MINUTES
Key Largo Wastewater Treatment District (KLWTD) Board of Commissioners Meeting

Jan. 20, 2009
98880 OVERSEAS HWY, KEY LARGO, FL 33037

The Key Largo Wastewater Treatment District Board of Commissioners met for a regular meeting at 4:00 PM. Present were Commissioners Robbie Majeska, Norman Higgins, Andrew Tobin, Charles Brooks and Chairwoman Susie Hammaker. Also present the General Manager Charles F. Fishburn, District Counsel Thomas Dillon, District Clerk Carol Walker, and other appropriate District Staff.

The Pledge of Allegiance was led by Commissioner Brooks.

APPROVAL OF AGENDA

Commissioner Higgins added two items, Vacuum Station at Dove Creek, and the hiring of more employees.

Commissioner Brooks would like to hold the December 16, 2008 minutes until the February 3, 2009. He would like more time to review them. Martin Waits, District CFO removed the Pending Payments from Bulk and he added a Total Project Cost and Sources of Funding report.

Motion: Commissioner Brooks made a motion to approve the agenda as amended. Commissioner Tobin seconded the motion.

Vote on Motion

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Motion passed 5 to 0

PROCLAMATION
The Commission approved a Proclamation declaring February as Water Conservation Month.
PUBLIC HEARING
Sweetings Four Inc.
Linda Sweetings, Attorney for Sweetings Four Inc. called in.

District Counsel, Thomas Dillon, explained that a settlement offer has been presented to Sweetings Four Inc. subject to Board approval to assess the property at 5 EDU's. See Exhibit "A".

Ms. Linda Sweeting as attorney for Sweetings Four Inc. stated that she wishes to accept the settlement offer of the property being assessed at 5 EDU's.

Mr. Dillon recommended to the Board that the settlement offer, which does not set a precedent it is a settlement of a disputed claim, of assessing the property (the Kentucky Fried Chicken property) at 5 EDU's be accepted.

Mr. Dillon asked Ms. Sweeting if she thought that there was a need for public testimony on the matter. Ms. Sweeting stated that in her option she did not see the need and Mr. Dillon stated that he did not see the need for public testimony either.

Mr. Dillon explained that the District’s Assessment Resolution allows for the District to reassess a property when it is put into beneficial use.

Commissioner Brooks asked if the District was planning on putting in a six inch pipe to the property line. Mr. Dillon confirmed it.

Motion: Commissioner Higgins made a motion to accept the proposed settlement of assessing the Kentucky Fried Chicken property at 5 EDU’s. Commissioner Majeska seconded the motion.

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Motion passed 5 to 0

Mr. Dillon stated that the District will notify the Monroe County Tax Collector in the morning of the assessment change.

PUBLIC COMMENT
The following person addressed the Commission: Burke Cannon, Tavernier, FL thanked the District Clerk, Carol Walker, for giving a presentation at the Hammer Point Homeowners Association Meeting. She gave a very good presentation.
GENERAL MANAGER’S REPORT

Basin C-2 Collection System Contract Award

Charles Fishburn, General Manager, explained that Basin C-2 bids were received by the KLWTD District on December 3, 2008. Fourteen bids were received. After review Metro, the low bidder, is recommended by staff for construction of Basin C-2. Danny Gonzales, Metro Project Manager and Michael Giardullo, Project Manager, and Carlos Alvarez, Superintendent from Metro were at the meeting to take questions.

Commissioner Brooks asked if it was Metro’s intention to be on the job site everyday supervising the subcontractors and what percentage of work do they plan on having the subcontractors do. He also asked if Metro has sufficient equipment. Commissioner Brooks wanted to know a little about the Metro employees.

Metro stated that they will have a supervisor on site daily and they are looking at a 50/50 split with subcontractors (Mr. Fishburn commented that the split is 60/40). They have all the equipment they need except a trencher which they are planning on renting. Their employees have been with them in the range of twenty years to one year.

The Board questioned the supervision of the C and W crew and there was mention of the lack of supervision in the work done by them in Basin A. The Metro representatives stated that there was no doubt that they will have supervisors on site and that Metro will control the performance of the C and W crews.

Mr. Dillon commented that the District has the ability to reject a subcontractor if they are not performing.

