

Naples, Florida

February 24, 1989

LET IT BE KNOWN, that the Pelican Bay Improvement District met on this date in continued session at 8:30 A.M., in the Naples Federal Savings & Loan Building, Fifth Floor, 5801 Pelican Bay Boulevard, Naples, Florida, with the following members present:

PRESIDENT:	James D. Hake
SECRETARY:	Ramer B. Holtan
	J. Russell Mudge
	James R. Dunwiddie
	Walter B. Potter

ALSO PRESENT: Mr. James P. Ward, Assistant District Manager; Mr. Joe McMackin, Attorney for the District; Mr. Art Diamond of Fishkind & Associates; Mr. William Reagan of Alex Brown & Sons, Inc.; Mr. Jim Stewart of Cummings & Lockwood; Mr. Lou Hoegsted of Westinghouse Communities of Naples, Inc.; Messrs. Bill Ogden and Richard Shively, residents of the Stratford and Ms. Jean C. Smith, Assistant Secretary.

ROLL CALL

Mr. Hake called the meeting to order at 8:30 A.M. and asked the record show this meeting was a continuation of the February 15, 1988 meeting which had been recessed and that all members were present.

CONSIDERATION OF BOND DOCUMENTS NECESSARY TO CONSUMMATE THE PROPOSED
REFUNDING

Mr. Potter commented that on the advice of the District's Financial Advisor, Mr. Art Diamond, the Financial Team had given verbal approval for the District to sell its bonds and that they had all been sold.

Mr. Art Diamond reported that on Tuesday, February 21, 1989, a conference call had been held with the Underwriter, Mr. Ward, Mr. Potter and himself and the market had improved to the point where they felt the District could get into the market, which they did, and by Tuesday afternoon the bonds were all committed for, at a very good rate and at a very good level of savings. He advised that sale was handled very professionally and by the end of the day, the Financial Team all felt very relieved that they had been able to do a good job and that the transaction was completed. He reported that the window had now closed and the rates had come down in a hurry and had the District not gone into the Market on Tuesday, upon recommendation of the Underwriter, he felt the District would still be without a bond sale. He commented there was a very quick opening and closing of the window and the District got in and out very quickly. He advised that the bonds were committed for at a very good rate and recommended that the Board accept the bid of Alex, Brown & Sons, Inc.

Mr. Bill Reagan advised that the bonds were committed in about four or five hours on Tuesday, February 21, 1989 and the District ended up with a very attractive interest rate and savings well above the targeted savings. He advised that the final present value savings ended up at at \$308,000, in part due to a higher treasury investment rate which helped

in the savings. He explained that the cumulative savings over time is no longer a negative number but rather a positive number and he was happy the sale went well and hoped that the Board would accept Alex, Brown & Sons bid. At this time, Mr. Reagan handed Alex Brown & Sons, Inc.'s "good faith" check, in the amount of \$90,000, to Mr. Hake and advised that the proposed closing date is March 15, 1989.

Mr. Jim Stewart of Cummings & Lockwood distributed two Resolutions to the Board of Supervisors; the first being a Resolution "Determining Details Of The Water And Sewer General Obligation And Revenue Refunding Bonds, Series 1989". He explained that this Resolution contained four companion Agreements as Exhibits: the Bond Purchase Agreement; the Preliminary Official Statement; a Tax Regulatory Agreement and an Escrow Deposit Agreement and that if the Board adopted the Resolution these Agreements would all be adopted as well.

Mr. Mudge asked whether these documents had been reviewed. Mr. McMackin advised that the documents had been reviewed and discussed for a period commencing as far back as November 1988. He explained that the figures marked in pencil on the Preliminary Official Statement are a customary method which is used prior to finalizing the Statement.

There being no further discussion, Mr. Holtan moved, seconded by Mr. Mudge and unanimously approved the Resolution, "Determining Details Of The Water And Sewer General Obligation And Revenue Refunding Bonds, Series 1989".

