

Naples, Florida

May 31, 1989

LET IT BE KNOWN, that the Board of Supervisors of the Pelican Bay Improvement District met on this date in Continued Session at 3:00 P.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 (Absent)

ALSO PRESENT: Mr. James P. Ward, Assistant District Manager; Mr. Joe McMackin, Attorney for the District; Messrs. Tom Peek, Ron Orach, Steve Means and Scott Wiggins of Wilson, Miller, Barton, Soll & Peek; Messrs. Lou Hoegsted and Edward Griffith of Westinghouse Communities of Naples, Inc.; Mr. Henry Michel, Member of the Conservation Advisory Committee; Mr. John Petty of the Pelican Bay Improvement District; and Ms. Jean C. Smith, Assistant Secretary.

AGENDA

1. Roll Call.
2. Public Hearing:
 - A) Fiscal Year 1990 Street Lighting Budget.
 - B) Street Lighting Budget Resolution.
8. Discussion of District's Plan Review Procedure and Submittal Manual.
10. Engineer's Report.
 - A) Change Order No. One (1) to Mitchell & Stark Contract for Weir in Bay Colony Shores.

ROLL CALL

Mr. Hake called the meeting to order and asked the record show Mr. Potter absent, with all other members present.

PUBLIC HEARING

Fiscal year 1990 Street Lighting Budget

Legal Notice having been published in the Naples Daily News on May 2 and May 9, 1989, as evidenced by the Affidavit of Publication presented for the Record, the Public Hearing was continued to consider the District's Street Lighting Budget for Fiscal Year 1990.

Mr. Hake reported that at the last meeting the Board had asked Mr. McMackin review whether the District could levy a "Special Assessment" or an "Impact Fee" on specified lands within the District, to retire outstanding debt incurred in the purchase and installation of street lighting facilities and to provide funding for future expansion of lighting facilities within new developments as needed. He advised that since this meeting, Mr. McMackin had written a letter, dated May 26, 1989, to the Board members expressing his opinion that the Board has the power to levy Special Assessments, however, does not have the authority to impose impact fees. Mr. McMackin also distributed a letter to the Board, dated May 31, 1989, which he had received from David C. Weigel, Assistant Collier County Attorney, in which Mr. Weigel also advised that the District had the power to levy a Special Assessment upon benefited property for street lights. Mr. Holtan remarked that he did not think Mr. Weigel's letter made it clear that the District could levy a Special Assessment for past improvements, however, it was very clear from Mr. McMackin's letter that it could. Mr.

McMackin concurred and advised that the District could levy a Special Assessment to pay off existing debt or for new expansion.

Mr. Dunwiddie stated that in reading Mr. McMackin's letter he received the impression that the District could impose a Special Assessment to pay off existing debt, however, it would be so complicated and cumbersome that the District would be better off not doing so and he asked Mr. McMackin his thoughts on the matter. Mr. McMackin advised that in the conclusion portion of this letter he stated that if the District's aim is for complete fairness, "the Board must determine what actual expenditures were made for the installation of street lights in each neighborhood throughout the District and an apportionment must be made with respect to all property within Pelican Bay. The District must also consider how much money each property owner has contributed to the capital of the Lighting District by virtue of the annual Ad Valorem Tax that has been in effect since the creation of the Lighting District. These amounts should offset any special assessments for capital levied on that property". He explained it all depended on how "surgical" the Board desired to get in the precision of imposing this assessment. Mr. Dunwiddie suggested that if the Board did not desire to get "surgical" then the District could take the first group that was built, for which a loan was specifically identified, and if this was paid off, consider that these people had completed their indebtedness as far as paying for capital improvements, and then take the next area for which the District has a loan out and if there was any outstanding indebtedness on this loan, those people would have a one time assessment for this indebtedness, and so on for each one of the areas, until all

outstanding indebtedness was paid off. He advised that according to the proposed Fiscal Year 1990 Budget there are only two outstanding loans, so all the District would have to do is assess the property owners in these areas to pay these loans off and then each new area would be paid off through a Special Assessment to those areas. He asked Mr. McMackin if the District had the authority to proceed in this manner. Mr. McMackin replied in the affirmative and advised that if the Board did not desire to get too complex about this issue, then it should not be too expensive.

Mr. Hake asked Mr. Ward which areas would be covered in the Phase VIII and Phase IX loans. Mr. Ward advised that a map of these areas had been included in the Agenda Package and the Phase VIII area is the continuation of the Oakmont Subdivision, which extends along Oakmont Parkway and Greentree Drive and ties into the future Pelican Bay Boulevard and Phase IX extends from the end of Interlachen north to just north of Bay Colony Drive. Mr. Hake asked what areas were covered in the loans currently on the books that are not paid for. Mr. Ward responded that he would have to check the files to determine what areas were involved in the Phase V and Phase VI loans.

