

**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 April 26, 2021 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 in the Joint Regular Meeting, via Zoom, at <https://us02web.zoom.us/j/88969163185> and 1-929-205-6099, Meeting ID: 889 6916 3185 for both.

For Bayside Improvement CDD, present were:

Walter McCarthy	Chair
Bill Nicholson	Vice Chair
Bernie Cramer	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
Jerry Addison	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Adams	Assistant District Manager
Dan Cox	District Counsel, Bay Creek CDD
Greg Urbancic	District Counsel, Bayside Improvement CDD
Wes Kayne	District Engineer
Christina Kennedy	SOLitude Lake Management (SOLitude)
Derek Rooney	Village of Estero General Counsel
Roy Hyman	PLCA General Manager
Paul Kemp	Irrigation Manager
Gail Gravenhorst	Resident/Landscape Committee Member
Marilyn Price	Resident/PLCA Landscape Committee Chair and PLCA Board Member

FIRST ORDER OF BUSINESS

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

Mr. McCarthy called the meeting to order at 1:04 p.m.

SECOND ORDER OF BUSINESS

Roll Call

For Bay Creek CDD, all Supervisors were present, in person. For Bayside Improvement CDD, all Supervisors were present, in person.

THIRD ORDER OF BUSINESS

Public Comments: *Agenda Items*

No members of the public spoke.

JOINT BOARD ITEMS

▪ **Colony Landscape Committee**

This item, previously Item 6B, was presented out of order.

Ms. Gravenhorst stated that The Colony Landscape Committee conducted a landscaping review and wished to praise the Bayside CDD for being so cooperative in helping The Colony adjust the landscaping. The agenda package did not contain a report because The Colony Landscape Committee meeting did not occur until after the agenda submission deadline. The Committee has been working to revise the Agreement between the Bayside CDD and The Colony. A paragraph was requested stating that maintenance would be provided to pick up royal palm fronds and any other debris, between Friday at noon and sundown on Sunday. A storm damage Agreement was under review. The Committee concluded that the best course of action was to continue allowing the Bayside CDD to direct and schedule cleanup work as needed. The Colony would file paperwork with the Federal Emergency Management Agency (FEMA), as necessary, with the Bayside CDD's assistance.

Mr. Adams distributed copies of the Landscape Maintenance Agreement; redline copies were emailed and comments and approval may be considered at the next meeting. He believed the Agreement looked good but he would need to determine how to cost-effectively provide weekend work. Discussion ensued regarding current service hours, the need for timely palm

frond removal and how best to accommodate the request. Ms. Gravenhorst stated The Colony Foundation Board verbally requested weekend maintenance and asked her to draft a plan; the Board recognized there would be an increase in labor cost and wanted to incorporate the cost in the budgeting process. With reference to a previously circulated memo, Mr. Adams stated The Colony Foundation understood that it would be responsible for paying disaster cleanup bills directly and the CDD would certify that the work was completed and properly priced, direct contractors and administer the cleanup processes.

FOURTH ORDER OF BUSINESS

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

Mr. Kayne stated that there was nothing new to report; however, he would provide updates on upcoming agenda items.

FIFTH ORDER OF BUSINESS

Lake Maintenance Report: *SOLitude Lake Management*

Ms. Kennedy presented the April Monthly Report and reported the following:

- Lake A15 would be treated for vines in the littorals.
- Lake A17 would be treated for pond apple, vines and torpedo grass in the littorals.
- Lake B8 would be treated for torpedo grass and primrose.
- Lake C4B would be treated for torpedo grass and Bullrush in the littorals.
- Lake D10 would be treated for willow nightshade, torpedo grass and alligator weed.
- Lake E5 at Sandpiper, across from The Colony Clubhouse, would be treated with an experimental liquid bacteria treatment beginning in May. Water quality and muck analysis testing would be conducted before, during and after the treatment.

Mr. Durney asked if water quality sampling data could be shared with the Water Quality Task Force. Ms. Kennedy would send the Scope of Work to Mrs. Adams.

Discussion ensued regarding littoral plantings for mitigating contaminants and the best time to plant littorals. Ms. Kennedy stated littorals are typically planted in mid to late May, based on rainfall. Mrs. Adams stated that EarthBalance installs the littoral plantings and no additional littorals would be installed during Fiscal Year 2021 due to budget constraints. Ms.

