

Naples, Florida

October 21, 1987

LET IT BE KNOWN, that the Pelican Bay Improvement District met on this date in Regular 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 (Absent)
TREASURER:	Sylvia A. Moll (Arrived At 4:10 P.M.)
	Ramer B. Holtan
	James D. Hake

ALSO PRESENT: Mr. Gary L. Moyer, District Manager; Mr. James P. Ward, Assistant District Manager; Mr. Joe McMackin, Attorney for the District; Mr. Harmon Turner, Consultant to the Board; Mr. Tom Peek of Wilson, Miller, Barton, Soll & Peek; Mr. John Petty of the Pelican Bay Improvement District; Messrs. Byron Koste, Lou Hoegsted, David Caldwell, Walter Carter and Ms. Linda Lawson of Westinghouse Communities of Naples, Inc.; Mr. William Dahnke, President of Concept To Completion, Inc.; Mr. Tony Pires of the law firm Woodward and Woodward; Mr. Tom Benson of Fred S. James & Company; PBID Residents and Ms. Jean C. Smith, Assistant Secretary.

AGENDA

1. Roll Call.
2. Approval of Minutes of the Meeting held September 16, 1987.
3. Guaranteed Revenue Agreement and Agreement for the Construction of Subdivision Facilities.

AGENDA (CONT.)

4. Amendment to General Bond Resolution to Provide for an Increase in the Renewal & Replacement Account.
5. Consideration of Unit VII Water & Sewer Program.
 - A) Construction Financing Agreement
 - B) Award of Bid
6. Consideration of License Agreement for the Construction of a Boardwalk for St. Tropez.
7. Consideration of Registry Hotel Easement Modification Agreement.
8. Consideration of Grant of Easement Villa Lantana, Water & Sewer Lines.
9. Consideration of Water & Sewer Maintenance Agreement - Beauville.
10. Discussion of District Insurance Matters.
 - A) Quarles & Brady's Legal Opinion on Sovereign Immunity Statute of the State of Florida.
 - B) Update by Mr. Tom Benson of Fred S. James & Co., Inc. on the following matters:
 - 1) Status of \$10,000,000 Umbrella Liability Quote
 - 2) Status of Pollution Liability Insurance.
11. Consideration of Proposed Change Orders to Jacaranda Landscape Right-of-Way Contract.
12. Authorization to Bid Sod Improvements in the Rights-of-Way.
13. Engineer's Report.
 - A) Update on the Wastewater Treatment Plant Construction.
14. Manager's Report.
15. Confirmation of Invoices and Requisitions.
16. Supervisor's Requests.
17. Adjournment.

ROLL CALL

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

MINUTES OF MEETING OF SEPTEMBER 16, 1987 - APPROVED AS CORRECTED

Mr. Hake moved, seconded by Mr. Holtan and approved unanimously, the Minutes of September 21, 1987, subject to the following corrections:

Page 2304 - The fourth paragraph of the page should read as follows:
"Following this discussion, Ms. MacAlister moved, seconded by Mr. Holtan, with Mr. Hake voting Nay, and approved, the Encroachment Agreement for Lot 1, Block A., Unit 4, as revised by Mr. White, subject to review by Mr. McMackin."

GUARANTEED REVENUE AGREEMENT AND AGREEMENT FOR THE CONSTRUCTION OF SUBDIVISION FACILITIES

Mr. Moyer called upon Mr. Joe McMackin of Quarles & Brady to discuss the Agreements with the Board. Mr. McMackin explained that what he had attempted to do in the Guaranteed Revenue Agreement versus the Agreement presented at the September meeting was two fold: one he tried to simplify the Agreement and secondly tried to reflect some of the major concerns which had been raised by the Pelican Bay Property Owners Association. Mr. McMackin advised the Board that Mr. Ward had recently held discussions with Mr. Frederick Hardt, President of the Pelican Bay Property Owner's Association, and Mr. Hardt's recommendations appeared in the proposed Agreement. Mr. McMackin explained that the basic philosophy of the Agreement was to assure to the District and ultimately to the District's creditors that regardless of the progress of development in Pelican Bay, the District would have sufficient funds, on a semi-annual basis, to meet the debt service requirements of the District. He commented that the Agreement contained no reference to Exhibits to the Agreement itself so the Agreement could be read and understood by itself. He advised that the Agreement as proposed was acceptable to Westinghouse Communities of Naples, Inc. and the Pelican Bay Property Owner's Association.

Mr. Moyer advised that he felt the Agreement as written accomplished what the District desired to accomplish and found the proposed Agreement acceptable.

Mr. Holtan asked whether the Guaranteed Revenue Agreement had been discussed with the Bonding Company and Bond Counsel. Mr. McMackin replied that this Agreement had not been discussed with them. Mr. Holtan

commented that, as he understood it, the reason for the Agreement was to satisfy the Bonding Company and Bond Counsel and thus wanted to know why it had not been discussed with them. Mr. McMackin advised that the Agreement would probably give some comfort to the District's creditors by entering into this Agreement because the District is assured of minimum payments on a semi-annual basis. He explained that credit for the Bonds had been advanced to the District without the Agreement and in his opinion the Agreement was only a "footnote" to the discussion and thus further enhanced the District's position.

Mr. Holtan asked Mr. McMackin whether any Agreement was legally necessary. Mr. McMackin stated that from the District's standpoint he felt the Agreement was valuable and the Agreement reflected what, in fact, had been a casual understanding between the District and WCN and the District now would have an Agreement which would bind WCN and give the District assurance of semi-annual payments. Mr. Holtan asked whether the same thing could be accomplished without the Agreement, i.e., the District could change the rates at any time without the Agreement. Mr. McMackin replied that the District could change its rates and in his opinion the Agreement left the price of individual connection fees unaffected.

Mr. Hake explained for Mr. Holtan that the Board could change the rates, fees and charges without the Guaranteed Revenue Agreement, however, the Agreement assured the District that they would have monies on a semi-annual basis when needed, based upon connection fees that Westinghouse Communities of Naples, Inc. must buy down. Mr. Hake explained that the Agreement was first drafted at the request of the Pelican Bay Property

Owner's Association and furthermore, would give the District the protection they needed and make everyone happy as a verbal commitment was now a written commitment.