Mr. Hake suggested that the Budget, as it is proposed, includes the payments and the continuation of the debt service and interest that the District has already incurred, plus an estimate for the additional lighting and for repairs to the existing Street Lighting System. He stated that if the Board approves the Budget as proposed and then creates a Committee to look into what areas are outstanding in way of payments and what areas are to be constructed, then the District could impose a Special Assessment to

cover these areas and the landowners abutting each side would be asked to pay for the Street Lights in these areas, and then what the Board would have done is to create too large a budget. However, he advised that next year there would be excess money in the Budget and, therefore, the Budget could be reduced by the funds received from the Special Assessment and a decrease in taxes would take place in Fiscal Year 1991. He asked Mr. McMackin if this would be a legal possibility. Mr. McMackin responded in the affirmative. Mr. Hake remarked that now that the Board has this information they can look forward to what they want to do and to take their time in doing it and if in the next month or two, the Board makes up their minds to come back and say, "these are the assessments we are looking at" and if they have time to do this, the District could go back to the County very quickly and if they don't, the worst scenario would be that the tax base would stay the same as it is this year and next year there would be a great reduction in the tax base as far as the Street Lighting District is concerned. He suggested that this then would not prolong the Budget and everyone would not be in a panic trying to come up with a bunch of crazy numbers in a short period of time.

Mr. Dunwiddie suggested that the only thing he would like to accomplish is to avoid borrowing money and then having to pay interest on it. Mr. Hake commented that the only way the District should borrow the money was if it were to be paid back within a short period of time, with no prepayment penalty, and suggested if it was paid off after only a few months, the interest would be minimal. He advised this would give the District time to do a proper job.

At this time, Mr. Hake called for further comments on the proposed Budget. Mr. Mudge asked if the Special Assessment would be a Special Assessment that would pay off all of the outstanding loans. Mr. Hake responded in the affirmative and explained that the Special Assessment would cover the new construction as well as the repair work that needs to be performed to the existing system. Mr. Dunwiddie did not feel that the repair work should be allocated in the special assessment as this could not be allocated to just a particular area and suggested it should be considered an expense of the system and written off in one year. Mr. Hake suggested that this is not what he had in mind and that most of the repair work is the result of improper installation and the District has recouped poles from Sterner Lighting for the poles that were shipped to the District which did not meet the specifications of Cor-ten steel and advised that he was still at work on trying to determine where the responsibility may or may not be with the installation of the poles. He advised he had traveled to Orlando last week to meet with Post, Buckley, Schuh & Jernigan, Inc. and he had learned some things that were now in his Street Lighting File and he was hopeful that the largest share of the money for the repairs, if not all of it, would be recouped. He explained that he would be meeting with Mr. McMackin to discuss all of this information and would come back to the Board with a recommendation. He hoped this could be done without getting involved in litigation and was hopeful that this could be talked through by all the parties involved to reach some type of compromise. Mr. Dunwiddie suggested that the District would still have to pay for the repairs. Mr. Hake agreed, however, suggested that borrowing the money was the way to

proceed. Mr. Dunwiddie asked if this issue was separate from the issue of a Special Assessment and the moneys for the repair work would not be recovered from the Special Assessment. Mr. Hake replied in the affirmative.

Mr. Ward reported that he had recently spoken with the Property Appraiser's Office who informed him that the current net appraised value for the Street Lighting District was \$559,000,000, and explained that this was an increase from last year's valuation of \$386,000,000. He added that assuming this assessed value was correct it would drop the millage rate to .2747, thus dropping the bill down to \$82.00 per unit, based on a \$300,000 home.

In response to a question by Mr. Mudge, Mr. Hake offered that the confines of Pelican Bay in its entirety are now included in the Lighting District and were included in the District for the last Fiscal Year.

Following discussion, Mr. Hake called for comments from the Public. There being no questions from the Public, Mr. Mudge moved, seconded by Mr. Holtan and approved unanimously that the Public Hearing be closed.

At this time, Mr. Mudge moved, seconded by Mr. Holtan and approved unanimously, the Street Lighting Budget for Fiscal Year 1990, as presented.

Street Lighting Budget Resolution

There being no additional discussion, Mr. Holtan moved, seconded by Mr. Mudge and unanimously approved, the Resolution adopting the Budget and that the President and Secretary be authorized to sign the Resolution.

DISCUSSION OF DISTRICT'S PLAN REVIEW PROCEDURE AND SUBMITTAL MANUAL

Mr. Mudge advised that he thought the Manual was a fine improvement over the previous manual and it reflected most of the changes the Board has been discussing over the past few meetings.

During ensuing discussion, the Board concurred that the following amendments to made to the manual:

Page II-2, Item S. - The definition of a Project Engineer be improved upon.

Page III-3 - The second paragraph of the page be expanded to outline that the Developer's Engineer must provide the District with a detailed cost estimate as to what the project will cost and the District will then use this figure as its base in determining the amount of the performance guarantee.

Page III-3, Item iii - In the fifth line of the paragraph, the word "Director" be amended to "District".

