

REPORT
TO
THE BOARD OF COLLIER COUNTY COMMISSIONERS
RELATIVE TO
SUCCESSION TO RIGHTS, DUTIES, FUNCTIONS AND OBLIGATIONS OF THE
PELICAN BAY IMPROVEMENT DISTRICT
BY THE
COLLIER COUNTY BOARD OF COMMISSIONERS
AS PROVIDED IN
CHAPTER 74-462 LAWS OF FLORIDA

PREPARED BY THE COLLIER COUNTY MANAGER'S OFFICE

NOVEMBER 7, 1989

FINDINGS

1. On November 5, 1974 Chapter 74-462, Laws of Florida became the special law creating and governing the Pelican Bay improvement District (PBID).

The law provided the water management, water and sewer facilities and services in the district.

Subsequent amendments to the enabling legislation provided for the expansion of powers to provide additional services related to the financing of recreational, road, school and mosquito control services and facilities.

Currently PBID provides only the following services:

Water, sewer, irrigation water, right of way maintenance, water management and street lighting services.

2. To preserve the economic advantages afforded by regional waste water services the Board of Commissioners required, as indicated by the stated legislative intent of the enabling legislation for PBID, that the water and sewer district be merged with the general purpose government, at the option of the County Commission, at such time as the water and sewer infrastructure was established, viable and functional, the guarantee of the sponsor had expired, and the interest of the bond holders had been met.
3. On February 17, 1989, the Board of Commissioners authorized the engineering firm of Hole, Montes, and Associates to proceed with the development of a study to determine the feasibility of the County succeeding to the rights, duties, functions and obligations of PBID as provided in Chapter 74-462 Laws of Florida.
4. On August 15, 1989 representatives of Hole, Montes and Associates presented the findings of its report concluding that the action of the Board to invoke its succession rights related to the operation and maintenance of PBID's water, sewer and irrigation water system appeared to offer substantial long term benefits to the property owners of PBID and the citizens of Collier County, and suggested that the Board of Commissioners continue to explore the potential succession.
5. On October 18, 1989 representatives of the County appeared before the Board of Supervisors of PBID and requested that the Board cooperate with the County in its study of possible succession by the County.
6. On October 24, 1989 the Collier Legislative Delegation held a public hearing for the purpose of considering Legislative amendments by PBID to eliminate the succession powers of the Board of County Commissioners from law.

At the hearing, State Senator Fred Dudley offered a substitute proposal which would require the County to comply with Sections (4) and (5) of Section 190.046 Florida Statutes in the execution of its succession powers to PBID.

7. On October 31, 1989 the Board of County Commissioners issued Resolution # 89-341 concluding that the legislative proposals offered by Pelican Bay and Senator Dudley were not in the best interest of the citizens of Collier County.
8. On November 3, 1989 the Board of County Commissioners received a letter from Senator Fred Dudley critical of the Board's opposition to his proposal and advising the Board of his intent to file the proposed legislation.
9. On November 3, 1989, representatives of the County staff and Hole, Montes and Associates traveled to the headquarters of PBID to examine the public records of the district to complete its assessment of the feasibility of the County succeeding to the rights, duties, functions, and obligation of PBID as provided in Chapter 74-462.

Upon completion of their analysis, the study team presented its findings to the County Manager's office, finding that significant opportunities exist to enhance the efficiency, reliability and cost effectiveness of the services provided by PBID as a result of the County's succession to the rights, duties, functions and obligations of PBID as provided in Chapter 74-462.

CONCLUSION

Based upon the Record of Fact, staff has reached the following conclusion:

1. The amendments proposed to Chapter 74-462 Laws of Florida as proposed to the Board of Supervisors of the Pelican Bay Improvement District seek to undo the protective measures which were created through the wisdom of prior Boards of County Commissioners to prevent actions on the part of PBID that would serve the special interest of PBID at the expense of the interest of the community as a whole and serve to erode the concept of general purpose government rendered under Home Rule Law.
2. Actions on the part of PBID to issue additional Utility Bonds for the purpose of making improvements to the PBID's water and sewer and irrigation water systems would serve to perpetuate the inefficiencies of the PBID system and do irreparable violence and harm to the economic advantages of regional water and sewer services that occur to the benefit of all the customers of the regional system.

3. The County can provide water management, right of way maintenance and street lighting services to the property owners of the district of equal quality, as, if not more efficiently, and as, if not, more cost effectively than that now provided by PBID.
4. The County can provide water, sewer and irrigation water services of better quality, more efficiently, and more cost effective than water, sewer, and irrigation water services now provided by PBID.
5. The County can provide for future expansion, future improvements, and future operations and maintenance of the water, sewer, and irrigation water services of better quality, more efficiently, and more cost effectively than that which can be provided by PBID.
6. Actions on the part of the PBID Board of Supervisors to promote the special interest of the district at the expense of the general public, to erode the concept of general purpose home rule government, and to limit the economies and efficiencies afforded to the customers of PBID through regional water, sewer, and irrigation water systems creates a condition in which the Board of County Commissioners has available to it no choice but to exercise its rights to succeed to the rights, duties, functions and obligations of PBID as provided in Chapter 74-462 Law of Florida.

RECOMMENDATIONS

In consideration of facts contained herein, staff recommends the following:

1. The Board of County Commissioners should instruct that staff to prepare in conjunction with legal counsel, a proposed resolution necessary to succeed to the powers, rights, duties, functions, and obligations of PBID as provided in Chapter 74-462 Laws of Florida.
2. The resolution should provide for the following:
 - a. That all contracts of the district for supplies, services, and other things of value shall remain in force until such time that the Board of County Commissioners shall determine otherwise appropriate.
 - b. That all PBID employees shall remain in the employ of the district until such time as the Board of County Commissioners shall determine otherwise appropriate.
 - c. That all fees, charges, assessments, taxes and other rates of revenue shall remain unchanged until the Board of County Commissioners shall otherwise determine appropriate.
 - d. Any and all activities related to the issuance of long term obligation notes and bonds are suspended until such time as the Board of County Commissioners shall otherwise determine appropriate.

