

SOUTH BROWARD DRAINAGE DISTRICT

**SBDD COMMISSION/EROSION WORKSHOP MEETING MINUTES
MAY 14, 2008**

Present:

James Ryan, Chairperson
Scott Hodges, Vice Chairperson
Robert E. Goggin IV, Secretary
Thomas Good, Treasurer
John Eastman, Commissioner
Mercedes Santana-Woodall

Alanna Mersinger, Commissioner
Leo M. Schwartzberg, District Director
Douglas R. Bell, Legal Counsel
Joann Long, Recording Secretary
General Public/List Attached

01. CALL TO ORDER/ROLL CALL/PLEDGE OF ALLEGIANCE

Meeting called to order at 2:10 P.M. followed by roll call and the Pledge of Allegiance.

02. PURPOSE OF WORKSHOP

To discuss suggestions and recommendations submitted to the Board by the Hurricane Erosion Committee and provide Commissioners and the general public the opportunity for their individual input.

03. DISCUSSION

The Committee met three times; and while some issues were resolved by unanimous consensus, some were resolved begrudgingly by majority consensus. It was recommended Mr. Schwartzberg's list (see attachment) be reviewed item by item using Mr. Bell's memorandum (see attachment) if necessary.

In response to a question, Mr. Bell advised that the District has the right to do almost anything it wants regarding erosion-repair work and also to make decisions regarding financing. It is the Board's responsibility to make the decision on who and how to assess. Commissioner Eastman has read all of the applicable homeowner-association documents, and the District is under no obligation to do anything with lake-front properties. It is the homeowner associations responsibility to maintain the lake banks. Mr. Bell confirmed Commissioner Eastman's position.

LMS Item #1: Should the District repair hurricane damage to lake-maintenance easements? Committee's position: yes.

Commissioner Ryan felt the District is obligated to do the repairs behind the homes adjacent lakes. He is not concerned with aesthetics. Commissioner Eastman felt that all repairs should be done in the same manner; the District needs to have the final say regarding repair criteria. Commissioner Eastman felt the issue is, "Who pays for the repairs?".

Commissioner Mersinger felt that many homeowners did not have the ability to pay for the work needed to restore their lost property after "Wilma". Had the District not undertaken the needed repair work and paid for same, the adjacent property values would have decreased greatly, with all other properties within the developments also realizing some decrease in value. It is Commissioner Mersinger's opinion that the District is responsible for the lake-bank slopes and grades.

Re: spending money in a specific area that does not benefit the overall properties but was collected from those overall property owners, Commissioner Mersinger used the example

of the cost of the trees being removed from within Rolling Oaks and paid for from overall District funds to show that this practice is not something new. She felt that while the District is divided into individual basins, what affects one basin affects everyone in some manner; and she would like to see the Board continue with that theory which has been in effect for many years.

Commissioner Good would like to see some defining criteria, i.e., does the District do hurricane-erosion repair according to the original-design criteria or to the condition the property was in when the catastrophic-wind event occurred? Commissioner Goggin agreed that repair criteria must be in place in order to assist the applicable property owners in need. He noted SBDD has grown tremendously in its responsibilities and undertakings and that the property owners and communities will again look to the District in the event of another wind event that causes damage such as happened with “Wilma”.

Commissioner Santana-Woodall felt there are many lakes throughout the District that are open to the general public. Accordingly, she felt everyone should pay the same amount towards catastrophic-wind event damage.

There being no further comments from the Commissioners, the general Board consensus for LMS Item #1 was “yes”.

LMS Item #2: Should the District pay for all or a portion of the repairs to a lake-maintenance easement? Committee’s position: The District should consider paying for all hurricane-related repairs.

Commissioner Eastman felt the District should take care of the headwalls, interconnects and such throughout the development(s). It is the repair costs on private property that he objects to the District paying, as it is his firm belief that those private-property owners are responsible for those costs. Other Board members disagreed.

On the issue of outside financial assistance, Commissioner Ryan interjected that there is no guarantee that the District will receive any such assistance.

LMS Item #3: Should the District only pay for what it expects to receive in reimbursement from FEMA and/or NRCS? Committee’s position: No.

Again, FEMA and/or NRCS funds may not be available. Commissioner Eastman agreed that if the District is going to step up and undertake repairs, there should be a mechanism in place to assist those who are directly benefitted whereby they would pay for anything paid for by general SBDD funds and not reimbursed by an outside source. Commissioner Mersinger voiced her disagreement with that position. Commissioner Hodges felt that the District must undertake all repairs regardless of whether or not any monies will be reimbursed by property owners.

The Board’s overall consensus was that all repairs must be done and that the District cannot rely on any outside funding becoming available.