Page III-9 - The last line of the page be amended to read, "As defined by County Ordinance, all exotic vegetation shall be removed from the project".

Page III-10, Item 4 - In the sixth line the word "District" be added before Engineer and in the eighth line the word "staff" be inserted after District.

Page IV-3, Item 2(a) - In the last line of the last paragraph, the word, "bituminous" be amended to "bitumastic" and the one (1) mil thickness requirement be reviewed as it was felt this was too thin.

Page IV-4, Item 3(b) - In the fourth line the word, "construction" be amended to "installation".

Page IV-7, Item d(3) - The last sentence be amended to read that, "Samples shall be taken by a Certified Laboratory for analysis."

Page IV-8, Item B - It was decided that the District should make it mandatory to install sensory devices and make them part of the irrigation system. Mr. Hake suggested that for irrigation systems which are already installed, information should be sent out by

District staff suggesting the installation of a sensory devices, along with a price list and any other beneficial information.

Page IV-9, Item C - It decided that the language in this section was ambiguous and that it should be reviewed by Mr. Ward and the District's Engineer to arrive at some appropriate language for this section. Mr. Dunwiddie suggested one thought would be to add that it is the District's intention that the maximum water application be 0.25 inch per day and the system shall be designed within this maximum and that the developer must show the District how they will accomplish this.

Page IV-14, Item C - Mr. Dunwiddie asked whether there were any lakes in Pelican Bay that did not meet the criteria outlined in this section. Mr. Means responded in the affirmative and explained that this criteria was requested by the Conservation Advisory Committee.

Page IV-16, Item 2(b) - This paragraph shall be reviewed by District staff and the District's Engineer and reworded to make it sound less ambiguous.

Page IV-17, Item 3 - This paragraph shall read as follows: "No improvements other than grading and landscape improvements shall be allowed with District drainage easements. All proposed grading and landscaping improvements shall be shown on the site and/or landscaping plan and shall be approved by the District prior to construction.

It was further decided that Mr. Ward would furnish copies of letters written by him approving the plans which had been submitted to the District for review and he and Mr. McMackin would work together to prepare a form letter, which could be used in the future, relative to all the plans and specifications that are reviewed. A disclaimer was to be added to the letter to protect the District.

Mr. Dunwiddie asked whether WMBS&P has checked all the lakes that are being constructed on the new Golf Course to see whether the grades are correct before they are filled with water. Mr. Means advised that WMBS&P will review the cross-sections of the lakes after they are constructed by sounding.

There being no further discussion, Mr. Dunwiddie moved, seconded by Mr. Mudge and unanimously approved, the Site Development & Plan Submittal Manual, dated May 1989, as amended in accordance with the suggestions previously outlined.

Mr. Ward wished to thank the members of the Conservation Advisory Committee for all their time and effort in helping to revise this Manual.

ENGINEER'S REPORT

Change Order No. One (1) to Mitchell & Stark's Contract for Weir in Bay Colony

Mr. Hake reported that a copy of the Agreement with Westinghouse Communities of Naples, Inc. regarding Lake Six (6), System IV, dated February 14, 1983, setting forth the District's obligations with regard to the construction of future Water Management facilities, had been included in the Agenda Package. He advised that the copy of the Agreement answered all the questions he had and, thus, he recommended approval of the Change Order with Mitchell & Stark.

There being no further discussion, Mr. Hake moved, seconded by Mr. Holtan and approved unanimously, Change Order No. One (1) to Mitchell & Stark Construction Company, in the amount of +\$16,000, for construction of the weir in Bay Colony (Contract D-32).

Work Authorization from Wilson, Miller, Barton, Soll & Peek, Inc. for Phase IIIB Utility Site Modifications

Mr. Steve Means recalled that at the last meeting, the Board had requested WMBS&P to prepare a Work Authorization for the design and bidding services for the addition of an external clarifier and sludge pumping facilities at the Wastewater Treatment Plant. Mr. Means explained that the

external clarifier would consist of a sixty-five (65) foot diameter concrete clarifier which would be approximately fifteen (15) feet tall. Mr. Means outlined in detail the scope of services as outlined in the Work Authorization.

Mr. Means explained that WMBS&P had identified the supply of the mechanical equipment (clarifier mechanism and pumps) as being one of the critical path items and strongly recommended that this equipment be pre-purchased prior to awarding the Contract for the construction of the clarifier.

Under Item 7 of the Work Authorization, Mr. Means suggested that the District independently contract for the geotechnical work, however, offered that WMBS&P would supply the geotechnical firm with the location of the clarifier so they could take the borings. Mr. Peek explained that there is no need for WMBS&P to hire the geotechnical firm, as WMBS&P would have to put a mark-up on the firm's price, thus, it would make more sense for the District to contract directly with the geotechnical firm and upon receipt of the report, WMBS&P would use the information in the report to design the facilities. Mr. Means advised that the geotechnical work should be undertaken immediately, as WMBS&P would need forty-five (45) days after receipt of this information to complete the design of the facilities. In response to a question by Mr. Dunwiddie, Mr. Peek explained that it is always best practice to perform these tests site specific and the amount of the expense to get this done is worth the expense in order to have the test site specific, as in Florida the geology changes and there is no uniform sub-strata.

