

**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 December 4, 2023, at 2:00 p.m., at the Pelican Landing Community Center, 24501 Walden Center Drive, Bonita Springs, Florida 34134. Members of the public were able to participate via Zoom, at <https://us02web.zoom.us/j/84137772934>, and via conference call at 1-929-205-6099, Meeting ID: 841 3777 2934 for both.

Present for Bayside Improvement CDD were:

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

Present for Bay Creek CDD were:

James Janek	Chair
Robert Travers	Vice Chair
Jerry Addison	Assistant Secretary
Gary Durney	Assistant Secretary
Mary McVay	Assistant Secretary

Also present:

Chuck Adams	District Manager
Cleo Adams	District Manager
Shane Willis (via phone/Zoom)	Operations Manager
Dan Cox (via phone/Zoom)	District Counsel, Bay Creek CDD
Greg Urbancic (via phone/Zoom)	District Counsel, Bayside Improvement CDD
Frank Savage	District Engineer
Paul Kemp	Field Manager
Bailey Hill	SOLitude Lake Management (SOLitude)
Eric Franzoi	President, W.J. Johnson & Associates
Andy Nott	Superior Waterway
Louis San Lorenzo	Aquagenix

George Bowling
Deb McKenna
Marcia Gunther
Jane Troup
Kurt Hesse

Crosscreek Environmental
Resident
Resident
Resident
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

All Supervisors were present for both Bayside Improvement and Bay Creek CDDs.

THIRD ORDER OF BUSINESS

Public Comments: Agenda Items

Resident Deb McKenna thanked the CDDs and Mr. Kemp for addressing the corner of Bay Cedar. She stated the Butterfly Garden Group asked her to represent them regarding some issues including Brazilian peppers, dead trees, trash, etc. She noted the CDDs are the only entities willing to assist and the Butterfly Garden Group is very appreciative.

A Board Member commented that the Butterfly Garden looks very nice.

Resident and Long Lake Village (LLV) Board Member Marcia Gunther discussed LLV's irrigation and a proposal to install a filter. She asked permission for LLV to install a master filter and presented a letter from LLV President Dr. Dean Francis with additional information. Mr. Kemp voiced his opinion that LLV selected a good contractor and expressed support for the project. He discussed previous work in Ascot, the current conditions in LLV, the scope of work proposed, the need for testing, the possible need for additional work to be done, etc. Mr. McCarthy stated that LLV does not need CDD authorization to proceed. Mr. Adams stated Staff will assist LLV and noted that billing issues were resolved.

Discussion ensued regarding the scope of work.

A resident expressed support for Mr. Geist, the selected contractor.

Resident Jane Troup noted that many residents continue to water their lawns daily, flagrantly misusing the water system amid a drought, and suggested a subcommittee address such issues. She asked for CDD staff to pick up roadside litter. She noted that the rear lighting of the north monument at Goldcrest is not working. Mr. Kemp stated it is on the electrician’s list.

Resident and Costa del Sol President Kurt Hesse thanked the CDDs for the work done on Greenview Drive. He asked for sod to be installed at the Greenview and Alicante roundabout. Mr. Kemp stated planting is paused due to the drought but the area will be addressed when feasible.

Mr. Hesse stated that residents who observed much watering at the golf course asked him why the golf course waters so frequently and if their community can purchase water or have permission to water more frequently. He noted that, when pond levels are too low, the pump shuts off and the residents cannot water even one day a week, resulting in loss of plants and grass. He asked if the problem can be relieved.

Mr. Adams stated water is a finite source; in Pelican Landing, most irrigation water comes from the ground and part is from Resource Conservation Services, who purchased effluent water from Bonita Springs Utilities, which has a finite source. Bay Creek CDD receives approximately 250,000 gallons a day into its holding pond at Greenview and Nest Drive. Staff has looked into bringing reuse water into the Bayside CDD’s system; in the past, issues included the need to line the pond to separate the water from the water table. The CDDs are working to address these and other issues and hopefully find a suitable solution. Mr. Hesse appreciated the information.

Ms. McVay noted that part of the question relates to the golf course water usage. Mr. Adams noted the golf course has a separate water usage permit. The CDDs’ water usage permits allow about one billion gallons per year but that is used quickly during a drought.

Mr. Hesse asked if there is a water usage monitoring system. Mr. Adams stated individuals are not checking usage but mailers were sent and a penalty system will be discussed today.

