

**MINUTES OF MEETING  
BAYSIDE IMPROVEMENT AND BAY CREEK  
COMMUNITY DEVELOPMENT DISTRICTS**

The Boards of Supervisors of the Bayside Improvement Community Development District and Bay Creek Community Development District held a Joint Regular Meeting on October 26, 2020 at 2:00 p.m., in-person at the Pelican Landing Community Center, 24501 Walden Center Drive, Bonita Springs, Florida 34134 and remotely, via Zoom, at <https://us02web.zoom.us/j/82618813405>, and telephonically at 1-929-205-6099, Meeting ID 826 1881 3405 for both.

**For Bayside Improvement CDD, present were:**

Walter McCarthy	Chair
Bernie Cramer	Vice Chair
Bill Nicholson	Assistant Secretary
James Nicholson	Assistant Secretary
Karen Montgomery	Assistant Secretary

**For Bay Creek CDD, present were:**

Mary McVay	Chair
Robert Travers	Vice Chair
James Janek	Assistant Secretary
R. Gary Durney	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Cleo Adams	Assistant District Manager
Tammie Smith	Operations Manager
Dan Cox	District Counsel, Bay Creek CDD
Greg Urbancic	District Counsel, Bayside Improvement CDD
Wes Kayne	District Engineer
Carl Barraco, Jr.	Barraco and Associates, Inc.
Jamie Todd	Barraco and Associates, Inc.
Bill Kurth	SOLitude Lake Management (SOLitude)
Steve Backman	PLCA General Manager
Joanna Muller	Resident/PLCA Landscape Committee
Marilyn Price	Resident/PLCA Landscape Committee Chair and PLCA Board Member
Gail Gravenhorst	Resident/PLCA Landscape Committee
Ed Shinouskis	Resident/Water Quality Task Force

Anne Cramer  
Tim Gavin

Resident

**FIRST ORDER OF BUSINESS**

**Call to Order/Phone Silent Mode/Pledge of Allegiance**

Mr. McCarthy called the meeting to order at 2:00 p.m.

All present recited the Pledge of Allegiance.

**SECOND ORDER OF BUSINESS**

**Roll Call**

For Bay Creek CDD, Supervisors Janek, Travers, McVay and Durney were present. Supervisor McBride was not present. For Bayside Improvement CDD, all Supervisors were present.

**THIRD ORDER OF BUSINESS**

**Public Comments: *Agenda Items***

Mr. Ed Shinouskis, a resident and Water Quality Task Force member, read the following statement related to the Seventh Order of Business, Consideration of the NPDES Cycle 4 Year 3 Report:

“My opinion is that the Cycle 4 Year 3 NPDES Report does not represent the operational performance of the CDDs’ stormwater management systems, specifically are discharges into Spring Creek and Estero Bay. Section 3.B., of the Report, does not describe our reactional discharges into the surrounding waters as required. The narrative uses of Lee County Spring Creek test sight 48-10GR, which has no proven relationship to our actual nutrient discharges. The instructions in the Sections state, results must be specific to the Permittees’ Stormwater Management Program. I do not believe they are. We have at least 11 discharge points into the surrounding waterways; Site 48-10GR, which is the Pelican Landing Kayak Park, is not a measurement of any of those. This testing sight is subject to tidal mixing and upstream stormwater runoff in Volusia. Accurate measurements must be made at the point of discharge, not a location that was chosen because it is easy. This site was chosen specifically because, in