Commissioner Brooks stated the following: “In all good conscience based on our past experience during this year with a particular contractor I cannot vote in favor of this award until the District has certain guarantees that certain scenarios not repeat themselves.

There has been discussion regarding the potential subcontractor involved in this award. That has been a major problem for the District on several occasions. It seems the District gets into situations that it does not have full control over during the construction process.

Therefore, I cannot vote for a contract award that does not specify stipulations within the contract that protect us from similar conditions. I understand that there has been some verbal understanding, and the District has control over who the subcontractors are (approval or disapproval). Also, I understand that there are stimulations such as requiring the general contractors 100% supervision time on the job.

Further there has been discussion regarding past contracts that either have or do not have a stipulation that controls the amount of work that can be done by a subcontractor with or without supervision from the general contractor. This seems to be an on-off situation depending on the contract.
It may not be necessary with some contractors but should be in all contracts to provide the necessary controls to prevent reoccurrences of past performances.

I assume at this point the awarding of this bid is not binding. There will be no binding obligations until such time as the Board approves the final contract.

Is that the case here and is it the normal case?”

District Counsel, Thomas Dillon told Commissioner Brooks that that is not the normal case and it is not the case in this bid. He explained that the District goes out to bid with certain specifications and they have to award to the low bidder. The District cannot change the specification before the contract is signed.

Commissioner Brooks stated “I will not be able to support any construction contract that does not provide contract stipulations that gives the District maximum and legal controls that protect the District and the Key Largo citizens to the best possible performances and construction procedures (this includes restoration to original or better conditions in the shortest time.)

I will need those stipulations summarized in the background of the agenda item so I may have the secure feeling that we are doing our best to protect the District.”

**Motion:** Commissioner Higgins made a motion to award the Basin C-2 Collection System award to Metro Equipment Service Inc. Commissioner Majeska seconded the motion.

Commissioner Tobin stated that he expects Staff to watch the project very carefully and to report to the Board immediately any problems.

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Motion passed 4 to 1

Commissioner Tobin requested that at the next meeting staff make a report on what is being done to let Basin C-2 know about what is going to be happening in their neighborhood.

**Basin D-3 Paving Estimate**
The General Manager, Charles Fishburn, explained that the complete overlay of roads in Basin D-3 was under estimated. Therefore a change order will be required to pay for complete overlay of most streets in Basin D-3. When the exact scope of the additional overlay has been determined this Change Order will be brought back to the Board for approval.
**Basin B-3 Change Order**
Mr. Fishburn told the Board that Ric-Man was low bidder on Basin B-1 and was awarded Basin B-2 by change order. Ric-Man has proposed to move into Basin B-3 with trenching and pit boring equipment. Staff will review the proposal and bring back a recommendation to the Board for approval.

**Arcadis Work Authorization No. 4**
Mr. Fishburn stated that Weiler Engineering is responsible for construction management and oversight of the Regional Plant; Arcadis continues to be Engineer of Record and will need to be consulted regularly for design issues. Staff will bring back a work authorization which will provide for compensation for those services on an hourly basis.

**COMMISSIONER’S ITEMS**

**RESOLUTION 03-01-09**

A RESOLUTION OF THE KEY LARGO WASTEWATER TREATMENT DISTRICT, PROCEDURES FOR INCREASES IN PERSONNEL COMPENSATION; AND PROVIDING FOR AN EFFECTIVE DATE

Commissioner Tobin explained that the resolution is not designed to interfere as much to keep the Board informed, and to prevent something that none of the Board wants being jammed down their throats because they never had an opportunity to review it. The resolution will be a good check and balance making the Commissioners better at their job and would allow the Commissioners to have an informed role in the management of the District. Commissioner Tobin asked for a 3% cap on employee compensation.

Chairman Hammaker stated that she feels that the resolution would be micro managing the General Manager.

**MOTION:** Commissioner Brooks made a motion to approve Resolution No. 03-01-09 setting the cap at 3%. Commissioner Tobin seconded the motion.

