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coastal engineering and environmental consultants, as well as representatives of the City of Naples. These meetings have been extremely productive as we have worked through an extensive array of water quality, testing, dredging, and other issues arising in the context of managing Clam Bay. Both County personnel and City of Naples personnel have been extremely cooperative, and we have been able to arrive at proposed resolutions of issues based upon broad scientific consensus. It has been a refreshing change from the acrimonious relationship that the County has had with the Pelican Bay Services Division (PBSD in recent years. We also have been keeping interested stakeholders within Pelican Bay as well as Kathy Worley of the Conservancy of Southwest Florida abreast of what has been going on with the County.

An alarming development: The PBSD Board has been asked to consider a motion at its January 5th meeting to petition the BCC for the PBSD to regain control over certain Clam Bay matters. Incredibly, this motion has been presented without any discussion with the Foundation, with its Ad Hoc Committee on Clam Bay, or with the Pelican Bay community.

Our efforts have been directed towards a meeting with County staff, including County Manager Leo Ochs, in early January to begin the process of reducing our tentative agreement to writing. However, there is an alarming development: The PBSD Board is going to consider a motion at its January 5th meeting to petition the BCC for the PBSD to regain control over certain Clam Bay matters. It is regrettably a fact that there are a few within our community who are so antagonistic to the County that they view any negotiated settlement with the County as intrinsically suspect and risky. They have devised their own plan forward, which would involve the PBSD having primary responsibility for Clam Bay. Incredibly, their plan has been presented without any discussion with the Foundation, with its Ad Hoc Committee on Clam Bay, or with the Pelican Bay community.

This approach risks undermining what have proven to be very successful negotiations with the County.

This approach disregards the two plus years of effort of the Foundation's Ad Hoc Committee on Clam Bay, and risks undermining what have proven to be very successful negotiations with the County. Some in this rump group have decried what they see as the lack of openness of the Ad Hoc Committee's negotiations, and yet they themselves have held no public meetings about their approach, nor have they published anything, formally or otherwise, which attempts to justify why the eleventh hour approach they advocate would be superior to the solution carefully crafted over the past several years by the Foundation and its Ad Hoc Committee.

Background on how the Foundation's Ad Hoc Committee has approached Clam Bay issues.

I will comment below in the merits of their proposal, but first I want to give you a little background on how the Ad Hoc Committee has approached the various Clam Bay issues. Initially, even before the Committee was formed an incredible amount of time was spent

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researching the legal and regulatory situation applicable to Clam Bay. At the time the PBSB and the County were at odds over red and green lateral navigational markers, over dredging, over water quality studies, over proposed water flow modeling studies, and over who should be responsible for what in Clam Bay. You may recall the vitriolic attacks some of those within our community leveled against the County. The situation grew so intense that the County, which owns Clam Bay and which has total control over the PBSB, simply took away from the PBSB the responsibility for managing Clam Bay.

During all of this time no one spoke or wrote about who had the legal right to control what goes on within Clam Bay. It became apparent fairly early on that, through Declarations and Protective Covenants that were created in 1982 when Clam Bay was deeded to the County, the Foundation and only the Foundation has the legal right to a seat at the table in deciding what goes on within Clam Bay. About two years ago the Foundation Board decided that the Foundation, as a party with legal standing, should become involved in what had become a bitter dispute, and the Foundation Board unanimously created the Ad Hoc Committee on Clam Bay, comprised of myself, Bill Carpenter, now Chairperson of the Foundation, Mike Coyne, Vice-Chairperson of the Foundation, Henry Price, former Chair of the Legal Committee of the Foundation, and Cora Obley (recently deceased, a tremendous loss to our community).

I would like to explain how the Ad Hoc Committee approached this incredibly complex issue. There is an excellent record available from speeches, articles, emails, and personal conversations, much of which is available on the Foundation's web site, where we have tried to explain what we have been doing in these negotiations, but perhaps it may be helpful to elaborate a bit more on how and on what basis we have conducted these negotiations. There is a discussion on what I call Principled Negotiations attached.

The Foundation has conducted its negotiations with the County, and with the interested stakeholders within our community, using the attached fundamental rules of what I call Principled Negotiations. The end result is that the Foundation and the County are close to a resolution of this long simmering dispute.

