

PLANTATION ACRES IMPROVEMENT DISTRICT

REGULAR MEETING

August 27, 2020

Member Present: Stephen Nieset, Chairman
Dr. Edward N. Szerlip, Vice-Chair
Louis Flanigan, Commissioner
Lance Fein Ed.D, Commissioner

Also Present: District Engineer Vaughan
Joseph Telles, District Administrator
Angel Alvarez, District Manager

Virtually: Jesse Varnell, Commissioner (partial time)
District Attorney – Paul Gougelman
David Fradley, District Engineer

Chairman Nieset called the meeting to order at 7:00 p.m. The Pledge of Allegiance to the Flag followed by Chairman Nieset giving opening prayer. Roll call indicated the above members were present.

MINUTES –

Motion made by Commissioner Flanigan to approve the regular meeting minutes of July 23rd, 2020 and second by Vice Chair Doc Szerlip to approve the minutes with corrections made to reflect August 27th as indicated by Chairman Nieset . Motion carried unanimously by voice vote. Role call Chairman Nieset, (yes) (Commissioner Flanigan (yes), Vice Chairman Doc Szerlip (yes), Commissioner Varnell (yes), Commissioner Fein (yes), Motion carried unanimously by voice vote.

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PUBLIC COMMENTS: Christopher Cariffe - 11401 NW 27 CT PLANTATION FL 33323 - Drainage swale status.

Commissioner Flanigan: Is this an agenda item if so he cannot go up there yet.

District Manager Alvarez: Yes Sir it is an agenda item on my report.

District Attorney Gogleman: Mr. Chairman may I ask if he can get a report and this way he doesn't have to stay here all night?

Chairman Nieset: I agree if it is not detailed.

District Manager Alvarez: Rear swale concerns, four homes along 28 CT. have brought in fill to raise their property elevations. A neighbor along 27 CT. has concerns about drainage being affected negatively during rain events. After inspecting the area several different times and being unable to determine (no grade stakes present) if drainage functionality has been adversely affected, I am requesting the Board instruct Winningham & Fradley to, once again, mark the rear swale' property lines, edges and elevation from NW 112 Terrace to the catch basin inlet located at the Plantation

Baptist Church' South East corner to assure drainage compliance is in effect by all properties adjacent to this swale. Only a survey can determine compliance is in effect.

Christopher Cariffe: I would like to add that we also sent our inspector out and there are permits that have been approved, and we will make sure that they conform to those permits, (Overview provided). If the Board and allows the rear swale to be removed.

Motion made by Vice Chair Doc Szerlip to approve recommendation made by Angel and the engineering departments recommendations to further evaluate second by Commissioner Flanigan. Motion carried unanimously by voice vote. Role call Chairman Nieset, (yes) (Commissioner Flanigan (yes), Vice Chairman Doc Szerlip (yes), Commissioner Varnell (yes), Commissioner Fein (on his way to the office), Motion carried unanimously by voice vote.

Christopher Cariffe: Discussion on permit provided by District Engineer Vaughan.

District Attorney Gogleman: As part of the public comment, I would like to introduce to the Board David Tolces, on the upper right hand corner of the screen, who is one of my partners and he is simply a visitor at tonights meeting and there is no fee. He is simply getting a feel for the Board so that from time to time and I'm not available he will be stepping in. Mr. Tolces has twenty to thirty years experience practicing for a long time and not a newbie. So I introduce Mr. Tolces to you.

David Tolces: Hello everyone. I will be providing at times services to you along with Mr. Gougلمان

Christopher Cariffe: I also wanted to mention the culvert.

District Manager Alvarez: I don't know what Scott recommended

District Engineer Vaughan: It looks like its probably blocked and unblocking it will create a better situation; we don't know what the elevation of that culvert is; is it far enough beyond the driveway an the East side but it looks like; it would look like water if any that was on your lot may have a tendency to move Westward but the adjacent neighbor to the West looks like they have an extremely deep swale. It would move water from your lot to his lot and sit. That is the best case scenario. I will go out there and take a look. (Discussion continued)

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DISTRICT ADMINISTRATOR'S REPORT: Motion was not carried.