Hole, Montes & Associates, Inc.
Engineers / Planners / Surveyors

M E M O R A N D U M

DATE: November 7, 1989

MEMO TO: Ron McLemore

FROM: Hole, Montes & Associates, Inc.
Thomas M. Taylor

SUBJECT: Supplemental Review of PBID
HMA File No. 88.59

In response to a request by the County Manager's office, HMA participated in a review of additional information obtained from the files of the Pelican Bay Improvement District and Florida Department of Environmental Regulation. The review also included discussions with the PBID Assistant District Manager. The PBID management and Board of Supervisors extended an opportunity to obtain and review all available information related to the services of PBID. A review of PBID files was performed by representatives of the County Utilities Division, Transportation Department, Water Management Department and our office.

Emphasis was placed on evaluation of the County's ability or inability to provide the same services currently provided by PBID. Particular importance was given to determination of the County's ability to provide the services 1) as efficiently, 2) of equal or higher quality and 3) at equal or less cost, than PBID.

As noted in our original Feasibility Study, PBID provides water management, right-of-way maintenance, street lighting, potable water, wastewater and irrigation water services to the Pelican Bay development. A brief summary of the findings of this additional analysis performed by our office and County staff is outlined in the following paragraphs.

A. Water Management & Right-of-Way Maintenance

- Discussions with the Assistant District Manager (Jim Ward) indicates that no further major capital improvements are anticipated by PBID. Major operating expenses are lake and swale maintenance performed in-house, payroll and administration.

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- Right-of-way maintenance essentially consists of landscaping and irrigation. These services are contracted with an outside vendor and administered by PBID.
- Roadways have been either dedicated to Collier County, or are private and maintained by homeowners associations. PBID retains no roadway responsibilities.
- The FY 1990 Budget provides for approximately \$764,000 of operating expenses and \$855,000 of debt service (mostly related to outstanding bond debt).
- The major source of revenue is a tax levy, as an annual assessment to Pelican Bay property owners. Other revenues needed to meet expenses are 1) cash carry forward and 2) interest income.

B. Street Lighting

- The Pelican Bay Street Lighting District was created by Collier County, and is administered by PBID per agreement with Collier County.
- Design services are provided by outside consultant and construction is obtained through competitive bidding.
- Street lighting maintenance and repair is contracted to outside vendor and administered by PBID.
- The FY 1990 Budget provides for approximately \$200,000 in expenses.
- Revenues are obtained via annual assessment to Pelican Bay property owners.

C. Potable Water

- Bulk potable water is currently obtained from the City of Naples.

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- Per agreement with PBID, Collier County will provide bulk water upon completion of on-going County system improvements and transfer of system components from the City to County.
- PBID appears to distribute potable water effectively and efficiently; however, it will remain dependent on an outside entity (County) to develop raw water supplies and treatment.

D. Wastewater

- PBID currently operates a 1.0 MGD treatment facility that during peak season appears to operate above rated capacity.
- Advertisement for construction bids on a 65' diameter clarifier appears to be a stop-gap to handle hydraulic overloading of the existing "boat" clarifier.
- Preliminary design of the proposed treatment plant expansion was only recently authorized and completion of the expansion would not likely occur in less than 18 to 24 months.
- The existing treatment facility continues to operate under an extended "construction permit" until January 28, 1990. (Presumably due to operating start-up problems).
- The PBID treatment facility has had a history of operational problems and illegal discharges as documented by FDER and residents of Pelican Bay.
- FDER's Enforcement Tracking system indicates recurring and frequent problems, which ultimately resulted in a Consent Order and \$19,390 fine.
- PBID's Phase III Facilities Expansion Report, as prepared by its consultants, recommended a plant expansion scenario consistent with FDER's Class 1 Reliability requirements needed for golf course and residential effluent irrigation. The PBID analysis provided at the Legislative Delegation Hearing appears inconsistent with the Phase III

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Report recommendations and, in fact, appears inconsistent with Class I Reliability criteria.

- Collier County's North Regional Wastewater Treatment Plant expansion is underway. Based on discussion with Utilities Division staff, we believe a fast-track program could result in service to Pelican Bay within 12 months.
- Collier County's facilities will meet all Class I Reliability criteria.

E. Irrigation

- PBID appears to effectively and efficiently provide irrigation water to PBID customers.
- Irrigation water is provided through blending of raw water from a wellfield located north of Immokalee Road and effluent from the PBID wastewater treatment facility.
- Projections indicate a significant shortfall of irrigation water will be realized in the mid to late 1990's. It appears no defined plan has been identified by PBID, except possible potable water purchase for irrigation or wellfield expansion.
- It is our belief that Collier County could provide supplemental effluent at some time in the future, although no excess effluent currently exists.

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SUMMARY AND CONCLUSIONS

Review of PBID files and information obtained since completion of the Feasibility Study has not resulted in a need to revise major components of the conclusions and recommendations contained therein.

With regard to water management, right-of-way maintenance and street lighting, we reviewed the data and discussed the ability of Collier County to provide these services. Specifically questioned was the ability to meet three (3) key factors; 1) efficiency, 2) quality and 3) cost. As a result, the County staff and our firm believe:

- 1) Collier County can provide these services as efficiently as PBID;
- 2) Collier County can provide an equal or higher quality service. All functions except lake and swale maintenance and administration are performed by outside vendors or consultants;
- 3) Collier County can provide the services for equal or possibly less costs due to savings in administration. Funding mechanisms for improvements, operation and maintenance could remain as is currently practiced.