Mr. Holtan asked Mr. McMackin whether he thought the Guaranteed Revenue Agreement was valid and whether WCN could get out of the Agreement if they so desired. Mr. McMackin advised that there wasn't a Contract that he had ever seen which given an unusual set of circumstances one party couldn't escape liability. In his opinion there was a "quid pro quo" for this Agreement, i.e., the District was ready, willing and able to provide service to WCN and in exchange WCN guaranteed the District a semi-annual income either in the form of connection fees or a minimum payment obligation. Mr. Holtan asked whether, in accordance with the Florida Statutes, the District was required to supply water to residents of the District. Mr. McMackin replied that this was indeed the case, however, the Agreement stated that this would now be done in accordance with a development scheme. Mr. McMackin advised Mr. Holtan that in his opinion the Agreement was an enforceable Agreement.

With reference to the Agreement for the Construction of Subdivision Facilities, Mr. McMackin explained that this Agreement was originally consolidated in the original Guaranteed Revenue Agreement, however, he had separated the Guaranteed Revenue Agreement into two Agreements on the grounds that their relationship was tenuous. It was his opinion that the Guaranteed Revenue Agreement could stand on its own separate from the Agreement for the Construction of Subdivision Facilities and stated that the purpose of the Agreement was to outline the District's

and the Developer's responsibilities with regard to the construction of the major mains and the subdivision facilities. He stated that the Agreement set forth the procedures by which these facilities would be constructed and would govern all future subdivisions. However, he explained that each future subdivision would have its own Agreements in accordance with the Exhibits to the Agreement.

Mr. Holtan asked why this matter couldn't be handled by a policy decision of the Board rather than by a written Agreement. He commented that he saw no point to a written Agreement. Mr. Moyer stated that the reason the Agreement was necessary reverted back to his comments that the fees and charges of the District are tied to certain assumptions and the Agreement outlined these assumptions. He explained that the reason this Agreement was originally part of the Guaranteed Revenue Agreement was that the amount of money that the District was asking from the Guarantor was based on the current connection fees which were based on the assumption that the District would construct the major mains and finance these mains and when one looked at the total District debt over a period of time and, pursuant to the schedules as prepared by Coopers & Lybrand, these schedules then tied back to the connection fees. Although Mr. Moyer did not have any strong feelings regarding having an Agreement versus a policy, he firmly believed that people who came into the District ought to know the rules and regulations of the District.

Mr. Holtan agreed that the District ought to have standard operating procedures which are subject to change. Mr. Moyer agreed that the Board should have the right to make changes, however, he advised that

when the Board changes the policies then they change the financial assumptions that are used to establish the rates.

Mr. Hake explained that when the rates, fee and charges were being discussed by the Rate Study Committee and there was the insistence upon an Agreement for WCN to fund monies via a Guaranteed Revenue Agreement, Mr. Hoegsted had insisted that WCN should not suffer at the whim of a future Board. In other words, WCN was willing to guarantee revenue to the District on a semi-annual basis, however, in return they desired a positive statement from the District that they would give them what they wanted, when they needed it and no one on the Rate Study Committee had any objection to this request. He commented that the Agreement merely restated what the District was already committed to do and with the Guaranteed Revenue Agreement, everyone should be happy.

Mr. Scofield commented that he personally liked the Agreement and thought it was clear-cut and concise.

Mr. Holtan recalled for the Board that Mr. Scofield had previously studied common practices in the State of Florida and the local area as to who financed the construction of water mains. He asked Mr. Scofield whether this Agreement went along with what he had learned in his study. Mr. Scofield replied that in most instances the primary developer of the various subdivisions in the Naples area also installed the trunk lines. However, he commented that, in his opinion, the District was far better off today than they were two years ago. He also commented that he was very satisfied with the Agreement.

Ms. Moll commented that she was under the impression that the

Rate Study Committee had come to the conclusion that the District was responsible for the major mains and she believed Mr. Dunwiddie had commented on this during a previous meeting. Mr. Holtan did not recall any such comments by Mr. Dunwiddie and it was his opinion that any such decision was not in the province of the Rate Study Committee.

Mr. Moyer advised that the major concern of the Rate Study Committee and several residents in the Community was that the existing users of the system should not pay for new growth. He commented that the connection fees were in large part sized to recover not only plant capacity but also the cost of future major water and sewer lines. In this light, he explained that Mr. Dunwiddie had agreed that via the current rate structure the current users of the system would not be paying for the future major line extensions.

Mr. Hake also commented that Mr. Dunwiddie was unhappy at the start of the Rate Study Committee meetings regarding how the new lines would be funded but when it was determined that the connection fees would be backed by the Guaranteed Revenue Agreement and subsequently the Agreement On Construction of Subdivision Facilities, concurred that there would be no hardship on anyone. Mr. Hake stated he felt confident the Agreements took care of any resistance by all concerned parties.

There being no further discussion, Mr. Hake moved, seconded by Ms. Moll, with Mr. Holtan voting nay, and approved, the Guaranteed Revenue Agreement with Westinghouse Communities of Naples, Inc.

Following approval of the Guaranteed Revenue Agreement Ms. Moll moved, seconded by Mr. Hake, with Mr. Holtan voting nay, and approved,

the Agreement for the Construction of Subdivision Facilities with Westinghouse Communities of Naples, Inc.