Consent Agenda for July 4th, 2020 that has not changed and the Cash Flow for the same period (overview provided). Motion made by Commissioner Flanigan to approve the Consent Agenda and Cash Flow second by Vice Chair Doc Szerlip to approve the minutes with corrections made to reflect August 27th as indicated by Chairman Nieset . Motion carried unanimously by voice vote. Role call Chairman Nieset, (yes) (Commissioner Flanigan (yes), Vice Chairman Doc Szerlip (yes), Commissioner Varnell (yes), Commissioner Fein (yes), Motion carried unanimously by voice vote.

Commissione Flanigan"When does the payroll tax savings go into effect?"

District Adminisrator Telles: Not going into effect. Must first be approved by Congress then Senate and the parties.

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LEGAL REPORT:

District Attorney Gogleman: Nothing to report other then to let you know there is violation hearing on the agena later. When we get to that I will walk the Board through the procedures.

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ENGINEER'S REPORT :

District Engineer Vaughan; Overview and attachments provided

A. CONSENT ITEMS - NONE

B. QUASI-JUDICIAL ITEMS - The items in this section are quasi-judicial in nature. If you wish to object or comment upon any of these items, you must be sworn before addressing the Board of Commissioners, and if you wish to address the Board, you may be subject to cross-examination. If you refuse to submit to cross-examination, the Board of Commissioners will not consider what you have said in its final deliberations.

District Attorney Gogleman: Parties sworn in (B1). Mr. Chairman we have procedures and our rules for how to handle these hearings and if I may walk the Board item by item through. If any Board member has had any sort of discussion or exchange of correspondence with anybody regarding this hearing if you would please disclose with whom you've had discussion or correspondence and anything materia you learned in that so that it is added to the record.

Chairman Nieset: I spoke with Greg yesterday and he basically said he would be attending tonight and I told him I was aware about it and that was the extent of our conversation. He is my neighbor of my daughter.

District Attorney Gogleman: Any of the other Board members?

Commissioner Fein: Having difficult time hearing will come to the office and arriving shortly.

District Attorney Gogleman: We're having a physical quorum here and we are good however; you will have to vote on it.. I would like to make for the record the special act that governs this Board as well as the § Chapter 298 and § Chapter 189 of the Florida Statue and our rules and regulations that govern our proceedings. I would like to point out to the Board that under § 9-4 of Act 2002 and Section 9 Sub 5 the Board has power to regulate a perfect resolution to drain requirements and conditions to be meet for any of the development upon any land within the District...to insure proper drainage in the area the rules and regulations as the Collier's attorney is aware Section 5.1 does required work is done on the property that a permit be obtained and I will disclose to you at this point that I'm not acting as the Board's attorney but acting as the attorney for the staff so that there are no conflicts but I will walk everybody through this process. First step is for the staff to outline to you the nature of the violation, what has caused it, the surface. The second step will be to hear from the Collier's attorney and if anyone is here from the audience (no audience) they can also participate and after that there is an opportunity for closing comments by staff and then for the Board to make a decision.

District Engineer Vaughan: I will remind everyone that this is a Quasi Judicial item at 11700 NW 12th Street; Violation V2006.01. (Overview provided below) This morning Fradley, attorney for applicant and myself had a discussion on the history of this property and I will turn it over to you (Attorney for the applicant) since our recommendation has been stated.

District Attorney Gogleman: So that the Board understands better can you outline for the Board you have some photos in the agenda package the nature and the size of the area affected?

District Engineer Vaughan: I'm not sure the size of the area affected but if you look at the pictures in your package it was taken when the CO was completed and signed off by our office. The next photo show's the fill (white category) and the final photo is from the roadway still showing the fill in the background, a gate that was installed, and it looks like the swale in front of the gate may have also been filled. We won't know that until we take some photography shots.

District Attorney Gogleman: For the record I would like to ask who and when were the pictures taken. Mr. Alvarez you've been previously sworn. Tell us about the photagraphs and when they were taken and affirm that you did take them.