The water, wastewater and irrigation issues are more complex. Since water will be supplied by Collier County under either PBID or County control, there is likely minimal difference in efficiency or quality.

The irrigation system is recognized as having a future supply shortfall. The short-range (3 to 5 year) result of County controlled service would likely result in minimal difference in efficiency or quality of service. If PBID fails to correct overloading of the wastewater plants, their quality of irrigation service could greatly deteriorate. Over a longer term, we believe Collier County will be able to provide a more efficient and higher quality service with supplemental effluent from the North Regional Wastewater Treatment Plant.

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Contrary to the PBID Board of Supervisors statement in the Legislative Delegation Hearing, PBID was unable to provide us or County staff the comparative rate analysis and commodity rates proposed for Pelican Bay over the next several years.

The wastewater system is a major component of the analysis. With specific regard to the three (3) criteria, we offer the following:

- 1) It is our and County staff's believe that Collier County can provide service quicker and with less complex improvements than those proposed by PBID. The concept of regionalization lends itself to efficiency of operations and maintenance.
- 2) Collier County has consistently demonstrated an ability to treat and provide high quality effluent for irrigation. The current expansion provides and additional 2 MGD capacity for new development in the area. PBID has historically had operating problems (since early 1987) and according to engineering reports and other documentation continues to have problems. PBID's consultants questioned whether the selected alternative is permittable through FDER. We and the County staff believe Collier County can provide a higher quality of service than PBID.
- 3) We and the County staff remain convinced that Collier County can construct needed system improvements to serve Pelican Bay for much less cost than PBID's proposed improvements.

Upon completion of this additional data review and discussions with County staff, it is our opinion that Collier County has the ability to operate and maintain the utility systems at least as cost effectively and possibly at less cost than PBID.

MEMORANDUM

DATE: November 07, 1989
TO: Ron McLemore, Assistant County Manager
FROM: Fred Bloetscher, Assistant Utilities Administrator *F*
SUBJECT: Utility Evaluation of PBID

Per your request, attached hereto please find the Utility Staff Evaluation of the Provision of Service to PBID. If you have any questions, please feel free to contact me.

UTILITY EVALUATION

The evaluation of the utility system at Pelican Bay Improvement District (henceforth PBID) has been performed in two steps, the first being the Hole, Montes and Associates (henceforth HMA) feasibility analysis, and subsequently by further staff evaluation of the important considerations noted in the HMA feasibility analysis. Per a resolution of the Collier County Board of County Commissioners, staff included in their analysis a focus on the three concepts of providing service as efficiently as PBID, with the same or higher quality of service as currently provided by PBID (or in the recent past), and at a cost at or less than that currently or projected to be charged by PBID in the near future. It is the staff's opinion that these services can be provided by the Collier County Water and Sewer District, and that provision easily meeting these criteria.

EFFICIENCY

Efficiency in the provision of water and sewer service is a difficult task to define. Normally cost is a part of an analysis for efficiency, as is the evaluation of the system's ability to deliver services at the time when they are required, and having capacity available to provide these services without adversely impacting the remaining customers. Since cost is one of the three criteria to be discussed, it will be discussed separately.

With regard to efficiency, PBID currently purchases bulk water from the City of Naples. The Collier County Water and Sewer District is contractually obligated to take over this bulk service arrangement upon the completion of the necessary line work and some transfer of facilities with the City of Naples. A new water treatment plant is in the planning stages to increase the amount of water that the Collier County Water and Sewer District can provide to its customers, both within PBID and elsewhere. As such there is no question that service would be available. Likewise the Collier County Water and Sewer District is in the midst of construction of an addition to the North County Regional Wastewater Treatment Plant, which should be completed in mid-1990. This facility will allow the County to accept the excess flows generated by PBID, with the subsequent expansion taking the remaining PBID sewage, thereby allowing phase-out of that facility. The additional effluent generated by the County will be returned to PBID to address their projected irrigation water shortfall. The facilities to transmit the sewage to the North County facility and return the irrigation water are in the master planning stage. This scenario will allow the County to absorb the additional sewage generated by PBID in already anticipated expansions, and will allow a block of sewage to come into the facilities early in their lives, thereby allowing for a better plant operation. Plants that have very low loadings still require the same amount of treatment and personnel, so that having sewage to send to the plant will provide a more efficient operation. It should be noted that PBID is currently over capacity at their wastewater plant and it will be at least two (2)

years before PBID can provide the additional capacity required. Thus the County sewer system meets the efficiency criteria as the water system does, while PBID's sewer system does not have the ability to meet the needs at this time.

QUALITY OF SERVICE

Quality of service will be the next criteria reviewed. Both the City of Naples and the Collier County Water and Sewer District provide their customers with high quality treated water in conformance with all applicable state and federal treatment regulations, and at pressures exceeding state mandated minimums. As such, the quality of water service to PBID customers will not change.

However, the quality of sewer service should improve. The quality of service provided by PBID over the past three years is suspect. Despite a statement by the Pelican Bay Property Owners Association President, Mr. Fred Hardt that the people in Pelican Bay were satisfied with the service they were receiving, a review of the Department of Environmental Regulation (henceforth DER) files indicate that Mr. Hardt's law firm played an integral part in DER forcing PBID into a consent order and fines in August of 1987. The DER files document that Mr. Hardt's firm filed three letters with DER (4/15/87, 6/1/87 and 8/5/87) in 1987. The latter resulting in the PBID consent order and a fine of \$19,390 for unlawful discharges and improper operation of the plant. DER was set to fine the Chief Operator personally, but this was later waived as a part of the consent order. The situation appears not to have improved over the next year as Mr. Hardt's firm filed two more letters (4/13/88 and 11/16/88) complaining about the operation of the plant.

