

Naples, Florida

July 1, 1987

LET IT BE KNOWN, that the Pelican Bay Improvement District met on this date in a Workshop Session at 4:00 P.M., in the Naples Federal Savings & Loan Building, Fifth Floor, 5801 Pelican Bay Boulevard, Naples, Florida, with the following members present:

PRESIDENT: Miles Scofield
SECRETARY: Sue E. MacAlister
TREASURER: Sylvia A. Moll (Absent)

Ramer B. Holtan
James D. Hake

ALSO PRESENT: Mr. Gary L. Moyer, District Manager; Mr. James P. Ward, Assistant District Manager; Mr. Tracy Bolesky, Attorney for the District; Mr. Harmon Turner, Consultant to the Board; Mr. Jack McKenna of Westinghouse Communities of Naples, Inc.; Mr. James Dunwiddie, Representative of the Pelican Bay Property Owner's Association and Jean Smith, Assistant Secretary.

AGENDA

1. Roll Call.
2. Discussion on Attorney's Services.

ROLL CALL

Mr. Scofield called the meeting to order at 4:00 P.M. and asked the record show Ms. Moll absent with all other members present.

DISCUSSION ON ATTORNEY'S SERVICES

Mr. Moyer reviewed the past policies of the previous Boards regarding services required from the District's Attorney. Mr. Moyer explained that since the inception of the District, most of what came before the Board was more of a business nature rather than a legal nature. He stated that most of the Agreements had been negotiated by representatives of WCN, the Developers doing business with the District or by Administration (Mr. Moyer in the early years or by Mr. Ward in the later years). He explained that after the Agreements had been prepared they were then reviewed by Mr. Bolesky, more for legal format than for content. He advised that this was similar to the way staff currently handled Agreements. He commented that today it seemed as if everyone was becoming legal paranoid and that documents were generally being prepared by Attorneys rather than businessmen, a process with which he disagreed.

Mr. Moyer advised that it was important for the Board to address whether they desired to continue to rely on staff for the preparation of Agreements or whether they desired to look to the Attorney for preparation of the documents. He advised the Board that after Mr. Bolesky reviewed the Agreements, he had always responded in a timely manner and if administration had to work in an area with which they were unfamiliar, Mr. Bolesky then provided his input into the Agreements. He explained that previous Boards had always looked at the Attorney position as one of support rather than one of active involvement and the Attorney had never been an integral part of each and every negotiating session. However, he explained this was a policy matter to be addressed by the Board. He advised

that he had no problem with continuing to be the generator of legal documents, subject to their review by the District's Attorney and the Board.

In conclusion, Mr. Moyer advised that, at this time, it was important for the Board to address the roll of the Attorney before they got into the actual specifics of which Attorney they desired to retain, as this would be a major decision in the direction the District would proceed in the future.

Mr. Holtan suggested that according to Mr. Moyer's previous comments, Mr. Moyer did not think an Attorney was really necessary. Mr. Moyer replied that, on the contrary, he thought an Attorney was absolutely necessary, however, the involvement of the Attorney was not as critical if it was the Board's desire to continue with Administration being the generator of the legal documents. He advised that in the ten years that he had been the Manager of the District, with one or two exceptions, he could not recall any confrontation or issue which needed to be resolved by litigation. He recalled that the two that came to mind were the suit to enjoin Mr. Bill Higgs to disconnect from the District's water line (which he had connected into without paying connection fees) and a suit by the Dorchester Condominium Association regarding the rusting of their internal water pipes.

Mr. Holtan asked Mr. Moyer whether the previous situation hadn't been that prior Boards had never questioned what staff had done. Mr. Moyer took exception to this comment and advised that this had not been the case; that throughout the history of the Board, there had been many lengthy

meetings on policy and not every Board member had always agreed with the policies and that there had been many hotly contested and heated debates over policy issues. He stated that previous Boards had never rubber stamped administration's suggestions, that on the contrary, the Pelican Bay Board had always been the most active and involved Board in not going along with administration's suggestions and in many instances had participated in the formulation of policy.