McVay stated that she and Mrs. Adams would conduct a survey in early May to identify future littoral needs; findings would be reported at the next meeting. Mr. Janek asked if the bacteria would target the lake bottom. Ms. Kennedy replied affirmatively and stated that the bacteria would target organic muck and help reduce phosphorus and nitrogen. Ms. Montgomery volunteered to attend the meeting with Ms. McVay and Mrs. Adams and report the findings and report to the Water Quality Task Force. Mrs. Adams would send an invitation and the meeting would be planned accordingly.

Discussion ensued regarding sampling the lake bottoms and the SOLitude bacteria treatment, which was provided free of charge on a lake with known troubles. Ms. Kennedy stated that it would be a six-month study. Discussion ensued regarding whether the new SOLitude study would supersede existing treatments or lake management. Mr. Adams stated it would not supersede treatments and others were being considered, in partnership with the City of Bonita Springs.

SIXTH ORDER OF BUSINESS

Committee Reports

A. PLCA Landscape Committee

Ms. Price thanked the CDD for continued assistance with the central and south gates. She reported the following:

- The “co-minimum” plan was submitted to the City in the hopes of quick approval.
- Irrigation was a concern at the immediate north gate area; existing plants were dying due to the long-term irrigation malfunction.
- The expanded gatehouse project plan would be submitted to the PLCA Board for approval, which was expected within the next 60 days. The CDD would be kept informed regarding the process.
- A tour of the area utilizing a PLCA bus was under consideration.

Ms. McVay discussed large trucks utilizing the southern residential gates. Ms. Price stated the issue was discussed at the last PLCA Board meeting and she believed there were no egress issues at either gate. Ms. McVay asked if photos of the truck license plates could be reported to the PLCA. Ms. Price replied affirmatively and stated that RAMCO staff would be advised to enforce the requirement that trucks utilize the outside gate.

B. Colony Landscape Committee

This item was presented following the Third Order of Business.

C. Water Quality Task Force

Ms. Montgomery stated a draft was sent, on behalf of Mr. Shinouskis, following the Water Quality Task Force (WQTF) meeting. Discussion ensued regarding Mr. Chip Hand assuming the role of PLCA Board Representative to the WQTF and Mr. Hand's intention to resign his position as The Colony Golf Course WQTF Representative, upon finding a replacement. Ms. Montgomery stated the CDD request that a Board Member join the WQTF was in progress and she believed the two seats would be adequately represented. The next WQTF meeting would be held on May 10, 2021. She requested that Mr. Hymann advise the WQTF who would serve as the official PLCA Board Representative and stated that Mr. Hand was a valued member of the WQTF.

In response to issues raised at the last meeting regarding fecal bacteria testing and requests to revise Spring Creek water quality testing at 33 testing sites, which would be an unbudgeted expense, Ms. Montgomery stated that Lee County has an extensive ten-year track record of sampling Spring Creek monthly. The kind of nitrogen testing proposed was already being implemented at multiple sites and the extensive results are available and posted online, so the WQTF suggests there is no need to pay for additional testing. Testing was also requested to evaluate the effects of tidal processes. Lee County's extensive testing at multiple sites was fully accessible to the public; sampling currently showed high levels of fecal bacteria, copper and total nitrogen. Ms. McVay stated that she would like to publish the website URL for residents to access. Ms. Montgomery stated the data would be shared for distribution.

Mr. Durney proposed deferring the Johnson Engineering testing, changing the scope of the testing and coordinating efforts based on the settlement agreement and the needs of the WQTF. Mr. Adams stated that some budget funds could be repurposed to participate but he believed that the Districts want partnership with other stakeholders. He estimated the cost to be \$10,000, to be divided between five or six entities. Mr. Durney felt that that some of the PLCA needs, such as what the City requested in the Settlement Agreement, should be considered when determining the scope of work and to determine the costs and equal

participation by other participants, including the CDDs, PLCA, Colony Board and the two golf courses.

Mr. Cramer stated he was engaged with the Water Quality Committee and he took issue with calling it a “Task Force”. In his opinion, a “Committee” provides data and communication and, while Mr. Shinouskis provided an excellent presentation, he disagreed with calling it a Water Quality “Task Force”. Furthermore, he expressed dismay that CDD business was presented.

Discussion ensued regarding the need to work with the City of Bonita Springs and the Village of Estero, the limits of representatives at such meetings and the need for all interested parties to meet to determine community goals.