An August 2, 1988 letter from Post, Buckley, Schuh and Jernigan (henceforth PBSJ) further indicates the situation had not improved much as demonstrated by the following:

- 1) The operator could not cite any instance where the clarifier walls or ports were cleaned;
- 2) The operator on duty could not cite the last time when the effluent wier was cleaned;
- 3) The operator on duty could not cite the last time the filters were cleared with a chlorine solution to kill algae;
- 4) and the engineers noted that the clarifier effluent wier was full of debris, rags and algae.

These are normal, routine maintenance items, necessary for a high quality treatment to be obtained. The PBSJ report discusses numerous other operational problems at the plant.

As noted previously, the existing wastewater plant is over capacity. A February 1989 Wilson, Miller, Barton Soll and Peek (henceforth WM) report in irrigation noted that the wastewater plant "has units which appear to be hydraulically overloaded due to flow rates." PBID's own operating reports indicated they have had regular peak, season flows in excess of the plant capacity.

It is the Collier County Water and Sewer District staff's opinion that the boat clarifier system currently in place does appear to create some problems when the plant is overloaded. However, PBID's own legal counsel, when the discussion arose concerning litigation with the engineers on the boat clarifier, recommended that they not pursue litigation because "the attitudes of the current personnel would be detrimental to the case." (paraphrased) PBSJ noted in their report that the system was not run in conformance with the guidelines they had set out in design due to the staff's refusal to do so. These problems continue to this day as the facility has never received its final operating permit and is instead operating on an extension of the original construction permit. Yet with an acknowledged problem on the wastewater side, the PBID Board of Supervisor's did not accept the recommendation of the engineers for the Phase III Facilities Expansion Report. (Staff asked Mr. Ward if the Phase III report we had was the final version and we were told it was.) The Engineers presented eight alternatives, the three lowest cost of which they did not recommend for permitting and other reasons. They recommended a new oxidation ditch and two new clarifiers as follows (my clarifying comments in parentheses):

Balancing the costs, Florida Department of Environmental Regulation reliability requirements, the proven technology of the external clarifier, and the need to finally resolve the boat clarifier's viability in the PBID wastewater treatment plant, it is recommended that: 1) preliminary design be authorized on Alternative 3A (new oxidation ditch and external clarifiers) and 2) adjustments to existing oxidation ditch activated sludge be made followed by a hydraulic stress test of the existing boat. Based on the results of 2) a final decision can be made early enough in the preliminary design phase to definitely accept or reject the existing boat clarifier and the incorporation of a second boat clarifier into the design.

Instead of following the recommendation, the PBID Board of Supervisors chose the option for which Wilson Miller had this to say:

The results of these analyses show that the apparent least costly alternative would be 4A: add three external clarifiers, use the existing digester, but no additional oxidation ditch is added. At present DER has ruled that a second oxidation ditch MUST be provided to give class 1 reliability. Although this alternative is \$283,000 less than the next higher alternative (\$547,000 less than the recommended one), it appears that this alternative will not be permitted by DER. However PBID could request a variance to this DER requirement from the State Environmental Regulatory Commission or the rule may change. This petition for a variance would most likely be costly in both time and money and may not even be granted.

The choice of an alternative not likely to be permitted for class 1 reliability (thereby allowing the effluent to be used as irrigation water for golf courses and homes) is baffling, especially in light of an identified shortfall in irrigation water within the next ten year in that same report. The HMA document projected this shortfall could reach 3 million gallons per day in the peak times. This leads to another interesting recommendation - that of supplementing the shortfall with potable water (with no accompanying apparent rate analysis or change).

In contrast to this myriad of problems, over the same three (3) years, the North County Regional Wastewater facility has operated with only the normal, routine, minimum number of problems, with absolutely no threat of fines, consent orders or charges of incompetent operations. In addition the facility has been operating the irrigation water program in conformance with their current operating permit, and is making improvements to the facility during this expansion to address both capacity needs and more stringent future regulations. Upon completion of the expansion, the facility will be a Class 1 permitted facility, as will the new South County Regional Wastewater facility that will replace the other three plants currently operated by Collier County. Given all this, there should be no question that Collier County provides a better quality service.

CURRENT COST OF SERVICE

Representatives of the operating, financial, and administrative staff of the Collier County Utilities Division have reviewed the PBID operating budgets, rate schedules and debt service requirements. It is staff's opinion that the PBID utility system could be administered by Collier County with no changes in the current PBID rate schedule. There would therefore be no negative impact of PBID customers from a cost standpoint.

FUTURE COST OF SERVICE

One of PBID's main arguments is that the upcoming facilities will be the only ones needed to complete build-out. Yet as shown previously, these proposed facilities may not be permitable, thereby requiring the addition of more facilities to achieve better treatment. It is the opinion of the County utilities staff that with these additional requirements and changing regulations, PBID may come to the County for help, which may place an undue burden on other county customers at that time.

The HMA analysis was of long term revenue projections conducted over a number of months during which a number of requests were made to PBID for information, some of which was provided, the remainder of which either does not exist or was not provided in a timely manner. As such, the HMA analysis made a number of assumptions on customer costs, revenues and expenditures. There is NO analysis of the commodity rates beyond what Mr. Ward termed as work on a scratch pad, which he could not produce for County staff to look at. The "fixed operating costs" shown in the "PBID Proposed Connection Fee" report do not represent

commodity charges. The current operating budget is nearly \$1.35 million in the current year. The operating budget and commodity charges do not correspond. As stated the Collier County Water and Sewer District staff feels that they can easily operate the system at or below the current PBID rates in the future, since they would not incur many of the same fees and administrative costs that PBID currently pays (savings up to \$420,000 per year). The County would also not incur the large capital outlays necessary for PBID to spend in the next two (2) years since the sewage flows from PBID would be gradually transmitted to the North County Regional Wastewater Plant as the currently planned expansions are completed.

