

## MINUTES OF THE BOARD OF SUPERVISORS

### ISLE OF PALMS SPECIAL DISTRICT

June 8, 2022

Board President Ken Wright opened the meeting; calling it to order at approximately 1832 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, and Member Josh Reichert. Member David Touring arrived late at about 1855 hours. A quorum was established with four Board members present at the meeting for the initial voting/motions and then the full Board after DTouring arrived. 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 available for the meeting via call-in/speaker. Lance Young of Brance Diversified, Inc. (BDI), the dredging contractor, did not attend, nor was he represented by the presence of his attorney, Lindsey Brock, at the meeting. There were 2 homeowners from the District physically attending the meeting and 1 unidentified call-in attendee(s). 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 May 11, 2022.

**MOTION:** To approve the minutes of the Board meeting held on May 11, 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 \$ 895,737.05, as of June 8, 2022. There were two new bill(s)/invoice(s) needing approval for payment: (1) \$215.95 to PRAudenbush as reimbursement for charges paid to WEB.com for quarterly website maintenance, and (2) \$6,166.00 to Wood, PLC for engineering charges during April 2022. WFlowers indicated that LLW will have an invoice ready for April charges in next few days. 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 the funds to the District to make the payments.

**MOTION:** To approve payments for the PRAudenbush reimbursement and Wood invoice, as described above, by PRAudenbush.

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

4. Assessment for FY 2022-2023, discussion and Notice. As a matter of annual routine, prior to the beginning of the new FY, the Board must determine whether to raise, maintain, or reduce the annual assessment for the District. Since the maximum allowable assessment has been reach (by Ordinance), the Board can only maintain the current assessment of \$1,000.00 or reduce it, if justified. General discussion between Board members indicated that because the District is in the middle of completing the current dredging effort there is agreement that the assessment should be maintained. As such, a hearing will be held at the July 2022 meeting where a vote will held, between Board members, to make the current assessment official for another year and to adopt the current tax roll for the properties being assessed. WFlowers will make the public Notice of the hearing (because the assessment will not be raised, it is not necessary to mail individual letters/notices to homeowners).

**MOTION:** To maintain the current assessment of \$1,000.00 for FY 2022-2023, to adopt the corresponding tax roll for the COJ at the July meeting/hearing, and to have WFlowers order the Notice of Hearing, 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 April Board meeting, there were two recent surveys performed, one by the board's contract surveyor, Arc, and one commissioned by BDI and performed by DeGrove

Surveyors. Representatives Rick Sawyer from Arc and Matt Niles from DeGrove were in attendance at the meeting. PRAudenbush shared a tabular breakdown of the survey results for three dredge templates. For a template allowing dredging in areas outside of the original template and above -6 mean low water (MLW), the Arc and DeGrove surveys produce overall similar results, although the specific results in the north and south IOP canal systems differ. PRAudenbush asked the surveyors if there was any known reason for the difference. Volumes from both surveyors were calculated using the average end area method. Rick Sawyer offered to exchange data sets between the two surveyors in an effort to uncover where they differ. Lance Young interjected and stated that the barge amounts were higher than either survey.

Lance Young then expressed concern that the baseline survey was performed too far ahead of the beginning of the contract and was not done at high tide. PRAudenbush refuted this statement, saying that Lance is on record accepting the baseline survey at the time that the notice to proceed was given. PRAudenbush attempted to redirect attention to the agenda item, stating that he was in favor of paying for all dredging above -6 MLW, then focusing on finishing touch-up work particularly in the south IOP system where some canals are not at -5 MLW.

After discussion moved back to the surveyed removal amounts, Rick Sawyer stated that Arc calculations are based off of cut only. KWright stated his concerns that the BDI calculations, done by barge measure, do not correctly remove private dredging work that has already occurred within the district, using Baseline 7 as an example. DTouring spoke and said that he was in support of allowing payment for the highest surveyed removal quantities contractually possible, since that would be in line with the spirit of removing as much material as possible. Lindsey Brock, BDI's counsel, requested specifics on what additional dredging needs to be done and how much the board will pay for the dredging. PRAudenbush stated that he simply wants to see a blue line down every canal to the last station, in reference to the post-dredge survey maps that show areas of acceptable depth per the contract in blue and areas with depths not meeting the contract in red. Upon request from Lindsey Brock the board agreed to provide station ranges for additional work.