Mr. Stewart advised that the second Resolution which needed Board action was the, "Supplemental Resolution of the Board of Supervisors of the

Pelican Bay Improvement District in Collier County, Florida, Amending and Supplementing that Certain "General Water and Sewer Obligation and Revenue Bond Resolution Authorizing the Issuance and Sale of Not in Excess of \$4,530,000 Water and Sewer General Obligation and Revenue Bonds, Series 1978" Adopted by the Aforesaid Board of Supervisors on June 22, 1978 To Provide for Obtaining Insurance, Surety Bonds, Guarantys, Letters of Credit, or Other Credit Enhancement Facilities Insuring the Bond Reserve Requirement to the Extent of any Specified Series of Bonds; Providing for Certain Definitions; Providing for the Disposal of Certain Moneys; Amending the Definition of "Investment Securities" in Aforementioned Bond Resolution; Amending Section 509 of Aforementioned Bond Resolution; Amending Section 204 of Aforementioned Bond Resolution; and Providing an Effective Date." Mr. Stewart recalled for the Board that this Resolution should look familiar to the Board as they had adopted a similar Supplemental Resolution a couple months ago. He advised that this Resolution related to the Debt Service Reserve being converted from cash to Bond Insurance and the reason the Resolution was being brought back to the Board was that the Trustee had some additional comments on the documents which they had not previously discussed with him and wished incorporated in the Resolution and this document now included the Trustee's comments, as well as the comments from the holder of 60% of the bonds.

Mr. Hake asked if the Insurance Company furnishing the insurance was adequate so that the District did not have to be concerned about the stability of the company. Mr. Stewart advised that the Insurance Company is MBIA, a nationally recognized Municipal Bond Insurance Company, and they

are so highly regarded that the Municipal Bonds insured by MBIA are rated AAA by Standard & Poors and Moody's.

There being no further discussion, Mr. Mudge moved, seconded by Mr. Potter and unanimously approved the "Supplemental Resolution of the Board of Supervisors of the Pelican Bay Improvement District in Collier County, Florida, Amending and Supplementing that Certain "General Water and Sewer Obligation and Revenue Bond Resolution Authorizing the Issuance and Sale of Not in Excess of \$4,530,000 Water and Sewer General Obligation and Revenue Bonds, Series 1978" Adopted by the Aforesaid Board of Supervisors on June 22, 1978 To Provide for Obtaining Insurance, Surety Bonds, Guarantys, Letters of Credit, or Other Credit Enhancement Facilities Insuring the Bond Reserve Requirement to the Extent of any Specified Series of Bonds; Providing for Certain Definitions; Providing for the Disposal of Certain Moneys; Amending the Definition of "Investment Securities" in Aforementioned Bond Resolution; Amending Section 509 of Aforementioned Bond Resolution; Amending Section 204 of Aforementioned Bond Resolution; and Providing an Effective Date."

At this time, Mr. Diamond commented that too often the people responsible for the hard work do not get the credit they so deserve and he was talking about the Board of Supervisors. He remarked that he had been to enough public meetings to know that the Board is subject to various trials and tribulations and comments from the public and he wanted to give the Board a great deal of credit for proceeding with the refunding and to let the Board know that he enjoyed working with the District. Mr. Hake remarked that he had learned that Mr. Potter has been very pleased with the

professionalism that has been exercised by Mr. Diamond, Mr. Reagan and all the parties concerned in the refunding and he thanked them for their good work.

Mr. Potter commented on the fine way that Alex, Brown & Sons, Inc. handled the bond sale and also stated that Mr. Diamond was a real tower of strength throughout the entire process. He thanked all the concerned parties.

Mr. Dunwiddie commented that his only objection to the refunding was using a twenty two (22), instead of a twenty one (21) payment refunding, because numbers he had seen showed the actual total money paid out by the District was significantly less in the twenty one repayment rather than the twenty two repayment and the discounted cash flow rate of return was substantially the same and he had not seen any numbers yet to prove this to be wrong.