We have conducted our negotiations with the County, and with the interested stakeholders within our community, using these fundamental rules of Principled Negotiations. The end result is that we are close to a resolution. We are not there yet, and there is still a lot of work to be done. But as the Foundation Board has made it clear throughout this process, no deal with the County will be made without a full opportunity for our community to review and comment on and have input into the proposed transaction.

Against this background, a few individuals, without any discussions with the Ad Hoc Committee, the Foundation Board, or the larger Pelican Bay community, have proposed their "deal" for the PBSB Board to regain control over certain, as yet undetermined, aspects of Clam Bay.

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That is the background against which a few individuals, without any discussions with the Ad Hoc Committee, the Foundation Board, or the larger Pelican Bay community, have proposed their “deal” for the PBSB Board to regain control over certain, as yet undetermined, aspects of Clam Bay.

On one level, their “deal” has a certain attractiveness. As we all know, the PBSB has done a stellar job over the years maintaining Clam Bay, and one solution to handling Clam Bay issues clearly could be to put control in the hands of the PBSB. The PBSB has an institutional knowledge of Clam Bay issues and has the ability to levy assessments of our members to be able to fund the studies and analysis that will be necessary going forward to manage Clam Bay.

Before we as a community endorse this course of action, however, we should carefully consider all its ramifications. The plan for the management of Clam Bay that is currently being negotiated with the County by the Ad Hoc Committee (admittedly, still to be reduced to writing, and subject to approval by the BCC and by the Foundation Board) involves the Foundation and the County having equal say on all Clam Bay matters, with a provision that if the parties cannot agree, the matter will be subject to arbitration.

The proposal for the PBSB to regain control over certain Clam Bay matters would involve abandoning the co-management plan currently being negotiated between the County and the Foundation.

The proposal for the PBSB to regain control over certain Clam Bay matters would involve abandoning the co-management plan currently being negotiated between the County and the Foundation. We need to consider carefully what the control structure truly would be with the PBSB in control of Clam Bay and what matters would properly be under the jurisdiction and control of the PBSB.

The County’s current practice is to require that Coastal Zone Management have jurisdiction over inlets and passes, a practice that enables the County to control potentially costly issues such as water quality and dredging. It is unlikely that the County will cede water quality or dredging issues to the PBSB.

The County’s current practice is to require that Coastal Zone Management have jurisdiction over inlets and passes, a practice that enables the County to control potentially costly issues such as water quality and dredging. It is unlikely that the County will cede water quality issues to the PBSB, since water quality issues may well be some of the most critical and potentially costly issues to be dealt with in Collier County in the years ahead. In contrast, the co-management plan being negotiated between the Foundation and the County provides that the Foundation and the party will jointly deal with water quality issues. Already in just a few short months our experts and the County’s experts have been able to reach agreement on water quality testing procedures, and have tentatively agreed on a plan to deal with water quality issues in Clam Bay.

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It is also difficult to see the County ceding to the PBSB the control over the dredging of Clam Pass, which is paid for by funds from the Tourist Development Tax, not from Pelican Bay funds. In contrast, the Foundation's negotiations with the County have resulted in an agreement regarding dredging that protects the ebb shoal, that protects our property at South Beach, that ensures that dredging will only occur when necessary for the health of the mangroves, and that gives the Foundation an equal say in when and where to dredge. I don't see the County allowing the PBSB to make those decisions.

Regardless of what responsibilities over Clam Bay a majority of County Commissioners might grant to the PBSB today, another majority of County Commissioners could reduce or withdraw those responsibilities at a future date.

But most fundamentally, regardless of what responsibilities over Clam Bay a majority of County Commissioners might grant to the PBSB today, another majority of County Commissioners could reduce or withdraw those responsibilities at a future date. The PBSB Board would have no legal right to object to having its responsibilities over Clam Bay reduced or even eliminated, just as they had no right to object in 2008 when the BCC took just that action. Again, in contrast, the agreement being negotiated between the Foundation and the County would be legally binding, and would limit during its term the County from taking unilateral action in Clam Bay.

The City of Naples has a legitimate interest in Clam Bay.

