

BOARD OF SUPERVISORS OF
THE SAN CARLOS ESTATES WATER CONTROL DISTRICT
TUESDAY MAY 17, 2022

6:00 P.M.

TOWNPLACE SUITES, 23161 VIA COCONUT POINT, ESTERO, FL 33928

1. **Call Meeting to Order:** Ben Bogacz called the meeting to Order at 6 PM.
2. **Roll Call of the Board of Officers:** Present are Supervisors Ben Bogacz (Ben); Jim Bradford (Jim); Jennifer Finazzo (Jennifer); Attorney Richard Pringle (Richard); and Sec/Treas Chris Lawson (Chris) and 17 guests. Engineer Bill Morris (Bill), absent
3. **Receive Engineer's Report on District Works:** No report since the Engineer is absent
4. **Chairs Report:** Nothing to report
5. **Treasurer's Report:** The bills were presented for payment in addition to the bills not paid in April. The reports include Balance Sheet; Check Detail; Income/Expense Comparison for the prior year; the status of the tax receivables and a comparison of budget and actual expenditures annualized and noted the % difference between actual and budget. In 2021-2022 we budgeted \$499,805 and we have spent year-to-date \$310,228 and the annualized difference is (\$29,114). The principal reason for this shortfall is that there has been no funding of the budgeted addition to the Contingency Fund for \$50,000. The Engineer remains 26% over-budget on an annualized basis. The reports look different because of the adjustment made at the recommendation of the auditor and to follow the GASB. For example, the gate remote expense is now in Administration and the funds received for the gate remotes are in Other Income. In the past the expense and the income were reflected in the Gate expense line item, but we cannot offset expenses with funds received. The same thing with the culvert repair that was reimbursed by the insurance company.

The invoice for Brad Gallagher is prepared for the legal and engineering expense incurred during the vacation of easement request made to the District. The Board agreed to send the invoice to Mr. Gallagher.

Chris asked about the necessity of having advertised budget hearings. Richard said that it is not necessary to since the assessments are non valorem and if the discussion is held within the regular meeting, then no additional advertisement is necessary. Chris further mentioned to the Supervisors that they need to consider what project(s) they want to undertake in the next fiscal year so that it can be incorporated in the upcoming budget considerations. Also, the Supervisors needed to consider how much principal paydown they want to make for the CIP PH 1 loan in before mid-July so that Bank of American can be notified and prepared to draw the additional funds.

6. **Attorney's Report:** Richard mentioned the need that the Board needs to make some considerations considering the resignation of Chris Lawson as Secretary/Treasurer/Manager effective 05/31/2022 adding that an agenda item be added to discuss selection of Secretary/Treasurer/Manager beginning 06/01/2022. The only other item to mention is that a letter from the attorney for the property owner at 8991 Strike Lane and that they have completed their plans which are different than they were before. This might be a consideration for your next meeting.

7. Comments from Guests and Public Input:

Judy Tapply made a couple of comments about the last meeting. The first is regarding the bills that might not have been reviewed prior to payment. She stated that they used to review the bills at the meeting and discussed them at length. At some point to save time, the bills were sent to the Board members in advance of the meeting so that any questions could be addressed before the meeting. There were many times that questions arose in one bill or another that needed clarification. So, if anyone had any concerns about prior bills that may have not been reviewed or paid properly, they were up to the time when she was no longer on the Board, and I cannot speak about what has gone on in recent months. The other thing I was concerned about was the discussion over the gate(s). The only issue with David Nadig's gate is that it is not permitted. If it gets permitted, then there is no issue. When the other gates were installed, it was decided that there would be 2 feet on the inside of the gate to allow for pedestrian traffic. What happened over the years, the ATVers started riding through the area increasing the area which cause the landowners to block the path to stop the ATVers. David Nadig questioned the 24" allowance around the gates. Ben clarified that it was at the time of installation. He then questioned that his is the only one that is not permitted, and he would like to see the permits. Ben said that the permitting was done with the City of Bonita Springs at the time of the CIP project. David asked where he could find the permits and Judy stated he could locate the permits at the City, Morris Depew, or the District records. Ben said just permit the gate to make it legal and be done with it. David asked who issues the permit and Richard replied that there are two levels of approval – first from the District and then from the City. David then asked what authority does the District have to establish codes and code enforcement? Richard replied that Chapter 298 governs water control districts in their authority. One of the items listed in Florida Statute 298 is the authority of the water control district to control the development or the placement of any improvements within a District right of way (ROW). He then explained the development of the District's easements and the recordation of the site plat including the dedication of easements for the drainage and roads within the District (Plat Book 1 Page 1). This is what creates the District's right and based on the Board's decisions control over the easement. The Board has adopted standards over the use of the ROW. There is also within the City of Bonita Springs code that specifically refers to the San Carlos Estates Water Control District and says that the City will exercise its code enforcement authority to assist the District in controlling the ROW's and the use of the District ROW. Richard then further discussed the history of Mr. Nadig's property, the District, and the gate in question.

