

BOARD OF SUPERVISORS OF
THE SAN CARLOS ESTATES WATER CONTROL DISTRICT
TUESDAY APRIL 19, 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); Engineer Bill Morris (Bill); and Sec/Treas Chris Lawson (Chris) and 19 guests.
3. **Receive Engineer's Report on District Works:**
 - There are 64 open driveway permits, 7 new permit and 3 closed permits.
 - Annual maintenance update: Sweeperman completed the maintenance for the 2020-2021 cycle. The maintenance list is being compiled for the 2021-2022 which will be completed over the next several months.
 - NPDES – To provide more detail, the current reporting cycle runs May 1st – April 30th of each year and is due to be file by October 31st. It includes the status of the maintenance items, water quality reporting, etc.

Jim asked several questions about the reporting and testing to better understand the reporting which Bill answered. Jim continued to discuss the number of culverts draining into our canal system, and San Carlos Estates residents must pay for all the maintenance and have responsibility for the water quality for the canal. Jim does not understand why we must pay to clean and monitor the water when there are so many others contributing to our system. Bill addressed Jim's questions and comments. David Nadig also asked questions and had comments regarding the culvert from the concrete plant that drains to the canal that includes his property.

Jim also said there are grant funds that the District may be able to apply to assist the District with the maintenance of the canals.

- **Education:** Bill provided a presentation to refute the comments of last month's presenter regarding the water quality of the District's canals. He provided slides of different constituents in the water that showed the test results of the water and how it compared with the threshold level which is the standard we are being compared against. San Carlos Estates canals do not exhibit any chronic water quality problems. He also offered the Lee County brochure for any residents' interest. Jennifer questioned the frequency of the testing. Lee County tests monthly and Morris Depew also tests monthly in various locations in the canals. A guest asked if he were to request the test results would the results be for the four locations or would the locations be averaged together. Bill commented that part of their methodology is so that they could isolate issues. One of the locations is near Old 41 is a large drain is representative of all the water being discharged from San Carlos Estates. If there are no water quality problems at that location, then logic is that what we discharge is not problematic. Bill continued to discuss the purpose of the testing for Lee County and what they are doing. I
 - He also stated that the testing is not expected to be continuous at its current frequency.
4. **Chairs Report:** Nothing to report

5. **Treasurer's Report:** Based on the auditor's comments, the reports you have at this meeting are slightly different than in the past meetings. The past meeting reports only detailed information as of the meeting date and were not approved. This month, the reports provided are for the period ending March 31, 2022 and the Board will be requested to approve the reports which will correspond with the Bank statement report. The reports include Balance Sheet; Monthly Income/Expenses; Fiscal Year to date; Comparison of FYTD for income and expenses; the status of the tax receivables and a comparison of budget and actual expenditures annualized and notes the % difference between actual and budget. In addition, you have reports for April up to the meeting date which consist of the Check Detail for the checks being signed, Income and Expense, and comparison of budget and actual expenditure. Engineering and legal expenses continue to be out of line with the budget year to date.
6. **Attorney's Report:** At the last meeting, there was a discussion of other type of uses in the ROW. There are two sources of information. One is the Access Standards Handbook adopted in 2016. That document talks about not only approval for access purposes but also in Section 3 of that Handbook, it says that the requirements apply to other items besides driveways within the District's ROW such as the paver pad to be discussed later in the meeting. There was another reference in the Handbook which says there can be up to two driveway connections but no more than two driveway connections. I then looked at the SCEWCD Access and ROW Use Permit Application packet approved in 02/2021. In the permit application packet, it contains a letter that states that the packet is for not only the driveway permit but other uses in/on the ROW. Jim asked for clarification and Richard responded. The one exception raised is the use of the District ROW for access purposes such as walking, biking, vehicle use, etc. It is up to the Board to decide what it will allow or prohibit. It is up to the Board to decide how the ROW will be used. Any installation of any improvement in the ROW must have permission from the District Board and if there is no permission, then the District Board can require the removal of the improvement.

Darlene Smith questioned the walls by her driveway which have been there for a long time. Does she need to now request approval or are they grandfathered in? Ben said the topic overall is lack of education for the new landowners. Gayle Taylor stated that she did not know about the Board and feels there is a need for communication, so people know.