CABLEVISION BILLING SERVICES FOR PELICAN BAY

Mr. Hake commented that it had recently been brought to his attention that there was interest by the Pelican Bay Property Owner's Association of getting involved in establishing a central billing agency for cablevision in Pelican Bay. Subsequently, at the request of Mr. Bill Ogden, a resident of the Stratford, he attended a meeting at the Stratford, during which time this matter was discussed. Mr. Hake remarked that Mr. Richard Shively, a Stratford resident, was also in attendance at today's meeting, and he is a previous owner of a cablevision system, and as such, he is extremely knowledgeable in this field. Mr. Hake offered that he had recently contacted Mr. McMackin regarding this matter and thanked Mr.

McMackin for the timely manner in which he responded to his request.

Mr. Hake explained that these discussions were originated by the Dorchester Condominium Association, as the Dorchester was going to install a Satellite Dish on their roof because of their bad experiences with Palmer Cablevision. Subsequently, the other condominiums learned that the Dorchester was going to install such a Satellite Dish and decided to join in this effort. He commented that if the Pelican Bay Improvement District could act as a central billing agency for Palmer Cablevision or Florida Power & Light Co.'s, Telesate, there could be a very favorable rate given to everyone in Pelican Bay. Mr. Hake felt this would be a simple matter as it would be nothing more than another item on the present Utility Bill everyone now receives, however, he understood that getting this information initially installed in the computer system would be more difficult. He felt it would not cost the District any more for the billing itself other than what went into the computer. He stated the question boiled down to whether or not the District could act as a central billing agency for cable television, under its present Statutes. At this time, Mr. Hake called for Mr. McMackin's opinion on this matter.

Mr. McMackin stated that the issue he had been asked to research was whether or not the District's Enabling Act and the amendments or related portions of Florida Statutes would give the District the authority to enter into such a billing arrangement on behalf of a commercial provider of cable services. It was clear to him that the Enabling Act and the applicable amendments do not give the District this power. He explained there is a Florida Statute which allows Improvement Districts to provide,

"indoor cultural and entertainment facilities", which one might be able to bend for providing cablevision services under this Statute, however, he did not feel this would be likely.

Mr. McMackin commented there are two ways of handling this: first, the District could apply to the Attorney General of the State of Florida for an opinion as to whether he felt this particular Statute would give the District the authority to provide this service and he advised he has begun the process of making such an application. Secondly, he advised this matter could be discussed with Legislator, Ms. Mary Ellen Hawkins, regarding a further amendment to the District's Enabling Act giving the District this power. In addition to the legal position, Mr. McMackin advised that he had researched some of the practical considerations. He discovered that Palmer Cablevision does not have an exclusive right in Pelican Bay; that their original agreement gave them exclusive rights until the early 1990's, however, there was a later amendment which voided the expiration date. He advised that there are cable regulations and ordinances with Collier County which govern the provision of cable services and he was unsure that the Collier ordinance would apply to what the District would be doing. He discussed the issue of a receiving station at the Utility Site. He recalled for the Board that there are certain deed restrictions in Pelican Bay which would limit the right of the property owner to install this type of dish, and although the Utility Site is somewhat unique, it was his recommendation that the District obtain WCN's consent if they planned to build a satellite dish on the Utility Site. Another practical consideration is whether the District has the room on the

Utility Site for such a dish.

To summarize, in Mr. McMackin's opinion, the District does not have the express authority to enter into central billing services and Pelican Bay is open to competition in the provision of cable services; that Palmer Cablevision does not have an exclusive right and if a receiving dish is to be put on the Utility Site, the District Engineer would need to verify that the District had the space on the site and that there were no deed restrictions which would prohibit this.