LMS Item #4: Should the District lend money and be reimbursed by each affected property owner? Committee’s position: Per the District’s legal counsel, the District cannot lend money to individual property owners and/or HOAs. **The Board consensus was the same, as there is no other legal choice.**

LMS Item #5: Should the Fund lend money to be reimbursed by a special assessment? Committee and Board’s response was the same as for Item #4. **It was noted that the Fund may “loan” money to the District to make improvements.**

The Franklin Farms development was briefly discussed in that while the City of Miramar actually owns the lake and there are no SBDD easements on or around that water body, the District does have the right to work in that lake as it is owned by a governmental

entity. Commissioner Eastman felt that SBDD could help with repairs but that those property owners would have to pay for all repairs. Mr. Bell noted the District would need an easement in order to do any work or an agreement with each property owner that the District is permitted to work on their properties. Commissioner Mersinger felt this should be a separate issue from what is being discussed at this time.

Mr. Bell advised that there are a number of lakes in the eastern area that are not owned by the District. It was agreed all such lakes would have to be discussed on a case-by-case basis in the event of catastrophic erosion damage to any of them. Most did agree that the District should consider helping if possible but that it is not obligated to do so for the privately-owned lakes. It was reiterated that the District does not own a lake, it would have to obtain an easement or agreement from every property owner in order to do any work in and/or around the lake.

LMS Item #7: Should the District repair lake-maintenance easement erosion that has occurred over a long period of time as opposed to hurricane damage? The Committee's position: No and that the District should communicate this position to the HOAs.

Commissioner Ryan suggested that the District's field-maintenance crews should advise of any non-hurricane erosion they might see during their spraying operations in order that those property owners could be advised of the need to address the situation before it worsens.

Commissioner Eastman again noted that the HOA documents of the five western developments that experienced severe lake erosion during "Wilma" specify that the HOAs are responsible for the shorelines, and he felt they should be held to that responsibility.

Commissioner Ryan questioned how a determination can be made on what constitutes normal everyday erosion compared to hurricane erosion after the fact. Commissioner Mersinger felt that staff should do an overall survey in order that the District can be aware of existing "regular" erosion. Commissioner Ryan suggested video taping all shorelines as soon as possible. Commissioner Good interjected that the County has aerial maps which would be very useful in this effort. Mr. Schwartzberg noted that it would be a very cumbersome project to do an overall shoreline survey. He did add that the District also has aerial maps for all areas within its boundaries. He noted that it would be difficult to distinguish the type of erosion that exists from the aerials. Some felt that comparing the properties adjacent to any questionable area could help in this effort.

Commissioner Ryan, in reference to the maintenance/repairs of the lake banks being the responsibility of the HOAs, felt the property owners should be educated on this issue.

The general Board consensus was that the District could provide technical support in the event of a catastrophic event.

LMS Item #8: Should the District partner with the HOA or the individual property owner? Committee's position: No. Board's consensus: No.

LMS Item #9: Should the District repair lake-bank erosion if there is no lake-maintenance easement? Committee and Board's position: No, as it does not have the right to work on land not covered by an easement (see Item #6).

LMS Item #10: Who should pay to remove trees that fall from private property across the District's lake-maintenance easement? Committee's position: The owner of the private property.

There is an existing policy on this matter which specifies that the property owner is responsible for costs incurred by the District to remove the tree(s). Mr. Schwartzberg noted

that NRCS will only provide financial assistance when a tree falls into the District's easement during a catastrophic event. Mr. Good felt that the District should be reimbursed by the property owner only for that portion of the cost not reimbursed by any other agency.

The overall consensus of the Board was that Mr. Good was right in his recommendation that only that part of the cost not reimbursed by any other agency would be the responsibility of the private-property owner.

LMS Item #11: Should the District repair seawalls? Committee's position: No. The District's repair should be limited to restoring the bank to its original design and not incur additional expense due to an improvement made by a property owner. Commissioner Eastman questioned who pays for the debris removal. **Most Commissioners felt this should be addressed even though they were satisfied with the wording as is.**

LMS Item #12: How large should the fund be before the District stops adding to it? Committee's position: There is merit in Mr. Castillo's suggestion that the decision should be made with actuarial input; also that Mr. Schwartzberg determine the services an actuary can provide and probable cost for said services.

Info gleaned by Mr. Schwartzberg on this subject: (1) For actuary who performs the type of service needed, approximately \$12,000. (2) In order for the actuary to be able to provide his/her information, hurricane-wind modeling at a cost of \$18,00 plus \$850 per storm is necessary. (3) In order for the hurricane-wind modeling to be done, wave modeling at a cost of \$35,800 is required. He has not as yet received a proposal for geotech engineering which would be necessary to determine the damage the waves would cost.