The other topic that Richard wanted to mention is that the first year for an audit is the most difficult year because of the transition. A new auditor will have criteria that they use that are different from the prior auditor and/or interpretations of the state standards that apply to the audit process. Richard has spoken with Jeff Tuscan regarding some of the questions he has, and he has answered those questions the best he could. At the May meeting, Jeff Tuscan will present the audit report to the Board and part of the report involves recommendations of changes that should occur to make the operations better. Thus far, everything that he has discussed with Mr. Tuscan can be addressed. Richard will bring a Budget Amendment Resolution for the Board to consider and approve which involves a true up of the balance carryforward.

7. **Comments from Guests and Public Input:**

Norman Kaye (24199 Cock Robin Lane) says that his neighbor (24231 Cock Robin) has installed a third driveway. This is causing drainage issues and he must walk through 3-4 inches of water to get to his driveway.

David Klopach (Rodas Dr) installed an illegal extension and repair to his culvert earlier this year. In a prior meeting, he was given until May to replace the culvert. David says that he feels that now that the landowners are 100% responsible for the culverts and if the culvert is 100% functional, he asked the Board if he can simply pay the use and connection fee permit. Jim asked how he made the connection

for the extension. David explained the process he used to connect the pipe. Jim's stated his concern is that if the Board allows the exception, then others might follow suit. Jim further stated that if he paid the permit fee, the engineer and attorney costs, then he would be satisfied. Richard said that the permit application packet contains an application that could be completed and turned to the engineer, a filing fee could be determined, tests could be conducted, and the engineer could determine if it were built to the District specifications, and if it is, then you are done. Bill said that the concern at the time is that the culvert did not meet the current pipe diameter and that the amount of cover over the pipe was deficient. Richard then stated that this would be an example of a variance that could come before the Board and the Board would be able to exercise their discretion to decide on what to do.

Larry Rose commented that he had removed the broken fence poles and rails where Gerald removed the trees. There are eight to ten poles left in concrete and wanted to be sure that the Board wanted to keep it open before he removed them. He suggested leaving a couple of uprights up and placing No Trespassing Signs on them.

8. **Old new and unfinished Business:**

- 8991 Strike Lane: No changes
- Stillwell Guardrail Accident of 01/24/2022: Still getting quotes
- 24166 Sunny Lane (Paver pad in ROW): Needs to submit a ROW use application
Jim questioned why we are suddenly asking people to take these actions. He suggested that we identify all the existing structures/exceptions in the ROW. Richard said that the Board could decide to suspend the enforcement of the application process for the next thirty days until the next Board meeting to pick a date to begin the permitting process to apply for things other than driveways. The idea of a blanket approval up to a date certain could be made at the next Board meeting which would bring resolution to some of these open items. Ben said the only issue he sees is that others will see what others have done, do it themselves and then the problem arises again.
- 9360 Bonita Bill (Damage to Bonita Bill): A discussion of the issue between the Board and the property owner. Richard said that if the ROW is going to be used, then a use and connection permit application must be submitted. If there is no further use, then the ROW must be restored to the original condition in accordance with the engineer recommendations. Gayle asked if the road could be inspected after rainy season. Richard said that the request would be for approval for a driveway with a variance from the normal standards to allow instead placement of gravel or whatever. The engineer would then say it is good or not good and then the Board would decide.
- Tuck Gate: David expressed his frustration that he keeps hearing that there is no way to walk around the gate. But the gate does allow for people to walk around. Jim said that in discussions he had with David Nadig, the proposal he would have is if you and everyone else chooses to cut off the gate access, light it up so that people could safely pass walking or biking, then he is willing to put together a plan that would do that and he would sign off on that. But you must move the gate back far enough to allow for traffic turnarounds. My other opposing opinion is that we vote to remove all the gates that are on the ROW. Anyone who does not want to do either; then the District gates near the property in question would be opened until they comply. Ben is opposed to opening the District gates because of potential vehicle use. Jim said he is providing an option that he would work with if gate owner(s) were willing to make the gate(s) safely accessible. Further the Board would either maintain or clear the area around the District gates to allow for safe access. Property owners block the roadway with barbed wire, glass, and rocks, so people cannot use the roadway safely. Jim