AMENDMENT TO GENERAL BOND RESOLUTION TO PROVIDE FOR AN INCREASE IN THE RENEWAL AND REPLACEMENT ACCOUNT

Mr. Moyer recalled for the Board that this Amendment would allow the District to eliminate the 10% Reserve Requirement from the user rates. He advised that Coopers & Lybrand's original Rate Study included a 110% coverage requirement which is in the District's Bond Resolution. Thus, the District needed to earn income equal to operating expenses plus the debt service plus an additional 10% coverage on top of the debt service. He explained that the 110% coverage increased the user rate portion of the District's rates and that many people took exception to this. He stated that after a great deal of research the Rate Study Committee arrived at a means of addressing the 110% coverage. He advised that if one looked at the Resolution it stated that the 110% could be met by using proceeds, if required, from the Renewal and Replacement Account. The funds in this account would be available to pay debt service. Thus, he explained, the Committee wanted to go back and increase the Renewal and Replacement Fund: (1) to eliminate the 10% increase in the rates, and (2) because the District should have a higher Renewal and Replacement Fund since the District now has a \$9,000,000 plant that may need renewal and replacement in the future. Thus, he explained, Bond Counsel had been requested to provide a Resolution amending the General Bond Resolution which accomplished increasing the Renewal and Replacement Fund requirement to \$150,000. Mr. Moyer explained that the concern by Bond Counsel had been over the 1986 Tax Reform Act on arbitrage earnings on the Renewal &

Replacement Account. He explained that the 1986 Tax Reform Act states that the District cannot earn more money on the Renewal and Replacement Funds than is paid in interest. This, however, was not true when the District went through the original Bond Issue. In conclusion he advised that Paragraph 3 of the Resolution had been added which states, " Any moneys in the Renewal and Replacement Fund above \$50,000 shall be prohibited from being invested in any securities or obligations, other than tax-exempt government bonds, which will provide a yield materially higher than the interest rate borne by the bonds issued under the Resolution." This, then accomplishes that and the District would not have to charge higher user rates to meet the coverage requirements and thus, Mr. Moyer recommended approval of the Resolution.

At this time, Mr. Hake moved, seconded by Ms. Moll and unanimously approved, the Amendment to the General Bond Resolution to Provide for an Increase in the Renewal and Replacement Account.

CONSIDERATION OF UNIT VII WATER AND SEWER PROGRAM

Construction Financing Agreement

The Bid Tabulations for the construction of the water and sewer lines in Oakmont, Phase II, Unit VII were distributed to the Board. Mr. Peek explained that bids for the project were taken on October 15, 1987 and the low bidder was Mitchell & Stark Construction Co., Inc., in the amount of \$143,675.46. He explained that bids were taken in two parts; Alternate A (Not Under Pavement) and Alternate B (Under Pavement). He advised that there was a small section of the main road which traversed an environmentally sensitive area which contained some Turkey Oaks and the

County Natural Resources Department desired that these trees be preserved. He explained that at the time bids were submitted it was not known whether it was possible to construct the lines outside of the pavement or under the pavement and thus bids were taken for each Alternative. It was WMBS&P's recommendation that Alternate Route "B" (Under Pavement) be awarded as it was important to attempt to save the Turkey Oaks by limiting the clearing in this section and since the difference in the Contract would only be \$1,647.94. Mr. Hake asked Mr. Peek how many feet the line extended under the roadway. Mr. Peek replied that horizontally the line would be six (6) feet inside the edge of curb and would extend approximately 350' under the pavement. He explained that there was no pavement in place at this time.

Mr. Peek advised that the Developers portion for the subdivision facilities would be \$90,795.45 and via a site map distinguished the locations of the major mains and the subdivision facilities.

Mr. Scofield asked Mr. Peek what type of inspection there would be by WMBS&P for the lines under the pavement. Mr. Peek replied that WMBS&P's inspection staff, as well a District inspector, would be on site when the lines were put in place.

There being no further discussion, Mr. Hake moved, seconded by Ms. Moll and approved unanimously, the Construction Financing Agreement with Westinghouse Communities of Naples, Inc. for the construction of the major mains in the amount of \$52,880.01 and the subdivision facilities in the amount of \$90,795.45 for Oakmont, Phase II, Unit VII.

Award of Bid

At this time, Mr. Hake moved, seconded by Ms. Moll and approved unanimously, award of contract to Mitchell & Stark Construction Co., Inc., in the amount of \$143,675.46, for Alternate Route "B" (Under Pavement), Water and Sewer Facilities for Oakmont, Phase II, Unit VII.

CONSIDERATION OF LICENSE AGREEMENT FOR THE CONSTRUCTION OF A BOARDWALK FOR ST. TROPEZ

Mr. Moyer advised that the Application for a License to construct a Boardwalk for St. Tropez had been included in the Agenda Package. He explained that a major portion of the License Agreement was indemnification and insurance related and the License Agreement was the standard form agreement used by the District in the past.

Mr. William Dahnke, the Engineer representing St. Tropez, explained that the Boardwalk would be constructed across the area between the pool deck and the paved road and construction would occur from the platform of the Bridge with no equipment in the vegetated areas. He stated that the only vegetation that would be destroyed would be three Melaleuca trees located about half-way across the Boardwalk. He advised that the purpose of the Boardwalk was two fold: (1) to expose the nature area and (2) because the Boardwalk appeared on a picture that was used in promotional sales brochures and thus according to Condominium Law, had to be built as depicted in the brochures. He commented that the deck of the Boardwalk would be approximately three to five feet above the existing terrain.

The Engineering drawings were presented to the Board for their review. Mr. Scofield suggested that there would be very little added cost to increase the width of the Boardwalk to five feet and the end result

would be a more functional Boardwalk. He explained that the walkway to the Sandbar is four feet wide and it is very difficult to pass people or to carry things on the walkway. Mr. Dahnke stated that this would be taken under consideration as he did not know if the four foot width was a request by the Developer or an in-house decision.

Mr. Hake concurred with Mr. Scofield's suggestions and insisted that the Boardwalk be five foot in width. Mr. Ward advised that he was not sure the Board had the authority to tell the Developer how to build their facilities but offered that he would notify the Developer of the Board's suggestions. Mr. Hake commented that the Board did have the authority to disapprove the License Agreement if the Developer did not build the facility in accordance with the Board's suggestions.

At this time, Mr. Hake moved, seconded by Mr. Holtan and approved unanimously the License Agreement for the Construction of a Boardwalk for St. Tropez with the Gulf Bay Development Group, Inc., subject to the Boardwalk being constructed five feet in width.

CONSIDERATION OF REGISTRY HOTEL EASEMENT MODIFICATION AGREEMENT

Mr. Moyer presented an overall site plan of the Registry Hotel for the Board's review. He explained that as part of the Site Plan for the Registry Hotel, the District had previously agreed to modify the Water Management Easement around the Hotel to accommodate the Site Plan for the project and the proposed Easement Modification Agreement would modify the easements to show what was actually built and in the ground based upon the As-Built Surveys for the project.