**Vote on Motion**

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Motion passed 4 to 1

**Employee Benefits**
Chairman Hammaker introduced paper work from Marlo DeMoss’s company. The company works with Boards to explore benefits for employees.
Stimulus Fund Effort Update
Chairman Hammaker reported that the response emails must be into the Florida Delegation by January 28, 2009. An ad will be in the Free Press and the Reporter with the suggested email. Chairwoman Hammaker met with Islamorada staff, Islamorada Chamber of Commerce, and the Key Largo Chamber of Commerce. She had an interview with a reporter and will be giving an interview with the Upper Keys BPW Wednesday, and will give a presentation at the Islamorada Commission Meeting.

905 Workshop, County Line Workshop, “Private” Subdivision Workshop
Commissioner Tobin stated that the Board needs to have a special meeting on CR 905, County Line, and “Private” Subdivisions to discuss Ed Castle’s memo and then when the Board is comfortable with the issue the can be a workshop with the residence and then a decision can be made.

MOTION: Commissioner Brooks made a motion call a Special Meeting on February 11, 2009 at 4 PM to 6 PM to discuss CR 905, County Line, and “Private” Subdivisions. Commissioner Majeska seconded the motion.

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Motion passed 5 to 0

Vacuum Station at Dove Creek
Commissioner Higgins reported that the residence in the area of Dove Creek do not want a vacuum station in the area.

General Manager Charles Fishburn told the Board that the District will talk to the neighbors to see how they feel and may post a sign on the property

BULK ITEMS
Pending Payments of January 20, 2009

Motion: Commissioner Brooks made a motion to approve the Pending Payments contingent upon the availability of funds. Chairman Hammaker seconded the motion.

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ENGINEER'S REPORT
Status Report
Ed Castle, Weiler Engineering, stated that Basins E and F will be 100% designed in a few weeks. Basins G and H are at a preliminary design level. Basin C Phase 2 has just been awarded and the final documents for the rest of Basin C should be finished in a few weeks. The injection well is going deeper than first thought.

FINANCIAL REPORT
First Quarter Consolidated Financial Report
Martin Waits reviewed the first quarter financial report and reported that the District is very close to the budgeted amount.

North Component Project Report
Mr. Waits reviewed the email that he had sent the Board that reviewed the North Component Project which projects the project at $58.9 million.

Assessment Management System
Mr. Waits reported that he and Syndi Langford are still reviewing systems.

LEGAL COUNSEL REPORT
Refund of Non Ad Valorem Assessment Payment for Government Entities Holding Unimproved Property for Conservation Purposes

Thomas Dillon, District Counsel, introduced the refund request.

Motion: Commissioner Tobin made a motion to approve the refund of Non Ad Valorem Assessment Payment for Government Entities Holding Unimproved Property for Conservation Purposes. Commissioner Brooks seconded the motion.

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Motion passed 5 to 0

ADJOURNMENT
The KLWTD Board adjourned the Board Meeting at 7:29 PM to be continued on January 22, 2009 at 4 PM.
The KLWTD meeting minutes of January 20, 2009 were approved on February 17, 2009.

Chairwoman Hammaker

Carol Walker, CMC
District Clerk
Backup re Sweetings Four agenda item

Thomas M Dillon PA
Board Certified in Construction Law
PO Box 370736
Key Largo, Florida 33037
Phone: 305-240-1767
Fax: 305-853-2693

Please update your address book to show my new email address:
lawtmd@gmail.com

From: Thomas M Dillon [lawtmd@gmail.com]
Sent: Friday, January 09, 2009 2:20 PM
To: Margaret Blank; Syndi Lankford; Martin Waits; 'Andrew Tobin'; 'Carol Walker'; Charlie Brooks; 'Chuck Fishburn'; 'Norman Higgins'; Robby Majeska; Susan Ford Hammaker
Subject: FW: Sweetings Four assessment

FYI

Thomas M Dillon PA
Board Certified in Construction Law
PO Box 370736
Key Largo, Florida 33037
Phone: 305-240-1767
Fax: 305-853-2693

Please update your address book to show my new email address:
lawtmd@gmail.com

From: Lin Sweeting [mailto:lin.sweeting@gmail.com]
Sent: Friday, January 09, 2009 2:16 PM
To: Thomas M Dillon
Cc: Mlsgls
Subject: Re: Sweetings Four assessment

Mr. Dillon:

Sweetings Four agrees and concurs with your representations.

