

**MINUTES
NORTH PALM BEACH HEIGHTS
WATER CONTROL DISTRICT**

January 27, 2010 at 7:00 p.m.

**North Palm Beach Heights Water Control District Office
700 Old Dixie Highway, Unit 203
Lake Park, FL 33403**

The January 2010 business meeting of the North Palm Beach Heights Water Control District ("District"), having been duly advertised and posted, was held on January 27, 2010 at the District's Office, 700 Old Dixie Highway, Unit 203, Lake Park, FL. The meeting was called to order at 7:04 p.m. and roll call was taken:

Present

Jeff Iravani
Brett Carpenter
Wally Baldwin
Lee Hintemeyer
Lynn McCullough

Approval of Annual Landowner's Meeting and November Business Meeting Minutes:

A motion was called to approve the Annual Landowner's Meeting and November Business Meeting minutes and the motion carried and the minutes were approved as read.

Report by Mr. Baldwin, District Attorney:

1. Negotiations have continued regarding the *District v. Regency Center*. A draft of the proposed agreement has been circulated. Mr. Baldwin believes they are close to settlement as everyone seems to be in agreement with the majority of the terms. In the old agreement, there was indemnification language which basically states that if any of the parties to the agreement are sued and the District is sued, the parties will cover the District's attorney's fees. Mr. Baldwin put that language in the new agreement and Regency Center and Chasewood objected to it. Mr. Baldwin reviewed SFWMD's permits, which contain hold harmless language to which these same parties already agreed. Mr. Baldwin discussed this issue with Terry Lewis, attorney for Florida Association of Special Districts, who advised that as an agency of the State, Fla. Stat. 868.28 (waiver of sovereign immunity) regulates the District's immunity. It caps agencies' liability under the Statute at

\$100,000 for a claim by any one person or if there is multiple claims that come out of the same incident. There is quite a bit of case law dealing with these issues. Mr. Baldwin reviewed some drainage agreements, which do not contain any language addressing this issue. Mr. Baldwin proposed to the Board possibly removing all indemnification language, which means the Statute would control this issue. He suggested that removing the language would be a way to settle the lawsuit.

Chasewood previously offered roughly fifty cents on the dollar and the Board directed Mr. Baldwin to propose seventy-five cents on the dollar. Mr. Baldwin has a verbal agreement from attorney Lee Cohen that his client Chasewood has accepted that.

2. The District had sent out the notices for 2010 drainage fees to the various entities. He has not received any checks yet. Mr. Baldwin advised that they will send out letters to collect those fees.

A supervisor asked for clarification regarding the indemnification language. Mr. Baldwin explained that it meant if a third party filed a claim. For example, if a homeowner and Chasewood filed a claim against Chasewood for some kind of drainage damage or negligence claim and if they named the District by virtue of being a party to that agreement, Chasewood would indemnify the District by covering their attorney's fees. It only covers third party claims.

Report by Jeff Iravani, District Engineer:

1. The fourth quarter cleaning is substantially complete. Most of the Heights area has been done. They are going to move on to NC-5 and NC-6.
2. Mr. Iravani provided a copy of the Indian Creek Outfall Inspection and proposed bid in his report. Basically there were some leaks in the pipes. They are going to repair it in the future. It shouldn't settle any more than it is. After it settles, if it is not moving quickly, they might just add some more riprap in there.
3. There are "No Trespassing" signs on all of the gates at NC-6 following the repairs at NC-4, at Felter Street, have been completed.
4. After the trucks had been dumped into the canal, they were pulled out quickly and the damage was minimal so that has all been repaired.
5. Additional canal repairs are starting on Barbara Street. They are starting on the Westside. The District performed a survey on one fence inside of Harriet; it is about 8 or 9 inches right-of-way. They will tell the homeowner to move it. When the canal is repaired; they are going to put a 2 foot berm in there. 2 feet is not that much but they cannot have something sitting there. Mr. Iravani will provide the homeowner with a copy of the survey and advise them they are going to start and

ask them to relocate their fence. Also, every time the District performs repairs, the District provides them with a fence permit if they don't have one and they are waiving the \$25 fee. The permits are being scanned and kept in the file. Mr. Iravani will eventually have a master drawing depicting who has a permit so it is readily available. The fence permit basically establishes the District's right of the easement and advises the homeowner that if they have to take down the homeowner's fence, the District does not have to replace it.