Mr. Holtan asked Mr. Moyer whether it was his opinion that it didn't make any difference what kind of an Attorney the District had, as he wasn't important. Mr. Moyer replied that from the Board's perspective, they needed to be comfortable with the legal advice they received and from staff's perspective, suggested he could work with any Attorney the Board hired and not have any problems. He suggested that the day-to-day business of the District was not that controversial and what had been accomplished in the past had been reasonable and he was naive enough to believe that if staff continued to do things that were reasonable they would not end up in litigation. He commented that the Attorney the Board hired should be a good Attorney, however, should play a minor role in the District.

Ms. MacAlister commented that a lot of business firms were now requiring their Attorneys to sit in on every negotiating session because litigation was so prevalent and things had gotten to be a lot more complicated because of it. She suggested that the decision the Board must make was whether they desired more involvement by their Attorney and if this were to be the case, it would cost the District a lot more money. She suggested that the Board needed an Attorney who was knowledgeable in the

affairs of the District so he could assure them that they were staying within the boundaries of the legal requirements, however, she did not think that the Board necessarily needed an Attorney to walk staff through negotiations on a day-to-day basis. She agreed that the Attorney should play a supportive role rather than a major role in the District's affairs.

Mr. Hake asked Mr. Moyer whether what he was saying was that staff had never given Mr. Bolesky the opportunity to review the documents in order to keep the Board in line and advise them properly. Mr. Moyer replied that the documents were currently originated by staff, then given to Mr. Bolesky to review for legal format and content and to make sure that everything covered in the Agreement was in accordance with the District's enabling legislation. He stated that a prime example was the Agreement with the City of Naples and the County regarding the purchase of bulk treated potable water. He explained that many hours were spent by staff, Mr. Turner, City officials, County officials, etc. putting the Agreement in writing and Mr. Bolesky did not attend each and every session but rather reviewed the many documents as they originated. Likewise, he explained the Attorney for the City of Naples did not get involved in the negotiations but rather played a supportive role.

Mr. Hake stated that sitting out in the audience for the past two or three years listening to many of the meetings, was when he first became disenchanted with the legal advice the Board was receiving. He stated that on several points he had made on many different occasions as to whether the District was following the statutes, he had been told that Mr. Bolesky didn't know whether the statute was being followed. He explained that

often Mr. Bolesky had promised answers to his questions by the following meeting and he had never received these answers. He also commented that once he brought these matters to everyone's attention, then everyone "got on the stick", however, he did not think this was his job but rather the job of the District's Attorney. He explained that everything had been alright ever since but questioned why it had been his role to bring these matters to the attention of the Board.

Mr. Hake also asked why the Board should have to be considering the matter of Supervisor's insurance coverage. It was his opinion that this was a matter on which Mr. Bolesky should have advised the Board as to whether or not they had exposure, that he did not want to sit on the Board and defend himself in a suit because the Board did not have the proper insurance coverage. He also thought this was the result of poor legal advice through the years.

Mr. Scofield asked whether the District had ever had any other Attorney besides Mr. Bolesky. Mr. Moyer replied that Mr. Bolesky had been the Attorney for the District since 1975 and the District had never had any other Attorney.

Mr. Hake stated that he had certain documents in his possession which outlined when members of Municipal Boards such as the PBID Board could abstain from voting under certain circumstances and the circumstances under which the past President, Mr. Scuderi, abstained any time he did not like an issue was as illegal as anything that had happened on the Board. He stated that a Board member had the right to abstain when a conflict of interest was involved, however, did not have the right to abstain because

he didn't like the issue.

Mr. Holtan stated that another item which could not be taken lightly was the investment of funds at First Pennsylvania Bank and this could have been a very serious issue. He went on to state that he didn't have any confidence in Mr. Bolesky, that he had read several letters written by Mr. Bolesky which had not answered the questions which had been asked and in several instances his opinions were incorrect.