Mr. Hymann stated he wholeheartedly agreed with Mr. Cramer regarding the need to work together. He stated that, as stated earlier, Mr. Hand had not been appointed to the WQTF; Mr. Shinouskis was serving as the WQTF Representative and he was not aware that Mr. Hand was no longer a Board Member. He stated that Mr. Hand represents the Board’s Recreation Group, which is comprised of Pelicans Nest and The Colony Golf Club. Many members of the PLCA were confused by the Board structure and voting. Having worked on similar issues with Mr. and Mrs. Adams in other communities with great success, he wanted everyone to work together, as a group.

SEVENTH ORDER OF BUSINESS

Discussion: South Entry Trees – Silk Floss Tree Evaluation and Report

Mr. Adams presented a plan to relocate the silk floss trees planted by Mr. McAuley and Mr. Glueck. Discussion ensued regarding the sentimental value of the trees, relocating process and the cost.

On MOTION for Bay Creek by Mr. Janek and seconded by Mr. Travers, with all in favor, the proposal to relocate the silk floss trees, at a cost of \$4,200, was approved.

Discussion ensued regarding the expense, to be borne by Bay Creek alone, and viability of the trees. Ms. Gravenhorst thought that the area in consideration for relocating the trees

was not scheduled for redesign; the Landscape Architect fee is \$200 per hour and redesign costs may become a CDD responsibility.

Ms. McVay asked if any of the trees were worth selling or saving, given that part of the problem was poor soil prep.

On MOTION for Bay Creek by Mr. Janek and seconded by Mr. Durney, with Mr. Travers, Mr. McBride, Mr. Janek and Mr. Durney in favor and Ms. McVay dissenting, rescinding the previous motion, was approved. [Motion passed 4-1]

Ms. Montgomery pointed out Mr. Boyd's second suggestion was to remove the trees and replace them with more suitable trees that adapt better to the littoral zone.

Mr. Adams stated the silk floss trees would be removed.

EIGHTH ORDER OF BUSINESS

Continued Discussion: Walden Center Drive North Roadway Turnover to Village of Estero

Mr. Adams stated the Engineering Staff reviewed the road, with regard to the development code in effect at the time of construction, when it was under the jurisdiction of Lee County. Several deficiencies were identified and the cost of repairs would be approximately \$4,500. The matter was currently scheduled for consideration at the Village of Estero's May 5, 2021 meeting. It was unclear whether the Village would require sidewalks to comply with current land development code.

Mr. Urbancic stated that he would attend the meeting to present the case for the Village's acceptance of the road. Discussion ensued regarding ownership of the surrounding roadways. Ms. McVay asked if it was reasonable for the CDD to pay for the roads. Mr. Adams recommended turning the section over to the Village, as it was the only section of roadway outside the gates. The new development code requires sidewalks but the CDD was built under the old development code, permitted, constructed and certified with Lee County; therefore, it should be grandfathered in and the addition of sidewalks should not be required.

Discussion ensued regarding the Interlocal Agreement that addressed North Commons Drive, whether an adequate Right-of-Way (ROW) was available for a sidewalk and ownership of

the road. Mr. Adams stated the Village considered the roadway to be a private road but it was public, by virtue of the CDD's ownership.

Mr. Rooney stated the matter would be considered by the Village on May 5, 2021.

NINTH ORDER OF BUSINESS

**Consideration of Petty Cash Agreement for
Field Manager and Irrigation Manager**

Mr. Adams presented the Petty Cash Agreement and stated that it would benefit the Districts by allowing the Field and Irrigation Managers to place online orders, without delay, and receive free shipping, which would save time and money. The cards would be non-cash cards with a low initial limit and, should a large transaction be needed, a transfer could be done quickly.

On MOTION for Bayside by Mr. McCarthy and seconded by Ms. Montgomery, with all in favor, the Petty Cash Agreement to be executed by the Field and the Irrigation Managers, individually, and setting a spending limit, was approved.

Ms. McVay stated she would like an established limit. Discussion ensued regarding uses of the cards. Mr. Adams stated each card would have an initial limit of \$2,500.

On MOTION for Bay Creek by Mr. Janek and seconded by Mr. Travers, with all in favor, the Petty Cash Agreement to be executed by the Field and the Irrigation Managers, individually, and setting a spending limit, was approved.