JOINT BUSINESS ITEMS

FOURTH ORDER OF BUSINESS

Discussion/ Consideration of Lake Maintenance Award of Contract

This item was presented following the Fifth Order of Business.

FIFTH ORDER OF BUSINESS

**Consideration of W.J. Johnson & Associates
Letter of Engagement Regarding Space
Optimization [Maintenance and
Administrative Facility on Coconut Road]**

Mr. Nicholson introduced Mr. Eric Franzoi, of W.J. Johnson & Associates, who was asked to do a concept analysis of the facility and determine what rearrangements might be warranted to make better use of the footprint of the building and exercise those concepts with either Estero or Bonita Springs to ensure compliance with the permits.

Mr. Franzoi presented the proposal, noting the need to protect equipment from the elements and issues presented by overhead doors. He discussed his understanding of various considerations, such as setbacks, access for large trucks and fire trucks around the buildings, the need for covered areas, stormwater management, etc. He discussed his firm's experience working with local municipalities and noted the need to determine what can be built and where, before a building is designed. The proposed scope in the proposal includes an operational part and a civil works part.

Mr. McCarthy stated the property in question is in unincorporated Lee County, not in the City of Bonita Springs or in the Village of Estero.

Mr. Nicholson noted that the proposal represents the first of three steps; the first step would be concept development and provisional County approval. The second step would be design, and the third step would be bidding and construction.

Mr. Durney asked if the site is large enough for the proposed project. Mr. Franzoi replied affirmatively and discussed the need to prepare a layout, designate staging areas, consider setbacks, etc. Ms. Montgomery suggested moving the employee parking to the shuttle parking lot would provide a great deal of additional space, if an Agreement with PLCA was made.

Mr. McCarthy noted that use of the property is subject to zoning and Development Orders (DO). He suggested approaching the County and reviewing the documents; he thinks the CDDs already maximized development as much as possible. Open space is required by the DO. He discussed the need to ensure compliance with existing DOs before approaching the County about additional projects. He discussed the County's informal processes for early-stage projects and

stated, in the past, the joint CDD Boards appointed him to be the manager of this project when it was built. He expressed support for a point person for and stated he is not unwilling to do it but only one person can be present, due to restrictions.

Mr. Cramer expressed support for constructing the building discussed and any steps necessary to enable that to proceed.

Discussion ensued regarding how to proceed and designation of a point person.

Mr. McCarthy noted that fees must be paid to obtain copies of documents.

Mr. Franzoi stated he is willing to attend the first meeting, free of charge.

Mr. Durney believes, with regard to the operational portion, the CDDs' computerized work management system might already have a preventive maintenance module; however, the data might need to be entered. Mr. Franzoi stated it is possible and, if not, he can work with Information Technology to develop one.

On MOTION for Bayside by Ms. Montgomery and seconded by Mr. Cramer, with all in favor, designating Mr. Nicholson as the point person with the County and related entities, in consultation with Staff, and accepting the generous free of charge service offered by W.J. Johnson & Associates, was approved.

On MOTION for Bay Creek by Mr. Janek and seconded by Ms. McVay, with all in favor, designating Mr. Nicholson as the point person with the County and related entities, in consultation with Staff, and accepting the generous free of charge service offered by W.J. Johnson & Associates, was approved.

▪ **Discussion/Consideration of Lake Maintenance Award of Contract**

This item, previously the Fourth Order of Business, was presented out of order.

Mrs. Adams presented the Memorandum regarding the Award of Contract for Lake Maintenance, which was advertised as required. The current contract with SOLitude will expire January 31, 2024. The contract will be performance-based and, regardless of the number of technicians specified, the contract requires as many technicians as necessary. All four companies invited to the pre-bid attended. She reviewed the bids and expressed concern that the \$213,211 Deangelo Contracting Services, LLC DBA Aquagenix (Aquagenix) bid was so low given that the current contract price has been stable for several years and the economy has not changed. She

felt that both Superior Waterway Services (Superior) and Crosscreek Environmental (Crosscreek) are very capable, based on current experience with other CDD clients.

In response to a question, Mr. Urbancic stated while he did not review all the backup documents, he did find that the advertised notice was sufficient for the bidding process.

Mrs. Adams voiced her opinion that Superior is more than capable to perform the lake management services; Superior bid the lowest for the first year and the difference in the second year cost is only approximately \$2,000. The bid is for a one-year contract with a second year option to renew; should the Boards decide next year to go out to bid, a 30-day notice to the contractor is required.