I also note that the City of Naples has an interest in Clam Bay, both because part of Clam Bay is in the City of Naples, because Clam Bay is connected to Moorings Bay, and because Clam Bay and Moorings Bay are both within the same WBID (water body identification number, a designation used by State authorities for managing water resources in Florida). We have taken the considerations of the City of Naples into account in arriving at the currently proposed management structure for Clam Bay. It is not at all clear how the City of Naples would react to the PBSB controlling Clam Bay matters. They certainly did not react well to the way the PBSB handled the red and green marker issue.

I am cautiously optimistic that we are going to be able to resolve the red and green lateral navigational marker issue.

And speaking of the red and green lateral navigational marker issue, I have previously reported that I am cautiously optimistic that we are going to be able to resolve this issue, and have asked for our community to temper down its often acerbic approach to this sensitive and contentious issue.

Many of us are concerned that those in our community who appear to believe that war is preferable to a negotiated settlement, who seem to have concluded that the County can never be trusted, and who refuse to abandon the conflict with the County over Clam Bay, are leading us down a path of renewed conflict that in fact will not result in our community gaining control

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of Clam Bay. A few in this rump group have said that they feel left out of the process, and that they do not understand the rationale behind the various positions that the Ad Hoc Committee has taken over the past several years.

How the Ad Hoc Committee conducted its negotiations with the County.

While we have tried to be as transparent as possible, and while no one can doubt that we have spoken and written extensively and I believe very clearly on the subject, perhaps we have not been as clear as we could be. One reason has been that negotiations are delicate affairs, and that publishing your negotiating position is not always a wise thing to do. However, we have now concluded that we are far enough along in the negotiations that we can share with our community how the Ad Hoc Committee has handled these negotiations. To do so I will use the Principled Negotiations framework as per the attached.

Principle 1: Aim To Win.

The first step was to decide, in a realistic and intellectually honest way, what was possible.

From the outset we had no goal other than “winning.” However, before one can decide what winning entails, you have to do the hard work necessary to understand the complete legal, factual, and interpersonal background of the situation. In other words, we had to determine, in a very realistic and intellectually honest way, what was possible.

We had to understand the legal framework.

The work began with an attempt to understand the legal framework. First, it is a fact that the PBSB is an arm of the County, and as such is under the total control of the BCC. The PBSB Board, as an advisory Board, is empowered by and under the authority and control of the BCC, with the authority to advise the BCC on the administration of a Municipal Services and Taxing Benefit Unit that was established to enable the residents of Pelican Bay to assess themselves to pay for certain extra services and facilities, including upgraded street lighting and medians, for example, that the County would not otherwise be willing to provide to Pelican Bay.

The PBSB Board is not an elected Board. It is appointed by the BCC. Pelican Bay property owners are entitled to vote their preference for PBSB Board seats, and fortunately the BCC has followed those preferences in making appointments to the PBSB Board, but they are not required to do so.

The Ordinance that sets forth the scope of responsibility for the PBSB is subject to amendment at any time by the BCC. We saw this in stark terms when the BCC voted on September 9, 2008 to take away from the PBSB the responsibility for Clam Bay, instead establishing the Clam Bay Advisory Committee to advise the BCC, and the County Coastal Advisory Committee, on Clam Bay matters. A number of us were involved in meeting and talking with the members of the

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BCC about that proposed action, and it became apparent in the harshest way that the BCC felt in no way compelled or obliged to deal with the PBSB—the BCC was going to do whatever it wanted to do with regard to Clam Bay.

The PBSB is always going to be subservient to the BCC, and it has no independent source of power that it could exercise over Clam Bay.

The lesson we learned in this analysis and in our various interactions with the BCC and County staff was that the PBSB is always going to be subservient to the BCC, and that it has no independent source of power that it could exercise over Clam Bay. Even if we could today convince a majority of the BCC to cede control over Clam Bay to the PBSB, there was absolutely no way to make that control permanent. At any time and over any issue a simple majority of the BCC is all that would be required for the BCC to reassign responsibility for Clam Bay matters to whatever entity it wishes.