Mike Peil mentioned that he received a letter from the District regarding a gate on his property that installed by a previous landowner saying that the gate could not be closed because it was not permitted. He had been told that the City of Bonita Springs would not authorize a permit for any additional gates on those roadways. Because of that, they removed the gate since the authorized use was only for pedestrian or bicycles. There is a fair number of four-wheelers and golf carts using the canal roadway and going around the gate. If there could be signage placed addressing the authorized use, then this might stop. Judy Tapply stated that the Board was also told at the time of the CIP that the City of Bonita Springs would not approve any additional gates in the area.

David Nadig further mentioned that the Board needs to take control of the situation and to have a systematic way to protect the roadways and not rely on the landowners to take some action or not.

8. Old new and unfinished Business:

- Tuscan & Company PA: Lisa McKenzie of Tuscan & Company reviewed the work performed for the audit; discussed the financial condition of the District; outlined the

Management Comments for recommended changes in the operations to follow Florida state law and GASB reporting standards and the management response. The Board signed the representation letter and management letter. Richard prepared a Budget Amendment to add the audited carryforward amount to the budget. When the financial report is finalized, it will be filed with the appropriate governmental agency(ies) and posted on the District website.

- Richard addressed the Board regarding amending the 2021-2022 budget to address the carryforward balance resulting from the audit to \$956,018. He prepared a Resolution to amend the budget for the board's adoption. He reviewed the budget resolution in detail. The Board approved the Resolution.
- Stillwell Guardrail Accident of 01/24/2022: The quote from Alford Construction and Thrasher Site Development LLC were accepted by the Board. The Board authorized Morris Depew to coordinate and oversee the guardrail repair. Then the final bills will be submitted to State Farm for reimbursement.
- David Klopach, Rodas Drive Driveway Extension – David did not attend meeting. He had not submitted a permit application. The matter was tabled to the next meeting.
- EDR Natural Resources Stormwater and Wastewater 20-year Plan – Morris Depew has offered to complete the template due to Lee County by June 30, 2022 pending Board approval.
- 24166 Sunny Lane (Paver pad in ROW): The Board accepted the permit application and approved the installation of the paver pad in the ROW noting that per the engineer, it does not impede the use and purpose of the ROW. No permit fee required.
- A discussion ensued initiated by Jim regarding improvements in the District and how to handle in the future. Richard stated that the board must decide upon a standard to apply and then he can draft a document based on the decisions of the Board for the standard(s) they wish to maintain. Having a standard is useful because then you can use the standard in addressing future actions and decisions by the Board. Jim also mentioned that he felt not everything required the attention of the engineer and that the manager could address some if not many of the issues. Judy Tapply stated that in the past, the Board and manager simply would address issues as they arose with the landowner. If there was a problem, then corrective action was taken but if it presented no issues, then no action was taken. It was a very informal process. Jennifer commented that having a systemic way of asking for improvements is needed.
David Nadig questioned the Board's authority to dictate and enforce the actions discussed. From there the direction of the discussion drifted to communication to the community at large about policy(ies) adopted by the Board. Jennifer commented that she did not know to get the information out. Ben concurred and stated that he did not know how to educate the community.
- 9360 Bonita Bill (Damage to Bonita Bill): The Board accepted the permit application provided that the homeowner follows the recommendation of the engineer for the Bonita Bill covering.
- Tuck Gate – Discussion continued the topic with no resolution. The matter is tabled until October.
- Brad Gallagher request for gate installation: Brad completed the permit application in accordance with the current standards and brought it to the meeting. He withdrew it pending the gate standards policy that will be adopted in a future meeting.
- Morris Depew: Jim made a motion at the last meeting to replace Morris Depew as the engineer for the District and has not changed his opinion. Jennifer agreed. Jim wants to have a RFQ published to review alternatives for engineering services for the District. Jim