Mr. Moyer stated that he wasn't in attendance at the meeting to defend Mr. Bolesky, however, he was in attendance to give the Board the approach administration had used in the past. He stated that he currently managed several Districts and issues of exactly the same nature came up daily in different Districts and he had very qualified Attorney's in every District who often gave conflicting legal opinions regarding the same issue. He commented that this was why he had stated that the Board must do what they thought was fair, equitable and right. He stated that he could find Attorneys who were not fair, equitable and right and who would try and convince others of this position. He explained that this was why he had stated that from his perspective he would like to continue to generate the Agreements and the negotiations because he would do what he thought was fair, equitable and right and review it with the Board for approval. He could not see having an Attorney actively involved in every day discussions and advised the Board that the Attorney they hired to represent the District was really a comfort level issue that the Board needed to address and whomever the Attorney might be, staff could live with their selection.

Mr. Scofield commented that since he had been on the Board, the

only objections he had received regarding Mr. Bolesky had come from the Property Owners Association and Mr. Bolesky's interpretation of the District's By-laws.

At this time, he asked Mr. Bolesky whether he wished to be added to the list of Attorneys submitting proposals for the Board's consideration. Mr. Bolesky replied that he had never resigned and was still working on District matters.

At this time, Mr. Bolesky asked if he could respond to some of the allegations by the Board. He advised that he had never done anything unless it had been requested of him by the Board or a member of staff and anything that had been requested of him had been handled in a timely fashion. He stated that as far as the insurance matter was concerned, he had never in all the years he had been the District's Attorney, been asked to review any insurance policies or had never been asked any insurance questions.

As far as the Statutes referred to by Mr. Hake regarding the submission of documents to the County, Mr. Bolesky stated that he had no input in this matter, that it had been entirely handled by District staff and he was not aware that the documents had not been submitted until after the fact. He stated that on previous occasions when documents needed to be submitted they had been submitted and he had mistakenly assumed that this had again been done.

Mr. Moyer stated that in order to keep things in their proper perspective, it was not realistic for the Board to assume that District staff was never going to make any mistakes. He suggested that he was not

entirely pleased with staff's performance last year, however, he did think that there were several highlights; one being the City of Naples Agreement. He admitted that staff had overlooked some procedural matters and Mr. Bolesky had assumed that staff had done everything correctly because staff had a track record of doing things correctly and there would have been no reason for Mr. Bolesky to believe that staff had done anything different.

Regarding the insurance issue, he advised that staff had always relied on the Insurance Agent who staff assumed was more knowledgeable than the Attorney, as they worked with insurance matters on a daily basis and he advised that the District currently had one of the better agents in the area to represent them.

At this time, Mr. Scofield suggested that the Board address the insurance matter at the next meeting.

Ms. MacAlister suggested that what Mr. Moyer was asking for was what kind of representation the Board was looking for; was the Board looking for more involvement on a day-to-day basis by the District's Attorney or was the Board looking at an Attorney as one who gave them legal opinions and worked at the direction of the Board. It was her understanding that in the past the Attorney had been working at the direction of the Board and she thought it was the Board's responsibility that Mr. Bolesky had not checked into the insurance issue at an earlier time and further suggested that staff was working at the direction of the Board and the Board was remiss for not directing administration to check into the matter of insurance coverage.

Mr. Holtan stated that the Board deserved and ought to have the

best legal counsel they could find and at this point in time, he did not feel the Board had the best legal counsel they could find. Mr. Moyer replied that it didn't matter what kind of Attorney the Board hired because even the best Attorney would not keep the Board out of Court.

Mr. Scofield stated that seven proposals had been received by the District for consideration as the District's legal counsel and suggested that the Board discuss each proposal and then rank the firms in order of their preference.

Mr. Dunwiddie stated that he personally had been involved in many negotiations for his company and all of these negotiations had been with a lawyer sitting by his side. He suggested that he had a great deal of experience judging the caliber of Attorneys and he agreed with Mr. Moyer that most of the work performed by the District did not require an Attorney, that staff was capable of negotiating and writing Agreements. However, he commented that the Board did need the documents reviewed and by a "good" lawyer. Speaking on behalf of himself and the Property Owner's Association, he said they did not have the confidence in Mr. Bolesky that they would like the Board to have and therefore, it was their suggestion that the Board hire a new Attorney. He commented that they were not suggesting that Mr. Bolesky had been incompetent, however, they were suggesting that the Board could hire someone better and for approximately the same amount of money.