our Interlocal Agreement with Lee County, it states that Lee County can provide the data for free. That same Interlocal Agreement states that the Agreement parties' desire is to maintain and assist in the improvement of water quality and to preserve and enhance the environmental quality of streams in receiving waters. This tells me there is an overriding responsibility to maintain and improve water quality. It also states that all co-permit holders will still be responsible for their actual discharges of their NS 4 Systems. What I see in the Report is a claim that all is well and I see no desire to maintain it and assist in the improvement of water quality. Section 3B also does not state that this Lee County test site shows that nutrient levels are much higher than the FDEP Class 3 Water Quality threshold. In fact, of the last 120 monthly tests performed by Lee County at this site, between 2010 and 2020, 113 of those have shown that the nutrient level is above the water quality threshold for total nitrogen. That is 94% of the samples tested over the last 10 years, so even if this site was representative of our discharges, the results are very high, and it could be interpreted that we are a contributing factor. The FDEP document entitled "Guidance for Preparing Monitoring Plans as Required for Phase One MS4 Permits" specifically states "it is highly recommended that monitoring be conducted on major outfalls and our in stream monitoring locations, to measure the pollutant loadings of stormwater discharges from an MS4. The document then goes by to say, specific examples include major outfalls that discharge to an impaired water body. So, per this document, because of our discharges going into water bodies that have been declared and verified impaired, FDEP highly recommends that we test major outfalls, not a site chosen for its convenience and cost savings. We are not really discharging into impaired water bodies, but impaired water bodies that are also outstanding Florida Waterways or OFWs. This is a special designation given by FDEP that enhances protection and includes a non-degradation standard, which means by law, no one is allowed to discharge anything that reduces the existing water quality. Estero Bay and its tributaries are now celebrating their 30<sup>th</sup> year of being declared Outstanding Florida

Waterways. Ironically, since this special designation, water quality has gotten progressively worse. So, my request, which is consistent with the FDEP MS4 Guidance document, is that monitoring be conducted on major in-stream and outfall locations that discharge from our CDDs into the surrounding waterways. This is the only way to get an accurate measurement of our true nutrient loading and discharges, at the operational performance for stormwater infrastructure.

Thank you.”

Ms. Gravenhorst, a resident and PLCA Landscape Committee member, asked, on behalf of The Colony Foundation Board, if Bayside would conduct a Workshop with The Colony to better identify areas that need attention and fashion a “Colony” appropriate Landscape and Disaster Response Agreement, similar to the one they approved with the PLCA.

**JOINT BOARD ITEMS**

**FOURTH ORDER OF BUSINESS**

**Staff Report: District Engineer: Barraco & Associates, Inc.**

There being no report, the next item followed.

**FIFTH ORDER OF BUSINESS**

**Lake Maintenance Report: *SOLitude Lake Management***

Mr. Kurth presented the October 2020 Monthly Report and discussed the following:

- The Sonar herbicide treatments were successful at Lake B-5, an outfall lake. Solitude would continue to monitor and address algae blooms. This action typically is performed in April.
- All nano-bubblers were functioning properly; cleaning and/or replacement was scheduled with the manufacturer.
- A concern about the high rise’s lake condition was reported. He toured the property on Friday and found it to be beautiful.
- Grass Carp Permit: Herbicide treatments over the last few years enabled control of the major submersed weed problems and, because options other than Sonar were available, proceeding with grass carp was not recommended, as the fish could negatively impact existing beneficial littoral plants.

Discussion ensued regarding the existing grass carp, life span, etc.

Mr. McCarthy asked about the Report determining whether the nano-bubblers at the E Lakes were effective. Mr. Kurth would compare the results with the other units running full time and include his findings in his Report for the next meeting. Since the units were installed, there was noticeable improvement; however, not all algae was removed. Discussion ensued regarding the need to repair some units and from noise complaints, at Lakes E-1 through E-3, which caused operating hours to change from 7:00 a.m., to 6:00 p.m., instead of full 24-hour cycle.

Mrs. Adams stated that Mr. Zimmerman would be restoring the lake bank located on the golf course, adjacent to Lake A-16, caused by a broken irrigation head.

Mr. Kurth stated he was negotiating with another firm for a new bacterial trial to treat the muck at Lake E-5; it would include sampling the muck, at no charge to the Districts, as there are significant nutrients and muck in the lake.

**SIXTH ORDER OF BUSINESS**

**Committee Reports**

**A. PLCA Landscape Committee**

Mr. Cramer asked for the landscape projection for the areas around the security checkpoints and inquired about whether there would be any changes to the street lighting. Ms. Muller stated she was unsure but would know within in the next couple of weeks.