Concurrently, we reviewed the governing documents of Clam Bay and of the Pelican Bay Foundation. That review revealed that the Planned Unit Development (PUD) Ordinance that formed Pelican Bay clearly indicated that Clam Bay was being set aside for the residents of Pelican Bay. This Ordinance was passed by the BCC, originally in 1977, and although it has been amended multiple times since, this provision has remained intact over the years. We also found that the predecessor in title to the Foundation, what is now WCI Communities, Inc. (WCI), had deeded Clam Bay to the County in 1982, as part of very complex set of negotiations with the County, the State predecessor to what is now the Florida Department of Environmental Protection, and the US Army Corps of Engineers. At the same time that Clam Bay was deeded to the County, WCI placed a set of restrictions and protective covenants on what could be done in Clam Bay. These were done by Deed and were clearly intended to be binding upon the County. The County accepted its Deed to Clam Bay, and when it did so it specifically recognized in writing that it was taking Clam Bay subject to these restrictions and protective covenants.

The Clam Bay restrictions and protective covenants, coupled with the PUD Ordinance, provide the only viable source of legally enforceable power for our community to have a seat at the table on Clam Bay matters.

These restrictions and protective covenants, coupled with the PUD Ordinance, thus appeared to provide the only viable source of legally enforceable power for our community to have a seat at the table on Clam Bay matters. However, further research indicated that WCI had in fact not fully transferred all of its rights and powers to the Foundation with respect to these restrictions and protective covenants. Thus in the spring of 2008 the Foundation began negotiations with WCI in an effort to convince WCI to assign all of its rights in Clam Bay to the Foundation. These negotiations took approximately one year, but they were successful, and in April of 2009 WCI assigned all of its rights in Clam Bay to the Foundation.

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As these negotiations were being conducted, and long before the Foundation decided to create its Ad Hoc Committee on Clam Bay, we conducted extensive additional research to determine just how viable the rights were that we were seeking to obtain from WCI. Initially, it became clear that the restrictions and protective covenants were not absolute, and that they did not give WCI total control over all matters in Clam Bay. For example, the restrictions and protective covenants did not cover on their face things like red and green lateral navigational markers, a source of a heated dispute between the PBSB and the County.

The coverage of dredging was also quite limited. For example, the restrictions and protective covenants provided that the County could not apply for a dredging permit without the prior approval of WCI, but it did not limit in any way what the County could do once it obtained a permit to dredge.

The Foundation's rights under the restrictions and protective covenants are not absolute. The Foundation has to have reasons for the exercise of its rights, and those reasons would have to be reasonable.

Finally, the restrictions and protective covenants, even where they were not limited, did not in fact give WCI the absolute rights that their language seemed to provide. Thus, there are a number of the restrictions and protective covenants that read that action is prohibited with the prior written consent of WCI, "which consent may be withheld in the sole and absolute discretion of WCI." However, Florida case law provides that what appears to be an absolute right is in fact not an absolute right, and the WCI would be required by a court to be reasonable in the exercise of its approval rights.

Thus, notwithstanding the language of absolute rights, WCI would be required to have reasons for its exercise of its rights, and those reasons would have to be reasonable. Once we came to this conclusion, it became apparent that we were going to have to do an extensive amount of work to understand each and every issue on its merits, and that to do that in a meaningful and adequate way, we were going to need to be part of the discussion of the substantive issues involved. It was at this stage where we began to use the phrase that the Foundation wanted its rightful "seat at the table."

The Foundation amended the restrictions and protective covenants to expand their scope.

In the course of all this research we determined that there was a way to deal with the limitations on the scope of the restrictions and protective covenants. By this time, we had the assignment of all of WCI's rights in Clam Bay. Article II, Section 2 of the declarations and protective covenants provides that "WCI (as well as its successor in interest, the Foundation) may, in its sole discretion, modify, amend, waive, or add to these covenants or any part thereof. The power of amendment, however, shall be limited to modification or enlargement of existing covenants which shall not substantially impair the general and uniform plan of development originally set forth herein." We saw the possibility of using that power to expand

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the scope of the restrictions and protective covenants. Accordingly the Foundation Board approved an Amendment to these restrictions and protective covenants in April of 2009 that made it clear that red and green lateral navigation markers, or any markers, could only be installed with the prior written approval of the Foundation. That amendment also provided that not only could the County not apply for a permit to dredge without the approval of the Foundation, the County could not commence dredging without the Foundation's approval.