Mr. Andy Nott, of Superior, discussed his company's experience and references and responded to questions. Two technicians would service the lakes twice per week, committing to a minimum of sixteen visits per month and more visits, if necessary. Superior's office is in Northport and many technicians live in Fort Myers and visit the office once a week to pick up chemicals and maintenance items. He discussed his previous experience with Lake Masters and SOLitude treating lakes in the CDDs and stated that he installed most of the aeration.

Mr. Louis San Lorenzo, of Aquagenix, discussed his company's experience and references and responded to questions. He proposed three technicians each week and noted that his Assistant Manager previously worked as the CDDs' technician for ten years. Aquagenix has more than seven offices in Florida and an office in Fort Myers; the company reorganized several years ago and has adequate resources to fulfill the contract.

Mr. Bowling, of Crosscreek, discussed his company's experience and references and responded to questions. He discussed a recent expansion and stated his office is in South Fort Myers. He discussed his impressions of the CDDs' lakes and treatment needs and noted that several crew members previously treated the CDDs' lakes. His company is an up-and-coming company with new equipment, new spray systems and highly experienced technicians.

Mr. Adams discussed why the lowest bid, given this unique property's history and challenges, does not seem to be the best responsible bid.

Mr. San Lorenzo and Staff discussed the bid and potential treatments.

Mrs. Adams noted that, in her experience, Sonar[®] treatments are very expensive and will be necessary. She recommended engaging Superior.

Discussion ensued regarding the performance-driven contract, past issues related to selecting the lowest bidder and resulting recovery efforts, etc.

On MOTION for Bay Creek by Mr. Travers and seconded by Ms. McVay, with Mr. Travers, Ms. McVay and Mr. Addison in favor and Mr. Durney and Mr. Janek dissenting, awarding the contract to Superior Waterway Services, Inc., was approved. [Motion passed 3-2]

Mr. McCarthy asked if the CDD Boards want to have two different contractors.

The Board Members agreed that the same contractor should be selected for both CDDs.

Discussion ensued regarding the difference in bid price, performance guarantee, issues in the past and the Boards' directive to select the lowest responsive, responsible bidder.

Mr. Cox stated the Boards can split the bid but the cost might increase if the contract is split and it is unknown whether the bidders would accept a split bid.

Ms. Montgomery stated she leans toward engaging Crosscreek given the local office in Lee County and new equipment but, in her opinion there are two strong contenders and she believes it unwise to have the Boards engage different contractors.

Mr. McCarthy noted that, as Mr. Cox stated, the bid was not set up for separate contracts.

Discussion ensued regarding accepting Staff's recommendation to engage Superior.

On MOTION for Bayside by Mr. Nicholson and seconded by Ms. Gravenhorst, with Mr. Nicholson and Mr. Cramer in favor and Mr. McCarthy, Ms. Montgomery and Ms. Gravenhorst dissenting, awarding the contract to Crosscreek Environmental, was not approved. [Motion failed 2-3]

On MOTION for Bayside by Ms. Montgomery and seconded by Ms. Gravenhorst, with Ms. Montgomery, Ms. Gravenhorst and Mr. McCarthy in favor and Mr. Nicholson and Mr. Cramer dissenting, awarding the contract to Superior Waterway Services, Inc., on the basis of Staff's recommendation, was approved. [Motion passed 3-2]

SIXTH ORDER OF BUSINESS**Review of Landscape Maintenance Agreements with PLCA**

- **Continued Discussion: Setting Joint Workshop in January**

Mr. Adams stated a comprehensive presentation will be given at the January workshop, including maps and GIS overlays to convey the size and scope of the project, which encompasses 91 acres of lakes and over 3 million square feet of landscaping to maintain. Once complete, the document will be presented to the PLCA.

Mr. Cramer noted that various PLCA subcommittees make determinations regarding utility easements; he believes the decisionmakers need to be aware of the limitations. Mr. Adams stated this document will not address Village or City requirements.

Mr. Adams stated the Landscape Agreements, curb inlet cleaning and the CDD-owned streetlighting systems will be addressed. He recalled that, per Ms. Gravenhorst's suggestion regarding who will determine when a plant has reached its "end of life" it was decided that the life expectancy will be determined by a third-party licensed Horticulturist.