Mr. Ward explained that approximately a year ago, the District

modified the water management facilities which encompass the Registry Hotel to conform the District's facilities to the Registry's Site Plan. He stated at the time of conceptual approval, As-Built drawings had not been performed and more recently the As-Built survey of the property had shown some minor encroachments within the Registry Site. He advised that this Agreement would modify the easements to show the actual field conditions.

Mr. Scofield stated that he had a problem with the Registry's property line overlapping the District's berm. Mr. Ward advised that the District has an easement over the berm but does not have the property rights underneath the berm. He explained that the property is actually owned by the Unit Owners of the Registry Hotel, however, the District does have the right to use the berm for water management operations.

Mr. Holtan asked whether the usual procedure has been for the District to grant easements after completion of a project. Mr. Ward explained that the normal procedure has been for the Developer to submit a site plan to the District and at that time request the District to modify their water management easements to conform to the site plan. Following the Developer's request, staff then presents the site plan to the Board for their conceptual approval and subsequently the actual easement documents are presented to the Board upon completion of the project. He explained that this is the easiest and best way to accomplish the easement modifications.

Mr. Moyer advised the Board that the Registry Hotel Easement Modification Agreement had been reviewed and approved by the District's Engineers who determined the modifications would have no adverse affect on

the District's water management facilities.

Mr. Scofield requested that the Board receive the drawings and site plans prior to the meetings and included as part of the Agenda Package. This way he could walk the site with the drawings in hand prior to the meetings. Mr. Ward advised he would be happy to comply with this request.

Mr. Holtan asked Mr. McMackin what Florida law read about the binding effect of a conceptual agreement. Mr. McMackin advised the Board that they would be within their right to disallow the encroachment on the District's easement if the encroachment was found unacceptable to the Board and, at this point in time, the Board would be within their right to have the owner remove the encroachment. Mr. Holtan asked Mr. McMackin whether the Board must approve the termination and grant of easements which had been conceptually approved by a previous Board. Mr. McMackin replied that the Board did not have to approve the documents if the encroachments were unacceptable to the Board. Mr. Moyer disagreed with Mr. McMackin's opinion and commented that it has been his understanding that if something is undertaken based upon prior governmental approval then that government could not go back and unilaterally adversely affect what had been done based upon previous conceptual approval.

Mr. Koste suggested that it was important for the Developers in Pelican Bay to be able to rely on the past policies of the District and if these policies changed, the Developers must be notified. He stated he would hope that the Developer would not have to rely upon the whims of the Board if they carried out the spirit of what had been proposed and what had

been built did not adversely affect the District's water management facilities.

Mr. Holtan and Mr. Hake agreed with Mr. Koste's remarks, however, Mr. Hake did not think the Board had to approve blatant, intentional encroachments on the District's easements and a builder or developer who made a mistake should in the end pay for their mistakes.

Following further discussion, Mr. Hake moved, seconded by Mr. Holtan and approved unanimously the Termination and Grant of Easement with the Association of Unit Owners of the Registry Hotel at Pelican Bay, Inc.

CONSIDERATION OF GRANT OF EASEMENT FOR VILLA LANTANA WATER AND SEWER LINES

Mr. Moyer recalled for the Board that the District had previously entered into an Agreement with Pelican West Associates II, the Developers of Villa Lantana, for the construction of the water and sewer lines for Villa Lantana. This Agreement provided that the Developer pay for the construction of the water and sewer lines within the project and the lines would then be constructed by the District. Mr. Moyer explained that upon completion of construction the Developer then turns the lines over to the District and grants the District the necessary easements for the operation and maintenance of the system.

Mr. Ward explained that only a portion of Villa Lantana was constructed and the Developer had advised the District they would not be proceeding with the construction of any further units within Villa Lantana. He advised that the legal descriptions had been reviewed by the District's Engineers who found them acceptable. Mr. Ward further advised that the Grant of Easement covered all of the facilities that are currently in place

in Villa Lantana and the balance of what was Villa Lantana is now called Beauville and the Beauville water and sewer lines would be constructed under the current District policy.

There being no further discussion, Ms. Moll moved, seconded by Mr. Hake and approved unanimously that the Grant of Easement from Pelican West Associates II for the Villa Lantana water and sewer lines be accepted.

CONSIDERATION OF WATER AND SEWER MAINTENANCE AGREEMENT FOR BEAUVILLE

Mr. Moyer advised that Southern Gulf Corporation, the Developer of Beauville, desired to provide water and sewer service through individual meters rather than through a master meter and the proposed Maintenance Agreement would accomplish this request. He explained that the Maintenance Agreement provides that the District will install and maintain the meters, however, any costs for repairs and maintenance will be paid for by the Developer.

Mr. Moyer recommended that Item B on Page 3 of the Agreement, be amended to read as follows: "In said event, DISTRICT shall install a master meter at the property boundary line, for the purpose of metering service to the property, at the expense of DEVELOPER." The Board concurred with Mr. Moyer's recommendation.

Mr. Scofield asked whether any maps or drawings were available which showed the area under consideration. Mr. Ward stated that no maps depicting this area had been brought to the meeting.

Mr. Tony Pires of the law firm Woodward and Woodward advised that forty four units had been approved for construction in the Beauville project and between thirty six and forty four units would be constructed on

the parcel. Thus, between thirty six and forty four meters would be required. He explained that the project consisted of individual villa units similar in nature to the Lugano and Chanteclair projects.

It was Mr. Hake's opinion that individually metering these units would cause the District additional time to read the extra meters and additional administrative billing expenses. He asked whether the individual meters carried an extra fee for each meter. Mr. Ward explained that each meter carried a connection fee of \$2,250.00 plus a \$250.00/unit meter use fee. Mr. Hake asked why the connection fee for a villa unit was different from a single family home. Mr. Moyer explained that the difference in the connection fees is based upon the unit type and the use of the facilities. He explained that single family homes historically use more water and wastewater than villa units, regardless of whether they are a free standing home. He further advised that villas are generally smaller in size than a single family home and use less water and wastewater and the connection fees are based on historical use.

At this time Mr. Hake suggested that this item be tabled until the next meeting when a map could be provided for the Board's review. There being no further discussion, Mr. Hake moved, seconded by Mr. Holtan, that consideration of the Water & Sewer Maintenance Agreement for Beauville be tabled until the next meeting.