Finally, with regard to the complaint of current rate comparisons, this stems from the HMA analysis. This issue needs to be clarified in that the Collier County Water and Sewer District has NO irrigation rate for residential users. In contrast PBID has a substantial one, which makes up over one half of their customer's regular monthly water and sewer bills. It was felt that since the County irrigation rate was in the works and not finalized, that showing a lesser rate that could not be substantiated would bring undue criticism. A disclaimer was made in the feasibility analysis, and the same rates were used for both PBID and the County to generate further information. PBID charges a portion of their wastewater treatment costs in their irrigation rate, whereas, the County includes the cost of all wastewater treatment in the sewer rates. As such when the two rates are compared, the County comes out higher. Likewise the revenues generated come out higher. These are not realistic numbers, but ones for convenience in performing the original analysis. The Utilities staff feels that the irrigation rate analysis, when completed, will show that the fixed, debt service rate to be substantially less than PBID's, and the operating costs to be about the same.

Thus the Utilities staff feels confident that the system can be operated at the current total rates charged by PBID, and we foresee no need for any increases in the rates charged to PBID customers in the near future.

SUMMARY

In summary, the staff of the Collier County Water and Sewer District feel that the PBID system can be operated at least as efficiently as it is now, with better quality service, and at no added costs. Staff will continue to work on cost figures for all the operations, especially those variable ones which need to be projected, in an effort to better define these future costs to the County.

HARDT & STEWART
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NAPLES, FLORIDA 33963

TELEPHONE
(813) 598-2900

FREDERICK R. HARDT, J.D.
FLA. & WIS. BARS
JOSEPH D. STEWART, J.D., C.P.A.
FLA. BAR

April 15, 1987

Mr. Miles Scofield
Chairman
Pelican Bay Improvement District
Suite 510, Sun Bank Building
801 Laurel Oak Drive
Naples, Florida 33963

COPY

Re: Sewage Plant Odors

Dear Mr. Scofield:

Our firm has been retained by Mr. and Mrs. Curtis L. Ivey, who reside at 700 Buttonbush Lane in Pelican Bay Woods, with respect to the stench that has been emanating from the sewage plant operated by the Pelican Bay Improvement District. Over the past several weeks, the stench has been so bad that the Iveys are unable to sit on their lanai or on their swimming pool deck. They have been forced to keep the doors and windows of their home closed. The stench has been an embarrassment when the Iveys have attempted to entertain in their home. On at least one occasion, Mrs. Ivey has become sick from the stench.

As I am sure you are aware, the odors caused by the sewer treatment plant have been a problem for several years, but it seems that this year the problem is out of control or, at the very least, has been poorly managed by the Pelican Bay Improvement District.

We trust that your board is well aware of the numerous complaints which have been voiced by the Pelican Bay residents who live in Chateaumere, Hyde Park, and other residential areas within close proximity to the sewer plant. According to the minutes of the Pelican Bay Improvement District meeting held on March 18, 1987, the existence of the odor problem is acknowledged by Mr. Holtan and Mr. Peek (pages 2044 - 2047). Furthermore, Mr. Hake stated at this meeting that "the odor problem had not improved to the point that if he were living near the site he would be happy."

Mr. Miles Scofield
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There seems little doubt that the odor problem and the operation of the sewer plant would be declared by a court as a legal nuisance. In addition, the odors constitute pollution which is defined in §403.031(7), Florida Statutes as the:

"Presence in outdoor atmosphere of any man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of air in quantities or levels which are or may be potentially harmful or injurious to human health or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation."

The same definition of pollution is found in Rule 17-6.030(62), Florida Administrative Code.

Section 403.161, Florida Statutes, prohibits the creation of pollution causing harm or injury to human health, welfare or property. Rule 17-6.070(2), Florida Administrative Code, provides that wastewater treatment plants:

"shall be designed and located on the site so as to minimize adverse effects resulting from odors, noise, aerosol drift and lighting. All such design control measures shall be described in the engineering report. The permittee shall give reasonable assurance that the treatment plant or modifications to an existing plant shall not cause odor, noise, aerosol drift or lighting in such amounts or at such levels that they adversely affect neighboring residents, in commercial or residential areas, so as to be potentially harmful or injurious to human health or welfare or unreasonably interfere with the enjoyment of life or property, including outdoor recreation." (emphasis added).

Rule 17-6.110(3) provides that:

"All equipment necessary for the treatment and disposal of domestic wastewater shall be maintained, at a minimum, so as to function as intended. In the event odor, noise, aerosol drift, or lighting adversely affect neighboring developed areas . . . corrective action (which may include modification of the treatment plant) shall be taken by the permittee. Other corrective action may be required to ensure compliance with rules of the department." (emphasis added).

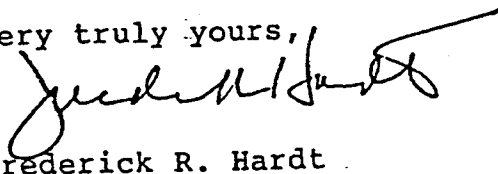
Mr. Miles Scofield
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Section 403.412, Florida Statutes, also authorizes any citizen to maintain an action for injunctive relief against any governmental agency to enjoin the violation of any laws, rules or regulations for the protection of air.

Mr. and Mrs. Ivey demand that the Pelican Bay Improvement District take immediate corrective action (as opposed to Mr. Peek's recommendation at your March 18 meeting to only "monitor the situation" and if the odor reoccurs to "then explore some different options"). The fact is the odor problems still exists and it is worse than ever. We would appreciate your written response within the next ten days as to what affirmative action the Pelican Bay Improvement District is taking to correct this problem.