says he does not want to open the District gates but if a person chooses to block off the road so that people cannot pass by walking or biking, then he says unlock the District gate until those persons clear the area. Or we choose as a Board to have the District gates modified so that people can pass on the District property like they should be able to. The question of liability came up in the discussion and Richard reiterated what he stated in the previous meeting that it is the control of the District's ROW that is the primary cause of the liability. If the District is exercising control over the ROW and has done something negligent in its maintenance and control of the ROW, then the District is going to have the responsibility. If the homeowner has not been a part of that, then the homeowner's liability is minimal. This does not mean that the homeowner would not be included in a lawsuit. David said that should be a reasonable compromise and that the perimeter roads are open for walkers and bicyclers. Jim says open the gates enough so that people can pass safely through there. The bottom-line is that is just needs to be resolved so they can do it safely.

Richard said that there has been ample discussion about the gates, that the Board needs to decide about the topic of gates in the District. The Board needs to make decide what the standards for gate installations will be and then apply those standards to all the gates around.

Brad Gallagher created a form to request a gate that included all the talking points Richard brought up in the last meeting. It is simple for the homeowners to complete and bring to the Board for review and approval. Jim said that the gate would have to be set back far enough to allow a truck to turn around. Jim will draw up a plan and bring it up at the next meeting. Further discussion was had regarding the fire department, fire hydrants, locks, etc. Richard said there is currently an application process for a use in the District's ROW. What is not in place is the description of the standards for the installation of a gate in the ROW. At this time, there is not a set of standards that would apply to the installation of a gate in the ROW.

- Brad Gallagher request for gate installation: Request continued to the next meeting.
- Morris Depew: Ben asked Jim if he had anything more to discuss regarding Morris Depew. Jim stated that he stands on what he said in the Supervisor Discussion. If anything comes out differently, then let him bring a proposal along with those of other firms in Bonita Springs. He added that all checks should come before the Board to be signed and the Board should approve them as a group. The Board members should take the time to review and understand what they are signing. Chris commented that this was the reason the bills are sent to the Board members before the meeting to allow for ample time to review. The check drafted for Morris Depew and Sweeperman were voided. Ben then asked Jennifer for her thoughts. She stated that she felt there should be a 30-day period to allow for corrective actions. Ben asked Bill if he would be willing to come back with a proposal. Bill responded that he would like the opportunity to repair himself and his Firm with this Board. He takes this matter very seriously and he would appreciate the opportunity to right the wrong. Jim had further discussion. Bill asked how he would be evaluated. Jim responded that he did not feel it was necessary for Bill to be present for the full meeting and that he could participate by telephone for his reports. Jim continued with his thoughts and opinions about the engineering services and presentations.

Richard suggested that having an Engineer of Record is important. He suggests that Morris Depew continue to be the Engineer of Record until a decision regarding Morris Depew is made or another engineering firm is selected. A competitive selection process may be

required for the hiring of the professional engineering service. In the meantime, he will determine what type of competitive selection process, if any, and advise the Board. The matter has been continued to the next meeting.

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

- Ben made a motion to amend agenda to add Morris Depew as an item under old new and unfinished business. Jim seconded the motion. Motion passed 3-0.
- Ben made a motion to continue the discussion for the paver pad in the ROW. Jennifer seconded the motion. Motion passed 3-0.
- Ben made a motion to continue the 9360 Bonita Bill matter to next meeting. Jennifer seconded the motion. Motion passed 3-0.
- Ben made a motion to continue the decision for the Tuck Gate pending the creation of a set of standards for gate installations. Jim seconded the motion. Motion passed 3-0.
- Brad Gallagher's request for a gate installation was accepted at the meeting and the discussion continued to the next meeting. Jim seconded the motion. Motion passed 3-0.
- Ben made the motion to continue Morris Depew to the next meeting and add to it Engineer Selection Process. Jennifer seconded the motion. Motion passed 3-0.

9. **Supervisor Discussion:** Jim made a presentation of the work purported to have been completed by Sweeperman and then of culverts that were recently cleaned in San Carlos Park. Jim went to five roads. He measured the culverts twice and those numbers did not match up to the amount billed. Jim took pictures of the culverts that were supposed to have been cleaned and presented the pictures at the meeting which does not appear to have been done. There was general discussion between the Board and the attendees.