Lance Young asked the board to produce a new template that matches the contractual requirement to not dredge within 5 feet of structures. KWright replied that doing so would delay progress and undermine the intent of trying to expeditiously complete the work. Lance then stated that any liquidated damages imposed by the district would result in litigation, and that he would like the unit price to increase for any additional work done. Finally, he stated that BDI will demobilize until remaining quantities and unit costs are determined. KWright asked that BDI send an invoice to the district for approval and the board will convene an emergency meeting to discuss approval of the invoice.

PRAudenbush stated that the district could provide a document outlining the remaining work to be done by BDI within ten days. Charlene Stroehlen asked about over-dredge inside the template area (between -5 MLW and -6 MLW) and KWright advised not to be

concerned with that amount.

On April 20, 2022, the Board held an emergency meeting to discuss approval of the BDI's most recent invoice and whether the retainage would be released to BDI on the basis that the dredging effort was substantially complete. However, since it was determined by reviewing ARC's surveying results that the dredging is not substantially complete; the Board did not approve payment of the invoice or release of the retainage. The Board also rejected a BDI proposal to reduce the retainage on future invoices from 10% to 5%. At the regular May Board meeting, BDI's attorney, Lindsey Brock, attended to present new terms and proposals (distributed to Board members prior to the meeting for their review) to the Board in Lance Young's absence. KWright started off the discussion by providing his concerns regarding the District's experience with BDI, thus far, indicating that: the Board is not an HOA or just a group of homeowners but rather a public/government-type entity that is limited in what it can allow to transpire and/or approve beyond the existing contract since the District is beholden to the tax payers affected by the District. He continued that the Board has bent-over backward trying to accommodate BDI in any reasonable way possible since the dredging began to assist in moving the dredging effort along but all along the way BDI has not followed certain aspects of the contract such as providing reliable schedules, attending meetings to provide the Board updates on dredging progress or even non-progress (because of moving boats, etc.), using the contract required surveyor instead of using his own, as well as not using the contracted-allotted 12 surveys efficiently, and re-submitting BDI invoices that needed to be adjusted in conformance with the contract.

PRaudenbush then indicated that he WFlowers met with Lance Young and his attorney Lindsey Brock days prior to this meeting to discuss some of these issues and how they might be rectified. The result of the discussions was suggested/proposed new terms and changes to the existing contract (that BDI had already agreed to by signing) that BDI wants the Board to approve. However, PRaudenbush had indicated that any such changes to the contract or new terms/proposals would need to be presented in the form of change-orders, as according to the contract, but which were not presented to the Board in the form of such change-orders. He asked again at this meeting that these proposed changes, etc. be submitted as change-orders and included 1) "fuel escalation" costs, 2) delays that BDI says was caused by waiting for survey results and that BDI should not be assessed for liquidated damages during that period of time, 3) calculations for the volumes of dredged materials - BDI apparently does not have confidence in the surveyor's calculations and wants to change the way it is calculated by counting full containers on the barges instead, and finally 4) BDI wants to increase his originally agreed upon unit price (per yard) by \$5.00/yard. In particular reference to Item 4), PRaudenbush indicated that he would want to know why BDI thinks they should be allowed to increase their rate when that was the agreed to amount from the beginning of the contract. He also indicated that Wood has now provided their review of the surveying results and high-lighted areas on maps showing where the dredging is not complete.

JReichert indicated that he thought it was somewhat peculiar that BDI is requesting both

a unit rate increase as well as a fuel cost increase or is it intended to be one or the other and that in order to even consider this, he would need some type of explanation.

