

**MINUTES
LEGAL COMMITTEE MEETING
NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT
December 6, 2010**

The Legal Committee met on December 6, 2010 at 4:00 p.m. in the Northern Administrative Complex, 359 Hiatt Drive, Palm Beach Gardens, Florida.

1. ROLL CALL

The full membership of the Committee, comprised of Board Supervisors Adrian M. Salee and Michael O'Rourke, was present.

Also present were Executive Director O'Neal Bardin, Jr.; Deputy Director Danvers Beatty; Finance Director Katie Brunk; Executive Assistant Susan Scheff; District Engineer Robert W. Lawson; General Counsel Kenneth W. Edwards and Frank Palen of Caldwell, Pacetti, et al.; John Gary of Gary, Dytrych & Ryan; Dave Dailey of Dailey & Associates, Inc.; and Butch Beechler of The Bear's Club.

2. ESTABLISH A QUORUM

Mr. Bardin announced that a quorum was present and that it was in order to consider any business to come before the Committee.

3. REORGANIZE THE COMMITTEE

Mr. O'Rourke nominated Mr. Salee to Chair the Committee and Mr. Salee accepted.

4. ADDITIONS OR DELETIONS TO THE AGENDA

Mr. Bardin reported that there were no additions or deletions to the agenda.

5. APPROVAL OF MINUTES – JULY 22, 2009

A **motion** was made by Mr. O'Rourke, seconded by Mr. Salee and unanimously passed approving the July 22, 2009 Committee meeting minutes as presented.

6. REGULAR AGENDA

- **Unit No. 20 – Juno Isles
Consider Landowner Request(s)**

Mr. Bardin explained that he received a request from John Gary, an attorney representing three Landowners in Juno Isles, that Northern convey title to three parcels of land to his clients. Northern originally received title to this property from Palm Beach County. He further explained that the three parcels represent an upland part of the Juno Isles' outfall canal tract and they adjoin these Landowners' lots.

Mr. Beatty showed overhead slides of the parcels being discussed.

Mr. Salee expressed concern about liability to Northern for what has already been built along the canal and Mr. Bardin provided some history of the existing structures.

Mr. Edwards informed the Committee that a title search of the canal has not been performed. He also explained that Northern may have some exposure to liability but he doesn't know to what extent, if any, without a title search.

After inquiry, Mr. O'Rourke was advised by Mr. Edwards that Northern was conveyed a 50' easement within the canal.

John Gary then addressed the Committee and confirmed that he represents the three landowners, and that they had thought that they already owned the property. Mr. Gary indicated that

the County took the property due to non-payment of taxes and subsequently deeded it to Northern by means of a Quit Claim Deed.

Mr. O'Rourke asked when the platted lot lines were established and was shown a plat depicting the properties in question.

Mr. Bardin stated that the Committee should consider requesting that the District Engineer issue an opinion with regard to whether Northern needs the property to carry out the Unit 20 Plan of Improvements.

Mr. Salee expressed his belief that requests of this nature should be evaluated on a case by case basis.

A general discussion followed with regard to the purpose of the canal.

It was the consensus of the Committee that the District Engineer provide an opinion as to whether the properties in question are necessary to carry out the Unit 20 Plan of Improvements and authorized Staff to engage an appraiser to determine the value of the three parcels in question.

- **Unit No. 44 – The Bear's Club**
Consider Options re: ACOE and SFWMD Notices of Non-Compliance

Mr. Bardin presented some background regarding the permitting process within this Unit. He then explained that the developer and Staff had been working on an amendment to the Property Exchange Agreement, as well as an amendment to the Conservation Easement, and these amendments were scheduled to go to the Board for consideration. Mr. Bardin further explained that although the developer had received a permit from SFWMD, it didn't believe it needed one from ACOE. So, the improvements were constructed without ACOE approval.

Mr. Bardin stated that as a result of the developer's action, Notices of Non-Compliance were issued by both SFWMD and ACOE.

A general discussion followed with regard to the developer's opinion regarding the uncertainty of ACOE's jurisdiction in this matter, as well as an apparent communication problem with the ACOE on the matter.

Mr. Salee inquired if the work was performed with a Northern permit and Mr. Beatty explained that while a permit had been applied for, it has not been issued as of today.

Mr. O'Rourke inquired if Northern has a mechanism to issue fines as SFWMD has done , and Mr. Edwards then reviewed several remedy options available to Northern.

Mr. Bardin explained that the developer is working on solving the SFWMD's issues and, similarly, wants to settle its outstanding issues with Northern.

The Committee directed Mr. Bardin to work with Staff to prepare a list of proposed remedies and possible penalties to present to the Board for their consideration.

- **General
Palm Beach County Code of Ethics**

Mr. Edwards introduced his law partner, Frank Palen, who addressed the Committee to discuss the recently amended Palm Beach County Ethics Code and potential impacts upon Northern.

Mr. Palen explained that Northern is not currently subject to the Ethics Code, rather Northern is governed by the State ethics laws. He reviewed the history of the County's Ethics Code and noted that the recently approved referendum requires every municipality now be subject to the County's Ethics Code. The latest revision to the Code goes into effect on January 1, 2011 and applicability of the municipality portion takes effect on April 1, 2011.

Mr. Palen spoke about the County Commission on Ethics and explained that Broward County has created an Ethics Code as well.

Mr. O'Rourke asked if the School Board is now subject to the Ethics Code and Mr. Palen stated that the School Board and other local governmental agencies currently are not subject to the Code.

He explained that a Palm Beach County Inspector General's office has also been established and currently has a staff of approximately 50 people.

A general discussion followed with regard to Northern's ability to opt-in to the County Ethics Code and the question of how that would be funded. Mr. Palen explained that the Solid Waste Authority has opted-in and is being charged \$250,000.

Mr. Edwards explained that Northern does not have the legal authority to impose penalties of the nature set forth in the County Ethics Code so that may prevent such an opt-in.

Mr. O'Rourke did not believe the expense involved is necessary to provide added assurance and comfort to Northern's landowners, and Mr. Edwards reminded everyone that the ethics requirements of Chapter 112, Florida Statutes already apply to Northern. Mr. O'Rourke discussed the possibility of Northern adopting its own set of ethics rules to make the constituency more aware of the Board's commitment to ethics.

There was also some discussion with regard to Board Members sitting on County Committees and if a waiver is needed. Mr. Palen explained that the Code revisions in September removed that requirement.

It was the consensus of the Committee that the Board is currently governed adequately by the ethics requirements of Federal and State laws.

7. MISCELLANEOUS

There were no miscellaneous items.

8. RECEIVE AND FILE

The Proof of Publication was presented for filing.

9. COMMENTS FROM THE COMMITTEE MEMBERS

Based upon his review of the Committee Minutes of July 22, 2009, Mr. O'Rourke asked how the law firms currently contracted with Northern were selected. Mr. Edwards explained the Request for Proposals process that was followed, and Mr. Bardin noted that he can provide a breakdown of services provided by each firm if Mr. O'Rourke would like one.

10. ADJOURN

There being no further business to come before the Legal Committee, the meeting was adjourned.