District Manager Alvarez: Photographs correspond with emails that I sent but I don't remember when they were taken. I believe he mentioned the dates when he was reading off of his letter.

District Engineer Vaughan: April 16th it was approved so it had to been within April and before May 9 because Commissioner Varnell sent an email alerting staff of a potential filling violation. On May 12 the district manager went out there and confirmed the activity.

District Attorney Gogleman: Mr. Alvaarez you did take the photos.

District Manager Alvarez: Yes

District Attorney Gogleman: At this time we'd like to make these photos and agenda items and official files as part of the record. For either Mr. Alvarez or Mr. Vaughan on one of the photos it's clear that someone has drawn in in blue ink a large "I" .

District Manager Alvarez: The blue mark represents grading as to safety issue from there up to where the white pole is.

District Attorney Gogleman: Do you have an idea roughly the size of that area? Would you say it's closer to 1000SF?

District Manager Alvarez: 75'

District Engineer Vaughan: It would be something that they would have to provide us from their professional so we can review and make sure it conforms.

District Attorney Gogleman: Let me advise that we are not getting into a discussion tonight with the correctness of the word for the violation the Collier's have been cited for they are doing work without a permit is that correct?

District Engineer Vaughan: We are asking for the applicatn to submit for a permit.

District Attorney Gogleman: If they don't do that within a reasonable amount of time it would be a violation of the District's regulation correct?

District Engineer Vaughan: Section 3 and 5 of the district policy and procedure.

District Attorney Gogleman: At this point if the attorney for the Collier's wishes to cross exam Mr. Vaughan or Mr. Alvarez he is entitled to otherwise it would be appropriate for the gentleman to give a presentation on behalf of his client. I would like to note for the record that the attorney for the client has been extraordinary professional in how he has represented his client so far but I also tell you he has advocated his client's position which we would expect him to do as attorney.

Client Attorney: This is not a formal cross. The one with the "I" on it. I would like to introduce another record what ended up occurring in term of our clients. They did have a permit issued in March, the picture with the "I" was previous to the final approval. The engineer came in and said the slope and grade was too steep. I would like to introduce this picture into the record. (picture provided to the Board) Discussion continued.

Vice Chair Doc Szerlip: Are you saying that you did not need apply for another permit because you followe the previous permit? I would like to ask our engineer if that attorney for the Collier's is saying that the amount of grading will have no effect on the water flow in the drainage.

District Engineer Vaughan: That is speculation. Until we have a final survey which on April 16th we approved we don't know if the picture is exactly in correspondence with this survey.

Vice Chair Doc Szerlip: How can the Board make a decision.

District Engineer Vaughan: Need to do a survey in that area and see how it complies. A survey was completed which was compliant and approved for the CO. We are asking the applicant to apply for a permit.

District Manager Alvarez: Date of the picture is April 13 which corresponds with the date of my report.

District Attorney Gogleman: Can you make the report part of the record and let the gentleman see it ?

District Engineer Vaughan: Best thing to do is have the client apply for the permit, tell us what the difference is on what was improved on April 16 and what was constructed and/or filled as per these photos. We can comment after we review the document that is submitted. It is difficult for us to speculate.

Client Attorney: No work was done in the swale area. This is about whether a permit is required I'm saying their shouldn't be a permit required. My client wants to be a good neighbor (Discussion continued)

Commissioner Flanigan: That's why we have staff to tell us things like this. It is your recommendation the client needs a permit I don't see how the Board can do anything other than do what you are requiring. Go ahead and submit for another permit.

District Attorney Gogleman: Mr. Chairman we have to let the client attorney finish and then we will have a summary comments from both staff and client attorney in that order and then it will be up to the Board.

Client Attorney: Wisdom and fairness is where we started this meeting today to understand as a property owner that you receive an approval to increase/decrease the grade of the slop and you put some rocks over it does that constitute fill? (Discussion continued)

District Attorney Gogleman: Mr. Chairman before we get into closing arguments I would like to ask one question of staff that when a permit application is submitted and a survey and you have the data and information in hand it can well be possible that further action is required is that correct? It could also be that you might find that a permit is not needed? And what would be required for a permit application?