Ms. Gravenhorst stated it was noted that a baseline is needed for today's standards as opposed to standards from 15 years ago, to determine when PLCA will be financially responsible and when the CDDs will pay the cost.

Mr. Durney questioned the duration of the Agreement and whether it can only be canceled for cause. Mr. Adams stated the Agreement will continue in perpetuity until one party or the other cancels it.

Mr. Cox confirmed that the Agreement can be canceled by either party.

SEVENTH ORDER OF BUSINESS**Discussion: Irrigation Penalty Rates**

Mr. Adams discussed the need to implement irrigation penalty rates and noted that the justification is that, if all well water is depleted, the only remaining viable water source is drinking water. Therefore, charging potable water rates was deemed justified and the tiered structure used by local utilities was used. The tiers were last examined ten years ago; since that time, costs have increased from \$0.30 to \$0.40 per thousand gallons, or approximately 1% per year. To deter

those who are overusing water, a greater penalty is needed. On average, one or two requests for relief are received per month. The intent of the penalty is not to generate revenue; rather, it is to ensure that the water supply remains adequate. Mr. Adams discussed past violations and asked the attorneys to opine on options available to determine a more stringent penalty rate.

Mr. Cox stated that two different accounts he represents own potable water treatment and distribution facilities. He stated, at those rates, there is a need to contact suppliers. He noted that his accounts are planning large increases.

Discussion ensued regarding the rates, the relatively low rate increases in recent years, increasing chemical and labor costs and the need to gradually increase rates accordingly.

Ms. Gravenhorst asked if the water bill indicates when a penalty for overuse applies. Ms. McVay stated they do not and noted that she objected to that indication being removed. The Board Members agreed that the penalty should be included. Mr. Adams will look into this matter.

Discussion ensued regarding watering lawns, occasional versus habitual offenders, increasing the cost for each tier and instances in which one-time relief will be offered.

Asked if denial of service could be an issue and if the CDDs are obligated to provide water, Mr. Urbancic stated that a claim could be filed if water is withheld for other than good cause.

Mr. Cox stated, in the event of a force outside of the CDDs' control, force majeure applies and the CDDs would not be liable. He expressed concern due to the extended lack of rain given the time of year and the ongoing drought. If there is no ability for the CDDs to control the situation that led to its inability to perform, there is no liability on the CDDs' part.

Mr. Janek voiced his opinion that, if water available at Bay Creek is not provided to The Ridge, it is improperly denied. Mr. McCarthy thinks that would be discretionary, not force majeure. Mr. Adams stated that the water builds over the days when pumps are shut down; when notices are sent, residents can determine which days water is available.

Discussion ensued regarding implementing step-wise tariffs as drought levels change and impacts on revenues.

JOINT BOARD ITEMS**EIGHTH ORDER OF BUSINESS****Staff Report: District Engineer – Barraco & Associates, Inc.**

Mr. Savage stated a field representative was on site on November 30, 2023 to review the conveyance swale connecting between Parcels M & N. During inspection, some minor adjustment was needed to the turbidity curtain; it was reported to the contractor at that time and remedied that day. No other issues were noted on the Infinity parcel.

Mr. Savage stated, with regard to Action Item #11 from the previous meeting minutes, there is no update.

NINTH ORDER OF BUSINESS

Waterway Inspection Report: November 2023 – SOLitude Lake Management, LLC

Ms. Hill presented the November 2023 Report, which included the actions taken to bring all non-compliance issues in the defective work notice into compliance. She noted that nearly all issues were resolved, with the exception of Lake E-8, which will be treated with Sonar® for slender spikerush. All cattails were removed from the WCI lake on Friday.

Mrs. Adams stated Mr. Willis will schedule a review of the lakes in January, in order to release the remainder of the funds payable to SOLitude; funds will be held back for any initial cleanup requirements.

TENTH ORDER OF BUSINESS

Committee Reports

A. PLCA Landscape Committee

There was no report.

B. Colony Landscape Committee

The Report was included for informational purposes.

ELEVENTH ORDER OF BUSINESS

Presentation of Monthly Year-End Financial Forecast (under separate cover)

This item was discussed during the Twelfth Order of Business.

TWELFTH ORDER OF BUSINESS

Acceptance of Unaudited Financial Statements as of October 31, 2023

Mr. Adams presented the Unaudited Financial Statements as of October 31, 2023. The investment account previously authorized was opened as of November 2023, and will be reflected in the next financials.