We will attend and await the Board's ruling on January 22, 2009.

We hope to forego any legal action that will result in the expenditure of time and money for both Sweetings Four and the District.
If the Board approves the agreed proposal, I will immediately withdraw the Sunshine requests upon receipt of the email copy of the notice of adjustment to the Tax office.

Thank you again for your assistance in possibly resolving this matter.

On Fri, Jan 9, 2009 at 2:06 PM, Thomas M Dillon \texttt{<lawtmd@gmail.com>} wrote:

Yes

Thomas M Dillon PA
Board Certified in Construction Law
PO Box 370736
Key Largo, Florida 33037
Phone: 305-240-1767
Fax: 305-853-2693

Please update your address book to show my new email address:

\texttt{lawtmd@gmail.com}

\textbf{From:} Lin Sweeting [mailto:lin.sweeting@gmail.com]
\textbf{Sent:} Friday, January 09, 2009 2:05 PM
\textbf{To:} Thomas M Dillon
\textbf{Cc:} Mlsgis

\textbf{Subject: Re: Sweetings Four assessment}

Mr. Dillon:

What about the size of the connection. Will the District commit to at least the 6 inch connection for this Parcel based on the 5 EDU assessment?

On Fri, Jan 9, 2009 at 1:58 PM, Thomas M Dillon \texttt{<lawtmd@gmail.com>} wrote:

Ms. Sweeting:

In the interest of settling a disputed claim, I am willing to submit to the Board a recommendation to change the 2008 assessment for Parcel AK 1641642 to a number based on 5.0 EDUs. The District staff will endorse this change. If the
Board approves the change, the District would notify the Tax Collector by January 22, 2009 and provide a copy to you by email.

I understand that you want to make representations to prospective buyers. THE DISTRICT IS NOT IN THE LAND DEVELOPMENT BUSINESS AND WILL NOT MAKE OR ENDORSE ANY OPINION AS TO WHAT CAN OR CANNOT BE DONE WITH THE PROPERTY. The District will provide the connection that is designed within the right of way adjacent to the property, and will provide Sweetings Four or the buyer with the specifications necessary to design the connecting infrastructure on the property. However, it is up to the property owner to determine for itself whether the property is suitable for the intended use and what improvements may be required for that use. PLEASE DO NOT REPRESENT THAT THE DISTRICT HAS PROVIDED YOU WITH ANYTHING OTHER THAN THE FACTUAL INFORMATION DESCRIBED IN THE SECOND SENTENCE OF THIS PARAGRAPH.

Regarding the document request, I understand that you are requesting the District to avoid making any expenditures on your behalf in connection with responding to the request until at least January 21, 2009. If you decide to revoke the request, you must provide a notice to me in written or email form. Otherwise, the District will be obligated to begin expending funds for your account.

Thomas M Dillon PA
Board Certified in Construction Law
PO Box 370736
Key Largo, Florida 33037
Phone: 305-240-1767
Fax: 305-853-2693

Please update your address book to show my new email address:

lawtmd@gmail.com

From: Lin Sweeting [mailto:lin.sweeting@gmail.com]
Sent: Friday, January 09, 2009 11:11 AM

To: Thomas M Dillon
Subject: Re: Sweetings Four assessment

Mr. Dillon:

Then, based upon your response, this is what we propose.
5 EDUs with the understanding that the District will install a 6 inch connection sufficient for a restaurant. That way we can represent as a seller or lessor that the connection is sufficient for same without altering the proposed use of the property. This building's seating capacity is limited to 24 and will be reduced when the necessary expansion of the bathrooms is made to accomodate and comply with disability laws. This building will never be a high capacity restaurant with linens, etc. because of that limitation.

Of course, whatever use it is eventually put to, the District will have the right to reassess if the usage goes up; and the buyer or lessor will have the right to request a reassessment if the usage is something less.

We want the District's agreement in submitting this proposal so that hopefully there will not be significant opposition from the Board members, i.e. we want this to be the District's recommendation.

If the agreed proposal is approved on January 20, 2009, then by no later than January 22, 2009, we want the District to convey in writing this adjustment to the Monroe County Tax office so that the tax bill can be revised and hopefully my parents can get the payment in before the end of the month before they lose another discount percentage. We also want to be provided with a copy of that written notice by no later than January 22, 2009.