will oversee the competitive selection process. Richard will publish the RFQ for engineering services in the paper and said if anyone knew of an interested firm that they could forward the RFQ on to the firm. In the meantime, Morris Depew will continue, if agreeable, to serve on a month-to-month basis.

Judy Tapply offered her personal comments based on her experience from years of working with Morris Depew. She said that there is a benefit to the community of having a firm who has the intimate knowledge of the community, who designed the infrastructure, and who has had a good working relationship with the District's prior Boards.

- Bonita Bill Repair – Between Red Robin and end of Bonita Bill – The Board wanted to inspect the disturbance first before any decision was made as to the repair. No action taken. The discussion digressed to the topic of a district procurement policy and if the manager could arrange for the repair depending on the cost of the repair. Richard outlined how other special districts handled such matters.
- Gate Request Standards – The discussion on this topic is tabled until October.
- 9360 Bonita Bill – The Board accepted the permit application and engineering recommendations for the roadway material application used.
- June meeting – It was determined that a meeting will be needed in June. Richard will publish the schedule change and meeting location in the newspaper.
- Secretary/Treasurer/Manager Selection – Jennifer discussed using a service to provide the services performed by the Secretary/Treasurer and offered to research options. Jim wanted to have a separate person act as Manager for the District who could perform repairs as part of his responsibilities. A general discussion about how the Board wanted to structure the two positions was held. A job description for both positions would need to be determined with a division of duties respective of the roles. Chris offered to continue to serve as Secretary/Treasurer until a replacement is found. The Board members agreed to survey the District and temporarily perform the duties of Manager until a permanent solution is determined. The Supervisors collectively will oversee the District work to fulfill the manager's role.
- A discussion of the Sweeperman services performed in March or suspected lack thereof based on the inspection conducted by Jim and the bill presented for payment was conducted. It was decided that the bill would not be paid, and a letter would be sent to Sweeperman with an explanation.

Motions approved by Board noted in old, new, and unfinished business:

- Ben made a motion to add selection of Secretary/Treasurer/Manager to agenda. Jennifer seconded the motion. Motion passed 3-0.
- Ben made a motion to hold a June meeting time and date to be determined to the agenda and calendar. Jim seconded seconded the motion. Motion passed 3-0.
- Ben made the motion to send the invoice to Brad Gallagher to recoup the professional services provided in the vacation of the easement for his property. Jim seconded the motion. Motion passed 3-0.
- Ben made the motion to approve the auditor report from Tuscan & Co. Jennifer seconded motion. Ben asked if all was in favor and everyone replied aye. Motion passed 3-0.
- Ben made a motion to adopt the Budget Amendment Resolution to amend the 2021-2022 budget to address the fund balance carryforward balance on the budget. Jennifer seconded

the motion. A roll call of the board members was taken and all approved. Motion passed 3-0.