Ms. Muller introduced Ms. Marilyn Price, a resident, PLCA Board member and Chair of the PLCA Landscape Committee.

**B. Colony Landscape Committee**

Ms. McVay asked that they consider reserving landscaping funds in the budget, which was not done for several years.

**C. Water Quality Task Force**

Mr. Shinouskis listed the Water Quality Task Force members and outside support teams. The first meeting, scheduled for November 13, 2020, would be an organizational meeting. It would be in-person, at the PLCA Community Center, and available virtually.

**SEVENTH ORDER OF BUSINESS**

**Consideration: NPDES Cycle 4 Year 3  
Report**

Ms. Todd presented the NPDES Cycle 4 Year 3 Report, which addresses nutrient loading analysis. Overall, the annual nutrient loading analysis results were less than the prior year because of the cascading effect, as it went from one basin to 32 basins, which helps with removal of the nutrients. Mr. Adams stated that the Districts were not on the County's audit list this year.

Mr. Bill Nicholson asked Mr. Barraco to respond to Mr. Shinouskis' comments earlier in the meeting. Mr. Barraco recalled that Mr. Shinouskis requested performing tests at the actual discharge points; however, the Report was completed according to industry standards, using Lee County's monitoring sites. Additional testing could be performed but he did not think the results would change the results in the Report. Ms. Todd would correct discrepancies in the Report and include the total phosphorus graph that was inadvertently omitted.

**On MOTION for Bayside by Mr. Cramer and seconded by Mr. Jim Nicholson, with all in favor, the NPDES Cycle 4 Year 3 Report, as amended to include edits and a missing graph, as discussed, and authorizing the Chair to execute the final version, was approved.**

**On MOTION for Bay Creek by Mr. Janek and seconded by Mr. Travers, with all in favor, the NPDES Cycle 4 Year 3 Report, as amended to include edits and a missing graph, as discussed, and authorizing the Chair to execute the final version, was approved.**

Mr. Adams stated Mr. McBride moved out of state and had not submitted his resignation letter.

**EIGHTH ORDER OF BUSINESS**

**Discussion/Consideration: Revised Disaster  
Response Agreement with PLCA**

Mr. Janek stated he was upset with Mr. Bill Nicholson's action of negotiating with the PLCA his terms and, in Item #9, the Termination Agreement, on behalf of the Districts, and directing Counsel to incorporate them without the consent of the Boards. Mr. Adams stated

that, due to formatting issues the second Item #9 would be deleted. The first one covered the PLCA's request to provide a termination clause, which included the same clause in the Landscape Maintenance Agreement. The PLCA Board is prepared to execute the Agreement once it is approved by the Boards. Mr. Bill Nicholson voiced his concerns that the Agreement was beneficial to the PLCA and recommended further review by the new District Counsel, as he felt that it did not protect the CDD, professionally or financially. In response to a question, Mr. Urbancic stated that he reviewed the prior and current versions of the Agreement, along with Mr. Bill Nicholson's comments. He stated that this was a policy issue for which they need to determine the middle ground. Mr. Cox recalled that the Agreement included generic language, from the prior Workshop, and recommended holding another Joint Workshop with the PLCA, due to the changes being proposed. Board Members voiced concern that the Agreement does not protect the Districts' financial interests, the PLCA exceeding its budget, the PLCA pursuing reimbursement from the Federal Emergency Management Agency (FEMA) instead of the CDD, post-hurricane roadway cleanup and the District billing the PLCA for the debris clearing costs.

Mr. Steve Backman, PLCA General Manager, stated that the PLCA Board increased the capital reserves from \$1 million to \$1.5 million to be used solely for storm water management issues. It could not be used for the down payment of amenity construction and any funds needed beyond that would come from capital or an assessment. Several CDD Board Members were concerned about the Agreement. It was felt that the District should not be involved in the financial process and that the PLCA should pay the subcontractor directly. Use of the Districts' landscape crews in the first week to clear roads due to a storm was discussed and having further discussions with the PLCA was suggested.

