

**MINUTES OF MEETING
SUNSHINE WATER CONTROL DISTRICT**

A Regular Meeting of the Sunshine Water Control District's Board of Supervisors was held on **Monday, December 7, 2015, at 6:30 p.m.**, at **Sartory Hall, located in Mullins Park, 10150 NW 29 St. (Ben Geiger Drive), Coral Springs, Florida 33065.**

Present at the meeting were:

Joe Morera	President
Daniel Prudhomme	Secretary

Also present were:

Craig Wrathell	District Manager
Doug Paton	Wrathell, Hunt and Associates, LLC
Alfred J. Malefatto	District Counsel
Mathew Taylor (<i>via telephone</i>)	Lewis, Longman & Walker, P.A
Gene Schriener	District Engineer
Steve Zielnicki	Craig A. Smith & Associates, Inc.
Cory Selchan	Field Superintendent
John McKune	McKune & Associates
Dave Hulett	Resident

FIRST ORDER OF BUSINESS

Call to Order

Mr. Morera called the meeting to order at 6:30 p.m.

SECOND ORDER OF BUSINESS

Roll Call

Mr. Wrathell called the roll and noted, for the record, that Supervisors Morera and Prudhomme were present, in person. Supervisor Maguire was not present.

Mr. Wrathell indicated that an Executive Session of the Board of Supervisors was advertised.

Mr. Malefatto advised that the Executive Session would be held to provide an update of, hold a discussion on and move toward settlement in the ongoing Lanzo Construction (Lanzo) vs. Sunshine Water Control District (SWCD) litigation.

Mr. Wrathell noted, for the record, that the published notice for the Executive Session name the Board President, Vice President, Secretary, District Counsel, Co-Counsel, District Manager and the court reporter, as attendees.

THIRD ORDER OF BUSINESS

Pledge of Allegiance

All present recited the Pledge of Allegiance.

FOURTH ORDER OF BUSINESS

Recess Regular Meeting

The Regular Meeting recessed at 6:32 p.m.

FIFTH ORDER OF BUSINESS

Commencement of Attorney-Client Session

The Attorney-Client Session commenced 6:32 p.m.

SIXTH ORDER OF BUSINESS

Termination of Attorney-Client Session

The Attorney-Client Session closed at 6:58 p.m.

SEVENTH ORDER OF BUSINESS

Reconvene Regular Meeting

The Regular Meeting reconvened at 6:59 p.m.

EIGHTH ORDER OF BUSINESS

**Public Comments [3-Minute Time Limit]
(Comments should be made from the microphone to ensure recording. Please state your name prior to speaking.)**

There being no public comments, the next item followed.

NINTH ORDER OF BUSINESS

Consideration of Access & Maintenance Easement Agreement Estoppel Certificate

Mr. Malefatto indicated that, in August, 2015, the Board approved a request by Continental Real Estate Companies (Continental) for an Access & Maintenance Easement Agreement. Continental was selling the property to Free Experience, Inc. (Free Experience) and

the agreement estoppel certificate assured the purchaser that there were no outstanding fees due to the District for maintenance or access. The transaction fell through. Continental has a new arrangement with 144 East 24th Street Corporation (144 East) and requested that the District approve an Access & Maintenance Easement Agreement Estoppel Certificate for the new entity.

District Counsel provided date corrected replacement pages for the certificate included in the agenda.

Mr. Morera asked if the agreements were alike. Mr. Malefatto confirmed and recommended that the Board approve the certificate.

On MOTION by Mr. Prudhomme and seconded by Mr. Morera, with all in favor, the Access & Maintenance Easement Agreement Estoppel Certificate, was approved.

▪ **Consideration of Coral Lago - Mineral Interest Release and Waiver**

****This item is an addition to the agenda.****

Mr. Malefatto indicated that a request was made for the District to enter into a release and waiver of mineral interests for the Coral Lago project and advised that there were no mineral interests in the land that was swapped with Coral Lago. The lender wanted a release stating that the District did not retain any mineral rights to the property. Mr. Malefatto recommended ratification of the Coral Lago Release of Temporary Easement Agreement, to include the Mineral Interest Release and Waiver.

Mr. Morera asked if there was anything the District did not know about the property.

Mr. Malefatto reiterated that there were no mineral interests in the property. The lender and title company were being extremely cautious, as mineral claims occurred in other parts of Florida.

On MOTION by Mr. Prudhomme and seconded by Mr. Morera, with all in favor, the Release of Temporary Easement Agreement, to include the Mineral Interest Release and Waiver, was ratified.