Mr. Nicholson asked how expansion of Mr. Kemp’s team has progressed. Mr. Adams stated his team is fully staffed at the newly-authorized levels; two additional vacancies were filled.

The financials were accepted.

THIRTEENTH ORDER OF BUSINESS

Approval of October 23, 2023 Joint Regular Meeting Minutes

On MOTION for Bayside by Ms. Montgomery and seconded by Mr. Nicholson, with all in favor, the October 23, 2023 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. Addison, with all in favor, the October 23, 2023 Joint Regular Meeting Minutes, as amended to include any changes submitted to Management, were approved.

FOURTEENTH ORDER OF BUSINESS

Action/Agenda Items

The Action/Agenda Items list will be updated following the meeting.

FIFTEENTH ORDER OF BUSINESS

Old Business

There was no old business.

SIXTEENTH ORDER OF BUSINESS

Staff Reports

A. District Counsel

I. Gregory Urbancic, Esq., Coleman Yovanovich Koester, P.A.

Mr. Urbancic stated Staff is monitoring the upcoming legislative session and several bills might affect CDDs or Special districts. He will monitor the session and provide updates.

II. Daniel Cox, Esq.

Mr. Cox stated Staff needs to monitor phone participants who might wish to comment to comply with the Sunshine Law.

Asked when the letter to the homeowner at 3709 Baycreek Drive will be mailed, Mr. Cox stated it was sent; he will email it to District Management tomorrow.

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

I. Monthly Status Report: Field Operations

The Monthly Report was included for informational purposes.

II. UPCOMING MEETING DATES:

- **January __, 2024 at __:__ AM/PM [Joint Workshop with PLCA]**
- **January 22, 2024 at 2:00 PM [Regular Meeting]**
- **QUORUM CHECK: BAYSIDE IMPROVEMENT CDD**
- **QUORUM CHECK: BAY CREEK CDD**

All Supervisors confirmed their attendance at the January 22, 2024 meeting. The workshop meeting date is to be determined.

SEVENTEENTH ORDER OF BUSINESS

Supervisors' Requests

Ms. Montgomery recalled a quote from Perky Varmints in April 2023. Mrs. Adams stated the quote was given to the HOA. Ms. Montgomery stated the pests are dormant now and will not be observed for a time. The quote included a 2024 portion; the seven-month quote would have provided coverage for 2023. The issue was deferred and input was sought from The Next, The Colony and the PLCA. A meeting was held with Ms. Ellen Dennis and others; essentially, responsibility for the matter rests with the CDDs. The 2024 quote was based on 10 months at a cost of \$58,000.

Ms. Montgomery stated the Eco Club is running again after being dormant for several years. They were at the Info Fair. There are over 200 members and the most requested speaker topic is cane toads. The Eco Club will sponsor a meeting on January 15, 2024. She suggested the quote be revisited before the pests become active again; activity is temperature related and activity might begin in February. This item will be included on the next meeting agenda.

Mr. Cramer discussed and stated he received calls asking why the CDD has not repaired an area in front of the clubhouse, between the sidewalk and the roadway, that was damaged when The Nest replanted. Mr. Adams stated he will call the General Manager.

Ms. Montgomery discussed an area visible when entering the southern gate, towards The Nest that has been taken over by vines. Mr. Adams stated they were treated and the brown vines will be removed.

Mr. Durney stated painting the monuments was discussed at the Landscape Committee Meeting. Mr. Kemp indicated that the budget provides for three monuments by the entrances to be painted. The Landscape Committee also wants the fourth monument, by Spring Creek, to be painted; if the CDDs lack funds, the Landscape Committee would like to fund the expense. A proposal will be requested.

Mr. Travers voiced his opinion that the CDDs look great and he has received excellent feedback. Mrs. Adams echoed his comments and stated Mr. Kemp is doing an excellent job.

EIGHTEENTH ORDER OF BUSINESS

Public Comments: Non-Agenda Items

No members of the public spoke.

NINETEENTH ORDER OF BUSINESS

Adjournment

There being nothing further to discuss, the meeting adjourned at 4:20 p.m.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

FOR BAYSIDE IMPROVEMENT:



Secretary/Assistant Secretary



Chair/Vice Chair

FOR BAY CREEK:



Secretary/Assistant Secretary



Chair/Vice Chair