TENTH ORDER OF BUSINESS

**Continued Discussion/Consideration:
Stormwater Utility Settlement Agreement
with City of Bonita Springs (*materials to be
provided under separate cover*)**

Mr. Cox presented the Stormwater Utility Settlement Agreement with the City of Bonita Springs and responded to questions submitted regarding the Agreement. While the number of properties in the Districts subject to the Bonita Springs stormwater charge may be zero, there was still an interest in resolving this as amicably as possible. A Basin Management Action Plan (BMAP) was not yet established. Mr. Adams stated that the City and the CDD are co-permittees

to the Lee County permit. Mr. Cox stated that the City has inherent regulatory authority, where the CDD does not, so the CDD is subject to the regulations of the City, regardless of whether this Agreement is entered into or not; the City can regulate stormwater within the CDD jurisdiction. Mr. McCarthy asked if the City can regulate more stringently than the County. Mr. Cox stated the County must meet thresholds determined by the State and the City cannot regulate more stringently than the County but the BMAP can.

Mr. Durney requested clarification of applicable City regulations. Mr. Cox stated the City regulations would be, at a minimum, the threshold for establishing the impairment determination of Estero Bay and Spring Creek, until the BMAP is adopted. Once adopted by rule, the BMAP must be implemented through statutory enactments by the general-purpose local government, whether it be the County, City or Village of Estero.

Discussion ensued regarding the list of questions and suggested revisions to the Agreement and the document. Mr. Cox stated, from a legal perspective, Paragraph 1 clearly lays out the water quality standards. Right now, the level for Spring Creek is set by the Department of Environmental Protection (DEP) until incorporated into a BMAP and, once that is done, that becomes the standard. Until the BMAP is done, the only measurable standard that is adopted and can be clearly referenced is the Determination of Impairment.

Mr. Urbancic suggested clarifying changes to define “applicable”, on Page 3, Item 3iii. Discussion ensued regarding upstream and downstream waters, weirs, the tributary systems, discharges and the need to better define outfalls. Mr. Adams noted these would be provided in the as-built survey inventory referenced in Paragraph 3aii, which would essentially be the permit drawings. The Districts’ stormwater capital improvement plan (CIP), was discussed. Mr. Cox stated the CDDs performed lake and wetland maintenance, drain cleanout program and street sweeping; some is capital and some is maintenance and, because the system is built out, it does not need capital improvement. For the sake of clarity and specificity, Mr. Cox noted that “capital improvement plan” would be changed to “capital asset maintenance program”.

Mr. Travers stated his understanding was that the CDDs were not being asked to do anything more than they were already do and, given that the CDDs would receive a credit and the alternative is to charge residents \$50 each, he wondered why the Districts would not enter into the Agreement. Mr. Bill Nicholson asked Mr. Cox to ensure that “capital improvement” is

replaced, throughout the document, as necessary. He suggested that 3bii be struck because, in his opinion, it implies that capital plans would be implemented and measured for effectiveness. Mr. Cox stated he was inclined to agree, given that the ‘Harper Method’ assigns a coefficient.

Mr. Urbancic asked if there was a stipulation for each party to bear its own fees from the litigation and noted the Release in Section 10 was a one-way Release. Mr. Cox noted there were no counterclaims but that a provision could be added.

On MOTION for Bayside Improvement by Mr. Bill Nicholson and seconded by Mr. Cramer, with all in favor, authorizing Staff to edit the Agreement and provide a final draft at the May meeting, was approved.

On MOTION for Bay Creek by Mr. Travers and seconded by Mr. Janek, with all in favor, authorizing Staff to edit the Agreement and provide a final draft at the May meeting, was approved.

ELEVENTH ORDER OF BUSINESS

**Continued Discussion/Presentation:
Modified Financials and Monthly Report
Narrative (*to be provided under separate
cover*)**

Mr. Adams reported the following:

- A homeowner on a lake asked the CDD to trim the oak trees on their property, within the District’s lake maintenance easement. The request was rejected because it is not a CDD responsibility.
- The Controller was revising a worksheet for modified financials.
- The Monday software program was substantially complete and the BOSS program was cancelled.

Mr. Kemp conducted a live Zoom demonstration of the Monday.com activity tracking software to the Boards. A link to the form would be added to the CDD websites, allowing residents to submit concerns related to various categories, such as lakes, irrigation, landscape and lighting, and include their email address to enable follow up. The software was effective and much more adaptable than the previous software.