Mr. Malefatto advised that, in the opinion and judgment of District Counsel, the statute of limitations to pursue recourse against IBI Group Inc. (IBI), would not have begun until May, 2015, at the time of a site inspection when it became apparent that there was an issue. A claim against IBI must be made before May 21, 2017. District Counsel believes that the District has a claim against IBI.

Mr. Malefatto recalled that, at the last meeting, there was concern regarding District Counsel's relationship with IBI, in another district and as witnesses in the Lanzo case. Though there is no legal conflict, District Counsel recommended that his firm not represent the District in this matter in order to provide full assurance that the claim was vigorously pursued. District Counsel and Mr. Wrathell consulted with other law firms, including Ciklin Lubitz & O'Connell (Ciklin Lubitz), in West Palm Beach, who have construction litigation experience, and Mr. Michael Wilson, of Broad and Cassel, in Orlando. Mr. Wilson's hourly rate is \$395; the other Broad and Cassel's attorneys' rates range from \$240 to \$385 per hour. Ciklin Lubitz agreed to charge the government rate, which is a maximum of \$295 per hour. Mr. Malefatto recommended that the Board take this under consideration but not make a decision until Mr. Maguire is present.

Mr. Wrathell had no experience with Ciklin Lubitz but had no reason to believe they are not highly qualified. If the District wanted a "pit bull" law firm to represent them, Broad and Cassel is a top land development law firm in South Florida. Mr. Wilson is the chair of the construction litigation practice and a partner in the firm; he is capable of representing the District in this matter and would be happy to meet with the Board. Broad and Cassel does not charge for travel expenses and is a top notch law firm. Mr. Wrathell believed that the IBI agreement allows the prevailing party to be reimbursed for attorneys' fees; the Board should select the firm they feel can most capably handle the case and both firms are two great options.

Mr. Malefatto indicated that Mr. Michael Kennedy, from Ciklin Lubitz, would be happy to attend a meeting, to meet the Board.

Mr. Morera requested that Mr. Maguire be provided with all of the information regarding both firms.

Mr. Malefatto is familiar with both firms and felt that both are very good and would do a good job.

Mr. Morera presented the November 4, 2015 Regular Meeting Minutes and asked for any additions, deletions or corrections.

On MOTION by Mr. Prudhomme and seconded by Mr. Morera, with all in favor, the November 4, 2015 Regular Meeting Minutes, as presented, were approved.

TWELFTH ORDER OF BUSINESS

Supervisors' Communications

Mr. Prudhomme asked if there would be a holiday luncheon for Mr. Selchan's staff. Mr. Selchan replied that the luncheon will be held on December 18, 2015.

Discussion ensued regarding the District's employee holiday luncheon.

Mr. Morera wished everyone a happy holiday, a Merry Christmas and a healthy and prosperous New Year. 2016 will be a challenging year and the District will, hopefully, prevail in some of these matters and be on track to focus on the issues that must be addressed.

Mr. Morera thanked Staff for their contributions to the District.

THIRTEENTH ORDER OF BUSINESS

Staff Reports

A. Attorney: *Lewis, Longman & Walker, P.A.*

There being no report, the next item followed.

B. Engineer: *Craig A Smith & Associates*

- **Monthly Engineer's Report: October 29, 2015 - November 30, 2015**

Mr. Zielnicki presented the Comcast Communications (Comcast) permit application for CAS Project 15-1826 to bore underneath a culvert off of University Drive, south of Royal Palm Boulevard, near Canal T. He recommended approval of a ROW permit, subject to the conditions outlined in the CAS letter dated October 5, 2015.

On MOTION by Mr. Prudhomme and seconded by Mr. Morera, with all in favor, the Comcast Communications, Canal J Aerial Crossing CCU-CS-18, CAS Project 15-1826, permit application, subject to the conditions set forth in the CAS recommendation letter dated October 5, 2015, was approved.

Mr. Schriener indicated that the Pump Station #2 Report will be completed once the suppliers' prices are received. The Interconnected Pond Routing (ICPR) modeling was moving forward; issues with the West Outfall Canal were identified and progress was made on improvement plans.

Mr. Zielnicki indicated that, based on Mr. Selchan and Mr. McKune's comments, the final revision to the Permit Criteria Manual was being completed. The final draft will be presented for review.

Mr. Morera stated that the Lanzo litigation highlighted issues with the structure of the District's contracts. The issues must be identified and addressed so that the District does not find itself in the same situation again. There must be a process to address questions raised by the contractor regarding methodology or direction that could impact the length or duration of the contract and the contractor should sign a waiver indicating that additional charges will not be pursued at the end of a project.