There is a fundamental issue of whether the wetlands of Clam Bay are owned by the County or by the State.

Another issue involves title to the wetlands of Clam Bay. We have written about this extensively elsewhere (see for example the May 15, 2009 Clam Bay Q & A available on the Foundation's web site), but to summarize the issue briefly, there is an extremely complex and controversial issue whether the wetlands of Clam Bay are owned by the County or whether they are in fact owned by the State of Florida.

The County contends that the State owns the wetlands of Clam Bay, and that accordingly the restrictions and protective covenants are not valid in the wetlands. The Foundation contends (1) that the County and not the State owns the wetlands of Clam Bay, and (2) that even if the State owns the wetlands, the restrictions and protective covenants are valid as a matter of contract against the County. The Foundation has other substantive arguments as to why the restrictions and protective covenants are binding against the County. We have conducted an immense amount of research on these issues.

It is a fact that the State of Florida itself takes the position that it owns the wetlands in Clam Bay. That position is more than a bit disingenuous, since the State has a tendency to claim ownership of any Florida real estate that is even damp. But the fact is that this is the position of the State, even though the State disclaimed any ownership interest in Clam Bay in 1959 in a formal written and duly filed Deed of Disclaimer. Thus, any litigation with the County that places title to Clam Bay in dispute could be expected to cause the State to become involved.

We spent quite a bit of time, and our attorneys spent quite a bit of time, understanding and weighing and evaluating the multitude of variables involved in this ownership issue. Each aspect of this issue has permutations and implications far beyond its narrow confines. I should also mention that the Foundation Board approved in July of 2009 a second Amendment to the restrictions and protective covenants, which provides that even if some or all of the wetlands of Clam Bay are owned by the state, the restrictions and protective covenants are nonetheless binding against the County. I truly believe that the Ad Hoc Committee did not leave a stone unturned in attempting to amass as strong a legal position as possible vis-à-vis the County.

Some who are distrustful of the County have urged us to sue the County to enforce our legal rights. I have been skeptical of this approach.

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Some who have been distrustful of our negotiations with the County have encouraged us to sue the County to enforce our legal rights. I have been and remain skeptical of this approach, because even though I was trained as a litigator, even though I am convinced we do have strong legal rights, and even though I have “won” nearly all of the disputes with which I have been involved, I find that a lot can go wrong in trials, and that no result can be guaranteed.

More fundamentally, however, even if the Foundation were to go to trial, which could easily involve the State and the County on the other side, and even if we were to “win,” we have to look at what it is that we would win. We would win the right to enforce the restrictions and protective covenants against the County. We may even win the right to enforce the Amendments. We must realize what it is that such a win would give us: we would “win” the right to be able to have reasons for our positions, and to have reasons that are reasonable.

Note that the flip side of this is that we could lose. We could find the Foundation in a position of having no legal rights in the wetlands of Clam Bay. I really don’t think that this is a likely outcome, but it is not an impossibility.

Early on we saw that if the Foundation could obtain an agreement where the Foundation would have a seat at the table, with an equal say in the outcome, and with an acceptable dispute resolution mechanism in the event of a deadlock, that we would in fact be achieving as much as if not more than we could “win” via litigation.

Once it is determined that the best outcome is that you get to have reasons for your positions, and that those reasons must be reasonable, the benefits of having a “seat at the table” become apparent. By having a seat at the table, and a say in the outcome, you have the opportunity to influence the course of events long before serious disputes arise. Early on we saw that if the Foundation could obtain an agreement where the Foundation would have a seat at the table, with an equal say in the outcome, and with an acceptable dispute resolution mechanism in the event of a deadlock, that we would in fact be achieving as much as if not more than we could “win” via litigation.

Principle 2: Set a Clear Goal and Establish a Walking Point

We established as a goal a structure that would allow the Foundation to participate in the day to day management of Clam Bay, with an equal say on all decisions, and with a mechanism such as arbitration to resolve any deadlock.

We thus established as a goal a structure that would allow the Foundation to participate in the day to day management of Clam Bay, with an equal say on all decisions, and with a mechanism such as arbitration to resolve any deadlock.

We established a walking point of any outcome that would allow the County to act unilaterally in Clam Bay.