- Jim made a motion to replace Morris Depew as the engineer for the District. Until a replacement is selected, If Morris Depew will agree to continue to serve as the engineer of record on a month-to-month basis until a replacement is established. A RFQ will be published requesting responses from engineering firms to apply to work for the District. Jennifer seconded the motion. Ben did not agree. Motion passed 2-0.
- Motion to proceed with a competitive selection and request pricing under the Statute and authorize Supervisor Bradford to oversee the process for the June meeting. If not feasible for the June meeting, then Supervisor Bradford can push the selection to the July meeting. Ben made the motion. Jim seconded the motion. Motion passed 3-0.
- Ben made the motion to accept the quotes for the repair of the Stillwell Guardrail and have Morris Depew coordinate and oversee the repair between the two vendors. Jim seconded the motion. Motion passed 3-0.
- Ben made a motion to approve the request from 24166 Sunny Lane for a paver pad in the ROW and not charge a permit fee for the request. Jennifer seconded the motion. Motion passed 3-0.
- Ben made a motion to table the decision for the matter related to landowner, David Klopach, and the violation of the unpermitted driveway extension; Jennifer seconded the motion. Motion passed 3-0.
- Ben made the motion to have Morris Depew prepare the EDR Natural Resources Stormwater and Wastewater 20-year plan report for Lee County submission due June 30, 2022. Jennifer seconded the motion. Motion passed 3-0.
- Ben made the motion to table the decision on the Tuck gate issue to the October meeting. Jennifer seconded the motion. Motion passed 3-0.
- Ben made the motion to take no action on the Bonita Bill Road washout repair at this time. Jim seconded the motion. Motion passed 3-0.
- Jennifer made the motion to accept the engineering recommendations to accept the permit application for the use and connection permit for 9360 Bonita Bill and corrective repairs to Bonita Bill Rd. Ben seconded the motion. The motion passed 3-0.
- Jim made the motion to table the discussion for establishing Gate Request standards and ROW use until October 2022; Jennifer seconded the motion. The motion passed 3-0.
- Ben made the motion to table the Tuck Gate action decision to October 2022. Jim seconded the motion. The motion passed 3-0.
- Ben made the motion to authorize Jennifer to oversee and begin the competitive selection parts – one for administrative/Treasurer position and the other for the Manager/Superintendent of the District works in the District. Supervisor Finazzo would be authorized to get it going and work with Richard. Jim seconded the motion. Motion passed 3-0. Ben made the motion to hire Chris Lawson to perform the administrative function and transition on a month-to-month basis. Jennifer seconded the motion. Motion passed 3-0.
- Ben made the motion that the Supervisors would oversee the District work to fulfill the manager's role.
- Ben made a motion to add Sweeperman bill as a business agenda item for discussion. Jennifer seconded the motion. Motion passed 3-0.
- Ben made a motion to not pay Sweeperman for the invoice and send a letter to Sweeperman of objection describing the reason for non-payment. Jim seconded the motion. Public input was requested. There was no public input. Motion passed 3-0.

9. **Approve the April 17, 2022 Meeting Minutes:** Ben made the motion to approve the April 17, 2022 meeting minutes. Jim seconded the motion. Motion passed 3-0.
10. **Approve April 30, 2022 Bank Statements, April 30, 2022 Financial Reports, May Financial Reports as of Meeting Date, Payment of May 2022 Bills:** Ben made a Motion and seconded by Jennifer to approve the April 30, 2022 Bank Statements, the April 30, 2022 Financial Reports, May Financial Reports, and the payment of the May 2022 bills. Jennifer seconded the motion. Motion passed 3-0. The Supervisors approved the bills presented for payment except Morris Depew dated 03/31/2022 because their understanding is that Bill Morris withdrew that bill for payment in the April 17, 2022 meeting.

Jennifer will receive the future bank statements when received in the mail unopened at the recommendation of the auditor. A stamp will be ordered for Jennifer to certify that she received the statements unopened, reviewed them, and they were received unaltered and in their original state. Then the statements will be returned to the Treasurer for reconciliation.

11. **Adjournment:** A Motion was made by Ben and seconded by Jennifer to adjourn the monthly meeting. Motion passed 3-0. Meeting adjourned at 9:30 pm.