Mr. Schwartzberg further explained that there is a potential to purchase a certain amount of insurance to cover the District after a specified amount of damage has occurred. There is no local company that provides this type of coverage, but the District's insurance agent has a contact in London who is doing some investigation on this type of coverage and the cost for same through a London carrier. The District could request prices for different amounts of coverage and deductibles.

As this is not something which must be decided at this time, it was agreed to withhold further discussion until additional information is available.

LMS Item #13: Once the fund reaches the desired size, how should the District use the interest generated by the fund? Committee and Board's position: **This item cannot be resolved at until the desired size of the fund is determined.**

LMS Item #14: How should the District structure assessments that are to be used to reimburse the District for erosion-related work? Committee's position: SBDD Legal Counsel will prepare a legal opinion to determine the following: (1) Can the District do an assessment district wise and (2) Can the District do an assessment by specific area less than the entire District? (Mr. Bell has since responded affirmative to both questions.)

Commissioner Eastman felt reimbursement has to be structured whereby the work can be done, but the cost would have to be returned to the fund as private property repair costs cannot be recovered from property owners who receive(ed) no direct benefit from the work performed.

Discussion ensued on whether or not homeowners whose lots are repaired by the District should pay a special assessment if the cost of repair exceeds the amount of money in the fund. The Committee felt that lake-front property owners should pay more money than other property owners annually into the fund. In exchange, they would not be subject to additional assessments for repairs made to the lots in the future. No additional amount was determined.

Commissioner Mersinger remained firm in her opinion that any monies to be reimbursed should be equally assessed to all property owners throughout the District.

Commissioner Hodges felt that all property owners receive some benefit as a result of the water bodies within the District even though the lake-front owners do receive the majority. He agreed that those receiving maximum benefit should pay more than those who do not. Even so, Commissioner Hodges felt it is difficult to assign benefit percentages throughout an entire development.

Commissioner Goggin, in reference to the 5-6 large western lakes, felt these large water bodies are the most likely to suffer catastrophic wind damage in the future. The eastern (and smaller) lakes are not nearly as likely to have that happen. He felt consideration should be given to that factor.

Commissioner Santana-Woodall noted that many of the large western lakes are open to the general public, and thus other property owners do receive a benefit from being able to use those water bodies if they so desired. Mr. Bell interjected that most large lakes are owned by the District who does not permit use of the lakes by anyone other than the individual-community property owners. .

The Board members agreed with Mr. Bell's responses to the two questions from the Committee on the Board's authority.

LMS Item #15: If the District makes erosion repairs that fall into a category that the District has decided should be paid for by the fund and the amount of the repairs does not exceed the amount of money in the fund, should the District assess anyone to reimburse the fund? Committee's response: No.

Commissioner Eastman felt it is good to have money available for needed repairs. Even so, repairs made to private properties should be reimbursed 100% by those property owners who receive the benefit from the work done in order that there would be monies in the fund for future use. Commissioner Mersinger again voiced her disagreement with Commissioner Eastman. **As there were no other comments, the Committee's position was accepted by the majority of the Commissioners.**

04. AUDIENCE/COMMISSIONERS COMMENTS

Ms. Dee Schroder, Sunshine Ranches/SWR resident, disagreed with the statement made re: all property owners paying the same amount for school taxes. In re: to all property owners paying equally for lake-front property damage on private properties, she thought that was unfair. She felt everything attached to the bank and shore line should be the responsibility of the adjacent property owners.

Mrs. Mary Gay Chaples, Southwest Ranches, voiced her agreement with Ms. Schroder's comments noting that lake-front property owners choose to purchase that property. She is opposed to all property owners being taxed for a fund that basically serves only those lake-front properties...and then mostly the large western lakes. Mrs. Chaples noted that the large lakes were dug for fill. She questioned what can be done to prevent new large lakes in the future as well as protecting the work done after "Wilma" from being "re-injured". Mrs. Chaples would like the District to come up with a solution that would take care of the problem once and for all, as she objected to just keeping on making repairs on the large lakes time after time as damage occurs. She was very adamant in her opposition to all property owners within SBDD having to pay into a fund that basically benefits only the lake-front properties if needed.

Mr. N. Hollingsworth explained that the large western lakes were originally rock pits or mining operations and that homes should never have been constructed on those areas. It was his belief that the erosion-fund monies will be used only for those properties adjacent to those large water bodies, and he objected to collecting monies from all property owners

within the District which will for the most part be used for only a very few areas within the overall boundaries of SBDD.

