

MINUTES OF THE BOARD OF SUPERVISORS

ISLE OF PALMS SPECIAL DISTRICT

November 9, 2022

Board President Ken Wright opened the meeting; calling it to order at approximately 1830 hours with a Roll Call of all Board members present at the San Pablo Public Library. Other Board members/officers present were Vice President Paul Raudenbush, Secretary Brad Radloff, Member David Touring, and Member Josh Reichert. A quorum was established with five Board members present at the meeting. Board Attorney Wayne Flowers of Lewis, Longman & Walker (LLW) and Charlene Stroehlen, P.E., the Project Manager with Wood, PLC, as representative for the District's Engineer of Record to administrate the dredging efforts, were both attending via call-in/speaker. Neither Lance Young of Brance Diversified, Inc. (BDI), the dredging contractor, nor his attorney, Lindsey Brock, attended the meeting. There was 1 homeowner(s) from the District physically attending the meeting with an unknown number of call-in attendee(s), if any. The meeting was held in a Community Meeting Room of the Pablo Creek Regional Library at 13295 Beach Boulevard, Jacksonville, FL 32246 but could also have been attended via Skype-based audio-only teleconference. The call-in phone number was (904) 348-0303 and the meeting ID 809 721 327.

Agenda-Specific Public Comments [Agenda Item 1]-

As a result of a Florida Statute, *public comments of Agenda items only* (no general items) are to be taken prior to addressing the Meeting Agenda. There were no public comments on any of the Agenda items from homeowners - either present (if so) or from those that may have called-in to the meeting.

OTHER AGENDA ITEMS

2. Vote on approval of the Meeting Minutes from the monthly Board meeting of October 12, 2022.

MOTION: To approve the minutes of the Board meeting held on October 12, 2022, by KWright.

The motion was seconded by JReichert and PASSED unanimously by the Board members present.

3. Treasurer's Report. PRAudenbush provided an update to the Treasurer's Report for this meeting and reported the District's bank balance [combined balance bet. two accounts- Wells Fargo and SunTrust] at \$ 866,214.01, as of October 31, 2022. There were two new bill(s)/invoice(s) needing approval for payment: \$2,117.50 to LLW for legal fees during the month of October and \$287.00 to Wood, PLC for September fees. As a special note, there is a dual signature requirement that is in place for all checks/bill payments. Also, now that the District has obtained a loan for the dredging, all the dredging invoices have to be pre-reviewed by the Bank prior to providing such funds to the District to make the payments.

MOTION: To approve payment for the LLW and Wood invoices, as described above, by PRAudenbush.

Motion was seconded by KWright and PASSED unanimously by the Board members present.

4. Consideration of a resolution (Resolution 22-03) adopting an Amended Continuing Covenants Agreement related to the Wells Fargo loan. This Resolution is necessary since extending the contract length with BDI to finish the dredging would in effect extend the loan terms with Wells Fargo Bank. Prior to the meeting, WFlowers sent the Resolution and Covenants Agreement to the Board members for review the documents ahead of time. KWright indicated that he saw a discrepancy with regard to a date, within the Covenants Agreement, to which WFlowers indicated he will make the adjustment by striking through the date and revising, so the Board can go ahead and vote on the Resolution during this meeting.

MOTION: To approve Resolution 22-03, as described above, by KWright.

Motion was seconded by PRAudenbush and PASSED unanimously by the Board members present.

5. Review dredging progress, follow-up on status since last meeting. [**HISTORY:** From the **August meeting**, KWright began this agenda item with a summarization of the results of the meeting held between BDI and his attorney and the two IOPSD appointed Board members (KWright and PRAudenbush) chosen to conduct negotiations with BDI at separately prearranged meeting date. KWright's impression of the meeting immediately afterward was optimistic as it seemed that everybody was in general agreement about the results of the meeting; however, communications with BDI representatives, days later, seemed to indicate that there was no agreement. PRAudenbush added that the meeting started out with change-order issues that the Board was aware of, but then Lindsey Brock brought up additional other issues. He also discussed an email that was