ROLL CALL VOTE:

Mr. Hake	- Aye	Ms. Moll	- Nay
Mr. Holtan	- Aye	Mr. Scofield	- Nay

The motion died for lack of a majority.

Mr. Pires asked whether this item could be re-addressed later in the meeting as a map was on the way which would further enlighten the Board members regarding this issue. Mr. Scofield advised that this item could be revisited later in the meeting.

DISCUSSION ON DISTRICT INSURANCE MATTERS

Quarles & Brady's Legal Opinion On Sovereign Immunity Statute of the State of Florida

Mr. McMackin recalled for the Board that at the last meeting they had passed a Resolution, "Setting Forth the Policy of the District with Regard to the Support and Legal Defense of the Board of Supervisors and District Staff", for tort liability for acts incurred in the scope of the Board's authority. He stated at the September meeting he had been asked to research the law regarding this matter. He advised that Florida Law is very clear on the subject of the Board's liability for tort claims when acting within the scope of their authority. He stated that Florida Statute 768.28(9)(a) provides that, "No officer, employee, or agent of the State or any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any acts, event, or omission of action in the scope of his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property" Thus, in his opinion, the Supervisors would not be personally liable in tort for injuries or damages suffered as a result of any act, event or omission of action "within the scope" of their employment or function. He explained that the proper defendant in this action would be the government entity or

Mr. Scofield as Chairman of the Board and it would be improper to join the Board as individuals. In his opinion under the Statutes if a party did join the Supervisors as individuals a motion to dismiss them as parties to the action should succeed. In contrast, however, are acts the Supervisors might commit that would not constitute those in the scope of the Board's authority. In this case, the Immunity Statute does not extend to the Board individually.

Mr. McMackin advised that he was also asked to take a look at the insurance limits and whether the Board needed any additional insurance coverage. Mr. McMackin quoted Subsection (5) of §768.28 of the Florida Statutes which read as follows: "Neither the State nor its agencies or subdivisions shall be liable to pay a claim or a judgment of any one person which exceeds the sum of \$100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the State or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$200,000." He stated that when one got by the issue of whether in acting within the scope of their authority the Board was individually liable and it is clear from the Statutes that the Board is not individually liable, then the question would be, what is the liability of the District, as the District would be the proper defendant, for these actions. He explained that the Statutes limit the District to the \$100,000-\$200,000 maximum except the Statutes specifically authorize judgments against the District in excess of these amounts if it is the wish of the Legislature. He explained that what could happen would be that the plaintiff received a judgement against the District in excess of \$200,000

and would then apply to the Legislature for a special claims acts against the District for whatever amount they so desired. He further advised that the Statutes expressly authorize the purchase of liability insurance for whatever coverage the Board might choose, "in anticipation of any claim, judgment, and claims bill they may be liable to pay....."

Following Mr. McMackin's presentation, Mr. Hake asked for Mr. McMackin's advice to the Board regarding this matter. Mr. McMackin advised the Board to insure themselves against the eventuality that the Legislature might pass a claims act against the District.

Mr. McMackin advised that he had rewritten the Resolution regarding the Board's legal defense to track the Florida Statutes more carefully and that the Board would be agreeing to protect themselves and the District's employees and to make clear that coverage for acts for members of the Board following the expiration of their term or resignation from the Board would be covered.

Mr. Scofield asked Mr. Benson if he had taken a look at the Legal Defense Resolution. Mr. Benson replied that he had not seen the Resolution but really did not need to review the document as he was in favor of the Resolution. He stated that insurance was nothing more than a funding device and that if a loss occurred within the \$100,000 guideline or in excess of these limits, the Board at least had made an honest decision as to whether or not they desired to purchase insurance. Mr. Scofield then asked for staff's recommendations. Mr. Moyer commented that with Mr. McMackin's opinion that as long as the Board acted within the scope of their basic responsibilities they were likely covered then the Resolution

provided the Board with a defense if Mr. McMackin could not obtain a summary judgement to dismiss a suit brought against the Supervisors as individuals. It was his opinion that the Resolution was something the Board ought to favorably act upon.

Following further discussion, Mr. Hake moved, seconded by Mr. Holtan and approved unanimously, the Resolution "Setting Forth the Policy of the District with Regard to the Support and Legal Defense of the Board of Supervisors and District Staff."

Status Of \$10,000,000 Umbrella Liability Quote

Mr. Benson recalled for the Board that he had previously been directed to increase the District's umbrella coverage from \$1,000,000 to \$5,000,000 and he advised that this coverage was currently in place. He advised that pursuant to the Board's request he had sought quotations for limits above \$5,000,000 and to date had been unsuccessful in securing quotations for an additional \$5,000,000 coverage. He commented that he had submitted the exposure to twenty three insurance companies and to date he had received twenty one declines and tentative indications from two companies who indicated the premium would be approximately \$7,500 annually for the additional \$5,000,000 coverage. Mr. Scofield asked Mr. Benson the cost of the current \$5,000,000 umbrella policy. Mr. Benson replied that this cost the District approximately \$9,900 per year. Mr. Benson also advised that the current insurance carrier would not offer limits in excess of the present \$5,000,000 coverage and thus he had been forced to go to other markets seeking the additional coverage. Mr. Scofield asked Mr. Moyer whether the \$5,000,000 current umbrella coverage was in line with his

other Districts. Mr. Moyer replied that this coverage exceeded what was carried by his other Districts, however, he did think the premium for the \$5,000,000 coverage was an excellent premium. The Board concluded that the additional \$5,000,000 umbrella coverage was too expensive and should be foregone at this point in time.

Status Of Pollution Liability Insurance

Mr. Benson stated that Pollution Liability Insurance is only available through two insurance market places and one such market place was the Pollution Liability Insurance Association (PLIA), which consists of a consortium of six insurance companies combined together to issue pollution coverage and he advised that in order to approach this market one had to submit the risk through one of the these six participating companies. He stated that to date he had done this and had subsequently been informed that in order for the District to secure a firm quotation, PLIA must have an independent risk assessment performed by one of the six firms. He explained that the cost for the independent risk assessment would range from \$4,000 to \$7,000 and if the Board elected to spend this money, upon completion of the investigation, the risk assessment form would be forwarded to PLIA and at that time, they would give the District a quotation for the coverage. He advised that he had been told that coverage was available through PLIA and had been given a "ballpark" price of approximately \$6,000/million with a maximum coverage of \$20,000,000. In response to a question by Mr. Scofield, Mr. Benson advised that the current insurance policies of the District specifically exclude pollution liability.