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Based upon all of the foregoing research and analysis, we established a walking point of any outcome that would allow the County to act unilaterally in Clam Bay. We determined that even if we were able to convince a majority of the current BCC to allow the Foundation to achieve its goal, if we could not do that in a way that creates a long term solution, one that cannot arbitrarily overturned by a later BCC majority, then it would be better to undertake the risk of litigation.

Principle 3: Establishing Trust and Building a Relationship

We worked to establish trust and build relationships with all concerned parties.

Long before reaching this point in our analysis, we had begun attempting to establish trust and build relationships with all concerned parties. This didn't involve lunches and backslapping, but rather carefully and slowly establishing a reputation for saying what we mean, meaning what we say, and being careful to try to stay on message, to find rational and positive bases for our positions, to try to deal on the basis of fairness, by focusing on the future, not the past, and by trying to build emotional trust, avoiding threats to trust, miscommunications, and, at all costs, avoiding personal attributions. We also never allowed "our side" to think of our position as worthy, and the County as being somehow evil or unworthy. That kind of thinking poisons your ability to think clearly, and is highly counterproductive.

It is important to research and understand the interpersonal dynamics that will be involved in a negotiation. While I won't go into the work that was done in that regard, you can be assured that a great deal of effort went into understanding the personalities involved, their political positions, and a host of other factors. Quite frankly, we found out that, contrary to what you may have heard from those who are opposed to the Foundation's efforts to seek a negotiated resolution of our dispute with the County, people on the "other side" do not in reality have horns and tails. In fact, they are not very different from you and me, they just have a different set of interests and responsibilities.

Principle 4: Keep it Principled

We attempted to avoid taking positions, but rather looked for shared interests. We tried to identify the legitimate interests that the County has in Clam Bay, and to find a way that those interests could be met without sacrificing the Foundation's legitimate interests.

From the outset we attempted to avoid taking positions, but rather looked for shared interests. We tried to identify the legitimate interests that the County has in Clam Bay, and to find a way that those interests could be met without sacrificing the Foundation's legitimate interests. The County is going to be responsible for water quality issues in unincorporated Collier County, including in Clam Bay. The forthcoming State and Federal water quality standards could cost

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the County a small fortune. We knew that the County was never going to give up this area of responsibility, and we never asked them to do so. We also knew that the County had a legitimate need for, and a right to, the sand taken when dredging Clam Pass. We recognized that need, and right, early on, and tried to ensure that we could find a way for the County to meet that need without jeopardizing our needs and rights.

We also recognized that Clam Bay is connected to Moorings Bay, which is in the City of Naples, and that part of the City of Naples abuts Clam Bay. Thus, the City of Naples, which also faces the same potentially costly water quality issues, has a legitimate interest in Clam Bay, an interest that we recognized and acknowledged as legitimate.

Our goal was to keep the discussions focused on issues and not on positions, and, over time, slowly, we were able to make progress.

Our goal was to keep the discussions focused on issues and not on positions, and, over time, slowly, we were able to make progress. We also assiduously avoided using the power button. Sure, we told anyone who would listen that we have a great case, but we did so in the context of also saying that neither side will win if we go to court, that a court case will only harden the already considerable animosity that exists on both sides, and that a Foundation victory could be a negative for the Pelican Bay community as well as for the County, because it would only embolden those on our side who have no desire to work with the County, thus risking a perpetual state of conflict. We argued to the County that the reason it should negotiate was not because we were confident of victory, although we were and so stated, but rather because a Foundation victory could be bad for both sides.

Principle 5: Be Positive

It is easy for me personally to choose this negotiating style, since I am positive by nature, but, as I mention in the attached, I also believe that in most cases it is the most effective way to approach negotiations. The Ad Hoc Committee consistently followed a positive approach in our negotiations.

Conclusion

Those who support PBSB control over Clam Bay seem to be following a strategy of "Let's go back to what didn't work before and what is structurally incapable of working for the long term." It is a strategy that would keep Pelican Bay, and Clam Bay, at the mercy of a majority of the BCC. It is simply not a viable long term solution.