Mr. Prudhomme was worried that some contractors could be "scared off". If contractors must adhere to the price submitted, before knowing the whole situation, they may submit higher bids or quotes to hedge themselves in case the project costs were higher. Previously, the contractor had 30 days to advise the district of a price increase. Lanzo blundered and presented a significantly larger bill at the end of the project.

Mr. Morera noted that every contract has change order requirements; if the change order is reasonable and Staff feels it is in line, it will be approved.

Mr. Wrathell pointed out that there is a claims process in the contract but, in the Lanzo case, it was not followed. If the District made a mistake, it was having the contract open to a jury trial. There were specific provisions in the contract whereby the contractor had the ability to file a claim and those abstract concepts become part of the jury deliberation. The District would be in a better position if, the contract stated that, both parties waived a jury trial.

Mr. Malefatto recommended that future contracts contain an arbitration clause. A lot of construction contracts go to binding arbitration, as opposed to litigation. The panel of arbitrators would consist of people with both legal and real world construction experience.

Mr. Dave Hulett, a resident, strongly recommended that, in the future, District Counsel be required to affirm in writing that the contract was reviewed and is in the District's best interest.

Mr. Prudhomme remarked that, in this case, it would not have made a difference. District Counsel may have approved of the contract but the contractor is required to advise the District of any issues within 30 days but did not do so.

C. Engineering Consultant: *John McKune*

Mr. McKune voiced his opinion that the contracts, as written, contain safeguards; the issue was that the contract participants did not live up to their responsibilities. He suggested that the contract require the contractor, or a representative, attend each meeting and that a discussion of “potential for claim” be added to the agenda.

D. Field Supervisor: *Cory Selchan*

Mr. Selchan reported that the District received an unusually high amount of rainfall for this time of year. In November, 2015, the District received over 6.5” of rain and, thus far, in December, over 8” of rain, which is not normal during the dry season. The East Basin water level would normally be at 7.5’ and was currently at 9’. Staff will work to maintain that level so residents can enjoy a nice waterway behind their homes instead of a dry ditch.

Mr. Selchan thanked the Board and Staff for their support throughout the year and wished everyone a Merry Christmas and Happy New Year.

E. Manager: *Wrathell, Hunt & Associates, LLC*

Mr. Wrathell agreed that the District has faced many challenges. The District’s infrastructure was built in the 1960s and improvements were neglected. The Board and Staff were working hard to update the system.

i. Approval of Unaudited Financial Statements as of October 31, 2015

Mr. Wrathell presented the Unaudited Financial Statements as of October 31, 2015. On Page 1, he indicated that there was approximately \$5,300,000 in the “FineMark Bank - ICS” account, which was attributed to unexpended capital project items. Page 2 reflected that no assessment revenues were collected. Tax bills were not mailed until mid-November and those funds will start appearing on the December financials. Activity was relatively limited. On Page 4, the “Debt Service” fund showed no collections. On Page 5, the balance of the “Capital Projects” fund was \$123,290.

On MOTION by Mr. Prudhomme and seconded by Mr. Morera, with all in favor, the Unaudited Financial Statements as of October 31, 2015, were approved.

ii. **NEXT MEETING DATE: January 13, 2016 at 6:30 P.M.**

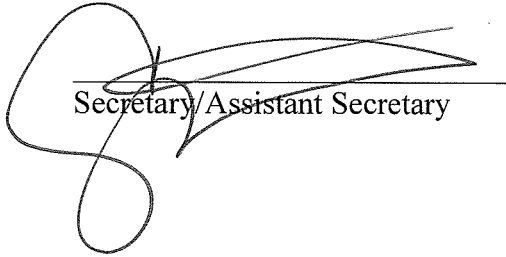
Mr. Wrathell indicated that the next meeting will be held on Wednesday, January 13, 2016 at 6:30 p.m., at this location.

FOURTEENTH ORDER OF BUSINESS Adjournment

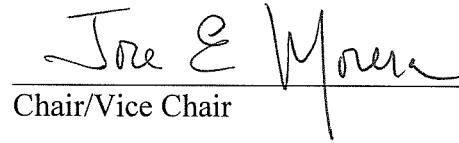
There being no further business to discuss, the meeting adjourned.

On MOTION by Mr. Prudhomme and seconded by Mr. Morera, with all in favor, the meeting adjourned at 7:37 p.m.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



Secretary/Assistant Secretary



Chair/Vice Chair