Mr. Holtan asked Mr. Peek what performance guarantee or warranty is a part of this Work Authorization. Mr. Peek responded that the District would receive the standard design liability warranty from WMBS&P. He explained that what WMBS&P would be designing is a standard of the industry and although it is not a guaranteed product, it is one that is the standard of the industry and is not a test item that hasn't been tried and proven in thousands of installations all over the United States. Mr. McMackin explained that the District would have a warranty of fitness for the intended use. Mr. Peek explained that nothing would be given to the District in writing, however, the District would be receiving a professional design, based upon the standards of practice of the industry for the external clarifier. Mr. Hake explained that the District would be receiving a warranty from the manufacturer for the equipment he supplies and really the Board was looking at the expertise of WMBS&P who really wouldn't want everyone to know that they did a lousy job so they would do the best they could for the District, however, the District would not have a written document that is going to say that under all circumstances, the clarifier is going to work the same day in and day out. Mr. Dunwiddie remarked that all WMBS&P was really guaranteeing was that they would be giving the District a design, in accordance with good practice and the only thing the District could sue WMBS&P for was a design that was not in good practice. Mr. Peek explained that WMBS&P had just gone through an elaborate process with the Board defining the various components that would ultimately need to be put in place at the Utility Site and this particular Work Authorization is for one of those components, the external clarifier

that is a necessary, integral part to get the plant operating up to its design capacity. In addition, the clarifier would meet one of the criteria in the Class I reliability for the future expansion of the plant. He explained that WMBS&P pointed out to the Board at the last meeting, there are other components that will have to be designed and constructed in order to make the plant reach its required ultimate capacity and to meet the requirements of the D.E.R. and, likewise, WMBS&P knows there are still some deficiencies within the plant. Thus, he advised, WMBS&P was not standing before the Board today saying that with this Work Authorization that WMBS&P would be solving all of the problems at the Plant, as they are only solving one problem of many in order to proceed with the expansion of the system.

Mr. Hake stated that he was under the assumption that Mr. Dunwiddie would be meeting with United Industries to see whether or not the Boat Clarifier will work as designed and asked whether the Board was taking for granted that by approving this Work Authorization, the Boat Clarifier is not ever going to work. Mr. Means advised that staff had asked WMBS&P to look at the Boat Clarifier and make a recommendation as to whether the Boat Clarifier, in their opinion, would work through the next build-out, and subsequently, Mr. Ron Orach looked at the Boat Clarifier, talked with the Manufacturer, performed some tests and his conclusion was that he did not feel comfortable saying that the Boat Clarifier will work through the next tourist season. Therefore, it was WMBS&P's recommendation that the District proceed with the construction of an external clarifier and in their opinion the external clarifier would solve the problems through the next tourist season, plus in light of the new D.E.R. rules, satisfy future

Class I reliability the District will need to comply with. Mr. Means explained that, in the mean time, WMBS&P is still looking at the Boat Clarifier and just because the external clarifier is designed, does not mean that it needs to be built, however, he advised that the District needs to get something on line by the next season. Mr. Dunwiddie commented that he supports the external clarifier and felt the District needed to proceed with this to comply with the new D.E.R. regulations for redundancy in the system and to insure that if the District has problems with the Boat Clarifier, the external clarifier would help meet the District's obligations. He also approved of the external clarifier because when the District expands into the next Phase, it is not yet known whether the District will expand by building another ditch and another Boat Clarifier or whether it will expand by building another ditch and two additional external clarifiers; thus, even if the District builds another ditch and another Boat Clarifier, the District will still need the additional clarifier to meet the redundancy requirements in accordance with D.E.R. rules.

Mr. Hake asked Mr. Means the total anticipated cost of the external clarifier. Mr. Peek advised that since the last meeting, Mr. Orach had completed a total cost estimate and his total estimated cost for the external clarifier was \$460,000, excluding the engineering design fees. Mr. Orach explained that he had recently met with a Contractor who builds treatment plants and went through the detailed estimate of all of the components of the clarifier with him to help him arrive at this figures. He further explained for the Board the methods he used to evaluate the total cost of the external clarifier.

Mr. Dunwiddie was of the opinion that the cost for the external clarifier, as well as for the engineering fees, seemed very high and stated that the cost for the external clarifier made the Boat Clarifier look more attractive. However, he suggested the District cannot install two additional Boat Clarifiers.