Jim wanted to analyze the Morris Depew billing because he feels there is a lot of repetition in the billing. Jim said that he has discussed many things with Bill over the past eighteen months but does not see any resolution. Jim mentioned several other issues and a general discussion occurred with the attendees. Bill apologized to the Board and attendees for the performance regarding the supervision of the job performed by Sweeperman and said supervision will be discussed with staff. It is not the standard that his Firm strives to achieve. Jim stated that he feels that there are local companies in Bonita Springs that could perform the same services. Jim is recommending that the Board no longer use the services of Morris Depew. Ben stated that Bill has been a major part of this community for so long that the Board should give him an opportunity to right whatever is wrong. We need to slow down.

An attendee commented that there are two issues: one is a matter of trust being broken and then the other is financial, past, and future. The conversation then turned to Chris Lawson and her performance and what she does or does not do and how she got on the Board. Brad Gallagher stated that after him attending meetings over the past eighteen months, he has not seen any resolutions. Jim agreed.

Bill made a statement that the drainage taken as a whole, the system does what it designed to do. The intention is that the system is maintaining to a level of service that is functional and serves the property owner's interest. There are a lot of things that can be done to improve drainage. They all have costs associated with them. The nature of San Carlos Estates is that it is a development that is carved out of a wetland fifty years ago. There are limitations in terms of what level of service that can be practically made to that system. We can design anything. We can design the system to do

whatever it is that this community wants it to do. However, within the reasonable economic limits, it is close to what the performance is going to be because of the characteristics we must work with. We are limited by SFWMD requirements to limit the amount of discharge we have. Brad Gallagher said that there is a way to get water off a roadway. The discussion continued.

Jennifer said that prior to coming to the Board, the biggest complaint of the person(s) that came to her was dealt with flooded roads. It is the way the roads function. No real decision as to why they cannot resolve them was asked for or offered. Looking at the engineer bills, a concern about the job not being done, determination that the job has not been done, do we give the Engineer a 30-day notice because there are things in motion and come back with a resolution for an audit of the past several months' bills, a proposal, a change of practice, and how this reflects to the budget. Determine what was done and not done. Ben asked if this could be done. Jim wants to fire Morris Depew immediately, be charged with locating a replacement until a decision to hire a permanent replacement. Richard said that the District must have an engineer of record in accordance with the Florida Statutes.

10. **Approve the March 15, 2022 Meeting Minutes:** Ben made the motion to approve the March 31, 2022 meeting minutes. Jim Bradford seconded the motion. Motion passed 3-0.
11. **Approve March 31, 2022 Bank Statements, March 31, 2022 Financial Reports Payment of April 2022 Bills:** Ben made a Motion and seconded by Jim to approve the March 31, 2022 Bank Statements and the March 31, 2022 Financial Reports. Motion passed 3-0. The Supervisors approved the bills presented for payment except Morris Depew and Sweeperman. They will be brought back in the May meeting.
12. **Adjournment:** A Motion was made by Ben and seconded by Jennifer to adjourn the monthly meeting. Motion passed 3-0. Meeting adjourned at 10:15 pm.

**San Carlos Estates Water Control District
Gate Request Form**

- 1) I, the hereby undersigned, owner/legal representative of the property location below, willfully acknowledge that any gate requested to be installed meets the following criteria:
- 2) Gate must be pedestrian friendly and allow access for the public walking the SCEWCD right of way.
- 3) A Picture of the Gate and location of its proposed placement on the property must be provided and attached to this form.
- 4) All costs related to the purchase and installation of the gate after approval are the owner's responsibility.
- 5) SCEWCD has the full authority to revoke the use of this gate request at any time for cause in the future and retains its right to enter for maintenance/ emergency use.
- 6) Owner is fully aware that by installing a gate across the right of way, they are now assuming a greater risk of personal liability then when fully accessible. Owner has had ample time to discuss this matter with their legal counsel prior to submitting this application form.
- 7) After approval of this form, the owner still must obtain a gate permit from the City of Bonita permitting department prior to installing the gate.

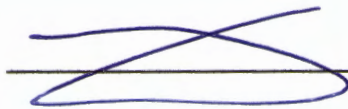
Owner/Legal Representative:

Please print name

Brad Colkeher

Owner/Legal Representative:

Signature



Site address (# and street only) 25441 Mariah Ln, Bonita ^{JY135} Date: 4/19/2022

SCEWCD Board Meeting date: 4/19/2022 Approve Rejected

Board Member Signatures _____