If the current situation is not immediately resolved, Mr. and Mrs. Ivey will vigorously pursue their administrative, legal and equitable remedies.

Very truly yours,



Frederick R. Hardt

FRH:ww

cc: Ms. Sue E. MacAlister
Ms. Sylvia A. Moll
Mr. James D. Hake
Mr. Ramer B. Holtan
Mr. Gary L. Moyer
Mr. Byron Koste
Mr. Curtis L. Ivey
Department of Environmental Regulation ✓

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(813) 598-2900

August 5, 1987

RECEIVED

AUG 07 1987

D.E.R. SO. FLA. DISTRICT

Mr. Gordon Romies
Department of Environmental Regulation
2269 Bay Street
Fort Myers, Florida 33901

Re: Pelican Bay Improvement District (PBID);
Sewage Plant Odors

Dear Mr. Romies:

I am enclosing a copy of a letter I received from the Pelican Bay Improvement District dated June 15, 1987 in which it is acknowledged that the wastewater treatment plant has operated well in excess of its design capacity. According to Mr. Ward "during the season of this year our average daily capacity flow was 494,000 gpd, with a maximum one day flow of 726,000 gallons." I have previously forwarded to you copies of the minutes of the March 18, 1987 PBID Board Meeting (pages 2043-2047) wherein the PBID engineer, Tom Peek, acknowledged that "after maximum flows were experienced there were some solids from the sewage treatment plant that discharged into the lagoon." In other words, raw sewage is going into the Lagoon when the flows exceed capacity. No wonder my clients, the Iveys, and the other residents near the treatment plant are experiencing these offensive odors.

I am also enclosing the Managers Report from the June 17, 1987 PBID Board Minutes (pages 2174-2177), which I think you will find particularly interesting. Mr. Moyer states at page 2176,

"that during recent inspections by D.E.R. district staff (Mr. Moyer) had been told that any overflow was illegal."

Yet, Mr. Ward, the assistant district manager for PBID, in his letter dated June 15, 1987, brushes this aside by stating:

"we did not believe at that time, operation of the wastewater treatment plant in excess of its design capacity would propose a problem."

Mr. Gordon Romies
August 5, 1987
Page Two

Why are there regulations pertaining to the operations of these wastewater treatment plants if PBID is going to ignore them?

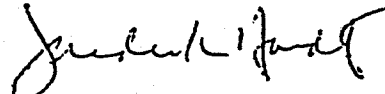
You will note in these same minutes, Mr. Moyer takes the position that PBID is exempt from the 1983 regulations because the permit for the plant was issued in 1979. This position is incorrect. Section 17-6.160, F.A.C., provides that existing wastewater treatment facilities shall provide a written report to D.E.R. within 270 days of the effective date detailing "each appropriate provision of this chapter with which facilities do not comply," and that "if no such report is submitted the facilities would presume to be capable of operating in full compliance." I am not aware of any such "written report" having been filed by PBID. In which case, PBID would not be "grandfathered" as claimed by Mr. Moyer.

Finally, please note that PBID has refused to take any temporary action to resolve the hydrogen sulfide smell. You previously indicated to me this could be corrected rather quickly and cheaply.

We respectfully request that the Department of Environmental Regulation take appropriate enforcement action to insure the compliance of PBID with all applicable rules and regulations as they pertain to the wastewater treatment plant overflows and the odor pollution.

Thank you for your assistance in this matter.

Very truly yours,



Frédéric R. Hardt

FRH:pb
Enclosure

cc: Mr. Curtis L. Ivey, with enclosures
Mr. Gary L. Moyer, with enclosures
Mr. James P. Ward, with enclosures
Mr. Miles Scofield
Ms. Sue E. MacAlister
Ms. Sylvia A. Moll
Mr. James D. Hake
Mr. Ramer B. Holtan

HARDT & STEWART
ATTORNEYS AT LAW
SUITE 705, SUN BANK BUILDING
801 LAUREL OAK DRIVE
NAPLES, FLORIDA 33963

TELEPHONE
(813) 598-2900

FREDERICK R. HARDT, J.D.
FLA. & Wis. BARS
JOSEPH D. STEWART, J.D., C.P.A.
FLA. BAR

April 13, 1988

RECEIVED
APR 18 1988

Mr. Miles B. Scofield
Chairman
Pelican Bay Improvement District
801 Laurel Oak Drive
Suite No. 510
Naples, Florida 33963

D.E.R. FORT MYERS

Re: Odor Problems

Pelican Bay

Dear Mr. Scofield:

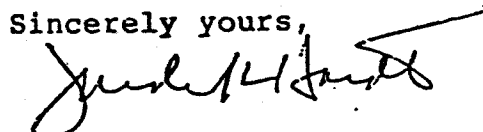
We are in receipt of your letter of March 14, 1988. Your statement that "It is sad to me that Mr. Ivey and Mr. Hart (sic) did not first check with the plant to see what the reasons were" evidences a lack of understanding and concern about the odor problem. You apparently forgot that Mr. Ivey told you on February 28, 1988 that the odor had existed for three (3) days prior to February 28th. You also apparently forgot the excuse you offered that evening for the odor as being "there is not a full shift on in the evening."

We are enclosing the handwritten notes prepared by Mr. Ivey relating to the dates and times the odors were present together with a handwritten note from Mr. Bernon W. Young who resides at Chateaumere concerning the same problem.

If you and the management staff of PBID believe that the odor problem was limited to a thirty minute to one hour period on February 28th, you are sadly mistaken.

Our clients expected more from their elected representative than your statement that it was their job "to check it out!"