**On MOTION for Bayside by Mr. Cramer and seconded by Mr. Jim Nicholson, with all in favor, authorizing Staff to schedule a Joint Workshop with the PLCA to review the details of the Disaster Response Agreement, was approved.**

**On MOTION for Bay Creek by Mr. Travers and seconded by Ms. McVay, with all in favor, authorizing Staff to schedule a Joint Workshop with the PLCA to review the details of the Disaster Response Agreement, was approved.**

Mr. Cramer asked for the Agreement to include events triggering the PLCA to inform all the residents that, in conjunction with the PLCA Board, the CDDs would work for a certain time; a key telephone list would be provided to them. The Boards instructed District Counsel for each CDD to incorporate comments from Mr. Bill Nicholson and Mr. Cramer and distribute a new draft to the Boards, within the next ten days, before the Joint Workshop is scheduled.

**NINTH ORDER OF BUSINESS**

**Discussion/Consideration: Interlocal  
Agreement with Village of Estero for North  
Commons Drive and Walden Center Drive  
North**

Mr. Adams stated that the Village Attorney approved the Interlocal Agreement; however, a response from Village Staff and the Councilman regarding accepting the CDD-owned section of road at North Commons Drive was pending. He suspected that improvements to the roadway might be necessary before the Village would accept it. The version of the Agreement in the agenda did not include Mr. Urbancic's edits, which were sent to the Village.

**TENTH ORDER OF BUSINESS**

**Acceptance of Unaudited Financial  
Statements as of September 30, 2020**

Mr. Adams presented the Unaudited Financial Statements as of September 30, 2020. Budget amendments for Fiscal Years 2020 and 2021 would be presented in December to address overages on appropriations in the General Funds and to roll balances from the uninsured asset funds into each Districts' respective General Funds, split between surplus and unassigned surplus fund balance. Discussion ensued regarding the horticulturist invoices and suggestions submitted to The Colony Landscape Committee after touring and identifying stressed or nonexistent plant materials; a walkthrough would be scheduled before the turnover. The financials were accepted.

**ELEVENTH ORDER OF BUSINESS**

**Approval of Minutes**

**A. September 14, 2020 Special Meeting [Bayside Improvement CDD]**

Mr. McCarthy presented the September 14, 2020 Special Meeting Minutes.



**B. September 28, 2020 Joint Regular Meeting**

Mr. McCarthy presented the September 28, 2020 Joint Regular Meeting Minutes.

**On MOTION for Bayside by Mr. Cramer and seconded by Mr. Jim Nicholson, with all in favor, the September 14, 2020 Special Meeting Minutes, as presented, and the September 28, 2020 Joint Regular Meeting Minutes, as amended to include any changes submitted to Management, were approved.**

**On MOTION for Bay Creek by Mr. Janek and seconded by Mr. Travers, with all in favor, the September 28, 2020 Joint Regular Meeting Minutes, as amended to include any changes submitted to Management, were approved.**

**TWELFTH ORDER OF BUSINESS**

**Action/Agenda Items**

Active/Ongoing News Items: Items 7, 8 were completed.

Item 7: Ms. McVay stated she would address Item 7 during Supervisors' request.

**THIRTEENTH ORDER OF BUSINESS**

**Old Business**

There being no old business, the next item followed.

**FOURTEENTH ORDER OF BUSINESS**

**Staff Reports**

**A. District Counsel: *Gregory Urbancic, Esq., Coleman Yovanovich Koester, P.A.***

Mr. Urbancic stated that a physical quorum of the Board for each District would be required at the next meeting, as the Governor's Executive Order waiving in-person quorum requirements would expire on November 1, 2020.

▪ **QUORUM CHECK: *BAYSIDE IMPROVEMENT CDD***

**This item, previously Item 14B2, was presented out of order.**

Supervisors Montgomery, Jim Nicholson, McCarthy and Cramer confirmed their in-person attendance at the December 7, 2020 Meeting. Supervisor Bill Nicholson would attend via Zoom.