Mr. Dunwiddie commented that to his knowledge this is the first time anyone has ever tried to tie a conventional clarifier and a Boat Clarifier in parallel and he asked Mr. Orach whether he had talked to United Industries about this to determine whether they had any problems with it. Mr. Orach advised that he had mentioned to them what the District was planning to do and had received no opinion one way or the other. Mr. Dunwiddie advised the Board that Mr. Orach would be visiting United Industries the later part of next week and this is one of the items that he had asked Mr. Orach to talk to United Industries about and he felt any approval the Board gave WMBS&P today should be contingent upon United Industries not seeing any major problems with this concept. Mr. Dunwiddie also asked Mr. Peek whether WMBS&P's Work Authorization with the District contained any provision whereby in the event of litigation between the two parties, the prevailing party would recover, in addition to his damages, the legal fees. He asked Mr. Peek whether he would have any objections to such a stipulation in the Work Authorization. Mr. Peek advised that WMBS&P had signed such Contracts before with the District and therefore he would have no objection.

There being no further discussion, Mr. Dunwiddie moved that the Work Authorization from Wilson, Miller, Barton, Soll & Peek, Inc., in an

amount not to exceed \$54,000.00, for design and bidding services for the addition of an external clarifier and sludge pumping facilities at the Wastewater Treatment Plant be approved, subject to adding language to the Work Authorization stating that in the event of litigation, the prevailing party would recover, in addition to his damages, the legal fees and subject to there being no objection on the part of the manufacturer of the Boat Clarifier to the District installing an external clarifier in parallel and using the same oxidation ditch. Mr. Hake asked Mr. Dunwiddie whether there was any question in his mind that if United Industries said no that he would say no also. Mr. Dunwiddie responded that it would be the Board's decision but he would not want WMBS&P to proceed automatically, as he felt if the Board received a negative response, they should have the opportunity to review the information and decide whether they desired to override any objections by United Industries. Mr. Hake remarked he did not think it wise for Mr. Dunwiddie to waste his time asking United Industries their advice, because, most likely he would not receive a favorable response. Mr. Dunwiddie offered that all he was looking for from United Industries was whether they knew of any practical reasons why this would not work and if they came up with a good reason why it would not work then he did not want to have given automatic authorization to WMBS&P to proceed with the design of the external clarifier. Mr. Hake questioned whether he would get this kind of an answer from United Industries, however, seconded the motion. There being no additional discussion, the motion was unanimously approved.

Water Management System Three

Mr. Peek explained that Water Management System Three generally lies around the Golf Course Club House and to the west and to the east of the Club House and, as a part of the analysis of the new changes to the Golf Course, PBID had asked WCN to review certain water management features that were being affected by the Golf Course. He advised that WMBS&P then went ahead and looked at the entire System Three because there was some background information and flood routings that were not available within the District's records and, therefore, there was not any background information to reference when certain new projects would come on line on undeveloped lands to see how they were going to affect the system. Mr. Peek advised that Mr. Scott Wiggins, a Water Management specialist with WMBS&P, ran all the calculations included in System Three and that after the calculations had been run, WMBS&P had determined there was a problem within the System, in that under the twenty-five year, one day design storm, the Permit issued by the South Florida Water Management District back in the early 1980's had a design water elevation of 9.6 feet and when WMBS&P ran their computer models, based on the current information available, it yielded that the water under the twenty-five year, one day frequency would get up to 11.2 feet, or a foot and a half above what was originally estimated to be the design high water. He remarked that this affected the Willowbrook project in that their internal street elevations are 9.7' to 10.1', however, he advised that the houses are not in danger as the finish floor elevations are 12.0'. However, he commented that several of the streets in Willowbrook and perhaps in several of the other projects

in this system, as well, might have a problem.

He explained that WMBS&P had gone back to try and determine what had occurred that might have caused this problem, however, they were unable to arrive at a specific reason. They believed that somewhere in the calculations that had been done, it had been estimated that one of the basins had an area of about 16 to 17 acres when it truly had an area of 50 acres, thus this area has a deficiency in storage capacity with this System and the System has already been constructed. He advised there is no practical way to increase the storage within the System by building bigger lakes, etc. and, thus, WMBS&P looked to see whether there was a practical way to reduce the impact to the System by transferring some of the impact downstream. He explained that System Three discharges through a set of pipes that go from the west end of the lake behind No. One (1) Tee into a drainage ditch on the south side of the practice tee to a new lake being constructed as part of the Golf Course modifications. Thus, they looked at the existing of pipes and the current plan which calls for a junction box to be installed and to extend the pipes into the new lake to pass the water flow through the system and on out to the berm area. He advised that the modifications to the Golf Course are currently taking place and the pipe is ready to be put into place and when the District found out there was a problem, they had asked the Golf Course contractor to hold up on the installation of the pipe to see if there was some modification that could be made in order to help alleviate the problem. He stated that it appeared that there could be significant relief by adding two additional lines of piping and modifying the weir at the head of pipes, just to the north of

the cart barn so that the District could get the elevation back down to 10.0', which would still leave it about .4' higher than its original design. He advised that a number of other alternatives were looked at to see if there was a less costly way to proceed, however, they could not arrive at any other sufficient, practical solution that would have any significant impact on the elevation in the System. Thus, it was their recommendation to modify the piping system by adding two additional lengths of pipe to a junction box, modify the junction box, and then change the pipe sizes going to the lake. He explained that the District was fortunate in the timing of the Golf Course construction and that WCN had agreed to let their contract be changed to add these two lengths of pipe so that the District's cost would only be the cost of adding the additional two lengths of pipe and changing the weir structure, rather than having to go back in and add the pipe after construction had been completed, which would have been far more costly for the District. WMBS&P estimated that price for these modifications would be approximately \$40,000 versus approximately \$100,000 if construction had been completed.