Mr. Ward asked Mr. Benson whether there were any other cities or counties in the State of Florida who carried Pollution Liability Insurance. Mr. Benson replied that he did not know the answer to this question. Mr. Ward asked whether PLIA had given Mr. Benson any indication that if the District were to proceed with the risk assessment, and it was a favorable assessment, would they be willing to write the pollution coverage? Mr. Benson responded that he had received an indication from PLIA that they would be willing to quote and issue coverage upon a favorable assessment. In response to a question by Mr. Ward regarding the premium for pollution coverage, Mr. Benson stated that PLIA was very vague about quoting premiums for coverage before the assessment was completed and thus he was unable to obtain a firm quotation.

Mr. Hake explained that his company had just gone through a risk assessment and advised that the investigation was quite thorough before any recommendation was made to the consortium of insurance companies. He commented that whether or not the District's records would stand up under such a thorough investigation for the past year or two could be a stumbling block as to whether the facilities were being run in accordance with the necessary standards. He felt this was very important to take a look at because if the risk assessment was denied the District would be hard pressed to obtain such coverage in the foreseeable future.

It was Mr. Holtan's opinion that the cost of the risk assessment should not stop the Board from proceeding with trying to obtain pollution coverage. Mr. Hake concurred and commented that even if the District did not proceed with the purchase of pollution liability coverage, it would be

a good idea to proceed with the risk assessment, as it would give District staff and the Board confidence that the facilities of the District were able to favorably withstand such an investigation.

Following further discussion, Mr. Holtan moved, seconded by Mr. Hake and unanimously approved that Mr. Benson proceed with the independent risk assessment for the approximate cost of \$4,000 to \$7,000.

CONSIDERATION OF PROPOSED CHANGE ORDERS TO JACARANDA LANDSCAPE RIGHT-OF-WAY CONTRACT

Mr. Moyer explained that in accordance with the provisions of the current Contract with Jacaranda Landscape, the Contract would automatically renew beginning January 1, 1988 unless cancelled by either party at least thirty days prior to the expiration date of December 31, 1987. He recalled for the Board that at the May 20, 1987 meeting, they had approved Change Order No. 1 with Jacaranda Landscape for the maintenance of Unit VI and Glenview Place and since this Change Order was only effective until December 31, 1987, it was necessary to modify the Change Order to allow for the continuation of this maintenance through calendar year 1988. Thus, Change Order No. Two (2), in the amount of \$24,780, would accomplish this task.

He explained that Change Order No. 3 had also been included in the Agenda Package and covered the maintenance of the right-of-way of West Boulevard from Bridgeway Villas south to Seagate Drive. He advised that the amount of this Change Order was \$12,000 for calendar year 1988.

He concluded by stating that District staff has been very satisfied with Jacaranda's performance over the past year and, thus, recommended continuation of the Contract with Jacaranda Landscape &

Maintenance for calendar year 1988.

The Board concurred with Mr. Moyer's comments. Mr. Holtan asked whether Jacaranda could do something about the fire ant problem in Pelican Bay, especially between Chateaumere and Hyde Park. Mr. Ward commented that he would contact Jacaranda to insure that this matter was taken care of.

Following further discussion, Mr. Holtan moved, seconded by Mr. Hake and approved unanimously, Change Order No. 2, to increase the Contract with Jacaranda Landscape & Maintenance in the amount of \$24,780.00 and Change Order No. 3, to increase the Contract with Jacaranda Landscape & Maintenance in the amount of \$12,000.00.

AUTHORIZATION TO BID SOD IMPROVEMENTS IN THE RIGHTS-OF-WAY

Mr. Moyer commented that this item concerned a request by District staff for authorization to bid sod replacement to the median of Pelican Bay Boulevard from Glenview Place north to Gulf Park Drive. He recalled in the Fiscal Year Water Management Budget \$20,000 had been budgeted for the replanting program and thus the funds were available for the improvements along Pelican Bay Boulevard.

Following further discussion, Mr. Hake moved, seconded by Ms. Moll and approved unanimously, that District staff be authorized to seek bids for the right-of-way sod improvements to the median of Pelican Bay Boulevard from Glenview Place north to Gulf Park Drive.

CONSIDERATION OF WATER AND SEWER MAINTENANCE AGREEMENT FOR BEAUVILLE

At this time, Mr. Pires presented a site plan of the Beauville project for the Board's reconsideration of this item. He reiterated that the Developer desired individual meters to these villa units rather

than service through a master meter and via the Agreement the Developer would assume all costs for any repairs or maintenance to the meters. He also stated that the Board had previously approved individual meters for this parcel as part of the Villa Lantana project and thus this request was consistent with the current policy of the Board.

Following the review of the drawings by the Board and by roll call vote as follows:

Mr. Hake - Aye Ms. Moll - Aye

Mr. Holtan - Aye Mr. Scofield - Aye

the Water & Sewer Maintenance Agreement for Beauville was approved subject to amendment of Item B, Page 3 as follows: "In said event, DISTRICT shall install a master meter at the property boundary line, for the purpose of metering service to the property, at the expense of DEVELOPER."

ENGINEER'S REPORT

Update On The Wastewater Treatment Plant Construction

Mr. Peak of Wilson, Miller, Barton, Soll & Peek showed the Board updated aerial photographs of the Wastewater Treatment Plant and handed out an updated Construction Progress Schedule. Mr. Peak recalled for the Board that over the past several meetings it had been reported to the Board that parts of the construction project were behind schedule and thus the Board had recommended that staff formally write the Contractor a letter identifying the terms of the Contract and outlining the consequences if the substantial completion date was not met and to forward a copy of the letter to Metro's Bonding Company. He advised that this letter had been written and over the past couple of weeks there had been a substantial improvement

in the number of people working on the site. He commented that in a recent meeting with the Contractor, Metro Construction, they still claimed they could meet the substantial completion date of November 9, 1987, however he and District staff were not in agreement with the Contractor's claim.