TWELFTH ORDER OF BUSINESS

**Acceptance of Unaudited Financial
Statements as of March 31, 2021**

Mr. Adams presented the Unaudited Financial Statements as of March 31, 2021. On Page 3, the "Landscaping-Minor operating equipment" line item included over \$13,000 related to the purchase of new mules. These expenditures would be re-coded to "Landscaping-Capital outlay". The "Landscaping-Mulch program" line item included nearly \$30,000 that would be re-coded to The Colony. Mrs. Adams stated that a proposal for the second phase of outfall and interconnecting pipe cleaning would be presented at the May meeting; the budget allocated \$40,000 but the proposal is \$56,340. She recommended increasing the budgeted amount in the Fiscal Year 2022 budget. The addition of new aeration installations, budgeted at \$15,000, would be put on hold. The financials were accepted.

THIRTEENTH ORDER OF BUSINESS

**Approval of March 22, 2021 Joint Regular
Meeting and Executive Session Minutes**

Ms. McVay presented the March 22, 2021 Joint Regular Meeting and Executive Session Minutes.

On MOTION for Bayside by Mr. McCarthy and seconded by Ms. Montgomery, with all in favor, the March 22, 2021 Joint Regular Meeting and Executive Session 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 March 22, 2021 Joint Regular Meeting and Executive Session Minutes, as amended to include any changes submitted to Management, were approved.

FOURTEENTH ORDER OF BUSINESS

Action Items

Active/Ongoing New Items: Items 2, 3, 5, 7, and 8 were completed.

Active/Ongoing Carry Over from 02.22.21 Meeting: Items 1 and 2 remained ongoing.

Item 2: Mr. Adams recommended trying to organize a joint Workshop with the PLCA and the WQFT in early June. Discussion ensued regarding revisions to the Disaster Response Agreement and communications with the PLCA Board.

Mr. Bill Nicholson motioned for Mr. Adams to compose a letter to Mr. Hart and Mr. Cramer seconded the motion. Discussion ensued regarding whether District Counsel should draft the letter. Mr. Bill Nicholson amended the motion.

On MOTION for Bayside by Mr. McCarthy and seconded by Ms. Montgomery, with all in favor, authorizing Mr. Adams to compose a summary letter to the PLCA General Manager and authorizing District Counsel to include his comments and transmit the letter to the PLCA General Manager, as discussed, was approved.

On MOTION for Bay Creek by Mr. Janek and seconded by Mr. Travers, with all in favor, authorizing Mr. Adams to compose a summary letter to the PLCA General Manager and authorizing District Counsel to include his comments and transmit a copy of the letter to the PLCA General Manager, as discussed, was approved.

Mr. Cramer asked for all parties to be copied on the correspondence.

FIFTEENTH ORDER OF BUSINESS

Old Business

There being no old business to discuss, the next item followed.

SIXTEENTH ORDER OF BUSINESS

Staff Reports

A. District Counsel

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

There being nothing further to report, the next item followed.

II. *Daniel Cox, Esq.*

- **Update: Litigation and proposed Amendment to Ordinance**

This item was presented in conjunction with the Fourteenth Order of Business.

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

I. Monthly Status Report: Field Operations

The Monthly Status Report was included for informational purposes.

II. Number of Registered Voters as of April 15, 2021

- **Bayside Improvement CDD: 2,956**
- **Bay Creek CDD: 748**

III. NEXT MEETING DATE: May 24, 2021 at 2:00 P.M.

- **QUORUM CHECK: *BAYSIDE IMPROVEMENT CDD***
- **QUORUM CHECK: *BAY CREEK CDD***

The next meeting would be held on May 24, 2021 at 2:00 p.m.

SEVENTEENTH ORDER OF BUSINESS

Supervisors' Requests

Mr. Jim Nicholson asked when he should resign, as he sold his home and would be closing on July 13, 2021. Mr. Adams stated that he could serve for as long as he is a resident.

EIGHTEENTH ORDER OF BUSINESS

Public Comments: *Non-Agenda Items*

No members of the public spoke.

NINETEENTH ORDER OF BUSINESS

Adjournment

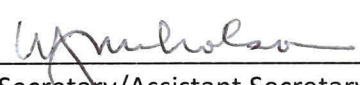
There being no further business to discuss, the meeting adjourned at 5:12 p.m.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

**BAYSIDE IMPROVEMENT
& BAY CREEK CDDS**

April 26, 2021

FOR BAYSIDE IMPROVEMENT:


Secretary/Assistant Secretary


Chair/Vice Chair

FOR BAY CREEK:


Secretary/Assistant Secretary


Chair/Vice Chair