Mr. Peek stated that he had anticipated a question by the Board as to whether this problem was caused by any of the Golf Course modifications currently being performed and he advised the answer to this question was no, because WMBS&P had run all the calculations on the Golf Course area and they had no affect on the upstream area. Thus, he advised that WMBS&P could unqualifiedly tell the District that the modifications to the Golf Course had no impact on this upstream area.

Mr. Hake asked whether the elevation of Saint Andrews and Sand

Pointe are affected as well. Mr. Peek felt sure they are affected, however, advised that WMBS&P had not yet reviewed these areas. Mr. Hake stated that the developers of these projects used most of their dirt to fill in half the lake and asked why the District should be responsible for somebody going in there and creating another elevation by filling in the half of the lake. Mr. Peek explained that when Willowbrook was constructed, they actually added some storage area with an expansion to the lake. Mr. Ward further explained that, as he recalled, the developer of Willowbrook narrowed the easement, however, expanded the lake in another area and the net result was a slight increase to the storage capacity in the lake rather than a net reduction.

Mr. Dunwiddie commented that if the District did not do anything to correct this problem, these areas might have their streets flooded once every twenty-five years and he asked whether the District had any legal obligation to correct this problem. Mr. McMackin asked Mr. Peek whether at some point the District told the Developers of the projects within this system that if they built their streets at 9.6' that the streets would survive a twenty-five year storm. Mr. Peek commented that he suspected this was the information that had been given to them by the District. Mr. McMackin asked how it came about that the District thought an area within this system was 16 acres when it turned out to be fifty acres. Mr. Peek advised that WMBS&P was unable to determine how this occurred; that they talked to the people who were with Hole, Montes & Associates at the time, as they were a sub-consultant to Post, Buckley, Schuh & Jernigan, Inc., the District's Engineer, and they believed there was a criteria that they used

on the acreage, however, WMBS&P could not tell from the record, how it was changed at some later date. Mr. McMackin asked what damage would occur to the streets if they were flooded. Mr. Peek advised that if they were inundated for a short period of time and no traffic traveled on them while they were inundated, probably very little damage would occur, however, if they were inundated and traffic traveled on them, the base material would become loose and there would be structural breakdown and the surface would come off of the base.

Mr. Holtan suggested that he did not feel the exposure to the District was very great and felt the District should "skip it". Mr. Dunwiddie asked what the time frame was for action being recommended by WMBS&P. Mr. Peek explained that the contractor for the Golf Course has stopped working on this section of pipe and was scheduled to lay the pipe a week ago and as the Golf Course is shut down for forty-five days while this work is being completed, the time frame was very critical.

Mr. Dunwiddie asked Mr. Ward his recommendation. Mr. Ward commented that he had a concern for the people living in Willowbrook and Sand Pointe and any flooding in this area could open the District up for some liability and his other concern was that the District has an obligation under its Permit with the South Florida Water Management District in that the District has built a system to meet certain criteria and this system does not meet this criteria. He personally felt the District should do something to try and minimize the impact on these areas and therefore, agreed with the recommendation of WMBS&P.

Mr. Hake asked Mr. Ward why he hadn't discussed this problem with

PBS&J. Mr. Ward explained that he had just found out about the problem yesterday afternoon and he had not had the time to speak with them. Mr. Hake suggested that WMBS&P go back to PBS&J to try and ascertain what went wrong.

Mr. Dunwiddie asked whether the District would be in violation of the Permit with South Florida Water Management District if they did nothing to correct this problem. Mr. Peek explained that the SFWMD had issued a Permit to the District for water storage which carried with it the design high water elevations and this Permit is based on certain provisions of storage and if the District is not meeting these provisions, then he would presume that the District has a certain obligation under the Permit to notify them that there is a change to the Permit.

Mr. Mudge asked what recourse the District would have against PBS&J. Mr. McMackin explained that if it could be established that the mistake constituted negligence or professional malpractice, the District could make an attempt to recover the \$40,000 or \$100,000 cost from them, excluding the legal cost of recovery, as under Florida law the legal fees are only recoverable if it is by Contract or by Statute.