District Engineer Vaughan: Correct. Fill permist are straightforward. This is a circumstance that there was fill in without a permit so our response is to apply for a permit. It could be easily resolved or not. Something has to be submitted by the professional for us to review. (Discussion continued)

District Attorney Gogleman: Angel does the client attorney have a copy of the photo you are referring to at this time? Please provide him with one. With both presentations now completed it's time for closing arguments/remarks by staff and then by client attorney in that order.

Client Attorney: Gave closing argument. At this time the position taken is inappropriate.

Chairman Nieset: Anyone else have questions/opinions

Commissioner Fein (physically present): I have what was the approved work permit and then this is ultimately what was done is the violation? Is this something they can seek an approval for? So we don't know whether the completed work can be permitted. Thank you.

District Engineer Vaughan: They can come in for an permit application.

District Attorney Gogleman: Just for clarification what staff are asking is not approving or disapproving what has been done...staff is asking that finding be made that a permit is required by your regulations that it is required that a violation currently exist because a permit has not been issued, applied for and the violation appears to have existed up to the months of June, July and up to the date of this hearing. No permit application had been made.

District Engineer Vaughan: None that we are aware or has been submitted.

District Attorney Gogleman: It's up to the Board to discuss it. If there are any further questions of the client attorney or the staff it's your prerogative otherwise the staff is looking for the motion

Chairman Nieset: So to get an application for the permit and for a plan survey and if it can get approved.

District Attorney Gogleman: So that the Board is aware I'd like to ask the client attorney and Mr. Vaughan that if the Board decides to require an application be made a way to correct that is making a submittal. What is reasonable time to make that application? If the motion passes I will go ahead a prepare a written order fro your signature.

Commissioner Fein: Is there a penalty for the violation? And can we hold off on all penalties until final approval is completed?

District Attorney Gogleman:It's Not at this point.

District Engineer Vaughan: On our report to the client it states 45 days. If they have not complied within the 45 days the issue would be brought back to the Board for further action.

Client Attorney: I'm under the impression that a permit is not necessary.

Motion made by Commissioner Flanigan to follow staff recommendation and require a permit within 45 days second by Chairman Nieset. Role Call: Chairman Nieset (yes), Vice Chairman Doc Szerlip (yes), Commissioner Fein (yes), (Commissioner Flanigan (yes), Commissioner Varnell (N/A). Motion carried unanimously by voice vote. Role call Motion carried unanimously by voice vote.

District Engineer Vaughan: That completes the quasi judicial item on the agenda.

**ENGINEER'S STAFF REPORT
FOR August 27, 2020 MEETING
AGENDA ITEM No.: B1**

Action Required: Board Approval (Quasi-Judicial)

Item Description: 11700 NW 12th Street (Repeat from July)
Notice of Violation

P.A.I.D. Number: V2006.01

Attachments: Photo taken prior to final approval
Copy of Final Survey Dated April 16, 2020
Photo taken by District Manager on May 12, 2020
Photo taken by District Manager on July 14, 2020
Engineer's Letter Dated July 14, 2020

Summary:

Based on an inspection by a District Inspector of the property located at 11700 NW 12th Street, an apparent violation of Sections 3 and 5 of the District's Policies and Procedures Manual exist as follows:

Fill material placed without approval or permit

Background:

The following is a chronology of events:

"April 16, 2020 - The work on the detached building was approved.

" May 9, 2020 - Commissioner Varnell sent an email alerting staff to a potential filling violation. " May 12, 2020 - The District Manager confirmed the activity.

" May 12, 2020 - The District Engineer contacted the Owner's representative and surveyor and shared photos.

" May 13 to 14, 2020 - The owners' representative, Tim O'Brian contacted the Engineer and explained the operation and was informed that a permit is needed.

"June 2, 2020 - Due to inactivity, a Notice of Violation (NOV) was sent to the owners, Robin & Lori Collier.