▪ **QUORUM CHECK: *BAY CREEK CDD***

Supervisors Travers, Janek, McVay and Durney confirmed their in-person attendance at the December 7, 2020 Meeting. Supervisor McBride would not be present.

▪ **Bay Creek District Counsel: *Daniel Cox, Esq.*,**

**This item was an addition to the Agenda.**

Mr. Cox stated that the revised DRC identified Bayside Improvement incorrectly and HOA's Counsel included objectionable language that the District is subject to Association approval. As Mr. Urbancic sent Mr. Adams the same comments and Mr. McCarthy identified other inaccurate information in the document, Mr. Cox would verify that his and Mr. Urbancic's comments are the same and schedule a conference call with him and Mr. McCarthy tomorrow afternoon.

Mr. Cox reported the following regarding the Bonita Springs Stormwater Utility Program:

- If the language that would be presented at the City's November meeting is approved, the City would advertise an amendment to the Ordinance regarding entities being eligible for discounts on their capital improvements.
- The direction of the Districts would be discussed with Mr. Urbancic during the conference call tomorrow.
- A status hearing was scheduled for December and, if the parties agree to resolve the issues, it was hoped that the case would be dismissed; if not, a Motion for Summary Judgment would be filed and a hearing would be scheduled for February 2021.
- The costs would expend half the legal budget for Fiscal Year 2021.

**B. District Manager: *Wrathell, Hunt and Associates, LLC***

**I. Monthly Status Report: Field Operations**

The Monthly Status Report was included for informational purposes.

**II. NEXT MEETING DATE**

- **December 7, 2020 at 2:00 P.M.**
  - **QUORUM CHECK: *BAYSIDE IMPROVEMENT CDD***
  - **QUORUM CHECK: *BAY CREEK CDD***

These items were presented during Item 14A.

Mr. McCarthy offered his regards to those running for positions on the Boards in the upcoming elections.

**FIFTEENTH ORDER OF BUSINESS**

**Supervisors' Requests**

Ms. McVay thanked Mrs. Adams for providing the Bay Creek buffer easement. She asked Mr. Adams to send a copy of the slide presentation identifying the buffer easement, along with a write up for residents, and to have a tire removed.

Mr. Janek asked who is authorized to give attorneys tasks and when the South Gate would be opened. Mr. Adams stated the District Manager and there was no update as to when the South Gatehouse would reopen. Mr. Cox stated the Rules of Procedure state that the District Manager has the authority to manage the contracts, along with the Chair, upon consultation. Ms. Muller would provide Mr. Janek with an update tomorrow.

Mr. Bill Nicholson asked Mr. Adams to prepare a draft strategic planning objective for the December meeting and suggested that the process and procedure practices focus on efficiency and working smarter and not harder. He expressed his appreciation and stated that it is an honor serving on the Board. He thanked the Board Members for their inclusiveness and tolerance and noted that he was running opposed in the upcoming election.

Ms. Montgomery thanked the Board Members for the opportunity to serve on the Board.

Ms. McVay asked about the Boss program and requested quarterly status reports. Mr. Adams stated that it continues to evolve. Mr. Bill Nicholson was working with Mr. Kucera and the Boss technician in an attempt to manipulate the program to fit the Districts' needs.

**SIXTEENTH ORDER OF BUSINESS**

**Public Comments: *Non-Agenda Items***

Ms. Gravenhorst asked to include The Colony in the joint workshop with the PLCA.

**SEVENTEENTH ORDER OF BUSINESS**

**Adjournment**

There being no further business to discuss, the meeting adjourned at 4:05 p.m.

**BAYSIDE IMPROVEMENT  
& BAY CREEK CDDS**

October 26, 2020

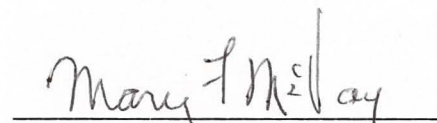
FOR BAYSIDE IMPROVEMENT:

  
Secretary/Assistant Secretary

  
Chair/Vice Chair

FOR BAY CREEK:

  
Secretary/Assistant Secretary

  
Chair/Vice Chair