At this time, Mr. Scofield called for comments from the Board regarding the firms under consideration. Ms. MacAlister stated that regarding Cummings & Lockwood, she was not real comfortable with the

experience of Dudley Goodlette in this field compared to some of the other Attorney's who had submitted Proposals.

Mr. Hake stated that out of all of the proposals, there were two which he had selected by the process of elimination; one being Cummings & Lockwood and the other being Hardt & Stewart. It was his opinion that all of the proposals except for Cummings & Lockwoods stressed the amount of work they performed for other Developers or for Banks with which the District did business. He commented that the firms of Cummings & Lockwood and Hardt & Stewart did not seem to work for any of the parties associated with Pelican Bay. He commented that the Attorney from the firm of Woodward & Woodward who would be representing the District would be Mr. Tony Pires and he did not think Mr. Pires could operate on behalf of the Board without a conflict of interest. He suggested that the firm of Gillette, Pilon & Richman represented Naples Federal Savings & Loan and NAFCO and half the builders and developers in Pelican Bay and he did not see where they could work with the District without a conflict of interest. He stated that Vega, Brown, Nichols, Stanley & Martin had worked in the past for WCN and for the Property Owners Association and it had been a very poor relationship on behalf of the Property Owners Association. His thoughts on Quarles & Brady were that their main client was Barnett Bank and the District had many business dealings with Barnett. He stated he would not reiterate his thoughts regarding Mr. Bolesky. Therefore, after the process of elimination, he had arrived at the firm of Cummings & Lockwood. He advised that he did not know anyone in the firm, however, the Board had selected the firm as Bond Counsel for the refunding issue, and at that time

had discussed the qualifications of the firm and everyone had agreed they were one of the foremost firms in the U.S. and what they didn't have in Naples, they had in other offices around the U.S. He explained that Mr. Frederick Hardt was well known to him personally and he had been very satisfied with the personal work he had done for him, however, he was currently President of the Pelican Bay Property Owners Association and this would create a conflict of interest. He also was the Attorney representing the Iveys, and this could create a possible conflict of interest.

Mr. Scofield asked for Ms. MacAlister's opinions on the firms. Ms. MacAlister commented that Mr. Hake's opinions pretty well said it all and that he had valid points on each firm. She also suggested that Hardt & Stewart would involve a conflict of interest as they were representing the Ivey's and suggested that the firm of Quarles & Brady might not always be representing Barnett Bank depending on the outcome of future negotiations. She stated she had no information on Cummings & Lockwood or the Attorney in Charge and had found no resume in their proposal regarding Dudley Goodlette which outlined his field of expertise.

Mr. Dunwiddie stated that he had personally used the firm of Cummings & Lockwood and specifically Mr. George Wilson, an Attorney with the firm, and he had been very pleased with their work. He stated that he did not know Dudley Goodlette so he could not comment on him as an individual.

Mr. Holtan suggested that he knew Mr. Hardt very well and he was a very intelligent, competent individual, however, he did not know how the Board could get around a conflict of interest with this firm. He stated

that the obvious choice to him would be Cummings & Lockwood as they had previously been investigated by the Board.

Mr. Scofield commented that he knew a little about Cummings & Lockwood as the President, Mr. Tuthill, lived in Hyde Park. He suggested that he was a very competent individual. He further stated that Mr. Joseph Cox, who was in charge of the Naples office was very competent. He suggested that he had no personal experience with Mr. Dudley Goodlette. He commented that Mr. Farese of Cummings & Lockwood had represented him in a personal lawsuit and he was not very satisfied with the outcome, however, he suggested that Mr. Goodlette might be alright. He agreed with the fact that Hardt & Stewart had a potential suit against the District and thus he had eliminated them from further consideration. He stated that he was more familiar with Quarles & Brady than any other firm under consideration as he was on the Board of Directors of Barnett Bank and Joe McMackin was the top person in the firm and was of the best and sharpest young Attorneys he had ever come in contact with. He explained that he had handled some of his personal business and he was very satisfied with his work. He advised that he did not know anything about the other firms under consideration and appreciated the fact that Mr. Bolesky had kept the District out of the Courtroom over the past few years and had always responded in a timely manner.