"July 14, 2020 - An inspection was made by the District Manager and no corrections were found.

"July 15, 2020 - A second NOV was sent.

Recommendation: Require compliance with District criteria within 45 days as follows:

Restore property to condition as permitted and provide survey for verification of compliance.

C. BOARD ACTION ITEMS: NONE

D. DISCUSSION ITEMS

D1. Pump Stations Improvements (D1707.01) Update

**ENGINEER'S STAFF REPORT
FOR August 27, 2020 MEETING
AGENDA ITEM No.: D1**

Action Required: Discussion
Item Description: Pump Stations Improvements Update
P.A.I.D. Number: D1707.01
Attachments: None

Summary: There are two issues to report. The first is the status of the construction and the second is the status of the SFWMD right-of-way occupancy permit.

The contract for the pipe lining work has been sent for execution. This work will commence after the signed contract is returned. The contractors that were to submit revised bids for Pump Station 3 have yet to respond. We will continue to seek a qualified contractor to perform the work. If no contractor is found or willing to do the work, the plans will be modified to show only PS 3 and re-bid.

Regarding the second item, the SFWMD permit, we have responded to all comments from the SFWMD staff and the R/W Department has indicated that they are ready to issue the permit. However, they have indicated that the ACOE has been non-responsive regarding their review.

District Engineer Vaughan: Updated the Board that today the SFWMD Right of Occupancy permit was received stating work cannot start until the ACOE approves and if so might be subject to revocation of said permit. Update will follow for next Board meeting.

Vice Chairman Szerlip: Does the ACOE always get involved?

District Engineer Vaughan: They have actually been overseeing the SFWMD. This one has been rather complicated. Hopefully we get some answers tomorrow or soon. Reference to the low bidder we gave a clear understanding on the specifics of the work to be done; pump station #3; we had a very good meeting and as of this date received a bid from the low bidder of the revise bid; we took out the hardware; so that District could pay for them and the contract is for the work. As a result the bid that came is was double than the original bid. Continuing to work with the other bidders and perhaps only do #3 and not all 6 pumps (discussion continued)

D2: Permit Activity Summary

District Engineer Vaughan: Overview provided on permit activity

D3: Notices of Violation Summary

**ENGINEER'S STAFF REPORT
FOR August 27, 2020 MEETING
AGENDA ITEM No.: D3**

Action Required: Discussion
Item Description: Notices of Violation Summary
P.A.I.D. Number: D9611.01
Attachments: None

Summary: The following is a summary of the existing violations.

Name Address Violation Status

1. Diaz/Gill 11591 NW 25th Street Fill without a permit. Complying
2. Perez 12041 NW 26th Street Construction without a permit. Notified

Prepared by: HMS Date: 08/17/2020 J:\PAID\Projects (D)\1996\D9611.01-Violation Summary\WP\2020-08-27 D3. Nov Activity.wpd

DISTRICT MANAGER'S REPORT:

Last Month's Follow up:

- 1) NW 27 CT./28 CT. rear swale concerns – four homes along 28 CT. have brought in fill to raise their property elevations. A neighbor along 27 CT. has concerns about drainage being affected negatively during rain events.
- 2) After inspecting the area several different times and being unable to determine (no grade stakes present) if drainage functionality has been adversely affected, I am requesting the Board instruct Winningham & Fradley to, once again, mark the rear swale' property lines, edges and elevation from NW 112 Terrace to the catch basin inlet located at the Plantation Baptist Church' South East corner to assure drainage compliance is in effect by all properties adjacent to this swale. Only a survey can determine compliance is in effect.
- 3) New nameplate and business cards have been ordered and received for Chairman Nieset.

Pump Stations: All stations are operating as designed. Storm expected for weekend of 08-22/23. Fuel has been ordered for all stations (Monday/Tuesday delivery expected).