6. EPA came out with proposed nutrient criteria. The number for nitrates is 1.6. The District is under on nitrates and over on phosphorus. The total amount of phosphorous is too high. Of course, that is just a proposal. Everybody has 60 days to respond to the EPA. In Palm Beach County, the NPDES is basically takes care of these things. Mr. Iravani will make the proposal to NPDES regarding the phosphorous. There is also a chlorophyll number which is basically the green elements in the water. Mr. Iravani spoke with the person who does their testing about the cost which is minimal. Mr. Iravani stated that they can just test it at the outfall. They have taken samples at the beginning of Leslie Street and at the outfall. Mr. Iravani explained that the nitrate level is up because of vegetation, animals, etc. The phosphorus is going down because of the fertilizer. At the outfall, the nitrate is up. The criteria for estuaries are going to be posted in January, 2011, which may be the criteria that the District's canals must follow. A Board member asked whether the standard applies just to the outfall canal or if it applies to the entire canal system. Mr. Iravani advised that right now they are looking at the entire canal system, which is another objection that will be raised. Mr. McCullough requested that the lake be tested as well since construction has been started. A Board member asked about possible penalties if the District violates these standards. Mr. Iravani believes that it won't impact the District because they have no control but the Town of Jupiter does. Since the District doesn't own any developments or projects beyond its canal, they don't have much liability.

Items by the Board Members:

The website is up and running.

Miscellaneous Items by the Chairman:

Mr. McCullough received and deposited 2010 drainage fees from Bonded Lightning, Timberwalk, Wal-Mart and Jerry Thomas Elementary. The only one missing is Pep Boys. When Mr. McCullough receives the accounting papers, he will review the last quarter so he requested Mr. Baldwin wait before contacting Pep Boys about overdue drainage fees until he verifies whether they paid already.

Mr. McCullough provided Mr. Baldwin with an acknowledgment of the two-year lease for the District's office. Instead of renting on a monthly basis, the two-year lease provided a discount to the District.

Florida Resources Environmental Analysis Center wanted to look for documentation of public land ownership. Mr. McCullough asked Mr. Baldwin to review it.

The annual audit is about 75% complete. Mr. McCullough met with Karen Peterson and reviewed the first quarter accounting package for 2009-10, which has already gone to Steadman for a workup. Once that is complete, Steadman will write up the management report. Then it will go back to Nolan, Holt & Miner to wrap it up and the District will receive a preliminary report for their approval before it goes to press.

The next bond payment of \$750,000 is due in April. Then there are only two left, 2011 and 2012. Then it is done.

Mr. Hintemeyer will go to the Jupiter Library to schedule the next meeting as they had difficulty getting a place to hold the District's meeting. The library in Palm Beach Gardens is closed for construction. The March meeting will be held at the Jupiter Library on Thursday, March 18. They are going to try to schedule dates for May and for June for the special budget meeting. Once the dates are obtained, they will be posted on the website. Mr. McCullough will take suggestions for any backup locations, perhaps at FAU.

Mr. McCullough gave the Supervisors a copy of the proposed agreement regarding the litigation.

New Business:

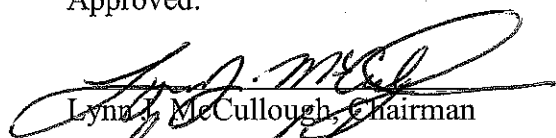
Mr. Hintemeyer made a motion to give direction to the District Attorney to go ahead and strike the language from the proposed agreement lifting the indemnification clause that is currently in there providing that the 75 cents on the dollar remains and the motion carried.

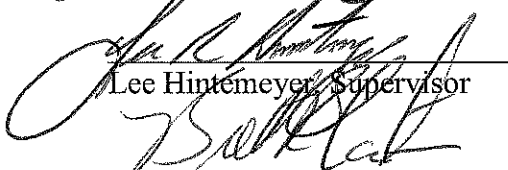
Items by the Public:

There were no members of the public present.

A motion was made to adjourn the meeting at 7:30 p.m. and it carried unanimously.

Approved:


Lynn J. McCullough, Chairman


Lee Hintemeyer, Supervisor


Brett Carpenter, Supervisor