I readily acknowledge that our friends who are pursuing PBSB control of Clam Bay undoubtedly have the best interests of Clam Bay and of Pelican Bay at heart. The problem, however, is that they are pursuing a strategy that is inherently flawed, a strategy of "Let's go back to what didn't work before and what is structurally incapable of working for the long term." It is a strategy

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that would keep Pelican Bay, and Clam Bay, at the mercy of a majority of the BCC. It is simply not a viable long term solution.

Our objective has been and is to put in place a procedure that will enable our community to have an effective voice in the ongoing long term management of Clam Bay, especially when difficult and controversial issues have to be handled. If the PBSB, which is under the absolute control of the BCC, takes over day to day management of Clam Bay, final authority will always rest in the hands of the BCC, and even if a majority of the BCC would be willing to vote today to bring Clam Bay under the auspices of the PBSB, there is no guarantee we will have the necessary majority to resolve critically important issues down the road.

The Foundation, which represents all the property owners in Pelican Bay, has a sound legal basis behind its request to have a seat at the table. Obtaining such a seat will enable the Foundation, and our community, to influence the course of events in Clam Bay in a more meaningful way than any other available solution.

The Foundation, which represents all the property owners in Pelican Bay, has a sound legal basis behind its request to have a seat at the table. Obtaining such a seat will enable the Foundation, and our community, to influence the course of events in Clam Bay in a more meaningful way than any other available solution. The resolution proposed for the PBSB Board on January 5 represents a step backward for our community.

I am convinced that the resolution being pursued by the Foundation and its Ad Hoc Committee will have broad support within our community.

I am convinced that the solution being pursued by the Foundation and its Ad Hoc Committee will have broad support within our community. I am also confident that the majority of the PBSB Board will see the relative merits of the Foundation's position and that support for the proposed resolution will be limited to those few who want to continue the battles of the past.

I would like to express my appreciation to the PBSB Board for all that it and its predecessors have done for Clam Bay and for our community. I would also like to express my thanks to the multitude of members who have sent their demonstrations of support for the work of the Foundation in attempting to resolve the previously seemingly intractable problems in dealing with the County over Clam Bay. And to those very few who have expressed dismay over the course we are taking, or who have indicated a lack of understanding about just what that course entails, and who are urging that the PBSB should be in charge of Clam Bay matters, I urge you to give careful consideration to all the ramifications of what the PBSB Board is being asked to pursue. We need to find a resolution that is both sound and will be effective for an extended period. The last thing we want is to fashion a resolution of current issues only to find that future thorny problems again subject us to the vagaries of needing to win a vote before the BCC.

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And I would also like to express my thanks to all of those in the County, including BCC Chairman Fred Coyle, County Manager Leo Ochs, and many others, as well as representatives of the City of Naples, including Vice-mayor and Chairman of the Coastal Advisory Commission John Sorey and many others, for the work they have done to make it possible for us to reach this promising stage in our negotiations. Thanks are also due to our new Second District Commissioner, Georgia Hiller, for her strong support of Pelican Bay in its endeavor to regain a voice in Clam Bay matters.

The Rules of Principled Negotiations Follow

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PRINCIPLED NEGOTIATIONS

The first and overriding principle—aiming to win

Negotiation first and foremost is about achieving your desired outcome. It isn't politically correct to say it, and the word "winning" admittedly has some negative connotations, but negotiations are about winning.

The second principle—setting a clear goal and establishing a walking point

You have to learn what is possible, and what others have achieved in similar circumstances. There is a lot of hard work involved in this stage, factual research, emotional research, understanding the other party, understanding the harsh realities of the world, but without this underlying homework your desired outcome is unlikely to be realistic and therefore achievable. Your goal does not have to be set in stone, and it can contain variables, but you should know what those variables are, and be prepared to recalibrate your goal as the variables change during negotiations, which invariably happens.

To set a goal means more than just establishing aspirations for the negotiations. You need to establish the point at which you would walk rather than enter into an agreement. Establishing this point is determined solely by the political, economic, and legal reality of your situation. A "walking point" should not change during a negotiation unless the objective situation has changed. This is why the most important stage of any negotiation is doing the research to establish your walking point.

The third principle—establishing trust and building relationships

Why establish trust? The fact is that people that trust you will be more willing to work to expand the pie rather than just to split it. Trust also frees up people to be creative in problem solving. Distrust invariably involves costly detection and regulatory mechanisms that can get in the way of successful negotiations.