Re: it being the HOAs responsibility to maintain the areas in question, Mr. Hollingsworth felt the HOAs are very happy to have this District undertake the lake-bank repairs as it keeps them from having to raise their HOA dues on all properties within their developments. He feels the District is collecting and spending money that otherwise would have to be collected and spent by the HOAs were they to be required to fulfill their responsibilities as contained in their HOA documents. Mr. Hollingsworth is very much opposed to SBDD allowing that practice to continue.

Mr. Doug McKay, Chairman of the SWR Drainage Committee, agreed with the three previous speakers. If, as mentioned earlier, the Board is considering having another special committee come up with recommendations on “who pays what”, that is an excellent idea. If everyone is going to be taxed to get the fund to a specified amount, that would be acceptable; but once those monies are used, the Board needs to address how it would be replaced.

Mr. Bob Busch, SWR, doesn't believe the District has the authority through its Charter to do what it is being proposed and that the type of funding being considered should be the responsibilities of the individual City/Town municipalities wherein the District is located.

Mrs. Joanne Hollingsworth, SWR, does not believe in public funds being used for work done on private properties that benefit only those owners. She agreed with others who have stated that the HOAs should be made to abide by their documents which specify they are responsible for the lakes and lake banks. Mrs. Hollingsworth felt that the individual property owners should be fully responsible for repairs to their properties.

Commissioner Eastman felt the Erosion Committee was totally one sided when considering every issue and every suggestion put before it which resulted in recommendations to the Board that were not unanimous. He felt the Board should listen to the taxpayers. Commissioner Mersinger responded that she would like to hear from more than municipality. She noted that other property owners who do not live on a lake have voiced their opinions that everyone should participate in the erosion fund. As such, she again noted that she would like more input from a larger cross section of people.

Commissioner Hodges belief is that there are some flood benefits to everyone within the District due to the way the overall drainage system is comprised as all areas are connected in some manner even though perhaps not visible to those not familiar with the overall system. He does agree with some that a benefit-ratio level should be determined in order to set equitable erosion-assessment amounts.

Commissioner Good wasn't ready to make any final comment(s) until he has given more thought to some of the things he has heard today.

Commissioner Goggin recalled previous discussion on the District being divided into thirteen individual basins and then some sub-basins. He agreed that there is an indirect benefit to all properties within the District even though not in tiered levels according to the amount of benefits received which should be considered when making the decision on what amounts to be assessed for an overall erosion fund.

Commissioner Santana-Woodall felt that in the long run, anything done re: drainage affects everyone because the District boundaries encompass only one large overall general community. She felt that looking at the issue of erosion in terms of each area differently will only result in dividing the vast majority of those within SBDD.

Commissioner Ryan has studied the District's Charter, particularly the area re: the stated purpose of the District, and felt many have lost sight of what the District's job is as a

drainage district. The water bodies are here for water storage and drainage. He would like to see the fund reach a certain amount and then cease with the special assessment for same. Commissioner Ryan felt there are only two options which should be considered, one being to continue with the erosion program as it now exists with everyone paying the same amount, as many homes within SBDD areas, i.e., Southwest Ranches, would not be there if it were not for the District's overall drainage system. The second option is to do away with the fund in its entirety and then take care of any problems that arise as they occur as best as possible (basically "let the chips fall where they may"). For option #2, if the District has to assess to repay funds, Mr. Ryan reiterated that everyone should be assessed equally.

Mr. Bell noted that the Board may want to reclassify the type of catastrophic-event damage that it would consider.

In re: to assessing the lake-front properties more than the others, Mr. Schwartzberg recalled the suggestion that the Board appoint a small technical committee to discuss this and come up with a recommendation. Mr. Bell interjected that if a tiered assessment plan were to be adopted, it would be necessary to create some new sub-districts. After further discussion, it was agreed that Commissioner Hodges and Messrs. Bell and Schwartzberg would work together to make recommendation(s) to the Board for how any erosion assessment could be accomplished in a tiered manner and who should be subject to what. Then the Board would be in a position to make a final decision.

Commissioner Mersinger noted that on a happier note, the Autism Bill had received final approval and also that the District has been approved for a CIBR (Community Issue Budget Request) grant of \$100,000.00. Thanks were given to Commissioner Mersinger re: both, as the Board realized it was only through much work on her part of that the District will receive any CIBR funds. While SFWMD had put in a CIBR package requesting funding in the amount of \$3,500,000.00 for surface-water projects, only the \$100,000.00 was approved, a great deal in part to Commissioner Mersinger. Mr. Schwartzberg added that he had discussed the matter with Mr. Ron Bergeron who also spoke with the Governor about SBDD.

Adjournment at 4:15 P.M. as there was no further on the part of those present.

James "Jim" Ryan, Meeting Chairperson
South Broward Drainage District

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