Sincerely yours,



Frédéric R. Hardt

FRH:jp
Enclosures

cc: Mr. Curtis Ivey
Mr. William Beich
Mr. Peter Wege
Mr. Graeme Hunter
Mr. Bernon W. Young

Mr. Gordon Romeis, Department
of Environmental Regulation
All PBID Supervisors
Mr. Jack Portman
Mr. James Ward

HARDT & STEWART
ATTORNEYS AT LAW
SUITE 705, SUN BANK BUILDING
801 LAUREL OAK DRIVE
NAPLES, FLORIDA 33963

RECEIVED
NOV 17 1988
D TELEPHONE
(813) 598-2900
SOUTH FLORIDA DISTRICT

FREDERICK R. HARDT, J.D.
BOARD CERTIFIED CIVIL TRIAL LAWYER
FLA. & WIS. BARS

JOSEPH D. STEWART, J.D., C.P.A.
FLA. BAR

November 16, 1988

HAND DELIVERED

Mr. James D. Hake
Pelican Bay Improvement District
801 Laurel Oak Drive, Suite 510
Naples, Florida 33963

Re: Odor Problems/PBID Wastewater Treatment Plant

Dear Mr. Hake:

As you know our firm represents Mr. and Mrs. Curtis L. Ivey with respect to the odor problems from the wastewater treatment plant in Pelican Bay.

You may recall that we were assured by the PBID staff that the new wastewater treatment plant would solve the sewage odor problems. As I am sure you have heard, it has not. On the evening of Friday, October 21, 1988 the stench was particularly offensive during a block party held at the cul de sac of 700 Buttonbush Lane. Since that time, odors from the plant have been clearly noticeable depending upon wind direction and velocity. The residents of Chateaumere will freely attest to the stench when the wind is from the east. What is of particular concern is that the odors have been noticed so early in the "season".

In reviewing the minutes of the last several PBID board meetings, and in conversations I have had with several PBID board members, it is apparent that the new wastewater treatment plant is functioning far below the designed capacity. We understand that although the designed capacity of the plant is 1400 gallons of sewage per minute, the plant is only operating at 600 gallons per minute. Obviously, the odors will continue to get worse as more seasonal residents return to Naples.

We request that the PBID board take immediate action to correct this situation, including but not limited to the following:

1. Retain an "independent" engineer to determine why the plant is not operating to capacity and to recommend a course of action to eliminate or at least minimize the present odor

Mr. James Hake
November 16, 1988
Page 2

pollution. By "independent" we mean an engineer not financially related to Westinghouse Communities of Naples, Inc. or any other developer in Pelican Bay. The engineering firm of Post Buckley should not have been retained to investigate this problem when they were charged with supervising the installation of the plant.

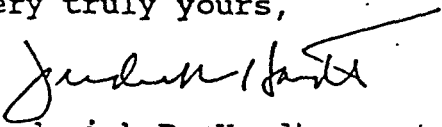
2. Impose a moratorium on all new sewage connections to the wastewater treatment system until such time as the odor pollution problem has been resolved.

3. Commence negotiations as soon as feasible with the City of Naples to have Pelican Bay connected to the City of Naples wastewater treatment system.

We request that the PBID board take this matter up at its next regularly scheduled meeting on November 16, 1988. If a solution to the odor pollution problem is not diligently pursued by the PBID board, our clients will have no choice but to request the Department of Environmental Regulation to take appropriate action under their authority and to commence litigation in the Collier County Circuit Court for appropriate relief, including a court imposed moratorium on further sewer connections to the existing system.

We look forward to your prompt response to this letter.

Very truly yours,


Frederick R. Hardt

FRH/ls

Copies to: Mr. Ramer Holtan
Mr. Russell Mudge
Mr. Walter Potter
Mr. James Dunwiddie
Mr. Curtis Ivey
Mr. William Beich
Mr. Peter Wege
Mr. Graeme Hunter
Mr. Bernon Young
Mr. Jack Portman
Mr. Gordon Romeis, Dept. of Environmental Regulation ✓

NOV 06 1989

MEMORANDUM

COUNTY MANAGER'S OFFICE

TO: Ron McLemore
Assistant County Manager

FROM: John H. Boldt, P.E.,
Water Management Director

RE: Pelican Bay Improvement District
"Water Management and Right-of-Way Analysis"

DATE: November 6, 1989 (R)

1) As per statement from James Ward relative to future capital improvements to water management system: master water management system is complete and no future capital improvements are planned. Any future improvements such as enclosure of open swales with pipes is responsibility of Westinghouse, individual tract owners or from monies reserved from original bond sale for that purpose.

2) Water Management Budget includes administrative, operating and maintenance items such as:

General administrative, office expenses & misc.	\$	127,000
Employee payroll & related expenses	\$	172,000
Lake & swale maintenance	\$	61,000
Water quality testing program	\$	12,000
Right-of-way maintenance (Boulevards)	\$	291,000
Irrigation expense for landscaped areas	\$	101,000
Debt service expenses (\$3.6 million original issue) (\$3.0 million outstanding)		
Principal	\$400,000	
Interest	\$344,000	
Other	<u>\$111,000</u>	
	\$855,000	\$ 855,000
Total =		\$1,619,000

a) Portions of some of general expenses including employee expenses are shared with street lighting & water/waste water operations.

b) Right-of-way maintenance is performed under contract with a out-side vendor. All other water management activities are done in-house w/ PBID staff.