At this point, Lindsey Brock spoke up to say as for the fuel costs BDI has provided the Board with all their receipts for fuel costs over the length of the project thus far. Some discussion back and forth ensued regarding the fuel costs, including how does anybody know that all these fuel costs were actually incurred during dredging of the District's canals and not anybody else's, like the Moorings. KWright reiterated that he's not sure that the District has a responsibility to cover the additional fuel cost and that any delays from surveying don't seem to be the District's fault either since had BDI used ARC to survey rather than DeGrove, the surveying would have been done on time and BDI wouldn't have had to pay for the additional surveying had they not blown through the first 12 surveys allotted by the District. Brock asked about maps for the new template design (that was agreed to and signed off on by BDI) that he suggested BDI never received and that the Board members reposted that BDI received those via WFlowers. BRadloff even indicated to Brock that the whole template design change was BDI's idea and the District made it happen by way of a Change-Order (#1) to which the new template design maps were attached. Brock tried to make an issue of the date of the aerials that were used to present the dredging template as being inaccurate because they are not the most recent but he was countered by the Board members that indicated said issue was covered by the contract and BDI agreed to that. At this point, Brock asked how the Change-Orders should be submitted (separately or as one) to which he was told separately and then asked how the Board would go about considering the Change-Orders (vote on them as written or possibly edit them to counter as written for BDI's consideration) to which he was told it might be both, voted on as written or edited for BDI's consideration.

At this point, PRaudenbush indicated that the Board should consider issuing a Notice of Default of the Contract for failure to execute the work to BDI, especially in light of the prospect of imposing liquidated damages. After such issuance, BDI would need to come up with a recovery plan if they are indeed going to try and cure the default. Brock suggested that issuing the Notice of Default prior to allowing BDI the opportunity to submit the Change-Orders "would likely be viewed as an unnecessary escalation." He wanted some clarity as to what canals the District says are done, and which are not. The Board voted to issue the Notice of Default at this May meeting.] As for this June meeting, PRaudenbush and WFlowers started off this agenda item with any updates to communications with BDI and/or Lindsey Brock which was little to none since Lindsey Brock's submittal of BDI's Change Orders shortly after the May meeting. PRaudenbush provided a brief summation of where the District currently is after having received BDI's change orders, IOPSD issued the NoD, rejection of certain of BDI's change orders (#4), dispute resolution between the District and BDI, and BDI's plan for recovery. More discussion was held between Board members regarding the legalities revolving around addressing BDI's non-responsiveness to the contract, their recovery from the dispute, and potential mediation proceedings. WFlowers went over the contract process for attempting to resolve any disputes that arise under this contract and the timelines

associated with those.

KWright and BRadloff suggested that the Board should specifically go over the Change-orders, at this meeting, in an effort to allow PRAudenbush to know how to respond back to BDI and Lindsey Brock. Opinions from various Board members seemed to be generally in agreement that most of the change-orders were not acceptable but that given certain assurances from BDI that they will complete the dredging in a timely fashion, the District *might* consider agreeing to portions of a change-order, in an effort to keep the dredging going and remove as much sediment as possible. After much discussion, KWright passed out a draft counter-response to BDI that he wanted to the Board to consider for the next meeting. It outlined, in detail, his perception of where he thought the District and the project/contract stands, what the District's options might be going forward and where the District would like to be in the near future. After much discussion, it was decided that a counter change-order from the District to BDI should be withheld pending the timeline for BDI to provide their recovery plan with change-orders and that until then the Board members will individually review KWright's draft C.O. for consideration at the July meeting.

**MOTION:** To not make any counter Change-Order proposal to BDI until after the timeline for their response has expired, as described above, by KWright.

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

6. Update on getting cost share from the City. DTouring was present at this meeting to provide an update on this effort and indicated that the District has already been reimbursed now for the first submittal of District expenses related to this dredging effort and has another submittal pending for an amount of \$182,668.95 that when paid will total over \$332,230.00 of reimbursed expenses, representing approximately 43% of the total Cost-share that was made available to the District. Good efforts by DTouring who indicated that there should be plenty more expenses that can be collected in the future to apply for even another reimbursement.

7. New Business. None

### ***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 1839 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](http://isleofpalmsjax.com)) for any updates to the location of the upcoming meetings.** Future meeting dates listed below:

July 13, 2022   August 10, 2022   September 14, 2022   October 12, 2022

November 9, 2022   December 14, 2022