Mr. Ward advised that he was concerned about the \$40,000 cost and secondly how the District would pay for these modifications and, therefore, had spoken to Mr. Hoegsted regarding the remaining credit that WCN currently has under its existing Agreement with regard to building future management facilities. He explained that there is currently about \$25,000 remaining under this agreement and he had asked WCN whether they would object to the District using the balance of these funds which had been set

aside, to apply towards this additional pipe work and they had verbally agreed that the District could use the funds for this purpose. Thus, this would be somewhat of a help to the District. Mr. Hake asked whether this meant that WCN would give up all rights to the \$25,000 in the future. Mr. Ward responded in the affirmative.

Mr. Dunwiddie commented that he felt the District was somewhat under the gun to do something and if it did not do something now it would cost a lot more money to perform the modifications at a later date and if he understood what everyone had said, if the District does nothing now and informed the SFWMD that it was not going to be doing anything, they would have the right to force the District to do something at the cost of \$100,000 instead of \$40,000. Mr. Peek advised that their best estimate was if that the Golf Course work were not under way it would cost approximately \$100,000 to make the correction, however, he did not know whether the SFWMD could force the District to make a change or correct a mistake and until they addressed the SFWMD with this problem he could not give the Board assurance of the action they might take.

Mr. Hake asked if the District had the legal authority to spend the \$25,000 from the funds set aside for WCN and to then assess the additional expense for the modifications to the property owners in this area. Mr. McMackin responded that he felt the Board was getting special assessment happy. Mr. Hake commented that he was not getting special assessment happy, but he did not wish to spend taxpayers money for somebody's mistake and this is what the Board is constantly confronted with. Mr. Dunwiddie did not feel it was a mistake of any Developer and it

was not a Developer's responsibility, engineering wise, to redo numbers that were run by the District's Engineers and given to them. Mr. Holtan concurred with Mr. Dunwiddie. Mr. Dunwiddie also commented that if the District did nothing then they would be forcing the residents who lived in the affected areas to bear the brunt of a mistake which was made and felt the brunt of the mistake would have to be borne by all the residents of the District.

Mr. Ward commented that his thoughts were that any Board approval today would be sufficient for staff to proceed with these modifications and if the Board approved the modification, he would get together with Mr. Peek, Mr. McMackin and the Contractor to establish the pricing and to insure that however the District pays for this, it is done in such a fashion as to meet the obligations of the Contract with WCN and the District. Mr. Hake asked if there were any bidding requirements for expenditures over \$5,000.00. Mr. Ward advised that there are provisions under the law for fiscal emergencies and if one can show under the provisions that what is going to be done is financially sound, the bidding process can be circumvented. Mr. Hoegsted remarked that the Contract contains unit prices for the pipe and chances were if the District bid these modifications they could not beat the current prices. Mr. Hake asked Mr. Hoegsted if he would make the unit prices privy to the Board. Mr. Hoegsted responded in the affirmative and further remarked that if this problem would have been discovered five years ago, the District would still have had to spend the money and although it might not have been \$40,000 because of inflation, they would have had to put in additional piping and therefore

there would have been some expense on the part of the District.

Following further discussion, Mr. Mudge moved, seconded by Mr. Holtan and approved unanimously that the District proceed with the modifications to System Three (3), subject to using the \$25,000 left in the Agreement for the construction of the Water Management facilities with WCN, with the remainder to be paid for by the District.

Mr. Dunwiddie asked Mr. Peek to find out from PBS&J what they think went wrong and to pass this information on to the Board and to Mr. McMackin for his review.

Discussion of Bridge Crossing at Lake No. Three (3)

Mr. Ed Griffith recalled for the Board that at the last meeting they had requested a presentation by WCN at this meeting, regarding the Bridge Crossing at Lake No. Three in the new Golf Course, as the Board's motion approving the extension of Lake No. 23, was subject to WCN making a further presentation for any structures over or on PBID easements.

Mr. Griffith presented sketches showing two different bridges; one showing the concept of a golf cart crossing underneath the bridge and the second showing a bridge without the golf cart crossing. He explained the grades and elevations and problems that would be involved in each of the concepts.

The Board concurred that, with all due respect to the Conservation Advisory Committee's request that the cart path should be under the Bridge, sometimes the Committee gets confused as to the District's objectives and Mr. Hake was of the opinion that whatever WCN did with respect to the golf cart crossing, they would meet all the County

requirements and it would be as safe as WCN could make it. Mr. Hake thanked Mr. Griffith for his presentation.

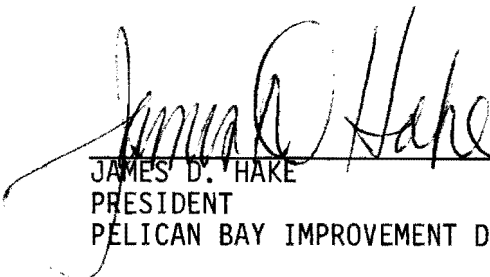
Mr. Griffith remarked that he had recently spoken with Mr. Walt Carter of Collier County who informed him that all the work that Collier County has performed in Clam Pass has been done by County staff and, therefore, Mr. Carter was unable to furnish any cost figures to Mr. Griffith. Mr. Mudge suggested that the District has some money in the Fiscal Year 1989 Water Management Budget, that would be reimbursed by WCN, to spend with regard to Clam Pass and he felt the District should spend this money before the Fiscal Year ended, September 30, 1989.