3) Budget Summary as follows proposed for 1990:

<u>Revenues</u>		<u>Expenses</u>	
Tax Levy	\$1,055,000	System Operations	\$ 764,000
Carry Forward	\$ 449,000	Debt Service	\$ <u>855,000</u>
Interest	\$ <u>115,000</u>		\$1,619,000
Total	\$1,619,000		

Based upon my review of the facts, it is my conclusion that Collier County can succeed to the rights, duties and obligations of the Pelican Bay Improvement District's water management and right-of-way maintenance systems as cost effectively as currently being experienced with the District. More specifically, I can find no reason why the County could not provide as good or better quality of service as, if not more, efficiently as currently being provided within current cost parameters.

JHB/mts

cc: Mark Lawson, Assistant County Attorney
John Yonkosky, Finance Director
Walt Carter, P.E., Transportation Director
Fred Bloetscher, P.E., Assistant Utilities Administrator
William D. Lorenz, P.E., Environmental Services Administrator
Tom Taylor, P.E., Hole, Montes & Associates

MEMORANDUM

Date: Nov. 6, 1989

To: RON MCLEMORE
ASSISTANT COUNTY MANAGER

FROM: WALTER C. CARTER, P.E.
TRANSPORTATION DIRECTOR



RE: ROADS WITHIN PELICAN BAY

The road system within Pelican Bay consists of both Public and private roads. The Pelican Bay Improvement District is not responsible for the maintenance or construction of any roadways within the District, either Public or private.

The existing Public Roads are currently being maintained by Collier County and the private roads are being maintained by the various Homeowners Associations and Condo Associations.

CONCLUSIONS:

Since The Pelican Bay Improvement District is not responsible for the construction or maintenance of any roads with the District the cost, quality or efficiency of the road system would not be altered by Collier County assuming the responsibilities of the District.

CC: Mark Lawson, Assistant County Attorney
Fred Bloetscher, Ass't. Utilities Adm.
John Boldt, P.E., Water Management Director
G.F. Archibald, P.E., Transportation Serv. Adm.

MEMORANDUM

DATE: NOV. 6, 1989

TO: RON MCLEMORE
ASSISTANT COUNTY MANAGER

FROM: WALTER C. CARTER, P.E.
TRANSPORTATION DIRECTOR



RE: PELICAN BAY
STREET LIGHTING DISTRICT

The street lighting district is a Collier County District created by the County and administered by the Pelican Bay Improvement District Board of Supervisors per an agreement with the Board of Commissioners. The district covers all of the Pelican Bay PUD. The millage rate for Fy 89/90 is 0.2499.

FY 89/90 Budget :

Legal Fees.....	\$12,000
Engineering Fees.....	3,500
Administrative & Accounting.....	12,000
Operating expenses.....	149,319
Other fees & reserves.....	23,478
Total.....	\$200,298

Power is furnished to the District by Florida Power and Light by agreement which includes a rate schedule. The total lights presently in the District is 322.

The outstanding debt of the District as of the beginning of the fiscal year is \$409,000 with the total debt service for the fiscal year being \$114,760.

CONCLUSIONS:

The street lighting district can be absorbed into the County administrative process under Transportation Services and administered along with the other lighting districts.

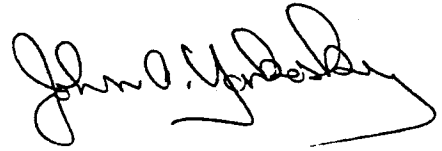
The current maintenance and repair contract with Mid-Continent Electric would be administered by Collier County assuring the same quality and efficiency of service.

The cost of service, in my opinion, would be lower in the County process due to reduced administrative cost derived from administering many districts.

CC: Mark Lawson, Ass't. County Attorney
Fred Bloetscher, Ass't. Utilities Adm.
John Boldt, P.E., Water Management Director
G.F. Archibald, P.E., Transportation Serv. Adm.

MEMORANDUM

TO: Ronald McLemore, Assistant County Manager
FROM: John A. Yonkosky, Finance Director/Deputy Clerk
DATE: November 6, 1989
RE: Pelican Bay Improvement District (PBID)



The major concerns or questions raised by Senator Dudley with regard to the County's succession to the powers, rights and duties of the PBID were economy, efficiency, and quality of service. All three of the terms, standing alone, are rather abstract and open to definition. The best approach to analyze their impact is to define them with measurable concepts. A brief overview of quality of service is provided in the next paragraph and is followed by a discussion of economy and efficiency.

If quality of service is defined as the most effective delivery of governmental services to PBID, then it would be very hard to justify that a handful of employees could perform as effectively as the County. If you specifically address the governmental services provided by the PBID, differences in effectiveness become readily apparent. For example, in the water management area, the County has engineers on staff who can respond quickly to emergencies. These engineers would also perform other functions that are currently being contracted out by PBID. In the water and wastewater area, County utilities has specialized equipment such as televised instruments that enables an operator to quickly locate a break or crack in either a distribution or collection system. There are State certified operators to address specific technical environmental and safety requirements. A review of the PBID minutes for the fiscal 1990 budget contains a request for backup equipment. The County already has the needed backup equipment. This comparative list could go on and on to define and address the effectiveness of the County delivery system versus the PBID's ability to provide governmental services.

(continued on back)

Economy and efficiency should be measured both in terms of fiscal responsibility and from a management perspective. The County from a purely fiscal position can readily absorb the administrative and management operating expenditures of the PBID with only a minimal increase of costs to the County. The following is a partial list of expenditures that are fully paid (funded) by the PBID which can be readily absorbed by the County structure. Succession by the County will dramatically reduce the following expenditures by the PBID:

- Elected Officials
- Management
- Budgeting
- Facility
- Purchasing
- Accounting
- Legal
- Computer
- etc.

The above list has a dollar for dollar correlation and does not include certain economies of scale benefits such as purchasing. For example, the cost of chemicals for water management and utilities would be greatly reduced due to volume discounts available to the County. A comprehensive list of economies of scale benefits can be prepared if necessary.

JAY/cjm