sent out to the Board members that was a remaining volume calculation (by Wood) of approximately 36,000 cubic yards to be dredged that would be used in the five-point agreement. Either way, based upon the email sent out by WFlowers on August 9, 2022 with a draft document outlining "IPSD-BDI Settlement Points" that seemed to have been the five points agreed to at the meeting, were discussed between the Board members to determine whether the "Points" would be agreeable. Much discussion ensued about the "points" and included concerns over which canals were considered finished and which were not and who would determine that, language in the agreement that revolved around the definition of "additional materials," additional individual/homeowner's dredging and increasing the originally contracted/quoted rate to do so, paying the escalated fuel costs since the project was initiated, when the individual homeowner dredging should occur relative to when the baseline dredging is completed, and how will volumes of individual dredging be tracked. After the discussions, KWright indicated that although he thought approval of the 5-point Agreement would be a "wind-fall" for BDI, it would be less expensive to work with BDI to get this dredging complete (as opposed to going through the process of getting the bonding company to complete it) with the goal of trying to get as much sediment removed from the canals as possible, especially in light the fact that if the dredging stops now, it will likely be years before the remaining dredging is completed via the bonding company. As such, KWright motioned that the draft document (prepared by WFlowers) be revised, as discussed during the meeting, and otherwise finalized for presentation to BDI. A motion was made to approve the five settlement points with the discussed revision indicating a maximum fuel adjustment of \$200,000 and was passed by the Board 4-1 (BRadloff dissented). At the **September meeting**, KWright briefly indicated that the Board had approved a settlement agreement with BDI that was forwarded to them for their approval but he had not heard back from them. However, PRaudenbush indicated that a response had been received from BDI, on September 12, 2022, by Wayne Flowers that they were declining the settlement agreement for various reasons but Wayne did not sense that BDI was done or not interested in discussing the settlement any longer. PRaudenbush also indicated that he had met with BDI (without WFlowers) to renegotiate the settlement points and briefly described what those points were and that BDI would need to resubmit change orders for those points. One of BDI's proposed settlement points is to increase the individual homeowner dredging rate and neither KWright nor PRaudenbush think said rate should change from the already contracted rate of \$35/yard. The discussion ensued with suggestions for revising the settlement agreement one more final time and giving BDI a deadline to respond and if they do not respond favorably the bonding company would be notified that a Notice-to-Terminate the contract would be issued (bringing the Bonding Company into play). Three Motions were approved by the Board: 1) To authorize Board Attorney Wayne Flowers to send a letter to the Surety Company indicating the Board's intent to issue a Notice-To-Terminate the contract with BDI, which passed unanimously, 2) To revise the most recent proposed settlement agreement, that BDI declined previously, to include the discussed changes regarding the individual dredging rate with BDI responding by a certain dateline date (10/10/22), which passed but with one dissenting vote by BRadloff, and 3) To approve an amendment to the loan agreement with Wells Fargo Bank that would revise certain terms related to the draw period and the proposed extension of the

contract to BDI, which passed unanimously. At the last **meeting in October**, a letter received by WFlowers from the Surety Company was shared with the Board members, and discussed briefly, as it contained instructions requesting certain information/documentation from the District regarding the contract default of BDI. WFlowers also shared a letter from BDI's attorney, received on the deadline date as required by the District, that attempts to provide a response to the District's final Five Settlement Points (should BDI and the District come into agreement on the settlement points, the District would withhold the intended Letter to Terminate to the Surety). As such, BDI's attorney, Mr. Brock, summarized their response to the settlement points, to which Board members, primarily PRaudenbush and KWright responded with their positions and requested clarifications from Brock and Lance Young. The most contested disagreement appeared to be the rate to be charged the homeowners for individual dredging and some of the discussion became somewhat heated mostly by Mr. Young. Mr. Young also apparently brought with him several homeowners that would be willing to pay BDI's requested higher than agreed to contract rate for individual dredging and a couple of those homeowners spoke to that effect. Still more discussion ensued (mostly regarding BDI's adjustments to the new/final settlement) with some clarifications being made along with some misunderstandings straightened out after WFlowers presented BDI's proposed adjustments. As a result of such discussions, PRaudenbush was able to revise and print out the settlement agreement, during the meeting, and toward the end of the discussion Brock and Young left the room to discuss their position privately. After returning to the room, Brock indicated that BDI would agree to the revised Settlement, as adjusted by PRaudenbush during the meeting. The Board voted on a motion from KWright to "Approve Change Order #2, as adjusted during the meeting" which was passed 4-1, with the dissenting vote coming from BRadloff.] At this **November meeting**, there was very little to discuss regarding the dredging progress since the new agreement was executed by both the Board and BDI at the October meeting and the only thing to get started, at this time, is a new Baseline bathymetric survey, as requested and [to be] paid for by BDI (actually, the District will order the survey, pay for it, then deduct the cost from BDI's next invoice), to start off the new agreement. KWright indicated that he has already put the order in with ARC Survey to begin ASAP.

6. Update on getting cost share from the City. DTouring reported that he has nothing new from the City but that they are still having IT issues. He was, however, able to talk to his contact at the City and she suggested that she realizes that they are five months late on making the payment and that she will try and get the issue resolved.
7. New Business. KWright indicated that he is still awaiting an engagement letter from the District's auditor for certifying the Financial Statement for this year.

General Public Comment -

There were no other comments from the public at the end of the meeting (comments/questions

were taken during the meeting, if any).

Adjournment -

KWright adjourned the meeting at 1843 hrs.

Future Meeting Dates -

Meetings are held on the second Wednesday of the month (6:30 PM), at the “Pablo Creek Regional Library,” 13295 Beach Blvd. Jacksonville 32246. **It is recommended to check the District’s website (isleofpalmsjax.com) for any updates to the location of the upcoming meetings.**

Future meeting dates listed below:

December 14, 2022