should be no net change in cost, but if, for example, the PBID undertakes to maintain the Foundation's parks, it would seem that the Foundation would have to pay for that service.
- The possibility exists that a future Board of the PBID could see the world differently than a future Board of the Foundation. We now have that problem with the County with respect to Clam Bay, but the County generally leaves us alone to manage our own affairs otherwise. A strong PBID Board with a vision contrary to the vision of a Foundation Board could create problems for our community.
- We would need to determine the type of Board we would want for the PBID. We will want to examine carefully what checks and balances can be put into the legislation to ensure that the Board members exercise their responsibilities wisely.

- We would need to be certain that all liabilities associated with any employees who might be transferred to the PBID, such as pension obligations, are adequately funded by the County.

The bottom line seems to be that there are clear pluses, but that the extent of those pluses needs to be determined in negotiations with the County, and in understanding what powers the PBID can have, and that at the same time there are clear minuses, in particular any extra costs that we would be assuming, as well as the potential for future taxation, which again would need to be determined in negotiations with the County and in our structuring of the PBID.

What next steps the Foundation should take?

- At our meeting on June 11, we asked County Attorney Jeff Klatzkow what assets and liabilities the County contemplated transferring to the PBID and what powers it envisioned for the PBID. Mr. Klatzkow stated that the County is desirous of providing Pelican Bay with the independence that Pelican Bay has been seeking, and that it would be more appropriate for Pelican Bay to tell the County what it wishes for the PBID.
- Accordingly, we recommend that the Board authorize the Ad Hoc Committee to evaluate what services, systems, and facilities might be desirable for inclusion in the PBID, and what the cost of each might be, as well to evaluate what powers the PBID should have and any other considerations that should be taken into account. We break these down into three general categories as follows:
 1. The functions currently being performed by the PBSD, as well as road maintenance.
 2. The possible transfer of the land owned by the original PBID to the PBID, as well as the possible resolution of Clam Bay issues and the non-potable water issue.
 3. The potential for the PBID to be able to undertake joint efforts, such as the installation of clean energy devices, which would not be possible for individual owners or condominium associations to achieve.
- We recommend that the Foundation establish an informational and educational campaign for both our members and the larger community on the possible conversion of the PBSD and the MSTBU into the PBID.
- We recommend that beginning this Fall the Foundation schedule a number of community workshops on this issue in order to obtain input from our members.
- We anticipate that contacts with the County will be ongoing throughout this process, and that subsequent reports will be made to the Foundation Board and to the community about this project.
- We recommend that the Ad Hoc Committee be expanded to include the President of the Pelican Bay Property Owners Association. We believe that the Ad Hoc Committee should remain small but that it would be desirable to have a representative of our larger community on the Committee.

What the timetable might be?

- We believe that this evaluation should proceed in a careful and deliberative manner, and that consideration by our community should take place during the upcoming Fall and Winter seasons.
- If progress is made on this project, and the Foundation Board decides that it would like to proceed to a next step, we would advise that the Foundation's membership be asked to vote on this issue at the 2011 Annual Meeting.
- Depending upon the outcome of that vote, the Foundation Board can decide how and whether it wishes to proceed. The earliest that the legislation could be introduced in Tallahassee would be the 2012 Session.

What will the fiscal implications of this process be for the Foundation both for this year and for subsequent years?

- If the Foundation Board decides to continue to pursue this, which we recommend, the Foundation will incur costs for Ken van Assenderp and for Dolly Roberts, who will assist us on our educational and informational campaign. We believe that these hourly costs will be relatively modest, in the range of \$15,000 for this fiscal year, with perhaps slightly more costs being incurred next fiscal year to reach a decision point on going forward or not.
- If the Foundation decides to proceed with legislation, our very rough and preliminary estimate is that the Foundation will wind up spending perhaps up to \$150,000 between the point a decision is made to pursue legislation and the formation of the PBID, if the legislation is successfully passed. We will need to refine that estimate as we go forward.
- It should be possible for the Foundation to recoup a substantial portion of these costs from the PBID if we do go forward and the legislation is successfully passed.
- We also need to determine whether there will be any increased costs to the Foundation going forward in operating with the PBID as opposed to operating with the PBSD and the MSTBU. That will require a careful analysis of how the Foundation is currently operating with the PBSD and MSTBU and how it will be allowed to operate with the PBID.

What would the fiscal implications of the PBID be for our members?

- We need to determine what the bottom line will be for our members with respect to assessments from the PBID, as opposed to their current assessments with respect to the MSTBU, both as the outset of the PBID and potentially for future years. This will obviously depend on the outcome of any negotiations with the County.
- We will need to have a very clear and firm handle on what the potential for PBID assessments and taxation in future years might be, and what procedures we can put in place to control the power to tax.

What reactions should be expected from our members and how should we plan to deal with them?

- We believe that our members will want to know what this is going to cost them, now and potentially in the future. As indicated above under fiscal implications, we will need to have a firm handle on this issue.

- Many in our community will view this as “incorporation light.” We need to appreciate that and be prepared to address the concerns that are inherent in that viewpoint. In that regard, we note that we have been advised that communities that form an independent district rarely progress to incorporation. Thus, a decision to form the PBID should practically be viewed as effectively precluding incorporation.

Why isn't the PBSB Board handling this?

- The PBSB Board, which is elected by our members, nonetheless reports to and is responsible to the BCC. We anticipate that we will receive a great deal of cooperation from the PBSB Board members, and from Neil Dorrill, and that we should work closely with all of them. However, they are subject to Florida Sunshine laws, and we will need to ensure that we retain the confidentiality of our internal deliberations and determinations as we negotiate with the County over these matters.