Mr. Scofield asked whether the Construction Progress Schedule was up to date and commented that if the schedule was up to date there was a great deal of work that had to be accomplished in order to meet the substantial completion date. Mr. Peek advised Mr. Scofield that the Construction Schedules are prepared using the Contractor's payment requests and by the time the Board receives the schedule it is at least one month old. He advised that at the next meeting he would present a Construction Progress Schedule that would be no more than 10 ten days old. He further advised that District staff was diligently working to insure completion of the project by the substantial completion date of November 9, 1987.

MANAGER'S REPORT

Mr. Moyer had no comments at this time.

CONFIRMATION OF INVOICES

Water/Sewer Operating Summary and Invoices For September 1987 - Approved As Presented

At this time, Ms. Moll moved, seconded by Mr. Hake and carried unanimously, that the Water/Sewer Operating Summary and Invoices for September, 1987, be approved as presented.

Water Management Operating Summary and Invoices For September 1987 - Approved As Presented

At this time, Ms. Moll moved, seconded by Mr. Hake and carried unanimously, that the Water Management Operating Summary and Invoices for

September, 1987, be approved as presented.

CONFIRMATION OF REQUISITIONS

At this time the following Certificates Of Payment were presented for approval by the Board:

<u>CERTIFICATE NO.</u>		<u>CONTRACTOR</u>	<u>AMOUNT</u>
1985 Bond Proceeds Utility Site Improve- ments & Instrumentation	No. 142	Wilson, Miller, Barton, et. al	1,655.70
1985 Bond Proceeds Convert Irrigation Tank to Potable Tank	No. 143	Wilson, Miller, Barton, et. al	2,445.35
1985 Bond Proceeds WWTP - Construction Services	No. 144	Post, Buckley, Schuh & Jernigan	2,117.79
1985 Bond Proceeds WWTP - Construction	No. 145	Metro Equipment & Construction	263,267.00
Unit VI Street Light System	No. 5	Sterner Lighting Systems	2,483.38
West Boulevard Street Light System	No. 1	Bay Electric of Collier	2,500.00
West Boulevard Street Light System	No. 2	Sterner Lighting Systems	249.82
Oakmont Phase II, Unit VII	No. 1	Wilson, Miller, Barton, et. al	4,490.80
TOTAL AMOUNT ALL INVOICES			\$ 279,209.84

At this time, Mr. Hake moved, seconded by Mr. Holtan, and approved unanimously, the Certificates of Payment as presented.

SUPERVISORS REQUESTS

Mr. Hake commented on the License Agreement with The Association Of Unit Owners Of The Registry Hotel At Pelican Bay, Inc. for use of the District's berm. He stated that he had recently heard that the Unit Owners no longer desired to use the berm and thus recommended that the License Agreement with the Registry Hotel be officially terminated. Mr. Koste suggested that the Board hold off on any decision to terminate this License

Pelican Bay Improvement District
October 21, 1987

Agreement until after the meeting of the Unit Owners which was scheduled for next week and their recommendation on this Agreement became public record. He advised that this item was one of the scheduled Agenda items for the meeting of the Association of Unit Owners. The Board concurred with Mr. Koste's suggestion.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned. Time: 6:05 P.M.



MR. MILES B. SCOFIELD
PRESIDENT
PELICAN BAY IMPROVEMENT DISTRICT

PELICAN BAY IMPROVEMENT DISTRICT
WATER/SEWER INVOICES
SEPTEMBER 1987

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
Apple Computer	Computer Printer	2,147.88
Aubrey Rogers	Wellfield Security 8/22 to 9/12	459.90
B-B Builders	R.O. Plant Supplies	965.72
B & H Sales	Meters & Meter Supplies	422.70
Bay Electric, Inc.	Repairs At R.O. Plant	162.50
Bob Dean Supply	80 CP Chain	107.87
Tracy H. Bolesky	W/S Portion Legal Services to 8/19/87	550.00
Blankenship & Assoc.	12" Meter	1,585.00
City of Naples	Water Service 8/1/87 - 9/1/87	12,905.91
Computerland	Computer Diskettes	39.95
Coral Springs Improvement District	W/S Portion September Health & Dental Insurance	409.26
Coral Springs Improvement District	3rd Quarter Water Samples	770.00
Federal Express Corp.	W/S Portion Aug. & Sept. Courier Service	35.12
File One	W/S Portion August Office Supplies	46.87
Florida Power & Light	W/S Portion July Electric	8,473.10
Gulf Shore Associates	W/S Portion September Rent	842.97
IBM	W/S Portion Displaywriter Maintenance & Typewriter Ribbons	336.70
J.C. Drainfield	Pump D-14 Lift Station	225.00
J & N Environmental	August W/W Analyses	182.50
Naples Daily News	Notice To Bidders - Wastewater Treatment Plant Chemicals	73.02
North Trail Auto Parts	W/S Portion Vehicle Maintenance Supplies	26.72
PB&S Chemical Co.	Chlorine	1,548.10
Park Tire Center	Repair 1981 Ford Courier	276.43
Robbins Telephone Answering Service	W/S Portion September Answering Service - R.O. Plant	36.02
Southwest Electric Supply	Electrical Supplies	97.32
Sunshine Ace Hardware	R.O. Plant Supplies	276.46
The Office	Freight	114.00
United Telephone	W/S Portion September Telephone	304.30
Weavers Office Supply	W/S Portion September Office Supplies & Filing Cabinets	348.08
Westinghouse Communities of Naples, Inc.	W/S Portion July & August Postage, August Fuel, & Copies from 6/1 to 9/16	299.40