Mr. Scofield called for comments from administration regarding the firms under consideration. Mr. Moyer stated that he was not familiar with any of the Attorneys except for Mr. Pires as he had no direct exposure with any of the firms. Mr. Ward also commented that he had no experience

with any of the firms.

Mr. Hake stated that the Board would be better off staying away from any firm that has prior legal involvement with WCN.

At this time, the Board ranked the firms in order of their individual preference and it was the consensus of the Board that the firm of Cummings & Lockwood be ranked No. 1 and the firm of Quarles & Brady be ranked No. 2.

Mr. Moyer recommended and the Board concurred that representatives from these two firms be in attendance at the next meeting for interview by the Board.

Following the discussion regarding Attorney's proposals, Mr. Scofield asked Mr. Moyer whether the Board had anything to say about what the County did at the Clam Pass Park near the Registry Hotel regarding their requirement of concessionaires and boat rental agents. Mr. Hake suggested that the only thing the Board could do would be to deny the Hotel use of the Berm, as the Berm belonged to PBID. He stated that currently the Registry had a permit to use the berm to get from the Hotel to the Sand Bar and all that the Board would need to do is pass a motion denying the Registry the use of the berm. Mr. Moyer commented that the berm was constructed on an easement and the underlying fee simple title to the berm was not in the ownership of the District. Mr. Hake asked why the Board had to approve the use of the berm by the Hotel if they did not have the right to disallow its use. Mr. Moyer explained that the District controlled and operated the berm as part of the District's drainage system and any permit issued by the District dealt with improvements to the

drainage and water management system. Mr. Holtan asked why staff asked for the Board's approval if they had nothing to say about this issue. Mr. Moyer explained that, for example, if the Hotel wanted to lower the berm or build something on it that would restrict District access to the use of the berm, then the Board could revoke the permit. However, if the Registry's use didn't adversely affect the operation and maintenance of the District's water management system, then the Board would be arbitrary in denying its use. He said the Board would need a good reason as it related to their primary responsibility and not as it related to their discretion, to deny use of the berm by the Registry. Mr. Holtan suggested that staff look at the easement documents regarding this matter. Mr. Moyer replied that he would do so.

Mr. Scofield asked whether there were any further developments to report regarding the Ivey case. Mr. Moyer replied that in the past two weeks, staff had not had any communication from Mr. Hardt or the Iveys.

Mr. Hake commented that at the Foundation meeting this past Monday, Mrs. Schall had asked him whether the District was using the proper chemicals to kill the weeds in the Tierra Mar Lake and along the berm. Mr. Moyer advised Mr. Hake that the herbicides used by the District were all licensed by the regulatory agencies and were tested extensively before permitted. He also advised that District personnel were licensed applicators.

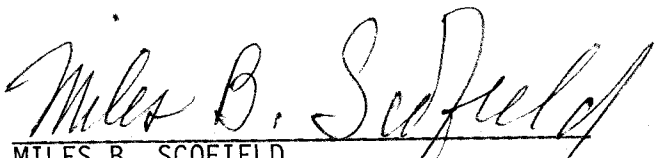
Mr. Scofield suggested that the lake might have been sprayed when it was slightly windy out and the drift of the chemicals killed some of the grass along the lake banks.

Pelican Bay Improvement District
July 1, 1987

Mr. Hake asked about the debris in the swale south of the Heron and if it was the result of construction in the area why someone wasn't doing something to correct the situation. Mr. Ward replied that this was debris from the construction of St. Tropez and he would be happy to contact the County to follow up on the cleanup of this area.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned: Time: 5:15 P.M.


MILES B. SCOFIELD
PRESIDENT
PELICAN BAY IMPROVEMENT DISTRICT