Canals: This Month = 3.9' - Previous Month = 3.86' - Year to Date = 4.01'

Rainfall : This Month = 2.99" - Previous Month total = 17.99 - Year to date = 47.64"

Projects : A canal culvert was replaced at C-6, NE corner, after being damaged (cause is unknown). Routine facilities and equipment maintenance. Response to service trash racks/District Drainage facilities, as needed, during rain events.

Fleet: 2010 F-150 –Mileage = 146,327 - 2016 F-250 –Mileage = 45,884 - 2018 F-150 – Mileage = 36,024

Safety: No incidents to report.

New: I would be grateful if Board members considered a cost of living adjustment for my field staff during this coming 2020/2021 budget year.

Vice Chair Szerlip: Are we going to discuss it?

District Manager Alvarez: I was not there for the meeting.

District Administrator Telles: We will discuss it.

Chariman Nieset: Lance how did the meeting go?

Commissioner Fein: The meeting went as expected; a little late and hostile in arriving; I think it was the president and the gentleman boarders the property that has an issue with the trees. They will not allow us to do anything with the property and will stop us...they have attorneys and money to stop us and do not care what the cost is and that was the point of view. Ultimately, they don't want people driving by and seeing sheds and equipment. Said if we are willing to split the property in half even if we get it all the North side we don't touch, leave the trees and they will take responsibility for the maintenance, and we do what we want with the South section. We would have to put a 6-8' fence around the property and add landscaping such as bushes so as to have non visibility of the fence. Agree that we would not store equipment that would be visible from the street and/or build anything past the fence footage that would be an eyesore. That is the only thing comprising at meeting.

District Administrator Telles: I asked the president if they hired an attorney and he was affirmative and I asked if they were looking to take possession of the property. He said if we are looking to take adverse possession then so are we. He tried telling me the property is on residential and I told him not; found out the homeowners don't want anything to do with Mr. Zaras. I feel that in some way either we take possession or dually and split the lot. That would be reasonable, I don't think we need the entire property; let them take the North end, clear the trees, and landscape it for the entrance of their neighborhood. If we can work with them. Comment was made that we were storing old rusty equipment. Let them know we don't have rusty equipment and we wouldn't leave our equipment out for someone to take it. We will tax them on the property.

Commissioner Fein: Ultimately, I don't know what the benefit would be for us to have the North area. He didn't say they were 100% in with the split. He would present it to the HOA and felt it would be reasonable. Let them manage the other half and if the trees fall they are responsible. We left it that I would bring it to the Board and come up with an agreement.

District Manager Alvarez: Paul so that we take adverse possession do we go back and reconstruct the fence?

District Attorney Gogleman: Yes. If you are looking for a response on how do we proceed from here the answer is exactly as Commissioner and Mr. Telles mentioned and that is to continue discussions with their HOA and if they are then we will get into finite detail and the more finite detail on how our property will be used and how they will use their's and will there be support for any necessary rezoning they might need with the property things of that sort. At the end of that discussion we can go again and put together an actual agreement signed by both parties and anyone else such as Mr. Zaras. That would be the approach so that the adverse possession claim goes more smoothly. I think it's better if we pursue it with agreement so that when we perfect adverse possession you would have something that is an enforceable document. I'm sure attorney Cocker will look at it. It sounds like the two organizations may be in the cusp of being able to work something out that will benefit both parties. That would be my suspicion.

Commissioner Fein: Can we just fence in just the section we want? I know they would have an issue on us putting up the fence again.

District Attorney Gogleman: I think the answer is yes however; let me look at the Statue. We need to know who is paying the property taxes, type of fence etc.

Commissioner Flanigan: Do you think if we drop the adverse possession they would pursue ownership?

District Attorney Gogleman: That would be a Mr. Telles question. I would suggest if the property is left out there nothing will stop anyone else from pursuing an adverse possession. I think if you go for partial and no one says anything by the time you get to the end of the adverse possession process the residents would have changed out a new president of the HOA and they will then announce to you and fight you every inch of the way as far as rezoning. It's best to work out the roadmap now with both sides knowing what is going to happen and agreed.

Commissioner Fein: We might have two options to present them. I think they might want us to take the entire property. A 99 year lease.