PELICAN BAY IMPROVEMENT DISTRICT
 WATER MANAGEMENT INVOICES
 SEPTEMBER 1987

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
Apple Computer, Inc.	Computer Printer	2,147.88
B & S Marine Supplies	Power Wench	195.95
Tracy H. Bolesky	W/M Portion Legal Services to 8/20/87	20.00
Computerland of Naples	Computer Diskettes	39.95
Coral Springs Improvement District	W/M Portion September Dental Insurance	409.25
Florida Power & Light	Crayton Road Sprinkler Clock - August	9.30
Federal Express Corp.	W/M Portion August & September Courier Service	35.13
File One	W/M Portion August Office Supplies	46.86
Gulf Shore Associates	W/M Portion September Rent	842.97
IBM	Maintenance Displaywriter System & Typewriter Ribbons	336.70
Jacaranda Landscape	August R-O-W Maintenance	14,773.87
Marine Service & Supply	Repair Boat Motor	282.25
Naples Daily News	Legal Advertising	190.03
Naples Federal	Meeting Room Rental August 19, 1987	50.00
North Trail Auto Parts	W/M Portion Transportation Supplies	26.73
PBID W/S Account	R-O-W Maintenance 8/15/87 - 9/15/87	1,823.01
Robbins Telephone Answering Service	W/M Portion August Answering Service - R.O. Plant	36.03
United Telephone	W/M Portion September Telephone	206.11
W.H. Turner	August Consultation Services	150.00
Weavers Office Supply	W/M Portion Aug. & Sept. Office Supplies & Filing Cabinets	348.09
Westinghouse Communities Of Naples, Inc.	W/M Portion July & August Fuel, Postage & Copies from 6/1/87 to 9/16/87	299.38

PELICAN BAY IMPROVEMENT DISTRICT
WATER AND WASTEWATER OPERATING SUMMARY
SEPTEMBER 1987

	FISCAL YEAR 1986 BUDGET	MONTH TO DATE			YEAR TO DATE		VARIANCE FAVORABLE (UNFAVORABLE)
		BUDGET	ACTUAL	VARIANCE FAVORABLE (UNFAVORABLE)	BUDGET	ACTUAL	
<u>CHARGES FOR SERVICES</u>							
Connection Fees	\$ 830,750	549,120	33,570	(515,550)	830,750	1,120,641	289,891
Meter Use Fees	28,250	3,000	3,500	500	28,250	107,380	79,130
<u>USER REVENUE</u>							
Water	482,866	43,287	42,135	(1,152)	482,866	512,203	29,337
Sewer	395,998	35,829	35,843	14	395,998	424,451	28,453
Irrigation	368,298	33,614	41,081	7,467	368,298	375,692	7,394
<u>TOTAL REVENUE</u>	<u>\$2,106,162</u>	<u>664,850</u>	<u>156,129</u>	<u>(508,721)</u>	<u>2,106,162</u>	<u>2,540,367</u>	<u>434,205</u>
<u>PROFESSIONAL FEES</u>							
Engineering	\$ 18,000	4,500	95	4,405	18,000	10,761	7,239
Legal	15,000	1,250	550	700	15,000	15,515	(515)
Audit	8,058	0	0	0	8,058	8,058	0
Trust	6,584	0	0	0	6,584	6,584	0
<u>SYSTEM OPERATING EXPENSES</u>							
Office	33,367	1,949	1,523	426	33,367	26,879	6,488
Billing	2,484	207	89	118	2,484	89	2,395
Insurance	28,227	0	0	0	28,227	28,227	0
Payroll	130,238	10,022	8,265	1,757	130,238	104,250	25,988
Transportation	9,750	813	516	297	9,750	2,189	7,561
Water Quality	18,183	1,518	953	565	18,183	13,115	5,068
Repairs & Maintenance	100,100	4,092	2,355	1,737	100,100	88,475	11,625
Electric	124,103	9,975	8,473	1,502	124,103	123,936	167
Chemicals	34,411	2,043	1,548	495	34,411	29,031	5,380
Contingencies	10,000	0	3,648	(3,648)	10,000	18,728	(8,728)
City of Naples Water	93,140	10,577	12,906	(2,329)	93,140	81,328	11,812
Meters	6,272	768	1,967	(1,199)	6,272	32,687	(26,415)
<u>TOTAL EXPENSES</u>	<u>\$ 637,917</u>	<u>47,714</u>	<u>42,888</u>	<u>4,826</u>	<u>637,917</u>	<u>589,852</u>	<u>48,065</u>

PELICAN BAY IMPROVEMENT DISTRICT
WATER MANAGEMENT
OPERATING SUMMARY
SEPTEMBER 1987

	<u>MONTH TO DATE</u>				<u>YEAR TO DATE</u>		
	<u>FISCAL YEAR 1987 BUDGET</u>	<u>BUDGET</u>	<u>EXPENSES</u>	<u>FAVORABLE (UNFAVORABLE) VARIANCE</u>	<u>BUDGET</u>	<u>EXPENSES</u>	<u>FAVORABLE (UNFAVORABLE) VARIANCE</u>
MEETING EXPENSE							
Supervisors Fees	\$ 6,000	500	500	0	\$6,000	6,000	0
Travel Reimbursement	300	25	0	25	300	33	267
Legal Notification	700	41	190	(149)	700	729	(29)
PROFESSIONAL FEES							
Engineering	10,800	900	137	763	10,800	11,622	(822)
Legal	6,000	500	20	480	6,000	5,170	830
Audit	8,058	0	0	0	8,058	8,058	0
Trust	1,500	0	0	0	1,500	1,500	0
SYSTEM OPERATING EXPENSE							
Office	28,007	1,499	1,327	172	28,007	24,019	3,988
Payroll	108,211	8,323	8,457	(134)	108,211	105,408	2,803
Transportation	4,334	355	240	115	4,334	1,754	2,580
Swale Maintenance	4,000	336	0	336	4,000	2,205	1,795
Lake Maintenance	17,340	1,445	478	967	17,340	23,685	(6,345)
Water Quality	6,720	560	0	560	6,720	3,781	2,939
Insurance	13,814	0	0	0	13,814	14,443	(629)
Rights-Of-Way	246,239	21,928	14,783	7,145	246,239	191,901	54,338
Water Connection	70,719	0	0	0	0	0	0
Water Use	17,908	1,495	1,823	(328)	17,908	14,315	3,593
Renewal & Replacement	6,000	500	0	500	6,000	0	6,000
Contingencies	8,000	0	3,798	(3,798)	8,000	12,898	(4,898)
TOTAL EXPENSES	\$ 564,650	38,407	31,753	(6,654)	493,931	427,521	66,410