SUPERVISORS REQUESTS

Mr. Mudge asked if something was supposed to be put together on how to evaluate a special assessment. Mr. Hake suggested that Mr. Mudge take a look at this matter and that he get someone to help him that was not a member of the Board. It was ultimately decided that Mr. Ward and Mr. Mudge would work together on this matter.

ADJOURNMENT

There being no further business to come before the Board at this time, Mr. Hake moved, seconded by Mr. Mudge and approved unanimously that the meeting be adjourned. Time: 5:45 P.M.



JAMES D. HAKE
PRESIDENT
PELICAN BAY IMPROVEMENT DISTRICT

Affidavit of Publication

State of Florida
County of Collier

Before the undersigned authority, personally appeared
Nina Iverson, who on oath says that
he is the Ass't Secretary of the Naples Daily News,
a daily newspaper published by Collier County Publishing
Co., Inc., at Naples, Collier County, Florida, that the
attached copy of advertisement, being a
Notice of Public Hearing

in the matter of May 17, 1989

in the _____ Court, was published in
said newspaper in the issues of
May 2, 9, 1989

Affiant further says that the said Naples Daily News is a newspaper
published by Collier County Publishing Co., Inc., at Naples, in said
Collier County, Florida and that the said newspaper has heretofore
been continuously published in said Collier County, Florida, each day,
and has been entered as second class mail matter at the post office in
Naples, in said Collier County, Florida, for a period of one year next
preceding the first publication of the attached copy of advertisement;
and affiant further says that he has neither paid nor promised any
person, firm or corporation any discount, rebate, commission or
refund for the purpose of securing this advertisement for publication
in the said newspaper.

Nina Iverson

Sworn to and subscribed before me this 9th day
of May, A.D. 1989

Gary L. Moyer
Notary Public

My Commission Expires _____

Notary Public, State of Florida
My Commission Expires Sept. 19, 1989
Bonded thru Troy Fair Insurance Inc.

NOTICE OF PUBLIC HEARING
Notice is hereby given of a meeting of
the Board of Supervisors of the Pelican
Bay Improvement District in the Naples
Federal Savings & Loan Association
Building, 5801 Pelican Bay Boulevard,
7th Floor, Naples, Florida, on Wednes-
day, May 17, 1989 at 3:00 P.M. The pur-
pose of this meeting is to conduct general
business of the district and to hold a pub-
lic hearing for the purpose of soliciting
public response and input on the pro-
posed Fiscal Year 1990 Street Lighting
Budget.
As citizens' input is requested, copies of
the proposed street lighting budget may
be reviewed at the district's office located
at 801 Laurel Oak Drive, Suite 510,
Naples, Florida beginning May 2, 1989.
Additionally, this notice advises that, if a
person decides to appeal any decision
made by the Pelican Bay Improvement
District Board of Supervisors, with re-
spect to any matter considered at this
meeting, he will need a record of the pro-
ceedings, and that, for such purpose, he
may need to ensure that a verbatim
record of the proceedings is made, which
record includes the testimony and evi-
dence upon which the appeal is to be
based. Comments may either be sub-
mitted in written form prior to the sched-
uled meeting or may be heard on the day
and time specified for the public hearing.
**PELICAN BAY IMPROVEMENT
DISTRICT
COLLIER COUNTY, FLORIDA
GARY L. MOYER
DISTRICT MANAGER
May 2, 9** No. 1157

PELICAN BAY IMPROVEMENT DISTRICT
MAY 31, 1989 MINUTES
TAPE NUMBERS & CORRESPONDING AGENDA ITEMS

<u>AGENDA ITEM</u>	<u>NUMBER ON TAPE</u>
1. Roll Call.	0 - 5 (Tape 1, Side A)
2. Public Hearing: A) Fiscal Year 1990 Street Lighting Budget B) Street Lighting Budget Resolution	5 - 282
3. Discussion of District's Plan Review Procedure & Submittal Manual.	282 - 751 (End Tape 1, Side A) 0 - 348 (Tape 1, Side B)
4. Change Order No. One (1) to Mitchell & Stark's Contract for Weir in Bay Colony.	348 - 370
5. Work Authoirzation from WMBS&P for Phase IIIB Utility Site Modifications.	370 - 751 (End Tape 1, Side B) 0 - 174 (Tape 2, Side A)
6. Water Management System Three.	174 - 751 (End Tape 2, Side A) 0 - 134 (Tape 2, Side B)
7. Discussion of Bridge Crossing at Lake No. Three.	134 - 324
8. Supervisor's Requests.	324 - 341
9. Adjournment.	341 - 343