Mr. Hake explained that the matter of the satellite dish on the Utility Site might not be a requirement as it was his understanding there might be some new satellite dishes in the area to the north.

It was Mr. Hake's opinion that the Enabling Act read that the District could handle utilities and these utilities were not restricted and he believed that cablevision, by the U.S. Supreme Court, has been declared a utility, and as such, the District is set up to handle utilities within Pelican Bay. Mr. Holtan felt the Enabling Act restricted the District to water and sewer. Mr. McMackin concurred with Mr. Holtan's opinion. Mr. Holtan suggested that the Pelican Bay Property Owner's Association could be the body with which the cable people would deal and all the District would be doing would be to rent part of their machines to the P.B.P.O.A. Mr. McMackin commented that he did not see where the Enabling Act read that the District could contract for billing services to individuals.

Mr. Bill Ogden, a resident of the Stratford, advised that he currently serves on the Committee reviewing this matter and he had recently learned from his Son that Florida is one of the States where Cablevision

companies are not deemed to be a utility, however, he felt this would bear further legal investigation.

Mr. Hake asked what would happen to the District, if the District took the position that they could act as a central billing agency for cablevision and proceed on their own. Mr. McMackin replied that the risk would be to the Board members in that they would be exceeding their authority and stepping over into the area of a private sector and this could leave them open for some type of a legal action.

Mr. Hake suggested that Mr. McMackin proceed with obtaining an opinion from the Attorney General. Mr. McMackin stated he would do so, however, advised that in only about 20% of the cases does the Attorney General's office respond to such a request.

Mr. Hake suggested that as far as he knew there were only two cablevision firms in the area; Palmer Cablevision and Telesate Cablevision, Inc. who would be willing to compete and if they were willing to compete on one hand then they couldn't argue against Pelican Bay providing this service on the other hand. Mr. McMackin commented that he disagreed; that a disgruntled bidder would be faced with losing a population of approximately 10,000 people and could proceed to prevent the winner from using an easy billing method that Pelican Bay Improvement District would be providing, in the hope that they could garner a percentage of the residents.

Mr. Hake asked when the District could hope to have an answer on this matter. Mr. McMackin responded that from his past experience it would be no sooner than sixty days from the time of actual submittal and he could

not give an outside date.

Mr. Richard Shively remarked that the thrust of what he and Mr. Ogden were attempting to do was to get a much reduced rate, with improved service. He explained that the genesis of his discussion with Mr. Hake was that the condominiums were going to be in a position to provide this improved service at an extremely reduced rate and thus, why wouldn't it be a good idea for all the residents of Pelican Bay to benefit from the reduced rates and better service if the District could act as a central billing agency. He explained that the condominiums can go ahead with this, however, they thought this might be an opportunity for all of Pelican Bay to take advantage of the situation.

Mr. Hake felt it would be poor judgement on the part of the Board not to do something that would be for the general benefit of the residents of Pelican Bay. He felt it would be worthwhile to enlist everyone's services they could think of, because in many cases the legislature responds to requests from large groups of people. He also suggested that it might be helpful if the Property Owners Association could provide a list of residents in favor of such a proposal to the Attorney General's Office.

Mr. Dunwiddie commented that this issue first arose because the original question was whether Telesate Cablevision, in order to provide services to the condominiums, could use the District's berm for their distribution lines. He remarked that he did not know where this issue stood at the moment and asked whether the District was being premature in discussing this because he was not sure that Telesate could offer

cablevision services without putting lines under the ground and Palmer Cablevision could provide such a services at the present time.

Mr. Shively commented that at the present time only Palmer Cablevision has the franchise authority to provide service to Pelican Bay, and in order for Telesate to provide service to Pelican Bay in its entirety it would require a franchise for them to cross the rights-of-way. He explained that, in all probability, Telesate still could serve the condominiums, however, they could not go cross the rights-of-way without a franchise agreement from Collier County. In other words, as long as Telesate did not cross the right-of-way, a franchise was not necessary, however, it would limit Telesate to the number of subscribers because all of the free standing units would be eliminated.