If the District agrees with this proposal and will put this recommendation in writing and submit same to the Board, then I will further defer the District's response to the Sunshine requests through the date of the hearing on January 20, 2009.

If the Board votes in agreement with the proposal and the written adjustment is provided to the Monroe County Tax office by January 22, 2009, I will withdraw the Sunshine requests.

Thank you.

On Fri, Jan 9, 2009 at 10:08 AM, Thomas M Dillon <lawtmd@gmail.com> wrote:

Ms. Sweeting:

1. 5 EDU's

2. Starbucks is not connected yet, but the connection size will be 6".
Mr. Dillon:

The obvious question. What is the lowest EDU where the District will install pipe with restaurant capacity?

What size is installed for the Starbucks?

On Thu, Jan 8, 2009 at 4:11 PM, Thomas M Dillon <lawtmd@gmail.com> wrote:

Ms. Sweeting:

I acknowledge receipt of your email advising the District that it may defer efforts to comply with your document request until 1/13/09. I note that you are not listed with the State of Florida as an officer of Sweetings Four, Inc.; therefore I am assuming that you are the attorney for Sweetings Four, Inc., with full authority to act on behalf of the corporation. Please confirm.

I am attaching a draft copy of the notice of public hearing that is being published. The final copy is also being mailed to the address currently shown in the Property Appraiser's records, as follows: SWEETING'S FOUR INC, PO BOX 370141, KEY LARGO, FL 33037-0141. If you would like an additional courtesy copy sent to another address, please advise.
I will attempt to address your further question as follows. The District will provide a connection point for the parcel within the public right-of-way adjacent to the parcel. The District facilities are in the design process and will be based on the anticipated flow from the parcel, which will be based on the flow used for assessment purposes, currently 29.2 EDU's. The assessment includes $2,250 to cover the cost of the connection provided by the District. If that cost exceeds $2,250, the excess amount will be added to the assessment. In addition, the parcel owner may be required to construct improvements at its own cost to complete connection from the owner's structure to the District connection. Until the design of District facilities is complete, the nature of such improvements will not be known.

If Sweetings Four accepts the recommended assessment, based on 9.9 EDU's, the design of the connection will be adjusted accordingly. In order to settle this matter, the District will be willing to consider a reasonable proposal to use a flow number less than the currently recommended basis for assessment. If a lower flow rate is used, the design of the connection will be adjusted accordingly. However, if the use of the parcel changes such that flow is expected to increase above the flow finally used for the assessment purposes, and the District must upgrade the connection to handle the anticipated flow, the owner of the parcel will be required to pay for the upgrade as a lump sum. Further, as provided in the Final Assessment Resolution, if actual flow changes significantly, even if the rate does not require a change in the physical connection, the District may change the assessment amount to reflect actual flow.

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Fax: 305-853-2693

Please update your address book to show my new email address:

lawtmd@gmail.com

From: Lin Sweeting [mailto:lin.sweeting@gmail.com]
Sent: Thursday, January 08, 2009 3:28 PM
To: lawtmd@gmail.com
Cc: Msglc
Subject: Sweeting's Four assessment

Mr. Dillon;

Thank you for your time today along with Mr. Fishburn regarding potential resolution of the above.
Please accept this as my agreement that the District may defer its response to my Florida Sunshine requests until next Tuesday, January 13, 2009, to provide the District and Sweeting's Four additional time to reach a proposed resolution of the matters discussed. I understand that any proposed resolution will have to be voted on and approved by the Board. Please ensure that Sweeting's Four receives due and proper notice of any hearing date where this matter is on the District's Agenda.

Should we reach a proposed resolution, I will again defer the District's response to the Florida Sunshine requests until such time as the Board votes on and approves the proposal. If any proposed resolution is approved by the Board, I will withdraw the Florida Sunshine requests.

As one follow up question to our discussions today, relative to the size of the pipe that will be installed at this property's location, I want to know if that plan or determination has, in reality, already been made. Since the budget and plan for this project was developed before the assessments, isn't it already the plan to install a pipe that has the sewage capacity for a restaurant at this site?

Thank you for yours, the District's and the Commissioners' assistance throughout.

Linda C. Sweeting