One of my basic concepts is to try to push all conflict into cognitive conflict, as opposed to interpersonal conflict. Cognitive conflict is largely depersonalized, and consists of focusing on arguments about the merits of ideas, plans, and projects, independently of the identity of the people involved. How to do that? First, try to agree on a common goal or a shared vision. If the parties are focused not on their respective positions, but rather on what they might do together, the discussion becomes positive and idea based rather than position based.

Another method is to try to establish a "fair" basis for positions, and then discuss the issue of fairness as opposed to your position. Again, an idea based approach as opposed to a position based approach.

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Focusing on the future and not dwelling on the problems of the past also can be used to build trust. If you focus on the problems of the past in a negotiation, the other party is likely to be defensive and may well conclude that your insistence on enforcing all your “rights” for their prior behavior is going to be the way you will act with respect to their future behavior.

Establishing emotional trust is also important. Spend time with the other party. Create a good mood. Never gloat. Try to find something in the other party to admire.

You also need to be careful to avoid threats to trust. Breaches of trust are the most obvious, when you violate a principle that has been established between the parties. Miscommunications can cause parties to interpret something as a breach when in fact it is not. When you sense an inappropriate reaction on the other side, give first consideration as to whether a miscommunication might be involved. A good idea is to always be ready and willing to clarify what you meant to say.

Avoid personal attributions at all costs. Never call into question the other person’s character or intentions, because that destroys trust more quickly than anything else. Also avoid thinking of your side as good and worthy and the other side in less favorable terms. If you think this way, it will seep into your negotiations, and lead to a breakdown in trust.

The fourth principle—keeping it principled

Stay away from positions per se and focus instead on underlying issues: what are the parties’ interests, how can they be expanded, what independent standards can you use to determine a fair outcome, etc.

All negotiations are ultimately about interests, rights, or power. Interests involve learning about and understanding each side’s underlying needs, desires, and concerns. Rights involve standards of fairness. Power involves status, rank, and the ability to hold out, or walk away from the negotiations. Successful negotiations involve the use of each of interests, rights, and power, but I believe that the key is the way that they are used.

I try to steer negotiations into discussions of interests, and to finding ways of maximizing the mutual interests of the parties. This is not a revolutionary concept, everyone more or less tries to do it. What I try to do is to take the “person” or “position” out of the negotiations, and concentrate instead on a principle. Just about everyone would acknowledge that you can benefit from focusing on your opponent’s reasons for choosing a position, rather than the position itself. What I attempt to do is attempt to engage the party in the interests involved in their underlying concern, and then try to uncover a mutually advantageous way of satisfying those interests.

By keeping the discussion focused on principles, and not on positions, you can more effectively utilize the rights and power cards. Even a principled discussion can wind up with the parties

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still not seeing eye to eye. But if you have kept the discussion on the level of principle, you have made it much less likely that the other side has dug in, and you have left room to bring in an argument of fairness, that is, you can talk about what is “fair” to your constituency, and what you need to be successful.

And if you do need to use the power button, how you do so is critical. I have never said in a negotiation, if you don’t give us this point, we will terminate the negotiations. I have, however, said in negotiations that unless we are able to obtain a certain point, we will be unable to sell the transaction to the board, or to the CEO, or to some decision making group, in each case having laid a careful predicate to let the party we are negotiating with know that our decision makers have a reason for needing or wanting the particular provision. Again, a principled use of power.

The fifth principle—keeping it positive

Most negotiators focus on how to package their negotiations—what I call keeping it principled, focusing on interests, rights, and power in a principled way—but don’t focus nearly as much on their delivery. There are three distinct emotional styles that you see in negotiations: rational (unemotional, poker face), positive (friendly and nice), and negative (the rant and rave approach).

Each of these delivery mechanisms has a role in negotiations. However, I have come to believe that a positive approach is best for achieving long term results. Research bears out that positive mood negotiators use more cooperative strategies, engage in more information exchange, generate more alternatives, and use fewer contentious tactics than other negotiators. I believe that using emotion positively in negotiations is a self fulfilling prophecy—that a positive approach can determine the emotions of the other party and even the nature of the negotiations.