Mr. Shively also advised that in recent proposals he had seen from the two firms in regard to the condominiums, Palmer Cablevision is now offering lower rates than Telesate; that both are charging \$5.00 per channel for premium service, but for the basic thirty channel service, Telesate is at \$6.50 and Palmer Cablevision has come down to \$5.65. He suggested that if all of Pelican Bay were involved, the rates might even be lower.

Mr. Dunwiddie asked whether the District would have the right to let Telesate put a cable down the berm under the District's right-of-way. Mr. McMackin replied that this was an interesting question and he had only been able to find one case in the State of Florida where the holder of the easement added cable along the easement and in this case the landowner

filed suit on the grounds that the easement was granted for a specific purpose and it was now being used for other services. He stated that the District has an easement on the berm for a certain purpose and the District might very well have the right to increase its use by the installation of cable, however, the prudent thing to do would be to get a further easement from the landowner, Westinghouse Communities of Naples, Inc. Mr. Hake asked Mr. Hoegsted whether he could advise the Board as to WCN's position on this matter. Mr. Hoegsted remarked he could not address this issue at this time, as he would have to discuss it with Mr. Koste. Mr. Hake suggested that WCN would not stand in the way of Pelican Bay residents saving money.

Mr. Hake asked Mr. McMackin's help in supplying the names of whom the residents could write to on an individual basis to help support this issue. He also asked if it would be fitting and proper for any of the Board members to meet with Representative Hawkins or State Senator, Mr. Dudley to aid in this matter. Mr. McMackin suggested he would make an appointment with Ms. Hawkins to discuss this matter.

There being no further discussion, Mr. Hake moved, seconded by Mr. Dunwiddie and approved unanimously, that Mr. McMackin be authorized to make the proper requests to the State Attorney General to see if the District could provide cablevision central billing services for the residents of Pelican Bay.

Mr. Mudge asked who would be responsible if someone got hit by a golf ball. Mr. Mudge asked if it would be the golfer, WCN, the Club or PBID? Mr. McMackin replied that if a PBID employee was injured on the job

he or she would be covered under Workman's Compensation; if, however, someone else was injured, most Plaintiff's Attorneys have a "more the merrier" theory on liability; that they will join the Golfer, the Club, the owner of property, the manufacturer of the Golf Ball, the manufacturer of the Club, etc. and then let the insurance companies sort out the liability. Mr. McMackin did not feel the District would be involved in any liability as the District simply provides irrigation water to the Golf Course and even the most aggressive tort lawyer would not find that the irrigation water could be responsible.

Mr. Dunwiddie commented that there has been a profusion of signs in Pelican Bay in the last month and it is continually getting worse and asked whether the District has any authority to order the removal of these signs. Mr. McMackin responded that this would be covered in the deed restrictions, as set forth by WCN, and if the restrictions were not being enforced it would be up to WCN. Mr. Hoegsted asked Mr. Dunwiddie to make a list of his complaints and give it to Mr. Ben Briggs and he promised he would look into this matter.

Mr. Hake commented that in reading through the documents it stated that the Conservation Advisory Committee is responsible for anything that takes place in the Conservation areas and in the recreational areas and he asked that staff or Mr. McMackin draft a letter or contact Mr. Small and put the Pelican Bay Foundation on notice that anything they do through the conservation area for the "north pod" must be cleared through the Conservation Advisory Committee.

Pelican Bay Improvement District
February 24, 1989

ADJOURNMENT

There being no further business to come before the Board at this time, Mr. Potter moved, seconded by Mr. Mudge and unanimously approved, that the meeting be adjourned. Time: 9:40 A.M.



JAMES D. HAKE
PRESIDENT
PELICAN BAY IMPROVEMENT DISTRICT